News Lextter

ARBITRATION

www.plmj.com

PLMJ

A.M.PEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE E ASSOCIADOS
SOCIEDADE DE ADVOGADOS, RL

Editorial

José Miguel Júdice
jmj@plmj.pt

The growing sophistication of many modern-day legal disputes has led those involved in the legal world to search for practical solutions which may provide decision-making mechanisms that are more appropriate for dealing with specific problems, and enable them to avail themselves of means and resources which are not normally available in the courts. Together with the period of crisis which the justice sector is currently undergoing, particularly evident in the slow pace of legal proceedings, this has led to an increasing belief in arbitration as the dispute resolution mechanism *par excellence.*

Arbitration is the "justice of business people" and is especially appropriate for the resolution of commercial disputes. These disputes require the person weighing up the issues involved to be particularly sensitive to the actual interests concerned, as well as a departure from purely formal decisions, and sufficient knowledge of the relevant business sector to enable the award to take into account practices and expertise that are very often incomprehensible outside of that particular context.

Arbitrators must be chosen with great care since it is here that much of the success of this dispute resolution mechanism lies. They should be professionals with technical and legal qualifications, who have practical experience in litigation (since only then can they be good judges) and are attuned to the realities of business. With the exception of certain special situations which rarely arise, the selection of formalist arbitrators, who are excessively theoretical or exclusively technical, indecisive, or lack court experience should be avoided.

Whenever it is agreed that any disputes which may arise out of a contractual situation should be settled by arbitration, it is advisable to make provision by means of an arbitration clause and also to set out the basic rules to be applied. An appropriate alternative is to refer to the rules of a respected institutional arbitration centre. If such precautions are not taken, there is a much higher risk that the party in breach, aware of the characteristically long delays and lack of expertise of the judiciary in such cases, will refuse to submit to the arbitration process.

One final word remains to be made with regard to the choice of lawyer to represent a party in arbitration proceedings. Contrary to what one might initially believe, an arbitration tribunal requires a category of lawyer who is not always to be found even amongst the most skilful advocates. Arbitral justice is more demanding when it comes to evidence (and particularly to cross examination), and less interested in the formalisms and technicalities that are unfortunately the corner stones of Portuguese court procedure; it deals harshly with delaying tactics and manoeuvres, requires the lawyers to be fully acquainted with the applicable substantive law and capable of interacting with arbitrators, who are, as a rule, older, more experienced and more highly skilled lawyers. Errors in arbitration tribunals prove to be more costly and immediate in effect than in a normal court where the judges are usually younger and more inexperienced than the lawyers.

It is mainly for these reasons that I personally consider the arbitral tribunals, in which I have often worked as an arbitrator and as a lawyer, a most stimulating challenge. I also believe that much remains to be done as regards the methodology and promotion of arbitral tribunals. This "newslextter" is the first step in an ongoing project which PLMJ, based on experience gained over the years, will build on in the near future and of which we will keep our clients up to date.

The Voluntary Arbitration Law

Nuno Líbano Monteiro
nlm@plmj.pt

The legal framework for voluntary arbitration is set out in Law 31/86 of 29 August. This law limits itself to establishing certain restrictions and a set of rules - most of which may be set aside by the parties, and does not concern itself in any way with laying down detailed provisions to govern arbitration proceedings.

Article 1 sets out that "*any dispute which does not involve inalienable rights may be submitted to arbitration by means of an arbitration agreement, provided that such a dispute is not referred, by any special law, exclusively to a court of law or arbitration". The arbitration agreement* may be aimed at an actual dispute, even if this is still proceeding through the court (arbitration agreement), or at disputes which may arise out of a legal relationship, contractual or otherwise. The arbitration agreement must be drawn up in writing, although the law is very flexible as to the form of such an agreement (Article 2) and a simple exchange of correspondence may be accepted as being a valid arbitration agreement.

The arbitral tribunal may be composed of one or more arbitrators, in accordance with the agreement, but there must always be an odd number, to whom the same principles of exemption and incapacity apply as for judges (Article 10). If the parties cannot agree on the appointment of the arbitrators, the appointments will be entrusted to the appeals court at the seat of the arbitration. The most common rule (and one which generally gives the best results) is that each party appoints an arbitrator and the two arbitrators thus appointed, in turn, agree on the appointment of the President of the Arbitral Tribunal. Nevertheless, where necessary, an appeals court will act relatively quickly to appoint an arbitrator.

