CUATRECASAS

# Doing business in Spain

2025 Edition

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March 1, 2025

This guide provides general information to investors intending to operate in Spain on legal issues on which they may need advice. It is not intended, and cannot be considered, as a comprehensive and detailed analysis of Spanish law or, under any circumstances, as legal advice from Cuatrecasas.

This guide was drafted based on information available as of March 1, 2025. Cuatrecasas is under no obligation and assumes no responsibility to update this information.

# Content


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## Introduction

This guide provides an overview of key legal aspects for foreign investors interested in investing in Spain. It is not intended to be comprehensive, but to address practical issues that will help investors considering an investment project in Spain.

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# Definitions

| | |
|---|---|
| **AMDR** | Appropriate Means of Dispute Resolution |
| **AML** | *Anti-money laundering* |
| **BME** | *Bolsas y Mercados Españoles*: the company that operates the Spanish stock markets and financial systems |
| **CAM** | Madrid Court of Arbitration |
| **CIAM** | Madrid International Arbitration Center |
| **CIAM-CIAR** | Madrid International Arbitration Center - Ibero - American Arbitration Center |
| **CIAR** | Ibero - American Arbitration Center |
| **CIT** | Corporate income tax |
| **CJEU** | Court of Justice of the European Union |
| **CNMC** | National Commission for Markets and Competition |
| **CNMV** | Spanish Securities and Exchange Commission |
| **CSRD** | Corporate Sustainability Reporting Directive |
| **EBITDA** | Earnings before interest, taxes, depreciation and amortization |
| **EEA** | European Economic Area |
| **EFTA** | European Free Trade Association |
| **EIG** | Economic interest groupings |
| **EP** | European patent |
| **EPO** | European Patent Office |
| **ERTE** | Temporary redundancy |
| **ESRS** | European Sustainability Reporting Standards |
| **EU** | European Union |
| **EUIPO** | European Union Intellectual Property Office |
| **EUT** | European Union trademark |
| **GDPR** | EU General Data Protection Regulation |
| **Good Governance Code** | Good Governance Code for Listed Companies |
| **ICAC** | Spanish Accounting and Auditing Institute |
| **IP** | Intellectual Property |
| **KYC** | Know Your Client |
| **LDC** | Spanish Competition Act |
| **LO 1/2025** | Organic Act 1/2025 on measures concerning the efficiency of the Public Justice Service |
| **Madrid System** | Madrid Arrangement and Madrid Protocol |

| | |
|---|---|
| **MARF** | Alternative Fixed-Income Market |
| **MEFF** | Market for Financial Futures and Equity Derivatives |
| **MLI** | Multilateral Instrument |
| **MTF** | Multilateral Trading Facilities |
| **NewCo** | New company |
| **NIE** | Foreigner identification number |
| **NIF** | Tax identification number |
| **NRIT** | Non-resident income tax |
| **OECD** | Organisation for Economic Cooperation and Development |
| **PIT** | Personal income tax |
| **REER** | Renewable energy economic regime |
| **REIT** | Real estate investment trust |
| **SA** | Spanish public limited company (*sociedad anónima*) |
| **SA Regulations** | Regulations applying to SAs |
| **SCA** | Spanish Companies Act |
| **SEPBLAC** | Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (*Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias*) |
| **SIBE** | Spanish Automated Quotation System |
| **SIU** | Savings and Investments Union |
| **SL** | Spanish private limited company (*sociedad limitada*) |
| **SL Regulations** | Regulations applying to SLs |
| **SMA** | Securities Markets and Investment Services Act |
| **SMEs** | Small and medium-sized companies |
| **SPTO** | Spanish Patent and Trademark Office |
| **Strained Market Area** | Strained residential market area |
| **TOB** | Takeover bid |
| **UGE** | Large Companies and Strategic Groups Unit |
| **ULA** | Urban Leases Act |
| **UNCITRAL** | United Nations Commission on International Trade Law |
| **VAT** | Value added tax |
| **Workers Statute** | Workers Statute Act |

# 1

*Spain is attractive for foreign investment*

# Spain at a glance

## 1.1. Unique geostrategic position

Spain is attractive for foreign investment, not only because of its domestic market but also because of its privileged geostrategic position. It is the perfect bridge between Latin America, Europe and Africa. Its location provides an ideal gateway to Northern Africa, and it is also a unique platform to channel investments to Latin America. Strong cultural, economic and historical ties between Spain and Latin America have led to a wave of Spanish investment in Latin America, and Spanish companies have become leaders in many strategic sectors of the continent. Spain is the 5th economy in the euro and the 15th in the world and has been a member of the European Union ("EU") since 1986. In 2024, Spain had around 49 million inhabitants and it received approximately 88 million tourists. Spanish is a global language with over 600 million speakers. Spain offers an excellent quality of life for its citizens and for foreigners that live there.

## 1.2. Spanish legal system

Spain is a parliamentary monarchy with three independent branches of government: the executive, the legislative and the judiciary. The head of state is the king who, among other tasks, represents the state in international relations. Executive authority is exercised by the government, whose action is directed by the president. The legislative power is exercised by the parliament, which has two chambers: the lower house of parliament and the upper house of parliament.

The judiciary is represented by independent judges. The highest court in Spain is the Supreme Court. The Constitutional Court, which is not part of the judiciary, has authority to interpret the constitution. Spain has a continental law system based on written law, while case law is used for interpretation purposes.

EU membership has a decisive influence on Spain's legal system, as a substantial part of its commercial law is based on EU law. The primary binding EU legal instruments are regulations and directives. These instruments do not apply hierarchically fashion, but serve different purposes based on their specific features.

Regulations are of general application, binding in their entirety and directly applicable in all Member States without the need for national implementing legislation. They automatically override any conflicting domestic provision and ensure uniform application in the subject matter across all Member States.

Directives differ from regulations in two important ways: (i) they do not have to be addressed to all Member States (although they usually are); and (ii) they are legally binding as to the result to be achieved but allow Member States to decide how to achieve it. Consequently, national legislators must adopt a transposing legal act or national implementation measure to align national law with the directive's objective. This transposition must occur within the period specified by the directive. Directives are preferred when the aim is to harmonize the rules in a specific area, while allowing Member States to adjust them to fit their own legal, social, political, or administrative systems.

Finally, the Court of Justice of the European Union ("CJEU") plays a crucial role in ensuring uniform application and interpretation of EU law. It reviews the legality of EU acts through direct actions and appeals and interprets EU law at the request of national courts through preliminary rulings.

In January 2025, the president of the European Commission stressed Europe's need to "*shift gears*" given the era of "*harsh geostrategic competition*," a necessity heightened by recent events. Soon afterwards, the European Commission launched its five-year action plan, the EU Competitiveness Compass, and the 2025 work program, outlining an ambitious roadmap with a tight schedule. The strategy focuses on boosting innovation in startups to enhance productivity and competitiveness while continuing to advocate for a "decarbonized economy" by investing in clean energy and green technologies. To achieve these goals, the European Commission aims to "*make life easier for businesses*" and increase financing options. This includes reducing reporting obligations by 25% for businesses and 35% for small and medium-sized companies ("SMEs"), and providing easier access to EU funds and administrative decisions. On February 26, 2025, the European Commission began implementing this plan by approving several omnibus proposals to simplify sustainability and investment regulations.

# 2 Ways of doing business

## 2.1. Setting up a business

*When setting up a business in Spain, foreign investors generally incorporate or acquire a limited company*

### Limited companies

When setting up a business in Spain, foreign investors generally incorporate or acquire a limited company. The two main types of limited companies in Spain are public limited companies (*sociedades anónimas*, or "SAs") and private limited companies (*sociedades limitadas*, or "SLs"). Both have legal personality, separate and distinct from that of their members, who are not personally liable for the company's debts.

Choosing between an SA or an SL is mainly determined by (i) the size of the business, (ii) the legal requirements (only SAs can be listed), (iii) the future ability to raise capital, (iv) the rules on transferability that members want to apply, and (v) the flexibility offered by the regulations applying to SLs ("SL Regulations") as opposed to those applying to SAs ("SA Regulations") (see section 2.2.).

*As an alternative, foreign companies can establish a branch or open a representative office*

### Branch or representative office

As an alternative, foreign companies can establish a branch or open a representative office. A branch is a secondary establishment operating permanently as a representative of its parent company. Although it has a degree of independence from its parent company and carries out all or part of that company's business activities, it does not have separate legal personality. Representative offices mostly carry out ancillary, accessory and instrumental activities (including information gathering, market prospection and local support). Like branches, a representative office does not have separate legal personality. This means that the parent company of a branch or a representative office will be liable for their respective obligations and debts.

### Other alternatives

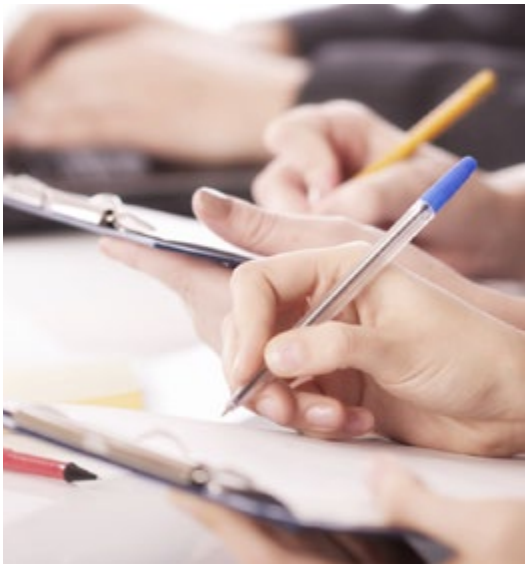
Another option is to associate through a joint venture with a business already established and functioning in Spain. Venture partners often create an equity joint venture by incorporating a limited company or acquiring a stake in an existing company. However, Spanish law contemplates other joint venture alternatives:

- Temporary joint ventures (*Unión Temporal de Empresas*), which do not have separate legal personality from its members and are created to carry out specific projects or services, such as engineering or construction projects.

- Economic interest groupings (*Agrupación de Interés Económico or "EIG"*), aimed at facilitating, improving or increasing the economic activity of their members, who are held jointly and severally liable, albeit subsidiarily to the EIG. EIGs are frequently created to provide centralized services for a group of companies.

- Joint accounts agreements (*cuentas en participación*), under which investors hold an interest in a business they do not manage by making contributions of money or in kind. These are not considered as capital contributions, but give investors the right and obligation to share, respectively, the business's profits or losses.

Finally, there is the option of selling or providing goods or services in Spain without setting up a legal structure, either by entering into a distribution, franchise or agency relationship with a third party established in Spain, or by entering into a partnership or cooperation agreement with a Spanish company to work together on a particular project on a collaborative basis.



## 2.2. Overview of limited companies

### Main characteristics

The most common types of limited companies that operate in Spain are SAs and SLs, which are regulated by the Spanish Companies Act ("SCA"). Limited liability of members is common to these capital-based companies. In both cases, the members' and the company's assets are independent. These companies can be owned by a single shareholder.

*In recent years, nearly 97% of companies incorporated in Spain were SLs.*

Traditionally, SMEs have chosen the form of SL because its characteristics are more suitable:

- Lower capital requirements than an SA (€1 as opposed to €60,000).
- Statutory restrictions on the transfer of quotas are more stringent than for an SA. The capital of an SL is divided into quotas, i.e., non-negotiable interests.
- More flexibility and greater autonomy to decide on the company's structure and organization. SA Regulations establish stringent mechanisms aimed at protecting the company's share capital and its creditors. In the case of an SL, these mechanisms are replaced by members' and/or directors' liability; therefore, regulations are more flexible than for an SA.

In contrast, SAs have traditionally met the needs of larger corporations. Although their complex legal framework and the limited liability of shareholders to structure the company clash with the needs of small businesses, it is easier for large corporations to invest in these companies because their capital is divided into shares that can be listed on stock exchanges and are naturally transferable.

It is worth noting that these characteristics of SAs and SLs can be interpreted in subtly different ways. We often find large corporations incorporated as SLs, tailoring the statutory model, initially designed for SMEs, to suit their goals and interests. In this context, members and shareholders agreements play an important role.

### Differences between SAs and SLs

The following table identifies the most important differences between an SL and an SA. However, the information provided is not comprehensive:

| | SL |
|---|---|
| **CAPITAL** | |
| **Minimum requirement** | €1<br>However, if a company's share capital is less than €3,000, some specific rules apply to the allocation of the statutory reserve and to members' liability in the event of liquidation. |
| **Divided into** | Quotas, i.e., non-negotiable interests. |
| **Disbursement** | Fully paid-up on incorporation. |
| **Voting rights** | As privileges are allowed, it is easier for SLs to modify voting rights. It is also possible to issue quotas without voting rights. |
| **Contributions in kind** | No expert report assessing the value of contributions in kind is required. However, in this case, members (and directors in the case of a capital increase) will be jointly and severally liable against third parties and the company for the value attributed to the contribution in kind. |
| **TRANSFER** | |
| **Restrictions on transfers** | Unless otherwise provided in the bylaws, quotas can be freely transferred between members or with members' spouses, ascendants, descendants and within the group companies. In all other cases, transfers are subject to the restrictions provided in the bylaws or, failing that, to the provisions of the SCA. Inter vivos transfers of quotas can be restricted to a maximum of five years. |
| **TREASURY STOCK AND FINANCIAL ASSISTANCE** | |
| **Derivative acquisition of treasury stock** | Only allowed, with no set limit, in certain cases; when quotas are acquired (i) at no cost, (ii) as part of an estate acquired in whole, (iii) mortis causa, (iv) through a court award, (v) through a capital reduction agreement or (iv) due to a member exit or exclusion. |
| **Financial assistance prohibition** | No exceptions to the prohibition of providing financial assistance for acquisition of its own quotas or the shares or quotas of its group companies. |
| **FINANCING SOURCES** | |
| **Listing and issuing bonds or other negotiable instruments** | SLs cannot be listed. With some restrictions, SLs can issue or guarantee bonds and other securities that acknowledge or create a debt, but SLs are prohibited from issuing/guaranteeing bonds convertible into shares. |

| SA |
| --- |
| |
| €60,000 |
| Shares issued as bearer or registered shares. Shares can be traded on the stock market. |
| Initial contribution of 25% of the nominal value of each share. The outstanding amount must be paid according to agreed terms and in the case of non-capital contributions, within five years. |
| No special voting rights or privileges are allowed. However, it is possible to issue shares without voting rights or to include voting caps limiting the number of votes that can be cast by each shareholder. Listed companies can grant, through their bylaws, double voting rights to shares that have been held by the same shareholder for at least two years (loyalty shares). |
| The value of the shareholders' contributions in kind must be assessed by an expert. Although this expert report provides greater certainty and protects the interests of third parties, cost and time requirements are more cumbersome than for SLs. |
| |
| Restrictions on transferability can only be applied to registered shares, should be explicitly stipulated in the bylaws, and may not completely limit their transfer. Exceptionally, a lock-up is allowed for two years following incorporation. |
| |
| Allowed subject to certain conditions and up to a maximum of 20% of the share capital, or 10% if the company is listed. |
| Two exceptions to the financial assistance prohibition: (i) aid to company employees, (ii) ordinary transactions carried out by banks and credit entities. |
| |
| SAs can raise funds through the capital markets by issuing/selling shares or issuing bonds and other securities that acknowledge or create a debt, including bonds convertible into shares. |

| | SL |
|---|---|
| **REDUCTION OF CAPITAL** | |
| **Mandatory reduction of capital** | There is no compulsory reduction of capital for losses. |
| **Publicity and opposition term** | The member resolution authorizing the reduction of capital does not need to be published and the opposition term is not required (unless otherwise established in the bylaws). Instead, members are liable for the company's debt for an amount equal to what they received in the capital reduction, unless a reserve charged to profits or freely disposable reserve is created for this amount. |
| **CORPORATE GOVERNANCE** | |
| **General meeting** | General meetings must be convened at least 15 days before they are scheduled to be held. However, "universal" members meetings (in which all members present or represented agree to hold the meeting) can be held without being convened. The bylaws can provide for hybrid or virtual meetings.<br><br>There is no quorum. Resolutions are passed by simple majority of valid votes provided they represent at least one-third of the voting rights.<br><br>Some resolutions require a reinforced majority (more than one-half of the voting rights for capital increase or reduction and bylaws amendments, and at least two-thirds of the voting rights in the case of, inter alia, merger or spin-off).<br><br>The bylaws can increase the voting majorities. |
| **Administrative body** | Unless provided in the company's bylaws, minority members cannot be represented in the board in proportion to their stake in the company. |

SAs have to reduce their share capital when, for more than a financial year, losses reduce the net worth of the company below two-thirds of its share capital.

Resolutions to reduce the share capital to reimburse contributions to shareholders must be published and some creditors have one month to object to the capital reduction until their credits are guaranteed.

This opposition right does not exist when (i) the reduction is charged to profits or freely disposable reserves, and (ii) a reserve is allocated for an amount equal to the nominal value of the reduction of capital.

General meetings must be convened at least one month before they are scheduled to be held. However, "universal" shareholders meetings (in which all shareholders present or represented agree to hold the meeting) can be held without being convened. The bylaws can provide for hybrid or virtual meetings.

At first call there is a minimum quorum: 25% of the issued share capital with voting rights. Resolutions are passed when approved by a simple majority of the votes at the meeting.

Some resolutions require a reinforced quorum and voting majorities (e.g., increase and reduction of share capital; bylaw amendments; and transformation, merger and spin-off).

The bylaws can increase the quorum and voting majorities.

Minority shareholders are entitled to be represented in the board of directors in proportion to their stake in the company.

## 2.3. Incorporating new companies and acquiring "shelf companies"

*When investing in Spain, you can either incorporate a new company ("NewCo") or buy a company that has already been incorporated but has not yet started trading ("shelf company")*

When investing in Spain, you can either incorporate a new company ("NewCo") with documents that are specifically tailored to your requirements or buy a company that has already been incorporated but has not yet started trading ("shelf company"). The latter is more expensive but helps accelerate the process of starting a new business in Spain.

**Requirements for incorporating a limited company**

This section describes the main steps required to incorporate a Spanish limited company (whether an SL or an SA).

- **Powers of attorney.** To be represented at the act of incorporation, it is necessary to grant powers of attorney, legalized by (i) a notary public and duly apostilled in accordance with the Hague Convention; or (ii) a Spanish consul. If the powers of attorney are not drafted in Spanish, a translation into Spanish is required.

- **Company name.** A certificate of clearance must be obtained from the Central Commercial Registry (*Registro Mercantil Central*) to use the NewCo's proposed name. The certificate attests that the chosen name is available and can be used by NewCo.

- **Tax identification numbers.** All foreign shareholders and future non-resident directors of the NewCo need to obtain a tax identification number ("NIF"), in the case of companies, or a foreigner identification number ("NIE"), in the case of individuals.

- **Cash contributions.** Contributions made in cash to the NewCo can be deposited into or transferred to a bank account in Spain, opened in the name of the NewCo "under incorporation." In the case of SAs, a bank certificate certifying the monetary deposit must be provided on incorporation or, less commonly, cash contributions can be delivered to the notary public on the incorporation date. In the case of SLs, it is not compulsory to prove that cash contributions have been made if shareholders declare in the deed of incorporation that they will be jointly and severally liable for these cash contributions against the company and its creditors.

- **Public deed of incorporation**. Founders or their duly authorized representatives must submit a deed of incorporation to a Spanish notary public. This deed includes:

    a. the bylaws regulating the internal affairs of NewCo including, among others, the corporate name, the corporate purpose, the registered office, the share capital, the rules regulating the issue and transfer of quotas/shares, the management body structure, directors' remuneration and the rules governing the meetings of the administrative bodies including quorum and voting majorities;

b. evidence of the contributions made either in cash, where applicable (see "cash contributions" section above), or in kind;

c. the appointment of directors, who can either accept their appointment in person before the notary or by letter of acceptance; and

d. the foreign investment declaration (see section 2.5).

In relation to the public deed of incorporation, Spain has adopted EU anti-money laundering and terrorist financing regulations that require the founder(s) to provide the identity of their "beneficial owners." Basically, "beneficial owners" are the individuals on whose behalf founders intend to incorporate the NewCo and/or who (i) own or control, directly or indirectly, more than 25% of the NewCo's share capital or voting rights; or (ii) exercise direct or indirect control of the NewCo. If nobody holds such a direct or indirect stake or control, it is considered that the company directors exercise control. If any of the directors is a legal person, it is considered that the individual representing that legal person exercises control.

