

IBA ARBITRATION COMMITTEE

Sub Committee on recognition and enforcement of arbitral awards

COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE VALIDITY OF THE ARBITRAL AWARD

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Brazil			
I. General questions		(Yes/ No /NA)	Additional comments, if any.
I.1	Has the country that you are reporting about adopted the UNCITRAL Model Law?	Yes (but only partially)	Brazil has not formally adopted the UNCITRAL Model Law. However, the Brazilian Arbitration Act (Federal Law n. 9307/1996 – “BAA”) was inspired on the Model Law and adopted many of its principles and provisions.
I.2	Is it required for the award to result from an agreement to arbitrate?	Yes	
I.2.a	If your answer to question <u>I.2</u> is yes, does the agreement to arbitrate have to be transcribed into the award?	No	
I.2.b	Does the agreement to arbitrate have to be attached to the award?	No	
I.2.c	If your answer to question <u>I.2.b</u> is yes, would a copy of the agreement to arbitrate be sufficient?	NA	
I.2.d	If your answer to question <u>I.2.c</u> is no, is it necessary to attach an original version of the arbitration agreement?	NA	

I.3	Must the award resolve a substantive issue, not merely a procedural matter to be considered an arbitral award?	No	
I.3.a	If your answer to question <u>I.3</u> is yes, should decisions purely on procedural and/or administrative matters be then resolved in form of a procedural order?	NA	
I.4	Does the award must comply with certain minimal formal requirements?	Yes	The BAA sets out minimal formal requirements in its Article 26.
I.4.a	If your answer to question <u>I.4</u> is yes, is it required for the award to be an authenticated original award?	No	Pursuant to Article 26, sole paragraph, of the BAA the arbitral award shall be signed by the arbitrator or by all the arbitrators (there is no legal requirements as to the need for the authentication of the arbitrators' signatures by a notary public). In addition, if one or more arbitrators is unable to or refuses to sign the award, the chairman of the arbitral tribunal shall certify such fact.
I.4.b	If your answer to question <u>I.4</u> is yes, is it required for the award to be in writing?	Yes	BAA, Article 24.
I.4.c	If your answer to question <u>I.4</u> is yes, is it required for the award to be a reasoned instrument?	Yes	BAA, Article 26, II.
I.4.d	If your answer to question <u>I.4</u> is yes, is it required for the award to indicate the place of arbitration?	Yes	BAA, Article 26, IV, second part.
I.4.e	If your answer to question <u>I.4</u> is yes, is it required for the award to specify the date of the award?	Yes	BAA, Article 26, IV, first part.
I.4.f	If your answer to question <u>I.4.e</u> is yes, does the date of the award need to be the date when the last of the arbitrators signed the award?	No	

I.4.g	If your answer to question <u>I.4.f</u> is no, is the date of the award the same date when the relevant arbitration institution confirmed the award?	No	
I.4.h	If your answer to question <u>I.4.g</u> is no, is the date of the award the same date when the award was sent to the parties?	No.	
I.5	Are partial awards permitted?	Yes	BAA, Article 23, paragraph 1.
I.5.a	If your answer to question <u>I.5</u> is yes, please briefly explain (in the comments column) in which cases can a partial award be issued?		<p>Partial awards can be rendered in regard to both procedural and merits issues.</p> <p>Partial awards may decide, v.g.: whether a non-signatory party is bound by the underlying arbitration agreement; whether statute of limitation has run regarding some of the claims presented in the arbitration; whether a contract has been breached (an debeatur), leaving the quantum analyses to a second phase in the proceedings.</p>
I.6	Are rectificative or interpretative additional awards permitted?	Yes	BAA, Article 30.
I.6.a	If your answer to question <u>I.6</u> is yes, is there a specific deadline to issue rectificative or interpretative additional awards?	Yes	<p>BAA, Article 30 sets out a 5-day deadline for such requests to be presented, as well as a 10-day deadline for the arbitral tribunal to issue such awards.</p> <p>However, the parties and the arbitral tribunal are free to agree on different, extended deadlines.</p>
I.6.b	If your answer to question <u>I.6.a</u> is yes, which is the deadline?	Yes	Please see the comments immediately above.

I.6.c	If your answer to question <u>I.6</u> is yes, is the relevant additional award considered to be part of the initial award?	Yes	
I.6.d	If your answer to question <u>I.6.c</u> is no, is the relevant additional award considered to be a separate award from the initial award?	NA	
I.6.e	If your answer to question <u>I.6</u> is yes, please briefly explain (in the comments column) in which cases can a rectificative award be issued?		BAA, Article 30 sets out narrow grounds upon which the parties may rely to request that the Arbitral Tribunal renders a rectificative award: (i) to correct any material error of the arbitration award; and (ii) clarify any obscurity, doubt or contradiction of the arbitral award, or pronounce on the omitted point in respect of which the decision should have addressed.
I.6.f	If your answer to question <u>I.6</u> is yes, please briefly explain (in the comments column) in which cases can a interpretative award be issued?		Please see the comments immediately above.
I.7	Are interim or preliminary awards permitted?	Yes	BAA, Article 22-B, sole paragraph.
I.7.a	If your answer to question <u>I.7</u> is yes, are decisions on choice of law subject to an interim award?	Yes	
I.7.b	If your answer to question <u>I.7</u> is yes, are decisions on liability subject to an interim award?	Yes	
I.7.c	If your answer to question <u>I.7</u> is yes, are decisions on the interpretation of a particular provision subject to an interim award?	Yes	
I.7.d	If your answer to question <u>I.7</u> is yes, is the enforcement of interim awards somehow conditioned to the rendering of the final award?	No	
I.8	Are awards by consent accepted?	Yes	BAA, Article 28.

I.8.a	If your answer to question <u>I.8</u> is yes, is there any additional requirement to render awards by consent?	No	
I.8.b	If your answer to question <u>I.8.a</u> is yes, please provide a brief description (in the comments column) regarding such additional requirements.	NA	
I.9	Are default awards accepted?	Yes	Under Article 22, paragraph 3, of the BAA, default by a party shall not prevent the arbitral award from being rendered.
I.9.a	If your answer to question <u>I.9</u> is yes, should the award be rendered in a form of a partial award?	No	
I.9.b	If your answer to question <u>I.9.a</u> is no, should the award be rendered in a form of a final award?	No	
I.9.c	If your answer to question <u>I.9.b</u> is no, should the award be rendered in a form of an interim award?	No	
I.9.d	If your answer to question <u>I.9</u> is yes, must particular notification requirements be met?	Yes	The BAA does not set our requirements in this regard. However, erring on the side of caution, a default party should be notified by the arbitral tribunal of every major step in the proceedings, such as the signing of the terms of reference, receiving a copy of the terms of reference with the provisional calendar included therein, dates of hearings, invitation to file post-hearing or final briefs, as well as a final registered notification with a copy of the award.
I.9.e	If your answer to question <u>I.9</u> is yes, should the efforts made by the arbitrators to notify the absent party and to give such party the opportunity to present its case be documented in the award?	Yes	Please see the comments immediately above.

