Rules of Evidence (Civil Proceedings) in Brazil: Overview

by *Flavia Alterio*, *Tiago Cortez*, *Taísa Oliveira*, *Aline Adestro*, *Gabriella Feres*, and *Nathalia Abe*, KLA Advogados

Practice notes | Law stated as at 01-Mar-2022 | Brazil

This Practice Note provides an overview of the rules governing disclosure and the admissibility of evidence in civil proceedings. In particular, it looks at the rules on the disclosure obligations of the parties, admissibility of evidence, witness evidence, the burden and standard of proof, as well as issues that arise in gathering cross-border evidence.

Evidence is fundamental to the outcome of any civil litigation case. Usually, the facts in issue in a case must be proved by evidence, and the court will decide the case on the evidence adduced by the parties.

One of the most challenging aspects for any cross-border practitioner is to adapt to the differences in the rules of evidence taking in various jurisdictions. These differences are evident in the manner in which evidence is produced, the issues surrounding relevance and admissibility, the probative value attached by the courts to the various types of evidence and the principles of burden and standard of proof across jurisdictions. Further, such disputes often give rise to situations where one of the parties to the litigation is required to produce evidence located in a jurisdiction foreign to the forum of proceedings. These are important legal issues that a practitioner should be aware of since they largely determine the way litigation is conducted in all the major civil law and common law systems around the world and ultimately influence its result.

This Note provides an overview of the rules of disclosure and evidence in civil proceedings in Brazil. In particular, it looks at:

- The rules regarding the disclosure obligations of the parties.
- Admissibility of evidence.
- Witness evidence.
- Expert evidence and the role of experts (court hired independent experts and party hired experts) in civil proceedings.
- The rules regarding the burden of proof and standard of proof in civil proceedings.
- The rules regarding cross-examination.
- Issues that arise in gathering cross-border evidence, including:
    - the applicable international treaties, agreements, and regulations governing cross-border evidence;
    - how to obtain foreign evidence for use in Brazilian civil proceedings; and
    - how to obtain evidence located in Brazil for use in foreign civil proceedings.

Rules of Evidence and Evidence in Domestic Proceedings

The main sources of the rules of evidence that regulate civil proceedings in Brazil are:

- The Federal Constitution, which stipulates the general principles related to Brazilian citizens' rights and the constitutional guarantees that Brazilian citizens produce evidence and can access the fullest possible defense, always observing the adversarial principle.
- The Civil Code (*Código Civil)* (Law No. 10406/2002), which stipulates general rules about the interpretation and admissibility of evidence.
- The Civil Procedure Code (*Código de Processo Civil*) (Law No. 13.105/2015), which states the specifics on how and when evidence must be produced, and its admissibility and interpretation.

Note that there is also some special legislation that regulates the rules of evidence production relating to specific topics, for example the Consumer Protection and Defense Code (*Código de Defesa e Defesa do Consumidor*) (Law No. 8.078/90).

Obtaining Evidence

Disclosure or Discovery Obligations

The Brazilian legal system does not provide for full disclosure and discovery. The parties must ordinarily rely on their own evidence. However, Brazilian procedural law provides a proceeding specifically designed for a party to request the forced disclosure of documents. A request for the disclosure of documents must meet the following requirements:

- Detail, as completely as possible, an object or document to be exhibited as evidence.
- Demonstrate the purpose of the envisaged evidence, setting out the facts that relate to that document or object.
- Indicate the grounds for the belief that the object or document is in the possession of the other party.

(*Article 399, Civil Procedure Code.*)

The other party is given five days to respond (*Article 398, Civil Procedure Code*). In its response, that party must disclose the document or explain the reasons why the document cannot be disclosed. The judge cannot accept a refusal to disclose the document in any of the following cases:

- The defendant has a legal obligation to disclose the information or document.
- The defendant has mentioned the document or thing, during the proceedings, with the aim of proving a certain fact.
- The document, by virtue of its content, belongs to or is related to both parties.

(*Article 399, Civil Procedure Code.*)

If the other party remains silent, the facts stated by the applicant are presumed to be true and correct. If a party refuses to comply with the exhibition order without an acceptable reason a search and seizure order can be issued. A third party can also be summoned to produce the relevant object or document in certain circumstances.

