



Litigation Dispute Resolution Comparative Guide



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Transformative
Legal Experts



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1. Legal framework

1. 1. What system of jurisprudence applies in your jurisdiction? What implications does this have for litigation?

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Portugal's legal system is based on written legislation (statutes and codes) as the main source of law. Portuguese judges cannot create law, but can only interpret and apply it. Jurisprudence is merely a complementary source of interpretation and application of the law. The rule of precedent does not exist in the Portuguese legal system.

1. 2. What rules govern litigation in your jurisdiction?

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The Portuguese legal system contains the following main coded legislation with provisions governing litigation:

- the Civil Code;
- the Civil Procedure Code;
- the Penal Code;
- the Penal Procedure Code;
- the Insolvency and Recovery Code;
- the Commercial Code;
- the Commercial Companies Code;
- the Labour Code);
- the Labour Procedure Code;
- the Administrative Procedural Code.

1. 3. Do any special regimes apply to specific claims?

Portugal
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Yes. Disputes concerning the exercise of public power, commercial and corporate litigation, employment claims and maritime law claims are subject to special regimes and are heard by specific courts. Additionally, there are other special regimes for specific claims within the scope of civil matters, such as injunctions and enforcements; and the procedural law also provides for fast-track proceedings for specific applications.

1. 4. Which bilateral and multilateral instruments have relevance to litigation in your jurisdiction?

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- Service/notices:
 - the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; and
 - Council Regulation (EC) 1393/2007 on the service in Member States of judicial and extrajudicial documents in civil or commercial matters, which has applied since 13 November 2008.
- Taking of evidence:
 - the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; and
 - Council Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.
- Recognition and enforcement of judgments:
 - Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- Small claims and payment orders:
 - Regulation (EC) 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure;
 - Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European small claims procedure; and
 - Regulation (EU) 2015/2421 of the European Parliament and of the Council amending Regulation (EC) 861/2007 establishing a European small claims Procedure and Regulation (EC) 1896/2006 creating a European order for payment procedure.

Portugal is also a member of the Judicial Network for Cooperation of the Community of the Portuguese-Speaking Countries, together with Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, the Democratic Republic of São Tomé and Príncipe and Timor Leste.

2. Judicial structure

2. 1. What courts exist in your jurisdiction and how are they structured?

Portugal
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The Portuguese judicial system is essentially divided into:

- judicial courts – common courts which deal with civil and criminal issues, with jurisdiction in all matters not allocated to other judicial bodies; and
- administrative and tax courts, which have jurisdiction to settle disputes arising from administrative and tax legal relations.

In addition, the Portuguese Constitution includes provisions on:

- the Constitutional Court, which is responsible for monitoring the rule of law in Portugal;
- the Audit Court, which is responsible for scrutinising the legality of public expenditures;
- the arbitration courts;
- the justice of the peace courts, which have jurisdiction to decide on actions with a value not exceeding €15,000; and
- the conflict courts.

The Portuguese court structure provides for three judicial instances:

- first instance courts (district courts);
- the courts of appeal; and
- the Supreme Court;

The judicial courts of first instance fall into three categories, depending on the subject matter of the action and the amount at issue:

- courts with general jurisdiction;
- courts with specialised jurisdiction (criminal cases; family matters; cases involving minors, employment law, commercial law, maritime law, intellectual property, competition and regulation; and the enforcement of cases); and
- courts with specific jurisdiction (civil, criminal or mixed divisions; civil or criminal benches; civil or criminal benches dealing with minor matters).

The administrative courts also have a tripartite structure, with:

- administrative and tax courts as the first instance;
- two central higher administrative courts as the second instance; and
- the Supreme Administrative Court, with jurisdiction over all of Portugal, as the highest instance.

2. 2. What specialist courts or tribunals exist in your jurisdiction?

Portugal

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- The Constitutional Court;
- The Audit Court;
- The criminal courts;
- The civil courts;
- The family and minors courts;
- The Maritime Court;
- The Intellectual Property Court;
- The Competence, Regulation and Supervision Court;
- The administrative and tax courts;
- The employment courts;
- The commercial courts; and
- The enforcement courts.

