

# PORTUGAL'S NEW ARBITRATION LAW - F CASTELO BRANCO & ASSOCIADOS

*Posted on 25/10/2011*



Category: [Uncategorized](#)



Last September the Portuguese Government submitted to Parliament a proposal for a new Arbitration Law to replace the 1986 law currently in force. This was made as a result of a measure contained in the Memorandum of Understanding with the international Troika arising from Portugal's bailout, as well as the present Government's program.

When presenting this Bill (which was already approved in general terms by the Parliament), the Government announced that it intended to attract companies that usually resolve their disputes through arbitrations held in other jurisdictions and to make Portugal a seat for international arbitrations, especially those involving companies from countries with similar legislations (like Angola and other Lusophone African countries).

For this purpose, international standards for commercial arbitration were followed, in particular, the United Nations Commission on International Trade Law (UNCITRAL). Nevertheless, this bill kept some provisions from the existing law and also followed closely other recent arbitration laws of other jurisdictions where arbitration has successfully become a regular dispute resolution mechanism. As a result, this arbitration bill is more comprehensive and complex than its predecessor and certainly more demanding for its users, in particular the arbitrators.

It should be noted that the new legal regime for arbitration does not only concern private or commercial disputes, but it is also highly relevant for public sector entities in the resolution of public law disputes. In fact, over the last ten years, most disputes in the most relevant public contracts (in particular in the construction and infrastructure sector) have not been solved through the court system but through arbitration.

This bill provides a wide range of new legal solutions, starting with new rules on the appointment of arbitrators when the dispute involves several plaintiffs and/or defendants, as well on the dismissal of arbitrators by the parties.

Based on the *interim measures* foreseen in UNCITRAL's model, the new law now provides that the arbitration tribunal may grant interlocutory injunctions and preliminary orders. When applying for an injunction, parties may request a preliminary order destined to maintain a given *status quo* while the tribunal is not able to decide definitively on the appropriate measure. A preliminary order will be granted if the tribunal considers that the effects of a future injunction might be prejudiced by the other party's prior knowledge of the request for such injunction. Therefore, the preliminary order is granted *ex parte* (i.e. without hearing of the other party), contrary to what occurs in the final injunction. In any event, parties are still allowed to claim injunctions in court system, before or during the arbitration proceedings.

Rulings on third party intervention is also a new aspect of this Bill. Given the contractual nature of arbitration, a third party may only participate, along with the plaintiff and the defendant, if it is or becomes a signatory to the arbitration agreement. Such intervention is always subject to the tribunal's acceptance, which shall only be granted if it considers it to be relevant and that it will not affect the proceedings. Parties may agree on different rules in the arbitration agreement or submit it to the rules of institutional arbitrations where such intervention is more flexible.

In this regard, the Bill makes it clear that procedural rules do not need to comply with general procedural rules applicable in the court system, unless the parties or the arbitrators decide otherwise.

Under the new law, arbitrators will be given twelve months to issue their final decision, instead of the current six months. Additionally, it is now foreseen that such initial twelve month period may be renewed for one or more equal periods by agreement of the parties or by a decision of the tribunal (although the parties may agree to oppose to it).

Inverting the solution set out in the current law, the new law establishes that arbitration decisions are not, in general, appealable unless the parties have expressly agreed to the contrary.

Unlike what happens today, under this Bill the arbitrators' intervention does not necessarily end with the final decision and not only will the arbitration tribunal be able to rectify formal errors or clarify parts of its decision, but it may also be called again to issue a complementary decision. In case one of the parties requests the annulment of the arbitration decision, the courts can even suspend the procedure and allow the arbitration tribunal to resume its proceedings or take any another measure it deems adequate to eliminate the causes of annulment.

Miguel Lorenzo Brito is a Partner with Lisbon's F Castelo Branco & Associados. He can be reached via [mlb@fcblegal.com](mailto:mlb@fcblegal.com)