

No. 32499

**BRAZIL
and
ITALY**

Treaty on judicial cooperation and the recognition and enforcement of sentences in civil matters. Signed at Rome on 17 October 1989

Authentic texts: Portuguese and Italian.

Registered by Brazil on 1 February 1996.

**BRÉSIL
et
ITALIE**

Traité relatif à l'entraide judiciaire et à la reconnaissance et exécution des décisions de justice en matière civile. Signé à Rome le 17 octobre 1989

Textes authentiques : portugais et italien.

Enregistrée par le Brésil le 1^{er} février 1996.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL
AND THE ITALIAN REPUBLIC ON JUDICIAL COOPERATION
AND THE RECOGNITION AND ENFORCEMENT OF SEN-
TENCES IN CIVIL MATTERS

The Federative Republic of Brazil and the Italian Republic (hereinafter referred to as the “Parties”),

Wishing to strengthen their relations in the field of judicial cooperation,

Have agreed as follows:

CHAPTER I. PURPOSE OF THE TREATY

Article 1. SCOPE

1. The provisions of this Treaty shall apply to all civil matters, including those relating to commercial, family and labour law.

2. Each of the Parties shall cooperate with the other, upon request and in the manner stipulated in this Treaty, in carrying out judicial actions and procedures, particularly in serving judicial documents, obtaining and submitting evidence, seeking expert opinions, hearing the parties to proceedings and witnesses, and transmitting the corresponding documents.

3. Each of the Parties shall recognize and declare enforceable, as stipulated in this Treaty, sentences passed by the judicial authority of the other Party in civil matters, as well as the provisions of criminal sentences concerning compensation for damages and restitution of property.

4. Each Party may request the other Party to provide information concerning its laws, regulations and case law.

*Article 2. REFUSAL TO COOPERATE OR TO RECOGNIZE
OR ENFORCE SENTENCES*

Judicial cooperation and the recognition and enforcement of decisions and sentences shall be denied if they are contrary to the public policy of the requested Party.

CHAPTER II. GENERAL PROVISIONS

Article 3. AUTHORITY

1. For the purposes of this Treaty, “judicial authority” shall mean any authority of the Parties which is competent, under the law of its own State, to carry out the procedures envisaged in this Treaty.

¹ Came into force on 1 July 1995, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Brasília, in accordance with article 22 (2).

2. For the purposes of this Treaty, the central authority of the Federative Republic of Brazil shall be the Brazilian Ministry of Justice, and that of the Italian Republic shall be the Italian Ministry of Justice.

Article 4. METHOD OF COMMUNICATION

1. The Parties shall transmit the communications and documentation provided for in this Treaty through their central authorities, unless expressly stipulated otherwise in this Treaty.

2. Transmission through the diplomatic channel shall also be permissible.

Article 5. LEGAL PROTECTION

1. Nationals of either Party shall enjoy in the territory of the other Party, in respect of their persons and property, the same rights and the same legal protection as nationals of that other Party.

2. Nationals of either Party shall have access to the judicial authorities of the other Party, under the same conditions as nationals of that other Party, in order to guarantee and defend their rights and interests.

Article 6. LEGAL ENTITIES

The provisions of this Treaty shall also apply, where appropriate, to legal entities constituted in accordance with the legislation of one of the Parties.

Article 7. LANGUAGES

1. Requests for judicial cooperation and supporting documents shall be written in the language of the requesting Party and accompanied by an official translation into the language of the requested Party.

2. Documents relating to the execution of a letter rogatory shall be transmitted to the requesting Party in the language of the requested Party.

3. Requests for information concerning legislation and case law shall be written in the language of the requested Party, and replies shall be transmitted in that same language.

Article 8. COSTS

The costs of cooperation shall not be reimbursed. However, the requested Party shall be entitled to reimbursement of any expenses incurred in respect of experts, witnesses and interpreters and in connection with the execution of letters rogatory according to the special instructions referred to in article 15, paragraph 1, of this Treaty.

