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This book would not exist without the support of my father, who encouraged me to do a Ph.D. at the University of St. Gallen.

When finalising this publication, I benefited greatly from the aid of Catarina Paese and Rodrigo Salton.

I also received help from Alana Cardoso, Bernardo Borchardt, Iasmin Teixeira, Luiza Teixeira, Matheus Diniz and Victória Régia Pires.

Finally, I should like to thank my editor Vinícius Vieira and his team at Quartier Latin. I am already looking forward to our next book.

Leonardo Ohlrogge

Zurich

Foreword

It was with great pleasure that I received the honorable invitation to introduce Leonardo Ohlrogge's book.

I have been following his successful academic career ever since he was my law student during his Bachelor in Brazil. At that time, his interest in studying and practicing law proved above the average, and this book now confirms my initial impressions about his early career.

We have had numerous further opportunities to discuss his internship activities, his legal practice, and academic projects including his Ph.D. at the prestigious University of St. Gallen in Switzerland.

This book is the outcome of his doctoral research on the objective and subjective scope of the arbitration agreement in arbitrations involving multiple parties and contracts.

Leonardo has combined an analysis of multi-party and multi-contract practical issues that are repeatedly faced by arbitration practitioners with in-depth academic research on the most fundamental element of arbitration: the parties' consent.

Contracts are not static. They are entered into to be performed. Nor do contracts exist in isolation. They are commonly related to other agreements, or affected by them. In fact, contracts are concluded between companies, which are themselves a nexus of contracts, as precisely put by Ronald Coase.

The plurality of contracts and the involvement of non-signatory parties in the negotiation, performance and termination of contracts are a natural consequence of increasingly complex transactions.

Here, Leonardo analyzes the most common basis for binding non-signatories to the arbitration agreement, and the most common contractual structures that may result in multi-contract arbitration in the light of an important question: To what extent is consent to the arbitration agreement still fundamental, and how have multi-party and multi-contract arbitrations impacted on the way it is assessed?

It does not come as a surprise that Leonardo chose to write his Ph.D. thesis on a subject with great practical relevance. Leonardo worked for a boutique law firm in Brazil, and has gained great experience in leading arbitration firms in Europe. As a result, we do not have here purely academic research conducted by someone who has never practiced, but a book dealing with concrete problems analyzed theoretically and extensively. It is thus a book relevant for Brazilian and foreign arbitration practitioners, one with the academic sophistication of a doctoral thesis, but which they may use in their daily practice.

This book reveals Leonardo's academic and professional consolidation, and it will benefit the reader and the arbitration community as a whole. It is highly recommended.

Dr. Luciano Benetti Timm, LL.M.
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Note about the Author

An easy way of introducing someone could be: "There are no words to describe him..." etc., though this would be a cliché that we should definitely avoid. I will not say this about Leonardo, because there are indeed words to describe him. There might not be room for all the words that I could say. OK, this is a cliché as well. But this time, it is unavoidable.

Noblesse oblige: The second after I wrote this, I realized that, from now on, he is the one to embody it. When put it in perspective, to many of us it is he who is "noble," on the upper level. But in this case, we are no less fortunate. On the contrary, I could say of myself that I am very fortunate; I am the lucky one in this scenario. I had the honor and privilege of working and spending time with Leo (allow me to use your nickname – the sound of it gives me the impression of your being geographically closer), one of the nicest, most intelligent, vivid people I have ever had the pleasure of sharing moments with.

As for this book, I should like to offer a short message: it has been long awaited. Not only because it is the first by a great writer-to-be, but also because it is already a great book, and highly important for those in the business. The stakes are high.

But it also requires me to let people know, in few words, that the part of his path I witnessed evokes emotional memories. I remember the first days when we talked about the future, his future. A young boy full of hopes and positive expectations for what the future would bring. I thought to myself: let life show him how hard things are, to bring him down to earth a bit. My mistake. Life could only raise him up. And he deserves that. And he still is a boy full of hopes and dreams – though he is now already living (in) the future.

My only regret is that my father is not here in person to co-witness his success – or to answer his letters. Allow me just to say that I remember the days after he passed away, when Leo used to leave small notes on his desk with questions about the future. He did not tell me that; I saw

it. This book is part of his future. Or an answer to his letters. But only in a small way. There is so much more to come.

Stay hungry, stay foolish, said a man once! Count on me. I count on you.

Thomas Dulac Müller

Partner at Dulac Müller Advogados

Preface

It is a great honor to preface this remarkable book written by Leonardo Ohlrogge.