- **Tax filings.** It is necessary to file certain forms to register with the tax census and obtain the company's provisional NIF with the tax authorities. Once the NewCo has been registered with the Commercial Registry, it will be assigned a definitive NIF.

- **Filing with the Commercial Registry.** The public deed of incorporation must be submitted to the Commercial Registry for registration. Registration normally takes up to 15 days.

  NewCo can operate from the date the deed of incorporation is filed although it will only have full legal personality upon registration.

- **Foreign investment filings.** (see section 2.5.).

*Recent legal reforms have aimed to simplify the procedure to set up companies in Spain*

Recent legal reforms have aimed to simplify the procedure to set up companies in Spain. Thus, an SL can be fully incorporated online when the members' contributions are in cash (these contributions must be made through an electronic payment instrument), without the founders having to appear in person before the notary public. There are standard bylaws and public deeds, and if they are used, the Commercial Registry must register the incorporation within six hours.

**Requirements for acquiring a shelf company**

Shelf companies (usually SLs) are already incorporated, are registered with the Commercial Registry and hold a NIF. As in the case of a NewCo, it is necessary to grant a power of attorney if a representative is appointed to sign the relevant documents. Moreover, all foreign shareholders and future non-resident directors must obtain a NIF or NIE. See the previous section for details on these two steps.

- **Sale and purchase deed.** The purchaser and seller must appear before a Spanish notary public to formalize the sale and purchase deed. The purchase price must be previously transferred to a bank account. The "beneficial owner" of the parties must be disclosed (see details above).

- **Foreign investment filings** (see section 2.5).

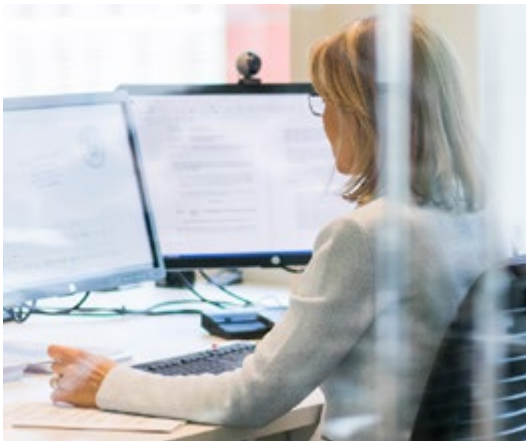
- **Single member status.** Most shelf companies are incorporated with a sole member. Thus, when acquiring the company, notification must be given as to the change in identity of the company's single member or the loss of this status if the shelf company has more than one member. In either case, the change must be recorded in a public deed and registered with the Commercial Registry.

- **Other corporate actions.** Once the shelf company has been purchased, it is necessary to appoint new directors and amend the bylaws to tailor the company to meet specific needs (change of corporate name, corporate purpose, registered office, transfer rules and management systems). If the corporate name is changed, a clearance certificate must be obtained from the Central Commercial Registry (*Registro Mercantil Central*). These corporate resolutions must be formalized before a notary public and registered with the Commercial Registry.

## 2.4. Corporate governance of limited companies

There are four alternatives to organize the managing body of a limited company: (i) a sole director; (ii) a number of directors that act independently, each binding the company separately with joint and several responsibility; (iii) a number of directors, not exceeding two in the case of an SA, that act jointly; or (iv) a board of directors. The bylaws may include all these options, allowing the general meeting to opt for one of the structures without needing to amend the bylaws.

Unless the bylaws provide otherwise, a director is



not required to be a shareholder of the company. Individuals and legal entities can be appointed as directors. In the latter case, the legal entity has to be represented by an individual.

The directors' authority to represent the company extends to all activities within the scope of the corporate purpose as set forth in the bylaws. Any restrictions on the authority of directors, even if registered with the Commercial Registry, have no effect on third parties.

Unless stated otherwise in the bylaws, a board of directors, if so allowed by two-thirds of its members, can delegate its authority on a continuous basis, establishing the delegation terms, limits and methods, to (i) one or several directors (known as *consejeros delegados*, i.e., chief executives), (ii) a reduced group of directors (known as *comité ejecutivo* or *comisión ejecutiva*, i.e., executive committee), or (iii) both.

Directors' power of representation of the company does not exclude specific empowerment the company may occasionally grant in favor of a proxy holder, where the general rules on representation apply. Any general empowerment, as well as any amendment, cancellation or replacement of empowerment, must be granted in a public deed registered with the Commercial Registry.

*In carrying out their duties, directors are obliged by a duty of diligence and a duty of loyalty.*

The duty of diligence refers to the level of care, attention, and expertise with which directors must perform their role and, specifically, to their obligation to act with the diligence of an orderly entrepreneur. The duty of diligence also includes the obligation to comply with the duties imposed by the law—including sustainability regulations—and serves to assess the management of business risks, including sustainability risks.

The duty of loyalty requires directors to defend the corporate interest over their personal and any other interests. Directors must act under the principle of personal liability and freedom of choice and must avoid any situations that conflict with the company's interest (for example, carrying out transactions with related parties or performing competing activities). The general meeting or the board of directors, depending on the specific situation, can grant an exemption to the director in case of conflict of interest when certain requirements are met.

Directors (and de facto or shadow directors) are liable to the company, to its shareholders and to the company's creditors for any damages they may cause due to any acts contrary to law or the bylaws, or carried out in breach of the duties associated with their position. Liability is also extended to the individual representing the company who acts as director, and to the most senior executive only when the board has not continuously delegated its powers.

No remuneration is payable for the position of director, unless otherwise established in the bylaws.

*Where remuneration is provided for a director position, the bylaws must identify the remuneration system or systems.*

The general shareholders meeting will set the maximum amount of annual compensation for all directors including, if any, the remuneration of executive directors. Within the maximum annual remuneration of all directors, and unless the general shareholders meeting decides otherwise, how this maximum annual remuneration is divided among directors will be established by board resolution, based on each director's duties and responsibilities.

When a member of the board of directors is appointed executive director, or executive duties are assigned to a member under another title, an agreement must be drawn up between that person and the company. The contents of the agreement must be consistent with the remuneration system or systems established in the bylaws and with the maximum amount approved by the general shareholders meeting.

Listed companies are subject to specific rules concerning directors' remuneration (see section 10.2).

## 2.5. Financial information, exchange control and foreign direct investment regulations

### Financial information

Spanish companies must draw-up, approve and deposit annual accounts. Annual accounts must be (i) drawn-up by the managing body within three months following the end of the financial year, (ii) approved by the general meeting within six months following the end of the financial year and (iii) filed with the Commercial Registry within one month after their approval. If certain thresholds are met, companies are required to audit their annual accounts.

### Exchange control and foreign direct investment regulations

*In line with Regulation (EU) 2019/452, "foreign direct investments" will require prior authorization in two cases: one based on the type of company in which the investment is made and one on the investor's profile.*

"Foreign direct investments" are those (i) in which the investor becomes the holder of a share of at least 10% in the Spanish company's capital or, when as a result of the transaction, the investor acquires control of all or part of the company according to the terms of Spanish Competition Act ("LDC") and; (ii) made by investors resident in states outside the EU or the European Free Trade Association ("EFTA"); or by investors resident in an EU or EFTA state whose beneficial ownership is held by a non-resident.

Liberalization is suspended when "foreign direct investments" are made in specific strategic sectors that affect public security, public order or public health. More specifically, affected sectors include (i) critical, physical or virtual infrastructures (i.e., energy, transport, water, health care, communications, media, data processing and storage, aerospace, defense, electoral and financial infrastructures, and sensitive facilities), as well as land and real estate that are crucial for use of those infrastructures; (ii) critical and double-use technologies, key technologies for leadership and industrial qualification and technologies developed under programs and projects of particular interest to Spain, including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace technology, defense technology, quantum and nuclear technologies, energy storage, nanotechnologies, biotechnologies, advanced materials and advanced manufacturing systems; (iii) supply of fundamental inputs (especially energy or those related to strategic connectivity services or raw materials, as well as food safety); (iv) sectors with access to sensitive information, especially personal data, or that are able to control that information; and (v) media.

Liberalization of "foreign direct investments" in Spain may also be suspended based on the investor's profile or characteristics (regardless of the sectors in which the investment is made) in the following circumstances : (i) the investor is controlled, directly or indirectly, by a third-country government; (ii) the investor has invested

or participated in sectors affecting public order, public security and public health of another EU Member State; or (iii) the investor represents a serious risk owing to its engagement in criminal or unlawful activities that may affect public order, public security or public health.

However, some transactions are exempt from the prior authorization regime, such as foreign investments in strategic sectors where the turnover of the acquired companies does not exceed €5 million in the last closed accounting year, provided their technologies have not been developed under programs and projects of particular interest for Spain or time-limited investments; that is, investments of short duration (hours or days), which do not create any real capacity to influence the management of the acquired company.

Generally, authorization for "foreign direct investments" must be granted by the Council of Ministers (except for investments equal to or under €5 million, in which case authorization must be granted by the head of the Directorate General the head of the Directorate-General for International Trade and Investment).

As a temporary measure, until December 31, 2026, investments that cumulatively meet the following requirements will also be subject to authorization by the Council of Ministers: (i) those made by residents of EU/EFTA countries other than Spain, or by residents in Spain with a beneficial owner in an EU/EFTA country; (ii) investments whereby the investor becomes the holder of a participation equal to or greater than 10% of the capital of a Spanish company or acquires the control of the company; (iii) those made in companies listed in Spain or unlisted companies, if the value of the investment exceeds €500 million; and (iv) those affecting certain strategic sectors.

Non-resident investments in Spanish companies not affected by (i) the restrictions applicable to "foreign direct investments" indicated above, (ii) the interim regime for investments made by residents from EU/EFTA countries indicated above, or (iii) restricted sectors that have a specific regulation (e.g., national defense, air transport, gambling and telecommunications) are free but must be declared for statistical purposes. The declaration must be submitted within one month following the completion of the transaction. No declaration is needed in cases where the investment does not derive from a non-cooperative jurisdiction (formerly known as tax havens) and the investment is lower than 10% of the share capital or the voting rights. In cases where the investment derives from a non-cooperative jurisdiction and exceeds 50% of the Spanish company's share capital, a prior declaration must be submitted in addition to the one submitted within one month following the transaction.

**Reporting obligations of all foreign transactions and balances of financial assets and liabilities**

Spanish residents (individuals or entities) must inform the Bank of Spain of any transaction executed with non-residents or any asset or liability in countries other than Spain. Information regarding creditor and debtor positions has to be supplied monthly, quarterly or yearly, depending on: (i) the volume of the transactions executed in the previous year by the resident, and (ii) the balance of assets and liabilities as of December 31 of the previous year.

# 3 Taking security

## 3.1. Preliminary considerations

There are two ways of securing an obligation under Spanish law:

a. *In rem*, whereby an item secures the fulfilment of obligations.

b. Personally, whereby a person guarantees the fulfilment of obligations.

Given that both are referred to as "guarantees" in Spanish, we will jointly refer to both as "guarantees," although, in the case of (a), we are referring to the taking of security.

In the case of insolvency, these guarantees rank differently and there are material differences in their enforcement.

### Notarization and registration

Guarantee or security documents must be issued before a notary public to be considered as enforceable titles. When executing a public deed, it is important to remember that all non-resident parties or appearers must have a tax identification number (NIF or NIE) and that the identity of the "beneficial owner" must be disclosed.

Registration is required for and increases the costs of some types of guarantees, e.g., real estate mortgages.

### Principle of integrity

Broadly speaking, a security interest can only secure one main obligation and its ancillary obligations. If two different main obligations need to be secured, two different security instruments must be created. Spanish law does not provide for a so-called "universal security" over all the debtor's assets, although there are exceptions, such as floating mortgages (*hipotecas flotantes*). Nor does it generally provide for the creation of a "floating" or "adjustable" charge.

### Blanket prohibition on financial assistance

An SA cannot give financial assistance to acquire its own shares or units, or the shares of its parent company. This prohibition does not apply to (i) financing for employees, or (ii) transactions carried out in the ordinary course of business by banks and credit entities. An SL cannot give financial assistance to acquire its own units, or the units created, or shares issued by another company belonging to the same group as the SL.

This blanket prohibition covers indirect assistance, meaning situations where the company is not providing consideration in the traditional sense, but is covering another party's obligation, e.g., if the company

guarantees a bank loan in favor of an individual for purchasing shares in the company. The rules prohibiting financial assistance are particularly relevant in the context of acquisition finance.

## 3.2. Overview of the most relevant types of security

In this section, we provide an overview of some of the options available when taking security in Spain. This description, however, is not fully comprehensive and other types of security are available under Spanish law.

**Pledge over shares and credit rights**

*Pledges over shares and credit rights (such as bank accounts, receivables and insurance policies) are the most common type of security given.*

These pledges:

- only secure obligations that can be valued in cash;
- must be formalized before a notary public to be considered as an enforceable title upon execution. If the pledge is incorporated under a law other than Spanish law, which is unadvisable for pledges of assets located in Spain, a document equivalent to a Spanish notarized agreement or deed must be signed;
- do not need to be entered on a registry to be valid, except pledges over listed shares; and entail a transfer of possession.

**Non-possessory pledge (*prenda sin desplazamiento*)**

A non-possessory pledge is granted over movable assets that cannot be the object of (i) a chattel mortgage (only certain assets—such as aircrafts, fully identified industrial machinery intended for operation in an industry, and IP rights—can be subject to a chattel mortgage); or (ii) an ordinary pledge (only assets that can be transferred to the creditor or to a third party can be subject to ordinary pledge).

Credit rights, and even future credit rights, can be used in a non-possessory pledge if they are not represented by securities or considered financial instruments.

A non-possessory pledge must be entered in the Chattel Registry to be valid.

**Real estate mortgage**

Real estate is frequently used as security by means of a real estate mortgage. As an exception to the principle of integrity, a mortgage can secure several obligations if they are specified or specifiable and the procedure for settling each obligation is established. In addition, there is also a specific exception for "floating" mortgages *(hipotecas flotantes)* set up for financial entities and governments.

*Mortgage agreements must be drafted in Spanish, executed before a notary public and filed with the pertinent Land Registry, making this type of security more costly.*

**First demand guarantee**

This guarantee imposes an obligation on the guarantor to pay the beneficiary on first demand. Therefore, the beneficiary is not required to first make a claim or take any action against the obligor of the guaranteed obligation that the guarantee supports but can demand payment directly from the guarantor.

*A personal guarantee that qualifies as a first demand guarantee will be independent from the underlying agreement that it guarantees and operates strictly in accordance with its terms.*

First demand guarantees are not affected by disputes over the underlying agreement between

the obligor and the beneficiary, who is usually entitled to payment simply on submitting a claim for payment.

## 3.3. Special regime for financial guarantees

To grant a financial guarantee, the parties, the collateral and the secured obligations must fulfil several specific requirements.

Spanish regulation on financial collateral agreements provides for a simple and quick procedure for enforcing financial guarantees. These are some of the most relevant features of these guarantees:

- They do not need to be formalized before a notary public to be enforceable against third parties.
- Security can be created by outright transfer of title to the asset or right concerned, or by creating a pledge.
- The creditor can negotiate a right of replacement and use of the financial collateral as if it were the owner, without losing rank of privilege.
- The collateral can be enforced through "direct sale." When expressly agreed, the creditor can retain the collateral.
- These guarantees are not affected by the general insolvency regime.

# 4 Competition

Businesses in Spain are subject to EU and Spanish competition law. EU law applies to agreements and other restrictive conducts that may affect trade between Member States. Spanish law applies to restrictive conducts with effects in Spain.

The relevant Spanish statutes are the LDC and its implementing regulation (Regulation for the Defense of Competition).

The provisions of the LDC are enforced not only by the Spanish Competition Authority (the National Commission for Markets and Competition, or "CNMC"), but also by regional competition authorities, where they exist. Regional authorities are only competent for acts with effects limited to their own regions.

In addition, EU and Spanish competition law can be applied in private litigation before Spanish courts.

After the last reform of the LDC in April 2021, transposing the ECN+ Directive into the Spanish legal order, further changes were implemented on June 28, 2023. These changes, however, essentially affected procedural matters of administrative proceedings under the LDC. In relation to sanctioning proceedings for restrictive practices, the maximum term of the proceedings was extended to 24 months (instead of 18 months), and the legal term for submitting allegations during the proceedings was also extended from 15 working days to one month. In turn, in the case of merger control proceedings, (i) the maximum term to issue a decision in concentrations notified under an abbreviated form was shortened to 15 working days, whereas (ii) the maximum term to issue a decision after the CNMC opened a Phase II investigation was extended to three months. Finally, the LDC did not set a legal term for the CNMC to answer a formal consultation in connection to merger control, but this has been corrected and the CNMC is now subject to a legal one-month deadline to issue a response.

In addition to these changes, the LDC is expected to undergo further reforms in the current legislative term, since relevant measures were overlooked in the above reforms. In this regard, there is a parliamentary initiative to amend the LDC and include the long-awaited settlement procedure for competition investigations, in line with the practice of the European Commission, and several amendments in relation to fines imposed on companies and directors.

## 4.1. Restrictive practices

*The LDC prohibits collusive practices (agreements and concerted or parallel practices that restrict effective competition),*

*abuse of dominant position and significant acts of unfair competition that are contrary to the public interest.*

**Collusive practices**

In general terms, Spanish law prohibits all agreements, collective decisions and recommendations, and concerted or parallel practices that have as their object or effect the prevention, restriction or distortion of competition.

These practices include, *inter alia*, price fixing; limiting or controlling production, distribution, technical development or investment; sharing or allocating markets, customers or sources of supply; applying dissimilar conditions to equivalent transactions; and concluding agreements subject to the acceptance of supplementary obligations that have no connection with the object of these agreements.

Prohibited agreements and practices, subject to some exceptions, are null and void and may be punishable, depending on the severity of the restriction on competition, with fines of up to 10% of the total worldwide turnover of the infringing company in the business year preceding the imposition of the fine. Moreover, in certain cases, the infringing company may also be banned from entering into contracts with the public administration for a given period. Finally, managers and legal representatives who have intervened in the restrictive practice may also face individual fines.

**Abuse of dominance**

The LDC prohibits abusive conducts by firms that hold a dominant position in a given market. Such abuse may, for instance, consist of applying unfair trading conditions, limiting production to the prejudice of consumers, or discriminating so as to place one or more parties at a competitive disadvantage.
Abuse of dominance is punishable with fines of up to 10% of the total worldwide turnover of the infringing company in the business year preceding the imposition of the fine.

**Unfair practices affecting the public interest**

The Spanish antitrust authorities may also investigate and initiate sanctioning proceedings against acts of unfair competition that have a significant effect on the market and, as a result, on the public interest.

Acts of unfair competition are punishable with fines of up to 5% of the total worldwide turnover of the infringing company in the business year preceding the imposition of the fine.

## 4.2. Merger control

*The LDC requires prior notification and authorization for mergers and other concentrations if certain conditions are fulfilled.*

The LDC requires prior notification and authorization for mergers and other concentrations, including acquisitions and full-function joint ventures, which are not subject to notification to the European Commission under the EU Merger Regulation, but which satisfy the thresholds listed below.

A concentration must be notified to the CNMC when either of the following alternative sets of thresholds is met:

a. A market share of at least 30% in the relevant product or service market in Spain (or in a geographical market defined within Spain) is acquired or increased as a result of the transaction (unless, under a de minimis exemption, the annual Spanish turnover of the acquired undertaking or assets did not exceed €10 million in the previous financial year, and the parties have no individual or combined market share of 50% or more in any affected market in Spain or in a geographical market within Spain).

b. The aggregate turnover in Spain of all the firms involved in the transaction exceeded €240 million in the previous financial year, provided that the individual turnover in Spain of at least two participants exceeded €60 million.

The LDC provides for fines of up to 5% of the parties' worldwide turnover in the business year preceding the imposition of the fine if a transaction is completed without authorization. The CNMC has been particularly attentive in the prosecution of such cases in the latest years, which is likely to continue in 2025.

## 4.3. Unfair competition

Spanish unfair competition law is based on the general principle that commercial conduct contrary to good faith is considered unfair. The relevant Spanish statute is the Unfair Competition Act.

*The Spanish Unfair Competition Act specifically addresses unfair commercial conducts, including acts of confusion, misleading advertising, some kinds of gifts and discounts, acts of denigration, acts of comparison, acts of imitation and sales at a loss.*

Certain anticompetitive practices may also be subject to sanctioning proceedings under the LDC if they lead to the distortion of effective competition on the market and affect the public interest.

