



Family Law 2026

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Brazil

- Law and Practice**
- Trends and Developments

Law and Practice

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Chieco Advogados (<https://chambers.com/law-firm/chieco-advogados-high-net-worth-21:23027590>) is a boutique law firm based in São Paulo, with a team of eight professionals dedicated to Brazilian family and succession law. Established 12 years ago, the firm advises domestic clients throughout Brazil as well as international clients. Its practice covers divorce and financial claims, child custody and parental responsibility, international child abduction cases under the 1980 Hague Convention, inheritance disputes, and estate and succession planning. The firm is particularly recognised for its work on multi-jurisdictional matters, frequently co-ordinating with foreign counsels to address conflicts of laws, jurisdictional issues and the recognition of foreign decisions. Recent work includes acting in divorce disputes, structuring cross-border succession planning involving assets held in multiple countries, representing high net worth individuals in probate and succession disputes involving offshore structures, and advising on Hague Convention abduction proceedings. Chieco Advogados has been consistently ranked as a leading firm in Family/Matrimonial in the Chambers High Net Worth Guide.

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▼ 1. Divorce

▼ 1.1 Grounds, Timeline, Service and Process

Grounds for Divorce

Brazilian law adopts a no-fault divorce regime. This means that the dissolution of marriage is a unilateral potestative right and requires solely the declared will of one or both spouses, with no requirement to disclose the specific reasons for the separation, prove fault, or comply with any waiting period.

These principles apply in full and on an equal-rights basis to same-sex spouses.

Divorce Proceedings

Divorce in Brazil may be granted either at court or before a notary public. The out-of-court route is typically expeditious and may be adopted when the spouses agree as to the terms of the divorce. Legal representation is mandatory, and a single lawyer may act for both parties. However, any matters concerning minor or legally incapacitated children – including custody and visitation arrangements and child support – must be previously determined by the court. The extrajudicial divorce is then formalised by a public deed and may be concluded within a short timeframe.

A judicial divorce decree also tends to be obtained within a relatively short timeframe, since the court does not enquire into or require proof of the reasons for the breakdown of the marriage. In practice, if parties are litigating, the court will generally wait for the defendant to be served and file their defence before deciding about the divorce itself. There have also been recent decisions immediately decreeing the divorce even prior to service on the other spouse, due to its potestative nature.

There is no requirement for any minimum period of separation (nor for proceedings to have been pending for any minimum duration) as a precondition for the divorce to be granted.

Service of divorce proceedings

Valid service of process is an essential requirement for procedural legal certainty and is ordinarily executed personally by a court bailiff (*oficial de justiça*). Where all reasonable steps to locate the other spouse have been exhausted, service may be executed by public notice. However, divorces limited to the dissolution of the marriage (excluding matters relating to children and the division of assets) have increasingly been granted without prior service.

Religious Marriages

A religious marriage, if recorded in the competent Civil Registry Office within the statutory 90-day registration period following the ceremony, may produce immediate civil effects with effect from the date of celebration. However, the religious dissolution of the marital bond (an ecclesiastical divorce) has no legal validity or effect under Brazilian civil law. For the marriage to be legally brought to an end, the parties must formally obtain a civil divorce, either through court proceedings or by an out-of-court notarial procedure.

Ending a Marriage

It is possible to seek the invalidation of a marriage on grounds of nullity, where statutory impediments exist (such as close kinship) or annulment, where there are defects in consent, such as duress, an essential mistake as to the person, or where one party was below the minimum legal age. Both remedies are subject to strict statutory limitation periods. Unlike divorce, they aim to obtain a declaration that such marriage should not have existed in law or that it was vitiated at the moment of its formation.

Until the entry into force of Constitutional Amendment No 66/2010, judicial separation was required as a preliminary step to divorce for couples who had not been living separately in fact for more than two years. Following a one-year period after the judicial separation decree, the parties could then obtain a divorce. This temporal requirement was abolished in 2010, and the Supreme Federal Court has since confirmed that judicial separation is no longer a prerequisite for divorce and that the mechanism has been abolished under Brazilian law.

