Country Guide
Spain

Prepared by

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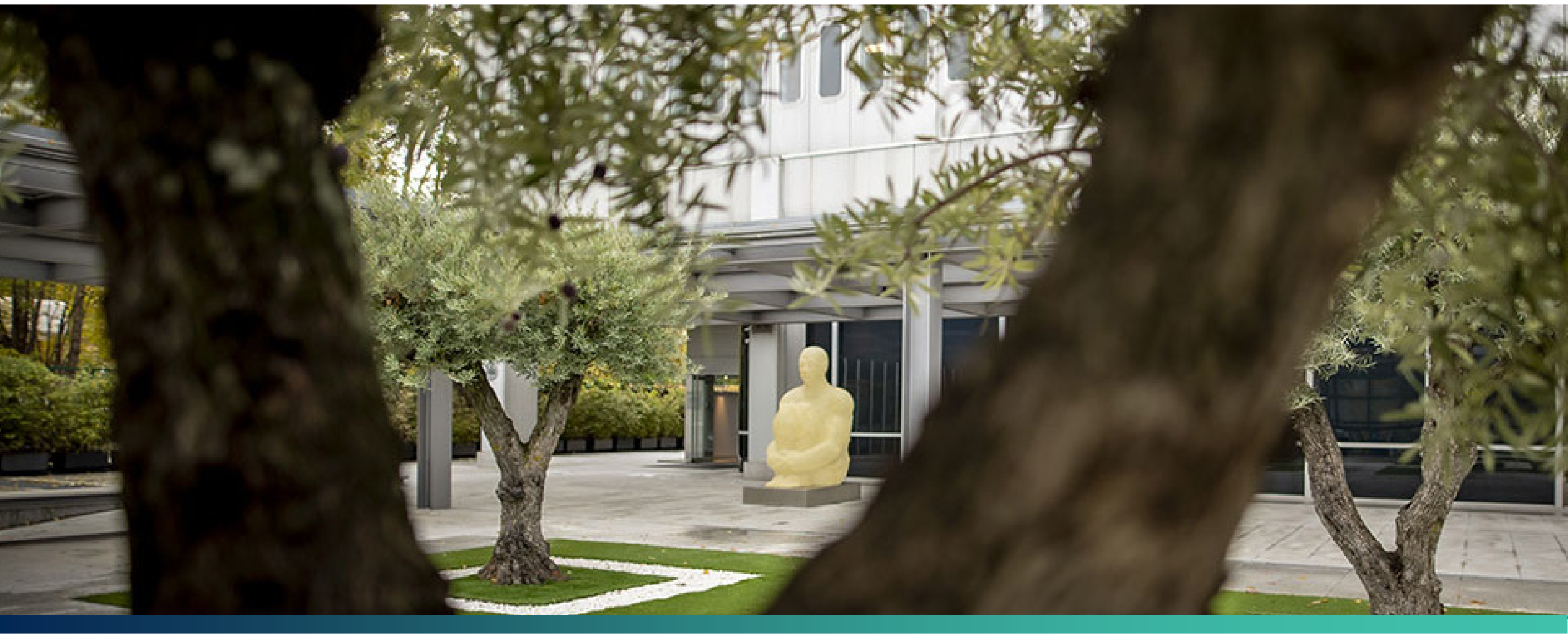

Doing business in Spain

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1. THE COUNTRY AT A GLANCE

1.1 Map

1.2 Geography

Spain occupies an area of roughly 505,000 square kilometres in the southwest of Europe. With a coastline of 4,964 km, Spain is the third largest country in the European Union (the "**EU**"). The Spanish territory covers roughly 80% of the Iberian Peninsula, which it shares with Portugal, and also includes the Balearic Islands in the Mediterranean Sea, the Canary Islands in the Atlantic Ocean, and the North African cities of Ceuta and Melilla.

In the north, it is bordered by the Bay of Biscay, France and Andorra (a small landlocked country in the eastern Pyrenees); in the east and southeast, by the Mediterranean; in the south, by the Straits of Gibraltar; in the south-west and north-west, by the Atlantic; and in the west, by Portugal.

Despite central Spain consisting of a vast plateau *(meseta)*, the country has a rich variety of landscapes, ranging from the deserts of Andalusia, to the green wetlands of Galicia, to the snow-capped Pyrenees. Indeed, with five major mountain ranges stretching across the country, and with an average altitude of about 650 metres, it is the second highest country in Europe after Switzerland.

1.3 Population and economy

Spain's population was estimated at just over 47 million (including 5.3 million foreigners) [1] in 2020. In 2021, life expectancy was 85.3 years for women and 79.2 years for men.[2]

GDP per capita in 2019 was $40,903 (making it the 45th highest in the world) [3]. Spain's principal economic activities lie in the service sector, specifically in banking, construction, tourism, retail, and telecommunications.

Nearly one quarter of the population live in cities with more than 500,000 inhabitants. The largest metropolitan areas are Madrid (the capital, with over six million inhabitants), Barcelona, Valencia, Seville and Bilbao.

1.4 Languages

Spanish is the official language and is spoken by about 90% of the population. Other official regional languages, such as Catalan (17%), Basque (2%) and Galician (7%), are spoken in their respective autonomous regions. English is the main foreign language studied at school.

1.5 Time zones

Spain is one hour ahead of Greenwich Mean Time, with the exception of the Canary Islands, which are in the same time zone as London.

1.6 Standard of living

Spain is the sunniest country in Europe, and its climate is among the healthiest in the world. The average annual temperature is approximately 20 degrees Celsius and the quality of life that Spaniards enjoy as a result is one of the highest in Europe.

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1 From Royal Decree 1147/2020 of 15 December, declaring official population figures resulting from the revision of the municipal census as at 1 January 2020 and statistics from the National Statistics Institute published in January 2021.

2 From CIA, The World Factbook: https://www.cia.gov/the-world-factbook/countries/spain/#people-and-society information updated on 27 April 2021.

3 From CIA, The World Factbook: https://www.cia.gov/the-world-factbook/countries/spain/#economy information updated on 27 April 2021.

2. GENERAL CONSIDERATIONS

2.1 Political system

The basic principles governing Spain's political and legal system are contained in the 1978 Constitution.

Spain is a parliamentary monarchy. The reigning monarch is the head of state but holds no real decision-making powers. The current King is Felipe VI, who acceded to the throne after former King Juan Carlos I abdicated in June 2014.

Spain is defined in the Constitution as a democratic and social state based on the rule of law. It is also a decentralized state: the territory of the country is divided into 17 "autonomous communities" at the regional level, each of which has its own parliament and government. These regions have authority over various matters, including, most importantly, health and education. At the local government level, municipalities and provinces exercise autonomous powers as well.

Accordingly, Spain has three different levels of government. Political responsibilities are distributed in accordance with principles that, from time to time, give rise to disputes between different governing bodies. With respect to business activities, the basic commercial, corporate and intellectual property regulations, as well as monetary policy, are decided and implemented by the central government, while specific issues, such as consumer rights and retail sale regulations, are decided by the autonomous regions.

The central government's political power is divided between parliament, the government and the judicial system. The parliament, called the *Cortes Generales*, is made up of two chambers, the Congress and the Senate. It is empowered to pass legislation and approve the annual budget. The government exercises the executive power. Parliament elects the president of the government who, in turn, appoints ministers. The judicial system is governed and controlled by the General Council of the Judiciary, an independent body whose members are elected by parliament.

The autonomous regions and municipal entities have parliamentary bodies elected by the people and an executive branch. The legislative and executive powers are thus distributed between the state and the regional/local level. In contrast, the courts pertain exclusively to the state level.

2.2 Legal system

The Spanish legal system is hierarchical so that laws of a higher rank prevail over conflicting laws of a lower rank. The sources of law are ranked as follows:

2.2.1 *Legal and regulatory provisions*

(A) The Constitution occupies the highest position in this hierarchy. As mentioned above, it lays down the basic principles and rules of Spain's political and legal system. More specifically, it sets out the basic rules relating to fundamental rights and duties, the crown, parliament, the government, the relationship between government and parliament, the judiciary, the territorial division of powers, the constitutional court and the procedure to amend the Constitution.

(B) Organic statutes are special laws that regulate certain matters mentioned in the Constitution, such as fundamental civil rights and liberties, the structure and competences of autonomous regions, the electoral system, etc. The adoption and amendment of organic statutes requires an absolute majority in Congress.

(C) Ordinary statutes comprise laws whose subject matter does not fall within the ambit reserved for the organic statutes. The laws affecting commerce and securities are approved through ordinary statutes. Both the government and parliament can put in motion the legislative procedure to enact a statute. Legislation is debated in both parliamentary chambers, but if there is a disagreement between the two, Congress prevails over the Senate with a simple majority.

(D) Decree-laws (*decretos-ley*) are approved by the government but are ranked as statutes. They regulate exceptionally urgent matters and must be ratified by Congress. Decrees may not deal with basic state institutions, civil rights, the regulation of autonomous regions or general election law.

(E) Likewise, parliament may occasionally authorize the government to prepare and enact legislative decrees (*decretos legislativos*), which have the same rank as statutes. Legislative decrees generally deal with the compilation and redrafting of existing laws.

(F) Decrees and ministerial orders have a lower status. They are issued by the government or its ministers for the purpose of implementing legislation.

The autonomous regions enact their own legislation within the scope of their powers. The regional parliamentary chambers issue statutes that are granted the same treatment as national statutes, while the regional governments adopt decrees and orders.

2.2.2 Custom and general principles of law

In the absence of an applicable piece of written law, customs can be used to decide cases, provided that their existence and content are proved, and provided that they are not contrary to moral standards or public order.

General principles of law are those that underlie the system of legal rules. They can be used to interpret the written law. They can also be applied to fill gaps when no legislation or custom is applicable to the case.

2.2.3 Case law

The Spanish legal system is a civil law system, and thus the courts are not given the power to create law. The doctrines established by the Supreme Court, however, are highly valued as a source of interpretation and application of the law. The decisions of a court can be challenged if they do not conform to the doctrines laid down by the Supreme Court in earlier cases.

2.2.4 Treaties

Spain is bound by international treaties, which become part of the national legal system once they have been ratified by parliament and have been published in the Official State Gazette. Spain is party to most multilateral international conventions that are important for international business.

2.2.5 EU law

EU law is applicable in Spain, under the conditions defined by the Court of Justice of the European Union.

2.3 Courts and arbitration

2.3.1 Court system

The judicial power in Spain is exercised by independent courts. The General Council of the Judiciary governs the courts and protects their independence from the executive branch.

The courts are organized according to the following jurisdictions: civil (which is made up of courts of first instance and commercial law courts), criminal, administrative and labour. Within each jurisdiction, the courts are divided according to the level of authority they have:

(A) District courts

Specialized first instance courts presided over by a single judge that deal with civil and commercial matters, as well as administrative and labour matters (although some administrative matters are heard directly by a collective court). For administrative matters, the proceedings are mainly conducted in writing, while labour proceedings are mostly conducted orally, and commercial and civil proceedings combine both systems.

Criminal cases are investigated by a judge, who is assisted by public prosecutors. The case is heard by a court presided over by either one or three judges, depending upon the gravity of the offence.

Civil courts of first instance have a very broad jurisdiction, and deal with family law issues, disputes between neighbours, wills and probate, as well as with technical issues involving commercial law. Specialized commercial courts were created in 2005 to handle specific commercial law matters, such as intellectual property, insolvency and competition cases.

(B) Courts of appeal

The courts of appeal that sit above the courts of first instance are distributed on a regional basis and include: (i) provincial courts, located in each of Spain's fifty provinces; (ii) the High Court of Justice of each autonomous region; and (iii) the Supreme Court, based in Madrid. There is also the *Audiencia Nacional* (National Court), which is a specialized central court with jurisdiction over specific crimes (e.g. terrorism) and other matters. The courts of appeal are organized into chambers, which are presided over by a three-judge panel that has competence over a single jurisdiction. Provincial courts have civil law chambers (which handle cases involving commercial matters) and criminal law chambers.

Civil and commercial claims are generally heard by a court of first instance. Their decision is subject to appeal before the provincial court. The provincial court's decision can, on some occasions, be challenged before the Supreme Court, but only to determine the correctness of the lower court's application of the law (*casación*).

(C) The Supreme Court

The Supreme Court, based in Madrid, has jurisdiction over all judicial matters in Spain, except over those dealing with constitutional matters, and is the highest judicial body that can review judgments issued by the lower courts. The Supreme Court has five chambers that are responsible for civil and commercial matters, criminal cases, administrative law disputes, labour claims, and military matters.

(D) The Constitutional Court

The Constitutional Court is not considered part of the ordinary court system, but rather a separate and independent national institution that deals with constitutional disputes. Disputes between the state and the autonomous regions, the constitutionality of laws, and violations of constitutional rights all fall within its jurisdiction.

2.3.2 Arbitration

Spanish arbitration law provides a mechanism that enables commercial disputes to be resolved expeditiously by arbitrators using legal or equitable principles. Conflicts arising between parties may only be resolved by arbitration when there is a prior written agreement that states the intention of the parties to submit their disputes to arbitration. This written commitment may refer to future or existing disputes and may be incorporated into a contract or be an independent agreement. Questions that, pursuant to law, cannot be settled by the parties, may not be submitted to civil and commercial arbitration. Arbitration awards are subject to judicial review in very limited circumstances, and are enforceable by the courts of first instance of the district where the award has been rendered. There are a number of professionally-based arbitration tribunals in Spain that specialize in commercial disputes.

Foreign arbitration awards are enforceable in Spain in accordance with the international treaties to which Spain is a party, and Spanish procedural law.

Spain is party to several international treaties on the enforcement of international arbitration awards, the most important of which is the New York Convention of 10 June 1958. As Spain did not make any reservation as to the scope of the Convention, the Convention applies to the enforcement of any foreign arbitration award, even if it is issued in a non-contracting state and regardless of whether or not it deals with commercial matters (provided the matters it deals with can be submitted to arbitration).

2.4 Economic system

Spain became a full member of the EU on 1 January 1986, and all EU legislation is therefore fully applicable in Spain.

Spain’s GDP in 2019 was worth 1,245 billion euros. The crisis of 2008 hit Spain severely. Its economy did not start to recover significantly until 2014 (1.4% growth) and in 2015 (3.8% growth). Since that time, annual GDP growth has been steady, culminating in 2% for the year 2019.

In 2020, however, the economy suffered as a result of the COVID pandemic. Spain´s GDP that year was 1,121 billion euros, a decrease of 10.8%.

2.5 Financial system

2.5.1 Introduction: the harmonization of financial legislation in the EU and Spain

Financial services are an essential part of the EU’s efforts to complete the internal market of services and capital. One objective of the EU during the last two decades has been the liberalisation of financial services, which, linked to that of capital movements, represent a major step towards EU financial integration and the widening of the internal market. This harmonisation is based on the principles of a ‘single banking license’, ‘mutual recognition’ and ‘home country control’, which make cross-border financial operations quick and easy.

Accordingly, the Spanish regulatory system governing financial institutions largely mirrors the legal framework in force in other EU member states (each an “**EU Member State**”). Further, under the so-called “passporting rights” contained in the EU financial Directives, a financial institution from any EU Member State may provide financial services in another EU Member State though a branch or on a freedom-to-provide-services basis, i.e. it is not necessary to create a new financial institution in that other EU Member State.

Spain has therefore implemented different EU financial Directives during the abovementioned process of harmonization which cover different financial services and entities.

For instance, in connection with credit institutions, Spain has already implemented Directive 2013/36/EU of 26 June on access to the activity of credit institutions and prudential supervision of credit institutions and investment firms (the “**Capital Requirements Directive**”) and Directive 2014/59/EU of the European Parliament and of the Council of 15 May establishing a framework for the recovery and resolution of credit institutions and investment firms. The measures contained in these Directives represent the cornerstones of the EU’s response to the 2007-2008 financial crisis, and established the basis for the EU banking union.

The banking union is an important step towards a genuine Economic and Monetary Union. It allows for the consistent application of EU banking rules in the participating countries, with new decision-making procedures and tools helping to create a more transparent, unified and safer market for banks. The EU banking union has currently three pillars: (i) the Single Supervisory Mechanism (the “**SSM**”), (ii) the Single Resolution Mechanism (the “**SRM**”) and (iii) the European deposit insurance scheme.

The SSM comprises the European Central Bank ("**ECB**") and the national supervisory authorities of the participating countries (all Eurozone members and any non-euro EU Member State that elects to join the SSM). Under the SSM, the ECB is the central prudential supervisor of credit institutions, with a mandate to ensure the safety and soundness of the European banking system, increase financial integration and stability and ensure consistent supervision across all participating EU Member States.

The SRM was established in response to the "too big to fail" problem that became apparent during the the 2007-2008 financial crisis, in order to ensure an orderly resolution of failing banks with reduced costs for taxpayers and to the real economy. The SRM applies to all credit institutions supervised by the SSM, and is designed to provide strong, centralise, swift and independent decision-making to allow resolution of any failed bank to be managed effectively through a central resolution authority and a single resolution fund financed by the banking sector.

The European deposit insurance scheme, third pillar of the EU banking union, is being currently contemplated. The objective of the European deposit insurance scheme is to uniform insurance cover for retail depositors. This would reduce the vulnerability of national deposit guarantee scheme to large local shocks, ensuring that the level of depositor confidence in a bank would not depend on the bank's location and weakening the link between banks and the EU Member States in which they are established.

Now, a new EU banking reform package has been agreed by European Parliament and is set to come into force by mid-2021. The package is comprised of (i) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May, which amends the Capital Requirements Regulation in a number of key ways (e.g., *inter alios*, leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements) and (ii) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May which amends the Capital Requirements Directive IV as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, includes an amendment to Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June on prudential requirements for credit institutions and investment firms ("**CRR**") and to Directive 2013/36/EU of the European Parliament and of the Council of 26 June on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ("**CRD**"). The functioning of the securities markets and the framework for the incorporation and operation of investment firms has also been harmonized in accordance with EU Directive 2014/65/EU on markets in financial instruments ("**MiFID II**") and further measures regarding organizational requirements and operating conditions for investment firms have been incorporated into Spanish law through Royal Decree 4/2015 of 23 October, approving the revised text of the Securities Market Law (the "**Securities Market Law**").

There has also been a sustained effort to adapt fully the regulations affecting the insurance sector to the numerous EU directives that create the single market for insurance products. In February 2020, the Spanish government approved Royal Decree-Law 3/2020 on urgent measures incorporating into Spanish law various EU directives in the field of public procurement in certain sectors; private insurance; pension plans and funds; taxation and tax litigation, which implements EU Directive 2016/97 of the European Parliament and of the Council of 20 January on insurance distribution.

All in all, Spain today boasts a diversified modern financial system that is fully integrated with international and European financial markets. The system includes credit markets, insurance markets, stock markets and money markets, as well as specific markets for derivatives (options and futures markets based on different assets, e.g. the IBEX 35 share index).

2.5.2 Operators in the Spanish financial system

(A) The credit market

(i) The Bank of Spain

The Bank of Spain no longer sets the country's monetary and exchange rate policy, except in its role as member of the European System of Central Banks. However, it remains in control of, among others, the following functions: (a) management of currency and precious metal reserves not transferred to the ECB; (b) supervision of credit institutions, in collaboration with the ECB, pursuant to the SSM; (c) promotion of the stability of the financial system and of national payment systems, without prejudice to the functions of the ECB; and (d) minting and circulation of coins and other types of legal tender. During the financial crisis the Bank of Spain also played a central role in the control and supervision of financial markets and the solvency of credit institutions.

As part of the SSM, the Bank of Spain supports the ECB in the performance of on-site inspections, collects and transfers the required information, participates in the preparation of supervisory decisions and collaborates in sanctioning processes.

In the case of less significant institutions, the Bank of Spain carries out their direct supervision, while the ECB exercises indirect supervision. In these cases, the ECB, in its role as the person ultimately responsible for the operation of the SSM, can issue guidelines to ensure consistency of supervision in all the EU Member States, request additional information or even assume direct supervision of any of these entities if deemed necessary.

(ii) Credit institutions (*entidades de crédito*)

(a) Banks, savings banks and credit co-operatives

The raising of funds from the general public, except through activities subject to the regulations governing the securities markets and other expressly exempted activities, such as those undertaken by collective investment schemes (*instituciones de inversión colectiva* or "**CIS**"), is reserved for credit institutions.

Credit institutions in the Spanish financial system fundamentally consist of banks and savings banks, together with credit co-operatives (especially those linked to the primary sector, which are called *cajas rurales* (rural savings banks)) and the Official Credit Institute (*Instituto de Crédito Oficial*), which is the country's financial agency. Following the restructuring of the banking sector, the number of savings banks has dropped dramatically since 2007 as a result of their conversion into "Institutional Protection Systems" (*Sistemas Institucionales de Protección* or "SIPs"). SIPs are essentially concentrations of saving banks that agree to share their banking business in a newly created bank, while remaining independent for the rest of their activities (this is informally known as a "cold merger"). In practice, this means that the savings banks cease to act directly as credit institutions and are replaced by the banks created out of the SIPs. As of May 2021, only two savings banks continued to be registered with the Bank of Spain.

In addition to banks, SIPs and the few remaining savings banks, there is a third type of credit entity that operates in Spain: credit co-operatives. Credit co-operatives are entitled to carry out the same activities as banks, and their solvency, recovery and resolution are governed by the same rules. That said, their creation and organization are governed by distinct legislation (primarily Law 13/1989 of 26 May on credit co-operatives and Royal Decree 84/1993 of 22 January) and there are a number of other differences between banks and credit co-operatives, e.g.: (i) the latter are non-profit institutions; (ii) each member of a credit co-operatives has a single vote, regardless of their stake in the share capital; and (iii) credit co-operatives have geographical limitations to perform their activities.

(iii) Financial credit establishments (*establecimientos financieros de crédito*)

Financial credit establishments ("**FCEs**") are a specific type of financial entity which typically performs one or more of the following activities: (a) granting of loans, credits and facilities, including consumer credit, mortgages and commercial transaction financing; (b) factoring; (c) leasing; and (d) granting of bonds and sureties.

They are not allowed to receive repayable funds from the public, except through the issuance of securities; consequently, they have to raise funds through other means. As a result, the requirements placed on these establishments for the pursuit of their activities are less strict than those placed on credit institutions.

FCEs are regulated by Law 5/2015 of 27 April on the promotion of business financing and Royal Decree 309/2020 of 11 February on the legal regime of financial credit establishments.

(iv) Electronic money institutions (*entidades de dinero electrónico*)

EU Directive 2009/110/EC was fully implemented in Spain by Law 21/2011 of 26 July on electronic money and Royal Decree 778/2012 of 4 May on the legal regime for electronic money institutions. Besides the issuance of electronic money, such entities may also provide payment services and grant credit to finance payment transactions executed on behalf of their clients. They must be registered with the Bank of Spain and fall under its supervision.

(v) Payment institutions

Regarding the provision of payment services and the functioning of payment institutions, EU Directive 2015/2366 on payment services in the internal market ("**PSD2**"), has been implemented into Spanish law through Royal Decree-Law 19/2018 of 23 November on payment services and other urgent financial measures and Royal Decree 736/2019 of 20 December on the legal regime for payment services and payment institutions.

The overarching objectives of the PSD2 are (i) to contribute to a more integrated and efficient European payments market; (ii) to further level the playing field for payment service providers by facilitating the entry of new players to the market; (iii) to make payments safer and more secure; and (iv) to enhance protection for European consumers and businesses.

In view of the above, the key changes imposed by PSD2 are as follows:

(a) Rules for third-party payment service providers: PSD2 opens up the EU payments market to payment initiation services, account information services and issuance of card-based payment instruments by third-party payment service providers. Such third-party payment services providers must be authorised and regulated.

(b) Increased security for payment services: PSD2 sets out strict security requirements for electronic payments and the protection of consumers' financial data. Payment institutions are required to ensure strong customer authentication for the initiation and processing of electronic payments.

(c) Clarification of the liability regime originally set out in Directive 2007/64/EC of the European Parliament and of the Council of 13 November on payment services in the internal market: in the event of an unauthorised payment transaction initiated through a payment initiation service provider, the account-servicing payment service provider must refund the payment service user. If the payment initiation service provider is liable for the unauthorised payment transaction, it must immediately compensate the account-servicing payment service provider.

Although payment institutions are not considered credit institutions, they fall under the supervision of the Bank of Spain.

(B) Stock markets

(i) Investment firms (*empresas de servicios de inversión*)

In accordance with MiFID II, the Securities Market Law categorises the following as investment services:(a) the reception, transmission and/or execution of orders for trading financial instruments on behalf of third parties; (b) dealing on one's own behalf; (c) individual portfolio management; (d) the placing of financial instruments with or without a firm commitment basis; (e) the underwriting of financial instruments without a firm commitment basis; (f) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis; (g) investment advice; and (h) the operation of multilateral trading facilities.

The provision of investment services is reserved to investment firms, credit institutions and CIS management companies. Investment firms may be: (i) brokers (*agencias de valores*), which may only carry out transactions on behalf of third parties; (ii) broker dealers (*sociedades de valores*), which are also entitled to act on their own behalf; portfolio management companies (*sociedades gestoras de carteras*), which may not receive, transmit or execute orders in the securities markets, but only manage investment portfolios; and/or (iii) financial advisory firms (*entidades de asesoramiento financiero*), which may only provide investment advice and investment research and financial analysis. To operate, all of these require prior authorization from the Spanish government agency responsible for financial regulation, the National Securities Market Commission (the *Comisión Nacional del Mercado de Valores* or "**CNMV**") and are all subject to its supervision and control.

Investment firms are subject to financial and internal organization requirements set out in MiFID II but are also subject to CRR, though a specific prudential regime for investment firms was approved at EU level through Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November on the prudential supervision of investment firms in order to reduce the prudential requirements of investment firms not categorised as systemic by virtue of their size and their limited interconnectedness with other financial and economic actors. The existing prudential framework under CRD and CRR will continue to apply to the largest and most interconnected investment firms, which have business models and risk profiles similar to those of banks and other credit institutions.

(ii) Collective investment schemes (*instituciones de inversión colectiva*)

A CIS is an investment vehicle that sets up an investment or mutual fund to allow two or more investors (including members of the public) to invest together. A CIS may either be a financial CIS investing in financial assets and instruments (e.g. securities, financial and monetary instruments, investment funds or companies, master and feeder fund structures, ETFs, etc.), or a non-financial CIS established to invest in other, non-financial, asset classes (e.g. real estate funds). CIS tend to be closely linked to banks and other credit institutions, are supervised by the CNMV, and tend to be popular among investors due to the favourable tax treatment they receive.

There are two principal legal forms that a CIS can take — collective investment companies and collective investment funds. A collective investment company is a CIS set up as a corporation, with its own separate legal personality, established to raise funds from investors to invest in its target asset class(es). Collective investment companies are often (but not always) managed by a management company (*sociedad gestora*). A collective investment fund, on the other hand, does not have separate legal personality - it is simply a pool of assets divided into units which may then be transferred amongst investors, and will be represented and managed by a management company. Note also that a CIS may either be "open ended", meaning that it that can issue and redeem shares or units at any time, or "closed-ended", with a fixed issue of shares or units at the outset.

In terms of the legal framework applicable to CIS, Spain has fully implemented (i) Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ("**UCITS Directive**") and (ii) Directive 2011/61/EU of 8 June on alternative investment funds managers ("**AIFMD**"), which together establish a harmonized regime for the management and sale of collective investment schemes throughout the EU, and create an EU passport for the marketing and management of CISs and alternative investment funds ("**AIF**").

(iii) Venture capital entities (*Entidades de Capital-Riesgo*) and other close-ended AIFs

Venture capital entities are closed-ended CIS consisting of venture capital companies (*sociedades de capital-riesgo*) and venture capital funds (*fondos de capital-riesgo*), both of which hold equity interests in non-financial and non-real estate companies whose securities were not listed at the time of purchase. The distinction between companies and funds is similar to that corresponding to CIS generally, as described above.

Law 22/2014 requires venture capital entities to invest at least 60 per cent of their assets in equity or equity-related instruments (including, subject to certain limits, profit-sharing loans). Investments in certain real estate companies, financial entities or listed companies (other than public-to-private transactions) will not qualify within such 60 per cent threshold. The remaining assets may be invested in the share capital of other companies, profit-sharing loans, other types of financing to portfolio companies or certain other securities (although proceeds from such investments would not benefit from the special tax regime for venture capital entities). Additionally, venture capital entities are subject to certain diversification and borrowing limits. Management companies of venture capital entities are required to appoint a depositary in certain cases.

Venture capital entities fall under the supervision and control of the CNMV. They are subject to strict investment regulations and must fulfil information obligations similar to those of other financial institutions.

(iv) Official secondary securities markets

The Spanish official secondary securities markets comprise of the four Spanish stock exchanges, the public debt market, the AIAF market for private debt securities, and the markets for trading in options, futures, derivatives and other financial instruments. Since October 2002, the securities markets and multilateral trading facilities ("**MTFs**"), as well as Iberclear, have been held under a single holding company, Bolsas y Mercados Españoles. There are four MTFs: SENAF, MAB, LATIBEX and MARF (alternative fixed-income market). All companies listed on official securities markets are under an obligation to periodically provide financial information to the CNMV. In addition, there is a secondary market for olive oil derivatives, and, in 2011, MEFF (an official secondary market offering trading and central counterparty services) launched a new central counterparty service for OTC-traded electricity derivatives, MEFF Power, enhancing liquidity and transparency in the electricity market and contributing to increased control over OTC operations.

Following MiFID II and its implementing regulations, the Securities Markets Law allows for the creation of MTFs and systematic internalizers (subject to compliance with applicable regulations and the verification and supervision of the CNMV), which, as well as foreign (EU) stock exchanges and multilateral trading facilities, may now operate directly in Spain.

Of the four stock exchanges in Spain, the largest is in Madrid and the others are located in Barcelona, Valencia and Bilbao. These stock exchanges are interconnected through the so-called "continuous market" (officially, the *Sistema de Interconexion Bursatil de España*), which is operated by the *Sociedad de Bolsas*, a company owned by the four stock exchanges.

In 2013 the Spanish Ministry of the Economy authorized, in accordance with Regulation 648/2012 ("**EMIR Regulation**"), the separation of the compensation, settlement and liquidation functions from the trading functions carried out by MEFF, thereby creating two different companies: one to carry out derivatives trading (MEFF EXCHANGE) and a second to act as a central counterparty entity for EMIR Regulation purposes (BME CLEARING).

The Spanish settlement and clearing system underwent a major overhaul in order to adapt it to the EMIR Regulation and Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July on improving securities settlement in the EU and on central securities depositories. As a result, since February 2016 securities are cleared through BME CLEARING, the central counterparty, and settled through Iberclear's ARCO platform.

Leading Spanish companies and banks are listed on the stock market. Shares of Latin American companies are listed on an MTF called LATIBEX. Promissory notes, corporate and securitization bonds and fixed-income securities are traded on the AIAF.

Regulations of the Spanish securities markets are harmonised in accordance with MiFID II and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May on markets in financial instruments requirements and aimed at protecting small investors and the integrity of the market itself. Insider trading and other forms of market abuse are regulated and penalized by the CNMV, which supervises the securities markets and is responsible for the admission of new listings, together with the management bodies of each stock exchange in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April on market abuse (MAR). The CNMV also monitors compliance with the trading rules that ensure market and price transparency and investor protection - including public tender regulations.

(C) Pensions and insurance

(i) Pension plans and pension funds

The Pension Plans and Funds Law of 2002, supplemented by the Regulation on Pension Plans and Funds and as amended by Law 2/2011 of 4 March on Sustainable Economy, sets out the basic regulation of the pensions sector and distinguishes between pension plans and pension funds.

Pension plans are schemes which define the right of contributors to receive income or capital upon retirement, survival, widowhood, orphanhood or disability. Pension funds, on the other hand, are funds without legal status created for the exclusive purpose of performing the obligations established in the pension plans and are managed by a management entity (*entidad gestora*). As such, pension funds are structured to facilitate long-term financing. The law foresees the existence of pension plans promoted by employers, associations and financial entities.

The creation of pension funds requires the prior authorization of the Ministry of the Economy, and both pension plans and pension funds are subject to the supervision and control of the General Directorate of Insurance and Pension Funds (*Dirección General de Seguros y Fondos de Pensiones* or "**DGS**").

Royal Decree-Law 3/2020 of 4 February partially amended Pension Plans and Funds Law of 2002 to implement Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December on the activities and supervision of institutions for occupational retirement provision, with the objective of ensuring a high level of protection and security for unitholders and beneficiaries of pension funds.

(ii) Insurance companies and insurance brokers

The Spanish insurance sector is now fully integrated with the single market in the EU for insurance products. Since the approval of Directive 2009/138/EC of the European Parliament and of the Council of 25 November on the taking-up and pursuit of the business of insurance and reinsurance, insurance companies from EU Member States may freely operate in Spain on a "right of establishment" or "freedom of services" basis, without the need to apply for Spanish authorization (they need only follow a simplified notification procedure before the insurance supervisory authority of the EU Member State of origin), and remain under the control of the authorities of the EU Member State of origin. Holders of most types of Spanish insurance policy must contribute a certain amount, as part of the insurance premium, to the Insurance Compensation Consortium (*Consorcio de Compensación de Seguros*), to cover extraordinary events occurring in Spain and the risk of the corresponding insurance companies becoming insolvent. The sale of short-term survival insurance with scant actuarial content is prohibited in Spain.

Spanish insurance companies and insurance brokers require the prior authorization of the Ministry of Economy to operate, and are under the supervision and control of the DGS. They are also subject to obligations to provide financial information as well as restrictions as to the holders of significant interests in their share capital.

In recent years, major international insurance companies have set up operations in Spain, either by forming subsidiaries or branches or by buying existing companies. Bank assurance transactions, entered into between a credit entity and an insurance company, by means of which the latter acquires a stake in the share capital of an insurance company owned by a credit entity, have also increased in the Spanish market. There is also a growing trend toward the direct sale of insurance products on a cross-border basis from other EU countries.

3. BUSINESS ENTITIES

There are four principal types of business entities in Spain:

(A) public limited liability companies (*Sociedad Anónima* or "**SA**"),

(B) limited liability companies (*Sociedad de Responsibilidad Limitada* or "**SL**"),

(C) partnerships, and

(D) joint ventures.

Since 2011, several legislative changes have simplified the way in which SAs and SLs operate and have significantly reduced organizational and functional requirements for both types of companies (especially SAs) in order to reduce costs.

This section will look at each business entity's key characteristics in turn.

3.1 Public limited liability companies (*Sociedad Anónima*)

SAs are governed by Royal Legislative Decree 1/2010 of 2 July, which approved the consolidated text of the Companies Law. In years gone by, SAs were the most common vehicle used to set up a company in Spain, but have now been surpassed in popularity by limited liability companies (see below).

3.1.1 Incorporation and registration

SAs must be incorporated by a deed executed before a notary public and subsequently registered at the Commercial Registry (*Registro Mercantil*).

Note that non-resident founders are generally required to execute a power of attorney before a notary public, in the jurisdiction where the non-resident founder is incorporated or domiciled, in favour of the officer acting in Spain. The power of attorney must be legalized by the Spanish consulate or by an apostille. Non-resident founders must hold a Spanish tax identification number (*número de identificación fiscal* or "**NIF**" in case of entities or *número de identificación de extranjero* or "**NIE**" in case of individuals).

(A) Registration

SAs must be registered at the Commercial Registry corresponding to their registered address. The company becomes a separate legal entity with its own assets, rights and obligations upon the registration of its deed of incorporation.

