

Arbitration World

Jurisdictional comparisons

Third edition 2010

FOREWORD J. William Rowley QC, 20 Essex Street Chambers

PREFACE Adrian Winstanley, Director General, LCIA

GLOBAL OVERVIEW Constantine Partasides and Greg Fullelove, Freshfields Bruckhaus Deringer LLP

AAA/ICDR Guy S. Lipe and Timothy J. Tyler, Vinson & Elkins LLP

ENERGY CHARTER TREATY Karyl Nairn and David Herlihy, Skadden Arps Slate Meagher & Flom (UK) LLP

ICC Paula Hodges and Jennifer Kirby, Herbert Smith LLP

ICSID Stephen Jagusch and Matthew Gearing, Allen & Overy LLP

LCIA John Bellhouse and Phillip Capper, White & Case LLP

NAFTA Robert Wisner, McMillan LLP

SCC Hans Bagner and Helena Dandenell, Frank Advokatbyrå AB

SWISS RULES OF INTERNATIONAL ARBITRATION Dr. Georg von Segesser and Alexander Jolles, Schellenberg Wittmer

UNCITRAL Adrian Hughes QC, 39 Essex Street Chambers

WIPO Jane Player and Alejandro Garcia, Bird & Bird LLP

AUSTRALIA Doug Jones and Björn Gehle, Clayton Utz

AUSTRIA Dr. Andreas Reiner and Dr. Helmut Ortner, Andreas Reiner & Partner

BRAZIL Pedro Soares Maciel and Alfred Habib Sioufi Filho, Veirano Advogados

CANADA David W. Kent and Markus Koehnen, McMillan LLP

CHINA Peter Murray and Philippa Langton, Ince & Co

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GERMANY Dr. Wolfgang Kühn and Ulrike Gantenberg, Heuking Kühn Lüer Wojtek

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PORTUGAL Manuel P. Barrocas, BARROCAS Advogados

RUSSIA Ilya Nikiforov, Egorov Puginsky Afanasiev & Partners

SINGAPORE Michael Tselentis QC and Michael Lee, 20 Essex Street Chambers, and David Lewis, Maxwell Chambers

SOUTH AFRICA Desmond Williams, Werksmans Inc

SOUTH KOREA Tae Hee Lee, Lee & Ko

SPAIN David Arias and Tatiana Portillo, Perez-Llorca

SWEDEN Claes Lundblad, Roschier

SWITZERLAND Dr. Georg von Segesser and Alexander Jolles, Schellenberg Wittmer

TURKEY Dr. Ismail G. Esin, Esin Law

UNITED ARAB EMIRATES Essam Al Tamimi and Claire Clutterham, Al Tamimi & Co

UNITED STATES David W. Rivkin and Donald Francis Donovan, Debevoise & Plimpton LLP

General Editor: J. William Rowley QC
20 Essex Street Chambers

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confidentiality in the arbitral process. However, the commercial arbitration rules of the KCAB require that matters relating to the arbitral process are not to be disclosed (Article 8 of the KCAB commercial arbitration rules).

20. UNIQUE JURISDICTIONAL ATTRIBUTES

20.1 Is there any particular aspect of the approach to arbitration in the jurisdiction that bears special mention?

In general, Korean courts broadly recognise the effectiveness of arbitration agreements and the independence of arbitration provisions. They grant broad discretion in relation to the reasons to be stated in arbitral awards, with the aim of developing the arbitration system in Korea and to raise arbitration standards to the international level. Further, the KCAB promotes the advantages of arbitration and actively recommends the use of arbitration as a dispute resolution mechanism. Therefore, it is expected that arbitration will continue to develop further in Korea.

Spain

Perez-Llorca David Arias and Tatiana Portillo

1. USE OF COMMERCIAL ARBITRATION

1.1 Describe the prevalence of commercial arbitrations as a method of settling disputes, both domestic and international.

International business is increasingly looking towards Spain as a venue for dispute resolution. The past few years have seen clear growth in both domestic and international arbitration proceedings, as Spanish companies have learned to embrace alternative dispute resolution as a way of settling disputes, and international businesses are also becoming more attracted to Spain as an arbitration forum.