The party who wishes to submit the dispute to the Arbitral Tribunal must notify the other party by recorded delivery letter, referring to the arbitration agreement and stating the nature of the dispute, if this has not already been established in the agreement. If the parties wish to appoint one or more arbitrators, this notification must contain the name of the arbitrator or arbitrators appointed by the party who wishes to submit the dispute to arbitration, as well as an invitation for the other party to appoint the arbitrator or arbitrators that he is entitled to appoint (Article 11). Once this notification has been made, the arbitration procedure commences. Therefore, if the other party does not reply, or replies but does not appoint any arbitrator, the claimant will be able to have the arbitral tribunal constituted and the proceedings commence.

Once arbitration has commenced, the proceedings must be conducted in accordance with the fundamental principles set out in Article 16, and listed below, breach of which may be grounds for overturning the arbitral award.

- The parties will be treated equally;

- The defendant will be summoned to present his defence;
- Strict compliance with the adversarial principle will be guaranteed at all stages of the proceedings;
- Both parties will be heard, orally or in writing, before the final arbitral award is made.

Any evidence that is admissible under civil procedure law may be presented to the arbitral tribunal, and where the evidence depends on the cooperation of one of the parties or of a third party who refuses to cooperate, the interested party may, upon authorisation from the tribunal, apply to a court for the evidence to be disclosed, with the results being submitted to the arbitral tribunal (Article 19). Clearly, if it is necessary to resort to such measures, arbitration, despite being a quicker means of dispute resolution, will be stripped of much of its usefulness.

As regards the procedure itself, the legislature has chosen to allow the parties to determine the form – in compliance with the fundamental principles referred to above – and it is common to for them to draw up the arbitration rules, in greater or lesser detail.

The parties may fix a time limit for the arbitral tribunal to deliver its award, or stipulate the method for establishing such a time limit in the arbitration agreement or in a subsequent document signed before the first arbitrator accepts the invitation. If the parties do not provide otherwise, the time limit for delivering the arbitral award will be six months from the date of appointment of the final arbitrator (Article 19), that is to say, from the time the Tribunal is effectively constituted.

If the arbitral tribunal is composed of more than one member, the award is decided by a majority of votes at a deliberation in which all the arbitrators must take part, unless the parties stipulate a qualified majority (Article 20) either in the arbitration agreement or in a subsequent written agreement entered into prior to the date on which the final arbitrator conveys his acceptance, or if the agreement is silent in this respect, the arbitral tribunal will decide according to the law governing the arbitration proceedings (Article 22), with an appeal lying to a second instance court, unless otherwise agreed (Article 26). The arbitral award has the same enforcement standing as a judgment of a court of first instance (Article 26). ■

Opting for Arbitration and the Arbitration Clause

Pedro Metello de Nápoles
pmn@plmj.pt

The majority of arbitration proceedings are based on a contract which contains a clause enabling the parties to opt for arbitration - designated by law as an “arbitration clause”. There is nothing to prevent the parties from entering into an agreement to submit the dispute to arbitration (“arbitration agreement”) before or even during the course of legal proceedings, but this rarely occurs, for a number of reasons, but particularly because in most disputes there is normally one party who is less interested in having the issue resolved quickly.

It is therefore at the time of preparation of contractual documents that the issue of resorting to arbitration must be considered. Several aspects must be taken into account:

Firstly, the monetary value of any disputes which may arise. Whilst court costs are proportional in nature, in arbitration it is expected that the amount of the arbitrators’ fees will provide recompense for the work done. Therefore, in disputes involving relatively low amounts, for example, disputes with a value of less than €250,000.00, there is a risk that either the arbitrators will wish to receive fees which are high in comparison to the value of the dispute, or arbitrators who are available to act cannot be found. One way of minimising this problem is to provide that the dispute be settled by a single arbitrator.

In this respect also, there is a widespread conviction that arbitration is substantially more expensive than court proceedings, but this is not necessarily the case. When faced with a potential dispute and considering the recent amendment to the Court Costs Code, it may be advisable to look into the costs of arbitration as opposed to court proceedings, since arbitration is not necessarily more expensive.

In addition, there is a particularly marked tendency in Portugal to think that if the arbitral tribunal consists of 3 arbitrators, with one arbitrator being appointed by each one of the parties, they should act as lawyers for the parties before the President of the Tribunal. If both parties take this attitude, the efficiency of the tribunal is impaired since all the work will have to be done by the President. If this attitude is taken by just one of the parties, the efficiency of the Tribunal will also be impaired since the opinion of “his” arbitrator will probably be undervalued by the other two. This is not the aim behind opting for arbitration proceedings or deciding that a dispute will be settled by three arbitrators. Despite the fact that an arbitrator may be more or less sympathetic to the interests of the party who appointed him, he must be independent so that he can collaborate actively in the work entrusted to the arbitral tribunal.

