

PORTUGAL: AN IP CLUSTER FOR LUSOPHONE AFRICA - F CASTELO BRANCO

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Portugal, Angola, Cape Verde, Mozambique and São Tomé e Príncipe share a wide range of cultural roots, among which are very specific aspects of the daily life and, most of all, the same language.

Although these lusophone (Portuguese speaking) countries each have their own distinct legal systems, all also share the same basic principles and legal solutions regarding Intellectual Property (IP) protection, clearly evidenced in the legal frameworks adopted and currently in force.

Of course, it may be said that, in general terms, IP is an area in which principles and rules are largely harmonised worldwide but, when it comes to the lusophone countries consistency among their legal systems is even greater.

Traditionally, Portuguese institutions have been adopted as models by these African countries in many respects due to the nature and length of their historic relationship. This has led to a tendency among them to adopt, with the inevitable natural adaptations specific to their own development, very similar approaches to the solutions put in place in Portugal, namely in the case of development models and legislations.

Portugal, Angola, Cabo Verde, Mozambique y Santo Tomé y Príncipe comparten sus raíces, incluyendo aspectos de la vida cotidiana y sobre tienen el idioma en común. Aunque con diferencias en sus sistemas legales, todos estos países de habla portuguesa comparten los principios básicos y jurisdiccionales del Derecho de Propiedad Intelectual portugués, afirma Nuno Cadima Oliveira de F Castelo Branco & Asociados.

Specifically concerning IP, all of the above countries have adopted modern legislation based largely on the Portuguese Code of Industrial Property, in the Portuguese Copyright Act and related legislation, laying down the same principles, protecting the same rights and implementing very similar administrative procedures – while also using the same language and legal concepts.

Besides this, the interchange of IP professionals between Portugal and each of these countries has also contributed significantly to the shaping and development of their own IP systems. With a decisive influence of the Portuguese legal framework, IP institutions, expert opinion and professionals. Portuguese Law Schools are still, in a way, also models for scholars across the lusophone African countries and the contingent of African students in Portuguese Universities (learning the Portuguese IP system) seems to be increasing.

The most recent IP reforms introduced in the majority of these jurisdictions (through the adoption of modern IP Codes and legislation) has largely occurred over the past 10 years and in each the influence of the Portuguese IP system is obvious.

It is expected that the latest reforms introduced in Portugal (namely the transposition of Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights) may yet prove to be the preferred future model for the lusophone African jurisdictions. The implementation of a robust legal framework for the enforcement of IP rights, and its application, is widely recognised (including among developing countries) as a key factor for the credibility of any advanced IP protection system.

For all these reasons, Portugal already offers a cluster of competencies regarding IP rights protection in Portuguese speaking African countries, acting as a base for the implementation and conduct of actions aimed at achieving maximum protection for IP rights for both Portuguese and multinational entities.

The proximity between the Portuguese and the African nations' IP legal systems is a decisive factor in making Portugal a leading focus for crossborder IP strategies encompassing Africa – and an obvious choice when it comes to selecting professionals to support their implementation. Within a EU perspective, and with the constant and strong effort to harmonise national IP policies and legal frameworks across member states, Portugal therefore assumes an important role in the spreading of already implemented solutions, as well as regards upcoming reforms.

In any event, the last and decisive factor for regarding Portugal as "the" cluster in this area, is the fact that it shares a common language with these African countries. This allows a more straightforward, direct and close approach to understanding their IP systems, to the implementation of IP protection strategies and to the solving of issues, including before competent administrative authorities, the

Courts or through arbitration.

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