CUATRECASAS

Doing business in Spain

2024 Edition

CUATRECASAS

Doing business in Spain

January 31, 2024

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 on the basis of information available as of January 31, 2024. Cuatrecasas is under no obligation and assumes no responsibility to update this information.

All rights reserved. No part of this publication may be reproduced or transmitted, in any form or any means, without written permission from Cuatrecasas.

2024 © Cuatrecasas. All rights reserved.

Content

1.	**Spain at a glance**	**11**
1.1.	Unique geo-strategic position	11
1.2.	Spanish legal system	11
2.	**Ways of doing business**	**13**
2.1.	Setting up a business	13
2.2.	Overview of limited companies	14
2.3.	Incorporating new companies and acquiring “shelf companies”	20
2.4.	Corporate governance of limited companies	22
2.5.	Exchange control and foreign direct investment regulations	24
3.	**Taking security**	**27**
3.1.	Preliminary considerations	27
3.2.	Overview of the most relevant types of security	28
3.3.	Special regime for financial guarantees	29
4.	**Competition**	**31**
4.1.	Restrictive practices	31
4.2.	Merger control	33
4.3.	Unfair competition	33
5.	**State aid**	**35**
6.	**Intellectual property and data protection**	**37**
6.1.	Copyrights	38
6.2.	Industrial property rights	40
6.3.	Data protection	43
7.	**Real estate**	**45**
7.1.	Types of property investment	45
7.2.	Steps to purchasing real estate	45
7.3.	Requirements for real estate transfer	47
7.4.	Urban leasing	48
8.	**Tax**	**51**
8.1.	Overview of the Spanish tax system	51
8.2.	Corporate income tax (“CIT”)	52
8.3.	Personal income tax (“PIT”)	56
8.4.	Non-resident income tax (“NRIT”)	58
8.5.	Value added tax (“VAT”)	60
8.6.	Transfer tax	60
8.7.	Tax treaties and limited taxes on Spanish-source income	61
8.8.	M&A-related taxation	62

9. Labor 65

9.1. Employment law framework 65
9.2. Employment agreements 65
9.3. Salaries 67
9.4. Working time 68
9.5. Changes in labor conditions 68
9.6. Temporary redundancies 69
9.7. Termination of employment 70
9.8. Transfer of undertakings 72
9.9. Subcontractors and temporary employment agencies 72
9.10. Collective representation and organizational rights 73
9.11. Equality in the workplace 74
9.12. Registration and social security issues 74
9.13. Contracting employees who are non-residents of the EU 75
9.14. Health and safety at work 79
9.15. Labor fines and penalties 79

10. Securities regulation 81

10.1. Overview 81
10.2. Listed companies: obligations and recommendations 82
10.3. Offering of securities and admission to trading 86
10.4. Takeover bid regulation 87

11. Regulated sectors 91

11.1. Financial entities and investment companies 91
11.2. Insurance 92
11.3. Energy 92
11.4. Technology, media and telecommunications 94

12. Insolvency 97

12.1. Definition of insolvency 97
12.2. The insolvency procedure 97
12.3. Effects on debtors 98
12.4. Effects on creditors 98
12.5. Clawback period 99
12.6. Restructuring plans 100
12.7. Sale of business units 101

13. Dispute settlement 103

13.1. Civil litigation: jurisdiction and procedure 103
13.2. Commercial arbitration 104

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.

Cuatrecasas is a law firm present in 12 countries with a strong focus on Spain, Portugal and Latin America.

With a multidisciplinary and diverse team of 29 nationalities from 26 offices, we advise on all areas of business law, applying a sectoral approach and combining maximum technical expertise with business vision.

We are committed to an integrated approach to client service through collective knowledge with innovation and the latest technologies. In Spain, we have a team of over 900 lawyers located in 13 offices, advising all types of clients on their day-to-day activities, as well as on complex matters and transactions, understanding their needs and different scenarios.

"Law firm of the year: Iberia, 2022, 2020"

"Law firm of the year: Europe, 2022"

THE LAWYER

"Most innovative law firm in Europe, 2023"

FT INNOVATIVE LAWYERS EUROPE 2023 WINNER

For more information please visit **www.cuatrecasas.com** or email us at **doingbusinessinspain@cuatrecasas.com**

Definitions

AML	Anti-money laundering
BME	*Bolsas y Mercados Españoles*: a listed company that operates the Spanish stock markets and financial systems
CIAM	Madrid International Arbitration Center
CIT	Corporate income tax
CNMC	National Commission for Markets and Competition
CNMV	Spanish Securities and Exchange Commission
CSRD	EU 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
Housing Act	Act on the right to housing
IP	Intellectual Property
KYC	Know Your Client
LDC	Spanish Competition Act
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*)
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
SL	Spanish private limited company (*sociedad limitada*)
SMA	Spanish Securities and Investment Services Act
SME	Small and medium-sized company
SPTO	Spanish Patent and Trademark Office
Strained Market Area	Strained housing 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 at a glance

Spain is attractive for foreign investment

1.1. Unique geo-strategic position

Spain is attractive for foreign investment, not only because of its domestic market but also because of its privileged geo-strategic 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 4th economy in the euro and the 14th in the world and has been a member of the European Union ("EU") since 1986.

In 2023, Spain had around 48.4 million inhabitants and it received approximately 85 million tourists. Spanish is a global language with over 500 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.

2

Ways of doing business

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

2.1. Setting up a business

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 a legal personality, separate and distinct from that of their partners, who are not personally liable for the company's debts.

Choosing between an SA or an SL is mainly determined by (i) the scale 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 partners want to apply, and (v) the flexibility offered by SL regulations as opposed to 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 a 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 a separate legal personality. This means that the parent company of a branch or a representative office will be liable for their obligations and debts.