It should also be taken into account that an arbitral tribunal is inclined to be fairer, even if not specifically authorised to decide in accordance with the principles of equity, than a court, favouring settlement and reconciliation awards that have regard to the interests concerned over awards of a purely formal character. Furthermore, an arbitral tribunal – which generally has more time to prepare the proceedings than a judge – is normally more attentive to documentary and expert evidence, attaching less importance to witness testimony than is normal in the courts. This is a factor which must be considered in potentially complex disputes.

Given the potential complexity and specific nature of possible disputes, the option to resort to arbitration has the advantage that the party is partially able to control the choice of arbitrators, choosing suitable candidates to understand and decide on the problem at issue. Considering the degree of complexity involved in disputes regarding building contracts, project finance agreements, certain types of commercial disputes, etc., this possibility of choice is without doubt one of the most attractive features of arbitration.

Arbitration also frequently arises as the ideal solution for disputes

involving parties of different nationalities, who are opposed, and understandably so, to the choice of the national courts of the other parties. In these cases, provision is usually made for parties to resort to international arbitration seated in a neutral territory.

Another feature of arbitration which is normally seen as an advantage is that of confidentiality. Some arbitral regulations contain express provisions regarding the confidentiality of proceedings. However, even where such provision is not made, and this is the norm in *ad-hoc* arbitration, third party access to the proceedings will always be more restricted than in a court of law.

Finally, there is the question of the greater or lesser celerity of arbitration proceedings. Regardless of what is laid down in arbitral regulations and arbitration clauses, it is practically impossible for even relatively non-complex issues to be concluded within the period normally provided for that purpose - six months. Arbitration proceedings, whether institutional or *ad-hoc*, domestic or international, often take substantially longer - one or two years. In any case, given the present state of the courts, resorting to arbitration will always be a speedier option than recourse to a court of law.

Now that we have considered the advantages and disadvantages of resorting to arbitration, we must turn our attention to the arbitration clause. Certain choices that must be made at this time may have a decisive influence on the arbitration.

First of all, the parties must choose *ad-hoc* or institutional arbitration and, if the latter is chosen, the application of national or international rules. Each system has its own advantages and disadvantages, which must be assessed on a case-by-case basis. The major advantage of institutional arbitration, besides the support provided to the parties, is that their regulations lend themselves more easily to resolution of those cases where the defendant does everything in his power to escape the arbitration, although the Voluntary Arbitration Law also sets out remedies for such cases. If institutional arbitration is chosen, this option must be clearly stated in the arbitration clause, for example, stating that certain institutional rules are applicable is not enough, it is preferable to name the arbitration centre that will decide the dispute in accordance with its own rules.

The choice of the place where the arbitration will be seated also merits consideration because in principle it determines the law by which the proceedings will be governed and defines the criteria under which the award may be challenged.

The number of arbitrators who will constitute the arbitral tribunal must also be stipulated, as well as the language of the proceedings.

Finally, it is necessary to stipulate whether the arbitral award is to be decided in accordance with the law or pursuant to equitable principles, whether the parties may appeal, and if so, how many levels of appeal.

Although it is not necessary to stipulate the period of arbitration in the arbitration clause, care should be taken to specify periods which are neither excessively short nor difficult to extend. It is common for contracts to stipulate a period of 60 days for the conclusion of proceedings. In general, such deadlines are very difficult to meet and may lead to arbitration proceedings running out of time, ultimately obliging the parties to institute legal proceedings in the courts. References to an entire procedural code as auxiliary procedure should be avoided, or the parties risk defeating the purpose of arbitration. One of the advantages of arbitration is precisely to enable greater flexibility in procedural rules, which is impossible in a court of law. Simply referring the proceedings to a procedural code in its entirety could wipe out this advantage. Obviously recourse to this flexibility, which is much more frequent in international arbitration, entails recourse on the other hand to more specialised legal counsel.

