Lisbon Report 2013: A resilient profession

Print

The constant threat of default of its Troika obligations and the potential of a second bailout are affecting Portugal's business and legal markets, both nationally and internationally. The country has been in a vicious circle of political and economic instability, the effects of which have been difficult to stop – and the legal market has not been immune. But in amongst all this, the legal profession has stood strong, adapted and survived.

The Troika's so-called 'Men in Black' recently paid a visit to Portugal for the 8th and 9th review of the bailout. The purpose: to demand austerity measures to replace those recently rejected by the Constitutional Court for being in breach of the Constitution – putting a €1.3bn hole in the 2013 budget.

And it has been this recent decision that has aborted deals – not the political crisis over the summer that almost left Portugal without a Government, says Duarte Garin, Managing Partner of Uría Menéndez-Proença de Carvalho. "And clients are very concerned about its implications."

The economy has changed significantly, for instance, some large domestic companies have been sold to foreign investors and broken up into smaller ones. Others have shrunk, gone bankrupt or almost ceased their activity in Portugal, explains Manuel Santos Vítor, Managing Partner of PLMJ. "So many large clients have disappeared and firms are having to find new clients and opportunities – large firms are now dealing much more with smaller clients and budgets than a couple of years ago."

Things have most definitely changed, but then so have attitudes of late. "We made an internal rule to stop comparing things to how they were pre-crisis," says Rui Amendoeira, Managing Partner of Miranda Correia Amendoeira e Associados, "as it doesn't achieve anything nor serve any purpose moving forward."

The country seems to be better embracing the reality that things will never go back to 'the good old days', and an important cultural change has happened, say lawyers – the private sector has finally understood that they can't rely on the Government, and for the very first time in decades people are not looking to them for answers.

Political influences

Portugal's business and legal markets work hand-in-hand with the economy and the political climate, and cannot escape the effects of the Government's current instability. "If you are very integrated in the domestic market then of course politics affect you," says João Caiado Guerreiro, Managing Partner of Caiado Guerreiro, "and international investors have clearly noticed the problems the country is suffering. "

The visibility of the Government's predicament means that its failings are there for all to see, discouraging business and investment, and an atmosphere of heavy uncertainty hangs over Portugal. But more than the political climate, says César Bessa Monteiro, Senior Partner at pbbr, it has been the measures imposed under the Troika bailout that have affected the business, and consequently the legal markets.

There is less investment, market interest and ability of banks to lend money, leading to less production capacity, more unemployment and business closures, explains Pedro Guimarães, a Partner at F. Castelo Branco & Associados.

The Troika's intervention has, however, led to lower interest rates, which allowed Portuguese organisations to issue bonds, says António Soares, Head of Corporate Finance at Linklaters, Lisbon. And there has been a slight, though partial, economic recovery, say lawyers, on the back of which the Government has introduced some important reforms, believed to bring greater stability and competitiveness into the Portuguese economy, creating a more favourable investment environment.

And with the German elections now decided, lawyers believe they have likely achieved the best result in terms of Portugal's interests. What remains to be seen is whether or not the Troika will actually accommodate a certain degree of flexibility in the way they look at and deal with Portugal, says João Vieira de Almeida, Managing Partner of Vieira de Almeida. "The situation at the moment is rather volatile – on the one hand with indications that the economy is improving, while on the other interest rates are rising, so it is hard to predict the actual implications."

But the problem with the political climate is about how it affects clients and, more importantly, how they will react, says Maria João Ricou, Co-Managing Partner of Cuatrecasas, Gonçalves Pereira, Portugal. "And these are two things that are completely out of our control."

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Concerning clients

"Nowadays we are used to the crisis, our clients are used to the crisis and we are all much more comfortable in today's reality," says Isabel Martínez de Salas, Managing Partner at Garrigues, Portugal. "The nature of our work has changed, and I believe it's going to remain that way for the near future."