5

# State aid

Under EU law, State aid is subject to control by the European Commission to ensure that government interventions at any level (national, regional or local) do not distort competition and trade inside the EU. State aid is defined as an economic advantage—in any form whatsoever—conferred from state resources on a selective basis that may result in a distortion of competition.

*EU law establishes a general prohibition of State aid, while making allowances for a number of areas in which this aid can be considered compatible under certain conditions or after notification to, and prior authorization from, the European Commission.*

Following the appropriate proceedings, if the European Commission concludes that a government intervention constitutes an aid measure or instrument incompatible with EU law and such aid has already been paid out, it will generally order the Member State concerned to recover the aid from the beneficiary or beneficiaries (which, in most cases, will be private undertakings).

# 6

# Intellectual property and data protection

*Spain has a modern IP legal system. It has adhered to the main international IP treaties*

Spain has a modern intellectual property ("IP") legal system. It has adhered to the main international IP treaties, including the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Madrid Agreement Concerning the International Registration of Marks, and the European Patent Convention. However, it has not adhered to the Agreement on a Unified Patent Court.

Being part of the EU, Spanish IP legislation incorporates all EU regulations (e.g., EU regulations on European Trademarks and Designs) and it is harmonized with EU directives (e.g., EU Directive 2004/48/EC, on the Enforcement of Intellectual Property Rights).

Spain has courts specializing in IP issues, known as commercial courts (*juzgados de lo mercantil*).

Next, we will summarize the main IP rights recognized by Spanish law. It is worth noting that several IP rights can exist over the same subject matter, i.e., an icon can be protected by copyright, design rights and trademark rights, if the necessary requirements are met. As a note on terminology, it is worth highlighting that the term "intellectual property" (*propiedad intelectual*) is normally used in Spain to refer only to copyrights and related rights, while other IP rights such as trademarks, industrial designs, patents, utility models and geographical indications are generally referred to under the label of "industrial property" (*propiedad industrial*).

The following table identifies the main characteristics of IP rights under Spanish law. Please note that the information it provides is not comprehensive:

| | TRADEMARKS | COPYRIGHTS |
|---|---|---|
| **Subject matter** | Signs, including:<br>• Words<br>• Figurative<br>• Combined<br>• Sound<br>• 3D | Artistic, literary, or scientific creations (e.g., books, movies, music, architecture, paintings, software, databases) |
| **Main requirements** | Distinctiveness | Originality (independent creation) |
| **Term of protection** | Indefinite (must be renewed every 10 years) | General term: life of author + 70 years |
| **Must register?** | Yes | Not mandatory |
| **Territorial scope** | • EUT (EUIPO): All EU<br>• Spanish Trademark (SPTO): Spain only | Spain (but principles of "national treatment" and "independence" under Berne Convention apply) |

## 6.1. Copyrights

*Copyrights are mainly regulated by the Intellectual Property Act, which complies with international treaties and existing EU directives.*

The subject matter of copyrights are works of authorship. For a work of authorship to be protected, it must be an original creation, expressed in any way or form. Works protected by copyright include, but are not limited to, books, music, cinematographic works, sculptures and paintings, architectural works, photographs, and software. The Spanish Intellectual Property Act also grants neighboring rights (including the rights of producers of phonograms and videograms, performers, and broadcasting companies) and the *sui generis* database right.

Unlike most industrial property rights, copyrights are automatically acquired on creation of the work, once it is perceptible by others. Thus, protection is not subject to registration with the Intellectual Property Registry, although at times this may be advisable to prove existence and authorship of these rights at a certain point in time.

Under Spanish law, the author has two sets of rights:

a. Moral rights: Regardless of the author's economic rights, and even after the transfer of these rights, the author has "moral rights," which include the right to claim authorship of the work and the right to object to any distortion, mutilation or modification to the work that would be prejudicial to the author's honor or reputation. Moral rights cannot be assigned or waived under any circumstance.

b. Economic rights: The exclusive right to authorize any exploitation of the work, particularly the reproduction, distribution and transformation of it, as well as its communication to the public. These rights may be licensed and assigned to third parties, individually or as a whole.

As a rule, exploitation rights last for the author's life and 70 years after the author's death. When the term expires, the affected work enters the

| DESIGNS | PATENTS | TRADE SECRETS (Know-How) |
|---|---|---|
| Appearance of a product: its shape, patterns and colors (e.g., design on furniture, clothing, electronic devices and icons) | New products, processes or uses that solve technical problems | Any information providing a technical/commercial advantage |
| • Novelty<br>• Individual character | • Novelty (universal)<br>• Inventive step<br>• Industrial applicability | Confidentiality |
| • Not registered: 3 years from first public disclosure<br>• Registered: up to 25 years | 20 years | Indefinite (until secret is revealed) |
| More protection if you do | Yes | No |
| • EU Design (EUIPO): All EU<br>• Spanish Design (SPTO): Spain only | • EP (EPO): EU Member States where patent is validated<br>• Spanish patent (SPTO): Spain | Worldwide |

public domain, and the public may use it as long as they respect the moral rights that may remain in force.

If any of the above rights are infringed, the holder may take legal action, requesting that the infringer cease the unlawful activity, and claim reparation for any material and moral damages caused. In clear-cut cases, the holder can also apply for a preliminary injunction to obtain immediate protection.

## 6.2. Industrial property rights

*Industrial property rights are territorial rights that can be protected at different levels (national, EU or international).*

In most cases they are subject to previous registration.

### Trademarks

A trademark is any sign capable of distinguishing the goods or services of one undertaking from those of other undertakings in the course of trade. In practice, these signs may consist, in particular, of words, images, shapes, letters, numbers, three-dimensional shapes, sounds or any combination of the above.

#### National trademarks

In Spain, trademark rights are regulated by the Spanish Trademark Act, which has been amended several times, most recently in July 2022. The Spanish Trademark Act transposes the EU Trademark Directive. A Spanish trademark application must be filed before the Spanish Patent and Trademark Office ("SPTO") specifying the products and services for which protection is sought (using the Nice "International Classification of Goods and Services"). Among other restrictions, trademark legislation forbids registration of signs that lack distinctive character; are contrary to law, public order or morality; or are identical or confusingly similar to an earlier trademark.

Trademark registration is granted for a ten-year period starting on the application date and can be indefinitely renewed for subsequent ten-year periods. A trademark can be revoked if its holder has not used it, without proper reason, for at least five straight years.

Registration entitles rights holders to the exclusive use of the trademark in the course of trade in relation to the products and services for which it was registered. If a third party uses an identical or confusingly similar trademark to designate identical or similar goods or services in the course of trade without authorization, holders can request the cessation of the unlawful activity against the infringer and can claim reparation for any material and moral damages caused. They can also request a preliminary injunction to obtain immediate protection.

#### European Union trademarks

The Regulation on the European Union trademark ("EUT") applies within the EU, including Spain. The EUT application must be filed before the European Union Intellectual Property Office" ("EUIPO").

*A EUT registration is effective in all Member States for a ten-year period and can be indefinitely renewed for additional ten-year periods.*

A EUT can also be revoked if it is not used for an uninterrupted period of five years. If the EUT is revoked, it is revoked in all EU Member States.

### International protection: the Madrid System

The Madrid Arrangement and the Madrid Protocol (together known as the "Madrid System") establish a unified application procedure for obtaining international trademark protection. The Madrid System, administered by the World Intellectual Property Organization, allows an application to be filed directly with a national trademark office. The application is then processed as an international registration, which is subject to substantive examination by the IP offices of the designated countries. Trademark protection will be granted in each designated country that has approved the application after substantive examination.

## Designs

Directive 98/71/EC on the legal protection of designs defines design as "the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation". Directive 98/71 has been repealed by the new Directive (EU) 2024/2823, of 23 October 2024, on the legal protection of designs (recast), which includes in the definition of design "the movement, transition or any other sort of animation of those features." Spain and the other Member States must transpose the new Directive by December 9, 2027.

### Spanish designs

Spanish designs are regulated by the Act on Legal Protection of Industrial Designs, which transposes Directive 98/71/EC, and is expected to be amended to transpose Directive (EU) 2024/2823.

*The two requirements for registering a design are novelty and individual character,* meaning that the overall impression it produces on informed users differs from the overall impression produced on these users by any previous design.

The period of protection is five years from the date the application is filed. The rights holder can renew the period of protection for one or more five-year periods, up to a maximum of 25 years from the filing date. While Spanish legislation only protects registered designs, unregistered designs benefit from the protection granted by the EU Regulation.

### EU designs

Regulation (EC) 6/2002 on Community designs is directly applicable in all Member States, including Spain. The Regulation was amended in 2024 by Regulation (EU) 2024/2822, which will apply from May 1, 2025, except for certain provisions that will apply from July 1, 2026. Under this amendment, Community designs will be renamed as EU designs. There are two types of protection for Community (or EU) designs: (i) the unregistered design without any formalities, which is protected for three years from the date on which it was first made available to the public within the EU; and (ii) the registered design, registered after a formal examination by the EUIPO, which is protected for a five-year period, renewable for subsequent five-year periods up to a maximum of 25 years.

## Patents

### Spanish patents

Spain enacted a new Patent Act in 2015, which is currently in force, to adapt the Spanish patent system to the EU and international legislation.

Under the Spanish Patent Act, an invention (a new product, process or use) is patentable when it (i) is novel, i.e., it is not part of the state of the art before the date on which the patent application is filed, (ii) involves an inventive step, i.e., with regard to the state of the art, it is not obvious to a person skilled in the art; and (iii) is

susceptible of industrial application, i.e., it can be made or used in any kind of industry.

Since the current Patent Act entered into force in 2017, all Spanish patent applications must be examined by the Spanish Patent and Trademark Office, which will carry out a prior art search and make sure all substantive requirements are met before granting the patent.

The Spanish Patent and Trademark Office grants patent rights for a non-renewable period of 20 years, beginning on the date the application was filed. This registration grants exclusive exploitation rights in Spanish territory. These rights can be licensed or assigned (or both) to third parties.

Patent claims will determine the extent of the protection conferred by a patent. The rights holder must exploit the invention or license an authorized third party to exploit it.

### European Patent Convention system

The Munich Convention, of October 5, 1973, established a European patent ("EP") issuance system whereby a single application is filed with the European Patent Office ("EPO"). After the EP is granted by the EPO, to be enforceable, it must be translated into the language/s of the specific countries where protection is sought, and it must be published in those countries. By doing so, the EP is converted into several national patents. Thus, the European Patent Convention system provides a single window to obtain several national patents, each of which is subject to the national rules of the countries listed on the application. Therefore, it is not necessarily valid throughout the entire EU territory.

### EU unitary patents

The unitary patent—or EP with unitary effect—is an EP granted by the EPO under the rules and procedures of the European Patent Convention, to which, at the patent owner's request, unitary effect is given for the territory of the Member States participating in the Agreement on a Unified Patent Court. To date, Spain has not joined the Unitary Patent system.

### International patent system

The Patent Cooperation Treaty, signed on June 19, 1970, provides for a unified procedure to protect inventions by filing patent applications with the World Intellectual Property Organization. Examination and granting procedures are handled by the corresponding national authorities and do not result in an international patent.

**Utility models**

Utility models are industrial property rights that protect inventions consisting of giving a new form, structure or constitution to an object or product that results in an appreciable improvement in its use or manufacture. Utility models require (i) novelty, (ii) an inventive step, and (iii) industrial applicability. However, the inventive step required is of a lower level than that required for a patent (i.e., it is not very obvious to a person skilled in the art). The period of protection is a non-extendable term of 10 years from the date of registration. The regulation for patents applies by default to utility models in all aspects that are not contrary to the specific nature of the latter.

## 6.3. Data protection

Since May 25, 2018, the right of personal data protection is governed by the EU General Data Protection Regulation ("GDPR"). A new national law, the Act on Data Protection and Guarantee of Digital Rights (*Ley Orgánica de Protección de Datos y Garantía de los Derechos Digitales*), was enacted in 2018 to adapt the Spanish national legal framework to the GDPR.

The GDPR applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EU, regardless of where the processing takes place. It also applies to a controller or processor not established in the EU, where the processing relates to the offering of goods or services to data subjects in the EU, or to the monitoring of their behavior in the EU.

The GDPR provides a high level of protection for data subjects and requires data controllers and processors to comply with highly demanding obligations, which include respecting the principles of (i) lawfulness, fairness and transparency; (ii) purpose limitation; (iii) data minimization; (iv) accuracy; (v) storage limitation; and (vi) integrity and confidentiality. Data controllers must be responsible for, and able to demonstrate compliance with, these principles. The most serious infringements may result in administrative fines of up to €20,000,000, or in the case of an undertaking, up to 4% of its global annual turnover of the preceding financial year, whichever is higher.

7

*Legal titles and charges to real estate in Spain are tracked and supported through a public land registration system (Registro de la Propiedad, or Land Registry)*

# Real estate

## 7.1. Types of property investment

Investments in real estate in Spain can be structured as asset deals (buying the real estate directly) or share deals (buying the real estate through the purchase of the corporate vehicle that owns it). Both structures are common and the choice is mainly based on the advantages and disadvantages of each option: (i) tax impact (considered on a case-by-case basis); (ii) due diligence effort (more significant tin the case of share deals); and (iii) risk assumption, whereby the purchaser must assume risks related only to the property (asset deal), or related both to the property and the company (share deal). This section focuses on asset deals.

## 7.2. Steps to purchasing real estate

**Land Registry system and Land Registry extract *(nota simple del Registro de la Propiedad)***

Legal titles and charges to real estate in Spain are tracked and supported through a public land registration system (*Registro de la Propiedad*, or Land Registry).

The Land Registry keeps a record of property titles and rights *in rem*. Although it is not compulsory, it is advisable and common to register the title and rights *in rem,* as doing so protects beneficiaries from third parties. Moreover, several rights (e.g., mortgages) must be registered to make them enforceable.

The Land Registry's most important function is the protection it awards, which implies that third parties acting in good faith (e.g., purchasers) can rely on the information it provides. When *bona fide* third parties acquire ownership of real estate or any other right *in rem* for a consideration and record their acquisition at the Land Registry, that purchase cannot be challenged on the basis of circumstances not recorded in it.

Generally speaking, rights *in rem* and charges recorded in the Land Registry can be opposed by third parties, including the purchaser, who is not affected by third-party rights not recorded in the Land Registry (barring some exceptions). The registrar of the Land Registry issues extracts (*notas simples*) and certificates (*certificaciones*) substantiating the title and charges recorded in the Land Registry. Most purchasers rely on the Land Registry's records of title and charges, with no need for title insurance. However, under Spanish law, it is possible to obtain title insurance, as well as warranty and indemnity insurance (which would cover other seller's representations and warranties), and these insurance policies can be used in certain circumstances.

Exceptionally, some contingencies and third-party rights not recorded in the Land Registry may be binding on the purchaser, including (i) lease agreements (barring some exceptions) and the lessee's pre-emptive rights, if any, (ii) liability for soil contamination, (iii) several property taxes, and (iv) condominium charges. Likewise, certain pre-emptive rights in favor of the authorities are not registered with the Land Registry (see below).

### Property taxes

Payment of certain taxes on real estate, such as property tax (*impuesto sobre bienes inmuebles)*, will not be confirmed in the Land Registry extract or certificate, although specific certificates are available from the tax authorities.

### Condominium

Regarding properties belonging to a real estate complex containing different properties owned by different owners with common areas or facilities (*comunidades de propietarios)*, a certificate from the agent of the condominium (*administrador de fincas*) must be obtained to certify there are no outstanding payments relating to the property.

### Zoning classification

The Land Registry does not provide confirmation of the real estate zoning classification nor of whether the property's boundaries, surface and physical characteristics fulfil urban planning provisions.

Confirmation of these issues should be requested from the town hall, which will issue a planning note (*cédula urbanística*) providing a description of the property's compliance with the applicable urban planning regulations, such as authorized uses and development status of the land.

*It is also advisable to request permits related to the real estate and confirmation that there are no urban planning proceedings affecting the real estate.*

Although the permits system may vary from one municipality to another, as a rule, and always depending on the nature and use of the real estate, the permits required would be a works license (municipal license allowing building works to be carried out on the property); an activity license (municipal license enabling the specific activity to be carried out), when applicable; and the functioning or operating license (municipal license usually granted if the real estate has obtained both previous licenses). Depending on the municipality and the nature and use of the real estate, these licenses could be replaced with a statement of responsibility.

### Other issues

Additional matters also need to be addressed according to the circumstances (e.g. proper maintenance, environmental status, pre-emptive rights, revision of construction agreements and revision of lease agreements).

Moreover, some EU regulations will have a potential impact on real estate sustainability, namely, the Energy Performance of Buildings Directive (EU/2024/1275), which entered into force in all EU countries in May 2024 and needs to be transposed into national law by May 2026, and which will demand substantial investments in building upgrades and energy-saving measures, requiring strategic planning and resource allocation.

### Due diligence

The purchaser should properly address all the above matters when (i) conducting the required due diligence, and (ii) drafting the transaction documents (see below).

## 7.3. Requirements for real estate transfer

### Preparatory documents

Preparatory documents, including letters of intent and reservation documents, can be drawn up and are common under Spanish law. Parties can include binding clauses in these documents, e.g., stating a commitment to buy or sell, establishing an exclusivity period, or agreeing to a confidentiality provision. Option agreements (call options) are also valid and enforceable under Spanish law. Provided several requirements are met, option agreements can be registered in the Land Registry, making them enforceable against third parties.

### Sale and purchase deed

Spanish law establishes, in general terms, that a title to real estate can only be transferred if (i) possession of the real estate is delivered to the purchaser, and (ii) that delivery results from a valid legal transaction.

*A private agreement (with transfer of possession) is enough for transfer of ownership, which takes place once the agreement has been signed and the real estate is handed over to the purchaser.*

However, to record the acquisition with the Land Registry, it is necessary to sign a public deed before a notary.

If the sale and purchase deed is to be granted by two companies, the representatives of the parties will have to prove their capacity to represent their principals through appointment as officer with sufficient legal capacity to sign the sale and purchase deed, or power of attorney, among others.

Powers of attorney must be granted before a notary and provide sufficient capacity to sell or purchase the real estate. When granted abroad, the power must be legalized by a notary public and duly apostilled in accordance with the Hague Convention or legalized by a Spanish consul. If the powers of attorney are not granted in Spanish, a translation into Spanish is required.

### Filing with the land registry

The sale and purchase deed can be submitted to the Land Registry for registration (see section 7.2).

### Exchange control and foreign direct investment regulations

*Despite some exceptions (see section 2.5.), foreign investment in real estate in Spain is not restricted.*

However, investors must comply with Spanish anti-money laundering ("AML") regulations (see below), which include providing information about the beneficial owner (the real beneficiary of the investment) and the origin of the investor's funds. Moreover, some foreign real estate investments have to be notified to the State Secretary for Trade.

Spain has implemented the European directives on the prevention of the use of the financial system for the purposes of AML and terrorist financing. EU and Spanish AML regulations are in line with the Financial Action Task Force recommendations.

AML rules apply to several obliged entities, including banks and other financial and credit institutions, real estate agents and brokers, auditors, external accountants and tax advisors, notaries, and lawyers. The obliged entities should (i) implement an internal control system that includes a policy and procedures to identify their clients (Know Your Client—"KYC"—policy), and (ii) identify (and avoid) suspicious activities and transactions, and report them to the authorities (namely, the *Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias*, or "SEPBLAC"). The obliged entities must also gather and store their clients' information, and keep it available for the SEPBLAC.

A real estate transaction usually involves several obliged entities (e.g., a bank, a real estate agent, a lawyer and a notary), and each entity must apply its KYC and AML risk assessment policy independently. The parties must provide the required information to all involved obliged entities separately, and the transaction calendar has to take into account the time, information and documents these entities need to conduct their KYC and AML procedures.

## 7.4. Urban leasing

### General

The Spanish legal framework for lease agreements is developed under (i) Act 29/1994, on the Urban Leases ("ULA"), and (ii) the Civil Code when the ULA is not applicable.

There are two main categories of urban leases: those intended for residential purposes ("residential leases") and those intended for non-residential purposes ("commercial leases").

### Residential leases

Residential leases are subject to the parties' will, always in the framework of the ULA provisions and, on a subsidiary basis, to the provisions of the Civil Code.

