GETTING THE DEAL THROUGH

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Portugal

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Litigation

1 Court system

What is the structure of the civil court system?

The Portuguese civil court system is hierarchically divided into first-instance courts, courts of appeal and the Supreme Court of Justice.

First-instance courts have jurisdiction over any civil claim that is not of the specific jurisdiction of another court and are territorially divided in accordance with the Portuguese judiciary map. There are also first-instance courts with specialised jurisdiction according to the subject matter under dispute (ie, family courts, juvenile courts, labour courts, courts of commerce and maritime courts). If necessary in view of the volume and complexity of the service, the first-instance courts may be subdivided into groups with specific competence depending on the type of proceedings, which vary according to the value and nature of the claim.

In claims with a value exceeding €30,000 the parties may agree on the judgment of the case by a collective court composed of three judges. Otherwise, the court will be composed of a single judge.

The court of appeal primarily acts as a second-instance court in civil claims of more than €5,000. The Portuguese courts of appeal have seats in Lisbon, Oporto, Coimbra, Évora and Guimarães.

The Supreme Court of Justice has its seat in Lisbon and jurisdiction over the full Portuguese territory. Its main role consists of hearing appeals on points of law of decisions of the courts of appeal in civil claims of more than €30,000.

As a general rule, appeals submitted before the courts of appeal or the Supreme Court of Justice are decided by a collective panel of three judges but, in certain cases, namely when a precedent needs to be established, may also be decided by a collective panel composed of all the judges of the Supreme Court of Justice civil division.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

Portuguese civil proceedings follow the adversarial system. Consequently, judges will have to decide based on the facts and evidence brought by the parties to the proceedings or that are complementary or instrumental to such facts. Nevertheless, Portuguese civil procedure rules establish certain prerogatives of judges, which are considered manifestations of the inquisitorial system (eg, the judge has the power to order ex officio the production of any evidence deemed necessary to determine the truth of the case).

Judges are also free to decide on the points of law, even in matters not pleaded by the parties.

Juries play no role in civil proceedings.

3 Limitation issues

What are the time limits for bringing civil claims?

The time limits for bringing civil claims are three years for tort liability and 20 years for contractual liability. Nevertheless, a shorter time limit of five years is fixed for debts periodically renewed (eg, capital interests, outstanding rents, etc). On the other hand, in certain cases (eg, debts deriving from services rendered) there is a legal presumption that the debt was paid or the obligation complied with after the elapsing of six months or two years. This legal presumption of compliance can only be contradicted by the debtor's confession.

The statute of limitation regime is considered a matter of public order not subject to modification by the parties' agreement. Thus, any contract by which the parties agree to alter such legal regime, in any way, is null and void.

Any court service given to the debtor that reflects the creditor's intention to exercise its rights interrupts the statute of limitation time period and a new time period will start.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

No pre-action behaviour is imposed on or required from the parties before issuing proceedings. In any case, the parties may voluntarily agree on the use of alternative means of dispute resolution (ADR), such as meditation or arbitration. Such agreement can be reached prior to any dispute or at any time after, even during the course of judicial proceedings.

5 Starting proceedings

How are civil proceedings commenced?

Civil proceedings are commenced by the submission of a written statement of claim before the competent court (as a general rule the court of residence of the defendant).

The parties have to be represented by a lawyer in any claim in which an appeal to a higher court is possible (eg, claims exceeding €5,000).

The following elements have to be included in the statement of claim:

- identification of the competent court;
- parties' identification;
- the lawyer's registered office;
- type of proceedings;
- exposition of the relevant facts and legal grounds;
- the claim; and
- the claim value.

All relevant documents, a power of attorney and the receipt of payment of the initial court fees should also be submitted with the statement of claim.

All statements of case and other applications can be filed directly to the court's secretary by registered mail, fax or the internet (through an official website). If the latter is used by the parties, the court fees will be reduced by 25 per cent.

6 Timetable

What is the typical procedure and timetable for a civil claim?

