Machine Translated by Google

RCMOS – Multidisciplinary Scientific Journal of Knowledge.
ISSN: 2675-9128. São Paulo-SP.

Year V, v.1 2025. | submission: 08/31/2025 | accepted: 09/02/2025 | publication: 09/04/2025

Arbitration in Consumer Relations: Challenges and Guidelines for Effective Consumer Protection

Arbitration in Consumer Relations: Challenges and Guidelines for Effective Consumer Protection

Elival Tomaz Santos Junior

Dione Day Maria Pires Chaves
Tatiana do Nascimento da Silva

SUMMARY

This article analyzes the application of arbitration in consumer relations in Brazil, highlighting the conflicts between the Arbitration Law and the Consumer Protection Code. The research shows that, although arbitration offers speed and specialization, its use faces challenges due to consumer vulnerability and the need to ensure effective access to justice. International experiences, such as those of Portugal and France, which adopt mechanisms of free legal aid, state oversight, and transparency, are examined. Based on these references, the study proposes guidelines for a more equitable Brazilian model, including informed consent, reduced costs, public oversight, and legislative harmonization. It concludes that arbitration should be a complementary instrument to the judiciary, capable of strengthening consumer protection and promoting balance in market relations.

Keywords: Arbitration; Consumer Relations; Vulnerability; Access to Justice; Consumer Protection.

ABSTRACT

This article examines the application of arbitration in consumer relations in Brazil, highlighting the conflicts between the Arbitration Law and the Consumer Protection Code. The study shows that, while arbitration provides speed and specialization, its use raises challenges due to consumer vulnerability and the need to guarantee access to justice. International experiences, such as those from Portugal and France, are analyzed, emphasizing free access, government oversight, and transparency. Based on these references, the article proposes guidelines for a fairer Brazilian model, including informed consent, reduced costs, public supervision, and legislative harmonization. It concludes that arbitration should be a complementary instrument to the Judiciary, strengthening consumer protection and promoting balance in market relations.

Keywords: Arbitration; Consumer Relations; Vulnerability; Access to Justice; Consumer Protection.

1. INTRODUCTION

Consumer protection occupies a prominent position in the Brazilian legal system, not only as a fundamental right—guaranteed in Article 5, Section XXXII, of the Federal Constitution—but also as a structuring principle of the economic order, provided for in Article 170, Section V. This dual enshrinement reveals that consumer protection is not limited to an abstract normative ideal: it presents itself as an indispensable instrument for balancing relationships historically marked by inequality of power and informational asymmetry between suppliers and purchasers of goods or services.

In this context, arbitration emerges as an alternative dispute resolution method capable of offering speed, specialization, and technical efficiency. However, its application in the field of consumer relations is far from straightforward. On the one hand, the Consumer Protection Code (art. 51, VII) prohibits the compulsory imposition of this procedure; on the other, Law No. 9,307/1996 allows arbitration clauses in adhesion contracts, provided the consumer expresses express consent after the dispute (art. 4, § 2). This coexistence of regulations has given rise to divergent interpretations in legal doctrine and case law, sometimes favoring the dejudicialization of disputes, and sometimes reinforcing the need to preserve access to the Judiciary.

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

The central challenge, therefore, is to harmonize the agility and efficiency of arbitration with the constitutional and legal duty to protect vulnerable parties. Scholars such as Rizzatto Nunes and Fernanda Sirotsky Scaletcky emphasize that the validity and legitimacy of consumer arbitration depend on requirements such as free consent, affordable costs, and effective impartiality. Without these guarantees, arbitration risks becoming a barrier to access to justice, rather than an instrument for strengthening citizenship.

Based on this issue, this study proposes a critical examination of the role of arbitration in consumer relations, identifying its potential benefits and risks, analyzing international experiences, and proposing guidelines for its application in an equitable manner consistent with the principles of consumer law. The research adopts a qualitative approach, based on a literature review, legislative analysis, examination of judicial precedents, and comparative studies, seeking to contribute to the debate on the development of an arbitration model that balances procedural efficiency and effective consumer protection.

