

JOINING UP CROSS-BORDER DISPUTES - SALANS

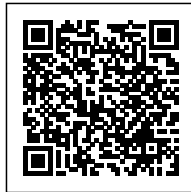
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“There has been a strong willingness to look outside of the country for guidance, and to work with recognised international bodies not only to help create the regulatory framework but also to structure the Exchange and regulatory institutions.”

Luis Miguel Nunes, PLMJ



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Most transactions now have an international element, be it the parties involved, the reach of the companies' operations, the sources of finance or the applicable laws, so consideration must also be given to how any emerging disputes may be handled, says Jose Maria Buxeda, Managing Partner of the Madrid office of Salans.

"Any litigation will likely involve multiple laws and jurisdictions, as will the enforcement of interim remedies or judgments. A dispute may ultimately be decided in a single Court but it may well not be in the preferred jurisdiction of the parties involved."

It is now very common for arbitration clauses likewise to stipulate a different applicable law or language to the venue or seat in which a dispute may be heard, he notes. Evidence collection or "discovery" may also take place in any number of jurisdictions.

In addition, the prolonged economic downturn has highlighted the prevalence of cross-border issues that can emerge out of insolvency and administration proceedings, emphasises Buxeda.

"It is now usual that a major company will have operational activities, subsidiaries or assets in any number of different jurisdictions, and that different or unfamiliar insolvency or administration schemes may apply."

The degree of complexity and management time required in undertaking cross-border transactions, disputes or insolvencies, inevitably means that in-house counsel will not want to further complicate matters with the need to manage many various law firms in different jurisdictions, he believes.

"Experienced clients understand the practical significance of having a single point of reference, and contact partner, and that the way information is both delivered and presented is how they are used to working."

This means also that firms can present a single bill, says Buxeda. "The clients are the ones that will have to face the problem and the aim of the external lawyers must therefore be to make the resolution as simple as possible, no matter where it issues may arise. The way in which legal services are structured and the importance of taking a joined-up approach must be an important

element of this."