Other alternatives

Another investment 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*), with no separate legal personality besides that of its members, created to carry out specific projects or services, such as an engineering or construction project.

- 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 to participate in the positive or negative results of the business.

Finally, there is the option of selling or providing goods or services in Spain without setting up a legal structure, or 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 partners is common to these capital-based companies. In both cases, the partners' 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, small and medium-sized companies ("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 partners' 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, they offer large corporations the following advantage: investing in the company is easier since its 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, partners 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 it provides is not comprehensive: differences between an SL and an SA. However, the information it provides is not comprehensive:

	SL
CAPITAL	
Minimum requirement	€1 However, until the company's share capital reaches €3,000, some specific rules apply regarding the allocation of the statutory reserve and, in the event of liquidation, partners' liability.
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 investments in kind is required. Partners (and directors in the case of a capital increase) are joint and severally liable for the existence and the value of the investment in kind against third parties and the company.
TRANSFERS	
Restrictions on transfers	Unless otherwise provided in the bylaws, quotas can be freely transacted between partners or with partners' spouses, ascendants, descendants and group companies. In all other cases, transfers are subject to the restrictions provided in the bylaws or, failing that, in 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 due (iv) to a partner 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 quoted. With some restrictions, SLs can issue or guarantee bonds and other securities that acknowledge or create a debt, but SLs are banned from issuing/guaranteeing bonds convertible into units.

SA

€60,000

Shares issued as bearer or registered shares. Shares can be negotiated on the stock market.

Initial outlay of 25% of the nominal value of each share. The outstanding amount must be paid according to the agreed terms. In case of non-capital contributions, within five years.

No 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 held by the same shareholder for at least two years (loyalty shares).

The value of the shareholders' investments 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 capital markets by issuing/selling shares or issuing bonds and other securities that acknowledge or create a debt, including bonds convertible into shares.

	SL
CAPITAL DECREASE	
Mandatory capital decrease	There is no compulsory capital decrease for losses.
Publicity and opposition term	The capital decrease resolution does not need to be published and the opposition term is not required (unless otherwise established in the bylaws). Instead, partners 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" partners meetings (in which all partners present or represented agree to hold the meeting) can be held without being convened. The bylaws can provide for hybrid or virtual meetings. There is no attendance quorum. Resolutions are passed by simple majority of valid votes provided they represent at least one-third of the voting rights. Some resolutions require a reinforced majority (more than one-half of the voting rights for capital increase or decrease and bylaws amendments, and at least two-thirds of the voting rights in the case of, inter alia, merger or spin-off). The bylaws can increase the voting majorities.
Administrative body	Unless provided in the company's bylaws, minority partners cannot be represented in the board in proportion to their stake in the company.

SA

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 share capital decrease.

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 attendance 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 decrease of share capital; bylaw amendments; and transformation, *merger and spin-off*).

The bylaws can increase the attendance 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 been traded ("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 been traded ("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 estates 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, the 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 issue and transfer of quotas/shares, the management body structure, directors' remuneration and the administrative bodies attendance quorums and voting majorities;

Spain has adopted EU anti-money laundering and terrorist financing regulations that require the founder(s) to provide the identity of their "beneficial owners"

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

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. Thus, an SL can be fully incorporated online when the partners' 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.

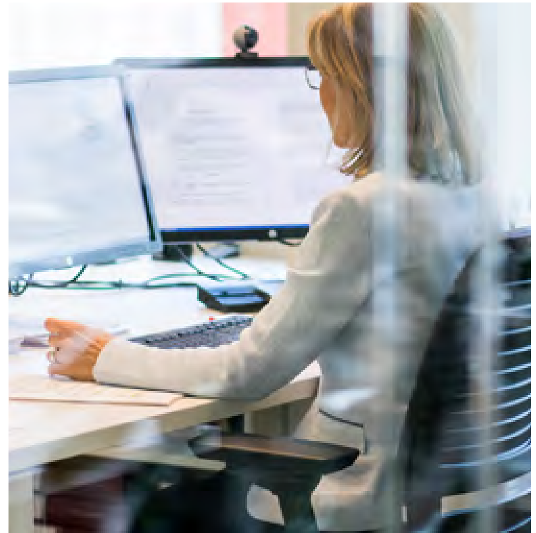
The "beneficial owner" among the parties to the deed must be disclosed (see details above).

- **Foreign investment filings** (see section 2.5.).
- **Single member status.** Most shelf companies are incorporated by a sole partner. Thus, when acquiring the company, notification must be given as to the change in identity of the company's single partner or the loss of this status if the shelf company has more than one partner. Either situation 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 certificate reserving the desired name 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 joint and several directors that act independently, each binding the company separately; (iii) a number of joint directors, not exceeding two in the case of an SA, that act jointly or unanimously; 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 to authority activities, even if registered with the Commercial Registry, have no effect on third parties.

Unless stated otherwise in the bylaws, a board of directors, with the affirmative votes of 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 is the standard of conduct required of directors regarding corporate management, which aims to establish their commitment to the company: they must handle corporate matters with the same diligence as a careful entrepreneur. Spanish law contemplates the business judgment rule, establishing criteria that enable strategic business decisions, regardless of the end result for the company, to be considered correctly adopted in accordance with the diligence required of directors.

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. 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.

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, 2024, 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

Types of guarantees

There are two types of guarantees, depending on how the obligation is secured:

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

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

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

Guarantee or security documents must be issued before a notary public to be considered as enforceable titles

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 guarantees must be created. Spanish law does not provide for a so-called "universal guarantee" over all the debtor's assets, although there are exceptions, for instance floating mortgages. Nor does it generally provide for the creation of a "floating" or "adjustable" lien or encumbrance.