2. ARBITRATION AND CONSUMER RELATIONS: COMPATIBILITY AND CONFLICTS REGULATIONS

The 1988 Federal Constitution enshrines, in Article 5, Section XXXII, the State's responsibility to promote consumer protection, as provided for by law. Furthermore, Article 170, Section V, includes this same principle as a structuring element of the economic order. These provisions, analyzed together, reveal that consumer protection is not limited to a merely contractual or private aspect, but acquires the nature of public policy and collective interest, linked to the very equilibrium of market relations. Consumer protection, therefore, is not merely a tool to correct individual imbalances, but a guideline that governs the healthy functioning of the economy, reflecting constitutional values such as human dignity and social justice.

At the infraconstitutional level, Law No. 9,307/1996—known as the Arbitration Law—establishes, in its Article 1, that fully capable parties may use this mechanism to resolve disputes involving available property rights. This scope, at least in theory, would encompass a large portion of claims arising from consumer relations, since they generally involve property interests. However, the application of arbitration in this field encounters a significant barrier in the Consumer Protection Code (Law No. 8,078/1990). Article 51, VII, of the Consumer Protection Code (CDC) considers clauses that impose compulsory arbitration on consumers null and void, precisely to prevent the more vulnerable party from being excluded from the Judiciary by virtue of a unilateral contractual stipulation.

The Arbitration Law itself, however, provides for an exception in Article 4, § 2, allowing arbitration clauses in adhesion contracts, provided that the consumer's expression of intent is express and occurs after the dispute arises. This is not a mere procedural formality: this requirement seeks to ensure that the choice of arbitration is the result of free and informed consent, preventing the weaker party from being bound to a technical, potentially costly and specialized procedure, without fully understanding its legal and economic consequences.

The contrast between these provisions has created a scenario of interpretative uncertainty, reflected in divergent judicial decisions. The Superior Court of Justice, in the judgment of Resp 1.602.076/SP (2021), adopted a protective stance by invalidating prior arbitration clauses unaccompanied by subsequent consent to the dispute, reinforcing the centrality of conscious consent. On the other hand, the Court of Justice of São Paulo, in cases such as Civil Appeal No. 103XXXX-47.2020.8.26.0100 (2022), recognized the v

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

of arbitration clauses as long as they are accompanied by clear and accessible information for the consumer, in addition to reasonable economic conditions.

This normative tension goes beyond a conflict between legal provisions: it exposes the lack of uniform criteria that reconcile the pursuit of procedural speed—a characteristic often attributed to arbitration—with the preservation of the protective function of consumer rights. A merely contractualist interpretation, focused exclusively on the autonomy of will, risks weakening the principle of vulnerability, provided for in Article 4, Section I, of the Consumer Protection Code, and compromising the systemic coherence of consumer protection.

Therefore, a systematic and teleological interpretation of the rules is required, guided by three essential axes: (i) the prevalence of the protective function of consumer law over the strict logic of private autonomy; (ii) the rejection of any form of disguised imposition of arbitration, which could restrict access to state jurisdiction; and (iii) the strengthening of stable and predictable case law, capable of offering legal certainty to both consumers and suppliers. Only through this interpretative triad will it be possible to balance the objectives of the Arbitration Law and the Consumer Protection Code.

2.2 Consumer vulnerability

Arbitration in consumer relations can only be analyzed coherently if we start from one inescapable fact: the consumer is the vulnerable party in this relationship. This vulnerability, expressly provided for in Article 4, Section I, of the Consumer Protection Code, is not limited to economic limitations but also manifests itself on a technical level—lack of knowledge of information related to the product or service and legal issues, difficulty understanding complex contractual clauses and their consequences.

