

RECENT DEVELOPMENTS IN ARBITRATION - SERRA LOPES, CORTES MARTINS & ASSOCIADOS

Posted on 28/02/2013



Category: [Uncategorized](#)

Tag: [cat-disputeresolution](#)



Almost a year since Portugal brought in new arbitration laws, the overall feedback from the disputes market has been positive

Ya ha pasado un año desde la nueva Ley de Arbitraje voluntario y, en general, la impresión del mercado ha sido positiva. La normativa actualiza los procedimientos que se remontaban a 1986, adoptando un modelo más sofisticado y en la línea de otras jurisdicciones similares, afirma Luís Cortes Martins, de Serra Lopes, Cortes Martins & Associados.

Portugal enacted its new Voluntary Arbitration Law in March 2012. The legislation updated the original rules – which trace back to 1986 – by adopting a much more sophisticated model that was

in-tune with comparable jurisdictions, says Luís Cortes Martins, Managing Partner of Serra Lopes, Cortes Martins & Associados.

"The old law was not based on UNCITRAL Model Law, so it was something of a stand-alone structure", says Cortes Martins. "As such, and with regards to international arbitration, it was not a popular choice for dispute resolution."

Portugal has also struggled with wider challenges amongst its courts, like heavy backlogs in commercial cases, he adds, so an update in arbitration procedures was due.

The 2012 Act followed the UNCITRAL Model Law, which outlines issues such as party autonomy, the jurisdiction of the courts, the time frame to follow (preliminary orders within 20 days), fees, multi-party disputes and the regulation of the process, such as the issue of claims and counterclaims.

"While the law has been in place for less than a year, and it is too early to draw definitive conclusions, it is fair to say the feedback so far has been positive," says Cortes Martins. "The law made the whole arbitration process more straightforward and cleared up a number of issues with the old rules."

Under the old system, the normal rule was that parties could appeal the arbitration court's decision via the judicial courts, says Cortes Martins. "Now the rule is that the arbitral award is, in principle, definite. This gives much more power and efficacy to this jurisdiction. In addition, there are now much clearer rules on the division between arbitral and judicial court relations. This is a very important step to bring efficiency to arbitral court decisions."

Market impact

Cortes Martins says the feedback from clients has been positive. Many now view arbitration as a much more viable option and have been keen to enter proceedings to avoid costly litigation and speed up procedures. Indeed, there has even been additional legislation from the Government that has actively encouraged the use of arbitration in certain sectors.

During 2012, they saw an increasing trend of cases involving pharma IP disputes after the Government published new rules that made it mandatory for some disputes to go through arbitration rather than litigation, he explains. "Now, pharma companies with a branded drug that want to bring action against a generic provider regarding a patent dispute must have their case heard in an arbitration court."

Quite what the long-term impact of the new law will be is unclear, he adds. Neighbouring Spain, for instance, recently revived its efforts to become a seat for arbitrations involving Latin American companies.

The hope for Portugal is that, by following the UNCITRAL Model Law, it can be operated in a similar way to established bodies such as the International Chamber of Commerce's arbitration court or the World Bank's International Centre for Settlement of Investment Disputes. In doing so, says Cortes Martins, Portugal could start to make movements in the arbitration market with the potential to bring in claims involving parties from Portuguese-speaking jurisdictions like Brazil, Angola, Mozambique or East Timor.

"By bringing Portugal closer to the arbitration rules of other jurisdictions, the country could potentially be a seat for not only local disputes but Iberian issues involving Spanish entities or places such as Angola and Mozambique," he adds.

Portugal has needed to undertake major restructuring off the back of the Troika agreement. State assets, public sector management, legislation and the courts have all been remodelled to meet the criteria of the bailout. While arbitration is one part of that process, and Portugal, like Spain, faces challenges if it wants to compete with better regarded seats, there is no reason the country cannot become a viable alternative to the existing hubs says Cortes Martins.