I.10	Is there a time limit requirement to render the award?	Yes	BAA, Article 23 gives the parties and the arbitral tribunal leeway to set the appropriate time limit to render the award. However, if no such agreement is reached, the law sets out a 6-month deadline for the rendering of the award from the institution of the arbitration or from the substitution of the arbitrator.
I.10.a	If your answer to question <u>I.10</u> is yes, please specify (in the comments column) what is the relevant time limit.		Please see the comments immediately above.
I.11	Are arbitrators required to meet certain qualifications?	Yes	BAA, Article 13 sets out that arbitrators must have civil legal capacity (as defined in the Civil Code) and must have the parties' trust.
I.11.a	If your answer to question <u>I.11</u> is yes, please provide a list (in the comments column) of such requirements.		Please see the comments immediately above.
II. Language			
II.1	Is it required for the award to be written in the language of the arbitral proceeding?	No	The BAA does not require the award to be written in the language of the proceedings, although this is a common practice.
II.1.a	If your answer to question <u>II.1</u> is yes, should the award be issued in all of the languages chosen by the parties for the arbitral proceedings?	NA	
II.1.b	If your answer to question <u>II.1.a</u> is no, do the arbitrators have the discretion to choose between the languages of the arbitral proceedings to issue the award?	No	Parties usually agree on the language of the proceedings and the award in the Terms of Reference. The tribunal must follow said agreement.

II.1.c	If your answer to question <u>II.1</u> is no, should the language of the award be that of the arbitration agreement?	No	
II.1.d	If your answer to question <u>II.1</u> is no, should the language of the award be that of the underlying agreement?	No	
II.1.e	If your answer to question <u>II.1</u> is no, should the language of the award be that of the seat of arbitration?	No	
II.1.f	If your answer to question <u>II.1</u> is no, should the language of the award be the language of the parties' nationality?	No	
II.2	Are there any circumstances that must be taken into consideration in order to determine the language of the award?	No	The BAA does not have any provision on this issue. However, certain institutional rules provide standards to establish the language of the award. It will generally depend on the language of the parties, of the contract or of the arbitrators.
II.2.a	If your answer to question <u>II.2</u> is yes, should the language of the award be understandable by all of the arbitrators?	No	The BAA does not have any provision on this issue. However, it is a common practice that the arbitrators are fluent in the language of the proceedings/award.
II.2.b	If your answer to question <u>II.2</u> is yes, should the language of the award have a link to the dispute?	No	The BAA does not have any provision on this issue. However, it is common practice that the language of the award to be the language of the proceedings.
II.2.c	If your answer to question <u>II.2</u> is yes, should the language of the award have a link to the parties?	No	
II.2.d	If your answer to question <u>II.2</u> is yes, should the language of the award have a link to the dispute?	No	

II.2.e	If your answer to question <u>II.2</u> is yes, should the arbitrators take into consideration the language of the correspondence between the parties?	No	
II.2.f	If your answer to question <u>II.2</u> is yes, should the arbitrators take into consideration the place where the award is most likely to be enforced?	No	
II.3	Is it permitted to use two languages in the award (i.e. quotes in one language and the rest of the award in another language)?	Yes	The BAA does not have any provision on this issue. However, it is not uncommon to see awards, v.g., written in Portuguese with references to documents and evidence in general (as well as legal authorities) in other languages. In such cases, the award usually includes a footnote with the translation of the relevant passages to Portuguese.
II.3.a	If your answer to question <u>II.3</u> is no, when the parties have made a quote on a language different from the one of the proceedings and the quote is used in the award, should that quote be translated by the arbitrators?	NA	
II.3.b	If your answer to question <u>II.3.a</u> is no, should a translator translate the quote?	NA	
II.3.c	If your answer to question <u>II.3.b</u> is yes, should that translator be selected by the arbitrators?	No	
II.3.d	If your answer to question <u>II.3.c</u> is no, should the translator be selected jointly by the parties?	No	
II.3.e	If your answer to question <u>II.3.b</u> is no, should one of the parties translate the quote?	No	
II.3.f	If your answer to question <u>II.3.e</u> is yes, should the arbitrators select the party which will translate the quote?	No	
II.3.g	If your answer to question <u>II.3.b</u> is yes, is there any specific requirement regarding the person who can translate the text (<i>ie.</i> sworn translator)?	No	In Brazil, certified translators must be registered before the Board of Trade.

			But it is also possible to provide free translations of quotes and submissions, depending on the agreement of the parties and arbitrators at the outset of the proceedings.
III. Signature, date and place			
III.1	Is it required for the arbitral award to bear the arbitrators' actual (as opposed to electronic) signature?	Yes	BAA, Article 26, provides for the mandatory "signature" of the arbitrators, with no distinction as to actual or electronic signatures. In the Brazilian practice, both actual and electronic signatures are used by arbitrators.
III.1.a	If your answer to question <u>III.1</u> is no, is it permitted for the arbitral award to bear the arbitrators' electronic signature?	Yes	
III.1.b	If your answer to question <u>III.1</u> is yes, is it required to use a specific ink color to sign the award?	No	
III.1.c	If your answer to question <u>III.1.b</u> is yes, please specify (in the comments column) the ink color that must be used.	NA	
III.2	In case of majority decision, will the award be valid with the signature of the majority (as opposed to the signature of all of the arbitrators)?	Yes	Under Article 26, sole paragraph, of the BAA, the arbitral award shall be signed by the arbitrator or by all the arbitrators. If one or more arbitrators is unable to or refuses to sign the award, the chairman of the arbitral tribunal shall certify such fact.
III.2.a	If your answer to question <u>III.2</u> is yes, is it required for the award to contain an explanation as to why a signature of an arbitrator is missing?	Yes	Please see the comments immediately above.

III.3	In case of a dissenting opinion by one of the arbitrators, is it permitted for the award to bear the signature of the dissenting arbitrator?	Yes	Please see the comments immediately above.
III.3.a	If your answer to question <u>III.3</u> is yes, is it required for the award to contain an explanation as to why award bears the signature of the dissenting arbitrator?	Yes	Please see the comments immediately above.
III.3.b	Are the non-dissenting arbitrators required to analyze the dissenting opinion?	No	
III.4	In the case of unanimous decision, are all arbitrators required to sign the award?	Yes	Under Article 26, sole paragraph, of the BAA, the arbitral award shall be signed by the arbitrator or by all the arbitrators. If one or more arbitrators is unable to or refuses to sign the award, the chairman of the arbitral tribunal shall certify such fact.
III.4.a	If your answer to question <u>III.4</u> is no, would the signature of the president of the Arbitral Tribunal suffice?	Yes	Please see the comments immediately above.
III.5	Is initialling of all the pages of the award required?	No	
III.5.a	If your answer to question <u>III.5</u> is yes, is initialling required from all of the members of the arbitral tribunal?	NA	
III.5.b	If your answer to question <u>III.5</u> is yes, is it permitted for only some of the arbitrators to comply with such requirement?	NA	
III.5.c	If your answer to question <u>III.5</u> is no, is initialling of all the pages permitted?	Yes	
III.6	In case of a dissenting opinion by one of the arbitrators, is initialling of all the pages required by the dissenting arbitrator?	No	
III.6.a	If your answer to question <u>III.6</u> is no, is initialling of the award by the dissenting arbitrator permitted?	Yes	
III.7	Is physical presence of the arbitrators at the place of arbitration required for validly signing the award?	No	