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) ordinary transactions carried out 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

A non-possessory pledge is granted over movable assets that cannot be the object of (i) a chattel mortgage, because their specific identity cannot be registered; or (ii) an ordinary pledge, given the legal or financial impossibility of transfer to the creditor or to a third party.

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 on 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 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.

A first demand guarantee is independent from the underlying agreement that it guarantees and operates strictly in accordance with its terms.

Therefore, the guarantor's payment obligation becomes a principal obligation that is 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. Spanish law applies to agreements and other restrictive conducts with effects in Spain. EU law applies to those which may affect trade between Member States.

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 in 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 spite of these changes, the LDC may undergo a further reform in 2024, since relevant measures were overlooked in the above reforms. Future amendments of the LDC would include the long-awaited introduction of a 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.

The LDC prohibits collusive practices (anticompetitive agreements and concerted or parallel practices), abuse of a dominant position, and significant acts of unfair competition that are contrary to the public interest

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/or 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 notifiable 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 2024.

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 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 "*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, as long as 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: • Words • Figurative • Combined • Sound • 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 • Spanish Trademark (SPTO): Spain only	Spain (but principles of "national treatment" and "independence" under Berne Convention apply)

6.1. Copyrights

Copyrights are 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 which 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 general rule, exploitation rights last for the author's life and 70 years after the author's death. When the term expires, the affected work

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 • Individual character	• Novelty (universal) • Inventive step • Industrial applicability	Confidentiality
• Not registered: 3 years from first public disclosure • Registered: up to 25 years	20 years	Indefinite (until secret is revealed)
More protection if you do	Yes	No
• EU Design (EUIPO): All EU • Spanish Design (SPTO): Spain only	• EP (EPO): EU Member States where patent is validated • Spanish patent (SPTO): Spain	Worldwide

enters the 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 in the Spanish Trademark Act, which was amended in 2018, to transpose the 2015 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 which 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 gives right owners the exclusive right to use 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 European Union. 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 to obtain different national trademarks. The Madrid System, administered by the World Intellectual Property Organization, allows an application to be filed directly with a national trademark office which will convert it into different national trademarks, subject to substantive examination by the IP office of the selected countries. Trademark holders will have a national title in each country designated in their application.

Industrial designs

Industrial designs are defined as the appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture or materials of the product itself or its ornamentation. Holders of an industrial design right are entitled to use the design and to prevent third parties from using it without consent.

Spanish industrial designs

Industrial designs are regulated under the Legal Protection of Designs Act, which implements the EU Directive.

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.

Community designs

EU Regulation on community designs is directly applicable in all Member States, including Spain. There are two types of protection for community designs: (i) the unregistered community 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 community 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 search the prior art 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 and/or assigned 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, created 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, for it 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 this, 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 configuration, structure or composition

to an object or product, which results in some meaningful advantage for 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 Real estate

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)

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 (i.e., 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, (iv) property insurance premiums, and (v) condominium charges. Likewise, certain pre-emptive rights in favor of the authorities are not registered with the Land Registry. It is important to note that certain authorities (such as municipalities and autonomous regions) benefit in some circumstances, from pre-emptive rights over certain properties (such as historical buildings and residential leases) that are not registered with the Land Registry.

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*, or condominiums), it is advisable to obtain a certificate from the agent of the condominium (homeowners association) to ensure there are no outstanding payments or any other claims or pending issues relating to the condominium.

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

If the physical characteristics of the real estate or its proper maintenance and current conditions, or both, may affect the transaction, proper technical advice and due diligence must be requested.

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).

Additional matters also need to be addressed according to the circumstances. For instance, residential buildings should be covered by a ten-year insurance policy for structural damages (this insurance can also be taken out for non-residential buildings), environmental situation, pre-emptive rights, revision of construction agreements, and revision of lease agreements, among others.

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, but most sellers request a substantial advance payment. It is essential for purchasers to secure all advance payments.

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. ULA has been recently amended by Act 12/2023, on the right to housing (the "Housing Act").

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 (i.e., 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. It is expected that several municipalities in Catalonia will soon be declared Strained Market Areas.

Rent, legal deposit and additional guarantees:
The rent is freely determined by the parties. However, in Strained Market Areas, if a new lease agreement is signed and the lessor is a large property holder (individual or legal entity owning over 10 residential properties[1] 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 to be approved in the future. It is expected that the reference price index system applicable to Strained Market Areas will soon be approved. If the lessor is not a large property holder, the rent amount of the new lease agreement cannot exceed the amount set out in the previous agreement plus the Retail Price Index variation (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. In 2024, if the lessor is a large property holder, the increase cannot exceed 3%. If the lessor is not a large property

1 In Strained Market Areas, the autonomous regions can reduce the threshold to five or more properties. Catalonia has reduced the threshold to five properties.

holder, the rent adjustment is not subject to any limitation but if the parties are unable to reach an agreement, the rent review may not exceed 3%. From January 1, 2025, the annual rent adjustment may not exceed the result of applying a new reference index to be defined by the National Institute of Statistics no later than December 31, 2024.

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. However, in these cases housing legislation is expressly given the power to grant the competent administration preferential acquisition and withdrawal rights.

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 terms 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.

page ▲
end ►
page ▼

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.

Green taxes are levied at state level on non-reusable plastic packaging and landfill, incineration and co-incineration of waste.

Temporary levies will be charged in 2023 and 2024 to the following companies carrying out activities in Spain in the energy and financial sectors whose turnover exceeds certain thresholds: (i) companies that qualify as main operators in the electricity, natural gas and liquefied petroleum gas sectors, and companies carrying out crude oil, natural gas production, coal mining, or oil refinery activities; and (ii) credit institutions and financial credit establishments.

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, i.e., 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.)
- 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 laws.

