

# IN-HOUSE LAWYERS QUESTIONING THE MERITS OF THE BILLABLE HOUR

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**Speaking at the first Iberian Lawyer In-House Club meeting of 2009, Gonzalo Fernández, Chief Administrative Officer at RBC Dexia Investor Services in Spain, sparked a hot debate by asking whether the economic crisis is likely to further increase the pressure on law firms to abandon billing by the hour.**

His comments were prompted by a debate recently begun in the US in which a number of prominent lawyers had acknowledged that hourly billing is often unsatisfactory for both clients and law firms.

Among the key issues that such an approach raises, stated in-house lawyers, are concerns over communication and transparency, and that there is often no correlation between cost and quality of service. "Increasingly we want to see full information in order to justify where the costs have been – and it is no longer suitable to simply put down time under headings like 'internal meeting' – which I do not want to pay for," said one.

Beatriz Martínez – Falero, Director Asesoría Jurídica, Grupo Mahou-San Miguel, noted that the issue is not always about cost but the way that hours are being used. Law firms need particularly to be more effective in delegating responsibilities between client teams, she says. "Sometimes it is difficult for clients to analyse and measure time sheets and to know if the assignment of time for partner, senior associate and junior is the most appropriate for the work developed. For that reason, clients

normally prefer to work under a closed budget or, at least a combination of both systems in such a way that the final cost can be easier to forecast and be controlled by the client."

Partners from the law firms present acknowledged that in the face of such concerns, and increasing pressure on clients' legal budgets, they were open to more flexible ways of billing.

Gonzalo Fernández drew on an analogy recently used by Evan Chesler, managing partner of Cravath Swain & Moore: "When you ask a craftsman to build a kitchen you work out a reasonable cost based upon their specific skills, costs, time and the benefit you will derive. It is also up to law firms to also assess what their clients require, to build in contingencies and where applicable incentives."

Others emphasised that the issue is however not always a difficult one for clients "We regularly work with close estimated fees previously submitted to the client's considerations. We are aware that cost management and the demand for internal efficiency on each project are key issues for our clients which may require considering new invoicing formulas that respond to the client's interests, favour transparency and simplify internal management." said Jose Antonio Cainzos, Head of Dispute Resolution at Clifford Chance in Madrid.



For one Head of Legal present, litigation is a field however in which billing by the hour is always difficult to justify. "Billable hours are illogical as law firms need motivation, and some financial reward, for resolving disputes without long and drawn out costs."

A number of in-house lawyers referred with interest to the recent decision of the Spanish Supreme Court approving the use of "success fees" by lawyers, but nonetheless highlighted the importance of ensuring that clients and lawyers' interests were aligned.

"Success fees have the potential to create uncertainty as a client's interests in settling a case might conflict with the law firm's incentive to win a victory, but the risks are clearly less where there is a strong bond of trust with the external advisers. The key is to build that trust," said Fernández.

For others however trust is an issue that must permeate through the entire client-lawyer relationship. "A client has to trust their external lawyers on all issues, no more no less, including costs. Clearly however you will not want to incur higher costs on unsuccessful projects," said Manuel Liedo, General Counsel at Metrovacesa.