Recent research, such as that by João Guilherme Marques Cruz, Lorena Tôrres de Arruda, and Ana Celuta F. Taveira (2022), reveals that most consumers are unable to effectively assess the scope of an arbitration clause, especially when it is included in adhesion contracts. In these cases, the wording is unilateral, drafted by the supplier, and often tied to previously selected arbitration panels, which can compromise the perceived impartiality of the procedure.

Fernanda Sirotsky Scaletcky's (2020) warning is pertinent: when poorly structured, arbitration can become an obstacle to the fundamental right of access to justice (Article 5, XXXV, of the Federal Constitution). The main risks identified include:

• inducing the understanding that arbitration is the only possible way to resolve the conflict;
• high costs that, in some cases, exceed the value of a legal process;
• perception of bias when the arbitration chamber maintains close ties with business sectors.
rials.

For Gabriela Carmona Freiria (2021), mitigating these distortions requires specific protective measures, such as mandatory informed consent, state oversight of arbitration chambers, and guaranteed free or shared costs for the procedure. This view is reinforced by Raasch (2022), who argues that arbitration is only legitimate in the consumerist field if it ensures genuine balance between the parties, procedural transparency, and effective consumer choice.

Therefore, recognizing consumer vulnerability is not a simple conceptual exercise, but a prerequisite for redesigning the very architecture of arbitration proceedings. This institution must be inclusive, accessible, and effectively protective, so that the promise of speed and specialization does not become yet another mechanism for restricting rights.

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

3. MEDIATION, CONCILIATION AND ARBITRATION: COMPLEMENTARITY IN CONFLICTS CONSUMER ACT

Arbitration is part of the set of so-called Appropriate Methods of Dispute Resolution (ADS), alongside mediation and conciliation. These mechanisms comprise a hybrid dispute resolution model that aims not only to reduce the burden on the Judiciary but also to enhance the quality and effectiveness of rights protection, especially in relationships characterized by the vulnerability of the consumer.

In the Brazilian legal landscape, the search for consensual solutions is supported by constitutional and infraconstitutional provisions. Article 5, LXXVIII, of the Federal Constitution guarantees a reasonable duration for proceedings and encourages expeditious dispute resolution. The 2015 Code of Civil Procedure (Article 3, §§ 2 and 3) imposes on all procedural parties the duty to encourage self-composition, while Law No. 13,140/2015 regulates mediation in both private and public relations.

Studies such as that of João Guilherme Marques Cruz, Lorena Tôrres de Arruda and Ana Celuta F. Taveira (2022) indicate that the staggered integration of these methods — negotiation, mediation or conciliation, and, ultimately, arbitration — favors faster, more transparent and satisfactory solutions for both parties.
This practice reduces costs, increases consumer understanding of the procedure, and minimizes the risk of flawed consent.

Along the same lines, Gabriela Carmona Freiria (2021) argues that prior mediation can eliminate a significant number of consumer disputes by creating a space for dialogue in which suppliers can correct service failures and offer personalized solutions before the conflict progresses to arbitration or judicial proceedings.

Among the most efficient preventive strategies, the following stand out:

- staggered contractual clauses (negotiation ÿ mediation/conciliation ÿ arbitration);
- internal service channels and ombudsman offices with decision-making power;
- extrajudicial mediation by independent entities;
- pre-trial conciliation in Judicial Centers for Conflict Resolution and Citizenship (CEJUSCs);
- compliance and conflict management programs with consumer satisfaction indicators.

Recent case law confirms this trend. The São Paulo Court of Justice (TJSP) (ApCiv No. 103XXXX-47.2020.8.26.0100, 2022) recognized the validity of escalated clauses, as long as the consumer's right to appeal to the courts if dissatisfied with the previous solution is preserved. The Federal Court of Justice (TJDFT) (ApCiv No. 070XXXX-42.2021.8.07.0001, 2024) reinforced that prior mediation can enable faster and more economically advantageous agreements, especially in lower-value claims.

