

GUIDE TO ARBITRATION PLACES (GAP)

PORTUGAL

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The choice of the seat of the arbitration is one of the most consequential decisions in any arbitration agreement. The arbitration law of the arbitral seat will typically govern a wide range of issues concerning both the internal procedural conduct of the arbitral proceedings, as well as the external relationship between the arbitration and national courts. The seat may affect not only the way in which the arbitration is conducted, but also its final outcome, e.g., the possibility of enforcement. It is also a main driver of time and costs.

Portugal has a pro-arbitration and modern arbitration law, enacted in 2012, which is based on the 2006 UNCITRAL Model Law, with certain improvements mostly based on the experience of other leading jurisdictions and/or on demands by users (e.g., providing specific rules governing multi-party and multi-contract arbitrations, expressly allowing for interim measures and preliminary orders, prohibiting state entities from relying on domestic law to evade from arbitration agreements and enshrining a liberal attitude towards the validity of arbitration agreements).

Key places of arbitration in the jurisdiction?	Lisbon and Porto.
Civil law / Common law environment? (if mixed or other, specify)	The Portuguese legal system is a civil law jurisdiction with a significant influence in other Portuguese-speaking jurisdictions such as Angola, Brazil, Cabo Verde, Guinea-Bissau, Macau, Mozambique, S. Tomé e Príncipe and East Timor, and a long-lasting tradition in international arbitration.
Confidentiality of arbitrations?	Yes. Article 30(5) of the PAL makes clear that the arbitrators, the parties and the arbitral institutions must maintain the confidentiality of any information obtained and any documents produced during the arbitration proceedings, without prejudice to the parties' right to make public parts of the arbitral proceedings for the purpose of defending their rights (e.g. in the context of challenging the award) and to the parties' duty to communicate or disclose information or acts to the competent authorities, as imposed by law. However, as stated in Article 30(6) of the PAL, unless a party objects, awards and other decisions may be published, excluding details that might identify the parties.
Requirement to retain (local) counsel?	The issue is not regulated by the Portuguese Voluntary Arbitration Law ("PAL") and is not entirely settled. Some authors consider that, unlike in court litigation, representation by counsel is not mandatory, unless the parties agreed otherwise and, thus, according to this understanding, absent agreement by the parties on the matter, each of them is free to decide whether they wish to be represented by local counsel or not.
Ability to present party employee witness testimony?	Yes.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	Yes. Under Article 31(2) of the PAL the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it deems appropriate to hold hearings, to allow the production of evidence, or to deliberate.

Availability of interest as a remedy?	Yes. The PAL does not prescribe any rules governing the award of interest because, under Portuguese law, that is a matter pertaining to substantive law.
Ability to claim for reasonable costs incurred for the arbitration?	Yes. According to Article 42(5) of the PAL, unless otherwise agreed by the parties, the arbitrators shall determine in the award the proportion in which the parties shall bear the costs directly resulting from the arbitration and may also, if they deem it appropriate, order that one or several of the parties compensate the other or others, for all or part of the costs and reasonable expenses which the latter proved to have incurred because of their intervention in the arbitration.
Restrictions regarding contingency fee arrangements and/or third-party funding?	The Code of Ethics of the Portuguese Bar Association expressly prohibits the use of fee arrangements where the lawyers' fees are dependent on the success of the claim (" <i>quota litis</i> "). Third-party funding is not specifically regulated and there are no particular restrictions to its use.
Party to the New York Convention?	Yes. Portugal is a party to the most important international treaties governing international arbitration, including the 1968 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the 1923 Geneva Protocol on Arbitration Agreements, the 1927 Geneva Convention on the Execution of Foreign Arbitral Awards and the Inter-American Convention on International Commercial Arbitration, thus making arbitral awards rendered in Portugal readily enforceable worldwide.
Party to the ICSID Convention?	Portugal is a party to the ICSID Convention since 1984.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	20 years.
Other key points to note?	Portuguese Courts are widely acknowledged as being independent and impartial and are generally supportive of arbitration. Portugal has a highly committed, specialized, experienced, multilingual and culturally diverse arbitration community capable of conducting all kinds of arbitration. Portugal has a unique geographical location at the cross-roads of Europe, America and Africa. Portugal is a relatively less expensive jurisdiction when compared to other major international seats, while offering all the necessary equipment and infrastructures.
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	67.9
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2023, if available?	0.65

ARBITRATION PRACTITIONER SUMMARY

The current Portuguese Voluntary Arbitration Law (“**PAL**”) is the result of an extensive debate and peer-review process and it materializes the efforts of the Portuguese government to equip Portugal with a more competitive, effective and modern arbitration law, thereby rendering the country truly arbitration-friendly.

Date of arbitration law?	The PAL entered into force on 15 March 2012 and was heavily influenced by the 2006 version of the UNCITRAL Model Law, with certain improvements mostly based on the experience of other leading jurisdictions and/or on demands from users.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Yes, with the most significant deviations discussed below.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Portuguese Courts are widely acknowledged as being independent and impartial and are generally supportive of arbitration. Notwithstanding, there is no specific judicial body devoted to handling arbitration-related matters.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, in the appropriate circumstances.
Courts’ attitude towards the competence-competence principle?	In Article 5 of the PAL both the positive and negative effects of the competence-competence principle are recognised.
May an arbitral tribunal render a ruling on jurisdiction (or other issue) with reasons to follow in a subsequent award?	No. Under Article 42(3) of the PAL, awards must state the reasons upon which they are based, except where the parties have agreed that no reasons are to be given or where the award is rendered on the basis of the parties’ agreement to settle the dispute, under the terms provided under Article 41 of the PAL.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>Parties may request the annulment of awards by means of a set aside application under Article 46 of the PAL. In this regard, the Portuguese law significantly reflects, but does not absolutely mirror, the UNCITRAL Model Law. On some instances, it provides for grounds of annulment heavily inspired by those provided in the Model Law, but with slight, yet relevant, nuances. For example, Article 46(a)(ii) provides for the setting aside of the award where there has been a violation within the proceedings of some of the fundamental principles referred in article 30, paragraph 1 (which include the principle of equality of parties and the adversarial principle), “<i>with a decisive influence on the outcome of the dispute</i>”. While the violation of the adversarial principle is very much already contemplated as a ground for annulment in Article 36(1)(a)(iii) of the Model Law, this provision does not provide for that causality link requirement which increases the threshold that must be met for annulment. It is worth noting that the meaning and scope of this requirement is debated in the Portuguese legal commentary.</p> <p>Similarly, while both Article 46(3)(a)(iv) of the PAL and Article 36(1)(a)(iv) of the Model Law both provide as grounds for</p>

