Arbitration Insurance: *an Emerging Market in Spain*

The mandatory requirement for mediators will undoubtedly encourage growth in the field of arbiration insurance. But this emerging market needs better design of this kind of insurance.

PILAR PERALES VISCASILLAS
UNIVERSITY CARLOS III (MADRID)

LEGAL FRAMEWORK OF MANDATORY INSURANCE IN ARBITRATION

The amendment introduced to the [Spanish] Arbitration Act 60/2003 dated December 23, 2003 by the [Spanish] Arbitration and Regulation of Institutional Arbitration in the General Administration Act 11/2011 dated May 20, 2011 (published in the Official Gazette -*BOE*- No. 121 dated May 21, 2011) (hereinafter «AA») imposes, for the first time in Spain, a mandatory obligation for arbitrators, or arbitral institutions on their behalf, to take out civil liability insurance (hereinafter «CLI») or an equivalent guarantee, for the statutory coverage amount to be established by the relevant regulations (Article 21.1, subsection 2 of AA). The referred Article exempts Public Entities and arbitral systems forming part by, or dependent upon, public administrations from this insurance requirement.

Subsequently, the obligation to take out liability insurance was extended to mediators. Article 11.3 of the [Spanish] Civil and Commercial Mediation Act 5/2012 dated July 6, 2012 (published in the Official Gazette -*BOE*- No. 162 dated July 7, 2012) provides that: «Mediators must take out civil liability insurance or an equivalent guarantee covering their activities in any disputes they mediate». Mediation institutions are not required to take out mandatory CLI, however Act 5/2012 also establishes their liability (Article 14). No provision has been included requiring mediation institutions to take out such insurance on behalf of the mediators.

The new statutory requirement of mandatory insurance coverage –which is practically unique worldwide since we are not aware of any other laws imposing mandatory CLI for arbitration– is embodied in Article 21.1 of AA, that regulates the liability of arbitrators and arbitral institutions and is thus closely related to the liability that such arbitration operators may incur.

Article 21.1 of AA provides that:

«Acceptance [of the designation] requires arbitrators, and where applicable, the arbitration institution, to faithfully perform their duties, and

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failure to do so shall imply liability for damages caused as a result of their bad faith, recklessness or willful misconduct. In the case of arbitrations entrusted to an arbitration institution, the injured party shall have the right to direct action against such institution, regardless of any recovery actions that such institution may subsequently bring against the arbitrators.

Arbitrators or arbitration institutions on their behalf shall be required to take out mandatory civil liability insurance or an equivalent guarantee, in the amount to be established by the applicable implementing regulations. Public entities and arbitral systems forming part of, or dependent upon, public administrations shall be exempted from such mandatory insurance».

The aforementioned Article sets out –according to the interpretation which we deem to be the most correct– that the party required to take out CLI is the arbitrator in an *ad hoc* arbitration proceedings, and the arbitration institution on behalf of the arbitrator in an institutional arbitration. Arbitral institutions are not required to take out CLI insurance to cover their own liability. Moreover, as noted above, as from 2003, Spanish law leans towards restricting the liability of arbitrators and arbitral

institutions since they are only held liable in the most serious cases involving willful misconduct, bad faith and recklessness. This is in contrast to the former legal system, which followed the general rules: liability arising from willful misconduct or fault under the Arbitration Act of 1988 (Article 16).

RATIONALE OF THE STATUTORY REQUIREMENT

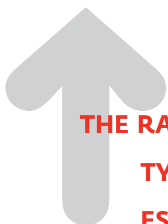
The mandatory insurance coverage requirement for arbitrators, as a type of civil liability insurance that originates in the XXI century, does not arise from the same historical reason underlying the creation of this type of insurance, i.e. the need to protect victims against the risks of industrialization and mechanization, which gave way to a voluntary civil liability insurance, under the principle of freedom of contract, and subsequently followed by a range of mandatory insurance in areas such as employment law, motor insurance, medical malpractice insurance, hunting insurance, etc. (Sánchez Calero). The idea behind [arbitration mandatory insurance] is neither to protect the victim from the referred risks arising from industrial society and machinery nor to create an instrument in pursuit of solidarity or social justice; instead, the rationale is, on the one hand, to promote Spain as a seat for international arbitrations by providing guarantees to potential users, and on the other, to strengthen the use of arbitration, calling the attention of potential users to the guarantees being offered.