In ordinary proceedings (claims exceeding €30,000), the following procedures and timetables will generally be followed:

- submission of the statement of claim;
- service of the statement of claim to the defendant;
- 30 days for the defendant to submit its statement of defence;
- 15 days for the claimant to submit its response to the statement of defence (only admissible if new facts or legal exceptions were introduced by the defendant) or 30 days if a counterclaim was introduced in the statement of defence;
- 15 days for the defendant to submit its reply to the new facts or legal exceptions introduced by the claimant in its reply to the defendant's counterclaim;
- pretrial conference (the judge will try to conciliate the parties and, if unsuccessful, will rule on the facts already proven at that stage – proven facts – and on the list of relevant facts to be subject to evidence and discussion in the trial hearing – questionnaire. At this moment the parties are also required to submit their list of witnesses and other means of evidence);
- trial hearing (which will end with the lawyers' oral conclusions on the points of fact);
- court's ruling on the points of fact;
- 10 days for each party to submit its conclusions on the points of law;
- final court's decision;
- 30 days for the losing party to appeal from the decision to the competent court of appeal or 40 days if the court's decision on the points of fact is challenged;
- 30 or 40 days (please see above) for the winning party to reply to the statement of appeal;
- court of appeal decision;
- 30 days for the losing party to appeal to the Supreme Court of Justice;
- 30 days for the winning party to reply to the statement of appeal; and
- Supreme Court of Justice decision.

This standard timetable may be altered due to conferences, hearings and decisions in accordance with the judge's and the lawyers' agenda. It is fair to say that standard times are usually increased.

7 Case management

Can the parties control the procedure and the timetable?

An extension of the procedural time limits for the submission of the statements of case up to twice the original period may be granted by the court at the party's request. The parties may also agree on the suspension of the proceedings up to a period of six months.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

The parties should conduct the proceedings in accordance with the principle of procedural good faith. Notwithstanding, Portuguese civil proceedings are not subject to the full disclosure rule. Thus, the parties are not obliged to share any document with the counterpart.

In any case, a party may request the court to order the submission of any document relevant to the case known to be in the possession of the counterpart or of any other person or entity.

Furthermore, the Portuguese Civil Code determines that the burden of proof lies on the party that asserts the fact. Consequently, it is in the party's best interest to submit all documents necessary to prove the facts stated in its statement of case.

The original documents or their certified copies should be submitted to court. Simple copies of private documents (eg, written agreements, written letters, etc) will also be accepted by the court, unless the counterpart challenges their veracity.

If the statements of case are submitted via the internet, a digital copy of the documents will be sufficient. In this case the court may, at any time, order the party to submit to court the original documents, which should, for that reason, be preserved until the end of the proceedings.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The party or any person or entity in possession of any documents under privilege may refuse to submit them to court. Nevertheless, if the court considers the information under privilege necessary to determine the truth of the case it may request the waiver of such privilege from the higher court.

The following information is considered privileged:

- confessions made to religious ministers;
- all information exchanged in a patient-doctor relationship;
- bank information;
- the names of journalists' sources;
- all information exchanged between a client and his or her attorney; and
- correspondence between lawyers duly marked as confidential.

Attorney-client privilege can only be put aside by the court with the prior accordance of the Portuguese Bar Association and of the respective attorney. Advice from an in-house lawyer (local or foreign) is also deemed confidential.

Information considered essential for national security is also not subject to disclosure.

The disclosure of any information under privilege will not be accepted as evidence by the court and constitutes a criminal offence.

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

As a general rule, witnesses only give oral evidence at the trial hearing, either directly before the court that will decide the dispute or by videoconference from the court of the witness's residency. Written depositions such as affidavits are not accepted in principle. However, the parties may agree to hear the witnesses in one of the parties' attorney's office (without the presence of the judge), in which case a written statement signed by the witness and by the parties' lawyers must be submitted to court.

Witnesses may also give evidence prior to the trial hearing if such measure is deemed necessary to prevent the loss of the evidence.

Public authorities representatives (eg, the president of the Republic, members of government and of the parliament, judges of high courts, etc) are entitled to give evidence in writing.