(B) Deed of incorporation

The deed of incorporation must include the by-laws of the company, as approved by its founders. The by-laws describe the essence of the company, setting out its basic management and administrative structure and the regulation of its internal and external affairs.

(C) Company documents

The public has access to the Commercial Registry's records and may obtain certificates and excerpts from the relevant registrar. The company's annual accounts and auditor's reports must be deposited at the Commercial Registry and made available to the public.

New registrations at the Commercial Registry are published on business days in an official gazette. Publication is used to determine the time from which the registration in question is effective *vis-à-vis* third parties.

3.1.2 Capital and shares

The capital of an SA must be paid-up in contributions in cash or in kind. The capital of an SA is divided into shares, which can be represented either by certificates or by book entries. There may be different series or classes of shares, with different par values and associated rights. Spanish law prohibits the issue of shares that have voting rights which are not proportional to their par value relative. This direct proportionality can only be altered in limited circumstances. Unless the by-laws of the company contain a right of first refusal or other such restriction, the shares of an SA are freely transferable.

The shares of an SA may be listed on Spanish stock exchanges and are tradable securities. Royal Legislative Decree 1/2010 sets forth certain special rules for listed companies.

(A) Share buybacks

Share buybacks in SAs are permitted, but only up to a maximum of 20% of an SA's capital (unless the shares bought back are immediately cancelled). For listed SAs, this limit is reduced to 10%. When a company holds treasury stock it must create a special reserve equal to the acquisition cost of the shares. The voting and economic rights attached to these shares are not exercisable whilst the shares are held in treasury.

(B) Share capital

An SA must have a minimum share capital of €60,000, which must be fully subscribed at all times with a minimum of 25% of the par value of each share paid-up at the time of subscription. Shares can be issued at a premium. The premium must be paid in full at the time that the shares are subscribed.

(C) Increase in share capital

Capital increases, as well as all amendments to the by-laws, must be approved at a general meeting. The shareholders and holders of convertible bonds have a pre-emptive right to subscribe any new issue of shares or convertible bonds if the increase is paid-up by contributions in cash. Holders of these pre-emptive rights can, in turn, sell them, unless the company's by-laws contain restrictions on such a transfer. The pre-emptive right may be revoked by a shareholder resolution if certain requirements are met (e.g. if to do so is in the best interests of the company).

SAs are prohibited from providing third parties with financial assistance in order to facilitate the purchase of shares in the SA or its controlling company. The liability of shareholders is limited to the amount corresponding to their investment in the company.

3.1.3 Corporate structure

(A) Shareholders

General meetings

The company's management body may convene a general meeting. Advance notice of at least one month must be given and the agenda must be published on the company's "corporate" website, provided this website has been approved by the shareholders and recorded in the Commercial Registry. If the company does not have a "corporate" website, the agenda must be published in the *Boletín Oficial del Registro Mercantil* ("BORME" - the official journal of the Commercial Registry) and in one of the province's major daily newspapers. Alternatively, the company's by-laws can provide that the general meeting may be called by sending a written notice to each shareholder by means that provide evidence of receipt of the notice at the address used for this purpose.

A quorum is required for the meeting to be validly held. Meetings may be held either on the first call or on the second call (i.e. on the day following the date of the meeting on first call). On first call more voting capital (25%) must be present than on second call (no voting capital). However, certain major decisions, such as amendments to the by-laws, capital increases or reductions, mergers, spin-offs and/or debenture issues, require a quorum of 50% on the first call and 25% on the second call. The by-laws may increase the statutory quorum requirements (unanimity cannot be required).

Decisions are adopted by a simple majority, except for decisions on certain reserved matters for which an absolute majority is required if the meeting is held with a quorum of more than 50% of the share capital. A two-thirds super majority is required if the meeting is held on the second call with a quorum of between 25% and 50% of the share capital.

The company's by-laws may also provide for meetings to be held by video conference, conference call, internet, etc.

Certain intragroup transactions, subject to potential conflict of interests, are authorised by law if certain legal requirements and formalities are met. One of them is the approval of the intragroup transaction by the shareholders instead of by the management body if this is mandatory by law or when the amount of the transaction is greater than 10% of the assets of the company.

(B) Management

The company may be managed by (i) a sole director, (ii) two directors acting jointly, (iii) several directors acting jointly and severally, or (iv) a board of directors with at least three members. Unless otherwise provided in the by-laws, a director does not have to be a shareholder. Non-resident directors must hold a Spanish tax identification number (*número de identificación fiscal* or "**NIF**" in case of entities or *número de identificación de extranjero* or "**NIE**" in case of individuals) in order to take office; any non-resident director without a NIF/NIE must apply to the tax authorities in Spain for such NIF/NIE, either in person or through a duly empowered representative.

Unless expressly authorized at a general meeting, directors may not engage on their own behalf in any of the activities performed by the company.

The board of directors must have a chairperson and a secretary. The secretary does not need to be a director. Members of the board may be legal entities. Directors are appointed for a maximum period of six years and may be re-elected for an unlimited number of six-year terms; they are appointed at the general meeting, which may also remove them at any time. An interim director, who must be a shareholder and serve until the next general meeting, may be appointed in the event of a board vacancy.

The board of directors may delegate all or part of its powers to one or more of its members (i.e. a managing director) or to an executive committee.

3.1.4 Directors' corporate liability

Spanish law defines directors' corporate liability in broad terms. Directors are liable for damages caused by an act contrary to the law or the by-laws or by their failure to carry out their duties with the necessary diligence and care. Notwithstanding the foregoing, the general meeting or, in some specific cases, the management body of the company, may authorise certain acts that contravene the prohibition of conflicts of interests between the directors and the company. Directors may be liable to the company itself, to its shareholders and to third parties, including creditors, for damages caused to the company, to individual shareholders or to third parties.

This liability extends to both appointed directors of a Spanish company who act as representatives of the company, and to so-called *de facto* directors; that is, to individuals or entities who act as directors of a company even though they are not formally appointed as such.

3.2 European publicly held corporations (*Sociedad Anónima Europea* or "SAE")

SAEs are governed by Royal Legislative Decree 1/2010 of 2 July, which approved the consolidated text of the Companies Law, by Council Regulation (EC) No. 2157/2001 of 8 October 2001, and by the laws governing the participation of employees in the SAE.

The main features of an SAE are the following:

(A) The SAE must have its domicile in Spain if its main management centre is located in this country.

(B) An SAE may be created (i) through the merger of various companies, (ii) as a holding of other companies, or (iii) by converting an SA into an SAE.

(C) An SAE may be governed by a monist (similar to a managing body of an SA) or a dual (with a management and a control committee) system. The by-laws must regulate the system chosen by the shareholders.

3.3 Limited Liability Company (*Sociedad de Responsibilidad Limitada* or "SL")

SLs are governed by Royal Legislative Decree 1/2010 of 2 July, which approved the consolidated text of the Companies Law.

SLs were created as an investment vehicle for small, family-run businesses and, hence, their regulation was more flexible than that of SAs. Owing largely to their special characteristics, SLs have become the most common type of business entity for non-listed companies.

Recent laws have done away with some of the major differences between SLs and SAs in terms of organizational and functional requirements (including the rules governing directors' liability).

The main differences between an SL and an SA can be summarized as follows:

3.3.1 Incorporation

A limited liability company must be incorporated by a deed executed before a notary public and subsequently registered at the Commercial Registry. The minimum share capital required by statute for a limited liability company is €3,000. This amount can be contributed either prior to or following incorporation; if provided following incorporation, certain limitations apply to shareholders until all share capital is contributed (e.g. limitations on the distribution of dividends).

3.3.2 Capital

(A) The capital of an SL is divided into *participaciones* (as opposed to *acciones,* though both can be translated as "shares") that are indivisible and cumulative. The shares may not be represented by certificates and are not considered negotiable securities.

(B) The shares of an SL may have disproportionate voting and economic rights.

(C) Shareholders may be removed by the other shareholders in a general meeting not only on the grounds set forth in the by-laws, but also in certain limited circumstances established by law.

(D) The transfer of shares to third parties is subject to the prior authorization of the company or any other conditions established in the by-laws.

(E) Shares of an SL may not be listed and each shareholder's liability is limited to the amount of their investment in the company.

(F) An SL may not issue bonds that are convertible into shares. Additionally, share buybacks are only permitted in very limited cases and the shares acquired must be cancelled in a maximum term of three years.

(G) SLs are prohibited from providing financial assistance to third parties in order to facilitate the purchase of shares in any company of their group of companies.

(H) An auditor's report is required when the capital is reduced to off-set losses. An independent expert's report is not required for contributions in kind to the company.

3.3.3 *Shareholders*

(A) At least 15 days' advance notice of meetings must be given. Meetings are called in the same way as those of an SA.

(B) An SL has no quorum requirements.

(C) Resolutions are passed by a majority of the votes validly cast, provided that they represent at least one-third of the voting capital. However, certain resolutions that concern fundamental matters require a majority of two-thirds of the voting capital. The by-laws may increase the majorities required for specific decisions (but cannot require that all shareholders attend the meeting).

3.3.4 *Management*

(A) An SL may be managed by (i) a sole director, (ii) several directors acting jointly or jointly and severally, or (iii) a board of directors with between three and twelve members.

(B) The term of office is indefinite, unless the by-laws provide for a specific term. Directors may only be appointed at the general meeting, where they may also be removed. Deputy directors may be appointed as alternates in the event that a director resigns or is removed.

3.4 ***Sociedad Limitada Nueva Empresa* or "SLNE"**

It is also possible to conduct business in Spain through a special type of SL, the so-called "Limited Liability New Business Company" (*Sociedad Limitada Nueva Empresa*, "**SLNE**").

The SLNE was introduced in 2003 to encourage the incorporation of small and medium sized companies by significantly simplifying the formal requirements for their creation. It should be noted, however, that although the SLNE is a flexible business vehicle, it is inherently limited in scope.

The main characteristics of SLNEs are:

(A) At incorporation, there may be no more than five shareholders. The number of shareholders may be increased as a consequence of subsequent transfers of shares in the company.

(B) Only individuals may be shareholders.

(C) The sole shareholder of an SLNE may not incorporate or be the sole shareholder of another SLNE.

(D) An SLNE must have a share capital of between €3,000 and €120,000. The share capital must be paid-up by means of cash contributions.

(E) The corporate purpose is general in order to allow flexibility in the performance of the entity's activities without the need to modify the company's by-laws.

(F) It is possible to use official pro-forma SLNE by-laws to facilitate incorporation.

(G) The registered name of the company is the surname(s) and the name of one of the founders, followed by an alpha-numeric code and the words "*Sociedad Limitada Nueva Empresa*" or, alternatively, "SLNE".

(H) SLNEs may be incorporated and registered electronically/online.

(I) Directors must always be shareholders.

(J) The company may be managed by a sole director or by several directors acting jointly, or jointly and severally, but not by a board of directors.

(K) Accounting requirements are simplified and there are also several tax advantages.

3.5 Partnership

There are two main types of partnership in Spain:

(A) A *Sociedad Regular Colectiva* or *"S.C."* is a general partnership governed by the Commercial Code in which partners are jointly and severally liable for the partnership's debts. There is no mandatory minimum capital amount established by statute.

(B) *Sociedad Comanditaria Simple* and *Sociedad Comanditaria por Acciones* are simple limited partnerships and limited stock partnerships respectively, and both are governed by the Commercial Code. The shares of the latter are also governed by the Companies Law. Both share the same partnership structure: one partner with unlimited liability who is in charge of the management and representation of the partnership, and at least one limited partner who is liable for losses and liabilities only up to the value of his contribution to the partnership. Limited partners may not perform management functions or act in the name and on behalf of the partnership. There is no mandatory minimum capital established by statute.

3.6 Joint venture

Joint ventures may be set up using any of the legal forms described above. Parties may also contractually agree to share interests in a business venture without creating a separate legal entity. This possibility is often used for public construction works or service projects under the name “**UTE**” (“temporary union of undertakings”).

3.7 Single member companies

Sole shareholders (individuals or legal persons) may own companies. Three requirements must be met:

(A) Legal publicity: companies that are owned by a sole shareholder must state the shareholder’s identity in a notarial deed recorded at the Commercial Registry. Any subsequent change in the identity or status of the shareholder must also be notarized and then recorded at the Commercial Registry.

(B) Commercial publicity: companies owned by a sole shareholder must include a statement disclosing this fact in all of their documents, including correspondence, orders, invoices and advertisements.

(C) Publicity of certain agreements: companies owned by a sole shareholder must keep an official book in which any agreement entered into between the company and its sole shareholder must be recorded. This book must be legalized with the Commercial Registry each year in which an agreement is signed. In addition, agreements entered into between the company and its sole shareholder must be executed in writing and disclosed in detail in the company’s annual report, which, in turn, must be filed with the Commercial Registry.

The failure to register the fact that a company has a sole shareholder means that the sole shareholder is liable for all of the debts incurred by the company while it continues to be its sole owner. This liability is unlimited and may be directly enforced by the company’s creditors against the sole shareholder without filing any prior legal action against the company. In addition, if any agreement between the company and its sole shareholder is not printed in the official book or is not disclosed in the company’s annual report deposited in the Commercial Registry, the sole shareholder may not assert its rights under the contract in the event that the company becomes insolvent.

4. BRANCHES

Foreign companies wishing to operate in Spain may also open branches, which do not have separate legal personality to that of the foreign company. This notwithstanding, for certain administrative, tax and other purposes a branch is treated as if it were a separate entity.

The establishment or attribution of capital to a branch of a foreign company in Spain is considered a foreign investment, although an actual attribution of capital is not necessary (except in the case of some types of branches, such as those of non-EU banks).

The establishment of a branch requires the execution of a public deed that is then registered with the Commercial Registry, with certain key company documents and powers of attorney governing the establishment of the branch (which must be translated by an official translator if they are not in Spanish) also required. In the cases of branches of regulated entities (e.g. credit institutions, investment firms, funds management companies, etc.) certain additional formalities will be imposed by supervisory authorities for registration.

After the execution of the public deed to establish a branch of a foreign company, a filing with the Ministry of Economic Affairs will need to be made to declare the foreign investment for statistical purposes.

Very limited formalities apply to branches from a Commercial Registry identification perspective. One of them is the obligation to file the parent's annual accounts with the Registry each year as well as the registration of changes in attorneys and identification details (such as corporate name and address).

5. INSOLVENCY

5.1 Introduction

Royal Decree-Law 1/2020, of 5 May (the "**Insolvency Law**"), was enacted in 2020 to consolidate and improve the Spanish legal framework for insolvency. The Insolvency Law treats commercial and non-commercial borrowers alike and, as such, applies to all debtors and insolvencies.

5.2 Pre-insolvency mechanisms

5.2.1 Pre-insolvency filing

When a company is unable to pay its due and payable debts, its directors are obliged to file for insolvency within two months from the date they become or should have become aware of the company's insolvency (current insolvency).

This two-month term may be extended if the debtor notifies the competent court that it has commenced negotiations with its creditors with a view to reaching an early Composition Agreement (see section 5.3.6(A)), a Collective Refinancing Agreement (see section 5.2.2), a Spanish Scheme (see section 5.2.3) or an OSP (see Section 5.2.4) (the "**Pre-insolvency Filing**"). Upon the filing of this notice, the debtor will have an additional three-month period to continue with the negotiations. Unless the debtor is no longer insolvent (or has reached one of the above-mentioned arrangements with its creditors), once this period has elapsed the debtor is obliged to apply for insolvency within the month following the termination of the additional three-month period (the "**3+1 rule**" or the "**Pre-insolvency Period**"). Applications for insolvency filed by creditors during the three-month period will not be accepted. Creditor's applications filed afterwards will only be admitted if the debtor has not filed for insolvency during the additional one-month term.

From the moment a Pre-insolvency Filing is submitted, and during a three-month period, judicial or extrajudicial proceedings may not be initiated to attach assets or rights that the debtor needs to continue performing its professional or business activity, and proceedings already initiated will be stayed (in the case of OSPs, the enforcement of unsecured claims may not be initiated, regardless of whether or not the rights and assets are needed to perform the debtor's activity).

Attachments sought by individual holders of financial liabilities cannot be initiated (or, if they have already been initiated, will be stayed) with respect to any asset and not only those deemed necessary to perform the business when no less than 51% of the creditors have agreed to negotiate a refinancing agreement and undertaken not to seek attachments in the meantime. Enforcements of *in rem* security may be initiated, but will be stayed for a three-month period if the security is granted over assets or rights that the debtor needs to continue performing its professional or business activity.

5.2.2 Refinancing Agreements

As will be explained in detail in section 5.3.5, the Insolvency Law establishes a claw back period of two years from the date on which the insolvency proceedings are initiated. Acts of the debtor during this period that are considered detrimental to the debtor's estate may be revoked, even in the absence of fraud, through the exercise of the claw back action.

The Insolvency Law grants protection against the risk of claw back (other than in cases of fraud) to (i) Spanish Schemes; (ii) Refinancing Agreements that meet the conditions set forth under the Insolvency Law; (iii) OSPs; and (iv) new security granted in connection with the same (as well as any other transaction, negotiation or payment consequential thereto).

Accordingly, new security granted as part of a refinancing agreement that meets all of the requirements detailed below, and which will be referred to as "collective" ("**Collective Refinancing Agreements**"), are not subject to claw back (unless there is fraud) provided that:

(A) The refinancing significantly increases the funds available to the borrower, extends the maturity date of existing financing or replaces existing obligations, provided that the refinancing agreement is part of a plan designed to ensure the viability of the debtor in the short and medium term.

(B) The refinancing agreement is approved by creditors holding at least three-fifths of the claims against the debtor at the time it is executed. In the case of a group of companies, the agreement must be backed up by creditors that hold at least three-fifths of the claims, both against each individual debtor and against the whole group or subgroup of companies. Intra-group credits are excluded in order to calculate whether the refinancing is supported by the necessary proportion of creditors.

(C) The debtor's auditor issues a certificate confirming that the three-fifths majority set forth in (B) above has been reached.

(D) The refinancing agreement and other related documents are formalized in a public deed.

The Insolvency Law provides for another category of "non-collective" refinancing agreements ("**Non-Collective Refinancing Agreements**" and together with Collective Refinancing Agreements, "**Refinancing Agreements**"). The Non-Collective Refinancing Agreements do not fall within the scope of Collective Refinancing Agreements and are not eligible for a Pre-insolvency Filing, but for which a claw back safe harbour is created provided the following requirements are met:

(A) the Non-Collective Refinancing Agreement responds to a viability plan designed to ensure the continuity of the debtor's activity in the short and medium term;

(B) the initial proportion of assets in relation to liabilities is increased;

(C) the resulting current assets are equal to or greater than current liabilities;

(D) the value of the resulting security granted in favour of the creditors who enter into the Non-Collective Refinancing Agreement does not exceed either nine-tenths of the outstanding debt owed to those creditors, or the proportion of security (calculated as set forth in the Insolvency Law) to the outstanding debt owed to such creditors prior to the agreement;

(E) the interest rate applicable to the subsisting claims or to the claims resulting from the agreement in favour of the participating creditor/s does not exceed by more than one-third the average of the interest rate applicable to the claims before the agreement; and

(F) the Non-Collective Refinancing Agreement is set out in public deed, signed by all the parties to which it will apply, and includes a description of the economic reasons justifying the agreement.

5.2.3 Cram down mechanism: the Spanish Scheme

The Insolvency Law provides for a mechanism of judicial homologation (*homologación judicial*) of certain refinancing agreements entered into by the debtor and creditors holding financial claims to protect both from claw back actions (except in the case of fraud) and which regulates a mechanism for the cram down of dissenting creditors provided that they hold financial liabilities similar to the United Kingdom's scheme of arrangement (the "**Spanish Scheme**").

The creditors considered for the purposes of a Spanish Scheme (both in number and for cram down purposes) are the holders of financial liabilities (including secured creditors), whether or not subject to financial supervision. If the financial liabilities include syndicated loans, all creditors holding an interest in the syndicated loan are deemed to have adhered to the refinancing agreement if creditors holding at least 75% of the liabilities represented by the loan vote in favour of it, or a lower majority if so established in the syndicated loan agreement.

The Insolvency Law provides for cram down of non-participant or dissenting secured creditors and adopts the security "value" of each creditor (the "**Security Value**") as the core concept of the cram down system. Additionally, it establishes a dual cram down regime which distinguishes between the amount of the claim not exceeding the Security Value (the "**Covered Amount**"), and the amount of the claim exceeding the Security Value (the "**Non-Covered Amount**"), to which the cram down effects will be extended in the same way as unsecured claims. Each creditor's Security Value, which cannot fall below zero or exceed the amount of the secured claim, is calculated according to the rules set forth under the Insolvency Law and, in particular, considering the reasonable value of the assets or rights over which the security is granted.

5.2.4 Out-of-court settlement for payments

The Insolvency Law also regulates another out-of-court mechanism that is mainly intended to be used by individuals and small companies seeking an indebtedness release: the out-of-court settlement for payments ("**OSP**").

The main features of Spanish Schemes (see section 5.2.3) and Composition Agreements (see section 5.3.6(A)) as regards the scope, type and extension (even to dissenting secured creditors) of restructuring measures are applied to OSPs.

Further to the possibility of cramming down non-participant or dissenting secured creditors, other core features of the OSP rules include (i) extending its scope to individuals who are not entrepreneurs (incorporating a simplified procedure), and (ii) empowering the role of the insolvency mediator in the insolvency proceedings.

(A) Who can apply for an OSP and the insolvency mediator

The OSP is designed for (i) individuals (entrepreneurs or otherwise) in a situation of current (i.e. unable to settle due and payable debts) or imminent insolvency (i.e. not currently insolvent but expected to be so in the near future) with debts of no more than €5 million; and (ii) SMEs (for these purposes, companies with fewer than 50 creditors and liabilities or assets amounting to less than €5 million) that are currently insolvent, provided that they have sufficient liquid assets to pay the OSP costs.

OSPs cannot be applied for if, among other circumstances: (i) the debtor has already been declared insolvent or is negotiating a Refinancing Agreement or a Spanish Scheme; (ii) the debtor has committed financial or business-related criminal offences in the previous 10 years; or (iii) the debtor reached an OSP or a Spanish Scheme or was declared insolvent in the previous five years.

The debtor must file an application to appoint an “insolvency mediator” with the Commercial Registry or a notary public from the place where the debtor is domiciled. Applications can also be made to the corresponding chamber of commerce. If the applicant is not an entrepreneur, the notary public who receives the application for OSP may take charge of conducting the negotiations with the debtor’s creditors. Only if the notary public considers it appropriate or is expressly asked to do so by the debtor will he/she appoint an insolvency mediator.

The Commercial Registry (or the notary public, as applicable) notifies the competent court that the application has been filed and the “3+1 rule” (see sections 5.2.1 and 5.2.4) is applied. Accordingly, during the three months following the application (unless the OSP is approved or the individual is declared insolvent beforehand), no judicial or extra-judicial enforcement may be initiated against the debtor’s estate (see section 5.3.6(A)). The debtor then has one month to file for insolvency if it is still insolvent. In the case of individuals who are not entrepreneurs, these terms are reduced to two months and ten days respectively.

The insolvency mediator verifies the existence and amount of the credits and calls a meeting with the debtor and its creditors to negotiate a payment plan.

(B) Effects of OSP procedures, creditors affected and OSP terms

Once the OSP is notified, no enforcement action, whether judicial or extrajudicial, may be taken or continued against the debtor's assets during a three-month period with the exception of (i) public authorities (tax, social security, etc.), which can force payment of their debts at any time during the process, and (ii) secured creditors in relation to assets other than those that the debtor needs to continue his/her professional or business activity and the debtor's permanent residence (attachment proceedings may be initiated against these assets but will be stayed during the period set out above). However, any creditor can enforce personal guarantees granted by third parties if the debt has matured.

Together with the proposed OSP (prepared by the insolvency mediator with the debtor's consent before the creditors meeting), a payment plan and a viability plan containing restructuring measures foreseen in the Insolvency Law is put to the creditors meeting.

If no plan is approved and, thus, insolvency proceedings commence, the claims of those creditors not attending the creditors meeting are ranked as subordinated claims (unless such creditors have challenged the proposed OSP during the ten-day term provided to such end, have accepted such proposed OSP, or have a security over rights or assets owned by the debtor), provided they have been informed of the meeting.

In order to approve an OSP and extend its effects to dissenting creditors (secured or otherwise), certain majority thresholds are required.

As is the case with Spanish Schemes (see section 5.2.3), the core idea behind the cram down of OSP secured creditors is the concept of Security Value (see section 5.2.3). Accordingly, the part of a secured claim not covered by the Security Value is treated as an unsecured claim and, therefore, subject to its majority (and cram down) rules. In contrast, the extension of the OSP's effects to the part of a claim covered by the Security Value requires certain majorities.

A valid OSP is immune to claw back actions (see section 5.3.5) in insolvency proceedings.

Creditors who do not vote in favour of the OSP (either dissenting creditors or those creditors who were not invited to the creditors meeting) can challenge the plan by filing a court claim based on one of the following grounds: the fact the OSP was not approved by the necessary majority, or that the reduction and extension are disproportionate. The decision can be appealed and if the plan is annulled, the debtor is declared insolvent.

If the payment plan is not accepted or not complied with, the insolvency mediator will apply for insolvency. Insolvency proceeding that follow an OSP ("*concurso consecutivo*") have certain special features: (i) they follow the rules for summary proceedings ("*concurso abreviado*") (see section 5.3.9); (ii) the two-year claw back period (see section 5.3.5) begins as from the day the insolvency mediator was appointed; and (iii) the insolvency mediator is, as a general rule, the insolvency receiver. In case of individuals who are not entrepreneurs, insolvency proceedings following an OSP go straight to the liquidation phase.

5.3 Insolvency proceedings

The Insolvency Law establishes a single procedure for insolvencies that is conducted before a court with the assistance of a sole receiver, except in certain cases (see section 5.3.3). The procedure begins with the so-called "joint phase" ("*fase común*"), which has two potential outcomes (see section 5.3.6):

(A) **a creditors' composition agreement** - an agreement between debtor and creditors to restructure the debt ("**Composition Agreements**"); or

(B) **liquidation** - to realize the value of the debtor's estate in order to pay its debts.

During the joint phase, the main function of the receiver is to determine the debtor's estate, debts and the management's responsibility, if any, for the insolvency situation, to control (either by way of intervention or replacement) the management of the debtor during the insolvency proceeding and to investigate any suspicious acts carried out by the debtor during the two years prior to the declaration of insolvency that could be considered detrimental to its estate and, therefore, subject to claw back. A report is drafted, together with an inventory of the debtor's estate and a list of creditors, which may be challenged before the court. The joint phase usually ends once a ruling has been issued on any such challenge.

5.3.1 Voluntary and involuntary insolvencies

(A) Voluntary insolvency

As indicated in section 5.2.1, directors are obliged to file for insolvency (when the debtor is unable to pay its debts when they are due and payable) within two months from the date they become or should have become aware of the company's insolvency (current insolvency)[4]. This term can be

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[4] Due to the Covid-19 health crisis, several extraordinary regulations have been enacted in order to address the impact of the pandemic over the economy, in particular, the Law 3/2020, of 18 September ("**Law 3/2020**"). Law 3/2020 establishes

extended as a result of a Pre-insolvency Filing subject to the terms and conditions outlined in section 5.2.1.

Once the debtor has proven its indebtedness and insolvency before the court, the court automatically declares it to be insolvent.

A debtor may also apply for insolvency when it expects that it will not be able to meet its obligations in the agreed terms (imminent insolvency).

(B) Involuntary insolvency

A creditor may file an application for the insolvency of a debtor. The creditor must prove that it has failed to attach any assets or sufficient assets of the debtor to cover the amount owed. If it does so, the court will declare the debtor insolvent without giving the debtor the opportunity to oppose the insolvency petition.

A creditor may also base its insolvency petition on evidence of any of the following circumstances (in these cases the debtor is entitled to oppose the insolvency petition prior to the court declaring it insolvent):

(i) general default of the debtor's payment obligations;

(ii) general seizure of the debtor's assets;

(iii) sale of the debtor's assets at a loss or in a negligent manner; or

(iv) debtor's failure to pay during the three-month period preceding the filing for involuntary insolvency its (a) tax liabilities, (b) social security obligations, or (c) salary and other emoluments; or

(v) the existence of a previous judicial or administrative resolution of insolvency, provided that the relevant resolution cannot be challenged.

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that an insolvent debtor is no obliged to file for insolvency until 31 December 2021. Additionally, creditors' application for insolvency ("*concurso necesario*") will be stayed until the same date.

Applications for insolvency filed by other creditors during this period will not be accepted. Creditors' applications filed afterwards will only be admitted if the debtor has not filed for insolvency beforehand.

5.3.2 Enhanced powers of the court

The insolvency court's broad powers include not only commercial, financial and administrative proceedings affecting the debtor, but also salary claims of the debtor's employees. For instance, the court may decide how much the debtor's employees are entitled to and rule on collective employment reorganization measures.

5.3.3 Insolvency receiver

In principle, the receiver (an individual or representative of a legal person) replaces the debtor's management in involuntary insolvency cases, and has certain supervisory powers over the debtor's management in the case of voluntary insolvencies. The court may rule otherwise depending on the circumstances of the case.

There are some regulations regarding the receiver's rules (specifically, those regarding receivers' remuneration and qualifications) that will not come into force until a supporting regulation is enacted.

Until then, and as a general rule, only one receiver will be appointed (a practicing lawyer or an auditor or economist, with at least five years' experience and proven specialized training in insolvency law). If the appointed receiver is an individual as opposed to a legal person, the court may appoint an assistant (and in fact in some cases this appointment is mandatory).

The court may appoint an additional receiver (a public administration or public entity) if the public interest justifies it.

5.3.4 Effects of insolvency

Main effects of a declaration of insolvency

(A) Secured creditors (including creditors under financial leases) are not allowed to foreclose on their collateral (and ongoing foreclosure proceedings are stayed) over assets that the debtor needs to perform its professional or business activity until the first of the following circumstances occurs: (a) a Composition Agreement is approved (see section 5.3.6 (A)) (to the extent that it does not affect the exercise of that right); or (b) one year elapses since the date of the declaration of insolvency without the liquidation phase being opened.

Only the court can decide if an asset is "necessary" to perform the debtor's activity. Shares held by the debtor in companies that exclusively hold assets and the liabilities necessary for their financing are not considered "necessary" assets, provided that the enforcement of the security over these shares does not constitute a ground for terminating or modifying the contractual relationships of the debtor that allow it to continue using those assets.

(B) The insolvent company's management will either be replaced or supervised by the insolvency receiver until the approval of a Composition Agreement (see section 5.3.6(A)) or the opening of the liquidation phase. The debtor in a voluntary insolvency generally retains its management powers but is subject to control ("*regimen de intervención*") by the receiver appointed by the court. In the case of mandatory insolvency, the debtor's management powers will generally be suspended and assumed ("*regimen de suspensión"*) by the receiver. Nonetheless, the court may modify this general regime, subject to the specific circumstances of each case, or, upon the receiver's request. Actions carried out by the debtor in breach of any required supervision of the receiver may be declared null and void unless ratified by the receiver.

(C) As a general rule, the assets of the insolvent company cannot be seized as collateral or otherwise transferred without proper authorization from the court.

However, an authorization from the court is not required to carry out sales that the receiver considers essential in order to guarantee the viability of the debtor or the cash requirements demanded by the continuation of the insolvency proceedings. The receiver must give the court immediate notice of any action taken and justify the need for taking that action. Furthermore, the Insolvency Law provides for the sale of business units. The regulations are significant in relation to outstanding obligations in favour of the transferee of business units.

In order to facilitate the sale of assets that are not necessary for the debtor's activity, if the receiver receives an offer that substantially matches the value allocated to such assets in the inventory, the disposal will be approved by the court if a better offer is not received within the next ten days. For these purposes, an offer will be considered a "substantial match" if the difference between the offer and the value allocated to the assets in the inventory is less than 10% (in the case of real estate assets) or 20% (for movable assets).

At the request of the receiver or a creditor, the court may, at any stage of the proceedings, allow the direct sale or assignment of assets or rights of the debtor subject to a security interest in favour of the privileged creditor or a third party appointed by said creditor.

The court may allow the direct sale of assets or rights of the debtor if the offer is made for a price higher than the minimum price established at the moment the security was granted. Exceptionally, the court may allow the direct sale for a price lower than the minimum price established if the debtor and the privileged creditor expressly agree so, and provided that the sale is made for market value of the asset or right.

The privileged creditor has the right to receive the amount resulting from the referred sale or assignment of assets or rights to completely settle its secured claim. If such secured claim is not completely settled, the remaining claim will be reclassified within the insolvency claims.

(D) Declaration of insolvency suspends interest accrual, except for claims secured with an *in rem* right, in which case remunerative interest accrues up to the relevant amount secured under the relevant security (provided that such remunerative interest is communicated by the creditor as contingent claims), and except for any wage credits in favor of employees, which will accrue the legal interest set forth in the corresponding Law of the State Budget (*Ley de Presupuestos del Estado*).

(E) The court, at the request of the receiver and once the affected creditors have been notified, may cancel all liens over the debtor's assets if their maintenance seriously affects the survival of the debtor's business. Liens held by public authorities cannot be lifted.

(F) Set-off after the declaration of insolvency is not permitted unless both debts were already due and payable before that moment. Settlement is allowed provided that the debts and credits to be settled arise from the same agreement or contractual relationship.

(G) Early termination clauses triggered by the declaration of insolvency become void and unenforceable.

(H) The court may, at the request of the receiver, the debtor or the employees, order the amendment, suspension or termination of employment contracts. The receiver has some powers in the case of high-ranking employees.

(I) The receiver may request that the court cancel or reduce any compensation that the directors receive pursuant to the company's articles of association, to change the auditors, or to vest in the receiver the debtor's voting rights in its subsidiaries.

(J) Creditors' rights to retain assets included in the debtor's estate will be suspended. If upon conclusion of the insolvency proceedings the assets have not been transferred, they will be returned to the creditor that holds the right to retain them, provided that its claim has not been entirely settled. This stay will not affect retentions established by administrative, tax, labour or social security regulations.

5.3.5 Claw back

As mentioned in section 5.2.2, the Insolvency Law institutes a two-year "suspect period" for the purposes of claw back. Transactions carried out during this period that are detrimental to the debtor's estate may be declared null and void, regardless of the existence of good faith on the part of the debtor. An non-rebuttable presumption that the debtor's estate has been prejudiced will exist when (i) there is a transfer of assets for no consideration, or (ii) debts maturing after the declaration of insolvency are repaid before they are due, unless they are secured with an *in rem* guarantee.

A rebuttable presumption applies to (i) a transfer of assets to a company or a person related to the debtor, (ii) where new collateral is granted in respect of existing obligations or of new obligations replacing existing ones, and (iii) payments before they are due of debts secured with *in rem* guarantees that mature after the declaration of insolvency.

As already indicated, Refinancing Agreements (see section 5.2.2), Spanish Schemes (see section 5.2.3) and OSP (see section 5.2.4) can benefit from claw back immunity if certain conditions are met.

5.3.6 Composition Agreement and Liquidation

Factors that influence either the adoption of a Composition Agreement[5] or a decision to liquidate the debtor's estate include the economic value that can be realized from each option and an assessment of the general health and prospects of the company. Factors governing each process are discussed below.

(A) Composition Agreement

A Composition Agreement may be deemed approved without the need to hold a general creditors' meeting (subject to the receiver's report and the possibility of this being challenged by creditors/the debtor) if an early Composition Agreement is filed by the debtor (jointly with creditors

[5] As per Law 3/2020 (Covid-19 extraordinary regulation), existing Composition Agreement may be amended until 31 March 2021.

representing at least one fifth of the company's total debts or one tenth if the proposal is filed with the petition for insolvency) before the end of the joint phase.