During a state of war, military courts may also be established.

3.Pre-litigation

3. 1. What formalities apply before litigation can be commenced in your jurisdiction?

Portugal

PLMJ

In Portugal, there are no specific formalities before litigation can be commenced.

3. 2. Do any pre-action protocols or similar rules apply prior to the commencement of litigation? What are the consequences of non-compliance?

Portugal
PLMJ

In Portugal, there are no pre-action protocols, conduct requirements or prerequisites to be met before commencing litigation.

3. 3. What other factors should a party consider before commencing litigation in your jurisdiction?

Portugal
PLMJ

The main factors to be considered before commencing litigation are:

- the litigation costs (which include court fees, winner's costs and lawyers' fees);
- the duration of judicial proceedings; and
- the probable outcome.

4. Commencing litigation

4. 1. What rules on limitations periods apply in your jurisdiction?

Portugal
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The limitation period will depend on the grounds of the claim. The general limitation period in civil law, which also applies to contract disputes, is 20 years. However, specific contracts and related obligations or grounds to bring actions may have shorter limitation periods.

Tort disputes have a limitation period of three years from the date on which the plaintiff became aware of its rights, with a limit of 20 years from the wrongful act. If the wrongful act is a criminal offence subject to a longer limitation period, this period will apply to the tort claim.

Property rights relating to land disputes are not subject to limitation periods. However, they may be extinguished or affected by non-use, as adverse possession for a period that exceeds 15 years may lead to the acquisition of legal ownership.

The most common trigger for the limitation period is the date of the act that constitutes the grounds for the claim, but a later date can be the trigger if the perpetrator or the details or consequences of the act remain unknown until later.

4. 2. What rules on jurisdiction and how this is determined apply in your jurisdiction?

Portugal

PLMJ

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

Under Article 62 of the CPC, the international jurisdiction of the Portuguese courts is determined by the following criteria:

- The action can be brought before a Portuguese court in accordance with the rules of territorial jurisdiction established in Portuguese law;
- The act that serves as the cause of the action was committed in Portugal; or
- The right invoked cannot become effective except through an action brought in Portugal or there is appreciable difficulty for the plaintiff in bringing the action abroad, provided that there is a strong connection between the object of the dispute and the Portuguese legal order, whether personal or real.

Once the international jurisdiction of the court has been established, jurisdiction is determined based on hierarchy, value, subject matter and territory (Articles 64 and following of the CPC).

4. 3. Are class actions permitted in your jurisdiction?

Portugal

PLMJ

Portuguese law permits class actions, multi-party litigation and group litigation. Depending on the subject matter of the claim, class actions are filed before the civil or administrative courts.

4. 4. What are the formal requirements for commencing litigation?

Portugal

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Claims are launched through the submission of a written initial claim to the competent court, usually through the e-justice platform (Citius).

The formal requirements for commencing litigation under Article 552 of the CPC are as follows:

- Identify the court in which the lawsuit is filed and identify the parties, indicating their names, residence or offices and, if possible, their civil and tax identification numbers, professions and workplaces;
- State the address of the plaintiff's lawyer;
- Indicate the type of proceeding;
- State the cause of action, including the facts and legal arguments supporting the claim;
- State the request;
- State the value of the claim; and
- Identify the means of evidence.

Any relevant evidentiary documents and proof of payment of the court fee (or proof of exemption from payment) must be appended to the initial claim (see Article of the CPC).

4. 5. What are the procedural and substantive requirements for commencing litigation?

Portugal
PLMJ

Civil and commercial cases start by filing the claim online. This claim:

- identifies the parties;
- states the facts;
- exhibits documents; and
- requests additional evidence such as witness statements.

Before filing, the plaintiff must pay the initial court fee, which will range from €102 (claims up to €2,000) to €1,632 (claims of more than €250,000).

4. 6. Are interim remedies available in your jurisdiction? If so, how are they obtained?

