

Foreword on dispute resolution in Portugal

Frederico Gonçalves Pereira and Catarina Carvalho Cunha of VdA look at why arbitration in Portugal is becoming an increasingly popular choice

For many years, Portugal's dispute resolution lay almost exclusively with the country's judiciary; yet over the years, and most significantly over the past decade, we have witnessed arbitration, as much as other alternative dispute resolution mechanisms, become a true alternative to litigating parties, both at a national and international level.

Portugal's recent crisis steered many companies into restructuring and insolvency proceedings, leaving disputes surrounding these entities thriving and clogging up the already slow-tracked judicial courts. This was further aggravated by the Bank of Portugal's resolution measure imposed on Banco Espírito Santo (one of Portugal's largest private banks) in 2014 and most recently with disputes connected with the bonds issued by Portugal's former telecoms giant, Portugal Telecom. Tied with this, modern-day disputes arising out of complex financial structures and ultra-specialised sectors, such as pharmaceuticals, have exposed parties to a pressing need of ensuring that the subject matters sitting at the end of their conflicts be dealt with and ruled on by real experts rather than historically-generalist judges.

To add to that, whereas judicial solutions used to present themselves as cheaper than alternate methods of dispute resolution, litigating through state courts has, to a certain extent and at a certain level, become close to unbearable. To be clear, as per the applicable law, judicial costs will generally vary depending on the case's value and complexity. Suits launched over €275m will ask parties to pay an initial fee of €1,650 and a final variable fee, which may cost a further €306 on each €25,000 in excess of the € 275m, contingent on the concrete aforementioned variables.

The backlash to this thwarting reality has led arbitration to finally bloom in Portugal. In March 2012, a new Law on Voluntary Arbitration (Law no. 63/2011 of 14 December), shaped on the UNCITRAL Model Law (yet custom-made to meet the needs and particularities of the Portuguese legal system), came into effect. It allows for any commercial disputes and civil disputes not involving personal rights to be solved via arbitration. Specific tax and even labour disputes (previously reserved for the state's tutelage) are now also allowed to be entrusted to arbitration. In contrast, specific sectors of law, such as sports law and industrial property rights – like in the case of disputes

arising between patent holders and companies intending to secure authorisations to introduce generic drugs into the market – now call for mandatory arbitration.

On the international front, Portugal has been a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1995, having acceded to the 1965 Washington Convention

on the Settlement of Investment Disputes between States and Nationals of other States in August 1984.

As for state courts, they have risen to the challenge. They rightfully abide by party autonomy and their arbitration agreements, and leave arbitral tribunals to take a stand in their own jurisdiction, save in cases where they find that the arbitration agreement in question is clearly invalid, inoperative, or incapable of being performed. Other than this, courts will assist arbitral tribunals when asked as a means to grant interim measures – which may be ordered even prior to the commencement of arbitral proceedings – ordered by arbitral tribunals, appoint arbitrators where the parties or appointing authorities have failed to do so, decide on challenges following prior decision of the tribunal refusing a challenge and grant support with the submission of evidence upon refusal of one of the parties or a third party to co-operate.

The leading commercial arbitral institution is the Arbitration Centre of the Portuguese Chamber of Commerce and Industry, based at the Associação Comercial de Lisboa. Other prominent national arbitral institutions include: (i) the Centro de Arbitragem de Conflitos de Consumo de Lisboa; (ii) Centro de Informação de Consumo e Arbitragem do Porto; (iii) CAL – Centro de Arbitragem de Litígios Cíveis, Comerciais e Administrativos da Ordem dos Advogados; (iv) Centro de Arbitragem da Universidade Católica Portuguesa; (v) Centro de Arbitragem Administrativa; and (vi) ARBITRARE – Centro de Arbitragem para a Propriedade Industrial, Nomes de Domínio, Firmas e Denominações.

All of this together has allowed parties litigating in Portugal to restore a certain level of faith in the system, ensuring that disputes with which they are faced are dealt with quickly, protected by privilege and ruled on by those most fit to address the underlying issues, while simultaneously relieving state courts from the respective load. Concurrently, Portugal is increasingly

‘Portugal is increasingly seen as an obvious seat by foreign companies and practitioners.’

seen as an obvious seat by foreign companies and practitioners, especially those working in or with countries with which Portugal holds closer ties, ie the Portuguese-speaking countries.

Aside from arbitration, the Portuguese alternative dispute resolution mechanism realm is also increasingly reliant on mediation, conciliation and resolution by justices of the peace.

For more information, please contact:

Frederico Gonçalves Pereira, partner, litigation and arbitration

E: fgp@vda.pt



Catarina Carvalho Cunha, senior associate, litigation and arbitration

E: acc@vda.pt



Rua Dom Luis I, 28
1200-151 Lisboa
Portugal

T: +351 213 113 400

www.vda.pt