Where early approval is not sought (or where support for such proposed Composition Agreement falls below the threshold set out above), the court will convene a creditors' meeting to negotiate a Composition Agreement. If there are more than 300 creditors, the Composition Agreement may be approved by the agreement of creditors made in writing without holding a meeting. Either the debtor or creditors holding one fifth of the company's outstanding claims can propose a Composition Agreement, which will be submitted to the approval of the creditors at the general creditors' meeting to be called by the court once the joint phase is closed.

There are certain measures and effects provided in the Insolvency Law, already foreseen for the Spanish Schemes, which are applicable to Composition Agreements. In particular, these provisions are related to the valuation of secured claims –"Security Value" (see Section 5.2.3) – creditors' meeting quorums, the majorities required for in-court Composition Agreement approval, as well as the scope, type and extension (even to dissenting secured creditors) of the different measures of the Composition Agreement.

If the debtor enters into insolvency and reaches a Composition Agreement with creditors representing the required majorities by the Insolvency Law, such Composition Agreement will be imposed on both ordinary and subordinated creditors. Likewise, as anticipated, the effects and measures of the Composition Agreement may also extend to privileged creditors (including special privileged – secured – creditors) even in relation to the amount of the claim not exceeding the Security Value, that is, the amount of the secured claim considered as a special privileged claim.

Subordinated creditors are paid under the Composition Agreement once all ordinary creditors (and privileged creditors) are paid. If the Composition Agreement includes an extension, the period of the extension for subordinated creditors begins upon the expiry of the forbearance period of ordinary creditors. Prior to its entry into force, an approved Composition Agreement can be blocked by the debtor filing for liquidation.

(B) Liquidation

The debtor is entitled, at any time during the insolvency proceedings, to request its liquidation instead of trying to reach agreement with its creditors.

The debtor must file for liquidation after a creditors Composition Agreement has been approved when it becomes aware of its renewed insolvency situation or its inability to comply with the Composition Agreement (see Section 5.3.6(A)). In addition, the receivers can request the opening of the liquidation if the business activity ceases. The court itself may seek the liquidation of the debtor if:

(i) no Composition Agreement is filed,

(ii) a proposed Composition Agreement is not approved by the creditors,

(iii) a Composition Agreement is declared null and void by a court, or

(iv) a court declares that the debtor has defaulted on its performance of the Composition Agreement.

Priority of payments:

Where the insolvency proceedings result in the liquidation of the debtor, its debts are paid in the following order.

(A) **Claims against the debtor's estate**, which correspond to certain debts incurred by the debtor following the declaration of insolvency, including: (i) salary claims accrued during the last 30 working days before the declaration of insolvency provided they are not higher than two times minimum legal wage, (ii) legal costs, (iii) claims arising from agreements under which reciprocal obligations of both parties are pending, (iv) receiver's fees and debts incurred during the insolvency proceedings in the ordinary course of business, and (v) 50% of credits that comprise new cash ("fresh money") granted as part of a Collective Refinancing Agreement (see section 5.2.2) or a Spanish Scheme (see section 5.2.3) (unless that cash has been provided by the debtor or by persons related to the debtor). As a general rule, these claims are paid as they fall due and are therefore deducted from the debtor's estate before the distribution to the insolvency creditors begins. However, assets securing special privileged claims cannot be used to pay claims against the debtor's estate, unless those claims have already been paid.

(B) **Special privileged claims**, which relate to secured assets (such as claims secured with mortgages, pledges as well as claims from financial leases and purchase agreements with deferred payments and retention of title, prohibition of disposal or termination conditions). These claims are paid with proceeds obtained from the sale of the assets that secure them. Special privileged claims only comprise the amounts that do not exceed the Covered Amount of the secured claim (see section 5.2.3), which are calculated according to the formula set out in the Insolvency Law. The excess amounts are classified according to their characteristics (i.e. as ordinary or subordinated claims).

Claims secured with pledges over future credit rights are considered special privileged claims if (i) the future credit rights arise from agreements or relations created prior to the declaration of insolvency, and (ii) (a) in the case of possessory pledges, the pledge has been granted in a public document, or (b) in the case of non-possessory pledges (*prenda sin desplazamiento*) the pledge has been registered in the corresponding public registry.

(C) **Ordinary privileged claims**, are paid before those of any creditor other than those referred to above, and include (i) other salary claims and redundancy payments up to a certain threshold, (ii) tax and social security liabilities (up to 50% of the amount owed), (iii) non-contractual civil liabilities, and (iv) in the case of involuntary insolvency, 50% of the amount of the claim of the creditor at whose request the insolvency has been declared and which is not itself considered as a subordinated claim.

(D) **Ordinary claims**, which are neither privileged (special or ordinary) nor subordinated.

(E) **Subordinated claims**, which relate to those credits that will only be paid out once all other claims (privileged and ordinary) have been satisfied in full, and include (i) contractual subordination claims, (ii) claims of companies or persons related to the debtor (e.g. debtor's group companies, shareholders with a significant stake or directors, including shadow or *de facto* directors, liquidators or relatives), except for credits of shareholders that do not originate from loan agreements or other agreements with analogous purposes[6], (iii) unsecured interests and penalty payments, (iv) claims from creditors who have repeatedly failed to comply with the terms agreed with the debtor, and (v) claims for which timely notice was not provided to the receiver.

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6 As per Law 3/2020 (Covid-19 extraordinary regulation), claims arising from cash income granted by persons related to the debtor, since the declaration of the state of emergency, may be considered as ordinary claims (without prejudice of the privileges that may correspond) within the insolvency proceedings declared until 14 March 2022. Additionally, those claims in which persons related to the debtor have been subrogated as a result of the payment of ordinary or privileged claims made on behalf of the debtor, would also be considered as ordinary claims during the same period.

Creditors who have directly or indirectly capitalised all or part of their claims as a result of (i) a Refinancing Agreement entered into in accordance with the provisions set forth under the Insolvency Law; (ii) an OSP; or (iii) a Composition Agreement shall not be considered as persons related to the debtor for the purposes of the classification, within the insolvency proceedings, of the claims arising from the financing granted by such creditors under the referred agreements, even if such creditors have assumed any position within the debtor's governing body as a consequence of such capitalisation.

Likewise, creditors who have entered into (i) a Refinancing Agreement; (ii) a Composition Agreement; or (iii) an OSP shall not be considered as *de facto* directors as consequence of the obligations assumed by the debtor in relation to a viability plan, unless there is evidence of any circumstance that could justify such condition.

The Insolvency Law also encourages the survival of the business of insolvent companies by enabling (not only during liquidation but at any stage of the insolvency proceedings) the sale of the business, or a part of it ("business unit"), as a going concern, especially by adopting an automatic mandatory subrogation of the transferee –it if so chooses– to contracts, licences and authorisations of the debtor, both of a commercial and administrative nature, without the other party's consent being required.

Furthermore, the Insolvency Law expressly indicates that transferees do not have to assume the debts incurred by debtors prior to the transfer of the business unit, unless the transferee expressly assumes such debt subrogation or any regulations provide otherwise. The exemption does not apply if the transferee is related to the debtor (see above).

5.3.7 Other ways of termination of insolvency proceedings

The Insolvency Law also foresees terminating of the insolvency proceedings at any stage when it is proven that all credits have been paid, or that all creditors have been entirely satisfied by other means, or that the situation of insolvency (i.e. the inability to meet payment obligations regularly) has been overcome.

Finally, the Insolvency Law foresees the termination of insolvency proceedings at any time when assets are not enough to pay post insolvency debt, so long as no future claw back actions are envisaged, nor actions claiming liability to third parties, nor the assessment of the proceedings as fraudulent (unless these actions have been assigned, or evidence is provided that their outcome would not be sufficient to repay all claims against the debtor's estate).

5.3.8 Classification of the insolvency. Possible liability of directors.

If insolvency proceedings lead to (i) the company's liquidation, or (ii) a Composition Agreement that provides for a reduction of more than one-third of the company's liabilities to all creditors or those belonging to one or several classes or a stay of more than three years (and provided the Composition Agreement is not breached) the phase to analyse whether the insolvency should be deemed guilty ("*culpable*") or not, will be opened.

Pursuant to the Insolvency Law, an insolvency is considered "*culpable*" if it has been caused or aggravated by the debtor's wilful misconduct or gross negligence (or that of its directors, including *de facto* directors, its general attorneys and all those persons who have fulfilled the aforementioned functions within the two years prior to the insolvency declaration).

Insolvency is presumed "*culpable*", unless proven otherwise, if the debtor, its legal representatives, directors or liquidators:

(A) fail to file an application for insolvency within two months following the date on which they knew or should have known the company was insolvent,

(B) refuse under certain circumstances to capitalise claims or issue convertible securities or instruments without reasonable justification, thus frustrating the execution of a Collective Refinancing Agreement, a Spanish Scheme or an OSP,

(C) breach their duty to cooperate with the court and the receiver and fail to provide them with necessary information for the insolvency, or fail to attend the creditors' meeting when their participation was needed to approve a Composition Agreement, or

(D) fail to issue, audit or, once approved, deposit the annual accounts with the Commercial Registry for the three fiscal years preceding the declaration of insolvency.

The Insolvency Law provides that an insolvency will also be declared "*culpable*" if:

(A) the debtor has not complied with its accounting obligations, has a double accounting system or commits an accounting irregularity that affects the calculation of its net worth or financing situation,

(B) the assets of the debtor are fraudulently transferred out of the debtor's estate during the two years prior to the declaration of insolvency, or

(C) the debtor has carried out acts with the intention of simulating a false net worth position.

In addition to any criminal liability, where the insolvency is declared "*culpable*", the court may impose punitive civil sanctions on the directors and liquidators (including shadow or *de facto* directors and liquidators), general attorneys and any persons who have performed management functions within the two years prior to the insolvency declaration, who are considered liable for the insolvency, as well as their accomplices. Sanctions include disqualification from holding similar posts, loss of rights, orders to return assets received from the debtor, pay damages, etc.

Creditors who, as a consequence of the provisions established under (i) a Refinancing Agreement entered into in accordance with the provisions set forth under the Insolvency Law; (ii) an OSP; or (iii) a Composition Agreement, have special rights of information, special rights to authorise certain transactions of the debtor, or any other surveillance or control rights over the performance of a viability plan shall not be considered as *de facto* directors for the purposes of the classification of the insolvency, unless there is evidence of any circumstance that could justify such condition.

Shareholders may also be considered liable for the insolvency but only in the event that they refuse, without reasonable cause, to capitalise claims or issue equity or convertible-to-equity instruments and in so doing frustrate a possible Collective Refinancing Agreement, a Spanish Scheme or an OSP, provided that shareholders are granted a right of first refusal in the event the creditor transfers the shares or instruments to third parties. A capitalisation will be presumed reasonable if it has been so declared by an independent expert.

If the insolvency results in liquidation and is declared "*culpable*", a civil fine may be imposed on those considered liable for the insolvency (except for the accomplices) for an amount equal to the debts not covered by the debtor's assets. In the event that more than one person is found liable, the court ruling will determine the exact amount that each liable person has to pay, taking into account their actual involvement.

If a creditor alleges any of these circumstances or facts, they are investigated by the court with the assistance of the receiver.

5.3.9 Summary proceedings

The court may choose to conduct summary proceedings if the insolvency does not appear to be particularly complex based on the following circumstances:

(A) the debtor lists less than fifty creditors,

(B) the credits held against the debtor do not exceed €5 million, and

(C) the value of the debtor's assets does not exceed €5 million.

The summary procedure can also be followed when the debtor files an early Composition Agreement proposal or a proposal that includes transferring its assets and liabilities.

The court must follow the summary procedure if (i) the debtor presents, along with the insolvency application, a liquidation plan that contains a binding written offer to buy the business or part of it (which introduces the possibility of implementing a pre-pack arrangement through the rapid sale of the business within the insolvency); or (ii) the debtor has completely ceased its activity and has no employees.

Notwithstanding the foregoing, the court can change to ordinary proceedings, and *vice versa*, if the complexity of the insolvency changes.

The summary procedure offers a much quicker solution for insolvent debtors.

5.3.10 Fresh start

The Insolvency Law refers to the over indebtedness of individuals (i.e. natural persons), be they entrepreneurs or not.

The fresh start provisions are primarily concerned with releasing distressed individuals from their over-indebtedness within the context of insolvency proceedings (by exempting them from liabilities), provided that (i) the individual is a good faith debtor, and (ii) his/her assets have already been liquidated or were insufficient and as a result the insolvency proceedings have concluded.

If these requirements are met, the debtor may be released from his/her outstanding liabilities if the debtor settles claims against (i) his/her estate; (ii) special privileged claims; and, if an OSP has not been attempted, (iii) 25% of ordinary claims.

Conversely, if the debtor is not able to satisfy such claims, and as long as he/she agrees to submit to a payment plan within the next few years, the debtor may be provisionally exempted from all liabilities except those related to public and allowance claims, claims against the estate and privileged claims. In order to be fully exonerated, the debtor must satisfy within such period the non-exempted liabilities or, at least, make a genuine endeavour to do so.

5.4 Insolvency in corporate groups

The Insolvency Law does not regulate specific insolvency proceedings for corporate groups. Accordingly, if a group of companies becomes insolvent, each of the insolvent companies would have its own insolvency proceedings with separate assets and liabilities. This notwithstanding, the Insolvency Law allows companies that belong to the same corporate group to file for joint insolvency, which would mean their insolvencies are coordinated and handled by the same court.

Creditors are also entitled to file a petition for the declaration of insolvency of various debtors if they belong to the same group of companies.

If two or more companies of a group have been declared insolvent separately, any of the debtors or the receivers may request that one court handles all the insolvency proceedings. In the absence of a petition by any of those parties, any of the creditors may file the request.

Insolvency proceedings that have either been declared simultaneously or have been subsequently referred to the same court will be processed in a coordinated manner at the request of the debtor, the receivers or any of the creditors. As an exception to this, if it is not reasonably feasible to separate the assets and liabilities of each company, the receiver may draft a single list of creditors and a single inventory.

5.5 Public register of insolvencies

A Spanish public register of insolvencies, in the form of a website, gives free access to information related to insolvent debtors. It will be connected to other European countries' registers to facilitate the exchange of information regarding insolvency proceedings.

5.6 International insolvencies

Regulation (EU) 2015/848) on insolvency proceedings ("**Regulation (EU) 2015/848**") is applicable in Spain. Regulation (EU) 2015/848 shall be applied to certain proceedings under the Insolvency Law, as referred to in annex A of such regulation:

(A) the Insolvency Proceeding ("*concurso*");

(B) proceedings to conclude an Spanish Scheme ("*procedimiento de homologación de acuerdos de refinanciación*");

(C) proceedings to conclude an OSP ("*procedimiento de acuerdos extrajudiciales de pago*"); and

(D) the proceedings set forth in article 583 and ff. of the Insolvency Law for the public negotiation of a Collective Refinancing Agreement ("a*cuerdos de refinanciación colectivos*"), a Spanish Scheme ("a*cuerdos de refinanciación homologados*"); or an early Composition Agreement ("*propuestas anticipadas de convenio*").

With regard to international insolvencies that are not governed by EU insolvency regulation, it should be highlighted that the Insolvency Law has a private international law system very similar to the European regulation, which enables the recognition of international insolvency rulings through *exequatur* proceedings under the very flexible principle of cooperative reciprocity. As is often the case with respect to the international recognition of judgments, there is an exception that allows the Spanish courts not to recognize an international insolvency ruling when it conflicts with Spanish public policy.

6. SECURITY INTERESTS

6.1 Introduction

According to Spanish law, payment obligations can be secured through the creation of various types of security interests over real and personal property. With the exception of ordinary pledges, where possession of the property provided as security is transferred, all forms of security interest normally only require registration in the relevant registry.

The different types of securities available in Spain under Spanish civil law are described below. Some Spanish autonomous regions have implemented their own regulations that govern security interests over assets located in their region.

6.2 Security interests requiring registration

6.2.1 Real estate mortgages

(A) Purpose

This type of mortgage encumbers the real estate of the mortgagor. Its scope extends to any additions or improvements or indemnities received by the mortgagor in connection with the mortgaged assets for events that take place after the creation of the mortgage. This would include any proceeds obtained by the debtor from the expropriation of the mortgaged real estate and any of its fixtures.

A mortgage may be created as an encumbrance over: (i) real estate; (ii) usufruct rights; (iii) surface rights; (iv) water rights; (v) administrative concessions (mines, roads, railroads, etc.); and, *inter alia*; (vi) certain servitudes (*servidumbres*) -an *in rem* right that a real estate asset (the so-called “dominant unit”), entity or person has over another real estate asset (the so-called “servant unit”)-.

Second ranking mortgages are permitted under Spanish civil law.

Maximum-amount mortgages (*hipotecas de máximo*), which grant security for various obligations up to a fixed maximum amount, are also permissible. These are, generally, used to cover the various obligations that arise under long-term commercial relationships.

Floating mortgages (*hipotecas flotantes*) are a type of maximum amount mortgage widely used in the Spanish market. They grant security for one or several obligations of any type, whether present or future.

(B) Documents and formalities

A real estate mortgage must be executed in the form of a public deed (*escritura pública*) before a Spanish notary public. The deed must then be filed and registered with the land registry (*Registro de la Propiedad)* of the area in which the relevant real estate asset is located.

The granting of a mortgage securing the payment obligations incurred under an agreement governed by the laws of a foreign jurisdiction may give rise to practical and legal problems. Firstly, the documents that are to be registered must be translated into Spanish and the agreement documents must also be translated to allow the registrar to verify that the provisions of the mortgage are valid under Spanish law. Secondly, the entire agreement, or a significant portion of it, has to be executed in Spain as part of the mortgage deed.

(C) Costs

The cost of a mortgage, excluding legal fees, ranges between approximately 1.5% and 3% (in cases of security for loans and credits) of the secured amount (which includes principal, interest, indemnities and legal costs) (the "**Secured Amount**"). Such costs include:

(i) stamp duty,

(ii) notarial fees, and

(iii) land registry fees.

(D) Enforcement

According to Spanish law, a secured party is not entitled to appropriate the collateral affected by a pledge or a mortgage, nor to dispose of the collateral as it deems fit; the so-called *"pacto comisorio*" or appropriation of collateral by the creditor is prohibited as a general rule. Because of this prohibition, a creditor must initiate the enforcement of the security interest and use as payment of the debt the proceeds obtained in the sale of the collateral in a public auction or through certain other proceedings designed to obtain the best possible price from the sale of the collateral under reasonable circumstances. These proceedings are monitored by a court (judicial procedure) or a notary public (notarial procedure) depending on the case.

Under the judicial procedure, the parties may agree upon a specific procedure to sell the mortgaged property. The court clerk (*letrado de la Administración de Justicia*) may entrust the sale of the property to a specialized person or entity. The notarial procedure is carried out through an online auction.

A secured creditor that wishes to accept title to the property in satisfaction of the Secured Amount may be required to acknowledge full or partial satisfaction of its claim (as provided by law).

Mortgages over assets used for professional or business activities of an insolvent debtor (*concursales*) cannot be enforced until the earlier of the following occurs: (i) a Composition Agreement is reached with the insolvent debtor, (ii) a year has elapsed since the insolvency was declared by the court without the liquidation of the insolvent estate having started, or (iii) the liquidation proceedings starting.

(E) Advantages of a mortgage

Mortgages offer significant legal advantages:

(i) they extend to interest accruals on the amount of the debt that is secured,

(ii) Composition Agreements only apply to debts secured by a mortgage if the mortgage holder has voted in favour of the agreement, and

(iii) the proceeds of the enforcement of the encumbered asset are allocated to the payment of the credit secured by the mortgage before other debts (*deudas de la masa*).

6.2.2 Security interests over movable assets

(A) Chattel mortgage (*hipoteca mobiliaria*) and pledge without transfer of possession (*prenda sin desplazamiento*).

There are two types of security interests over movable assets that can be created when the collateral cannot be delivered to the pledgee as required under a normal pledge: (i) chattel mortgages and (ii) pledges without transfer of possession.

(i) Purpose

(a) A chattel mortgage may be created as an encumbrance on (i) commercial businesses (*establecimiento mercantil*), including the premises of the business and its facilities, its commercial signs, lease and transfer rights under leases (*derecho de traspaso*), as well as stock and machinery, provided that they are part of the mortgaged business; (ii) vehicles (cars, trains and other motor vehicles); (iii) airplanes; (iv) industrial machinery; and (v) intellectual property rights such as trademarks, patents and copyright.

Unlike real estate mortgages, second ranking chattel mortgages are not permitted under Spanish civil law (without taking into account regional regulations).

(b) A pledge without transfer of possession may be created as an encumbrance over (i) agricultural business property, such as a harvest, products of a business, animals and tools; (ii) machines and other movable goods, which may be identified by their particular characteristics, such as their trademark, model, manufacturer number, or other analogous characteristics, and with regard to which a chattel mortgage may not be established; (iii) inventories and raw materials that are located in a certain place, building or store; (iv) artistic objects such as paintings, sculptures and books; (v) credit and other rights held by holders of contracts, licences, concessions or subsidiaries, provided that their sale to a third party is permitted; and (vi) trade receivables, including future receivables provided that they are considered financial collateral as described in section 6.3.3.

(ii) Documents and formalities

The creation and perfection of a chattel mortgage or a pledge without transfer of possession requires (i) the execution of a deed granted by a notary public, and (ii) the registration of the deed with the registry of chattel mortgages and pledges without transfer of possession (*Registro de Hipoteca Mobiliaria y Prenda sin Desplazamiento*).

(iii) Costs

The costs arising from these securities are similar to those of a mortgage over real estate.

(iv) Enforcement

The enforcement procedure for these security interests mirrors that for a real estate mortgage; judicial and notarial procedures are also available.

(v) Advantages of a chattel mortgage and pledge without transfer of possession

The granting of a chattel mortgage or a pledge without transfer of possession offers the same benefits to creditors as that of a real estate mortgage. Note that unlike real estate mortgages, the mortgaged or pledged property cannot be transferred without the prior consent of the creditors.

6.3 Non-recordable security interests

An ordinary pledge of movable property is an easier and more efficient way of creating security over assets. However, ordinary pledges are not flexible since they require the transfer of possession of the property to the creditor or third party. Pledges over shares can however be extremely practical if they allow the pledgee to take immediate control of the management of the company whose shares have been pledged prior to or when an event of default occurs, by allowing the pledgee to exercise the voting rights of the pledged shares.

6.3.1 Pledge over shares

(A) Purpose

A pledge over shares of a company to secure obligations.

Although not expressly regulated under Spanish civil law (without taking into account regional regulations), second ranking pledges are widely used.

(B) Documents and formalities

A pledge must be notarized by a Spanish notary public. Certificates of the pledged shares must be delivered by the pledgor to the pledgee. A pledge of registered shares must be recorded in the shareholders' register of the company whose shares are being pledged, and the pledge over shares must be reflected in the document evidencing title of ownership.

The shareholders of the company whose shares are being pledged may need to pass a resolution amending the company's by-laws to ensure that the pledgee acquires control over the company.

(C) Costs

Notarial fees are calculated as set out above for mortgages. Neither stamp duty (a very significant burden) nor registration fees are incurred.

(D) Enforcement

For the enforcement of a pledge, judicial and notarial procedures can be followed, although the latter is faster and more efficient. The judicial procedure is identical to the procedure described in section 6.2.1(D). A third enforcement procedure is possible when the pledge over shares concerns financial collateral, as defined in section 6.3.3.

A pledgee that acquires the pledgor's shares will not in its capacity as a shareholder be personally liable for environmental, labour or other obligations incurred by the debtor except in very limited circumstances based on fraud or the breach of regulations.

(E) Advantages of a pledge over shares

It offers the same benefits to creditors as the chattel mortgage in the event of insolvency. It does not, of course, afford control of the underlying assets of the company prior to foreclosure. As long as there is a pledge, the pledgee, if so provided in the pledge deed, may be entitled to receive any interest, dividends or other proceeds derived from the pledged assets as payment of the existing debt.

6.3.2 Pledge of credit rights

Spanish law also allows the pledge of credit rights, such as credit rights derived from bank accounts, the balance of a bank account, insurance policies, acquisition finance transactions or rights derived from claims against the vendor.

The steps to be followed to establish a pledge of credit rights are similar to those referred to in section 6.3.1, with the following specific requirements:

(A) A pledge must be executed as a guarantee of a principal obligation and any pledged credit right must be the property of the pledgor; and

(B) A notification of the creation of the pledge may have to be provided to the third party debtor in question (e.g. the bank in the case of a pledge of a bank account), instructing such third party debtor to pay directly to the pledgee if certain circumstances occur. Once notice is received by the third party debtor, any payment made by the third party debtor to the assignor, instead of to the assignee, will not release the third party debtor. It is not necessary to obtain an acknowledgement of receipt of such notification from the third party debtor.

6.3.3 Financial collateral

Financial collateral may be granted by transferring full ownership of the collateral or by pledging the collateral. The courts have been applying criteria under which financial collateral must meet the following conditions:

(A) Subjective conditions

One of the parties must be:

(i) a public authority,

(ii) a central bank,

(iii) a credit entity, a collective investment institution or securitization fund or the management company of any of these, a pension fund or other financial entity (an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry out one or more activities, e.g. issuing and administering means of payment, issuing guarantees and commitments and safekeeping and administration of securities), or

(iv) a governing body of secondary markets, a management company for registration, clearing and settlement systems or a clearing house,

and the other party must be a legal entity, except in the case of (iv), when the other party may be a natural person.

(B) Objective conditions

The subject matter of the collateral must be cash, credit rights, securities or financial instruments or rights over any of the foregoing.

(C) Documents and formalities

The financial collateral arrangement and the contribution of the collateral must be evidenced in writing or in a legally recognized electronic equivalent. The documents do not need to be notarized or registered.

If the financial collateral arrangements consist of a pledge, the parties may agree (i) except for those cases in which the subject matter of the collateral is a non-fungible credit right, to allow the collateral provider to replace the collateral, that is, to make use of the collateral and, simultaneously, replace it with collateral which has substantially the same value; and (ii) except for those cases in which the subject matter of the collateral is a credit right, to allow the collateral taker to dispose of the collateral, that is, to make use and dispose of the collateral as titleholder, and replace it with equivalent collateral (which is not the same as collateral of equivalent value).

(D) The parties may also agree to place additional securities or cash as collateral (which is considered part of the original collateral for all legal purposes) in situations in which the price of the collateral or the amount of the secured principal financial obligation varies.

(E) Costs

Neither stamp duty, notarial fees, nor registration fees are incurred.

(F) Enforcement

There is no legal obligation to enforce collaterals in any prescribed manner. The parties may establish a method to enforce the collateral via a financial collateral agreement.

In addition, the creditor may acquire the collateral if the parties have negotiated this right in the financial collateral arrangements (and upon a valuation of the financial instruments).

7. INVESTMENT REGULATIONS

7.1 Investment framework

The Royal Decree 664/1999 of 23 April on foreign investments (the "**FI Decree**") brought Spanish law into complete conformity with EU standards regarding the free movement of capital and, in particular, with respect to Article 73B of the Treaty of Maastricht, which calls for the free movement of capital and prohibits restrictions on capital movements, not only between EU Member States, but also between these states and third countries. The general rule (leaving aside the new foreign investment screening mechanism approved by Spanish government in the wake of the Covid-19 crisis which is outlined in Section 7.7) is that an investment or divestment must be notified to the Foreign Investments Registry after it has been made. This notification allows the authorities to monitor investments for administrative, economic and statistical purposes only.

7.2 Sector-specific regulations: carve-out

Existing Spanish sector-specific restrictions affecting foreign investment still apply. In particular, foreign investments relating to air transportation, radio, minerals and raw materials of strategic importance, as well as mining rights, television, gaming, telecommunications, private security, manufacturing, commercialization or distribution of arms and explosives for civilian use and activities related to national defence must be assessed separately. However, in addition to the relevant sector-specific requirements, the FI Decree will be applicable to foreign investment in these sectors.

7.3 Investors subject to regulation

The FI Decree deals with both foreign investment in Spain and Spanish investment abroad, using residence as the criterion for determining what constitutes foreign investment. Foreign investments in Spain can be made by (i) individuals (whether foreign or Spanish nationals) not residing in Spain, (ii) entities domiciled abroad, and (iii) foreign sovereign public entities. In turn, Spanish investments abroad can be made by (i) individuals (whether foreign or Spanish nationals) residing in Spain, and (ii) entities domiciled in Spain.

A change of residence may entail a change in the classification of the investment, and must be declared within six months from the date it takes place.

7.4 Foreign investment

Foreign investment in Spain or Spanish investment abroad is defined in the FI Decree as (a) direct investment in companies by subscribing, purchasing or otherwise acquiring stock or stock equivalents, (b) the creation of branches and allocation of capital to the same, (c) subscription of negotiable securities representing loans, (d) participation in mutual funds, (e) acquisition of real estate if its value exceeds €3,005,060.52 if located in Spain, or €1,502,530.26 if located outside Spain or, regardless of the amount, if the investment proceeds, goes to or comes from a tax haven, and (f) creation or participation in shared accounts (*cuentas en participación*), foundations (*fundaciones*), economic interest associations (*agrupaciones de interés económico*), cooperatives (*cooperativas),* and community property *(comunidades de bienes)*, in each case where the value exceeds €3,005,060.52 for foreign investment in Spain or €1,502,530.26 for Spanish investment abroad, or, regardless of the amount, if the investment is made in or comes from a tax haven.

7.5 Reporting rules

7.5.1 General rule: ex post facto reporting

There is a general obligation to report foreign investments and any subsequent divestments thereof after the transaction has taken place. The declaration must be made to the Investment Registry of the Ministry of Industry, Trade and Tourism (*Registro de Inversiones del Ministerio de Industria, Comercio y Turismo*). Companies and other legal entities must submit such declaration by electronic means; individuals may submit their declarations electronically or on paper.

(A) Investor declarations

An investment or divestment must generally be reported by the investor within one month of being made. Where a Spanish notary public is involved, the notary public must submit information about the investment to the Investment Registry.

(B) Exceptions

(i) Foreign investment in Spain

The following must be reported by the relevant third party and not the investor:

(a) investments in negotiable securities or non-negotiable securities that have been deposited or registered with an entity that renders depository or investment services or is a credit or financial institution must be declared by such entity;

(b) investments in registered shares of a Spanish company must be declared by the Spanish company; and

(c) investments in Spanish mutual funds must be declared by the managing company of the fund.

(ii) Spanish investment abroad

The reporting requirements for Spanish investors abroad involve a direct declaration, except investments in negotiable securities made through resident entities that render investment services, by credit or financial institutions or entities that perform such services and act as nominee for and on behalf of the investor.

7.5.2 A priori reporting

When a foreign investment is made in or comes from a tax haven, the investor must submit a declaration before making the investment, in addition to fulfilling the *ex post facto* reporting obligation after the investment has been made.

There are, however, several exceptions to this rule:

(A) Both foreign investment in Spain and Spanish investment abroad, if the investment relates to

(i) negotiable securities, whether or not they are publicly issued or offered and whether or not they are traded on an official secondary market, or

(ii) participation in mutual funds.

(B) Foreign investments in Spain not exceeding 50% of the Spanish company's share capital.

(C) Spanish investments in foreign companies that do not influence the management or control of the company (i.e. investments of less than 10% of the share capital or that do not allow the investor to nominate a member of the company's management body).

7.5.3 Other reporting requirements

(A) Foreign investment in Spain

An annual report on any changes in the investment during the course of the year must be filed by:

(i) branches of foreign entities in Spain (regardless of the amount of share capital or equity); and

(ii) Spanish companies:

(a) in which foreign investors own 50% or more, or which have at least one foreign investor with a shareholding of at least 10%; and

(b) which have a share capital or net worth of more than €3,005,060.52 or are holding companies obliged to prepare consolidated annual accounts for commercial purposes in Spain.

(B) Spanish investment abroad

Residents with foreign investments in (i) branch offices, (ii) companies engaged in the direct or indirect holding of shares in other companies, or (iii) companies with a net worth in excess of €1,502,530.27, where the investors hold over 10% of the share capital of the company or of the voting rights, must file an annual report regarding any changes in the investment during the course of the year.

7.6 Suspension of the liberalization rules: "safeguard" clauses

The FI Decree provides for the possible suspension of free investment if such an investment affects or may affect activities relating to the exercise of public powers or public order, health and safety.

The liberalization rules are automatically suspended with respect to companies carrying out activities directly related to national defence. Prior authorization from the Council of Ministers is therefore always required, except when the company in which the investment is to be made is listed on the stock exchange, in which case, prior authorization is required only if the investment (i) exceeds 5% of the capital of such company, or (ii) allows the investor to appoint a member of the company's management body.

7.7 New foreign investment screening mechanism in Spain

7.7.1 General information on the Screening Mechanism

Further to the possible suspension of the liberalization rules related to foreign investments, as mentioned in section 7.6 above, the Spanish government has introduced, in the wake of the Covid-19 crisis, new screening mechanisms for certain investments made by non-EU and non-European Free Trade Association ("**EFTA**") residents (and on a temporary basis certain EU/EFTA investors if they invest in listed companies or more than €500 million in private companies as further explained below), based on public order, public health and public security reasons (the "**Screening Mechanism**").

Consequences of breach of this new mandatory regime include rendering the relevant transaction invalid and without any legal effect (until the required authorization is obtained) and significant fines (up to the transaction value).

The Screening Mechanism implements in Spain the guidance issued by the European Commission in March 2020, which called upon EU Member States to "make full use already now of its foreign direct investment screening mechanisms to take fully into account the risks to critical health infrastructures, supply of critical inputs, and other critical sectors as envisaged in the EU legal framework".

The Screening Mechanism aligns part of the Spanish foreign investment legal framework with Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investments into the EU. Certain provisions of Regulation 2019/452 ─ such as the list of sectors affecting public order and public security or the definition of state-owned enterprises and other similar investors─ are mirrored in the regulations establishing the Screening Mechanism.

7.7.2 Main terms of the Screening Mechanism

The Screening Mechanism can be summarized as follows:

(A) Under the ordinary procedure, prior authorization from the Spanish Council of Ministers (*Consejo de Ministros*) is required to close foreign direct investments subject to it. The legal term to issue a decision is six months.

(B) On a transitional basis, until the Screening Mechanism is further developed, a fast-track 30-day procedure applies for investments (i) agreed but not closed prior to 17 March 2020; and (ii) those below €5 million. Investments below €1 million are not subject to the Screening Mechanism.

(C) Under both the ordinary and fast-track procedures, the investment will be deemed unauthorised if the relevant authority does not respond to the authorization request within the corresponding legal term.

7.7.3 Definitions of "foreign investor" and "foreign direct investments" for the purposes of the Screening Mechanism

(A) Foreign investors are ("**Foreign Investors**"):

(i) non-EU and non-EFTA residents; and

(ii) EU or EFTA residents beneficially owned by non-EU and non-EFTA residents. This occurs when non-EU and non-EFTA residents ultimately possess or control, directly or indirectly, more than 25% of the share capital or voting rights of the investor, or otherwise exercise control, directly or indirectly, over the investor.

In addition, on a temporary basis (as from 19 November 2020 until 30 June 2021) the following EU/EFTA investors are also considered "foreign investors", if they invest in listed companies, or more than €500 million in private companies:

(i) EU and EFTA residents in countries other than Spain, and

(ii) Spanish residents beneficially owned by EU or EFTA residents in countries other than Spain, that is, those in which a non-Spanish EU or EFTA resident ultimately owns or controls more than 25% of the share capital or voting rights of, or otherwise exercises control over, the Spanish resident entity.