Portugal
PLMJ

The CPC provides for two types of interim remedies: specified (intended to protect against a risk of injury specifically provided for and regulated by the law) and common.

The common forms of interim relief are governed by Article 362 of the CPC. This provides that where one party has a justified fear that another party may cause serious and irreparable damage to its rights, and none of the protective measures laid down by law are suitable for the case, it may ask the court to order the appropriate precautionary or anticipatory measure to secure the effectiveness of the right at risk.

The specified protective measures are as follows:

- provisional restitution of ownership;
- suspension of corporate decisions;
- provisional maintenance;
- provisional compensation;
- seizure/attachment;
- embargo on new construction; and
- impounding of goods.

To obtain an interim injunction, the plaintiff must prove to a summary level:

- facts that show the probable existence of its right; and
- facts that justify its fear of irreparable damage and the need for urgency.

The plaintiff is liable for damages (including interest) caused to the defendant if the injunction is ultimately lifted or considered unjustified; and the plaintiff is held responsible for not acting with reasonable caution. The defendant must prove the loss and damage suffered. This can include lost profits, legal fees and other damage resulting from the plaintiff's conduct. The party that ultimately loses on the merits pays the court costs of the injunction.

4. 7. Under what circumstances must security for costs be provided?

Portugal
PLMJ

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

5. Disclosure

5. 1. What rules apply to disclosure in your jurisdiction? Do any exceptions apply to certain types of documents?

Portugal
PLMJ

Disclosure as a mechanism that enables one party to require another party to produce documents or testimony at the pre-trial stage is not available in Portugal.

5. 2. What rules on third-party disclosure apply in your jurisdiction?

Portugal
PLMJ

Under the general rules of the Civil Procedure Code, in the context of an ongoing case, a party may request the court to order third parties to submit into evidence documents in their possession, provided that it can identify the relevant documents and specify the facts it seeks to prove with such documents. Additionally, all persons are under a general duty to cooperate with the court, which may include disclosing documents or other evidence that is requested by the court in order to clarify the facts in dispute. Any refusal to provide the documents may be freely assessed by the court for proof purposes and/or to reverse the burden of proof. This refusal may also result in the imposition of fines against the non-compliant party.

5. 3. What rules on privilege apply in your jurisdiction? Does attorney-client privilege extend to in-house counsel?

Portugal
PLMJ

In principle, any document that potentially proves the alleged facts can be exhibited. However, there are exceptions for documents covered by lawyer-client privilege. If documents relate, directly or indirectly, to facts that are subject to secrecy, they are immediately covered by lawyer-client privilege and cannot be disclosed.

Specifically, lawyers must maintain lawyer-client privilege regarding all facts that come to their knowledge in the course of their professional work.

If documents subject to secrecy are exhibited, they are null and cannot be considered.

However, exceptions are set out in the Statute of the Portuguese Bar Association which allow such documents to be filed. Lawyers can disclose facts that are covered by lawyer-client privilege if this is

absolutely necessary to defend the dignity, rights and legitimate interests of the lawyers or of the client or its representatives (with prior authorisation from the Portuguese Bar Association).

Confidential correspondence between lawyers cannot be exhibited under any circumstances, even if disclosure of the facts is essential.

Lawyer-lawyer and lawyer-client correspondence is privileged. Banking information and documents are also confidential and cannot be disclosed without the account holder's authorisation or a court order. State or lawyer-client privilege and grounds of invasion into private correspondence or telecommunications may also prevent disclosure.

Lawyer-client privilege extends to in-house counsel. In what concerns the professional secrecy of the work product or work-related knowledge of a lawyer admitted to the Portuguese Bar Association, there is no difference in treatment between in-house professionals and external lawyers.

5. 4. How have technological advances affected the disclosure process in your jurisdiction?

Portugal
PLMJ

Technological advances have not affected the disclosure process.

5. 5. What specific considerations should be borne in mind during the disclosure process, for both plaintiff and defendant?