*Article 9. EXEMPTION FROM THE DEPOSIT
OF SECURITY FOR COSTS (CAUTIO JUDICATUM SOLVI)*

1. Nationals resident or domiciled in the territory of one of the Parties and appearing before the judicial authorities of the other Party as accused or as parties to proceedings shall not be required to pay any security with respect to the costs

of proceedings (*cautio judicatum solvi*) by reason of their status as foreigners or because they are not resident or domiciled in the territory of that other Party.

2. If a person who is exempt from the deposit of security (*cautio judicatum solvi*) is sentenced to pay the costs of proceedings by a decision of the judicial authority of one Party that has acquired the force of *res judicata*, the decision shall, at the request of the person concerned, be enforced without costs in the territory of the other Party. The request and accompanying documents shall be submitted in accordance with article 19 of this Treaty and the judicial authority competent to rule on enforcement shall confine itself to stating whether the decision on costs is enforceable.

Article 10. FREE LEGAL AID AND EXEMPTION FROM FEES AND ADVANCES

1. Nationals of either Party shall be entitled in the territory of the other Party to free legal aid for civil proceedings, under the same conditions and to the same extent as nationals of that other Party.

2. Nationals of either Party shall also enjoy in the territory of the other Party, under the same conditions and to the same extent as nationals of that other party, exemption from fees and advances for trial costs and other costs for proceedings, as well as any other advantages provided by law.

3. The provisions of the preceding paragraphs shall apply to the entire proceedings, including the enforcement of sentences.

4. If the advantages referred to in the preceding paragraphs depend on the personal situation or property status of the applicant, such advantages shall be granted on the basis of attestations issued by the competent authority of the Party in whose territory the applicant resides. If the applicant does not reside in the territory of either of the Parties, such attestation shall be issued by the competent authorities of the Party of which the applicant is a national, in accordance with the laws of that Party.

Article 11. VALIDITY OF LEGAL INSTRUMENTS

Legal instruments considered as such by one of the Parties shall, for the implementation of this Treaty, have the same evidentiary value in the other Party, in accordance with the latter's legislation.

Article 12. EXEMPTION FROM AUTHENTICATION

For the purposes of this Treaty, documents, copies and translations drafted, or certified as authentic, by the competent authority of either Party and bearing an official signature, stamp or seal shall not require any form of authentication prior to their use by the authorities of the other Party.

Article 13. TRANSMITTAL OF CIVIL STATUS DOCUMENTS

Either Party shall transmit to the other, upon request and within the limits imposed by the legislation of the requested Party, copies of any civil status documents and certificates needed in connection with a judicial proceeding.

CHAPTER III. LETTERS ROGATORY

Article 14. REQUIREMENTS OF THE REQUEST

Requests for the execution of letters rogatory shall indicate:

- (a) The requesting judicial authority;
- (b) The requested judicial authority, where possible;
- (c) The subject of the request, including specification of the action to be taken;
- (d) The judicial proceedings which gave rise to the request;
- (e) The full name, address and, where possible, other details of the persons to whom the letter rogatory refers;
- (f) The full name, address and, where possible, other details of the parties to the proceedings and, in the case of legal entities, the name, the address of the main office and, if available, the name of their legal representative;
- (g) In the case of a request for questioning, the questions to be asked.

Article 15. EXECUTION OF LETTERS ROGATORY

1. In the execution of a letter rogatory, the law of the requested Party shall apply. If the requesting Party asks for the letter rogatory to be executed according to special instructions, the requested Party shall follow those instructions, provided that they do not conflict with its own legislation.

2. If the information and details provided by the requesting Party are insufficient to permit execution of the letter rogatory, and the requested Party is unable to obtain such information directly, it shall ask the requesting Party to supply the necessary additional information.

3. The requested Party, if specifically requested to do so, shall inform the requesting Party in good time of the date and place of execution of the action requested in the letter rogatory. Interested parties, authorities and parties to the proceedings may be present when such action is taken, provided that this is not contrary to the law of the requested Party.

4. The letter rogatory must be executed and returned to the requesting Party as quickly as possible.

5. If it is not possible to execute the letter rogatory, the requested Party shall return it as quickly as possible, explaining why it has not been executed.