▼ 1.2 Choice of Jurisdiction in Divorce Proceedings

Jurisdictional Grounds for Commencing Divorce Proceedings

The general rule under the Brazilian Code of Civil Procedure is that divorce proceedings should be brought before the court of:

- the domicile of the guardian of an incapacitated child;
- the parties' last shared domicile (if there is no incapacitated child); or
- the defendant's domicile.

There is, however, an important protective exception under the Maria da Penha Act (Law No 11,340/2006): in cases of domestic and family violence, the victim may elect to bring divorce proceedings before the court of their own domicile or place of residence, thereby facilitating access to justice.

These rules on territorial jurisdiction, including the general provisions of the Code of Civil Procedure, apply equally to same-sex spouses and to partners in a stable union. The special jurisdictional rule in domestic-violence cases also extends to victims in same-sex relationships, as recognised in settled case law of the superior courts.

Domicile, Residence and Nationality in Divorces

Domicile is the central connecting factor in Brazil for determining jurisdiction. It is defined as the place where an individual establishes residence with the intention of remaining on a permanent basis. Where the defendant is domiciled in Brazil, the Brazilian courts have jurisdiction to hear and determine divorce proceedings irrespective of the defendant's nationality. Residence, by contrast, refers to mere physical habitation without the necessary intention of permanence, and operates as a subsidiary connecting factor where domicile is unknown.

Nationality is relevant primarily in the context of out-of-court divorce abroad, because only Brazilian nationals may obtain a notarial divorce directly before Brazilian consular authorities, which is treated as equivalent to an out-of-court notarial divorce executed before a notarial authority within Brazil.

Contesting Jurisdiction

The jurisdiction of the Brazilian courts to determine divorce proceedings may, as a general rule, be challenged where the connecting factor of domicile is absent. However, a special basis of jurisdiction arises where the claim is grounded on a fact that occurred, or an act that was conducted, in Brazil. In such circumstances, the Brazilian courts may assume jurisdiction even if both spouses are domiciled abroad. Accordingly, Brazilian courts may grant a divorce between spouses domiciled outside Brazil where the marriage was celebrated in Brazil.

Stay of Proceedings

Proceedings issued in a foreign court do not imply *lis pendens* in Brazil and do not prevent the Brazilian courts from entertaining the same cause of action. Accordingly, an application to stay the Brazilian proceedings solely on the basis that proceedings are pending abroad is generally refused, since Brazil operates a system of concurrent international jurisdiction for divorce. This permits parallel proceedings to run in different countries without giving rise to an international pendency of proceedings objection under Brazilian procedural law. The Brazilian court will only consider discontinuing or staying the case where it is shown that a foreign judgment is already final and binding and has been duly recognised by the Superior Court of Justice (STJ).

▼ 2. Financial Proceedings

▼ 2.1 Choice of Jurisdiction in Financial Proceedings

Jurisdictional Grounds

Spousal alimony lawsuits may be filed in Brazil whenever (i) the plaintiff is domiciled or resident in Brazil; or (ii) the defendant maintains connections to Brazil, such as owning property or receiving income.

Regarding the partition of common property, this must be held before a Brazilian court or notary public if the spouses own assets in Brazil, as the country asserts exclusive jurisdiction over any assets held nationally.

Contesting Jurisdiction

In the cases mentioned above (lack of connecting factors), jurisdiction may be contested at the first procedural opportunity.

Stay of Proceedings

Brazilian law adopts a system of concurrent jurisdiction, under which proceedings pending before a foreign court do not prevent the same cause of action from being brought before the Brazilian courts, unless a final foreign judgment has been recognised by the STJ. As a result, a party may not seek a stay of proceedings in Brazil solely on the basis that the case is being heard abroad. Instead, it may challenge the proceedings by arguing, for example, that the Brazilian courts lack jurisdiction to hear the case.

