

# Portugal's litigation gains much needed efficiency boost

New code promises to have a big impact on the discovery process and speed up the country's failing court system

A new Code of Civil Procedure comes into force in Portugal at the beginning of September 2013. This promises to clear the clogged caseload in the Courts of First Instance. The New Code intends to streamline litigation by simplifying the process and putting greater emphasis on the judges.

The problems of Portugal's courts are well-documented. There are an estimated 1.2 million cases currently pending in the Court of First Instance, resulting in major delays in litigation, painfully slow court processes and many wasted hours for law firms. The reasons, say lawyers, include an ineffective system, where many hurdles have to be cleared before a judgment is issued, compounded by judges remaining slightly detached from proceedings.

Although the Code is being implemented quickly, and it is unclear how it will work in practice or how each judge will handle cases. According to Nuno Líbano Monteiro, Head of Litigation at PLMJ, the improvement gives more control to judges. "They must manage cases to make litigation faster, and get to the fundamental truth of the facts and the merits of proceedings and reach an accurate solution."

To assist them, judges will follow the so-called 'Principle of Management Procedure'. At the start of a case, just two key documents are filed; the claimant's petition and the defence's rebuttal. A 'pre-trial' meeting is held with the judge and the two sides to see if they can establish the basic facts of the case in a bid for an early settlement. If both sides cannot agree, they must then present all their evidence to the judge before trial. The judges are expected to be proactive in guiding the parties on the facts and merits of the case.

Ricardo Guimarães, Head of Public Law Litigation and Arbitration at Sérvulo & Associados, believes the new system provides greater flexibility in the management of hearings when compared to the former rather formal and rigid process.

To speed things up further, all evidence must

be presented before the hearing. Previously it was possible to bring new documents to the case at any point. However, the new regime means that unless a lawyer can prove that it was not possible to present any new evidence before the case, the judge may not accept it.

"This will have a big impact on the discovery process for law firms," says Guimarães. "They must effectively undertake their own private discovery process to ensure that they have all the evidence and facts in place."

Once this happens, an oral hearing is held on the facts of a case followed by written submissions on the merits of the case. The judge then makes a ruling accordingly, outlining both the facts and merits. An appeal can be lodged if one side deems the facts or merits in the judge's reasoning to be incorrect.

The hope, say lawyers, is to keep cases from actually going to court and, if that is not possible, manage the evidence and arguments effectively. The old code was similar to the Italian model, which some believe to be too rigid, resulting in lengthy discovery processes and countless delays due to arguments about irrelevant issues or a huge burden of evidence.

While it is hoped that the greater flexibility of the new Code will clear the system, the majority of cases pending in the Court of First Instance are executions – making a legal instrument legally binding and enforceable. Under the old system, it was possible to bring an execution based on just a simple signed document such as an invoice, which allowed for many executions to be filed. "Now only specific documents, such as those signed in front of a notary, are required to start an execution," explains Líbano Monteiro.

Guimarães, however, is hopeful that the new Code will prevent a further backlog of cases, but believes that the changes need time to take effect. "The goal is ultimately to make sure cases get heard quicker and a final decision is reached sooner."

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Paseo de la Castellana, 164 - 28046 Madrid (Spain) · T: (+34) 91 319 02 33 - F: (+34) 91 319 13 50 · E-mail: info@araozrueda.com · www.araozrueda.com