And as certain legal work is intrinsically linked to the state of the economy, clients continue to be interested in cost- and efficiency-driven operations. Their main concerns are often linked to competitiveness in their respective markets, explains Dulce Franco, a Partner on the Managing Board of AAA Advogados, as their business very much depends on having an advantage over competitors.

Risk is still high on the agenda, especially in relation to how Government measures and reforms affect current and potential projects. "Clients are looking for guarantees that the necessary and positive measures adopted will be maintained in the future, whatever the political forces in power," says Pedro Pinto, Senior Partner at pbbr. These concerns relate to employment regulation, tax stability, the simplification of administrative and licensing procedures, and the workings of the judicial system.

One of the Troika's conditions was that the country embarks on serious structural and legislative reforms with far reaching implications. These include amendments to the Competition Law and powers of the Competition Authority, changes to the Labour Code, and various tax adjustments and measures to streamline the public sector, explains Claudia Santos Cruz, Managing Partner for Portugal at AVM Advogados – such as the recent but very much overdue overhaul of the Portuguese Civil Code, aimed at minimising bureaucracy and wasting resources. "With so many legal reforms underway, it is inevitable that clients are anxious about restructuring some parts of their businesses and have a host of questions."

Many are therefore asking for advice and assistance on restructuring, tax and labour issues, aiming to cut down costs, renegotiate banking facilities, obtain tax efficiency, lay-off employees and optimise scarce resources.

And while client profiles have changed, consequently so has the work flow. While there are new opportunities, these are not sufficient to fully compensate the loss in work law firms in general have suffered due to the crisis, they say. So while there are good opportunities in M&A, privatisations, for example, they are few and they won't make law firm hit their budgets. Law firms are more now willing to consider clients that they would not have looked at a few years ago, they say, and analyse whether or not it is worth taking them in.

Large or small, all clients have been suffering from a huge increase in commercial debts, which has had an added effect for law firms. "Years ago it used to be shameful

for lawyers to call to collect fees," explains Garin at Uría Menéndez-Proença de Carvalho, "but now it has become common."
But even so, clients are not letting up on their increasing pressure to lower fees – a never-ending trend in the legal market. "Clients should realise that while in specific situations efforts can be made to reduce legal costs efficiently", says Ricou at Cuatrecasas, Gonçalves Pereira, "and as a rule – high-standard legal advice is not a 'low cost' service".

Areas of growth

Currently, there are high profile opportunities in hedge funds and private equity, say lawyers, but this is not what is feeding law firms – it is restructuring, insolvency, litigation, labour and tax that are sustaining them.
Companies are facing new and tougher challenges, say lawyers – from the market, the economy and regulations – and adjusting business models is still top of agendas. Insolvency and restructuring have suffered a huge increase due to the financial crisis, according to Ana Rita Paínho, a Partner at Anselmo Vaz, Afra & Associados. Law firms also see their clients still cautious and unwilling to invest and there has been a great deal of debt restructuring activity, renegotiating or reinforcing current packages or dealing with margin calls – the need to put in addition collateral to cover possible losses.
There is also a big trend for insolvency and pre-insolvency advice. Clients demand a thorough analysis of the pre-insolvency and insolvency laws and, where available, case law while structuring their transactions, says Fermín Garbayo, Resident Partner at Gómez-Acebo & Pombo in Lisbon. The current environment has determined that claw-back provisions, fresh money preferences, revitalisation mechanisms, equitable subordination, lender and director liability, among others, have now become the main focus of the legal framework and due diligence reports in the context of the insolvency of one of the parties to a transaction or the refinancing of a company.
These internal reorganisations are leading to a huge demand for labour advice, requiring thorough assessments of the contingencies involved in potential dismissals and adjustments to employment conditions and benefits. Last year's Labour Law Reform also generated a need for potential investors in distressed assets to understand their labour commitments and the flexibility of the Portuguese market in the context of the restructuring such assets. And the regulation is still changing – Portugal's Constitutional Court just ruled against certain provisions of the Labour Code, making it easier for companies to fire employees under certain conditions.
And litigation continues to rise in view of increasing contractual breaches and defaults, say lawyers, from simple debt recovery to more complex cases, including criminal litigation, negligent insolvency, director´s liability and fraudulent conveyancing, among many others.
The current economic situation has also prompted the Government to increase their tax revenues and a more aggressive approach is being adopted by the tax authorities, resulting in an increase in tax litigation and arbitration. And there have been two trends on compliance issues lately – on the one hand an increasing demand from high-net-worth individuals to re-structure their assets to comply with the applicable regulations, avoiding any future additional assessments, explains Rogério M. Fernandes Ferreira, Founding Partner of tax boutique RFF & Associado. On the other, companies continue to need assistance in tax litigation matters as administrative instructions have been put in place by the Government to raise tax revenues despite being in breach of the applicable legislation.

