No. 23490

FRANCE
and
BRAZIL

Convention on judicial co-operation in civil, commercial, social and administrative matters (with annex). Signed at Paris on 30 January 1981

Authentic texts: French and Portuguese.

Registered by France on 27 August 1985.

FRANCE
et
BRÉSIL

Convention de coopération judiciaire en matière civile, commerciale, sociale et administrative (avec annexe). Signée à Paris le 30 janvier 1981

Textes authentiques : français et portugais.

Enregistrée par la France le 27 août 1985.

[TRANSLATION — TRADUCTION]

CONVENTION[1] ON JUDICIAL CO-OPERATION IN CIVIL, COMMERCIAL, SOCIAL AND ADMINISTRATIVE MATTERS

The Government of the French Republic and the Government of the Federative Republic of Brazil,

Desiring to promote judicial co-operation between the French Republic and the Federative Republic of Brazil in providing reciprocal legal assistance in the fields of civil, commercial, social and administrative law, and thus to contribute to the development of their relations on the basis of the principles of respect for national sovereignty and equal rights and reciprocal advantages,

Have decided to conclude this Convention:

CHAPTER I. MUTUAL LEGAL ASSISTANCE

Article 1. The competent authorities of the two States in civil, commercial, social and administrative matters undertake to provide each other with legal assistance and to encourage co-operation in this field. The legal assistance shall extend to administrative procedures for which recourse to the courts is permitted.

Each Contracting State shall designate a central authority which will undertake to receive requests for service of judicial documents which may be addressed to it by the central authority of the other Contracting State, and to act on such requests.

The central authority also undertakes to receive from the central authority of the other Contracting State any letters rogatory issued by a judicial authority and to transmit them to the competent authority for execution. The Ministries of Justice of the two States shall act as the central authorities responsible for receiving requests for legal assistance in civil, commercial, social and administrative matters, and shall dispose of such requests. To that end, the central authorities shall be in direct communication and, where appropriate, refer the requests to their respective competent authorities.

CHAPTER II. SERVICE OF WRITS AND EXTRAJUDICIAL DOCUMENTS

Article 2. Writs and extrajudicial documents dealing with civil, commercial, social and administrative matters which are to be served on persons situated in the territory of either State may be sent by the central authority of the applicant State to the central authority of the respondent State.

Receipts and certificates pertaining to the service of such documents shall be transmitted by the same channel.

Article 3. The provisions of the preceding articles shall be without prejudice to the right:

(*a*) Of persons desiring to serve the documents and of officials, judicial officers or other competent persons of the State of origin to apply directly to the

[1] Came into force on 2 April 1985, i.e., the sixtieth day following the date of the last of the notifications (effected on 3 September 1982 and 1 February 1985) by which the Contracting Parties had informed each other of the completion of the required constitutional procedures, in accordance with article 41.

authority of the respondent State competent to serve the documents, if that State is France, or to order the service, if that State is Brazil;

(*b*) Of officials, judicial officers or other competent persons of the State of origin to apply directly to the central authority of the respondent State.

Article 4. Requests for service of the documents shall be written on bilingual printed forms, models of which are annexed to this Convention. The blank spaces shall be completed in the language of the applicant State.

Documents to be served shall be written in the language of the applicant State. However, they shall be translated into the language of the respondent State if the person named therein so requests. In that case, translation fees shall be paid by the respondent State.

Article 5. The respondent authority responsible for effecting service of a document shall use the most appropriate channel for that purpose, i.e., either by delivery through the mails, through a process server or an agent specially appointed for that purpose, or by simple summons.

Proof of service of a document shall consist of a printed bilingual receipt, models of which are annexed to this Convention. The blank spaces shall be completed in the language of the respondent State.

The certificate of receipt shall indicate the manner, place and date of service of the document, the name of the person on whom it was served and, where appropriate, the refusal of the person so named to accept the document or the circumstance which prevented it from being served.

Article 6. Where a writ of summons or an equivalent document had to be delivered for service to the territory of either State and the defendant failed to appear, the judge shall have the authority to suspend judgement until it is established that the document has been served.

