

Lisbon capital of international arbitration

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Authorship: António Pinto Leite.

Lisbon Arbitration was born with the ambition of being a major project for Morais Leitão, Galvão Teles, Soares da Silva e Associados (Morais Leitão), but also with the ambition of being yet another cog in the wheel of affirming Lisbon as one of the capitals of international arbitration.

Recently, when negotiating an arbitration agreement, one of the largest companies of the Portuguese-speaking countries outside of Europe proposed to its North American counterpart that the seat of arbitration should be Lisbon. The alternatives were London and Paris and the arbitration proceedings were to be administered by the International Chamber of Commerce (ICC).

The parties discussed the 2011 Portuguese Arbitration Law (2011 LAV), analysed the jurisprudence of the Portuguese judicial courts on arbitration, weighed up the costs of arbitration proceedings in Lisbon in comparison to the other two European cities and evaluated the logistics that Lisbon was able to offer for international arbitration proceedings. The result of the assessment on each of these points was favourable to the Lisbon choice.

No doubt remained as to the 2011 LAV being in line with the Model Law on International Commercial Arbitration (Model Law) of the United Nations Commission on International Trade Law (Uncitral), with its rules being easily recognised by the foreign lawyers involved. Moreover, the jurisprudence of the Portuguese judicial courts was considered to be arbitration-friendly, whether in relation to the judicial support system for arbitration tribunals or to the restrictive in favour of arbitration criteria applicable in the matter of annulment of arbitral awards issued in Portugal, or to the tendency of the courts to protect foreign arbitral awards in recognition proceedings. Lastly, Portugal's long experience with the New York Convention and the respect of Portuguese courts for the letter and spirit of the Convention was also highly prized.

As to the costs involved in arbitration, the comparisons were clearly favourable for Lisbon, particularly the prices of hotels, restaurants, renting rooms for the hearings, transport, and translation and

transcription support. Arbitration proceedings in Lisbon are far less costly than in London or Paris.

The logistical aspects were also overwhelmingly positive. The country is internationally at the highest level regarding communications and telecommunications and its hotels are first rate. There was even a consensus that “Portugal is now trendy”. Portugal, and Lisbon, have everything that international arbitrators and the parties need to hold arbitration hearings.

The security factor was also much appreciated: according to international statistics, Portugal is one of the safest countries in the world and this is a highly-valued facet nowadays.

Despite this assessment, the North American company did not agree to Lisbon being the seat of arbitration and Paris was eventually chosen as the seat of any future arbitrations. Ultimately, the decision was made on the basis of the prestige acquired by Paris and an obvious measure of self-protection on the part of the North American lawyers who felt better protected vis-à-vis their client by choosing Paris and not Lisbon.

This true recent story shows how Portugal and Lisbon in particular already has what it takes to become one of the international arbitration capitals. It also shows how major economic players from Portuguese-speaking countries are already endeavouring when negotiating their international contracts to draft arbitration clauses that favour Lisbon over Paris or London. Lisbon’s privileged location at the crossroads of Europe, Africa and America is gaining increasing visibility.

The path for Lisbon to be perceived internationally as a reliable first choice for international arbitration proceedings is a challenging one. Along the way, the Portuguese arbitration institutions should come together and create the Portuguese Rules, common rules adopted by arbitration centres, following the good example of another small and neutral country, Switzerland. Dispersion is a luxury of large countries, while the strength of small countries lies in unity.

We should also learn how to create an arbitration institution of international dimension, well-known and recognised in international trade and in the world arbitration community. Once these steps have been taken and the international vocation of Portuguese lawyers and our arbitration community empowered, a marketing strategy must be implemented which elevates Lisbon to among the first choices of international economic operators, their lawyers and the arbitrators.

This is a ten-year path and some Portuguese are sceptical about it simply because it is a long path. I take my own inspiration from a famous quote about Lisbon after the devastating earthquake of 1755 which flattened and destroyed the city. The Marquis of Pombal was told it would never be possible to rebuild Lisbon, to which he replied: “All the more reason for us to get started tomorrow”.

**António
Pinto Leite**
Partner

