

BES-RELATED DISPUTES WILL ENGULF FINANCIAL LITIGATORS IN PORTUGAL FOR ANOTHER TWO YEARS - VDA

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The cases related to the bank are so complex that even experienced litigators find it challenging to fully understand all the relevant products and structures

Disputes related to the collapse of Portugal's Banco Espírito Santo (BES) – which failed in 2014 after once being the country's largest listed bank – as well as the associated Grupo Espírito Santo, will dominate financial litigation in the country until at least 2019, according to Frederico Gonçalves Pereira, litigation and arbitration partner at Vieira de Almeida (VdA).

Fallout from the collapse of BES accounts for "about 50 per cent of the sophisticated financial litigation in Portugal today," Gonçalves Pereira says. "This group and the bank were responsible for between 5 and 10 per cent of Portuguese GDP," he adds. Outlining the scale and reach of the task now facing Portugal's litigators, Gonçalves Pereira says: "It [BES] did a lot of business in Portugal and abroad, in Switzerland, Brazil, South America, Bolivia and Paraguay, for example."

Highly complex

Gonçalves Pereira admits that handling the Espírito Santo cases has been a challenging experience as it has required lawyers to co-operate across disciplines. "The [legal] questions are so specific that it's not easy for a litigation lawyer, even a seasoned litigation lawyer in terms of banking and capital markets, to go into the detail of the products and structures," he explains. "So the challenge is the need for strong coordination between the groups in the firm." By way of example, litigators have had to work closely with capital markets, finance and securities lawyers in order to fully understand the financial products and arrangements that were used by the failed lender.

The fact that VdA has increased its headcount in recent years – partly with the aim of boosting the firm's international presence following Portugal's IMF/EU bailout in 2011 – has also helped. "You need to have a lot of lawyers involved in these cases," remarks Gonçalves Pereira. He adds that two rounds of hires – including a team from Linklaters' Lisbon office in 2014 and one from Miranda Correia Amendoeira & Associados the following year – were not solely for the purpose of handling BES litigation "but it was helpful".

Another significant opportunity for law firms in Portugal is the growth in international litigation. "We have a very extensive interest in Africa relating to oil and gas, projects and infrastructure investment and so on," says Gonçalves Pereira. "So we opened a new line of litigation in Africa related to these areas – we are now having a surge in the number of cases of this type in several African countries." There is tough competition for litigators with relevant international experience, adds Gonçalves Pereira: "The market is small and everyone is trying to do the [international] move, that's clear," he says. According to Gonçalves Pereira, there are opportunities for Portuguese law firms to expand further in African countries. VdA currently has nine offices/partnerships in Africa, but there are more planned. "We will probably develop in French-speaking countries," he says. "We are already in Cameroon and Congo and I think we will [move] into other countries."

Domestic arbitration decrease

Gonçalves Pereira anticipates that dispute resolution work in Africa will compensate for a predicted drop in domestic arbitration cases in Portugal. Such cases surged after new arbitration laws were introduced in 2011, he says, but they are expected to decrease as a result of a lack of domestic investment following the country's bailout. Gonçalves Pereira adds that, with little investment in the country – either public or private – since 2011, this means that there is likely to be a decrease in major disputes going to arbitration in the coming year. "We are not experiencing it yet, but it is logical that it will drop off," he says. "But on the other side, you have a very important new field emerging that relates to arbitration in the public works sector; this has been growing since Portuguese companies increased their investment abroad after 2011 – we are now seeing the first disputes from that, for example in Cape Verde, Angola and Mozambique. I think it will more than offset the decline in domestic arbitrations."

But Gonçalves Pereira acknowledges that there is fierce competition between Portuguese law firms. He adds: "It's always hard to win work – the Portuguese market is quite sophisticated."