Under the ULA, the main provisions to be considered in residential leases are the following:

*Term:* Although the term can be freely agreed by the parties, leases with a term of less than five years (when the lessor is an individual) or seven years (when the lessor is a legal entity) will be automatically extended for one-year terms until the five or seven-year term is reached, unless the lessee wishes to terminate the lease, providing at least thirty days' prior notice. After the mandatory minimum term has elapsed (five or seven years), a tacit extension will take place unless notice has been given four months in advance by the lessor or two months in advance by the lessee. If that notice is not given, it is mandatory for the agreement to be renewed for one-year periods up to a maximum of three years. Once the mandatory period (up to five years or seven years) or the tacit extension (annually up to three years) has expired, if the property is located in a strained housing market area ("Strained Market Area"), the lessee will be entitled to an additional extraordinary extension of the term, annually and up to three years. This extraordinary extension will be mandatory for the lessor barring some exceptions. The competent housing authorities are empowered to declare Strained Market Areas if certain conditions are fulfilled. Several municipalities in Catalonia and one municipality in Basque Country have been declared Strained Market Areas.

*Rent, legal deposit and additional guarantees*: The rent is freely determined by the parties. However, in Strained Market Areas, if the property has not be rented in the last 5 years or a new lease agreement is signed and the lessor is a large property holder (individual or legal entity owning over 10 residential properties1 or a built surface area of over 1,500 m2, excluding parking lots and storage spaces), the rent agreed at the start of the lease will be restricted by the cap on the price applicable under the system of reference price indexes. If the new lease agreement of the residential property located in a Strained Market Area is signed by a lessor who is not a large property holder, the rent amount of the new lease agreement cannot exceed the amount set out in the previous agreement updated (except in certain situations in which it can exceed up to 10%).

The rent can only be reviewed once a year if so specified in the agreement.

*From January 1, 2025, the mechanism used to update the rent of residential leases differs depending on the date the agreement was signed.* Agreements signed before May 26, 2023, are updated by applying the consumer price index, which in March 2025 was 2.3%. Agreements signed after that date are updated by applying the new reference index published by the National Institute of Statistics, which in March 2025 was 1.98%.

1 In Strained Market Areas, the autonomous regions can reduce the threshold to five or more properties. Catalonia and the Basque Country have reduced the threshold to five or more residential properties in the corresponding Strained Market Area.

On signing the lease agreement, the lessee must provide the lessor with a legal deposit equal to one month's rent. Apart from the legal deposit, the parties may agree on additional guarantees to be given by the lessee. However, during the first five years (when the lessor is an individual) or seven years (when the lessor is a legal entity) of the lease, the amount of the additional guarantee cannot exceed two months' rent.

*Preferential acquisition and withdrawal rights of lessees:* Under ULA, in the event of sale of the leased residential property, the lessee can enforce a preferential acquisition right within thirty calendar days as of the date when the lessor notifies his or her intention to transfer the residential property, the price and main conditions for the transfer. Lessees can exercise their withdrawal right if (i) the notification had not been served by the lessor; (ii) any of the essential transfer conditions were omitted in the notification or (iii) the sale and purchase price is lower, or the other essential conditions are less onerous. Preferential acquisition and withdrawal rights are not admitted if (i) the lessor transfers the leased residential property together with the rest of residential properties or premises owned in the same building, or (ii) all the residential properties or premises in one building that belong to several owners are transferred in favor of a single purchaser. It is noteworthy that certain authorities (such as municipalities and autonomous regions) benefit in some circumstances from pre-emptive rights over certain residential properties (e.g., sales of residential buildings located in Strained Market Areas in Catalonia owned by large property holders' legal entities).

**Commercial leases**

Commercial leases are subject to the terms agreed by the parties and, failing that, to the ULA and, subsequently, to the Civil Code.

*The regime applicable to commercial leases is more flexible than the regime for residential leases.*

*Term:* The ULA does not establish a minimum term for commercial leases and parties can freely agree on the lease term.

It is common practice for long-term leases to include a lessee's break-up option so that the lessee, once the mandatory term agreed has elapsed and at a specific moment of the lease, is entitled to terminate the agreement without paying compensation for early termination. Prior notice is usually agreed in these cases.

*Rent, legal deposit and additional guarantees:* The parties may freely agree on the rent and updates of the agreed amount. On signing the lease agreement, the lessee must provide the lessor with a legal deposit equal to two month's rent. Apart from the legal deposit, the parties may agree on the lessee giving additional guarantees. There are no limits to the amount of the additional guarantee.

*Preferential acquisition and withdrawal rights:* Unless otherwise agreed, the above provisions for residential leases also apply to commercial leases.

*Assignment and subletting:* Unless otherwise agreed, the lessee has the right to assign the lease agreement and sublease the premises without the lessor's prior consent, and the lessor has the right to increase the rent by 10% in case of partial subletting of the premises, and 20% in case of total subletting or assignment of the lease agreement. It is worth noting that under the ULA, unless agreed otherwise, the lessor is also entitled to increase the rent in case of merger, transformation or spin-off of the lessee.

*Compensation for clientele:* Unless otherwise agreed, the ULA provides that compensation for clientele must be paid to the lessee at the end of the lease term if (i) the activity carried out at the leased premises involved selling products or providing services to the public; (ii) the lessee carried out this activity during the previous five years; (iii) the lessee duly notified the lessor, four months before the expiration date of the agreement, of its intention to extend the lease for a further period of five years for a market rent; and (iv) the lessor did not accept the extension.

# 8

# Tax

*The Spanish tax system consists of different taxes that can be grouped according to assessment at state, regional or local level*

## 8.1. Overview of the Spanish tax system

The Spanish tax system consists of different taxes that can be grouped according to assessment at state, regional or local level.

**State level**

Direct taxes on income are levied for companies (corporate income tax, "CIT") and individuals (personal income tax, "PIT"). Tax on income earned by non-residents, whether individuals or corporations, is also levied through non-resident income tax ("NRIT").

Net wealth tax is levied for resident individuals, who are taxed on their worldwide wealth. Non-residents are also subject to wealth tax on the wealth that is located or will be exercised within Spain. Temporarily, for 2022 and 2023, a new solidarity tax on large fortunes was imposed on resident individuals whose net wealth was valued at over €3 million, and also on non-residents whose net wealth located or exercised within Spain exceeded € 3 million. Recent amendments have extended its application from 2023.

Individuals must pay inheritance and gift tax on the free acquisition of assets and rights by way of inter vivos or mortis causa transfers.

Indirect taxes at state level include value added tax ("VAT") and transfer tax. The former is applied to the consumption of goods and services; the latter is levied on specific property transfers, corporate events and legal documented acts (stamp duty).

Certain activities are taxed through specific indirect taxes, such as digital services tax on online advertising, online intermediary services and data transmission and financial transactions tax on the acquisition for value of shares in Spanish companies that are listed on a regulated market with a market capitalization value of over €1,000 million, irrespective of where the acquisition is made and the place of residence of the parties to the transaction.

Excise duties are also levied on the production or importation of specific goods, such as hydrocarbons, gas, alcohol and alcoholic beverages, tobacco, carbon and some oil products, and on the registration of some motor vehicles. These indirect taxes are harmonized at EU level and the Spanish legislation regulating these taxes complies with EU directives. A specific new tax is levied on the manufacture and importation of liquids for electronic cigarettes and other tobacco-related products.

The following green taxes are levied at state level: tax on non-reusable plastic packaging and landfill, incineration and co-incineration of waste; tax on the value of the production of electrical energy; tax on the emission of fluorinated greenhouse gases; tax on the production of spent nuclear fuel and radioactive waste resulting from nuclear power generation; and tax on the storage of spent nuclear fuel and radioactive waste in centralized facilities.

A temporary tax will be charged in 2024, 2025 and 2026 on the positive margin of interests obtained in Spain by certain credit institutions, financial credit establishments and branches of foreign credit institutions established in Spain.

### Regional level

Spain's autonomous regions receive a percentage of state-level tax revenue (including PIT, CIT, VAT, transfer tax, inheritance and gift tax and excise duties). Two autonomous regions, the Basque Country and Navarre, have their own regulations on these taxes.

Autonomous regions are entitled to create specific regional taxes provided they are levied on taxable events that are not subject to any other pre-existing tax at state level. Most autonomous regions have introduced different taxes on authorized gambling, vacant agricultural lands and environmentally damaging activities, among others.

### Local level

Mandatory taxes are levied by municipalities on specific taxable events related to their own territories, e.g., business activities tax, tax on real property and motor vehicle tax. In addition, municipalities may choose to levy other complementary taxes in their own territories, including tax on constructions, installations and works, tax on the increase in value of urban land and tax on luxury goods.

### Social security contributions

Social security contributions are similar to taxes and must be paid by employees, companies and individual entrepreneurs. These contributions finance social and welfare payments, such as unemployment benefits work accident compensation, pensions, medical care and additional work-related benefits.

Below is an overview of the most important taxes to be considered when conducting business or business-related activities in Spain:

- Corporate income tax (see section 8.2 below)
- Personal income tax (see section 8.3)
- Non-resident income tax (see section 8.4)
- Value added tax (see section 8.5)
- Transfer tax (see section 8.6)

## 8.2. Corporate income tax ("CIT")

### Taxable events and taxpayers

CIT is levied on the worldwide income obtained by companies that are resident in Spain for tax purposes, regardless of the source or origin of that income. A company is considered to be tax resident in Spain in any of the following cases:

a. It was incorporated under Spanish law.

b. Its registered head offices are located in Spain.

c. Its effective management headquarters, understood as the place where its business activities are managed and supervised, are located in Spain.

If there is a conflict of residence, the double taxation treaties between Spain and the conflicting country will apply.

**Taxable base**

The CIT taxable base is calculated from the declared accounting results (profit and loss account) and is subject to the adjustments required by CIT law.

In general, accounting expenses are considered tax deductible if they are duly registered in accountancy and documented in the corresponding invoice.

Specific tax deduction rules apply to some accounting expenses, such as amortization and depreciation of assets and rights, bad debts, financial leasing agreements and net financial expenses.

Depreciation is allowed on all tangible fixed assets (except land) and intangible fixed assets, based on their useful life. Different depreciation methods are available, and depreciation rates are regulated in official tables.

*Net financial expenses are tax deductible up to €1 million per year. Net financial expenses exceeding this amount are tax deductible provided they do not exceed 30% of annual EBITDA.*

Tax deduction of impairment losses of the value of fixed tangible and intangible assets and participations in listed and unlisted entities is deferred to the tax year in which the asset or participation is transferred to third parties or due to the winding up of the company.

Some expenses are considered non-deductible and must be adjusted to the CIT taxable base. Such expenses include (i) the remuneration on equity (dividends); (ii) CIT due paid; (iii) criminal or administrative fines sand sanctions; (iv) gambling losses; (v) donations, gifts and contributions to internal provisions or funds equivalent to pension schemes; (vi) expenses deriving from unlawful activities; (vii) expenses for operations performed, directly or indirectly, with persons or entities residing in tax havens; (viii) financial expenses (interest) from debt-financing borrowed from a lender entity or entities that

comprise a group of enterprises used to purchase shares in third entities or shares in other entities that belong to the same group of entities; (ix) remuneration exceeding €1 million per year paid to workers due to the extinction of the labor or statutory relationship with the enterprise; and (x) tax on documented legal acts paid on signing a mortgage loan deed.

Specific rules apply on the tax treatment of expenses/income deriving from crossborder transactions where hybrid mismatches arise due to a different expense/income qualification in the jurisdictions concerned.

**Reductions on the taxable base**

*Patent box.* A specific reduction is provided for income derived from certain intangible assets. The tax reduction on the taxable base amounts to 60% of the net income derived from the assignment of the right to use or exploit IP, including patents, advanced copyrighted software, utility models, complementary certificates for the protection of medicines and phytosanitary products and legally protected drawings and models that derive from research and development activities and technological innovation.

*Capitalization reserve.* Taxpayers subject to the standard rate are allowed to reduce their taxable base by the following amounts:

- For tax periods starting from January 1, 2024: 15% of the increase in their equity, provided that this increase is maintained over a three-year period, and a separate reserve is recorded in an amount equal to the tax reduction, which must not be released over the three-year period. As a general rule, the increase in equity has to come from the undistributed income in the given year. Therefore, shareholders' contributions or variations in respect of deferred assets should not be considered to determine the increase in equity. The capitalization reserve is limited to 10% of the positive income of that year. The limit is calculated on the taxpayer's taxable income without considering the special timing allocation rule reversions or the offset to negative taxable bases.
- For tax periods starting from January 1, 2025, the previous percentage is 20% and the above limit of annual positive income is 20% (25% if the taxpayer's turnover in the previous tax period is lower than € 1 million). Higher reduction percentages may apply provided that the taxpayer's total average workforce in the tax period has increased compared to the total average workforce of the immediately preceding tax period, and this increase is maintained for three years from the end of the tax period to which the reduction applies. The greater the increase in workforce, the higher reduction percentage applies, as follows: 23%, if the increase in workforce is at least 2% but does not exceed 5%; 26.5%, if the increase in workforce is between 5% and 10%; and 30% if the increase in workforce is greater than 10%.

**Offsetting negative taxable base**

A negative tax base may be carried forward and offset against positive tax bases calculated in the following tax years without any temporary limitation.

The maximum percentage of income that can be offset by negative taxable bases is 70% of the positive taxable base of a given year. The limit is calculated based on the taxpayer's taxable income before adjusting the capitalization reserve.

Specific limitations of 50% and 25% of the taxable base before adjusting the capitalization reserve and before offsetting apply when offsetting a negative taxable base in the case of taxpayers whose turnover in the previous tax year exceeds €20 million.

*The maximum percentage of income that can be offset by negative taxable bases is 70% of the positive taxable base of a given year.*

General and specific limitations for the offsetting are as follows:

| Maximum offsetting of a negative taxable base calculated as a percentage of taxable base prior to capitalization reserve adjustment and prior to offsetting | |
|---|---|
| Turnover of less than €20 million | 70% |
| Turnover of between €20 million and€ 60 million | 50% |
| Turnover exceeding €60 million | 25% |

The 70% limitation does not affect the right to offset €1 million of negative taxable bases annually.

For tax periods starting in 2024 and 2025, an additional limitation applies to the offsetting of negative tax bases of companies integrated in a group of entities subject to the tax consolidation regime. To calculate the group's taxable base, only 50% of the negative taxable base of each company of the group can be offset, and the remaining amount may be offset in the following 10-year period.

### Tax rates and 15% minimum taxation

The current CIT tax rate is fixed at 25%.

A 20% tax rate is granted to taxpayers whose annual turnover in the previous tax period is lower than € 10 million.

A 15% reduced tax rate applies to the following companies: (i) newly created companies for the first tax period in which they have a positive taxable base and for the following tax period; and (ii) companies qualifying as startups for the first tax period in which the tax base is positive and the following three years, as long as the company still qualifies as a startup.

For tax periods starting from January 1, 2025, the following tax rates apply to taxpayers whose turnover in the previous tax period is lower than € 1 million:

| TAXABLE BASE | TAX RATE |
|---|---|
| From € 0 to € 50,000 | 17% |
| From € 50,001 and over | 20% |

A 15% minimum taxation will affect taxpayers with a net turnover of at least €20 million in the previous year and those subject to the tax consolidation regime (regardless of their net turnover). Some companies are excluded from the scope of this measure, namely those with a reduced or a zero rate, such as investment companies with variable capital, financial investment funds, real estate investment funds and companies, and real estate investment trusts ("REITs") regulated under Act 11/2009, among others. The gross tax due, net of all credits and allowances, cannot be lower than the result of applying 15% to the CIT taxable base. This 15% minimum taxation rate increases to 18% in the case of credit institutions and companies dedicated to the exploration, research and exploitation of hydrocarbons (which apply a 30% tax rate instead of 25%).

### Tax credits

*A 95% exemption is granted for dividends, profit distributions and capital gains deriving from the transfer of shares in other companies, whether resident or non-resident. Tax exemption is granted if the taxpayer (i) holds a stake of at least 5% in the company, and (ii) participates for at least one year before the date on which they are payable.*

For tax periods 2021 to 2025, specific transitory provisions grant this tax exemption to dividends, profit distributions and capital gains derived from shares acquired by the taxpayer before 2021 representing a stake of under 5%, but with an acquisition cost higher than €20 million.

Special rules apply for this tax exemption when profit distributions or capital gains from the sale of participations derive from entities where income from dividends or capital gains from the sale of participations exceed 70% of their total return.

Foreign-source dividends and capital gains from transfers in qualifying foreign companies may also apply for this tax exemption provided the prior requisites are met and provided the profit distribution or the capital gain deriving from the transfer corresponds to a foreign entity subject to an income tax that is identical or analogous to Spanish CIT and where the tax rate is at least 10%.

A similar tax exemption is provided for foreign income derived from a permanent establishment. Losses derived from foreign permanent establishments are not tax deductible in the tax year when losses are incurred, but when the permanent establishment is liquidated.
Specific tax credits are granted for some corporate investments:

- R&D and technological innovation investments. CIT taxpayers may benefit from the following tax deductions on the gross CIT due: (i) 25% of expenses arising from R&D activities, plus an additional 17% of the payroll expenses for qualified researchers assigned exclusively to R&D activities; (ii) 8% of investments in tangible and intangible fixed assets (excluding buildings and land) for R&D activities; and (iii) 12% of expenses arising from technological innovation activities.

- Investment in film productions, audiovisual series and live performances of scenic arts and music.

- Employment creation.

- Creation of new jobs for disabled people.

- Deduction for investments made by port authorities.

- Foreign tax credit may be claimed for any foreign tax paid on foreign-source income up to the amount of the tax payable in Spain on such income.

**Tax accrual**

The CIT period coincides with the taxpayer's accounting year, which must not exceed 12 months and may coincide with the calendar year. The CIT due accrues on the last day of the tax period. The taxpayer must pay the CIT due within 25 calendar days following the sixth month after the tax accrual date.

**Special CIT regimes**

CIT regulations include the following special taxation regimes for some companies or activities:

- **Corporate restructuring operations.** As provided by EU regulations, a specific tax deferral regime is provided for income generated in corporate restructuring operations, such as mergers, spin-offs non-monetary contributions of branches of activity or exchanges of securities. See section 8.8.

- **Special tax regime for groups of companies and other special tax regimes.** A tax consolidation regime is granted to groups of companies, and a special tax regime may apply, among others, to (i) companies intended mainly to provide rental housing, (ii) REITs, (iii) EIGs, (iv) collective investment undertakings, and (v) venture capital entities.

- **Foreign-securities holding regime.** A special foreign-securities holding regime (*Entidades de Tenencia de Valores Extranjeros*, or ETVE) is granted to companies meeting specific requirements. These are the most noteworthy features of this taxation method:

  - The qualifying holding company can claim exemption to avoid international double taxation of dividends and foreign-source income from the transfer of equity shares in non-resident companies if the following conditions are met:

    i. It holds a stake of at least 5% in the company.

    ii. It participates for at least one year before the date when they are payable.

    iii. The profit distribution or the capital gain deriving from the transfer corresponds to a foreign entity subject to an income tax that is identical or analogous to the Spanish CIT, and where the tax rate is at least 10%.

– The following are not regarded as income obtained in Spain and are exempt from NRIT: (i) tax-exempt dividends paid out of income to non-resident members of the holding company; and (ii) income received by a non-resident member on the transfer of an equity interest in the holding company in an overseas transaction. This does not apply to members who, for tax purposes, are residents in non-cooperative jurisdictions.

**New complementary tax**

The new complementary tax (*impuesto complementario*) that develops the OECD's Pillar Two and transposes the EU Directive approved in 2022 has been introduced into the Spanish tax system through new legislation published in the official state gazette at the end of December 2024, although it will apply to tax periods starting from December 31, 2023, given that it does not pose constitutional problems in Spain.

This tax, aligned with the OECD's scheme, aims to guarantee a 15% effective tax rate in each jurisdiction for corporate groups with a turnover exceeding €750 million in at least two of the previous four tax periods.

It includes not only the GloBE Rules (the income inclusion rule, *impuesto complementario primario*; and the undertaxed profits rule, *impuesto complementario secundario*), but also a qualified domestic minimum top-up tax (QDMTT or *impuesto complementario nacional*). All three share the same basics for calculation and, particularly, the same rules for identifying the applicable accounting standards and the option to benefit from transitional safe harbors.

