

RESOLUTION No. 14/2024

Autonomous Production of Evidence

The President of the Chamber of Conciliation, Mediation, and Arbitration Ciesp/Fiesp (“Chamber Ciesp/Fiesp”), in the exercise of his duties and the powers conferred by section 4(f) of the Chamber’s Internal Regulation, issues the following resolution regarding the procedure for the autonomous production of evidence in arbitrations administered by the Chamber Ciesp/Fiesp, when the requirements for provisional and urgent measures under Article 22-A of the Brazilian Arbitration Law (Law No. 9.307/1996) are not present.

Considering the continuous improvement of the normative acts of the Chamber Ciesp/Fiesp and the increase in requests for autonomous production of evidence;

Considering that the arbitration clause included in contracts serves to resolve potential disputes related to them and that, except for matters related to provisional and urgent measures provided for in Article 22-A of the Brazilian Arbitration Law, all issues related to the contract containing an arbitration clause fall within arbitral jurisdiction;

Considering that requests for evidence production, whether autonomous or not, could already be processed under the Arbitration Rules of Chamber CIESP/FIESP;

Considering the objective of regulating a specific and faster procedure for autonomous production of evidence before the Chamber Ciesp/Fiesp;

Considering that this resolution only addresses an additional way of submitting a request for Autonomous Production of Evidence, leaving it to the Arbitrators to decide on its pertinence;

Considering the understandings reached in the meeting of the Thematic Council of the Chamber and the suggestions presented;

The following resolution is issued to regulate the procedure for the autonomous production of evidence, in addition to the rules of the Chamber Ciesp/Fiesp Arbitration Rules (“Rules”), as follows:

Article 1 – Unless otherwise provided in the arbitration agreement and before the arbitration is instituted, the party intending to autonomously produce evidence may request the President of the Chamber Ciesp/Fiesp to initiate the Autonomous Production of Evidence Procedure through a Requirement for Autonomous Production of Evidence (“Requirement”), when the conditions for provisional and urgent measures under Article 22-A of the Brazilian Arbitration Law (Law No. 9,307/1996) are not present.

1.1. The Requirement must contain:

- a.** Name, qualification, and address, and, if known, the email addresses or any other contact information of the parties and their representatives;
- b.** Relevant documents, especially the arbitration agreements;
- c.** Description of the circumstances that gave rise to the Requirement;
- d.** Description of the required evidence and the facts on which the evidence is based;



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- e. The reasons why the claimant believes the required evidence is appropriate and why it should be produced in advance;
- f. Comments on the number of Arbitrators, the method of selecting the Arbitrators, the language, the place where the Arbitrator's order should be issued, and the applicable law;
- g. Proof of payment of the registration fee;
- h. Any information or document that the claimant deems useful for the analysis of the Requirement.

1.2. The Autonomous Production of Evidence Procedure will be conducted electronically, in accordance with Resolution No. 13/2022, with the possibility of in-person acts, if necessary, such as meetings and hearings.

1.3. Unless otherwise provided in the arbitration agreement, the Autonomous Production of Evidence Procedure may be initiated at the interest of any of the parties.

1.4. The Chamber Ciesp/Fiesp will preliminarily examine the admissibility of the Requirement based on the existence, validity, and effectiveness of the arbitration agreement. Based on the information contained therein, the Chamber Ciesp/Fiesp may proceed with the Autonomous Production of Evidence Procedure or terminate it, notifying the parties of this decision.

1.5. The provisions of the Rules that do not conflict with this Resolution will apply, always considering the expedited nature of this Autonomous Production of Evidence Procedure.

Article 2 – Unless otherwise provided in the arbitration agreement, the President of the Chamber Ciesp/Fiesp will appoint an arbitrator (“Evidence Arbitrator”), applying, where applicable, the rules on the appointment and removal of arbitrators outlined in the Rules.

2.1. If the arbitration agreement provides for three arbitrators, upon receiving the request for the Autonomous Production of Evidence Procedure, the Chamber’s Secretariat will notify the Parties to inform whether they agree to proceed with the Autonomous Production of Evidence with a single arbitrator. If there is no agreement, the tribunal will be appointed in accordance with the Arbitration Rules.

Article 3 – The Evidence Arbitrator will decide on the matters presented through procedural orders and will decide on the admissibility and form of evidence production only after giving the opposing party the opportunity to respond within 15 (fifteen) days. The opposing party may, subject to specific applicable laws and any fishing expedition abuses, challenge the production of evidence.