This is a summary of the fundamental content of the arbitration clause. Obviously provision may be made for many other different aspects, from procedural rules to arbitrators' fees, however, the more complex the arbitration clause, the greater the problems that implementing it may bring about. If the party is confident of what is the aim of the arbitration and is aware of the range of problems that may arise, it may be worthwhile to draft clauses to suit. In general, it will always be better to opt for simple arbitration clauses because both the law and the arbitration regulations stipulated will set down rules which will deal with aspects not covered by the arbitration clause. ■

International Arbitration and the Internationalisation of Arbitration Procedures

Filipa Cansado Carvalho
fcc@plmj.pt

Article 32 of the Voluntary Arbitration Law (LAV) defines international arbitration as arbitration in which international trade interests are at stake, a definition which is somewhat less than satisfactory since it is not always clear what these interests are. In a more pragmatic, and necessarily simplistic manner, we can say that international arbitration is that which has an international element for example, because the parties have different nationalities.

In the field of international arbitration, the differences between court proceedings and arbitral proceedings, which are generally more related to the formalities of the proceedings rather than to the substance of the decisions as such, become even more marked than in domestic arbitral proceedings, the prevailing influences being the ideas of flexibility and the finality of the proceedings.

These differences are understandable if we consider that, as a rule, the parties involved will have different nationalities and consequently different national laws, the arbitrators themselves coming very often from countries different than those of the disputing parties.

It is obvious that as regards the law which is applicable to the merits of the case, both the contracts themselves and the conflict rules procedural of the different legal orders may provide solutions but, even so, the problem may not always be entirely solved :take for example a contract involving an Arab state whose law is based on the Koran which provides

that the law governing the dispute is the law of that state and that the seat of proceedings will be, for example, Lisbon. To what extent can certain fundamental legal principles bring about a partial disregard for the law chosen by the parties?

If there is much room for doubt in terms of substantive law, then in the field of procedural law, the uncertainty is much greater. The question may certainly be dealt with in the arbitration clause but it is extremely rare for a contract to take this type of problem into account. Moreover, if the parties did so, they would, to an extent, be putting at risk the flexibility they sought in first the place by resorting to arbitration.

The ad-hoc option for the law of one of the parties being excluded, the temptation would then be to resort to th procedural law of the place of arbitration. However, this solution can be criticized as the place of arbitration is very often intentionally neutral, i.e does not correspond to the national territory of either of the disputing parties. Why then apply a procedural law which is after all unfamiliar to both parties? Furthermore, it should be asked if it is indeed necessary to apply procedural law at all. The LAV for example establishes with particular clarity the fundamental principles that must be observed of the proceedings which must be observed in the proceedings under penalty of annulment of the arbitral award, without imposing a mass application of domestic procedural law.

Moreover, it should be borne in mind that the LAV allows, for example, the parties to establish that the arbitral award be rendered according to equity thereby renouncing to a strict application of the law. Consequently, since the parties have so much room for manoeuvre as regards the applicable law to the merits the case, why should they be confined to one national law when it comes to procedural rules?

In light of the foregoing, the tendency for international arbitration to free itself from national procedural laws is becoming more and more noticeable, to the benefit of what are probably the two most important goals of arbitration: flexibility of the proceedings in order to obtain quicker and more suitable decisions, and definitive settlement of the disputes submitted, thus minimising purely formal awards which in most cases result in subsequent submission of the dispute to national courts

Although these aspects of flexibility and finality are also present in other alternative forms of international dispute resolution, an award rendered at the end of an international arbitration seated in Portugal, in comparison, has one major advantage (in cases where enforcement of the decision is to take place in Portugal) in that it shall under the LAV, be enforced in the same terms as a judgment issued by a court of first instance. In fact the only other requirement for said enforcement is the translation of the arbitral award in cases where the proceedings were not conducted in the Portuguese language. Furthermore, even if the judgment is not to be enforced in Portugal, the enforcement of arbitral awards in other countries is generally not complicated and is very often even easier than that of court judgments, as a result of the many international treaties and conventions, both multilateral and bilateral, of which the most important, the New York Convention, has already been signed by more than 130 countries.

Mainly due to the greater flexibility which is characteristic of international arbitration, arbitrators play a more active role both in directing the dispute and in its outcome, a fact which has contributed, albeit not exclusively, to the rise of this form of justice as an independent means of international dispute resolution, increasingly subject to its own rules. Additionally, the fact that international arbitration is not as fettered by the legal concepts of given country or legal system as is state justice, in addition to its other characteristics, makes it an ideal instrument to settle disputes which may have an be international slant, enabling the mitigation or even the elimination of any imbalances which would be present if the same would be referred to national courts.