Investor opportunities

To every downside there's usually an upside, and the current crisis climate should not be an exception to that principle, says Carlos Lucena, Managing Partner at Telles de Abreu e Associados. "For those able to invest there are several very accessible quality opportunities in the real estate sector, as well as in some specific capital market securities, out of which investors can expect interesting medium and long-term investment returns."

Investment opportunities attract foreign investment, not only resulting from the free movement of offer and demand, but also as a consequence of programmes launched by the Government to push the economy, says Miguel Castro Pereira, Managing Partner at Abreu Advogados. These include the privatisations and the Golden Visa Programme – granting residency permits to non-EU nationals allowing them to circulate freely within the Schengen Area, if they invest in equity or real estate.

This has, to date, attracted €91m and around 147 investments in real estate, say lawyers. And it has been also announced that the state budget for 2014 will define benefits for the so-called 'rich immigrants', says Moura at A. M. Moura – Advogados – a measure that seeks to attract foreigners with strong investment capacities and provide them with very beneficial and attractive tax conditions. These important incentives are good examples of areas in which clients are requiring assistance, say lawyers, allowing for the growth of new practice areas such as private clients and international wealth management.

There is also interest from several private equity players to invest in Portuguese companies, in particular distressed ones that are in need of equity but demonstrate long-term potential, says João Galvão, Senior Associate at Campos Ferreira, Sá Carneiro & Associados. "The uncertainty around economic forecasts and the tendency for even established players to resize their investments and refocus on their core businesses should certainly continue creating good deal opportunities for newcomers."

A trend that lawyers are seeing is that Portugal is becoming a location for shared service centres for international companies – entities responsible for operational tasks, such as accounting, HR and IT, among others. Portugal has a very qualified and cheap labour force and is a developed country with a fantastic climate, says João Espanha, Founding Partner of Espanha E Associados. "A very good spot to install your back-office."

And the Government is about to introduce major changes to Corporate Income Tax, which, if implemented as proposed, will put Portugal as a top destination for holding investments anywhere in the world, says Rogério M. Fernandes Ferreira, Founding Partner of tax boutique RFF & Associados. "In fact, the proposed regime is ahead of most of the traditionally used regimes, whether in Europe or elsewhere."

Portugal is, therefore, making a significant effort to steer the situation back into recovery, and this is the time to invest, says Vieira de Almeida at Vieira de Almeida. "We have good assets at very good prices – this is time to commit."

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Innovation and creativity

Being subject to a bailout, naturally impacts all sectors of the economy. The market changed and that also has the effect of boosting law firms' constant need to adapt and find smarter and innovative ways to add value to clients, explains Nuno Azevedo Mendes, a Partner at ABBC.

And innovation comes from starting a conversation with the client and getting to know their business properly, explains José Luis Esquível, Managing Partner of Esquível Advogados, so as to be in a proper position to identify risk and provide comfort.