An increase in international commercial activity has generated the need for effective risk control methods with regard to cross-border commercial disputes. Arbitration has become one of the most frequently employed methods used by Spanish companies, considering that arbitration can reduce the inconveniences and possible uncertainties which litigation in a foreign country, under foreign legislation or in a foreign language could cause, as well as guaranteeing the enforcement of the adopted resolution. Recent studies on arbitration have revealed that the majority of companies prefer to use arbitration for the resolution of international commercial disputes.

2. LAW ON ARBITRATION

2.1 What are the principal sources of law and regulation relating to domestic and international arbitration? (Describe the role of federal or state laws and relevance of court decisions.)

The principal source of law on arbitration in Spain is the Spanish Arbitration Law, enacted in 2003 (*Ley 60/2003, de 23 de diciembre, de Arbitraje*), based on the UNCITRAL (United Nations Commission on International Trade Law) Model Law. The Spanish Arbitration Law guarantees an international arbitration proceeding with no external complications or challenges, while at the same time it foresees a system in which courts are able to assist the arbitration proceeding when necessary (such as enforcing interim measures) or assisting in collection of evidence. When determining the applicable substantive law in international arbitrations under the Spanish Arbitration Law, the arbitral tribunal does not have to abide by the conflict of laws rules. The arbitral tribunals shall take into account the applicable trade uses (ie the *lex mercatoria*) and the agreed contract terms. The Spanish Arbitration Law also allows for the most favourable approach to the validity of the arbitral clause. In this respect, it establishes that the arbitral agreement will be deemed valid if it is in force according to either the rules chosen by the

parties to govern the arbitral agreement, the rules applicable to the merits of the case, or Spanish law.

Apart from the Spanish Arbitration law, the national legal system for arbitration is complemented by important provisions included in several laws enacted in different fields, such as insolvency, administrative authorities and civil proceedings. Furthermore, there is important legislation on special arbitrations, concerning, among others, urban leasing, consumption, sports, brands, intellectual property, private insurance and transport. Finally, the rules of the various arbitral institutions are also a good reference on the subject.

2.2 List and briefly describe relevant arbitration statutes, international treaties and conventions.

Spain is a party to a number of international conventions on arbitration. The most important is the multilateral convention of New York of 10 June 1958 on the recognition and enforcement of foreign arbitral awards, as it means that the arbitral award will, almost inevitably, be enforceable in more than 130 countries. Spain is also a party to the multilateral convention of Geneva of 26 September 1927, on recognition and enforcement of foreign arbitral awards, the Protocol made in Geneva on 24 September 1923 on Arbitration Clauses, the European Convention of 21 April 1961 on International Commercial Arbitration and the Interamerican Convention on International Commercial Arbitration.

In addition, Spain has already signed, and will continue to sign, several bilateral investment treaties to reciprocally promote and protect investments made by investors from a member state in the territory of the other member state (the so-called BITS). Bulgaria, Colombia, India, Mexico, Russia, South Africa and Turkey are some of the many signatory states.

Spain has also signed several conventions on investment protection and on arbitration regarding investor-state controversies. As a member of the European Union, Spain has signed the Energy Charter Treaty (ECT), whose purpose is to promote East-West industrial co-operation through legal guarantees concerning investments, transit and trade. The ECT establishes strict arbitration procedures for settling disputes between either states or private investors and the country in which the investment was made.

3. PRINCIPAL INSTITUTIONS

3.1 What are/describe the principal institutions and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?

The Spanish Club of Arbitration (*Club Español del Arbitraje* or CEA) is Spain's leading arbitration institution. It was created in 2005 by a group of law firms and professionals working in the field of commercial arbitration. The club is very active, bringing together leading personalities from the Ibero-American arbitration world and has the following aims: the promotion of arbitration in the business community, the promotion of Spain as an international arbitration centre and the development of arbitration in Latin America. The

club was designed in order to serve as a forum of ideas among respected professionals and has its own journal, the Spain Arbitration Review, which has published documents such as Recommendations on Independence and Impartiality of Arbitrators, and the Code of Good Arbitral Practices, a code of practice in international arbitration. Some of the most outstanding lawyers and arbitration professionals are members of the CEA. The CEA is not an arbitration court, but a think tank to promote arbitration.

