

Complex Commercial Litigation 2021

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Complex Commercial Litigation 2021

Contributing editor**Simon Bushell**

Seladore Legal

Lexology Getting The Deal Through is delighted to publish the fourth edition of *Complex Commercial Litigation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Australia, Bermuda, China, Mexico, Portugal and Thailand.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Simon Bushell of Seladore Legal, for his continued assistance with this volume.

 **LEXOLOGY**
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BACKGROUND

Frequency of use

- 1 | How common is commercial litigation as a method of resolving high-value, complex disputes?

Commercial litigation is a frequent method of resolving complex commercial disputes in Portugal.

Litigation market

- 2 | Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

Portugal has a modern, high-standard dispute resolution system. This can be seen in the very successful e-justice platform (CITIUS) and the now paperless justice system. Portugal has introduced a more flexible and simplified Civil Procedure Code and has also recently reorganised its judicial system to bring greater effectiveness to the courts and judges by organising cases into practice areas and by strengthening their capacity for specialisation.

In general, Portuguese dispute resolution practitioners are very well prepared to work in an international market. The growth and variety of foreign investment in Portugal has tested and proved their ability to adapt and accommodate clients from different cultural and legal backgrounds.

The combination of these factors has not only made complex international litigation thrive in Portugal but has also contributed to developing case law and doctrine on highly complex matters.

Commercial disputes are usually decided before a civil court. However, in recent years, the demand for alternative dispute resolution methods has clearly increased in Portugal, with the parties resorting more frequently to arbitration (either institutional or ad hoc).

Mediation is also being encouraged in Portugal to resolve disputes relating to commercial contracts, and it is expected to grow in the coming years.

Legal framework

- 3 | What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

Concerning commercial litigation, the Portuguese legal system contains the following main coded legislation:

- the Portuguese Civil Code (PCC);
- the Portuguese Civil Procedure Code (PCPC);
- the Portuguese Insolvency and Recovery Code (PIRC);
- the Portuguese Commercial Code (PCC); and
- the Portuguese Commercial Companies Code (PCCC).

Portugal's legal system is based on written legislation (statutes and codes) as its main source of law in preference to the judicial precedents used in common law. The practical outcome is that Portuguese judges cannot create law, but only interpret and apply it.

BRINGING A CLAIM - INITIAL CONSIDERATIONS

Key issues to consider

- 4 | What key issues should a party consider before bringing a claim?

The main key issues a party should consider before bringing a claim are litigation costs (which include court fees, winner's costs and lawyers' fees), the duration of judicial proceedings and the probable outcome.

Establishing jurisdiction

- 5 | How is jurisdiction established?

Portuguese courts are bound by EU Regulation 1215/2012 and other international instruments that, if applicable, prevail over the rules governing international jurisdiction contained in the Portuguese Civil Procedure Code (PCPC).

Under Regulation (EU) 1215/2012, the general rule of international jurisdiction is the forum of the domicile of the defendant, whatever their nationality – article 4(1) – unless, for instance, a member state where the defendant is not domiciled has exclusive jurisdiction over the claim – article 24. If no Regulation or other international instruments are applicable, then the international jurisdiction is defined by articles 62 and 63 PCPC.

Once the international jurisdiction of the court has been established, it is necessary to determine jurisdiction based on hierarchy, value, subject matter and territory (see articles 64 et seq PCPC). The defendant could argue the lack of jurisdiction by reason of nationality, hierarchy, value, subject matter or territory, and thus have the claim dismissed on procedural grounds, or referred to the competent court (see articles 583, 576 (2), 577 (a) PCPC).

To avoid overlapping cases with the same cause of action and between the same parties in courts of different member states, Regulation (EU) 1215/2012 provides that the court other than the court first seised must, of its own motion, stay its proceedings until such time as the jurisdiction of the court first seised is established – article 29.

Preclusion

- 6 | Res judicata: is preclusion applicable, and if so how?

