

## Energising the alternatives in dispute resolution

The use of mediation may not be common in Spain but there is a steady trend among parties to explore new methods of resolving disputes

Contractual disputes are on the rise among Spanish parties but a traditional preference for litigation is starting to give way to a rise in alternative dispute resolution, says Gonzalo Stampa, of Stampa Abogados in Madrid.

"We are seeing an increase in disputes particularly involving energy companies, for example, which are unable to connect to the national grid because of the failure of a contractor to finish project construction work on time."

This is an issue of increasing importance in the renewable energy market because the Government is reducing the large subsidies, meaning there are significant financial risks if new projects are not finished before the relevant cut-off date.

"The ability of parties to obtain a quick resolution to their dispute and for it to be determined by experts with specific sector expertise, which arbitration offers, is therefore of significant importance," says Stampa.

Spain experienced a boom in renewable

energy during the mid-2000s on the back of very generous feed-in tariffs – the price paid to producers to supply power to the grid. This encouraged the launch of hundreds of new projects although, following the decision to cut tariffs, the market has been thrown into uncertainty.

Stampa predicts that in the face of continuing issues in the sector, the number of disputes involving turnkey and Engineering, Procurement and Construction (EPC) contracts looks likely to increase. But he points out that some parties are looking beyond both litigation and arbitration, towards mediation.

"Mediation offers a means by which disputes may be resolved in a matter of weeks rather than months. But it can also be used to refine the issues in contention between parties. The process may still be new in Spain but it is an option that companies should increasingly consider, and the use of which will likely grow with the transposition of the EU Mediation Directive in the coming months."



Gonzalo Stampa

Los conflictos contractuales entre las partes están creciendo en España, pero la tradicional preferencia por los procesos judiciales está cediendo ante los métodos alternativos de resolución de conflictos, especialmente el arbitraje y la mediación, afirma Gonzalo Stampa, de Stampa Abogados.

## Reorganising Portugal's Commercial Courts

Proposals to reorganise Portugal's Commercial Courts will have an impact not only on where cases are decided but how, says Nuno Libano Monteiro, Head of Disputes at PLMJ.

"A major challenge remains the length of time it takes for a cases, namely in the Commercial Courts. We have more judges per capita than any other European country yet the courts in Lisbon and Oporto continue to face a tremendous backlog, which is very difficult to explain especially to foreign clients."

Portugal's Minister of Justice has announced plans to close down a number of regional Courts and to concentrate resources in the main urban centres. This is intended to help refine the judicial process and create more specialised courts, but will require the relocation or redundancy of up to 80 Judges.

The plans are controversial, says Libano Monteiro, but necessary. Targets to speed up the judicial process were

among the terms of the Memorandum agreed in Portugal's €78bn financial assistance package. But what is proposed is different to the approach taken by the previous Government, which sought to extend the reach of the judiciary beyond the main urban centres.

"Access to justice is important but it cannot be right that you have to wait months for a simple interim measure in Lisbon while some regional courts seemingly have more staff than cases. A better balance has to be found."

The draft proposals will now be sent before Portugal's Parliament but are expected to come into effect in September, says Libano Monteiro.

"The creation of the Commercial Courts was a positive first step but we need to go further and create dedicated IP, competition, insolvency and family courts and to better train Judges and others legal players. Resources are scarce so they have to be focused where most required."



Nuno Libano Monteiro

La propuesta de reorganización de los tribunales portugueses, cerrando algunos tribunales y expandiendo otros en los principales centros financieros, no solo cambiará el lugar sino también el modo en que se resuelven los casos, según Nuno Libano Monteiro de PLMJ.