

大成 DENTONS

Manufacturing in Spain



Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.



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Spain and the European Union



Spain is the best European platform for doing business with countries around the world and, especially, due to its geographical position, Spain is a strategic point between America, the EU and Asia.

Spain has very good commercial relationships with different countries. For example, Spain is part of 17 agreements to avoid double taxation in Central and South America and has 19 Agreements for Reciprocal Protection and Promotion of Investments with several countries in the world.

In relation to connections with the rest of the EU, there are more than 4,000 weekly flights to the main international destinations. Spain is the 3rd largest worldwide (1st in Europe) in high-speed network, and it is the European leader with more than 2,500 km in railway service.



**Preparing
to manufacture:**
greenfield and
brownfield projects



A. Corporate vehicles

EU access: As Spain is a member of the European Union (EU); if you set up a company in Spain, you may use it to do business in other EU member states.

Types of companies: Typically, you would set up a limited liability company (in Spanish Sociedad Limitada or S.L.) or a stock corporation (in Spanish Sociedad Anónima or S.A.) You can own 100 percent of shares or participation units.

Main differences between S.L. and S.A.: S.L., which is roughly the equivalent of a private limited company (in the UK) or a GmbH (in Germany), is more common, and the social capital required amounts to €3,000. You would use an S.A. if required by law (such as for a bank or insurance company) or if you intend to list your company on a stock exchange market. The minimum social capital required to set up an S.A. is €60,000.

The advantages of an S.L. include: (1) It is cheaper and there are fewer formalities; (2) It is flexible, and (3) It can conduct almost any kind of business (though not banking, insurance or gambling). Furthermore, the liability of the shareholders is limited to the capital share amount.

B. Real Estate, Construction and Insurance

Real Estate

Citizens or commercial entities of member states of the European Economic Area (EEA) do not need a permit to buy real estate in Spain.

Golden Visa: In 2013 Spain introduced a law offering residency permits to non-EU nationals in return for an investment of €500,000 or more in Spanish real estate.

This law enables non-EU nationals to receive qualified residency permits in return for investing in Spanish real estate (and other assets), leading to long-term residency in Spain if certain conditions are fulfilled.

Recommendations

- Title, zoning and kind of land due diligence is vital: You should ensure that your advisors do due diligence of the title of the real estate, zoning, urban issues, environmental aspects, type of land, permits and licenses already obtained or to be obtained, depending on the activity to be performed.

Construction

- **Zoning plans:** if there is a local Zoning Plan, the design of any structure you propose to build must meet certain requirements. It must be in strict compliance with the Zoning Plan.

The Building Permit must be issued directly based on the Zoning Plan. Only certain minor developments, repairs or modifications of existing structures may be made without a Building Permit.

- **Environmental and Building Permit:** You must apply for an Environmental Permit, then a Building Permit (there is a special form). When you have a final Building Permit, construction can begin. The Building Permit is granted by public local entities of each region in Spain.
- **Construction contracts:** FIDIC (for international purposes) and other international model construction contracts are often used for major, complex development. For national purposes, construction contracts according to Spanish law are used.
- **Co-investment agreements:** Residential construction is mostly done using co-investment agreements (agreements on new construction financed by the future property co-owners). The legislation has certain special requirements and procedures for this co-investment.

- **Occupancy Permits:** Generally, if you build a simple structure, you can use it after you notify the competent authority that the works are completed, unless the authority objects. For more complex structures, you need an Occupancy Permit.
- **Legalization of structures built without permits:** The Spanish Construction Law contains procedures for the legalization of structures built without the necessary permits or in violation of the terms of any permit.

Recommendations

Due diligence: Extensive due diligence should be conducted when choosing a plot of land for construction or an existing construction.

The following issues require special attention:

- Title ownership history
- History of the plot of land formation and allocation and adjustment of its boundaries, especially when the existing lease rights are acquired or the land plot was granted into private ownership under privatization procedures
- Change of the category and permitted use of the land plot and compliance with all applicable procedures
- Any encumbrances and potential limitations in use.

Contractor liability: When drafting and negotiating the contract with the general contractor, special attention should be paid to the contractor's liability for poor quality work or breach of the construction terms or terms of delivery.



C. Administrative law – dealing with authorities

In order to set up a company, usually you will not need administrative consent to set up and run it (save for specific activities provided by law).

If the company carries out its activity in a plant or real estate, it will be required, depending on the activity to be performed, to apply for the environmental license.