It is important to point out that in international arbitrations seated in Portugal, notwithstanding the above and even if the applicable substantive and/or procedural law is not that of Portugal, it will always be necessary to comply with the mandatory rules set out in the LAV, in order to reduce the risk of the arbitral award being set aside or the other party being, later on, able to prevent its enforcement. Consequently, when dealing with international arbitration seated in Portugal, it is of the utmost importance that the parties be represented, not only during or immediately prior to the dispute, but also in the negotiation and drafting of the arbitration clause itself, by lawyers who are familiar with this type of procedure (given its specific characteristics) and also with the Portuguese rules applicable to international arbitration, in order to avoid that a breach of such rules determines the invalidity of the arbitral proceedings and consequently results in a total disregard for the reasons the parties chose this form of dispute resolution from the outset. ■

Arbitration in Labour Law

Abel Mesquita
atm@plmj.pt

Arbitration as a means of settling collective labour disputes has only rarely been used in Portugal in the last thirty years. However, with the entry into force of the Labour Code in 2003, arbitration has taken on major theoretical and practical relevance, to the extent that it is now one of the issues on which government and the social partners are focusing their attention.

The new government has even selected compulsory labour arbitration as the only priority feature of the review of the Labour Code, in order to make up for the expiry of collective agreements provided for in the Code. At the same time, however, the social partners are, each in their own way, endeavouring to come up with a solution to the expiry of the agreements, as well as to discover the best manner in which to react to the compulsory arbitration announced by the Government.

This then is the backdrop for the importance of this issue in the current socio-political climate in Portugal.

Compulsory arbitration would appear to be, in the eyes of the government, the cure for all evils, particularly for those of stagnation in the collective bargaining process and the expiry of collective agreements. In our opinion, this view of the problem is not only entirely erroneous but is also prejudicial to a normal development of the relations between employers and employees in the future.

Let us take a look at the reasons for this. The phenomenon of stagnation in the collective bargaining process precedes the Labour Code. Its origin lies in the automatic and undefined renewals of the collective agreements unilaterally by the trade unions, as permitted under pre-Code legislation. There are of course other reasons for this stagnation but this is undoubtedly the major one.

Compulsory arbitration will, if instituted, to a great extent replace the perpetually valid collective agreement and, in this sense, will provide a favourable solution to stagnation in the collective bargaining process. However, if an arbitration panel can settle the conflict compulsorily, then why are management and trade unions trying to find their own solution?

The expiry of the collective agreements at the end of the term agreed between the parties should be looked upon as a normal step in the relations between management and unions, with this expiry becoming the main propelling force in the bargaining process, since it forces the parties themselves to seek out new solutions. To state, as some have done, that expiry is the reason behind the stagnation in the collective bargaining process is to put the cart before the horse.

It must be acknowledged however that the expiry provided for in the Code has as yet not acted as a stimulant to the collective bargaining process, but this is essentially for three reasons. First of all, the expiry regime provided for in the Code entails a long procedural process, which may take almost three years. It has not yet therefore had sufficient time to operate as an incentive to collective bargaining, although there are clear pointers to this effect. Secondly, the complexity of the Code also renders the collective bargaining process complex. Thirdly, immediately after the Code was enacted, the belief arose that a new Government would repeal the expiry of collective agreements, which led the trade unions generally to adopt a wait and see approach in expectation of such a repeal.

By withdrawing the duty to negotiate and find solutions from the parties themselves, compulsory arbitration will, in our opinion, constitute the death blow to dialogue between employers and trade unions. There is therefore no justification for the solution put forward by the government. Furthermore, removing the ability to define individual and collective employment regimes from companies and the different sectors is a dangerous option. The history of arbitration in our country does not provide much encouragement in this perspective, given the compulsory nature of the proposed solution.

The lack of legislation on expiry is a myth that the individual employment contract deals with effectively, just as it already did under the pre-Code legislation, whenever a group of employees, for a number of reasons but especially in relation to company spin-offs, ceases to be covered by a particular collective agreement.

In our opinion, there is only one way to lend momentum to the collective bargaining process and that is to use the expiry of the conventions in conjunction with the conciliatory intervention of the public entitles involved in labour issues and voluntary arbitrations to settle disputes which have not been resolved in the first two stages. ▪

The Definitive Nature of the Arbitral Award
Recourse to Equity, Waiver of Appeal and Challenging the Arbitral Award

Maria do Carmo Dias Coelho
mdc@plmj.pt

The Voluntary Arbitration Law ("Lei da Arbitragem Voluntária") allows the parties to determine the substantive rules to be applied in settling the dispute. Either in the arbitration agreement or in a document signed before the first arbitrator indicates his acceptance, they may establish that the arbitrators must decide pursuant to the laws in force in a certain legal order or authorise them to settle the question by recourse to equity. Furthermore, in the case of international arbitration, the parties may establish, by mutual agreement, that the tribunal will decide according to the principle of amiable composition, that is, to make its decision based on a weighing up of the interests at stake.