	<p>annulment the composition of the arbitral tribunal or the arbitral procedure not having been in accordance with the agreement of the parties or, in the absence of such agreement, with the law of the seat, the PAL further requires that <i>"this inconformity had a decisive influence on the decision of the dispute"</i>. In this respect as well, the meaning and scope of such requirement is debated in Portuguese legal commentary.</p> <p>Furthermore, Article 46 of the PAL sets out some grounds to set aside the award not contemplated in article 34 of the Model Law, such as the award not complying with the requirements set out in article 42, paragraphs 1 and 3 of the PAL (which provide that the award shall be made in writing, shall be signed by the arbitrator or arbitrators, and shall state the reasons for the decision), and the award being notified to the parties after the maximum time-limit set in accordance with article 43 had lapsed.</p> <p>In any event, according to legal commentary and courts jurisprudence, the supervisory court is not allowed to carry out a review of the merits of the challenged award.</p>
Do annulment proceedings typically suspend enforcement proceedings?	<p>They do not. Article 46(3) of the PAL provides the award may serve as a basis for its enforcement despite that an application to set aside the award has been lodged in the competent State court. However, this article also provides that, in case the party seeking the annulment requests that its setting aside application be admitted with suspensive effect and accepts to provide suitable security to that effect, such suspensive effect will be granted on condition that the security is actually provided in accordance with the terms set by the competent court</p>
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	<p>The PAL has a pro-arbitration stance with respect to the enforcement of arbitration agreements and of arbitral awards and, in general terms, Portuguese courts have followed that orientation.</p> <p>However, Portuguese courts have not yet had the opportunity to address the question of whether an award that has been annulled at the seat may be recognised and enforced in Portugal.</p>
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	<p>The PAL does not discipline such issue and the Portuguese courts have not yet been called upon to decide on a request grounded on such objection.</p>
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	<p>The PAL provides that States or State-controlled entities which have entered into an arbitration agreement cannot subsequently invoke their national laws to deny the arbitrability of the disputes arising therefrom nor their legal capacity to become party to the respective arbitration.</p>

Is the validity of blockchain-based evidence recognised?	The PAL does not discipline such issue and the Portuguese courts have not yet been called upon to decide on it. However, under the PAL, the arbitral tribunal enjoys great discretionary power in the admission of evidence. Indeed, Article 30(4) of the PAL, provides that the powers conferred upon the arbitral tribunal include the determination of the admissibility, relevance and weight of any evidence presented or to be presented.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	<p>There are no provisions specifically disciplining whether such agreements are recognised as valid and, as such, the general rules of validity should apply. According to Art. 2 of the PAL, arbitration agreements must be made in writing. This requirement may however be complied with in multiple ways, since it is deemed to be met, pursuant to that provision, if the agreement is recorded either in a written document signed by the parties, in an exchange of letters, telegrams, faxes or other means of telecommunications which provide a written record of the agreement, including electronic means of communication. The requirement that the arbitration agreement be in writing is also met if it is recorded on an electronic, magnetic, optical or any other type of platform, that offers the same guarantees of reliability, comprehensiveness and preservation.</p> <p>The same goes for arbitral awards, which must, under the general provisions of the PAL, be issued in writing, be signed by the arbitrator(s) (in proceedings with more than one arbitrator, the signatures of the majority of the members of the tribunal or that of the chairman, in case the award is to be made by the latter, shall suffice, provided that the reason for the omission of the remaining signatures is stated in the award), state the date they are rendered, as well as the place of the arbitration.</p>
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	Portuguese law does not discipline such issue and, to the best of our knowledge, the Portuguese courts have not yet been called upon to specifically decide upon such question.
Other key points to note?	<p>The PAL provides for specific rules governing multi-party arbitrations and the joinder and intervention of third parties in pending arbitrations. It also expressly allows for the granting of interim measures and preliminary orders by arbitral tribunals.</p> <p>The PAL provides a general principle of confidentiality of the arbitration proceedings.</p> <p>The PAL accepts the substantive validity of an arbitration agreement and/or the arbitrability of the disputes contemplated therein, if such arbitration agreement is deemed valid or the dispute is deemed arbitrable either by the law which governs that agreement or by the law which is applicable to the merits of the dispute or by Portuguese law.</p>

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

Yes. The current Portuguese Voluntary Arbitration Law¹ ("PAL") entered into force on 15 March 2012. This Law confirms Portugal as a friendly jurisdiction towards arbitration, belonging to the universe of legislations that were based on the 2006 version of the UNCITRAL Model Law ("Model Law").

Despite its overall proximity to the Model Law, the PAL has its own specificities and deviations from that matrix which reflect not only the aim to take into account the experience gathered under the preceding Portuguese arbitration law (dated of 1986) but also the fact that it was prepared between 2009 and 2012 and, thus, could take into account later developments occurred in other key jurisdictions:

- Article 5 of the PAL adopted the competence-competence principle establishing not only its positive effect, but also its negative effect, limiting the powers of a Court seized with a matter subject to an arbitration agreement to a mere *prima facie* control of the validity and applicability of the arbitration agreement, thereby adopting a solution close, although not identical, to the one provided by French law.
- Articles 11 and 36 of the PAL contain provisions dealing with the constitution of the arbitral tribunal in the case of multiparty arbitration, as well as provisions regulating the joinder and the intervention of third parties in pending arbitral proceedings.
- Article 43(1) of the PAL establishes a flexible time-limit for the rendering of the award: unless the parties have agreed on a different time-limit up to the acceptance by the first arbitrator, the arbitrators shall render the final award within twelve months from the date of acceptance of the last arbitrator. However, the parties may subsequently agree on extensions of this time-limit, and the tribunal may also, through a duly reasoned decision, determine such extension, except if all parties oppose to it.
- Article 46(3) of the PAL establishes that with regards to public policy as a ground for setting aside an arbitral award, only the contrariness to "*international public policy*" of the Portuguese State may lead to the annulment of the award (regardless of whether it is a foreign or a domestic arbitral award).
- Article 49 of the PAL, under the influence of French law, adopted a substantive/economic criterion to define international arbitration, providing that "*[a]n arbitration is considered international when it involves interests related to international trade*".
- Article 50 of the PAL provides that if the arbitration is international and one of the parties to the arbitration agreement is a State, a State-controlled organization or a State-controlled company, this party may not invoke its domestic law to deny the arbitrability of the dispute or its capacity to become party to the arbitration, nor to evade its obligations arising from such agreement.
- Article 51 of the PAL provides for a specific *in favorem validitatis* regime applicable to the validity of the arbitration agreement, according to which the arbitration agreement shall be deemed valid if its validity is recognised by one of the following laws: (i) the law selected by the parties to govern their arbitration agreement, (ii) the law applicable to the merits of the dispute, or (iii) Portuguese law.

¹ Law No. 63/2011, of 14 December.

- Article 52(2) of the PAL provides that, when the parties have not chosen the rules of law applicable to the substance of the dispute, the arbitral tribunal shall apply the law of the State with which the subject matter of the dispute has the closest connection.

1.2 When was the arbitration law last revised?

The PAL currently in force was enacted in 2011 (and entered into force in March 15, 2012) and has not been revised since then.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In determining the law applicable to the substantive validity of the arbitration agreement, the PAL² adopts a specific *in favour of validity* provision, which has no parallel in the Model Law, but was inspired by Swiss law and was also adopted by Spanish law. This rule constitutes an important embodiment of the principle in *favorem validitatis* (of the arbitration agreement) in the PAL.³

Under article 51(1) of the PAL, arbitration agreements providing for arbitration in Portugal will be deemed valid if they satisfy any one of the following potentially-applicable national laws: (i) the law selected by the parties to govern their arbitration agreement, (ii) the law applicable to the merits of the dispute, or (iii) Portuguese law.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

The seat of the arbitration is either agreed by the parties or, in the absence of such an agreement, is determined by the arbitrators who shall take into consideration all the relevant circumstances, including the parties' convenience (Article 31(1) of the PAL).

The use of expressions such as 'venue' or 'place' of arbitration in the arbitration agreement may be construed as an agreement of the parties as to the seat, if the elements of interpretation indicate that such 'venue' or 'place' was intended by them as a designation of the seat of arbitration (a legal notion that may not always be straightforward to parties and does not necessarily correspond to the physical place where the arbitral hearing and arrangements take place).

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Article 18(2) of the PAL lays down the principle of separability, stating expressly that the arbitration agreement is separable from the contract in which it is set forth. This provision is modelled after article 16(1) of the Model Law.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

Similarly to Article 7(2) of the Model Law and in line with Article II(1) of the NY Convention, Article 2(1) of the PAL requires the arbitration agreement to be in writing.

Article 2 of the PAL deals with what is the meaning of "writing" for the purposes of this law. It provides that this requirement is met "*if the agreement is recorded in a written document signed by the parties, in an exchange of letters, telegrams, faxes or other means of telecommunications which provide a written record of the agreement,*

² Article 51(1) of the PAL. It is important to note that this provision is only applicable to international arbitration agreements.

³ Dário Moura Vicente, Annotation to article 51 of the PAL, in *Lei da Arbitragem Voluntária Anotada*, Third Edition, Almedina, 2017.

including electronic means of communication" or if "it is recorded on an electronic, magnetic, optical or any other type of support, as long as it offers the same guarantees of reliability, comprehensiveness and preservation".

Importantly, a reference made in a contract to any document containing an arbitration agreement satisfies the requirement of Article 2, provided that such contract is in writing and that the reference is such as to make that arbitral clause part of the contract in question.⁴

Furthermore, this requirement is also met if there is *"an exchange of statements of claim and defence in arbitral proceedings, in which the existence of such an agreement is invoked by one party and not denied by the other"*.⁵

Finally, it is worth noting that, under Article 3 of the PAL, the failure to satisfy this requirement renders the putative arbitration agreement null.

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The PAL does not have any specific rule governing this matter. The starting point for this discussion is the premise that arbitration is consensual by nature and that such consensus should be expressed in writing. The source of legitimacy of the arbitral tribunal's existence and jurisdiction is the will of the parties, materialized in their written agreement to submit certain disputes to arbitration. A corollary of the consensual nature of the arbitration agreement is, in turn, the fact that, as a matter of principle, it binds only the parties that agreed to it.

Nevertheless, there are particular cases in which, through certain legal institutes, arbitration agreements may be found to bind parties other than those who formally signed them. Below are some examples of such cases, notwithstanding the fact that it is always necessary to conduct a careful examination of all characteristics of each case in order to reach a definitive conclusion.

One first example in which extension may occur is where there is an assignment of a contract or the transfer of a debt that is subject to an arbitration clause. In these cases, as all the involved parties had to give their consent to the assignment or transfer, the person that was not originally a party to the assigned contract or transferred debt will ordinarily become bound by the arbitration clause *vis-à-vis* the original counterparty or creditor.⁶

When it comes to the assignment of a credit right, although the agreement of the debtor is not required, some authors deem the arbitration clause to be an accessory to the assigned right and thus consider the new creditor to be bound towards the debtor by the arbitration clause.⁷ However, although accepting the same practical result, other authors do not construe the arbitration clause as an accessory to the assigned right. Instead, they prefer the view according to which when an arbitral clause is inserted in a contract, the credits and other rights arising therefrom are *configured* so as to render the exercise of the corresponding claims only possible through arbitration.⁸

Further to this, third party beneficiary contracts also typically give rise to the question of whether the arbitration clause may bind the beneficiary. Some authors hold the view that, if the beneficiary seeks to enforce a substantive right conferred by the parties to the contract, then he must do so in compliance with

⁴ Article 2(4) of the PAL. See, also, Decision by the Oporto Court of Appeal, 13 April 2015, process 471/14.8TVPRT.P1. In this case, the court upheld an arbitration clause inserted in a standard form contract. Specifically, it stated that the clause inserted in the standard form contract was deemed integrated in the separate swap confirmation contract concluded by the parties pursuant to the former.

