Commercial Arbitration 2018
Portugal

Frederico Goncalves Pereira, Miguel Pinto Cardoso, Rui Andrade, Carla Goncalves Borges, Catarina Carvalho Cunha, Filipe Rocha Vieira and Joana Neves
VdA Vieira de Almeida

gar know-how

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Infrastructure

1 The New York Convention
Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

Portugal is a party to the New York Convention, which entered into force in January 1995. Portugal made the reciprocity reservation, meaning that the Convention is only applicable to arbitral awards rendered in a state that is also a party to the Convention. This reservation is of limited practical effect in light of the more-favourable-right provision of the Convention given that (i) Portugal is party to treaties that allow for the recognition of foreign arbitral awards; and (ii) the requirements for the recognition of foreign arbitral awards contained in the Portuguese Voluntary Arbitration Law (VAL), which was enacted in December of 2011 and entered into force in March 2012, are very similar to those of the Convention.

2 Other treaties
Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Portugal is party to several bilateral and multilateral treaties regarding the recognition and enforcement of arbitral awards. The most important bilateral treaties include those between Portugal and Portuguese-speaking countries, such as Angola, Cape Verde, Guinea-Bissau, Mozambique and Sao Tome and Principe. As for multilateral treaties, Portugal is a party to the Geneva Convention on the Execution of Foreign Arbitral Awards, the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States and the Inter-American Convention on International Commercial Arbitration.

3 National law
Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

The VAL replaced the previous arbitration law, which had been in force since 1986, and is based on the UNCITRAL Model Law, albeit with differences and specificities tailored to the Portuguese legal system and the arbitral culture and practice. The VAL is applicable to all arbitrations seated in Portugal although it contains some specific rules applicable to international arbitrations aimed at rendering Portugal an attractive seat. Under the VAL, arbitrations are considered international when international trade interests are at stake.

4 Arbitration bodies in your jurisdiction
What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

The most prominent commercial arbitration institution in Portugal is the Arbitration Centre of the Portuguese Chamber of Commerce and Industry, whose rules entered into force in March 2014 and reflect both the changes introduced by the VAL and international best practice. Fast-track arbitration rules were also enacted in March 2016. The Centre may act as an appointing authority if agreed between the parties in the arbitration agreement.

There are no international arbitration bodies based in Portugal, although the ICC has a national committee in Portugal, which assists the Court in the appointment of Portuguese arbitrations.

5 Foreign institutions
Can foreign arbitral providers operate in your jurisdiction?

Foreign institutions can, and do, operate in Portugal. According to the authors' experience, the ICC is the foreign arbitration institution most widely chosen by Portuguese users.

6 Courts
Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with the law and practice of international arbitration?

There is no specialist arbitration court for voluntary arbitration in Portugal. State courts, in particular Courts of Appeal – which are the default courts for assistance and control under the LAV – are familiar with the law and practice of international arbitration, generally applying the VAL in a predictable and consistent manner.

Agreement to arbitrate

7 Formalities
What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

The VAL requires arbitration agreements to be made in writing, otherwise they will be deemed as null and void. This requirement is met if

the agreement is recorded in a written document signed by the parties, in an exchange of communications providing a written record of the agreement, including electronic means of communication as well as any other type of support that offers the same guarantees of reliability, comprehensiveness and preservation. References made in a contract to a document containing an arbitration clause constitute an arbitration agreement, provided that they are made in writing and that the reference is such as to make that clause part of the contract.

The VAL distinguishes between an arbitration agreement concerning an existing dispute, even if already pending before a state court (submission agreement), and an arbitration agreement arising from a given legal contractual or non-contractual relationship (arbitration clause). A submission agreement must specify the subject matter of the dispute and an arbitration clause must specify the legal relationship underlying the dispute. An arbitration agreement, in the form of an arbitration clause, can cover all future disputes arising out of or in connection with such contract.