## 8.3. Personal income tax ("PIT")

**Taxable events and taxpayers**

*Resident individuals in Spain are subject to PIT on their worldwide income.*

Individuals are considered as tax residents in Spain for PIT purposes if any of the following conditions is met:

- They spend more than 183 days of a calendar year in Spanish territory. Temporary absences from Spain are not considered when calculating the period of residence, unless the taxpayer proves residence abroad for tax purposes.

- The main center or base of their business or professional activities or the center of their economic interests is, directly or indirectly, located in Spain. The center of economic interests is deemed to be in Spain if the taxpayer's spouse (husband or wife, not legally separated) and underage children have their habitual residence in Spain. This legal presumption is rebuttable and does not apply, among others, to staff members of diplomatic or consular offices.

The tax period is the calendar year, and tax liability accrues on December 31 each year.

**Taxable base**

Income obtained by the taxpayer must be classified for PIT purposes in one of the following categories: (i) employment income, (ii) income from economic activities, (iii) real property income, (iv) income from movable capital, (v) capital gains and losses, and (vi) income attributions/imputations as established by PIT law. Income subject to inheritance and gift tax is not subject to PIT.

To calculate gross tax due, all income categories will be classified under one item of the taxable base:

| GENERAL INCOME | SAVINGS INCOME |
|---|---|
| Employment income | Income from movable capital: |
| Income from economic activities | Income from equity in any kind of company (dividends and profit distributions) |
| Real property income | Income from assigning own capital to third parties (interest) |
| Deemed income (attributions/imputations) established in PIT law:<br><br>Income from the ownership of real estate different to the taxpayer's habitual residence and not rented<br><br>Controlled foreign company rules<br>Income from the assignment of rights regarding the taxpayer's image<br><br>Deemed income from collective investment undertakings in tax havens | Income from life/disability insurance policies, capitalization instruments and life/temporary annuities |
| Capital gains and losses not deriving from transfers of assets or rights | Capital gains and losses deriving from transfers of assets or rights |

Positive and negative net income respectively allocated in each part of the tax base can be offset according to specific rules. Negative aggregate income not offset in the tax year can be carried forward to the four subsequent tax periods.

The general tax base can be reduced in the amounts paid when subscribing specific private social welfare instruments, such as pension schemes (with limits) and equivalent financial instruments as established by PIT law.

Some allowances are provided to align taxpayers' liability to personal and family circumstances. Personal and family minimum allowances result from applying general tax rates to the personal and family amounts established by PIT law.

**Tax rates**

Income allocated in the general tax base is subject to taxation at progressive tax rates ranging between 19% and 47%, on an aggregate basis (state and autonomous regions level). In some autonomous regions, higher or lower margin tax rates may apply.

Income allocated in the savings tax base is subject to the following progressive tax rates:

| TAXABLE BASE (Euros) | TAX DUE (Euros) | REMAINING TAXABLE BASE (Up to Euros) | TAX RATE (Percentage) |
|---|---|---|---|
| 0 | 0 | 6,000 | 19 |
| 6,000 | 1,140 | 44,000 | 21 |
| 50,000 | 10,380 | 150,000 | 23 |
| 200,000 | 44,880 | 100,000 | 27 |
| 300,000 | 71,880 | Over 300,000 | 30 |

**Tax credits**

Taxpayers can claim specific tax credits at national and regional level.

To reduce gross tax payable, tax credits at national level apply to the following:

- Investments in new companies or in recently incorporated companies (business angels)
- Donations to non-profit t companies and charitable institutions
- Economic activities
- Income obtained in Ceuta and Melilla
- Tax credit on activities linked to the protection and disclosure of National Historic Wealth and Spanish-situs World Heritage Sites

Foreign tax credits and specific transitory benefits may apply to reduce net tax payable and to fix the final tax due. In addition, the taxpayer may be refunded for PIT due.

## 8.4. Non-resident income tax ("NRIT")

NRIT is levied on Spanish-source income obtained by non-residents, whether individuals or companies.

Like resident companies under CIT (see section 8.2 above), non-residents operating in Spain through a permanent establishment (branches and other permanent establishments) are subject to taxation under NRIT on the worldwide income attributable to the permanent establishment. Non-residents must appoint a tax representative residing in Spain to deal with the tax authorities for all issues concerning NRIT. Having a tax representative is also mandatory in some cases for non-residents that do not operate in Spain through a permanent establishment.

Non-residents that are not permanently established are subject to NRIT only on their Spanish-source income and capital gains. Fixed tax rates apply to the gross amount of the following main sources of income:

- General tax rate: 24%.
- Dividends and other income derived from shares in a company's equity: 19%.
- Interest and other earnings obtained from the assignment of own capital to third parties: 19%.
- Capital gains derived from the transfer or redemption of shares or units in collective investment undertakings: 19%.
- Other capital gains derived from the transfer of assets and rights: 19%.
- Royalties between associate companies paid to a company resident in an EU Member State or to a permanent establishment of the company in another EU Member State: tax-exempt.

**Optional special taxation regime for "impatriates"**

To make moving to Spain an attractive option for employees, professionals, entrepreneurs and investors residing abroad, individuals who become tax residents in Spain may opt for PIT liability for six years under NRIT rules, with some exceptions. This means, among others, that unlike Spanish-source income and worldwide employment, foreign-source income is not subject to Spanish PIT.

Non-resident individuals opting for PIT liability under this special taxation method may benefit from the following NRIT tax rates on employment income:

| TAXABLE AMOUNT | TAX RATE |
|---|---|
| Up to €600,000 | 24% |
| €600,001 and above | 47% |

To benefit from this special regime, the following requisites must be met:

i. Workers cannot have lived in Spain during the five tax periods before moving to Spain.

ii. The move must result from any of the following circumstances:

- An employment agreement (except for professional sportspersons).
- Acquiring the status of company administrator.
- Digital nomads (employees that work for a foreign company, providing their services remotely through the exclusive use of computer and telecommunications systems and resources).
- Carrying out entrepreneurial activities (startup entrepreneurs).
- Highly qualified professionals moving to Spain to carry out an economic activity that involves providing services to startups or carrying out training, research, development and innovation activities for which they receive remuneration that makes up over 40% of their income from work and economic activity.

iii. Taxpayers cannot obtain income that would qualify as earned through a permanent establishment in Spain (in general, services income).

This special tax regime is also available for impatriates' spouses and children up to the age of 25 years, or disabled children of any age. The regulations impose specific requirements for these individuals to benefit from this regime.

To apply for this special tax regime, taxpayers must notify the Spanish tax authorities. This taxation method applies in the tax period when the taxpayer becomes a tax resident in Spain and during the five subsequent tax periods, unless the taxpayer decides to stop applying this tax benefit before the five-year period expires or falls under any disqualifying circumstances established under PIT law.

## 8.5. Value added tax ("VAT")

VAT is an indirect tax on the consumption of goods and services.

Entrepreneurs, professionals and companies must levy this tax at every stage of the production or distribution process of goods and services. The final tax burden is borne by consumers.

Entrepreneurs and professionals charge VAT on supplies of goods and services provided to consumers and must pay this tax to the tax authorities (output tax). The VAT they are charged by suppliers for goods and services (input tax) may be offset against output VAT. Therefore, barring some specific activities, VAT is neutral for entrepreneurs and professionals operating within the production and distribution chain. Although the rates vary, VAT is a harmonized tax within the EU. VAT is applicable within the Spanish territory, except the Canary Islands, Ceuta and Melilla.

VAT applies to the following transactions carried out in Spain:

- Supplies of goods and services made by entrepreneurs or professionals in the course of their business or professional activity (including the transfer of goods or services that are part of their entrepreneurial or professional net worth when they cease their activities).

- Intra-EU acquisitions of goods. In general, these transactions are taxed when they are made by entrepreneurs or professionals but, in some cases, they are also taxed when made by individuals.

- Imports of goods, regardless of who makes them (whether an entrepreneur or professional).

*The general tax rate is 21%, but there are some reduced rates.*

A reduced rate of 10% is provided for a number of protected transactions, and an ultra-low rate of 4% is applied to a number of goods and services of public interest.

## 8.6. Transfer tax

Transfer tax includes three different taxes: (i) property transfer tax, levied on the non-business onerous transfer of property; (ii) tax on corporate events, levied on transactions related to companies' equity; and (iii) stamp duty, levied on the issuance of specific notary, commercial and administrative documents. Section 8.8 (M&A-related taxation) describes the most usual tax costs incurred when starting a business in Spain.

## 8.7. Tax treaties and limited taxes on Spanish-source income

Spanish tax treaties follow the 1963 OECD Model Convention and, in the case of more recent treaties, the 1977 OECD Model. They apply to individuals and entities residing in one of the contracting states under the domestic and treaty residence rules. The concept of residence used in Spanish treaties closely follows the OECD Model Convention.

The full text of the double taxation agreements validly signed by Spain is available on the official website of the Spanish Tax Agency (AEAT), at the following link. The tax limits applicable to the main sources of income regulated in the Spanish tax treaties in force are also available on the official website of the Ministry of Finance, at the following link.

Spain has ratified the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting (Multilateral Instrument, "MLI"). On January 1, 2023, the MLI automatically modified some double taxation treaties signed between Spain and other countries in cases where the position of the other contracting countries in the MLI is compatible (i.e., their position coincides with respect to the modification introduced by the MLI). The position of Spain in the MLI and its list of reservations and notifications is available at the Ministry of Finance official website, at the following link.

## 8.8. M&A-related taxation

The most usual tax costs incurred when starting up business in Spain relate to corporate transactions, which vary depending on how the business is carried out:

- The incorporation of a new company or the capital increase of a pre-existing company are tax-exempt under transfer tax provisions.
- The incorporation of a branch by a non-resident company resident in an EU country is also tax-exempt. Non-resident companies with a registered office and headquarters in a non-EU country are subject to 1% capital tax on the funds allocated to the Spanish branch.
- Investment in an existing company. As mentioned above, all operations aimed at capital increase are exempt from tax on corporate events. Consequently, no taxation should arise if investment is made in an existing company by way of subscription of new shares.
- **Share acquisition.** The transfer of shares, in general, is not subject to indirect taxation, whether VAT or transfer tax.

However, as provided for in article 338 of the Spanish Securities and Investment Services Act ("SMA"), a transfer of non-listed shares in the secondary market that leads to the acquisition of or an increase in control over certain companies owning real property located in Spain may be subject to transfer tax or VAT—where applicable—if, by means of such transfer, taxation of the real estate transfer is evaded. Tax evasion is considered to exist, unless the contrary is proved, if the following requirements are met:

- The purchaser obtains control of the share capital of an entity where more than 50% (at market value) of the total amount of the assets on its balance sheet consists of real property located in Spain that is not linked to an economic activity.
- The purchaser acquires shares of an entity whose assets include securities that enable the acquirer to exercise control over another entity, more than 50% (at market value) of whose assets consist of real property located in Spain that is not linked to an economic activity.
- The shares transferred were previously subscribed by the transferor in exchange for real estate that is not linked to an economic activity and is transferred to the entity under incorporation or capital increase of the entity, and the time elapsed between the transfer and the previous acquisition is less than three years.

If taxation takes place under the scope of article 338 SMA, transfer tax may be levied at a rate of 7% (in some autonomous regions, this rate may differ) and VAT may be levied at the general tax rate of 21%. The taxable base will be the market value of the real property owned by the company whose assets are transferred, or the value of the real property owned by the subsidiaries in which a control position is reached by the purchaser, pro rata to the percentage of ownership of the property.

**Ongoing business acquisition (transfer of assets and liabilities).** The transfer of assets and liabilities of a company may be taxed under VAT or transfer tax, where applicable.

However, tax exemption is granted under VAT provisions to the transfer of a group of tangible and intangible assets and liabilities that form part of an ongoing business (an undertaking or a part of an undertaking capable of carrying on an independent economic activity). In this respect, it is irrelevant whether the acquirer carries out the same activity as the one with which the assets and liabilities were connected. Acquirers must justify their intention to keep the elements connected with a business or a professional activity.

**Corporate reorganizations.** The CIT Act provides for a special tax deferral regime for mergers, spin-offs contribution of assets, exchanges of securities and the change of address of a European Company (*Sociedad Europea*) or European Cooperative Company (*Sociedad Cooperativa Europea*) from one EU Member State to another EU Member State. This special tax regime is based on the tax deferral of the income obtained by all persons or entities intervening in the corporate restructuring. The tax deferral regime will not apply if the transaction concerned is fraudulent or carried out in the interest of evading tax. In particular, the tax regime will not apply if the transaction concerned is not carried out for valid economic reasons, but with the aim of obtaining a tax benefit.

# 9 Labor

This section gives an overview of the main aspects of Spanish employment law to consider when carrying out an activity in Spain.

## 9.1. Employment law framework

*The main mandatory employment and labor rules are provided for in the Workers Statute Act ("Workers Statute") and the applicable collective agreement for each company*

The main mandatory employment and labor rules are provided for in the Workers Statute Act ("Workers Statute") and the applicable collective agreement for each company. Besides, there is a substantial body of legislation regarding employment, social security and health and safety, among others.

A company wishing to hire foreign employees in Spain must consider the immigration requirements and permits, a topic we do not explicitly address in this document.

## 9.2. Employment agreements

**Types of employment agreements**

Employment agreements are concluded on a permanent or temporary basis and can be either full or part time.

From a legal standpoint, the general rule is to conclude a permanent full-time employment agreement. There is a legal presumption that all employment agreements are permanent.

Temporary employment is only allowed when it is necessary to cover situations of production overload or to replace another employee.

Companies are legally required to specify the reason for the temporary nature of agreements. They must indicate (i) the grounds enabling the temporary recruitment, (ii) the specific circumstances justifying it, and (iii) the link between the reasons and the expected duration of the agreement.

Temporary agreements grounded on production overload may be justified on two grounds and are subject to the following terms:

- Occasional and unexpected increase and fluctuations (not seasonal) in the company's normal activity, resulting in a temporary imbalance between the staff available and the staff required. In this case, agreements can last up to six months (or one year if so specified in the industry collective agreement). Fluctuations in activity include those resulting from annual vacations.

- Occasional foreseeable situations that have a short, limited duration, in which case companies can enter into this type of agreements with an unlimited number of employees for up to 90 (non-continuous) days in a calendar year.

Companies cannot use temporary agreements to execute contracting, subcontracting and administrative concessions that are part of the company's normal activity.

Companies may enter into replacement agreements on the following grounds:

- To replace an employee entitled to return to the same job, in which case the agreement can start up to 15 days before the beginning of the leave of the employee to be replaced.
- To cover the full working day of another employee whose hours have been reduced (for legal or contractual reasons).
- To temporarily cover a position during a selection or promotion process to find an indefinite employee, in which case the term of the temporary agreement cannot exceed three months, or a shorter term under the collective agreement, and cannot be renewed for the same purpose once the temporary agreement has expired.

There are circumstances where temporary agreements can become permanent:

- Basic non-compliance with legal requirements.
- Failure to register the employee with Spanish Social Security after the probationary period.
- Enchained temporary agreements:
  - Affecting the same person: employees will be considered permanent if, during 18 out of 24 months, they work under two or more subsequent temporary agreements, including periods in which they are hired through temporary work agencies.
  - Affecting different people covering the same position: the temporary agreement will reclassify into permanent if, during 18 out of 24 months before this agreement, the employee's work position has been covered with other temporary agreements on the grounds of production overload, or the employee has been hired though a temporary work agency.

Any breach of temporary recruitment regulations is considered an infringement for each employee affected by the breach, with fines ranging between €1,000 and €10,000.

There are also training agreements for employees acquiring first time work experience or completing their education.

When 30% of the working day in a three-month reference period is carried out from home, it will be considered remote working.

**Remote working**

Remote working regulation highlights:

- Remote working does not allow employers to make changes in working conditions and cannot restrict employees' rights.
- Remote working cannot be imposed; it cannot be considered as grounds for dismissal, and it is reversible for both parties.
- Remote working must be agreed in writing and an agreement is required to modify its terms.
- Remote working cannot result in additional costs for the employee. Employers must provide the resources and tools necessary to carry out the work, and assume the costs associated to the equipment.
- Remote employees are subject to the company's organization and control powers.

Collective agreements may introduce specific provisions on remote working.

**Concluding an employment agreement**

An employment agreement must be signed before or on the first day of employment. Addenda or modifications to the employment agreement can be signed at any time.

Employers are obliged to provide their employees with basic information in writing on the key terms and conditions of the employment relationship, including the identification of the employer and employee, basic salary, working time, place of work, applicable collective agreement, type of agreement and probation period.

**Probation period**

The parties to an employment agreement usually agree on an initial probation period, which must be specified in writing. Collective agreements often establish fixed probation periods. If no such provision exists, the probationary period may not be longer than six months for qualified employees, and two months for the rest of employees.

No notice or severance payment is required if termination is made while on probation. During the probation period, the employee will have the same rights and obligations as a permanent member of staff except for termination.

The termination of the employment agreement of a pregnant employee during the probation period may be deemed null and void.

## 9.3. Salaries

Salaries are defined either in the collective agreement or in the employee's individual employment agreement, which must meet the minimum set forth in the collective agreement. The annual salary is usually paid in 12 monthly instalments plus 2 annual bonus payments on the dates provided in the applicable collective agreement. Thus, an employee's gross annual salary is normally paid in 14 instalments.

Salary is subject to general legal provisions on social security and income tax. The employer is responsible for making the corresponding withholdings on the employee's salary for these taxes and contributions.

*The official minimum wage is established by law.*

For 2025, it is set at €1,184, in 14 monthly instalments. However, the minimum wage for each professional group is usually set forth in collective agreements.

## 9.4. Working time

The maximum number of working hours per week is 40, on an annual basis. This year, the limit is expected to be reduced by law to 37.5 hours per week, on an annual basis, if the legislative process progresses as planned.

Working hours may be computed on an annual average basis, subject to a maximum of nine hours per day. Each hour worked over the limit is overtime.

*Overtime cannot exceed 80 hours per year and must be compensated with money or an equivalent amount of time off.*

The amount paid per hour of overtime cannot be below the rate paid for ordinary working hours.

All companies must keep a daily register of each employee's standard working hours, including the start and finish time. Non-compliance is classified as a serious offence with a fine of up to €7,500. The sanctioning regime is expected to be modified in 2025, considering an infraction for each affected employee in cases where (i) the company does not have a working time register, or (ii) the register contains false data or information.

## 9.5. Changes in labor conditions

The Workers Statute admits several types of employee mobility to allow companies to adapt to market and economic circumstances.

### Functional mobility

Employers may freely transfer employees between equivalent professional groups if they respect the employees' dignity.

Mobility between non-equivalent groups is allowed only when it is attributable to technical or organizational reasons and must end as soon as those circumstances are resolved. If, because of functional mobility, an employee is performing higher functions for a period of more than six months in one year or eight months in two years, the employee may ask to be recognized as belonging to the higher professional group, according to the upgrading regulations applicable in the company.

### Geographical mobility

A change in an employee's job location is allowed for when it is attributable to economic, technical, organizational or production reasons.

The change in location can be temporary or permanent. In the first case, employees may choose between being transferred and having their expenses reimbursed or terminating their labor relationship with severance pay equal to 20 days' pay for each year of service up to a maximum of one year's pay. However, the employee may challenge the transfer before a labor court. If the court considers that the transfer is unjustified it may determine that the employee must be reinstated in the original place of work.

If the transfer affects a certain number of employees within a specific period of time, the employees' representatives must be consulted. In the case of temporary transfer, the employee must accept the employer's orders but, if the duration of the temporary transfer exceeds twelve months in a three-year period, it will be considered a permanent transfer.

### Substantial modification of employment conditions

Employment conditions can be substantially modified affecting issues such as (i) working hours, (ii) working time and distribution, (iii) work shifts, (iv) remuneration system and salary, (v) working system and performance, and (vi) functions (if this exceeds the limits of functional mobility).

The employer must state and be able to produce evidence of the economic, productive, organizational or technical reasons justifying any modification. Reasons that justify a substantial modification must relate to competitiveness, productivity, work or technical organization needs in the company.

Different procedures apply depending on the impact caused by the substantial modification, particularly if it involves one or several employment agreements or it affects the conditions set out in the statutory collective agreement, in which case the procedure is stricter.

## 9.6. Temporary redundancies

Employers can temporarily suspend employment agreements or reduce working time (between 10% or 70%) without having to pay compensation (unless otherwise agreed by the parties) when layoffs are due to temporary work problems (as a result of *force majeure* or for business-related reasons: economic, technical and organizational grounds). These procedures are temporary redundancies ("ERTE").