As a general rule, a party can be excused from producing documents when the law expressly allows that party to object to the request in that specific situation, and when disclosure:

- Is related to their private life.
- Would compromise their duty to behave honorably.
- Could discredit the party itself or a third party.
- Could make confidential facts public.

Role of the Courts in the Evidence-Taking Process

Before the new Civil Procedure Code was enacted in 2015, the judge's position was more passive. However, the Civil Procedure Code calls for greater collaboration between the parties and the judge in the search for the real truth.

Evidence is addressed to the judge, who has the power to determine which evidence is useful, relevant, and necessary and therefore should be produced. The judge is free to decide that evidence is unnecessary and reject its production, without breaching the rights of the parties (*Article 370, Civil Procedure Code*). The judge can even determine *ex officio* that certain evidence should be produced.

Other Mechanisms to Obtain Disclosure from an Adverse Party and Third Parties

There are no other mechanisms to obtain disclosure from an adverse party or third party.

Standard of Proof and Burden of Proof in Civil Proceedings

As a rule, the claimant must prove the constitutive fact of its right and it is the defendant's burden to present evidence regarding the existence of facts impeding, modifying, or extinguishing the claimant's right (*Article 373, Civil Procedure Code*).

The court may assign the burden of proof in a different way:

- In certain cases where it is provided for by the law.
- Where it is impossible or too difficult to fulfill the burden as established under Article 373 of the Civil Procedure Code.
- If it is easier to produce evidence of the facts alleged by the other party.

The court must do this by issuing a reasoned decision. It should give a party the opportunity to discharge the burden attributed to it (*paragraph 1, Article 373, Civil Procedure Code*).

If the burden of proof is assigned differently to the provisions of Article 373 of the Civil Procedure Code, this assignment must be done before the judgment, and the assignee party must be notified that the burden now falls on it.

There is no legal standard of proof in civil cases. Any element of proof can contribute to the court's ratio decidendi.

In cases brought under the Consumer Protection and Defense Code , the burden of proof is inverted and falls on the supplier (*Article 6, Consumer Protection and Defense Code*).

Failure to Give Evidence at Trial: Consequences

If a party does not discharge its duty to prove the facts of the case and fails to give evidence at trial, the judge may draw adverse inferences against this party.

However, any party assuming the burden of proof contrary Article 373 of the Civil Procedure Code must be notified in advance (see *Standard of Proof and Burden of Proof in Civil Proceedings*). The judge is not authorised to draw adverse inferences if they have not notified the party about the allocation of the burden of proof (*paragraph 1, Article 373, Civil Procedure Code*).

Admissibility of Evidence

The parties have the right to use all legal and morally legitimate means, including those not specified in the Civil Procedure Code, to prove the truth of the facts on which the claim or defense is based and to influence the judge's conclusions (*Article 369, Civil Procedure Code*).

Evidence obtained by unlawful means is inadmissible (*Article 5, section LVI, Federal Constitution*). The concept of unlawful evidence is broad, covering all evidence that contradicts any rule of law. Examples of unlawful evidence include:

- Confessions obtained under torture.
- Witness testimony under moral coercion.
- Clandestine telephone interceptions.
- Documentary evidence obtained through theft.
- Evidence obtained through trespass into a private domicile.
- Evidence obtained through breach of the duty of professional secrecy.

When to Apply

As a rule, challenges to admissibility of evidence must be made at the party's first opportunity to file a statement into the records (*Article 278, Civil Procedure Code*).

The evidentiary procedure is composed of the following steps:

- Claim for the realisation of the proof.
- Deferral.
- Production.

When requesting proof, it is up to the party to indicate the fact to be proved and the means of proof. When the proof has been requested, the opposing party can challenge the request by claiming the evidence is unnecessary or unable to prove a certain fact. The judge will decide what evidence is necessary and the evidentiary phase will begin.

In theory, any material can be a source of evidence. For any sources of evidence to be excluded from the evidentiary phase, it is necessary to present a good reason for doing so.

Exclusionary Rules of Evidence

As a general rule, a party can be excused from disclosing documents when the law expressly allows them to object to the request in that specific situation, and when disclosure:

- Is related to their private life.
- Would damage their honor.
- Could discredit the party itself or a third party.
- Could make confidential facts public.

(*Article 404, Civil Procedure Code.*)

The court cannot draw adverse inferences from a failure to disclose evidence in these circumstances.

A judge must dismiss witness testimony on facts that either:

- Are already proven by documentary evidence or a party's confession.
- Can only be proven by documentary evidence or expert examination.