Res judicata has negative and positive preclusive effects in subsequent Portuguese civil proceedings. The negative effect occurs when there is a triple identify of parties, cause of action and claim between both sets of proceedings. Its effect is that the subsequent judge is not entitled to

decide on the merits of the new claim – (see articles 580 and 581 PCPC). The positive effect prohibits the contradiction between a prior decision and a subsequent proceeding with coincident objects, even if there is no triple identity (see article 619 PCPC).

Applicability of foreign laws

7 | In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

In Portugal, the courts can apply foreign law in the following circumstances:

- when it derives from the will of the parties as provided for in a clause of the contract;
- when a conflict-of-law rule is applicable; or
- when international conventions or EU legislation set out rules on applicable law that differ from those provided for in national conflict of law rules, in which case the national rules do not apply.

Any party that invokes a foreign law has the burden of proving its existence and content, but the court should seek, at its own initiative, to ascertain that content. If it is impossible to determine the content of the foreign law, the court must decide on the case according to Portuguese law.

Initial steps

8 | What initial steps should a claimant consider to ensure that any eventual judgment is satisfied? Can a defendant take steps to make themselves 'judgment proof'?

To ensure the effectiveness of the final decision, the claimant should apply for an interim relief prior to filing the claim.

Freezing assets

9 | When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

A creditor that is afraid of losing the asset security of their claim may request the attachment of the debtor's assets, as a specified protective measure that guarantees a credit claim and makes any acts of disposal of the attached assets ineffective against the creditor – article 619 PCC.

For the attachment to be ordered, two cumulative requirements must be met: the probability of the existence of a credit and the justified fear of loss of the asset guarantee for that credit – article 391 PCPC.

Pre-action conduct requirements

10 | Are there requirements for pre-action conduct and what are the consequences of non-compliance?

In Portugal, there are no pre-action conduct requirements.

Other interim relief

11 | What other forms of interim relief can be sought?

The PCPC sets forth two types of interim relief, specified and common. Specified interim relief is relief intended to protect against a risk of injury specifically provided for and regulated by the law. The following are the specified protective measures set out in the PCPC:

- provisional restitution of ownership;
- suspension of corporate decisions;
- provisional maintenance;
- provisional compensation;
- seizure;

- embargo on new construction; and
- impounding of goods.

The common forms of interim relief are governed by article 362 PCPC. This article provides that when someone shows a justified fear that another person may cause serious and irreparable damage to their rights, they may, if none of the protective measures laid down by law are suitable for the case, request the appropriate precautionary or anticipatory measure to secure the effectiveness of the right at risk.

Alternative dispute resolution

12 | Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

Portuguese courts do not require the parties to engage in any type of ADR before or during the litigation proceeding.

Claims against natural persons versus corporations

13 | Are there different considerations for claims against natural persons as opposed to corporations?

No, there are not.

Class actions

14 | Are any of the considerations different for class actions, multiparty or group litigations?

Class actions, multi-party and group litigations are permitted under Portuguese law. Depending on the subject matter of the claim, class actions are filed before civil or administrative courts. There are different rules applicable to civil and administrative procedures. However, the main mechanisms of both procedures are quite similar.

Class actions are aimed at preventing infringements against public health, consumer protection and rights, unqualified investor rights regarding financial instruments, quality of life, environment, cultural heritage, public interests or any other areas where supra-individual material interests may be at stake.

Class actions are commonly used in public law matters and they are gradually beginning to be brought before the civil courts.

Third-party funding

15 | What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

There is no regulation on third parties funding the costs of litigation or agreeing to pay adverse costs. Third-party funding is not a common practice in Portugal.

Contingency fee arrangements

16 | Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into an arrangement of this nature?

Under the Portuguese Bar Association Statute, the lawyer's fees must correspond to an adequate economic compensation for the services provided. The lawyers must take into account the importance of the advice provided, the complexity and urgency of the matter, the degree of intellectual creativity, the result obtained, the time spent, the responsibilities assumed by them and other applicable professional uses.

Under article 106 of the above statute, lawyers may not:

- claim, as their fees, a percentage of the amount obtained as a result of a legal action (quota litis); or

- make their fees dependent on the success of the action. However, a portion of the lawyers' fees may be subject to the outcome of the proceedings (success fees).

