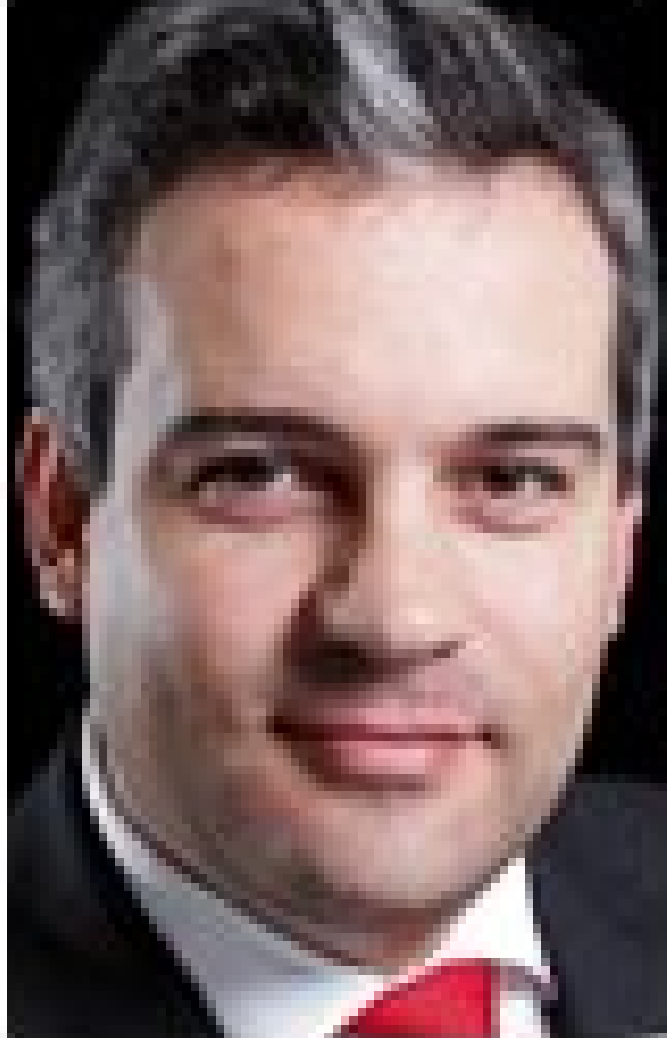


NEW PORTUGUESE CIVIL PROCEDURE CODE - F. CASTELO BRANCO & ASSOCIADOS

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In 2011, Portugal signed a Memorandum of Understanding (MoU) with the Troika and a review of the Portuguese Civil Procedure Code (CPC) was among the measures agreed. The main objectives

of this was to speed up proceedings and reduce the number of proceedings pending in court. Additionally, the opportunity was also used to eliminate some deficiencies of the previous CPC, which resulted from various amendments it had been subject to since 1961. The new CPC was approved by Law no. 41/2013, of 26 June, which entered into force on September 1st, 2013.

Impact

In relation to the slow pace of justice and the number of proceedings pending in courts for years, the amendments intend to ensure compliance with deadlines by judges and court officials, limit the possibility of the parties requesting the suspension of proceedings and causing the intervention of third-parties. There is also a clear concern with the final hearing which can only be postponed in particularly justifiable situations. Finally, the use of computerised means to deliver documents to court became mandatory.

The discovery of material truth, rather than formal truth, has also become the main focus. The amendments introduced to reduce the possibility of a skilful use of procedural rules being enough to ensure a favourable (though not always fair) decision were: a new set of powers of procedural management now attributed to judges and changes in rules applicable to the production and achievement of evidence.

Few changes were introduced to appeals – although the Courts of Appeal now have more means to re-appreciate factual matters – while the rules applicable to enforcement procedures were amended to reduce their number and to ensure expedite decisions. And there has been a reduction in admissible enforcement titles and a summary proceeding was created. Furthermore, there is also the possibility of an agreement with all creditors for either the extension of payment terms, debt write-offs or guarantee replacements, leading to the extinction of the procedure.

Verdict

Several people have written about the amendments of the new CPC and we believe that the proposal was generally well accepted by all relevant parties, regardless of the disagreement in respect of certain specific issues.

However, given the date of entry into force, it is still impossible to assess the practical consequences of the changes introduced to procedural laws, as we have not had the opportunity to initiate and complete a full process under the new rules. However, it is expected that the changes will lead to fairer and timelier decisions.

As it is usual when a considerable change is made to a relevant set of rules such as the CPC, there is always some resistance in applying the new rules, given that the relevant parties have been used to the previous version for many years.

In this specific case, doubts arise from transitional rules, making it difficult to assess the correct solution and procedural steps applicable to pending proceedings. So far, the interpretation of said rules has varied according to each judge and therefore different decisions have been taken in similar situations, depending on the rules deemed applicable in each case.

The new CPC establishes the principle of formal adequacy, allowing judges to apply the procedural rules considered adequate to each proceeding. As the judges have not yet resorted sufficiently to such principle, during the coming months we will probably face different evidence regimes in similar proceedings. Consequently, it is possible that the number of appeals for non-compliance with

procedural rules increases. That would be an opposite result to the objectives of the CPC's review, however we believe that such doubts will be overcome soon, and once this experimental period has elapsed, everything should be back to normal.

At this stage, what we can confirm is that one of the objectives of the new CPC has been achieved: it had the effect of reducing the number of pending enforcement proceedings.

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