

MULTINATIONAL MEDIATION - BARTOLOMÉ & BRIONES

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Mediation, as a tool, is not always top of a company's priority list. Manuel Alvarez-Trongé, Head of the Latin American Desk at Bartolome & Briones in Buenos Aires, however, believes that mediation is growing in importance, thanks to the economic crisis.

An Argentine Lawyer, qualified mediator and former in-house Counsel, Alvarez-Trongé has spent his career keeping disputes away from the courts.

He points to countries such as Argentina, where mediation has been mandatory since 1991, as encouraging the dispute resolution models beyond traditional litigation and arbitration.

"While some companies and lawyers were wary of mediation to start with, it has become well-established in Argentina and beyond," he adds. Indeed, most companies expanding into new markets now routinely include carefully-worded mediation clauses.

Alvarez-Trongé believes that mediation offers three main benefits. First, the process can be a lot speedier than arbitration and litigation, which can drag on for years. Second, as a result, it can be considerably cheaper than heading straight to the courts. Finally, there is the issue of confidentiality.

“Mediation tends to be confidential and that is important, especially in Latin America,” he remarks. “Court judgments can be publically available, which means journalists can obtain and publish sensitive information about cases.”

Mediation is also less risky because the power remains with the lawyers. For instance, if there was concern about the quality of the mediator, then either side could elect to use a new mediator.

“There is very little risk,” Alvarez-Trongé concludes. “As long as companies have strong mediation clauses and very good local lawyers, it should be easy to get a satisfactory agreement.”

Ultimately, the recession has also meant that the companies have to think differently, he says, particularly when it comes to cost, and mediation offers a more cost-efficient way of settling commercial disputes. Crucial in today's economic climate.