⁵ Article 2(5) of the PAL. This provision did not exist in the former version of the arbitration law, and it was imported from article 7(5) of the Model Law.

⁶ Mariana França Gouveia, *Curso de Resolução Alternativa de Litígios*, Third Edition, 2014, p.155-159.

⁷ Mariana França Gouveia, *Curso de Resolução Alternativa de Litígios*, Third Edition, 2014, p.155-159.

⁸ António Sampaio Caramelo, "Autonomia" da cláusula compromissória e a competência da competência do tribunal arbitral', in *Temas de Direito da Arbitragem*, Coimbra Editora, Coimbra, 2013, pp. 115-116.

the framework the parties agreed on for the conferral of such right. Thus, the beneficiary may be bound by the arbitration agreement contained in the contract.⁹ However, it is important to note that courts have reached contradicting conclusions on this issue.¹⁰

Finally, in some particular instances, it may be possible to resort to general principles of good faith to lift the corporate veil of the signatory of the arbitration agreement in order to make it binding on a non-signatory party, typically a controlling shareholder. This possible reasoning faces specific challenges in the Portuguese jurisdiction, as the PAL expressly imposes that the agreement to arbitrate be made in writing.

In general, courts usually engage in a highly fact-specific analysis of this topic, making it difficult to draw general conclusions on the extent to which an arbitration agreement may be binding on non-signatory parties.

2.6 Are there restrictions to arbitrability? In the affirmative:

Article 1(1) of the PAL provides that any dispute concerning patrimonial interests may be referred by the parties to arbitration. Further to this, the parties may also refer to arbitration disputes involving non-patrimonial interests, so long as they are entitled to conclude a settlement on the right in dispute, that is, as long as the rights in dispute can be disposed of (*i.e.*, are alienable).¹¹

With regards to employment disputes, the criterion based on the disposability/alienability of the rights in dispute shall apply exclusively until a new law governing the submission to arbitration of employment disputes is approved. Since such law is yet to be approved, the question of whether a labour dispute is arbitrable shall be answered only according to whether the rights in dispute are disposable or not (regardless of whether such rights are patrimonial in nature).¹²

Finally, in addition to the general arbitrability criteria, it is important to keep in mind that there are specific restrictions to arbitrability both related to specific domains of the law and to specific parties.

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

The PAL provides that disputes subject to mandatory arbitration or to the exclusive jurisdiction of national courts cannot be submitted to voluntary arbitration.

The following kinds of disputes are subject to mandatory arbitration, and are therefore subject to a different set of rules:

- Particular issues concerning sports federations, leagues and other sports entities, as well as disputes related to doping in sports;¹³
- Particular issues of collective bargaining (Portuguese Labour Code); and
- Some issues relating to copyright and intellectual property, namely those involving:¹⁴ rewards for the lease of works protected by copyrights;¹⁵ rights to authorize or prohibit cable retransmission of

⁹ Mariana França Gouveia, *Curso de Resolução Alternativa de Litígios*, Third Edition, 2014, p.161.

¹⁰ See, for instance, Supreme Court Decision of 27 November 2008, Process 08B3522. In this case, the Supreme Court held that the arbitration clause inserted in an insurance contract concluded between the insurance company and the employer, with the employee being the third-party beneficiary of such contract, was not binding on the employee.

¹¹ Article 1(2) of the PAL.

¹² See Article 4(4) of the Law No. 63/2011, that approves the PAL.

¹³ Law No. 74/2013 of 6 September 2013.

¹⁴ Please note that all other copyrights disputes that are not on the list and that do not relate to “undisposable” rights may be referred to arbitration. See Article 229 of the Portuguese Code on Copyright and Related Rights 1995, Decree-Law No. 63/85 of 14 March 1985.

¹⁵ Decree-Law No. 332/97 of 27 November 1997.

works protected by copyright;¹⁶ compensation for the recording or reproduction of works¹⁷; and technological protection measures.¹⁸

In addition to the disputes that are subject to mandatory arbitration in Portugal, there are disputes that cannot be submitted to arbitration and are under the exclusive jurisdiction of national courts.

First, with regards to industrial property disputes, some distinctions must be drawn. Arbitral tribunals cannot decide upon the validity of industrial property rights subject to registration (such as patents and trademarks) when that is the main topic of the dispute to be resolved.¹⁹ However, arbitral tribunals may assess and decide (such decision having only inter partes effect) on that matter, if it constitutes an incidental topic raised in a contractual dispute referring to an industrial property right (e.g., when the main disputed issue is the performance or breach of a licensing agreement). Moreover, disputes concerning the granting or refusal of a patent or of the registration of a trademark may, as a matter of principle, be arbitrated, provided that all concerned interested parties adhere to the arbitration agreement.²⁰ The reasoning behind this legal regime lies in the fact that these disputes may involve and affect the interests of third parties who may not be signatories of the arbitration agreement. In this case, the resolution of the dispute through arbitration is only allowed when such third parties adhere to the arbitration agreement.

Secondly, core bankruptcy issues are also typically non-arbitrable, for the same reasons mentioned above. Indeed, all creditors of the insolvent debtor are directly affected by the resolution of most core bankruptcy issues, and may not be signatories to the arbitration agreements concluded by the debtor.

Thus, Article 87(1) of the Portuguese Bankruptcy Code provides that once bankruptcy is declared, the effectiveness of any existing arbitration agreements entered into by the insolvent debtor, with respect to disputes which may affect the insolvent estate, is suspended.²¹ If, however, arbitration proceedings under such clauses are already underway, those proceedings shall be suspended for the period of time necessary for the insolvent debtor to become represented in the same by the insolvency administrator.²²

Finally, one must address the arbitrability of internal corporate disputes. In this regard, it is worth noting that, for the latest five years, a draft proposal of a new law disciplining exclusively arbitration of internal corporate disputes has been under discussion.²³

The difficulty with the arbitrability of this kind of disputes relates to the fact that arbitration is a decentralized process that only binds those who are a party to it, while certain decisions on internal corporate disputes must affect all shareholders as well as the company and its directors, because of their very nature.

