RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

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Law nr. 31/86 of 29 August (Voluntary Arbitration Law – VAL) is the main source of law governing voluntary arbitration in Portugal. Regarding recognition and enforcement of arbitral awards specifically it is also important to take into account Articles 814 and 815 and 1094 to 1102 of the Civil Procedure Code as well as, naturally, the New York Convention of 1958[1].

Pursuant to its article 37, the VAL "*is applicable to the arbitrations that take place in Portuguese territory*", therefore including the so-called international arbitrations, defined as those that "*put at stake international trade interests*" (see article 32). This formula, which is not innovative[2], aims to *comprise all arbitrations having as object disputes arising from economic operations that involve the cross-border circulation of assets, services or capital*[3].

I. RECOGNITION OF ARBITRAL AWARDS

In Portugal, only the foreign arbitral awards raise the problem of recognition in the sense of "*granting of significance under national law to an external act*"[4], since Portuguese law considers arbitral awards rendered in national territory as internal acts (even if the dispute at stake is international within the meaning of article 32), totally equalling them to State courts' decisions (article 30 of the VAL and article 48 of the Civil Procedure Code). Thus, an award rendered in national territory can immediately be enforced before Portuguese courts.

In respect of 'foreign' awards, article 1094 of the Civil Procedure Code (CPC) provides that "*without prejudice to what may be foreseen in treaties, conventions, Community regulations and special laws, no decision concerning private rights, rendered by a foreign court or by arbitrators abroad* [5], *is effective in Portugal, regardless of the nationality of the parties, without being reviewed and confirmed*".

Article 1096 of the CPC, in its turn, lays down the conditions to be complied with by the decisions for confirmation. These, although foreseen for the judgments of foreign judicial courts, are extensible, *ex vi* article 1097, to arbitral awards "*in so far as it is possible*". As shall be seen below, and in spite of the apparently restrictive formulation, the conditions laid down by Portuguese law are quite similar to the ones of the New York Convention.

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[1] Portugal ratified the convention in 1994 and it entered into force in 1995.

[2] See article 1492 of the French Civil Procedure Code.

[3] DÁRIO MOURA VICENTE, "Portugal e a arbitragem internacional" (Portugal and international arbitration), *http://www.janusonline.pt/2004/2004_3_2_5.html*.

[4] LUÍS DE LIMA PINHEIRO, "Reconhecimento Autónomo de Decisões Estrangeiras e Controlo do Direito Aplicável" (Autonomous Recognition of Foreign Decisions and Control of the Applicable Law), 2005, p. 216.

[5] No differentiation is made here as well, between arbitral awards and judgments handed down by judicial courts.

Portugal, being a party to the New York Convention of 1958, is bound to respect, in its legal system, what is laid down in the same.
Pursuant to article III of the Convention, "*each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is invoked, under the conditions laid down in the following articles*". These include, besides article IV, which we will refer to ahead, article V, nr. 1, under which the recognition and enforcement of arbitral awards may only be refused on the grounds listed in the same. These grounds – well known – consist of the incapacity of the parties to the arbitration agreement, of its invalidity or inexistence, of the infringement of the rights of defense, if the award deals with a conflict not contemplated by the arbitration agreement, of the infringement of the rules on constitution of the arbitral tribunal and the procedure rules, if the award has not yet become binding and in the event that it has been annulled or suspended.
In its turn, Portuguese law – article 1096 of the CPC – requires:

a) That there is no doubt as to the authenticity of the document bearing the award or the intelligence [6] of the award.
b) That it is considered *res judicata* pursuant to the law of the country where it was rendered;
c) That it proceeds from a foreign court [7] which jurisdiction has not been chosen in contravention of the law and does not contemplate matters falling within the exclusive competence of the Portuguese courts;
d) That no exception of *lis pendens* or of *res judicata* grounded on a proceeding subject to a Portuguese court may be invoked, unless it was the foreign court that first seized the jurisdiction;
e) That the defendant has been duly served, pursuant to the law of the country of the original court, and that the adversarial principle and the principle of equality of the parties have been observed;
f) That it does not contain a decision which recognition leads to a result manifestly incompatible with the Portuguese State's principles of international public policy (*ordre publique*).