(*Article 443, Civil Procedure Code.*)

In cases where the law requires written proof of an obligation, witness evidence is not admissible when there is no written evidence of the obligation.

Witnesses cannot testify when they are incompetent, biased, or conflicted (*Article 447, Civil Procedure Code*). Incompetent persons are those who:

- Are forbidden to testify due to mental illness or disability.
- Are under the age of 16.
- Have a visual and/or auditory impairment, when knowledge of the fact depends on those impaired senses.

A biased person is:

- A spouse, partner, ancestor, descendent in any degree, or collateral relative in the third degree, of any of the parties, by blood or affinity. If there is no other way to obtain the evidence that the judge deems necessary for a judgment on the merits these individuals will not be barred from testifying:
    - if it serves the public interest for them to do so; or
    - in cases relative to the status of the person, that is, cases directly linked to the right of personality and human dignity, for example changes of name, gender, or nationality.
- A party to the claim.

- A person who intervenes in the name of one of the parties, for example the guardian of an individual, the legal representative of a legal person, the judge, the lawyer, and others who may have assisted the parties.

A conflicted person is an enemy or close friend of a party or one who has an interest in the litigation.

In addition, all conversation and documents provided between client and attorney must be kept confidential by the professional. An attorney cannot, under any circumstances, make client personal data and information public, even when they end their professional services. An attorney is also not obliged to give evidence in court about their clients, and a judge cannot make an order against a client or third party for the search and seizure of documents for the production of evidence in court (*Article 35 and 36, Code of Ethics and Discipline of the Brazilian Bar Association*).

Discretion of Court to Exclude Evidence

The courts do not have any discretion to exclude a document that is otherwise admissible. Brazilian courts can only exclude evidence they believe to be unlawful.

Witness Evidence: Oral and Written

As a general rule, witnesses must testify before the judge, except for those who provide testimony in advance and those who are examined by letter of request (*Article 453, Civil Procedure Code*). There is no provision for a witness to submit a written statement or an affidavit made under oath.

Requirements for the Content of Written Evidence (Witness Statement or Affidavit)

As there is no legal provision for the production of written testimonial evidence, there are no requirements in connection with this type of evidence. However, it would be advisable to present a written statement before a notary public and obtain a certificate that the evidence has been analyzed and it is considered valid to prevent further discussions on its veracity.

Oral Evidence in Support of Written Evidence

Oral evidence given by a witness in court is the preferred method as provided for in the Civil Procedure Code. Therefore, it is necessary for a witness to give oral evidence in addition any written evidence previously given.

Timing for Filing Written Witness Evidence

The initial petition must be accompanied by all the documents (that is, written evidence) required to file the suit (*Article 320, Civil Procedure Code*). The defendant must present all written evidence alongside its statement of defence. The claimant will have the opportunity to present documents to counter the documents presented by the defendant. Both parties can at any time attach to the case files new documents, when they are intended to provide evidence of events occurring after pleadings or to counter documents already included in the records.

Evidentiary Value of Witness Evidence

As a rule, witness evidence has the same value as contemporaneous documentary evidence.

Cross-Examination and Re-Examination

Witnesses must testify before the judge of the case during the hearing. The judge can examine, cross-examine, and re-examine the witness only during the hearing.

Witness Unwilling or Unable to Provide Evidence or Attend Court

A witness who, when summoned in accordance with the legal requirements, fails to attend the hearing for no good reason will be summoned by police force, and will bear the costs of the postponement of the hearing (*Article 455, Civil Procedure Code*).

As a rule, the coercive conduct is necessary only in cases that a witness does not show up at a hearing or before an authority. However, if the witness presents a justification (for example the impossibility of travel or illness), the judge can reschedule the hearing or propose other ways to collect the testimony (including by videoconference). In addition, it is possible to request that the deposition be given before a judge of a court located in the same city as the witness through a rogatory letter.

Witness Immunity

Witnesses are not required to testify on facts:

- Which may cause them serious injury or may cause serious injury to their spouse or companion and their consanguineous or related relatives, in a straight line or collateral, up to the third degree.
- In respect of which, by state or profession, the witness is required to maintain secrecy.

