

# Arbitration in Spain (II): the race to create a regional arbitration court for Latin America

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A few months ago I wrote a post on this Blog about what I saw as “work left to do” in the Spanish arbitration system. I started with the need to build a regional court of arbitration on a par with those well-known centres in other jurisdictions, with the fundamental aim of taking advantage of Spain’s privileged position in the Latin American market.

I noted at the time that no Spanish arbitration institution has yet managed to become a point of reference in international contracts, in which clauses favouring seats of arbitration in other countries still predominate, even when both parties are Spanish-speaking and come from Central or South American countries.

That said, it is only fair to acknowledge that there is growing awareness of this shortcoming and progress has been made. As an indication of this, a short description of the main arbitration institutions that exist in Spain seems a good place to start.

Spain has a few dozen courts of arbitration, most of which are under the auspices of the eighty-eight chambers of commerce up and down the country. However, the biggest centres are in the main cities and areas of industry: Madrid, Barcelona, the Basque Country, Valencia and Seville.

Madrid is the seat of the Madrid Arbitration Court (*Corte de Arbitraje de la Cámara Oficial de Comercio e Industria de Madrid* – CAM), the Spanish Arbitration Court (*Corte Española de Arbitraje* – CEA), the Civil and Commercial Arbitration Court (*Corte Civil y Mercantil de Arbitraje* – CIMA) and the arbitration court of the Madrid bar association. Barcelona has the Barcelona Arbitration Court (Tribunal Arbitral de Barcelona – TAB) and so-called “Consulat de Mar”. For dispute resolution in the Basque Country, arbitration is available from the court of the Bilbao chamber of commerce, industry and shipping, the Basque arbitration court and the Basque centre of mediation and arbitration of the Álava chamber of commerce and industry. Valencia is home to the European Court of Arbitration (Tribunal Arbitral de Valencia – TAV-ICAV) and the Valencia court of arbitration and mediation, while Seville has the court of arbitration of that city’s official chamber of commerce, industry and shipping.

These may be the most important courts, yet most are largely focused on domestic matters and lack the potential to become an international centre of arbitration. That goal is left to the tribunals in Madrid and Barcelona, which have the volume, resources, geographical position and funding needed to take on that challenge.

However, it is clear that only one Spanish court of arbitration can achieve its potential in the international arena, just as happened with the London Court of International Arbitration in the United Kingdom, the Arbitration Institute of the Stockholm Chamber of Commerce in Sweden, the Cairo Regional Center of International Commercial Arbitration in Egypt or the Singapore International Arbitration Centre (SIAC) in South-East Asia, to name a few examples. The problem is not just that achieving that position requires massive, sustained investment in people and resources. It is also the case that the market tends to go for a single arbitral institution for each region or economic area of influence.

In Spain, the biggest push for international status at the moment is coming from the Corte de Arbitraje in Madrid. Since its appointment of the academic, lawyer and international arbitrator Miguel Ángel Fernández-Ballesteros as chairman in April, this Madrid court has launched a number of initiatives clearly aimed at making it the Spanish point of call for the world of international business arbitration and, in particular, Latin America.

The court had certainly already looked beyond Spain’s borders. As well as processing a large number of cases with an international component (38% of the

total, according to its own figures), it has also played its part in institutions like the United Nations Commission on International Trade Law (UNCITRAL), International Federation for Commercial Arbitration Institutions (IFCAI) and International Bar Association (IBA).

Nonetheless, this new direction for the CAM is driving its ambitions to become the arbitral institution of excellence in the region and the point of reference for dispute resolution for companies in Europe and Latin America. Note, for example, the collaboration agreements reached with some of the leading local arbitral institutions in Latin America, such as the Câmara de Comércio Brasil Canada (CCBC) and the Corte de Arbitraje in Mexico, the results of energetic international promotion of the CAM by its new chairman.

It seems clear that these kinds of initiatives are the best (if not only) way of earning recognition for the institution from companies and law firms in Latin America and for them to see it as a real regional centre and a reliable and effective option for resolving any disputes. Only then will clauses in their contracts refer to the Madrid court for arbitration instead of the other available routes.

The road is long and we will take a long time to get there, of that there is no doubt. However, the prize for the centre that comes out on top is a big one and well worth the effort. International arbitration cases are not for nothing a major source of business and revenue for the institutions they come up before and their cities. Precisely for that reason, it would not be surprising to see other Spanish courts of arbitration shortly follow the CAM's example. A real race to become the international centre of arbitration for Latin America would then be on.