



Arbitration in Brazil

A brief comparison with the Judiciary and the generation of economic benefits for users and society

Introduction

In this study, we analyze the Brazilian arbitration market and the benefits of arbitration as an alternative method for resolving disputes.

To this end, we first present an overview of the numbers of the Brazilian judicial system and how arbitration compares to the Judiciary in terms of certain metrics, such as average term and number of cases per judge. Next, we list the benefits of arbitration, both for the parties involved and for society as a whole.

Afterwards, we present the results of a survey that show, in practical aspects, the advantages perceived by users with the use of arbitration and their satisfaction with this alternative for resolving disputes.

Finally, we highlight the significant evolution of the Brazilian arbitration market since the promulgation of Law No. 9,307 of September 23, 1996 (“**Arbitration Law**”), considering metrics such as the total number of cases and the average value for disputes in the main Brazilian arbitration centers.

Brazil is a very litigious country, and the Judiciary is overloaded.

Every year, more than 30 million new cases are filed.

In this section we analyze metrics from the Brazilian Judiciary, extracted from the annual reports on the Judiciary (“**Justiça em Números**”) and from the National Judiciary Database (“DataJud”), where Justiça em Números data is published. Both are organized and published by the National Council of Justice (“CNJ”).

According to DataJud, on December 31, 2023,¹ there were **82.4 million legal cases ongoing** in all courts across Brazil,² with **35.2 million new cases** being filed during 2023. This number of new cases represents a 10% growth when compared with 2022.

Brazil is one of the most litigious countries in the world.

According to data from the World Justice Project, 32% of Brazilians experienced a legal problem in the two years prior to 2022,³ showing the country’s high litigiousness. As we will see later, in comparison with other countries, Brazil has a high number of ongoing cases in relation to the country’s population.

Using population data from the 2022 census⁴ together with the number of ongoing cases from Justiça em Números report for the same year, we calculate an average of **40,100 ongoing cases for every 100,000 inhabitants** in Brazil.



This average is very high even when compared with countries with a high number of disputes,⁵ such as:

- **United States of America:** 5,800 ongoing cases per 100,000 inhabitants;
- **Germany:** 12,300 ongoing cases per 100,000 inhabitants; and
- **Sweden:** 11,100 ongoing cases per 100,000 inhabitants.

As for the number of **new cases per year**, the European Union has an average of 4,400 new judicial cases per 100,000 inhabitants per year,⁶ much lower than the 15,800 new cases per year per 100,000 inhabitants in Brazil.

Studies suggest that the high level of litigation in Brazil is linked — among other things — to the low value of legal costs, which discourages negotiation between the parties and increases disputes brought to the Judiciary,⁷ contributing to congestion and slowness in the public disputes adjudication system.

The Brazilian Judiciary is much slower and more congested than the arbitration centers.

In order to obtain indicators that can be compared between the Judiciary and arbitration, the data published in DataJud was accessed, and this data was trimmed in order to consider only legal cases relating to disposable economic right⁸ topics that could be discussed in arbitration.⁹

With this selection, we observed that the average time¹⁰ elapsed between the beginning of a judicial process and the first resolution of the process¹¹ is **42 months**, or **3.5 years**.¹² This period is calculated as the sum of the average duration for cases in the 1st and 2nd degrees — that is, it does not include a potential additional period in higher courts.

The long time it takes to resolve legal cases in Brazil is corroborated by system users. According to the 2021 ICJ Brazil Report, “[t]he main dimension that affects trust in the Judiciary is slow judicial provision. In the period analyzed, 83% of respondents answered that the Judiciary resolves cases slowly or very slowly.”¹³

Even without including higher courts, the average period for resolving a lawsuit is around 120% longer than the average period of **19 months**, or **1.6 years**, observed in arbitration cases concluded in the eight largest Brazilian centers.^{14, 15}

The Judiciary slowness, among other things, is related to (i) the high level of litigation in the country; (ii) the low number of judges in relation to the number of cases; and (iii) the high ratio between the number of lawyers and the number of judges.

Between the years 2017 and 2023, the Brazilian Judiciary had, on average, annually:¹⁶

- 80.0 million pending cases;
- 30.0 million new cases per year;
- 31.2 million cases resolved per year; and
- 18,100 judges.

This data translates into a high volume of cases per judge, which has a direct impact on the time it takes to resolve cases.¹⁷ Between 2017 and 2023, the following was observed annually, on average:

- 4,421 cases pending per judge;
- 1,724 decisions per judge, per year; which translates into an impressive
- 6.9 decisions per judge per business day.¹⁸

On the other hand, compared with more developed countries, Brazil has few judges in relation to its population. In 2022, the last year with available data, Brazil had **8.9 judges per 100,000 inhabitants**,¹⁹ a lower number than most developed European countries, such as:

- **Germany:** 25.0 judges per 100,000 inhabitants;²⁰
- **Portugal:** 19.4 judges per 100,000 inhabitants;²¹
- **Italy:** 11.9 judges per 100,000 inhabitants;²²
- **Sweden:** 11.6 judges per 100,000 inhabitants;²³
- **France:** 11.2 judges per 100,000 inhabitants;²⁴
- **Spain:** 11.2 judges per 100,000 inhabitants;²⁵
- **Norway:** 11.0 judges per 100,000 inhabitants;²⁶ or
- **European Union:** 22.2 judges per 100,000 inhabitants.²⁷

Lastly, studies show that there is a strong correlation between the high rate of congestion in the Brazilian Judiciary and the high ratio of the number of lawyers to the number of judges.²⁸ In Brazil, there are currently **77.2 lawyers for each judge**,²⁹ much higher than what studies show for other countries, such as:

- **Italy:** 33.5 lawyers for each judge;³⁰
- **Spain:** 27.1 lawyers for each judge;³¹
- **Portugal:** 16.6 lawyers for each judge;³²
- **Norway:** 14.5 lawyers for each judge;³³
- **France:** 8.3 lawyers for each judge;³⁴
- **Germany:** 8.0 lawyers for each judge;³⁵
- **Sweden:** 5.2 lawyers for each judge;³⁶ or
- **European Union:** 7.7 lawyers for each judge.³⁷

As such, Brazil is a country with (i) a high number of legal cases per capita; (ii) a low number of judges per capita; and (iii) a high number of lawyers per judge. This results in a high workload for Brazilian judges, which contributes to the delay in resolving the cases in progress.

And this is not a recent problem: “[...] research shows that, at least in terms of the Judiciary efficiency, with regard to time and the bureaucratization of its services, its legitimacy has been questioned since the beginning of the 1980s.”³⁸

The Business Courts — an attempt to address the issue — are also overloaded.