If we compare the conditions foreseen in article 1096 of the CPC for the confirmation of foreign judgments with the mentioned articles of the New York Convention, we notice that, although they are in general equivalent, the CPC is slightly more demanding than the Convention (see the condition concerning the "*«intelligence» of the decision*" which has no correspondence in the Convention (NYC)).

Consequently, the Court cannot refuse the recognition of arbitral awards rendered in a Contracting State based on one of the grounds foreseen in article 1096 of the CPC and that has no correspondence with the Convention's grounds for refusal, under penalty of infringement of the latter. This conclusion allows us to state that, due to the contents of articles III and V of the Convention as well, an arbitral award pronounced in a member country of the New York Convention may obtain the "*exequatur*" more easily than a foreign judicial judgment.

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[6] «Intelligence» in the sense of the «reasons underlying the decision» being coherent and capable of understanding.
[7] Or tribunal. In Portuguese «tribunals» and «courts» are designated by the same word («tribunal»), which is currently translated by «court». Therefore article 1096, although only making reference to «court», is also referring to arbitral tribunals.

II. THE REQUIRED FORMALITIES

The New York Convention clearly determines the elements that must accompany the application for recognition and enforcement of a foreign arbitral award.
Thus, its article IV foresees that "*the Party (...) shall, at the time of the application, supply: a) the duly authenticated original award or a duly certified copy thereof; b) the original agreement referred to in article II, or a duly certified copy thereof*". It also provides that "*if the said award or agreement is not made in an official language of the country in which the award is relied upon*", a translation of the documents must be produced.
The VAL does not contain any provision different from this one, or even similar to it. However, the mere analysis of the items of the referred article 1096 leads to an equivalent result.

III. CHALLENGE OF ARBITRAL AWARDS

A) APPEALABILITY

Pursuant to article 29 of the VAL, applicable to domestic arbitrations (understood as arbitrations which seat is in the national territory and in which no international trade interests are at stake), "*if the parties have not waived the appeals, the arbitral award is open to the same appeals before the court of appeals, that lie from a judgment rendered by the judicial court of first instance*".
The VAL also considers that the power granted by the parties to the arbitrators to judge according to equity is a waiver of the right to appeal.
However, in matters of international arbitration, the general rule is that "*except if the parties agreed on the possibility of appeal and established its terms*", they waive the right to an appeal (article 34)
This difference in solutions concerning the appealability can be a source of problems, since the law does not strictly establish the characteristics that define international arbitration. Thus, a party in an international arbitration may try to defend the thesis that the arbitration is national, in order to obtain the possibility to appeal against an award that is disadvantageous to it. As far as I know, there are only two judicial decisions[8] that address the issue of the definition of international arbitration. Nota 8

B) MEANS OF CHALLENGING ARBITRAL AWARDS

Considering the possibility of appeal pursuant to the civil procedure scheme, as established in article 29 of the VAL, we can generically analyze the means of challenging arbitral awards: the request to ser aside («action for annulment») , the opposition to enforcement[9] and the appeal against the award.

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[8] Tribunal da Relação de Lisboa (Lisbon's Court of Appeals), of 11 May 1995 and Tribunal da Relação do Porto (Porto's Court of Apeals), of 17 November 1995; what is stated in the judgment of Lisbon's Court of Appeals is interesting: "The harmonized international trade, likely to be the object of arbitration, comprises all economic operations that involve circulation of assets, of services or of capital across borders".
[9] The analysis of which shall be made in the chapter concerning the Enforcement of Arbitral Awards.

1. Request to set aside

The request to set aside – defined as an «action for annulment» - is the only specific means of challenging internal arbitral awards (in the sense of awards rendered in an arbitration seated in Portugal, irrespective of whether, under the eyes of the law, it is national or international), foreseen by the VAL, the grounds of which are restrictedly listed in article 27. The right to apply for the annulment of the arbitrators' award cannot be waived, pursuant to nr. 1 of article 28. According to nr. 2 of the same article, the action for annulment can be "*filed within one month from the notification of the arbitral award*".