(*Article 448, Civil Procedure Code.*)

Otherwise, witnesses are not immune from criminal punishment for anything they say or do in their capacity as a witness. If a witness commits perjury, slander, or defamation they may be criminally liable. This is because the witness is asked at the beginning of the inquiry to provide a commitment to tell the truth and the judge will warn the witness that they will incur a criminal sanction if they make a false statement, remain silent, or conceal the truth (*Article 458, Civil Procedure Code*).

There is no specific civil sanction or proceedings that can be filed against a witness who is untruthful or does not act in good faith.

Expenses

A witness can make a request to the court that they are paid the expenses incurred to attend the hearing. The party that nominates the witness must make this payment as soon the case has been decided or deposit the payment in the court's office within three days of the request (*Article 462, Civil Procedure Code*).

Expert Witnesses

Court-Appointed Experts

The Civil Procedure Code calls for greater collaboration between the parties and the judge in the search of the real truth, and the judge has the general power to decide which evidence is useful and necessary and which is not (*Article 370, Civil Procedure Code*). The judge can determine *ex officio* the production of evidence they think is relevant, even if neither party has requested it. The court can appoint experts at its sole discretion. Judicial experts must be impartial professionals. Usually, the courts appoint experts they already know or that are otherwise reliable due to their professional recognition.

Party-Hired Experts

Experts can be hired by the parties to assist them in the preparation of technical questions/technical materials to be sent to the judicial expert. When the judicial expert presents their report specialists hired by the parties can help them refute and/or comment on the judicial expert's conclusions.

Party-hired experts must be appointed by the parties at their first opportunity to file a statement as soon as the production of the expert evidence is granted. At the same time, the parties must submit the questions they wish to be answered by the **j**udicial expert.

Fees of Expert Witnesses

Each party must pay the remuneration of the experts that it appoints (*Article 95, Civil Procedure Code*). The fees will be paid by both parties if the expert is appointed by the judge *ex officio* or is required by both parties.

Role of Party-Appointed and Court-Appointed Experts

A court-appointed expert's evidence consists of examination, inspection, or evaluation. The judge will dismiss the expert when:

- The proof of the fact does not depend on the expert's special knowledge.
- When the expert's evidence is unnecessary in view of other evidence produced.
- When verification of the facts the expert is relating is impracticable.

The expert will give evidence on the matters previously specified by the court.

Party-appointed experts are appointed to accompany the court's expert and guarantee that the methods applied are correct. Party-appointed experts will also express their views on the court-appointed expert's final report. A party cannot appoint an expert if the court has not appointed one.

The court can, either *ex officio* or at the request of the parties, determine the production of simplified technical evidence in place of an expert witness when the point at issue is less complex.

Presentation of Expert Evidence

As a general rule, expert evidence is produced in writing, and the parties can ask for clarifications during the hearing. These clarifications are usually given in written statements from the expert.

Documentary Evidence: Certification of Documents

As a general rule, the parties do not need to take any steps to certify the authenticity of a document before it can be admitted as evidence in court. However, the other party may allege that the document is false. A party can raise this allegation in the statement of defence, in the reply, or in a period of 15 days counted from the date of the summons of the document attached to the case file (*Articles 430-433, Civil Procedure Code*).

It is mandatory to use the Portuguese language in Brazilian proceedings. Therefore, if a document is written in a foreign language, a party is required to provide a translated version of it processed through a diplomatic channel or signed by a sworn translator (*Article 192, Civil Procedure Code*).

Legal Framework Governing Cross-Border Evidence

The Hague Evidence Convention

Brazil has been a party to the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention) since 2014.

Any other international instrument(s)

There are no other international instruments which regulate cross-border evidence to which Brazil is a party.

The Hague Evidence Convention

Central Authority

For contact details of the designated Central Authority and the additional authorities, see *Authorities, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*.

Reservations, Declarations, and Notifications

See *Status table, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*, for a complete list of reservations, declarations, and notifications made by Brazil in relation to*:*

- Language of letter of request (Article 4).
- Execution of letter of request in the presence of judicial personnel (Article 8).
- Evidence by diplomatic officers, consular agents, and commissioners (Articles 15-17).
- Pre-trial discovery (Article 23).

Request from Foreign Litigants

Although Article 9 states that letters of request will be executed expeditiously, in practice, and depending on the scope of the letter of request, it generally takes from six months to two years for a request to be executed in Brazil.