Financial Claims After a Foreign Divorce

Parties may file financial claims under Brazilian jurisdiction after a foreign divorce when they hold assets in Brazil or intend to require or enforce spousal maintenance.

As a general rule, a foreign divorce may only be enforced in Brazil after a procedure called “Recognition of foreign decision” is concluded before Brazil’s Superior Court of Justice. There is, however, an exception: if the decision only addresses the divorce itself and there is no partition of assets, no spousal or child maintenance and no decision regarding child custody or contact schedule, this procedure may be exempted, and the divorce can be directly validated before the Brazilian Civil Registry.

▼ 2.2 Service and Process in Financial Proceedings

Service in Financial Proceedings

The division of assets in divorce proceedings before the Brazilian courts may be determined within the same action that dissolves the marriage, and claims for spousal maintenance may also be brought together with the divorce (see **1. Divorce**). In such cases, the liquidation and enforcement of the resulting decisions are conducted through simplified procedures ancillary to the main proceedings, without the need for renewed service of process.

Where the assets to be divided include shares in a company, their valuation generally requires separate proceedings in which both the company and the former spouse must be named as defendants. In such circumstances, service of process is required and may be executed by registered mail or by a court officer (*oficial de justiça*). If all reasonable steps to locate the other spouse have been exhausted, service may be executed by public notice.

Post-divorce claims relating to the division of assets or spousal maintenance are also possible but must be brought into separate proceedings, with independent service of process.

Process for Financial Proceedings

These independent processes follow Brazilian general civil procedure, starting with a summons accompanied by a copy of the lawsuit, followed by possible mediation or conciliation sessions, defence and reply, production of evidence and finally a court decision. During the lawsuit progress, injunctions may be granted to preserve evidence, grant emergency relief or prevent dissipation of assets.

Interlocutory decisions issued by lower courts may, in specific circumstances, be challenged before a state court. Final judgments, by contrast, are in principle always subject to appeal. In limited scenarios, exceptional appeals may also be filed before the Superior Court of Justice, when related to violations of federal law, or before the Supreme Federal Court, in cases involving breaches of the Federal Constitution.

▼ 2.3 Division of Assets

The liquidation rules will depend on the matrimonial regime chosen by the spouses through a prenuptial agreement. If a regime is not chosen, the legal regime – partial community of property – will prevail unless stated otherwise by law. Regarding shared assets, courts may rule for co-ownership or determine which assets will make up a spouse’s individual estate, depending on the case.

Regulation and Reallocation of Assets Upon Divorce

If no agreement is reached, the courts can make financial orders to divide marital property and address post-divorce financial needs. The most important order is the division of assets and debts, carried out according to the applicable marital property regime, but the courts may also order spousal maintenance, and regulate the use of shared assets and right to occupy the family home.

These decisions are guided primarily by the Brazilian Civil Code, considering the marital regime and prenuptial or postnuptial agreements. Marital fault itself is generally irrelevant, unless it leads to fraud, concealment or dissipation of assets.

Disclosure of Assets

In order to identify the assets, Brazilian courts have a wide range of options, from enforceable court orders to the spouses or third parties to direct access to bank statements (“Sisbajud”), tax returns (“Infojud”), and company ownership (“Sniper”), among others. In contested divorces, the disclosure process takes place within the divorce lawsuit after the parties’ first declarations, during the production of evidence.

Marital Regimes

The Brazilian Civil Code establishes the following regimes for marital property:

- Universal community of property – all combined property is considered common, including assets inherited and received in donation (except if received with a “do not commingle” clause). Debts are also shared unless they are incurred for the sole benefit of one spouse. This was the default marital regime until 1977.
- Partial community of property – this is the regime currently applicable by default in cases where parties do not choose a different one. All the assets onerously acquired during a marriage are considered part of the community property, while all assets that each spouse acquired prior to the marriage or those received by donation or inheritance are excluded from the common estate and are considered separate property. Any assets that replace the separate property shall also be put outside of the common estate. However, proceeds from the common or separate property of each spouse received during marriage will also be considered part of the common estate. Improvements made to the separate property of each spouse usually belong to both. Debts are also shared unless they are incurred for the sole benefit of one spouse.
- Voluntary separation of property – each spouse has their own separate property, but they may choose to acquire assets in co-ownership. Each spouse is responsible for the debts individually incurred.
- Mandatory separation of property – this regime is applicable under specific circumstances (pending division of property after a divorce, one of the spouses being over 70 years old, etc). However, in 2024, the Federal Supreme Court decided that, when one of the spouses is over 70 years old, the couple can waive the application of this regime and opt for a different arrangement through the signing of a public deed. Although the regime name refers to “separation”, Precedent 377 of the Brazilian Federal Supreme Court established that assets acquired onerously during the marriage in this regime may be considered common property.
- Final sharing of acquests – one spouse does not take part in the administration of the other spouse’s assets. However, neither of the spouses is allowed to sell immovable assets, unless there is express authorisation in the prenuptial agreement. Where the marriage is dissolved, the acquests must be partitioned. In the regime of final sharing of acquests, each spouse is responsible for any debts incurred, unless they were incurred for the benefit of the couple.

If the parties are willing to choose a regime other than the default, they must sign a prenuptial agreement before a notary public. In this document, parties may combine different rules from each of the regimes.

Recognition of Foreign Trusts

There is no specific legislation in Brazil that encompasses trusts, and other similar fiduciary structures. However, the lack of regulation in Brazil does not prevent the use of fiduciary structures in foreign jurisdictions by Brazilian residents.

There is a bill currently under discussion that aims to regulate fiduciary contracts, inspired by the English law on trusts. With the imminent regulation of the subject in Brazil, it is certain that access to this tool will be democratised, thereby promoting the use of local contracts that can be tailored to the reality of Brazilian families.

Given the lack of a legal framework in Brazil, individuals and professionals engaged in trust arrangements should be mindful of the associated complexities and uncertainties before the Brazilian Court.

Regarding tax implications, Law 14,754/2023 introduced rules for revocable and irrevocable trusts involving Brazilian tax residents. Assets and rights held within a foreign trust are treated as belonging to the settlor until either the assets are distributed to beneficiaries or upon the settlor’s death. For

irrevocable trusts, ownership may be transferred earlier if the settlor irrevocably relinquishes their rights over the trust's assets.

▼ 2.4 Spousal Maintenance

Spousal maintenance is not automatic on divorce and is generally exceptional and temporary. It may be set through periodic payments limited to living costs but it may also encompass compensatory maintenance, which is expenses the spouse would have to maintain the same lifestyle as during the marriage.

It is also a key aspect of maintenance that the support received is not subject to compensation with other debts and payments. Restitution of maintenance payments is generally not allowed.

Interim Maintenance

Parties can apply for interim maintenance pending the outcome of a lawsuit, whether it is an independent process or requested within divorce proceedings, and this injunction is always subject to review.

Duration and Amount of Maintenance

The duration and amount of maintenance are determined through the application of statutory rules regarding the needs of the recipient, the financial position of the provider and the proportionality of the amount set. The duration may range from months to lifelong payments (although these are increasingly rare), and the amount may be a percentage of the provider's income or a fixed amount.

Some factors that are considered when determining the amount of fixed maintenance are the standard of living during the marriage; the age, health and gender of the parties; and the capacity to re-enter the workforce, among others. Economic dependency and childcare responsibilities have also surfaced as important factors in recent case law, with a view to providing a softer transition to post-married life.

▼ 2.5 Prenuptial and Postnuptial Agreements

Under Brazilian law, prenuptial agreements are recognised by statute as the public deed through which parties determine their matrimonial regime. It is also an opportunity to customise the rules of the marriage, provided that the limits of human dignity and public order are respected.

Brazilian law does not provide a framework for postnuptial agreements, but case law has admitted them as enforceable if signed with court authorisation.

