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PORTUGAL: An Introduction to Dispute Resolution

After a pandemic-driven record fall in 2020 (-8.4%), Portugal saw an economic upswing in 2021 (4.8%). This trend will seemingly hold in 2022 (5.8%). The gross domestic product (GDP) followed suit and is likely to return to pre-pandemic levels in the first half of 2022. This economic upturn is expected to contribute towards lowering the unemployment rate and boosting both private and public consumption. Exports grew 9.6% in 2021 and are expected to reach 12.7% in 2022. The country is also expecting close to pre-pandemic numbers of tourists in 2022, a key driver of the Portuguese economy. In short, despite the severe economic effects of the pandemic, Portuguese economy was quick in adapting and seems well on its way to return to pre-pandemic levels.

The political landscape changed significantly in 2022. After a relatively stable six years under a Socialist Party-led government supported by a left-wing coalition in Parliament (namely, the Communist Party and Bloco de Esquerda [Left Block]), the former Socialist Party partners refused to approve the 2022 General State Budget, which led to political instability in late 2021 and caused the government to resign. Elections were quickly called for 30 January 2022, and the Socialist Party was elected by absolute majority. This result will bring the political stability needed to implement the Portuguese Recovery and Resilience Plan, whose importance for the Portuguese economy in the short term cannot be overstated.

The next few years are not without challenges though. The rise of inflation and its effects on the refinancing of both public and private debt leads to a high degree of uncertainty. Considering that Portugal is a heavily indebted country, a rise in interest rates to mitigate inflation may end up increasing financing costs and ultimately hampering economic growth.

As for dispute resolution specifically, the Portuguese Recovery and Resilience Plan foresees a total €240 million budget for “economic justice and business environment,” focusing on digitalization. While it remains to be seen if and how this budget will be allocated by the new government, it surely is a great opportunity to increase the courts’ efficiency. 2021 affirmed the courts’ resilience to the pandemic and certain new trends that have been emerging in the last couple of years.

Despite a chronic and historical lack of efficiency, Portuguese courts dealt with the pandemic lockdowns far better than anyone dared to expect. Some emergency measures were put in place, such as suspension of deadlines, but courts relatively kept their pace in spite of all obstacles. Digital means of communication played an important role in keeping courts running and will likely play an even more central role in the future. Traditionally more flexible, arbitration proceedings fared even better than court proceedings. Despite all the difficulties, from mid-2021 onwards and increasingly in 2022, courts have accelerated the pace and 2022 will surely be bursting with activity.

Regarding new trends that emerged or consolidated during 2021 and that are expected to grow in 2022, proceedings regarding competition infringements, product liability cases and general consumer rights violations are becoming more common and increasingly relevant in value. These sorts of proceedings are being filed both by claimants individually and under the Portuguese collective action rules. They have been triggered not only by an increased public awareness regarding consumer and competition rights, but mostly by the efforts of some boutique law firms. The development and work of such firms has caught the eye of third-party funders, who have made an entrance in the Portuguese market. At least one international boutique law firm which entered the market specialised in representing claimants in such class action cases.

Environmental, social, and governance (ESG) issues are now very much on the radar of local firms and are expected to give rise to legal disputes in the foreseeable future.

Aside from these new trends, business remained as usual during the economic turmoil, with contract performance and remedies for non-performance keeping courts and arbitral tribunals busy. But while restructuring and insolvency proceedings increased, they did so in a far less relevant degree than the level of economic crisis would suggest. This is likely a consequence of the broad financial support the government granted to companies and individuals and the suspension of the duty to file for insolvency. Whether returning to “normal” economic activity will bring a wave of restructuring and insolvency proceedings is yet to be seen.

The Portuguese legal market is a mature market, with strong local firms and a handful of international firms. 2022 is not expected to bring relevant changes in this regard. Despite the challenges faced in the last couple of years, it is now relatively safe to say that the legal market in Portugal fared well during the pandemic. The top three firms by revenue in Portugal are long established Portuguese firms and the top ten include five Portuguese, three Spanish and two UK-based firms.

2022 is expected to bring the country a step closer to (a new) normal, with the dispute resolution landscape quickly picking up the pace that the pandemic slowed down. There are no doubts that 2022 will be a busy year for litigators.