

DISPUTES

Judges under scrutiny following unacceptable court delays

The introduction of a new Civil Procedure Code in Portugal is designed to end huge court backlogs and address key challenges in the country's litigation system

The Portuguese Ministry of Justice has announced that it is reviewing elements of the country's Civil Procedure Code intended to bring in long-awaited efficiencies to the court system and to enforcement procedures. A draft Reform Bill is set to be presented to Parliament in 2013.

The onset of the economic downturn and a dramatic rise in bankruptcy cases has brought an already troubled court system to a virtual standstill, say lawyers. There are an estimated 1.5 million cases pending. The court experience is routinely unpredictable with defendants often utilising further delaying tactics to frustrate claimants.

"Going to Court in Portugal can be a disaster for all involved," says Vasco de Ataíde Marques, Partner with PLMJ. "It can take years for a case to be heard and any appeal can mean a further two or three years' delay before a definitive decision is reached. And then you have to try and enforce the judgment."

But while key elements of the reforms are welcomed, including the potential to reinforce the powers of Execution Agents, enabling parties to move (post-judgment) to enforcement without the sign-off of the presiding judge, other aspects are more contentious.

Lawyers question an increased focus on pre-trial reviews, albeit intended to enable both sides to sit down with the judge prior to scheduling in order to determine the goals of the parties.

Currently, a party's lawyers would never have access to the presiding Judge until the day of the hearing. "So we are a little unsure how well the proposed pre-trial procedure will be received," adds de Ataíde Marques, "or what difference this will make due to the difficulty of having the parties agree with each other and with a judge that the parties have just met, all in a preliminary hearing of half an hour".

Also proposed in the Bill are the shortening of deadlines for procedural acts, the inclusion of expert evidence in the earliest phases of proceedings, and new restrictions on the grounds for delaying proceedings.

"Nevertheless, there will still be no consequence for

the failure of the deadlines by the Judges, prosecutors and other procedural agents, including the Court Secretary," says João Nuno Azevedo Neves, Partner with ABBC. "In our opinion, this proposal will not have any consequence since the attorneys are already the only ones who fulfil the deadlines."

The Bill also aims at reducing parties' ability to request a stay of proceedings, to a maximum period of three months instead of the current six months. "While reducing the potential for delay is important, a downside may be that it also reduces the scope for suspending proceedings as a means of achieving a negotiated settlement immediately prior to trial," explains Azevedo Neves. Going forward, any settlements must be agreed pre-trial or it will not have an effect, potentially limiting the scope for such an option.

Nonetheless, the Ministry of Justice has also alluded to the potential for reviewing the performance of Judges themselves, including the justification for delays in scheduling and deciding cases, and case management as a whole.

But while the scope of the reforms are yet to be presented in full, some leading Portuguese firms are already taking steps to assist their clients accelerate the dispute resolution process, and even to critique the merits of litigation itself.

PLMJ has introduced an 'Efficient Litigation Risk Assessment' service, offering strategic advice on reducing potential and even ongoing litigation for the firm's own clients, and for non-clients working alongside their own internal or external lawyers, for a fixed fee. Likewise, anticipating the growing emphasis towards pre-trial procedures, Abreu Advogados last year launched a mediation service aimed largely at non-clients of the firm.

And while the full details of the latest procedural reforms have yet to be made public, an added incentive already exists for parties to resolve their disputes away from the Courts themselves. Until March 2013, legal proceedings ended by settlement will be exempt from court fees, presenting potential savings for both parties.

"It always seems impossible until it's done."

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