Lawyers nowadays have to step into the shoes of their clients, offering legal solutions rather than legal services, adds Perestrelo, at Cuatrecasas, Gonçalves Pereira, and better understanding both the needs and businesses of their clients.

Many firms have seen this as an opportunity, using it as a chance to rethink their structures, cut costs and optimise their existing resources, being very aware that everyone in the firm can and should make a difference. Investment in multidisciplinary teams has been a must, to be better able to cover all client needs in one go and offer a more efficient approach, in particular with regards to cross border needs.

“Another step has been conceiving and executing specifically directed legal service projects to technology-oriented start-ups, for instance,” says Lucena at Telles de Abreu e Associados, “including special tailor-made assistance and billing packages”.

Many are now focusing on providing training opportunities for clients, something that is playing a crucial role in the way they do business with clients, be it through written newsletters, webinars or live sessions. “Clients want to remain informed about legal developments and practices,” says Guimarães at F. Castelo Branco & Associados, “and demand that law firms offer these opportunities”. This includes more direct and personal communication with clients, adds Nelson Raposo Bernardo, Managing Partner at Raposo Bernardo, rather than more widespread communication.

Prevention is also key, with law firms seeing clients increasingly ‘risk aware’, in particular to secure contractual payments. “So we provide risk analysis of the counterparties,” says Antonio Mendonça Raimundo, Partner at Albuquerque & Associados, “and have a more aggressive approach in what concerns prevention of unpaid credits by more closely monitoring the level of risk and the status of such counterparties”.

And most have moved away from hourly billing, providing alternatives such as fixed fees and caps with success fees, very flexible retainers and adjusting prices to their clients’ economic needs. And when the economics of businesses drop, clients look for value for money when they make their choices, says Mendes at ABBC, and that means increasing demand in terms of expertise, seniority and level of service – they want an effective hands-on approach by partners. Allocation of resources is therefore critical to ensure that there is adequate partner and senior associate involvement as this is proving vital to cater to today’s client needs.

One of the most important criteria still continues to be the concept of providing ‘added value’. “And clients are paying more attention to costs as never before,” says Lino Torgal, Managing Partner at Sérvulo & Associados, “and only those firms who are able to provide timely and valued counsel are able to survive in times of crisis”.

In a context where strong competition and abundant offers are endangering the qualification of legal services as a relatively undifferentiated commodity, law firms must aim to be solution creators, more than mere providers of billable legal services. “By doing so, we are able to increase the perceived value of our assistance,” says Galvão at Campos Ferreira, Sá Carneiro & Associados, “as well as evidence the advantages and synergies we can create with our clients”.

Standing strong

The market is now more cost and time sensitive than ever. Acting pragmatically, creatively, efficiently and preventatively is crucial for law firms to help their clients in business planning and anticipating potential risks and contingencies ahead.

“We could never predict the future and whereas we used to have a level of certainty pre-crisis, now we have no idea what is going to change from one day to the next,” says Caiado Guerreiro at Caiado Guerreiro. “Law firms are still growing, but we have to work 50 percent more for each Euro that we bring in.”

The good news, however, is that while the country is struggling, there are signs of recovery, say lawyers, and the second quarter of 2013 has the first GDP growth after 10 quarters of recession. “And I believe that the legal practice will grow in line with the recovery of the economy,” says Carlos Cruz, Senior Partner at CCA Ontier. Slowly, but surely, the mood is changing and things are now starting to happen, and law firms have done a rather good job of keeping up. “We’ve adjusted, adapted and survived in very good shape,” says Santos Vítor at PLMJ, “and we need to continue making ourselves compatible with the times”.

Law firms have to be more efficient, based on professional marketing and management models, looking at all angles of the business, adopting adequate capital structures, selecting and retaining the best human resources, says Castro Pereira at Abreu Advogados, and innovating with different approaches and services to meet clients’ needs.