Particularly relevant in this regard are the disputes concerning the validity of the company's resolutions. The prevailing view among Portuguese commentators²⁴ is that such disputes should only be arbitrable if (i) publicity is given to the initiation of arbitral proceedings, (ii) the tribunal provides all shareholders with the opportunity to join or intervene in the proceedings, (iii) the tribunal is not constituted through appointments

¹⁶ Article 7, Decree Law n.º 333/97 of 27 November.

¹⁷ Decree-Law No. 62/98 of 1 September 1998.

¹⁸ Article 221 of the Portuguese Code on Copyright and Related Rights 1995, Decree-Law No. 63/85 of 14 March 1985.

¹⁹ António Sampaio Caramelo, *Critérios de Arbitrabilidade dos Litígios. Revisitando o Tema, in IV Congresso do Centro de Arbitragem da Câmara de Comércio e Indústria*, Almedina, 2011, p. 38.

²⁰ Articles 47 and 38 (a) of the Portuguese Code of Industrial Property enacted in 2018.

²¹ It is debatable what this means: the prevailing view is that the arbitration agreement becomes temporarily without effect. Another possible view is that it will be up to the administrator of the insolvency to accept or not the submission of the disputes to arbitration.

²² Article 85(3) of the Portuguese Bankruptcy Code.

²³ Draft Proposal available at: <http://arbitragem.pt/projetos/arb-societaria/regime-juridico-arbitragem-societaria-v-discussao.pdf>.

²⁴ See, for instance, António Sampaio Caramelo, *Arbitragem de Litígios Societários*, in *Revista Internacional de Arbitragem e Conciliação*, Ano IV-2011.

from the disputing parties, but rather through appointments made by an administering arbitral institution (or by a State court), and, finally, (iv) the administering institution is empowered to order the consolidation of parallel proceedings.

2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

In this regard, a distinction must be drawn between disputes governed by private law and by public law.

Indeed, Article 1(5) provides that the State and other legal entities governed by public law may enter into arbitration agreements insofar as they concern private law disputes. Thus, for disputes governed by private law and involving the State or State entities, no particular restrictions on arbitrability apply.

However, with regards to disputes governed by public law, Article 1(5) of the PAL (interpreted *a contrario*) provides that the State and other legal entities governed by public law may only enter into arbitration agreements insofar as they are authorised to do so by law.

As an example of authorisations provided by law, Article 180 of the Code of Procedure of Administrative Courts²⁵ sets out a very wide number of circumstances in which the State and other legal entities governed by public law are authorised to enter into arbitration agreements. They include: (i) matters related to contracts, including the annulment or nullity of administrative acts of execution of such contracts, (ii) matters related to tort liability, (iii) matters related to the validity of administrative acts, unless otherwise provided by law, (iv) matters related to legal relationships governed by public law, insofar as they do not involve non-disposable rights, work-related injuries or occupational illness.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside the jurisdiction?

Article 5(1) of the PAL expressly provides that the state court before which an action is brought, on a matter that is object of an arbitration agreement, must dismiss the case upon request of the respondent, submitted no later than when the respondent submits its first statement on the substance of the dispute.

The limited instances in which the court will not do so, are cases in which the court finds that the arbitration agreement is manifestly (i) null and void, (ii) has become inoperative, or (iii) is incapable of being performed.²⁶ This provision embodies the so-called “negative effect” of the arbitration agreement.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Portuguese courts enforce an arbitration agreement, regardless of where the arbitration is seated. Thus, the answer given to the preceding question is equally valid if the place of the arbitration is outside of the jurisdiction.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Anti-suit injunctions are not addressed in the PAL and, to the best of our knowledge, have not yet been addressed by Portuguese courts in an arbitration context.

²⁵ Decree Law n.º 214-G/2015, of 2 October 2015.

²⁶ See Article 5(1) of the PAL.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Article 38(2) of the PAL, unlike the Model Law, provides that state courts may assist an arbitral tribunal seated outside of the jurisdiction, in the taking of evidence. Specifically, it provides that, when the evidence to be taken depends on the will of one of the parties or of third parties and they refuse to cooperate, a party may, with the approval of the arbitral tribunal, request from the competent State court that the evidence be taken before it, the results thereof being forwarded to the arbitral tribunal.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

Parties may always be represented by counsel in arbitral proceedings. Some commentators consider that, unlike in court litigation,²⁷ representation by counsel is not mandatory,²⁸ unless the parties agreed otherwise and, thus, according to this understanding, absent agreement by the parties on the matter, each of them is free to decide whether they wish to be represented by counsel or not. However, one must note that the issue is not regulated by the PAL and is not yet entirely settled.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

Article 9(3) of the PAL provides that arbitrators have a duty to remain independent and impartial throughout the arbitral proceedings.

Under article 13(1) of the PAL, arbitrators have a duty to disclose any circumstances that may give rise to justifiable doubts as to their impartiality and independence.

However, if the arbitrator fails to make such disclosure and those facts or circumstances are subsequently made known to the parties, the arbitrator may be challenged by the parties.²⁹

The challenging party must then submit the challenge directly to the arbitral tribunal within 15 days of becoming aware of the constitution of the arbitral tribunal or after becoming aware of the facts forming the basis for the challenge. The arbitral tribunal, including the challenged arbitrator, shall decide on the challenge.

If the tribunal rejects the challenge, thus allowing the challenged arbitrator to remain as part of the tribunal, the challenging party may file a petition in State courts, requesting them to decide on the challenge.

The State court engages in a fact-specific analysis of the case. An arbitrator's failure to disclose circumstances that may give rise to justifiable doubts will be considered in such analysis but does not, by itself, suffice for the court to accept a challenge. Indeed, courts have required that the undisclosed circumstances should justify that outcome.³⁰

²⁷ For litigation in court, article 40 of the Portuguese Code of Civil Procedure establishes a set of circumstances in which representation by counsel is mandatory, which includes cases valued in more than €5.000.

²⁸ Manuel Pereira Barrocas, *Manual de Arbitragem*, Second Edition, Almedina, p.394.

²⁹ Note that, under article 13(3) of the PAL, a party may only challenge an arbitrator appointed by it, or in whose appointment it has participated, for reasons of which it becomes aware after the appointment has been made.

