

THE VALUE OF EXPERTS - KPMG FORENSIC

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Calculating damages against the current backdrop of financial crisis and uncertainty is key in litigation

Commercial disputes have been increasing in Spain, especially for matters tied to the financial crisis, says Fernando Cuñado, Head of KPMG Forensic's Dispute Advisory Services. Cuñado says certain specific characteristics are gaining importance. Conditions and clauses agreed by parties in a contract a few years ago, principally based on prospects for sustained growth, are no longer valid. This means estimated profits must be reduced and/or causes an imbalance for one or other of the parties.



This is particularly true with regards to disputes linked to the tremendous change the economy is currently undergoing: long-term lease agreements, shareholders claims, pricing adjustments and guarantees expressed over the financial statements in M&A deals, and the downsizing of distribution networks - key areas of dispute - as well as government concessions. "In these cases, calculating damages requires estimates to be made of foreseeable future returns, which need to be based not only on expected growth or performance, but also on actual returns obtained in the past

wherever feasible," Cuñado concludes. "The expert has to use financial judgement as well as experience and knowledge to proportionately address two factors that have always played a pivotal role in valuations, and which have now taken on even greater relevance: risk and uncertainty."

The damages valuation method that is perhaps most widely accepted among the courts and the financial community is the expected cashflows approach, adds KPMG Director Marisa Yepes.

"Constructing expected cashflows and applying the appropriate discount rate in each case is a challenge for the expert, who must take into account risk and uncertainty to support an objective economic damages calculation that is both well-founded and credible in the eyes of the judges, who are by no means sheltered from the economic circumstances in which we live."

The experts themselves, therefore, prove to be a valuable tool to assist companies faced with the types of litigation listed above, which generally involve large sums and affect the company as a whole, even threatening its survival.