At the end of 2017, the Court of Justice of the State of São Paulo (“TJSP”) established four specialized business courts (“Business Courts”),³⁹ two in the capital and two in the greater São Paulo area.⁴⁰ The purpose was to direct more complex disputes to these courts so that the matters were handled by judges with greater specialization.⁴¹

Even though these four Business Courts deal with a much smaller number of cases per judge than the Judiciary average, their numbers are still significant. For example, according to DataJud, in 2021 these four TJSP courts had:

- 7,400 pending cases;⁴²
- 5,100 new cases per year;⁴³
- 3,600 cases resolved per year;⁴⁴ and
- Six judges, four in charge and two substitutes.⁴⁵

This data translates into a volume of cases per judge lower than the average of the Judiciary as a whole, but still quite high:

- 1,095 cases pending per judge;
- 852 new cases per judge per year;
- 595 decisions per judge per year; which translates into
- 2.4 decisions per judge per business day.⁴⁶



The lower ratio of “cases per arbitrator” contributes to faster resolutions in arbitration.

Identifying the ratio of cases per arbitrator — that is, between the number of arbitrations in progress and the number of arbitrators involved in them — is difficult. This is because few centers disclose the names of the arbitrators who are acting in the cases they manage — sometimes reporting this data only for a period of time⁴⁷, and other times just disclosing a list of the arbitrators who are members of that center. Additionally, it is very common for arbitrators to be on more than one center’s list, thus increasing their chances of participating in different cases from various centers and, consequently, the number of cases in which they are actually involved. Finally, it is necessary to know whether the cases are conducted by a single arbitrator or by three arbitrators.⁴⁸

We observed that the three centers with the highest number of cases in Brazil, Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce (“CAM-CCBC”), International Court of Arbitration of the International Chamber of Commerce (“CCI”) and Conciliation, Mediation and Arbitration Chamber of the Center for Industries of the State of São Paulo and Federation of Industries of the State of São Paulo (“CIESP/FIESP”),⁴⁹ there are 356 names of arbitrators, already disregarding double counts.⁵⁰ Even if (i) not all arbitrators on the lists are actually part of the tribunals in ongoing cases; (ii) there may be concentration of cases in some arbitrators; and (iii) each arbitration normally has three arbitrators; these numbers indicate an infinitely lower ratio⁵¹ of cases per arbitrator than the number of cases per judge observed in the Judiciary in general or in the Business Courts.

Thus, when opting for arbitration as a method for resolving disputes, the parties will have judges with more favorable conditions to dedicate themselves to the case when compared with the Judiciary. This factor is even more relevant when one takes into account that the majority of disputes that use the arbitration method have a higher degree of complexity than the average of judicial disputes. This naturally requires judges to be more involved in the case, which can hardly be done in a timely or adequate manner by judges who have the current load of pending cases and decisions taken daily in the Judiciary.

Arbitration generates a series of benefits for the parties involved in the dispute.

In this section, we explore the main benefits of arbitration compared with the judicial system from the perspective of the parties involved and provide a brief analysis of each of these benefits.⁵²

Arbitration gives the parties more freedom and allows them to choose arbitrators with significant expertise in the matters discussed.

The typical structure of an arbitral tribunal involves three arbitrators,⁵³ with each party appointing one of the co-arbitrators and a third arbitrator serving as the president of the arbitral tribunal.⁵⁴

This structure seeks to eliminate variables such as possible bias on the part of the judge, while allowing the parties to choose arbitrators with significant expertise to judge their disputes. This is especially relevant in disputes on complex topics involving in-depth discussions about a specific sector or discussions on complex economic and financial topics.

In many disputes, there may even be an intersection between themes, such as an arbitration involving a merger and acquisition transaction in the

agro-industrial sector. In this case, discussions may involve complex issues of agriculture and industrial productivity, as well as accounting, economic and financial issues. In these cases, having a panel of three arbitrators allows for a greater diversity of knowledge that favors a more-informed decision.

In the Judiciary, on the other hand, the decision is concentrated in a single judge and, although specialized courts have recently been created to decide on more complex cases,⁵⁵ there is no possibility for the parties to choose the judge of the case according to the specific knowledge required. As a result, it is possible for the case to be ruled by a judge who, despite his significant expertise in the field of law, has little familiarity with technical topics in other areas of specific knowledge relevant to the case.

As explained by Feliciano Dias “[...] legal rules have become ineffective in resolving increasingly complex conflicts, legal science losing its autonomy given its interdisciplinary character with other areas of knowledge, especially economics, requiring jurists of a new hermeneutics to resolve such problems.”⁵⁶





The speed of arbitration increases predictability and facilitates the release of resources for the creditor of the dispute.

The lack of access to resources that are trapped in long legal discussions generates a high opportunity cost for Brazilian companies, which fail to benefit from these resources. As described by Kenneth Dam, “the Brazilian private sector has enormous assets (equal to the value of the claims it is unable to vindicate through the court system) on which it is not able to earn interest currently or otherwise benefit.”⁵⁷

The concept of “time-value” of money shows that the value of a monetary unit in the present is greater than the same monetary unit in the future, due to the preference for consumption in the present over consumption in the future, inflation and uncertainty about future flows. Considering everything else constant, the value of a future flow reduces as (i) the uncertainty about the occurrence of this flow increases, increasing the discount rate; and (ii) the date on which the flow occurs is further away, as the future flow will be discounted over a longer period.⁵⁸

This concept becomes relevant as arbitration brings a much faster resolution than the judicial process, therefore reducing uncertainty, releasing resources more quickly to the winning party and increasing the present value of their benefit from the litigation.

The faster processing of arbitration procedures in relation to judicial procedures implies the financial award is more quickly accessed by the winning party, which can (i) be returned to shareholders; (ii) reduce the need to raise debt in the market; or (iii) be reinvested in productive activities within the company.

In other words, this encourages the company’s growth and, on a larger scale, results in a positive impact on the growth of the economy as a whole, due to the collective benefits arising from private investments.

The greater speed of arbitration also generates a reduction in uncertainty about the deadline for resolving a conflict — that is, greater predictability in terms of timing. This enhanced timing predictability reduces the perception of risk and favors litigation financing, allowing the litigant to raise resources with third parties to pay for an arbitration dispute, or even to monetize the value of the dispute through the sale of the asset to a third party. In other words, the greater predictability of arbitration tends to (i) lower the cost of a potential “litigation financing”; (ii) facilitate disputes that would otherwise not be initiated; or (iii) allow the monetization of the asset in dispute in a shorter period of time.

