

## Dispute Resolution

## Portugal

**I. INTRODUCTION TO PORTUGUESE LAW****I.1 LEGAL SYSTEM**

The Portuguese Legal System is a Civil Law system based on laws that are applied and interpreted by judges.

The organization of the courts is complex and the competence of each type of court depends on the nature of the dispute in question.

The main division is between judicial jurisdiction and administrative jurisdiction (including tax). Portugal is divided for judicial purposes and normally each municipality has its own judicial courts, which have generic competence.

However, in several municipalities (and always in the main cities) there are sub-types of judicial courts with specific jurisdiction e.g. in civil, criminal, family, commerce and employment matters.

Taking into account the value of the claim, the type of case and other circumstances, there can be sub-types of courts within the civil and criminal courts.

**I.2 SOURCES OF LAW**

- The Portuguese Constitution;
- Laws and decree laws (including all the legal codes);
- Regional laws;
- Regulations which implement the laws;
- Custom.

**I.3 LIMITATION PERIOD**

There is no general rule in Portuguese Law as to limitation and limitation periods.

Depending on whether the matter is a civil, corporate, employment, public or criminal claim, the limitation period varies from 30 days to 3 years as from the date of the breach (if the claim is in contract) or the date when the tort is committed (if the claim is in tort).

**2. ADMINISTRATION OF JUSTICE AND JUDICIAL FUNCTION****2.1 JURISDICTION****2.1.1 Portuguese Courts**

The judicial courts, as ordinary courts, are competent to judge all civil and criminal matters that are not subject to any other specialised jurisdiction (subsidiary competence).

Specialised jurisdiction: courts that exercise specialised jurisdiction, such as, criminal courts, family courts, juvenile courts, industrial courts, commercial courts, maritime courts, courts for execution of sentences;

Specific jurisdiction: civil and criminal courts composed of a panel of judges or a single judge. Jury courts may also exist depending on the type of crime (crimes with malicious intent against human life, for example).

### **2.1.2 The European Union**

As a member of the EU, the jurisdiction of Portuguese courts in civil or commercial matters involving parties in different EU member states is determined by the 'Brussels I' Regulation (EC Council Regulation 44/2001) ("the Regulation") and by the Brussels Convention of 1968 as regards Denmark and the Lugano Convention of 1988 as regards the EFTA states.

The general rule under the Regulation is that a defendant should be sued in his home court i.e. the place where an individual lives or where a company has its registered office or central place of business.

### **2.1.3 Rest of the World**

International Private Law is regulated in the Portuguese Civil Code and the general rule is to treat foreigners in the same way as Portuguese citizens, with regard to rights and obligations. Articles 25 to 65 of the Civil Code establish the applicable law in certain conflicts.

If the principle stipulates the competence of the foreign law, there will be the relinquishment to the foreign legal system.

The foreign law may refer to a 3<sup>rd</sup> legal system or return the matter to Portuguese law. Portuguese law will only accept the renvoi of the claim, if the interested person has his/her residence in Portuguese territory.

The principles that govern the identification of the proper law include: provisions governing personal matters, provisions governing contract and obligations, assets, family relationships and succession.

Depending on the matter, the applicable law can be the place of birth, the place where an individual lives, the place where a company has its registered office or central place of business, the place where assets are or the place where the contract was made.

## **3. LEGAL PROCEEDINGS**

### **3.1 COURT SYSTEM**

According to the provisions of article 209 of the Portuguese Constitution, the structure of independent courts comprises:

#### **3.1.1 The Constitutional Court**

This court has jurisdiction in matters of a constitutional nature.

### **3.1.2 The Supreme Administrative Court and other Administrative and Tax Courts**

These courts are competent to judge contentious cases and appeals and their object is to try disputes emerging from administrative and taxation matters.

### **3.1.3 The Audit Court**

This court has jurisdiction to audit the government's accounts.

### **3.1.4 The Supreme Court of Justice**

This is the highest court in the judicial court hierarchy, subject to the jurisdiction of the Constitutional Court.

