



ICLG

The International Comparative Legal Guide to:

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A practical cross-border insight into litigation & dispute resolution work

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Spain



Julio Parrilla



Arancha Barandiarán

Dentons

I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Spain got? Are there any rules that govern civil procedure in Spain?

Spain's legal system is a civil law system, being the sources of law regulated in the Spanish Civil Code (laws, customs and general principles of law).

Civil procedure is governed by the Spanish Code of Civil Procedural Law, approved by Law 1/2000, of 7 January. It is also necessary to mention that voluntary or non-contentious proceedings (mainly related to family law) or the recognition of foreign judgments rendered outside EU are still governed by the former Spanish Code of Civil Procedural Law approved by Royal Decree on 2 February 1881.

1.2 How is the civil court system in Spain structured? What are the various levels of appeal and are there any specialist courts?

The Civil Court system is regulated by the Organic Law no. 6/1985 on the Judicial Authority Organisation, and hierarchically structured into:

- **Magistrate's Courts**, which decide on minor claims under 90 euros and carry out functions connected to Civil Registry.
- **First Instance Courts**, which examine disputes which are not expressly attributed to another area of law and appeals against Magistrate's Courts decisions and **Commercial Courts**, specialised Courts on insolvency proceedings, transports, IP, trademarks, fair and unfair competition or company conflicts.
- **High Courts of Appeal (Civil Chambers)**, one for each province, dealing with appeals against the judgments rendered by First Instance and Commercial Courts on matters over 3,000 euros.
- **The Supreme Court (Civil Chamber)**, which rules on cassation appeals and extraordinary appeals for infringement of procedural law filed against High Courts' decisions.
- **The Constitutional Court**, deciding on proceedings in which constitutional rights are claimed to have been breached.

1.3 What are the main stages in civil proceedings in Spain? What is their underlying timeframe?

Ordinary trials ("*juicio ordinario*") are followed before the First Instance/Commercial Court. These proceedings usually take

around a year until a judgment is rendered. They consist of (i) pleadings of a claim filed by the plaintiff, (ii) admission by the Court and service to the defendant, (iii) a statement of defence challenging the complaint filed by the defendant, (iv) First Hearing to remedy any procedural fault and propose evidence to be practiced in the Trial (witnesses, experts, interrogatories of the parties, etc.), (v) Trial, and (vi) judgment.

Oral trials ("*juicio verbal*") are established for certain issues and disputes under 6,000 euros. The complaint is filed before the First Instance/Commercial Courts and admitted by the Court. When it is served to the defendant, he is already informed about the date of the Trial scheduled in which he will be able to oppose (orally) the claim. The admission and practice of evidence (documentary evidence, witnesses, experts, etc.) will be agreed and carried out within the act of the Trial. A judgment will be rendered after the hearing. The whole procedure might take around six to eight months.

In addition, there is also the possibility of filing an application for an order for payment ("*juicio monitorio*") established for uncontested debts. If the defendant does not oppose such an application or pays within a term of 20 working days, the claimant will be granted access to an enforcement procedure (around three to four months after the application has been filed).

1.4 What is Spain's local judiciary's approach to exclusive jurisdiction clauses?

Exclusive jurisdiction clauses are valid and enforceable, provided that they have been freely agreed by the parties.

However such clauses cannot be invoked in some disputes in which jurisdiction is mandatorily imposed and mainly related to real estate and rights *in rem*, inheritance, incapacitated persons, protection of the right to honour, privacy and image, lease agreements, condominiums, damages caused by vehicles, corporate decisions, intellectual property, unfair competition, patents and trademarks, contractual general conditions, third parties' rights *in rem*, insurance, certain financial agreements, consumers, applications for an order for payment procedure, payment notes and agency and distribution agreements.

1.5 What are the costs of civil court proceedings in Spain? Who bears these costs?

The main costs that a party must face are payment of judicial taxes, Court Agent and Lawyer's fees, which are both mandatory figures in all disputes except for, primarily, disputes under 2,000 euros, pre-action interim measures and applications for an order for payment procedure.