For cases involving higher amounts, arbitration tends to be less costly than the Judiciary.

It is common to hear that arbitration has a higher cost than the Judiciary, but this principle is not always true.⁵⁹ A recent study compares the cost of arbitration with the cost of proceedings in the Judiciary and concludes that “this statement is true for the party with the lower chance of success, but false for parties with higher probability of success.”⁶⁰

In other words, from the point of view of the claimant who had a favorable ruling, arbitration becomes more economical than the judicial process. This arises from the fact that (i) the judicial system provides for succumbent fees of 10% to 20% of the value of the dispute; and (ii) legal fees in the judicial system are irrecoverable, while the arbitration model allows the winning party to be reimbursed for its costs. In this sense, the fact that there are expenses that cannot be recovered by the winner of the dispute means that there is no full compensation for the losses,⁶¹ as there is no recovery of expenses incurred with lawyers and other advisors.⁶² Furthermore, the longer duration of legal proceedings may result in greater costs and fees for the parties involved.

The relative advantage of arbitration costs over the judicial system largely depends on the value of the dispute and the probability of success. Based on certain assumptions, and considering cases exceeding BRL10 million, studies suggest that (i) arbitration will be more economical than the Judiciary, starting at a 10% chance of success; and (ii) regardless of the chance of success, arbitration is more economical than the Judiciary for cases exceeding BRL50 million.⁶³

Taking into account that the average value per case in the eight largest arbitration centers was BRL118 million in 2022,⁶⁴ it is reasonable to conclude that arbitration is more economical than the Judiciary for the majority of cases that are taken to arbitration.



The confidentiality of arbitration prevents unnecessary disclosure of sensitive information of the parties.

By choice of the parties, most arbitration procedures take place in confidentiality, guaranteeing them that the topics under discussion, as well as the risks and benefits involved in the dispute, will not be public knowledge. This factor is relevant for companies, which are less exposed to the risk of potentially relevant — and still unresolved — issues becoming public knowledge and stimulating unrealistic speculation.

Incomplete information that becomes public knowledge can be harmful to the conduct of a company’s business, especially in major disputes involving publicly traded companies. In practice, users of arbitration view confidentiality as an important advantage of arbitration.

For example, research carried out by Queen Mary University of London in 2017 with 922 arbitration users shows that “87% of respondents believe that confidentiality in international commercial arbitration is of importance.”⁶⁵ The same research concludes “[...] From a commercial perspective, the ability to keep arbitrations away from the public eye in general, and competitors in particular, continues to be a highly valued feature of arbitration.”⁶⁶ In Brazil, according to research carried out by Brazilian Arbitration Committee (“CBAr”) and Ipsos Institute in 2021, confidentiality is seen by users as one of the five main advantages of arbitration.⁶⁷

Arbitration generates a series of benefits for society and the economy.

In addition to the benefits for the parties involved in an arbitration procedure, arbitration also generates broader benefits for the Brazilian economy and society in general.⁶⁸

Arbitration reduces the perception of impunity and legal uncertainty.

The large number of cases in progress and the long duration of cases in the Brazilian Judiciary can — in reality — amount to denial of justice: “Considered as a form of denial of justice, delays in judicial provision can bring harm to litigants.”⁶⁹ It is not uncommon in the Brazilian justice for cases to take more than 15 years without reaching a decision. For example, in 2023 Brazil had more than **two million cases that had not been judged for more than 15 years.**⁷⁰

This slowness and complexity of justice in Brazil, in its various levels, generates a perception that entities that act outside of compliance do not suffer the consequences of their actions. In other words, there is a feeling of impunity in Brazilian society.

In addition, the slowness of justice also increases legal uncertainty “since the slowness of judicial provision makes the citizen more insecure in relation to the judiciary, as they are left to a justice system that they do not know when or if it will respond to your necessity.”⁷¹

The use of arbitration tends to reduce the perception of impunity and legal uncertainty, as it implies in faster decisions than the Judiciary.

Arbitration generates greater legal stability, increased investment and economic development.

The Brazilian Judiciary is seen as an obstacle to economic development, causing vital projects to be paralyzed by investors’ uncertainty that the Judiciary will defend their rights.⁷² This is especially relevant for non-Brazilian companies less familiar with the complex Brazilian Judiciary and its various levels.

These companies may see arbitration as a solution that guarantees their rights with greater predictability, if they are involved in a dispute under Brazilian law. The feeling of greater legal stability for the business environment resulting from arbitration means there is a greater propensity to invest. Reports from companies show that they **would be inclined to increase investments if they had greater confidence in the courts in their countries.**⁷³

In line with this conclusion, several studies show that efficient justice is considered a factor of economic development,⁷⁴ and a strong judiciary is associated with faster growth of companies in an economy.⁷⁵ As explained by Luciano Timm, “[...] at least from an economic point of view, the better the institutions, the more developed the market will be [...]”⁷⁶

Arbitration helps to relieve the Judiciary of complex cases.

The number of arbitration disputes in Brazil is still quite low when compared with the numbers in the Judiciary. For example, in 2022 there were 1,116 ongoing cases in the eight main Brazilian arbitration centers,⁷⁷ which represents a small portion of total arbitrable cases. Despite the little comparative relevance in numerical terms, arbitration cases are of greater value and complexity than the average cases handled by the Judiciary, as pointed out by former Brazilian Supreme Court (“STF”) minister Francisco Rezek.⁷⁸

The option of resolving disputes using alternative methods makes it possible to allocate cases of greater technicality and complexity to arbitration, freeing up time and public resources for the Judiciary system to focus on other cases.

For example, the possibility of using arbitration for hyper-sufficient workers is cited as a factor in reducing Judiciary costs: “[...] the provisions of article 507-A of the CLT [...] which provides that workers who receive twice the Social Security contribution salary ceiling [...] will be able to resolve conflicts outside the Judiciary, in accordance with the Arbitration Law. The change has the potential to reduce Judiciary costs, accelerate the resolution of conflicts between the parties and bring gains in legal certainty.”⁷⁹



Arbitration contributes to income generation and job creation.

In addition to the benefits for the parties and the saving of public resources, it is a fact that the development of a mature arbitration market, as is the case in Brazil, also translates into the generation of jobs, income and payment of taxes. A single arbitration normally requires three arbitrators, employees of the arbitration centers, lawyers for both parties, court appointed experts and technical assistants for both parties, among other roles.