Brazil has witnessed a phenomenal development in the field of arbitration in the last two decades, with the consolidation of a growing body of technical and pro-arbitration case law and an ever-increasing number of arbitrations.

This has only been possible because of a number of factors, including the existence of a modern legal framework related to arbitration, which includes the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the technical interpretation made by state courts regarding arbitration. Another component that helped in the consolidation of arbitration in Brazil is no doubt the vibrant arbitration legal community that, from the very beginning, has embraced this method of dispute resolution in a country where most state courts fight against the lack of resources to deal with a massive number of disputes.

Indeed, Brazil was fortunate enough to witness a fantastic growth in the number of arbitrations, reaching the top positions in ICC arbitration statistics in the last few years. Brazil has also witnessed the development of important arbitration centers, which administer a growing number of cases. All this was accompanied by the rising complexity of cases and the increasing sophistication of the Brazilian arbitration bar.

In this context, a number of talented Brazilian young practitioners started to flourish, and Leonardo Ohlrogge is certainly a leading one amongst them.

Despite his young age, his accomplishments in the field of arbitration are notable. In addition to having qualified as a lawyer in Brazil, Leonardo has pursued a remarkable international academic career, having obtained a Ph.D. from the University of St. Gallen (Switzerland) and an LL.M. from the University of Frankfurt (Germany). I have been very fortunate to be able to follow his impressive career and his contributions to the study and development of arbitration so far. I am very grateful to him for this unique opportunity to preface his first book.

This academic path was in no way an obstacle to Leonardo building a solid career as a practitioner in international arbitration as well, having worked at some of the most prominent law firms in the field and developed an active and thriving practice.

This rare combination made Leonardo the perfect person to carry out an in-depth study of one of the most important and challenging topics in international arbitration, which involves themes revolving around multi-party and multi-contract arbitration, with a particular focus on Brazil.

The practical importance of the study of the subject matter of his book is undeniable, as a growing number of transactions and commercial dealings involve multiple parties and more than one agreement, sometimes several of them, which can give rise to complex questions and disputes. The statistics of leading arbitral institutions confirm that trend not only in Brazil, but worldwide.

If arbitration is based on private autonomy – and this cornerstone principle should be preserved -, it may however have to be interpreted in new ways if arbitration is to continue to be a useful and practical method of dispute resolution for commercial and international disputes. In a new scenario of increasing complexity of business relationships, arbitration has certainly not lost its consensual character but, as the author says, "multi-party and multi-contract disputes have clearly impacted upon the manner in which consent is assessed and the arbitration agreement is interpreted". The tension between the consensual character of arbitration and the need for an efficient dispute resolution mechanism involving complex disputes is real and is often seen in practice.

This is the challenge that Leonardo decided to embark on in this excellent book, challenge fully met by the author after a thorough and technical analysis of an impressive body of case law and legal literature. While the focus of the book is on Brazil, the author spared no efforts to cover important decisions and opinions from different jurisdictions, making the book a useful tool for practitioners who are interested in a more international perspective as well.

The book analyses the consensual nature of the arbitration agreement in the context of multi-party and multi-contract arbitration, examining fundamental questions regarding both the subjective and the objective scopes of the arbitration clause. The extent to which an arbitration agreement may bind the so-called non-signatory parties and cover disputes of related and interconnected agreements is one of the most delicate topics in international arbitration and is thoroughly assessed by the author in a firm and technical way, including citations of the most recent case law in Brazil.

The book is divided into two parts. The first part addresses the substantive matters relating to arbitrations with multiple parties and multiple contracts, while the second part deals with procedural issues. In a very interesting approach, the author has set out his partial conclusions at the end of each chapter, which makes the book easy to read and consult.

To reach his conclusions, the author provides a critical analysis of Brazilian decisions dealing with complex arbitration cases and addresses the fundamentals of arbitration relating to consent from the perspective of the Brazilian law.

The book significantly clarifies important issues related to multi-party and multi-contract arbitration and will be of great interest and value to both Brazilian and international arbitration practitioners dealing with arbitrations seated in Brazil or with a Brazilian connection. The fact that it has been written in English will surely be a great facilitator to reach a broader and international audience, who will be able to study and analyze how this topic has been developing in Brazil, one of the fastest growing arbitral jurisdictions in the world.

I hope all readers will have the same pleasure reading Leonardo's book as I had myself, and will find it as useful and provocative as I found it. It is a book that surely deserves to be in everyone's library.

Renato Stephan Grion

Partner at Pinheiro Neto Advogados
President of the ICC Arbitration and Mediation Commission (Brazil)