In short, the complementarity between mediation, conciliation, and arbitration should be conceived as part of a public policy of dejudicialization, but always with safeguards that ensure clear information, proportional costs, and impartiality. Consumers need to be assured that opting for alternative methods does not eliminate their right to seek legal redress, but rather complements it, strengthening the effectiveness of the protection of their rights.

4. FOREIGN EXPERIENCES AND LESSONS FOR BRAZIL

Comparative analysis of foreign systems demonstrates that several European nations have structured

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

Consumer arbitration models based on three fundamental pillars: accessibility, impartiality, and transparency. These experiences offer relevant guidelines for improving the Brazilian institutional framework, but they require adaptation to local realities, otherwise they may become unfeasible or ineffective.

In Portugal, the Consumer Arbitration Legal Framework (Law No. 63/2011) establishes that the procedure is free of charge for consumers, ensuring that economic barriers do not impede the exercise of the right to an out-of-court settlement. Funding comes from public funds and mandatory contributions from participating companies, creating a mixed funding structure. Oversight of arbitration chambers is the responsibility of the Directorate-General for Consumer Affairs, a state agency that, in addition to accrediting the institutions, oversees their operations, ensuring standards of quality, neutrality, and impartiality. This centralization contributes to the standardization of procedures and the establishment of a positive reputation for the institution, strengthening public trust and encouraging its use.

In France, Ordinance No. 2015-1033 created a national alternative dispute resolution system, requiring mediators and arbitrators to be previously accredited by a state authority. The French model stands out for its regulatory rigor in the area of transparency: arbitration decisions must be published—with anonymized personal data—and the appointment of arbitrators must follow objective and clear criteria, avoiding favoritism and preserving the credibility of the process. This publicity, while enabling social oversight, contributes to the development of a more predictable and uniform arbitration jurisprudence, benefiting legal certainty and decision-making consistency.

As Raasch (2022) highlights, there are direct lessons from these experiences for the Brazilian context, especially in three dimensions:

1. **Free or reduced cost to the consumer,** made possible by public mechanisms or deprived of funding;
2. **Effective state supervision,** capable of guaranteeing the impartiality and technical quality of procedures. coughs;
3. **Systematic and organized dissemination of decisions,** forming a body of arbitration precedents that allows greater predictability and coherence in the resolution of disputes.

The contrast with the Brazilian reality is stark. As Scaletcky (2020) warns, the lack of a unified and monitored model opens the door to significant distortions, such as: (i) charging excessive amounts, making access to arbitration impossible for low-income consumers; (ii) the proliferation of arbitration chambers with close ties to certain business sectors, compromising impartiality; and (iii) the insertion of arbitration clauses worded in an obscure manner, hindering consumers' understanding and often limiting their access to the judiciary.

Although Brazil has a solid regulatory framework for consumer protection—led by the Consumer Defense Code—the lack of specific and robust regulation for consumer arbitration undermines the credibility and effectiveness of this mechanism. Simply transposing foreign models would not resolve this gap; careful adaptation is essential, taking into account the country's socioeconomic peculiarities, legal culture, and level of consumer education.

Thus, elements such as free services for consumers, centralized state oversight, and the publication of decisions could indeed be incorporated into the Brazilian system, but their implementation would require significant adjustments. In the economic sphere, it would be necessary to create stable sources of funding—possibly through sectoral funds or regulatory contributions. In the cultural sphere, it would be essential to invest in consumer education and awareness campaigns to overcome the strong culture of judicialization.

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

lization and distrust of extrajudicial methods.

In conclusion, more than replicating foreign models, the Brazilian challenge lies in institutionalizing a consumer arbitration system that is supervised, transparent, accessible, and financially sustainable. Such a system must preserve the protective core of the Consumer Protection Code, ensure legal certainty, and simultaneously respect the country's economic and social reality. Only with this combination of regulatory adaptation, financial viability, and cultural acceptance will it be possible to transform consumer arbitration into an effective and reliable dispute resolution tool.