Each party assumes its own costs while the proceedings are pending. When a final decision is rendered a “loser pays” rule generally applies, meaning that the successful party will be entitled to recover his legal costs, however some limitations pursuant to the guidelines provided by Bars may be established.

1.6 Are there any particular rules about funding litigation in Spain? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

Contingency fees and security for costs are permitted even if this is still an unfamiliar practice.

1.7 Are there any constraints to assigning a claim or cause of action in Spain? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

There are no constraints to assigning a claim or cause of action, even if when it is done while the proceedings are already pending it has to be authorised by the Court and the counter-party is entitled to oppose such an assignment.

In addition, when a disputed claim is assigned, the debtor is granted the right to reimburse the outstanding debt, interests and costs within a term of nine days since payment has been required by the assignee.

Third party funding, even if not legally barred, is also an unfamiliar practice in Spain.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

A power of attorney must be granted before a Notary Public (and, if necessary, legalised with The Hague Apostille) in order to authorise Lawyers and Court Agents to act on behalf of the party.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The Spanish Civil Code states the limitation periods to be applied to the different classes of claims; the most relevant ones being: (i) a 15-year limitation period to be applied for contractual claims (with some exceptions); and (ii) a one-year limitation period for tort claims.

Regarding their calculation, they might also vary depending on the particular circumstances of each case but the general principle stated in the Spanish Civil Code is that limitation period is calculated from the day in which the action become exercisable.

Time limits are considered to be a substantial law issue to be resolved in the judgment to be rendered.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Spain? What various means of service are there? What is the deemed date of service? How is service effected outside Spain? Is there a preferred method of service of foreign proceedings in Spain?

After the complaint has been filed into the Courts’ registry and allocated, the Court Clerk of the Court in charge will carry out a quick examination on jurisdiction, capacity and legal representation of the claimant and the kind of proceedings to be engaged.

The Court Clerk will issue a decision admitting the complaint and opening a new case file, ordering the service to the defendant.

Service must be mandatorily supervised by the Court Clerk and it is carried out by the notification services of the Courts in the domicile of the defendant, the date of service being noted. Later communications will be addressed to the Court Agents appointed by the parties.

The valid date of service is meant to be the date in which the defendant has received full and clear copy of the complaint and attached evidence, translations included if necessary.

Court Clerks will be in charge of ordering and coordinating any service to be effected outside Spain and those ordered from foreign authorities to be carried out in Spain.

In connection to international service, Regulation (EC) no. 1393/2007 and Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters apply in Spain.

3.2 Are any pre-action interim remedies available in Spain? How do you apply for them? What are the main criteria for obtaining these?

When an urgent situation occurs, the claimant is entitled to request from the First Instance or Commercial Court the adoption of pre-action interim measures. If such pre-action interim measures are granted, the claim will have to be filed within a term of 20 working days.

The application is filed before the competent Court of First Instance/Commercial Court (attaching all available documentary evidence) and, if it is evidenced that “extreme urgency” applies, it will be granted “*inaudita parte*” (without hearing the defendant).

When the Court believes that there is no extreme urgency or it has already granted the injunction “*inaudita parte*”, the defendant will be granted a term of 10 working days to oppose the injunction application or the injunction granted “*inaudita parte*”.

If there is opposition, the parties will be summoned to a hearing before the Judge, who will render a decision subject to appeal before the competent High Court of Appeal.

The plaintiff must provide enough evidence on:

- (i) an urgent situation or need, so the interim measure request cannot be postponed until the claim is filed;
- (ii) having a “*prima facie*” case (or “*fumus boni iuris*”), that is, that the object of the claim appears to be sufficiently grounded; and
- (iii) the existence of danger in delay (“*periculum in mora*”), that is, that the mere lapse of time during the dispute until a final judgment is rendered might render such judgment ineffective.

It is also necessary to provide a security for compensation for any damages the injunction may cause to the defendant if the claim is not successful.