III.7.a	If your answer to question <u>III.7</u> is no, is it permitted for each arbitrator to sign at a different place from where the other arbitrators are signing?	Yes	
III.7.b	If your answer to question <u>III.7.a</u> is no, must physically meet to sign the award at the same place (different from the place of the arbitration)?	No	
III.7.c	If your answer to question <u>III.7</u> is yes, would this requirement also apply to cases where electronic signature is permitted?	No	
III.7.d	If your answer to question <u>III.7</u> is no, would there be any difficulty or problem for not physically signing the award at the place of arbitration?	No	
III.8	Is there any additional signature requirement applicable to the jurisdiction you are reporting about?	No	
III.8.a	If your answer to question <u>III.8</u> is yes, please indicate the requirement in the comments section.	NA	
III.9	Is it required for the arbitral award to bear the date?	Yes	BAA, Article 26, IV, first part.
III.9.a	If your answer to question <u>III.9</u> is yes, should each arbitrator state the effective date when he/she signed the award?	No	
III.9.b	If your answer to question <u>III.9.a</u> is no, should the date inserted in the award be the one when the last arbitrator effectively signed the award?	No	
III.9.c	If your answer to question <u>III.9.a</u> is yes, should the date be set using the calendar used at the relevant countries (i.e. solar calendar) of the nationality of the arbitrators?	No	
III.9.d	If your answer to question <u>III.9.c.</u> is no, should the date be set using the calendar used at the place of arbitration (i.e. solar calendar)?	Yes	
III.9.e	If your answer to question <u>III.9.d</u> is no, should the date be set using the calendar used at the relevant countries of the nationality of the parties?	No	
III.9.f	If your answer to question <u>III.9.e</u> is yes, if the countries where the parties are nationals of use different calendar systems, should the date be set in accordance all of those calendar systems (i.e. solar calendar and Chinese calendar)?	No	

III.9.g	If your answer to question <u>III.9.f</u> is no, should the arbitrators choose between the relevant calendar systems?	No	
III.9.h	If your answer to question <u>III.9</u> is yes, should the arbitrators write the entire date (i.e. January 1, 2019) as oppose of using only numbers (i.e. 01/01/2019)?	No	Arbitrators are free to choose the date format to be included in the award.
III.9.i	If your answer to question <u>III.9.h</u> is yes, what format should the arbitrators use (i.e. Month day, year)?	NA	
III.9.j	If your answer to question <u>III.9.h</u> is no, what format should the arbitrators use when writing the date with only numbers (i.e. day/ month/year)?	NA	This is usually left to the arbitrators' preference.
III.10	Is it permitted to pre-date the award to the submission to the relevant arbitral institution's approval?	No.	
III.11	Are the arbitrators free to choose the date in which their award will become effective?	Yes	BAA, Article 26, III, expressly states that the award must stablish the deadline for compliance with the obligations as defined therein.
III.11.a	If your answer to question <u>III.11</u> is no, would the award be deemed effective on the date of the last signature?	NA	
III.11.b	If your answer to question <u>III.11.a</u> is no, please provide a brief description (in the comments column) regarding the deadline, standards or methods used to determine the date on which the award will become effective.	NA	
III.12	Are arbitrators required to state in their award the place where the award was made (seat of arbitration)?	Yes	BAA, Article 26, IV, second part.
III.12.a	If your answer to question <u>III.12</u> is no, are arbitrators required to state the physical place where they were located during the proceedings?	No	
III.12.b	If your answer to question <u>III.12.a</u> is no, are arbitrators required to state in their award the place where they are at the precise moment of the signature of the award?	No	
III.13	Are arbitrators or the arbitral institution required to stamp the award?	No	

III.13.a	If your answer to question <u>III.13</u> is yes, is there a specific stamp that should be used?	NA	
III.13.b	If your answer to question <u>III.13</u> is yes, is there any particular rule applying to the use of the stamps (e.g., one stamp every X pages, stamp on the junction of the pages etc.)?	NA	
III.14	Are arbitrators or the arbitral institution required to bind the award?	No	
III.14.a	If your answer to question <u>III.14</u> is yes, is there any particular rule applying to the binding of the award (e.g., seal or other ways for granting authenticity etc.)?	NA	
IV. Notification of the award		(Yes/No/NA)	Additional comments, if any.
IV.1	Are there any specific required means for the notification of the award?	Yes	Under Article 29 of the BAA, the arbitral tribunal must send a copy of the award to the parties by mail or by other means of communication, with confirmation receipt, or through direct delivery to the parties, with return receipt.
IV.1.a	If your answer to question <u>IV.1</u> is yes, is it required for the award to be notified through judicial assistance?	No	
IV.1.b	If your answer to question <u>IV.1</u> is yes, is it required for the award to be notified through a public notary?	No	
IV.1.c	If your answer to question <u>IV.1</u> is yes, is it required for the award to be notified through judicial assistance?	No	
IV.2	Is it permitted for the relevant arbitration institution to perform the notification of the award?	Yes	
IV.3	In an ad-hoc arbitration, is it required for the arbitrators themselves to notify the award to the parties?	No	

IV.3.a	If your answer to question <u>IV.3</u> is no, is it permitted for the arbitrators themselves to notify the award to the parties?	Yes	
IV.4	In an institutional arbitration, are arbitrators themselves required to notify the award to the parties?	No	
IV.4.a	If your answer to question <u>IV.4</u> is no, are arbitrators themselves permitted to notify the award to the parties?	Yes	
IV.5	Is it required to provide each of the parties with an original version of the award?	Yes	Under Article 29 of the BAA, the arbitral tribunal must send a copy of the award to each of the parties. As explained above, awards may be delivered in hard or electronic copies.
IV.5.a	If your answer to question <u>IV.5</u> is yes, in the case of a multiparty arbitration, is it required to provide an original version of the award to each of the parties (i.e. each of the claimants and each of the respondents)?	Yes	
IV.5.b	If your answer to question <u>IV.5.a</u> is no, would it be required to provide one original version of the award to respondents and one to claimants?	NA	
IV.5.c	If your answer to question <u>IV.5</u> is yes, is it required for the award to be authenticated?	No	
IV.6	Is it required to provide each of the arbitrators with an original version of the award?	No	
IV.6.a	If your answer to question <u>IV.6</u> is no, would it be required to provide one original of the award for the arbitral tribunal?	No	
IV.6.b	If your answer to question <u>IV.6.a</u> is no, should a copy of the award be provided to the arbitral tribunal?	No	
IV.7	Is it required to provide an original version of the award to the courts of the seat of arbitration?	No	

IV.7.a	If your answer to question <u>IV.7</u> is yes, should that award be original or authenticated?	NA	
IV.7.b	If your answer to question <u>IV.7</u> is yes, is the arbitral tribunal required to provide an original version of the award to the court where enforcement is sought?	NA	
IV.7.c	If your answer to question <u>IV.7.b</u> is yes, should that award be authenticated?	NA	
IV.7.d	If your answer to question <u>IV.7</u> is no, is there any specific requirement for the presentation of an electronic version of an award to the courts?	No	
IV.8	Is it required for the notification of the award to be made by international courier?	No	
IV.8.a	If your answer to question <u>IV.8</u> is yes, are there specific international couriers that shall be used?	NA	
IV.8.b	If your answer to question <u>IV.8.a</u> is yes, please briefly provide a description (in the comments column) as to those international couriers.	NA	
IV.8.c	If your answer to question <u>IV.8</u> is no, is it permitted for the notification of the award to be made by international courier?	Yes	
IV.9	Is it required for the notification of the award to be made by public postal services?	No	
IV.9.a	If your answer to question <u>IV.9</u> is yes, are there specific public postal services that shall be used?	NA	
IV.9.b	If your answer to question <u>IV.9.a</u> is yes, please briefly provide a description (in the comments column) as to those public postal services.	NA	
IV.9.c	If your answer to question <u>IV.9</u> is no, is it permitted for the notification of the award to be made by public postal services?	Yes	
IV.10	Is it required for the parties to pick up the award personally at the offices of one of the arbitrators or of the arbitration institution?	No	

