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## A Light at the end of the Tunnel for the Labour Disputes in Brazil

Andrea Maia (Mediar360 – Dispute Resolution) · Tuesday, January 9th, 2018

The debate regarding the urgency of modernizing Brazilian labour laws has been going for quite a while, probably dating back to early 80s. Over the last four decades, hundreds of professions have disappeared, thousands have been created and our legislation has remained almost untouched.

As some of you may recall, not long ago, I posted an [article](#) outlining that lack of flexibility is probably one of the most difficult obstacles to resolve any dispute. In summary, the absence of flexibility when the letter of the law is applied, limits the ability to reach agreements and ultimately makes the Courts the only place where disputants believe they can find any kind of enforceable resolution.

At that same post I also commented that it is almost unbelievable that, at this day and age, where new working relations, emerging technologies like artificial intelligence, robotics, and digital biology arise almost every day, there are still some legal mechanisms that limit the parties' capacity to negotiate and settle their own disputes. Unfortunately, this limitation lasted in Brazilian Labour Law until the end of last year.

Helped by an also outdated Constitution, the Labour Laws in Brazil (CLT- Consolidação das Leis Trabalhistas) prescribe a series of norms that, in general, opposes the worldwide trend towards solving disputes through direct parties' negotiation or even through mediation, as they are rigid, confusing, unclear and complex. They attempt to cover every detail of the labour relationships, but ultimately are lost in contradictions and doubts.

The result of this outdated and illogical legal system is a clogged Court system. At any given moment, the Brazilian labour courts are home to approximately 2.5 million disputes. Roughly speaking, this means that, on average, 1% of the Brazilian population, at any given time, is seeking remedy in the labour courts every year.

The implication of this chaotic system goes beyond the legal sphere and has also become an economic problem. In 2016 alone, companies paid close to 3 billion Reais to Justice related to pending labour disputes. Among the branches of Justice, the Labour Court consumes 20.1% of the budget of the Judiciary System.

As many advocate, including myself, most of these disputes that clog Brazil's Court system could be solved through direct negotiation or mediation if the Law allowed. The good news is that

apparently (as better late than never), there seems to be some light at the end of the tunnel. On July 13, 2017, the Labour Reform Bill was finally approved by the National Congress, amending the Labor Law Consolidation (CLT) rules. The new rules, which came into effect in November last year, provides points that can now be negotiated between employers and employees and, in the event of a collective bargaining agreement, will have the force of law.

One important point in these changes in the Labour Reform also modified the relationship between employer and employee, stimulating self-composition, including the possibility of using Mediation as a mean to settle labour law disputes.

In this sense, in addition to the clear benefits to all directly involved in legal process, mediation can also be partial economic solution to lower the cost of doing business in Brazil. However, it is still too early to tell whether there will be a strengthening of mediation with the Law reform but, at least now, after a long wait, we can see the light at the end of the tunnel.

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