The main requirements to contract with Spanish Public Authorities are (i) to be up to date with the payment of social and tax duties; (ii) not being subject to any prohibition (condemned by final judgment on criminal issues, not to be in an insolvency proceeding, not to be sanctioned for serious infringement in labor issues, etc.) and (iii) to possess all permits required for doing business in Spain.

Currently, in order to contract with the Spanish Public Authorities, some authorities ask for compliance programs.

Recommendations

There are many forms and requirements to obtain contracts with Spanish Public Entities as well as to obtain aid from them. For that reason, it is important to obtain advice from lawyers who handle these types of issues.

D. Employment

Minimum gross monthly salary (changes at least annually): €735.90

Your basic obligations as an employer:

- Observe the labor legislation, internal policies, collective bargaining agreements, pension plans and employment contracts.
- Provide the work stipulated by the employment contract to employees.
- Register employees in the Spanish Social Security System and with other Spanish Public Authorities.
- Ensure safety and working conditions that meet state labor protection requirements.
- Supply employees with equipment, tools, technical documentation and other tools which they require to do their jobs.
- Pay the full wages/salaries payable to employees within the time set by the Workers' Statute, the applicable collective bargaining agreement, internal policies and employment contracts.
- Hold collective bargaining negotiations and conclude collective bargaining agreements in accordance with the procedure established by the Workers' Statute, where appropriate.
- Provide health and safety at work training for your employees.
- Obtain work permits for foreign employees, if necessary.
- Pay mandatory social contributions for employees in accordance with Workers' Statute.

Workers' Statute

Employment law is codified and highly regulated. An employment contract cannot be less beneficial for an employee than the provisions of the Workers' Statute and other generally binding regulations. Please also note that Employment Courts are very protective of employee rights.

Employment contracts

The basic form of employment is an indefinite term employment contract. However, Spanish current legislation provides a number of ways to recruit employees, which may be summarized into two (2) categories: indefinite contracts and fixed-term contracts (which include: (i) training contracts and (ii) placement contracts).

- (i) Indefinite contract: It is for a non-fixed term, and it may be concluded verbally or in writing (for employment training programs, part time, relay and fixed-discontinuous contracts, remotely or distance contracts and for workers displaced abroad, it is mandatory to conclude the contract in writing).
- (ii) Fixed-term contracts: Fixed-term employment contracts must be concluded in writing, and there are three main groups of fixed-term contracts: (i) contract for a specific project or service (the term depends of the project or service provided); (ii) temporary contract (it must be concluded for a maximum of six months within a period of twelve months) and (iii) provisional contracts (depending on the employee's absence term).
 - a. Training contracts: They must be concluded in writing and are for workers between 16-25 years of age who lack the professional qualification recognized to apply for a placement contract. The term shall be between one year (six months if it is stated by collective agreement) and three years. There are many aids for employers which use this kind of contract.
 - b. Placement contracts: This contract may be concluded in writing, and is for those who are in possession of a university degree or vocational training of a medium or higher degree or titles officially recognized as equivalent; said person must have obtained the title within the term of five years.

Probationary periods

A probationary period may be agreed on in writing, subject to the limits of duration, which, as applicable, are established in the Collective Bargaining Agreements. In the absence of a stipulation in the Collective Bargaining Agreement, the duration of the probationary period shall not exceed six months for qualified technicians or two months for other workers. In companies with less than twenty-five workers, the probationary period shall not exceed three months for workers who are not qualified technicians. In the case of temporary fixed-term contracts concluded for a period not exceeding six months, the probationary period may not exceed one month, unless otherwise provided in a Collective Agreement.

If the result of the probation period is unsatisfactory, the employer may dismiss the employee without prior written notice and without the need to indicate the reasons for their dissatisfaction.

During the probation period, the employee may also resign without prior written notice and without the need to indicate the reasons for his/her resignation.

However, temporary disability, maternity and adoption or foster care, which may affect the worker during the probationary period, interrupt the computation of the same as long as there is an agreement between both parties (employer and employee).

Compensation for dismissal

In the event of objective dismissal based on economical, organizational or financial ground, employees are entitled to receive minimum legal compensation of 20 days' per year of service, up to a maximum of 12 months' pay.

In the event of unfair dismissal of an employee who had an open-ended contract, employees are entitled to receive a minimum legal compensation of 33



days per year of service (if the employment contract entered into force after February 12, 2012. If it is before said date, the minimum legal compensation will be 45 days per year of service), up to a maximum of 24 months' pay.