Portugal
PLMJ

In general, a party is not obliged to provide all available evidence – specifically, evidence that is harmful to its position. However, there is a specific document disclosure procedure. The court, upon application or on its own initiative, can order any party or third party to produce specific documents that are considered useful to evaluating the claim (eg, technical reports, plans, photography, drawings, objects or other documents that are necessary to ascertain the truth regarding the merits of the case). Failure to produce specific documents so ordered is punishable by a fine and may lead to adverse inferences, such as the presumption that the allegations made by the requesting party regarding the other party are true.

6. Evidence

6. 1. What types of evidence are permissible in your jurisdiction?

Portugal
PLMJ

The Civil Code and the Civil Procedure Code list the following types of evidence:

- admission;
- documentary evidence;

- expert evidence;
- inspection;
- witness evidence, and
- presentation of movable or immovable objects.

6. 2. What rules apply to expert evidence in your jurisdiction? What specific considerations should be borne in mind when preparing and presenting expert evidence?

Portugal
PLMJ

Expert evidence can be requested directly by the court or by the parties. If the request is made by the parties, this request should be made with the initial claim and no later than the preliminary hearing. If the court considers this evidence to be necessary, it may request it itself, even if this requires the suspension of the trial hearing for that purpose.

The expert evidence may be given by just one expert appointed by the court or by three experts (one appointed by each party and one appointed by the court).

The experts must produce a written report, in which agreement or disagreement can be expressed by any of the appointed experts regarding each matter in the report. The parties may object or request clarifications to the report or request that the experts be summoned to be present in the trial hearing in order to clarify their statements. Their input will be limited to the scope of the report without rendering an opinion on the facts. A second expert opinion may also be requested.

Expert opinions are not binding on the court, even if the experts were appointed by the court itself.

6. 3. What other factors should be borne in mind when preparing and presenting evidence in your jurisdiction?

Portugal
PLMJ

If a party wishes to file a document during the trial, it must prove that it was impossible to do so earlier. However, the court can require any evidence it considers necessary to discover the truth and reach the right decision.

7. Court proceedings

7. 1. What case management powers do the courts have in your jurisdiction?

Portugal
PLMJ

The judge has the power to impose procedural acts appropriate to the specifics of the case, and to adapt and direct the content and form of the court acts to the end they aim to achieve, thus ensuring a fair trial.

7. 2. Are court proceedings in your jurisdiction public or private? If the former, are any options available to the parties to keep the proceedings or related information confidential?

Portugal
PLMJ

Civil trials are public unless the court decides otherwise in order to safeguard personal dignity, public morality or its own normal operation. The hearings must be fully recorded and are conducted by the appointed judge with the cooperation of the parties' lawyers. Although this is not mandatory, the parties may also be present.

Insofar as documents are concerned, these can be accessed by the parties or by anyone with a judicial mandate or a relevant interest in the case. However, if the disclosure of their content has the potential to harm personal dignity, privacy or public morality, or to undermine the effectiveness of the court decision, access may be limited or denied.

Access to a case file can be restricted under the General Data Protection Regulation if the personal data in question is not relevant to the case.

Parties and lawyers can access criminal court records, but access during the investigation stage requires the authorisation of the public prosecutor or the judge, and can be blocked if disclosure could interfere with the investigation or cause damage to any of the parties. Interested third parties can also request access.

7. 3. How is the applicable law determined? What happens in the event of a conflict of laws?

Portugal
PLMJ

The applicable law is determined in accordance with the subject matter of the case. Conflicts of laws are resolved through the provisions of the Civil Code.

7. 4. What rules apply to the joinder of third parties?

Portugal
PLMJ

Third parties may join a lawsuit in the following situations:

- The interested party has exactly the same interest in the lawsuit as the plaintiff or the defendant. In this case, the joining party may present its own claim/defence or adhere to the claim/defence presented by the existing parties by means of an *ad hoc* request stating a wish to adhere to the existing claim.
- The interested party does not have exactly the same interest as the plaintiff or the defendant, but has an advantage if a decision is issued in favour of one of them. In this case, the joining party may join the proceedings at any time before the final decision is reached by means of an *ad hoc* request or a claim/defence. During the proceedings, the joining party is subject to the same procedural rights and duties as the assisted party. However, it cannot undertake any acts that the latter has lost the right to

undertake or adopt an attitude which is in opposition to it.