- These procedures are applicable regardless of the number of employees affected.
- Whenever feasible, the ERTE must prioritize reducing working hours over suspending employment agreements.
- If based on *force majeure* grounds, although no negotiation period is required, authorization must be requested from the Labor Authority, which must respond within five days. If based on business-related grounds, a negotiated procedure must be followed, as provided under section 41 of the Workers Statute.
- During the suspension of employment agreements or reduction of working hours on any grounds, affected employees are entitled to unemployment benefits.
- Companies are not obliged to operate or pay salaries, but they must make social security contributions while the ERTE plan is in force.
- Companies that provide training programs for affected workers while the ERTE is in force (respecting legally established rest periods and work-life balance rights) may benefit from allowances for training and exemptions from social security contributions.
- It is considered a serious infringement (per hired employee, with fines of up to €7,500) to hire new employees while an ERTE is in force, with certain exceptions. Overtime is also prohibited.
- Non-compliance with outsourcing rules is considered a very serious infringement (fines range from €7,501 to €225,018).

The RED Employment Flexibility and Stabilization Mechanism provides another way to reduce working time or suspend agreements based on business reasons.

The government will make this option temporarily available in the following circumstances:

- When the overall macroeconomic situation makes it advisable (cyclical type), the term of which cannot exceed one year.
- When training and development in the sector has become obsolete (sectoral type), the initial term of which cannot exceed one year, which can be extended by no more than two six-month renewals.

Companies will then need to file for this option. Reduction in working time will have priority over suspension of agreements, and during this system, ERTE-equivalent restrictions will apply to companies.

## 9.7. Termination of employment

Termination of employment requires a cause. There are several grounds for individual termination of employment. Besides conduct-related termination (including termination for gross misconduct), employment may be terminated because of individual or collective redundancies (due to economic difficulties or the closure of business operations).

### Conduct-related termination

The Workers Statute establishes a list of misconducts by employees that, if sufficiently serious, may justify disciplinary termination. Furthermore, collective agreements commonly establish a list of infringements that are qualified as minor, serious or very serious, and their corresponding sanctions. Companies decide which sanction is to be applied. Collective agreements frequently set out specific procedures for this type of termination.

The Spanish Supreme Court has ruled that to ensure employees are able defend themselves against the charges before a dismissal decision is made, they are entitled to a preliminary hearing before dismissal.

### Individual redundancies

It is possible to terminate employment agreements when there are objective reasons, such as economic, technical, organizational or productive reasons justifying redundancy, or due to the employee's incompetence or inability to adapt to changes.

A 15-day prior written notice must be given to the employee and the grounds for the dismissal must be clearly and precisely stated in the termination letter.

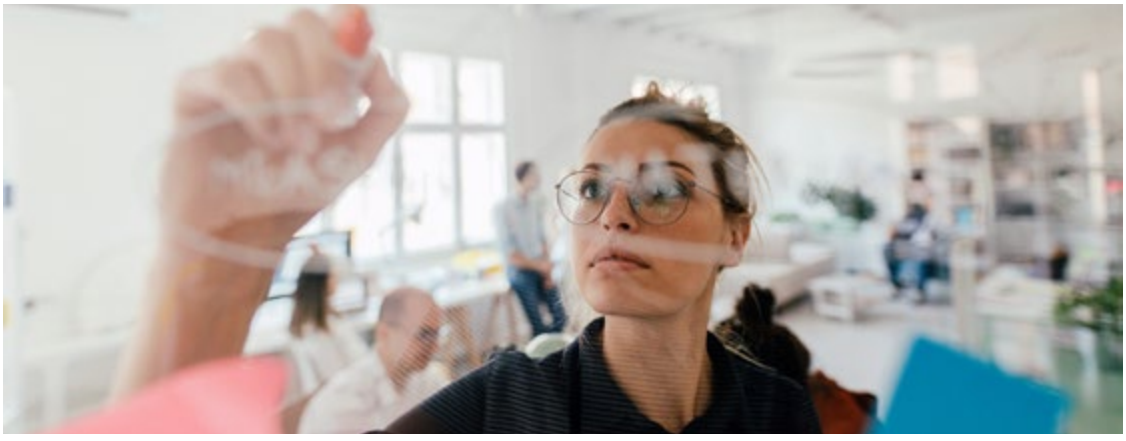
With respect to redundancy payments, redundant employees are entitled to a statutory severance equal to 20 days' salary per year of service (capped at 12 months' pay). For this purpose, salary includes base salary and commissions, and some benefits paid either in cash or in kind (including company car or stock options).

### Collective redundancies

If redundancies affect a significant number of employees, they may be considered a collective dismissal. The thresholds for collective redundancies are as follows: (i) 10 employees when the company/work center employs fewer than 100 employees, (ii) 10% of the employees when the company/work center employs between 100 and 300 employees, and (iii) 30 employees when the company/work center employs more than 300 employees.

*In case of collective dismissal, employees' representatives or ad hoc designated employees' representatives must negotiate the collective redundancy process.*

This process includes a negotiation period of 30 days—or 15 days for companies employing fewer



than 50 employees—and the implication of the labor authorities. During negotiations with the employees' representatives, employers must consider alternative measures to reduce the number of terminations and agree on the selection criteria. The employer must formally notify its employees or their representatives of its intention to carry out a collective dismissal 7 or 15 days prior to the beginning of the negotiation period, depending on whether all the affected working centers have designated employees' representatives.

As in the case of individual redundancy, minimum severance payment is set at 20 days' salary per year of service (capped at 12 months' pay), although during the negotiation with the employees' representatives, severance per employee is often increased.

If the collective redundancy affects smore than 50 employees, the company must offer a relocation plan of at least six months through an authorized relocation company.

If a company has more than 100 employees or is part of a group of companies with more than 100 employees; or if the company or the group it belongs to has made profits within certain periods before or after the collective redundancy; or if the collective redundancy disproportionately affects employees aged 50 years or over in relation to the number of employees of that age in the workforce, a substantial contribution to the Public Treasury must be made for all terminations affecting those employees, including those terminated in the three years prior to the collective redundancy or in the following year.

*Termination of employment by the employer may be qualified as fair, unfair or null and void*

**Consequences of termination**

**Fair:** When there is cause and the procedure has been followed correctly.

**Unfair:** When there is no cause, or it is not sufficient, or the formal requirements have not been complied with. In these cases, companies must either reinstate the employee or pay a severance compensation amounting to:

a. 33 days' salary per year of service (capped at 24 months' pay) for the length of service accrued after February 12, 2012; and

b. 45 days' salary per year of service (capped at 42 months' pay), for the length of service accrued before February 12, 2012.

The sum of both severance calculations cannot exceed the equivalent of 720 days' salary.

- **Null and void:** when based on discriminatory grounds, such as gender, sexual orientation or illness. In this case, the employee must be reinstated and receive back payment of the salaries accrued during the judicial process.

A collective redundancy procedure is null and void if formal requirements are not met, such as negotiating in good faith or providing the required information.

Also, terminations without cause will be null and void if they affect certain employees, such as pregnant women, employees on parental leave, or enjoying working time reduction because of caregiving, or during twelve months after the birth or adoption of a child.

## 9.8. Transfer of undertakings

Under the Acquired Rights Directive and the Workers Statute, employment relationships cannot terminate because of the transfer of the business. Instead, employees are automatically transferred to the transferee, preserving all their employment rights. Likewise, the transfer does not justify changes in the employees' working conditions. The new company assumes the position of employer, with the same obligations as the previous employer, becoming a party to the employment agreements.

A transfer of undertaking occurs when the transfer involves an autonomous economic entity, defined as an organized grouping of resources that has the objective of pursuing an economic activity, regardless of whether that activity is central or ancillary. The object of this kind of transfer may be an entire company, a work center or an autonomous production unit.

The transferor and transferee are jointly and severally liable, for a three-year period starting on the transfer date, for all employment obligations existing before the transfer and that have not yet been fulfilled Employment obligations include social security obligations.

## 9.9. Subcontractors and temporary employment agencies

The Spanish legal system allows decentralizing measures and considers that subcontracting is legal, including the use of an alternative workforce if the necessary requirements are fulfilled. These requirements aim to ensure employees' rights.

**Subcontractors**

*Companies frequently recur to alternative workforces through an agreement with another company.*

The purpose of this agreement is to provide a service, usually by one company (subcontractor) to another company (contracting company). This service requires not only providing a labor force, but also organization, equipment and initiative with a view to ensuring that the services are provided.

If the services provided by the subcontracting company are part of the contractor's main activity, the contractor must fulfil certain requirements to ensure the subcontractor complies with all its social security and employment obligations.

The subcontractor must exercise its management powers by giving orders to its employees on when, where and how the contracted service must be carried out. In contrast, the contracting company cannot exercise these management powers over the subcontracting company's employees.

If these conditions are not fulfilled, subcontracting may be considered an illegal transfer of employees, in which case the employees of the subcontractor company are entitled to choose which of the two companies—the subcontractor or the contracting company—is their real employer.

Penalties for the illegal transfer of employees include joint liability for the subcontractors' labor and social security rights (salary and social security contributions), fines (an illegal transfer is considered to be a very serious infringement, and fines range from €7,501 to €225,018) and, in very exceptional cases, even criminal liability.

Employees of subcontracting companies will be subject to the industry collective agreement applicable to the activity carried out under the services agreement, or any other sector-specific agreement applicable. If the subcontracting company has its own agreement or negotiates

at a later date, it may be entitled to apply this agreement instead of the industry agreement.

**Temporary employment agencies**

Temporary employment agencies are permitted, subject to some limitations. Besides providing all kinds of temporary employment, they also act as outplacement agencies.

## 9.10. Collective representation and organizational rights

*Trade unions play an important role in Spain. Employees' representatives have a significant presence in companies and are consulted on many decisions.*

Employees' representatives are elected by the employees. If the company has 50 or more employees, employees' representatives will be organized in works councils, with a minimum of 5 members and a maximum of 75 members in very large companies.

The representation of employees in businesses with more than 10 and fewer than 50 employees is undertaken by between 1 and 3 individual employees' representatives, depending on the size of the company. The rights, functions and obligations of individual employees' representatives are the same as those of the members of a company's works council.

The works council and individual employees' representatives have rights as to receiving information on the company, and they must be consulted on different issues.

Trade unions are represented in a company by union sections and union delegates. Union sections are groups of all the company's employees who are members of the same trade union. These sections can be created at work-center or company level. All union sections have the right to (i) hold meetings, having previously notified the employer; (ii) collect membership fees and distribute union information; (iii) receive information sent by their unions; (iv) go on strike; and (v) participate in the negotiation of collective agreements at a certain level.

## 9.11. Diversity, equality and inclusion in the workplace

*All companies with 50 or more employees are obliged to negotiate and draw up an equality plan and must also conduct an audit of women's and men's salaries to detect potential pay gaps.* From April 10, 2025, companies with more than 50 employees will also need to have a planned set of measures to prevent discrimination against LGTBI people in accordance with the applicable collective bargaining agreement, as well as a protocol against LGTBI harassment and violence in the workplace.

Non-compliance with any of these obligations is classified as serious offence with a fine of up to €7,500, as well as a higher probability that the company will be condemned for discriminatory conduct if it does not have the corresponding equality plan or LGTBI plan.

All companies must register the disaggregated salary information by gender and professional classification This register must be accessible to employees through their legal representatives. Companies must pay the same salary to employees carrying out equal value jobs, under the parameters defined by the law.

Companies with 50 or more employees that identify a pay gap of 25% or more between employees of either gender must provide an objective and reasonable justification for this gap. This percentage will decrease to 5% when Spain transposes the EU Directive on pay transparency, the deadline for which is June 2026.

## 9.12. Registration and social security issues

*Before employing local employees, foreign employers must be registered as employers with the Spanish tax authorities and the social security authorities.*

Although it is not necessary to set up a local company, employers wanting to register must file several documents, some of which need to be legalized and translated.

Social security contributions are compulsory for employers and employees. Employers must withhold their employees' contributions from their salaries and are liable for this withholding. The monthly social security contribution is determined by applying the rates provided by law to the adjusted income (the "social security base") of the employee. The law establishes a minimum and a maximum social security base for each professional group.

When hiring an employee in Spain, social security contributions must be made on the following basis:

- Social security contributions on the employer side amount to approximately 32% of the monthly pay, depending on the activity carried out. Pay is defined as base pay and any commissions earned during the month. These payments must be made on a monthly basis.

- Social security contributions on the employee side generally amount to a 6.35 % of the monthly salary, including base salary and any commissions earned. The contributions on the side of the employee must be withheld from the monthly payroll and paid to the social security authorities.

There is a maximum contribution base for the calculation of social security contributions. This maximum monthly base is €4,909.50 in 2025. As of January 1, 2025, a new "additional solidarity contribution" is applicable, imposing an extra contribution on salaries exceeding this maximum monthly base. This additional contribution is divided into three tranches: 5.5% for the first tranche (taxing 10% of the excess), 6% for the second (taxing the excess between 10% and 50%), and 7% for the third (taxing the excess above 50%). The cost is shared between the company

and the employee. In 2025, the initial rates are 0.92%, 1%, and 1.17% for the respective tranches. In the case of temporary agreements lasting 30 days or fewer, a fixed additional rate is established for each agreement, equal to three times the business fee for common contingencies of the daily base of the contribution, resulting in an additional cost of €32.6 for each agreement.

Besides, there is a progressive additional social security contribution (Intergenerational Equity Mechanism) aimed at ensuring the sustainability of the pension system. It applies to both employers and employees, with rates gradually increasing from 2023 to 2050. The Intergenerational Equity Mechanism aims to balance the financial burden across generations, ensuring that future pensioners receive adequate benefits while maintaining the system's financial health. The contribution rates will rise incrementally, starting at 0.6% in 2023 and reaching 1.2% by 2050.

These amounts are public or state social security contributions. The company can also contribute to a private pension scheme; the amount depends on what the parties agree on and the content of the relevant documents.

## 9.13. Health and safety at work

Employers must ensure health and safety at work by (i) notifying the labor authorities that they are opening a workplace, (ii) drawing up a risk assessment and prevention plan, (iii) training employees, and (iv) monitoring employees' health.

*The labor authorities rigorously enforce these obligations and carry out regular investigations regarding safety at work*

The labor authorities rigorously enforce these obligations and carry out regular investigations regarding safety at work. Employers that fail to comply with these obligations may face severe sanctions.

## 9.14. Labor fines and penalties

Spanish law establishes penalties for infractions committed by employers and employees alike in the context of a wide range of labor laws, including those relating to social security obligations, health and safety, labor relations, subcontracting, and temporary employment.

Employers and employees are both subject to disciplinary measures. The labor and social security inspectors are in charge of monitoring that companies and employees comply with their labor and social security obligations.

Fines for labor relations and employment, and social security infractions range between €70 for minor infractions and €225,018 for very serious infractions. Fines for violating health and safety regulations range between €45 and €983,736.

# 10 Securities regulation

## 10.1. Overview

The EU needs significant capital to address climate change, technological advancements, and geopolitical dynamics. On March 19, 2025, the European Commission adopted the Savings and Investments Union ("SIU") strategy to improve the EU financial system's capacity to convert savings into investments. The SIU aims to develop integrated capital markets to complement the banking system and provide funding to SMEs and innovative companies unable to depend solely on banks. This initiative, which will start being implemented in 2025, is expected to impact Spanish capital markets by creating a more cohesive and efficient financial environment.

*Bolsas y Mercados Españoles* ("BME") is the publicly traded company that operates Spain's stock markets and financial systems. The primary regulated markets in Spain include the stock exchanges in Barcelona, Bilbao, Madrid, and Valencia; Market for Financial Futures and Equity Derivatives ("MEFF"), which handles financial futures and equity derivatives; the AIAF Fixed-Income Market; and the book-entry public debt market. BME also manages several Multilateral Trading Facilities ("MTFs"), such as BME Growth, which caters to SMEs and includes a segment for REITs; the Alternative Fixed-Income Market ("MARF"); and BME Scale-up, designed for early-stage companies and mature businesses seeking new investors and greater visibility. There are other Spanish MTFs that operate independently of BME (e.g., Portfolio Stock Exchange).

Securities and financial instruments are generally traded on secondary markets through the Spanish Automated Quotation System ("SIBE"), an electronic platform that matches buy-and-sell orders. If a company is listed on only one stock exchange, trading is done through the open outcry system. Settlement occurs within two business days via the Target2-Securities (T2S) platform, a pan-European platform for securities settlement in central bank money.

The main act regulating the Spanish Securities Market is the Securities Markets and Investment Services Act ("SMA"). Key market authorities include:

- **Spanish Securities and Exchange Commission ("CNMV"):** The public agency responsible for supervising and inspecting the Spanish securities markets and the activities of all market participants.
- **Bank of Spain:** The national central bank and supervisor of the Spanish banking system.
- **Stock Exchange Management Authorities:** The companies owned by BME that supervise and manage all of the Spanish stock exchanges.
- **BME Clearing:** The BME company providing clearing services as a central counterparty (CCP).
- **Iberclear:** The BME company managing settlement and keeping the accounting records of book-entry securities traded on various Spanish markets, including the stock exchanges, the fixed-income market, the book-entry public debt market, and BME Growth.

## 10.2. Listed companies

Only SA can be listed. In addition to the regulations that apply to all SA companies (see section 2), Spanish listed companies must comply with binding legal provisions primarily contained in the SCA. They should also consider the good governance recommendations (soft law) outlined in the Good Governance Code for Listed Companies (the "Good Governance Code"). If institutional investors hold a significant stake in their capital, it is important for these companies to analyze the investors' voting and engagement policies and to be aware of the proxy advisors' voting guidelines.

The Good Governance Code is based on the principle of voluntary compliance, subject to the "comply or explain" rule. This means that a listed company can choose whether to follow a given recommendation, but it must inform the market and explain its reasons if it decides not to comply. Listed companies must publish an annual corporate governance report to inform the market of their degree of compliance with good governance recommendations.

The CNMV has approved a Stewardship Code setting out good practices for institutional investors, asset managers and proxy advisors based in Spain. This Stewardship Code is also voluntary and follows the "apply or explain" rule. Signatories are free to decide whether they want to adhere to the code but, once they do, they must apply all its principles and explain how they do it.

