



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Portugal: Litigation

This country-specific Q&A provides an overview of Litigation in Portugal.

It will cover methods of resolving disputes, details of the process and the proceedings, the court and their jurisdiction, costs and appeals and opinions on future developments.

This Q&A is part of the global guide to Litigation. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/litigation-dispute-resolution/>



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The Legal 500



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1. **What are the main methods of resolving commercial disputes?**

The main method is still judicial, with the parties bringing their disputes to Court by means of different types of proceedings (Injunctions, Enforcement Proceedings, Declaratory Actions or others). However, as a result of the need for swift decisions, the demand for extrajudicial methods is increasing, with the parties using Arbitration, Mediation or Civil Courts/Justices of the Peace (that follow a simplified regime).

2. What are the main procedural rules governing commercial litigation?

The main procedural rules imply the filing of a claim and summons addressed to the counterparty and allowing them a 30 day period within which to challenge the claim. This is followed by the scheduling of a preliminary hearing where the Court invites the parties with the goal of reaching a settlement or, if that is not possible, defining the subsequent terms of the process and scheduling a final hearing.

After that final hearing has occurred and all the evidence has been presented, the court makes a final ruling, which may be subject to appeal, depending on the amount due.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

The local Courts are arranged as follow:

- First Instance Courts - allocated to districts and with material jurisdiction;
- Court of Appeal – allocated to 5 districts which cover all national territory;
- Supreme Court.

Constitutional Court – an appeal can be submitted to this court in specific situations and in order to argue the constitutionality of a law applied in a particular case.

4. How long does it typically take from commencing proceedings to get to trial?

Presently, barring any extraordinary delays/incidents, proceedings may get to trial within a period of 1 to 1.5 years.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

As a general rule, hearings are held in public unless the court, in order to safeguard personal dignity, public morality or its own normal operation, decides otherwise.

As far as documents are concerned, they can be accessed by the parties or by anyone who has a judicial mandate or a relevant interest on the case. However, if the disclosure of the contents is liable to harm personal dignity, privacy or public morality or undermine the effectiveness of the court decision, access may be limited or denied.


6. What, if any, are the relevant limitation periods?

The most relevant limitation periods are:

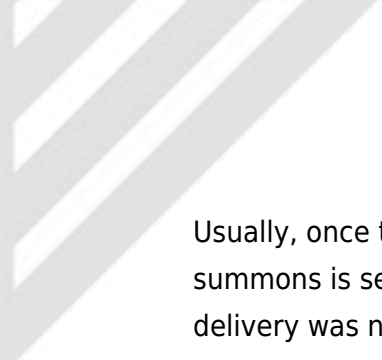
- 2 years for certain types of credit claims, such as lawyers' fees;
- 5 years for other specific situations (e.g. statutory or agreed interest)
- 20 years is the ordinary limitation.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In our jurisdiction there are no pre-action conduct requirements to consider. For instance, if there is a breach of contract, the compliant party may resort directly to judicial action.



How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?



Usually, once the claim is filed, the counterparty is summoned to challenge it. The summons is served by the court by postal delivery or by an enforcement agent if postal delivery was not effective. However, in certain lawsuits (Injunctions or Enforcement Proceedings) and depending on the circumstances, the summons may only take place later in the process.

9. **How does the court determine whether it has jurisdiction over a claim?**

Taking into account what is stated in European Regulations or other international treaties or conventions applicable in Portugal, Portuguese courts have jurisdiction when the existence of any of the connecting factors foreseen in the Portuguese Civil Code is confirmed or when such jurisdiction is assigned by the parties through a pact.

Subsequently, all the rules of internal jurisdiction must be fulfilled and, upon analysis of the file, the court should confirm that - in that particular case, the value of the process and the rules of territorial competence - jurisdiction cannot be questioned by any of the parties.

10. **How does the court determine what law will apply to the claims?**

The applicable law is determined in the first instance through an analysis of the will of the parties. However, it must always be taken into consideration that the will must meet all the relevant criteria prescribed by the Portuguese Civil Code.

11. **In what circumstances, if any, can claims be disposed of without a full trial?**

A claim may be disposed of without a full trial if to the Court considers it as notoriously inadmissible or unfounded or, in circumstances where a procedural or legal court

impediment is revealed.

In a different scenario, if the plaintiff does not follow the due course of the proceedings as demanded by law, the claim can also be disposed of without a full trial.

12. **What, if any, are the main types of interim remedies available?**

The main types of interim remedies in our legal system are Injunctions. These can be ordinary or specified (e.g. suspension of company resolutions) and always depend on a final decision ruled in the appropriate main action.

13. **After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?**

Parties must submit all documents they consider crucial to their plea to court, taking into account that the confidentiality of certain documents must always be preserved.

Usually, documents must be submitted with the allegation of the facts they intend to prove. However, it may be possible to submit them to Court up to 20 days before the final hearing.

In certain situations, the Court may allow the parties to submit documents at a later stage of the proceeding if it is shown that they could not be presented earlier or if the submission becomes necessary due to the course of the proceedings.

14. **What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege,**

confidentiality or public interest)?

As stated above, the disclosure of documents is allowed as a general rule, providing they do not conflict with personal dignity, privacy or public morality; constitute an abusive intrusion into private or family life; or breach professional secrecy.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Depositions are allowed and witnesses must be present in court in order to provide oral evidence. The cross-examination is bounded by the facts brought up in the previous deposition.

A written deposition may be allowed by agreement of both parties, if it is shown that it would be seriously strenuous for the witness to be present at the hearing or if such presence proves to be impossible.