According to nr. 3 of article 27 of the VAL, if an appeal against the arbitral award is admissible, the grounds to set aside the award "*can only be ascertained within the scope of that appeal*".

Thus, the following are grounds to set aside (article 27, nr. 1 of the VAL):

a) That the dispute cannot be settled by arbitration;

b) That the arbitral award was rendered by a tribunal that is incompetent or which composition was not made in accordance with the law;

c) That there was an infringement of article 16, with a decisive influence on the settlement of the dispute.

In its turn, article 16 imposes the respect of the following directives:

i) The parties shall be treated with absolute equality;

ii) The defendant shall be summoned to defend himself;

iii) In all stages of the proceeding, the strict observance of the adversarial principle shall be guaranteed;

iv) Both parties must be heard, orally or in writing, before the final decision is rendered.

d) That there was an infringement of article 23, nr. 1, item f), 2 and 3 regarding the arbitral award (indication of the place of the arbitration, signature of the decision and need to provide grounds);

e) That the tribunal assessed issues that it could not have assessed, or did not rule on issues it should have ascertained.

As can be seen, the grounds for the action for annulment are not very different from the ones that, pursuant to the New York Convention, would allow the refusal of the recognition, with special emphasis on the verification that the infringement of Portuguese State's rules of international *ordre publique* is not among the range of grounds[10].

The partial annulment of arbitral awards is admitted in the only judicial decision known to address the subject[11].

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[10] Portuguese case-law assumes that it is the Portuguese international *ordre publique* and not the internal one that is relevant here: see the Decision of the STJ (Supreme Court of Justice), of 10 September 2003: "*what is mentioned in respect of public law is the so-called international public law, i. e., the fundamental principles that structure Portugal's presence in the concert of nations*".

[11] Judgment of the Tribunal da Relação do Porto (Porto's Court of Appeals) of 21 October 2003.

2. Appeal against the arbitral award

2.1 In general (*principle of assimilation*)

In respect of appeals, the Portuguese law established the principle of assimilation of arbitral awards to judicial decisions (*vide* article 29, nr. 1 of the VAL).

By determining that "*if the parties have not waived the appeals, the arbitral award is open to the same appeals before the court of appeals, that lie from a judgment rendered by the judicial court of first instance*", the Portuguese legislator intended that the means of appealing from an arbitral award would be the same than those available to the parties in what regards judicial decisions.

However, it should be noted that the principle of assimilation is not equivalent to a principle of identity and, therefore, the regime of the civil procedure appeals, to which the VAL makes reference, should be applied with the necessary adaptations.

III. THE ENFORCEMENT OF ARBITRAL AWARDS

It should be noted that the Portuguese courts' case-law in respect of enforcement of arbitral awards and, specifically, in respect of recognition of arbitral awards rendered outside Portugal, is practically inexistent.

Pursuant to the provisions in article 30 of the VAL, "*the enforcement of the arbitral award will be judged by the court of first instance, pursuant to the provisions of the civil procedure law*". The scarce case-law[12] confirms this understanding. This rule is applicable to international arbitrations, without need for confirmation and recognition, if the seat of arbitration was Portugal.

Given the reference made in article 30 to the provisions of civil procedure law, the regime of the enforcement procedure is considered applicable.

According to nr. 2 of article 48 of the Civil Procedure Code, awards of arbitral tribunals granted on national territory are enforceable in the same terms of the decisions of ordinary courts, meaning that no previous recognition by ordinary courts is necessary. Therefore, nr. 2 of article 26 of the VAL determines that "*the arbitral award is enforceable in the same terms as a judgment of the judicial court of first instance*".

It is possible that, similarly to what is established for the enforcement of judicial decisions, one of the parties objects to the enforcement.

This other means of challenging an arbitral award is integrated into the regime of the action for enforcement and is foreseen in article 31 of the VAL and in article 815 of the CPC.

Since the court of first instance has jurisdiction to enforce the arbitral award – as article 30 imposes – it is in this jurisdiction and instance that the opposition to the enforcement can be filed, being the general terms of the procedure law applicable to the same.