If the judgement is rendered by default, or it is presumed to have been rendered after full argument has been heard on both sides, the judge shall have the authority to relieve the defendant from the effects of the expiration of the time to seek legal remedy if the defendant, through no fault of his own, did not have knowledge of the judgement in sufficient time to do so or if he was unable to act.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgement, in no case more than one year after the notification of the judgement. This period of time may not be used to defer compliance.

Article 7. The judicial officers, officials or other competent persons responsible for serving documents may serve those documents in their offices and by delivering a summons to the persons named therein in person.

Only where the person responsible for serving the document believes that he can reach the person named therein with certainty and unequivocally, service may be effected by registered letter with return receipt requested.

Article 8. The costs of serving or attempting to serve writs and extrajudicial documents shall not be refunded to the respondent State.

However, costs arising from the intervention of a judicial officer in France or a process server in Brazil shall be borne by the requesting State.

CHAPTER III. LETTERS ROGATORY

Article 9. Each State shall be free to transmit, in the manner stipulated in article 1, letters rogatory dealing with civil, commercial, social and administrative matters to the judicial authorities responsible for executing them in the other State.

Article 10. The judicial authority of the respondent State may refuse to execute a letter rogatory only if the letter rogatory is not within its competence or is liable to impair the sovereignty or security of that State.

The respondent State may not refuse to comply solely on the ground that, under its domestic law, it has exclusive jurisdiction over the pending case, or that its laws do not provide recourse in respect of the complaint brought before the applicant State, or that compliance would result in a violation of the law of the respondent State.

Article 11. Letters rogatory and the documents attached thereto shall be written in the language of the respondent authority or shall be accompanied by a translation into that language.

Article 12. The respondent authority shall announce the date and place of execution of the action requested in order to enable the authorities, interested parties and their representatives to attend.

This information may be communicated through the central authorities of the Contracting States or directly to the competent officials of the State of origin or to the interested parties themselves.

Article 13. The judicial authority which executes a letter rogatory shall apply its domestic law with regard to the methods of court procedure to be followed. The questions put to the witnesses together with their replies shall, so far as possible, be transcribed verbatim.

However, the request of the applicant authority that a special procedure should be followed shall be granted unless it is incompatible with the public policy of the respondent State.

The letter rogatory shall be executed forthwith.

Article 14. In executing a letter rogatory, the respondent authority shall apply the proper restraints as provided by its domestic law.

Article 15. The documents indicating that a letter rogatory has been executed shall be transmitted through the central authorities.

Where a letter rogatory is not executed in full or in part, the applicant authority shall be so informed immediately through the same channel, and shall be told the reasons thereof.

Article 16. The costs of executing a letter rogatory shall not be reimbursed.

However, the respondent State shall be entitled to require that the applicant State reimburse fees paid to experts and interpreters and costs arising out of the application of special procedures requested by the applicant State.

Article 17. Where the address of the person named in the document or the person being summoned to appear is incomplete or incorrect, the respondent authority shall nevertheless endeavour to accede to the request of the applicant

State. Accordingly, it may ask the applicant State for additional information to help it identify and search for the person concerned.

CHAPTER IV. EXCHANGE OF INFORMATION — PROTECTION OF MINORS

Article 18. In proceedings pertaining to the custody or protection of minors, the central authorities shall:

(*a*) Provide each other, upon request, with information about measures taken concerning the custody or protection of minors, the enforcement of such measures and the material and moral living conditions of the minors.

(*b*) Assist each other in locating minors in their territory who have been abducted, where the right of custody has simply been disregarded, and in bringing about their voluntary return.

Where the right of custody is contested, the central authorities shall immediately notify the authorized officials to take the necessary measures of protection and to rule on the request for return of the minor. In ruling on the request, the authorized officials shall take into account all the circumstances of the case which have occurred in the territory of the two States as well as the decisions and action already taken in the interest of the minor by the French and Brazilian judicial authorities. To that end, they shall initiate an investigation in the other State and draw up the judicial documents which they deem necessary by sending a letter rogatory to the judicial authorities of that State.

(*c*) Co-operate in ensuring that rights to visitation and bed and board are organized for the parent who does not have legal custody in the territory of the two States, that any legal obstacles to the enjoyment of such rights are removed and that the conditions laid down by their respective authorities for the implementation and free exercise of visitation rights and the undertakings of the parties in that regard are fulfilled.