³⁰ Decision by the Lisbon Court of Appeal, 24 March 2015, process 1361/14.0YRLSB.L1, where the Court stated precisely that the failure to comply with the duty of disclosure does not necessarily mean that there is a lack of independence and impartiality on the part of the arbitrator. Those have to be determined based on the concrete circumstances of the case, notably, verified links between the arbitrator with one or some of the parties or with the object of the dispute and, possibly, his behaviour since the start of the arbitration .

See, also, José Miguel Júdice, Annotation to article 13 of the PAL, in *Lei da Arbitragem Voluntária Anotada*, Third Edition, Almedina, 2017.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Courts appoint members of the arbitral tribunal when the parties who were entitled to make those appointments have failed to do that within the time span set out by law for this purpose (1 month). The court intervenes to provide such assistance on request of one of the parties.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Yes. Under Article 29 of the PAL, courts have the power to issue interim measures both prior to and during the arbitral proceedings. As Article 7 of the PAL (similarly to Article 9 of the Model Law) makes clear, recourse to state courts for the purposes of obtaining interim relief does not constitute a breach of the arbitration agreement.

In accordance with Article 366(1) of the Portuguese Code of Civil Procedure, the court shall hear the party against whom interim measures are sought, except if such hearing puts the purpose and effectiveness of the measures at serious risk. In conclusion, Portuguese courts are willing to consider *ex parte* requests for interim relief in the appropriate circumstances.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Article 30(5) of the PAL makes clear that the arbitrators, the parties and the arbitral institutions must maintain the confidentiality of any information obtained and any documents produced during the arbitration proceedings, without prejudice to the parties' right to make public parts of the arbitral proceedings for the purpose of defending their rights (e.g. in the context of challenging the award) and to the parties' duty to communicate or disclose information or acts to the competent authorities, as imposed by law.

However, as stated in Article 30(6) of the PAL, unless a party objects, awards and other decisions may be published, excluding details that might identify the parties.

4.5.2 Does it regulate the length of arbitration proceedings?

Under Article 43(1) of the PAL, unless the parties have agreed on a different time-limit up to the acceptance by the first arbitrator, the arbitrators shall deliver the final award on the dispute brought before them, within twelve months from the date of acceptance of the last arbitrator. However, the parties may subsequently agree on extensions of this time-limit, and the tribunal is also free to determine such extensions through duly reasoned decisions, unless all parties oppose to that.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

Under Article 31(2) of the PAL the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate to hold hearings, to allow the production of evidence, or to deliberate. This provision takes inspiration from article 20(2) of the Model Law.

The PAL does not discipline remote hearings and/or deliberation meetings but we do not see any obstacle in principle in that regard, at least where no party objects. To the best of our knowledge, Portuguese courts have not yet been called upon to decide on a request grounded on an objection from one party to the holding of the hearing remotely. Notwithstanding this, it is worth noting that Article 31(2) of the PAL grants great flexibility to arbitrators in the conduction of the proceedings and that some Portuguese commentators

support the view that this flexibility includes carrying out such activities with the aid of electronic means of communication³¹.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

The PAL reflects the 2006 Model Law revision, providing that not only arbitral tribunals have the power to issue interim measures, but they also have the power to issue preliminary orders.

On the one hand, under Article 22 of the PAL, and absent agreement of the parties to the contrary, the tribunal may issue preliminary orders. These are orders necessarily requested together with a request for interim relief, directing a party not to frustrate the purpose of the interim measure sought. Preliminary orders can be granted *ex parte*.

On the other hand, under Article 20 of the PAL, and absent agreement of the parties to the contrary, the arbitral tribunal may, at the request of a party and after hearing the opposing party, grant the interim measures it deems necessary in relation to the subject matter of the dispute. Thus, the tribunal cannot grant interim relief *ex parte*.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Article 30(4) of the PAL makes clear that the arbitral tribunal has the power to determine the admissibility, relevance and weight of any evidence presented or to be presented.

Thus, the PAL gives the tribunal wide discretion in the exercise of such power, and it also makes clear that the arbitral tribunal is not bound, by default, by the rules of civil procedure on admissibility of evidence that apply to state court proceedings.³²

4.5.6 Does it make it mandatory to hold a hearing?

Article 34 of the PAL provides that, subject to any contrary agreement between the parties, the tribunal shall decide whether to hold hearings, or whether the proceedings shall be conducted merely on the basis of documents and other means of proof.

However, the abovementioned provision also states that the arbitral tribunal should hold one or more hearings for the presentation of evidence whenever that is requested by a party, except if the parties themselves had previously agreed that no hearings would be held.

4.5.7 Does it prescribe principles governing the awarding of interest?

The PAL does not prescribe principles governing the awarding of interest because, under Portuguese law, that is a matter pertaining to substantive law.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

According to Article 42(5) of the PAL, unless otherwise agreed by the parties, the award shall determine the proportion in which the parties shall bear the costs directly resulting from the arbitration.

Further to this, the abovementioned provision provides that the arbitrators may decide in the award, if they deem it fair and appropriate, that one or some of the parties shall compensate the other party or parties for

³¹ Miguel Esperança Pina, 'Chapter 11: The Arbitral Award', in *International Arbitration in Portugal*, Pereira da Fonseca, Lentz de Moura Vicente, França Gouveia, et al. (eds), Kluwer Law International (2020), p. 178, footnote 18. Other commentators have verbally opined, after the start of the Covid pandemic, that the PAL does not impede hearings or meetings to be held remotely, through telecommunication/electronic devices.

