

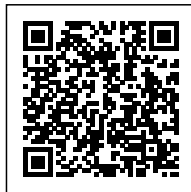
# MANAGING DISPUTES ACROSS BORDERS - HERBERT SMITH

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Ignacio Díez-Picazo

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## **Investment arbitration – both representative and advisory work – is a growing area of international disputes, say lawyers**

Cada vez se recurre más al arbitraje internacional en materia de inversiones, y las empresas deben estar preparadas para ello, afirman Ignacio Díez-Picazo y Christian Leathley, de Herbert Smith en Madrid.

The international expansion of Spanish businesses since the 2007 crash has been considerable. Organisations, such as Iberdrola, Santander and Ferrovial, have acquired valuable assets and contracts across the world. While such activity initially kept corporate lawyers busy, Spanish litigation teams are now winning international client mandates.

"We have seen a considerable uptake in cross-border litigation," explains Herbert Smith Madrid Partner Ignacio Díez-Picazo. "We are receiving instructions from all over the world from Spanish companies who have become involved in local disputes."

Diez-Picazo says that one specific area of interest is investment arbitration, particularly in Latin America. This is where a company benefits from a bilateral investment treaty (BIT) that Spain has entered into with the host investment country. A cause of action might arise when a State adopts a measure or course of action, for example nationalisation, that causes loss to the company. "Spanish clients are considering their right to pursue investment arbitration, especially in Latin America," explains Christian Leathley, Herbert Smith of Counsel. "The Republic of Argentina, for instance, currently has over 50 cases brought against it deriving from the abandonment of the peso's fixed exchange rate with the US dollar in 2001-02, leading to substantial financial loss for investors."

Leathley adds that Venezuela, Peru and Bolivia have likewise recently experienced an increase in investment arbitrations. Disputes relating to fast-moving sectors such as renewable energy, specifically the constant changing of tariffs, are on the rise too. Likewise, the advisory work ancillary to and in anticipation of investment arbitration, is also becoming an important aspect of the practice. "Many companies are increasingly aware that before investing, they need to be informed how to structure their investment to gain the protection of BITs. It is as important as tax planning," he concludes.