In international arbitrations seated in Portugal, the validity of the arbitration agreement and the possibility of referring the dispute to arbitration are determined by reference to the requirements set out either by the law chosen by the parties to govern the arbitration agreement, by the law applicable to the subject matter of the dispute or by Portuguese law, whichever is more permissive of arbitration.

8 Arbitrability

Are any types of dispute non-arbitrable? If so, which?

Any dispute involving economic interests may be referred to arbitration, save for those disputes which are exclusively submitted by a special law to the state courts (eg, criminal and insolvency disputes) or to compulsory arbitration (eg, certain labour disputes and disputes regarding the introduction of generic drugs in the market). In addition, disputes that do not involve economic interests may also be subject to arbitration provided that the parties are entitled to settle the disputed right. The state and other legal entities governed by public law may enter into arbitration agreements insofar as they are authorised to do so by law, or if such agreements concern private law disputes.

9 Third parties

Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

The VAL expressly regulates the joinder of third parties and its provisions apply in the absence of an agreement between the parties. The principle is that only third parties originally bound under the arbitration agreement, or that have subsequently adhered to it, are allowed to join a pending arbitration. The joinder is subject to the consent of all parties to the arbitration agreement. If the tribunal has already been constituted, the joinder depends on the third party accepting the composition of the tribunal. The joinder will only be allowed if it does not unduly disrupt the normal course of the arbitration and if there are relevant reasons that justify it (some of which are established in the VAL). Although the parties may agree differently on the process of (re) constitution of the tribunal in the event of a third-party joinder, in principle the joinder before the constitution of the tribunal may only occur under institutional arbitrations and, in any event, the principle of equality of the parties in the appointment of arbitrators must prevail.

10 Consolidation

Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

The matter of consolidation of arbitrations is not expressly addressed in the VAL, which means that in the absence of a specific agreement between the parties (namely by reference to the rules of arbitration institutions that regulate the issue as is the case of the Arbitration Centre of the Portuguese Chamber of Commerce and Industry) the possibility of consolidation will, in principle, be subject to the agreement of all the parties (and possibly of the arbitral tribunal) and will most likely depend on a case-by-case analysis considering, inter alia, the nature of the dispute, the terms of the arbitration agreement and the status of the proceedings.

11 Groups of companies

Is the "group of companies doctrine" recognised in your jurisdiction?

Although recognised in principle, the application of such doctrine is not settled in Portugal and its application (i) will depend on a case-by-case analysis, (ii) will be subject to very strict requisites and (iii) will be considered an ultima ratio solution. Indeed, courts will generally require consent – either express or tacit – by the third party for the doctrine to apply and will consider other legal basis for the extension of the arbitration agreement such as fraud, abuse of rights or representation. To the best of our knowledge, there is no case law that directly applied this doctrine to extend the arbitration agreement to third parties.

12 Separability

Are arbitration clauses considered separable from the main contract?

The doctrine of separability of the arbitration clause has been adopted expressly by the VAL, which clearly states that an arbitration clause forming part of a contract will be treated as a separate agreement vis-à-vis the other contractual terms and that the invalidity of the main contract does not automatically determine the invalidity of the arbitration clause.

13 Competence-competence

Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal's jurisdiction and competence?

The principle of competence-competence is recognised in Portugal and is expressly regulated in the VAL. The VAL regulates the positive effect of this principle, granting the tribunal the power to decide on its own jurisdiction (an issue which must be raised by the respondents until or together with the submission of the defence on the merits of the dispute) either through a partial decision (which may be challenged within 30 days by appeal to the competent state court; the appeal does not stay the arbitration but if successful will void the arbitral award) or together with the decision on the merits (which may also be challenged on the grounds of lack of jurisdiction). The VAL also regulates the negative effect of the principle, directing state courts to refer a dispute to arbitration in the event that one of the parties invokes an arbitration agreement (save when it finds that the arbitration agreement is clearly null and void, is or became inoperative or is incapable of being performed), and allowing the arbitral proceedings to be commenced or continued, and an award to be rendered, while the issue is pending before the state court. The competence-competence principle is generally applied in a consistent and predictable manner by the state courts.