³² Mariana Soares David, Os Poderes do Tribunal Arbitral em Matéria de Prova, no Âmbito da Actual Lei de Arbitragem Voluntária, in *Revista Internacional de Arbitragem e Conciliação*, Anual n.º 9 – 2016, p. 59.

the whole or part of the reasonable costs and expenses that they can prove to have incurred due to their participation in the arbitration. This provision is particularly relevant when tribunals seek to penalise a party's negative and hindering procedural behaviour throughout the arbitration, through the allocation of costs.³³

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Article 9(4) of the PAL provides that arbitrators cannot be held liable for damages resulting from their decisions, save for the situations in which judges may be so held. This is due to the fact that arbitral tribunals are considered to perform a jurisdictional function.³⁴

Articles 12(3) and 43(4) of the PAL, however, provides for two specific cases of civil liability, in case an arbitrator having accepted its appointment later resigns without good justification and in case the arbitrators who unjustifiably prevent the award from being rendered within the time limit set for that purpose,³⁵ shall be liable for the damages caused by such failure.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

There are no particular concerns with regards to potential criminal liability of any of the participants in the arbitral proceedings, except, for arbitrators, in respect of acts for which judges may be held criminally liable (e.g. corruption, prevarication and denial of justice)

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Unless a settlement is reached, the arbitral proceedings will end with an award. Similarly to the Model Law,³⁶ Article 42 of the PAL provides that the award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Article 41.³⁷

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Article 46(5) of the PAL expressly states that parties cannot waive the right to seek the annulment of the award.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requisites for the rendering of a valid award. As in most jurisdictions, the award must be in writing and signed by the arbitrator, in case there is a sole arbitrator, or by a majority of the arbitrators, in case there is a plural tribunal³⁸. The award must also state the date in which it was rendered, as well as the seat of the arbitration³⁹.

³³ José Robin de Andrade, Annotation to article 42 of the PAL, in *Lei da Arbitragem Voluntária Anotada*, Third Edition, Almedina, 2017.

³⁴ Constitution of the Portuguese Republic, article 209(2).

³⁵ Unless otherwise agreed between the parties, the arbitrators shall have twelve months, starting from the moment of designation of the last arbitrator, to render the award. See article 43(1) of the PAL.

³⁶ Article 31 (2) of the UNCITRAL Model Law.

³⁷ Article 41 of the PAL concerns the termination of the arbitral proceedings through settlement.

³⁸ Article 42(1) of the PAL.

³⁹ Article 42(5) of the PAL.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

With respect to awards rendered in domestic arbitrations, pursuant to Article 39 (4), appeals to State courts are only allowed when the parties have expressly provided for such possibility. As to awards rendered in international arbitrations, r. appeals to State courts are never permitted, as per Article 53 of the PAL.

However, Article 53 allows the parties, in the exercise of party autonomy, to expressly agree on the possibility of an appeal to another arbitral tribunal, provided that they regulate its terms (namely the grounds for appeal and the procedure to be followed).

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

The procedure for obtaining the recognition and enforcement of foreign arbitral awards in Portugal is governed by the PAL, without prejudice to the provisions of the New York Convention, to which Portugal adhered in 1994. No specific time-limits apply.

The party seeking the recognition of a foreign arbitral award must file a petition before the Court of Appeal of the district in which the person against whom enforcement is sought is domiciled. The petition must be filed together with the award or a duly authenticated copy of the award, as well as the original or an authenticated copy of the agreement to arbitrate.⁴⁰ If such documents are not in Portuguese, a certified translation must also be provided. The opposing party is then notified and has a 15-day window to oppose such request.

With regards to grounds for refusal of recognition of the foreign award, the list provided by Article 56 of the PAL, which in turn is inspired by article V of the New York Convention, shall apply.

Once the foreign arbitral award has been recognised by the competent court, the award constitutes an enforceable title, allowing the party to bring enforcement proceedings.

In case of a domestic arbitral award, neither recognition nor *exequatur* proceedings are necessary. The award itself is an enforceable title and enforcement proceedings may be brought in a court of first instance, subject to no specific time-limit.

As stated in Article 47(1) of the PAL, the party seeking the enforcement of a domestic arbitral award must file a petition before a court of first instance, together with the original award or a duly authenticated copy thereof and, if the award is not in Portuguese, a certified translation of the said award.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

The introduction of annulment proceedings does not automatically suspend the right to enforce an award, nor does it suspend any recognition proceedings that may be underway.

However, as provided in Article 47(3) of the PAL, the party seeking the annulment may request the suspension of the enforcement proceedings, provided that such party offers to provide security, such effect only being granted if and when security is effectively provided within the time limit set by the court.⁴¹

⁴⁰ Article 57(1) of the PAL.

⁴¹ See, also, Central Administrative Court, 18 March 2016, process 03300/14.9BEPRT, where the court stated that the request for annulment of an arbitral award does not immediately suspend enforcement proceedings based on said arbitral award.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

In line with Article V (1) e) of the New York Convention, Article 56(1)(a) of the PAL provides that recognition and enforcement of an arbitral award made in an arbitration taking place in a foreign country may be refused, at the request of the party against whom the award is invoked, if that party furnishes to the competent court in which recognition or enforcement is sought proof that the award has been set aside by a court of the country in which, or under the law of which, that award was made.

To the best of our knowledge, Portuguese courts have not yet had the opportunity to address the question of whether an award that has been annulled at the seat may be recognised and enforced in Portugal.

5.8 Are foreign awards readily enforceable in practice?

The grounds for refusal of enforcement of foreign arbitral awards, provided by the PAL and by the New York Convention (which are substantially the same), have in common the fact that they are very limited and do not allow for a review of the merits of the arbitral decision.

The one aspect in which the PAL slightly differs from the letter of the New York Convention, as well as from the Model Law, is the fact that it provides, in Article 56(1)(b)(ii), that enforcement may be refused if the court finds that it would lead to a result 'manifestly' incompatible with the international public policy of Portugal.

This provision already existed in the Portuguese Code of Civil Procedure, for the recognition and enforcement of foreign court decisions. Indeed, by introducing the word "manifestly", the legislator restricted even more the cases in which enforcement of an arbitral award may be refused on that ground.

Thus, one can state that foreign awards are readily enforceable in Portugal, although the recognition proceedings may take long in case the award debtor is based abroad and a copy of the recognition application should be served upon the latter in accordance with the provisions of the 1965 Hague Convention on the service abroad of judicial documents.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

The Code of Ethics of the Portuguese Bar Association expressly prohibits the use of contingency fee arrangements according to which the right to lawyer's fees is dependent on the success of the claim.⁴²

Third-party funding is not specifically regulated and there are no particular restrictions to its use.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

Under the PAL, the arbitral tribunal enjoys great discretionary power in the admission of evidence. Indeed, Article 30(4) of the PAL, provides that the powers conferred upon the arbitral tribunal include the determination of the admissibility, relevance and weight of any evidence presented or to be presented.