As an example, considering only three large arbitration centers that provide average arbitration costs,⁸⁰ we estimate that in 2022, more than BRL250 million⁸¹ in revenue was generated **for the arbitration centers and arbitrators alone.**⁸² And this amount is just a fraction of the total value moved in the Brazilian arbitration market, as (i) there are several other relevant arbitration centers; and (ii) in addition to the arbitrators' and centers' fees, an arbitration has a series of other actors.



The perception of arbitration users confirms the benefits listed in this article.

There is nothing more representative of perception than a survey with actual arbitration users. As mentioned, in 2021, CBA⁸³ published a survey on arbitration in Brazil in which more than 200 professionals were interviewed, including lawyers, arbitrators, in-house lawyers and arbitration centers.

These professionals had, on average, 10 years of experience in arbitration; and participated, on average, in 26 arbitrations. Of those interviewed, 93% were very or reasonably satisfied with arbitration as a method for resolving disputes.

The most commonly highlighted benefits were, in order of relevance:

- Resolution time compared with the Judiciary;
- The technical nature and quality of decisions;
- The possibility of appointing the arbitrator;
- Confidentiality; and
- The flexibility of the procedure.

Specifically regarding arbitrators, interviewees fully or partially agree that:

- Arbitrators demonstrate knowledge of the legal issues discussed in the merits of the arbitration (87%);
- Arbitrators respond quickly to requests for urgent measures made by the parties (72%); and
- Arbitrators conduct the procedure quickly, impartially and efficiently (68%).

As disadvantages, the following stood out, in order of relevance:

- The cost;
- The lack of publicity of decisions; and
- The difficulty in integrating third parties into arbitration.

In other words, research with arbitration users corroborates many of the benefits of arbitration for parties involved in disputes described in the previous sections.

The benefits of arbitration are reflected in the growth and consolidation of the Brazilian arbitration market since the beginning of the 2000s.

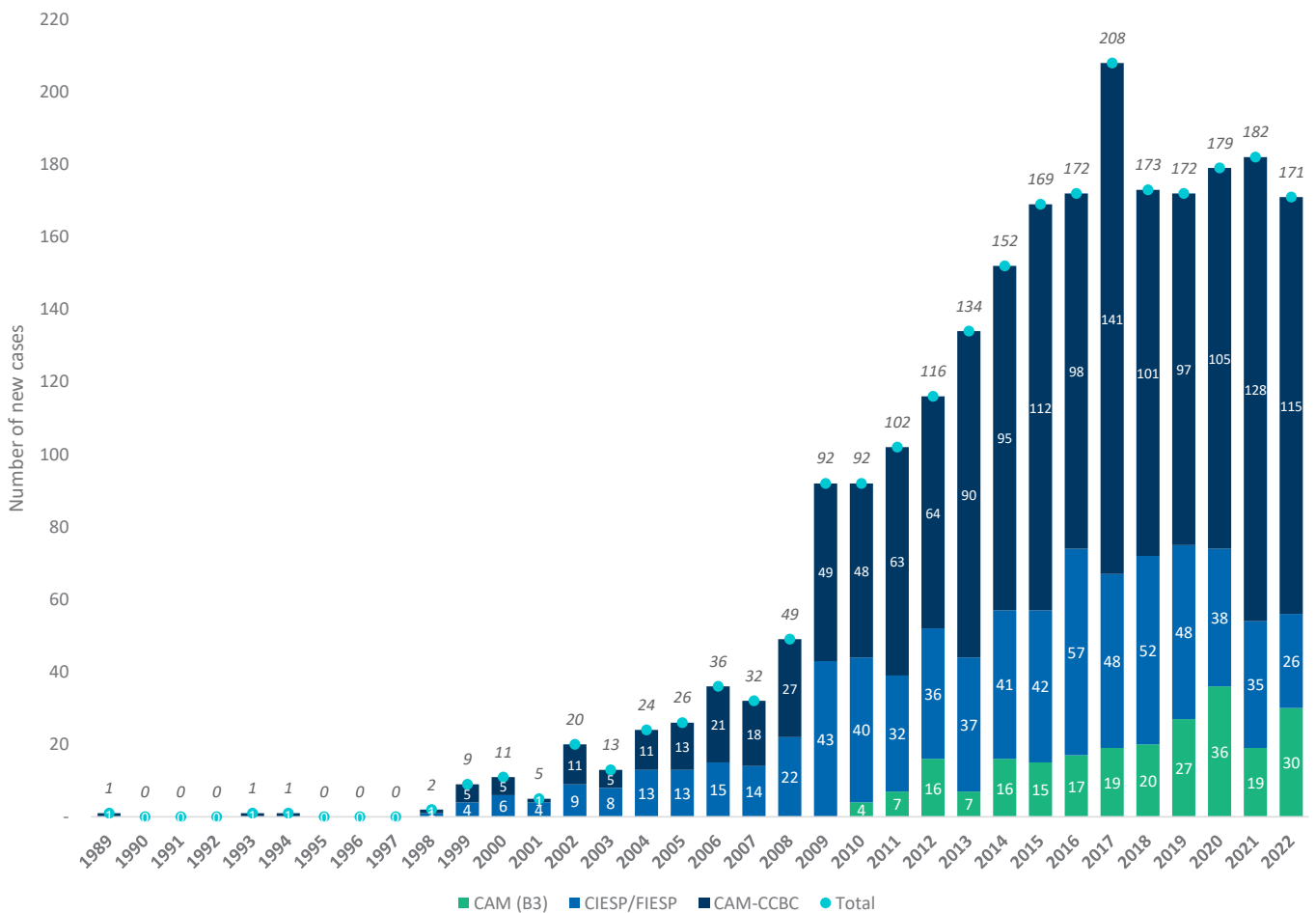
Although alternative dispute resolution was already provided for in the 1988 constitution, until the mid-1990s, this alternative was mostly used in contracts involving international business signed in Brazil.⁸⁴

The promulgation of the Arbitration Law in 1996, allowed for a dizzying growth in cases using arbitration as an alternative method for resolving disputes.