IV.10.a	If your answer to question <u>IV.10</u> is no, is it permitted for the parties to pick up the award personally at the offices of one of the arbitrators or of the arbitration institution?	Yes	
IV.11	After notifying the award to the parties, are the arbitrators required to assist the parties with complying with any further formalities that may be needed to ensure enforcement?	No	The BAA does not provide for such assistance, but arbitrators may be required, for example, to assist the parties in what concerns certification of their signatures by a notary public.
IV.11.a	If your answer to question <u>IV.11</u> is yes, are the arbitrators required to assist the parties in obtaining the relevant <i>apostille</i> ?	NA	Please see the comments immediately above.
IV.11.b	If your answer to question <u>IV.11</u> is yes, please provide a brief description (in the comments column) as to which would those formalities be.	NA	
IV.12	Is there any time limit established for notification purposes?	No	
IV.12.a	If your answer to question <u>IV.12</u> is yes, please provide a brief description (in the comments column) regarding the specific time limit established for the notification of the award to take place.	NA	
IV.12	Are there any additional specific local requirements for the notification of the award?	No	
IV.12.a	If your answer to question <u>IV.2</u> is yes, please provide a brief description (in the comments column) regarding which would those local requirements be?	NA	
V. Confidentiality		(Yes/No/NA)	Additional comments, if any.
V.1	Is it required for the draft of the award to be kept confidential (i.e. without sharing it with the parties)?	Yes	The BAA contains no express rule prohibiting arbitrators to share the draft of the award with the parties, albeit this is not a common practice in Brazil. However, pursuant to Article 13, §6, of the BAA, arbitrators must act with

			discretion. This includes keeping all information related to arbitration (including the drafting of the award) under secrecy.
V.1.a	If your answer to question <u>V.1</u> is no, is there any confidentiality obligation applicable to the drafting process of the award?	NA	Please see the comments immediately above.
V.2	Is it required for the comments and views of the arbitrators to be kept confidential (i.e. without sharing them to the parties)?	Yes	<p>The BAA contains no express rule prohibiting arbitrators to share comments and views with the parties, albeit this is not a common practice in Brazil.</p> <p>However, pursuant to Article 13, §6, arbitrators must act with discretion. This includes not revealing information related to arbitration (including the award) to third parties.</p>
V.2.a	If your answer to question <u>V.2</u> is no, is there any confidentiality obligation applicable to the deliberation process of the arbitral tribunal?	Yes	Pursuant to Article 13, §6, of the BAA, arbitrators must act with discretion. This includes not revealing information related to arbitration (including deliberation related information) to third parties.
V.3	Is it required for the arbitrators or arbitral institution to notify the award preserving its confidentiality?	No	<p>Pursuant to Article 13, §6, of the BAA, arbitrators (and arbitral institutions by extension) must act with discretion.</p> <p>Therefore, arbitrators and arbitral institutions must preserve the confidentiality of awards, unless otherwise provided for by law (v.g., in cases involving public entities) or by the parties.</p>

V.3.a	If your answer to question <u>V.3</u> is yes, are there specific confidentiality standards?	NA	
V.3.b	If your answer to question <u>V.3.a</u> is yes, please provide (in the comments column) a brief description regarding those standards.	NA	
V.4	Are the arbitrators required to identify the manner in which the award is to be notified in order to preserve its confidentiality?	No	
V.4.a	If your answer to question <u>V.4</u> is yes, are there any specific formalities that must be met regarding such identification?	NA	
V.4.b	If your answer to question <u>V.4.a</u> is yes, please provide a brief description (in the comments column) regarding those formalities.	NA	
V.5	Are the arbitrators required to identify to whom the award is to be notified in order to preserve confidentiality?	Yes	
V.5.a	If your answer to question <u>V.5</u> is yes, are there any specific formalities that must be met regarding such identification?	No	
V.5.b	If your answer to question <u>V.5.a</u> is yes, please provide a brief description (in the comments column) regarding those formalities.		Arbitrators shall send the awards to the parties and addresses (or e-mails) as expressly identified in the proceedings.
V.6	Does the award need to explicitly provide if it is (or not) of confidential nature?	No	
VI. Secretary of the Arbitral Tribunal		(Yes/ No /NA)	Additional comments, if any.
VI.1	Is it permitted for an arbitral tribunal secretary to assist the arbitrators in the drafting of the award?	Yes	The BAA does not have any provision on this issue. However, in Brazil, arbitral tribunals are ordinarily assisted by a secretary.

VI.1.a	If your answer to question <u>VI.1</u> is yes, is it permitted for the arbitral tribunal secretary to be part of the decision making process?	No	Arbitral tribunal secretaries may assist the arbitrators during deliberations, but are not supposed to participate directly in the decision-making process.
VI.1.b	If your answer to question <u>VI.1</u> is yes, is it permitted for the arbitral tribunal secretary to prepare a framework of the award (i.e., procedural history)?	Yes	
VI.1.c	If your answer to question <u>VI.1</u> is yes, please provide a brief description of the scope of the tribunal secretary's role in assisting with the award.		Tribunal secretaries usually assist the tribunal in the general organization of files and documents, drafting procedural orders, organizing hearings, reviewing evidence and drafting the procedural part of awards. They may also assist the tribunal in conferring costs and drafting awards on costs.
VI.1.d	If your answer to question <u>VI.1</u> is yes, please indicate if there is any legal provision in force regarding the nomination, scope of work and/or limits of assistance of a secretary to the arbitral tribunal.	No	
VI.2	Is it required for the award to state the name of the arbitral tribunal secretary?	No	However, it is a general practice to mention the name of the tribunal secretary in the award.
VI.2.a	If your answer to question <u>VI.2</u> is yes, is it required for such statement to include a description regarding her/his appointment as arbitral tribunal secretary?	Yes	
VI.2.b	If your answer to question <u>VI.2.a</u> is yes, is it required for such description to include an impartiality and independence statement by the arbitral tribunal secretary?	Yes	It is a general practice for the secretary of the tribunal to present a statement of independence and impartiality in the beginning of the proceedings. It is not common, however, for this statement to be reproduced in the award.

VI.2.c	If your answer to question <u>VI.2.a</u> is yes, is the arbitral tribunal secretary under a duty to sign the award?	No	
VI.3	In case where the arbitral tribunal secretary is permitted to assist in the drafting of the award, is it required for the award to contain a description of the scope and extent of such assistance?	No	
VII. Content of the award		(Yes/No/NA)	Additional comments, if any.
VII.1	Is it mandatory to state within the award the reasons upon which the award is based?	Yes	BAA, Article 26, II. In what concerns recognition of foreign arbitral awards in Brazil, the Superior Court of Justice (the court with exclusive jurisdiction to decide recognition applications) has granted recognition to a foreign award that proved to be “concise” in its reasons (see SEC 5.692/EX. Reporting Justice: Ari Pargendler, Special Court, decided on 20 August 2014).
VII.2	Is it mandatory to state within the award additional administrative or procedural issues/information?	Yes	BAA, Article 26, I.
VII.2.a	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain the names and addresses of the parties?	Yes	Article 26, I, of the BAA expressly requires the award to contain the names of the parties. There is no express rule concerning their addresses, but it is a common practice to include them in the award.
VII.2.b	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain the names and addresses of the legal representatives of the parties?	No	
VII.2.c	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain the date, parties and precise terms of the arbitration agreement?	Yes	The BAA does not have any provision on this issue.