Experts may also give evidence in writing through the submission of an expert report. In any case, the parties may request further clarification of the experts' reports and may also request that the experts give oral evidence in the trial hearing.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The trial will begin by the presentation of the evidence submitted by the claimant, followed by the presentation of evidence submitted by the defendant in accordance with the following order:

- party's deposition (only at the request of the counterpart and aimed at obtaining confession on the facts unfavourable to the deponent);
- exhibition of visual means of evidence (videos);
- experts' oral deposition on the controversial points of the experts' written opinion; and
- witnesses' oral deposition.

Prior to the commencement of the witness deposition, the witness will take oath and will be advised by the court that any false declaration constitutes a criminal offence.

The witness will be questioned first by the lawyer of the party that appointed the witness and subsequently cross-examined by the lawyer of the opposing party. At any time, the court may interrupt the inquiry to obtain any clarification deemed necessary or put forth any other questions.

12 Interim remedies

What interim remedies are available?

Prior to or during the course of civil proceedings a party may request from the court any preliminary injunction necessary to preserve or prevent the loss of or offence to the right that constitutes the grounds for the claim (eg, the freezing of the debtor's assets). For the injunction to be ordered, summary evidence must be made on the existence of the right (fumus bonus juris) and on the justifiable risk that it would be serious and burdensome to repair damage that will result unless the injunction is ordered (periculum in mora).

Injunction proceedings are urgent and subject to confirmation by the court in the final judgment made in the ordinary (principal) proceedings. In special circumstances, injunctions may be granted without the prior hearing of the defendant, in which case the defendant will only submit its defence after the ruling on the injunction.

Portugal, as a member of the European Union, is subject to Council Regulation (EC) No. 44/2001 of 22 December 2000. Consequently, interim remedies are also available in support of foreign proceedings.

13 Remedies

What substantive remedies are available?

According to Portuguese law the creditor is only entitled to compensatory damages. In fact, the creditor has the right to be placed in the same economic situation it was in before the unlawful damage occurred (restitutio in integrum). If compensation by way of restitution is not possible, the compensation shall be determined in money.

Compensation includes direct losses and loss of profits. Interest fixed at legal rates will accrue to the damages attributed by the court.

Moral damage may also be compensated and will be determined by the court ex aequo et bono.

If the defaulting party is subject (by law or contract) to an obligation of performance in which it cannot be replaced by a third entity, the non-defaulting party may also request from the court the establishment of a compulsory pecuniary sanction until the obligation is complied with. This economic sanction will be determined ex aequo et bono and reverts in equal parts to the creditor and the Portuguese state.

14 Enforcement

What means of enforcement are available?

Portuguese court orders are immediately enforceable unless the respective court decision is challenged by appeal to a higher court and the appellant guarantees (by adequate collateral) the remedies granted.

Enforcement proceedings can be intended to:

- seize and sell the debtor's goods to obtain payment of the monetary debt and costs of enforcement;
- obtain the delivery of certain goods or objects; or
- obtain the performance of a conduct by a third party in replacement for the debtor.

From the moment the court order becomes res judicata, interest at the rate of 5 per cent per year will accrue to the amount of damages fixed by the court, irrespective of the interest due for late payment. The non-compliance with any court order constitutes a criminal offence.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Portuguese civil proceedings are public except if the disclosure of the contents may harm the dignity or privacy of the persons involved, or when it jeopardises the public order or the efficiency of the decision to be issued by the court (eg, proceedings to obtain the annulment of marriage, judicial divorce, claims related to the recognition of paternity and injunction proceedings).

The court may also reject that the trial hearing is held in public if such measure is deemed necessary to ensure the normal functioning of the hearing.

Whenever there is no restriction to public access to the proceedings, all court documents will be made available to the parties, lawyers and anyone who shows a legitimate interest in the same.

16 Costs

Does the court have power to order costs?

The parties are required to pay the respective court fees (determined in accordance with the nature and value of the claim) with the submission of the statement of case and the statement of defence. The minimum and maximum amounts of court fees and taxes are established by a Code of Court Costs.

In its final decision the court will rule on the allocation of costs incurred in the proceedings. The costs in the proceedings will be borne by the losing party in the proportion of its loss (ie, if only 50 per cent of the claim is successful then the claimant will bear 50 per cent of all court costs).