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 quoted and non-quoted 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 10% of the increase in their equity, provided that this increase is maintained over a five-year period, and a separate reserve is recorded in an amount equal to the tax reduction, which must not be released over the five-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.

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 that were applicable from January 1, 2016, for taxpayers whose turnover in the previous tax year exceeded €20 million are no longer applicable since Constitutional Court Judgment 11/2024, of January 18, declared them illegal due to the fact that they were approved through a royal decree-law, a legal instrument not valid for the adoption of tax measures of this kind. Notwithstanding the above, it cannot be ruled out that these limitations may be reintroduced, through an appropriate legal instrument, in the CIT regulations for tax periods starting from January 1, 2024.

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

Only for tax periods starting in 2023, an additional limitation applied to the offsetting of negative tax bases of companies integrated in a group of entities subject to the tax consolidation regime. Although companies could only offset half of their negative tax base initially, they could offset the remaining amount in the following 10 year period. As mentioned above, it cannot be ruled out that this temporary measure may be extended for CIT periods starting in 2024.

Tax rates and 15% minimum taxation

The current CIT tax rate is fixed at 25%.

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 ("REIT") 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%).

A 23% tax rate is granted to corporations with a net turnover lower than €1 million in the previous year.

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 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.

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) REIT, (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.

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 economic activities Real property income Deemed income (attributions/imputations) established in PIT Law: • Income from the ownership of real estate different to the taxpayer's habitual residence and not rented • Controlled foreign company rules • Income from the assignment of rights regarding the taxpayer's image • Deemed income from collective investment undertakings in tax havens	Income from movable capital: • Income from equity in any kind of company (dividends and profit distributions) • Income from assigning own capital to third parties (interest) • 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 çthe 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	28

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 Organisation for Economic Cooperation and Development ("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 314 of the Spanish Securities and Investment Services Act ("SMA"), a transfer of non-quoted shares in the second 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:

i. 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.

ii. 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.

iii. 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 314 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 therein.

- **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.

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 (i.e., 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, within 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 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 2024, it is set at € in 1,134 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. These may be computed on an annual average basis, subject to a maximum of nine hours per day. Each hour worked over this 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 ordinary minimum annual vacation period is 30 calendar days.

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

The 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.

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.

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. 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 regarding 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. Equality in the workplace

Companies must prepare and apply an equality plan in line with the Act on Effective Equality between men and women, after negotiating, as the case may be, with the employees' legal representatives. Non-compliance is classified as serious offence with a fine of up to €7,500.

All companies with 50 or more employees are obliged to draw up an equality plan and must also conduct an audit of women's and men's salaries.

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.

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 €4,720.50 in 2024. For salaries higher than this maximum base, no additional contributions have to be made for the portion of the salary that exceeds the maximum base.

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 €29,74 for each agreement.

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. Contracting employees who are non-residents of the EU

As a general rule, employees who are not from the European Economic Area (EEA) need an initial work authorization to work in Spain, irrespective of the type and duration of the services rendered.

There are some exceptions for work permits required for specific groups of employees, mainly those involved in foreign affairs and scientific issues. Even so, these employees require a visa to enter Spain.

Employers wishing to hire non-resident employees must file a petition for an initial temporary work and residence authorization for those employees before the government authorities.

A work authorization is not required for the following activities, as they are not considered as "work" for the purposes of immigration law: (i) trips for commercial meetings with prospective clients, (ii) taking part in business fairs, and (iii) visiting the country to set up a business.

In these cases, prospective employees will be allowed to enter and stay in Spain for up to 90 days within a period of 180 days if they are from a country that is on the list of countries whose nationals do not require a visa to cross Schengen borders and if they hold a valid passport and documents justifying the purpose of their visit.

No provision to date establishes a minimum period of service for which non-residents are required to obtain a work authorization. In legal terms, work authorizations are required even when employees work for one day in any activity. In practice, companies do not apply for work authorizations when (i) the period foreign employees stay in Spain is shorter than the period granted by transits visas or visa waiver programs, and (ii) the services are rendered in an environment in which industrial accidents are uncommon, but this is not the recommended approach.

Requirements to obtain an initial work authorization

This section only refers to authorizations for employees. Requirements for self-employed employees may differ.

Generally, the following requirements must be met to obtain an initial work authorization:

- In general terms, the national employment situation must be favorable for the foreign employee to work in Spain due to a lack of equivalent employees in the Spanish market. The Employment Service Administration publishes a list of occupations that need to

be covered in Spain. However, if the position to be occupied requires highly qualified professionals or managers, the company may request the work authorization without demonstrating the national employment situation. There are other aspects that may exempt the assessment of this national employment situation. It is advisable to examine the specific circumstances of each case, such as the characteristics of the employee and the hiring company.

- The employment contract must be "indefinite" (permanent) and the employer must commit to maintaining the employment relationship for at least one year. The initial work permit will be granted for one year and may be renewed if the conditions imposed are met.
- The Spanish company cannot have pending debts with the social security or tax administrations.
- The Spanish company must have the necessary economic and material means to hire the employee for the corresponding project.
- The employee must have the legally required qualifications to perform of the duties corresponding to the employment agreement.
- The employee cannot be in Spain in an irregular situation or have a criminal background.
- The corresponding administrative fees must be paid.
- All official foreign documents must be up to date, apostilled/legalized and translated into Spanish by a sworn translator.

Requirements to obtain a residence and work visa

Once the initial residence and work authorization has been granted, non-resident employees must apply for a visa at the Spanish diplomatic delegation or consular office in their home country.

After entering Spain, non-resident employees must register at the corresponding city hall with their residential agreement and apply for a foreigner identity card at the police station of their city of residence in Spain.

The work authorization is effective once the company registers the employee with the Spanish Social Security Administration, and the identity card may be applied for after this registration. However, its effective date will be the date of entry of the employee into Spain with the work and residence visa.

