

**RECENT LEGISLATIVE INITIATIVES INVOLVING  
DISPUTE RESOLUTION IN IBERIA  
*NEW YORK STATE BAR ASSOCIATION  
SEASONAL MEETING  
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- 1. I wish to present you with a sort of *potpourri* of the more relevant and/or controversial issues arising from the more recent legislative improvements in Spain and Portugal.**
- 2. In 2011 important modifications to the arbitration law have been implemented in Spain (Law 11/2011, May 20) and a new Arbitration Law has been approved by the Portuguese Parliament into law (Law 63/2011, December 14). Finally, in July 6, a Mediation Law has been published in Spain (Law 6/2012) and Portugal is also preparing a draft for a mediation law.**

- 3. These laws have in common an intention of adapting a sometimes restive and archaic legal environment to the trends of international and global business, using as inspiration international or supra-national laws and soft law (UNCITRAL Model Law, IBA Rules on Conflicts of Interest in International arbitration, EU Mediation Directive).**
- 4. Some of the more relevant/controversial aspects of these laws will be mentioned with the intent of helping this qualified and sophisticated audience to take notice and have therefore interest in developing further analysis, rather than to lecture about the detailed specificities of the laws.**

- 5. Some of the more relevant topics:**
  - 5.1. The Iberian trend for upgrading the level of the courts that might be called to interact with arbitration (nomination of arbitrators, challenges, set aside awards, etc).**
  - 5.2. Stronger and more demanding criteria for the independence, impartiality and neutrality of arbitrators;**
  - 5.3. Public policy as a new/stronger area of risk for the arbitration awards;**
  - 5.4. Mandatory insurance policies for arbitrators and mediators;**
  - 5.5. Multiparty arbitrations rules and joinder of processes**

- 5.6. Interim measures by arbitral tribunals**
- 5.7. Mandatory training for mediators;**
- 5.8. Enforceability of agreements reached through mediation;**
- 5.9. Med/Arb conditions and confidentiality;**
- 5.10. Lisbon and Madrid as seats for international commercial and investment arbitration related with Portuguese and Spanish speaking countries.**

## **6. Main conclusions:**

- 6.1 Iberian legal systems and practice will be facing a very important and demanding process of adaptation to a new world.**
- 6.2 ADR will increase at double digit percentages (in 2011 Spain was the second country with more parties in ICC arbitrations).**
- 6.3 Arbitration will receive much more scrutiny and even media attention.**
- 6.4 Independence, impartiality and neutrality rules will increase the pressure for transparency, higher ethical standards and less cosiness.**

- 6.5 Mediation will arise in these countries where no roots exist that prepare the practitioners for its advantages/risks.**
  
- 6.6 The judiciary will have increased responsibility and will be asked for balancing the traditional favor arbitratis with a special attention to abuses that will come with the increasing number of cases and practitioners entering the field of arbitration, let alone mediation.**

- 7. The subjacent message is of cautious optimism and of the need for the international ADR community to look to these markets not yet mature but full of opportunities.**





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THANK YOU!  
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