

LEGAL ALERT

PORTUGUESE LAW REGARDING MANDATORY ARBITRATION FOR PHARMACEUTICAL INDUSTRIAL PROPERTY DISPUTES IS AMENDED

Decree-Law no. 110/2018, of 10 December 2018 (“DL 110/2018”), introduced important amendments to Law no. 62/2011, of 12 December 2011 (“L 62/2011”), which created a regime for the resolution of industrial property disputes involving reference medicines and generic medicines.

Among these amendments, it is worth highlighting the repeal of the mandatory arbitration regime that had been created by L 62/2011, now leaving the parties, according to the new regime established in DL 110/2018, with the option of initiating voluntary arbitration (*ad hoc* or institutionalized arbitration) or filing the claim before the Intellectual Property Court.

Pursuant to the newly amended law, the party invoking its industrial property right must submit the dispute to the Intellectual Property Court or, if agreement is reached with the opposing party(ies), initiate voluntary arbitration, within 30 days of the publication on INFARMED’s website of the application for marketing authorization or registration of the generic medicine.

The new regime introduced by DL 110/2018 also provides a solution to one issue discussed by scholars and case law since L 62/2011 entered into force in 2011: from now on patent invalidity may be invoked and declared in the arbitration proceedings with *inter partes* effects (*i.e.*, between the parties to the arbitration proceedings).

The amendments to L 62/2011 introduced by DL 110/2018 will enter into force on 9 January 2019.

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