The rationale of mandatory CLI Arbitration insurance is more similar to that of other types of professional liability or service provider insurance, such as the one recently established for bankruptcy trustees ([Spanish] Act 38/2011 dated October 10, 2011 amending the [Spanish] Bankruptcy Act 22/2003 dated July 9, 2003), sharing some of the legal problems that arise in the field of CLI.

However, mandatory CLI for arbitrators differs from the traditional categories of mandatory CLI (Pavelek). Mandatory CLI for arbitrators fails to fit into any of such categories given that this type of mandatory CLI is neither based on a special strict civil liability regime (as is the case of motor, hunting, etc) nor does it involve an insurance of a «mandatory» nature for classified «activities», the practicing of which requires obtaining a special license (*carnet*) or permit, registering with a special registry, being admitted to an association, etc.

In clear contrast with other professional areas where the rise of CLI is a result of a tightening of the regulations on the legal regime of liability, as in the case of company directors or bankruptcy trustees, the requirement for arbitrators to carry mandatory insurance coverage is not accompanied by an increase in their liability. In spite of the foregoing, it should be noted that the requirement of mandatory insurance is not automatically followed by a strict liability regime, which may go even as far as imposing a strict liability, but the expansion of mandatory CLI does have a direct impact on the increase of the alleged liability cases as well as on their structure.

On the contrary, the standard of liability of arbitrators has not changed in any way following the approval of the [Spanish] Arbitration Act in 2003. However, the amendment introduced by the May 2011 [Spanish] Arbitration Act now requires that arbitrators carry CLI and this leads us to question



THE RATIONALE FOR MANDATORY CLI ARBITRATION INSURANCE IS MORE SIMILAR TO THAT OF OTHER TYPES OF PROFESSIONAL LIABILITY OR SERVICE PROVIDER INSURANCE, SUCH AS THE ONE RECENTLY ESTABLISHED FOR BANKRUPTCY TRUSTEES

the rationale of this mandatory insurance requirement, particularly since it is not imposed upon arbitral institutions.

The concern underlying this question arises immediately upon analyzing the Preamble of the 2001 amendment, which justifies such mandatory insurance on very broad terms, thus hardly aiding to shed any light onto the actual sense of the statutory amendment. According to the Preamble (II) of the [Spanish] Act 11/2011, the purpose of such amendment is to increase both legal certainty and the effectiveness of arbitration proceedings. On the other hand, this development cannot be traced back, as most of the legal provisions of AA, to the UNCITRAL Model on International Commercial Arbitration (1985) or its amendment (2006). Therefore, its rationale cannot be found in International Commercial Uniform Law.

The search for the rationale underlying the reform is further complicated by another problem related to the civil liability standard adopted as from the enactment of the Arbitration Act, Article 21. The accountability of arbitrators is not determined in accordance with the Spanish general legal liability system, whereby liability is subjective or by fault, but they are held liable, on a first interpretation based on the wording of the law, solely in the most serious cases of bad faith, recklessness or willful misconduct. Thus, the legislator departs from the immediate antecedent provided under the AA (1988), whereby someone was held liable on the basis of his or her willful misconduct or fault (Art. 16), as well as the general standard of liability applied also to other professionals, thus complicating the analysis of the insurance contract in this field.

The rationale for mandatory CLI may be found in the general theory of the insurance contract and, therefore, always lies in the protection of damaged third parties, guaranteeing them responsible assets, in spite of the fact that the means used for such purpose, the CLI, seeks the protection of the liable party (Calzada Conde).

The mandatory imposition of insurance can also be considered in relation to the legislator's policy, both in Spain and in the EU, aimed at encouraging the so-called alternative resolution methods (ADRs, Alternative Dispute Resolutions, as they are usually referred to in English) and particularly mediation and arbitration. Thus, it does not come as a surprise that mediators are required to take out mandatory CLI under the new mediation law. To that can be added the opening to professionals who may carry out arbitration duties, as set out by the amendment of the Arbitration Act of May 2011, on the one hand, together with the decision that mediators need not necessarily have a legal education, although they must have mediation education.