The following table outlines some of the most noteworthy provisions of law and good governance recommendations that apply to the general meeting and board of a listed company. Please note that the information it provides is not comprehensive:

| PROVISIONS OF LAW | |
|---|---|
| **General meeting and board of directors' regulations** | Listed companies must approve specific regulations for the general meeting and the board of directors, report them to the CNMV, and file them with the Commercial Registry. |
| **Hybrid or virtual shareholders meetings** | The bylaws can provide for the convening of hybrid or virtual shareholders meetings. |
| **Disclosure of shareholders agreements** | Signatories to a shareholder agreement must disclose any clause that restricts voting rights or the transfer of shares to the market. Otherwise, those restrictions will not be effective. |
| **Voting caps** | Voting caps can be included in the bylaws but will not apply when a takeover bid results in a bidder attaining 70% of the company's voting rights (subject to the reciprocity rule). |
| **Loyalty shares** | Listed companies can grant, through their bylaws, double voting rights to shares held by the same shareholder or ultimate beneficiaries of the shares for at least two years ("loyalty shares"). The bylaws may extend (but not reduce) this minimum period. |
| **Related-party transaction rules** | Listed companies are subject to specific related-party transaction rules. |
| **Minority shareholder rights** | The minimum percentage stake required to exercise minority shareholder rights is 3%. These rights include petition for call of a general meeting, supplement to the agenda, appointment of an independent expert, actions for liability against directors, challenge of board resolutions, and appointment of auditors under specific circumstances. |
| **Shareholder and ultimate beneficiary identification** | Listed companies are entitled to know the identities of (a) their shareholders and (b) the ultimate beneficiaries of the shares where these are held by a financial intermediary on their behalf. Significant shareholders (3% stake) and associations (1% stake) also have this right for communication purposes. |
| **Board members** | Depending on their background, directors of listed companies are classified as: (a) executive or internal directors (those that perform senior management duties or are employees of the company or its group); (b) proprietary directors (shareholders or shareholders' representatives); (c) independent directors (those fulfilling the legal requirements that enable them to perform their duties without being restrained by relationships with the company, its shareholders or its executives), or (d) other external directors (when they do not fall into one of other categories). These, along with proprietary and independent directors, are collectively referred to as the "external directors," distinguished from executive or "internal directors". |
| **Board gender diversity** | Underrepresented genders should reach 40% on boards by June 30, 2026, in the case of the largest listed companies, and by June 30, 2027, in the case of other listed companies. |
| **Chairperson and CEO Roles** | Unless the bylaws provide otherwise, an executive director can hold the position of chairperson of the board if a lead independent director is appointed as counterbalance. However, proxy advisors generally recommend voting against the (re)election of combined chair/CEOs at widely-held listed companies unless the company provides assurance that: (a) the chair/CEO will only serve in the combined role on an interim basis; or that (b) adequate mechanisms have been implemented to prevent the potential conflicts of interests derived from the combination of the two positions. |

| PROVISIONS OF LAW | |
|---|---|
| **Non-delegable board powers** | The powers that the board of a listed company cannot delegate are broader than those of an unlisted company. |
| **Board committees** | Listed companies must have an audit committee and one or two separate nomination and remuneration committees. The Good Governance Code recommends that large companies (i.e., those listed on the IBEX 35 stock market index) have two separate committees: a nomination committee and a remuneration committee. In practice, this is one of the recommendations least followed by listed companies. |
| **Composition of committees** | Audit and nomination/remuneration committees must be made up of non-executive directors. A majority of audit committee members and two members of the nomination/remuneration committee must be independent, including the chairperson in all cases. |
| **Board emuneration** | The role of the general meeting regarding remuneration is broader than in the case of unlisted companies. The general meeting must approve the remuneration policy for directors at least every three years or when any amendment is made. The law details the content of this remuneration policy.<br>A yearly report on the directors' remuneration (including a breakdown of the remuneration accrued by each director) must be submitted to the vote of the general meeting by way of consultation. If this report is rejected in the vote by the ordinary general meeting, the remuneration policy for the following year must be submitted for approval by the general meeting before it can be applied. |
| **GOOD GOVERNANCE RECOMMENDATIONS** | |
| **Empowering shareholders and preventing strategic and selective board maneuvers shareholder conflicts and hostile takeovers** | The Good Governance Code provides several recommendations targeted at strengthening the role of shareholders and preventing strategic and selective maneuvers by the board in situations of shareholder conflict and hostile TOBs. Among others, it recommends that companies establish and disclose a consistent overall policy on payment of attendance bonuses and on the requirements and procedures they will accept as proof of share ownership and entitlement to attendance, delegation and remote voting. |
| **Board functioning** | Recommendations include optimal board size, diversity policies, majority presence of non-executive directors, director absenteeism, frequency of board meetings, and structure and form of directors' remuneration. The Good Governance Code recommends that termination payments do not exceed two years' total annual remuneration. |
| **Sustainability** | Listed companies are encouraged to assign specific sustainability functions to a specialized committee or distribute these duties among several committees, such as the audit committee, nomination committee, sustainability or corporate social responsibility committee, or another *ad hoc* committee. |

## Transparency

In this section, we provide an overview of the continuing transparency obligations and disclosure rules applicable to listed companies. Please note that this description is not comprehensive and that listed companies are subject to other transparency obligations.

### Financial information

Listed companies must submit annual and bi-annual reports to the market following the standard forms published by the CNMV. They are no longer required to publish quarterly financial reports although the CNMV may request this information when supervising the company's financial information.

### Non-financial information

Spain has missed the deadline for transposing the Corporate Sustainability Reporting Directive ("CSRD"), which requires most listed companies to start reporting in 2025 on 2024 CSRD sustainability data. This directive is currently under review within the Omnibus package proposed by the European Commission in February 2025. This proposal aims to simplify and reduce EU sustainability reporting requirements. It includes significant amendments to the CSRD and excludes nearly 80% of the companies that would currently be subject to this regulation.

The Spanish draft law incorporating the CSRD is still under discussion in the Spanish Congress and is likely to experience further delays pending the approval of the EU Omnibus Proposal. However, most listed companies have followed the joint recommendation issued in November 2024 by the CNMV and the Spanish Accounting and Auditing Institute ("ICAC"), and have incorporated CSRD sustainability reporting in their 2024 accounts, meeting other additional requirements to comply with existing Spanish regulations.

### Major holdings

The acquisition or loss of a major holding, or its existence in the case of an initial listing, must be reported when it meets, exceeds or falls below the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 60%, 70%, 75%, 80% and 90% of the company's voting rights.

This obligation arises when someone:

a. has the ability to exercise share voting rights representing a major holding, not only as shareholder, but also, for example, as a representative or under a shareholders agreement; or

b. holds a financial l instrument with a financial effect t similar to that of holding shares, regardless of whether settlement is made through shares or in cash.

To calculate whether the thresholds for notification of major holdings have been met, the voting rights corresponding to holding shares (physical position) and financial instruments (derivative position) will be added together.

### Treasury stock

A listed company must disclose the direct or indirect acquisition of its own shares when this represents at least 1% of the company's voting rights. This disclosure obligation is triggered as soon as the company meets the threshold, even if the shares are totally or partially transferred on the same day.

### Market abuse

The EU Market Abuse Regulation is directly applicable in all EU Member States since July 2016 and has unified requirements applying to issuers across EU markets. The concept of market abuse encompasses the following forms of unlawful behavior in financial markets, which prevent full and proper transparency: (i) insider dealing, (ii) unlawful disclosure of inside information, and (iii) market manipulation. Inside information is information of a specific nature, which has not been made public; relates directly or indirectly to one or more issuers, or to one or more financial instruments and their derivatives; and, if made public, could have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

*Anyone with inside information is forbidden from engaging in or seeking to engage in insider dealing; advising or inducing another person to engage in insider dealing; or unlawfully disclosing inside information.*

That person should also take appropriate measures to prevent the information from being used abusively or unfairly.

There is a presumption that anyone with inside information who deals or seeks to deal in financial instruments relating to that information has used it unlawfully. However, the Market Abuse Regulation identifies a set of behaviors that are initially considered legitimate (e.g., transactions by market makers, carrying out orders issued by third parties, and "Chinese wall" transactions).

To prevent insider dealing and avoid investors being misled or deceived, issuers must make inside information public "as soon as possible" in a way that allows the public fast access, and complete, correct and timely assessment of the information. From June 5, 2026, this requirement will not apply to protracted processes where only the final circumstances or event —and not the intermediate steps— must be disclosed as soon as possible.

In specific circumstances, issuers may, at their own responsibility, delay disclosure of inside information to the public, if the following three conditions are met: (i) immediate disclosure may damage its legitimate interests, (ii) delaying disclosure will not mislead the public, and (iii) it can ensure the confidentiality of the information. Where confidentiality is no longer ensured, the issuer must disclose the inside information to the public as soon as possible. From June 5, 2026, the requirement that the delay disclosure "is not likely to mislead the public" will be replaced by the requirement that inside information must be consistent with the latest public announcement or any other type of communication by the issuer related to the same matter. This change is intended to assist issuers in situations of uncertainty or change, as they only need to ensure that the inside information aligns with the information already communicated to the public.

## 10.3. Offering of securities and admission to trading

A prospectus must be published when (i) an offer of securities is made to the public, and/or (ii) securities are admitted to trading on a regulated market.

There is a single regulation throughout the EU governing the content, format, approval and publication of prospectuses: the EU Prospectus Regulation. This regulation is a major component

of the EU's Financial Services Action Plan, aimed at creating a single market in financial services in the EEA. The automatic European passport is a major step towards this goal, as it allows companies to draw up a single prospectus for use throughout the EEA. Once a prospectus has been approved by the competent authority of an EEA state (the home Member State), it can be automatically used in another EEA state (the host Member State). The supervisory authorities of the host Member States cannot impose further requirements.

### Public offering

*Anyone making a public offering of securities in Spain must obtain approval from the CNMV, and file and publish a prospectus to inform the public of the offering.*

The definition of "public offering" is very broad, encompassing any notification regardless of its form and how it is disclosed, as long as it provides sufficient information on the terms of the offer (price or criteria to determine price) and the securities offered, enabling an investor to decide to purchase or subscribe those securities.

### Private placements and exempt public offering

Given the characteristics of potential investors and the structure of the offer certain offers are considered private placements and the CNMV's approval is not required to file and publish an offering prospectus. Private placements include offers addressed solely to qualified investors, offers aimed at less than 150 persons (other than qualified investors) per Member State or where the offer's total consideration is under €8 million within the last 12 months.

Moreover, an offering prospectus and the CNMV's approval are not required for offers of certain securities ("exempt public offerings"), such as shares involved in a merger or division and securities offered allotted or to be allotted to directors or employees by their employer or by a group company. A document containing equivalent information must be made available in most cases as a condition for the exemption.

### Admission to trading on a Spanish regulated market

There are also exemptions from the obligation to publish a prospectus in the event of admission to trading on a Spanish regulated market. For example, a prospectus does not need to be published for admission to listing of: (i) securities representing, over a 12-month period, less than 30% of the number of shares of the same class already admitted to trading on the same market, (ii) shares offered allotted or to be allotted free of charge to existing shareholders, or (iii) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided they represent, over a 12-month period, less than 30% of the number of shares of the same class already admitted to trading on the same regulated market.

## 10.4. Takeover bid regulation

The EU Takeover Directive, implemented in Spain in 2007, establishes a set of minimum rules for carrying out TOBs on securities in the EU and the EEA, allowing countries to adopt additional and more stringent requirements. This directive is the result of 14 years of negotiations that resulted in the optional implementation of some of its rules and, in the long term, in a failure to achieve a European-wide harmonization of some essential rules.

### Types of TOBs

In Spain, there are two types of TOBs related to the acquisition of a controlling interest in a listed company: those triggered by acquiring control of a listed company (mandatory bids) and those voluntarily launched by a bidder to acquire shares in a listed company through a public offering (voluntary bids). A company must also launch a bid when it resolves to delist its shares from trading on official Spanish secondary markets, unless an exemption applies (delisting bid).

The recently approved SMA has extended the rules on mandatory TOBs and the voluntary delisting TOBs of listed companies to companies admitted to trading on MTFs, such as BME Growth, in the terms determined by future implementing regulations.

### Definition of control

For TOB purposes, control of a listed company is gained when a shareholder acquires:

- 30% of the company's voting rights, or
- a stake of less than 30%, if it appoints within 24 months a number of board members that, added to those it had already appointed, make up more than half of the company's board members.

There is also a special regime aimed to impede shareholders holding between 30-50% of the voting rights of a listed company as of August 13, 2007 (when the existing TOB regulation came into force), from gaining control of the company without launching a TOB for 100% of the capital.

The CNMV can conditionally waive the obligation to launch a TOB when these thresholds are reached if another shareholder acts as a counterbalance.

Control can be achieved not only by direct or indirect acquisition of securities conferring voting rights, but also by reaching agreements with other holders of securities that will lead to the acquisition of 30% of the voting rights by consensus.

### Characteristics of mandatory bids

Mandatory bids are an important mechanism allowing shareholders to exit after a change in the control of a listed company. They must be addressed to all the holders of shares, subscription rights and convertible debentures, and must be launched at an equitable price, including the premium that the offeror has paid to the sellers of the controlling stake.

The equitable price is understood as the highest price that the offeror or the persons acting in concert with the offeror have paid for the same securities during the 12 months before the bid announcement. If no shares have been acquired, this price will be calculated according to the valuation methodologies applicable to delisting bids.

There are noteworthy exceptions to the mandatory bid regime. A mandatory bid will not be required, among others, when control is acquired as follows:

- After a total voluntary bid, if an equitable price was offered or the bid was accepted by 50% of the voting rights to which it was addressed.

- Within a merger carried out for industrial or business purposes, provided whoever acquires control of the listed company did not vote in favor of the merger at the general meeting of the target company.

- By conversion or capitalization of credits into shares of a listed company whose financial liability is at serious risk, even though it is not insolvent. To benefit from this exception, the transaction must be aimed at ensuring the company's long-term financial recovery.

The last two exemptions do not apply automatically. The CNMV must evaluate the transaction to determine whether it falls under one of these exemptions. Exceptionally, when control is acquired through a conversion or capitalization of debts into shares directly attributable to a court-sanctioned refinancing agreement, the exemption applies automatically without the need for a CNMV evaluation.

**Characteristics of voluntary bids**

A voluntary bid is a public offer made by a bidder to acquire a controlling interest or increase its stake in a listed company. The bidder is under no obligation to submit a public offer but simply chooses this acquisition structure. This idea explains many of the differences between mandatory and voluntary bids.

Generally, voluntary bids may be partial, freely priced and conditional, providing the CNMV considers that the condition complies with the law and that its compliance may be verified before the acceptance period expires. Voluntary bids are frequently subject to a minimum number of acceptances, removal of voting caps included in the target's bylaws, or approval of the bid by the bidder's general meeting.

Regarding the price, as well as potential implications derived from foreign direct investment regulations (see section 2.5), there are a few exceptions where the bidder is not free to offer whatever price it wishes:

a. Where securities offered in exchange are illiquid or it has acquired at least 5% of the target's voting right during the 12 months before the bid announcement, it has to offer a cash alternative.

b. Where, in the two years preceding the bid announcement:

   - the targeted securities show "reasonable signs of manipulation" (i.e., the CNMV has started penalty proceedings for an infringement involving market abuse and has sent the interested party the list of charges);
   - the market prices or the price of the target company are subject to "extraordinary events" (including situations derived from *force majeure*); or
   - the target company has been subject to expropriation, confiscation nor similar event or circumstance.

The offer price should be calculated under article 137.2 SMA and should always include, at least as an option, a cash consideration.

Finally, although the bidder is free to offer whatever price it wishes, the fact that it is considered equitable is relevant for the exceptions to mandatory and delisting bids.

**Squeeze-out/ sell-out**

*In Spain, squeeze-out and sell-out rights are only provided for listed companies.*

In Spain, squeeze-out and sell-out rights are only provided for listed companies when, following a total TOB, (i) the bidder holds at least 90% of the target's voting rights, and (ii) the TOB was accepted by holders representing at least 90% of the voting rights comprised in the bid.

The squeeze-out or sell-out right must be exercised within three months following the expiry of the acceptance period and the price will be the same as the price offered in the TOB.

# 11 Regulated sectors

Investments in some sectors are subject to special regulations that, depending on the particular circumstances of the transaction, may require previous authorization or notification. Authorizations may be required by state, regional or local authorities. As mentioned above, foreign direct investments affecting Spain's main strategic sectors (including energy, technology, media and telecommunications) may also require authorization in certain cases (see section 2.5).

The main regulated sectors in Spain are the following:

- Financial and investments
- Insurance
- Energy
- Technology, media and telecommunications

## 11.1. Financial entities and investment companies

Banking services, such as deposit-taking, payment services and financing, are provided by regulated institutions, which may be credit institutions (banks) authorized by the European Central Bank, or specialized credit firms (*establecimientos financieros de crédito*) authorized by the Ministry of Economy and payment institutions (*entidades de pago*) authorized by the Bank of Spain. They are under the supervision of the Bank of Spain and, where relevant, by the European Central Bank.

Investment services are developed by investment services companies: broker-dealers (*sociedades de valores*), brokers (*agencias de valores*), portfolio management companies (*sociedades gestoras de cartera*) and investment advisory firms (*empresas de asesoramiento financiero*). In general, to incorporate any of these entities and develop their activities, prior authorization from the CNMV is required.

Investment services can also be provided as ancillary activities by management companies of collective investment vehicles (UCITS and AIFs), with prior authorization from the CNMV, and by credit institutions.

*Credit institutions and investment services companies established in other EU Member States are exempt from these authorizations if they operate through a branch in Spain*

*or under the freedom to provide services* (i.e., without permanent establishment in Spain). The latter only requires a formal notification to the home supervision authorities (the Bank of Spain or the CNMV, as applicable, and the corresponding regulatory authority of the EU Member State where the bank/investment firm rendering the services has its corporate address).

All credit institutions and investment services companies must comply with specific rules regarding their own resources, accounting and reporting to the supervisory authority, and with rules of conduct.

## 11.2. Insurance

Insurance activities are mainly regulated under Act 20/2015 on Ordination, Supervision and Solvency of the Insurance and Reinsurance Entities; and Royal Decree 1060/2015, developing Act 20/2015. Both legal norms were adopted for the implementation in Spain of Directive 2009/138/EC, on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Prior authorization from the Ministry of Economy is required to carry out insurance activities. The authorization must be granted either for a life insurance business or a non-life insurance business, but one insurance company cannot simultaneously conduct both types of insurance business (life and non-life).

Spanish insurance companies benefit t from the so-called "European passport," enabling them to operate in all other EU Member States, both under the right of establishment regime (through a branch) and the free rendering of services regime, without being required to obtain a new insurance license. On the other hand, EU insurance companies may operate in Spain by either setting up a branch or providing their services on a free rendering of services basis, without being required to obtain any additional insurance license in Spain.

Insurers from non-EU Member States need to obtain an authorization from the Spanish authorities to operate in Spain through a branch.

Spanish insurance legislation prohibits insurers from non-EU Member States to operate in Spain under the freedom to provide services.

All entities participating in this sector must comply with specific rules regarding their assets, investments, accounting and reporting to the insurance supervisory authority, as well as with specific rules of conduct aimed to protect the users of the insurance services.

## 11.3. Energy

**Electricity market activities**

The regulation of the electricity sector is established through the Electricity Sector Act (Act 24/2013). Despite including key developments, the electricity system it regulates is similar to the previous one: production and marketing continue to be liberalized activities, which are developed in a competitive environment, while transportation, distribution, and technical and economic management of the system are regulated activities. Companies performing regulated activities and their managers cannot participate in the shareholding of companies developing non-regulated activities. The electricity supply is deemed a service of general economic interest.

*Spanish electricity market activities require a non-discretionary administrative authorization, which means that the competent authorities only verify whether specific requirements are fulfilled (regarding legal, technical and economic capacity). If they are, authorization is granted.*

As regards the economic regime for renewable plants, those subject to the specific remuneration framework receive a specific amount associated with the type and category of each plant depending on their technology, characteristics and administrative status.

Recently, as an alternative to this framework, a new remuneration mechanism for the generation of electricity through renewable energy sources, called the renewable energy economic regime ("REER"), was approved by Royal Decree-Law 23/2020 and Royal Decree 926/2020. The REER allows certain plants to receive income through the sale of energy to the market, and it is granted through public auctions.
To be eligible for the REER, plants must either be new or an extension or modification of an existing plant. The price plants under the REER receive for each unit of energy auctioned will be its award price, which may be corrected on the basis of certain symmetrical market participation incentives by means of the market adjustment percentage. The remuneration will be maintained for a maximum period of between 10 and 15 years, which may be extended, on an exceptional basis, to 20 years.

The tentative auction schedule for 2020-2025 was established in Order TED/1161/2020 and will be updated annually. The last renewable auction was held on November 22, 2022.

Royal Decree 150/2023 approved the Maritime Spatial Plans, which establish the demarcation of five zones for the future implementation of offshore wind and marine energy in Spain.

### Gas market activities

Natural gas market activities in Spain require prior administrative authorization. Companies carrying out more than one activity in the gas sector must isolate each activity.

The supervisory authority of this sector is the CNMC. Act 8/2015, which amended Act 34/1998, on the Hydrocarbon Sector, created the secondary gas market, which was previously carried out in a non-regulated manner in bilateral relations between marketers. The new secondary market has an Iberian scope, intending to cover Spain and Portugal, although there is still no final agreement for its implementation. Moreover, the Act regulates the market operator of the newly established secondary gas market.

## 11.4. Technology, media and telecommunications

The general telecommunications act (Act 11/2022) transposing the European Electronic Communications Code includes a new classification of electronic communications services, a single information point for processing permits concerning network deployment and a notification system for the deployment or operation of submarine cables. The new act strengthens user rights and streamlines the processing of the general operator's fees.