The ruling on the court costs will include the court fees paid in advance by the parties, the expenses supported by the parties with the presentation of evidence (experts' fees, etc) and an amount granted to compensate the winning party for expenses incurred with legal fees (lawyer's fees and enforcement agent's fees), limited to half of the amount of court fees to be paid by both parties.

Within five days from the court's final decision becoming res judicata, the winning party has to service the losing party with a detailed account specifying all amounts due in the terms mentioned above.

The court may also award costs incurred with lawyers fees without limitation if it rules that a party acted with procedural bad faith.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Under the applicable Portuguese Bar rules, attorneys' fees should correspond to an adequate retribution of the legal service rendered, determined in accordance with the relevance of the services, difficulty and urgency of the matter, the intellectual creativity involved, the final outcome of the case, the time spent and the responsibility incurred by the lawyer. Thus, 'no win, no fee' agreements (quota litis) are not admissible according to Portuguese law.

It is, however, not uncommon to agree on cap fees, success fees, or both. In cases of success fee arrangements, such success fee should only represent a part of the lawyer's total fees, being the relevant part established in accordance with the aforesaid rules set by the Portuguese Bar Association.

Parties are free to commence proceedings using third-party funding, based on contractual arrangements. However, the third-party investor is not a party in the proceedings and, therefore, can have no intervention in the same and the allocation of winnings is subject to contractual agreement. Please also note that caution should be exercised in this matter to prevent possible cases of extortion, corruption or fraud, in which case civil and criminal liability may result.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

Insurance agreements that cover legal costs (including court fees and lawyers' fees and expenses) are permitted in accordance with the Portuguese Law on Insurance Agreements. As a general rule, the insured is free to choose the lawyer that will assist him or her.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Any citizen may commence a class action intended to prevent or obtain compensation for the unlawful harm of general or public interests protected by law (eg, public health, the environment, quality of life, consumers' rights, cultural heritage). Nevertheless, not all common interests belonging to a large number of persons are considered to be in the general or public interest for the purpose of a class action (for example, damage suffered by all passengers of an aircraft deriving from the crash of the aircraft consists of a common interest but it is not a general interest).

The claimant may act on behalf of others without the need of any power of attorney or other specific authorisation. In fact, after the submission of the statement of claim the court will give notice to all interested parties, which will have the right to refuse to be represented by the claimant that commenced the proceedings (opt-out). If nothing is said it is assumed that the claimant is duly authorised to carry on with the proceedings.

Portuguese class actions may be aimed at obtaining a general compensation on behalf of the community or individual compensations granted to each of the offended persons.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

For an appeal to be possible it is necessary that the appellant has been defeated in proceedings where the decision concerned an amount of at least €2,500 and that the claim value is in excess of €5,000.

The court of appeal may decide both on points of fact and on points of law. In certain circumstances, the court of appeal may also decide appeals regardless of the value of the claim (eg, claims involving the termination of residential lease agreements).

If the value of the claim is higher than €30,000, and the decision against the appellant is worth at least €15,000, an appeal to the Supreme Court of Justice is also admissible, unless the court of appeal has unanimously confirmed the decision of the first-instance court. Nevertheless, an appeal to the Supreme Court of Justice will be possible if deemed necessary to obtain case law uniformity.

As a general rule, the Supreme Court of Justice only rules on points of law and its decisions are final except in cases of non-compliance with the Portuguese Constitution, in which case the parties may appeal to the Portuguese Constitutional Court.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

According to Council Regulation (EC) No. 44/2001 of 22 December 2000, on the recognition and enforcement of decisions of courts of other member states in civil and commercial matters, a judgment given in a member state shall be recognised and enforceable in Portugal as long as:

- it is not manifestly contrary to the Portuguese public order;
- the rights of defence of the defaulting defendant were duly complied with;
- it is not in direct contradiction with a prior judgment given in a dispute between the same parties in Portugal or in another country; and
- the foreign decision is not in breach of the Regulation rules on jurisdiction.

The provisions of Regulation No. 2201/2003/EC of 27 November 2003 on the jurisdiction, recognition and enforcement of judgments in matrimonial and parental responsibility and the rules of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on the recognition and enforcement of judgments in insolvency proceedings are also applicable.