(B) Foreign direct investments are:

(i) investments that result in a foreign investor reaching a stake of at least 10% of the share capital of a Spanish company; and

(ii) any corporate or legal transaction or business action by which a foreign investor acquires control over a Spanish company; the possibility of exercising decisive influence as a result of an agreement or through the ownership of shares or interests in another person (directly or indirectly) is deemed to constitute "control" for these purposes.

7.7.4 Foreign direct investments subject to the Screening Mechanism

Not all foreign direct investments are subject to the Screening Mechanism - whether they are will depend on (i) the sector in which the target carries out its business; and (ii) the personal circumstances of the foreign investor, regardless of the business of the target.

(A) **Objective criteria:** foreign direct investments in the following sectors are subject to the Screening Mechanism:

   (i) Critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, sensitive facilities, and land and real estate crucial for the use of such infrastructure.

   (ii) Critical and dual-use technologies, key technologies for industrial leadership and training, and projects of particular interest to Spain.

   (iii) Supply of critical inputs, energy, strategic connectivity services, raw materials and food security.

   (iv) Sectors with access to or control of sensitive information, including personal data.

   (v) Media.

(B) **Subjective criteria**: applicable only to Foreign Investors, regardless of the business of the target:

   (i) Foreign Investors directly or indirectly controlled by a non-EU/EFTA government, including state bodies, armed forces or sovereign wealth funds; the possibility of exercising decisive influence as a result of an agreement or through the ownership of shares or interests in another person (directly or indirectly) is deemed to constitute "control" for these purposes.

   (ii) Foreign Investors that have already made an investment affecting national security, public order or public health in another EU Member State.

   (iii) If there is a serious risk that the Foreign Investor engages in illegal or criminal activities affecting national security, public order or public health in Spain.

7.8 Exchange control

EU Directive 88/361/EEC of the European Council of 24 June lifted all restrictions on financial transactions between residents and non-residents of Spain. It still provides for certain mechanisms for notifications and furnishing information that allow the Spanish authorities to calculate the Spanish balance of payments and to maintain statistical and tax control of monetary flows, but these mechanisms can no longer be deemed restrictions to the free flow of capital. Acts, business dealings, transactions and operations between residents and non-residents that give or may give rise to foreign collections and payments and to transfers to and from abroad or to changes in credit and debtor financial positions with foreign countries may be conducted freely without any limitation other than as provided by applicable laws (including those regulating specific sectors of the economy).

Payments, receipts and transfers between residents and non-residents, in national or foreign currencies, must be made through credit institutions, normally banks, registered with the Bank of Spain. Where payments and collections between residents and non-residents made in coins, bank notes or bearer notes, in national or foreign currencies, exceed €6,010.12, they must be declared within thirty days following the date of payment. Where Spanish cross-border movements of such means of payments exceed €10,000, they must be declared by filing form S-1 in the manner set out in Order EHA/1439/2006.

The Spanish Council of Ministers can resolve to apply measures adopted by the EU or other international bodies of which Spain is a member via certain safeguard and exceptional measure clauses. In addition, acts, business dealings, transactions and operations that owing to their nature, form or conditions affect or may affect activities that (i) are related, even incidentally, to the exercise of public powers, (ii) are directly related to national defence, or (iii) affect or may affect public order, safety or health, may be suspended.

The provisions of the Spanish exchange control system apply to payments, receipts and transfers generated by foreign investments in Spain. No prior authorization is required for transactions between residents and non-residents that involve payments within or outside of Spain. Nevertheless, transactions exceeding €1,000,000 must be reported to the Bank of Spain, in accordance with Circular 4/2012, 25 April of Bank of Spain. The frequency and content of such notifications depends on the monetary value of the transactions.

Spanish banks may freely accept foreign currency deposits, the placement of funds in foreign currencies to facilitate client transactions and the financing of imports and exports in foreign currencies within certain limits.

There are two types of bank accounts that foreigners may open in Spain.

(A) **Non-resident accounts in Spain**

(i) May be held in euros or a foreign currency.

(ii) The balances are fully convertible.

(iii) Evidence of the accountholder’s identity must be provided.

(B) Resident accounts in Spain and abroad

(i) May be held in euros or a foreign currency.

(ii) May be held in

(a) registered entities in Spain, and

(b) foreign branches of registered Spanish entities and foreign banks.

7.9 Mergers and acquisitions

7.9.1 Mergers

Mergers are strictly regulated by Spanish corporate law.

Law 3/2009, of 3 April, on structural modifications (*modificaciones estructurales*) provides a simplified process for mergers in which the merged company is a subsidiary that is at least 90% owned by the absorbing company - in such cases, certain requirements do not have to be met (e.g. approval by shareholders’ meetings of the subsidiaries or obtaining external valuation reports, if applicable).

Furthermore, certain requirements do not apply if there is no public company involved in the merger or when the merger is approved by all the shareholders of the merging companies in a shareholders meeting.

Except for these simplified cases as regulated by Law 3/2009, the full process will need to be followed: the directors of each company involved must approve a merger memorandum that sets out details of the merger and the companies involved and prepare a report on the merger; an expert report assessing the merger may also have to be approved, on a case by case basis. Additionally, a merger balance sheet must be prepared, which must be audited if the companies are subject to an audit requirement. The shareholders’ meeting of each company must also approve the merger with qualified majorities. The shareholders, certain third parties with special rights and the representatives of the employees of each of the companies involved are entitled to review the following documentation before the shareholders’ meetings called to approve the mergers are held:

(A) the merger memorandum;

(B) where applicable, a memorandum prepared by experts regarding the valuation of the assets of the companies involved in the merger and the exchange ratio;

(C) where applicable, the report prepared by the directors of each company;

(D) the companies' financial statements;

(E) the merger balance sheet;

(F) the draft merger deed;

(G) the by-laws of the merging companies; and

(H) the identity of the directors of each company.

Once the merger has been approved by each company's shareholders' meeting, the merger agreement must be published in the Official Gazette of the Commercial Registry and in a newspaper of the province in which each company has its registered address. The publication referred above will not be necessary when the merger agreement is communicated individually in writing to all the shareholders and creditors, by a procedure that ensures the receipt of such merger agreement at the address that appears in the documentation of the company.

The companies' creditors then have the right to oppose the merger during a period of one month following such publication (although this opposition may be overcome through the provision of bank guarantees).

Finally, the merger process finishes with the granting of a public deed and the registration of the merger public deed with the Commercial Registry. Once registered, the merger is effective and enforceable *vis-à-vis* third parties.

A merger process typically takes between three and six months to complete.

7.9.2 Acquisitions

Acquisitions can be made either through the acquisition of the assets and liabilities of a business (asset deal) or the purchase of shares (share deal).

A transfer of assets and liabilities is more common when the company owning the business carries out other activities which are not the subject of the acquisition, or where the parties do not wish the purchaser to acquire all the assets, risks and liabilities of the target business.

In an asset deal, the buyer acquires the assets and liabilities which are expressly and specifically listed in the acquisition agreement. If the sale of assets implies a transfer of an on-going concern, in accordance with Spanish law, the purchaser assumes the tax, labor, social security, soil pollution and other contingencies related to the business. However, some exceptions to the tax liabilities can be agreed if certain tax certificates are obtained from the national, regional and local tax authorities. This does not mean that the seller is released from such liabilities, but rather that the seller and the buyer will both be liable. Aside from the above, in an asset deal the purchaser does not acquire any liabilities of the target business not expressly set out in the acquisition agreement.

In asset purchases the transferor transfers an identifiable business as an "on-going concern". In any event, the parties are not precluded from partially or fully waiving the application of general Spanish legal rules for purchase agreements and are therefore, free to agree upon the representations, warranties and indemnifications which they deem appropriate. In practice, the manner in which Spanish acquisitions are documented closely follows the standard international pattern.

Regarding procedural matters, a transfer of assets and liabilities tends to be a more complex process than a transfer of shares due to the fact that it does not imply a universal transfer of the business and the contractual relationships linked to it; rather, a transfer of each individual asset, good, right and agreement must be carried out. In this sense and as a general rule, the consent of creditors and counterparties to the agreements must be granted before the transfer (except in cases in which the assignment is expressly allowed in the agreement to be assigned). Finally, the assignment of certain agreements may have an economic impact; for instance, the assignment of a lease agreement usually entitles the landlord to increase the rent.

On the other hand, in a share deal the purchaser acquires all the target business's assets and liabilities, both known and unknown, disclosed and undisclosed, and of whatever kind (e.g. tax, labour, environmental, contractual, etc.) through the acquisition of the shares in a target company holding such business.

The acquisition of shares in a public company listed on a Spanish stock exchange is subject to additional regulations as compared to a private acquisition, including those regarding public tender offers. A public tender addressed to existing shareholders in the target company is mandatory when the purchaser acquires control of the listed company, which is essentially measured in terms of shareholding stake or influence over the board. Public tenders must be submitted for approval to the CNMV, the regulatory agency of the Spanish stock markets.

Likewise, specific business sectors (for example, banking, insurance and securities) may be subject to specific restrictions or requirements, including in many cases a requirement to obtain the prior consent of the regulatory authority concerned if the purchase exceeds certain thresholds.

7.9.3 Competition law: merger control

Spanish merger control rules are contained in Law 15/2007 on the Defence of Competition (*Ley de Defensa de la Competencia*, "**LDC**") and the Regulation on the Defence of Competition approved by Royal Decree 261/2008.

(A) Definition of a concentration between undertakings

The LDC defines a concentration as an operation leading to a lasting change in the structure of control of the undertakings concerned by means of:

(i) a merger of two or more previously independent undertakings;

(ii) the acquisition of control of all, or part of one or more undertakings; or

(iii) the creation of a joint venture and, in general, the acquisition of joint control of an undertaking that performs all the functions of an autonomous economic entity on a lasting basis.

With regard to joint ventures, the definition adopted by the LDC refers to the concept of a full function joint venture, as provided for by EU Regulation 139/2004 (the "**EC Merger Regulation**").

The acquisition of a controlling interest will not qualify as a "concentration" if:

(i) it involves the redistribution of equities or assets within one group of companies;

(ii) securities are temporarily held by credit or financial institutions or by insurance companies, as well as certain financial holding companies, subject to the satisfaction of specific conditions; or

(iii) control is acquired by an office-holder pursuant to insolvency regulations.

(B) Mandatory notification to the Spanish National Markets and Competition Commission ("**CNMC**")

Concentrations are subject to compulsory notification to the CNMC if one of the two following thresholds is met:

(i) a 30% share of the national market or a defined geographical market is acquired or increased as a result of the concentration. However, there is no need to file the compulsory notification, even if the 30% threshold is met, when the global turnover in Spain of the target company or of the purchased assets in the last financial year does not exceed €10 million, provided that the undertakings concerned do not have an individual or combined market share equal to or higher than 50% in any affected market; or

(ii) the combined aggregate turnover in Spain of all the participant undertakings during the last financial year exceeds €240 million, provided that at least two of them achieve an individual turnover in Spain of more than €60 million.

For calculation purposes, turnover includes the overall sales of the economic group to which the acquiring undertaking belongs (excluding intra-group turnover). Special rules apply to calculate the turnover of specific undertakings, such as investment funds, financial entities and insurance companies.

Concentrations meeting these thresholds must be reported to the CNMC prior to their execution or implementation; however, there is no specific filing deadline, except in the case of a public bid, which must be notified within five days of submission for authorization to the CNMC. Filings can be made as from the moment that the parties have agreed to a proposal of a concentration (which includes the manner, terms and conditions under which the concentration is going to be implemented).

If there is uncertainty regarding whether or not the undertakings meet the notification thresholds, the parties may consult the Competition Directorate of the CNMC prior to filing. The LDC encourages pre-notification contacts, and a draft notification may also be submitted.

The parties may submit a simplified notification form where:

(i) the parties to the concentration are not engaged in business activities in the same relevant product and geographic markets, or in a market which is upstream or downstream of a market in which another party to the concentration is engaged;

(ii) the parties' combined share in the market is very small (less than 15% in the same market or less than 30% if the addition is lower than 2%; and less than 25% in upstream and downstream markets), such that it will not significantly affect competition;

(iii) a party acquires sole control of an undertaking which it jointly controlled with another party prior to the transaction; or

(iv) the transaction concerns a joint venture where its current and projected activities in Spain are marginal (annual turnover not exceeding €6 million) or non-existent.

However, there are some concentrations that, even if the above requirements are fulfilled, must be notified by means of an ordinary (i.e. long) form. These include:

(i) concentrations in which the notifying undertaking requests the lifting of the suspension of execution;[7] or

(ii) when the CNMC argues that an ordinary form is needed to proceed with an appropriate investigation into possible competition problems.

The implementation of the concentration is subject to obtaining express or tacit (i.e. if a decision is not issued within the applicable statutory deadline) clearance; however, the CNMC Council (the body that makes the final decision on notified mergers) may grant an exception. In takeover bids, the transaction may be implemented, provided that the acquirer does not exercise voting rights attached to the purchased shares, or does so only to safeguard the value of its investment.

(C) Failure to notify the concentration to the CNMC: imposition of fines

If the parties fail to notify the CNMC of a concentration exceeding the thresholds mentioned above, the CNMC may require the parties to do so. The notification must then be filed within 20 days after the receipt of the request from the CNMC. Notifications filed at the request of the CNMC may not benefit from the tacit authorization described below.

Failure to report the transaction following the request from the CNMC (or late notifications in the case of takeover bids), is considered a minor infringement for which a fine may be imposed of up to 1% of the turnover of the undertakings involved. The CNMC may also impose fines of up to €12,000 for each day of delay in the notification of the concentration after the 20 days granted by the CNMC.

Furthermore, the CNMC may impose fines of up to 5% of the turnover in Spain of the undertakings involved if the concentration is put into practice before clearance[8] (except where an exception has been granted by the CNMC Council), since implementation before clearance constitutes a serious competition infringement. The infringing company may benefit from a reduction of at least a 20% for admission of the existence of an infringement and of at least an additional 20% for

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7 Undertakings may not proceed with a transaction until authorization from the CNMC is obtained; until that time the transaction is subject to a "suspension of execution".

8 There are precedents in which the Spanish authorities have imposed fines for the infringement of the suspension obligation. The amounts imposed range from €1,000,000 (in two cases) to lower amounts of €819,000, €286,000, €150,000, €143,000, €89,000, €75,000, €61,600, €50,000, €46,500, €20,000, €12,800 or €3,000.

voluntary payment of the fine, provided that these conditions are satisfied prior the issuance of the resolution by the CNMC declaring the existence of such infringement.[9]

Whereas minor infringements expire after one year, serious infringements expire after two years, with such periods commencing on the day when the infringement was committed.

(D) Procedure

The CNMC Council, having received a case report and proposal from the Competition Directorate of the CNMC must, within one month of notification, either clear the transaction or open an in-depth investigation if it appears that it may impede the maintenance of effective competition in the relevant market(s). The Competition Directorate may issue requests for information (either to the parties to the concentration, to other stakeholders or to regulatory bodies), and such requests for information may suspend the legal deadline to issue the decision. The parties may, within 20 days after the notification, propose remedies or commitments as initially notified during this first phase of the procedure in order to obtain conditional clearance. If such remedies are offered, the duration of the proceedings is extended by ten days. Due to the short duration of the proceedings in the first phase, at this stage remedies are only accepted when the competition concerns that the transaction poses are "easily identifiable" and can be "easily overcome by such commitments".

If the case is subject to an in-depth investigation and the second phase of the proceedings is opened, the CNMC Council may, within two months after the decision to open the second phase, either authorize (conditionally or unconditionally) or prohibit the transaction. During the 35 days after the decision of the CNMC Council to initiate an in-depth investigation, the parties may also propose commitments (in which case the procedure is extended for an additional 15-day period). In the Spanish merger control system the CNMC may also unilaterally impose conditions in cases in which the parties have not offered commitments or if the proposed remedies are deemed insufficient. However, the CNMC has made a very limited use of this possibility and has shown a preference towards reaching agreed solutions with the parties.

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[9] Article 85 Law 39/2015 laying down general rules for administrative procedures before public administrations. This possibility has been put expressly recognised by the CNMC Council in its Decision on 28 November 2019, case file SNC/DC/093/19 *Grupo Nufri*, in which it awarded both reductions resulting in a total 40% reduction over the original fine.

Whereas clearance decisions take effect immediately, decisions prohibiting or granting conditional approval are submitted to the Ministry of Economy, which has 15 days to decide whether or not to forward them to the government. If it decides not to forward a decision to the government, the decision takes immediate effect. Otherwise, the government has one month to confirm or modify the CNMC's decision on "public interest" grounds. Such grounds include (i) defence and national security, (ii) protection of public safety or public health, (iii) free movement of goods and services within the national territory, (iv) the environment, (v) promotion of technological research and development, and (vi) guaranteeing the objectives sought by sector-specific regulations.

In conclusion, the entire procedure may take up to four months (or five months if the government intervenes) excluding pre-notification contacts. In exceptional cases, the duration will be extended for reasons such as prohibitions or conditional clearance, requests for information, or preparation of non-binding reports in regulated sectors, such as telecoms and energy.

(E) Publicity

The filing of the notification must be made public (just the identity of the parties and the type of transaction). The CNMC decisions (first and second phases) must also be published. Confidential information is removed from the public version of the decision made available on the CNMC's website.

(F) Filing fees

An administrative fee is charged for the filing of a concentration notification in Spain. The fee currently ranges from €5,502.15 to €109,806, depending on the total sales in Spain of the parties involved in the concentration. Concentrations that follow the simplified procedure (see section (B) of this section 7.8.3) benefit from a lower fee of €1,545.45. These fees are fixed annually in the General Budget Law.

(G) EU Merger Regulation

The Spanish merger control rules do not apply to concentrations with an "EU Dimension", as provided for in the EC Merger Regulation (except when referred[10]). A concentration has an EU dimension if either of the following tests is met:

(i) First test: (a) the combined aggregate worldwide turnover of all of the undertakings concerned exceeds €5 billion; and (b) the aggregate EU-wide turnover of each of at least two of the undertakings concerned exceeds €250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one EU Member State.

(ii) Second test: (a) the combined aggregate worldwide turnover of all the undertakings concerned exceeds €2.5 billion; (b) in each of at least three EU Member States, the combined aggregate turnover of all of the undertakings concerned exceeds €100 million; (c) in each of the three EU Member States mentioned in (b) above, the turnover of each of at least two of the undertakings concerned must exceed €25 million; and (d) the aggregate EU-wide turnover of each of at least two of the undertakings concerned exceeds €100 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover in one EU Member State.

(H) Spanish antitrust legislation

In line with the provisions contained in the Treaty on the Functioning of the European Union, Spanish antitrust legislation prohibits anti-competitive agreements,[11] the abuse by one or more undertakings of a dominant position and acts of unfair competition which affect the public interest by distorting free competition.

Fines up to 10% of the total turnover of the infringer in the business year immediately preceding that of the imposition of the fine may be imposed on those undertakings that, intentionally or by

[10] In general, the European Commission may refer a concentration to a Member State if the concentration threatens to significantly affect competition in a market within that Member State. Similarly, Member States may request that the European Commission examine a concentration that does not have a Community dimension but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State making the request.

[11] All agreements, collective decisions or recommendations, or concerted or consciously parallel practices, which have as their object, effect or potential effect the prevention, restriction or distortion of competition in all or part of the national market, are prohibited.

negligence, commit a very serious infringement of the LDC.[12] Serious infringements[13] attract fines of up to 5% of the total turnover.

Besides the CNMC, Spanish autonomous regions also have certain antitrust powers when the investigated practices affect exclusively "domestic trade" in their respective territories. However, the CNMC is still responsible for reviewing merger transactions and adopting any executive action regarding those practices that may alter free competition on a supra-regional level or in the national market, so as to ensure a uniform competition regime throughout the national market.

7.9.4 Disclosure requirements

Spanish corporate law provides that where an SA or an SL, or a group of SAs or SLs, holds more than 10% of the share capital of a target company, such stake must be disclosed immediately to the target SA or SL. If no such notice is given, the rights attached to the relevant shares will be suspended. Written notice must also be given to the target SA or SL for any subsequent acquisition exceeding 5% of the share capital.

In addition, Spanish corporate law allows Spanish SAs to purchase their own shares or those of their holding SA up to a limit of 20% of the share capital ("treasury shares"). The threshold is limited to 10% in the case of SAs listed on Spanish stock exchanges, which are also required to disclose such purchases to the CNMV when they exceed 1% of the share capital. Moreover, persons discharging managerial responsibilities must disclose to the CNMV any purchase of shares in the listed SA during their term of office.

There are also specific rules dealing with the disclosure of shareholdings in companies involved in particular sectors of the economy, such as banking and securities.

7.10 Money laundering and prevention of terrorist financing

In common with many other countries, Spain has introduced regulations on the prevention of money laundering and financing of terrorism (Law 10/2010, of 28 April, prevention of money laundering and

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[12] Very serious infringements include collusive conduct between real or potential competitors, abuses of a dominant position committed by an undertaking that operates in a recently liberalized market, has a market share close to a monopoly or which enjoys special or exclusive rights.

[13] Serious infringements include collusive behaviour between undertakings that are not competitors, abuses of a dominant position that are not considered to be very serious, and the distortion of competition through unfair acts.

terrorism financing incorporates into national law the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, which has been amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May). These regulations extend to entities and persons acting in finance and investment activities, real estate related activities and other activities that due to their nature have a high probability of being used for money laundering or terrorist financing. The regulations also extend to professionals such as auditors, external accountants, tax consultants, notaries and lawyers.

By virtue of these regulations, these entities and persons must comply with certain obligations to prevent the laundering of the proceeds of crimes or financing of terrorism. The activities that must be prevented include: (i) the transfer or conversion of property arising from a criminal act or from a participation in it in order to hide or cover-up the property's illicit origin or to help the persons involved elude their responsibility; (ii) the hiding or covering-up of the nature, origin, location, disposal, movement or real ownership of property or rights knowing that they arise from a criminal act or from a participation in it; (iii) the acquisition, possession or use of such property; and (iv) the participation in, association with others to take part in, and the aiding, attempting and abetting of any of these activities or the facilitating of their perpetration. Money laundering rules also apply to any amounts defrauded from the public treasury. Terrorist financing refers to activities involving the direct or indirect supply, deposit, distribution or collection of funds or property for its full or partial use in the perpetration of any terrorist crime defined as such in the Spanish Criminal Code.

The parties identified in the regulations (i.e. obliged entities) must adopt the required diligence measures. Such measures can be simplified in certain cases when the risk is very low or reinforced in others when it is high (for example, in relationships with public officials).

The main obligations are, in summary, the following:

(A) To identify the persons with which a commercial relationship or any type of transaction is to be entered into. For example, obliged entities are required to identify all individuals when establishing a business relationship or when carrying out a one-off transaction that constitutes a transfer of funds exceeding €1,000. Under no circumstances can there be dealings with persons that have not been duly identified. This duty extends to identifying the real, underlying party involved (i.e. the beneficial owner). By means of the Royal Decree-Law 7/2021, of 27 April, the abovementioned Directive (EU) 2018/843 of the European Parliament and of the Council of 30

May has recently been transposed into Spanish law. In this regard, the main amendments to be highlighted are: the inclusion of new obliged entities (i.e. providers engaged in exchange services between virtual currencies and fiat currencies), the imposition of AML obligations on non-obliged entities[14] and the creation of a single registry system, which will be implemented in accordance with subsequent regulation to be approved.

(B) To obtain information about the purpose and type of business involved and adopt reasonable measures to verify the information provided, as well as measures to constantly monitor the relationship.

(C) To adopt appropriate measures according to the risk posed and the type of client, business relationship or transaction. Measures must also be taken with regard to existing clients.

(D) To examine closely any transaction that may, as a result of its nature, involve money laundering or the financing of terrorism (especially those transactions that may be deemed complex, unusual, without any apparent economic or legal purpose or show signs of fraud or simulation).

(E) To keeping client identity documents for a minimum period of ten years after the transaction is completed or the business relationship has ended.

(F) To cooperate with the Commission on the Prevention of Money Laundering and Monetary Infringements (*Comisión de prevención del blanqueo de capitales e infracciones monetarias*) and the Executive Service of the Commission of the Bank of Spain ("**SEPBLAC**") in respect of their respective reporting and disclosure obligations.

(G) To communicate to SEPBLAC any fact or transaction, even if only attempted, that shows signs of money laundering or terrorist financing (though this does not compromise legal privilege).

(H) To report information to SEPBLAC systematically, as per applicable regulations or upon request from SEPBLAC.

(I) To abstain from carrying out any transaction described in section 7.9(iv) above.

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[14] The Royal Decree-Law 7/2021, of 27 April, establishes the duty for legal entities and entities without legal personality to obtain, keep and update their beneficial ownership information and provide it to the competent authorities and obliged entities when required.

(J) Not to reveal to a client, business party or third parties the fact that information has been reported to SEPBLAC, or that a transaction is being audited in this regard.

(K) To implement the necessary written procedures and create internal compliance bodies responsible for due diligence, collecting information, keeping documents, internal monitoring, risk evaluation and management, compliance and communication. SEPBLAC must be notified of the internal procedures followed, which will be audited annually by an external expert, and the internal compliance bodies must have sufficient human and technical resources bearing in mind the structure and activity of the entity.

(L) To draw up a client admittance policy and prevention manual.

(M) To provide employees with the necessary training regarding money laundering and prevention of terrorist financing.

Additionally, Law 12/2003 sets out obligations specifically aimed at preventing the financing of terrorist activities. These obligations are very similar to those described above and include implementing procedures and internal compliance bodies, as well as examining transactions suspected of being connected with terrorism. In this case, the information must be communicated to the Commission for Surveillance of Terrorism Financing Activities (*Comisión de Vigilancia de Actividades de Financiación del Terrorismo*).

The failure to fulfil these obligations may be considered a serious or very serious offence that can lead to the imposition of significant penalties and sanctions on the parties involved, including company directors.

8. TRADE REGULATIONS

As part of the EU Customs Union, and in accordance with the European customs and trade regulations, in general terms, goods can be freely imported and exported into/out of Spain. There are certain exceptions in relation to very specific products and materials which, mainly for public interest and security reasons, may require prior notification to, or authorization from, the Spanish authorities, depending on the country of destination or origin. It must be highlighted that although the cities of Ceuta and Melilla are European territories, they are not part of the EU Customs Union, and that in the Canary Islands, which is part of the EU Customs Union, special rules on indirect taxation and some specific trade rules apply (EEC Regulation 1911/91 of 26 June 1991).

8.1 Imports

According to EU Regulation 478/2015 of 11 March 2015 on common rules for imports, as a general rule, the importation of goods from non EU Customs Union territories into Spain is carried out under a free trade system, except for the importation of those goods subject to quantitative restrictions, surveillance or safeguard measures, in which cases an administrative approval from, prior certification from, or notification to, the State Secretary for Trade could be required. These measures typically apply to textile, agricultural, iron, steel, defence and dual-use products, among others, and to products originating from certain countries.

There are no customs tariffs or restrictions applied in Spain to EU goods originating from within the EU Customs Union, while customs tariffs on non-EU goods, including those from the United States and Japan, are assessed under the EU Common Customs Tariff (CCT), which is applicable throughout the EU to goods imported from outside the EU. For certain products and countries reduced tariffs may be applicable, according to preferential trade agreements signed with the EU. In the EU, customs authorities use the Harmonized System of tariff nomenclature to apply duties.

The free trade system for EU goods within the EU Customs Union does not preclude the possibility that, for statistical purposes only, imports and introductions may be subject to some documentary obligations, and therefore, under certain circumstances, an Intrastat declaration has to be filed (EU Regulation 2019/2152 of 27 November and EU Regulation 2020/1197 of 30 July).

In exceptional circumstances, and in accordance with EU law, the State Secretary for Trade may adopt prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial and commercial interests.

The Circular of the General Directorate for Trade and Investment of 3 April 2014, which is based on EU law, regulates the requirements applicable to the importation of products into Spain; in addition, the Order of 24 November 1998 establishes the procedure to be followed when an authorization is required.

The customs procedure for import is established at the EU level in EU Regulation 952/2013 of 9 October laying down the Union Customs Code, as amended, and its delegated and implementing regulations.

8.2 Exports

In accordance with EU Regulation 479/2015 of 11 March on common rules for exports, exports from Spain are also based on the free trade principle and, therefore, they are not subject to any quantitative restrictions. However, this does not preclude the EU from adopting protective measures to prevent a critical situation from arising on account of a shortage of essential products, or to remedy such a situation, and where EU interests call for immediate intervention. Nor are EU Member States precluded from maintaining or introducing quantitative restrictions on exports on grounds of public morality, public policy, public security, the protection of health and life of humans, animals and plants, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial and commercial property, in accordance with EU law.

Therefore, under Spanish law, exports are carried out under the EU free trade system, save those that, as they are subject to protective measures, are expressly subject to administrative approval from, prior certification from, or notification to, the State Secretary for Trade. For instance, according to Law 53/2007 of 28 December on the control of foreign trade in defence and dual-use materials, and Royal Decree 679/2014 of 1 August, which develops Law 53/2007, an export authorization should be obtained by the exporter from the State Secretary for Trade before the exportation of a defence or dual-use product from Spain.

The Circular of the General Secretary for Foreign Trade of 26 May 2017 establishes the requirements to be met to export goods from Spain, following EU law principles. The authorization procedure, where required, is regulated in Order ITC/2880/2005 of 1 August.

8.3 Defensive and protective measures

Spain applies EU defence mechanisms adopted by the competent EU bodies against unfair or illicit practices from which non-EU states, or their economic operators, seek to benefit, including:

- Anti-dumping rules, which are intended to counter the practice of exporting goods to the EU at lower prices than those applied to similar products on the domestic market (EU Regulation 2016/1036 of 8 June as amended by EU Regulation 2017/2321 of 12 December and EU Regulation 2018/825 of 30 May); and
- Anti-subsidy rules, which are designed to prevent the importation of products the prices of which are kept artificially low by public subsidies in the non-EU country or the country of origin (EU Regulation 2016/1037 of 8 June, as amended by EU Regulation 2017/2321 of 12 December and EU

Regulation 2018/825 of 30 May).

The application of these two defence mechanisms may result in customs duties being temporarily imposed on the importation of the goods in question.

In addition, the EU can adopt safeguard measures limiting the flow of imports into the EU, where it can be proven that imports of certain products have increased so rapidly and on such a scale as to jeopardize EU producers.

8.4 Product liability

Spain has an objective test for allocating responsibility for product liability that makes manufacturers or importers liable for damage caused by defective products. If the manufacturer or importer cannot be identified, the liability is passed on to the distributor of the product. If two or more persons are found to be liable for damages caused by a product, they will be jointly and severally liable.

Plaintiffs can recover damages for personal injuries, including material injury and emotional distress. The manufacturer's or importer's total liability for damages caused to one or more persons by a single class of products cannot exceed €63,106,270.96.

9. REPRESENTATIVES: DISTRIBUTION AGREEMENTS, AGENCY AGREEMENTS AND FRANCHISING

9.1 Distribution agreements

Despite some attempts to introduce specific legislation in Spain to govern distribution agreements, at present, no legislation governing distribution agreements has been enacted and they are not specifically mentioned in the Civil or Commercial Codes currently in force.

Therefore, the courts define and interpret distribution agreements primarily in line with legal doctrine and case law, with the Spanish Supreme Court having discussed their unique characteristics in several judgments.

While there has been considerable discussion in Spain as to whether or not the Spanish law on agency agreements should also apply to distribution agreements, there is currently no consensus. Therefore, distribution agreements remain subject to the terms freely agreed between the parties, provided that they contain no provisions that are contrary to Spanish law or public order. In particular, distribution agreements should be carefully drafted to ensure that they comply with competition law.

Distribution agreements have two overarching characteristics as construed by the Spanish Supreme Court: (i) the purchase by a distributor of the supplier's products for their resale; and (ii) the promotion of the supplier's products within a particular geographical area and the performance of post-sale services. The supplier will also usually undertake to sell its products exclusively to the distributor within a specific area.

The most important covenants that may be included in distribution agreements concern (i) the exclusivity of the relationship, which should not be assumed to exist; (ii) the geographical area to be covered by the distribution agreement; and (iii) the duration of the agreement, which may be fixed or indefinite.

Agreements of an indefinite duration may be unilaterally terminated without justified cause by any of the parties by giving prior notice to the other party of at least one month per year of duration of the contract, up to a maximum of six months, unless otherwise agreed by the parties in the contract.

If the party terminating the agreement fails to give this prior notice, the other party may be entitled to compensation for any damages suffered (*daño emergente*), including, in the event of termination by the supplier, reimbursement of any investment made by the distributor to perform the agreement that has not been fully amortized as of the date of termination of the agreement, and for loss of profit (*lucro cesante*) arising from the failure to observe the required prior notice.

These principles have been confirmed by the Spanish Supreme Court in several rulings on the basis that (i) giving prior notice is a requirement of the principle of good faith governing commercial relations in general; and (ii) the rules governing the termination of agency agreements should apply by analogy.

In addition, the supplier may be obliged to compensate the distributor upon the termination of the commercial relationship for any goodwill created, even if the agreement is silent on this matter.

Unlike in agency agreements, the distributor has no legal right to compensation or an indemnity payment upon the termination of a distribution agreement. Although this issue is controversial and the case law has not been consistent, recent rulings of the Spanish Supreme Court have held that, in the absence of a specific contractual provision, upon termination or expiry of a distribution agreement the supplier must pay compensation to the distributor in the following circumstances:

(A) if the distributor has procured new customers for the supplier (in such case compensation will be based on the net profits of the distributor);

(B) if the distributor has procured new markets for the supplier (i.e. significantly increased business turnover); or

(C) if the supplier continues to obtain a benefit from the distribution activities carried out by the distributor after the contract is terminated.

In conclusion, the Spanish Supreme Court has held that the provision of customers, additional markets and goodwill by the distributor must be duly compensated upon termination of the agreement in order to ensure that the supplier is not unjustly enriched (*enriquecimiento injusto*).

9.2 Agency agreements

Unlike distribution agreements, agency agreements are subject to specific regulation in Spain, in particular by Law 12/1992 of 27 May on agency agreements which is focused on agency agreements rather than on the status of the sales agents.

(A) Sales agents are independent from their principals and are bound to them by a commercial relationship. Sales agents act on behalf of one or more principals, unless exclusive agency is expressly agreed to in the agency agreement. In any case, the consent of the principal is necessary for the sales agent to act on behalf of other principals whose activity may compete with the activity of the relevant principal.

(B) Spanish law sets out certain provisions concerning the means of payment and type of sales commissions paid to the agent. The parties usually expressly address commissions in the agency agreement. In the absence of express provision, Spanish law establishes that the agent will be entitled to remuneration equivalent to that received by other agents similarly situated in the same market and with regard to the same goods or services. If this cannot be determined, the agent will be entitled to “reasonable remuneration”.

    Remuneration of sales agents may be fixed, variable or a combination of both. If the remuneration is fixed, principals must pay the agency fees in accordance with the agency agreement. There is no maximum or minimum amount for fixed remuneration. If the agreed remuneration is variable or a combination of fixed and variable remuneration, agency fees will accrue on sales made by the principal for the duration of the agency contract, subject to the satisfaction of one of the following conditions: (i) the sale was made as a consequence of the agent’s actions; or (ii) the sale was made to a person with whom the sales agent had previously carried out analogous or similar transactions.