THE CLAIM

Launching claims

- 17 | How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

Claims are launched with the submission of a written initial claim to the competent court, usually through the e-justice platform (Citius). The claimant must identify the court where the lawsuit is filed, the parties, the address of the claimant's lawyer, the type of proceedings, the cause of action, the request, the amount of the claim and the means of evidence. The claimant should also identify the applicable law. The length of the initial claim depends on numerous factors, notably the complexity of the case. It usually ranges from tens to hundreds of pages. Any relevant evidential documents, as well as the proof of payment of the judicial fee (or the proof of being exempted from such payment), must be appended to the initial claim (see article 552 Civil Procedure Code (PCPC)).

Serving claims on foreign parties

- 18 | How are claims served on foreign parties?

A defendant residing abroad must be served in accordance with Regulation (EU) 1393/2007, the Hague Convention of 15 November 1965 or under any bilateral agreements. If none of them are applicable, the claim must be served by registered letter with acknowledgement of receipt. If postal service cannot be effected and the defendant is Portuguese, the claim is served through the nearest Portuguese consulate. If the defendant is not Portuguese or it is not feasible to appeal to the consulate, the claim will be served by letter rogatory after hearing the claimant. If the defendant is absent or in an unknown place the claim is served by public notice (see article 239 PCPC).

Key causes of action

- 19 | What are the key causes of action that typically arise in commercial litigation?

The key causes of action that typically arise in commercial litigation are: breach of contract (non-compliance; delayed performance; and defective performance), professional malpractice, tort liability, insurance and reinsurance matters, distribution agreements and disputes involving maritime law.

Claim amendments

- 20 | Under what circumstances can amendments to claims be made?

The claimant may amend or extend the cause of action and the request by agreement of the parties at first or second instance, unless it disrupts the evidentiary activity. Otherwise, the cause of action may only be amended or extended because of an admission made by the defendant and accepted by the claimant or if supervening facts occur before the end of the arguments at first instance. The claimant may reduce the request at any time and extend it up to the end of the arguments at first instance if it is the development or consequence of the original claim (see articles 264, 265 and 588 PCPC).

Remedies

- 21 | What remedies are available to a claimant in your jurisdiction?

The claimant has different types of judicial remedies at its disposal, according to the purpose it wishes to achieve. Judicial actions have the following purposes:

- the action of simple appreciation aims to put an end to a situation of uncertainty by declaring the existence or non-existence of a right or a fact;
- the action of condemnation allows the claimant to demand the provision of a thing or a fact, assuming or foreseeing the violation of a right;
- the action of constitution authorises a change in the existing legal order; and
- the enforcement action allows a creditor to request the appropriate measures for the coercive performance of an obligation owed to them.

Recoverable damages

- 22 | What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?

Under Portuguese law, pecuniary or non-pecuniary damages are deemed recoverable. Pecuniary damages include actual losses, loss of profits and future damage if foreseeable. Non-pecuniary damages includes personal injuries, death and moral damage compensated on grounds of equity. Under the Portuguese legal system, unlike others, such as the common law, there are no punitive damages, thus compensation is not fixed to punish the offenders but to compensate the injured party.

RESPONDING TO THE CLAIM

Early steps available

- 23 | What steps are open to a defendant in the early part of a case?

After being served with the initial claim, the defendant must present their defence in a timely manner. In it, the defendant can present a counter-claim against the claimant if the conditions of admissibility are met. The defendant can also allege that a third party is liable for the claim and ask for its intervention. The defendant is also entitled to raise procedural issues (eg, lack of jurisdiction by reason of nationality, subject matter, hierarchy, value or territory).

Defence structure

- 24 | How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

The defence is usually sent to the court through the e-justice platform (Citius) within 30 days of service of the claim, but this period may be extended in certain circumstances. In the defence, the defendant will:

- take up a position on the facts alleged by the claimant;
- allege facts that prevent the court from judging against the defendant;
- raise procedural issues;
- allege on the applicable law; and
- present the means of evidence.

