

ENSURING INDEPENDENCE - SERRA LOPES, CORTES MARTINS & ASSOCIADOS

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Clients considering arbitration weigh up numerous factors, such as cost, duration and preferable outcome. One element that causes many companies to refrain using it is the independence of arbitrators in certain jurisdictions, according to Luís Cortes Martins, a Founding Partner of Serra Lopes, Cortes Martins & Associados.

"It is often said that the arbitration process is only as good or as bad as the arbitrators hearing the cases," he explains. "Experience shows that many organisations are not always comfortable in pursuing arbitration because of the possible conflicts of interest from arbitrators."

Cortes Martins says that Portugal has gone to great lengths to overcome these fears, with a new Arbitration Law in 2012, which has reinforced independence, allowing parties to request an arbitrator be removed if there are conflicts.

"Portugal has made transparency a central part of arbitration, which is crucial in helping arbitrations proceed to a successful conclusion with the confidence of all parties," he continues. "The challenge

is that we are a small country so there needs to be a balance between a relatively small group of available arbitrators and their potential conflicts of interest."

There have been few publicised removals since the new Law, but Cortes Martins believes this could change. Another possible problem in this is a party may move to dismiss an arbitrator to delay or prevent the loss of a case rather than from a genuine concern over independence.

"The law has taken these into account," Cortes Martins concludes. "To prevent abuses, there are certain rules and delays to require and decide on a possible dismissal aimed at making sure that unreasonable conflict claims are not accepted. I think the best option for preventing this is for arbitrators to fully disclose, from the beginning, all of their duties, relations, previous experience or any other fact or event that may have any impact on their independence or result in a conflict of interests."