If the agent has been granted exclusivity in a given territory or with regard to a group of clients, agency fees will accrue for all sales in that territory or to such clients, regardless of whether or not the transaction was promoted or concluded by the sales agent.

Sales agents also have a right to remuneration after the agency agreement is terminated for the following sales transactions: (i) transactions which are mainly related to the professional activity of the sales agent during the period that the agency contract is in force, and which are concluded within the first three months following the termination of the relevant agency contract; or (ii) transactions in which the sales agent or the principal has received the purchase order before the termination of the agency contract, provided that the agent would have had a right to be remunerated if the agency contract had not been terminated.

(C) Agency fees accrue when the sales transaction is executed. Principals have a maximum period of 15 days to accept or reject the sales agent's terms. Likewise, principals must inform the sales agent of the execution or partial execution of the sales transaction in the shortest time frame possible.

Agency fees must be paid no later than the last day of the month following the end of the calendar quarter in which the commission has accrued. Principals must inform sales agents of the agency fees accrued during each calendar quarter no later than the last day of the month following the end of that calendar quarter. In both cases, the parties may agree to shorter periods in the agency contract.

(D) Non-compete obligations are permitted, but they may not last longer than two years after the termination of the agency contract. When the agency contract has a duration of less than two years, the maximum non-compete period after termination is one year. The non-compete clause must (i) be in writing, and (ii) refer exclusively to the territory and/or group of clients allocated to the sales agent, and may affect only the type of services or assets covered by the agency contract.

(E) Agency contracts may have a limited or indefinite duration. Contracts with an indefinite duration may be unilaterally terminated by any of the parties giving written notice. The basic notice period is one month per year of duration of the agency contract, up to a maximum of six months.

In any event, a party may unilaterally terminate the agency contract upon giving notice to the other party in the event of (i) a serious breach by the other party of part or all of its obligations under the agency contract; or (ii) the other party being declared insolvent (*concurso*) by a court.

(F) Sales agents have a right to be compensated for creating a client base for their principals.

(G) Compensation for clientele may never exceed the average annual remuneration received by the agent during the last five years of the agency contract or during the term of the contract if it less than five years.

(H) The Spanish Supreme Court has held that the right to obtain compensation for clientele arises even when the agent and the principal have concluded successive agency contracts. Thus, the compensation for clientele to be paid to the agent has to be calculated taking into account the total term of all the successive contracts and not only the last contract subscribed.

(I) In the event of termination without cause by the principal, the agent may be entitled to receive damages for expenses, incurred as a result of the instructions of the principal, which have not been fully amortized because of the early termination.

(J) The competent jurisdiction must be that of the agent’s head office.

In accordance with the Statute of the Autonomous Worker, sales agents that are economically dependent on their principal (i.e. those who receive more than 75% of their total remuneration from the principal) have certain rights that are similar to those enjoyed by an employee of the principal. They also benefit from the specific collective agreements reached with trade associations or trade unions.

9.3 Franchising

Franchising agreements are specifically referred to in Law 7/1996 of 15 January on retail trade (“**Law 7/1996**”) and in Royal Decree 201/2010 of 26 February on commercial activity under franchises. This Royal Decree regulates the assignment of franchising agreements.

The Spanish Supreme Court has in several rulings defined franchising agreements as those in which one party (the holder of know-how and trademarks, signs, patents, or techniques, for example) grants another party usage rights for a set term and in a specific geographical area in exchange for consideration (a royalty or a percentage of the franchisee’s sales, for example). On the other hand, the European Commission states that “The franchise agreements consist essentially of licences of industrial or intellectual property rights relating to trademarks or signs and know-how, which can be combined with restrictions relating to supply or purchase of goods”. The European Court of Justice defines franchising as a way of exploiting a body of knowledge financially without compromising equity capital.

Under Law 7/1996, three conditions must be fulfilled for a given agreement to be considered a franchise agreement: (i) the holder of the franchise must carry out a business that shares a common trade name and homogeneous presentation in the market to that of other franchise holders; (ii) the franchisor transfers certain know-how to the franchisee; and (iii) the franchisor provides commercial and technical assistance to the franchisee during the term of the agreement.

Parties may stipulate the terms and conditions they consider appropriate when entering into the contractual agreement, as long as those terms are not contrary to Spanish law or public policy. Case law has tended to compensate the franchisee for the provision of customers, additional new markets and goodwill in order to ensure that the franchisor is not unjustly enriched (*enriquecimiento injusto*).

At least 20 days prior to the signing of a franchising contract or pre-contract, or prior to any payment to the franchisor, the holder of the franchise must deliver, in writing, all the information the franchisee needs to be able to freely and knowingly decide whether to join the franchise network.

That information includes the identity of the franchisor, its experience, the features of the franchise, the business model franchised and the training and assistance that will be provided to the franchisee. The Spanish Supreme Court has stated that where the franchisee has not been provided with this information, the franchise agreement may be considered null and void.

10. INTELLECTUAL PROPERTY

Spanish law protects different categories of intellectual property,[15] such as patents, utility models, trademarks, trade names and copyright, as well as trade secrets.

Legislative background

Copyright is regulated under Royal Legislative Decree 1/1996 of 12 April (the "**Copyright Law**"), which approved the revised Spanish intellectual property law.

Patents are governed by Law 24/2015 of 24 July on patents, and its ancillary regulations. Spain is a party to several patent treaties: the 1970 Patent Cooperation Treaty ("**PCT**"), the 1971 Strasbourg Agreement Concerning the International Patent Classification, the 1973 Convention on the Grant of European Patents, the 1977 Budapest Treaty on the International Recognition of the Deposit of Micro Organisms

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15 The Spanish term "*propiedad intelectual*" only refers to copyright and does not encompass other rights that the English term "intellectual property" would cover, such as patents or trademarks, which are generally referred to as "*propiedad industrial*" (industrial property) in Spanish. For the sake of clarity, however, all references to "intellectual property" in this Guide should be understood as having the broader meaning given to it in English.

for the Purposes of Patent Procedures and the 2000 Patent Law Treaty. In contrast, Spain is not part of the Unitary Patent system.

Trademarks are governed by Law 17/2001 of 7 December on trademarks and its ancillary regulations.

Industrial designs are governed by Law 20/2003 of 7 July on industrial designs ("**Law 20/2003**"). In addition to patents, trademarks and industrial designs, industrial property encompasses utility models, trade names, semi-conductor topographies, plant varieties and appellations of origin. The last three types of creation are not addressed in this guide.

Trade secrets are regulated under Law 1/2019 of 20 February on trade secrets.

Spain is a party to the 1883 Paris Convention for the Protection of Industrial Property (the "**Paris Convention**"), and the 1994 Agreement Establishing the World Trade Organization ("**WTO**") and Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement).

10.1 Patents

10.1.1 Obtaining a patent

(A) Subjective requirements

Patents may be granted to both natural persons and legal entities, including public-law entities.

(B) Right to a patent

(i) General rules

The right to a patent belongs to the inventor or the inventor's successors. Said right can be transferred to third parties.

When an invention has been created jointly by a number of people, the right to a patent belongs to them jointly. When the same invention has been created independently by various people, the right to the patent belongs to the person whose application is registered first in Spain, provided that the application is then published within eighteen months following the date it was filed.

An inventor has two actions against any third party who unlawfully applies for or is granted a patent over its invention: an action for recovery of possession and a declaratory action.

(ii) Employee inventions

Rights over inventions made by an employee (i) during the term of his/her contract, work or service with a company, and (ii) which are the result of research that is explicitly or implicitly the object of his/her contract, belong to the employer. Furthermore, unless there is evidence to the contrary, the employer may claim rights over inventions for which a patent application or other title of exclusive protection are made within a year following the end of the employee's work or service relationship. To this end, employees have a general duty to communicate any invention they make to their employers.

Where the employee makes an invention related to his/her professional activity and (i) the knowledge gained within the company has had a decisive influence on that invention, or (ii) the employee has used means provided by the company to create such invention, the employer has the right to claim ownership of the invention or to reserve a right of use. However, where the employer claims ownership of an invention or reserves a right to use it, the employee has the right to equitable financial remuneration determined according to the invention's industrial and commercial importance and taking into account the value of the means or knowledge provided by the company and the contribution made by the employee.

(iii) Inventions made by research personnel of public entities

Rights over inventions made by the research personnel of public entities (including public universities) which are the result of the functions they carry out, belong to the public entities, irrespective of the nature of their relationship with the relevant researcher. To this end, research personnel of public entities have a general duty to communicate any invention they make to such public entity.

Research personnel are entitled to a share of the profits earned by the public entity for the exploitation or transfer of rights over the inventions they make. Public entities are also allowed to transfer the ownership of these rights to their inventors, reserving a non-exclusive, non-transferable and free license over such rights or a share of the income earned from their exploitation.

Agreements between public entities and other public or private entities must include provisions for the allocation of rights over the inventions made by the research personnel.

10.1.2 Objective requirements to be granted a patent: patentability

According to Spanish patent law, the object of a patent should be a novel invention with an industrial application that has involved an inventive step.

(A) Invention

The following are not regarded as inventions: (i) discoveries, scientific theories and mathematical methods; (ii) literary or artistic works or any other aesthetic creation, including scientific works; (iii) schemes, rules and methods for performing mental acts, playing games or doing business; (iv) computer programs; and (v) presentations of information.

(B) Novelty

An invention is considered to be novel if it does not form part of the existing body of knowledge in a particular field in Spain or abroad before the date the patent application is filed. In particular, the contents of (i) Spanish patent and utility models applications; (ii) European patent applications that designate Spain and have been published in Spanish; and (iii) international PCT patent applications that have initiated their regional phase in Spain, are considered to be part of the existing body of knowledge when these applications have been filed before the date on which the relevant patent application is filed.

(C) Inventive step

An invention is regarded as involving an inventive step when it incorporates a development of the existing body of knowledge that is not obvious to a person skilled in that field. Although the contents of previous patent or utility applications are considered when determining the novelty of an invention, such documents are not taken into consideration when deciding whether there has been an inventive step.

(D) Industrial application

An invention is regarded as having industrial application when it can be manufactured or used in any form of industry, including agriculture.

10.1.3 Exceptions to patentability

Spanish patents are not granted for (i) inventions whose publication or use would be contrary to public interest or morality, (ii) plant varieties listed in Law 3/2002 of 12 March on the protection of plant variety rights, (iii) animal varieties, (iv) essentially biological processes for the production of plants or animals, or

(v) the human body, at the various stages of its formation and development, and the mere discovery of one of its elements, including the sequence or partial sequence of a gene (save for an element isolated from the human body or otherwise produced by means of a technical process), (vi) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body (this limitation does not exclude from patentability those products, apparatus or instruments that are used to put those methods in place), and (vii) a simple DNA sequence without indication of a biological function.

Microbiological processes or the products thereof can be patented.

10.1.4 Procedure for the granting of a patent

(A) General overview

The Spanish procedure for the granting of a patent comprises:

(i) a preliminary *ex officio* examination of the invention by the Spanish Patents and Trademarks Office ("**SPTO**");

(ii) a search of the body of existing knowledge in the particular field and a non-binding written opinion about the patentability of the invention; and, on occasion,

(iii) a substantive examination of the invention to verify that the object of the patent complies with the objective requirements listed above.

(B) Procedure

The procedure for the granting of patents in Spain is made up of the following steps: (i) verification that the formal requirements have been fulfilled, (ii) assignment of a filing date, (iii) a preliminary *ex officio* examination of the invention to verify that, *prima facie*, it is not manifestly excluded from patentability, (iv) drawing up of a report on the state of the body of existing knowledge in the particular field, comprising everything made available to the public in Spain or abroad, and the issuance of a preliminary and non-binding written opinion by the SPTO about the patentability of the invention, (v) substantive examination of the invention and the patent application's fulfilment of all the formal, technical and patentability requirements, and (vi) granting of the patent.

The report on current knowledge in the particular field and the preliminary non-binding opinion are key. The SPTO carries out a search to find documents that are in any way related to the invention for which a patent is being applied, and drafts a report and opinion based on the results of this search that is share with the applicant. In this way, the applicant can assess whether the invention complies with the objective patent requirements and, in particular, whether or not the invention lacks novelty, an inventive step or does not have industrial application.

Anyone may make observations about patent applications, but this will not interrupt the granting procedure. Patents can only be formally challenged once they have been granted.

10.1.5 Content

(A) Term

Patents have a fixed duration of 20 years from the date the application is filed. The patent takes effect from the date on which its granting is published.

Notwithstanding the above, holders of patents over medicinal products or plant protection products can apply for and obtain, if applicable, a supplementary protection certificate if they comply with the requirements established by EU law.

(B) Effects

A patent entitles its holder to prevent any third party from undertaking actions which involve the invention without his/her consent, namely:

(i) Manufacturing, offering for sale, putting into the market or using the product that is the subject matter of the patent or importing or possessing the product for one of the above mentioned purposes.

(ii) Making use of a process that is the subject matter of a patent or offering such use when the third party is aware, or the circumstances make it obvious, that use of the process without the consent of the patent owner is prohibited.

(iii) Offering for sale, putting on the market or using the product directly obtained by the process that is the subject matter of the patent or importing or possessing said product for any of the above-mentioned purposes.

(iv) Handing over or offering to hand over to unauthorized persons elements related to an essential part of the invention to be used to put the invention into effect.

The protection conferred by a patent over a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics. This same protection extends to biological material, possessing specific characteristics as a result of the invention, derived from a patented process that enables a biological material to be produced.

The protection conferred by a patent to a product containing or consisting of genetic information extends to all material (save for those exceptions referred to in section 10.1.3).

However, patent protection does not extend to, among others, (i) acts carried out in private and not for any commercial purpose, (ii) acts carried out for experimental purposes, (iii) the performance of studies and clinical trials carried out to obtain marketing authorizations for medicines, and (iv) the preparation of medicines in pharmacies solely for prescription purposes.

A proprietor may not prohibit third parties from carrying out acts involving patented goods placed on the market in Spain or the European Economic Area ("**EEA**") by the proprietor or with its express consent. This prohibition does not apply when there are legitimate reasons justifying the proprietor's objection to the further commercialization of the goods, particularly when their characteristics have been changed or altered after being placed on the market.

(C) Actions

The owner of a patent may bring civil or criminal actions before judicial authorities to safeguard against infringements.

In particular, the owner whose patent rights have been infringed may seek (i) termination of the acts infringing its rights (or their prohibition if they have not yet occurred), (ii) compensation for any damage or prejudicial consequences suffered, (iii) seizure of the objects produced or imported in breach of its rights, as well as any means used exclusively for such production or for unlawfully carrying out the patented process, (iv) attribution of the ownership of the objects and the means seized, (v) adoption of the necessary measures to prevent continued infringement of the patent, and (vi) publication of the judgment against the person infringing the patent (exceptionally ordered by the judge at the request of the patent holder). Measures (i) and (v) may also be taken against the intermediary whose services are used by the infringing party to breach a patent, even when such services do not constitute a patent infringement. The time limit for bringing a civil action for infringement of a patent is five years from the time the injured party becomes aware of the breach.

10.1.6 Transfer

Both patent applications and patents may be transferred and may be the subject of a licence for use. They may also be used as security for personal loans, which will be registered at the Movable Property Registry and notified to the SPTO. For coordination purposes, both registries will communicate with each other electronically in relation to the encumbrances they have registered or recorded.

When performed *inter vivos*, transfers and the licences must be in writing; to be enforceable, they must be recorded with the SPTO.

The license and transfer of rights over a patent may cover either a part or the whole of the patent. For the purposes of assignment or transfer, patent applications and patents already granted must be linked, even if they belong to several persons jointly.

10.1.7 Obligation to use

The owners of a patent are obliged by law to use their patent within four years following the date on which the patent application is filed, or three years following the date on which the granting of the patent is published in Spain or in any country member of the WTO. In the event that either the patent is not used within either of these periods or the use commences but is subsequently suspended for more than one year, the patent owner may be obliged to grant a compulsory licence.

10.2 Utility models

Utility models are a way to protect inventions that (i) are capable of industrial application, (ii) are new, (iii) involve an inventive step, and (iv) consist of conferring on an object or product, a shape, structure or composition which results in a significant improvement in its use or manufacture.

With regard to utility models, similarly to patents, the body of existing knowledge in the particular field to be considered in order to determine the novelty of the inventions comprises the existing body of knowledge in a particular field in Spain or abroad before the date the application is filed.

However, unlike patents, (i) the inventive step requirement is less stringent than that required for patents, (ii) the term of utility models is ten years from the date on which the application is filed, and (iii) unless somebody opposes it, the procedure does not require the drafting of a search report and does not permit the prior examination of the fulfilment of utility model application requirements.

Notwithstanding the above, in order to initiate legal actions aimed at enforcing the exclusive rights derived from utility models, a search report is required from the SPTO (such as the one provided for patents) referring to the object of title on which the action is based.

10.3 Trademarks

10.3.1 Regulation

(A) International rules

Spain is a party to the following trademark treaties: (i) the 1891 (as amended in 1967) Madrid Arrangement (*Arreglo de Madrid*) concerning the international registration of trademarks, (ii) the 1989 Protocol relating to the Madrid Agreement concerning the international registration of trademarks, (iii) the 1957 Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, and (iv) the 1994 WIPO Trademark Law Treaty.

The 1973 Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks has not been ratified by Spain.

(B) Domestic rules

The Spanish trademark regulation on distinctive signs (trademarks and trade names) is set out in Law 17/2001 of 7 December on trademarks, and the corresponding ancillary legislation.

10.3.2 Obtaining a trademark

(A) Subjective requirements

Trademarks may be granted to both natural persons and legal entities, including public-law bodies.

(B) Right to a trademark

As a general rule, the right over a trademark is conferred by its valid registration with the SPTO.

Nonetheless, Spanish trademark law recognizes and protects trademarks which, although not registered with the SPTO, are "well-known" in Spain, in accordance with the Paris Convention (article 6 *bis*). Owners of "well-known" trademarks may apply to the courts to invalidate a trademark registered for identical or similar goods that might cause confusion with the well-known trademark and may also bring infringement actions.

10.3.3 *Objective requirements to obtain a trademark*

(A) General overview

According to Spanish law, a trademark is any sign eligible to be represented in the trademarks registry in a way that allows the object of the protection to be clearly identified so as to distinguish goods or services of one person from identical or similar goods or services of another person in the marketplace.

Trademarks may be classified depending on, among other factors, (i) the signs which they comprise and (ii) their function.

Pursuant to their composition, trademarks may be (a) denominative (words or combined words), (b) graphic or emblematic (images, shapes, symbols or graphics), (c) mixed (combining denominative and graphic signs), (d) three-dimensional (packaging, shape or appearance of a product), (e) positional, (f) pattern, (g) colour (single or combined), (h) sounds, (i) motion, (j) multimedia, (k) holograms, and (l) any combination of the above.

According to their function, trademarks may be (a) used to distinguish products or services, (b) collective, or (c) of warranty.

(B) Prohibitions on registration

Prohibitions on the use of signs as trademarks may be "absolute" or "relative". The law provides for an *ex officio* examination for the former but not for the latter.

Signs affected by absolute prohibitions are those that (i) are unable to distinguish products or services (generic and descriptive terms, functional shapes, etc.), or (ii) are contrary to public policy (i.e., contrary to law, public policy, accepted principles of morality or misleading as to nature and quality of the goods or services, etc.).

On the other hand, relative prohibitions relate, among others, to signs which (i) are identical to prior registered trademarks or trade names (and the designated products or services), or (ii) may be confused with prior registered distinctive signs (the signs or the designated products and services are identical or similar), or (iii) may take an unfair advantage from, or damage, the reputation or distinctiveness of a trademark that has a reputation, or (iv) reproduce, imitate or transform works protected under copyright or by any other intellectual property right.

Registered trademarks which infringe relative prohibitions may be annulled during the five years following the date on which the granting of the trademark was published in Spain's Official Gazette on Intellectual Property. Actions seeking to nullify trademarks which have been applied for in bad faith, or have been registered in breach of absolute prohibitions, are not subject to statutory time limitations.

10.3.4 Effect

(A) Term

Ten years from the date of filing of the application, renewable indefinitely for ten-year terms.

A trademark registration may be renewed at the request of the proprietor of the trademark or his/her successors in title, provided that the renewal fee is paid.

(B) Effects

The registration of a trademark vests in its proprietor the exclusive right to its use. The proprietor of a trademark may bring civil and criminal actions against any third party who uses the following without consent: (i) an identical sign to distinguish products or services identical to those for which the trademark was granted, or (ii) an identical or similar sign to distinguish products or services identical or similar to those for which the trademark was granted if it may lead to confusion, or (iii) an identical or similar sign to distinguish products or services not similar to those for which the trademark was granted when this trademark has a reputation and its use may entail an unfair exploitation of the reputation of the latter or be harmful to it.

However, according to EU rules, the right conferred by a trademark registration does not allow its proprietor to prohibit third parties from using it for goods placed either by the proprietor or with his/her consent on the market in Spain or the EEA under that trademark. This prohibition does not apply when there are legitimate reasons justifying an objection by the proprietor to the further commercialization of the goods, particularly when their characteristics have changed after they have been placed on the market.

(C) Actions

As noted above, a proprietor may bring civil or criminal actions to safeguard its rights against infringements.

Civil remedies include (i) the cessation of acts infringing his/her right, (ii) compensation for the damage and loss sustained, (iii) necessary measures to prevent the infringement from continuing, (iv) the destruction of the products or their assignment for humanitarian purposes, (v) the assignment to the trademark owner of the products, materials and means seized by virtue of type (iii) measures, and (vi) the publication of the decision at the expense of the culpable party, through announcements and notifications to the persons concerned. Measures mentioned in (i) and (iii) above can also be adopted against any intermediary whose services are used by the infringing party to breach a trademark right, even when the provision of such services does not constitute a trademark infringement. Civil actions for infringement of trademark rights are time-barred five years after the date on which a claim could have been brought.

10.3.5 Transmission

Both trademark applications and trademark registrations may be transferred and licensed. Furthermore, trademark applications and trademark registrations may be pledged or be the subject of other real rights. If a trademark is mortgaged, the SPTO must be notified.

Transfers and licences must be set out in writing and duly recorded in the SPTO if they are to be enforced against third parties.

In the absence of a specific agreement on this matter in the license agreement, licensees may bring proceedings for infringement of a trademark only if the trademark proprietor consents to it. However, the holder of an exclusive licence may bring such proceedings if the proprietor of the trademark, after formal notice, does not itself bring infringement proceedings. In this regard, if the proprietor refuses to do so or does not file the corresponding action within three months, the holder of the exclusive licence shall be entitled to file such action on its own behalf by enclosing the formal notice submitted to the proprietor of the trademark involved. Additionally, and prior to the aforementioned three-month period, the holder of an exclusive licence will be entitled to request urgent injunctive relief from the competent judicial body when it is considered justified in order to prevent serious damage. A formal notice to the proprietor of the trademark will also be mandatory in this case.

10.3.6 Obligation to use

Trademark owners are forced by law to use their trademarks. If (i) no use is made of a trademark in Spain in connection with the goods or services for which it was registered within a period of five years from the date of publication of the granting thereof, or (ii) such use is suspended for an uninterrupted period of five years, the trademark will be deemed to have lapsed.

A trademark will be declared to have expired by the courts if the owner does not evidence that the trademark has actually been used or that there are grounds justifying the lack of use.

10.4 Other distinguishing signs: trade names and business signs

10.4.1 Trade names

A trade name is a sign, which may have a graphic representation, and which serves to identify a natural person or legal entity in the practice of its business activity and distinguishes its activity from identical or similar ones.

The legal status of trade names is specifically governed by Spanish trademark law. In addition to those specific provisions, the rules relating to trademarks are applicable to trade names when they are not incompatible with the inherent nature of trade names.

Trade names may be registered at the SPTO. Once registered, the trade name confers on its proprietor the exclusive right to use it in the course of trade.

When a term constituting a trade name is intended to be used as a trademark for a product or service, it must be registered separately. The use of a trade name to distinguish goods or services to the detriment of a previous trademark could be considered an infringement of the exclusive trademark right or an act of unfair competition.

10.4.2 Business signs

A business sign is the sign or name that serves to make a business known to the public and to distinguish it from others engaging in identical or similar activities.

Business signs are excluded from the scope of the Spanish Trademark Law and are protected by the general legal provisions on unfair competition.

Special provisions apply to registered business signs or to applications for business signs submitted before 2002. Owners of registered business signs may object to the registration of a trademark or trade name which is identical to the business sign, as long as those signs refer to the same products, services or activities as those previously registered. Under the transitional rules, the registration of a business sign may be renewed for a single seven-year period by paying a renewal fee. Otherwise, the registration will expire at the end of the ten- or twenty-year period.

10.5 Designs

10.5.1 Regulation

(A) International rules

Spain is a party to the 1925 Hague Agreement Concerning the International Deposit of Industrial Designs (London Law of 1934 and Geneva Law of 1999) and the Locarno Treaty Establishing an International Classification for Industrial Designs of 1968 (amended in 1979).

(B) Domestic rules

Industrial designs are regulated in Spain by Law 20/2003 on industrial designs (which incorporates Directive 98/71/EC of October 16 on the legal protection of designs into Spanish law). Law 19/2006 of 19 June on the protection of the intellectual property rights, which implements Directive 2004/48/EC of 29 April on the enforcement of intellectual property rights, has introduced amendments to Law 20/2003 related to the civil actions that the owner of a registered design may bring against those who infringe his/her rights.

In addition, Council Regulation (EC) No 6/2002 on Community designs is directly applicable in Spain.

10.5.2 Obtaining a design

(A) Subjective requirements

Designs may be granted to both natural persons and legal entities that are (i) Spanish, or (ii) of another nationality provided that such foreign persons or entities (a) ordinarily reside or have an active industrial or commercial establishment in Spain, (b) benefit from the Paris Convention, or (c) are nationals of a member country of the WTO or of a state which grants equivalent titles to Spanish persons or entities.

(B) Right to a design

(i) General rules

The right to a design belongs to the author (or his/her successor in title). In the event that a design has been created by a number of people, the rights over the design belong to them jointly in the proportion they determine. When the same design has been created by various people acting separately, the rights over the design belong to the person whose application is registered first in Spain, provided that the registration process is subsequently completed.

(ii) Designs developed by employees or pursuant to a services contract.

When the design has been developed by an employee in the performance of his/her functions or further to the instructions of an employer or the hirer or by virtue of a request for specially commissioned works within the framework of a services relationship, the right to register the design lies with such employer or hirer.

(C) Objective requirements to be granted a design

“Designs” are both the two-dimensional (designs) and the three-dimensional (models) appearance of a product (computer programs are expressly excluded) derived from the characteristics of the outline, shape, colours, form, texture and materials of the product itself or its ornamentation.

Designs must be objectively novel and singular to receive protection. A designer has twelve months from the date the product becomes generally known to apply for the grant of a design.

10.5.3 Exceptions to design protection

Spanish designs that are contrary to public order or principles of morality will not be granted protection.

10.5.4 Procedure for the granting of a design

Registration is granted after a simple *ex officio* examination of the application to make sure that it is made for a design that is not contrary to public order or good practice. Once the registration is published, which may be postponed for a maximum of 30 months upon request, the design has full effect. Following registration, third parties (including interested professional associations) may oppose it on the basis of previous rights or grounds for denial that may not have been examined *ex officio* by the competent authority.

10.5.5 Content

(A) Term

A design is registered for five years from the filing date and may be renewed for one or more successive periods up to a maximum of twenty-five years.

In accordance with Council Regulation (EC) No 6/2002 on Community designs, the protection of unregistered community designs is limited to three years from the date of first disclosure, and may not be renewed.

(B) Effects

A registered design confers on its holder the exclusive right to use it and to prevent any third party from using it without his/her consent. This includes the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes. The holder of an unregistered design has the right to prevent the above-mentioned acts only if the contested use results from the copying of the protected design.

However, the exclusive right to use rights conferred by the design do not extend to, among others, acts (i) carried out in private and not for any commercial purpose, (ii) carried out for experimental purposes, or (iii) of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that they mention the source.

In addition, the right conferred by a design does not allow its proprietor to prohibit third parties from carrying out acts of exploitation in relation to designed goods placed on the market in the EEA by the proprietor or with his/her express consent.

(C) Actions

The owner of a design may bring civil or criminal actions against those who infringe his/her rights and may demand measures be taken to safeguard those rights. These measures include those described in section 3(D)(iii) above in relation to trademarks.

10.5.6 Transfer

Both design applications and designs may be transferred and licensed for use to others. They may also be used as security for personal loans, in which case such use must be notified to the Designs Registry.

When performed *inter vivos*, transfers and licences must be agreed in writing, and unless stated otherwise, the licensee has the right to exploit the design in Spain, on a non-exclusive basis and with no power to assign or sub-license to third parties, during the term of its registration and for all of its applications.

Additionally, for the transfer and the licences to be enforced against third parties acting in good faith or to be mentioned in any product, they must be duly recorded in the Designs Registry. The Designs Registry does not require that the transfer/licence of a design be contained in a public document.

With regard to their scope, the licence and the transfer of rights over designs may cover either a part of or the whole item. For the purposes of assignment or transfer, the design application and the designs already granted must be linked, even if they belong to several people jointly.

10.6 Copyright

10.6.1 Regulation

(A) International rules

Spain is party to several specific copyright treaties: the 1886 Berne Convention for the Protection of Literary and Artistic Works (as revised in Paris, 1971), the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the 1971 Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, the 1952 Geneva Universal Convention on Authors' Rights (as amended in Paris, 1971), the 1996 WIPO Copyright Treaty and the 1996 WIPO Performances and Phonograms Treaty.

(B) Domestic rules

The main pieces of legislation governing copyright in Spain are the Copyright Law and its ancillary regulations. Law 10/2007 of June 22 on the book, the libraries and the reading habit introduced a number of amendments to the Copyright Law, primarily regarding the duties of public libraries regarding copyrighted works.

10.6.2 Obtaining copyright protection

In general terms, under Spanish law, copyright belongs to the author of a literary, artistic or scientific work, because the author has created it. Therefore, no special requirements must be met to obtain the copyright, apart from being the genuine author of the work or a person entitled to hold the ownership rights. Registration at the Intellectual Property Registry is a simple way to help the author protect his/her copyright, although this in itself does not create any rights.

As a general rule, authorship is reserved to individuals. Nevertheless, certain provisions of the Copyright Law attribute authorship or allow the attribution of the economic rights inherent in copyright, to legal entities. For instance, in collective works (including computer programs), which are created upon the initiative and under the direction of one person and which consist of combining contributions from various authors, the rights belong to the person who publishes it and discloses his/her name therein, as long as there is no agreement to the contrary. Furthermore, there are special rules attributing exploitation rights to legal entities when the work is created within an employment relationship.

There are other specific rules in the Copyright Law that regulate the ownership of copyright. For instance, in works that are the combined result of the collaboration of two or more authors, authorship and, as a consequence, copyright belong to all of the authors.

There are separate rules on the attribution of ownership of neighbouring/related rights. The criteria which these rules follow are, principally, the real performance of the work (i.e., performing artist), the assumption of initiative (i.e., musical producer), or the responsibility assumed as to the performance of the work.

10.6.3 Protected works

According to Spanish regulations, there are two main types of protected works: a first block comprising artistic, literary and scientific works that have copyright protection (or *"author's rights*" to use continental European terminology); and a second block comprising performances by artists, phonograms, audio-visual recordings, productions of broadcasting entities, photographs, database productions, and certain editorial productions, which are the subject of neighbouring rights or rights related to copyright.

The list of works that can be copyrighted is non-exhaustive. Certain derived works may also be considered subject to copyright, without prejudice, of course, to the copyright over the original work from which they derive. The collection of other people's works or the arrangement of data (databases) can also be copyrighted, provided that they can be considered the result of an intellectual work.

The only formal requirement for a work to be protected under copyright regulations is that it must be a man-made, original creation.

10.6.4 Content

Copyright vests authors with moral rights, exclusive exploitation rights and remuneration rights, which include the resale royalty right *(droit de suite)* and the right to compensation for private copying.

(A) Moral rights

Moral rights include a list of irrevocable and inalienable rights, among others: the right to decide whether the work is to be disclosed and in what form; the right to demand recognition of authorship of the work; and the right to withdraw the work from circulation for reasons such as a change in intellectual or moral convictions.

Moral rights end with the author's death. Nevertheless, the exercise of the right to demand recognition of authorship and the right to demand respect for the integrity of the work passes, without limitation of time, to the person or entity to whom the author has expressly entrusted it in his/her will or to his/her heirs, or to the state, regional or local authorities and public bodies if otherwise unknown.

(B) Exclusive exploitation rights

Exclusive exploitation rights are reserved for the proprietor, such as the right of reproduction, the right of distribution, the right of communication to the public (including the right to make the work available to the public) and the right of transformation, which, among other alterations, includes the translation or adaptation of the work. All these rights are independent from each other and also independent from others that may exist (e.g., ownership rights over the medium, industrial property rights).

The Copyright Law establishes that works may be reproduced without the author's authorization for use by private individuals.

Works can also be reproduced without the author's authorization within the context of judicial or administrative proceedings and, in certain circumstances, for the benefit of disabled people, for public safety reasons, or for educational or academic purposes. Quotations and summaries are also permitted, as well as using the works in news reporting and parodies.

In general terms, copyright lasts for the lifetime of the author and 70 years after his/her death. The exact duration of the copyright varies depending on the type of work (e.g., pseudonym or anonymous works), or other circumstances such as the unlawful disclosure of the work.

(C) Protection

The owner of copyright can protect his/her rights by seeking, among other remedies, (i) the cessation of the infringing acts, (ii) compensation for material damages (including loss of profits) and moral damages suffered, and (iii) precautionary measures.

10.6.5 Transfer

Exploitation rights may be transferred *donatio mortis causa* or *inter vivos,* whereas, moral rights are irrevocable and inalienable rights.

The regulation of the transfer of rights established under the Copyright Law is very protective of the author. The global transfer of future works and stipulations whereby the author undertakes not to create any work in the future are null and void.

The transfer of copyright is governed by the terms agreed in a written contract. Transfers can be exclusive or non-exclusive, for a specific purpose, indefinite or for a specific term, and they can also have territorial limitations. All exploitation rights can be transferred, although the parties may only agree to transfer some of them.

Unless otherwise agreed, it is presumed that a licence is (i) granted for five years, (ii) for the country in which it is granted, and (iii) for those uses implied from the licence contract and those required to achieve the purpose of the contract.

10.7 Trade secrets

10.7.1 Regulation

(A) International treaties

Trade Secrets are regulated by several international treaties of which Spain is part, including article 10bis of the Paris Convention and article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

(B) EU rules

The EU regulated the protection of trade secrets under the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016, on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (the "**Directive on Trade Secrets**").

(C) Domestic rules

Spain transposed the Directive on Trade Secrets by virtue of the Law 1/2019 of 20 February on Trade Secrets ("**Trade Secrets Law**"), which came into force on 13 March 2019. The Trade Secrets Law also replaced the trade secrets regulations under the Spanish Unfair Competition Act.

10.7.2 Trade secrets definition and protection

Under the Trade Secrets Law, Spanish regulations include for the first time a definition of trade secret.

The information or knowledge that is (and can be) protected as a trade secret relates to any area of business, and in particular to both industrial, scientific and technological areas as well as organisational, commercial and financial ones.