Pursuant to article 30 of the VAL, it is possible to file an opposition to the enforcement of an arbitral award on the same grounds a request to set aside could be lodged, even if this specific action for annulment has not been filed. Thus, the scarce Portuguese academic opinion on arbitration defends that it is possible to invoke in the opposition to the enforcement the means of opposition that could be raised in an action for annulment of the arbitral award. This is the opinion of LIMA PINHEIRO:

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[12] Judgments of the Tribunal da Relação do Porto (Porto's Court of Appeals) of 24 October 2002, of 26 October 2004 and of 21 June 2005 and of the Supreme Court of Justice, of 22 April 2004.

Not only the grounds established in respect of those judicial decisions, but also the grounds on which the annulment of the judicial decision can be based, under article 815 of the Civil Procedure Code, are grounds for the opposition to the enforcement"[13].

Yet, and on the contrary, we consider that this possibility must be rejected, obviously, as long as the party that disagrees with the decision had the opportunity to exercise the right to judicially challenge the arbitral award, namely, because it was notified of the same. The application of the scheme of the CPC to arbitrations must be made *cum granum salis*. This interpretation, of which we disagree, would grant a double possibility of contradicting the decision that was adopted within the voluntary jurisdiction desired by the parties, without anything to justify it. The application of the rules of the CPC to voluntary arbitrations must evidently be made with adaptations. However, the wording of the law (article 31 of the VAL) seems to concur with the thesis opposed to ours.

Until the Reform of the action for enforcement of 2003, operated by Decree-Law nr. 38/2003, of 08.03.2003, it was necessary to proceed to a previous verification, by the judge, as to the enforceability of the enforcement order (judicial judgment or arbitral award, besides other orders that are also available as basis for enforcement). However, since that date, this verification is only made by a clerk of the court, giving more easily rise to situations where an enforcement proceeding is filed based on an order that is inappropriate for that purpose, or that needs a prior consent in order to be enforceable. This can be particularly alarming given that the action for enforcement can only be suspended under special conditions and, as a rule, against a collateral or only after the attachment of assets of the debtor. In turn, and as article 49 of the Civil Procedure Code provides, the foreign arbitral awards only become enforceable after having been reviewed and confirmed – pursuant to the provisions in articles 1094 *et seq.* – by the competent Portuguese court[14]. I. e., the enforceability of the decision will depend on the previous application for an *exequatur*, without the granting of which the decision shall not be enforceable.

As a party to the New York Convention, Portugal must acknowledge the authority of an arbitral award rendered in the territory of another Contracting State and make possible to enforce it in the same manner a national arbitral award would be enforceable, combined with the rules established in the Convention itself.

Thus it can be concluded that, truly, in the case of arbitrations made outside of Portugal, the respective availability as a basis for enforcement in Portugal does not formally result from the arbitral award, but rather from the decision that confirms the enforceability of that award[15].

IV. APPEALABILITY OF INTERIM DECISIONS

[13] LUÍS DE LIMA PINHEIRO, Arbitragem Transnacional – A determinação do Estatuto da Arbitragem (Cross-Border Arbitration – The determination of the Arbitration Statute), Almedina, p. 177.

[14] According to article 1095 of the Portuguese Civil Procedure Code, "*the Court of Appeals is competent for the revision and confirmation*".

[15] In this sense, EURICO LOPES-CARDOSO, Manual da Acção Executiva (Handbook of the Action for Enforcement), Almedina, 1996, p. 26.

Article 29, nr. 1 of the VAL expressly mentions that "*if the parties have not waived the appeals, the arbitral award is open to the same appeals before the court of appeals, that lie from a judgment rendered by the judicial court of first instance*".
Analyzing the wording of this provision, we notice that the legislator only used the expressions "arbitral award" and "judgment".
In its turn, nr. 4 of article 21 of the VAL foresees that the "*decision by way of which the arbitral tribunal declares itself competent can only be ascertained by the judicial court after the decision on the merits has been rendered"* and only in the terms previously exposed (appeal, if admitted, or request to set aside).
Therefore, we cannot state that any decision of the arbitral tribunal is open to challenge. Such understanding would, inclusively, depreciate the grounds and the purpose of this type of tribunals.
Thus, it must be concluded that only the final awards, i.e., decisions on the merits or that decide not to judge on the merits, putting an end to the proceedings, are open to challenge.
Obviously, similarly to the regime defined for appeals in civil procedure, and since the VAL contains no provision to the contrary, if an interim decision with a partial decision on the merits is rendered, it is possible to file an appeal or an action for annulment.