Any relevant evidential documents, as well as the proof of payment of the judicial fee (or the proof of being exempted from such payment) must be appended to the initial claim (see article 569 et seq PCPC).

Changing defence

25 | Under what circumstances may a defendant change a defence at a later stage in the proceedings?

The defendant may present new facts if these occur after the previous pleadings or were unknown at the time those pleadings were submitted. If the defendant presented a counterclaim, they may amend or extend the cause of action and request by agreement of the parties at first or second instance, unless this disrupts the evidentiary activity. Otherwise, the cause of action may only be amended or extended because of an admission made by the claimant and accepted by the defendant. The counterclaim can be reduced at any time or extended until the end of the proceedings at first instance if it is the development/consequence of the primitive request (see articles 264, 265 and 588 PCPC).

Sharing liability

26 | How can a defendant establish the passing on or sharing of liability?

A defendant can establish the passing on or sharing of liability by applying for the joinder of the third part that, according to the applicable contract or the nature of the dispute, is liable in whole or in part (see articles 316 et seq PCPC).

Avoiding trial

27 | How can a defendant avoid trial?

A defendant can avoid trial by reaching an agreement with the claimant that is approved by the court (see article 290 PCPC). Furthermore, after receiving the defence, the court may render a decision, dismissing the case against the claimant, if it finds the cause of action manifestly unfounded or if any insuperable procedural objection occurs (eg, lack of jurisdiction by reason of nationality, matter or hierarchy – see articles 576(2) and 595 PCPC).

Case of no defence

28 | What happens in the case of a no-show or if no defence is offered?

If the defendant is correctly served and does not respond, the facts presented in the initial claim are deemed proven (with some exceptions). Within 10 days, the claimant's and defendant's lawyers can examine the file and present written allegations and the court will subsequently issue its ruling (see articles 566 et seq PCPC).

Claiming security

29 | Can a defendant claim security for costs? If so, what form of security can be provided?

There is no provision in Portuguese law to allow a defendant to claim security for costs.

PROGRESSING THE CASE

Typical procedural steps

30 | What is the typical sequence of procedural steps in commercial litigation in this country?

A typical commercial case subject to the Portuguese common declarative process has the following phases:

- pleadings phase (initial claim, defence, reply to the defence and supervening applications);

- initial management of the proceedings and prior hearing or decision on the subject matter of the proceedings and the topics for evidence;
- production of evidence (before the trial hearing, notably expert evidence);
- trial hearing (notably examination of witnesses and final arguments); and
- judgment (see articles 552 to 612 PCPC).

Bringing in additional parties

31 | Can additional parties be brought into a case after commencement?

Additional parties may voluntarily join a pending case as a main party or be called by the original parties if they have an interest equal to the main parties in relation to the merits of the case. If the additional party has a relative connection with the case but does not have an interest equal to the original parties, it may join the dispute, but with a limited role (see article 311 et seq PCPC).

Consolidating proceedings

32 | Can proceedings be consolidated or split?

Civil proceedings cannot be split but may be consolidated when there are different actions pending where the conditions of admissibility of the *litisconsórcio*, the coalition or the opposition or the counterclaim are met, and provided that this is requested by anyone with a credible interest or at the initiative of the judge responsible for both actions (see article 267 PCPC).

Court decision making

33 | How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

The court decides if the claims or allegations are proven based on its conviction of the facts, taking into consideration the evidence produced by the parties. The rule of the burden of proof states that any party that invokes a legal situation in their favour has the burden of proving the factual basis of that situation. The standard of proof operating in civil proceedings is that of the prevailing or 'most likely not' probability. In the event of uncertainty or lack of supporting facts, the court will decide against the party that stands to benefit from the fact (see article 342 PCC and 414 PCPC).

34 | How does a court decide what judgments, remedies and orders it will issue?

The judgment must fall within the scope of the claim and of the cause of action formulated by the claimant, and, as a result, the judge cannot decide on a greater quantity or on a different object than what was claimed under penalty of nullity of the judgment for going beyond their remit (see articles 3(1), 609(1) and 615 (1) (e) PCPC).