3.3 What are the main elements of the claimant's pleadings?

The claim shall be structured as follows:

- (i) a clear identification of the claimant and, if applicable, the Court Agent and Lawyer acting on behalf of the party and providing legal advice;
- (ii) a clear identification of the defendant and the domicile in which service must be fulfilled;
- (iii) an ordered (numbered) list of the facts giving rise to the claim, including references to the documents or means of evidence attached to the claim;
- (iv) the legal grounds of the claim, including a separate reference to the capacity and legal representation of the parties, jurisdiction and proceedings to be followed; and
- (v) a clear and ordered (numbered) list of the requests made to the Court.

Original documentary evidence, translated into Spanish (if necessary), and the expert report shall be attached to the complaint.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The claimant will be entitled to extend the scope of its claim or sue new co-defendants only if the defendant has not filed his statement of defence and the time limit within such statement has to be filed has not expired.

In order to preserve the defendant's right to defence, he will be granted a new term for filing his statement.

After the defendant has filed his statement, it is possible to introduce minor or side amendments to the pleadings, but no substantial changes to the terms and grounds of the claim will be accepted.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The statement of defence must follow the same requirements established for the pleadings of claim according to question 3.3 – exposing his reasons to oppose the claim and admitting or denying the facts giving rise to the claim. Original documentary evidence, translated into Spanish (if necessary), and the expert report shall be attached to the statement.

The defendant is entitled to counterclaim or raise his rights of set-off including, successively, in his statement of defence and his own pleadings of claim pursuant to question 3.3.

4.2 What is the time limit within which the statement of defence has to be served?

The statement of defence has to be filed within a term of 20 working days (excluding Saturdays, Sundays and bank holidays) after the complaint has been served.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

Applying the mechanism stated in question 5.1 for forced intervention, if the defendant considers that he should be replaced

by a new co-defendant, he will be entitled to request such a replacement to the Court.

The replacement will have to be authorised by the Judge and the claimant will be entitled to oppose it.

4.4 What happens if the defendant does not defend the claim?

The Court will declare the defendant to be in default and will serve its decision to him, informing about the date and hour of the First Hearing scheduled. No further Court decisions will be served to the defendant until a judgment is rendered.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant is entitled to challenge the jurisdiction of the Court to rule over a dispute within a term of 10 working days after the complaint has been served to him (five working days in proceedings of "*juicio verbal*").

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

The addition of third parties into ongoing proceedings can be voluntary, when a direct and legitimate interest in the result of such proceedings is proven, or forced, when expressly allowed by the law (e.g. disputes on construction defects).

The forced intervention requested by the claimant will be included in the pleadings of claim (the third party will not have, however, the status of co-defendant). When it has been requested by the defendant, it has to be filed before the Court within the term agreed for filing the statement of defence (or five days before the Trial in the case of "*juicio verbal*").

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The consolidation of two connected and ongoing proceedings is allowed when:

- (i) the Court which shall rule has jurisdiction and competence to rule over the accumulated procedure;
- (ii) both proceedings are being handled under the same kind of trial; and
- (iii) the law does expressly allow the consolidation or does not expressly prohibit it.

The consolidation will always be agreed when two proceedings are closely connected and the judgment to be rendered in one of the proceedings might have preliminary effects on the other one or, in cases of being followed separately, two contradictory judgments might be rendered.

5.3 Do you have split trials/bifurcation of proceedings?

When two actions have been unduly consolidated into the same claim, the Court, prior to the admission, or the defendant, when the pleadings are served and provided that the Court agrees, are entitled

to request that one of the actions brought be dropped. If the claimant does not fulfil such request, the proceedings will be terminated.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Spain? How are cases allocated?

The allocation of cases inside a jurisdiction among Courts of an equal level is established by the rules proposed by the board of Judges of such jurisdiction and approved by the Government Chamber of the High Court.

However, as a general principle and irrespective of specific rules of allocation, depending on the subject of the dispute, cases are assigned respecting the order of entry into the Registry of the Courts.

6.2 Do the courts in Spain have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Court Clerks are entitled to issue any decision required to speed up the proceedings and will verify the payment of judicial taxes, being entitled to terminate a procedure in case of default. Courts shall also supervise that the errors of procedure made by the parties are rectified.

During the proceedings the parties are entitled to apply for interim measures (requirements have already been outlined in question 3.2) and the adoption of measures to protect evidence when it is susceptible to being destroyed or altered.