Average growth in arbitration has been 11% per year over the last 20 years.⁸⁵

The graph below shows the evolution of the number of new arbitration cases registered per year in three arbitration centers that publish statistics with a long history (i) CAM-CCBC; (ii) CIESP/FIESP; and (iii) CAM-B3. These three centers, which are just a sample of the total Brazilian market, have shown significant historical growth over the last 20 years of **11% per year**.⁸⁶

Figure 1: Number of New Arbitration Cases Registered Per Year in Three Arbitration Centers — 1989 to 2022

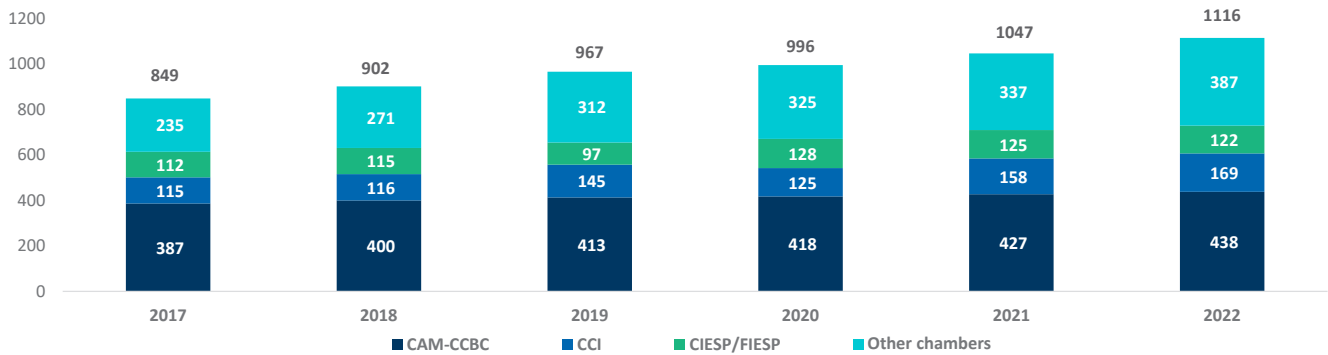


Source: Annual disclosure reports of each arbitration centers.⁸⁷

More comprehensive data from the last six years shows the maturation of the Brazilian arbitration market.

Another very useful source of data on the most recent evolution of the arbitration market is the annual survey “Arbitragem em Números”,⁸⁸ released by lawyer and professor Dr. Selma Lemes,⁸⁹ who, since 2017, has gathered data from the eight largest arbitration centers operating in Brazil.⁹⁰ According to this study, in the six-year period between 2017 and 2022,⁹¹ there was a 31% increase in the number of outstanding arbitrations, which is equivalent to an average growth of 5% per year in the eight main arbitration centers.

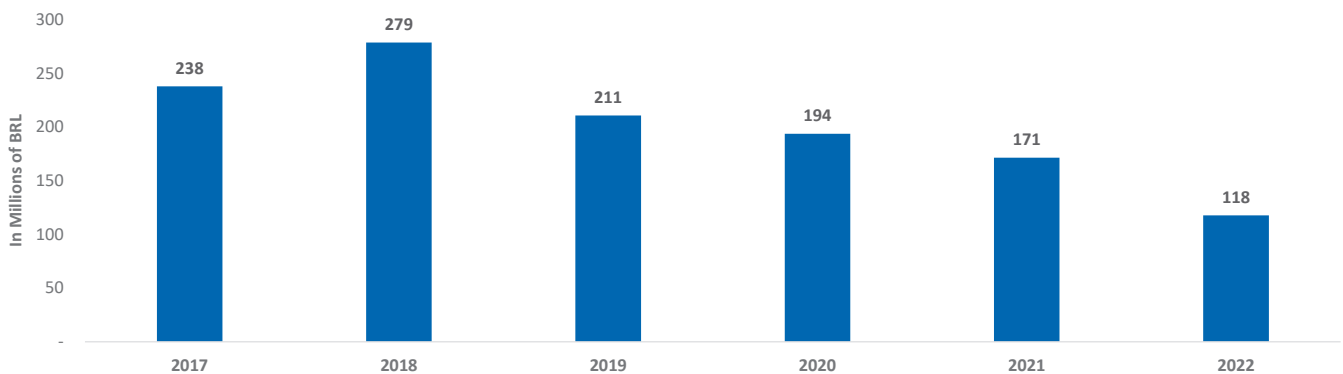
Figure 2: Ongoing Arbitrations in the Eight Main Arbitration Centers — 2017 to 2022



Source: Annual Arbitragem em Números Survey — Dr. Selma Lemes.⁹²

In terms of the average value in dispute in arbitrations in the eight main centers, after an increase in 2018, a consistent reduction is observed year-over-year until 2022. Based on the 336 new cases⁹³ initiated in the eight largest centers in 2022, the amount in dispute adds to BRL39.6 billion⁹⁴, or an average of **BRL118 million per case**. This represents around 50% of the average value of 2017 (BRL238 million per case).

Figure 3: Average Value in Dispute in Arbitrations of the Main Arbitration Centers — 2017 to 2022



Source: Annual Arbitragem em Números Survey — Dr. Selma Lemes.⁹⁵

The growth in the number of cases in these centers, together with the drop in the average value in dispute, may indicate that arbitration is increasing its penetration in the Brazilian market and starting to include smaller cases.⁹⁶ This may be evidence of the maturity of the arbitration institute in Brazil, which in recent times, has become more common, more accessible and less focused on major disputes.

Finally, although arbitration decisions can be challenged in the Judiciary,⁹⁷ a recent study by the Arbitration Observatory, the CBAr and the Brazilian Jurimetrics Association (“ABJ”), identified that there was only a 1.5% chance of arbitration awards being annulled by courts.⁹⁸ In other words, almost all arbitration cases represent a final decision, which is also an indicator of the consolidation of arbitration as an effective means of resolving disputes before the market and the Judiciary.

Conclusion

Brazil is a very litigious country, with more than 80 million legal cases in progress and high rates of cases per group of 100,000 inhabitants. While the European Union has, on average, 4,400 new legal cases per year per group of 100,000 inhabitants, this number in Brazil reaches 15,800.

Furthermore, the Brazilian Judiciary is slow, with the first resolution of cases taking, on average, 42 months. Among other reasons, this is due to the small number of judges compared with the inventory of ongoing cases.

To cope with the high volume of new cases per year, each judge makes almost **seven decisions per business day** in Brazil. This means that the judge has little time to delve into the issues relating to each case. In theory, the Business Courts should offer a more agile and skillful alternative to dealing with complex issues. However, they also suffer from an overload of cases, yielding a high number of cases per judge.

In this scenario, arbitration centers stand out for their agility in resolving disputes. On average, it takes around **19 months** to resolve cases, compared with **42 months** in the Brazilian judicial system (without considering higher courts).

Other advantages of arbitration for the parties involved are (i) the possibility of choosing arbitrators with significant expertise about the specific topic of the dispute; (ii) faster resolution of disputes; (iii) freeing up resources to be directed more efficiently; (iv) lower costs when the claimant's chance of success is high; and (v) guarantee of confidentiality, avoiding unnecessary disclosure of sensitive information of the parties.