The Central Authority's previous authorisation is required for judicial officers of the requesting court to be present at the execution of letters of request in the Brazilian jurisdiction. The Federal Courts are the competent authorities to enforce the request letters, therefore the party must file a request before the relevant Federal Court.

There are no key methods or procedures under the laws of Brazil to execute a letter of request under the Hague Evidence Convention (*Article 9*), apart from the procedure mentioned in *Procedure to Enforce Request for Witness Evidence*.

In practice, the convention allows the judge of a signatory country to request the obtaining or production of evidence in another signatory country by means of a letter rogatory. As in other bilateral and multilateral international legal co-operation agreements,

each country designates a central authority (in Brazil, the Ministry of Justice) to receive requests and responses from its national judges and forward them to the foreign central authority, which communicates with the local judiciary.

The convention provides that evidence can be produced not only by judges, but also by diplomatic representatives or consular agents. Brazil, however, approved the convention with reservations and will only accept evidence that is produced by the judiciary.

There is no specific rule about collecting depositions by video. Generally, it is necessary to ensure a clear and uninterrupted image throughout the hearing. It is also necessary to observe the rules and measures determined by the judge responsible for the case. The deponent must present their identification document.

Domestic Requests

See *Obtaining Evidence from Another Jurisdiction*.

Obtaining Evidence from Another Jurisdiction

General Requirements

Form or Application Along with the Documents

A request for international legal co-operation from a competent Brazilian authority will be forwarded to the Central Authority to conduct the request to the requested state, accompanied by a translation into Portuguese. It is incumbent on the requesting state to ensure the authenticity and clarity of the request.

The forms to be used are listed in the Ministry of Justice's website, at: *www.gov.br/mj/pt-br/assuntos/sua-protecao/cooperacao-internacional/formularios-online*.

Notice Requirements

The court will ensure that the other parties receive notice of the request for international legal co-operation. The principle of *audi alteram partem* is a general rule of law and will be applied.

Even where international legal co-operation is requested, the procedure for production of evidence is the same. The parties are summoned to indicate the evidence they intend to produce and the opposing party can challenge its inclusion if necessary. It is up to the judge to define which evidence will be produced, regardless of the parties' requests and challenges of those requests for evidence.

Grounds

The court will only deny applications to obtain witness or documentary evidence abroad if it deems the evidence useless or merely protractive.

The court will respect the following principles in conducting international legal co-operation:

- The guarantees of due process in the requesting state.

- Equality of treatment between national and foreign parties, whether residing in Brazil or not, in relation to access to justice and to the processing of cases and ensuring legal assistance to those in need.
- Procedural publicity, except in the event of confidentiality provided for by Brazilian law or the requesting state's law.
- The role of a central authority for the reception and transmission of requests for co-operation.

International legal co-operation incorporates the following processes:

- Summons, subpoena, and judicial and extrajudicial notification.
- Gathering evidence and obtaining information.
- Homologation and fulfillment of decision.
- Granting of an emergency judicial measure.
- International legal assistance.
- Any other judicial or extrajudicial measure not prohibited by Brazilian law.

Acts that contradict or that produce results that are incompatible with the fundamental rules that govern the Brazilian state will not be allowed as part of international legal co-operation.

Costs and Expenses

The rules of evidence are the same whether it is domestic or overseas evidence. Each of the parties will meet the costs and expenses of the evidence it requests. Where the production of evidence is either determined by the court (*ex officio*) or requested by both parties, the costs and expenses will be shared by the parties.

Application and Procedure Irrespective of the Applicable International Instruments (If Any)

The same application and procedure apply irrespective of whether or not an international convention applies.

Admissibility of Overseas Evidence

Proof of facts that occurred in a foreign country is governed by the law in force of the country that requested the proof. As to the burden of proof and means of production of evidence, Brazilian courts will not admit evidence that Brazilian law considers inadmissible according to constitutional principles (for example, the right to intimacy and confidentiality of correspondence), or that is unknown to Brazilian law (*Article 13, Decree-Law No. 4,657/1942 (known as the Law of Introduction to the Brazilian Legal System)*). Whether the element of proof is produced overseas or in Brazil, the rule of evidence is the same in terms of admissibility: the parties have the right to employ all legal and morally legitimate means to prove the truth of the facts on which the claim or the defense is based and to effectively convince the judge (*Article 369, Civil Procedure Code*). All documents must be duly signed and certified by the relevant foreign authority and translated into Portuguese.

