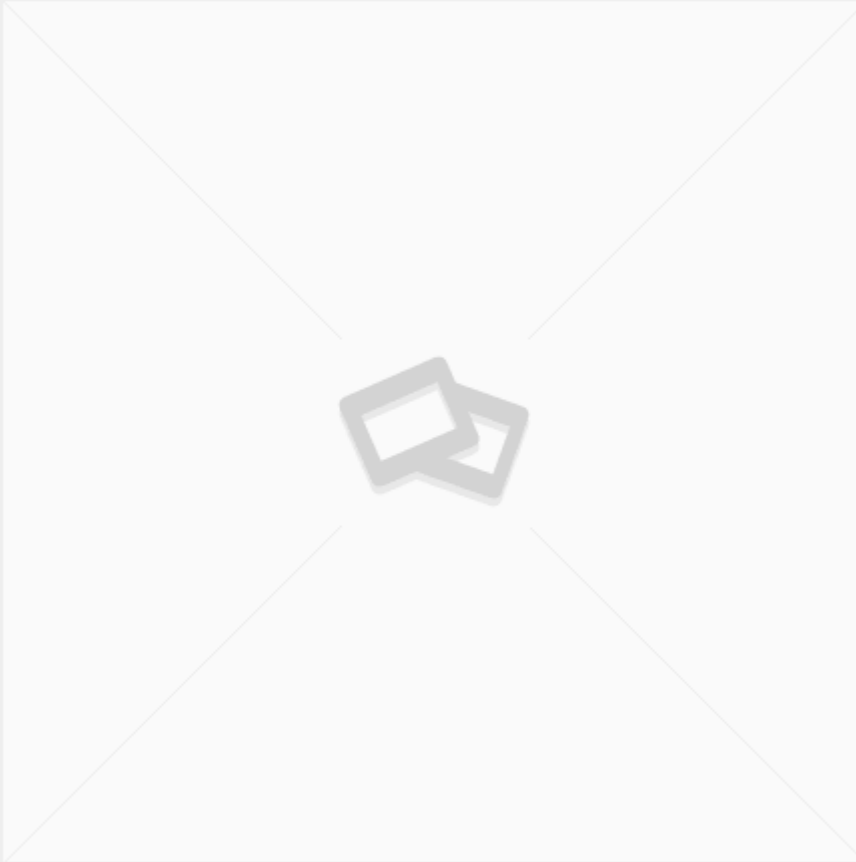


ARBITRATION - BENEFITING FROM THE CULTURAL TIES THAT BIND - PLMJ

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Portugal's historical and legal legacy, as well as its geographic position, makes it an increasingly attractive location for international arbitrations, particularly those involving Lusophone countries says José Miguel Júdice of PLMJ.

Portugal por su patrimonio cultural e histórico, se presenta cada vez más como un centro atractivo para la resolución de conflictos, sobre todo cuando alguna parte es de habla portuguesa. No sólo se valora el país como sede neutral para arbitrajes internacionales, sino que además se tiene en cuenta el valor añadido de poder involucrar a abogados y árbitros portugueses para que asistan en la resolución de estos conflictos, sea el que sea, afirma José Miguel Júdice, director del área de arbitraje en PLMJ.

Portugal's former colonies are inevitably heavily influenced by the Portuguese legal system, and for

many of the leading players in these countries Portugal is also a country of which they have direct experience, and where they feel comfortable, says José Miguel Júdice, head of arbitration at PLMJ.

“As a result, many international operators are now seeing the practical benefits of Portugal as a location for arbitration disputes involving their investments in Lusophone countries, or for Portuguese lawyers to play a major role in their resolution.”

Comfort

Portugal's historical legacy means that many of the leading lawyers, businessmen and politicians in its former dependencies have either studied, trained or worked in Portugal. There is also now an increasing flow of investment capital from Portugal to its former colonies.

Consequently, as well as having an international outlook, and familiarity with Western business concepts, many of the key individuals in these places also have an understanding of the Portuguese legal system – much of the legislation of countries such as Angola and Mozambique dates from before their independence in 1975, notes Júdice.

“But despite the increasing economic attraction, and rapid development, of the Lusophone countries many have not yet managed however to establish the kind of legal framework, or judicial process, that is required for settling disputes in highly complex transactions,” he adds.

This clearly has the potential to affect their attractiveness to major international investors who are naturally averse to the prospect of finding themselves engaged in litigation in a country's domestic courts, says Júdice.

“Arbitration is clearly the preferred dispute resolution mechanism for multinationals, and particularly in cross-border transactions. In addition, a prerequisite of World Bank assistance is that a country has in place a legal framework that recognises arbitration.”

Countries such as Angola and Mozambique arguably lack the sophistication to tackle major disputes internally, or at least are unable to offer the level of judicial comfort required of international investors, but they do now recognise the importance of arbitration, he emphasises. Mozambique, for example, is now a signatory to the New York Convention on Arbitration.

“There is a growing acceptance in such countries that arbitration is the most practical means of resolving international and complex disputes, and so the question therefore then becomes, which locations are best able to accommodate both the needs of the international investors and those from the countries themselves?”

Portugal's geographic position, on the edge of Europe, coupled with the clear cultural ties it has with its former colonies means that Lisbon is a city in which parties on both sides feel comfortable, he says. “In addition, it is often easier to travel to Portugal from places such as Angola or Mozambique than any other major international business centre.”

But it is not only parties involved in disputes concerning operations and investments in Africa that are turning to Portugal, and its lawyers, states Júdice.

“Brazil is a country from which we are also seeing an increasingly large number of arbitrations emanate. And again, these are disputes in which the parties see the historical legacy, and cultural and linguistic ties with Portugal as a key factor in deciding not only the arbitration seat or venue, but also the significance of involving Portuguese lawyers and arbitrators in their successful resolution.”

Significant, says Júdice, is that the Lusophone parties in such disputes have no fear of Portuguese dominance. “Parties are opting for Portugal precisely because it is familiar to them, and its lawyers are able to take a wider view and to translate linguistic, legal and business concepts. Ultimately we

are there to facilitate the resolution of often difficult issues, not to impose our views."