

Proinde Circular 27-06-2024: Civil Procedure Code limits forum selection clauses

A recent amendment to Brazilian procedural law has narrowed the scope of choice of jurisdiction to curb forum shopping practices

Background

Until recently, the Brazilian Civil Procedure Code – CPC ([Law 13,1095/2015](#)) allowed parties to elect the forum for resolving their disputes as long as they did so explicitly and freely.

Choice of jurisdiction

On 4 June 2024, the Brazilian president approved [Law 1,803/2024](#), which modified Article 63 of the CPC, establishing that forum selection will only be legally binding “*when stated in a written instrument, expressly alluded to a certain legal transaction and relevant to the domicile or residence of one of the parties or the place of obligation*”.

This limitation applies to consumer-related agreements, except where the chosen jurisdiction benefits the consumer.

Forum shopping

The amendment stipulates that filing claims before a random, unrelated court, colloquially known as forum shopping, is an abusive practice empowering judges to decline jurisdiction *ex officio*.

Uncertainty

The procedural change does not define the “place of obligation”, leaving it unclear whether it refers to the location where the contract was concluded (e.g. the port of loading) or where the obligation must be fulfilled (e.g., the port of discharge or place of delivery) or both the place where the contract was formed and where it is to be performed.

Implementation

The procedural amendment regarding jurisdiction came into effect on 5 June 2024. Since Law 1,803/2024 did not include any transitional rules, its provisions immediately apply to ongoing cases, with exceptions, as outlined in the CPC¹.

The impact of the new ruling on outstanding legal disputes involving forum selection is yet to be determined.

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¹ "Art. 14. The procedural rule will not be retroactive; it will be immediately applicable to ongoing proceedings, respecting the procedural acts carried out and the legal situations consolidated under the validity of the revoked rule." (free translation of Article 14 of the Brazilian Civil Procedure Code)