Evidence

35 | How is witness, documentary and expert evidence dealt with?

The list of evidence is offered with the pleadings presented by the parties.

However, the court has the prerogative to request additional information, technical reports, plans, photographs, drawings, objects or other documents and to carry out judicial inspections or order the reconstruction of events necessary to ascertain the merits of the case.

The court also has the prerogative to summon a person to give testimony in court when, during the course of the proceeding, it has reasons to believe that a certain person, not offered as a witness, has knowledge of facts that are important to making a correct decision of the dispute.

Written testimonies are only allowed in special circumstances and if it is shown that it would be seriously difficult for the witness to be present at the hearing or if such presence proves to be impossible.

Pursuant to specific rules, the parties or legal representatives of a corporation can testify at their request (regarding any facts in which they were personally involved or of which they have direct knowledge) or at the request of the opposing party (essentially, to obtain a confession).

The court assesses the parties' testimonies at its own discretion (unless they amount to an admission of the facts).

There is a legal duty to cooperate with the court. Thus, if a party refuses to do so, the court may draw negative inferences (in addition to other sanctions).

Expert evidence is allowed and can be requested by any of the parties or required by the court and may be provided by a single expert or by a panel of up to three experts. In the latter case, each party appoints one expert and the court appoints the third. The result of the examination carried out by the expert is included in an expert report, in which the expert issues a founded and neutral opinion on the subject matter of the report.

The court is only bound by evidence with legally predetermined probative force and under the terms and limits specified under Portuguese legislation: proof by authentic or private documents, whose authenticity is established by a competent authority (see articles 362 to 387 PCC), an admission (see articles 352 to 360 PCC) and legal presumptions (articles 349 to 350 PCC).

Assessment of the remaining evidence is carried out in accordance with the principle of free assessment of evidence, without being subject to any rules apart from the rules of experience.

36 | How does the court deal with large volumes of commercial or technical evidence?

Under article 601 of the PCPC, when the matter of fact gives rise to difficulties of a technical nature whose solution depends on special knowledge that the court does not have, the judge may designate a competent person to assist them and provide the necessary clarifications, as well as, in any case, request all the technical opinions that are essential for determining the truth of the facts.

37 | Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

In the Portuguese jurisdiction, a witness can be compelled to give evidence in or to a foreign court provided that the state of the court that requested it has an agreement with Portugal concerning the taking of evidence in civil and commercial matters and the conditions to do so are met (eg, Regulation (EC) No. 1206/2001 and The Hague Convention of 18 March 1970). Similarly, a Portuguese court may compel a foreign witness to give evidence in a foreign court if the state of this court has concluded that type of agreement with Portugal and the requirements in it are met.

38 | How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

During trial, the witness will be questioned first by the lawyer of the party that called them and then cross-examined by the lawyer of the

opposing party. The witness may also be confronted with existing documents in the case. The court may interrupt the examination to obtain clarifications or to ask any additional questions it considers necessary. Witnesses can only testify about facts that they have experienced or have special knowledge of (see article 516 PCPC). The court has the prerogative to request for expert evidence on the authenticity of documentary evidence.

Time frame

39 | How long do the proceedings typically last, and in what circumstances can they be expedited?

It is not possible to establish an average period for a decision on commercial litigation to be obtained. The average duration of a case in a judicial court is between one and one and a half years. However, for cases involving expert reports, large numbers of documents and various witnesses, and which are complex and time consuming, the estimate would be between two and four years. There are no expedited proceedings under Portuguese law.

Gaining an advantage

40 | What other steps can a party take during proceedings to achieve tactical advantage in a case?

Portuguese procedural law does not leave much scope for means to gain tactical advantage.

Under the PCPC, the parties cannot move to dismiss a legal action. However, the court may dismiss an action if the claim does not comply with the legal requirements. In certain circumstances, the court may issue a dispositive decision without producing evidence, for example, when the statute of limitation for filing a claim has expired.

When the claimant presents a claim and the defendant, despite being properly served, fails to challenge the claim, the facts alleged by the claimant are deemed to have been admitted and the court immediately issues its decision on the dispute.