In connection to costs, it depends if the counter-party has opposed or not, but the Court will decide as explained in question 9.2.

6.3 What sanctions are the courts in Spain empowered to impose on a party that disobeys the court's orders or directions?

A party disobeying a Court's order can be held in contempt, subject to be fined and even charged with a criminal offence, depending on the seriousness of the disobedience.

6.4 Do the courts in Spain have the power to strike out part of a statement of case? If so, in what circumstances?

There is no such power given to Courts in Spain.

6.5 Can the civil courts in Spain enter summary judgment?

When the parties agree on the facts and their dispute is focused on legal issues, the Court is entitled to render a judgment after the First Hearing has been held and without further need of a Trial.

In addition, when the defendant has partially recognised some of the requests made in the pleading of the claim the Court, without need of a First Hearing or Trial, is entitled to render a judgment on those specific demands.

6.6 Do the courts in Spain have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The Court is entitled to stay the proceedings in the following cases:

- The Judge's abstention to manage the case.
- If the consolidation of proceedings in different stages is agreed, the most advanced procedure will be stayed until the

second one reaches the same procedural stage.

- Agreement between the parties, during a maximum period of 60 working days, provided that no general or third party interests are harmed.
- The jurisdiction of the Court has been challenged.
- The passing of a party.
- Ongoing civil or criminal preliminary proceedings.
- The transmission of the object in dispute.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Spain? Are there any classes of documents that do not require disclosure?

All the documents supporting the pleadings of claim or the statement of defence must be attached to them when filed before the Court.

The possibility of disclosing additional documents at a later stage of the proceedings is restricted to those connected to new facts or statements made during the proceedings or dated after the filing of the briefs.

The possibility of requesting the disclosure from third parties is stated in question 7.3.

7.2 What are the rules on privilege in civil proceedings in Spain?

Official documents declared to be confidential or secret are excluded from the obligation of disclosure (public interest privilege).

In addition, an "attorney-client privilege" is recognised, providing protection for confidential attorney-client communications (this is also applicable to other professionals such as doctors and journalists, and those exchanged among attorneys in the course of negotiations to settle a dispute).

7.3 What are the rules in Spain with respect to disclosure by third parties?

If agreed by the Court, the disclosure of documents from third parties and the counter-party can be requested, provided that they are connected to the subject of the dispute and the documents to be produced are sufficiently identified.

Government and other public bodies must also disclose any documents requested by the Courts, unless classified as secret or confidential.

7.4 What is the court's role in disclosure in civil proceedings in Spain?

The disclosure of documents by the counter-party, third parties and government or public bodies must be agreed by the Court, upon a party's request, which will decide on the basis of (i) considering that such disclosure is relevant for the purposes of the proceedings, and (ii) the documents to be produced are sufficiently identified.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Spain?

There are no legal provisions concerning the use of documents obtained in the course of a procedure.

8 Evidence

8.1 What are the basic rules of evidence in Spain?

- In general terms, each party shall have the burden of proving the facts relied on to support his claim, defence or counter-claim, unless in some specific disputes where such burden is reversed (e.g. defective products disputes).
- The evidence, unless in exceptional cases, will have to be proposed or requested by the parties.
- Evidence unconnected to the subject of the dispute, deemed to be irrelevant for its resolution or which might imply an activity prohibited by law will not be admitted.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

- Interrogation of parties.
- Public and private documentary evidence.
- Expert reports.
- Interrogation of witnesses.
- Court's inspection.
- Reproduction of words, sounds or images by means of filming, recording or others.

Experts can be appointed by the party or the Courts. When the expert has been appointed by the party, the expert report must be attached to the pleadings of claim or the statement of defence. If the impossibility of attaching the report is justified, it will have to be announced in such briefs and the report will have to be filed before the Court at least five working days before the First Hearing is held. In the First Hearing, if the defendant has raised statements which could not have been predicted when the complaint was filed or there are additional/new statements, the claimant will be entitled to appoint or request the appointment by the Court of an expert. His report will have to be filed at least five working days before the Trial. The expert might be required to appear in the Trial in order to ratify his report and answer questions or clarifications requested by the parties.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Witnesses proposed and admitted by the Court at the First Hearing must be brought, or summoned by the Court upon the party's request, to declare before the Court in the Trial. Witnesses will declare one by one, in the order agreed by the Court, and will not be authorised to attend other witness interrogations before they are examined.