In an attempt to put together the complex puzzle of the potential motives that led to the establishment of the mandatory insurance coverage requirement for arbitrators, we must mention Directive 2006/123/EC of the European Parliament and the Council of December 2006 on services in the internal market (DO L 376/36, 27.12.2006), that establishes in a general manner the obligation to take out insurance or an equivalent guarantee in relation to the provision of certain services. However, it does not require that this obligation of appropriate insurance be laid down by law, it suffices that it is established in the ethical rules laid down by professional bodies and, of course, without imposing an obligation for the insurance companies to provide insurance cover (Whereas Clause 99 Directive 2006/123). Article 23 (Professional liability insurance and guarantees) of Directive 2006/123 establishes in paragraph 1 that:

> «Member States may ensure that providers whose services pose a direct and particular risk to the health or safety of the recipient or a third party, or to the financial security of the recipient, take out professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose».

It is probably the risk to financial security that best fits arbitration.

The transposition of the Directive in Spain has resulted in the legislator establishing that the obligation of taking out CLI coverage should be laid down by statute. Thus, Article 21.1 of [Spanish] Act 17/2009 dated November 23, 2009, on free access to the activities involving services and their practice, prescribes that:

Article 21. Insurance and professional liability guarantees.

«1. Service providers may be required, by a rule passed as an Act, to take out professional civil liability insurance or any equivalent guarantee covering any damages caused in the rendering of their services in those cases where the services they render pose direct and specific risks to the health or safety of the recipient or any third party, or to the financial security of the recipient.

The mandatory guarantee must be proportionate to the nature and the scope of the risk covered».

In light of the above, the following conclusions may be drawn:

First, the mandatory insurance requirement for arbitrators is based, at least partially, since its rationale also arises from the need to increase legal certainty and the effectiveness of arbitration proceedings, on EU legislation applicable to the rendering of services and its subsequent transposition into the Spanish legal regulations. Spanish legislators, unlike other European legislators, have considered that arbitrators are directly affected by such legislation and thus requires CLI or an equivalent guarantee.

Second, the above implies that Spanish legislators classify the services rendered by arbitrators as liberal professional activities, without equating such activities to those of public authority officials, specifically judges and magistrates, who are excluded from the Services Directive and from the Spanish Act. In other words, it seems that Spanish legislators decided in favor of the contractual nature and not the judicial aspect of the service rendered by arbitrators, an issue that has a significant impact on the liability of arbitrators.

Third, Spanish legislators incurred a patent contradiction by deciding that the arbitrator is the party required to take out the insurance, but not an arbitral institution, since the services rendered by arbitral institutions also affect the financial security of the recipients –this being probably the decisive reason for imposing mandatory insurance for arbitrators under the Directive and the Services Act, and when, additionally, such arbitral institutions are required to take out CLI on behalf of the arbitrators.

THE INSURANCE MARKET IN OTHER COUNTRIES

The debate as to the usefulness or necessity of carrying CLI, as well as the specific wording of the policies, depends to a large extent on the liability regime established in each legal system.

Different legislations and arbitral rules have adopted three different approaches, namely: the general liability approach based on fault or negligence (minority model in arbitral laws, although it has been adopted in some Latin American countries), the full exoneration approach (the arbitrators and arbitral institutions are fully exempt from liability; this is the Irish and the U.S. model) and the qualified exoneration approach (under this approach civil liability is attached only in serious cases, generally cases involving willful misconduct or gross fault). The qualified exoneration approach is the most successful and the one most extensively used, and it is the one adopted by Spanish law, which opted for liability based on willful misconduct, bad faith or recklessness.

The referred approaches are quite clear as to their relationship with the CLI or, more specifically, as to the absolute lack of relationship, since such regulatory framework explains that the statutory requirement of mandatory insurance is, in general, non-existent in comparative arbitration law, and the same may be said of the relationship with the voluntary taking out of civil liability insurance (Jolivet).

