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LITIGATION & ARBITRATION

NEW PORTUGUESE ARBITRATION ACT
Act 63/2011, of 14 December

Introduction

The Portuguese Parliament recently passed a new Arbitration Act, which was officially published on 14 December 2011, further to the demand made on section 7.6 of the Memorandum of Understanding entered into by and between the Portuguese State, the European Commission, the European Central Bank and the International Monetary Fund.

This new Arbitration Act takes from multiple sources. In fact, despite being clearly influenced by the 2006 version of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL), it also embraced solutions already set forth in the former Portuguese Arbitration Act (Law 31/86, of 29 August, which was superseded by this Act) and in foreign legal systems with a consolidated arbitration practice, such as France, Italy, Germany, Spain, Sweden, Switzerland and the United Kingdom.

As the Portuguese Government publicly stated on 15 September 2011, the purpose of this new Arbitration Act is to provide Portugal with a modern arbitration law and make the country international arbitration-friendly, "notably when the dispute involves companies or other economic operators from Portuguese speaking countries or when the applicable law is the law of one of such countries".

New features

The new Arbitration Act constitutes a significant improvement of the Portuguese legal framework on dispute resolution. Among the new features, the following can be highlighted:

(i) A change in the criteria for arbitrability, i.e. any dispute regarding a claim of economic interest can be the subject of an arbitration. However, the dispute may also be submitted to arbitration even if the claim has no economic interest provided it relates to alienable rights;
(ii) Detailed yet optional procedures for the appointment of arbitrators, the challenging thereof and arbitrators' fees and expenses;
(iii) The Act expressly allows arbitral tribunals to order provisional and conservatory measures and also preliminary orders, the former being enforceable before state courts and the latter non-enforceable;
(iv) Arbitration proceedings are subject to confidentiality (unless otherwise agreed);
(v) Arbitration awards are not subject to appeal (unless otherwise agreed);

(vi) Arbitral tribunals now have twelve months to issue a decision regarding the dispute (this deadline may be successively and indefinitely renewed by parties – provided they reach an agreement on the matter - or by the arbitral tribunal at its sole discretion, but the parties may jointly oppose to such renewal) (unless otherwise agreed);

(vii) Arbitral tribunals must apply to the merits of the case the law chosen by the parties. Where none was chosen, the arbitral tribunal must apply the rules bearing the closest connection with the dispute;

(viii) The award of the arbitral tribunal no longer needs to be deposited before the state courts.

Conclusions

All in all, the new Arbitration Act is farther comprehensive than its predecessor. This notwithstanding, it is considerably liberal and flexible, with a number of provisions inline with modern international arbitration standards that assure an appropriate constitution and functioning of the arbitral tribunal while giving parties and arbitrators the ability to conduct arbitral proceedings in accordance with their own reasonable expectations.

The Act will enter into force on 15 March 2012.

Lisbon, 29 December 2011