			However, it is a general practice to include the contents of the arbitration agreement in the award.
VII.2.d	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate whether the place of arbitration was agreed by the parties?	No	Article 26, IV, of the BAA states that the award must contain the place where the award was made. It does not state, however, that the tribunal must indicate whether the place of arbitration was agreed upon by the parties or determined by the arbitral tribunal.
VII.2.e	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate whether the place of arbitration was determined by the arbitral tribunal?	NA	
VII.2.f	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain the law or rules applicable to the arbitration agreement?	No	
VII.2.g	If your answer to question <u>VII.2.f</u> is yes, is it required for the award to specify if the laws or rules applicable to the arbitration agreement were agreed by the parties?	No	
VII.2.h	If your answer to question <u>VII.2.f</u> is yes, is it required for the award to specify whether the laws or rules applicable to the arbitration agreement were determined by the arbitral tribunal?	No	
VII.2.i	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the laws applicable to the merits of the dispute?	No	The BAA does not have any provision on this issue. Nonetheless, as a general practice, most arbitrators indicate the applicable law to the merits of the dispute in the award.
VII.2.j	If your answer to question <u>VII.2.i</u> is yes, is it required for the award to specify if the laws applicable to the merits of the dispute were agreed by the parties?	No	
VII.2.k	If your answer to question <u>VII.2.i</u> is yes, is it required for the award to specify if the laws applicable to the merits of the dispute were determined by the arbitral tribunal?	No	

VII.2.l	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the procedural rules governing the arbitration?	No	The BAA does not have any provision on this issue. However, as a general practice, most arbitrators indicate the procedural rules in the award.
VII.2.m	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the language of the arbitration?	No	The BAA does not have any provision on this issue. Nevertheless, as a general practice, most arbitrators expressly indicate the language of the arbitration in the award.
VII.2.n	If your answer to question <u>VII.2.m</u> is yes, is it required for the award to specify if the language of the arbitration was agreed by the parties?	No	
VII.2.o	If your answer to question <u>VII.2.m</u> is yes, is it required for the award to specify if the language of the arbitration was determined by the arbitral tribunal?	No	
VII.2.p	If your answer to question <u>VII.2.m</u> is yes, when there is more than one language established for the arbitration, is it required for the award to indicate which one is authoritative?	No	
VII.2.q	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain the name, nationality and contact details of each of the arbitrators?	Yes	Article 26, sole paragraph, of the BAA states that the arbitrators must sign the awards on their name. There are no express requirements to indicate the nationality and contact details of each arbitrator, although this is fairly standard practice in arbitrations in Brazil.
VII.2.r	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain a description as to how the arbitrators were appointed?	No	
VII.2.s	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the case reference stipulated by the arbitral institution, if any?	No	

VII.2.t	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain a chronology of the events that led to the dispute?	Yes	Article 26, I, of the BAA states that the award must contain a summary of the case. Usually, arbitrators fulfil this obligation by including a statement on the facts that led to the dispute.
VII.2.u	If your answer to question <u>VII.2</u> is yes, is it required for the award to contain the principal chronology of the proceedings?	Yes	Article 26, I, of the BAA states that the award must contain a report on the procedure. Usually, arbitrators fulfil this obligation by including a detailed report on how the proceedings occurred.
VII.2.v	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the steps taken by the arbitral tribunal to ascertain the facts of the case?	No	The BAA does not have any provision on this issue. In these situations, however, most awards usually indicate how the tribunal decided to ascertain the facts of the case.
VII.2.w	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the time limit for rendering the award, if applicable?	Yes	Pursuant to article 32, VII, of the BAA, an award can be set aside if it is rendered after the time limit has expired. Hence, it is common practice for the arbitrators to indicate the time limit and certify that they complied with it.
VII.2.x	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the type of award?	No	
VII.2.y	If your answer to question <u>VII.2.x</u> is yes, is it required for the type of award to be indicated on the cover page of the award?	No	
VII.2.z	If your answer to question <u>VII.2</u> is yes, is it required for the award to indicate the subject matter of the award (i.e. partial award on jurisdiction)?	No	The BAA does not have any provision on this issue.

			In these situations, however, most awards indicate the subject matter of the award.
VII.2.aa	If your answer to question <u>VII.2.z</u> is yes, is it required for the subject matter of the award to be indicated on the cover of the award?	No	The BAA does not have any provision on this issue. In these situations, however, most awards indicate the subject matter of the award on its cover page.
VII.3	If the procedural history is required to be included in the award, are there specific procedural stances that are required to be indicated?	No	
VII.3.a	If your answer to question <u>VII.3</u> is yes, is it required to include the arbitration agreement?	NA	The BAA does not have any provision on this issue. It is common, however, for the tribunal to refer to the full language of the arbitration agreement in the award.
VII.3.b	If your answer to question <u>VII.3</u> is yes, is it required to include the date of commencement of the arbitration?	No	The BAA does not have any provision on this issue. In these situations, however, it is common for the arbitrators to include the date when the tribunal was constituted, for the purposes of establishing the commencement of their jurisdiction pursuant to Article 19 of the BAA.
VII.3.c	If your answer to question <u>VII.3</u> is yes, is it required to include the constitution of the arbitral tribunal as part of the procedural history?	No	The BAA does not have any provision on this issue. In these situations, however, most awards indicate the date in which tribunal was officially constituted.
VII.3.d	If your answer to question <u>VII.3</u> is yes, is it required to include the procedural applications made by the parties to the arbitral tribunal?	No	The BAA does not have any provision on this issue.

			It is common practice, however, for the tribunal to include procedural applications and its decision on them in the award, depending on the nature of such application and the relevance of such decision to the award.
VII.3.e	If your answer to question <u>VII.3</u> is yes, is it required to include the arbitral tribunal's treatment of the applications made by the parties?	No	
VII.3.f	If your answer to question <u>VII.3</u> is yes, is it required to include the details concerning the evidence submitted by the parties?	No	The BAA does not have any provision on this issue. However, Article 26, II, of the BAA requires the award to contain the reasons upon which the tribunal relied to render its decision. This generally includes the tribunal's view on the evidence submitted by the parties during the proceedings.
VII.4	If the award follows a prior award, is it required for the newer award to make reference to the prior award?	No	Under Brazilian law, partial awards are independent from final awards for enforcement and annulment purposes. Therefore, it is not required for the tribunal to replicate or make reference to the prior award in the newer award. It is, however, common for tribunals to do so, for the purposes of fully reporting the proceedings, as required under Article 26, I, of the BAA.
VII.4.a	If your answer to question <u>VII.4</u> is yes, is it required to make reference to the procedural history of the prior award?	No	
VII.4.b	If your answer to question <u>VII.4</u> is yes, is the prior award considered to be part of the newer award?	No	Under Brazilian law, partial awards are independent from final awards for

			enforcement and annulment purposes. This topic has been subject to some controversy under Brazilian case law in the past, but the Superior Court of Justice has ruled that the prior award is independent from the newer award for enforcement and annulment purposes.
VII.4.c	If your answer to question <u>VII.4.a</u> is yes, is it sufficient to make reference to the sections of the prior award where the procedural history is described?	N/A	
VII.4.d	If your answer to question <u>VII.4.a</u> is yes, is it required for the newer award to include the prior award as an attachment?	No	
VII.4.e	If your answer to question <u>VII.4.d</u> is yes, is it required to attach an original or authenticated version of the prior award?	No	
VII.5	Is it required for the basis upon which the arbitral tribunal's jurisdiction is grounded to be included in the award?	Yes	Article 26, II, of the BAA requires the arbitrators to provide the reasons upon which the award was rendered. These include the grounds upon which the tribunal relied to find its jurisdiction, especially in cases where a party has objected to such jurisdiction during the proceedings.
VII.5.a	If your answer to question <u>VII.5</u> is yes, if one of the parties objected the jurisdiction of the arbitral tribunal, is it required for such objection to be recorded in the award?	Yes	
VII.5.b	If your answer to question <u>VII.5</u> is yes, if one of the parties objected the jurisdiction of the arbitral tribunal, is it required for the reasoning and resolution of the arbitral tribunal regarding such objection to be included in the award?	Yes	
VII.6	Is it required for the award to recite the parties' request for relief?	No	The BAA does not have any provision on this issue. However, Article 26, III, of the BAA requires the award to contain relief granted by the tribunal (<i>dispositif</i>).