In respect of the recognition and enforcement of foreign decisions of non-member states' courts, it will be necessary to commence special proceedings of recognition of those foreign decisions (exequatur) before the Portuguese court of appeal. In this case, only decisions res judicata may be recognised.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The taking of evidence in Portugal for use in civil proceedings in courts of other member states of the European Union is subject to the provisions of Council Regulation (EC) No. 1206/2001 of 28 May 2001. According to such provisions, evidence may be obtained in Portugal by the foreign court directly (in which case the evidence must be given voluntarily and without resource to coercive means) or by way of a request to the Portuguese courts.

Other states that are part of the Hague Convention on international cooperation in the production of evidence in civil and commercial matters may obtain evidence by submitting an application to the Portuguese General Department of the Ministry of Justice Judiciary Services.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Portuguese Law on Voluntary Arbitration (Law No. 31/86, of 29 August) is not based on the UNCITRAL Model Law, which was published in 1985 at a point when the preparatory work on the Portuguese arbitration law was already completed.

Though an advanced law in its own time, it now needs revision. A project has been completed and is under consideration by the Ministry of Justice. In such project, the UNCITRAL Model Law was indeed adopted as the basis for the new revision.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be made in writing and must specifically determine the subject matter of the dispute that is submitted to arbitration. Notwithstanding, a simple exchange of written messages (e-mails, letters, faxes, etc) containing the arbitration agreement or remitting to a different document where such agreement is inserted will be sufficient.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The arbitral award can be delivered by one or more arbitrators but an odd number of arbitrators has to be appointed. If the parties do not agree on the number of arbitrators the tribunal will be composed of a panel of three arbitrators, one appointed by each party and the third one (ie, the chairperson) by agreement of the other arbitrators or, if such agreement cannot be reached, by the president of the court of appeal or, in an institutional arbitration, in accordance with the rules of such institution.

The parties have the right to challenge the appointment of any arbitrator based on the same grounds applicable to challenging court judges (eg, if the arbitrator has a direct interest in the matter under dispute or when the spouse, child or other relative is one of the parties involved, or the arbitrator has previously acted in the case as a lawyer, expert or witness, etc).

A party may not challenge an arbitrator appointed by it unless the reasons for such challenging are verified or known to exist only after the respective appointment.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

Proceedings may be subject to the rules of arbitral institutional courts (eg, ICC) or the parties can otherwise agree to commence proceedings before an ad hoc arbitral tribunal, in which case the arbitration rules of procedure will be established by them or by the arbitrators.

In any case, the procedural rules must guarantee that:

- both parties are treated with absolute equality;
- the defendant is summoned to present its defence;
- the rules comply with the adversarial system and contradiction is ensured; and
- both parties are heard (verbally or in writing) before the final award is delivered.

Any means of evidence admissible according to Portuguese Civil Procedural Law may be presented, and if the evidence to be presented depends on third parties, the arbitrators may request the presentation of such evidence before a judicial court.

27 Court intervention

On what grounds can the court intervene during an arbitration?

The judicial courts have residual intervention during arbitration. In particular, the judicial courts will:

(i) appoint the arbitrators or the chairperson in the absence of the agreement between the parties;
(ii) allow the production of evidence by uncooperative parties before the courts at the party's request and with the prior authorisation of the arbitral tribunal;
(iii) decide appeals when an appeal is admissible;
(iv) decide on the annulment of the award on the grounds of:
  - non-arbitrability of the subject matter of the dispute;
  - irregularity on the constitution of the arbitration tribunal or lack of jurisdiction to decide the dispute;
  - non-compliance with the principles mentioned in question 26; or
  - absence of relevant formal elements of the award (eg, absence of the arbitrators signatures); and
(v) enforce the arbitral award.

28 Interim relief

Do arbitrators have powers to grant interim relief?

The current Portuguese Law on Voluntary Arbitration does not allow arbitrators to grant interim relief. In any case, this is contemplated in the revision works in terms similar to the UNCITRAL Model Law. At present, parties must apply to the courts for such interim relief, prior to or during arbitration proceedings.