CHAPTER V. RECOGNITION AND EXECUTION OF JUDICIAL AND ARBITRAL DECISIONS AND SETTLEMENTS

Article 19. The provisions of this chapter shall apply to the recognition and execution of decisions rendered by the courts of the two States in civil, commercial, social and administrative matters.

They shall also apply to decisions rendered by criminal courts in respect of reparations for damages and restitution of property.

Article 20. Decisions in adversary and non-adversary proceedings rendered by all courts in France or Brazil shall be recognized *ipso facto* in the territory of the other State, provided that they satisfy the following conditions:

(*a*) The decision was rendered by a court which is competent under the rules concerning conflicts of competence accepted in the territory of the State where the decision is recognized;

(*b*) The decision has applied the litigation law prescribed by the rules for resolving conflicts of law which are accepted in the territory of the State where the decision is recognized.

(*c*) The decision is no longer subject to ordinary appeal under the law of the State in which it was rendered and is enforceable; however, with regard to

personal status and legal capacity of individuals, the decision shall be recognized if it is enforceable;

(*d*) The parties were duly summoned, represented or declared in default;

(*e*) The decision contains nothing incompatible with the public policy of the State in whose territory it is invoked;

(*f*) A court action between the same parties, based on the same facts and having the same object:

— Is not pending before a court of law in the respondent State to which it has earlier been referred;

— Has not resulted in a decision rendered by a court of the respondent State which satisfies the conditions required for it to be recognized;

— Has not resulted in a decision rendered in a third State which satisfies the conditions required for it to be recognized in the territory of the respondent State.

Article 21. The procedure for obtaining the recognition of a decision shall be governed by the law of the respondent State.

In determining the competence of the court of origin, the respondent authority shall be bound by the statements of fact on which that court has based its competence except in the event of a decision by default.

Article 22. The party invoking the authority of a judicial decision must produce:

(*a*) A duly certified copy of the decision;

(*b*) The original of the document containing notification of the decision or of any other equivalent document;

(*c*) A certificate of the clerk of court establishing that there is no appeal against the decision or that it is enforceable;

(*d*) Where necessary, a copy of the summons served on the defaulting party, certified as a true copy by the clerk of the court which rendered the decision.

The documents must be accompanied by a translation certified as correct by any person legally authorized by the applicant State.

Article 23. For the purposes of this Convention, the recognition of a decision *ipso facto* means that the pronouncement of the judgement is binding on the applicant and respondent parties. They may invoke it as grounds for taking exception to any further action brought by the same parties for the same purpose and for the same reason, with the courts having the option either to dismiss the case or to suspend the proceedings.

The provisions of the preceding paragraph shall not infringe the right of the courts of either State, irrespective of the court to which the main object of contention has been referred, to order provisional or protective measures in cases of proven urgency.

Decisions recognized *ipso facto* may not be executed or be the subject of a formality such as inscription in the civil registers unless they have been declared enforceable. However, in matters relating to civil status, decisions which have acquired the force of *res judicata* may be published in the civil registers without

execution having been authorized provided that nothing in the law of the State in which the records are kept precludes their publication.

Article 24. The procedure for authorizing execution of the decision shall be governed by the law of the respondent State. The respondent judicial authority shall establish whether the decision for which a grant of execution is requested satisfies the conditions laid down in article 20 and is enforceable. It shall not proceed to any review of the substance of the decision. Partial execution may be authorized for only some of the charges dealt with in the decision invoked.

The party requesting the execution of a judicial decision must produce, in addition to the documents required for its recognition, a certificate from the clerk of court establishing that the decision is not being contested, appealed or brought before the court of cassation. These documents must be accompanied by a translation certified as correct by any person legally authorized by the applicant State.

Article 25. Arbitral judgements rendered in either State shall be recognized and executed in the other State provided that they satisfy the conditions of article 20 in so far as those conditions are applicable. The request for execution shall be granted in accordance with the procedures established in the preceding articles.

Article 26. Requests for recognition or execution of a judicial decision concerning the custody of minors, rights to visitation and bed and board and alimony obligations may be channelled through the central authorities. The central authorities shall, where appropriate, refer the case to the competent authorities concerned.