The Brazilian courts deal with these agreements based on private autonomy, which means that the judges and courts tend to respect what has been agreed upon by the couple, provided it does not violate matters of public policy. The STJ has consolidated the understanding that agreements are valid not only for money matters, but also for rules of co-habitation, functioning as a true "statute" for the couple.

However, the courts have embraced discussions regarding the validity of agreements where there are allegations of forced consent or other forms of signing under duress.

▼ 2.6 Cohabitation: Division of Assets Between Unmarried Couples

Stable unions are defined as public, continuous, lasting unions with the aim of constituting a family. Due to a judgment handed down by the Federal Supreme Court in 2018, stable unions are treated as equivalent to marriage. Thus, the same property regime rules apply, including the partial community of property as the default regime.

The existence of joint children and/or co-habitation will be considered as evidence of the establishment of a stable union, but neither automatically grants the union's recognition.

▼ 2.7 Enforcement of Financial Orders

Under Brazilian family law, the enforcement of financial obligations, such as the payment of spousal maintenance or the delivery of amounts related to the division of assets, is ensured by enforcement mechanisms that vary according to the nature of the debt.

Enforceability methods include imposition of fines, seizure of financial assets, payroll deductions and negative credit listing, although these are illustrative measures and the court may issue any other order it deems suitable to ensure compliance. In addition, spousal and child maintenance legislation is extremely strict in Brazil, representing the only remaining scenario of civil imprisonment under Brazilian law.

In matters of child support, Brazil is a signatory to the Hague Convention on Child Support, which allows for more efficient proceedings through the Ministry of Justice, acting as the central authority. This framework enables direct enforcement and the application of coercive measures, such as the freezing of bank accounts and, in certain circumstances, the civil imprisonment of the debtor within Brazilian territory.

By contrast, foreign decisions concerning the division of property or financial compensation must undergo a recognition procedure before the STJ. This process validates the foreign judgment so that it may take effect in Brazil, without any re-examination of the merits. It is important to note that assets located in Brazil fall under the exclusive jurisdiction of Brazilian courts; as a result, the recognition of foreign judgments dealing with the division of assets situated in Brazil is generally denied.

▼ 2.8 Media Access and Transparency in Financial Proceedings

The Brazilian Code of Civil Procedure, in Article 189, II, guarantees by law the confidentiality of all proceedings involving family matters, regardless of the parties' request. Since cases involving family law are subject to judicial secrecy by statutory law, they cannot be disclosed by the press.

▼ 2.9 ADR in Financial Matters

The Brazilian legal system offers flexibility for resolving financial disputes in family law, prioritising speed, confidentiality and the autonomy of the parties, as long as there are no minor children involved – in such cases, the judiciary holds exclusive jurisdiction over the matter, and the Public Prosecutor's Office intervenes in order to assure the minors' interests are being safeguarded.

Mediation is the most widespread ADR method, with an impartial third-party facilitating dialogue so that the spouses themselves can find a solution for the division of assets or spousal maintenance. In addition, collaborative practices propose an interdisciplinary approach where lawyers and financial experts work together with a formal commitment not to resort to the courts, focusing exclusively on building technically robust and customised agreements. If there are no civil status modifications or minors' interests under discussion and the dispute is purely financial, arbitration also arises as an option, which may be provided for in advance in prenuptial agreements, although this option still sparks discussion in legal forums.

Under the Brazilian Code of Civil Procedure (Article 334), conciliation is a necessary step in every lawsuit, including in family matters, but the parties can manifest their lack of interest by petitioning. In either case, the court has the power to impose mediation or conciliation sessions on its own or at the request of any party, if it deems this relevant to resolving the lawsuit in a faster or more appropriate manner.

Non-compliant parties may incur a fine of up to 2% of the value of the lawsuit and may face other penalties for contempt of court.

Validity of Out-of-Court Agreements

If there are no children involved, parties may settle financial matters by signing a public deed before a notary's office. Such deed constitutes an extrajudicial enforcement order that allows the aggrieved party to file an action for enforcement in the event of non-compliance, without having to discuss the merits of the case.

