

MILLENNIUM BCP: A MORE SOPHISTICATED PROFESSION

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As General Counsel of Millennium BCP, one of Portugal's leading banks, and President of the Company Lawyers Institute of Portugal, João Lourenço is well placed to assess the demands of both sides of the Portuguese legal market, and the increasing sophistication of the country's in-house profession.

Como Consejero General de Millennium bcp, uno de los bancos líderes en Portugal, y como Presidente del Instituto de abogados de empresa, João Lourenço está muy bien situado para evaluar las dos caras del mercado jurídico portugués, la creciente sofisticación de la profesión de asesor jurídico de empresa las exigencias impuestas a ellos.

João Lourenço's position has afforded him an inside view of the growth and diversification of the Portuguese economy, and legal profession over the past three decades. It is also one that has also seen him placed close to one of Portugal's most important M&A deals of the same period – Millennium BCP's (BCP) proposed €4.3bn takeover of its larger rival Banco Português de

Investimento (BPI) – albeit one in which he admits to having had relatively little direct input.

Although the BCP/BPI deal failed to go through, João is among those that believe that the attempt has helped to open up Portugal's economy – as well as prompting ongoing changes to Portugal's regulatory regime, and the operation of the Portuguese Competition Authority (PCA).

Specific expertise

Following his graduation from Universidade de Lisboa, and subsequent call to the Bar in 1977, João spent four years teaching in the University's Law Faculty before he moved into private practice.

"Since my childhood I've always dreamed of being a lawyer," he says. "I began practising in 1977, first as a private practitioner, and after 10 years became a company lawyer."

His first in-house role was as Deputy General Manager of the Legal Department at Banco Pinto & Sotto Mayor, where he was promoted to General Manager/ General Counsel in 1991.

It was following the bank's merger with Banco Comercial Português (BCP) in 2000 that led him to take over as General Counsel of BCP, and where he now leads a team of five lawyers, and reports directly to both the Board and the bank's senior management.

"I report to a Board member regarding the bank's litigation function, and to senior management concerning credit recovery activity," he explains. "Though issues such as litigation are conducted by external lawyers they always work in close connection with my team."

Litigation is in fact the area in which João's team most relies on external help, he says. As to what qualities he expects from external advisers, he is quite clear: "efficiency, accuracy, proficiency and cost control."

The process by which the bank selects external law firms is well defined, he says, but usually he is looking for specific expertise. He is however, happy to consider creative models regarding cost. "We like to work with our external lawyers on a mixed and systematic retainer basis, and will consider rewarding them when things go well, often through a complementary success fee. However, for some specific matters, we do hire external lawyers on a case-by-case basis."

In order to best add value, João believes that external lawyers must be available, determined, pragmatic and sensitive to practical results. "In my opinion, external lawyers can add value, above all, on the extra-judicial negotiation of disputes, through a cold and rational analysis of 'cost to benefit' to the client," he says.

Status

João is of no doubt that the role and status of company lawyers in Portugal is now very different to when he first took up a position in-house with Banco Pinto & Sotto Mayor. It is the result, he says, of a changing expectation of business managers towards their companies' legal teams, as well as a more complex business environment.

"The role of an in-house lawyer is changing in line with the increasing complexity of the legal function within companies, the increasing relevance of risk management and, the absolute necessity of preventive legal work," he says.

The growth of cross-border trade and interests has had a significant impact. "Financial globalisation, as well as the internationalisation of the bank's activity, has inevitably meant that my work has also become increasingly international." The bank now has interests in every one of the world's continents.

Nonetheless, João emphasises that the processes by which he selects lawyers in Portugal or

elsewhere are no different, and neither are the qualities he looks for. He is also unconvinced that there is a significant difference, in client service terms, between Portuguese, Spanish or Anglo-Saxon firms.

"In Portugal there are excellent law firms with top levels of client service, equivalent to the best of the Spanish or Anglo-Saxon firms. It is significant however that some of the most important Spanish and Anglo-Saxon law firms are active in Portugal through associations with local law firms, and not purely established through local branches," he says. "I think that this is the better way and I believe a trend that will continue in the near future."

Regulator

Last year's audacious takeover bid by BCP of its larger rival BPI – intended to create a Portuguese "champion" among the top five Iberian banks – was one of the most significant M&A transactions of the past decade. But despite the scale of the deal João admits to having had relatively little input. "Since my role is basically focused on litigation, I was not involved directly with the proposed merger," he says.

BCP engaged Moraes Leitão to lead its bid, while BPI retained Linklaters and Vieira De Castro Silva  Lopes Pessanha Costa Leite. Although the merger bid failed, its impact continues to be felt.

Despite the strength of the conclusions reached by the Portuguese Competition Authority (PCA) in its initial assessment of the potential impact of the deal – and of the concurrent Sonaecom/Portugal Telecom takeover bid – the merger control process was subject to strong criticism. It took the PCA almost a year to approve the merger, ultimately identifying 16 problematic market areas, including suggesting the proposed sell off of 60 BPI branches.

The Portuguese Government subsequently used the implementation of the European Takeover Directive to amend – for the first time – the Portuguese Competition Act, reducing merger control time limits, and the impact of PCA interventions.

The ultimate result, believes João has been to create a more practical regulatory environment. "In certain ways, regarding the financial market, my answer is positive, although some more major improvements are expected to be introduced in the competition regime."

Challenges

Despite a changing economic environment, in which takeovers and acquisitions are growing in frequency, and the demands placed on companies' legal teams are increasing, the challenges of working in-house remain largely constant, says João.

"The main challenges are in my opinion, the need for an ethical and moral attitude becoming of a lawyer, along with a deep knowledge of the law, the business and the culture of the company, balanced with a wider vision of the law as a deciding factor of the business," he says "But also determination, and essentially, technical consistency and independence."

His beliefs clearly reflect his position as President of Portugal's Company Lawyers Institute to further the causes and goals of company lawyers, and his insistence of the professional standards of in-house lawyers when compared to their contemporaries in private practice.

"The main goals and priorities of the Company Lawyers Institute are to create the conditions that enable every Portuguese in-house lawyer to practise with dignity, and in the most efficient and proper way," he says.

"Fundamentally, on an independent basis, and in accordance with the ethical and moral values of the profession – in a word, as 'members' (de jure pleno) of the Portuguese Bar Association."

There is no doubting that Portugal's changing business and regulatory environment poses new challenges for in-house lawyers, who have long enjoyed a stable corporate climate, and enforced strong anti-hostile takeover provisions.

More subtle impact, notes João, has also been to loosen some of the traditional "allegiances" of major Portuguese businesses to law firms.

Market entrants he agrees, are now looking much more coldly at both their legal functions and the law firms they appoint.

