

_ Brazilian Superior Court of Justice acknowledges the competence of arbitral courts to decide on matters related to the partial dissolution of limited liability company

On June 12th, 2018, the 3rd panel of the Brazilian Superior Court of Justice has unanimously refused Appeal No. 1.727.979 (“Appeal No. 1.727.979”), filed by the estate of a deceased partner of a limited liability company against the decision issued by a lower Court sustaining an award which extinguished the proceedings related to the partial dissolution of the limited liability company and the reimbursement of assets due to the death of the aforementioned partner and the absence of “*affectio societatis*” between the company’s remaining partners and the successors of the deceased partner. This claim was filed by the deceased partner’s estate in order to exercise its right to withdraw from the company (“Company”) and obtain the reimbursement of the value of the quotas for further allocation among the deceased partner’s successors.

The claim filed by the estate was extinguished because the Company’s articles of association had an arbitration clause that submitted any conflict among its partners, the Company and its managers to a pre-selected arbitral court, in which case filing a judicial claim related to the partial dissolution of the corporate partnership due to the death of a partner before the judicial courts would not be admissible. The estate argued that the arbitration clause in the Company’s articles of association was not applicable to this specific claim once the partial dissolution of corporate partnership was based on succession law provisions of strictly personal and non-disposable nature, in which case the claim had to be decided by the judicial courts.

THE REPORTING JUSTICE FOR THE APPEAL, JUSTICE MARCO AURÉLIO BELIZZE, HAD A

DIFFERENT UNDERSTANDING, AS FOLLOWS: (I) A PARTIAL DISSOLUTION OF LIMITED LIABILITY COMPANY CLAIM AIMS AT SETTLING THE CONFLICT OF INTEREST BETWEEN EITHER THE SUCCESSORS OF THE DECEASED PARTNER, WHO DO NOT INTEND TO BECOME PARTNERS OF SUCH LIMITED LIABILITY COMPANY, OR THE REMAINING PARTNERS, WHO, FOR SOME REASON, INTEND TO PREVENT THAT THE SUCCESSORS OF ANY DECEASED PARTNER BECOME QUOTAHOLDERS; (II) THE RIGHTS AND INTERESTS DISCUSSED WITHIN SUCH SCOPE, EVEN THOUGH BASED ON SUCCESSION LAW, ARE EXCLUSIVELY CORPORATE RIGHTS AND, THEREFORE, HAVE A DISPOSABLE NATURE; (III) THE CLAIM’S OBJECTIVE WAS TO DEFINE THE CONTINUANCE OF THE LEGAL ENTITY AND ITS CORPORATE STRUCTURE AND THUS IS SUBJECT TO THE ARBITRATION CLAUSE; AND (IV) CONSIDERING THAT THE PARTNERS ARE NOT ENTITLED TO EXCUSE THEMSELVES FROM ANY CORPORATE RULES, IN SPECIAL THOSE SET FORTH IN THE COMPANY’S ARTICLES OF ASSOCIATION, FOR THE SAME REASON, THEIR SUCCESSORS SHALL NOT BE ENTITLED TO EXCUSE THEMSELVES FROM ANY OF THE AFOREMENTIONED RULES, OTHERWISE THE ARTICLES OF ASSOCIATION AND THE PARTNERS WILLING WOULD BE VIOLATED AND COMPROMISED.

As a result, the understanding that the partial dissolution of the limited liability company should be decided by the arbitral court appointed in the arbitration clause set forth in the Company’s articles of association prevailed.

MORE INFORMATION ON APPEAL 1.727.979 CAN BE ACCESSED IN PORTUGUESE AT:

<http://www.stj.jus.br/SCON/jurisprudencia/toc.jsp?processo=1727979&&b=ACOR&thesaurus=JURIDICO&p=true>

_ Enacted law which rules upon the protection of personal data and modifies Brazilian regulation over internet issues

On August 14th, 2018, the Brazilian President enacted, with some reservations, Law No. 13.709 (“Law No. 13.709”), which rules upon the protection of personal data and modifies the Brazilian regulation over internet issues, coming into force on February 15th, 2020.