Among the leading arbitration institutions in Spain is the Court of Arbitration of Madrid (*Corte de Arbitraje de Madrid*) which became active in 1989. With the publication of its new rules and statutes in January 2009, the Court of Arbitration of Madrid has now positioned itself at the forefront of national and international arbitration. Its innovative rules are compatible with the main international standards and is responsive to the growing and changing needs of the court's users. In drafting its new rules, the Court of Arbitration of Madrid has received significant support from the CEA. Another important arbitration institution in Spain is the Civil and Commercial Court of Arbitration (*Corte Civil y Mercantil de Arbitraje* or CIMA), which was set up in Madrid in July 1989. Through the specific provisions set forth in CIMA's Procedural Ruling, foreign laws can be easily applied to the controversies submitted to it; therefore, it is another valid instrument for settling the differences arising in international commercial traffic and in relation to the disputes raised against or by foreign individuals or legal entities.

Furthermore, Spain's presence is also notable in arbitrations administered by the International Court of Arbitration of the International Chamber of Commerce (ICC). Indeed, there has been an important increase in the number of international arbitrations in Spain with a large number of Spanish parties in ICC arbitrations, the majority of which are heard in Madrid and Barcelona.

4. ROLE OF THE NATIONAL COURTS

4.1 What is the relationship between agreements to arbitrate and access to the courts? Is there a presumption of arbitrability/policy support for arbitration? Will the courts stay court actions in favour of agreements to arbitrate?

Spain certainly has arbitration-friendly courts. The Spanish judicial system is a strong supporter of arbitration and the vast number of court decisions back up the submission of disputes through arbitration. Moreover, new commercial courts with jurisdiction over arbitral proceedings involving certain commercial disputes have been established in order to ensure, *inter alia*, the existence of judges specialising in arbitration.

The Spanish legal system is governed by the principle of minimum intervention of the jurisdiction, which is contemplated in Articles 7 and 8 of the Spanish Arbitration Law. More specifically, Article 7 provides that no tribunal shall intervene in cases that are governed by the Spanish Arbitration Law, except for cases in which the Spanish Arbitration Law specifically states to the contrary. Such cases would regard the functions of support and control of arbitration itself, specifically foreseen in Article 8. That is to say,

the competence conferred by the parties to the arbitrator to solve a specific controversy between them is exclusive and excluding. In this sense, Articles 39 and 63-65 of the Spanish Procedural Law regulate the challenging of jurisdiction.

4.2 May an arbitral tribunal rule on a party's challenge to its own jurisdiction ('competence-competence')? Need a tribunal suspend its proceedings if a party seeks to test jurisdiction in the courts?

Only arbitrators are entitled to decide on their own jurisdiction by virtue of Article 22 of the Spanish Arbitration Law. Pursuant to Article 11.2 of the said law, the challenging of jurisdiction in the courts shall not prevent the initiating or continuing of the arbitral proceedings.

5. USEFUL REFERENCES

5.1 Provide a selected bibliography of the most influential publications in or relied upon in the jurisdiction – books, journals, newsletters and pamphlets.

Books

- David Arias, *Comentarios a la Ley de Arbitraje de 2003*, Navarra [2005]
 M. Gómez Jene, *El Arbitraje Internacional en la Ley de Arbitraje de 2003*, Madrid [2007]
 J. González Soria, *Comentarios a la Nueva Ley de Arbitraje 60/2003, de 23 de diciembre*, Navarra [2004]
 R. Hinojosa Segovia, *Comentarios a la Ley 60/2003, de 23 de diciembre, de Arbitraje*, Madrid [2008]
 Fernando Mantilla-Serrano, *Ley de arbitraje: una perspectiva internacional* [2005]
 J. Garberí Llobregat, *Comentarios a la Ley 60/2003, de 23 de diciembre, de Arbitraje*, Barcelona [2004]
 J. F. Merino Merchán, *Estatuto y Responsabilidad del Árbitro*, Navarra [2004]
 I. Heredia Cervantes, *Arbitraje y Concurso Internacional*, Navarra [2008]