The employee's authorization is limited to the specific activity or project for which it was granted and will be valid until the date of expiry. However, the authorization may be renewed if the established requirements are met.

Residence permits for entrepreneurs and international workers

Act 14/2013, supporting entrepreneurs and their internationalization, sets out new provisions affecting international mobility to attract investment (capital) and talent (qualified professionals) by eliminating administrative bureaucracy.

The Act regulates the following foreigners' entry into and presence in Spain:

- Investors
- Entrepreneurs
- Highly qualified professionals
- Employees subject to intra-corporate transfers within the same undertaking or group of undertakings
- Researchers and students
- International teleworkers (digital nomads)

Investors (golden visa)

This feature is aimed at non-resident foreigners carrying out capital investments in Spain.

The investor visa is granted for one year and is sufficient authorization to reside in Spain. The residence permit for investors is granted for three

years and can be renewed for a further five years if the conditions imposed are met.

To obtain the visa, one of the following types of investment in Spain must be proven:

- €2 million in Spanish public debt.
- €1 million in shares or equity investments in Spanish capital companies with a real estate business activity; in investment funds, closed-end investment funds or venture capital funds; or in bank deposits in Spanish financial institutions.
- Acquisition of one or more properties with a joint value of at least €500,000 per applicant.
- Investment in a general interest business project, provided it helps create jobs, has a socio-economic impact on its geographic sphere of influence or makes a relevant contribution to scientific and/or technological innovation (a favorable report must be submitted). The company must be incorporated in Spain.

  A significant investment will be understood to have been made if the investment has been made by a corporate entity in which the investor has the majority of voting rights and the right to name and remove the governing body. This corporate entity cannot be resident in a tax haven.

Entrepreneurs and business activity

For this purpose, the business and entrepreneurial activities must be innovative, of special economic interest for Spain and have been favorably reported by the competent body of the General State Administration. The creation of employment in Spain will be particularly valued. The applicant's professional profile as well as the business plan, financing, added value for the Spanish economy, innovation and investment opportunities will also be taken into account.

With a favorable report from ENISA (*Empresa Nacional de Innovación SA*), the immigration authorities will process and decide on the application. If both are favorable, a one-year visa will be granted to carry out the preliminary procedures required before starting a business activity.
The residence permit to exercise a business activity is valid throughout Spanish national territory for three years and may be renewed for a further two years.

Highly qualified professionals

Companies may apply for a residence permit for highly qualified professionals when they require the incorporation of professionals with higher degrees or professionals with three years' experience.

Companies must prove only once that they meet the requirements of the law. The company will then be registered with the Large Companies and Strategic Groups Unit ("UGE"). This registration will be valid for three years, renewable if the requirements are maintained. Any modifications to the conditions must be notified to the UGE within 30 days. If the modification is not notified, the company will no longer be registered with the UGE.

The residence permit for highly qualified professionals is granted for three years and can be renewed for another two years if the same conditions are maintained.

Intra-company transfer

A visa and residence permit are available to foreigners who move to Spain within the framework of an employment or professional relationship, or for professional training with a company or group of companies established in Spain or elsewhere.

The applicant must prove the following requirements have been met:

- There is a business activity.
- The applicant has a degree or equivalent, or three years' professional experience.
- The applicant had a prior continuous relationship of at least three months with one or more of the group companies.
- The applicant has documentation from the company proving the transfer.

Researchers and students

Specific residence authorizations are required for:

- Qualified researchers, entitling them to free mobility within the EU, and to stay in Spain for a limited period, while seeking employment or starting up a business project, once their research program is completed;
- International students who have completed their studies in Spain while seeking employment or starting up a business project; and
- International students who have recently graduated as interns through an agreement, or through a labor or internship agreement.

Digital nomads

Aimed at professionals with higher education or greater experience in their sector who can carry out their work/professional activity 100% remotely for clients residing outside of Spain.

They must prove the pre-existence of a real working relationship with their company for at least three months prior to the submission of the application.

International teleworkers who can prove they meet all the legal requirements will receive a renewable three-year residence and work permit.

Consequences of infringement

If a non-resident employee renders services in Spain without the corresponding residence and work authorization, the company and the employee will be fined and prohibited from obtaining further work permits and from entering Spain during a set period of time.

If a specific number of unauthorized foreign employees are hired by the company, this may constitute a crime.

9.14. 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.

9.15. 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

In 2023, a new Securities Market and Investment Services Act (the "SMA") was approved to facilitate competitiveness of the Spanish securities market, reorganize and simplify the regulatory system, and align it with EU law. In the short term, we anticipate new regulations on tokenized securities, takeover bids ("TOBs"), and matters affecting companies admitted to trading on Multilateral Trading Facilities ("MTF").

Bolsas y Mercados Españoles ("BME") is the listed company that operates the Spanish stock markets and financial systems. Spanish regulated markets are (i) the Spanish stock exchanges in Barcelona, Bilbao, Madrid and Valencia; (ii) MEFF (the market for financial futures and equity derivatives); (iii) the AIAF Fixed-Income Market; and (iv) the book-entry public debt market. BME also operates several multilateral trading facilities ("MTF") such as BME Growth—which is a market for growing small and medium-sized companies, including a specific segment for REITS—, the Alternative Fixed-Income Market ("MARF"), and BME Scale-up, which is the first stage for financing through the securities markets operated by BME aimed at early-stage companies and mature businesses seeking new investors and increased visibility which are run by BME. Additionally, Portfolio Stock Exchange is a Spanish MTF for equity and debt instruments, participations in investment funds and money market instruments, which is not run by BME.

