

Alternative Dispute Resolution - Portugal

In times of economic uncertainty organisations and individuals tend to turn to alternative methods of dispute resolution, as opposed to the more traditional, yet costly, path of litigation. In Portugal, November saw the passing of the new Law on Voluntary Arbitration, which aims to develop voluntary arbitration at national level. To find out more about these reforms, and other issues which have affected this sector during 2011, *Lawyer Monthly* speaks to José Carlos Soares Machado, the leading partner in the Dispute Resolution department of Portuguese law firm, SRS Advogados.

Q Please introduce yourself, your role and your firm.

I have 35 years of experience and expertise as a litigation/arbitration lawyer and arbitrator, and as a litigation expert, I believe I have built a reputation as a tough, but fair, trial lawyer, having achieved success in a number of large court cases.

For the last 20 years, I have also headed the Litigation Department of the Real Estate Owners Association. I have also been appointed as a member of the Commercial Arbitration Practice Council of the Portuguese Arbitrators Association. In addition, since 2005, I have been the representative of the Minister of Justice on the National Supervisory Board of Insolvency Administrators.

The Litigation & Arbitration Department at SRS comprises a team of 18 lawyers who are specialised in civil, commercial and finance litigation, as well as arbitration, insolvencies and corporate restructuring.

The department includes four managing associates, (two of which have over 15 years of experience, and the other two have over 10 years of experience, in litigation and arbitration), and an off counsel legal adviser, specialized in civil procedure and arbitration, who is a Professor on these subjects in the New University of Lisbon.

SRS offers our clients a strong position in the national market, benefiting from a presence in Lisbon, Funchal and Oporto (the latter by way of association).

We provide full support to our clients in international issues, and an all-round service. Areas of focus include dispute resolution, commercial, competition, construction, corporate, biotech, energy, environmental, European, finance, employment, maritime, media, new technologies, pharmaceutical, public, real estate, regulatory, tax and telecommunications law.

A front-line international presence is guaranteed through partnerships in Portuguese speaking countries, as Brazil,

with Veirano Advogados, which is a law firm with approximately 300 lawyers, present in five Brazilian cities. Also, in Angola, with LCF - Legal Counsel Firm (with offices in Luanda and Soyo), in Mozambique, with Sal & Caldeira (with offices in Maputo and Beira) and in the Cape Verde Islands, with Amado & Medina (with offices in Ilha de Santiago and Ilha do Sal).

Q What key cases have you been involved in this year?

This year, we have been working on many important cases involving copyright litigations, to define related rights, intellectual property, or to compensate for damages incurred due to the violation of competition laws; as well as civil liability cases for abuse of a dominant position, and /or breaches of international commercial contracts.

Q Which case interested you most and why?

Generally I am more interested by the more complex and difficult cases, which require a permanent readjustment of the procedure and legal strategy. I like the challenge that those cases represent; I enjoy being able to get into legal issues, as well as defining the best way to adapt the legal procedure laws to a specific case. I am also interested by cases that involve difficult negotiations.

Q What have been the main trends of alternative dispute resolution in your country this year?

In Portugal, the procedures pending in the courts of appeals or Supreme Court, as well as in the Constitutional Court, normally follow through at a reasonable pace, in fact

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usually quicker than the European average. However, given that the first instance Courts are sometimes less efficient, the alternative dispute resolution methods – specially mediation and arbitration – have been, during the past year, increasingly sought for by the economic players, as has become common in the most recent years.

Q What were the key legislative progressions to affect the ADR sector this year?

Undoubtedly the new law of Voluntary Arbitration, approved by the parliament in November, which substituted the former law (1986) that was in urgent need of an update. The current law was well achieved, using the UNCITRAL model, which encompasses many of the conclusions discussed by the legal doctrine and jurisprudence in recent years. The main legal issues setting back the use of these dispute resolution methods have now been resolved. Some of the main scholars, experts on this subject, were involved in the elaboration of this law, by means of the Portuguese Arbitration Association.

Q How do you feel it may progress in 2012; what legislative changes are on the horizon/do you see the need for?

The main legislative changes that are coming up are the court reforms, in order to make them more efficient, and have the application of justice become quicker; as well as the civil procedure reform, given that the changes introduced in this area in the past years, have not had the desired outcome. I believe that the civil procedure code must be improved. But, in my opinion, the main goal should be to endow the courts with adequate legal methods, in terms of organization and use of resources.

Q What are the main challenges raised when dealing with international arbitration?

At SRS we are increasingly dedicating more time to international arbitration. I am also personally interested in the study and development of this area, for which I hope to be able to give a contribution, by means of my participation in the International Arbitration Committee of the International Law Association. We are also paying close

attention to its development in Brazil and Angola. We are also involved in this area, through in the UIA, and also in collaboration with Spanish lawyers and arbitrators.

Q What is the aim for your firm in 2012?

The present economic and financial situation in Europe, and in Portugal specifically, sets us up for a great challenge. 2012 will be a difficult year for Portuguese law firms, but I am convinced that we will be able to overcome the difficulties, and reach the end of the year with the presumption that the crisis will be reaching an end. Our goal, at SRS, is to keep growing in size and quality, strengthening that which we offer our clients – a responsible work, focused on defending the interests of our clients. **LM**

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