14 Drafting

Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

There are no particular points specific to Portuguese jurisdiction that need to be considered when drafting arbitration clauses, although parties should be aware of specific provisions regarding international arbitrations, in particular those establishing that awards rendered in Portugal within the scope of arbitrations where foreign law was applied to the subject matter of the dispute will be set aside or not enforced, whenever such enforcement leads to a result that is manifestly incompatible with the principles of international public policy.

15 Institutional arbitration

Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

To the best of our knowledge there are no statistics to support this perception, but in recent years there has clearly been an increasing preference for institutional arbitrations. According to our experience, Portuguese users very seldom adopt the UNCITRAL Rules.

16 Multi-party agreements

What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

There are no points specific to Portuguese jurisdiction that need to be considered when drafting a multi-party arbitration agreement. Parties may wish to regulate the appointment of arbitrators, as is the case in other jurisdictions, namely by selecting an appointing authority. However, the default rule under the VAL is that in the absence of an agreement between the parties, the competent state court will make the appointment. The state court may appoint all arbitrators and designate the chairman if it becomes clear that the parties who failed to appoint an arbitrator jointly have conflicting interests regarding the substance of the dispute. The parties may also wish to regulate the possibility of joinder of additional parties or consolidation of arbitrations, particularly in the event of multiple contracts, in which case the parties should also ensure that all the agreements have compatible arbitration clauses. It is advisable that the parties refer to the rules of an arbitration institution governing multi-party arbitrations.

Commencing the arbitration

17 Request for arbitration

How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

Parties are free to agree on the procedural rules, including with respect to the commencement of the arbitration (eg, by adopting institutional rules that provide for a different procedure). Failing such an agreement, arbitral proceedings are commenced by written notice to the other party of the claimant's intention to refer the dispute to arbitration. The arbitral proceedings will be deemed initiated on the date when the respondent receives the notice. The VAL provides for a subsequent written phase where the parties may submit their statements of claim and defence.

Limitation periods for commencing the arbitral proceedings are governed by substantive law. For example, the Portuguese Civil Code establishes limitation periods of three and 20 years for non-contractual and contractual civil liability respectively.

Choice of law

18 Choice of law

How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

The tribunal resolves the dispute in accordance with the rules of the law chosen by the parties and, in the absence of such a choice, in accordance with the law of the state to which the subject matter of the dispute has the closest connection. Thus, while the parties are free to designate rules of law, including a-national sources of private nature, the tribunal is limited to a law of a given state. In any case, the tribunal will consider the terms of the contract and take into account the usages of the trade applicable to the transaction.

On the other hand, the arbitrators may decide ex aequo et bono or as amiable compositeur when the parties have expressly authorised them to do so.

Appointing the tribunal

19 Choice of arbitrators

Does the law of your jurisdiction place any limitations in respect of a party's choice of arbitrator?

Arbitrators must be individuals and have full legal capacity. Arbitrators must be and remain independent and impartial, and have a duty to disclose any circumstances that, from the parties' perspective, could affect their independence and impartiality. The tribunal must be composed of an uneven number of arbitrators. No additional qualifications are required, except when set forth by the parties in the arbitral agreement.

20 Foreign arbitrators

Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

Non-Portuguese nationals can and indeed act as arbitrators in arbitrations seated in Portugal or where hearings are held in Portugal. There are no specific immigration or other requirements.

21 Default appointment of arbitrators

How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

The arbitration agreement may designate the arbitrators, provide for the procedure and conditions of their designation, either directly or by reference to an arbitral institution's rules, or designate an appointing authority.