In the case of the abduction or unwarranted detention of a minor, the decision concerning the right to custody shall be recognized and rendered enforceable provided it satisfies the conditions set forth in paragraphs (*c*), (*d*), (*e*) and (*f*) of article 20 only when the request for recognition or execution is made within six months from the date of the abduction or unwarranted detention of the minor.

Article 27. Settlements which are enforceable in either State shall be recognized and declared enforceable in the other State subject to the same conditions as decisions, in so far as those conditions apply.

CHAPTER VI. PROBATIVE FORCE AND EXECUTION OF LEGAL INSTRUMENTS

Article 28. Legal instruments, including notarized documents, drawn up by public or judicial officers of either State shall have the same probative force under the judicial system of the other State as corresponding documents drawn up by public or judicial officers of that State.

Article 29. The documents referred to in the preceding article which are enforceable in one State shall be declared enforceable in the other State by the competent authority under the law of the State in which the execution is requested.

The aforesaid authority shall merely ascertain whether the instruments meet the requirements for their execution in the State in which they have been received and whether the provisions to be enforced are not incompatible with the public policy of the State in which the execution is requested.

CHAPTER VII. GENERAL PROVISIONS

Article 30. Documents issued by the judicial authorities or other authorities of either State, and documents which have been certified as authentic, correctly dated, properly signed or true copy of the original, shall not require authentication, marginal notation or similar formalities when they must be produced in the territory of the other State.

Article 31. The central authorities of the Contracting States may as a form of reciprocal legal assistance and provided it would not be incompatible with public policy, address requests for information or inquiry in connection with civil or administrative proceedings which may have been referred to their judicial authorities, and may exchange transcripts of judicial decisions at no cost to either State.

Article 32. The central authorities shall, upon request, exchange information concerning laws presently or formerly in force in the territory of their respective States.

Article 33. Proof of the legislative and customary provisions of either State may be brought before the courts of the other State on the basis, in particular, of information provided by the consular authorities of the State whose law is involved.

Article 34. Nationals of either State shall have free access to the courts of the other State on the same basis as nationals of that State for the exercise and defence of their rights and interests; they shall enjoy the same legal protection.

The preceding paragraph shall apply to bodies corporate constituted, authorized or registered in accordance with the law of either State.

Article 35. No requirement of security of deposit in any amount may be imposed on the nationals of either State in the territory of the other State by reason of their status as aliens or their habitual residence even if it is situated in a third State. The same rule shall apply to any payment required of plaintiffs or interveners as security for legal fees.

The preceding paragraph shall apply to bodies corporate constituted, authorized or registered in accordance with the law of either State.

Article 36. Nationals of either State shall be entitled to legal assistance in the territory of the other State on the same basis as the nationals of that State, regardless of their habitual residence, even if it is situated in a third State.

Requests for legal assistance, accompanied by supporting documents may be transmitted through the central authorities.

Persons entitled to legal assistance in the State of origin shall enjoy this same entitlement in the respondent State without further review and within the limits set forth in the law of that State in respect of the service of legal process, the execution of letters rogatory, except for experts' fees, documents and procedures for securing recognition of the decision or rendering it enforceable, and documents and procedures for giving effect to the decision to authorize execution, which shall not entail reimbursement of costs by the applicant State to the respondent State.

Article 37. In a court action concerning a civil, commercial, social or administrative matter, attorneys members of the bar of the court of first instance

may assist or represent the parties before the courts and jurisdictional bodies of the other country at the preliminary inquiry or at the hearing on the same basis as attorneys of that country.

Attorneys who choose to assist or represent parties before a court or other jurisdictional body of the other country must respect the professional rules and local customs of the host country, without prejudice to the obligations incumbent upon them in the country of origin. They must be introduced to the court by the competent *bâtonnier* (President of the Bar) in the host country, to whom they shall state, *inter alia*, the professional organization to which they belong and the court in which they ordinarily practise with a view to establishing their status as attorneys. For the purpose of receiving any notification provided for by law, they must elect as their domicile the office of an attorney of that country. If an attorney experiences difficulties in that regard, the President of the Bar shall designate the attorney of that Bar whose domicile shall be chosen.

Article 38. Upon the request of either State and at no charge, the two States shall transmit extracts of any civil status document concerning their nationals.