COMPARED LEGAL SYSTEMS
BRAZIL[16], ANGOLA[17], MOZAMBIQUE[18] AND MACAU[19]

1. The Recognition and Enforcement of Arbitral Awards[20]

The Brazilian Arbitration Law is governed in accordance with Law nr. 9.307, of 23 September 1996.
In the likeness of what the Portuguese Voluntary Arbitration Law provides, the Brazilian arbitration law also foresees, in its article 31, that "*the arbitral award* [i. e., national] *produces the same effects between the parties and their successors as the*

[16] Signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
[17] Not a signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
[18] Signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
[19] On 12 November 1999, Portugal notified the United Nations Secretary-General of the extension of the Convention to Macau in the same terms in which it was in force in Portugal (see Aviso nr. 257/99, of the Ministry of Foreign Affairs of Portugal, Diário da República nr. 292, I Series A, 17.12.1999, p. 8996-8997). The notification took effect on 10 February 2000. On the other hand, on 19 July 2005, China declared that the New York Convention would be applicable to Macau (that became an administrative region of that country on December 1999).
[20] According to Brazilian newspaper *Estado de São Paulo* (edition of 20.05.2007), the Brazilian Courts grant approximately 42% of the annulments of arbitral awards filed. The data represents, according to the news, a representative sample of 75% of the cases. The arbitral community, gathered in the Comité Brasileiro de Arbitragem (Brazilian Arbitration Committee), contested these numbers that seem excessive. Yet, in any event, this sample expresses a reason for concern.

judgment rendered by the bodies of the Judiciary and, being a conviction, constitutes enforcement order".
However, in respect of the foreign arbitral award that, pursuant to article 34, is the award "*that has been rendered outside the national territory*[21]", its recognition and enforcement in Brazil will depend on homologation by the Superior Court of Justice, pursuant to article 35.

The conditions for the homologation are those that result from article 38 of that Law which are, in general, equivalent to the conditions that result from article V of the New York Convention. The enforcement of Brazilian (national) arbitral awards "*produces the same effects between the parties and their successors as the judgment rendered by the bodies of the Judiciary and, being a conviction, constitutes enforcement order*".

Aside the mentioned article 34 of the Brazilian Arbitration Law, it can be said that the homologation by the Superior Court of Justice, required by article 35, constitutes a previous element for the enforcement of the foreign arbitral awards and that its conditions are foreseen in articles 483 and 484 of the Brazilian Civil Procedure Code. Essentially, the Superior Court of Justice will not homologate the arbitral award, in the event of offense to national sovereignty, public policy or morality.

The Angolan Voluntary Arbitration Law[22] was approved by Law nr. 16/03, of 25 July and the Mozambican Arbitration Law[23], by Law nr. 11/99, of 8 July, both systems being very similar to the Portuguese one in respect of the regulation of arbitration.

In Angola, as well as in Mozambique, the system for recognition and enforcement is similar to the Portuguese system, but it contains some differences that deserve a more detailed analysis.

As happens with both the Portuguese and Brazilian legal systems, the Arbitration Law of those two countries also differentiates between national (in the sense in which we have been using this expression) and international arbitrations, but it goes farther than Portuguese law in respect of the definition of the latter.

The provision in article 40 of the Angolan Law, very similar to article 52 of the Mozambican law, should be quoted: "*international arbitration means the arbitration that puts interests of international trade at stake, notably when: a) the parties to the Arbitration Agreement, at the time of the conclusion of the Agreement, have their establishments in different States; b) the place of the arbitration, the place of the*

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[21] Foreign arbitration is thus and *a contrario* defined just like the Portuguese Voluntary Arbitration Law does, in article 37: "*the present law is applicable to the arbitrations that take place in national territory*" –all others being considered foreign arbitrations.

[22] The recognition of foreign awards is contemplated in the bilateral agreement for legal and judiciary co-operation entered into between Portugal and Angola (signed in 1995 and ratified two years later).