Where no nomination is made by a party or parties or the selection mechanism fails for any reason, the President of the relevant Court of Appeal will appoint the missing arbitrator(s) at the request of the interested party, after taking into account the qualifications that have been agreed by the parties as well as all relevant circumstances to ensure that an independent and impartial arbitrator is appointed, including, in international arbitration, the nationality of the parties. State courts' decisions on the appointment of an arbitrator are not subject to appeal.

22 Immunity

Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

Arbitrators are accorded the same immunity as state judges, whose liability is generally limited to fraudulent conducts or gross fault. The VAL typifies arbitrators' liability in the following circumstances: unjustifiable delay in issuing the award or in performing their functions and resignation without cause. Arbitrators can be held liable towards the parties only.

23 Securing payment of fees

Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

Arbitrators have the power to order advance deposits in respect of their fees and expenses. If the parties fail to pay the requested advances, the tribunal may order the stay of the proceedings until payment, or even terminate the proceedings. In any case, the tribunal must give the non-defaulting party the opportunity to pay the outstanding amounts.

Portuguese arbitral institutions settle the arbitrators' fees and expenses and act as trustees of the parties' funds.

Challenges to arbitrators

24 Grounds of challenge

On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

A party may challenge an arbitrator on the grounds of circumstances giving rise to justifiable doubts as to his or her impartiality or independence, or failure to meet the qualifications agreed by the parties.

Parties are free to agree on the procedures for the challenge of arbitrators either directly or by reference to institutional rules. Failing such agreement, the party intending to challenge an arbitrator shall submit a written statement to the tribunal with the reasons for the challenge. If the challenged arbitrator does not step down and the party that appointed the arbitrator insists that the arbitrator continue, the tribunal will decide on the challenge with the participation of the challenged arbitrator. Only when the tribunal refuses the challenge may the challenging party apply to the state court, whose decision is not subject to appeal. While the challenge is pending before the state court, the arbitration may continue and the final award rendered. State court proceedings on challenges are treated as urgent.

The codes of ethics approved by the Portuguese main arbitration institutions have drawn inspiration from the IBA Guidelines. These are also frequently followed as relevant guidance by state courts.

Interim relief

25 Types of relief

What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

Except when otherwise agreed by the parties, the tribunal has the power to grant both interim measures and preliminary orders. The types of measures that may be granted are broad and include ordering a party to:

- maintain or restore the status quo pending determination of the dispute;
- take action that would prevent, or refrain from taking action that is likely to harm or impair the arbitral process itself;
- provide a means of preserving assets out of which a subsequent award may be satisfied; or
- preserve evidence that may be relevant and material to the resolution of the dispute.

Parties, however, maintain the right to seek interim relief before state courts, whether the arbitration is seated in Portugal or not. A request for interim measures made by a party to a state court prior to or pending arbitral proceedings is not deemed incompatible with the arbitration agreement nor considered a waiver to arbitration. State courts will exercise such power in accordance with the general procedural rules, but shall take into consideration the specific features of international arbitration.

Conversely, preliminary orders can only be requested to a tribunal and will be granted without prior notice to the counterparties if necessary to guarantee the effectiveness of the request.

While both interim measures and preliminary orders are binding upon the parties, only the first may be enforced by state courts.

Anti-suit injunctions are expressly forbidden by article 5(4) of the VAL.

26 Security for costs

Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

Although the issue is not specifically addressed, security for costs may be ordered under the general rules for interim measures set forth by the VAL.

Procedure

27 Procedural rules

Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

The principle of party autonomy prevails. The parties may, until the acceptance by the first arbitrator, agree on the procedure to be followed in the conduct of the proceedings. Compliance with the following due process principles is mandatory: the respondent will be summoned to present its defence; the parties will be treated with equality and given a reasonable opportunity to present their case, in writing or orally, before the final award is issued; the adversarial principle shall be guaranteed.

28 Refusal to participate

What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

If a party fails to participate in an arbitration, it is common practice that the arbitral institution and the arbitrators review the summon procedure and obtain sufficient evidence that the defaulting party received due notice of the arbitration. The failure of the respondent to present its statement of defence or the failure of any party to appear at a hearing will not be deemed as an admission of the claim. In that case, the proceedings will continue and the tribunal will rely on existing allegations and evidence to decide.