A common feature of the most extensively applied approaches is that by exempting the arbitrator or the institutions from liability or by addressing only serious liability cases which involve willful misconduct or fault, the institutions and

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arbitrators in such countries found it unnecessary to take out optional or voluntary ILC coverage, less still for legislators to impose –as is the case of Spain– mandatory insurance coverage. This is the case of Mexico, Peru or Venezuela.

This situation is not at all infrequent, as pointed out in a recent survey (Hofbauer) conducted on the basis of 22 answers provided by arbitral centers worldwide that were asked whether they carried ILC insurance and if such insurance covered arbitrators. The survey showed that over half of the institutions had ILC, but that they do not provide liability insurance to their arbitrators, and when they did so it was only following specific requests.

Although the survey does not state the reasons why the arbitral institutions' CLI coverage is not extended to arbitrators, it is possible that the reason thereof lies partly in that arbitral institutions deem that the relationship that binds them with arbitrators is non-contractual, and that it is therefore up to the arbitrators to take out their own indemnity insurance. The data shows that arbitrators do not care to take out insurance coverage because they trust that the arbitral institution may have obtained insurance covering their liability, they trust that the CLI of lawyers cover their activities as arbitrators or they even believe that, being protected by the legal privilege, they are deemed to be immune from any civil liability they may incur. Thus, hypothetically it can be said that they do not need or deem it necessary to take out CLI coverage.

The issues relating to the liability of arbitrators and arbitral institutions and the need to guarantee such liability is an issue of growing concern for parties to international commercial arbitration.

Thus, some prestigious arbitral institutions have on their agendas the possibility of an international insurance company developing a specific policy for arbitration centers for the purpose of providing them –particularly small and medium-sized ones– with a uniform policy that takes into account the specific features of arbitration. The issue regarding the coverage or non-coverage of arbitrators has yet to be decided.

We should also highlight the problems that arise at the time of taking out a potential CLI policy by arbitral institutions, as listed by specialized legal scholars (Jolivet):

- They have found it practically impossible to find an insurance company capable of offering adequate arbitration insurance.
- Lack of understanding and comprehension of the role played by an arbitrator and an arbitral institution.
- Lack of a standard policy covering the risks faced by an arbitral institution.
- Low profitability of a specific policy and, if such a policy is issued, the limited scope of the amount and territorial coverage makes it useless.
- The problems arising from the obligations undertaken by arbitral institutions in relation to confidentiality issues make it difficult to delimit the risk, particularly in relation to the questionnaire.
- The high cost of the premiums offered by insurance companies due to the technical difficulties they encounter in risk assessment, which even result in insurance companies resorting to reinsurance and co-insurance in order to distribute risk.

THE ISSUES RELATING TO THE LIABILITY OF ARBITRATORS AND ARBITRAL INSTITUTIONS AND THE NEED TO GUARANTEE SUCH LIABILITY IS AN ISSUE OF GROWING CONCERN FOR THE PARTIES TO INTERNATIONAL COMMERCIAL ARBITRATION

THE INSURANCE MARKET IN SPAIN PRIOR TO THE MANDATORY INSURANCE REQUIREMENT

As to the Spanish insurance market, it should be noted that prior to the imposition of mandatory insurance some arbitral institutions already carried general liability insurance coverage.

In the case of arbitrators who were also practicing lawyers, the CL policies of lawyers did not cover liability arising from arbitration activities, neither directly nor indirectly by resorting to interpretation by analogy or broad interpretation which would, otherwise, be highly debatable, although there were opinions to the contrary that placed arbitrators' liability in the general framework of out-of-court non-litigation activities that a lawyer could conduct at the client's request. The fact is that the duties, irrespective of the approach adopted as to the legal nature of the arbitrator's role, performed by lawyers and arbitrators are very different. There are even fewer similarities in the case of non-lawyer arbitrators.

THE INSURANCE MARKET IN SPAIN AFTER THE IMPOSITION OF MANDATORY INSURANCE

After the imposition of mandatory insurance by [Spanish] Act 11/2011, initially, a prestigious insurance company attempted to design a special policy to cover damages arising from the actions or omissions of arbitrators, and which was also offered in the context of an arbitral tribunal, thus implying that the statutory requirement was construed in the sense that in all cases the obligation fell upon arbitrators. We support an interpretation that involves making a distinction between *ad hoc* arbitration and institutional arbitration in order to determine the party that is under the statutory obligation of taking out the insurance.

