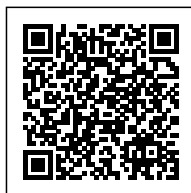


TAKING A STRATEGIC APPROACH TO DISPUTES- ARAOZ & RUEDA

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The economic downturn may not be changing fundamentally the way businesses approach litigation or arbitration but it is impacting on the nature of the disputes arising

“We are seeing clients focusing on the same strategic commercial issues as they always have but perhaps inevitably, in the current climate, we are increasingly seeing counterparties in agreements looking to exit deals, or frustrate matters through delay. Sheer frustration is prompting many to resort to formal dispute processes,” says Iñigo Rodríguez-Sastre, a partner with Araoz & Rueda who joined the firm in May 2010 to lead the expanding litigation team.

“We have seen considerable activity in relation to financial products, including claims of mis-selling by banks and financial institutions. In the projects arena, matters including changes in the feed-in tariffs that the government pays to renewable energy producers, and the general uncertainty over project viability, are causing tensions to rise as projects are cancelled or delayed,” says fellow

partner Alejandro Fernández de Araoz.

The firm is particularly active on behalf of claimants making financial claims, and as such is one of the few high-end Madrid firms acting against important financial institutions. It has also acted prominently in some of Spain's largest insolvencies and restructurings on behalf of creditors, including that of the recently concluded Bodybell Group.

La crisis económica no ha cambiado el modo en que las empresas recurren a los tribunales o al arbitraje, pero sin duda tiene un impacto en la naturaleza de los conflictos que surgen, afirman los abogados de Araoz y Rueda en Madrid. Por tanto, no hay ninguna solución milagrosa a la hora de resolver conflictos; para algunos asuntos el arbitraje puede ser la elección correcta y en otros casos no.

"Firms are inevitably seeing more demand for litigation but as an adviser you have to be realistic. If you accept a case you must be able to take it all the way. Clients likewise do not want their matter lost in a mass of cases and they definitely now want senior lawyers to take charge," says Fernández de Araoz.

Rodríguez-Sastre's arrival, he believes, demonstrates a growing commitment to dispute resolution, which now forms one of the firm's largest areas of practice and includes a significant amount of international or cross-border litigation and arbitration. Consistent however is the demand for "lean and mean" disputes teams, he says, with a demonstrable track record in the relevant business sector, and who are comfortable with the client playing an active role in matters.

The downturn is not however changing the way clients approach disputes, they insist.

There remains a certain preference among Spanish companies for litigation in domestic disputes – despite the relative inefficiency of the courts – while many more international businesses look more favourably towards arbitration, at least for their cross-border disputes.

"Spain's 2003 Arbitration Law was highly significant and raised everybody's hopes that we would see a dramatic increase in the use of arbitration and arbitration clauses, and the frequency of Spain being used as an agreed seat of arbitration in international disputes. There has been a real upturn but not on the scale some may have anticipated. Many in Spain continue to misunderstand or mistrust the validity of arbitration's 'one-shot' approach," says commercial partner Clifford Hendel, a Spanish-, French-, English and US-qualified lawyer with experience before domestic and major international arbitration institutions, like the ICC, LCIA and CAS.

"Many clients recognise that it obviously helps to have people deciding their dispute who understand both the legal and technical issues, which cannot be guaranteed with litigation through the Courts in Spain, but are nonetheless surprised that arbitration may be no cheaper or that there is no 'second chance' by appeal," he says.

Mediation is likewise an area in which there remains much progress to be made before it gains widespread acceptance in Spain, says Rodríguez-Sastre.

"Despite recent judicial changes intended to better promote its use and to guarantee the enforcement of agreements, mediation remains almost non-existent. Much of this however has to do with lawyers' own approaches – as there is little or no mediation tradition and a lack of qualified independent mediation institutions."

What is important therefore is that in any dispute, regardless of the cause, the best forum is utilised for the client's specific needs, they say.

"Just as there is no single panacea to everyone's problems, there is no single best forum to resolve all disputes," says Hendel.

"In some cases, litigation in the Spanish courts may be the best (or least bad) option: in others, arbitration. But looking towards the future, mediation may very well be an ideal first step for almost any dispute."