Regarding the benefits of arbitration for society in general, it is noted that the speed of the process generates a reduction in the perception of impunity and legal uncertainty. Foreign investors see arbitration as an alternative for resolving complex cases in an unfamiliar environment, which generates greater legal stability, improving the business environment and, consequently, investment in the country. Arbitration also contributes to relieving complex cases from the Judiciary, and to creating jobs and generating income, when considering the entire ecosystem of arbitrators, arbitration centers, lawyers, technical assistants and experts, among others, who work on disputes in arbitration courts.

Most of these advantages of arbitration are corroborated in the results of a survey carried out by CBAr among arbitration users in Brazil.

Finally, the evolution of arbitration in Brazil also corroborates the advantages perceived by users: the market has evolved considerably since the promulgation of the Arbitration Law in 1996, with the number of arbitrations growing at a rate of **11% per year over the last 20 years**.

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- 1 Until the preparation of this article, Justiça em Números for the year 2024 (referring to 2023 numbers) had not yet been released. Therefore, for information from 2023, the data was extracted directly from DataJud on May 27, 2024.
- 2 Of this amount, around 18.5 million were suspended or in provisional files. This means that the number of active cases was 64.3 million, or 78% of the total.
- 3 World Justice Project, “Thirty-two percent (32%) of Brazilians reported experiencing a legal problem in the last two years”, The Rule of Law in Brazil: Key Findings from the General Population Poll 2022 (2023), <https://worldjusticeproject.org/our-work/research-and-data/rule-of-law/brazil-2022#ExecutiveFindings>.
- 4 Population of 203,080,756 inhabitants in 2022 according to the Census carried out by IBGE.
- 5 Germany and Sweden would be the two most litigious countries in Europe according to the study cited. Data from 2013 (in the case of the United States) and 1998 (in the case of European countries), presented by Luciana Yeung, “A maior Justiça do Mundo: estaria Coase impressionado? [The Greatest Justice in the World: would Coase be impressed?]”, 03/08/2024, https://veja.abril.com.br/coluna/direito-e-economia/a-maior-justica-do-mundo-estaria-coase-impressionado#google_vignette.
- 6 It consists of the average from 2010 to 2020 of new cases of first and second instances, as well as higher instances, adding administrative, civil and criminal cases. European Judicial Systems CEPEJ Evaluation Report — 2022 Evaluation Cycle (2020 Data). Pages 128, 155 and 159. Accessed on May 27, 2024 at <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>. We did not find data on new litigation per 100,000 inhabitants for other countries.
- 7 Daniela Thomes Coelho, “Evaluation of the regulation of forensic costs and its correlation with the level of judicialization: evidence from Brazilian state courts in the period from 2009 to 2018”, Revista Direito GV, São Paulo, v. 19, e2337, 2023, p.19, <https://doi.org/10.1590/2317-6172202337>.
- 8 To conclude which filters would be applicable to the DataJud data to obtain the available patrimonial law data, we had help from lawyers who contributed to this article and who instructed us to: (i) exclude from the database cases in the Labor, Electoral and Military courts, with only State Court cases remaining; (ii) exclude from the database cases in Special Courts, Appeal and Standardization Classes, leaving only those in 1st Degree and 2nd Degree. Furthermore, for the purposes of measuring the average time until the first discharge, we were instructed to (i) exclude deadlines in the execution phase, keeping only cases in the non-criminal knowledge phase; (ii) carry out a selection of the subjects of the proceedings, excluding those that deal with disputes that are not normally pleaded in arbitration courts, such as, for example, educational, family, health, environmental, criminal, tax, social security law, among many others types and subtypes. The ultimate objective of this selection was to find cases in the Judiciary of cases that would be arbitrable.
- 9 To conclude which filters would be applicable to the DataJud data to obtain the available patrimonial law data, we had help from lawyers who contributed to this article and who instructed us to: (i) exclude from the database cases in the Labor, Electoral and Military courts, with only State Court cases remaining; (ii) exclude from the database cases in Special Courts, Appeal and Standardization Classes, leaving only those in 1st Degree and 2nd Degree. Furthermore, for the purposes of measuring the average time until the first discharge, we were instructed to (i) exclude deadlines in the execution phase, keeping only cases in the non-criminal knowledge phase; (ii) carry out a selection of the subjects of the proceedings, excluding those that deal with disputes that are not normally pleaded in arbitration courts, such as, for example, educational, family, health, environmental, criminal, tax, social security law, among many others types and subtypes. The ultimate objective of this selection was to find cases in the Judiciary of cases that would be arbitrable.
- 10 The average of the years available in Datajud was calculated (2020 to 2023).
- 11 Date on which the trial of the case is concluded.
- 12 Equivalent to 1,249 days.
- 13 Luciana de Oliveira Ramos and Luciana Gross Cunha and Fabiana Luci de Sampaio Oliveira and Joelson de Oliveira, “ICJBrasil Report”, São Paulo: FGV Direito SP, 2021.
- 14 Selma Lemes, “Arbitration in Numbers”, 2017 to 2022.
- 15 Despite the relatively low average term, there are several ongoing cases that far exceed this average duration.
- 16 The presentation of metrics for cases and decisions per judge uses the full DataJud database as a reference point. This is because it is not possible, through the information available in DataJud or Justiça em Números, to segregate how many judges are related only to judicial cases that could be arbitrable.
- 17 “Estudo Comparado sobre Recursos, Litigiosidade e Produtividade: a prestação jurisdicional no contexto internacional” [Comparative Study on Appeals, Litigation and Productivity: jurisdictional provision in the international context], National Council of Justice - Department of Judicial Research, November 2011, https://www.cnj.jus.br/wp-content/uploads/2011/02/relat_estudo_comp_inter.pdf.
- 18 Simplified calculation considering the working days of each year.
- 19 Justiça em Números Report 2023, p. 71.
- 20 European Judicial Systems CEPEJ Evaluation Report — 2022 Evaluation Cycle (2020 Data). Page 48. Accessed on May 27, 2024 at <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>.
- 21 *Ibid.*
- 22 *Ibid.*
- 23 *Ibid.*
- 24 *Ibid.*
- 25 *Ibid.*
- 26 *Ibid.*
- 27 *Ibid.*
- 28 “Estudo Comparado sobre Recursos, Litigiosidade e Produtividade: a prestação jurisdicional no contexto internacional” [Comparative Study on Appeals, Litigation and Productivity: jurisdictional provision in the international context], National Council of Justice — Department of Judicial Research, November 2011, https://www.cnj.jus.br/wp-content/uploads/2011/02/relat_estudo_comp_inter.pdf, pages 12 and 13.
- 29 Result of 1,396,000 lawyers divided by 18,000 judges. Accessed on May 27, 2024 at <https://www.oab.org.br/institucionalconselhofederal/quadroadvogados>.
- 30 European Judicial Systems CEPEJ Evaluation Report — 2022 Evaluation Cycle (2020 Data). Page 84. Accessed on May 27, 2024 at <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279> *Ibid.*
- 31 *Ibid.*
- 32 *Ibid.*
- 33 *Ibid.*
- 34 *Ibid.*
- 35 *Ibid.*
- 36 *Ibid.*
- 37 *Ibid.*
- 38 Jeovan Assis da Silva and Pedro de Abreu e Lima Florencio, “Políticas Judiciárias no Brasil: o Judiciário como autor de políticas públicas” [Judicial Policies in Brazil: the Judiciary as the author of public policies], p. 124, Public Service Magazine Brasília 62 (2): 119-136, April/June 2011.
- 39 1st and 2nd Business and Arbitration-Related Conflict Courts of the Capital, and the 1st and 2nd Regional Business and Arbitration-Related Conflict Courts of the 1st Judicial Administrative Region.