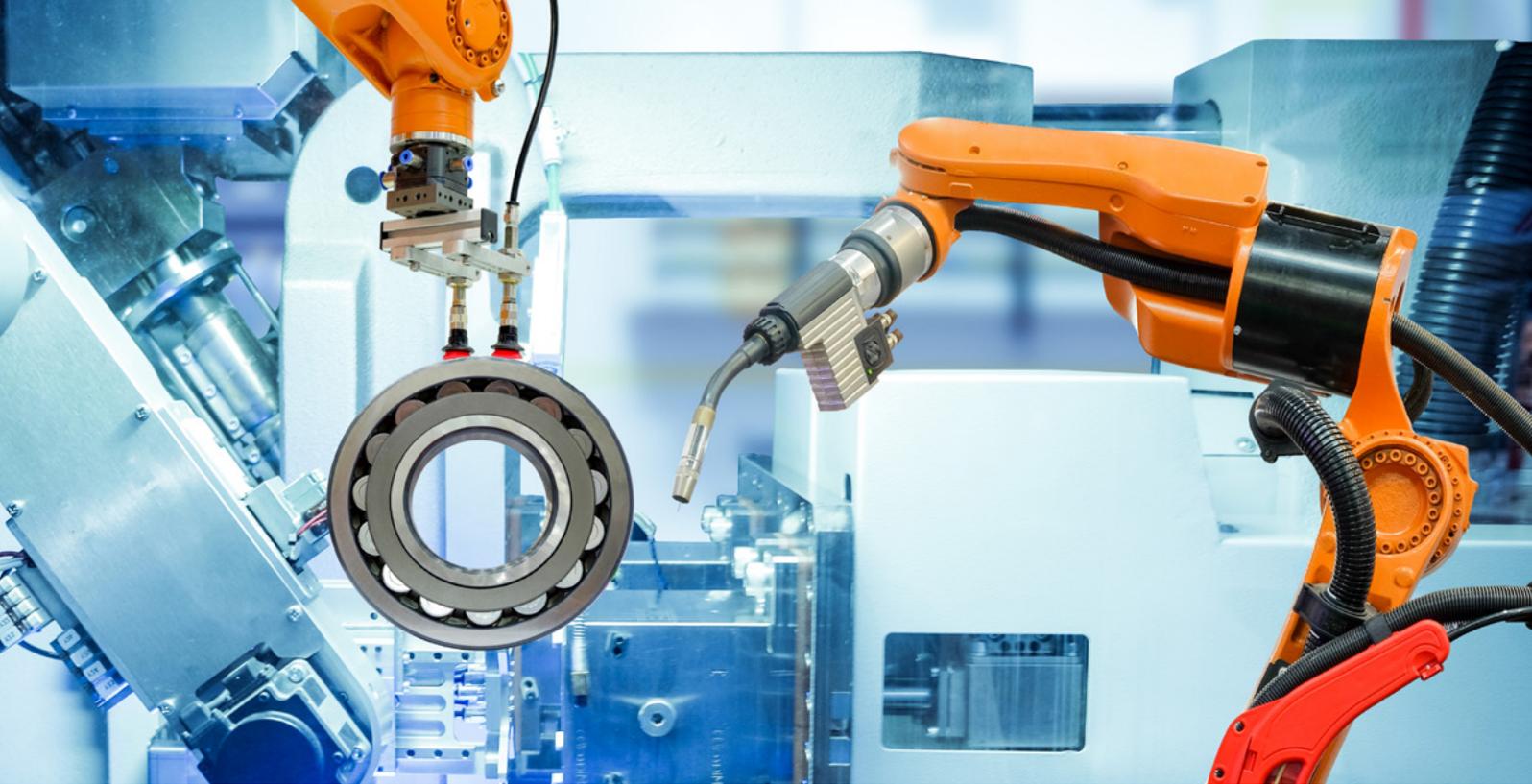
In relation to dismissals, there are some types of employees who are protected before a dismissal and their dismissal may be considered null or void:

- Employees during the period of suspension of the employment contract due to maternity, risk during pregnancy, risk during breastfeeding, diseases caused by pregnancy, childbirth or natural breastfeeding, adoption or foster care or paternity.
- Pregnant workers, from the date of the beginning of pregnancy until the beginning of the period of suspension, employees who are requested or enjoying a leave of absence, employees who are victims of gender violence due to the exercise of their rights related to the working time or geographical mobility.
- Employees after having returned to work at the end of periods of suspension of the contract for maternity, adoption or foster care or paternity, provided that no more than nine months have elapsed since the date of birth, adoption or foster care of the child.
- Employees who hold employees representation or are members of the Working Council.