Article 16. DOCUMENTARY PROOF OF SERVICE

1. Proof of the service of judicial documents shall be provided by a receipt signed by the person to whom the document was delivered or by a certificate issued by the competent authority, both of them completed in the manner provided for in the law of the requested Party. If the person on whom the document is to be served refuses to receive it, proof shall be provided by a statement signed by the court officer concerned, indicating the date, the place and the name of the person to whom it was delivered. If the document to be served is transmitted in duplicate, proof of its receipt or service may be provided by recording the above-mentioned information on the copy to be returned.

2. The requested Party shall transmit to the requesting Party, as quickly as possible, the receipt or certificate providing proof of service.

Article 17. APPEARANCE BEFORE THE REQUESTING PARTY

A person who is in the territory of the requested Party and is summoned to appear as a witness or expert before the judicial authority in the territory of the requesting Party cannot be compelled to appear, nor can penalties for failure to appear be applied to that person by either Party.

CHAPTER IV. RECOGNITION AND ENFORCEMENT OF SENTENCES
AND OTHER MEASURES

Article 18. CONDITIONS REQUIRED

Sentences passed in civil matters by the judicial authorities of either Party and the provisions of criminal sentence concerning compensation for damages and restitution of property shall be recognized by the other Party, except as provided in article 2 of this Treaty, on condition that:

(a) The sentence does not concern a matter which comes within the exclusive jurisdiction of the requested Party, or of a third State, pursuant to the law of the requested Party or to a treaty signed by that Party with a third State;

(b) The party against whom proceedings were brought was properly summoned in accordance with the laws of the Party where sentence was passed, or appeared in court and was duly represented in accordance with such laws;

(c) The sentence has acquired the force of *res judicata* under the law of the Party in whose territory it was passed;

(d) No decision between the same parties and on the same subject has been rendered by the judicial authorities of the requested Party;

(e) No proceedings on the same subject and between the same parties are pending before the judicial authority of the requested Party that were brought prior to submission of the request for recognition to the judicial authority which rendered the decision.

Article 19. REQUESTS FOR RECOGNITION AND ENFORCEMENT

Requests for recognition and enforcement of a decision shall be accompanied by:

(a) A certified copy of the entire text of the decision;

(b) Certification that the case was brought to trial;

(c) A certified copy of the original summons or, in the case of a decision rendered after the person failed to appear, an appropriate document showing that the sentenced person was duly summoned, unless the decision itself so indicates;

(d) In the case of legal incapacity, an appropriate document showing that the person was duly represented, unless the decision itself specifically indicates that this was the case;

(e) An official translation of the above-mentioned documents into the language of the requested Party.

Article 20. COURT SETTLEMENTS

Settlements reached before the competent judicial authority of one Party shall, upon request, be recognized and declared enforceable by the other Party, provided that the conditions of article 19 of this Treaty are met, as appropriate, and the provisions of article 2 are respected.

Article 21. PROCEDURES FOR RECOGNITION AND ENFORCEMENT

1. In procedures for the recognition and enforcement of final decisions and court settlements, the judicial authority of the requested Party shall apply the law of its own State.

2. The judicial authority deciding on the recognition and enforcement of decisions shall confine itself to verifying whether the conditions established by this Treaty have been met.

3. In examining the circumstances on which the competence of the judicial authority of the other Party is based, a judicial authority shall not consider the merits of the decisions rendered, but only whether the requirements established by this Treaty for their recognition and enforcement have been met.

CHAPTER V. FINAL PROVISIONS

Article 22. RATIFICATION AND ENTRY INTO FORCE

1. This Treaty shall be subject to ratification. The instruments of ratification shall be exchanged at Brasília.

2. This Treaty shall enter into force on the first day of the second month following the exchange of the instruments of ratification.

3. This Treaty shall remain in force for an indefinite period.

4. This Treaty may be denounced at any time by either Party. Such denunciation shall take effect six months following the date on which the other Party received notification thereof.

DONE at Rome on 17 October 1989, in two originals in the Portuguese and Italian languages, both texts being equally authentic.

For the Federative Republic
of Brazil:

[Signed]

ROBERTO DE ABREU SODRÉ

For the Italian Republic:

[Signed]

GIANNI DE MICHELIS