

Frustration with litigation and ADR leading clients to use 'unregulated methods' for resolving disputes

Due to the fact that it can take many years for a dispute to be settled via litigation, some parties are seeking to resolve conflicts through arbitration and other, more informal, unregulated channels, says Paulo de Moura Marques, Partner at AAMM & Associados in Lisbon.

"Over the last few months, we have seen a considerable amount of clients choosing to solve many issues through arbitration, especially in public law," De Moura Marques says. "Arbitration is preferred because, not only is it private, but also because of its focus on the matter that is being dealt with at the time, often without putting other parts of the contractual relationship at risk." However, while arbitration should be an expeditious way of solving a dispute, it is not always the case, according to De Moura Marques. "A court case can take anything from two to five years, while an arbitration

can take as much as two to three years to be decided, and that is too long, particularly in the case of arbitration, says De Moura Marques. "We can't say it's fair justice if it's not quick justice," he adds. "And we're not taking the necessary measures to provide some kind of quick response." As a result, De Moura Marques says businesses are getting frustrated and are "being invited to resort to unregulated methods for resolving disputes".

Across Europe it is now commonplace for commercial organisations – particularly those that normally handle insolvency and recover credit – to offer services similar to mediation and conciliation, services that should be referred to someone with proper training, according to De Moura Marques. "These companies do not even have qualified barristers or lawyers and this is putting people at risk of misrepresentation, conflicts of interest and most importantly, it means there will be no court ruling to impose a decision [if needed]."



Paulo de Moura Marques