Witnesses' statements can be admitted as documentary evidence but they are not considered proper witness evidence provided that there has been no cross-examination, immediacy or oral exposition before the Court.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

There are no particular provisions in connection to instructing expert witnesses, preparing expert reports or giving expert evidence.

The expert, even when appointed by the party, takes an oath stating that he has been objective in his report and is aware of the criminal sanctions which could be imposed in case of failing in his duty as an expert.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Spain?

The Court shall decide on the admission or inadmissibility of the evidence proposed by the parties and will also issue the summons to witnesses or experts and orders to request disclosures of documents from third parties.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Spain empowered to issue and in what circumstances?

Court Clerks are entitled to issue:

- "*Diligencias de Ordenación*", when the decision to continue with the due course of the proceedings is addressed.
- "*Decretos*", when the pleadings of claim are admitted and a reasoned decision in those procedural steps within the scope of the competence of the Court Clerk is requested.
- "*Diligencias de constancia, comunicación o ejecución*", when a specific fact or act must be reflected in the file case.

The Judge is entitled to render the following procedural decisions:

- "*Providencias*", when, according to the law, the decision is referred to procedural issues and an "*auto*" is not required.
- "*Autos*", when deciding on an appeal filed against "*providencias*" or "*decretos*" which have been decided on the admission or inadmissibility of the complaint, the counter-claim, consolidation of proceedings, admission or inadmissibility of evidence, Court approval of settlements, mediation agreements, injunctions and the nullity or invalidity of procedural acts.
- "*Sentencias*" (judgments), to render a decision on the proceedings in First Instance or appeal, and to decide on extraordinary appeals and proceedings for the review of final judgments.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Only damages or actual loss can be compensated and these must be proven, so no punitive damages can be awarded by the Courts. The only amounts to be discretionarily fixed by the Courts, but traditionally set very low, are "moral damages". Moral damages can only be awarded when expressly allowed by law and compensate personal suffering outside the economic sphere.

The payment of interests is regulated by the provisions of the Civil Code and the Spanish Code of Civil Procedural Law, so the Courts cannot impose them discretionarily.

Finally, the rules to impose the costs of the litigation are established in the Spanish Code of Civil Procedural Law (in general terms, "loser pays" rule). However, the Court is entitled to decide that each party shall bear its own costs if the case raised doubts about the facts or the legal grounds applicable to the dispute.

9.3 How can a domestic/foreign judgment be enforced?

Domestic judgments are enforced filing an enforcement claim before the Court that rendered the judgment. The Court will issue an enforcement decision and will grant the enforced party a 10-day period (five days in case of provisional enforcement) to challenge the enforcement.

The procedure for placing charges or seizing the debtors' assets depends on different facts. If the creditor is aware of any available assets (such as properties, bank accounts, outstanding credits against third parties, etc.) which can be seized, they will be directly identified in the enforcement complaint (this usually speeds up the proceedings). Otherwise, the Court, upon request of the creditor in its enforcement complaint, will deliver different orders to tax authorities, bank entities, etc., to provide all available information on debtors.

In connection to foreign judgments rendered in the European Union, within the scope of Regulation No. 44/2001, a Member State's judgment will be enforced in Spain (without any prior registration) provided that it has been declared enforceable in such Member State.

The enforcement application is filed before the Spanish First Instance Courts (the jurisdiction is determined by the domicile of the party whom the enforcement is sought), provided that we are not dealing with any matter reserved to the jurisdiction of Commercial Courts.

Once the Court has rendered its enforcement decision, it is served to the enforced party who will be granted a term to challenge the enforcement.