The information shall be transmitted through the diplomatic or consular channel. However, nationals of either State may apply directly to the competent authority of the other State.

Civil status documents written or transcribed in the diplomatic or consular posts of each State shall be treated in the same way as civil status documents drawn up in the territory of that State.

Article 39. No provision of this Convention may be interpreted as an impediment to the implementation of the Vienna Convention on Consular Relations.[1]

CHAPTER VIII. FINAL PROVISIONS

Article 40. Difficulties which may arise in the implementation of this Convention shall be settled through the diplomatic channel.

Article 41. Each Contracting Party undertakes to notify the other of the completion of the constitutional procedures required for the entry into force of this Convention, which shall take effect on the sixtieth day following the date of the last such notification.

Article 42. This Convention shall remain in force for an indefinite period. It may be denounced at any time by either Contracting Party, such denunciation to take effect six months following the date of receipt of its notification by the other State.

DONE at Paris on 30 January 1981 in duplicate in the French and Portuguese languages, both texts being equally authentic.

For the Government
of the French Republic:
[JEAN FRANÇOIS-PONCET]

For the Government
of the Federative Republic of Brazil:
[RAMIRO SARAIVA GUERREIRO]

[1] United Nations, *Treaty Series*, vol. 596, p. 261.

FORM OUTLINING THE ESSENTIAL ELEMENTS OF WRITS AND EXTRA-JUDICIAL DOCUMENTS IN CIVIL, COMMERCIAL, SOCIAL OR ADMINISTRATIVE MATTERS ISSUED BY THE FRENCH REPUBLIC TO BE SERVED ON PERSONS SITUATED IN THE TERRITORY OF THE FEDERATIVE REPUBLIC OF BRAZIL OR ISSUED BY THE FEDERATIVE REPUBLIC OF BRAZIL TO BE SERVED ON PERSONS SITUATED IN THE TERRITORY OF THE FRENCH REPUBLIC

ESSENTIAL ELEMENTS OF THE DOCUMENT

In implementation of the Convention on judicial co-operation in civil, commercial, social and administrative matters between the French Republic and the Federative Republic of Brazil of ..... 19..

(ARTICLE 4)

Authority requesting the document .....

Identity and address of person named therein .....

*Writ**

Identity of parties .....

Nature and purpose of document .....

Nature and purpose of proceedings and amount in dispute .....

Date and place for appearance* .....

Judge or court which rendered a decision in the case* .....

Date of the decision* .....

Time limits stated in document* .....

Extrajudicial Document

Nature and purpose of document* .....

Date and place for appearance* .....

Authority ordering service of the document* .....

Date of decision ordering service of the document* .....

Time limits stated in document* .....

* Delete if inapplicable.

RECEIPT DESCRIBING THE RESULT OF EFFORTS TO DELIVER TO THE PERSONS NAMED THEREIN WRITS OR EXTRAJUDICIAL DOCUMENTS IN CIVIL, COMMERCIAL, SOCIAL OR ADMINISTRATIVE MATTERS ISSUED BY THE FRENCH REPUBLIC TO BE SERVED ON PERSONS SITUATED IN THE TERRITORY OF THE FEDERATIVE REPUBLIC OF BRAZIL OR ISSUED BY THE FEDERATIVE REPUBLIC OF BRAZIL TO BE SERVED ON PERSONS SITUATED IN THE TERRITORY OF THE FRENCH REPUBLIC

Convention on judicial co-operation in civil, commercial, social and administrative matters between the French Republic and the Federative Republic of Brazil, signed at ..... on ..... 19..

(ARTICLE 5)

Authority requesting the document: .....

*Certificate of Receipt**

The undersigned authority has the honour to certify:

That the document has been served

On *(date)* .....

At *(place, street, number)* .....

In the following manner:

The documents referred to in the request have been delivered to:

Identity of the person: .....

Relationship to the person named in the document *(family, category in business or profession or other)*: .....

That the document has not been served by reason of the following circumstances:

ANNEXES *(where appropriate)*

A ☐ Documents indicating service of the document

B ☐ Documents returned, especially if they have not been served

DONE at ..... on .....

SIGNATURE AND SEAL OF CENTRAL AUTHORITY OF RESPONDENT STATE

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* This certificate shall be written in the language of the respondent State.