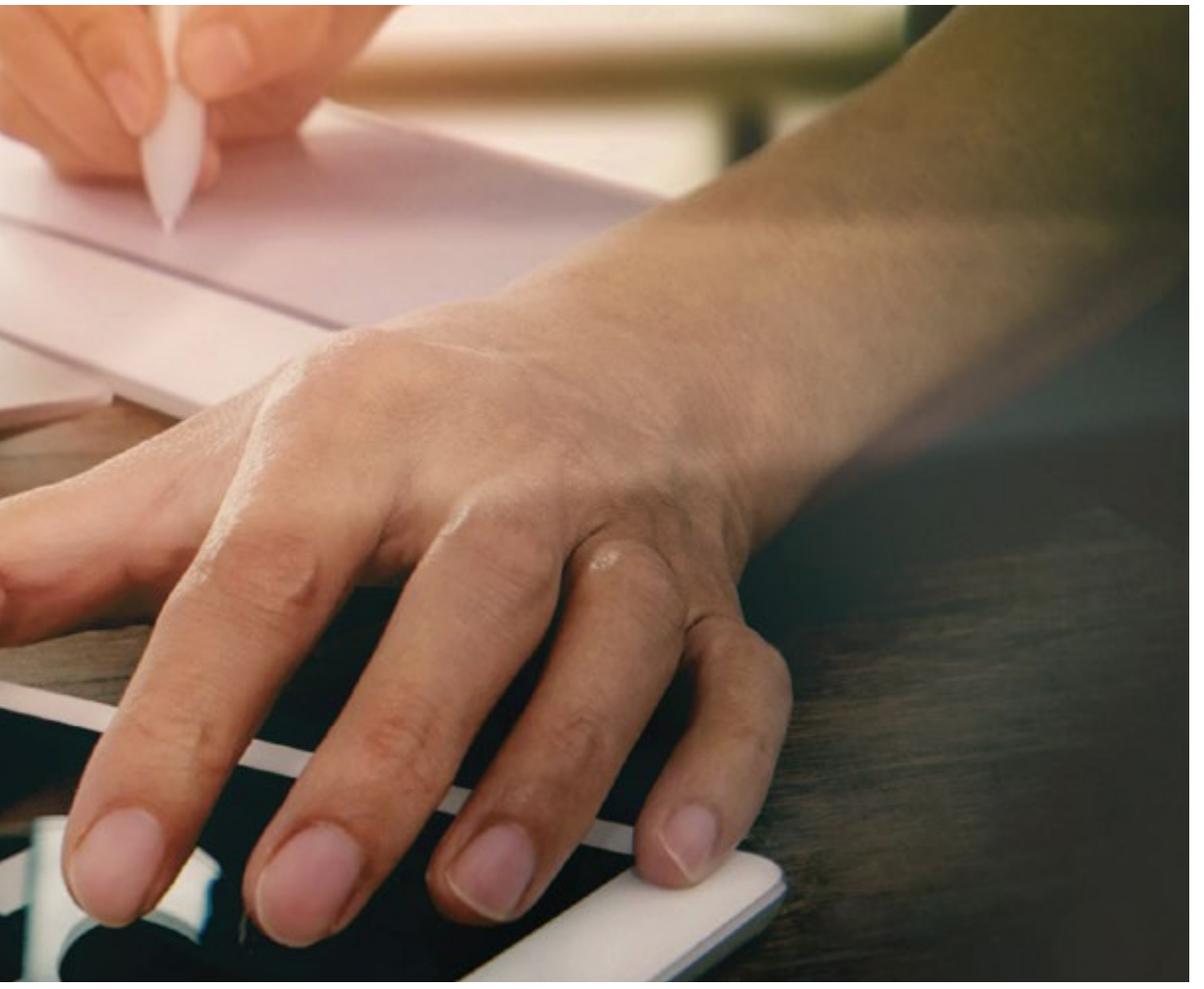
Under Act 11/2022, networks are operated and electronic communications services are provided in Spain under conditions of free competition, within the limits established in the current regulations, regardless of certain public service

obligations on operators. Any individual or entity resident in the EU, or in a state that has an international treaty binding Spain, may operate networks and provide electronic communications services provided that it appoints a resident in Spain for notification purposes. The Operators Registry must be given prior notification and the CNMC requires submission of a statement of responsibility, and certain data and documentation.

To make private use of the radio-electric spectrum in Spain, operators require an administrative authorization or consent to use the public radio-electric domain, under Royal Decree 123/2017, on the Use of the Public Radio-Electric Domain. Concessions in certain frequency bands may be awarded through a public tender process to guarantee efficient use of the spectrum.

Private television broadcasting activity is regulated by two different regimes:

- A general regime, which only requires previous notification to the competent authorities (state or regional, depending on the scope of the activity).
- A special regime, applicable to Digital Video Broadcasting-Terrestrial (or DVB-T, known in Spain as TDT) services, which require a license granted through public contests. These licenses are issued by the state, regional or local authorities depending on the scope of broadcasting.



# 12 Insolvency

In this section, we describe some of the key aspects of Spanish insolvency law. The approval of Act 16/2022 amending the Insolvency Act to incorporate the Directive on preventive restructuring has brought about a significant change to insolvency and restructuring regulations.

## 12.1. Definition of insolvency

*The debtor is considered insolvent when it is regularly unable to meet its obligations as they become due*

Insolvency proceedings are only triggered in the case of a debtor's insolvency. The debtor is considered insolvent when it is regularly unable to meet its obligations as they become due (current insolvency). In this situation, insolvency law serves two main purposes: (i) to protect the creditors' interests; and (ii) to restructure and preserve viable companies.

To facilitate debt restructuring at an earlier stage, Act 16/2022 provides pre-insolvency mechanisms when the debtor's circumstances indicate a "likelihood of insolvency" (when it is objectively foreseeable that if a restructuring plan is not agreed, the company will be unable to regularly meet its obligations falling due in the next two years), and in cases of imminent insolvency (referring to the company's foreseeable inability to meet obligations falling due in the next three months). In cases of current insolvency, it is possible to seek a pre-insolvency solution.

## 12.2. The insolvency procedure

In Spain, there is a single insolvency proceeding applicable to all debtors, whether an individual or a legal entity. A special proceeding applies to cases involving micro-enterprises (those with fewer than 10 employees and less than €700,000 annual turnover or €350,000 in liabilities).

Insolvency proceedings consist of a common phase (to determine the assets and liabilities), which may be followed by a:

- composition stage, the aim of which is to reach an agreement between borrowers and creditors on the payment of debts; and/or
- liquidation stage, during which the debtor's assets are realized and distributed among creditors.

**Voluntary insolvency**

*The debtor must file for insolvency within two months*

Debtors must file for insolvency within two months of the date on which they became aware (or should have been aware) of their state of current insolvency. If the debtor fails to fulfil this obligation, directors can become personally liable.

However, within this period the debtor may present a notice of the opening of negotiations under articles 585 *et seq.* of the Insolvency Act. On presenting this notice, the debtor will have three months to reach a restructuring plan with its creditors, and an additional month to file for insolvency if negotiations with creditors are not successful.

**Mandatory insolvency**

Creditors can file for mandatory insolvency against a debtor if they substantiate the debtor's insolvency. Creditors who acquired past-due claims through inter vivos transactions cannot file for insolvency after six months from the acquisition date. This time limit does not apply when credits are acquired by universal succession (due to a merger or spin-off, for example).

## 12.3. Effects on debtors

The effects of opening insolvency proceedings (declaration of insolvency) depend on whether the insolvency is voluntary or mandatory. In voluntary insolvency proceedings, debtors will, in principle, retain management and disposal powers over their assets—subject to supervision by the insolvency administrator. In mandatory insolvency proceedings, the debtor's management and disposal powers over the assets will be suspended and replaced by the insolvency administrator.

When the debtor is a legal entity, the judge may may preventively seize the assets and liabilities of the directors or liquidators and managing directors (including those who held these positions in the preceding two years) when there is a reasonable possibility that those persons will be required to cover all or part of the deficit upon classification of the insolvency.

## 12.4. Effects on creditors

*One of the keystones of the Spanish Insolvency Act is that creditors must receive equal treatment.*

The few exceptions admitted by law are based on the equal consideration of ordinary creditors.

On this basis, credits or claims are classified as privileged, ordinary, and subordinated. Privileged credits receive better treatment than ordinary claims, while subordinated claims receive worse treatment than ordinary claims. There is special category of claims against the insolvency estate (*créditos contra la masa*), which generally arise after the opening of insolvency proceedings. They are not subject to priority or recognition. In principle, they must be paid by the insolvency administrator when they fall due.

Exceptions to the above (equal treatment of creditors) are generally and specially privileged claims, depending on whether the security is over a specific asset or right (special privilege) or over all of the debtor's assets (general privilege).

Specially privileged claims include those secured by a specific asset or right (mortgage or pledge) or equivalent rights (credit rights under financial leases). The privilege only covers the part of the claim not exceeding the value of the respective security. To establish the value of the *in rem* security, the outstanding debts with a security over the asset or right in question must be deducted from nine-tenths of its fair value, as determined by an independent expert.

General privileged claims include (i) pre-insolvency claims for salaries and severance payments, and compensation for work-related accidents or illnesses; (ii) tax and social security withholdings; and (iii) 50% of the claims held by the creditor who filed for the insolvency.

The Insolvency Act introduces the category of subordinated claims, paid after ordinary claims.

Subordinated claims include those not filed in due time or that are contractually subordinated, interests and surcharges, and claims held by a person closely related to the debtor, including significant shareholders of the debtor.

## 12.5. Clawback

*Clawback applies to actions detrimental to the insolvency estate (even in the absence of fraudulent intent) carried out in the two years before the filling for insolvency or before the notice of the opening of negotiations for a restructuring plan.*

Actions will be presumed "detrimental to the insolvency estate" as follows:

- **Without the possibility of providing evidence to the contrary:** (i) if they are carried out for no consideration, or (ii) if they involve early settlement (by payment or otherwise) of debts maturing after the opening of insolvency proceedings (except if secured by an *in rem* security).

- **On a rebuttable basis:** (i) if they are carried out with consideration in favor of persons closely related to the debtor, (ii) if they create security interests to secure pre-existing debts or new debts that replace them, or (iii) if they involve early settlement (by payment or otherwise) of debts maturing after the opening of insolvency proceedings that are secured by an *in rem* security.

Subject to certain requirements, restructuring plans are protected against clawback. Actions taken in the debtor's ordinary course of business and under market conditions cannot be challenged.

## 12.6. Restructuring plans

The Spanish Insolvency Act provides pre-insolvency mechanisms as a more flexible and economical alternative to preserve the company's viability in a situation of crisis. These mechanisms facilitate pre-insolvency restructuring deals, helping to prevent debtors from undergoing insolvency proceedings, which typically result in low recovery rates for creditors).

*Restructuring plans are the key pre-insolvency instruments under Spanish law*

Restructuring plans affect most type of creditors and claims (with few exceptions), including trade and financial creditors, contingent or conditional claims, claims subject to special calculation rules, as well as public claims—subject to certain conditions and limitations —. All affected creditors are entitled to vote on the plan. Although the criteria for class formation are relatively flexible, the Insolvency Act sets out some imperative rules that must be observed at all times. Specifically, one mandatory general rule is that credit classes must always be formed on the basis of a joint interest of credits belonging to the same class. The guiding principle behind that joint interest is the rating established in the insolvency classification of credits. Also, credits with securities *in rem* will make up an individual class and public law credits will make up a separate class within their respective insolvency rating.

The plan is voted on by the different credit classes. Approval of the plan requires the favorable vote of two-thirds of the total liability represented by the claims in the class, or three-quarters if it the class is composed of credits with securities *in rem*.

For the restructuring plan to be court-sanctioned, as well as the requirements of content, form, and approval by the credit classes and, if applicable, by the debtor, it must offer a reasonable prospect of avoiding insolvency, ensure the debtor's viability in the short to mid-term, and treat creditors of the same class equally. Other requirements have been determined as grounds for challenge and would eventually be monitored if a challenge is presented.

*The effects of court-sanctioned restructuring plans can be extended to dissenting creditors within the same class as well as to entire credit classes, including those of higher priority. Restructuring plans are protected against clawback in case of subsequent insolvency.*

Court sanction is necessary if the restructuring plan is intended to (i) cram down dissenting creditors or classes of creditors or the debtor's shareholders; (ii) terminate contracts in the interest of the restructuring; or (iii) protect the interim and new financing under the plan, as well as the related actions or transactions.

## 12.7. Sale of business units

*The sale of the company or its business units may occur during the pre-insolvency phase (as part of a restructuring plan) or at various stages during the insolvency proceedings.*

Before filing for insolvency proceedings, when the debtor's circumstances indicate a "likelihood of insolvency," or when the debtor is in a situation of imminent or current insolvency, it may request the court to appoint an independent expert responsible for collecting offers for the purchase of business units (pre-pack).

Act 16/2022 allows restructuring plans to include the transfer of assets, business units, or of the whole company. In this case, the sale of business units will be affected by the court-sanctioning of the restructuring plan with the effects mentioned above.

In the case of a pre-pack process, the debtor may request the court to appoint an expert to collect offers for the purchase of one or more business units before filing for insolvency. On opening the insolvency proceedings, the judge may either confirm or revoke the expert's appointment. If confirmed, the expert will become the insolvency administrator in the insolvency proceedings.

The effects of the purchase include (i) the selection of affected agreements by the offeror and the automatic subrogation of contracts without any need for the counterparty's consent (except public contracts); (ii) subrogation on the business unit's administrative licenses and authorizations; and (iii) no assumption of insolvency liabilities, except for outstanding employment and social security claims of the assigned employees.

# 13 Dispute settlement

## 13.1. Civil litigation: jurisdiction and procedure

### Jurisdiction

Jurisdiction is determined by different criteria, namely (i) territory, and (ii) subject matter of the case (civil and commercial, criminal, administrative or labor).

The general territorial rule is that the claimant must initiate the litigation in the place where the defendant resides, even though other special rules may apply.

In the civil jurisdiction, courts of first instance, constituted by a single judge, are competent to hear, in first instance, all civil cases not expressly attributed to other courts by legal provision. Some courts of first instance specialize in specific commercial issues, such as insolvency. Appeals are heard by provincial courts, called courts of appeals. Subject to special requirements, in some circumstances it is possible to challenge the court of appeals' decisions before the Spanish Supreme Court.

Organic Act 1/2025, of January 2, on measures regarding the efficiency of the Public Justice Service ("LO 1/2025"), modifies the structure of first instance courts. According to this law, there will be first instance tribunals composed of different sections. Cases in first instance will still be adjudicated by one single judge, but the reform aims to achieve more efficiency and homogeneity among individual judges' criteria. The new structure will probably not be completely operative in civil and commercial matters in 2025.

### Civil and commercial procedures

Due to LO 1/2025, before admitting claims in the civil jurisdiction (which includes both civil and commercial matters), the parties to a dispute must show that they previously resorted to an appropriate means of dispute resolution ("AMDR") to try to resolve their dispute out of court. This new requirement will apply to proceedings filed on or after April 3, 2025. AMDR will be required in all declarative proceedings (including special proceedings for invoice collection), but not in enforcement proceedings. Insolvency proceedings are also excluded from this new requirement.

*The two main types of civil and commercial declaratory procedures are ordinary procedures and oral trials.*

The amount in dispute is what usually determines whether a case is decided through an ordinary procedure or an oral trial, although the subject matter of the procedure may have a bearing on the type of declaratory procedure used.

Ordinary procedures are held before first instance courts and consist essentially of (i) a statement of claim accompanied by documentary evidence and expert reports; (ii) an answer to the statement of claim made by the respondent, together with the documents and expert reports that support the pleading; (iii) a preliminary hearing, which is primarily directed at solving procedural issues and at proposing the additional taking of evidence; and (iv) a trial, in which witnesses and experts are heard, and lawyers make their final statements. In proceedings filed on or after April 3, 2025, oral trials will be carried out with a written statement of the claim and a written answer to the statement of the claim, followed by a written phase to propose the taking of evidence and to solve procedural issues. If, after that phase, the judge deems that a hearing is necessary, there will be a single hearing. In proceedings pending a hearing before or after April 3, 2025, judges will be able to issue decisions orally in oral proceedings. Oral decisions will be followed by a written statement after which the term for filing an appeal will commence.

**Appeals**

*Most first instance decisions in the civil jurisdiction can be appealed before a second instance court, the court of appeals, ordinarily constituted by a three-judge panel. In these courts there is usually no hearing, although one can be held if necessary.*

In some cases, the second instance decision can be challenged before the Supreme Court, which is not a third instance. In the appeal, both procedural and substantive matters can be reviewed. An appeal in cassation can only be filed when there is notorious cassational interest or a breach of fundamental rights is alleged.

**Enforcement procedures**

The Civil Procedure Act also encompasses enforcement procedures. It is worth noting that in Spain, public instruments (documents issued before a notary public) are directly enforceable, which means that a prior declaration proceeding will not be necessary to enforce them.

Most decisions issued in first and second instance are provisionally enforceable while being subject to appeal.

Further, the Civil Procedure Act includes a proceeding that simplifies collection of debts that can be proven either by:

- documents signed by the debtor or that contain the debtor's seal, stamp or mark; or
- invoices, delivery notes, certifications or other documents commonly used to prove credits and debts in the particular relationship between the creditor and the debtor.

Due to LO 1/2025, these simplified collection proceedings will require ADMR.

In addition, the European order for payment simplifies collection for some cases of European crossborder debts. It is recognized and enforced in almost all EU countries without requiring a declaration of enforceability.

## 13.2. Commercial arbitration

*Spain has a long-standing arbitration history.*

Spain incorporated the 1985 UNCITRAL Model Law in 1988 and has since advanced towards the growth of the arbitration community and practice. The current Arbitration Act is from 2003 (Act 60/2003) and was last amended in 2015. It encompasses domestic and international commercial arbitration, following a monistic model that applies to both institutional and *ad hoc* arbitration proceedings.

There are several consolidated arbitration institutions in the country, which deal with domestic and international cases. Some examples are the Madrid Court of Arbitration ("CAM"), the Barcelona Arbitration Tribunal, and the Civil and Commercial Court of Arbitration. In late 2019, the main courts in Madrid (the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration, and the Spanish Court of Arbitration) united to create the Madrid International Arbitration Center (*Centro Internacional de Arbitraje de Madrid* or "CIAM"). Furthermore, in 2024 the CIAM fused with the Ibero-American Arbitration Center (*Centro Iberoamericano de Arbitraje* or "CIAR") and became the Madrid International Arbitration Center – Ibero-American Arbitration Center (*Centro Internacional de Arbitraje de Madrid - Centro iberoamericano de Arbitraje* or "CIAM-CIAR"), a leading international arbitration center with a strong focus on the Ibero-American region. The CIAM-CIAR only administers international arbitrations, either by direct appointment or by derivation from agreements designating any of the arbitral institutions from which it was formed. The latter institutions still exist and continue to administer domestic arbitration cases.

In January 2024, the CIAM-CIAR adopted new arbitration rules that aim to modernize its procedures and bring them in line with the current best practices in international arbitration. Among other issues, the new rules expressly provide for muti-party and multi-contract arbitration and adopt regulations to facilitate the consolidation of separate arbitrations. Following these footsteps, in November 2024, the CAM also adopted its new arbitration rules, with the explicit aim of harmonizing the CAM Rules with those of the CIAM-CIAR, facilitating the referral of national and international matters between both institutions, and allowing users and arbitrators to benefit from the similarities between their rules.

*Spain is also an important seat of international arbitration proceedings held under the International Chamber of Commerce Rules of Arbitration.*

The Spanish Committee of the International Chamber of Commerce was constituted in 1922.

Spain is often chosen as the seat of arbitration proceedings to solve international commercial disputes, particularly when these involve businesses in Latin America.

Since 1977, Spain has been a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), without reservations or declarations. Therefore, the grounds on which Spanish courts may deny recognition or enforcement of an award are aligned with the international standard provided by this convention. As of 1994, Spain is also a party to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States, which established the International Centre for Settlement of Investment Disputes.

Spanish judicial case law respects the attribution of competences to arbitrators and only sets aside arbitral awards for the reasons listed in the Arbitration Act, which revolve around the inexistence of an arbitration agreement; serious procedural irregularities (provided they also create a situation of defenselessness); excess of jurisdiction by the arbitrators; and breaches of public policy. The latter has been a much-debated topic in Spain in recent years due to some isolated but resounding decisions by state courts overruling awards based on public policy grounds, which contradicted the prior jurisprudence of the Spanish courts. However, the Constitutional Court has greatly helped to settle the debate, overturning several of those state court decisions (see, for instance, decisions STC 46/2020, STC 17/2021, STC 65/2021 and STC 50/2022) and consistently holding that the breach of public policy as a ground for annulment should be interpreted restrictively, barring state courts from effecting a substantial review of challenged decisions. As a result, the Constitutional Court's jurisprudence has reestablished the long-standing practice of the Spanish state courts prior to those isolated decisions and has provided greater legal security for arbitral awards seated in Spain, increasing its attractiveness as a seat for international arbitrations.

Mediation in civil and commercial issues has been promoted by the Mediation Act of 2012, which, among others, entitles the judge to encourage the parties to defer civil judicial proceedings and initiate a mediation process.

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