In the case of enforcement of foreign judgments rendered outside EU or outside the scope of Regulation No. 44/2001 and in the absence of a bilateral treaty, prior recognition of the decision under the provisions of the Spanish Code Of Civil Procedural Law approved by Royal Decree on 2 February 1881 is needed, which requires such judgment to be final, respectful with regards to public order and the defendant's rights (problems might arise in case of judgments rendered in default) and rendered in a country in which Spanish judgments are also recognised (principle of reciprocity).

9.4 What are the rules of appeal against a judgment of a civil court of Spain?

An appeal in writing can be filed before the First Instance or Commercial Courts against the judgment rendered within 20 working days after the judgment has been served; the other party having the possibility of opposing/requesting the dismissal of the appeal.

The case is sent to the High Court of Appeal, which usually takes between eight and nine months to render a judgment (in writing). The decision rendered by the High Court of Appeal, when the legal requirements are met, can be subject to a cassation appeal or an extraordinary appeal for infringement of procedural law; the other party having the possibility of opposing/requesting the dismissal of the appeal.

The case will then be sent to the Supreme Court, which takes an average of one year to decide about the admission of a cassation appeal/extraordinary appeal for infringement of procedural law. This includes an examination to check that all legal requirements for filing such an appeal have been fulfilled. If the appeal is admitted, it takes an average of three years to render a decision on the merits of the appeal.

Against the decision rendered by the Supreme Court and for cases in which there has been a breach of constitutional rights, a claim can be filed before the Constitutional Court. The Constitutional Court applies very restricted criteria about the admission of constitutional claims. It usually takes about three or four months to get a decision over such an admission and around five years to render a decision on the merits of the case, if admitted.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of alternative dispute resolution are available and frequently used in Spain? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

- a) **Arbitration**: occurs when the parties have submitted the dispute to a sole arbitrator or an arbitration panel. The arbitration award has binding effects. The parties can agree that the arbitration shall be governed by *rules of law or equity*: (i) arbitration in law (resolves conflicts through legally reasoned decisions), strictly applying the legal rules applicable in any particular case to its conclusion. Arbitration in law awards must be well founded in law. This is the type of arbitration applied by default, i.e. in the absence of express agreement otherwise by the parties in conflict. It is ideal for resolving disputes over interpretation of contractual clauses and all other disputes involving matters governed by rules of law; or (ii) arbitration in equity (which resolves disputes on the basis of arbitrator knowledge and honest belief in accordance with their natural sense of justice).

The award is in both cases enforceable in the same way as a Court ruling. The type of arbitration chosen does not affect the procedure, but does affect the way the arbitrator considers issues and finally resolves the dispute.

- b) **Mediation**: by means of the mediation process, the parties try to reach an agreement to settle the dispute with the intervention of a third party (the mediator). If the parties reach an agreement, it would be binding and enforceable in the same way as a Court ruling. However, the process does not have to be completed. Even if the initiation of a mediation process was foreseen in an agreement in order to settle the dispute, the parties are entitled to close the mediation process at any time before reaching an agreement.

- c) **Expert determination**: although there is no legal provision that regulates the expert determination as an alternative dispute resolution method, some technical contracts state the expert determination as a dispute resolution method.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Arbitration is governed by Spanish Arbitration Act n° 60/2003, of 23 December.

Mediation is governed by Spanish Mediation Act in civil and commercial matters n° 5/2012, of 12 July.

Court Mediation is governed by Spanish Civil Procedure Act n° 1/2000, of 7 January.

1.3 Are there any areas of law in Spain that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Yes. ADR methods are not contemplated in administrative or labour matters.

There is no specific regulation in Spain allowing alternative dispute resolution methods on criminal matters. Notwithstanding the above, the EU Council Decision 2012/29/EU of the European Parliament and of the Council of 25 October 2012 sets forth that Member States shall promote mediation in criminal cases.

Notwithstanding the above, since the implementation of the Spanish Mediation Act concerning Civil and Commercial matters, many judges have tried to promote the use of mediation as an ADR.

Furthermore, the Spanish Code of Civil Procedural Law states a mandatory attempt for mediation by the First Instance Court/Commercial Court at the beginning of the First Hearing.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court - pre or post the constitution of an arbitral tribunal - issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Spain in this context?