Recommendations:

Employment contracts: In order to be binding on the employees and enforceable, employment must be officially adopted in the Spanish language by the authorized management body of the employer, and the employees must be familiarized with the stipulations (bilingual versions are permissible, but in case of discrepancies the Spanish version prevails). There are Spanish official employment contract models that shall be completed in order to be registered before the competent Spanish Authorities.

Consider hiring a Spanish lawyer who provides you legal advice on labor issues. Spanish labor law is highly formalistic and bureaucratic, so it is impossible to ensure compliance and observe even the most basic rules without the assistance of a person specialized in Spanish labor law.



E. Tax and State aid

Rates in Spain

Corporate Income Tax: 25 percent (15 percent for new companies incorporated during the first two years).

Value Added Tax: 21 percent (10 percent and 4 percent for some products).

Personal Income Tax for residents: from 19 percent to 45 percent.

Spanish taxes for non-residents:

- (i) Capital gains resulting from transferred assets are taxed at a rate of 19 percent.
- (ii) Investment interest and dividends are taxed at 19 percent, although are typically lower through double taxation agreements. Interest tax is exempt for EU citizens.
- (iii) Royalties are taxed at 24 percent.
- (iv) Pensions are taxed at progressive rates, from eight percent to 40 percent.
- (v) There is a special tax regime for foreigners coming to work in Spain on an employment contract with a Spanish company, which is known as "Becham's Law".
- (vi) Resident taxpayers in Spain are granted certain Spanish tax deductions and allowances (personal allowance for everyone, deduction for having children, etc.).

The basic options for acquiring an existing business in Spain are: (1) a share deal or (2) an asset deal. Each has different tax effects on the projected financial forecasts and transfer of historic tax risks and liabilities to you, as purchaser, that require careful consideration.

You must register your business with the tax authorities. Failure to comply with this requirement could cause tax fines and, under certain circumstances, criminal prosecution.

There are dual taxation agreements to avoid double taxations with 93 countries.

In relation to the VAT, the transfer of a company or business units is not subject to VAT. However, if the company has real estate, the transfer of said property shall be subject to the payment of ITP or VAT.

In relation to the Corporate Tax, the difference between the transfer value (price) and the real value of the business assets that are transferred shall be included in the tax base of the company.

In order to facilitate corporate reorganizations, the Spanish tax system provides for a well-established special regime based on the principles of non-intervention by the tax authorities and tax neutrality. Likewise, there is a special tax regime applicable to holding companies (in Spanish, ETVE).

There are many national, regional and local incentives available in all Spanish Autonomous Communities.

Recommendations

Spanish tax laws, regulations and court practice are subject to frequent changes and varying interpretations. If properly organized and focused, a tax due diligence of a target could help you in assessing the target's fair value and in subsequent negotiations of the price and seller's tax warranties and indemnities for the transaction.

Consider your investment structure at the outset: You may take advantage of a number of legitimate investment structures that are tax efficient, such as share exchanges, tax consolidations, closed-end investment funds, step-ups on acquired assets and others. However, you should do your planning before you are willing to make your investment.

F. Protecting your intellectual property and complying with data privacy obligations

Intellectual Property

Spain is party to a number of international treaties regulating intellectual property (IP), including the Berne Convention for the Protection of Literary and Artistic Works, the Madrid Agreement Concerning the International Registration of Trademarks and the Patent Cooperation Treaty.

As a result, Spanish IP law applies a similar logic and approach to those in most countries of the world. However, there are several important peculiarities which have a practical effect and should be considered when doing IP-related business in Spain.

Copyright

Copyrights gain protection as soon as they are created and do not require any special registration or marks to be recognized by law. Copyrighted works should have creative input. Software and databases are specifically protected as works of literature.

However, ideas, concepts, methods, processes, systems, approaches, technical, business and other solutions, discoveries, facts, and programming languages cannot be copyrighted. As a general rule, the term of an exclusive right is the life of the author plus 70 years starting from January 1 of the year following the author's death. However, there are many exceptions to this rule.

In contrast to some other jurisdictions, moral rights (the right of authorship, the right to the author's name and the right to the integrity of the work) cannot be waived or alienated and follow the work irrespective of the current copyright holder.