The requirements for company-related information to be protected as a trade secret are:

i. The information is secret. An information is secret when it is not generally known among, or readily accessible to, persons in professional circles that normally deal with this type of information.

ii. The information has commercial value. That is if it entails that the information or knowledge gives its owner a current or potential competitive advantage specifically because it is secret and is kept that way, and especially, because its owner knows the information and can decide to use it or not *vis-à-vis* those who lack the information or knowledge and are interested in obtaining it.

iii. Reasonable steps have been taken to keep this information secret. It implies that its owner has adopted measures and practical arrangements that by their very nature are adequate to maintain the confidentiality of the information and that by their design and application are sufficient to this end given its importance, the expected form or type of violation and the risk of it actually occurring. The reasonable steps taken to keep the information and knowledge secret must be supplemented with the obligation to maintain the information secret by those who, because of their position, have access to it, where this obligation is not established by law.

Also, the Trade Secrets Law includes the regulation of trade secrets as a property right, which grants their owner a subjective economic right and their transferability through assignment and licensing.

Nevertheless, the Trade Secrets Law does not include as a trade secret the experience and skills acquired by employees in the normal course of their employment relationship. The protection of trade secrets cannot limit employees' mobility and, specifically, cannot restrict their use of experience and skills. This is due to the fact that employees' experience and skills (acquired by performing their work) constitute professional goodwill and not a trade secret that belongs to the employer.

10.7.3 Acts which could constitute a violation of trade secrets

The acts that could be potential violations of trade secrets are:

i. Obtaining a secret by attaining it or the source from which it derives.

ii. Using it (in any way) and disclosing it by making it public or merely divulging it to third parties even when the communication carries a duty of secrecy.

iii. The production and commercial exploitation of the infringing goods or services.

Each of these acts is substantively independent from the others and can in itself constitute a violation of trade secrets.

The circumstances in which these acts are unlawful (an actual violation of trade secrets) include, as regards acquiring the secret, the lack of consent by its owner; in relation to its use, the prior unlawful acquisition or breach of the conditions established by the owner for its use; and finally, with regard to its disclosure, the prior unlawful acquisition or breach of a confidentiality obligation.

In this regard, the Trade Secrets Law extends the unlawfulness of obtaining, using and disclosing trade secrets to those who obtain them when they know, or should know, that they are obtaining the information from someone who is revealing or using it unlawfully. In this respect, producing and commercially exploiting the infringing goods is also considered unlawful when the operators know, or should know, that such goods unlawfully include the trade secret.

10.7.4 Civil actions to protect trade secrets

The Trade Secrets Law provides a non-exhaustive list of civil actions to protect trade secrets. The list includes the most important remedies available to the owner of a trade secret and defines their scope:

i. Declaration of the infringement.

ii. Cessation (including coercive measures).

iii. Seizure of infringing goods for their modification, destruction or delivery to charities.

iv. Removal.

v. Allocation of ownership of the infringing products.

vi. Compensation for damages. The Trade Secrets Law sets out the criteria according to which the amount of the compensation for damages must be calculated, in line with the Spanish Patents Law.

vii. Publication or communication of the judgment.

Particularly noteworthy is the specification of the circumstances to be taken into account to define the scope of the cessation and publication of the judgment, the acceptance of the possibility of replacing the cessation and the removal including compensation for damages when the violation of the trade secret is not intentional and the measures would cause disproportionate harm to the infringer.

In addition, the Trade Secrets Law includes changes to procedural rules in order to offer the owners of trade secrets the tools to effectively protect their rights. In that sense, the Trade Secrets Law regulates:

i. Rules to keep confidential any information that is provided or generated in infringement proceedings that constitutes a trade secret.

ii. Extension of the measures to prepare for infringement proceedings such as inquiries to substantiate facts and measures of access to sources of evidence.

iii. Legal standing of licensees. The trade secret owner can expressly authorise the licensees to exercise the rights of defence.

iv. Special provisions on injunctive relief in order to ensure that the granting of injunctive relief takes into account all the circumstances of the case to ensure that it is proportionate, that it is lifted when the information ceases to be a trade secret, and that its negative consequences for third parties are taken into account.

11. DATA PROTECTION

In Spain, like all of the other EU Member States, the General Data Protection Regulation (Regulation EU 679/2016) (the "**GDPR**") is the main regulation that applies to the processing of personal data by businesses and other organizations. That said, at a national level and in addition to the GDPR, a local data protection law was passed in December 2018, i.e., Spanish Basic Law 3/2018 of 5 December on Data Protection and Digital Rights Guarantees (*Ley Orgánica 3/2018 de Protección de Datos Personales y garantía de los derechos digitales*) (the "**LOPDGDD**"). The LOPDGDD's main goal was to formally repeal the previous national data protection rules, the content of which was incompatible with the GDPR, and to align local rules to ensure their compatibility with the GDPR. Therefore, the goal of the LOPDGDD is not the implementation or modification of the GDPR, but rather (i) the harmonisation of the Spanish law to the provisions of the GDPR (which in any case has direct applicability in Spain), and (ii) the provision of specific data protection regulation in different fields that are either not expressly covered by the GDPR or that are covered by the GDPR but in relation to which the EU Member States are given some competence to enact a more detailed regulation. This means that certain specific processing operations not specifically regulated in the GDPR (e.g., CCTV or creditworthiness shared files) have been provided with a more detailed regulation in the LOPDGDD.

As a novelty, the LOPDGDD also includes some new content, including in particular a new set of rights of citizens in relation to new technologies, known as “digital rights”. While some of these rights are specific to certain businesses and sectors (e.g., social networks) certain other digital rights may impact all businesses operating in Spain. This is the case, for instance, of rights that regulate and grant additional privacy safeguards related to the use of technologies within the workplace, such as digital rights granted to limit the monitoring of IT tools in the workplace, the use of geolocation systems or CCTV-related processing operations at work.

Moreover, other EU directives that contain data protection related provisions in the context of e-communications and e-commerce have been implemented in Spain.

Both the European framework and the Spanish data protection regulations provide a robust data protection system, comparable to countries such as Switzerland, Argentina, Uruguay or Israel. Although there is strong protection in the USA for specific sectors (e.g., regarding financial or health-related data), it is not considered adequate by European standards, and as a result personal data transfers from Spain to the USA (which account for the majority of transfers of personal data to non-EU countries) require the adoption of additional safeguards, particularly after the Schrems II ruling by the European Union Court of Justice.

11.1 Regulations

11.1.1 The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union, which has full legal effect since the entry into force of the Treaty of Lisbon on 1 December 2009, establishes the fundamental right of data protection in Article 8:

“*1. Everyone has the right to the protection of personal data concerning him or her.*

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.”

(A) International instruments to which Spain is a party

(i) The European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8)

(ii) The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (no. 108) (still under review)

(iii) OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (updated in July 2013).

(B) The Spanish Constitution

Article 18(4) of the Spanish Constitution states that: "*The law shall restrict the use of computing tools in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights*".

(C) EU rules

The GDPR.

(D) Spanish Data Protection Law and ancillary regulations

The LOPDGDD.

The Spanish supervisory authority on data protection (the "**SDPA**") has also issued instructions that adapt the general principles of the LOPDGDD in their application to specific processing activities, such as solvency, joint contracting of insurance and loans, premises access control, video surveillance, etc.

The SDPA also supervises the application and enforcement of the provisions of the 2002 E-Commerce Law and the 2014 General Telecommunications Law (currently pending to be repealed by a new Telecommunications Law), as developed by Royal Decree 424/2005 of 15 April. These laws regulate the use of cookies, direct marketing by e-mail and other equivalent communications such as fax and telephone, or other communications without human intervention, as well as the breach of notification duties of certain operators.

11.2 Scope of application of the LOPDGDD

The LOPDGDD has the same scope of application as the GDPR, although it is limited to processing operations carried out within the context of businesses in Spain. Therefore, the LOPDGDD is applicable:

(A) to personal data (as defined in the GDPR) so it applies to any item of information relating to an identified or identifiable natural person, irrespective of whether or not it is of a private nature;

(B) to the "data controller" and to the "data processor" (as defined in the GDPR); and

(C) when the processing is carried out in the context of the activities of an establishment of a controller or a processor in Spain, regardless of whether the processing takes place in Spain or not, as well as to the processing of personal data of data subjects who are in Spain by a controller or processor not established in the EU, where the processing activities are related to (i) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in Spain, or (ii) the monitoring of their behaviour as far as their behaviour takes place within Spain.

11.3 Main obligations under the LOPDGDD

11.3.1 General remark

The LOPDGDD may not amend or contradict duties set out in the GDPR. Therefore, main duties for data controllers making business in Spain are those set out in the GDPR. Still, certain rules have been further developed or detailed in the LOPDGDD, the analysis of which is the main focus of this section.

For instance, the LOPDGDD provides for an additional protection and safeguards to data related to the commission of administrative offences, while the GDPR reserves such protection to data related to the commission of criminal offences.

11.3.2 Internal records of processing activities

The controller and processor shall maintain a record of processing activities under its responsibility. This duty shall not apply to an organization employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data (e.g., health-related data or personal data relating to criminal convictions).

11.3.3 Information duties

Regardless of the legitimate basis applicable to processing (consent, legal duty or otherwise), data subjects from whom personal data are directly or indirectly collected must be given specific **information** about the processing of their personal data. The information must be provided by the data controller in an explicit, specific and unequivocal manner, and must provide for the content set out in articles 13 and 14 of the GDPR.

In order to ensure that transparency is met and that the information provided is not too complex, the LOPDGDD provides for certain rules on how to comply with information duties in a layered way. Also, transparency *vis-à-vis* data subject is also reinforced in other sections of the LOPDGDD, including for instance specific rules on how to comply with information duties when using CCTV systems or in order to comply with new digital rights within the workplace.

11.3.4 Legitimate basis for the processing of personal data

The GDPR sets out the list of legitimate grounds that would enable a data controller to process personal data, including consent, the existence of a legal duty, the fact that processing is necessary to perform a contract to which the data subject is party, or a legitimate business interest. The LOPDGDD does not modify this list but, in some cases, it provides examples of specific processing activities that could fall within one of these legitimate bases (e.g., a legitimate interest shall cover CCTV recording for security purposes).

11.3.5 International transfers of personal data

When personal data is to be transferred to the USA or to any other country outside the EEA whose regulations have not been identified by the EU authorities as ensuring an adequate level of protection, the controller must carry out the international transfer, as a general rule, only if (i) the recipient has provided appropriate safeguards, such as committing to abide by the EU Model Clauses, or (ii) the transfer falls within one of the derogations listed in article 49 of the GDPR (e.g., explicit consent of the data subjects). The LOPDGDD does not provide for relevant rules regarding international transfers of personal data, and so the general regime under the GDPR for these transfers apply in Spain.

11.3.6 Privacy impact assessments

The SDPA has made public the list[16] of processing operations that it considers should be subject to a privacy impact assessment, as well as a set of guidelines and a template to perform these PIAs[17].

11.3.7 Security measures and notification of data breaches

In the event that a controller suffers a security breach affecting personal data, it is subject to notification duties set out in articles 33 of the GDPR (*vis-à-vis* competent authorities) and 34 of the GDPR (*vis-à-vis*

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16 Available at https://www.aepd.es/sites/default/files/2019-09/listas-dpia-es-35-4.pdf.

17 Available at https://www.aepd.es/sites/default/files/2019-09/guia-evaluaciones-de-impacto-rgpd.pdf (guidelines) and https://www.aepd.es/es/derechos-y-deberes/cumple-tus-deberes/medidas-de-cumplimiento/evaluaciones-de-impacto (template for private businesses).

data subjects). The SDPA has made available an online reporting line and official reporting form in its website.

11.4 Specific administrative rules on spam, cookies and the breach of notification duties

11.4.1 Spam

Under the E-Commerce Law, sending unsolicited marketing materials to recipients by e-mail, SMS or any other equivalent form of electronic communication is prohibited unless previously requested or explicitly authorized by the recipient.

However, the prior and explicit consent of the recipient is not required if (i) there is an existing contractual relationship between the data subject and the company sending the communication, (ii) the recipient's data has been lawfully obtained, and (iii) the communication concerns products or services of the company that are similar to those initially contracted.

Upon collection of the data and in each commercial communication by e-mail, SMS or any other equivalent form of electronic communication, the recipient must be informed of his/her right to refuse (free of charge) the use of his/her data for marketing purposes, as well as of the procedure to exercise such right. If the commercial communication is sent by e-mail, the opt-out procedure must also be exercised by e-mail or "*other valid electronic address*".

Every electronic commercial communication must be clearly identified as such and include the name of the natural or legal person on behalf of whom it is sent.

It is prohibited to send electronic mail for the purposes of direct marketing that disguises or conceals the identity of the sender on whose behalf the communication is made.

Under the telecommunications regulations, explicit consent is also required for commercial communications sent by telephone or other communications without human intervention and fax (note that the exception mentioned above does not apply in this case). In any event, illegal spam may also constitute a breach of the consumer regulations and an unfair competition practice.

11.4.2 Cookies

The E-Commerce Law was amended by Royal Law Decree 13/2012 of 30 March in order to implement Directive 2009/136/EC (the "**e-Privacy Directive**") and by the 2014 General Telecommunications Law. It allows the use of devices for data storage and recovery purposes in the recipient's equipment terminal (e.g., cookies) if the recipient (i) is provided with clear and comprehensive information about the use and purposes of these devices, and (ii) has provided his/her prior explicit consent.

In December 2020, the SDPA issued specific guidelines on cookies to reinforce how to comply with information and consent duties. In these guidelines, the SDPA requires companies to make consent mechanisms easier to implement.

11.5 Enforcement

11.5.1 Administrative fines

The SDPA supervises the application and enforcement of the GDPR and the LOPDGDD and related regulations, both *ex officio* and as a result of a complaint.

Both controllers and processors may be held liable for infringements of the data protection rules. While the GDPR provides for two sanctioning ranges only (one up to €10 million or an amount equal to 2% of global annual turnover, and one up to €20 million or an amount equal to 4% of global annual turnover), the LOPDGDD provides for:

(A) a more detailed definition of infringements, which it qualifies as minor, serious or very serious depending on the severity of the breach; and

(B) statutory periods for data protection infringements (up to three years for the very serious infringements) and sanctions (up to three years for sanctions exceeding €300,000).

The SDPA is known for being an active authority taking into account the number of complaints by data subjects received (over 11,000 in 2020) and investigations and sanctioning proceedings initiated per year (over 4,000 in 2020). That said, the highest sanction imposed by the SDPA until May 2021 has amounted 6 million EUR.

11.5.2 Civil compensation

Civil compensation can be claimed for damages caused by the infringement of data protection rules (irrespective of the measures that the regulatory authority may take, such as the imposition of fines). Note that the GDPR enables consumer associations to issue class actions regarding data protection matters.

11.5.3 Criminal sanctions

The Spanish Criminal Code sets out certain criminal sanctions for offences related to unlawful processing of information that could include personal data. For instance, articles 197 (including 197 *bis*, *ter*, *quater* and *quinquies*), 199 and 278 of the Spanish Criminal Code establish that a person may be imprisoned (in general, sentences can be up to seven years) and face daily fines (as a general rule, for up to 24 months) when that person:

(A) With the intention of discovering secrets or breaching the privacy of another person, seizes personal documents or belongings, intercepts telecommunications or uses technical devices for listening, transmitting, recording or reproducing sounds or images.

(B) Seizes, uses or amends, to the detriment of a third party, personal data recorded on files (whether or not automated) or accesses data by any means or amends or uses the data to the detriment of the data subject or a third party.

(C) Accesses computer data or software within a computer system in breach of the security measures established to prevent such access or creates specific software tools or produces passwords to carry out such illicit access.

(D) Discloses secrets discovered as a result of professional activity or employment relationship.

(E) In order to discover a company secret, obtains data or written or electronic documents, or uses telecommunications or technical devices for listening, transmitting, recording or reproducing sounds or images or any other communication signal.

Legal entities may also be held liable for certain offences ((A) to (C) above) and may be sanctioned with a daily fine for a duration of between six months and two years. Ancillary sanctions may also be imposed, such as dissolution, suspension of activities or closure of the premises, disqualification from carrying out the activities leading to the criminal offence, disqualification from applying for public subsidies, or judicial intervention to safeguard the rights of the workers and creditors.

Daily fines are determined by the court and range from €2 to €400 for natural persons and up to €5,000 for legal entities.

There are specific circumstances that will be considered in order to establish the precise sanction from the general range indicated above (and, in some cases, even increase it). For most infringements, the aggravating circumstances include profit-making intent, disclosure to third parties, the fact that the offender is a controller or processor, or that the breach involves sensitive data, the involvement of a minor, a criminal organization, or a public authority.

12. LABOUR

The latest legislative reforms in Spain aim at protecting existing jobs, promoting the creation of new jobs, encouraging self-employment, making employment conditions more flexible, eradicating gender-based discrimination within the context of employment relationships and increasing the pensionable age.

Moreover, several laws have been implemented to consolidate, clarify and update important employment and social security laws in Spain, such as Royal Legislative Decree 2/2015 of 23 October approving the consolidated text of the Statute of Workers ("**Royal Decree 2/2015**"), Royal Legislative Decree 8/2015 of 30 October approving the consolidated text of the General Social Security Law ("**Royal Decree 8/2015**"), and Royal Legislative Decree 3/2015 of 23 October approving the consolidated text of the Employment Law. Although the aim of these laws was to consolidate separate laws into a single piece of legislation, they have also codified some minor changes and new provisions on different matters.

The global objectives behind the latest amendments have focused on employment stability and providing guarantees to employees (i.e., social security incentives for employees on voluntary leaves of absence for maternity, paternity, adoption or fostering, pension plans and funds, health and safety, and immigration regulations).

In March 2007, parliament adopted an important reform when it approved Basic Law 3/2007 of 22 March on gender equality ("**Basic Law 3/2007**"). This reform aimed to eradicate gender-based discrimination within the context of employment relationships and has been included in the Statute of Workers, approved by Royal Decree 2/2015, and other labour regulations. The improvements in gender equality in the workplace led the government to approve Royal Decree 850/2015 of 28 September, which has adapted the requirements imposed on companies and the assessment criteria to obtain an "equality in the workplace" certificate according to Royal Decree 1615/2009 of 26 October. Basic Law 3/2007 provides that companies with more than 250 employees must negotiate and implement an employment equality plan aimed at guaranteeing equal treatment and opportunities between men and women in employment. This threshold is being progressively reduced through the application of Royal Decree-Law 6/2019 of 1 March, which states that companies with more than 100 employees must have an employment equality plan in place by 7 March 2021. By 7 March 2022 all companies with more than 50 employees must have an employment equality plan in place. Royal Decree 901/2020 of 13 October regulates the content of equality plans and their negotiation process with employees' representatives. Royal Decree 902/2020 of 13 October, aimed to promote equal pay, regulates the obligation of the companies to establish a comparative pay register, broken down by gender and professional category, and to carry out a pay audit.

Royal Decree Law 6/2019 of 1 March (introduced in the Statue of Workers) gives employees the right to request an adjustment to their working time and in the manner in which they provide their services, in order to fulfil their right to a work and family life balance. Employers must start a negotiation process with the requesting employee but can reject the request based on the organizational or production needs of the company.

Royal Decree-Law 8/2019 of 8 March incorporates a set of measures aimed at guaranteeing employees' rights and preventing instability in employment with regard to working time. Amongst those measures are that every employer company must register the daily working time of its employees.

Another aim of the latest legislative reforms has been to reverse the trend of increasing unemployment rates in Spain. Firstly, Royal Decree 7/2011 of 10 June introduced some minor amendments to the collective bargaining agreements system. The aim of the Royal Decree 7/2011 was to bring collective negotiations closer to each company or activity sector and it further aims to foster negotiations within companies, so that employers and employees can adapt to changing economic circumstances. Secondly, Law 3/2012 introduced internal and external flexibility to labour relations in order to enable companies to adapt to new circumstances.

Law 27/2011 of 1 August and Royal Decree 5/2013 of 15 March increased the general retirement age from 65 to 67, the voluntary early retirement age from 63 to 65, the mandatory early retirement age from 61 to 63 and the partial retirement age from 61 to 63 (subject to transitional provisions). Royal Decree 5/2013 also regulates the requirements to receive a retirement pension while continuing to work.

In relation to personal data protection, the LOPDGDD introduced article 20 *bis* in the Statute of Workers, which provides that workers have the right to privacy in the use of digital devices made available by the employer, to digital disconnection and to privacy with regard to the use of video-surveillance and geolocation devices under the terms established in the legislation in force on personal data protection and the guarantee of digital rights.

12.1 Recent labour regulations

In the context of the Covid-19 crisis, numerous labour-related regulations have been issued aimed to provide companies with resources to cope with the crisis and to protect employees (e.g. temporary furloughs, prohibition to carry out dismissals based on Covid-related causes, etc.).

Additionally, Royal Decree-Law 28/2020 of 22 of September regulates the minimum content of the remote working agreement that must be formalized in writing with employees who work remotely on a regular basis (i.e., for at least 30% of their working time in a three-month reference period).

12.2 Employment contracts

Employment contracts must comply with the minimum requirements on employees' rights established in the Statute of Workers, as well as those of the applicable collective bargaining agreements, which may stipulate further conditions.

Notwithstanding any possible changes that may be introduced in the coming years by the new government formed in January 2020, employment contracts may be permanent or temporary. As a consequence of the "job security principle" (*principio de estabilidad en el empleo*), as a general rule, employers must hire employees through permanent employment contracts; temporary contracts are only permitted in limited circumstances. Temporary employees are afforded the same rights as employees with a permanent employment contract.

Currently, the following temporary employment relationships are permitted: (i) training contracts, (ii) apprenticeships, (iii) contracts for a specific work or service, (iv) contracts for production needs, (v) contracts to temporarily replace employees, (vi) contracts to replace retiring employees, (vii) research contracts for certain university personnel, and (viii) contracts to hire unemployed persons for works and services of general interest to the public.

The duration of a temporary employment contract depends upon the type of contract and the services performed. An employer and an employee may agree in writing to a probationary period. The period may be fixed by a collective bargaining agreement, or, in the absence of an established period, the Statute of Workers provides for a maximum duration of six months for university graduate employees and two months for other employees.

Employment contracts may be full-time or part-time. In this regard, "overtime for part-time employees" is considered to be the hours worked in excess of the agreed workday in the part-time employment contract. As a general rule, "overtime for part-time employees" may not exceed 30% of the agreed workday. However, a collective bargaining agreement may increase this percentage to 60%.

12.3 Permits for foreign employees

Foreign employees working in Spain are subject to the same employment laws as Spanish employees. However, foreign employees, if they are not nationals of EU Member States or EEA members, must obtain a work and residence permit to legally work in Spain.

Law 14/2013 of 27 September modified the legal requirements to obtain residence permits for foreign investors, entrepreneurs, highly qualified employees, researchers and employees belonging to a company group who are transferred to Spain with the aim of simplifying the process. In 2015, Law 14/2013 was modified to broaden the requirements for residence in Spain in general terms, in particular those regarding the residence permit for investors.

12.4 Working conditions

Minimum working conditions, such as salary and working hours, are established in the Statute of Workers and the applicable collective bargaining agreements. The Statute of Workers enables companies and employee representatives to agree not to apply several working conditions set out in the collective bargaining agreement.

“Salary” includes fixed and variable wages and fringe benefits in cash or in kind. Collective bargaining agreements usually determine the amount and structure of the salary. The fixed salary is paid monthly with two additional payments, usually in June and December. The Statute of Workers provides for a minimum annual, monthly, or daily salary, which the government sets every year. The minimum salary has been gradually increased in recent years and for 2020 is €13,300 per year.

The maximum working week is forty hours. Workdays of more than nine hours are not permitted, unless provision is made for this in the collective bargaining agreement or by an agreement between the employer and the employee representatives. In any case, there must be a minimum 12-hour break between the end of one workday and the beginning of the next one. In addition, employees are entitled to a weekly uninterrupted rest period of one and a half days.

“Overtime” (*horas extraordinarias*) is considered to be all work performed outside of normal working hours and employees must be compensated for it either economically or in the form of a longer rest period, in which case the maximum overtime limit of 80 hours per year would not apply. As a general rule, “overtime” for part-time employees is prohibited, as this type of employment contract has a specific regulation of its own - “overtime for part-time employees” (*horas complementarias*). According to the Statute of Workers, the statutory minimum period of paid holidays is 30 calendar days per year.

12.5 Transfer of undertakings (protection of employment)

Pursuant to EU law, the change in the ownership of a business, workplace, or independent production unit does not result in the termination of existing employment contracts. In accordance with article 44 of the Statute of Workers, the new employer is subrogated to the rights and obligations of the former employer.

The acquired rights of the affected employees must be respected by the transferee, including the rights and obligations regarding social security and private pension plans. The transferor and the transferee must notify the employee representatives of such change, establishing the envisaged date of the transfer, the reasons for the transfer, the legal, economic and social consequences arising from the transfer, and the measures to be taken with regard to the employees, if any. This information must be provided promptly, and in any event, before the actual date of the transfer. For three years after the transfer both the transferor and transferee are jointly and severally liable for labour obligations accrued prior to the transfer. In addition, they are jointly and severally liable for social security obligations under the terms established by social security law.

12.6 Termination of employment

Employment contracts may be terminated on the following grounds:

(A) mutual agreement of the parties;

(B) valid reasons previously identified in the employment contracts;

(C) established expiration date or completion date for the job or service performed;

(D) the employee's resignation;

(E) death or permanent disability of the employee;

(F) retirement of the employee;

(G) *force majeure*;

(H) a collective redundancy based on economic, technical, organizational or production reasons;

(I) by the employee, owing to a breach of contract by the employer;

(J) disciplinary dismissal of the employee;

(K) objective legal reasons, such as inability of the employee to adapt to the new circumstances of his/her post;

(L) individual dismissal for objective reasons: where there are insufficient funds to pay employee salaries when they have permanent contracts to work on public projects; or

(M) by a female employee who is forced to leave her job because she has been a victim of domestic violence.

As stated above, collective redundancies must be based on economic, technical, organizational or production reasons. A collective redundancy process must be followed if the redundancy affects, in a period of 90 days, at least:

(A) all the employees if the company has more than five employees, provided that the company stops its economic activity after the collective dismissal;

(B) ten employees in companies with less than 100 employees;

(C) 10% of the employees in companies with 100 to 300 employees; or

(D) 30 employees in companies with more than 300 employees.

The employer does not have to seek the labour authorities' authorization for a collective redundancy; however, the employer must enter into negotiations with employee representatives for a period of 30 calendar days, or 15 calendar days for companies with less than 50 employees. The consultation process will be carried out with the employees' negotiating body, to be composed prior to its commencement, in order to simplify the negotiation process.

Royal Decree 1483/2012 of 29 October regulates contributions to the Treasury by profitable companies that make employees aged 50 or over redundant. Those companies which dismiss a higher percentage of employees aged 50 or over than the percentage of employees aged 50 or over in the company must make special contributions to the Treasury, provided that the company or the group of companies makes a profit.

An individual dismissal for objective reasons may be based on (i) the employee's incapacity to perform the job, (ii) the failure to adapt to technical changes relating to the employee's job, or (iii) economic, technical, production or organizational needs.

Employees whose employment contracts are terminated due to a collective dismissal or an individual dismissal for objective reasons have the right to a statutory severance payment equivalent to at least 20 days of salary per year of service, up to a maximum limit of 12 months of salary. Individual dismissals for objective reasons must be communicated in writing to the employee in question 15 calendar days in advance. The employer must make the relevant amounts available to the employee and, in the event of dismissals based on economic, technical, organizational or production reasons, a copy of the dismissal notice must be delivered to the employee representatives. A higher severance payment may be agreed during the negotiation period for collective dismissal proceedings, normally up to the limit of the statutory compensation for unfair dismissal.

Employees may be dismissed as a result of a serious and wilful breach of their duties (disciplinary dismissal), such as a lack of discipline or insubordination towards the employer or other employees, or a continuous and voluntary decrease in the efficiency of an employee. In this case, the employee is not entitled to receive any amount as severance payment. However, an employee who is dismissed for objective or disciplinary reasons may file a claim before the labour courts, which must then determine whether the dismissal was fair, unfair, or null and void.

If the dismissal is declared unfair, the employer may choose within five working days from the notification of the judgment between (i) reinstating the employee, or (ii) paying the statutory compensation for unfair dismissal. However, if the dismissed employee is an employee representative, he/she will be entitled to choose between being reinstated and receiving the statutory severance for unfair dismissal. If the dismissed employee representative does not choose between these two options, the Statute of Workers dictates that the employee must be reinstated.

The statutory compensation for unfair dismissal is equivalent to (i) 45 days' salary per year of service up to 42 months' salary, from the date of recruitment until 11 February 2012, and (ii) after such date, 33 days' salary per year of service up to 24 months' salary from 12 February 2012 until the date of the dismissal. Severance payments for unfair dismissal relating to the period from 11 February 2012 until the date of the dismissal are accrued provided that on 11 February 2012 the affected employee was entitled to less than 24 months of his/her current salary. Thus, if the affected employee was entitled to a severance payment equal to or higher than 24 months' salary as at 11 February, he/she will not accrue any further severance payment for the period from 11 February 2012 onwards. If the employee is reinstated, the employer is obliged to pay the employee the accrued salary for the period between the date of the dismissal and the notification of the judgment. However, this accrued salary will also be payable if the employee is an employee representative, regardless of whether he/she is reinstated or not.

If the dismissal is declared null and void, the employer must reinstate the employee and pay back-dated salary from the date of dismissal until the date of reinstatement.

12.7 Trade unions and employers' associations

All employees have the right to join trade unions. The largest trade unions *(sindicatos)* are *Comisiones Obreras* ("**CCOO**") and the *Union General de Trabajadores* ("**UGT**"), which are represented in most major Spanish industries. There are also employer associations, the most important of which is the *Confederación Española de Organizaciones Empresariales* ("**CEOE**").

12.8 Employee representatives

In companies or workplaces with 11 to 49 employees, the employees are represented by workers' delegates (*delegados de personal*). One delegate must be appointed if there are less than 31 employees and three delegates must be appointed if there are between 31 and 49 employees. Workers' delegates may also be appointed in companies that have more than six and less than ten employees, if the majority agrees. In companies or workplaces with 50 or more employees, employees are represented by work councils (*Comités de Empresa*). These are committees of representatives of all the employees of the workplace in question. Employee representatives must be informed of, among other issues, the sanctions imposed on employees, the types of contracts entered into between the company and the employees, and the decisions taken by the employer regarding changes to employment in the company.

Spanish law grants employee representatives certain rights and protection. For example, representatives may not be dismissed or sanctioned during the performance of their duties or during the year following the expiration of their term for actions related to the fulfilment of their representative functions. Moreover, credit in the form of paid working hours is available for the performance of their functions.

Those employees who are members of a union may form union sections *(secciones sindicales)* within their company or workplace. In companies or workplaces with more than 250 employees, union sections may be represented by a trade union delegate (*delegado sindical*), who enjoys the same legal protection as workers' delegates or workers' committee/work council members.

12.9 Social security

Spanish social security covers all Spanish nationals who reside and perform their activities in Spain, as well as foreigners with work permits. Spanish nationals who do not reside in Spain are also covered under certain circumstances. Social security benefits include protection during sick leave, disability benefits, family protection, maternity and paternity leave, pregnancy and post-natal health cover, retirement pensions, and payments in the event of the loss of a spouse or parents.

The Spanish social security system is mainly financed through contributions made by employers and employees. Social security contributions are calculated based on the monthly salary received by the employee, plus any annual amounts that are not paid on a monthly basis, divided by 12. Royal Decree 16/2013 of 20 December broadened the concepts that must be included in the calculation of social security contributions. Thus, social security contributions must also be made for nursery school vouchers, travel allowances, food allowances and insurance premiums. Royal Decree 637/2014 of 25 July establishes the rules to value nursery school vouchers, travel allowances, food allowances and insurance premiums in order to include them when calculating the appropriate contribution.

Each year the government establishes the maximum and minimum amount used to calculate social security contributions and the percentages that must be assumed by employers and employees. In 2019, the monthly maximum amount fixed by the government was €4,070 while the minimum amount was €1,050. As a general rule, employees must contribute 6.35% and employers 29.9%.

Employers can apply deductions to the social security contributions they pay as a consequence of hiring long-term unemployed workers with permanent employment contracts. Under Royal Decree Law 8/2019 of 8 March, the amount to be deducted will depend on the working day of the hired employee (full-time or part-time). Furthermore, under Royal Decree 8/2015 companies are exempt from making certain contributions for employees over 65 or 67 years of age, provided that the employees have been making social security contributions for a certain amount of time.

Finally, Law 31/2015 of 9 September introduced measures to promote self-employment such as (i) making receipt of an unemployment benefit compatible with registration under the Special Scheme for Self-Employed Workers and; (ii) extending the period during which an active self-employed person can preserve accumulated unemployment benefit rights to 60 months.

13. TAX

13.1 Corporate income tax

13.1.1 Taxation of resident companies

Spanish corporations and other entities are subject to 25% corporate income tax (*Impuesto sobre Sociedades,* "**CIT**"*)* for tax periods starting on 1 January 2021 onwards, levied on the entity's worldwide net taxable income, including capital gains. Certain companies and other entities domiciled in the autonomous regions of the Basque Country and Navarre are subject to their specific regional CIT laws, which do not differ substantially from the general CIT law.

The current CIT Law, Law 27/2014 of 27 November 2014, came into force on 1 January 2015 (the "**CIT Law**").

As a general rule, companies are deemed to be resident in Spain for tax purposes when they have been incorporated under Spanish law, have their registered office in Spain, or have their place of management in Spain. In addition, certain unincorporated entities are also subject to CIT.[18]

The Spanish tax authorities may also consider companies and other entities established in low or no taxation jurisdictions, or in tax havens, as resident in Spain where (i) most of the company's assets consist, directly or indirectly, of assets located in Spain or rights that may be exercised in Spain, or (ii) its activities are mainly performed in Spain. This anti-abuse clause does not apply if the non-resident entity proves (i) that it is effectively managed from its alleged jurisdiction of residence with sufficient human and material resources, and (ii) that its incorporation and operation correspond to valid business reasons other than mere portfolio or asset management.

(A) Taxable income

Taxable income is calculated on the basis of the taxpayer's profit and loss account drawn up in accordance with Spanish GAAP, subject to some adjustments established by the CIT Law. The CIT Law is substantially consistent with Spanish GAAP, and sets out fairly straightforward guidelines regarding tax deductions and expenses.

Spanish accounting rules are based on the EU Accounting Directives, which have largely, with a few exceptions, adopted the International Accounting Standards ("**IAS**").

Business expenses are generally deductible, provided that they (i) relate to the generation of income, and (ii) are correctly recorded in the taxpayer's records. However, a number of restrictions on the tax deductibility of expenses may be found in the CIT Law. For example, payments made by Spanish residents to entities residing in a tax haven jurisdiction are not deductible for tax purposes unless it is proven that a service was effectively rendered.

In addition, a number of limitations have been introduced to limit the deductibility of interest expenses.

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18 From 2016 onwards, *sociedades civiles* with a commercial corporate purpose are subject to CIT.

Significantly, net financial expenses exceeding 30% of the annual operating profit (as defined for this purpose) of the tax period are not tax deductible (although the expense may be deductible in future tax periods without time limitation). However, the first €1,000,000 of net financial expenses is always tax deductible.

There is an additional limit on the deduction of interest deriving from indebtedness incurred to acquire shares in other companies. The purpose of this additional limit is that the acquiring company bears the financial cost of the acquisition loan. The trigger for the new limit may be (i) the merger of the acquired company (or other company) with the acquiring company within four years as of the acquisition or (ii) the inclusion of the acquired company (or other company) in the acquirer's tax group within four years as of the acquisition. In this context, an amount of interest on the acquisition loan may be deductible up to 30% of the buyer's or its tax group's operational profit, excluding the operational profit of the companies merged or included in the tax group. Some exceptions may apply to this additional limit on deductible financial expenses.