5. GUIDELINES FOR MORE EQUITABLE AND ACCESSIBLE CONSUMER ARBITRATION

Based on an analysis of the Brazilian regulatory framework, international experiences, and specialized literature, it is possible to establish a set of guidelines that ensure that consumer arbitration acts as an instrument of effective consumer protection and not as a barrier to access to justice. Implemented in an integrated manner, these measures have the potential to correct distortions, increase public trust, and strengthen the legitimacy of the institution.

1.1. Informed and qualified consent

The validity of an arbitration clause in consumer relations requires a free and conscious expression of will after the dispute arises, as provided for in Article 4, § 2, of the Arbitration Law. Simply signing a contract of adhesion containing an arbitration provision does not satisfy this requirement. It is essential that, at the time of the dispute, the consumer fully understands the consequences of their choice, including costs, deadlines, procedural rules, and the possibility of recourse to the courts. To this end, the clause must be written in plain, clear language, accompanied by objective clarifications from the supplier.

1.2. Reduced costs or free of charge for the consumer

Inspired by the Portuguese model, it is recommended that arbitration be free of charge for consumers, with funding coming from public funds or mandatory contributions from participating companies. When free arbitration is not feasible, a ceiling should be set for costs and fees to prevent the amounts charged from becoming prohibitive, especially in low-value disputes.

1.3. State supervision and mandatory accreditation

The system's credibility requires ongoing oversight by a public body—such as the Ministry of Justice or a specialized entity—responsible for accrediting and monitoring arbitration chambers. This oversight should encompass institutional suitability, transparency, impartiality, and technical qualifications, ensuring that only qualified and impartial institutions operate in the consumerist field.

1.4. Parity in the selection of arbitrators

To preserve impartiality and eliminate suspicions of favoritism, it is essential that the choice of ar-

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

The distribution of prices is balanced between the parties. Unilateral selection by the supplier is not permitted. Models such as public drawings or lists previously approved by the regulatory body can ensure greater equity and trust in the process.

1.5. Mediation or conciliation as mandatory preliminary steps

Arbitration must be preceded by mandatory attempts at consensual resolution, such as mediation or conciliation, under Law No. 13,140/2015. This measure helps resolve most disputes more quickly and less costly, reserving arbitration for situations in which prior negotiation does not produce an agreement.

1.6. Transparency and publicity of arbitration decisions

The publication of arbitration decisions, while preserving personal data, creates a body of arbitration case law that promotes predictability and standardization of understandings. This practice, already adopted in France, reinforces legal certainty and the reliability of the system.

1.7. Legislative harmonization between the CDC and the Arbitration Law

The existence of potentially conflicting provisions—such as Article 51, VII, of the Consumer Defense Code and Article 4, §2, of the Arbitration Law—requires legislative intervention to unequivocally define the compatibility and application limits of each rule. This harmonization will help reduce disputes over the validity of arbitration clauses and provide greater predictability in decisions.

FINAL CONSIDERATIONS

The analysis conducted throughout this work highlights that arbitration, while holding the potential to offer swift and technically specialized solutions to consumer disputes, faces significant obstacles when applied in a context characterized by the structural vulnerability of consumers. The regulatory tension between the Consumer Protection Code and the Arbitration Law, coupled with the lack of a uniform and effectively monitored regulatory framework, contributes to a situation of legal uncertainty that undermines both social trust and the practical effectiveness of the institution.

It has been found that the indiscriminate use of arbitration, especially in adhesion contracts, can limit access to the judiciary, impose disproportionate costs, and raise doubts about the impartiality of decisions. In contrast, international experiences, such as those of Portugal and France, demonstrate that the adoption of mechanisms that provide free arbitration for consumers, strict state oversight, transparency in the conduct of proceedings, and equality in the selection of arbitrators can transform arbitration into a legitimate, reliable, and socially acceptable instrument.