			Tribunals usually follow the parties' request for relief when drafting the final part of the award. Hence, it is common for the award to recite the parties' request for relief.
VII.6.a	If your answer to question <u>VII.6</u> is yes, if the relief sought has changed during the proceeding, is it required to describe any withdrawal or modification of claims or waivers?	No	The BAA does not have any provision on this issue. However, it is common practice for arbitrators to clarify whether there has been any changes to the relief sought by the parties over the course of the proceedings.
VII.7	Is it required for the award to identify the issues to be decided by the arbitral tribunal?	Yes	Article 26, II, of the BAA requires awards to be reasoned, so therefore arbitrators do identify the issues to be decided in the award.
VII.7.a	If your answer to question <u>VII.7</u> is yes, is it required to identify whether certain issues are contingent on others?	Yes	
VII.8	Is it required for the award to contain an account of the relevant facts of the dispute?	Yes	Article 26, I, of the BAA requires the award to contain a summary of the case, including the relevant facts of the dispute.
VII.8.a	If your answer to question <u>VII.8</u> is yes, is it required for the award to identify whether the facts are agreed or disputed?	No	However, it is common practice for arbitrators to identify the main facts of the dispute and whether they are agreed or disputed.
VII.8.b	If your answer to question <u>VII.8</u> is yes, is it required for the award to include any reasoning and resolution by the arbitral tribunal regarding disputed facts?	Yes	Article 26, II, of the BAA requires the award to be reasoned, so arbitrators do include in the award specific reasoning and resolution in what concerns disputed facts.

VII.9	Is it required for the award to include a summary of the parties' positions with respect to the issues that are relevant to the arbitral tribunal's decisions?	No	Although there is no express rule concerning this topic, it is a general practice to include a summary of the parties' positions followed by the Tribunal's respective decision.
VII.9.a	If your answer to question <u>VII.9</u> is yes, is there a specific structure that shall be followed (i.e. issue by issue basis where the parties' positions are juxtaposed immediately after each other under each issue)?	NA	
VII.9.b	If your answer to question <u>VII.9</u> is yes, is it permitted for the arbitral tribunal to paraphrase the arguments submitted by the parties?	Yes	
VII.9.c	If your answer to question <u>VII.9</u> is yes, is the arbitral tribunal required to include a verbatim transcription of every argument submitted by the parties?	No	
VII.10	If the procedural rules are in dispute between the parties, is it required for the award to set out the parties' positions in such regard?	Yes	Article 26, II, of the BAA requires the award to be reasoned, so arbitrators must set out the parties' positions in such regard.
VII.11	If the procedural rules are in dispute between the parties, is it required for the award to include the determination and reasoning of the arbitral tribunal in such regard?	Yes	Article 26, II, of the BAA requires the award to be reasoned, so arbitrators must express their views in such regard.
VII.12	If the substantive laws applicable to merits of the case are in dispute between the parties, is it required for the award to set out the parties' positions in such regard?	Yes	Article 26, II, of the BAA requires the award to be reasoned, so arbitrators must express their views in such regard.
VII.13	If the substantive laws applicable to merits of the case are in dispute between the parties, is it required for the award to include the reasoning and determination by the arbitral tribunal in such regard?	Yes	Article 26, II, of the BAA requires the award to be reasoned, so arbitrators must express their views in such regard.
VII.14	Is there any tax requirement that must be met by the arbitral tribunal when writing the award?	No	

VII.14.a	If your answer to question <u>VII.14</u> is yes, please briefly describe (in the comments column) the relevant tax requirement.	NA	
VII.15	Is there any anti-money laundering requirement that must be met by the arbitral tribunal when writing the award?	No	
VII.15.a	If your answer to question <u>VII.15</u> is yes, please briefly describe (in the comments column) the relevant anti-money laundering requirement.	NA	
VIII. Reasoning and findings		(Yes/No/NA)	Additional comments, if any.
VIII.1	Is it required for the award to contain the arbitral tribunal's reasoning?	Yes	Article 26, II, of the BAA requires the award to be reasoned.
VIII.1.a	If your answer to question <u>VIII.1</u> is yes, is a specific extent required for such reasoning?	No	
VIII.1.b	If your answer to question <u>VIII.1.a</u> is yes, please provide a brief description (in the comments column) as to the extent of reasoning that is required.	NA	
VIII.1.c	If your answer to question <u>VIII.1</u> is yes, is the arbitral tribunal required to make references to the factual record?	No	Although there is no express rule concerning this topic, it is a general practice to make extensive references to the factual record in the award.
VIII.2	Is the arbitral tribunal required to address each of the parties' main arguments on each issue?	No	Pursuant to Article 21, §2, of the BAA, the arbitrators are only required to state the grounds which convinced them to issue the ruling. It is common, however, to address the main arguments each party presented during the arbitration and the grounds upon which the tribunal accepted or dismissed them.

VIII.3	Is it permitted for the award to be issued without reasons?	No	Article 26, II, of the BAA requires awards to be reasoned.
VIII.4	Is the arbitral tribunal permitted to issue an <i>ex aequo et bono</i> award?	Yes	Under Article 2 of the BAA, at the parties' discretion, arbitration must be at law or in equity.
VIII.5	Is the <i>iura novit curia</i> principle applicable in the jurisdiction you are reporting about?	Yes	<p>This is a generally debatable topic. <i>Iura novit curia</i> used to be regarded as a general principle of Brazilian law, and there is case law recognizing the tribunal's power to decide a legal issue based on grounds not previously argued by the parties.</p> <p>However, more recently, with the New Code of Civil Procedure of 2015, judges are now under the duty not to surprise the parties with decisions based on legal arguments not previously discussed in the proceedings.</p> <p>This relevant change in the procedural law shall influence the arbitration practice as well.</p>
VIII.5.a	If your answer to question <u>VIII.5</u> is yes, is it customary to apply the principle of <i>iura novit curia</i> ?	No	
VIII.4.b	If your answer to question <u>VIII.5</u> is yes, to what extent is the arbitral tribunal allowed to apply such principle?		<p>See the comments to item VIII.5.</p> <p>In addition, arbitral tribunals are more aware of this issue and there seems to be a trend to mitigate the <i>iura novit curia</i> in Brazil, be it in court disputes or in arbitration proceedings.</p>