Law No. 13.709 is considered a regulatory landmark, as it (i) foresees numerous rights for the owners of personal data stored by individuals or legal entities, public or private, which act as holders (i.e., responsible to decide on the treatment to be given to personal data) or handlers (i.e. those who treat personal data as required by the holders) of such personal data; (ii) indicates an exhaustive list of legal hypothesis in which the treatment of data is authorized and; (iii) establishes proceedings for such data to be safely treated or transferred.

Among the innovations brought by Law No. 13.709., we highlight:

(i) the principle of intention, whereby any personal data shall only be used for the specific purpose that caused them to be gathered;

(ii) the principle of minimum gathering, which determines that only the minimum personal data necessary for a specific purpose can be gathered;

(iii) the principle of minimum retention, whereby any holder or handler of personal data shall eliminate the data they obtained right after the purpose which justified its gathering is accomplished;

(iv) the principle of accountability, which establishes that holders of personal data shall evaluate the whole treatment

cycle of such data in order to appoint the grounds which authorize its treatment and the safety measures adopted to minimize eventual incidents;

(v) the right to transfer personal data, which allows the owner of such data to request its transfer to other holders;

(vi) the obligation of the data holder to inform any safety incident, such as information on leaks which may cause any risk or relevant damage to data owners;

(vii) the position of Data Protection Officer, a person whose identity and contact information shall be publicly disclosed, preferably on the website of the data holder and who is responsible for the communication channel between data holders, data owners and the competent Brazilian authorities.

In case rules set forth in Law 13.709 are violated, the competent Brazilian authorities may apply, upon administrative proceedings, certain administrative penalties, including fines of up to 2% of the turnover of the legal entity or offending group in the last fiscal year, limited to R\$50 million per infraction.

It is also worth noting that the creation of the National Data Protection Authority, a competent governmental authority to monitor the compliance with Law 13.709 and to determine the corresponding sanctions, foreseen in the preliminary minute of Law 13.709, was vetoed by the Brazilian President, who understood that the creation of a new public entity should be proposed by the executive branch. According to media reports, the federal executive branch intends to send a bill to the Brazilian Federal Congress on this subject.

MORE INFORMATION CAN BE ACCESSED IN PORTUGUESE AT:

http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/L13709.htm

_ Brazilian Securities and Exchange Commission and Brazilian Antitrust Authorities establish a new group for collaborative work

On August 14th, 2018, it was enacted the Joint Ordinance CADE/CVM No. 5 (“Ordinance CADE/CVM No.5”) in order to create a working group (“Working Group”) aiming to improve the institutional relationship between the Brazilian Securities and Exchange Commission (“CVM”) and the Brazilian Counsel of Economic Defense (“CADE”) related to: (i) the exchange of common interest information related to securities issuers subject to the supervision of CVM and the investment funds industry; and (ii) the exchange

of information and guidelines about CADE’s Program and Leniency Manual and the work developed by CVM regarding administrative settlements in supervisory proceedings.

Pursuant to Ordinance CADE/CVM No. 5, CVM’s and CADE’s representatives shall take part in the Working Group, which was created for an initial term of 180 days, counted from the date of its first meeting, after which the discussions shall be concluded.

MORE INFORMATION ON THIS WORKING GROUP CAN BE ACCESSED IN PORTUGUESE AT:

http://www.cvm.gov.br/export/sites/cvm/noticias/anexos/2018/20180816_portaria_conjunta_cvm_cade_5_2018.pdf

_ Once again, Founding Partner Gyedre Carneiro de Oliveira has been ranked in Chambers Global/2019 and in Chambers Latin America/2019

Founding Partner Gyedre Carneiro de Oliveira has been once again ranked in 2019 edition of the Chambers and Partners Global and Latin America guides. The renowned British publication is one of the most prestigious legal directories

which identifies and ranks the most outstanding lawyers in the world and in Latin America based on research and client interviews

MORE INFORMATION ABOUT CHAMBERS AND PARTNERS IS AVAILABLE AT:

<https://www.chambersandpartners.com/>