Financial expenses deriving from intra-group indebtedness are not tax deductible when the relevant debts have been incurred in order to (i) acquire from another group company an interest in the share capital or equity of any type of entity, or (ii) to increase the share capital or equity of a group company, unless the taxpayer is in a position to evidence that there are sound business reasons to carry out these transactions.

Finally, for contracts entered into after 20 June 2014, profit participation loans granted by companies belonging to the same group as the borrower are treated as equity for tax purposes and interest expenses are no longer tax deductible, however interest (classed as dividend income) may be tax exempt.

On the other hand, for tax periods starting as of 1 January 2021, expenses incurred in cross-border transactions may not be tax deductible if non-taxation or double deduction of expenses scenarios occur as a result of legal characterization differences in Spain and the other country or territory ("hybrid mismatches"), provided that certain requirements are met.

All fixed assets, excluding land, are depreciable for tax purposes provided certain conditions are met, calculated on the basis of the useful life of the assets. A straight-line depreciation is the method typically applied to the acquisition cost of the asset, however other methods are also permitted.

Likewise, intangible assets are also depreciable for tax purposes on the basis of their useful life. However, when the useful life of an intangible asset cannot be reliably determined, its tax depreciation cannot exceed a maximum annual rate of 5%. In relation to goodwill, although generally considered to be deductible for accounting purposes at an annual rate of 10%, goodwill is deductible for tax purposes up to a maximum annual rate of 5%.

Furthermore, depreciation of financial goodwill resulting from the acquisition of shares in foreign entities carried out before either 21 December 2007 or 21 May 2011 may also be available under certain requirements, irrespective of whether or not it is registered for accounting purposes.[19]

On the other hand, the CIT Law has introduced a so called "capitalization reserve", which is a new tax base reduction for an amount equal to 10% of the net equity increase, which could lower the maximum tax rate to 22.5%.

(B) Taxation of capital gains and patent box regime

Capital gains are treated as ordinary income for CIT purposes. The positive income obtained from the sale of securities which (i) represent at least 5% of the share capital of a company, and (ii) have been maintained during the fiscal year prior to the date of the transfer, is subject to the general exemption rules described in (E) below.

The taxation of capital gains arising from certain corporate reorganizations, including those that relate to shares or assets, whether or not they constitute a branch of activity, may be deferred, subject to compliance with some specific requirements and always provided that the transaction has been conducted for valid business purposes rather than merely to achieve a tax advantage.

The "patent box" rules set out certain tax benefits that apply to positive income earned by licensing or disposing of (i) patents, utility models, supplementary protection certificates for medicines and

[19] The tax benefit is applied to equity investments undertaken before 21 December 2007 in the terms set forth in article 1.3 of the Decisions of the European Commission dated 28 October 2009 and 12 January 2011. The tax benefit would apply to the acquisition of a majority interest in the capital of foreign entities, undertaken between 21 December 2007 and 21 May 2011, in countries where the existence of express legal barriers to cross-border business combinations have been or can be demonstrated. However, in 2014 the Court of Justice of the European Union ruled that the first Decision of the European Commission was to be annulled, and that no state aid existed. The Commission appealed against the ruling and Spain filed a claim seeking to cease the enforcement of the Commission's Decision, but the General Court of the European Union rejected the claim. Thus, the tax treatment of financial goodwill for equity investments undertaken after 21 December 2007 is unclear.

plant-protection products, legally protected designs and models, which result from research, development and technological innovation activities; and (ii) registered advanced software which arises from research and development activities, provided that certain requirements are met.[20]

As a counterpart, in the event of obtaining negative income (i.e., when the expenses related to the intangible assets exceed the income earned by licensing or disposing them), when the CIT taxpayer had obtained positive income in prior tax periods which had been reduced according to the patent box regime, such negative income will be reduced accordingly.

(C) Carried forward losses

Negative taxable income (tax losses) can generally be carried forward and offset against taxable profits without any time limitation.

For tax years starting on or after 1 January 2021, taxpayers' tax losses may be carried forward and offset by up to 70% of the tax year's tax base prior to the "capitalization reserve" reduction. In any event, carry forward losses of up to €1,000,000 may be offset.

Notwithstanding the above, companies whose net turnover of the 12 months prior to the start of the tax period exceeded €20,000,000 would offset tax losses according to the following limits: (i) 50%, if the net turnover was lower than €60,000,000; and (ii) 25%, if the net turnover exceeded €60,000,000.

(D) Valuation of assets

Assets are normally valued at their acquisition cost or at their cost of production. The acquisition cost of fixed assets includes all expenses, such as financing costs, incurred up to the moment when the asset may be used for its intended purpose. Any investment that increases the value of the asset will also increase the acquisition cost of such asset. The cost to be considered when determining any profit or loss generated as a result of the transfer of an asset is the asset's acquisition cost or its cost of production minus its accumulated depreciation and other corrections made to the value of the asset.

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20 A further limitation of the benefits of the patent box regime applies to those taxpayers that are not involved in the generation or creation of intangible assets by themselves.

Inventory is also valued at the price of acquisition or the cost of production. The acquisition cost includes the purchase price and other costs such as transport, customs and insurance. FIFO or average cost calculation methods have traditionally been accepted by the Spanish tax authorities; LIFO is no longer acceptable under the new accounting rules. As a general rule, assets must be valued at the lower of either their book value or their recoverable value.

For accounting and tax purposes, certain transactions must be valued at arm's length, including assets acquired in exchange for other assets, assets contributed to the share capital of legal entities, assets distributed as a result of a spin-off or company liquidation, share capital reduction, and so on. Additionally, fair market value must be used for tax purposes when the transaction takes place between related parties.

Certain assets[21] shown in the first balance sheet closed after 28 December 2012 may be eligible for a step up revaluation, provided that they are not completely depreciated for tax purposes at that time.[22] The step up is subject to a special 5% tax on the amount registered in a special reserve account created for this purpose.

Once a three-year term has elapsed or the Spanish tax authorities have audited the revaluation, the amount registered in the special reserve may be used to offset losses, to increase the share capital or, once ten years have elapsed as of the closing date of the last balance sheet prior to the step up, to increase the freely distributable reserves (which will only be distributable once the stepped-up assets have been completely depreciated or disposed of).

The amount derived from the step up revaluation shall be amortized as of 2016. Furthermore, CIT taxpayers subject to the general CIT rate will benefit from a 5% deduction on the amount included in the taxable base derived from the step up revaluation.

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21 (i) Fixed tangible assets and real estate investments, located in Spain or abroad, including those which are held through finance leases, subject to the condition that the call option is actually exercised; and (ii) administrative concessions registered as intangible assets by concessionaire companies that are subject to the special accounting criteria set forth in the accounting regulations applicable to concessionaire companies (EHA/3362/2010).

22 This step up valuation process may be carried out not only by CIT payers but also by PIT payers who carry out business activities (and keep their accounts according to the Commercial Code or are obliged to keep records of their business activities) and non-resident income tax payers with a permanent establishment in Spain.

(E) Avoidance of double taxation and other tax credits

The CIT Law establishes general exemption rules that apply to both domestic and foreign dividends and capital gains on the transfer of shares.

In general terms, for tax periods starting as of 1 January 2021, capital gains derived from the transfer of shares in companies, as well as dividends paid to CIT taxpayers, will benefit from a 95% tax relief from CIT provided that (i) the relevant direct or indirect stake is 5% or higher, and (ii) such stake has been held or is to be held for at least one year. In addition, for non-resident companies, they must be either resident in a tax treaty jurisdiction or subject to a nominal income tax rate of at least 10%, and cannot be domiciled in a tax haven jurisdiction. In practice, domestic and non-domestic dividends and capital gains obtained by CIT taxpayers are taxed at an effective 1.25% rate (25% CIT rate on the 5% of the registered dividends/capital gains).

A full exemption will continue to apply to dividends earned in the three years following the incorporation of the subsidiary, provided that specific requirements are met (mainly that the shareholder: (i) has a net turnover of the preceding year below €40 million; (ii) is an active company from a CIT perspective; and (iii) before the incorporation of the subsidiary, the shareholder did not form part of a company group and did not hold, directly or indirectly, any stake of 5% or more in other companies; and that the subsidiary: (i) is incorporated after 1 January 2021; and (ii) has been wholly owned since its incorporation by the shareholder).

A transitory regime is established in order to allow the application of the participation exemption for dividends and capital gains derived from subsidiaries acquired before 1 January 2021 with a tax acquisition value higher than €20 million (and a lower stake of 5%) within the following five years.

A number of special rules and limitations exist, such as those applicable to holding companies or to non-resident subsidiaries that are subject to CFC rules. In particular, among other BEPS-based rules, dividend income which generates a tax deductible expense in the hands of its payor will not qualify for the exemption.

As a counterpart, capital losses triggered by the transfer of shares will not be deductible if (i) the requirements set out above are complied with; or if (ii) the participated non-Spanish resident company is not a resident of a tax treaty jurisdiction, or is not subject to a nominal income tax rate of at least 10%.

Otherwise, capital losses would be reduced (i) in the amount of the dividends earned since the 2009 tax period, provided that such dividends have not reduced the acquisition value of the equity participation and have qualified for the application of the exemption regime; and (ii) in the amount of the positive income earned by another group entity in the transfer of the same shares, provided that such income has qualified for the application of an exemption or deduction regime.

Capital losses triggered upon the dissolution of the participated company will be deductible for tax purposes, unless it results from a restructuring transaction. In this case, capital losses would be reduced in the amount of the dividends earned during the last ten years prior to the dissolution date, provided that such dividends have not reduced the acquisition value of the equity participation and have qualified for the application of an exemption or deduction regime.

Moreover, foreign taxes paid on income subject to and not exempt from CIT are generally deductible from CIT liability, within certain parameters.

Tax Credits: certain tax credits are granted to resident CIT payers who make certain investments, such as those related to research, development and technological innovation ("**RDI**").

CIT taxpayers may apply a deduction of (i) 25% on investments in research and development[23], (ii) 8% on investments in tangible or intangible fixed assets, excluding real estate and (iii) 12% on investments in technological innovation.

(F) Transactions between related parties

All transactions between related parties must be valued at arm's length. According to the CIT Law, related party transactions include transactions between persons under common control, a company and its shareholders or its directors, or between a Spanish resident entity and its foreign permanent establishments. Related parties are required to keep transfer pricing documentation that details, amongst other things, the valuation methods and data used as the basis for the transfer pricing value. Tax penalties may be imposed on taxpayers who do not comply with these

[23] The amount exceeding the two previous years' average expenses benefits from a 42% deduction. An additional deduction of 17% may be applied to salary expenses the tax payer incurs corresponding to investigative staff exclusively assigned to R+D activities.

documentation duties or if they do not apply the arm's length value resulting from such documentation.

In addition, the CIT Law provides for the possibility of entering into advance pricing agreements with the Spanish tax authorities.

(G) Controlled foreign companies (CFC) rules

Spanish resident individuals and entities must include in their taxable income the net income and capital gains obtained by foreign subsidiaries in which they hold (alone or together with related parties) a direct or indirect interest of at least 50%, if the foreign subsidiary pays taxes that are less than 75% of the amount which would have been payable under the Spanish CIT Law on the same income and gains. Only certain passive income and gains may be charged, unless the non-resident subsidiary qualifies as a passive entity not undertaking a trade or business. There are also certain safe-harbour rules aimed at avoiding imputation of foreign business income and gains.

For CIT taxpayers, the CFC rules do not apply with respect to subsidiaries resident in an EU Member State, provided that the Spanish resident taxpayer can evidence that the subsidiary was incorporated for valid economic reasons and is engaged in an economic activity.

(H) Spanish holding companies

(i) Spanish holding companies ("**ETVE**") are companies whose corporate purpose includes, but is not necessarily limited to, the management of stakes in active non-resident entities that meet certain requirements.

(ii) ETVEs, as any other CIT taxpayer, benefit from a 95% tax relief on qualified dividends and capital gains arising from their stakes in foreign subsidiaries, provided that certain requirements are met (see Section E above).

(iii) Non-resident shareholders of ETVEs are exempt from Spanish taxation on dividends and capital gains earned through the ETVE, provided that certain requirements are met. This exemption does not apply to shareholders resident in a tax haven jurisdiction, as defined under Spanish tax rules.

(iv) ETVEs are Spanish resident entities that are entitled to the benefits of EU directives and bilateral tax treaties.

(l) Spanish REITs ("**SOCIMI**")

(i) SOCIMIs are the Spanish equivalent of a US-style real estate investment trust (REIT). As of 1 January 2013 the SOCIMI rules were substantially amended to simplify the requirements to be met by SOCIMIs and making them more tax efficient. Principally:

(a) Profits earned by a SOCIMI in its ordinary business are subject to a special 0% CIT rate, although a 19% CIT rate will be payable by the SOCIMI on dividends distributed to a shareholder holding a minimum 5% interest in the SOCIMI, when such taxpayer is not subject to tax on the dividend or is subject to tax at a rate of less than 10%.

(b) Trading of shares in SOCIMIs is possible not only in regulated markets, but also in multilateral trading systems (e.g. the Spanish alternative investment market known as "**MAB**"); and not only in EU Member States or in EEA members, but in any other country to the extent that it has entered into an exchange of tax information agreement with Spain.

(c) The trading requirements must be fulfilled on the date when the entity formally elects to be subject to the SOCIMI rules or during all the tax periods during which the entity is taxed as a SOCIMI.

(ii) Real estate assets developed by the SOCIMI must be leased for at least three years.

(iii) Subsidiaries may develop real estate assets.

(iv) The minimum share capital required is €5,000,000.

(v) A minimum of 80% of the assets' value must be invested (i) in real estate assets intended for leasing; (ii) in lands for real estate development, provided that the development starts within three years as from the acquisition of the land; and (iii) in stakes in other SOCIMIs, in other foreign entities subject to similar dividend distribution regime or in real estate collective investments undertakings.

(vi) A minimum of 80% of the income of the relevant tax period, excluding the income derived from the transfer of shares and real estate assets related to the main corporate purpose, must derive from: (i) the leasing of real estate assets to third parties who are not members of the same group of companies; and (ii) dividends or shares in profits.

(vii) A minimum of 80% of the income not deriving from the transfer of real estate assets, the transfer of certain shareholdings and dividends from such shareholdings is subject to compulsory distribution.

(J) Tax grouping

A group of resident companies commonly owned by either a Spanish resident parent company or a Spanish permanent establishment of a foreign entity may be taxed on its consolidated taxable income, provided that all the companies within it formally elect to apply these rules and notify the tax authorities of such election. In addition, from 2015 onwards, Spanish resident entities directly or indirectly owned by the same Spanish non-resident parent company, unless it is resident in a tax haven jurisdiction for Spanish tax purposes, may also be entitled to apply these rules. In this case, the parent company of the CIT group will be the Spanish resident entity so appointed by the Spanish non-resident controlling company.

In order for a parent entity to form a tax group, it must have, directly or indirectly, a minimum 75% shareholding in its subsidiaries,[24] among other conditions.

Among others, tax-exempt companies, companies taxed at a different rate than the parent company and companies in specific situations, such as insolvency, may not form part of a tax group.

Finally, losses deriving from the transfer of a shareholding in an entity of a tax group that ceases to be part of the group must be reduced by the amount of the tax losses that the transferred entity had generated and which have been offset by the group.

(K) Special tax rules for restructuring transactions

Certain corporate reorganizations may benefit from a tax neutrality system that seeks to remove tax issues as an obstacle to corporate restructuring decisions, which are regarded as necessary and beneficial to the domestic and EU economy.

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24 However, if the subsidiary is a company whose shares are traded on a regulated market, a 70% participation of the parent company in its subsidiary is sufficient.

The technique used to achieve this objective consists of deferring the tax due on capital gains which arise in connection with the reorganization, accruing at the level of the companies involved or their shareholders. The system is thus based on two basic principles: tax neutrality and an absence of prior administrative authorization.

The special tax neutrality rules are applicable by default unless the Spanish resident acquirer or the Spanish resident transferor (should the acquirer be a Spanish non-resident person) notifies the Spanish tax authorities of its intention to waive the application of the special tax neutrality rules. This notification must be filed with the Spanish tax authorities within the three months following the registration of the relevant transaction in the Spanish Commercial Registry. The delay in notifying the Spanish tax authorities of a transaction entails a fine of €10,000 per transaction.

If the Spanish tax authorities challenge the application of the special tax rules due to a lack of sound economic reasons or to the fact that the purpose of the reorganization was tax avoidance or evasion, only the tax benefit that would have been applicable if the special tax neutrality rules had applied would be eliminated.

(L) Payments in advance on account of Spanish CIT

Entities subject to CIT must make three annual payments in advance on account of CIT, which fall due in April, October and December.

13.1.2 Taxation of non-resident companies

Non-resident taxpayers are generally subject to a non-resident income tax *(Impuesto sobre la Renta de no Residentes,* "**NRIT**") on Spanish source income, including personal and business income related to an economic activity conducted in Spain, with or without a Spanish permanent establishment.

(A) Non-residents not operating through a Spanish permanent establishment

Unless there is an exemption or reduced tax rate under the NRIT Law, an applicable tax treaty or EU directive, dividends and interest payments received from a Spanish resident by a non-resident person (who does not operate in Spain through a permanent establishment) and capital gains resulting from the transfer of assets or rights located in Spain are subject to NRIT at a flat rate of 19%, whereas other income is subject to NRIT at a flat rate of 24% (19% for taxpayers resident in an EU Member State).

Specifically:

(i) Dividends paid by Spanish subsidiaries to their EU parent companies and to parent companies resident in Iceland or Norway (members of the EEA) are exempt, provided that (i) the parent company holds (and has held for at least one year) at least 5% of the Spanish subsidiary, (ii) the subsidiary and the parent company are subject to and not exempt from income tax, (iii) the subsidiary and the parent company take one of the legal forms mentioned in Directive 2011/96/EU, and (iv) the distribution is not a proceed of liquidation.

The exemption does not apply when the majority of the votes in the parent company are held by non-EU and non-EEA residents, unless there are valid business reasons for the incorporation and operation of the parent company.

(ii) Royalties paid to associated EU resident companies are exempt from NRIT.

(iii) Other NRIT exemptions may apply to certain income and capital gains obtained in Spain by foreign investors without a permanent establishment, including (i) interest and capital gains obtained from movable assets (e.g. shares) obtained by EU residents, and (ii) interest paid on bank accounts held by EU residents, provided that, among other requirements, the income or gain is not obtained through a permanent establishment in Spain.

Taxpayers resident in an EU Member State are entitled to deduct from the Spanish source income any expenses directly related to the former, on similar terms to Spanish resident taxpayers.

(B) Non-residents operating through a permanent establishment

As a general rule, permanent establishments are subject to the same taxation as Spanish corporate residents. However, some exceptions may apply: (i) a reasonable part of the management and general administration expenses that the head office incurs relating to the branch are deductible by the branch provided that certain requirements are met; (ii) interest, royalties, fees and payments for technical assistance and for the use of other goods or rights made by a Spanish permanent establishment to its foreign head office are not deductible from the permanent establishment's taxable income. The only exception to this rule is the interest paid by permanent establishments of foreign banks to their head office or to other associated foreign establishments.

Furthermore, permanent establishments may be subject to different taxation depending on whether or not they complete a business cycle when carrying out their activities in Spain.

Profit distributions made by Spanish permanent establishments to their foreign head offices are subject to a 19% branch profits tax, unless the head office is located in the EU (this exception does not apply if the country is considered to be a tax haven) or in a country with which Spain has entered into a tax treaty (unless the applicable tax treaty provides otherwise).

(C) Special tax on entities owning real estate in Spain

Non-resident entities domiciled in a tax haven owning or enjoying any rights over Spanish real estate assets are subject to a special tax amounting to 3% of the property's assessed value, which is levied on an annual basis.

(D) Tax treaty network

Spain has a wide network of bilateral conventions for the avoidance of double taxation ("**Double Taxation Treaties**") with other jurisdictions.

The countries with which Spain has entered into a treaty (some of which are not yet in force) are: Albania, Algeria, Andorra, Argentina, Armenia, Australia, Austria[25], Azerbaijan, Barbados, Belarus, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cape Verde, Canada, Chile, China (P.R.C.), Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark,[26] Dominican Republic, East Timor, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea (R.O.K.), Kuwait, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States of America[27], Uruguay, Uzbekistan, Venezuela and Vietnam. Additional treaties pending to be ratified include those with Bahrain, Montenegro, Namibia, Peru and Syria. Spain has also

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[25] A new version of this tax treaty is on a preparatory phase, pending to be signed and published in the Spanish Official Gazette.

[26] Terminated, with effect from 1 January 2009.

[27] Apart from the exchange of information clause included in this tax treaty, the United States of America and Spain have entered into an Exchange of Information Agreement aimed at the implementation of the Foreign Account Tax Compliance Act ("**FATCA**").

entered into an information exchange agreement with Andorra, Aruba, Bahamas, Curaçao, San Martín and San Marino. Additional information exchange agreements pending ratification include those with Bermuda, the Cayman Islands, the Cook Islands, Guernsey, Jersey, Isle of Man, Saint Vincent and the Grenadines, Santa Lucia, Macao and the Principality of Monaco.

In addition, the tax treaty entered into by and between the USSR and the Kingdom of Spain is still in force for Turkmenistan, Kyrgyzstan, Tajikistan and Ukraine, as former members of the USSR with whom Spain has not entered into a new standalone tax treaty. The following former USSR members have all entered into new tax treaties with Spain: Armenia, Azerbaijan, Georgia, Kazakhstan, Moldova and Uzbekistan.

Spain has also signed treaties regarding inheritance tax with Greece, Sweden and France.

Spain has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"), opting for the PPL anti-abuse provision as a default, but as of 1 January 2021 it has not entered into force yet.

13.1.3 Tax procedure

(A) CIT tax payers and non-residents with permanent establishments

Spanish CIT tax payers and permanent establishments of non-residents subject to NRIT must file an annual self-assessment tax return. This annual tax return must be filed within 25 days after the six-month period following the end of the relevant tax period.

In addition to this annual return, taxpayers must make advanced payments on account of their final CIT or NRIT return during the first 20 days of April, October and December of each year. Such payments, together with any withholdings on account of CIT or NRIT which have been borne, are credited against the taxpayer's final CIT or NRIT liability.

The tax return on branch profit distribution must be filed within a period of one month following the profit distribution.

The permanent establishment of a foreign company in Spain must appoint a tax representative in Spain.

(B) Non-residents without permanent establishments

Income obtained by non-residents without a permanent establishment is generally declared by the payer of the income, who is required to make a withholding and pay the withheld amount to the Treasury through a tax return (form 216) to be filed monthly when the annual turnover exceeds €6,010,121.04, and quarterly in any other case.

Where an exemption or a reduced tax rate applies because of the tax residence of the recipient, the withholding agent must be provided with a tax residence certificate (issued by the tax authorities of the jurisdiction of residence and valid for one year) before the relevant payment becomes due. Otherwise, the withholding agent will not be allowed to apply the relevant exemption or reduced rate, and the recipient will have to request a refund from the tax authorities by filing a tax return.

Income not subject to withholding on account of NRIT and capital gains obtained by non-resident persons acting without a permanent establishment in Spain must be declared by the non-resident taxpayer by means of a special form (form 210), which must be filed, depending on the type of income, generally quarterly or on an annual basis. In principle, a separate form must be used for each transaction; however, collective returns are allowed in certain cases (form 210), in which case the filing must be carried out within the 20 days following the end of the calendar quarter.

Non-resident taxpayers without a permanent establishment in Spain must appoint a tax representative in Spain when required to do so by the NRIT Law.

13.1.4 Withholding tax rate for residents

The general withholding tax rate for CIT taxpayers is 19%.

13.2 Value added tax (VAT)

All business transactions are subject to VAT, except for those activities which are declared exempt. As a general rule, VAT is levied on transfers of goods made or services provided by entrepreneurs, on certain intra-EU acquisitions and on the import of goods within the Spanish VAT territory. In the Canary Islands, Ceuta and Melilla no VAT is applicable, but there are certain analogous indirect taxes (IGIC in the Canary Islands).

VAT taxpayers may elect to be taxed under VAT grouping rules, provided that certain conditions are met. As of 2015, a holding company may be the VAT group's parent company.

The applicable VAT rates depend on the type of goods sold or services provided: (i) a general rate of 21% is applied to most goods and services; (ii) a reduced rate of 10% applies to certain intra-EU transactions, imports and supply of goods and services; and (iii) a super reduced rate of 4% is applied to a few goods and services deemed as bare necessities.

The sale and provision of certain goods and services, such as financial services (excluding some management, administration and custodial services) and the sale of securities, health care and education, are exempt from VAT.

The Spanish VAT Law establishes a special procedure under which taxpayers not established in Spain can obtain a refund of the VAT they have borne within a taxable period if certain conditions are met. This VAT refund applies to EU residents as well as residents in non-EU countries with reciprocal arrangements (e.g., United Kingdom, Swiss, Norwegian or Japanese resident taxpayers).

Special cash-based VAT rules are applicable to VAT taxpayers that formally opt to apply them and have a limited VAT turnover.[28] The main benefit is that taxpayers that opt to apply these rules do not have to pay the Spanish Treasury the output VAT that is passed on until the latter has been collected from the customer.

13.3 Capital duty

Certain capital transaction, including capital decreases and the liquidation of companies, or branches of non-EU resident companies, are subject to a 1% capital duty in Spain. The incorporation of companies, increases in share capital and, in general, shareholder capital contributions to companies or branches are exempt from capital duty in Spain.

Furthermore, any corporate reorganizations, as defined under Spanish tax law, are not subject to capital duty. Such transactions include mergers, spin-offs, special contributions in kind, and share-for-share exchanges.

13.4 Business activities tax

Business activities tax (*Impuesto sobre Actividades Económicas* or "**IAE**") is a local tax payable by any entities carrying out a trade or business in Spain. It is regulated by Royal Legislative Decree 2/2004 of 5 March and it is payable on an annual basis. The amount of IAE payable varies depending on the activity

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[28] The cash-accounting VAT rules are applicable to taxpayers whose (i) VAT turnover during the previous calendar year did not exceed €2 million (or which activity commenced during the current calendar year), and (ii) who do not receive cash payments from the same client in excess of €100,000 during a given year, provided that they formally opt to be subject to these special VAT rules under the terms established in the corresponding regulations.

performed and the place where the activity is based, as a different coefficient is applied to the general quota set forth in Royal Decrees 1175/1990 and 1259/1991.

Different tax benefits are applicable. CIT taxpayers, civil partnerships engaged in a trade or business, and other entities with an annual net turnover lower than €1,000,000, as well as natural persons, are exempt from IAE. Entities that exceed said threshold and commence activity in Spain are exempt from IAE during their first two tax periods.

The final amount owed in IAE due will typically not be significant.

For additional information on the Spanish taxation system, please refer to the International Tax Desk Book at:

http://www.lexmundi.com/images/lexmundi/PracticeGroups/InternationalTax/DeskBookUpdate/Spain.pdf

14. ENVIRONMENTAL LAW

14.1 General legal framework

Article 45 of the Spanish Constitution of 1978 establishes the framework for Spanish environmental law. This article includes a right to enjoy the environment and a duty to protect it, and draws a distinction between three different areas of environmental law; namely, administrative, civil, and criminal.

On this basis, numerous environmental rules have been enacted, both at the national and regional level[29], some of which are of a more general scope while others which focus on specific environmental areas. We have summarised the specific legal framework in section 14.2 below; section 14.3 deals with environmental liabilities.

The regulations on classified activities are generally considered the most important since they allow local authorities to control any activity that may have an impact on the environment. In addition, according to Royal Decree 1/2016 approving the consolidated text of the Law on integrated pollution prevention and control, an integrated environmental authorization must be obtained for those activities listed in its annex I (e.g. waste water discharges, waste production, management of emissions).

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29 The regions may approve stricter environmental regulation in addition to that approved at the national level. For their part, municipalities may approve regulations of their own which implement national and regional rules.

Law 21/2013 on environmental assessment further establishes that certain public or private projects consisting of the construction of works, facilities, or any other activity included in its annexes, as well as certain public authority plans and programs, are subject to prior environmental assessment.

14.2 Specific legal framework

Several statutes have been enacted concerning specific administrative aspects of environmental law. For instance, Law 34/2007 on air quality and protection of the atmosphere establishes a general scheme for the surveillance and control of atmospheric pollution, and is further developed by several more specific regulations. In addition, Law 1/2005 governs the trade of greenhouse gas emission allowances.

Law 22/1988 on coasts, Legislative Royal Decree 1/2001 on water, Law 41/2010 on the protection of the marine environment, Royal Decree 258/1989 on the spillage of hazardous substances from the land into the sea, and Royal Decree 1514/2009 on the protection of underground water against pollution and deterioration, all deal broadly with water conservation.

Law 22/2011 introduces the basic principles of European policy on waste management, including the waste hierarchy (i.e. prevention, preparation for re-use, recycling, other recovery and disposal) and the “polluter pays” principle.

Law 22/2011 also specifically addresses soil pollution. It establishes information procedures and apportions responsibility for the process by which a site must be cleaned once it is declared polluted.

Additionally, Law 42/2007 on natural heritage and biodiversity establishes the basic legal regime for the conservation, sustainable use, improvement and restoration of natural heritage and biodiversity.

14.3 Environmental liability regime

Administrative sanctions usually take the form of fines (in certain cases up to several million euros), though other sanctions, such as the suspension of the activity, closure of premises and the obligation to restore things to their prior state, may be imposed as well. Moreover, Law 26/2007 on environmental liability obliges operators to take measures to avoid environmental damage and, where damage has been caused, to remedy it.

Civil liability is independent and, therefore, can apply irrespective of criminal liability or administrative sanctions.

An entire section of the Spanish Criminal Code (Title XVI) is devoted to crimes concerning land planning and the protection of national heritage and the environment (although other articles of the Code also cover crimes concerning the environment, such as articles 343 and 345 in Title XVII). Title XVI includes three chapters that are relevant for these purposes: (i) criminal offences against natural resources and the environment, (ii) criminal offences against the protection of flora and fauna and domesticated animals, and (iii) general provisions applicable to Title XVI. Among other penalties, guilty parties may be imprisoned. Legal entities may also be held criminally liable, as well as individuals.

15. CRIMINAL LAW

15.1 General issues

The Spanish Criminal Code ("**SCC**") contains both (i) rules on attributing criminal liability (and civil liability arising from the crime) to any individual who has committed a criminal offence, and (ii) provisions describing each specific criminal offence.

An overview of the aspects of criminal law that may affect business in Spain should focus on those corporate criminal offences for which company directors may be liable, such as unfair administration (article 252 SCC), misappropriation (article 253 SCC), investors' fraud (article 282 *bis*), market manipulation (article 284 SCC), insider trading (articles 285 and 285 *bis* SCC), bribery in the private sector (article 286 *bis* SCC), corporate crimes (articles 290-294 SCC), money laundering (article 301 SCC), tax fraud (article 305 SCC), violations of employees' rights (articles 311-318 SCC), environmental crimes (articles 325-331 SCC), criminal offences against public health (359-367 SCC), bribery of public officers (articles 424-427 *bis* and 286 *ter* SCC), influence peddling (articles 429 and 430 SCC) and embezzlement (articles 432-435 SCC).

15.2 Corporate criminal liability

According to article 31 *bis* SCC, which was included in 2010 and modified in 2015, corporations/legal entities may be prosecuted as criminally liable parties on the basis of the general principle that organizational duties may be breached. This corporate criminal liability is based on a "transference" model. This means that companies will not be penalized for their own conduct but for the acts committed by an individual; criminal liability is "transferred" from the individual to the company if any of the following requirements is met:

(A) the offence has been committed by a director or legal or de facto representative of the company, who acted on behalf of and for the direct or indirect benefit of the company; or

(B) the offence has been committed for the direct or indirect benefit of the company by an individual who is under its control and direction (e.g. an employee or agent) as a result of the company failing to perform its monitoring and control duties.

The reform of the SCC in 2015 introduced a criminal liability exemption for companies capable of proving that they have adopted effective crime prevention measures.

In the case of offences committed by employees, the company will be exempt from any criminal liability if, before the commission of the crime, it had adopted, and effectively implemented, an organization and management model likely to prevent crimes of the same nature or significantly reduce the risk of their commission.

In the case of offences committed by company representatives, the company will only be exempt from any criminal liability if the following requirements are also fulfilled:

(A) The monitoring of the prevention model has been entrusted to a compliance officer or supervisory body with the necessary powers, or to a corporate body legally entrusted with supervising the effectiveness of internal controls;

(B) The offender has committed the crime fraudulently, avoiding prevention controls; and

(C) There has been no omission or insufficient oversight by the compliance officer or supervisory body.

In any case, the SCC sets forth that the company's organization, management and control model must comply with numerous requirements. It must (i) identify the activities through which offences might be committed, (ii) establish protocols and procedures that specify how company decisions should be adopted and executed in relation to crime prevention, (iii) design adequate financial resources management models to prevent the commission of crimes, (iv) impose an obligation to report to the compliance officer or supervisory body any risks or violations of the prevention model, (v) establish a disciplinary framework that adequately punishes violations of the prevention model, and (vi) carry out periodic verifications and updates of the prevention model.

Corporate criminal liability is of a cumulative nature. Therefore, both the individuals involved and the company will be held criminally liable and may be found guilty and punished with various separate penalties for the same offence.

However, this strict cumulative nature is partially eased by article 31 *bis*, according to which criminal liability may be attributed exclusively to the company when the crime has been committed by one of its directors, representatives, employees, agents, etc., but the perpetrator cannot be identified and prosecuted.

Criminal corporate liability under the SCC does not apply to all criminal offences set out in the SCC, but rather only applies when expressly established by the relevant provision regulating a criminal offence. The following are examples of criminal offences that can be committed by corporations: (i) privacy offences; (ii) fraud; (iii) concealment of assets; (iv) fraudulent bankruptcy; (v) cybercrime; (vi) intellectual property related crimes; (vii) copyright offences; (viii) investors' fraud; (ix) market manipulation; (x) insider trading; (xi) money laundering; (xii) illegal funding of political parties; (xiii) tax fraud; (xiv) urban planning crimes; (xv) environmental crimes; (xvi) public and private bribery, (xvii) influence peddling; and (xviii) embezzlement.

15.3 Crimes that may be committed while carrying out the company's activity

(A) Unfair administration takes place when directors or any other person with management powers exceed the limits of those powers and cause harm to the assets under management.

(B) Misappropriation is committed when directors or any other person related to the company appropriate, for themselves or for a third party, money, belongings, securities or any other movable property received in deposit, commission or custody, or entrusted to them by virtue of any other valid title that produces the obligation of handing them over or returning them, or when they deny having received them.

(C) Investors' fraud takes place when *de facto* or *de iure* managers of a company that issues securities listed on the stock markets falsify the economic-financial information contained in the prospectuses used to issue any financial instruments or information that the company must publish and make known pursuant to the stock market legislation, concerning its resources, activities and present and future business, in order to attract investors or depositors, to place any kind of financial asset, or to obtain financing.

(D) Private sector bribery is the unjustified offer or granting of a benefit or advantage of any nature (e.g. money, gifts or favours) to a director, manager, employee or collaborator of a company, with the intention of obtaining favourable treatment from the bribed individual in preference to third parties in the field of commercial transactions, through the breach of his/her duties.