But the legal market is weathering this crisis storm, and along the way developed a reputation for showing remarkable strength in the face of adversity. As Amendoeira at

Miranda says, the Portuguese legal market can be summed up in one word: Resilient.

Practice growth

Changing and unstable times also generate opportunities – and Portugal is no exception. The bailout continues to drive M&A activity in public sector divestments, in particular in State-owned or controlled companies and assets.

There are a number of medium to high-profile privatisations already lined up that promise to attract investors' attention – the already announced sale of CTT (Post Office), for example, says Carlos Aguiar, Senior Partner at Carlos Aguiar, Ferreira de Lima & Associados, and the sale of the insurance business of the state financial group Caixa Geral de Depósitos.

Lawyers identify IT and biotech, energy, including renewables, and outsourcing as showing potential for new practice growth, with agriculture and fishery back on the agenda. And the considerable investment that Portugal has put in place in 'alternative energies' – wind, wave or solar – as well as the country's natural optimal conditions are providing good opportunities for investments, says Isabel Marinho, a Partner at Carlos de Sousa e Brito, Isabel Marinho, Mafalda Rodrigues Fonseca & Associados.

Aviation and maritime law are also two areas that have been consistently growing in Portugal in recent years with more demand for legal services, and specialised lawyers, adds Mafalda Rodrigues Fonseca, also a Partner at the Firm.

Legally and economically, Portugal provides very competitive and attractive investment conditions, for example, for the registration of aircraft and vessels.

And while some traditional practices have declined, such as wholesale, retail, food and restaurateurs, says lawyers, tourism continues to grow against all odds with Lisbon, Oporto and other destinations appear at the top of tourist lists.

Open market

The possibility of so-called 'multidisciplinary practices' (MDPs) is something that is currently under discussion, with wide-ranging views across the profession as to viability, necessity and likelihood.

If approved by the Government, there is potential for change in the legal market with the introduction of new structures made up of professionals with complementary skills, allowing clients to find a single company to provide all the services they need – the 'one-stop-shop'. This practice has been deeply rooted in Spain, says Adelaide Moura, Senior Managing Partner at A. M. Moura – Advogados, and while it has fans in Portugal, it appears to meet great resistance from more traditional lawyers.

There is movement in the market, with some gearing up for the potential introduction of MDPs. "Something is happening with the accounting firms in Portugal," says Pedro Rebelo de Sousa, Managing Partner of SRS Advogados, "with at least two of the top four that are apparently trying to build up large law practices."

Whether this movement will come to fruition remains to be seen. But multidisciplinary practices should not be on the table in Portugal, but under the table, says Diogo

Perestrelo, Co-Managing Partner at Cuatrecasas, Gonçalves Pereira, Portugal.
“It’s not a good option for us in such a small and already competitive market, but more than that it brings several problems – the respect of the rules of our profession, conflict of interests, among others.”

Finding funding

Public investment is almost at a standstill and private investment frozen due to uncertainty, fear of further austerity measures and difficulties in access to financing. Several of the country’s banks are having capital shortfalls, according to Pedro Raposo, Managing Partner at Pedro Raposo & Associados, and the deterioration of loans undermines business, and consequently reshapes the legal framework.

The drought of funds in the Iberian banking community has forced sectors and traditional Portuguese corporates and groups to look elsewhere for finance, even sometimes accepting alternative means of funding through hybrid instruments.

“Everyone knows that a large number of hedge funds are now paying great attention to the opportunities on the equity side generated by the divestment of some Portuguese corporates,” says Garbayo at Gómez-Acebo & Pombo. “We are still waiting to see if the banking sector joins that trend, other than just with sporadic sales, as for the time being a lot is being looked at but little is effectively closed.”

Last year there was a great deal of ‘talk’ coming from the funds and asset managers but not much ‘action’, explains Rebelo de Sousa at SRS Advogados.

“But we are now seeing a lot of those players plus family offices transactions happening, as well as small/medium size M&A deals.”