- During a lawsuit between two or more parties, a party may claim to have a right that is fully or partially incompatible with the rights invoked by the plaintiff. In this case, the joining party may join the proceeding before the final hearing is scheduled or, if the final hearing has already been scheduled, before a final decision is reached. For this purpose, the joining party must file a claim, which must comply with the requirements provided for the initial claim by the plaintiff.

7. 5. How do the court proceedings unfold in your jurisdiction? What specific considerations should be borne in mind at each stage of the process, for both plaintiff and defendant?

Portugal
PLMJ

At the time scheduled, the court clerk will ensure that all summoned witnesses and parties are present and then invite counsel to enter the hearing room. The judge enters the room once all counsel and parties are assembled. All participants must rise when the judge enters.

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 of the Civil Procedure Code):

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

However, the court is free to alter this sequence, either at the parties' request or if it considers that some other order would be more suitable for the case.

After all evidence has been produced, the parties' counsel will produce their final oral statements.

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' agendas;
- the number of parties involved;
- the number of people who will be heard; and
- whether 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.

7. 6. What is the typical timeframe for the court proceedings?

Portugal
PLMJ

The average duration of a case is between 12 and 18 months. However, for cases involving expert reports, large numbers of documents and various witnesses, and which are complex and time consuming, the estimate is between two and four years.

8. Judgment and remedies

8. 1. What types of judgments, orders and other remedies are available in your jurisdiction?

Portugal
PLMJ

The plaintiff has different remedies, depending on the objective. Lawsuits have the following purposes:

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

Regarding remedies, compensation is available whenever the ‘natural reconstitution’ of the plaintiff’s situation is impossible, insufficient or too expensive. The main forms of ‘natural reconstitution’ are repair and enforcement of an agreement or legal obligation. Courts may order anti-competitive conduct to cease and specific performance. Monetary compensation is the exception in theory, but is most common in practice.

Monetary compensation can cover loss and damage (which can be repaired by money). Damages cover actual losses from a reduction in assets or loss of profits. Loss of chance can be compensated if expenses were incurred and compensation can be claimed for any profits that would have arisen from lost chance. However, the evidence required is very burdensome. There is also compensation for moral damage (eg, to physical integrity, honour or reputation), and for foreseeable future losses.

Natural restoration or monetary compensation can follow a successful claim for breach of competition law.

Damages are purely compensatory, as punitive damages are not available.

9. Appeals

9. 1. On what grounds may a judgment be appealed in your jurisdiction?

Portugal
PLMJ

First instance judgments may be appealed if the claim’s value exceeds €5,000 and if the decision is unfavourable to the appellant by more than €2,500. If these values are €30,000 and €15,000 respectively, an appeal to the Supreme Court is possible on matters of law, unless the court of appeal unanimously confirms the first instance decision.

Regardless of value, an appeal is always admissible:

- based on infringement of the rules of international jurisdiction, the rules of subject matter or hierarchical jurisdiction, or *res judicata*;
- where the decision concerns the value of any claims if their value exceeds the jurisdictional amount of the court in question;
- where a decision handed down under the same legislation and on the same fundamental question of law goes against uniform jurisprudence of the Supreme Court; and
- where a court of appeal decision contradicts another decision of the same or a different court of appeal under the same legislation and on the same fundamental question of law.

Additionally, an appeal will always be admissible:

- in actions examining the validity, subsistence or termination of lease agreements, with limited exceptions;
- where the decision concerns the value of the cause in preventive proceedings if the value exceeds the court's jurisdiction; and
- where the decision preliminarily dismissed an application for preventive proceedings.

Generally, the Supreme Court rules on points of law only and its decisions are final, except in case of non-compliance with the Constitution, in which case the parties may appeal to the Portuguese Constitutional Court.