[23] The recognition of foreign arbitral awards is foreseen in the bilateral agreement for legal and judiciary co-operation entered into between Portugal and Angola (signed in 1995 and ratified two years later).

enforcement of a substantial part of the obligations resulting from the legal relationship from which the dispute arises or the place with which the object of the dispute is more closely related, is located outside the State in which the parties have their establishment; c) the parties have expressly agreed that the object of the Arbitration Agreement is linked to more than one State".

In respect of the effects of the national arbitral award, the Angolan Law, in article 33, and the Mozambican Law, in article 43, provide that the arbitral award produces the same effects between the parties as the judicial decisions, and when it condemns one of the parties is enforceable.

On the other hand, in respect of the enforcement of arbitral awards – and being applicable to foreign arbitral awards as well – article 37 of the Angolan Law foresees that the parties must enforce the award as decided by the Arbitral Tribunal (nr. 1) and that, in case this is not complied with within 30 days after the notification of the decision, "*the interested party may apply for its enforcement before the Provincial Court, pursuant to the provisions in the Civil Procedure Law"*. According to article 38, the procedure for enforcement follows the terms of the summary enforcement procedure, regardless of the value of the case.

In Mozambique, article 49 also provides that the enforcement of the arbitral award is determined by the Arbitral Tribunal itself and that, only if this is not the case, the interested party may apply for its enforcement which, conversely to the Angolan legal system, follows, in this case, the form of an extra-summary proceeding (which is the most simplified form of judicial proceeding), regardless of the value of the case. The Mozambican Arbitration Law also foresees the possibility of opposition against the enforcement, but the judicial order that refuses the possibility of opposition is not open to challenge (article 51).

The Law regarding Voluntary Arbitration in the Territory of Macau was approved by Decree-Law nr. 29/96/M, of 11 June. Complementarily, and in an autonomous legislation, the specific System for External Commercial Arbitration was approved by Decree-Law nr. 55/98/M, of 23 November.

This System provides, in nr. 4 of article 1, that: "*for the purposes of the present legislation, an arbitration is considered external, when: a) The parties to the Arbitration Agreement, at the time of the conclusion of the Agreement, have their establishment in different States or Territories; b) One of the following places is located outside the State or the Territory in which the parties have their establishment: i) The place of the arbitration, if it is established in the arbitration agreement or can be determined pursuant to the latter; ii) Any place where a substantial part of the obligations resulting from the contractual relationship should be enforced or the place with which the object of the dispute is more closely linked; or c) The parties have expressly agreed that the object of the arbitration agreement is linked to more than one State or Territory"*.

In respect of the enforcement of national arbitral awards, Decree-Law nr. 29/96/M provides, in nr. 2, of article 35, that "*the arbitral award is as enforceable as the judgments of the Court of Generic Jurisdiction*", and is open to opposition to

enforcement, under article 36, based on the same grounds as the opposition to enforcement established in Macau's civil procedural law.

On the other hand, the specific System for External Commercial Arbitration mentions, in article 35, that "*the arbitral award, regardless of the State or Territory in which it was rendered, is recognized as being enforceable and must be enforced, by way of application addressed in writing to the competent court, without prejudice to the provisions in the present article and in article 36*[24]".

2. The Required Formalities

Article 37 of the Brazilian Law provides that it is for the party interested in the enforcement to present all elements considered necessary for the recognition and the enforcement. Thus, it is for the same to deliver, together with the initial application, "*I – the original arbitral award or a duly certified copy thereof, authenticated by the Brazilian Consulate and accompanied by the official translation*".

In Angola, the Voluntary Arbitration Law foresees, in nr. 2 of article 38, that the application for the enforcement of the arbitral award must be accompanied by the arbitral award, its rectification or clarification and of the proof of the notification and the deposit of the award.

Thus, it is apparently not necessary to file the arbitration agreement, contrarily to what is the case in Portugal and in Brazil.

In Mozambique, in its turn, article 50 provides that the request for enforcement must be accompanied by the arbitration agreement, the arbitral award and the proof of the notification to the parties and of the deposit of the award.