The State maintains a mandatory supervising role in matters involving minor or incapacitated children, requiring the parties to seek court approval even if they agree with all the terms.

▼ 3. Child Law

▼ 3.1 Choice of Jurisdiction in Children Proceedings

In Brazil, children-related proceedings (such as custody/residence, contact arrangements, guardianship, and protective measures) are generally brought to the court of the child's domicile, which in practice follows the domicile of the parent(s) or legal guardian with whom the child lives. Where the child's domicile cannot be clearly determined, or where urgent protection is required, jurisdiction may be exercised by the court of the place where the child is physically present.

In determining and establishing the competent jurisdiction, the judge must take the following factors into account:

- the place of residence of the child or adolescent;
- the principle of the best interests of the child or adolescent;
- any potential risk or urgency inherent to the specific case;
- the domicile of the parents; and
- the social, familial and educational ties of the child or adolescent, in cases of an international nature involving relocation to another country.

Under Brazilian law, domicile is defined as the place where an individual establishes residence with the intent of permanence. In cases concerning children and adolescents, however, the most significant concept for the determination of jurisdiction is residence, as it reflects the actual circumstances of the child or adolescent and ensures proximity to conduct procedural acts, such as psychosocial expert examination and hearings.

▼ 3.2 Living/Contact Arrangements and Child Maintenance

Approach of the Courts

In the absence of an agreement, either parent may file a lawsuit for custody and/or visitation. The court will examine such petitions for custody and/or regulation of visitation based on the fundamental principle of the best interests of the child or adolescent. In doing so, the court will consider criteria such as emotional bonds, daily routine, the health and stability of the child or adolescent, any potential risk or unsuitable environment, as well as the availability and capacity of the parents. Furthermore, the judge generally orders that psychosocial expert examination be used to ascertain which arrangement best serves the interests of the child or adolescent. The judge may also, where appropriate, order interviews with the minor and the parents.

Custody and Contact

Brazilian law provides that joint custody will be applied whenever possible, although domestic violence constitutes an exception. With respect to parental responsibility, Brazilian law establishes that parental authority is not extinguished by divorce or separation. That is, both parents retain parental responsibility, such that important decisions concerning the minor must be taken jointly. Accordingly, divorce or separation does not alter the legal relationship between parents and children, and even where the minor's residence is fixed with one parent (the reference household), parental authority remains joint.

Judicial decisions relating to custody and contact arrangements must always observe the principle of the best interests of the child. Accordingly, the court must prioritise the child's welfare, taking into account, among other factors, territorial limits on changes of domicile, the impact of alternating residence arrangements (such as weekly rotation), the need for restricted and/or supervised contact, and the possible exclusion of one parent in cases involving abuse or violence.

Maintenance

The Brazilian Civil Code defines maintenance (alimony) as encompassing all that is necessary for the dignified subsistence of the individual. In the case of children and adolescents, maintenance must meet the needs of the beneficiary, which include food, health, education, clothing, leisure, housing, transportation, personal care, and extracurricular activities, among others. However, in addition to the needs of the minor, maintenance must also consider the financial capacity of the parent paying such support.

Under Brazilian law, child and adolescent maintenance is determined in accordance with the triad of need, capacity and proportionality. The court must strike a balance between the actual needs of the child or adolescent – built around age, education, daily routine and standard of living – and the

effective financial capacity of the parent, to determine the appropriate level of maintenance.

The obligation may not be set at an excessive or unreasonable level so as to compromise the subsistence of the obligor, nor may it be fixed at a merely nominal amount that would undermine the purpose of ensuring the child's or adolescent's dignified development. In essence, maintenance must be established in a proportionate and reasonable amount, consistent with the specific circumstances of the case.

Child support may be determined as a percentage of the parent's income, by reference to the statutory minimum wage, or as a fixed sum sufficient to meet the needs of the child or adolescent.

The parties may enter into an extrajudicial agreement regarding the amount of child or adolescent maintenance. However, for such agreement to be enforceable, it is necessary that the agreement be ratified by a judge, following the opinion of the Public Prosecutor's Office.