9. 2. What is the appeals process? Is the judgment stayed while the appeal is pending?

Portugal PLMJ

Appeals can be filed only by the party against which the judgment was given. However, any person directly affected by a decision can appeal it, even if that party is not a party to the case.

The time limit for appeal is 30 days from the date of notification of the decision or 15 days in urgent cases and for interlocutory decisions.

If the appeal includes a challenge against the proven facts through the review of the recorded witnesses or party statements, the time limits for appeal and reply are increased by 10 days.

If the defendant requests that the object of the appeal be extended, the appellant can respond to the subject of the extension within 15 days of receiving the request.

Where there are several appellants or defendants, even if represented by different lawyers, they will be subject to the same timeframe within which to submit their allegations and they must all be allowed to examine the case file during that timeframe.

After the submission of the appeal allegations and the counter-appeal allegations, the first instance court or the appeal court will then decide whether the appeal should be accepted. If it is accepted, the case will be sent to the higher court.

The general rule is that an appeal does not suspend the proceedings unless the appellant pays a deposit or

presents a bank guarantee.

9. 3. What specific considerations should be borne in mind during the appeals process, for both plaintiff and defendant?

Portugal
PLMJ

Appeals can be filed if they comply with the rules on values outlined in question 9.1.

A court of appeal decision on a first instance judgment that decides on the merits or dismisses a claim or counterclaim against a defendant can be reviewed by the Supreme Court, unless the decision is the same as the first instance sentence.

Regardless of value, an appeal is always admissible:

- based on infringement of the rules of international jurisdiction, the rules of subject matter or hierarchical jurisdiction, or *res judicata*;
- where the decision concerns the value of any claims, if their value exceeds the jurisdictional amount of the court in question;
- where the decision goes against uniform jurisprudence of the Supreme Court handed down under the same legislation and on the same fundamental question of law; or
- where a court of appeal decision contradicts another decision of the same or a different court of appeal under the same legislation and on the same fundamental question of law.

Additionally, an appeal will always be admissible:

- in actions examining the validity, subsistence or termination of lease agreements, with limited exceptions;
- where the decision concerns the value of the cause in preventive proceedings, if the value exceeds the court's jurisdiction; and
- where the decision preliminarily dismissed an application for preventive proceedings.

Appeals to the Supreme Court can be based on:

- a violation of substantive law;
- a violation or misapplication of procedural law; or
- the grounds for nullity provided for in the Code of Civil Procedure.

10. Enforcement

10. 1. How are domestic judgments enforced in your jurisdiction?

Portugal
PLMJ

Enforcement agents deal with the enforcement of judgments issued by local courts. The enforcement agent has the power to:

- search for assets;

- attach and seize them; and
- liquidate or sell them to satisfy the judgment.

10. 2. How are foreign judgments enforced in your jurisdiction?

Portugal

PLMJ

Foreign judgments are enforced in Portugal only after review and confirmation by the court of appeal, subject to Articles 85 to 87 of the Code of Civil Procedure (CPC), with the necessary adaptations.

The CPC provides that no judgment on private rights issued by a foreign court will be effective in Portugal, regardless of the nationality of the parties, unless it has been reviewed and confirmed.

In addition, the confirmation/revision of judgments of EU courts can be dispensed with under Council Regulation (EC) 2201/2003 of 27 November 2003 (matrimonial and parental responsibility matters).

Additionally, in order for a judgment to be confirmed:

- there must be no doubt about the authenticity of the document on which the judgement is based or the intelligence of the decision;
- it must have become *res judicata* under the law of the country in which it was issued;
- it must come from a foreign court whose jurisdiction was not obtained by fraudulent evasion of the law and concern a matter under the exclusive jurisdiction of the Portuguese courts;
- the exceptions of *lis pendens* and *res judicata* cannot be raised, unless the foreign court has prevented jurisdiction;
- the defendant must have been served in accordance with the law of the country of the court of origin, and the principles of adversarial proceedings and equality of the parties must have been observed; and
- its recognition must not lead to a result manifestly incompatible with the principles of international public order of the Portuguese state.