Courts provide specific support to arbitration both to improve the efficiency of the process and to enforce the arbitration award.

- a) Improving the efficiency of the process: the Courts are entitled to (i) refuse to admit a legal claim when there is submission to arbitration, (ii) appoint arbitrators whenever the parties have not submitted the matter to an arbitration body, (iii) adopt interim measures before the arbitration has started or once the arbitration has started, and (iv) assist the arbitrator in reviewing and evaluating evidence (to request the exhibition of any document, etc.).
- b) Enforcing the arbitration award: the Courts shall enforce the awards in the same way as a Court ruling.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Spain in this context?

- a) Arbitration: the arbitration award is binding on the parties in the same way as a Court ruling. In fact its binding effect is even stronger than a First Instance ruling. Whereas a First Instance ruling could be challenged before a higher Court which is entitled to review the assessment of the evidence, an arbitration award can only be challenged under very restrictive and limited grounds (such as nullity of the arbitration award, breach of the procedure for the appointment of the arbitrator, etc.).
- b) Mediation: the mediation process is ruled by the Spanish Mediation Act and is a voluntary action, and the parties are entitled to discontinue the mediation process whenever they choose.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Spain?

- a) International Courts:
 - a. *Corte Internacional de Arbitraje de la Cámara de Comercio Internacional* (ICC) with premises in Barcelona.
- b) National Courts:
 - a. *Corte Civil y Mercantil de Arbitraje* (CIMA).
 - b. *Tribunal Arbitral de Barcelona* (TAB).
 - c. *Corte Española de Arbitraje* (CEA).
 - d. *Corte de Arbitraje del Colegio de Abogados de Madrid* (ICAM).
 - e. *Corte de Arbitraje de la Cámara de Comercio de Madrid*.

2.2 Do any of the mentioned alternative dispute resolution mechanisms provide binding and enforceable solutions?

Yes. Arbitration provides binding and enforceable solutions in the same way as Court proceedings.

3 Trends & Developments

3.1 Are there any trends in the use of the different alternative dispute resolution methods?

Since the implementation of the Spanish Mediation Act concerning Civil and Commercial matters, many institutions in the legal sector (law firms, academic institutions, arbitration institutions) have started to promote the use of mediation as an ADR through the participation in associations (*Gemme*), the creation of working groups, etc.

In particular, any national institutions which have arbitration Courts (such as the Chamber of Commerce, the Bar Association) have implemented mediation departments in order to meet a potential future demand for mediation which may surface within the next few years.

However, despite the Spanish Mediation Act being enforced for over one year the current scope of the implementation of mediation as an ADR system is still unknown as there is no concrete and updated data on this issue.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those alternative dispute resolution methods in Spain.

Spain has a large number of arbitral institutions (58) and during the last few years arbitration seems to have finally taken off. There is a clear intention to make Madrid a new centre for international arbitration and the platform for arbitrations connected to Latin America.

This impulse is mainly due to the following factors: (i) it has proven to be a system of quick resolution; (ii) it guarantees confidentiality to the parties involved; and (iii) the recent legal amendments enacted by the current Ministry of Justice, which has significantly increased judicial fees, tend to improve the perception of arbitration to parties, which has been traditionally considered to be expensive.

Although there are no unified statistics showing the evolution of arbitration in Spain, the use of this mechanism is experiencing a

clear upward trend. The Spanish Court of Arbitration registered an increase of 12% last year and the Arbitration Court of the Commerce Chamber of Madrid has also increased its activity during the same period by nearly 15%.

Arbitration in Spain has specifically grown in regards to renewable energy (like the solar energy sector) and preferred stocks (“*participaciones preferentes*”) conflicts.

Very recently, the Court of Appeal of Madrid (“*Audiencia*

Provincial”) served a ruling by means of which the referred Court admitted the validity of a hybrid clause submitting disputes to arbitration and jurisdiction at the same time. Therefore, by virtue of this kind of clause, the claimant is now entitled to serve a claim before the judicial courts despite having signed a submission to arbitration with the defendant. The acceptance of such a hybrid clause by the Spanish Case Law will probably increase the arbitration proceedings as well.



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