Securities and financial instruments are mainly traded on secondary markets through an electronic trading platform (the Spanish Automated Quotation System or "SIBE") that matches buy-and-sell orders when these are entered. Only companies listed on at least two stock exchanges can trade their shares through SIBE. If a company is only listed on one stock exchange, trading is carried out using the open outcry system. Settlement takes place within two business days after trading through Target2-Securities (T2S), a pan-European platform for securities settlement in central bank money.

The main act regulating the Spanish Securities Market is the SMA and the most important market authorities are the following:

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

10.2. Listed companies: obligations and recommendations

This section outlines the main obligations of and recommendations for listed companies regarding corporate governance, transparency and market abuse.

Corporate governance

Two types of provisions apply to corporate governance of listed companies:

i. Binding provisions of law mainly contained in the SCA.

ii. Good governance recommendations (soft law) contained in the Good Governance Code for Listed Companies (the "Good Governance Code").

If institutional investors hold a relevant stake in the listed company, engagement with these investors becomes crucial. In this context, it is important for the company 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 rule of "comply or explain," where a listed company can choose whether to apply a given recommendation, but is obliged to inform the market and explain the reasons for its decision. Each year, 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 voluntary and is subject to the rule of "apply or explain." This

means that, as a 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.

We outline some of the most noteworthy provisions of law and good governance recommendations that apply to the general meeting and board of a listed company:

Provisions of law

- Listed companies must approve a specific set of regulations for the general meeting and for the board of directors, report them to the CNMV and file them with the Commercial Registry.
- The bylaws can provide for the convening of hybrid or virtual shareholders meetings.
- Signatories to a shareholder agreement must disclose to the market any clause that restricts the exercise of voting rights or the transfer of shares. Otherwise, those restrictions will not be effective.
- Voting caps can be included in a listed company's bylaws, although they will not apply when a takeover bid TOB results in a bidder attaining 70% of the company's voting rights (subject to the reciprocity rule).
- 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.
- Listed companies are subject to specific related-party transaction rules.
- The minimum percentage stake required to exercise minority shareholder rights is 3%. These minority rights include, most notably, petition for call of a general meeting, supplement to the agenda of a general meeting, petition for appointment of an independent expert for non-cash contributions, carrying out actions for liability against directors, challenge of board resolutions and appointment of auditors under specific circumstances.
- Shares in Spanish listed companies are frequently held through complex chains of intermediaries that offer safekeeping, administration, and securities account-maintenance services. These intermediaries are formally registered as shareholders, but hold shares on behalf of their clients, who are the "ultimate beneficiaries of the shares." Listed companies are entitled to know the identities both of their shareholders and the ultimate beneficiaries of the shares.
- Significant shareholders (i.e., those who individually or jointly have a stake of at least 3% of share capital) and associations formed within the company that represent at least 1% of share capital also have the right to know the identities of the shareholders and the ultimate beneficiaries of the shares, but only for the purpose of facilitating their communication with other shareholders to exercise their rights and defend their common interests.
- 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); or

  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).

  Those who do not fall into one of the above categories are classified as "other external directors." These, along with proprietary and independent directors, are collectively referred to as the "external directors," distinguished from executive or "internal directors".
- Unless the bylaws provide otherwise, an executive director can hold the position of chairperson of the board as long as 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.

- The powers that the board of a listed company cannot delegate are broader than those of an unlisted company.

- 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.

- The audit and the nomination and/or remuneration committees must be made up of non-executive directors. A majority of the audit committee members and two of the members of the nomination and/or remuneration committee must be independent, including the chairperson in all cases.

- The role of the general meeting with regard to 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.

- 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

- 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.

- In connection with the board of directors, the Good Governance Code includes several recommendations aimed at ensuring its optimal functioning, including suggestions on the size of the board, diversity policies, majority presence of non-executive directors, director absenteeism, frequency of board meetings, and structure, make-up and form of directors' remuneration. As regards the latter, we highlight the importance of the recommendation on the amount of termination payments, which should not exceed two years' total annual remuneration.
- Given the importance of sustainability, listed companies are encouraged to assign specific functions in this area to a specialized committee or distribute these duties among several committees, namely the audit committee, the nomination committee, a 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 have to 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

Most of the Spanish listed companies will be required to provide their non-financial information for 2024 in compliance with the EU Corporate Sustainability Reporting Directive (CSRD). This entails incorporating a specific section in their management report that includes the relevant details to understand the company's impact on sustainability as well as how sustainability affects its business (the "double materiality principle"). The information will relate both to their operations and those of their value chain and must adhere to the EU taxonomy and the European Sustainability Reporting Standards (ESRS). An independent expert must also offer "limited" assurance on this reporting.

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 s 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.

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 y is no longer ensured, the issuer must disclose the inside information to the public as soon as possible.

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 rule 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 l 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 d 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 issued as a result of a split 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) shares representing, over a 12-month period, less than 20% 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 20% 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 TOB 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 din 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 (i.e., 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.

Recently, 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

A new general telecommunications act (Act 11/2022) has been recently approved and substitutes the previous Telecommunications Act 9/2014.

Act 11/2022 transposes the European Electronic Communications Code and introduces significant modifications for enterprises in the sector, including 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.