Impact of third-party funding

41 | If third parties are able to fund the costs of the litigation and pay adverse costs, what impact can this have on the case?

If it becomes common for third parties to fund the costs of litigation and to pay adverse costs, Portugal would see an increase in small and medium-sized companies pursuing complex litigation claims that need specialist counsel and technical experts.

Impact of technology

42 | What impact is technology having on complex commercial litigation in your jurisdiction?

Lawyers are able to consult their court cases online through the e-justice platform (Citius).

Under article 502 PCPC, witnesses residing outside the municipality where the court is located are presented by the parties or heard through technological equipment that allows communication in real time, visually and audibly, from the court or from another public building in the area of their residence.

Without prejudice to the provisions of international or European instruments, witnesses residing abroad are interviewed using technological equipment that allows communication, visually and audibly, in real time, whenever the necessary technological means exist at the place of residence.

Technologically assisted document review is not provided for in Portuguese law and it is not used by the courts.

Parallel proceedings

43 | How are parallel proceedings dealt with? What steps can a party take to gain a tactical advantage in these circumstances, and may a party bring private prosecutions?

Civil proceedings can be suspended if another case (including a criminal or administrative proceedings) is dealing with a preliminary question necessary to decide the former.

There are adhesion procedures under which private law claims are decided in criminal proceedings at the request of a party with legal standing.

The impact in a civil proceedings of the decision issued in a criminal proceedings relies on the fact that the last has become final.

TRIAL

Trial conduct

44 | How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

Under Portuguese law, the trial hearing should be continuous and only be interrupted if absolutely necessary. However, the trial hearing can be suspended and continued on a different day if it is not possible to complete the whole agenda on the same day.

Civil trials are public, must be fully recorded and they are conducted by the appointed judge with the cooperation of the parties' lawyers. Although it is not mandatory, the parties may also be present.

Before the beginning of the trial hearing, the court clerk ascertains if all the persons invited to attend are present.

The trial hearing usually begins with the judge attempting to get the parties to settle. If no agreement is reached, the hearing will begin with the following order of evidence (as set out in article 604 Civil Code Procedure (PCPC)):

- Parties' testimonies;
- exhibition of cinematographic reproductions or phonographic records;
- experts' clarifications; and
- witnesses' testimonies. If any testimony is to be given outside the court, the hearing is interrupted before the oral arguments and the judge and lawyers move to take it.

After all the evidence has been produced, the parties' counsel will produce their final oral statements. In those arguments, they should highlight the facts they believe were or were not proven based on the evidence produced, the applicable legal rules, and the overall consequences resulting from it.

In theory, the final decision should be issued in writing within 30 days of the end of the trial.

The duration of a trial hearing depends on the court's and the lawyers' agenda, the number of parties involved, the number of people who will be heard and whether or not all attend the hearing. On average, the time between the first and the last session of a trial will not be more than three months.

Use of juries

45 | Are jury trials the norm, and can they be denied?

Juries play no role in Portuguese civil proceedings.

Confidentiality

46 | How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

Portuguese civil proceedings are public unless the disclosure of their contents may harm the dignity of people, the privacy, public morality, the normal functioning of the hearing or the effectiveness of the decision to be taken. Publicity means that all court documents are available to the parties, lawyers and anyone who shows a legitimate interest in them (see articles 163 and 164 PCPC). Sensitive commercial information is protected with some measures that can be adopted by courts, such as limiting the access to documents containing commercial secrets and restricting the number of people who can attend hearings (see article 352 of the Portuguese Industrial Property Code).

Media interest

47 | How is media interest dealt with? Is the media ever ordered not to report on certain information?

The media interested in consulting the case must claim facts that justify the interest in that consultation and specify the alleged relevance and public interest. Provided that all the legal requirements are met, the media may be ordered by means of an interim relief not to report on certain information.

Proving claims

48 | How are monetary claims valued and proved?