### **3.1.5 Judicial Courts of the Second Instance**

Second Instance Courts (Tribunais da Relação).

### **3.1.6 Judicial Courts of the First Instance – District Courts**

Circuit courts jurisdiction.

## **3.2 CIVIL PROCEDURE**

### **3.2.1 Ordinary Action**

- a) **Plaint:** a pleading that must identify the competent court, the form of the proceedings, the parties, the legal grounds and the claim.
- b) **Defence:** the defendant must plead his/her defence within 30 days to dispute the grounds pleaded in the plaint, plead new facts that will defeat or diminish the merits of the claim and/or file a counterclaim.
- c) **Reply:** within 15 days (or 30 days when there has been filed a counterclaim) as from service of the defence, the claimant may reply to the matters pleaded in the defence.
- d) **Reply to the defence to the counterclaim:** within 15 days and only if the initial claim has been amended, or if the claimant has commented on the claim in the defence, the defendant may respond to the matters pleaded therein.
- e) **Pre-Trial:** In the 30 days following the closing of pleadings, the judge may hear the parties and may try to reach a settlement between them. This is also an opportunity to discuss the legal aspects and the judge will consider the question of any procedural nullities. Depending on the complexity of the case, the judge may also issue a final decision based on the written submissions.
- f) **Trial:** Each party presents its case. Each party makes closing submissions after the witnesses have been examined.  
The judge will issue a final decision within 30 days.

- g) Appeal: The unsuccessful party may, within 10, 15 or 30 days, lodge an appeal against the judgment passed by the judge. There are different types of appeals, depending on the effect intended.

### **3.2.2 Corporate Litigation Procedure**

The corporate litigation procedure is similar to the civil procedure outlined above (3.2).

### **3.2.3 Interim Measures**

During the litigation process and until the closing of pleadings, parties can plead any fact that might support, modify or extinguish the claim.

However, the judge can reject the admission of a new fact, if it was presented out of time and/or if it is not relevant to the merit of the case.

### **3.2.4 Enforcement Proceedings**

In the Portuguese legal system, enforcement proceedings are independent from the main proceedings. In enforcement proceedings the judgments in the main proceedings have the status of an enforceable instrument (there are other enforceable instruments, such as, private documents or notarial documents) and the debtor's assets may be seized and subsequently sold in order to satisfy the judgment.

Another alternative is to commence bankruptcy proceedings against the debtor.

### **3.2.5 Enforcement of Foreign Decisions**

As a member of the EU, Portugal is bound by (EC) Regulation 44/2001, and is also a signatory of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

If the judgement or award was rendered in a country not bound by the Regulation or the New York Convention, the causes of non-enforcement under Portuguese Law are very similar to those provided in these documents.

The court will never order a re-hearing of the dispute or a review of the award. However, it is possible, as a consequence of compliance with general principles of Portuguese Law, that the court does not recognize the entire award.

Outside of the scope of application of the EU regulation, which has its own rules, a formal recognition of the decision will have to be requested and the party against whom the recognition is requested will be entitled to defend the application. The court or the parties may request that evidence be produced and subsequently the parties will present their oral arguments.

After the award has been recognised, enforcement may be requested. The enforcement follows the provisions of the Portuguese Procedural Rules regarding enforcement of judicial court decisions. These rules still allow some opposition procedures, which cannot stop the enforcement procedure, unless a bond is paid.

### 3.2.6 Civil Small Claims Courts

In 2001, civil small claims courts were created by Law 78/2001 of 13<sup>th</sup> July. These courts, which promote participation by citizens, have jurisdiction to decide minor disputes by encouraging an agreement between the parties through a simple and informal procedure.

These courts are organised according to territorial jurisdictions and can only decide disputes with a monetary value of € 5 000,00 or less.

The claims must, *inter alia*, be related to:

- payment of debts;
- delivery of goods;
- condominium management;
- liability claims based on minor crimes;
- securities and warranties.