The guidelines proposed in this study — which cover informed consent, cost reduction or exemption, public oversight of arbitration chambers, implementation of prior mediation or conciliation stages, and legislative harmonization — reinforce that consumer arbitration is only compatible with the principles of the CDC if it ensures effective balance between the parties, guaranteeing consumers freedom and awareness in exercising their choice.

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Machine Translated by Google

In this context, legislative and jurisprudential standardization emerges as an indispensable condition for overcoming current uncertainties and allowing arbitration to fully fulfill its role as an appropriate dispute resolution method. At the same time, public policies focused on consumer education and the dissemination of clear information about arbitration mechanisms can reduce information asymmetry and foster a culture of consensual dispute resolution.

Therefore, arbitration should not be conceived as an exclusive alternative to the Judiciary, but as a complementary and balanced instrument within the consumer protection system, capable of contributing to a fairer, more transparent and efficient market, in which speed and justice go hand in hand.

REFERENCES

Works and articles

• CRUZ, João Guilherme Marques; ARRUDA, Lorena Tôrres de; TAVEIRA, Ana Celuta F. *Arbitration and consumption: compatibilities and challenges.* Consumer Law Journal, São Paulo, v. 130, p. 45-72, 2022.
• FREIRIA, Gabriela Carmona. *Arbitration in consumer relations: limits and perspectives in Brazilian law.* Belo Horizonte: Fórum, 2021.
• NUNES, Rizzatto. *Consumer Law Course.* 17th ed. São Paulo: Saraiva, 2021.
• RAASCH, Rodrygo Welhmer. *Appropriate methods of conflict resolution: an analysis of the complementarity between mediation, conciliation and arbitration in consumer relations.* Journal of Arbitration and Mediation, São Paulo, v. 74, p. 101-128, 2022.
• SCALETCKY, Fernanda Sirotsky. *Arbitration in consumer law: constitutional and legal limits.* Consumer Law Journal, São Paulo, v. 123, p. 189-212, 2020.

Brazilian legislation

• BRAZIL. *Constitution (1988).* Constitution of the Federative Republic of Brazil. Brasília, DF: Federal Senate, 1988.

• BRAZIL. *Law No. 8,078 of September 11, 1990.* Consumer Protection Code. Brasília, DF: Presidency of the Republic, 1990.
• BRAZIL. *Law No. 9,307 of September 23, 1996.* Provides for arbitration. Brasília, DF: Presidency of the Republic, 1996.

• BRAZIL. *Law No. 13,105 of March 16, 2015.* Code of Civil Procedure. Brasília, DF: Presidency of the Republic, 2015.

• BRAZIL. *Law No. 13,140 of June 26, 2015.* Provides for mediation between individuals and self-resolution of conflicts within the public administration. Brasília, DF: Presidency of the Republic, 2015.

Foreign legislation

• PORTUGAL. *Law No. 63/2011, of December 14.* Legal regime for voluntary arbitration and mandatory consumer arbitration. Official Gazette, 1st series — No. 239, December 14, 2011.
• FRANCE. *Ordonnance n° 2015-1033, du 20 août 2015.* Relative au règlement extrajudiciaire des litigates de consommation. Journal Officiel de la République Française, 21 août 2015.

Jurisprudence

• BRAZIL. Superior Court of Justice. REsp 1.602.076/SP. Rapporteur Min. Ricardo Villas Bôas Cueva. 3rd Panel. Tried on February 23, 2021. E-DJ March 1, 2021.
• BRAZIL. Court of Justice of São Paulo. Civil Appeal No. 103XXXX-47.2020.8.26.0100. Rel. Des. Francisco Loureiro. 1st Reserved Chamber of Business Law. Judged on March 15, 2022.
• BRAZIL. Court of Justice of the Federal District and Territories. Civil Appeal No. 070XXXX-42.2021.8.07.0001. Rel. Des. Cruz Macedo. 5th Civil Chamber. Decided on February 12, 2024.

This is an open access article distributed under the terms of the Creative Commons Attribution license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.