The decision to establish maintenance may be rendered in a lawsuit for offer/fixation of maintenance, in divorce or custody proceedings, or within the framework of urgent measures. As to the duration of child support, maintenance will, in principle, be provided to minor children until they reach the age of majority, at 18 years. However, legal doctrine and case law (including a binding precedent of the STJ) hold that termination is not automatic and requires a judicial decision, subject to adversarial proceedings. This is because, although parental authority is extinguished upon majority, the right to receive maintenance does not automatically cease, as it then derives from kinship relations, in which proof of the beneficiary's need is required. In general, continuation is granted to allow completion of educational training. It should also be noted that maintenance may persist without age limitation where the beneficiary is a person with a disability who is unable, through their own work, to provide self support.

In the case of children and adolescents up to the age of 16, they will be represented by a parent or legal guardian in any lawsuit concerning maintenance. From the age of 16, the adolescent may initiate a maintenance lawsuit, but only with the assistance of a parent or legal representative; and upon reaching the age of 18, they may do so independently.

▼ 3.3 Other Matters

Judicial Supplementation of Consent

Ideally, where joint custody is in place, the parents should reach consensus on matters of parental responsibility, such as schooling, medical treatment, religion and related issues, particularly because delegating the authority to decide such personal matters – for instance, religion and medical treatment – to the State may generate more difficulties than solutions. In any event, where consensus is lacking, the matter may be resolved judicially through a lawsuit for judicial supplementation of consent, as in cases involving relocation abroad, authorisation for travel, change of school, and similar matters.

Parental Alienation

The concept of parental alienation is recognised in Brazil and was codified in 2010, upon the enactment of Law No 12,318/2010, which specifically addresses the matter. Since then, however, the subject has faced challenges, as certain specialists and mothers contend that the law affords protection to abusive fathers (by imposing severe measures in cases of false allegations) and is employed against mothers. More recently, there has been a movement towards the repeal of Law No 12,318/2010, which has already obtained approval in the Committee on Constitution and Justice. The approved text, nevertheless, still has a legislative path to follow before coming into force.

The courts usually address parental alienation through psychological expert examination, where the child and the parents are sent to a psychologist appointed by the court for a specific analysis of the matter. The parents and the child undergo interviews in order to ascertain whether acts or indications of parental alienation are present, as set forth in Article 2 of the aforementioned law, including:

- conducting a campaign to discredit the conduct of the parent in the exercise of fatherhood or motherhood;
- obstructing the exercise of parental responsibility;
- hindering contact between the child or adolescent and the parent;

- impeding the exercise of the regulated right of family contact;
- deliberately withholding from the parent relevant personal information concerning the child or adolescent, including educational, medical, or address changes;
- lodging false allegations against the parent, their relatives, or grandparents, with the purpose of preventing or hindering their contact with the child or adolescent; and
- relocating to a distant domicile without justification, with the intention of hindering the child's or adolescent's contact with the other parent, their relatives, or grandparents.

Should the psychologist responsible for the case conclude that parental alienation exists, sanctions provided for in the law may be imposed by the court, ranging from fines against the alienating party to an order for reversal of custody. The application of such sanctions, however, tends to be carried out with considerable caution by the judiciary.

Children's Testimony

Children may give testimony, but this depends greatly on the child's age and the subject matter to be addressed in each case. For instance, the Statute on Children and Adolescents provides that a child must be heard in adoption proceedings from the age of 12. In family lawsuits, particularly those involving custody and parental contact, the usual practice is for the child to be heard by a psychologist and a social worker appointed by the court in the course of psychological and social expert examination, rather than directly giving testimony. Testimonies may occur depending on the circumstances, but they are rare, especially because children are developing beings and highly susceptible to conflicts of loyalty. A hearing involving a child must therefore be conducted by qualified professionals, such as psychologists.