10. 3. What specific considerations should be borne in mind during the enforcement process, for both plaintiff and defendant?

Portugal

PLMJ

See question 10.2.

11. Costs, fees and funding

11. 1. What costs and fees are incurred when litigating in your jurisdiction?

Portugal

PLMJ

The parties are obliged to pay the 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.

Where the value of the claim is above €275,000, the losing party may request the court to relieve it from payment of a large percentage of the court fees or even the total amount of the remaining court fees.

Following the issue of the judgment, the winning party can ask the losing party to pay its judicial costs by sending a statement of costs. The winning party may also request payment of the expenses and lawyers' fees; but in the latter case, this is limited to 50% of the court fees paid by all parties.

11. 2. Are contingency fees and similar arrangements permitted in your jurisdiction?

Portugal
PLMJ

Any arrangement whereby lawyers' fees depend exclusively on the outcome of the case is forbidden by the Statute of the Portuguese Bar Association. Lawyers' fees must correspond to 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 required;
- the result obtained;
- the time spent;
- the responsibilities assumed by them; and
- other applicable professional uses.

11. 3. Is third-party funding permitted in your jurisdiction?

Portugal
PLMJ

The court fees are not high. The most significant costs are the lawyers' fees and the fees for technicians, experts, legal opinions and certain types of evidence. There is a need for third-party funding, but Portugal has no specific regulations on this and it remains to be seen whether this will benefit or hinder its development.

The current economic situation could also trigger the growth of the third-party funding market. Many businesses prefer to fund their businesses rather than litigation. This opens the door to third-party funding as a way to litigate while reducing financial exposure. As Portugal has no specific rules on third-party funding, there is less certainty for parties that want to use it, because the general rules and principles require interpretation.

11. 4. What other strategies should parties consider to mitigate the costs of litigation?

Portugal
PLMJ

To mitigate the costs of litigation, parties should carefully consider the value to be attributed to the claim and the likelihood of the court granting the full amount claimed.

12. Trends and predictions

12. 1. How would you describe the current litigation landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

Portugal
PLMJ

Due to the COVID-19 pandemic, online hearings using Webex became the rule, to ensure that hearings went ahead despite travel restrictions. Today, remote hearings are limited to case management hearings and are used for final hearings only exceptionally, where the parties and witnesses give evidence.

The courts' powers to manage litigation have been strengthened in recent years. Following the review of the Civil Procedure Code in 2013, the courts gained additional powers of inquiry and now play an active role in remedying procedural shortcomings and acting to ensure proper evidence production. For example, the court can examine witnesses, order the submission of necessary documents, request clarifications, require expert evidence and carry out inspections. The standard of proof depends on the rights being enforced, with the burden of proving certain facts falling on either the plaintiff or the defendant, and is subject to different standards (eg, authenticated documents, written evidence, witnesses)

The latest proposal for dispute resolution reform concerns the judicial courts and relates to issues in the Civil Procedure Code. Among other things, it aims to:

- extend the possibility to waive the case management hearing; and
- reinstate a limit on the number of witnesses and an additional submission at the written stage of the proceedings to allow a broader response from the plaintiff to the statement of defence.

13. Tips and traps

13. 1. What would be your recommendations to parties facing litigation in your jurisdiction and what potential pitfalls would you highlight?

Portugal
PLMJ

In dispute resolution, negotiation should always be the first option. As a rule, judicial actions are time consuming and expensive, so it is essential to be proactive, approach business partners, start negotiations early and consider all negotiation possibilities before proceeding with litigation.

While the aim of negotiations is to resolve the dispute, preparation for litigation should not be neglected, because this may ultimately be unavoidable. It is important that this stage is subject to without prejudice privilege and the obligation of confidentiality. It is also important that any agreement effectively binds the

parties and can stand up in court in the event of non-compliance. In critical situations, participation in recovery proceedings with creditors or debtors, or an application for or submission to insolvency proceedings, may be necessary. These situations demand the assistance of a litigation lawyer early on in the process.



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