(E) Crimes committed within the corporation/legal entity include the following:

(i) Accounting fraud covers *de facto* or *de iure* directors who falsify annual statements or other documents which must reflect the legal or economic situation of the company, when this fraud is sufficient to cause economic damage to the company, to any of its shareholders, or to third parties.

(ii) Using a majority position to impose resolutions during a general meeting or through the board of directors of any company, for one's own benefit or for the benefit of a third party and to the detriment of the other shareholders, and with no corporate benefit.

(iii) Imposing or taking advantage (to benefit oneself or a third party) of a detrimental resolution passed by a fictitious majority that has been achieved through an abuse of blank documents which have already been signed (or similar abuses), by unlawfully granting a voting right to parties who do not have this right, by illegitimately denying the exercise of a voting right to those legally entitled to vote, or by any other means which harm the company or any of its shareholders.

(iv) The refusal by *de facto* or *de iure* directors, without a valid legal reason, to allow shareholders to exercise their right to information, their right to participate in the management of the company, or their preferential subscription rights.

(v) The refusal by *de facto* or *de iure* directors of companies acting in a regulated market to allow any agents, bodies or inspecting entities to carry out their supervisory duties.

(F) <u>Money laundering</u> is defined in the SCC as the acquisition, possession, use, conversion or conveyance of assets in order to conceal their illicit origin or to help the author of a crime to avoid the corresponding sanction. In Spain, money laundering offences may be committed either intentionally or through gross negligence.

(G) <u>Tax fraud</u> is a criminal activity committed by any person who defrauds the national, regional or local treasury by evading tax payments, misappropriating amounts retained at source or amounts that should have been retained or payments deriving from remuneration in kind, obtaining fraudulent tax rebates or enjoying other forms of improper tax benefits, when the amount of tax defrauded exceeds €120,000. *De facto* or *de iure* directors are liable as the parties responsible for the payment of corporate income tax.

The SCC sets a penalty of one to five years imprisonment and a fine ranging from one to six times the defrauded tax. The penalty may be increased if (i) the fraudulent party's identity, assets or the defrauded sum is concealed, or (ii) the amount defrauded exceeds €600,000, or (iii) the tax fraud has been committed within a criminal group or organization. No criminal liability shall arise for tax crime if the suspect acknowledges and reimburses the tax debt before being formally notified of any judicial or administrative investigation procedure regarding such debt. The penalty may be substantially reduced if the suspect of a tax crime acknowledges the facts and reimburses the sums claimed by the tax authorities before two months have elapsed since his summoning as a suspect by the court.

In the event that the legal person is responsible for any of these offences, a fine amounting to the defrauded or unduly obtained sum and up to two times that sum may be imposed, while an offence committed by a natural person carries a sanction of over two years' imprisonment. The SCC sets out that when both the legal person and its director(s) are fined on the grounds of the same facts, the amount of the penalty imposed shall be adjusted proportionally.

(H) A company's directors will be sanctioned when criminal offences that infringe employee rights are attributed to the company. The following may constitute a criminal offence:

(i) Imposing employment or social security conditions on employees that damage, remove or limit their legal, statutory or contractual rights.

(ii) Simultaneously employing several workers without obtaining the corresponding labour authorization or communicating their activity to the social security authorities, provided that the number of workers working under these conditions exceeds a certain threshold.

(iii) Repeatedly employing foreigners or minors without work permits.

(iv) Engaging in illegal employment or promoting or in any way encouraging illegal immigration of workers to Spain.

(v) Discriminating against any individual in his/her workplace, whether public or private, due to his/her ideology, religion, beliefs, ethnicity, race, nationality, gender, sexual orientation, family situation, etc.

(vi) Hindering or limiting the exercise of trade union rights or the freedom to strike.

(vii) Failing to adopt appropriate health and safety measures to protect employees where such failure is intentional or the result of gross negligence.

(I) Environmental crimes involve the infringement of any environmental regulation which causes or produces, either directly or indirectly, emissions, waste disposals, radiation, extractions, excavations, terracing, noises, vibrations, injections or deposits, into the atmosphere, soil, underground or in continental, maritime or underground waters, even with trans-border effects, as well as water collections, which may cause serious harm to the quality of the air, soil, water, animals or plants. If the risk of harm affects the balance of ecosystems or human health, the penalties increase significantly.

These environmental crimes will be aggravated, and penalties increased, where:

(i) The activity takes place in secret, without the required authorization or administrative approval.

(ii) Express orders of the authorities related to the alteration or termination of polluting activities are disobeyed.

(iii) Information on the environmental impact of the activity is concealed or forged.

(iv) Administrative inspections are hindered.

(v) The activity produces a risk of irreversible or catastrophic damage.

(vi) Illegal collection of water is carried out during a restricted period.

(J) The bribery of public officers can be committed by private individuals who corrupt or try to corrupt any Spanish, EU or foreign public officers, both in national and international transactions. The crime is committed not only when the private individual pays the public officer, but also when the individual offers such payment or bribe or accepts the solicitation of the public officer. The aim of the payment or bribe could be to have the public officer carry out an act, to avoid or delay him or her from carrying an act out or simply given his or her position.

(K) Influence peddling is committed when private individuals influence a public officer's decision, taking advantage of their personal relationship with them or another public officer, in order to obtain a financial benefit.

(L) Embezzlement is the misappropriation or unfair administration of public funds. It may be committed by private individuals when they are in charge of public funds or treasury bills.

In addition to the abovementioned crimes, there are certain criminal offences that may be committed only in specific sectors, such as criminal offences against public health (which may be committed in health or food industry sectors) or market abuse/manipulation and insider trading (which may be committed in the financial markets sector).

15.4 Initiation of criminal proceedings

Criminal proceedings may be initiated under Spanish law in the following circumstances:

(A) By criminal courts at their own initiative, if the judge knows that a crime has been committed.

(B) By means of a criminal complaint filed by the public prosecutor.

(C) By means of a criminal complaint filed by a private party. A private prosecution may only be brought by those who have a direct interest in the case (victim, aggrieved individuals, etc.)

(D) By means of a criminal complaint filed by a “people’s prosecutor”. A “people's prosecution” may be initiated by any individual or entity that, regardless of their involvement in the case, wishes to prosecute a crime.

In all these cases, private parties or people’s prosecutors may become parties to the formal accusation within the criminal proceedings.

16. APPENDIX

16.1 Head of state

CASA DE SU MAJESTAD EL REY
(THE ROYAL HOUSEHOLD OF H.M. THE KING)
Head of the Household of HM the King: Jaime Alfonsín Alfonso
Palacio de La Zarzuela
Carretera del Pardo s/n
28071 Madrid
Telephone: (+34) 91 599 24 24
Website: http://www.casareal.es

16.2 Government of Spain

PRESIDENCIA DEL GOBIERNO
(PRESIDENT OF THE GOVERNMENT)
President: Pedro Sánchez Pérez-Castejón
Complejo de la Moncloa, Avda. Puerta de Hierro, s/n.
28071 Madrid

Telephone: (+34) 91 335 35 35

Website: https://www.lamoncloa.gob.es/Paginas/index.aspx

16.3 Legislature

CONGRESO DE LOS DIPUTADOS

(CONGRESS OF DEPUTIES)

Plaza de las Cortes, 1

28014 Madrid

Telephone: (+34) 91 390 60 00

Website: http://www.congreso.es/

SENADO

(SENATE)

Calle Bailén, 3

28071 Madrid

Telephone: (+34) 91 538 10 00

Website: http://www.senado.es/

16.4 The judiciary

CONSEJO GENERAL DEL PODER JUDICIAL

(GENERAL COUNCIL OF THE JUDICIARY)

Marqués de la Ensenada, 8

28004 Madrid

Telephone: (+34) 91 700 61 00

Website: http://www.poderjudicial.es

TRIBUNAL CONSTITUCIONAL

(CONSTITUTIONAL COURT)

Domenico Scarlatti, 6

28003 Madrid

Telephone: (+34) 91 550 80 00

Website: http://www.tribunalconstitucional.es/

TRIBUNAL SUPREMO DE JUSTICIA

(SUPREME COURT OF JUSTICE)

Plaza de la Villa de París, s/n

28071 Madrid

Telephone: (+34) 91 397 12 00

Website: http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Tribunal_Supremo

AUDIENCIA NACIONAL

(NATIONAL COURT)

García Gutiérrez, 1

28004 Madrid

Telephone: (+34) 91 709 66 62

Goya, 14

28001 Madrid

Telephone: (+34) 91 400 70 53

Website: http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Audiencia_Nacional

FISCALÍA GENERAL DEL ESTADO

(PUBLIC PROSECUTION SERVICE)

Fortuny, 4

28010 Madrid

Telephone: (+34) 91 335 21 66

Website: http://www.fiscal.es

TRIBUNAL MILITAR CENTRAL

(CENTRAL MILITARY COURT)

Princesa, 36

28008 Madrid

Telephone: (+34) 91 308 98 00

Website: https://www.defensa.gob.es/jurisdiccionmilitar/TMC/

TRIBUNAL ECONÓMICO-ADMINISTRATIVO CENTRAL

(CENTRAL ECONOMIC-ADMINISTRATIVE COURT)

Panamá, 1

28036 Madrid

Telephone: (+34) 91 700 32 00

Website: http://www.minhap.gob.es/es-ES/Areas%20Tematicas/Impuestos/TEAC/Paginas/Tribunales%20economicos%20administrativos.aspx

16.5 Other national institutions

BANCO DE ESPAÑA

(BANK OF SPAIN)

Alcalá, 48

28014 Madrid

Telephone: (+34) 91 338 50 00

Website: http://www.bde.es/

BIBLIOTECA NACIONAL

(NATIONAL LIBRARY)

Paseo de los Recoletos, 20

28001 Madrid

Telephone: (+34) 91 580 78 00

Website: http://www.bne.es/

BOLETIN OFICIAL DEL ESTADO

(SPAIN'S OFFICIAL STATE GAZETTE)

Avda. de Manoteras, 54

28050 Madrid

Telephone: (+34) 91 111 40 00

Website: http://www.boe.es/

COMISIÓN NACIONAL DE LOS MERCADOS Y LA COMPETENCIA

(NATIONAL MARKETS AND COMPETITION COMMISSION)

Barquillo 5

28004 Madrid

Telephone: (+34) 91 432 96 00

Alcalá, 47

28014 Madrid

Telephone: (+34) 91 432 96 00

Carrer de Bolivia, 56
08018 Barcelona
Telephone: (+34) 93 603 62 00
Website: http://www.cnmc.es/

COMISIÓN NACIONAL DEL MERCADO DE VALORES
(NATIONAL SECURITIES MARKET COMMISSION)
Edison, 4
28006 Madrid
Telephone: (+34) 91 585 15 00
Website: http://www.cnmv.es/

CONSEJO DE ESTADO
(COUNCIL OF STATE)
Mayor, 79
28013 Madrid
Telephone: (+34) 91 516 62 62
Website: http://www.consejo-estado.es/

CONSEJO ECONÓMICO Y SOCIAL
(ECONOMIC AND SOCIAL COUNCIL)
Huertas, 73
28014 Madrid
Telephone: (+34) 91 429 00 18
Website: http://www.ces.es/

DEFENSOR DEL PUEBLO
(OMBUDSMAN)
Paseo de Eduardo Dato, 31
28010 Madrid
Telephone: (+34) 91 432 79 00
Zurbano, 42
28010 Madrid
Telephone: (+34) 91 432 79 00

Website: http://www.defensordelpueblo.es/

TRIBUNAL DE CUENTAS

(COURT OF AUDITORS)

Fuencarral, 81

28004 Madrid

Telephone: (+34) 91 447 87 01

Website: http://www.tcu.es/

BOLSA DE MADRID

(MADRID STOCK EXCHANGE)

PALACIO DE LA BOLSA

Plaza de la Lealtad, 1

28014 Madrid

Telephone: (+34) 91 709 50 00

Website: http://www.bolsamadrid.es/

BOLSA DE BARCELONA

(BARCELONA STOCK EXCHANGE)

Paseo de Gracia, 19

08007 Barcelona

Telephone: (+34) 93 401 35 55

Website: http://www.borsabcn.es/

BOLSA DE BILBAO

(BILBAO STOCK EXCHANGE)

Jose Mª Olabarri, 1

48001 Bilbao

Telephone: (+34) 94 403 44 00

Website: http://www.bolsabilbao.es/

BOLSA DE VALENCIA

(VALENCIA STOCK EXCHANGE)

de los Libreros, 2

46002 Valencia

Telephone: (+34) 96 387 01 56

Website: http://www.bolsavalencia.es/

CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA

(GENERAL COUNCIL OF SPANISH LAWYERS))

Paseo de Recoletos, 13

28004 Madrid

Telephone: (+34) 91 523 25 93

Website: https://www2.abogacia.es/

16.6 Regional institutions

16.6.1 Andalusia

JUNTA DE ANDALUCÍA

(REGIONAL GOVERNMENT OF ANDALUSIA)

Av. de Roma s/n. (Palacio de San Telmo)

41071 Sevilla

Telephone: (+34) 95 503 55 00

Website: http://www.juntadeandalucia.es

PARLAMENTO DE ANDALUCÍA

(PARLIAMENT OF ANDALUSIA)

San Juan de Ribera, s/n

41009 Sevilla

Telephone: (+34) 95 459 21 00

Website: http://www.parlamentodeandalucia.es

BOLETÍN OFICIAL DE LA JUNTA DE ANDALUCÍA

(OFFICIAL GAZETTE OF ANDALUSIA)

Polígono Industrial de Fuente del Rey, Dos Hermanas,

41014 Sevilla

Telephone: (+34) 955 03 48 00

Website: http://www.juntadeandalucia.es/eboja.html

16.6.2 Aragon

DIPUTACIÓN GENERAL DE ARAGÓN

(REGIONAL GOVERNMENT OF ARAGON)

P.º María Agustín, 36

50004. Zaragoza

Telephone: (+34) 976 71 40 00

Website: http://www.aragon.es

CORTES DE ARAGÓN

(PARLIAMENT OF ARAGON)

Palacio de la Aljafería, c/ Diputados s/n

50004 Zaragoza

Telephone: (+34) 976 28 95 28

Website: http://www.cortesaragon.es

BOLETÍN OFICIAL DE ARAGÓN

(OFFICIAL GAZETTE OF ARAGON)

Paseo María Agustín, núm. 36

50004 Zaragoza

Telephone: (+34) 976 71 44 91

Website: http://www.boa.aragon.es/

16.6.3 Cantabria

GOBIERNO DE CANTABRIA

(REGIONAL GOVERNMENT OF CANTABRIA)

Peña Herbosa, 29

39003. Santander

Telephone: (+34) 942 20 71 00

Website: http://www.cantabria.es

PARLAMENTO DE CANTABRIA

(PARLIAMENT OF CANTABRIA)

Edificio San Rafael. Calle Alta, 31-33

39008. Santander

Telephone: (+34) 942 24 10 60

Website: http://www.parlamento-cantabria.es

BOLETÍN OFICIAL DE CANTABRIA

(OFFICIAL GAZETTE OF CANTABRIA)

Peña Herbosa, 29

39004 Santander

Telephone: (+34) 942 20 82 53

Website: http://boc.cantabria.es/boces/

16.6.4 Castile-La Mancha

JUNTA DE COMUNIDADES DE CASTILLA-LA MANCHA

(REGIONAL GOVERNMENT OF CASTILE-LA MANCHA)

Río Cabriel, 7

45007 Toledo

Telephone: (+34) 925 28 98 90

Website: http://www.castillalamancha.es/

CORTES DE CASTILLA-LA MANCHA

(PARLIAMENT OF CASTILLA-LA MANCHA)

Convento de San Gil. Bajada del Calvario, s/n

45002 Toledo

Telephone: (+34) 925 25 98 00

Website: http://www.cortesclm.es

DIARIO OFICIAL DE CASTILLA LA-MANCHA

(OFFICIAL GAZETTE OF CASTILE-LA MANCHA)

Avda. de Portugal 11

45005 Toledo

Telephone: (+34) 925 266 281

Website: http://docm.jccm.es/portaldocm/

16.6.5 Castile and Leon

JUNTA DE CASTILLA Y LEÓN

(REGIONAL GOVERNMENT OF CASTILE AND LEON)

Pza. de Castilla y León, 1

47008 Valladolid

Telephone: (+34) 983 41 11 09

Website: http://www.jcyl.es

CORTES DE CASTILLA Y LEÓN

(PARLIAMENT OF CASTILE AND LEON)

Pza. de las Cortes de Castilla y León, 1

47015 Valladolid

Telephone: (+34) 983 42 15 00

Website: http://www.ccyl.es

BOLETÍN OFICIAL DE CASTILLA Y LEÓN

(OFFICIAL GAZETTE OF CASTILE AND LEON)

C/Santiago Alba, 1

47008 Valladolid

Telephone: (+34) 983 41 12 42

Website: http://bocyl.jcyl.es/

16.6.6 Catalonia

GENERALITAT DE CATALUÑA

(REGIONAL GOVERNMENT OF CATALONIA)

Palau de la Generalitat. Pza. de Sant Jaume, 4

08002 Barcelona

Telephone: (+34) 93 402 46 00

Website: http://www.gencat.cat/

PARLAMENT DE CATALUÑA

(PARLIAMENT OF CATALONIA)

Parc de la Ciutadella, s/n

08003 Barcelona

Telephone: (+34) 93 304 65 00

Website: http://www.parlament.cat/web

DIARIO OFICIAL DE LA GENERALITAT DE CATALUÑA

(OFFICIAL GAZETTE OF CATALONIA)

Avda. de Josep Tarradellas, 20

08029 - Barcelona

Telephone: (+34) 93 292 54 00

Website: http://www20.gencat.cat/portal/site/portaldogc

16.6.7 Extremadura

JUNTA DE EXTREMADURA

(REGIONAL GOVERNMENT OF EXTREMADURA)

Pza. del Rastro, s/n

06800. Mérida. Badajoz

Telephone: (+34) 924 00 51 94

Website: http://www.gobex.es/

ASAMBLEA DE EXTREMADURA

(PARLIAMENT OF EXTREMADURA)

Pza. de San Juan de Dios, s/n

06800. Mérida. Badajoz

Telephone: (+34) 924 38 30 00

Website: http://www.asambleaex.es

DIARIO OFICIAL DE EXTREMADURA

(OFFICIAL GAZETTE OF EXTREMADURA)

Av. de Valhondo, 1

06800. Mérida. Badajoz

Telephone: (+34) 924 00 55 04

Website: http://doe.juntaex.es/

16.6.8 Galicia

XUNTA DE GALICIA

(REGIONAL GOVERNMENT OF GALICIA)

Edificios Administrativos San Caetano. San Caetano, s/n

15704. Santiago de Compostela. A Coruña

Telephone: (+34) 981 54 54 00

Website: http://www.xunta.es

PARLAMENTO DE GALICIA

(PARLIAMENT OF GALICIA)

Rúa do Hórreo, 63

15702. Santiago de Compostela. A Coruña

Telephone: (+34) 981 55 13 00

Website: http://www.parlamentodegalicia.es

DIARIO OFICIAL DE GALICIA

(OFFICIAL GAZETTE OF GALICIA)

San Caetano, 1

15704 Santiago de Compostela. A Coruña

Telephone: (+34) 981 54 42 68

Website: www.xunta.es/diario-oficial-galicia/

16.6.9 Islas Canarias

GOBIERNO DE CANARIAS

(REGIONAL GOVERNMENT OF THE CANARY ISLANDS)

Pza. Doctor Rafael O'Shanahan, 1

35004. Las Palmas de Gran Canaria.

Telephone: (+34) 928 21 12 00

José Manuel Guimerá, nº 1

38003 Santa Cruz de Tenerife

Telephone (+34) 922 47 75 00

Website: http://www.gobiernodecanarias.org/

PARLAMENTO DE CANARIAS

(PARLIAMENT OF THE CANARY ISLANDS)

Teobaldo Power, 7

38002. Santa Cruz de Tenerife

Telephone: (+34) 922 47 33 00

Website: http://www.parcan.es

BOLETÍN OFICIAL DE CANARIAS

(OFFICIAL GAZETTE OF THE CANARY ISLANDS)

Doctor Juan de Padilla 7

35002 Las Palmas de Gran Canaria

Telephone: (+34) 928 36 23 36

Website: http://www.gobiernodecanarias.org/boc/

16.6.10 Balearic Islands

GOVERN DE LES ILLES BALEARS

(REGIONAL GOVERNMENT OF THE BALEARIC ISLANDS)

C/ de la Llotja, 3

07012. Palma de Mallorca.

Telephone: (+34) 971 17 71 00

Website: http://www.caib.es

PARLAMENTO DE LES ILLES BALEARS

(PARLIAMENT OF BALEARIC ISLANDS)

Carrer del Conquistador, 11

07001 Palma de Mallorca.

Telephone: (+34) 971 22 82 81

Website: http://www.parlamentib.es

BOLETÍN OFICIAL DE ISLAS BALEARES

(OFFICIAL GAZETTE OF THE BALEARIC ISLANDS)

Passeig de Sagrera, 2

07012 Palma de Mallorca.

Telephone: (+34) 971 17 71 00

Website: http://www.caib.es/eboibfront/?lang=es

16.6.11 Madrid

GOBIERNO DE LA COMUNIDAD DE MADRID

(REGIONAL GOVERNMENT OF MADRID)

Real Casa de Correos, Puerta del Sol, 7

28013 Madrid

Telephone: (+34) 91 529 82 10

Website: http://www.madrid.org

ASAMBLEA DE LA COMUNIDAD DE MADRID

(PARLIAMENT OF THE REGION OF MADRID)

Pza. de la Asamblea de Madrid, 1

28018 Madrid

Telephone: (+34) 91 779 95 00

Website: http://www.asambleamadrid.es

BOLETÍN OFICIAL DE LA COMUNIDAD DE MADRID

(OFFICIAL GAZETTE OF THE REGION OF MADRID)

Fortuny, 51

28010, Madrid

Telephone: (+34) 91 702 76 10

Valportillo Primera, 9

28108, Alcobendas, Madrid

Telephone: (+34) 91 490 00 40

Website:
http://www.bocm.es/bocm/Satellite?language=es&pagename=Boletin%2FPage%2FBOCM_home

16.6.12 Basque Country

GOBIERNO VASCO-EUSKO JAURLARITZA.

(REGIONAL GOVERNMENT OF THE BASQUE COUNTRY)

Ajuria Enea: Fray Francisco, 5

01007 Vitoria-Gasteiz. Álava

Telephone: (+34) 945 01 79 00

Lehendakaritza: Navarra, 2

01007 Vitoria-Gasteiz. Álava

Telephone: (+34) 945 01 79 00

Website: http://www.euskadi.net

PARLAMENTO VASCO-EUSKO LEGEBILTZARRA

(PARLIAMENT OF THE BASQUE COUNTRY)

Becerro Bengoa, s/n

01005 Vitoria-Gasteiz. Álava

Telephone: (+34) 945 00 40 00

Paseo de la Florida, 5

01005. Vitoria-Gasteiz. Álava

Telephone: (+34) 945 00 40 00

Website: http://www.legebiltzarra.eus/portal/web/eusko-legebiltzarra

BOLETÍN OFICIAL DEL PAÍS VASCO

(OFFICIAL GAZETTE OF THE BASQUE COUNTRY)

Calle Donostia-San Sebastián, 1

01010 Vitoria-Gasteiz Álava

Telephone: (+34) 945 01 86 03 / 945 01 86 22

Website: https://www.euskadi.eus/y22-bopv/es/bopv2/datos/Ultimo.shtml

16.6.13 La Rioja

GOBIERNO DE LA RIOJA

(REGIONAL GOVERNMENT OF LA RIOJA)

Vara del Rey, 1

26003 Logroño. La Rioja

Telephone: (+34) 941 29 11 00

Website: http://www.larioja.org

PARLAMENTO DE LA RIOJA

(PARLIAMENT OF LA RIOJA)

Marqués de San Nicolás, 111

26001 Logroño. La Rioja

Telephone: (+34) 941 20 40 33

Website: http://www.parlamento-larioja.org

BOLETÍN OFICIAL DE LA RIOJA

(OFFICIAL GAZETTE OF LA RIOJA)

Vara de Rey, 3

26003 Logroño. La Rioja

Telephone: (+34) 941 29 40 80 / 941 29 18 69

Website: https://web.larioja.org/bor-portada

16.6.14 Valencia

GENERALITAT VALENCIANA
(REGIONAL GOVERNMENT OF VALENCIA)
Carrer dels Cavallers, 2
46001 Valencia
Telephone: (+34) 96 386 60 00
Website: http://www.gva.es

CORTES VALENCIANAS
(PARLIAMENT OF THE REGION OF VALENCIA)
Palau de les Corts Valencianes. Pza. San Lorenzo, 4
46003 Valencia
Telephone: (+34) 96 387 61 00
Website: http://www.cortsvalencianes.es

DIARIO OFICIAL DE LA COMUNIDAD VALENCIANA
(OFFICIAL GAZETTE OF THE REGION OF VALENCIA)
Plaza de nules, 2
46003 Valencia
Telephone: (+34) 96 386 60 00
Website: http://www.docv.gva.es/

16.6.15 Navarre

GOBIERNO DE NAVARRA
(REGIONAL GOVERNMENT OF NAVARRE)
Av. Carlos III, 2
31002 Pamplona. Navarra
Telephone: (+34) 848 42 70 00
Website: http://www.navarra.es/home_es/

PARLAMENTO DE NAVARRA
(PARLIAMENT OF NAVARRE)
Navas de Tolosa, 1
31002 Pamplona. Navarra
Telephone: (+34) 948 20 92 09
Website: http://www.parlamento-navarra.es

BOLETÍN OFICIAL DE NAVARRA

(OFFICIAL GAZETTE OF NAVARRE)

C/ Esquiroz, 20 bis.

31007 Pamplona. Navarra

Telephone: (+34) 848 42 12 50

Website: https://bon.navarra.es/es/inicio

16.6.16 Asturias

CONSEJO DE GOBIERNO DEL PRINCIPADO DE ASTURIAS

(REGIONAL GOVERNMENT OF THE PRINCIPALITY OF ASTURIAS)

Suárez de la Riva, 11

33071 Oviedo. Asturias

Telephone: (+34) 98 510 68 51

Website: http://www.asturias.es/

JUNTA GENERAL DEL PRINCIPADO DE ASTURIAS

(PARLIAMENT OF THE PRINCIPALITY OF ASTURIAS)

Calle Fruela, 11

33007 Oviedo. Asturias

Telephone: (+34) 98 510 75 00

Website: http://www.jgpa.es

BOLETÍN OFICIAL DEL PRINCIPADO DE ASTURIAS

(OFFICIAL GAZETTE OF THE PRINCIPALITY OF ASTURIAS)

Julián Clavería 11

33006 Oviedo. Asturias

Telephone: (+34) 985 10 84 20

Website:
https://sede.asturias.es/portal/site/Asturias/menuitem.048b5a85ccf2cf40a9be6aff100000f7/?vgnextoid=c0c756a575acd010VgnVCM100000bb030a0aRCRD

16.6.17 Murcia

CONSEJO DE GOBIERNO DE MURCIA

(REGIONAL GOVERNMENT OF MURCIA)

Palacio de San Esteban. Acisclo Díaz, s/n

30005 Murcia

Telephone: (+34) 968 39 58 58

Website: http://www.carm.es

ASAMBLEA REGIONAL DE MURCIA

(PARLIAMENT OF THE REGION OF MURCIA)

P.º Alfonso XIII, 53

30203 Cartagena. Murcia

Telephone: (+34) 968 32 68 00

Website: http://www.asambleamurcia.es

BOLETÍN OFICIAL DE LA REGIÓN DE MURCIA

(OFFICIAL GAZETTE OF THE REGION OF MURCIA)

Camino Viejo de Monteagudo 8

30160 Murcia

Telephone: (+34) 968 85 10 86

Website: https://www.borm.es/#/home

16.7 Registries

COLEGIO DE REGISTRADORES DE LA PROPIEDAD Y MERCANTILES DE ESPAÑA

(ASSOCIATION OF LAND AND COMMERCIAL REGISTRARS OF SPAIN)

Diego de León, 21

28006 Madrid

Telephone: (+34) 91 270 16 99

Website: http://www.registradores.org/

DIRECCIÓN GENERAL DE REGISTROS Y DEL NOTARIADO

(DIRECTORATE-GENERAL OF REGISTRIES AND NOTARIES)

Plaza Jacinto Benavente, 3

28070 Madrid

Telephone: (+34) 91 390 20 00

Website:https://www.mjusticia.gob.es/cs/Satellite/Portal/es/ministerio/organigrama/subsecretaria/direccion-general-registros

OFICINA ESPAÑOLA DE PATENTES Y MARCAS

(SPANISH PATENT AND TRADEMARK OFFICE)

Paseo de la Castellana, 75

28046 Madrid

Telephone: (+34) 91 078 07 80

Website: http://www.oepm.es/

REGISTRO CENTRAL DE LA PROPIEDAD INTELECTUAL

(GENERAL REGISTRY OF INTELLECTUAL PROPERTY)

Alfonso XII, 3

28014 - Madrid

Telephone: (+34) 91 589 89 35

Website: http://www.mcu.es/propiedadInt/CE/RegistroPropiedad/RegistroPropiedad.html

REGISTRO MERCANTIL CENTRAL

(CENTRAL COMMERCIAL REGISTRY)

Príncipe de Vergara, 94

28006 Madrid

Telephone: (+34) 91 745 41 31

Website: http://www.rmc.es

CONSEJO GENERAL DEL NOTARIADO

(GENERAL COUNCIL OF NOTARIES)

Silvano, 55

28043 Madrid

Telephone: (+34) 91 308 72 32

Website: http://www.notariado.org

16.8 Other institutions

AGENCIA ESPAÑOLA DE COOPERACIÓN INTERNACIONAL

(SPANISH AGENCY FOR INTERNATIONAL COOPERATION)

Avenida de los Reyes Católicos, 4

28040 Madrid

Telephone: (+34) 91 583 81 00

Website: http://www.aecid.es

AGENCIA ESPAÑOLA DEL MEDICAMENTO Y PRODUCTOS SANITARIOS

(SPANISH MEDICINES AND HEALTHCARE PRODUCTS AGENCY)

Campezo, 1

28022 Madrid

Telephone: (+34) 91 822 59 97

Website: http://www.aemps.es/home.htm

AGENCIA ESPAÑOLA DE PROTECCIÓN DE DATOS

(SPANISH DATA PROTECTION AGENCY)

C/ Jorge Juan, 6

28001 Madrid

Telephone: (+34) 91.266.35.17

Website: http://www.aepd.es

AGENCIA ESTATAL DE ADMINISTRACIÓN TRIBUTARIA

(SPANISH NATIONAL TAX AUTHORITY)

Infanta Mercedes, 37

28020 Madrid

Telephone: (+34) 91 583 89 97

Website: http://www.agenciatributaria.es/AEAT.internet/Inicio.shtml

DIRECCIÓN GENERAL DEL TESORO Y POLÍTICA FINANCIERA

(DIRECTORATE GENERAL OF THE TREASURY AND FINANCIAL POLICY)

Paseo del Prado 6

28014 Madrid

Telephone: (+34) 91 209 95 00

Website: http://www.tesoro.es

DIRECCIÓN GENERAL DE SEGUROS, PLANES Y FONDOS DE PENSIONES

(DIRECTORATE-GENERAL OF INSURANCE AND PENSION FUNDS)

Paseo de la Castellana 44

28046 Madrid

Telephone: (+34) 91 339 70 00

Website: www.dgsfp.mineco.es

INSTITUTO DE CONTABILIDAD Y AUDITORÍA DE CUENTAS

(ACCOUNTING AND AUDIT INSTITUTE)

Huertas, 26

28014 Madrid

Telephone: (+34) 91 389 56 00

Website: http://www.icac.meh.es/

INSTITUTO DE CRÉDITO OFICIAL

(OFFICIAL CREDIT INSTITUTE)

Paseo del Prado, 4

28014 Madrid

Telephone: (+34) 91 592 16 00

Website: http://www.ico.es/

INSTITUTO ESPAÑOL DE COMERCIO EXTERIOR

(SPANISH INSTITUTE FOR FOREIGN TRADE)

Paseo de la Castellana, 278

28046 Madrid

Telephone: (+34) 900.349.000

Website: https://www.icex.es/icex/es/index.html

SECRETARÍAS DE ESTADO DE DIGITALIZACIÓN E INTELIGENCIA ARTIFICIAL Y DE TELECOMUNICACIONES E INFRAESTRUCTURAS DIGITALES

(SECRETARIES OF STATE FOR DIGITALIZATION AND ARTIFICIAL INTELLIGENCE AND FOR TELECOMMUNICATIONS AND DIGITAL INFRASTRUCTURES)

Poeta Joan Maragall, 41

28020 Madrid

Telephone: (+34) 91 346 15 00

Website:
http://www.mineco.gob.es/portal/site/mineco/menuitem.19368ee62a6eae4c2adf03a0026041a0/?vgnextoid=fe03a570b4ee3610VgnVCM1000001d04140aRCRD

16.9 Chambers of commerce

CONSEJO SUPERIOR DE CÁMARAS DE COMERCIO, INDUSTRIA Y NAVEGACIÓN

(HIGH COUNCIL OF CHAMBERS OF COMMERCE, INDUSTRY AND NAVIGATION)

Ribera del Loira 12

28042 Madrid

Telephone: (+34) 91 590 69 00

Website: http://www.cscamaras.es

CÁMARA OFICIAL DE COMERCIO E INDUSTRIA DE MADRID

(OFFICIAL CHAMBER OF COMMERCE AND INDUSTRY OF MADRID)

Plaza de la Independencia, 1

28001 Madrid

Telephone: (+34) 91 538 35 00

Website: http://www.camaramadrid.es

CONSEJO DE CAMARAS OFICIALES DE COMERCIO, INDUSTRIA Y NAVEGACION DE CATALUÑA

(*COUNCIL OF THE OFFICIAL CHAMBERS OF COMMERCE OF CATALONIA)*

Av. Diagonal, 452-454

08006 Barcelona

Telephone: (+34) 93 416 93 00

Website: http://www.cambrescat.es

CÁMARA OFICIAL DE COMERCIO, INDUSTRIA Y NAVEGACIÓN DE BARCELONA

(OFFICIAL CHAMBER OF COMMERCE, INDUSTRY AND NAVIGATION OF BARCELONA)

Avda. Diagonal, 452

08006 Barcelona

Telephone: (+34) 93 416 93 01

Website: https://www.cambrabcn.org/es/home

CÁMARA OFICIAL DE COMERCIO, INDUSTRIA Y NAVEGACIÓN DE BILBAO

(OFFICIAL CHAMBER OF COMMERCE, INDUSTRY AND NAVIGATION OF BILBAO)

Alameda Recalde 50

48008 Bilbao

Telephone: (+34) 94 470 65 00

Website: http://www.camarabilbao.com/

AMERICAN CHAMBER OF COMMERCE IN SPAIN

Pl. Francesc Macià, 5 Piso 1º 1ª

08021 Barcelona

Telephone: (+34) 93 415 99 63

Tuset, 8 entlo. 3

08006 Barcelona

Telephone: (+34) 93 415 99 63

Carrera San Jerónimo, 15

28014 Madrid

Telephone: (+34) 914 54 70 80

Website: http://www.amchamspain.com/

Registro Mercantil de Madrid, Tomo 24490 del Libro de Inscripciones, Folio 42, Sección 8, Hoja M-43976,
Inscripción 85. Denominación Social: Uría Menéndez Abogados, S.L.P. NIF: B28563963