

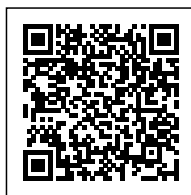
PROMOTING ARBITRATION ON A LOCAL LEVEL - PINTÓ RUIZ

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José Juan Pintó Sala

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The growth of arbitration is less dependent on the ups and downs of the economy and more about businesses awareness of the process, especially on a regional level

Los problemas económicos que afrontan hoy en día las empresas han ocasionado un aumento radical de los litigios comerciales, pero no se ha visto reflejado en el volumen de demanda de arbitrajes en las instituciones arbitrales españolas por lo que opina que no depende tanto de la eficiencia de los tribunales como de que las partes entiendan como aprovechar las ventajas del proceso, dice José Juan Pintó Sala, socio de Pintó Ruiz & Del Valle en Barcelona. Confía en que las empresas en Cataluña y España cada vez más comprendan las oportunidades que presenta este procedimiento de resolución de disputas.

The economic challenges currently facing businesses has resulted in a dramatic increase in

commercial disputes but the volume of demand now being placed on Spain's arbitration institutions is less dependent on the efficiency of the commercial courts than parties awareness of the process, says "José Juan Pintó Sala , President of Pintó Ruiz & Del Valle with headquarters in Barcelona."

'I do not sense that the relative ups and downs of the economy have much of an impact on the volume of arbitrations that we are seeing. What is more significant is the perception and understanding of arbitration by company lawyers, as well as those in private practice.'

Major Spanish companies, particularly those with an international outlook, are both already aware of arbitration and the merits of using it, he says. The situation is however clearly different among smaller and regional-focused businesses.

'Large companies are familiar with institutions such as the ICC and the challenge there is to convince them to bring their disputes to domestic institution. Among smaller and medium-size companies the challenge is clearly to alert them to the merits of the process in the first place.'

Nonetheless he senses a steady growth in arbitration by companies and a growing confidence in the use of local arbitral tribunals. 'After 20 years of operation, Barcelona's main commercial arbitration institution the *Tribunal Arbitral de Barcelona (TAB)* is firmly rooted in the local business consciousness. But it is inevitably now seeing increasing prominence as parties demand a more cost effective way in which to resolve their disputes.'

Other smaller institutions also exist in Barcelona with a specific focus on, for example, consumer or transport issues, but nonetheless Pintó Sala acknowledges that some clients are not yet fully comfortable with the process – while efforts also be taken to notably address the perception of some that the process is a 'cheaper' form of dispute resolution.

'Arbitration is a specialist option, which utilises the expertise of senior practitioners. The depth of their commercial background and experience therefore offers a better understanding not only of the legal issues at hand but also invariably the parties own business sector.'

The result, says Pintó Sala, is that awards are rendered much more quickly in complex disputes than would be experienced through the Courts. Arbitrators are able to really get to the point and offer a greater analysis of the core issues.

But the quality of the awards rendered by arbitral institutions depends entirely therefore on the level of the arbitrators active before it. The TBA is fortunate to be able to call on the skills of some of Spain's and the region's top arbitrators, he says. But the ongoing challenge for any arbitration institution is of course to continue to attract the very best, and to offer the remuneration and fee levels that reflect their levels of expertise.

Pintó Sala notes the success of specialist international institutions, such as the *Tribunal Arbitral du Sport in Lausanne (TAS)*, to attract top talent and remain at the pinnacle of arbitral practice. TAS has though begun to ask practitioners to decide whether, going forward, they will sit as arbitrators or counsel before it. It is an approach that he admits is not typical of the approach taken by most.

'TAS operates a closed list of arbitrators and is focused entirely on sporting matters, and where it makes sense that practitioners do what they can to avoid conflict issues. In the commercial sector there is obviously a much broader array of expertise and of experts.'

He is optimistic therefore that the benefits of arbitration are being recognised by businesses both across Catalonia and Spain, and which is being aided by a recognition of the distinct expertise it offers.

'Regardless of what may be the root cause of the disputes our clients are now facing, and compared to litigation, arbitration can be very cost effective, with a degree of arbitrator expertise unparalleled in the courts. It does not have to be the only the sophisticated choice.'