In Macau, nr. 2 of article 35 of the specific System for External Commercial Arbitration foresees that the application for enforcement of a foreign arbitral award must be accompanied by the duly authenticated original award or by a copy thereof, as well as the original arbitration agreement or a copy thereof.

3. Means of challenging

Pursuant to article 18 of the Brazilian Law, "*the arbitrator is the judge on matters of fact and of law, and the judgment he pronounces is not open to challenge or to homologation by the Judiciary.*"

Thus, and contrarily to what was established in respect of the Portuguese Voluntary Arbitration Law, there is no default rule of appealability of national arbitral awards (in Brazil) by way of referral to the civil procedure scheme. "*The adopted system of one single instance (...) does not harm any constitutional principle and was already admitted by the Civil Procedure Code (in the part concerning arbitration), in an indirect way, through the imposition of a fine to the appellant*"[25].

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[24] Grounds for refusal of recognition and enforcement.

[25] JULIANA ILDEFONSO BECATTINI, A Arbitragem e o Poder Judiciário – Da Intervenção do Tribunal Judicial no Processo Arbitral no Brasil – Dissertação de

Yet, it is always possible to use a different mechanism, the challenge of arbitral awards foreseen in article 33 - the action for annulment.

The request to set aside follows the terms of the Brazilian Civil Procedure Code and is filed up to 90 days after the "*reception of the notification of the arbitral award or of its amendment*".

Article 32 establishes the grounds for the claim of nullity: "*The arbitral award is null and void, if: I – the agreement is null; II – it was rendered by someone who could not be an arbitrator; III – it does not fulfil the conditions foreseen in article 26 of this Law* [report, grounds, date and place of the award]; *IV – it was rendered outside the boundaries of the arbitration agreement; V – it did not decide the entire dispute subject to arbitration; VI – it is proven that it was rendered with prevarication, peculation or passive corruption; VII – it is rendered out of time (...); VIII – the principles mentioned in article 21, § 2 of the present Law are infringed*[26]".

In Angola, article 36 of Law nr. 16/2003 establishes a system for the lodging of appeals that is very similar to the one that exists in Portugal, being, at the outset, admissible to lodge an appeal against national arbitral awards, "*in the same terms that would be applicable if the judgment was rendered by the Provincial Court*", and it is also established that there will be a waiver of appeal whenever the parties allow the Arbitral Tribunal to judge according to equity (nr. 2).

On the other hand, the international arbitral award is not subject to appeal, under article 44, unless the parties have agreed otherwise.

The Mozambican Law only foresees one type of appeal, in article 44 - appeal for annulment – and its grounds are established in the body of the article. Article 47 adds that "*the right to appeal against the decision of the arbitrators cannot be waived"*.

Nothing is provided in respect of the possibility or impossibility to lodge an appeal against the international arbitral award. Therefore, to the extent of the reference made in article 53 to the national arbitration scheme, it should be considered possible to appeal against the award, but only by way of the annulment proceedings.

In Macau, the Voluntary Arbitration Law allows the parties to create an arbitration appeal jurisdiction, either in the arbitration agreement itself or through a subsequent written agreement (see nr. 1 of article 34). Said law also provides that the arbitral award is open to appeal, to be lodged before the Superior Court of Justice, the respective rules of civil procedure law being applicable (nr. 2).

Mestrado (Arbitration and Judiciary – The intervention of the judicial court in the arbitration procedure in Brazil – Master's Dissertation), Faculdade de Direito da Universidade de Lisboa, 2003, p. 24.

[26] Article 21, § 2: "*the adversarial principle, the principles of equality of the parties, of impartiality of the arbitrator and of his free conviction shall always be observed within the arbitration procedure*".

According to nr. 3 of that provision, the power granted to the arbitrators to judge according to equity means that they waive the right to appeal against the award.

Pursuant to article 38, if the parties have not agreed on the possibility of challenging the arbitral award by way of appeal, the Court of Generic Jurisdiction may proceed to that annulment, as long as the conditions imposed by that provision are fulfilled and pursuant to the grounds for annulment established in article 37.

In its turn, the specific System for External Commercial Arbitration provides that the judicial challenge of the arbitral award can only be made in the form of an action for annulment (nr. 1 of article 34).