29 Award

When and in what form must the award be delivered?

The parties may agree on the time limit granted to the arbitrators to deliver an arbitral award but, if nothing is said to that respect in the arbitration agreement, a period of six months will be applicable. During the proceedings, the parties may also agree to extend the duration of the time limit up to double the time initially granted. Arbitrators who fail to deliver the award in the predetermined time period without a reasonable justification may be held liable for the damage caused to the parties.

The arbitral award must:

- be made in writing;
- identify the parties;
- make reference to the arbitration agreement and to the subject matter under dispute;
- identify the arbitrators and the seat of arbitration;
- be dated and signed by the arbitrators and include the declarations of vote of the arbitrators who did not agree with the majority of votes;
- include the grounds of the decision (both of fact and law); and
- include the allocation of costs.

30 Appeal

On what grounds can an award be appealed to the court?

The current law foresees the possibility of appeal from the arbitration award to the appellate judicial court under the same terms of appeals from the first-instance judicial courts. The law, however, creates an exception for 'international arbitrations', defined as those that deal with 'interests of international trading'. In those cases, an appeal is only possible if the parties have expressly agreed to such appeal and have regulated the respective procedural terms.

In addition, the agreement of the parties on an award ex aequo and bono is deemed to be a waiver to the right of appeal.

Notwithstanding the aforesaid, even if the final award is not subject to appeal, the parties may start judicial proceedings requesting the annulment of the award on the grounds mentioned in question 27, item (iv).

Most institutional rules contemplate the principle that recourse to arbitration under the rules of the institution implies a waiver to any appeal.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Portugal is party to the New York Convention and as such, foreign awards are enforceable under the terms of such Convention.

Domestic arbitral awards are enforceable without need of exequatur under the same terms of the decisions of the first-instance courts.

32 Costs

Can a successful party recover its costs?

As mentioned in question 26, proceedings may be subject to the rules of arbitral institutional courts (eg, ICC), in which case the respective rules on the allocation of costs and their recovery by the winning party will apply. If the parties otherwise agree to commence proceedings before an ad hoc arbitral tribunal, the rules on the allocation of costs set by the parties or by the arbitrators will apply.

In any case, the arbitral award must always contain a ruling on the allocation of costs.

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

The types of ADR commonly used are mediation and conciliation.

Mediation was introduced in the judicial system in 2001 as an element of the proceedings followed in specific courts then created with jurisdiction limited to small disputes (peace courts). In such courts, the parties are invited to mediation and should attend a pre-mediation session where the features and benefits of mediation are explained. The parties, however, have the option to refuse prior or after such session the proposed mediation.

In such peace courts as well as in family and consumer disputes, mediation has registered significant success. In labour disputes and other areas, though, fostered by the government, progress has been considerably slower.

Update and trends

The government proposed to the parliament a law project for a new arbitration law that closely follows the UNCITRAL Model Law. However, due to the dissolution of the parliament and calls for general elections that occurred in early April, this law project is considered to be elapsed.

The new government that will result from the coming elections will certainly take the project on again; therefore, the long-awaited new arbitration law will probably enter into force later this year.

Commercial mediation is still in its initial steps but a considerable effort is being made to promote such voluntary form of ADR.

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is no such requirement except for small disputes in the peace courts. However, as mentioned in question 33, this is not mandatory; the parties will always have the possibility of refusing mediation.

Conciliation is normally attempted by the judge in the course of the judicial proceedings prior to the production of evidence. If unsuccessful, the motives of the parties for the impossibility of conciliation shall be recorded in the minutes of the proceedings.

In any case, and except as to such conciliation attempt, the court cannot force the parties to participate in an ADR process. Notwithstanding, according to the recent revision of the Civil Procedure rules on the allocation of costs (entered into effect on 20 April 2009), whenever the claimant has the contractual option or has been induced to participate in a ADR process and chooses to commence judicial proceedings, the claimant will bear its own expenses, even if the court's final decision is in his or her favour.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

All enforcement acts involving the seizure and sale of debtors' goods will be carried out by an enforcement agent under the supervision of the judge.

ALVES PEREIRA & TEIXEIRA DE SOUSA RL

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