IX. Operative part (<i>dispositif</i>)		(Yes/ No /NA)	Additional comments, if any.
IX.1	Is it required for the award to contain the arbitral tribunal’s ultimate findings and decisions?	Yes	BAA, Article 26, III.
IX.1.a	If your answer to question <u>IX.1</u> is yes, is it required for the operative part to be prefaced by specific introductory language (i.e. for the foregoing reasons, the Arbitral Tribunal renders the following decisions)?	No	
IX.1.b	If your answer to question <u>IX.1.a</u> is yes, please briefly specify (in the comments column) the introductory language that is required.	NA	
IX.2	In the case of final awards, is it required for the award to include a “catch-all” dispositif (i.e. all other claims are dismissed)?	No	There is no such express requirement, although it is standard practice to do so.
IX.3	Are arbitrators allowed to include in the award injunctive relief?	Yes	Pursuant to Article 22-B, sole paragraph, of the BAA, tribunals may grant injunctive relief during the arbitration or in the award.
IX.4	Are arbitrators allowed to include in the award relief ordering specific performance of the relevant contract?	Yes	As a general rule, specific performance is a remedy available under Brazilian law, pursuant to Article 475 of the Brazilian Civil Code. Certain limitations, however, may apply, depending on the nature of the performance and the possibility of its execution.
IX.5	Are arbitrators allowed to include in the award relief ordering rectification, setting aside or cancellation of a deed or of another document?	Yes	
IX.6	Is it required for the arbitrators to include in the award a specific “wording /language” and/or any other “formula” for the award to be considered official/valid?	No	
IX.6.a	If your answer to question <u>IX.6</u> is yes, please briefly indicate (in the comments column) which wording should be included.	NA	

X. Dissenting and separate opinions		(Yes/ No /NA)	Additional comments, if any.
X.1	Is it allowed for the arbitrators to write a dissenting or separate opinion?	Yes	
X.1.a	If your answer to question <u>X.1</u> is yes, is it required for the dissenting or separate opinion to be delivered as an attachment to the award?	No	
X.1.b	If your answer to question <u>X.1.a</u> is no, is it required for the dissenting or separate opinion to be delivered as a separate document from the award?	No	
X.2	Are the arbitrators required to address within their reasoning the dissenting opinion?	No	The BAA does not have any provision on this issue. Some tribunals address the dissenting opinion in the main award. However, this does not rise to a general practice in the country.
X.2.a	If your answer to question <u>X.2</u> is no, is it allowed for the arbitrators to address within the award the dissenting opinion as part of their reasoning?	Yes	
X.3	If an arbitrator disagrees with the majority's determination of an issue or issues but does not wish to write a dissenting opinion, is it required for the award to record the issue in question and the dissenting opinion on that issue?	No	Article 24, paragraph 2, of the BAA gives deference to the dissenting arbitrator to decide whether it wants to present a dissenting opinion or not. The award may simply state that the dissenting arbitrator disagrees, without any further opinions.
X.3.a	If your answer to question <u>X.3</u> is yes, is it required to identify which arbitrator disagreed?	No	The BAA does not have any provision on this issue. It is, however, general practice to identify the dissenting arbitrator.
XI. Reservation of issues		(Yes/ No /NA)	Additional comments, if any.

XI.1	In case the award is not final, is it allowed for the arbitral tribunal to reserve issues for later determination?	Yes	Article 23, paragraph 1, of the BAA allows arbitrators to issue partial awards.
XI.1.a	If your answer to question <u>XI.1</u> is yes, is it required for such issues to be clearly designated?	No	The BAA does not have any express provision on this issue. It is, however, general practice to identify the pending issues designated for later phases of the proceedings.
XII. Style and length		(Yes/No/NA)	Additional comments, if any.
XII.1	It is required for footnotes and citations in the award to be presented in a specific style?	No	
XII.1.a	If your answer to question <u>XII.1</u> is yes, please provide a brief description (in the comments column) of such style.	NA	
XII.2	Is the arbitral tribunal permitted to indicate post-award interests?	Yes	Article 406 of the Brazilian Civil Code allows tribunals to grant post-award interests.
XII.2.a	If your answer to question <u>XII.2</u> is yes, is the arbitral tribunal required to indicate the pre-award interests separately from the post-award interests?	No	
XII.3	Are there any restrictions or requirements as to the length of the award?	No	
XII.3.a	If your answer to question <u>XII.3</u> is yes, please provide a brief description of such length.	NA	
XIII. Award of costs		(Yes/No/NA)	Additional comments, if any.
XIII.1	In the allocation of costs, is the arbitral tribunal required to consider the reasonableness of the costs claimed?	Yes	The BAA does not have any provision on this issue.

			Most institutional rules, however, allow tribunals to consider reasonableness in assessing awards on costs.
XIII.1.a	If your answer to question <u>XIII.1</u> is no, in the allocation of costs, is the arbitral tribunal permitted to consider the reasonableness of the costs claimed?	Yes	
XIII.2	In allocating costs, is the arbitral tribunal required to consider the conduct of the parties?	Yes	The BAA does not have any provision on this issue. Most institutional rules, however, allow tribunals to consider the parties' conduct in assessing awards on costs.
XIII.2.a	If your answer to question <u>XIII.2</u> is no, in allocating costs, is the arbitral tribunal allowed to consider the conduct of the parties?	NA	
XIII.3	In allocating costs, is the arbitral tribunal required to consider the nature and complexity of the dispute?	Yes	The BAA does not have any provision on this issue. Most institutional rules, however, allow tribunals to consider the nature and complexity of the dispute in assessing awards on costs.
XIII.3.a	If your answer to question <u>XIII.3</u> is no, in allocating costs, is the arbitral tribunal allowed to consider the nature and complexity of the dispute?	NA	
XIII.4	In allocating costs, is the arbitral tribunal required to consider whether a party has succeeded in whole or in part?	Yes	
XIII.4.a	If your answer to question <u>XIII.4</u> is no, in allocating costs, is the arbitral tribunal allowed to consider whether a party has succeeded in whole or in part?	Yes	
XIII.5	Regarding the arbitral tribunal's costs & expenses and institutional costs (if any), is the arbitral tribunal required to fully record in the award these costs and expenses in an institutional arbitration proceeding?	No	The BAA does not have any provision on this issue. It is not common, however, for arbitrators to record such costs in awards. Usually, institutions send reports to the parties after the award stating the total

			costs to be reimbursed by the losing party.
XIII.5.a	If your answer to question <u>XIII.5</u> is no, regarding the arbitral tribunal's costs and expenses and institutional costs (if any), is the arbitral tribunal allowed to fully record in the award these costs and expenses in an institutional arbitration proceeding?	Yes	
XIII.6	Regarding the arbitral tribunal's costs and expenses (if any), is the arbitral tribunal required to fully record in the award these costs and expenses in an ad-hoc arbitration proceeding?	No	The BAA does not have any provision on this issue. It is common, however, for arbitrators to record such costs in awards or in subsequent communication, as there is no institution administering the proceedings.
XIII.6.a	If your answer to question <u>XIII.6</u> is no, regarding the arbitral tribunal's costs and expenses (if any), is the arbitral tribunal allowed to fully record in the award these costs and expenses in an ad-hoc arbitration proceeding?	Yes	
XIII.7	Is it required for the award on costs to be reasoned?	Yes	Under Article 26, II, of the BAA, awards must be reasoned.
XIII.7.a	If your answer to question <u>XIII.7</u> is no, is it allowed for the award on costs to be reasoned?	NA	
XIII.8	Are the arbitrators required to use certain size/type of paper?	No	
XIII.8.a	If your answer to question <u>XIII.8</u> is yes, please specify (in the comments column) which size/type of paper is required.	NA	
XIII.9	Is it prohibited for the arbitrators to use different sizes/types of paper to print the award?	No	
XIV. Structure of the Award		(Yes/ No /NA)	Additional comments, if any.
XIV.1	Is it required for the award to separate its formal from its substantive aspects?	No	Although there is no express rule on this topic, it is a general practice to separate

			formal and substantive aspects of the award.
XIV.1.a	If your answer to question <u>XIV.1</u> is yes, is there a specific order required (i.e. formal issues first)?	NA	
XIV.1.b	If your answer to question <u>XIV.1.a</u> is yes, please briefly indicate (in the comments column) the requested order.	NA	
XIV.2	Is there a requirement to follow a specific structure of the award?	No	
XIV.2.a	If your answer to question <u>XIV.2</u> is no, is there a common structure used in the jurisdiction that you are reporting about (i.e. introduction, recitals, reasoning and operative part)?		Generally speaking, awards are divided in an introductory section, which contains the name of the parties, counsel, arbitrators and tribunal secretary, followed by a report on the facts of the case and the arbitral proceedings. Later, awards usually present a summary of the parties' arguments and claims, followed by the tribunal's rationale in deciding such issues. The last part of the award is usually the dispositive, which is followed by the date, seat and arbitrators' signatures.
XIV.2.b	If your answer to question <u>XIV.2.a</u> is yes, please briefly indicate (in the comments column) what structure is required.	NA	
XIV.3	Is it required to address jurisdiction before substance?	No	
XIV.3.a	If your answer to question <u>XIV.3</u> is no, is it customary to address jurisdiction before substance?	Yes	
XIV.4	Is it required to discuss the merits of the claim before quantum?	No	Although there is no express rule on this topic, it is a general practice to decide the merits of the claim before quantum.