3.1. The Evidence Arbitrator may request clarifications from the parties via telephone conference, in-person or remote hearing, or undertake any other measures deemed necessary to analyze the admissibility and form of evidence production, always considering the expedited nature of this Autonomous Production of Evidence Procedure.

3.2. The Evidence Arbitrator’s decision will be issued within 30 (thirty) calendar days from the latest of the following dates: (i) receipt of the opposing party’s statement on the admissibility and form of evidence production, (ii) expiration of this period without a response, or (iii) completion of the measures requested under item 3.1. The deadline for issuing the procedural order may be extended

by the President of the Chamber upon a justified request from the Arbitrator or with agreement of the parties.

3.3. The procedural orders issued by the Evidence Arbitrator must be reasoned in writing. The Evidence Arbitrator may establish the necessary requirements to ensure compliance with their decisions. The procedural order of the Evidence Arbitrator will be binding on the parties and must be complied with immediately.

3.4. Once the evidence production is completed, the Evidence Arbitrator will ratify the produced evidence by Award and decide on the allocation of costs and expenses of the procedure, prohibiting the awarding of attorney's fees, reimbursement of contractual attorney's fees, and any other expenses incurred by each party. The Evidence Arbitrator will not rule on the occurrence or non-occurrence of the fact or its legal consequences.

3.5. Once the award is issued as per Article 3.4 above, the arbitral jurisdiction of the Evidence Arbitrator will be terminated.

3.6. The Autonomous Production of Evidence Procedure may not exceed 6 (six) months from the appointment of the Evidence Arbitrator. This period may be extended for an equal period by the President of the Chamber Ciesp/Fiesp upon justification from the Evidence Arbitrator.

Article 4 – If the arbitration is instituted during the Autonomous Production of Evidence Procedure, under item 2.4 of the Rules, the jurisdiction of the Evidence Arbitrator will immediately cease, and the Arbitral Tribunal will analyze the admissibility of the evidence

or the continuation of its production. The Tribunal may consider, as deemed appropriate, the procedural acts taken by the Evidence Arbitrator and the procedural efficiency/effectiveness regarding the evidence production.

4.1. The Arbitrators who acted in the Autonomous Production of Evidence Procedure may not act in eventual subsequent arbitration instituted.

Article 5 – The costs of the Autonomous Production of Evidence Procedure include:

- a.** Registration fee of R\$ 5,000.00 (five thousand reais), payable by the Claimant on the date the arbitration procedure is requested;
- b.** Administration fee of the Chamber Ciesp/Fiesp of R\$ 50,000.00;
- c.** Fees of the Evidence Arbitrator(s), at the rate of R\$ 1,400.00 (one thousand four hundred reais) per hour worked;
- d.** Expense fund of R\$ 10,000.00 (ten thousand reais);

5.1. The Claimant must advance the full costs of the Autonomous Production of Evidence Procedure within 15 (fifteen) days of submitting the Requirement. Regarding the fees of the Evidence Arbitrator(s), the Claimant must initially advance an amount corresponding to at least 40 hours per Arbitrator.

5.1.1. If the procedure is exceptionally conducted by three Evidence Arbitrators, the payment specified above will be due for each member of the Tribunal.

5.2. The Evidence Arbitrators are entitled to receive a minimum of 20 hours. The remaining balance of hours worked will be paid monthly.

5.3. The Evidence Arbitrators must submit a report detailing the hours worked and expenses incurred, with original receipts, upon request by the Secretary-General of the Chamber.

5.4. The Chamber may request the Claimant to supplement the fees of the Evidence Arbitrator(s) and the expense fund at any time.

5.5. If the procedure is extended under item 3.6, the Chamber's Secretariat will request the renewal of the administration fee payment, amounting to R\$ 50,000.00 (fifty thousand reais).

5.6. If payment is not made by the stipulated deadline, the Secretary-General of the Chamber, after consulting the President of the Chamber and/or the Evidence Arbitrator(s), may suspend the procedure for up to 30 (thirty) days. If the period expires without payment, the procedure may be terminated at the discretion of the President of the Chamber and/or the Evidence Arbitrator(s).

5.7. The Registration Fee is non-refundable.

Article 6 – Any cases not addressed by this Resolution will be decided by the President of the Chamber Ciesp/Fiesp.



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Article 7 – This Resolution comes into effect immediately and applies to requests for Advance Production of Evidence initiated from this date.

São Paulo, September 4, 2024

Sydney Sanches

President of the Chamber Ciesp/Fiesp