Thus in international arbitration, the parties may either choose the substantive law to be applied by the arbitrators and, in the absence of such a choice the tribunal will apply the material law which is most appropriate to the dispute, or authorise the arbitral tribunal to decide according to amiable composition. In any *ad-hoc* voluntary arbitration cases, on the other hand, if the parties intend the tribunal to adjudicate in accordance with equity, this must be expressly provided and if no provision is made in this respect, the tribunal will decide in accordance with the applicable law.

Judgment according to equity enables the arbitrators to take into consideration the particular circumstances of the case, and to decide freely according to reasons of convenience, opportunity and specific justice, untrammelled by any subordination to existing laws. In practice, recourse to equity is extremely rare and, as a rule, national laws are applied in arbitral tribunals.

In the arbitration agreement, the parties may waive their rights of appeal from the very outset, thereby conferring definitive status on the arbitral award. The waiver of the right to appeal may result expressly from the arbitration agreement but may also be implied from such an agreement if the parties refer to the dispute being "definitively" adjudicated by the arbitral tribunal or, alternatively, authorise the arbitrators to decide according to equity. In fact, any mention of the

word “definitively” in the arbitration agreement is effectively a waiver of the right of appeal. On the other hand, since equity is based on general principles of justice and the conscience of the judge, recourse to equity obviously entails a waiver of the right of appeal.

The contrary holds true in international arbitration, that is to say, an appeal cannot be lodged against the arbitral award unless the parties have made express provision for such an appeal and set out the applicable terms.

The arbitral award has exactly the same binding effect as court decisions and is likewise enforceable. This means that if the parties do not agree with the arbitral award and have either not waived the right of appeal (in domestic arbitration), or have made express provision for an appeal (in the case of international arbitration), an appeal will lie to an appeal court. For instance, there is nothing to prevent the parties from including a provision that the arbitral award, decided by an arbitral tribunal seated in a different country, will be heard by an appeal court in Portugal.

However, even in those cases where the right of appeal is waived, our voluntary arbitration system allows the parties to challenge the arbitral award in two different ways, namely, by means of an annulment action or an application to contest the decision.

An action for annulment, as inherent to the right to take legal action, cannot be waived by the parties and must be filed, within one month of the date of notification of the arbitral award, at the first instance court of the district where the arbitration took place. This is why the clause in the arbitration agreement on where the arbitral tribunal is to be seated is relevant for the purposes of determining which court has jurisdiction to hear the annulment proceedings.

An action to annul an arbitral award must be grounded on certain facts, a comprehensive list of which is set out in the Voluntary Arbitration Law. These grounds constitute situations which are so serious in their nature that very often they justify overturning the definitive status of the arbitral award. Thus, an action for annulment cannot be seen as a type of appeal against an arbitral award.

Consequently, the parties can only apply for the annulment of an arbitral award in the event that: i) arbitration is not a suitable means of settlement for the particular dispute, (ii) the award has been made by a tribunal which lacks jurisdiction or by a tribunal which has been improperly constituted, (iii) there has been a breach of the fundamental principles which govern arbitration proceedings (equality, summons, adversarial principle, the opportunity for the parties to be heard prior to the final decision), (iv) the award has not been signed by a majority of the arbitrators, does not include or identify dissenting opinions, or does not give reasons (v) the award has addressed issues which lay outside its scope or has failed to address issues which it should have done.

Finally, as regards the enforcement of the arbitral award which will also be dealt with by the first instance courts, the unsuccessful party may avail himself of the normal measures which an unsuccessful party has at his disposal in contesting an enforcement action The grounds for such an action are practically identical to those for an action for annulment of an arbitral award, in addition to the grounds which an unsuccessful party may avail himself of, under civil procedure law, when the enforceable document is a court order. ▪



Gabriela Vaz
“Blindfold Stills”
Provas lambda, 2001
16 / 20 cm
Displayed at "Centro das Artes Casa das Mudas - Madeira"
In the scope of the "Extension of the Eye" exhibition, runs until July 31st.