The aim of monetary compensation is to place the claimant in the position they would have been in if the unlawful act had not occurred. Monetary claims are proved by any means admissible under the PCPC. Although liquidation of damages (at a later stage of the proceedings) is allowed, the assessment of damages usually takes place at the same time as the trial of the merits. Compensation for financial losses is calculated based on the difference between the claimant's financial position at the most recent date that can be taken into account by the court, and that which would have existed if there had been no damage. Compensation for non-financial loss is fixed on the basis of equity and depends on the severity of the damage, the level of fault, the economic status of the claimant and of the party at fault and currency fluctuation (see articles 562 and 496 PCC).

POST-TRIAL

Costs

49 | How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

Litigation costs have increased substantially in recent years. Parties involved in court proceedings are obliged to pay court fees and are also responsible for the payment of their own expenses and their own lawyers' fees.

The exact amount to be paid depends on the value of the claim, the conduct of the parties and the complexity of the matter. However, in cases where the value of the claim is above €275,000, the losing party may request the court to relieve them from payment of a large percentage of the court fees or even the total amount of the remaining court fees.

Following the issuing of the judgment, the winning party can ask the losing party to pay the judicial costs incurred by the former by sending a statement of its costs. The winning party may also request the

payment of the expenses and lawyers' fees, but in the latter case, this is limited to 50 per cent of the amount of court fees paid by all the parties (see article 533 CPC and articles 25 and 26 of the Judicial Costs Rules).

Appeals

50 | When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

Judgments issued by the court of first instance may be appealed up to 30 days from the date of notification (with an extra 10 days if the decision on the facts is also challenged), if the value of the claim is higher than €5,000 and if the decision is unfavourable to the appellant by more than €2,500. If the value of the claim is higher than €30,000, and the decision against the appellant is worth at least €15,000, it is also possible to appeal to the Supreme Court of Justice on matters of law, unless the Court of Appeal unanimously confirmed the decision at first instance without essentially different reasoning.

The duration of a civil appeal is on average four months, as indicated in the statistics of the Directorate-General of Justice Policy for 2018.

Enforceability

51 | How enforceable internationally are judgments from the courts in your jurisdiction?

Judgments rendered in Portugal are automatically enforceable in EU member states without any further formalities being required. The same applies to the enforceability of judgments rendered by courts of another EU member state in Portugal (see article 36 of Regulation 1215/2012 of 12 December).

The enforceability of decisions rendered by courts of non-EU member states depends on a prior review and confirmation by the Court of Appeal under a special recognition procedure (see articles 978 et seq PCPC).

52 | How do the courts in your jurisdiction support the process of enforcing foreign judgments?

A judgment by a court of an EU member state that is enforceable in that member state is enforceable in Portugal without any declaration of enforceability being required. This enforcement will be governed by Portuguese law as if the judgment had been originally issued in Portugal (see article 39 et seq of Regulation 1215/2012).

The enforcement of decisions rendered by courts of non-EU member states depends on a prior review and confirmation by the Court of Appeal under a special recognition procedure (see articles 978 et seq PCPC).

OTHER CONSIDERATIONS

Interesting features

53 | Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

Portugal has a well-tested e-justice platform in place, where court filings and notifications are done electronically.

The database on insolvencies and the database of case law can both be accessed online and free of charge.

In general, lawyers are highly qualified and creative in finding solutions to complex problems.



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Jurisdictional disadvantages

54 | Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

No, quite the contrary.

Special considerations

55 | Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

Special considerations have to be looked at on an individual case-by-case basis before filing or defending a claim.

UPDATES AND TRENDS

Key developments of the past year

56 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?

This year, there are no key cases, decisions, judgments, policy and legislative developments besides the ones relating to the covid-19 pandemic.

Coronavirus

57 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In the context of covid-19 and with relevance to litigation, Law 1-A/2020 of 19 March (amended by Law 4-A/2020 of 6 April) was approved and it suspended most procedural time limits, as well as limitation and prescription periods from 9 March 2020. Subsequently, Law 16/2020 of 29 May lifted this suspension from 3 June 2020 and established exceptional arrangements for court proceedings during the pandemic. It gave priority to in-person trials and witness examinations, and to the use of remote means of communication for the remaining proceedings.

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