- 40 Ana Paula Ribeiro Nani, “As Varas Empresariais do Tribunal de Justiça de São Paulo — Os impactos no tempo médio processual, na qualidade das decisões e na previsibilidade dos julgamentos em matéria empresarial” [The Business Courts of the São Paulo Court of Justice — The impacts on the average procedural time, the quality of decisions and the predictability of judgments in business matters], 2023, <https://repositorio.fgv.br/server/api/core/bitstreams/178f9c15-8b47-4cee-b7a1-a0357e48aff9/content>.
- 41 *Ibid.*
- 42 Datajud data accessed on May 27, 2024.
- 43 *Ibid.*
- 44 *Ibid.*
- 45 Ana Paula Ribeiro Nani, “As Varas Empresariais do Tribunal de Justiça de São Paulo — Os impactos no tempo médio processual, na qualidade das decisões e na previsibilidade dos julgamentos em matéria empresarial” [The Business Courts of the São Paulo Court of Justice — The impacts on the average procedural time, the quality of decisions and the predictability of judgments in business matters], 2023, <https://repositorio.fgv.br/server/api/core/bitstreams/178f9c15-8b47-4cee-b7a1-a0357e48aff9/content>.
- 46 Simplified calculation considering the working days of the year.
- 47 As is the case with CAM-CCBC, which publishes information on the arbitrators involved in each case only from January 7, 2019. <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/resolucao-de-disputas/resolucoes-administrativas/ra-35-2019-divulgacao-dos-tribunais-arbitrais/>.
- 48 Some arbitrations have only one designated arbitrator. However, we understand that the most common model observed is that of three arbitrators to compose an arbitration tribunal.
- 49 Cases in progress in these three centers represent 68% of the total arbitrations in progress in the eight largest arbitration centers (according to the Arbitragem em Números survey) in the six-year period between 2017 and 2022.
- 50 Lists of arbitrators available on the CAM-CCBC and CIESP/FIESP websites. In the ICC case, there is no list of arbitrators, but rather a disclosure of the arbitrators who act in the cases of that center. Of the total of 520 arbitrators identified in these three arbitration centers, excluding names present in more than one list, there are 356 unique names.
- 51 In a very simplified account, considering these three centers we would have on average a ratio of approximately six cases per arbitrator, calculated as: 729 cases, divided by 356 arbitrators, multiplied by three arbitrators in each case.
- 52 This is not an exhaustive list of benefits, but rather a list of what we believe to be the most relevant.
- 53 At CAM-CCBC, for example, only 11% of the cases constituted had a single arbitrator in 2022 <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/fatos-e-numeros/> p. 11.
- 54 Law 9,307, article 13, ¶4.
- 55 <https://www.migalhas.com.br/depeso/183075/varas-empresariais>.
- 56 Feliciano Alcides Dias, “Análise econômica da arbitragem: a desmonopolização da jurisdição e a solução de conflitos nas relações contratuais” [Economic analysis of arbitration: the demonopolization of jurisdiction and the resolution of conflicts in contractual relations], p. 237.
- 57 Kenneth W. Dam, “The Judiciary and Economic Development”, p. 5.
- 58 <https://pages.stern.nyu.edu/~adamodar/pdfiles/FoundationsOnline/slides/session6.pdf>, p. 2.
- 59 Heitor Vitor Mendonça Sica and Wilson Pimentel, “Custo do processo arbitral versus custo do processo judicial: uma análise econômica da realidade brasileira” [Cost of the arbitration process versus the cost of the judicial process: an economic analysis of the Brazilian reality], p. 42.
- 60 *Ibid.*, p. 65.
- 61 Perdas no sentido mais amplo, incluindo não apenas as consequências dos atos discutidos na ação judicial, como também os gastos incorridos com a ação.
- 62 Heitor Vitor Mendonça Sica e Wilson Pimentel, “Custo do processo arbitral versus custo do processo judicial: uma análise econômica da realidade brasileira”, p. 65.
- 63 *Ibid.*, p. 63.
- 64 Calculated based on new arbitrations in the eight main centers for the year 2022 according to the annual Arbitragem em Números Survey — Dra. Selma Lemes.
- 65 “2018 International Arbitration Survey: The Evolution of International Arbitration”, School of International Arbitration Queen Mary University of London and White & Case, p.3, <https://arbitration.qmul.ac.uk/research/2018>.
- 66 *Ibid.*, p. 3.
- 67 <https://cbar.org.br/site/wp-content/uploads/2021/09/pesquisa-cbar-ipsos-2021-arbitragem-no-brasil.pdf>.
- 68 This is not an exhaustive list of benefits, but rather a list of what we believe to be the most relevant.
- 69 <https://www.migalhas.com.br/depeso/376402/responsabilidade-do-estado-no-exercicio-da-atividade-civil>.
- 70 CNJ data, available at <https://justica-em-numeros.cnj.jus.br/>.
- 71 <https://www.migalhas.com.br/depeso/376402/responsabilidade-do-estado-no-exercicio-da-atividade-civil>.
- 72 Kenneth W. Dam, “The Judiciary and Economic Development”, p. 5.
- 73 *Ibid.*, p. 3.
- 74 Daniela Thomes Coelho, “Avaliação da regulação das custas forenses e sua correlação com o nível de judicialização: evidência das Justiças estaduais brasileiras no período de 2009 a 2018” [Evaluation of the regulation of forensic costs and its correlation with the level of judicialization: evidence from Brazilian state courts in the period from 2009 to 2018], p. 4, Revista Direito GV, São Paulo, v. 19, e2337, 2023, <https://doi.org/10.1590/2317-6172202337>.
- 75 Kenneth W. Dam, “The Judiciary and Economic Development”, p. 3.
- 76 Luciano Benetti Timm, “Direito Contratual Brasileiro: críticas e alternativas ao solidarismo jurídico” [Brazilian Contract Law: criticisms and alternatives to legal solidarity]. In: Dias, Feliciano Alcides, “Análise econômica da arbitragem: a desmonopolização da jurisdição e a solução de conflitos nas relações contratuais” [Economic analysis of arbitration: the demonopolization of jurisdiction and the resolution of conflicts in contractual relations], p. 291.
- 77 Selma Ferreira Lemes, “Arbitragem em Números — Pesquisa 2021/2022, 2023” [Arbitration in Numbers — Survey 2021/2022, 2023], p. 6, <https://canalarbitragem.com.br/wp-content/uploads/2023/10/Arbitragem-em-Numeros-2023-VF.pdf>.
- 78 https://www.conjur.com.br/2008-abr-03/facil_justica_arbitragem_afirma_rezek/.
- 79 <https://legis.senado.leg.br/sdleg-getter/documento?dm=5326353&disposition=inline>. Grifo nosso.