Patents and utility models

Patents and utility models are titles granted by the Spanish state that give its holder the right to prevent others from temporarily manufacturing, selling or commercial use of the protected invention in Spain.

The patent holder is obliged to exploit it, by himself or by a person authorized by him, by executing it in Spain or in a territory member of the World Trade Organization.

The exploitation must be carried out within a period of four years from the date of presentation of the patent application, or three (3) years from the date of publication of the concession (the term that expires later applies). If the patent is not exploited, it may expire.

As a general rule, the protection term for inventions is twenty years, while utility models are protected for ten years.

The following cannot be protected by patent or utility model: discoveries, scientific theories and mathematical methods, literary, artistic and scientific works, economic-commercial methods, computer programs, forms of presentation of information, races animals and plant varieties, inventions that are contrary to public order or good customs, the human

body at all stages of its constitution and development and essentially biological procedures for obtaining plants and animals.

Procedural inventions cannot be protected as utility models, nor can chemicals or food.

With the aim of obtaining a patent with effects in Spain, three ways may be used:

- (i) National application. The application is prepared following the requirements established by the Spanish Patent Law.
- (ii) European application. Since 1986, Spain has been part of the European Patent Convention, which allows to obtain a set of national patents through a single application at the European Patent Office (EPO).
- (iii) International application or PCT. Since 1989, Spain has been a party to the Patent Cooperation Treaty (PCT). This system allows to request the protection of an invention in each of the signatory states of the PCT through a single request. It is not a procedure for granting patents, nor does it replace national concessions, but unifies the processing of international protection.

Trademarks

Trademarks are also subject to registration.

Trademarks not registered in Spain are not protected.

In order to protect trademarks abroad, it is possible to obtain them as follows:

- Country by country application.
- International trademark application. This procedure is ruled by the Madrid Agreement and its Concerning, and it is possible to protect it within 114 countries through one application.
- EU Trademark application. This procedure is ruled by the EU Trademark Regulation, and it is possible to protect it in EU member states through one application.

As a general rule, the exclusive right to a trademark is effective for 10 years starting from the date of application. This term may be renewed multiple times.

Know-how

Any information (production, technical, economic, business, etc.) can be considered know-how if such information has real or potential commercial value, and the owner takes reasonable measures to keep the information confidential (e.g., by setting up commercial secret procedures). The right to know-how is an exclusive right which can be licensed or alienated. One practical limitation of know-how is that the exclusive right to it exists as long as the confidentiality is kept. If confidentiality is broken for whatever reason, all exclusive rights cease to exist by operation of law.

Recommendations

Consider agreement forms. According to Spanish law, exclusive rights to intellectual property can be transferred from one to another person under a license agreement or an agreement on alienation of exclusive rights. Each kind of agreement should be made in writing—otherwise it will be invalid—and must describe the intellectual property transferred.

A license agreement must also specify the territory and period of use.

Finally, a license agreement must explicitly specify the ways in which the licensee is permitted to use the intellectual property. Sublicensing is possible if permitted by the licensor in writing.

Trademark registration: If you intend to register your trademark in Spain, it is highly recommended to carry out a preliminary trademark search to avoid any potential opposition or unintentional infringement of existing trademarks. The same recommendation is applicable to patents. You should also file a trademark application as soon as you have chosen a logo for your goods or services (otherwise, your competitors or trademark squatters can register it before you), and



make sure you own copyright in a design before you file a logo trademark application. To avoid the risk of trademark cancellation for non-use, make sure you use your logo trademark as soon as it is registered.

G. Free Trade Zones and Special Economic Zones (SEZ) in Spain

In Spain, there are seven SEZ situated near major industrial, academic and transportation hubs in outlying regions. SEZ are located in Barcelona, Santander, Vigo, Cádiz, Tenerife, Las Palmas de Gran Canaria and Sevilla.

The main benefit is that the goods that arrive at these ports for re-export purposes are exempt of custom duties and VAT.

Likewise, a Spanish free-zone company can be 100 percent foreign owned and does not need a local director.

Some other incentives. Special Canary Zone (SEC)

There is a special economic zone located in Las Palmas de Gran Canaria (Canary Islands) with the objective of providing incentives to establish economic plants and facilities in the Canary Islands; among other fiscal benefits, the corporate tax is reduced to four percent. Similarly, a special value-added tax is imposed at the rate of seven percent, including several exemptions, such as in the case

of goods imported to the Canary Islands by a SEC company.

SEC fiscal benefits are generally available to manufacturing, processing and distribution companies, as well as several types of service companies, with the exception of financial-service providers.