29 Admissible evidence

What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the

Taking of Evidence in International Arbitration generally be taken into account?

The parties are free to agree on the rules of the procedure, including those concerning admissible evidence. Failing such agreement, the tribunal will conduct the proceedings, as it deems appropriate, provided that the principles of due process are observed. The Portuguese legislator intended to draw a clear line between arbitration and domestic judicial proceedings, granting total flexibility and autonomy to the parties and tribunals in this respect.

The IBA Rules are generally taken into account as a reference in arbitration. State courts are also familiar with the IBA Rules and have already taken them into account in arbitration-related decisions.

30 Court assistance

Will the courts in your jurisdiction play any role in the obtaining of evidence?

When the parties or third parties refuse to cooperate to obtain evidence, a party may, with the approval of the tribunal, request from the competent state court that the evidence be taken before it, the results thereof being forwarded to the tribunal. The request to take evidence addressed to a state court is also admissible in case of arbitrations seated abroad.

31 Document production

What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

Parties and arbitral tribunals are familiar with the IBA Rules on the Taking of Evidence and use them as a reference. Typically, domestic litigation practice is followed regarding document production, which relies on the initiative of each party to request documents from the other party with leave from the tribunal, provided they identify the requested documents and justify their relevance. Broad discovery is not applied and could be construed as conflicting with constitutional due process principles.

32 Hearings

Is it mandatory to have a final hearing on the merits?

A final hearing on the merits is not mandatory and is subject to the discretion of the tribunal, unless otherwise agreed by the parties. The tribunal may decide to conduct the proceedings merely on the basis of documents and other means of proof. The tribunal will, however, hold one or more hearings for the presentation of evidence whenever so requested by a party, unless the parties have previously agreed that no hearings will be held.

33 Seat or place of arbitration

If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

The arbitral tribunal may meet at any place it considers appropriate to hold hearings, to allow the production of any evidence or to deliberate, unless otherwise agreed by the parties.

Award

34 Majority decisions

Can the tribunal decide by majority?

Majority voting is the rule, but if no majority is reached, chairman renders the award. If an arbitrator refuses to vote, the other arbitrators may render the award, unless otherwise agreed by the parties. The chairman may decide on issues relating to procedural ordering, procedural sequence or procedural initiative, if authorised by the parties or all other members of the tribunal.

35 Limitations to awards and relief

Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

The particular types of remedies or relief that may be granted by an arbitral tribunal will depend on the substantive law of the dispute. The VAL does not foresee any limitations on the types of remedies or relief that may be granted by the tribunal, with the exception that the remedies or relief may not have an enforcement nature or conflict with the principles of international public policy of the Portuguese state (eg, arbitral awards were already set aside for granting excessive penalty clauses).

36 Dissenting arbitrators

Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

The VAL does not refer to dissenting opinions. However, in practice, this possibility is generally admitted and common, whether in ad hoc or institutional arbitrations.

37 Formalities

What, if any, are the legal and formal requirements for a valid and enforceable award?

Unless the parties authorised the tribunal to decide ex aequo et bono, the award must be rendered in accordance with the applicable law.

The award must be made in writing and signed by the arbitrator(s). In arbitral proceedings with more than one arbitrator, the signatures of the majority of tribunal members or that of the chairman, in case the award is to be made by the latter, shall suffice, provided that the reason for the omission of the remaining signatures is stated in the award.

The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is rendered on the basis of an agreement between the parties. Furthermore, the award must state the date on which it was rendered, and the place of the arbitration.

Unless otherwise agreed by the parties, the award must determine the proportions in which the parties shall bear the costs directly resulting from the arbitration.