- 80 CAM-CCBC, CCI and CIESP/FIESP.
- 81 BRL58 million in revenue for the centers and BRL208 million in arbitrators fees.
- 82 CAM-CCBC (2022): average value in dispute of BRL68.8 million, which implies revenues of around BRL270,000 for CAM-CCBC and BRL900,000 for the arbitrators. Given that CAM-CCBC had 115 cases initiated in 2022, fees of around BRL104 million for arbitrators and BRL31 million for the center can be extrapolated. Source: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/resolucao-de-disputas/arbitragem/tabela-despesas-calculadora-2019/>.
- CCI (2022): average value in dispute of BRL372.8 million, which implies revenue of around BRL380,000 for the center and fees of around BRL1.5 million for the arbitrators. Considering that the CCI had 53 new cases initiated in 2022, the arbitrators' fees would be around BRL84 million and the CCI's revenue would be around BRL20 million. Source: <https://icwbo.org/dispute-resolution/dispute-resolution-services/arbitration/costs-and-payment/costs-calculator/>.
- FIESP/CIESP (2021): average value in dispute of BRL31.5 million, which implies revenues of around BRL175,000 for the center and BRL601,000 for the arbitrators. Considering that CIESP/FIESP had 35 cases initiated in 2021, the arbitrators' fees would be around BRL21 million and the center's revenue would be around BRL6 million for the center. Data from 2021 was used because Arbitragem em Números survey did not make available, for this center, the amounts involved in disputes initiated in 2022. Source: <https://produtos.ciesp.com.br/calculadora/calcrita.aspx?op=2>. Source: <https://produtos.ciesp.com.br/calculadora/calcrita.aspx?op=2>.
- 83 <https://cbar.org.br/site/wp-content/uploads/2021/09/pesquisa-cbar-ipsos-2021-arbitragem-no-brasil.pdf>.
- 84 Leonardo Fonseca Gregório, "Contexto Histórico da Arbitragem e sua Evolução no Brasil" [Historical Context of Arbitration and its Evolution in Brazil], July 18, 2023.
- 85 Considers the sum of the three largest chambers with long-term public information available. The International Court of Arbitration of the International Chamber of Commerce ("CCI") does not disclose information with a long history for cases based in Brazil.
- 86 Weighted average annual growth between 2002 and 2022.
- 87 CAM-CCBC, "Fatos e Números 2022", <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/fatos-e-numeros>; CAM, "Estatísticas 2022", <https://www.camaradomercado.com.br/pt-br/sobre--estatisticas.html>; e — CIESP/FIESP, "Estatísticas 2022 — Serviços e Atuação", <https://www.camaradearbitragem.com.br/pt/estatisticas-camara.html>.
- 88 <https://www.selmalemes.com.br/index.php/artigos>.
- 89 <https://www.selmalemes.com.br/index.php/selma-lemes>.
- 90 Arbitration and Mediation Center of the American Chamber of Commerce for Brazil ("CAM-AMCHAM"); Arbitration and Mediation Center of the Brazil-Canada Chamber of Commerce ("CAM-CCBC"); International Court of Arbitration of the International Chamber of Commerce ("CCI"); Chamber of Conciliation, Mediation and Arbitration of the Center for Industries of the State of São Paulo and Federation of Industries of the State of São Paulo ("CIESP/FIESP"); Market Arbitration Chamber ("CAM" or "B3"); FGV Chamber of Mediation and Arbitration ("CAM-FGV"); Brazilian Center for Mediation and Arbitration ("CBMA"); and Business Arbitration Chamber ("CAMARB").
- 91 Arbitragem em Números survey has been carried out since the mid-2000s, however, it was only in 2017 that it began to gather data from the eight largest Brazilian arbitration centers that are still presented in the most recent versions of the survey. Versions of Arbitragem em Números prior to 2017 analyzed data from "only" six centers, so its numbers and conclusions are not comparable to the most recent versions of the research presented here.
- 92 <https://www.selmalemes.com.br/index.php/artigos>.
- 93 Selma Ferreira Lemes, "Arbitragem em Números — Pesquisa 2021/2022, 2023" [Arbitration in Numbers — Survey 2021/2022, 2023], p. 5, <https://canalarbitragem.com.br/wp-content/uploads/2023/10/Arbitragem-em-Numeros-2023-VF.pdf>.
- 94 *Ibid*, p.7.
- 95 <https://www.selmalemes.com.br/index.php/artigos>.
- 96 It is possible that very relevant cases increased the average value per case in 2017 and 2018, so we cannot categorically say that this is a trend, also because the range of years does not define a sufficiently long series.
- 97 Arbitration decisions can be challenged in ordinary court through appeal if one of the parties is unhappy with the final result obtained in the arbitration. However, to achieve this, the case no longer has the benefits of arbitration and enters the courts as just one of many cases.
- 98 Brazilian Jurimetrics Association, "Processos Relacionados à Arbitragem - Um levantamento no banco de sentenças do TJSP" [Processes Related to Arbitration - A survey of the TJSP judgment bank], p. 6, 11/22/2023.