This first approach towards mandatory insurance actually involved *ad hoc* individual or collective civil liability insurance that provided coverage only to the insured party for damages arising from the performance of his/her arbitration activities. However, this specific insurance was only marketed for a few months until the market shifted towards a different approach which finally did not involve adopting a specific policy in this field.

The market has currently adopted the practice of amending lawyers' CL policies so as to include arbitration activities. Lawyers' Associations are beginning to extend their policies so as to also cover their members' arbitration activities as arbitrators (as well as mediation activities). Thus, the Madrid Lawyers' Association (*Ilustre Colegio de Abogados de Madrid*) has extended its policy (ICAM Policy) to cover mediation and arbitration, both in relation to practicing lawyers who may be acting as arbitrators or mediators as well as in relation to the coverage of its own Arbitration Court (*Corte de Arbitraje del ICAM*) and Mediation Centre (*Centro de Mediación del ICAM*).

MAPFRE has considered extending the Professional CLI for Lawyers in order to cover their civil liability as arbitrators and mediators.

It should be noted that since the Professional CLI for lawyers has been «automatically» extended to arbitration activities (as well as mediation activities), no new questionnaire has been submitted to the insured party, who has simply been informed of the policy extension, with no premium increase resulting therefrom.

This extension of CLI policies for lawyers has not occurred in relation to other professions –such as architects or engineers, not even to notaries, who are also required to take out mandatory insurance pursuant to the Order issued by the Ministry of Justice on November 16, 1982, that requires notaries to take out mandatory insurance through the *Junta de Decanos* body, and who may, precisely after the amendment of the Arbitration Act by means of the referred Act 11/2011, conduct arbitration activities (Article 15.1 AA, even in cases of arbitration in law). Therefore, these professionals do not have a defined coverage if they render services as arbitrators.

The above, however, does not mean that policies for lawyers are specifically adapted to the field of arbitration. On the contrary, interpretation problems and gaps can be detected in such policies, which leads us to consider that insurance companies will have to gradually adapt such policies so as to improve them in light of practical experience or even to reconsider the idea of a specific policy.

As to arbitration centers, and after analyzing some policies of leading arbitral centers in Spain, we observe that under one single policy –although independent and normally with a different limit– coverage is provided for different civil liability modules: professional and general civil liability, the latter including separate sections for general liability, employers liability and products, also including damage to leased premises. Additionally, one of the referred institutions has taken out a professional liability policy (second layer) that covers a specific amount in excess of the first layer. The ICAM Policy also insures against General, Employers and Professional CL of the Arbitration Court, as well as against breaches to the Data Protection Act (*Ley Orgánica de Protección de Datos*).

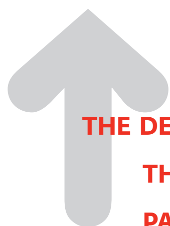
It should be noted that the administration institutions have not been subject to a questionnaire, except for one of the examined policies. In this case the short and simple renewal questionnaire consisted of three questions aimed at assessing the arbitral activities of the institutions in relation to the number and type of arbitration proceedings: in law or equity; knowledge of the existence of any claim and, if this is the case, the circumstances and results thereof; and lastly, the existence of any amendments to the by-laws or rules of the arbitral institutions.

The simplicity of the questionnaire in the context of arbitration is probably due to the limited practical experience in the field, together with the fact that this is not a widely used type of insurance in the market. In addition, some of the policies we examined were not preceded by a questionnaire and this is probably due to the fact that it is the policyholder who initiated the mechanism of contracting the policy.

One further question at this stage would be whether the professional CLI that professional companies must mandatorily carry (Art.11.3 of [Spanish] Act 2/2007, dated March 15, on Professional Companies –*Sociedades Profesionales*–), where the insured party is not only the company, but also the partners, whether professional or not, and the employees, could also be extended to cover arbitration. The question is, undoubtedly, important as regards lawyers, given that today the large majority of arbitrators are lawyers, but it is also important as regards other professions that are organized as a firm, and whose partners or employees are members of a professional body entitled to conduct arbitration activities, such as doctors, economists, architects or engineers.