Where children are heard, their statements are taken into account but weighed against the evidence in the record, notably the conclusions of the professionals who conducted the expert examinations. In lawsuits specifically involving parental alienation, there exists a special protocol for child hearings, under which a series of safeguards protect the minor and enable the pursuit of their best interests.

▼ 3.4 ADR in Child Law Matters

Mechanisms Outside of the Court

Conciliation and mediation are the dispute-resolution mechanisms most commonly used in divorce and family disputes. In conciliation, the conciliator adopts a more active role and may put forward proposals to assist the parties in reaching settlement. In mediation, by contrast, the mediator focuses on restoring productive dialogue between the spouses so that they themselves can identify and propose the most appropriate terms of agreement. These consensual resolution mechanisms may be used before proceedings are issued, where the parties wish to avoid contested litigation, or during court proceedings, which may be stayed while negotiations take place.

ADR Methods and Penalties for Non-Compliance

The Brazilian Code of Civil Procedure places strong emphasis on consensual dispute resolution and provides that judges must encourage settlement between the parties at any stage of the proceedings, preferably with the assistance of court-appointed conciliators and mediators. In family disputes, there is an express statutory provision that all reasonable efforts must be made to achieve an agreed resolution, including the listing of a mediation/conciliation hearing before the statement of defence is filed. If the parties fail to attend the hearing, they may be sanctioned for conduct deemed contrary to the dignity of justice, including a fine of up to 2% of the economic benefit sought or the value of the claim, as determined by the judge.

Status of Out-of-Court Agreements

An out-of-court settlement related to minor children would be a faithful register of the parties' will and would be useful if any discussion arises, but would not be directly enforceable in a case of non-compliance. It is recommended that such agreement be submitted to court approval, by inviting the Public Prosecutor's Office to intervene and provide its opinion on the parties' agreement.

Requirements to Engage in ADR

There is no obligation on the parties to reach agreement, but the procedural framework strongly encourages the use of appropriate dispute-resolution mechanisms. In family disputes, a conciliation or mediation hearing is almost invariably listed at the outset of the case. Where consensual resolution is attempted, whether pre-action or during proceedings, the law requires compliance with core principles, including the mediator/conciliator's impartiality, equality of arms between the parties, informality, party autonomy, good faith and, above all, confidentiality. As a general rule, statements, documents, concessions and settlement proposals exchanged in mediation/conciliation are confidential and may not be relied upon as evidence in subsequent contested proceedings if no settlement is reached.

▼ 3.5 Media Access and Transparency in Children Proceedings

Judicial proceedings involving children and adolescents, particularly where they relate to custody, adoption, guardianship, juvenile offending, paternity proceedings, domestic violence, abuse, or any other matter directly affecting a minor, are conducted under confidentiality (ie, not open to the public).

Accordingly, where the media become aware of such proceedings, they must not publish information that could identify the child or adolescent, or disclose details of the case. Should they not comply, they may incur civil, administrative and criminal liability.

Under Brazilian law, proceedings involving children and adolescents are generally heard in private and are subject to statutory confidentiality, and the publication of any information that could identify a child or adolescent in connection with judicial proceedings is prohibited. In practical terms, the court file is restricted-access and any material that becomes publicly accessible (eg, decisions disseminated in databases) should be anonymised or redacted so that the child cannot be identified. Parents or legal guardians may apply for confidentiality/anonymisation measures by a petition in the case requesting that:

- the proceedings be formally made confidential if that has not already been recorded;
- access to the electronic case-management system be limited to the parties and their lawyers;
- specific documents or information be sealed where particularly sensitive; and
- any public extracts, certificates or published decisions be issued only in an anonymised form, and where there is an imminent risk of exposure (including threatened media publication), urgent protective relief may be sought on an expedited basis.

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 - 1.1 Grounds, Timeline, Service and Process
 - 1.2 Choice of Jurisdiction in Divorce Proceedings
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 - 2.1 Choice of Jurisdiction in Financial Proceedings
 - 2.2 Service and Process in Financial Proceedings
 - 2.3 Division of Assets
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 - 2.5 Prenuptial and Postnuptial Agreements

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