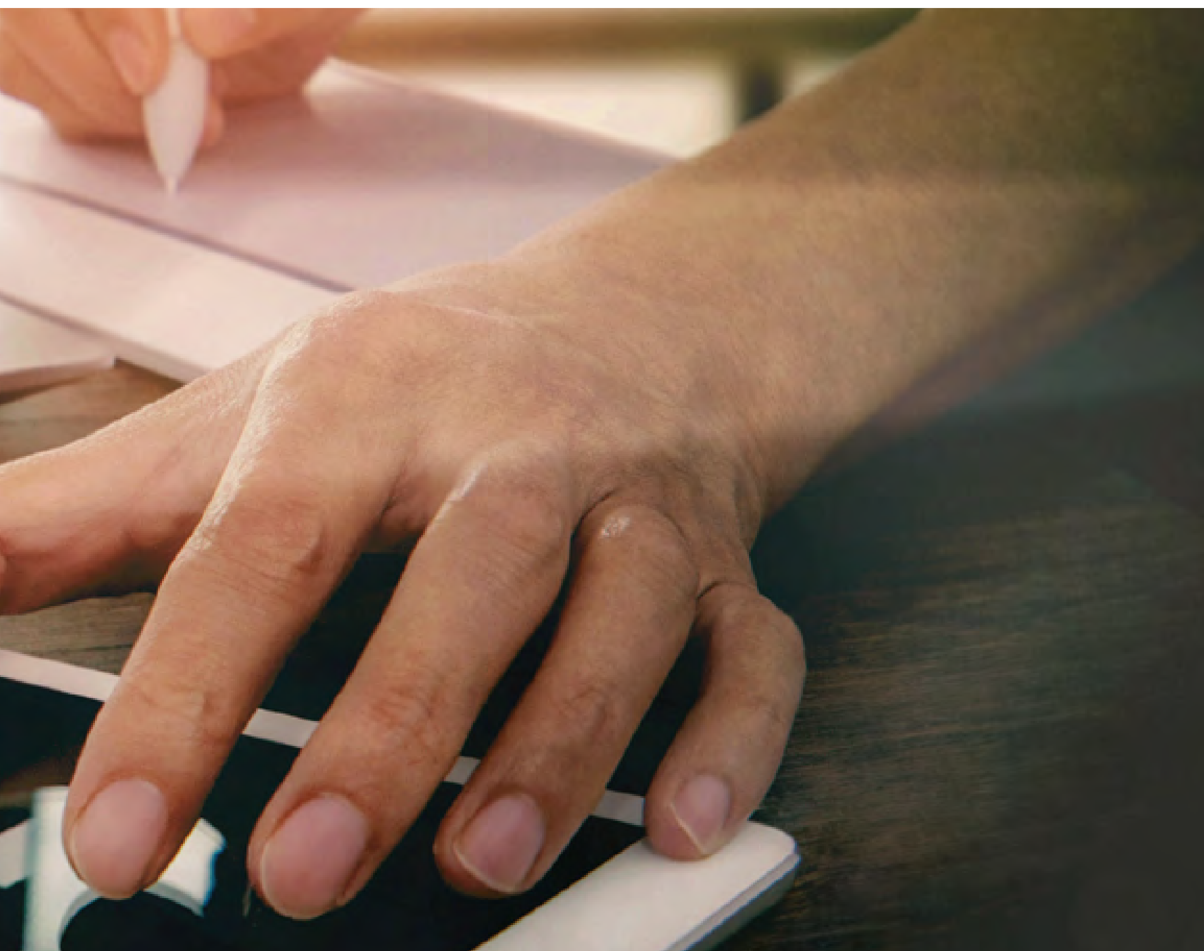
Under Act 11/2022, networks are operated and electronic communications services are provided in Spain under conditions of free competition, within the limits established in the current regulations, regardless of certain public service obligations on operators. Any individual or entity resident in the UE, 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 n 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 aims to protect creditors' interests and to reorganize and preserve the viability of sound companies that become insolvent.

To facilitate debt restructuring at an earlier stage, Act 16/2022 allows seeking a pre-insolvency solution in cases of imminent insolvency 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 following two years), and in cases of imminent insolvency, which has been redefined as the foreseeable inability to meet obligations falling due in the following three months. Current insolvency is still considered to be a financial state in which it is possible to seek a pre-insolvency solution

12.2. The insolvency procedure

In Spain, there is only one insolvency procedure for all debtors, whether companies or individuals. A special procedure 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 procedures have a common stage (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

The debtor must file for insolvency within two months after it becomes aware or should have become aware of its state of current insolvency. If the debtor fails to fulfil this obligation, directors can become personally liable.

However, if within this two-month period the debtor files a " 585 petition" an extra four-month period (three months to negotiate + one month to file for insolvency) is granted from the date the debtor files the petition with the court to reach a restructuring agreement. If negotiations with creditors are not successful, the debtor will have to file for insolvency within one month from the unsuccessful conclusion of the three-month negotiation period.

Mandatory insolvency

Creditors can file for mandatory insolvency against a debtor if they can prove the debtor's insolvency. If you become a creditor through an *inter vivos* transaction, you can only file mandatory insolvency against the debtor six months after the acquisition date of the credit. 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 the declaration of insolvency on the debtor mainly depend on whether insolvency is voluntary or mandatory. In the first case, the debtor usually retains its powers to manage and operate its business, supervised by the insolvency administrator the insolvency judge has appointed. If insolvency is mandatory, debtors lose all rights over their assets, which are managed by the insolvency administrator.

When the debtor is a company, the judge may grant injunctive relief over 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 are sufficient grounds to consider that, in the insolvency proceedings, they will be requested to cover the deficit.

12.4. Effects on creditors

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

There are few exceptions to this rule and those permitted by law abide by the rule that "ordinary credits" are considered equal.

On this basis, a distinction is made between privileged, ordinary, and subordinated credits. Privileged credits are given preferential treatment over ordinary credits, which in turn have preference over subordinated credits. In addition, there is another special and prioritized category, known as "credits against the insolvency estate," which generally arise after the declaration of insolvency. These credits are not subject to ranking or acknowledgement and, in principle, must be paid by the insolvency administrator when they fall due.

Privileged credits may have a special or general privilege, depending on whether the security is created over a specific asset (special privilege) or over all the debtor's assets (general privilege).