38 Time frames

What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

Unless otherwise agreed by the parties, the award must be rendered within 12 months as from the date of acceptance by the last arbitrator. The parties may agree or the tribunal decide to extend such time limit for successive periods of 12 months, provided that the tribunal's decision is duly motivated, unless both parties oppose.

Within 30 days following service of the award, unless another period of time has been agreed by the parties, the parties may request the correction of any errors in computation, any clerical or typographical error or any error of an identical nature, as well as the clarification of any obscurity or ambiguity of the award or of the reasons underpinning it.

Absent an agreement to the contrary, the parties may also request the tribunal, within 30 days of receipt of the notice of the award, to make an additional award as to parts of the claim or claims submitted in the arbitral proceedings but omitted from the award.

Costs and interest

39 Costs

Are parties able to recover fees paid and costs incurred? Does the "loser pays" rule generally apply in your jurisdiction?

Unless otherwise agreed by the parties, the tribunal shall rule on the allocation of costs of the proceedings. The arbitrators may furthermore decide, if they so deem fair and appropriate and if the necessary evidence is provided, that one or some of the parties compensate the other party(ies)for all or part of reasonable costs and expenses, such as lawyers' fees, travel and translation costs. Practice shows that the 'loser pays' rule applicable in state courts is frequently followed in arbitrations.

40 Interest on the award

Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

Whether interest may be awarded is a matter of applicable substantive law. Where Portuguese law is applicable to the merits, the tribunal can award interest at the rate set by the parties or, in the absence of an agreement, at the legal rate, which is updated every six months. Portuguese law establishes different rates for civil and commercial interest.

Challenging awards

41 Grounds for appeal

Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

As a rule, arbitral awards will only be subject to appeal if expressly foreseen by the parties; hence, the grounds on which an award may be appealed against before state courts will vary according to party specification. In international arbitrations seated in Portugal, appeal will only be possible to another arbitral tribunal if the parties so have agreed and regulated its terms.

42 Other grounds for challenge

Are there any other bases on which an award may be challenged, and if so what?

A party may apply for the setting aside of an award made in Portugal, with the following grounds:

- if one of the parties to the arbitration agreement was incapacitated, or the agreement is not valid under the law to which the parties have agreed to submit it, or failing express reference thereon, under the VAL;
- if there has been a violation of any of the mandatory principles of due process applicable as per the VAL, with influence on the decision rendered;
- if the award deals with a dispute not contemplated by the terms of the arbitration agreement, or if it contains decisions on matters beyond the scope of the arbitration agreement;
- if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties save if such agreement was in conflict with a provision of the VAL and provided that such non-conformity has a decisive influence on the decision;
- if the tribunal condemns in an amount in excess of the claim, or deals with issues on which its decision was not required/allowed or the exact opposite;
- if the award is not signed by the arbitrators or the Chairman, where applicable, nor is it reasoned, as required by the VAL;
- if the award is notified to the parties after the time limits set under the VAL, or agreed to by the parties.

An award may additionally be set aside if the court finds that (i) the subject matter of the dispute cannot be decided by arbitration under Portuguese law, or (ii) the award has applied non-Portuguese law to the dispute and the decision is in conflict with Portuguese public policy.

43 Modifying an award

Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

Parties may not waive their right to set aside an arbitral award.

Enforcement in your jurisdiction

44 Enforcement of set-aside awards

Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

Portuguese courts will reject recognition and enforcement of awards that have been set aside or suspended by the courts of the country in which the award was rendered or under the law of such country.

45 Trends

What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

There is no specific trend of Portuguese courts regarding the enforcement of arbitral awards. But Portuguese courts are fairly knowledgeable of the matter and quite prone to enforce awards.

46 State immunity

To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

Pursuant to the VAL, when the arbitration is international and a party to the arbitration agreement is a state or a state-controlled entity, said party may not resort to its domestic law to challenge the dispute's arbitrability or its capacity to act as a party to the arbitration, nor may such party, in any other way, evade its obligations arising from such agreement.