XIV.4.a	If your answer to question <u>XIV.4</u> is no, is it customary to discuss the merits of the claim before quantum?	Yes	
XIV.5	When the resolution of specific issues depend on the resolution of another, is it required to address the latter before any related issues (i.e. scope of an indemnity clause prior to analyze the specific indemnity that is sought)?	Yes	Under general rules of due process, arbitrators are allowed to stay the proceedings pending decision of other issues to be determined in the same arbitration or elsewhere (be it in another arbitration or court proceedings).
XIV.5.a	If your answer to question <u>XIV.5</u> is no, is it customary to address such issue before resolving any related issues?	NA	
XV. References to exhibits, authorities and witnesses declarations		(Yes/ No /NA)	Additional comments, if any.
XV.1	Is it required to identify in the award all exhibits submitted during the proceeding?	No	
XV.1.a	If your answer to question <u>XV.1</u> is yes, is there a specific format to do so?	NA	
XV.1.b	If your answer to question <u>XV.1</u> is no, is it customary to identify in the award all exhibits submitted during the proceeding?	No	Awards usually identify only the exhibits upon which the tribunal relied when rendering its decision.
XV.1.c	If your answer to question <u>XV.1</u> is no, is it allowed to identify in the award all exhibits submitted during the proceeding?	Yes	There is no express rule permitting or prohibiting the tribunal to identify in the award all exhibits submitted during the proceeding.
XV.2	Is it required to identify in the award all evidence submitted during the proceeding?	No	
XV.2.a	If your answer to question <u>XV.2</u> is yes, is there a specific format to do so?	NA	
XV.2.b	If your answer to question <u>XV.2</u> is no, is it customary to identify in the award all evidence submitted during the proceeding?	No	Awards usually identify only the evidence upon

			which the tribunal relied when rendering its decision.
XV.2.c	If your answer to question <u>XV.2</u> is no, is it allowed to identify in the award all evidence submitted during the proceeding?	Yes	There is no express rule permitting or prohibiting the tribunal to identify in the award all evidence submitted during the proceeding
XV.3	Is it required to identify in the award all authorities cited during the proceeding?	No	
XV.3.a	If your answer to question <u>XV.3</u> is yes, is there a specific format to do so?	NA	
XV.3.b	If your answer to question <u>XV.3</u> is no, is it customary to identify in the award all authorities cited during the proceeding?	No	Awards usually identify only the authorities upon which the tribunal relied when rendering its decision.
XV.3.c	If your answer to question <u>XV.3</u> is no, is it allowed to identify in the award all authorities cited during the proceeding?	Yes	There is no express rule permitting or prohibiting the tribunal to identify in the award all authorities cited during the proceeding
XV.4	Is it required for references to the parties' submissions to contain pinpoint citations (i.e. specific paragraph numbers)?	No	
XV.4.a	If your answer to question <u>XV.4</u> is no, is it customary for references to the parties' submissions to contain pinpoint citations (i.e. specific paragraph numbers)?	Yes	
XV.5	Is it required to make direct quotations of a witness' declaration on a particular issue?	No	
XV.5.a	If your answer to question <u>XV.5</u> is no, is it allowed to summarize the essence of a witness' declaration on a particular issue?	Yes	
XV.5.b	If your answer to question <u>XV.5.a</u> is yes, is it a custom to summarize the essence of a witness' declaration on a particular issue?	Yes	

XV.6	Is it permitted to cite in the award judicial precedents that were not cited by the parties?	Yes	
XV.6.a	If your answer to question <u>XV.6</u> is yes, is it customary to cite in the award such judicial precedents?	No	It is not generally common for tribunals to cite court precedents in Brazilian arbitration awards. However, arbitrators are fully allowed to do so, with the caveat that such precedents should not serve as surprise grounds (i.e., not previously address by the parties) to reach a final decision.
XV.7	Is it permitted to cite in the award judicial precedents that were cited by the parties?	Yes	
XV.7.a	If your answer to question <u>XV.7</u> is yes, is it customary to cite in the award judicial precedents?	No	
XV.8	Is it permitted to cite in the award legal authors and doctrine?	Yes	
XV.8.a	If your answer to question <u>XV.8</u> is yes, is it customary to cite in the award such legal authors and doctrine?	Yes	
XV.8.b	If your answer to question <u>XV.8</u> is yes, is it permitted to cite legal authors and doctrine that were not cited by the parties?	Yes	Tribunals do tend to rely a lot on scholarly authorities in Brazilian awards. It is therefore fairly common for Brazilian arbitrators to cite scholars not previously cited by the parties.
XVI.	Use of annexes and diagrams	(Yes/ No /NA)	Additional comments, if any.
XVI.1	Are annexes to the award permitted?	Yes	There is no express rule permitting or prohibiting the use of annexes.

XVI.1.a	If you answer to question <u>XVI.1</u> is yes, is it customary?	No	
XVI.2	Is it permitted for the award (interim, partial and/or final) to include tools used by the arbitral tribunal during the deliberation process (tables, diagrams, flow charts, etc)?	Yes	
XVI.2.a	If your answer to question <u>XVI.2</u> is yes, is it customary to use such tools in the award?	No	Tribunals may use diagrams, flow charts, etc., presented by the parties during the case, but it is not common for arbitrators to produce new graphics and include them in awards.
XIV.2.b	If your answer to question <u>XVI.2</u> is yes, is it permitted for such tools to be produced by the arbitral tribunal, in other words, to use items that are not on the record?	Yes	There is no express rule permitting or prohibiting the production of such tools, albeit it is uncommon.
XVII. Miscellaneous		(Yes/ No /NA)	Additional comments, if any.
XVII.1	Are there any other local requirements for the validity on an award?	Yes	Local requirements are straight forward and listed in Article 26 of the BAA: “The arbitral award must contain: I – A report including the names of the parties and a summary of the dispute; II – The grounds of the decision with due analysis of factual and legal issues, including, a the case may be, a statement that the award is made in equity; III – The dispositive by which the arbitrators shall resolve questions presented before them, and establish a time limit for the compliance with the

			<p>decision, as the case may be; and</p> <p>IV – The date and place where the award is rendered.</p> <p>Sole paragraph. The arbitral award shall be signed by the arbitrator or by all the arbitrators. If one or more arbitrators is unable to or refuses to sign the award, the president of the arbitral tribunal shall certify such fact.”</p>
XVII.1.a	If you answer to question <u>XVII.1</u> is yes, please briefly indicate (in the comments column) which requirements are needed	NA	See comments immediately above.