

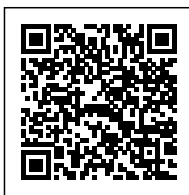
ASSESSING CHANCES IN DISPUTE RESOLUTION - KPMG FORENSIC

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Launching a lawsuit can be a costly affair, which is why more companies are looking to external experts to assess the financial viability of undertaking legal proceedings.

Emprender un proceso judicial puede ser muy costoso, por lo que cada vez más empresas recurren a expertos externos que evalúen la viabilidad financiera de las demandas, explica Marisa Yepes de KPMG Forensic en Madrid.

Early case assessment (ECA) is not a term that all European companies may be familiar with but it has flourished in the US, the world's largest litigation market, where over 90 percent of disputes are settled prior to reaching the courts. ECA involves a review of the nature and amount of the economic items to be included in the quantum phase of a claim. The idea is to undertake a thorough economic and financial analysis to give a proper estimate of what a claimant can or should expect to lose or gain, explains Marisa Yepes, a Director with the forensic advisory team at KPMG in Madrid.

"Pre-assessing the amount in dispute and the relative strengths and weaknesses from a financial standpoint can be essential when the in-house lawyer is assessing the full viability of a claim," she says. "What can seem a strong case on paper often has below stated expenses and, crucially, overly-generous payout predictions."

Yepes suggests that part of the problem is that many companies make decisions based on their own damages estimates. "In some cases, with a company's own calculations, the consequential losses may overlap, strengths or weaknesses may not be considered in terms of the documentary evidence required, or inappropriate discount rates may have been used to calculate the loss of profit."

Spanish companies' increasingly complicated business structures are contributing to the uptake in forensic analysis. But the demand for General Counsel to get greater value for money and the rise in the use of third-party funding for claims, is also driving demand for a cold financial benefit-risk analysis of claims.

"Six years ago, there was very little discussion about ECA," says Yepes. "Now there is a clear trend for businesses to call in experts very early in the assessment process. The strongest legal claims may not always be the best use of a company's financial resources."