Each of these courts has an arbitration section as an alternative to litigation. Both procedures (litigation or arbitration) are simple and have the force of judgments issued by first-instance judicial courts.

## 4. ARBITRATION

### 4.1 ARBITRATION IN PORTUGAL

Arbitration is accepted by the Portuguese law as a part of the administration of justice, when the dispute is submitted, by the parties, or by the law, to a private decision, when the award has the force and effect of a judgment or by first-instance judicial courts and are an enforceable instrument.

#### 4.1.1 Arbitration categories

**Compulsory Arbitration** – Which is obligatory in certain situations as provided in special laws. Governed by the articles 1525 to 1528 of the Portuguese Civil Procedure and subsidiary by the Voluntary Arbitration Law (Law No. 31/86, of 29<sup>th</sup> August);

**Voluntary Arbitration** – Which takes place whenever the parties stipulate arbitration as the means to settle any disputes arising from a contractual relationship.

The parties may nominate independent and impartial arbitrators, who are usually lawyers or experts on the specific matter.

#### 4.1.2 The Arbitration Convention

Article I of the said Law No. 31/86, of 29<sup>th</sup> August, provides for the existence of an “Arbitration Accord”, which is a written agreement that must contain the subject-matter of the arbitration in very clear terms and establishes the possibility of resolving the current dispute (arbitration agreement) or a future dispute (arbitration clause).

The inclusion of a dispute resolution clause in any kind of contract, compels the parties to deal with the dispute in arbitration proceedings.

An arbitration accord can be revoked but only until the moment before the arbitrator issues his decision.

#### **4.1.3 Arbitration Award**

As already stated above, an arbitration award has the same effect as a judgement handed down by a judge and it is often considered to be an enforceable instrument.

An arbitration award may be nullified by the court in an action for annulment, which can be brought by any interested party within one month of the notification of the arbitration award.

However, this is restricted to cases where there are irregularities in the procedure, such as irregularities in the formation of the Arbitration Tribunal or if the dispute is not allowed to be solved by an Arbitration Tribunal.

International arbitration awards as well as foreign judgements must be reviewed and confirmed by a competent Portuguese Court.

The Portuguese law also allows for the existence, via legal approval, of institutions authorised to conduct arbitration proceedings.

The main centres of institutionalized arbitration in Portugal are:

- the Commercial Arbitration Centre;
- the Portuguese Chamber of Commerce and Industry;
- the Arbitration Centre of the Confederation of the Professions.

These institutions have their own rules, which combine the requirements of Portuguese law with concerns for the prompt settlement of disputes.

Arbitration proceedings are accordingly only permitted to solve matters of specific legal rights. Arbitration is fast track justice.

## **4.2 PROCEDURE**

After the establishment of the Tribunal (which may comprise a single arbitrator or a number of arbitrators), the parties are heard and all the evidence is adduced.

## **4.3 APPEAL**

If the parties have not renounced the right to appeal in the Arbitration Accord, they are entitled to appeal from the final award to a superior Court.

## 5. ALTERNATIVE EXTRA- JUDICIAL DISPUTE RESOLUTION

### 5.1 ALTERNATIVE DISPUTE RESOLUTIONS

#### Prior Independent Evaluation

The process whereby an independent technical expert, usually a lawyer, hears the arguments of the parties in the dispute and gives his opinion.

#### Expert Examination

The process whereby an expert on the issue is appointed to decide the dispute, and his decision is binding on the parties;

### 5.2 MEDIATION

#### 5.2.1 General Procedure

##### Mediation

The mediator helps the parties to reach an agreement that is considered to be acceptable to all, evaluating all the possibilities that might successfully put an end to the dispute.

##### Conciliation

A conciliator has a more active role than a mediator, in order to try to reach a settlement between the parties.

#### 5.2.2 Advantages and Disadvantages of Mediation

The advantages of Mediation are: procedural flexibility, the potential for achieving a speedier and a more cost effective result.

The disadvantages include a lack of rigour in the resolution of the dispute.

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