Credits with special privilege generally include those in which collateral consists of specific property or rights (mortgage or pledge) or equivalent rights (financial lease agreement for the leased property). The privilege will only cover the part of the claim not exceeding the value of the respective guarantee. The value of the in rem guarantee will be that resulting from deducting any outstanding debts enjoying a preferential guarantee over the asset or right over which the guarantee lies from nine-tenths of its fair value as determined by an independent expert.
Credits with general privilege are, for instance (i) credits relating to salaries and indemnity for termination of agreements, occupational health and safety claims, provided they are incurred before insolvency; (ii) tax and social security withholdings; and (iii) 50% of the credits held by the creditor at whose request insolvency has been declared.

Ordinary creditors are those who do not fulfil the requirements to become a privileged or a subordinated creditor. Subordinated creditors are those that the Spanish Insolvency Act considers subordinated to all other creditors.

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

12.5. Clawback period

Clawback applies to any act or transaction considered to damage the debtor's estate (even in the absence of fraudulent intent) and performed within the two years before the debtor files for insolvency or before the date on which notice informing of negotiations on a restructuring plan is served.

The following actions are deemed to damage the debtor's estate:

- **Without proof to the contrary:** (i) acts performed without consideration, and (ii) payments or other acts cancelling obligations due after the declaration of insolvency (except those with an *in rem* guarantee).

- **Unless proved otherwise:** (i) acts of disposal for valuable consideration performed in favor of a party closely related to the insolvent party, (ii) granting security interests covering pre-existing debts or new debts incurred to cancel pre-existing debts, and (iii) payments or other actions cancelling obligations secured by an *in rem* security interest due after the declaration of insolvency.

A special regime for restructuring plans protects them from being challenged if they fulfil specific requirements. Actions carried out in the debtor's ordinary course of business and under market conditions cannot be challenged.

12.6. Restructuring plans

Spanish insolvency law regulates flexible out-of-court restructuring mechanisms that enhance the deleveraging of viable Spanish companies and facilitate pre-petition restructuring deals while preventing debtors from going through insolvency proceedings (which generally result in low recovery rates for creditors).

The entry into force of Act 16/2022 gives a more prominent role to creditors, who will be able to benefit from pre-insolvency instruments providing greater speed and flexibility, and offering a greater scope, as they allow the possibility of cramming down all types of creditors (financial, commercial, and even holders of public law credits that meet certain requirements) and shareholders of insolvent companies.

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

Restructuring plans may have an impact on all kinds of creditors and credits, with very few exceptions, and all affected parties are entitled to participate in the approval of the plan. The criteria for class formation are relatively open, despite there being some imperative rules that must always be observed. Specifically, credit classes must always be formed based on a joint interest of credits belonging to the same class (insolvency rating is the guiding principle behind joint interest). 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 class liabilities, or three-quarters if it is a class 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 and 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.

Effects of court-sanctioned restructuring plans can be extended to dissenting creditors within the same category or to whole categories of creditors, even those in higher ranks. Restructuring plans (and the acts performed through them) are protected

against the clawback risk in case of later insolvency.

The court sanction of the restructuring plan can extend its effects to all credits affected by the plan.

In an insolvency scenario, court-sanctioned restructuring plans and acts carried out in the context of promoting or implementing the plan are protected against clawback actions. Interim financing granted during the negotiation of the restructuring plan to ensure the continuity of the business activity, or the new money financing described in the plan that is necessary for it to be successful, are specifically protected and could be given preference for payment under certain conditions.

12.7. Sale of business units

The transfer of the company or its business units may occur at different times during the insolvency proceedings.

Even before filing a request for insolvency proceedings, debtors whose circumstances indicate a likelihood of insolvency or who are in a situation of imminent insolvency or current insolvency may request the court to appoint an independent expert responsible for collecting offers for the purchase of business units (pre-pack).

Act 16/2022 enables restructuring plans to include the transfer of assets, business units or of the whole company. The sale of business units set out in a restructuring plan will be subject to the court-sanctioned restructuring plan system mentioned above.

In the case of a pre-pack process, the debtor may request the court that will hear the proceedings to appoint an expert responsible for collecting offers for the purchase of one or several business units before filing for insolvency. On declaring insolvency, the judge may confirm or revoke the appointment of the expert. If ratified, the expert will become the insolvency administrator.

The effects of the purchase on the acquirer are, in brief, the selection of agreements by the offeror and the automatic subrogation of contracts without the need for the counterparty's consent (except administrative contracts); subrogation of administrative licenses and permits making up the business unit; and the non-assumption of insolvency liabilities, except labor and social security debts of the workers taken on. Business succession will apply for labor and social security purposes on transferring business units at any stage of the insolvency proceedings.

13 Dispute settlement

13.1. Civil litigation: jurisdiction and procedure

Jurisdiction

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

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.

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.

Civil and commercial procedures

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 to solve procedural issues and propose additional taking of evidence; and (iv) a trial, in which witnesses and experts are heard, and lawyers make their final statements. An oral trial is carried out in a single hearing that takes place after a written statement of claim and a written answer to the statement of the claim.

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 the appealed decision goes against Supreme Court doctrine or when there is no Supreme Court doctrine on the subject, the courts of appeals' doctrine on the subject is contradictory, or exceptionally when there is notorious cassational interest.

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.

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, 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"). The CIAM 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.

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 and STC 17/2021) 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.

CUATRECASAS

Spain & Portugal

› Alicante › Barcelona › Bilbao
› Girona › Lisbon › Madrid
› Málaga › Palma de Mallorca › Porto
› San Sebastián › Seville › Valencia
› Vigo › Vitoria › Zaragoza

International

› Beijing › Bogotá › Brussels › Casablanca*
› Lima › London › Luanda* › Mexico City
› New York › Santiago › Shanghai

* *in association with the respective local law firm*

doingbusinessinspain@cuatrecasas.com

www.cuatrecasas.com