The issue is not in the least trivial, because although the activities of an arbitrator are, undoubtedly, different from those conducted by a lawyer, the remuneration paid to the arbitrator (lawyers, partners or employees, who are members of a professional company, the legal structure currently adopted by most firms, particularly larger ones) has an impact, totally or partially, on such professional company, even though such activities are conducted independently from the company. In addition, the issue of the independence and impartiality of the arbitrator is closely related to the client portfolio of the law firm, so that an essential element in the arbitrator's acceptance of his/her role as arbitrator is the non-existence of a conflict of interests between the parties to the arbitration and the firm, or rather its clients, where the arbitrator practices law.

The issue is similar and the answer is the same to the one provided in relation to the CLI for lawyers before the mandatory insurance requirement. The fact that in the case of lawyer policies liability has been extended to cover their activities as arbitrators results in a very generic extension that fails to provide for specific issues involving arbitration, as we have earlier pointed out. The activities conducted by an arbitrator are different from those conducted by a lawyer, particularly bearing in mind that an arbitrator's role ends with a specific result: the issue of an award with a legal scope similar to that of a final judgment. This precisely calls for the development of a specific policy covering the CL of arbitrators, or at least the design of CL policies for lawyers –whether professional companies or not– that will take into account the particular features of arbitration activities. It should be noted that in the regulatory provisions of other mandatory CLI –such as the ones imposed on bankruptcy administrators– the legislators have provided that minimum mandatory coverage may be introduced «as an extension to the civil liability policies of lawyers, economists, business administrators or auditors», as provided in the Preamble of the [Spanish] Royal Decree 1333/2012, dated September 21, regulating liability insurance and the equivalent guarantee imposed on bankruptcy administrators.



THE DEVELOPMENT OF A SPECIFIC POLICY COVERING THE CIVIL LIABILITY OF ARBITRATORS, OR AT LEAST THE DESIGN OF CIVIL LIABILITY POLICIES FOR LAWYERS THAT WILL TAKE INTO ACCOUNT THE PARTICULAR FEATURES OF ARBITRATION ACTIVITIES, IS A NECESSARY NEXT STEP

CONCLUSIONS: AN EMERGING MARKET THAT REQUIRES IMPROVED INSURANCE DESIGN

The mandatory insurance requirement will undoubtedly encourage growth in the field of arbitration insurance, and this will have evident advantages vis-à-vis the possibility of obtaining an equivalent guarantee.

However, the limited practice of insurance companies in relation to this specific field of liability, the insufficient case law and jurisprudence, the difficulty in fitting the insurance into the liability legal standard provided in Article 21.1 of AA, particularly if it is construed in the sense that liability arises only in case of willful misconduct, and the lack of support of policies used in other countries –given that no specific insurance practice exists worldwide– will create interpretation and adaptation problems between insurance and arbitration.