Willing Witness (Unable to Travel)

Unless otherwise provided, witnesses must be heard at the seat of the court. When a party or witness, due to illness or another relevant reason, is unable to attend the hearing, but is still able to give testimony, the judge will designate, according to the circumstances, a day, time, and place to hear the witness (*Article 449, Civil Procedure Code*).

Documentary evidence should be robust, produced in writing on paper, and relate to a fact alleged by the parties. The probative value of documentary evidence comes from its authenticity and the legitimacy of its content, which cannot be subject to any type of fraudulent tampering.

Witness evidence is obtained by questioning witnesses about facts relevant to the trial. A witness is a person who is not involved in the case and who presents to the court what they know about the dispute. (A party's statement is personal testimony and not testimony.) In general, the testimony is about what that person witnessed, although witnesses can also relay a fact that they heard, but did not witness.

The following persons will be questioned at their domicile or at the place where they perform their functions:

- The President and Vice-President of the Republic.
- The ministers of state.
- The ministers of the Supreme Federal Court.
- The counsellors of the National Council of Justice and the ministers of the Superior Court of Justice.
- The ministers of the Superior Military Court, the Superior Electoral Court, the Superior Labor Court, and the Federal Court of Accounts.
- The attorney general of the republic and the advisers of the National Council of the Public Prosecutor's Office.
- The attorney general of the federal government, the attorney general of the state, the attorney general of the municipality, the federal public defender, and the public defender of the state.
- The senators and federal deputies.
- The governors of the states and the Federal District.
- The mayors.
- The state and district deputies.
- The judges of the Courts of Justice, the Regional Federal Courts, the Regional Labor Courts, and the Regional Electoral Courts and the Counselors of the Audit Courts of the States and the Federal District.
- The attorney general of justice.
- The country ambassador who, by law or treaty, grants the same prerogative to Brazil's diplomatic agent.

(*Article 454, Civil Procedure Code.*)

Video-Link, Teleconference, or Depositions

As a general rule, witnesses must testify at the hearing, unless they provide testimony in advance or are questioned by letter.

The testimony of a witness who resides in a judicial district, section, or subsection other than that in which the process is conducted can be carried out by video conference or other technological means of transmission and reception of sounds and images in real time, which can occur during the investigation and trial hearing (*Article 453, paragraph 1, Civil Procedure Code*). This evidence can be given from wherever the witness is at the relevant time. There is no restriction on where it can be collected.

Obtaining Evidence in Support of Foreign Litigation

National Rules

Law 9.039/17 ratified the Hague Evidence Convention to facilitate the transmission and fulfilment of letters rogatory and to promote and make mutual judicial co-operation in civil or commercial matters more efficient. Other than that, there is no national law that has direct application.

Direct Application

See *National Rules*.

Procedure to Enforce Request for Witness Evidence

The procedure for determining whether a request from a foreign court will be enforced is to place a letter rogatory before the Superior Court of Justice, which is of contentious jurisdiction and must guarantee due legal process to all parties. Defences to the enforcement of a request are restricted to questioning whether the requirements for the foreign judicial pronouncement to take effect in Brazil have been fulfilled.

Once the Superior Court of Justice has approved a request, the Federal Justice Courts are competent to enforce it.

The procedure is the same whether or not the Hague Evidence Convention applies.

Grounds

A document that requests international legal co-operation and includes a translation into Portuguese, authenticated by the Brazilian Central Authority or through diplomatic channels, will be deemed authentic, without the need for swearing, authentication, or any other statutory procedure.

The requirements for a foreign judicial pronouncement, including a request for evidence, to take effect in Brazil are that it:

- Be rendered by an authority with jurisdiction.
- Be preceded by suitable service of process, even if there is default.
- Be effective in the country where it was rendered.
- Does not violate a Brazilian *res judicata* decision.
- Is accompanied by an official translation (unless this requirement is waived by a treaty).
- Does not contain an express violation of public policy.

(*Article 963, Civil Procedure Code.*)

To grant the exequatur of letters rogatory in cases where the defendant has not been heard, the right to be heard, *audi alteram partem*, must be assured at a later stage (*paragraph 3, Article 962 and Article 963, Civil Code*).

Time Frame

The time frame in which a request for evidence is executed depends on the scope of the evidence to be produced. However, in general a request for evidence will not be executed in less than six months.

END OF DOCUMENT