Requirements to secure SEC registration approval in Canary Islands:

- At least one director must be resident in the Canary Islands;
- Minimum investment commitment of €100,000 within two years of obtaining ZEC status; and
- Within six months of registration approval, the ZEC company must hire at least five local staff or relocate existing employees and maintain the same throughout ZEC status.

The activity of SEC has been extended until 2026 (which will be extendable with the prior authorization of the European Commission).

Operating





A. Connecting to utilities

First, you need to know when you want to connect to utilities and if the real estate was connected in the past or not. New connections are only for when there is no supply already existing.

If your real estate does not already have connections to utilities, you will need to contact the distributor assigned by area in Spain.

Immediately after buying or renting real estate (unless utilities are included in the rent), you should arrange to register the contract (e.g. electricity, gas or water) with your name, and the service will be switched on.

The utility companies provide provision of service contracts that contain general conditions applied to the customers. There are many tariffs to choose according to your preferences.

B. Health and Safety

It is an employee right recognized by the Spanish Constitution.

Spanish Law 31/1995 on prevention of occupational risks rules health and safety obligations for the building and employees.

It is mandatory for the employer to implement a plan for the prevention of occupational risks (PPRL) in the company and keep it operational permanently.

C. Trade unions

Employees have the right to be represented before the employer. This right cannot be removed by the employer.

There are two types of representative of employees: personnel delegates and work council.

Personnel delegates: When the workforce is comprised of between six and ten employees, they may propose one personnel delegate. If the company is comprised of between ten and 50 employees, there may be up to three personnel delegates.

Work council: When the company has more employees, employees shall create a work council with the number of representative between five and 75.

Trade unions: Trade unions are ruled by Spanish Law 11/1985 on Trade unions freedom. The workforce shall be higher than 250 employees and delegates represent to the trade unions and handle the formal complaints that are raised by employees to the trade union.

Depending on the employment size, there will be:

- 250-750 employees: one trade union delegate
- 751-2,000 employees: two trade union delegates
- 2,001-5,000 employees: three trade union delegates
- More than 5,001 employees: four trade union delegates

D. Industrial risk & insurance

The employer shall draft a report about the industrial accident.

The employer shall inform the Local Labor Authority within a term of five days from the labor incident.

The employer must give the injured employee a copy of the accident report sent to the Labor Authority.

The medical center shall provide a report about the incident and, if it is necessary, the employee may be in a situation of work leave due to illness or accident.

E. Commercial and Insolvency related risks related to suppliers

Sometimes, in commercial contracts there are some “change of control clauses” stipulated, which means it is not possible to subrogate or cease agreements.

According to Spanish law, it is not possible to cancel a commercial contract when a company enters into an insolvency proceeding. Furthermore, clauses stating that a contract can be released when the supplier enters into an insolvency proceeding can be considered null and void.



F. Defending your intellectual property

The defense of Industrial Property rights is entrusted by law to the Spanish Courts and is carried out through the exercise of civil or criminal actions provided that the circumstances and requirements provided by law are met.

There are several legal actions against the infringement parties:

- Cease of activity: the injured party may demand the cease of the activity (a) suspension of the infringing exploitation; (b) prohibition of the offender to restart the activity; (c) withdrawal of illicit products and their destruction; (d) inactivation and, if necessary, destruction of molds, plates, matrices, etc.; (e) sealing of the devices used in unauthorized public communication, among others.
- Claim for damages: The injured parties may claim compensation for infringing their rights protected by Spanish law.
- Precautionary measures: In the event that there has been an effective infringement of intellectual property rights or that there is a rational and well-founded fear that it will occur, the judicial authority (at the request of the rights holders) may establish precautionary measures that are necessary for the protection of such rights.

Competent jurisdictions to hear a Trademark and Patent Litigation case. Currently in Spain, said litigation procedures are carried out in “Commercial Specialized Courts” which are located in Cataluña, Community of Madrid and Community of Valencia. In case there are no links with said places, another jurisdiction may be chosen.

G. Regulation compliance

Depending on the product marketed by the company, there are some requirements that you need to comply with prior to the sale of the products, for example, notification to Spanish Health Agency, if your product belongs to the food industry.

Depending on the activity carried out, you will need prior consent by Spanish Public Authorities to develop the activity or to commercialize several products by a labelling and other requirements point of view.

H. Competition law investigations

In Spain, the CNMC is the public entity that applies antitrust rules.