Further considerations

47 Confidentiality

To what extent are arbitral proceedings in your jurisdiction confidential?

Arbitrators, the parties, or arbitral institutions as the case may be are bound to maintain the confidentiality of any information and documents they may have access to in the course of arbitral proceedings, save when disclosure proves necessary to protect their rights or comply with any disclosure obligations before the relevant authorities. This does not preclude awards and other decisions issued by arbitral tribunals from being made public provided the parties' details are removed and the latter have not opposed disclosure.

48 Evidence and pleadings

What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

The above general rule on confidentiality is extensive to evidence produced and pleadings submitted in the relevant proceedings.

49 Ethical codes

What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

Under the VAL, arbitrators are bound by duties of independence and impartiality. Other than that, there are no general binding laws on ethics in arbitration in force in Portugal. The Portuguese Arbitration Association has, however, enacted a Code of Ethics for Arbitrators, mandatory for its members and which may also be relied on, at will, by authorised arbitration centers, parties in ad hoc arbitrations and arbitral tribunals. Several arbitration centres also have mandatory codes of ethics.

50 Procedural expectations

Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

There are no expectations or assumptions worth highlighting of which counsel or arbitrators participating in an international arbitration seated in Portugal should be aware; this is because Portugal is an arbitration-prone country and its professionals – including those working in state courts – are well acquainted and versed in arbitral subject matters.

51 Third-party funding

Is third-party funding permitted in your jurisdiction?

No regulation on third-party funding of arbitration exists in Portugal. Notwithstanding, third-party funding is already a reality in Portugal.

Frederico Goncalves Pereira
VdA Vieira de Almeida

Partner in charge of the litigation and arbitration law practice group.

Professional qualifications

- Law degree, University of Lisbon, Faculty of Law.
- Master's degree in civil law, University of Lisbon, Faculty of Law.
- Admitted to the preparation of a PhD thesis in corporate law, University of Lisbon, Faculty of Law.
- Harvard Business School - Leading Professional Services Firm course, 2009.

Partner in charge of the litigation and arbitration law practice group since then. In such capacity he has been involved in many cases representing several domestic and international clients in disputes involving commercial law before judicial courts as well as in arbitration before Portuguese and international entities. In addition, he has been active in out-of-court negotiations involving groups of companies and public entities. More recently, he has gained extensive experience in insolvency and restructuring under Portuguese law, having represented clients in many of the most important cases in Portugal in the past five years.

Miguel Pinto Cardoso
VdA Vieira de Almeida

Professional qualifications

Law degree, Catholic University of Lisbon, Faculty of Law.

Partner and co-head of the Litigation and Arbitration practice group. His activity is focused in arbitration, both national and international, and commercial litigation (finance disputes, shareholder disputes, construction disputes, distribution disputes, professional negligence disputes). He is often appointed as arbitrator. He also has considerable experience in criminal litigation and labour litigation.

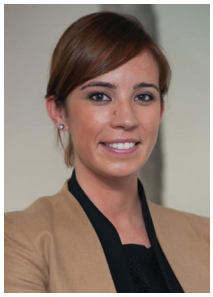
Rui Andrade
VdA Vieira de Almeida

Partner of the litigation and arbitration practice.

Professional qualificationsLaw Degree University of Lisbon Faculty of Law.

Postgraduate in Droit Communautaire de la Consommation - Faculté de Droit de l'Université Catholique de Louvain (Belgium).

Extensive experience coordinating matters of litigation, arbitration and labour in Angola, Mozambique, East Timor, Equatorial Guinea, São Tomé and Príncipe, Guinea Bissau and Cape Verde, representing and advising the most relevant national and international companies, including oil industry corporations.



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Managing associate at the Litigation & Arbitration area of practice where she is actively involved in litigation and arbitration proceedings.

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Senior associate in the litigation and arbitration practice and has been actively involved on civil and commercial litigation; international and national commercial arbitration; insolvency and restructuring.

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