Nevertheless, affidavits are not allowed under Portuguese law.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is allowed and can be requested by any of the parties or required by the court.

The expert is appointed by the court, and must perform his/her functions with diligence and impartiality.

However, if both parties agree to a certain expert, the court should appoint this specific expert unless there are reasonable grounds to believe that the expert in question is not capable.

Expert evidence may be carried out by one single expert or - by request of the parties or when the court reaches the decision that expert evidence is required due to the complexity of the matter - by a team of up to three experts. In this situation each party appoints one expert and the court appoints the third.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

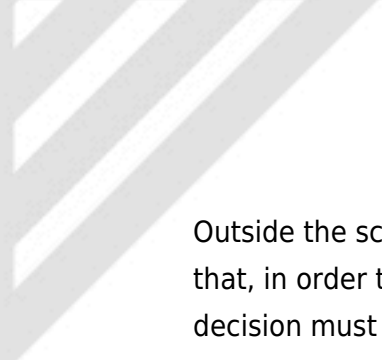
Appeals under Portuguese jurisdiction must fulfil certain initial requirements related to the amount of the claim and the burden of loss.

Taking these factors into account, final decisions can be appealed to the respective higher court (e.g. a decision of a first instance court must be appealed to the court of appeal – Tribunal da Relação) and, depending on the type of process or the grounds of the decision, within a period of between 15 to 30 days, counting from the date the decision was notified to the parties.

Not all Interim decisions can be appealed, but if the appeal is allowed, it must be presented within 15 days counting from the date when the decision was notified.

18. What are the rules governing enforcement of foreign judgments?

According to Commission Regulation (EU) No 1215/2012, foreign judgements passed in other Member States must be treated, for enforcement purposes, as if they were given in the Member State of enforcement. That is, without any specific procedure.



Outside the scope of this Regulation, the internal rules regarding this matter determine that, in order to enforce a foreign decision within the Portuguese jurisdiction, such decision must be formally reviewed and confirmed by a Portuguese court (the Court of Appeal in the area of residency of the party against whom that decision was issued being the competent court).

19. **Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?**

Court fees and other similar costs may be recovered from the counterparty by the party that was successful in the matter, provided the winning party submits those costs to the court and to the counterparty within the stipulated legal deadline.

Nonetheless, despite being allowed, the recovery of lawyers' fees is bound by law to a very small amount.

20. **What, if any, are the collective redress (e.g. class action) mechanisms?**

Portuguese law does not provide for collective redress mechanisms. The most similar legal instrument would be the "Ação Popular", but this is not commonly used.

This kind of proceeding is intended for the protection of the rights of each and every member of a certain group, despite their own will and related to assets that can be used by all of them in a non-exclusive way.

21. **What, if any, are the mechanisms for joining third parties to**

ongoing proceedings and/or consolidating two sets of proceedings?

The Portuguese Civil Procedural Code foresees mechanisms – incidents – for third parties to join ongoing proceedings, on the side of the plaintiff or the defendant, when certain criteria are met and accepted by the court.

If 2 or more sets of proceedings, even if they are running in different courts, connect in relation to the parties or the matter to be analysed and therefore could be ruled on as if they were one, any of the parties can request their consolidation.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

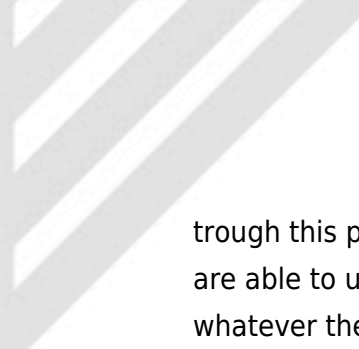
Third parties funding is not allowed under Portuguese law.

23. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

In Portugal, commercial disputes can be adjudicated upon in Judicial Courts or Arbitrational Courts.

There are Arbitration laws with the basic rules that must be followed by the parties and the Court. Arbitration Courts are faster than their judicial counterparts when it comes to analysing and ruling on the matter, but the case can become more expensive since parties have to pay not only the Court fees but also the arbitrators (that are usually well known attorneys or Professors at Law Faculties), in addition to lawyers.

For more than 10 years, the Portuguese judicial system has operated via an online platform – CITIUS – where judicial files are accessible: papers have to be submitted



through this platform and judges' decisions are also registered here. As a result, parties are able to understand what is happening in their proceedings at any time and print whatever they need to.

If the amount requested in the file does not exceed € 250.000,00, court fees will not be as expensive as with arbitration proceedings. In a realistic scenario, if the case is not too complex and no extraordinary circumstances arise, it can be ruled on approximately in one and a half years in the first instance Court.

24. **What, in your opinion, is the most likely growth area for disputes for the next five years?**

We had been seeing a growth in insolvency proceedings over the past few years due to the economic and financial crisis Portugal was going through. However, the economy is slowly recovering and businesses are getting on track. Typically, this means that commercial disputes will become trendy again, namely proceedings against banks from investors that felt misled, proceedings for medical malpractice, and proceedings related to property investments and loans.

25. **What, in your opinion, will be the impact of technology on commercial litigation in the next five years?**

For small commercial disputes/credit collection, digital systems are already in use, allowing clients to access proceedings online in real time; these systems will allow law firms to become paperless offices, saving paper, reducing archive space and administrative tasks.

In the years to come, law firms will also have to deal with artificial intelligence that may replace lawyers in some legal matters, impacting lawyers' careers and the growth of law firms.