The main three competition law investigations that are carried out by CNMC resulted from collusive, abusive and/or unfair practices.

In the event that a company signs a contract contrary to the antitrust rules, this contract would be totally or partially null and therefore, the counterparty could not be required to comply with it.

I. Tax investigations

Due to international transactions and business, the Spanish Tax Office may request information to business between companies located in different cities and/or countries.

J. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in Spain

The Spanish government recognizes corruption as one of the most serious problems facing the country and has taken various steps to fight it, including increasing sanctions and bringing the legislation in line with international standards. Nonetheless, corruption remains widespread particularly in such areas as, inter alia, customs, law enforcement, various licensing and registration procedures, public procurement and tenders.

Sanctions for bribery offences vary depending on the amount of the bribe and other circumstances and can include, in particular, fines, imprisonment and/or a prohibition to hold certain positions or to carry out certain activities.

Not only individuals, but also companies are subject to criminal liability in Spain. For that reason, companies have an obligation to prevent and detect anti-bribery, anti-money laundering and whistle-blowing in their companies and to inform Spanish authorities.

Likewise, companies shall implement a “Compliance Program” to their employees and Directors in order to prevent unfair conducts.

In addition, in M&A transactions and public contracts with the Spanish Public Entities, it is very common the request of a “Compliance program” in order to check if its application is being correctly implemented in order to prevent and avoid potential claims for said practices in the future.

The background of the slide is a photograph of industrial machinery, possibly a textile mill or a similar manufacturing plant. The image is heavily overlaid with a semi-transparent purple color. The machinery consists of various metal frames, pipes, and large rollers. The lighting is somewhat dim, and the overall tone is industrial and technical.

Acquiring and selling a plant

(buy side & sell side
key check points)



A. Share deals & Asset deals

When a purchaser acquires 100 percent of the shares, there is a transfer of all rights and obligations of the company. In this regard, the company maintains the same condition without altering its equity and composition of assets and liabilities.

The change of ownership of shares does not affect the relationship with third parties or reduce the burden of the obligations.

In relation to asset deals, parties may agree on which assets or liabilities are included in the deal. Therefore, the purchaser will only face the burdens and contingencies associated with the specific activity or assets.

In relation to the limitations of selling shares or assets, it is mandatory to review the articles of association of the company.

With reference to Spanish S.L. companies, the seller shall notify the Company previously. According to Spanish Corporate Law, the rest of the shareholders have right of first refusal.

In relation to Spanish S.A., in addition to the articles of association review, it shall be mandatory to review if there are some limitations on the nominative shares.

B. Real Estate

A due diligence report in relation to the title of the plot of land or plant, encumbrances and charges, environmental licenses, activity license for working, excerpt from the Property Register and cadastral situation must be considered at any time.

Environmental issues: Depending on the location of the real estate, it will be necessary to check environmental conditions in order to prevent a potential Spanish administrative fine.

In the event that the seller is the owner of the real estate, an appraisal of the real estate is advisable to be included in the price of the deal.

In case the seller is the lessee of the real estate, it shall be necessary to review the conditions of the lease agreement ((i) term of the agreement; (ii) price; (iii) limitation clauses of transfer, etc.).



C. Third party suretyship on the plant

In relation to the lease for business purposes, a deposit equal to two months will be required.

During the first five years of the contract, the deposit is not subject to update. At the end of the contract, the balance of the cash deposit must be returned to the lessee.

In relation to credits, as a general rule all credits may be transferred except where otherwise agreed.

In relation to mortgage, it is common that the purchaser subrogates himself in the conditions of the mortgage, except where otherwise agreed in the mortgage agreement between parties (i.e. change of control clauses). However, when you purchase a plant, it is possible to cancel the mortgage and grant another.

D. Employment & trade unions

The change of ownership of a company (in share deals) does not extinguish by itself the contracts of employment that the previous employer had concluded, being subrogated the new employer in the Labor and Social Security rights and obligations.

The employment contracts that were in force continue in their terms and conditions, placing the new employer in the same contractual position as the previous employer.

The seller and purchaser are jointly and severally liable for three years of labor obligations born prior to the transfer and that had not been satisfied.

In relation to workers council and trade unions, the seller and purchaser shall inform work councils in advance about (i) scheduled date for the transfer; (ii) reasons for the transfer; (iii) legal, economic and social consequences for employees and (iv) planned measures regarding employees.