Blockchain, understood as a database where the data is stored in different nodes (computers) that are connected through a common network via the internet, can naturally source relevant evidentiary elements.

Assuming that the block-chain evidence is susceptible of being presented to the tribunal in one of the traditional forms of evidence (notably in documentary form), there appears to be no legal obstacles for the

⁴² Article 101(1) of the Code of Ethics of the Portuguese Bar Association.

tribunal to determine its admissibility, relevance and weight, under the same terms that it does with evidence from other origins. However, the authenticity and reliability of such evidence may be challenged depending on the type of blockchain that was used (e.g. notably whether it was public permissionless, public permission, private permissionless or private permissions).

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

There are no provisions specifically disciplining whether such agreements are recognised as valid and, as such, the general rules of validity should apply. According to Article 2 of the PAL, arbitration agreements must be made in writing. This requirement may however be complied with in multiple ways, since it is deemed to be met, pursuant to that provision, if the agreement is recorded either in a written document signed by the parties, in an exchange of letters, telegrams, faxes or other means of telecommunications which provide a written record of the agreement, *including* electronic means of communication. The requirement that the arbitration agreement be in writing is also met if it is recorded on an electronic, magnetic, optical or any other type of platform, that offers the same guarantees of reliability, comprehensiveness and preservation.

The same goes for arbitral awards, which must, under the general provisions of the PAL, be issued in writing, be signed by the arbitrator(s) (in proceedings with more than one arbitrator, the signatures of the majority of the members of the tribunal or that of the chairman, in case the award is to be made by the latter, shall suffice, provided that the reason for the omission of the remaining signatures is stated in the award), state the date they are rendered, as well as the place of the arbitration.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

As a preliminary point, it is worth recalling that Portugal has ratified the New York Convention with the reciprocity reservation foreseen in Article I(3), which means that Portugal restricted the application of the Convention to arbitral awards rendered in the territory of a State bound by the said Convention. Accordingly, the arbitral awards rendered in contracting States shall be subject to the New York Convention, whereas the arbitral awards rendered in non-contracting States shall be subject to the PAL.

Notwithstanding this distinction, the grounds for refusal of enforcement of foreign arbitral awards provided by the PAL are substantially the same as those provided by the New York Convention, both having in common the fact that they are very limited and do not allow for a review of the merits of the arbitral decision.

Under the general rules, provided by both the New York Convention and the PAL, the party seeking recognition and enforcement must supply the court with the duly authenticated original award or a duly certified copy thereof and the original arbitration agreement or a duly certified copy thereof. The Portuguese courts have not, however, considered the issue of whether blockchain arbitration agreements and/or arbitral awards are deemed as originals for these purposes.

There is a debate within the international legal community as to whether such agreements and/or awards should be deemed originals, and some within the arbitration community advocate for the idea that enforcement of awards would be expedited if the award and the arbitration agreement would be uploaded to a blockchain. However, there is no legal provision nor case law from Portuguese courts addressing that controversy.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys

authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

The award must be made in writing and signed by the arbitrator or a majority of the arbitrators. If only the chair is available to sign, the reason for omitting the remaining signatures must be stated in the award (Art. 42(1) of the PAL).

Although the PAL does not expressly regulate the form of signature, nor specifically electronic signatures, it certainly does not pose any obstacles on that matter. As such, unless there are questions as to the authenticity and authorship of such signatures, it seems that no novel issues of recognition and enforcement should, in principle, arise.

8. Is there likely to be any significant reform of the arbitration law in the near future?

It is not anticipated that there will be a significant reform of the PAL in the near future. However, it is currently under discussion a draft proposal of a new law disciplining exclusively arbitration of internal corporate disputes.⁴³

9. Compatibility of the Delos Rules with Local Arbitration Law

There are no apparent contradictions between the Delos Arbitration Rules and the PAL.

10. Further reading

- *International Arbitration in Portugal*, Edited by André Pereira da Fonseca, Dário Moura Vicente, Mariana França Gouveia, Alexandra Nascimento Correia, Filipe Vaz Pinto, Wolters Kluwer (2020);
- *Manual de Arbitragem Internacional Lusófona volume I*, Coord. Catarina Monteiro Pires, Rui Pereira Dias, Almedina (2020);
- *A impugnação da Sentença Arbitral*, António Sampaio Caramelo, 4th Edition, Almedina (2023);
- *Lei da Arbitragem Voluntária Anotada*. Coord. Dário Moura Vicente, 6th Edition, Almedina (2023);
- *Arbitragem Comercial*, Coord. António Menezes Cordeiro, Almedina (2019);
- *O Reconhecimento e Execução de Sentenças Arbitrais Estrangeiras*, António Sampaio Caramelo, Almedina (2016);
- *Tratado da Arbitragem*, António Menezes Cordeiro, Almedina (2016);
- *Temas de Direito da Arbitragem*, António Sampaio Caramelo, Almedina (2013).
- *Direito da Arbitragem. Ensaios*, António Sampaio Caramelo, Almedina (2017).

⁴³ Draft Proposal available at: <http://arbitragem.pt/projetos/arb-societaria/regime-juridico-arbitragem-societaria-v-discussao.pdf>.

ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> , with offices and a case team?	Arbitration Centre of the Portuguese Chamber of Commerce and Industry (for civil and commercial disputes) ARBITRARE (for disputes arising out of industrial property rights, domain names, patents, trade names and corporate names) Administrative Arbitration Centre (for administrative and tax disputes).
Main arbitration hearing facilities for in-person hearings?	The facilities of the arbitral institutions cited above, alongside hotels and conference centers.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Let's Copy Duplix
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	AP Portugal Paper Box SPS Traduções
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Cross Legal AP Portugal Intess
Other leading arbitral bodies with offices in the jurisdiction?	Católica Arbitration Centre (for civil and commercial disputes) It is also worth noting that, by an agreement entered into on 6 July 2017, Portugal has accepted to become a host State for arbitration, mediation, conciliation and fact-finding commissions of inquiry administered by the Permanent Court of Arbitration.