



# The Legal 500 Country Comparative Guides

## Portugal: Litigation

This country-specific Q&A provides an overview of litigation laws and regulations applicable in Portugal.

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### Contributing Firm



SRS Advogados

### Authors



José Carlos Soares Machado  
Partner and Head of the Dispute Resolution Department  
The Legal 500

[soares.machado@srslegal.pt](mailto:soares.machado@srslegal.pt)



Natália Garcia Alves  
Partner of the Dispute Resolution Department

[natalia.alves@srslegal.pt](mailto:natalia.alves@srslegal.pt)

## **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 among 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 (the last following 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 conceding a 30-day deadline within which an opposition can be filed. This is followed by the scheduling of a preliminary hearing to which 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 the final hearing occurs and all the evidence has been presented, the court makes a final ruling which may be subject to appeal, depending on the value of the claim.

## **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, excluding any extraordinary delays or 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 arm 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, after declaring the termination of the contract.

**8. 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 through 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 and 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 valid pact.

Subsequently, all rules of the Portuguese 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 the court considers it is notoriously inadmissible or unfounded or in case 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 imposed 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 (usually, with the claim and opposition). However, it may be possible to submit them to court up to 20 days before the trial 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 it does not conflict with personal dignity, privacy or public morality; does not constitute an abusive intrusion into private or family life; does not generate a breach of professional secrecy/client privilege.

**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 but affidavits are not allowed under Portuguese law.

The court follows the principal of the free assessment of evidence.

**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 - by request of the parties or when the court reaches the decision that expert evidence is required due to the complexity of the matter - or by a team of 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 law must fulfil certain initial requirements related to the value 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) 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 filed in the Court of Appeal within 15 days counting from the date when the decision was notified to the parties.

**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, meaning 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 of the area of residence 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 judicial proceedings provided that this party submits those costs to the court and to the counterparty within the stipulated legal deadline.

Nonetheless, despite being allowed, recovery of lawyers' fees is restricted 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 proceedings 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 of the defendant, when certain criteria are met and accepted by the court.

If two 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 judicial courts 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 the 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 value of the file does not exceed € 250.000,00, court fees will not be as expensive as those of 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?**

After the economic crisis that Portugal went through after 2008 and a large number companies was declared insolvent, the economy was recovering, businesses were getting on track and commercial disputes became trendy again, namely proceedings against banks from investors that felt misled, proceedings for medical malpractice, and proceedings related to property investments and loans.

The unexpected pandemic brought another economic crisis which is most likely to increase the number of judicial proceedings related to contract breaches, enforcement and insolvency proceedings.

**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, reducing archive space, costs and administrative tasks, more protective of the environment and leaving a smaller carbon print.

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

**26. How have the courts in your jurisdiction dealt with the COVID-19 pandemic and have you seen particular types of disputes arise as a result of the pandemic?**

In Portugal, the Government decided to suspend procedural deadlines on March 20 in local courts, except for urgent files, until new order. Limitation periods were suspended too.

In urgent files (e.g. injunctions or files with detained defendants), the proceedings were to be carried out by online platforms such as *Webex* and, if not possible, with a physical presence in court in compliance with the measures imposed by the health authorities, such as limiting the number of people in the room.

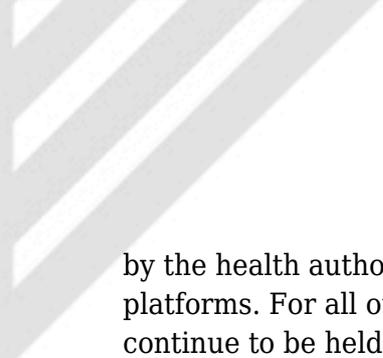
To prevent delays as much as possible, the Government decided that non-urgent files were allowed to follow the same regime and be carried out electronically if all parties agreed that they had the conditions to ensure the practice through online platforms.

Actually, many proceedings were postponed at the court's initiative, without providing a new scheduled date and others were not carried out as the parties did not agree to proceed through online platforms by not trusting the electronic means which are fallible and do not allow to follow the principle of immediacy.

However, it should be noted that before the pandemic witnesses' enquiries were held by videoconference as long as their domicile was outside the court area, so we believe that conducting trials by online platforms is just a matter of changing mentalities that will happen soon.

Nevertheless, courts have taken the opportunity to render final decisions at a good rhythm in files in which no further steps were necessary.

With the relief of the containment measures since mid-May, as of 3 of June, the court's activity will resume and trial hearings will recommence to occur with the physical presence in court of parties, lawyers and witnesses always in compliance with the measures imposed



by the health authorities. Only in cases this is not possible the trials are carried out by online platforms. For all other proceedings, such as preliminary hearings, the rule is that they shall continue to be held through online platforms.

As a measure of protection for the most vulnerable parties, counsellors or any other person involved over 70 years old or that belongs to any risk group, it is not mandatory to be present in court allowing the law that they participate in the proceedings by technological means.

Regarding the particular types of disputes arising, there is no doubt that the increase of litigation is inevitable and we can anticipate that for bank loans, to which a *moratorium* has been granted due to the pandemic, contract defaults will rise once that suspension period has passed which will lead to a growing number of enforcement and insolvency proceedings. We also expect an increase of declaratory actions for other types of contractual breaches in which the parties were unable to renegotiate and adjust the contracts to their “new normal”.