Transfer of undertakings protection of employment (TUPE): If the company has concluded senior management employment contracts (which are ruled by a specific Spanish law) with some employees, when a company is purchased and leads to a change of control, the senior manager has the right to terminate the employment contract and request the agreed compensation according to said contract.

E. Specifics for distressed assets

Companies may be purchased in each stage of an insolvency proceeding. During the first stage of the insolvency procedure, as a rule, assets cannot be sold without the approval of the Court. However, there are some exemptions in relation to the sale of assets. If the sale of assets of the company is important for the continuity of the company, it is possible to carry out with the consent of the Bankruptcy Director, appointed by the Court.

During the second stage of the insolvency proceeding, some assets and business units may be sold. In this regard, the purchaser shall continue with the activity of said business units and pay the debts related to the specific business units purchased according to the Insolvency agreement.

During the third stage, it is very common that the company is sold as a whole, unless the court states that it is more beneficial to sell separately or by business units.

F. Merger control

When a merger takes place, the main effects are:

- The total transfer of assets and liabilities of one or more companies to the company recipient that may be: (i) an existing company (absorbing company) or, on the contrary, (ii) company that is expressly incorporated for that purpose.
- The extinction, because of the merger, of the companies that have transferred its heritage.
- The perception of shares, participations or quotas by the partners of the extinct companies.
- It will be necessary to draft a merger project that contains the main points of the transaction and the adopted agreement that is required.

In relation to M&A transactions to take control of a company, the most common mean is the purchase of shares. However, there are other means, for example LBO/MBO or OPAs, which are widely used.

G. Tax risks

When the sale of a company is carried out, the seller and purchaser shall submit reports and information about the transaction to the Spanish Tax Office.

It is important to value what assets are transferred in the transaction in order to check potential tax issues.

H. Intellectual Property & Technology acquisition

In relation to the acquisition of a company with IP&IT rights, said rights shall be enumerated and described in an inventory.

The transfer of patents and trademarks must be registered in the Spanish Patent and Trademark Office (OEPM).

In relation to the valuation of IP&IT assets, there are three (3) main categories which are: (i) valuation based in the market price; (ii) valuation based in costs and (iii) valuation based in economic profits in the past and future.



Closing down

– moving away
manufacturing
from Spain



1. To reach the agreement to dissolve the company, it is mandatory to adopt the dissolution agreement through a General Shareholders' Meeting.
2. It is an obligatory step in the case of those organizations that attend any of the causes listed by law and refers to the convocation of a General Meeting by the directors/shareholders.
3. The dissolution agreement shall be stated in a public deed before a Public Notary to be effective in Spain.
4. The public deed must be filed in the Commercial Registry.
5. It is possible to carry out the dissolution and liquidation of the company at the same time.
6. Registration/appointment of the liquidators. It may be carried out both when the dissolution of the company is agreed and during the liquidation.
7. Inscription of the designation of the liquidators. The liquidators of the company shall be registered in the Commercial Registry in which the company is located.
8. Process of liquidation, distribution of the social stock and public deed of extinction: This process shall be done before a Public Notary or with the participation of the liquidators of the company who shall draft a General Shareholder's Meeting Minutes stating said agreement.
9. Prior to distribution of the social stock to the shareholders, the debts shall be paid, and all commercial and employment agreements shall be terminated.
10. Liquidation of the Transfer Tax and Documented Legal Acts (ITP and AJD). The liquidation of said taxes due to the extinction of the company shall be filed.
11. This procedure shall be completed within a period of 30 working days from the granting of the public deed of extinction.
12. Application for registration of the extinction of the company and cancellation of registration entries takes place in the Competent Commercial Registry.
13. If you want to move production away from Spain, you must analyze the Corporate law that applies to the destination country.
14. The transfer abroad of the social domicile of a registered company incorporated under Spanish law can only be carried out if the State to which it is transferred allows the maintenance of the legal personality of the company.
15. The companies in liquidation or those in bankruptcy may not transfer the domicile abroad.
16. The shareholders shall approve the transfer of the company to another country.
17. Employees may accept to be transferred to another country, terminate their employment relationships with compensation or file a claim against the transfer of the company.
18. The Directors of the Company that intends to move the residence abroad will have to write and subscribe to a transfer project.
19. The Directors will prepare a report explaining and justifying in detail the transfer project in its legal and economic aspects, as well as its consequences for the shareholders, creditors and the employees.
20. Shareholders who have voted against the agreement to transfer the registered office abroad may be separated from the company in accordance with Spanish Corporate Law.

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