



SIGNS OF CHANGE?

Lawyers in Iberia are still struggling to convince clients of the benefits of alternative dispute resolution, but, as companies internationalise, their exposure to arbitration clauses is increasing

While there is a feeling among lawyers in Spain that clients are more willing to use arbitration to settle disputes, there's no denying that, generally, there is still considerable scepticism among Spanish clients about alternative dispute resolution (ADR). It has not helped that courts in Madrid, for example, have been setting aside some awards made in arbitrations. However, there is hope for those who advocate the greater use of arbitration. More Spanish clients are expanding their businesses abroad and consequently they are signing

international contracts that include arbitration clauses, so there is hope that such clients will become more comfortable with ADR as they become increasingly exposed to it. Meanwhile, in Portugal, finance-related litigation continues to generate substantial revenue for the nation's law firms, though M&A, real estate, and technology-related disputes are on the rise. That said, lawyers in Lisbon also express concerns about the increasing competition they face from international firms in this practice area. In Spain, there is an increasing shift towards arbitration and

away from litigation, according to **Pedro Rodero**, managing partner of Ontier. "ADR cases are increasing, particularly in sectors such as energy, construction, technology, banking and finance," he says. "There are generally more disputes and there is a trend to increase efficiency and manage disputes in a cost effective way." Rodero adds that there is significant competition between law firms in the area of dispute resolution, which puts pressure on fees. "This means law firms have to cleverly manage their teams and adapt to the latest technology," he says.

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PEDRO RODERO

Rodero adds that clients are becoming better educated about ADR and he says this is because there has been a lot of work done in the last 15 years to develop arbitration in Spain and raise awareness among clients and lawyers. He also says that Spanish businesses are agreeing more international contracts and these often include arbitration clauses. Meanwhile, Rodero says that third party funding is playing an important role in developing “massive cases” and this is driving demand for big law firms that can provide strategic and logistical advice. Uría Menéndez partner **Álvaro López de Argumedo** says there is a considerable amount of arbitration at international level, though it is less popular at a national level. “If a business has a contract with a Chinese company, it will need an arbitration clause,” he says. Meanwhile, López de Argumedo adds that, in the financial sector, consumer litigation is on the increase, while work related to criminal investigations is also growing. Meanwhile, third-party funding of litigation is becoming increasingly common, he says. López de Argumedo also says that international arbitration



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focussed on Latin America is a growing area.

Arbitration is not increasing in Spain, but there are opportunities for law firms to represent clients in Latin American arbitrations, says Gómez-Acebo & Pombo partner **Gonzalo Ardila Bermejo**. "There are more conflicts abroad," he says. However, he adds that there are numerous energy-related cases "against the Kingdom of Spain and there will be a significant number of awards to come". Financial sector class actions are also becoming more common and this represents an opportunity for law firms to advise clients on their strategy for defending such claims, says Ardila Bermejo. In addition cases related to infringement of competition law are also a growth area for law firms.

Allen & Overy partner **Antonio Vázquez-Guillén** says that domestic arbitration in Spain has not taken off and that, generally, there is a "lack of sufficient trust and understanding" in arbitration in the country. He added that the Court of Justice of the European Union's ruling in the "Achmea" case put up another huge obstacle to the success of arbitration because it implied that arbitration awards are not binding. Meanwhile, Vázquez-Guillén added that there was a considerable amount of litigation related to the acquisition of non-performing loans (NPLs), with many investors, particularly from London, buying portfolios of NPLs. He added that consumer class actions are "here to stay" and that if they involve "success fees, they are a no-brainer for the consumer". Vázquez-Guillén concluded: "Litigation and dispute resolution practices are in good health."

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Clients are becoming more educated about investment arbitration, while another trend is the increase in shareholder disputes, according to Pérez-Llorca partner **Mercedes Romero**. She adds that there has also been many instances of companies “selling litigation to funds”. With regard to arbitration, Romero says there have been a lot more awards set aside. “Parties are trying to get awards annulled,” she added. Romero says that, with a lot of work becoming more commoditised, sometimes junior lawyers are not getting the opportunity to learn by handling more complex cases. She adds that clients want their lawyers to have a higher degree of specialisation. “Clients are willing to pay more for specialist advice,” she says. Though the popularity of domestic arbitration in Spain is still limited, there have been some developments that suggest its use may become more common, says Cuatrecasas partner **Alfonso Iglesia**. “The Spanish arbitration organisation, Club Español del Arbitraje, created more than 10 years ago, plays a significant role to this end,” he says. Iglesia believes



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that all lawyers need to do more to convey the benefits of arbitration to clients. Iglesia adds that arbitration is more popular in the construction and energy sectors, which, he says, are well suited to this form of dispute resolution. Although there are some concerns about Madrid as a location for arbitration – “based on certain decisions of the Madrid High Court setting aside some awards,” according to Iglesia – Madrid has huge potential as a global arbitration hub, partly due to it being a location that is popular with Latin American clients, Iglesia says.

PORTUGAL: LIABILITY DISPUTES ON THE RISE

Litigation related to the collapse of Banco Espírito Santo, as well as disputes related to alleged financial mismanagement at Portugal Telecom, will continue to generate a significant amount of work for Portuguese law firms in the coming years, according to MLGTS managing associate **Sofia Vaz Sampaio**. She adds that, in general,



FERNANDO AGUILAR DE CARVALHO

there will be an increasing amount of litigation related to the liability of directors, auditors and regulatory bodies. Meanwhile, Sampaio also says that class actions will also increase, especially given the more common use of third party funding to pay for the costs of cases. She adds: “Also, Brexit may put at risk London’s reputation as a popular forum for international litigation and arbitration and this may represent an opportunity for other places such as Portugal, especially when it’s now attracting so many foreign companies.”

M&A-related disputes will increase in Portugal, according to Cuatrecasas partner **Miguel de Almada**. “M&A operations are increasing and this will lead to litigation and arbitration,” he says. Almada adds that there are also a growing number of disputes in the real estate and construction sectors. He also says that projects and infrastructure-related disputes will also become more common given that there will be an increase in public sector spending. In addition, there will be more litigation in the technology sector, while the energy sector will also generate a lot of dispute resolution work for lawyers given that the industry is becoming more competitive, Almada says.

Uría Menéndez-Proença de Carvalho partner **Fernando Aguilar de Carvalho** says the biggest challenge litigation and ADR lawyers face is adapting to the “rapidly changing economic, technological, legal and regulatory environment, which is shaping the way

disputes are fought”. He adds that, consequently, law firms will need to have a sufficient number of lawyers, sector specialists and “cutting edge technology” in order to provide “value-added services to an increasingly demanding client base”. He adds that Portuguese law firms face growing competition from international firms, particularly in the area of international arbitration.

Clients are ever more knowledgeable, more selective, and more demanding in relation to their legal service providers, says Garrigues partner **João Duarte de Sousa**. “We have to go above and beyond clients’ expectations,” he adds. “Clients demand not only outstanding legal expertise but expect their lawyer to know their industry and their business in order to provide them with added-value solutions and strategies.”

Disputes related to data protection, professional negligence claims and the energy sector will be a major source of work for law firms in the future, says Linklaters managing associate **Raquel Galvão Silva**. She adds that there is likely to be an increase in the number of regulatory-related disputes with public authorities, particularly concerning competition matters.

Compliance-related litigation will be a big opportunity for law firms, according to CCA Law managing associate **Marta Duarte**. She adds that there will also be a significant number of disputes related to online gaming and new technologies. Duarte also says: “The media are increasingly aggressive in the way they convey the news so it’s an area where law firms can see business opportunities.” 