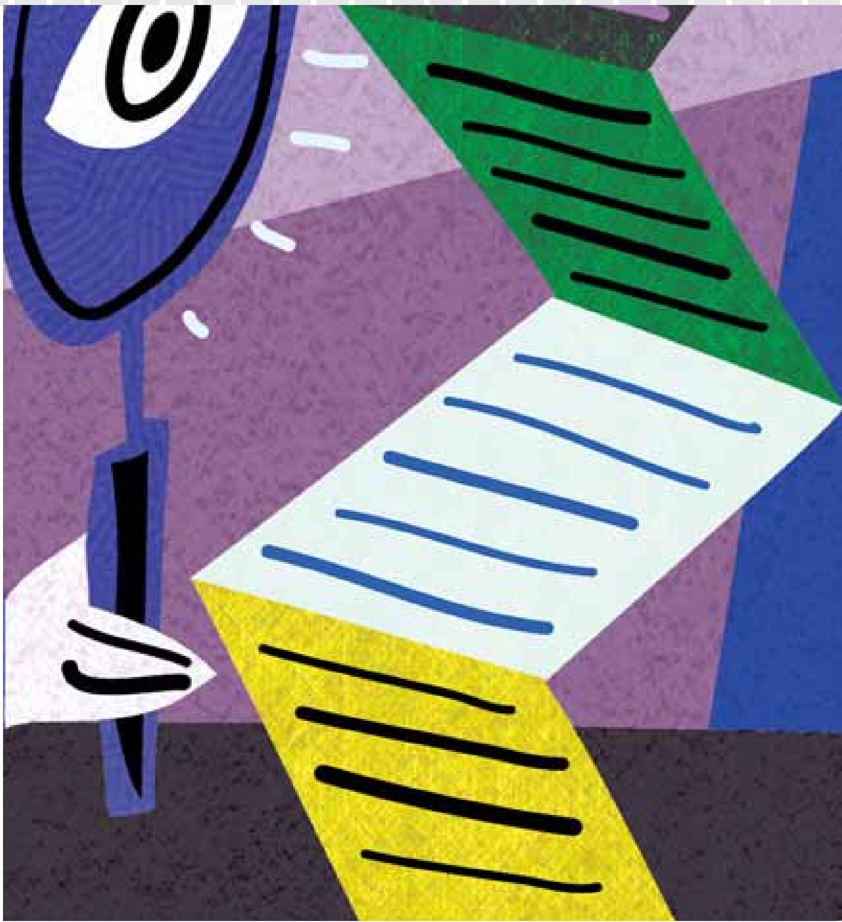
Clear evidence of the above is the fact that on the one hand the policies taken out by arbitral centers give rise to problems in terms of their coverage for arbitrators, both because of the wording of such policies and due to the delimitation of the risks insured, and also because of the exclusions in the policies. Additionally, the few policies issued today in the Spanish market that provide insurance to arbitrators are professional CLI policies for lawyers which have been extended to include arbitration and mediation services, and they are not suitable for the needs of arbitration, while all other professionals lack coverage. On the other hand, the rest of the different policies we examined are different in their contents, scope and wording, which will make it difficult to apply them to specific cases, particularly in light of the uncertainties arising from the temporal scope of coverage in the case of administered arbitrations and the low coverage limits.

Precisely, one of the problems reported by the arbitral institutions in finding a CLI that will adequately cover the risks arising from arbitration activities lies in the limitations imposed by insurance companies on the amount of coverage. Even now that CLI for lawyers has been extended to cover arbitration activities, the limit per event for the coverage is really low (for example, 18,000 euros in the case of the ICAM Policy) compared to the figures involved in commercial arbitration proceedings, and particularly international arbitration proceedings, which makes this insurance useless in the field of commercial arbitration.

It is clear that the insurance market in Spain should adopt a leading position given that there is no practice in the field of arbitration liability insurance coverage in other countries where, in spite of the liability standards, there is growing demand from arbitration operators in light of the increase and globalization of arbitration and the larger litigation as regards liability. However, and using tennis as an example, this service advantage of 15 or 30-love does not mean that the match will be won unless there is an effort to design an insurance policy that will actually cover the needs arising from the provision of arbitration services.

Accordingly, in our opinion, the most appropriate mechanism of coverage would be to create a specific insurance for this field –or a specific supplement to professional liability policies, instead of a mere inclusion of arbitration, as is

THE INSURANCE MARKET IN SPAIN SHOULD ADAPT A LEADING POSITION GIVEN THAT THERE IS NO PRACTICE IN THE FIELD OF ARBITRATION LIABILITY INSURANCE COVERAGE IN OTHER COUNTRIES



currently the case in most policies– given that the specific features of arbitration activities, as well as the statutory liability arising from the Arbitration Act, call for a policy specially designed and devised to cover the different contingencies arising in this field, particularly bearing in mind that the list of professionals who may act as arbitrators has been extended by the latest amendment to the Arbitration Act.

In addition, in the above case, the policy could be amended or extended from time to time in light of the practical experience that will arise in this field, which is currently quite limited. However, current practice has not developed a uniform set of particular terms and conditions for the policies that are being offered by the professional bodies, with the disadvantage of the top limits as to the amounts covered, which leaves room for a specific insurance market in this field that may offer conditions better tailored to the parties involved in arbitration and to the limits covered, and in relation to other specific and particular terms and conditions that could be agreed upon, especially once the future regulatory provisions have been passed.

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