Journals

- Spain Arbitration Review* (Revista del Club Español del Arbitraje, CEA)
Revista de arbitraje comercial y de inversiones del Centro Internacional de Arbitraje Mediación y Negociación del Instituto Universitario de Estudios Europeos (Universidad CEU San Pablo)
Revista de la Corte Española de Arbitraje

6. AGREEMENT TO ARBITRATE

6.1 Are there form and/or content requirements for an enforceable agreement to arbitrate? How may they be satisfied?

The Spanish Arbitration Law is very flexible regarding the validity of the agreement to arbitrate. Provisions in relation to form and content of the agreement to arbitrate are set forth in Article 9. The agreement to arbitrate, which may take the form of a clause incorporated in a contract or of an

independent agreement, shall express the parties' will to submit all or some of the controversies to arbitration that have arisen or may arise in the course of a particular legal relationship, be it contractual or non-contractual. If the agreement to arbitrate is included in a standard-form contract, the validity of the agreement and its interpretation shall be governed by the provisions that are applicable to this type of contract.

The agreement to arbitrate shall be in writing, in a document signed by the parties or in an exchange of letters, telegrams, telexes, faxes or any other means of telecommunication that registers the agreement. This requirement shall be deemed fulfilled when the agreement to arbitrate is stated and is accessible to further consultation in an electronic, optical or other medium. In this respect, the High Court of Madrid has stated that the agreement to arbitrate does not have to be materially expressed in an arrangement granted with unity of act and the joint signature of the parties, but only requires the evidence of the joint and unmistakable will of both parties to submit the controversies that may arise to the arbitral decision that they undertake to accept (Judgment of the High Court of Madrid 29 July 2005).

The agreement to arbitrate stated in a document to which the parties have referred in any of the ways mentioned in the previous paragraph, shall be deemed as incorporated into the agreement between them. It shall be understood that there is an agreement to arbitrate when in the exchange of statements of claim and defence its existence is confirmed by one of the parties and not denied by the other.

In an international arbitration, the agreement to arbitrate shall be deemed valid and the controversy susceptible to arbitration if it fulfils the requirements set forth by the legal provisions chosen by the parties in order to govern the agreement to arbitrate or by the legal provisions applicable to the basis of the controversy, or by Spanish law.

7. ARBITRABILITY

7.1 Is arbitration mandated for certain types of dispute?

The agreement to arbitrate is contingent on the parties' will to submit to arbitration all or some of the controversies that have arisen or may arise between them with respect to a certain legal relationship. In this sense, there are no legal provisions stating mandatory arbitration for any type of dispute.

7.2 Is arbitration prohibited for certain types of dispute (restraints of fundamental public policy)?

The arbitrability of a controversy coincides with the adequacy of its object for the parties according to Article 2 of the Spanish Arbitration Law. This provision also states that, in cases of international arbitration and if one of the parties is either a state or a company or organisation controlled by a state, that party shall not be able to appeal for the prerogatives of the law governing it in order to avoid the obligations arising from the agreement to arbitrate.

However, Article 1.4 of the Spanish Arbitration Law expressly states that labour arbitrations are excluded from its scope of application. Nevertheless,

inclusion of an agreement to arbitrate in the articles of association of a company is valid, given that the Supreme Court has recognised it as such (Judgment of the Supreme Court 15 September 2004).

8. SEPARABILITY OF ARBITRATION CLAUSES

8.1 May an arbitral clause be considered valid even if the rest of the contract in which it is embedded is invalid?

Article 22.1 of the Spanish Arbitration Law expressly states that an agreement to arbitrate, which is embedded in a contract, shall be considered as an agreement independent of the rest of the stipulations of said contract. The decision of the arbitrators to declare the nullity of the contract shall not entail the nullity of the agreement to arbitrate in itself. Article 22.1 acknowledges the autonomy of the agreement to arbitrate. In relation to the predecessor of Article 22.1 (Article 8 of the former law), case law states that, while the causes of nullity invoked refer to the main agreement – to which the arbitral agreement has been attached – they shall have no effect on the principal agreement itself.

9. QUALIFICATION/APPOINTMENT/LIABILITY OF ARBITRATORS

9.1 Are there specific provisions regulating the qualifications of arbitrators? Are there requirements (including disclosure) for 'impartiality' and 'independence', and do such requirements differ as between domestic and international arbitrations?

There are no specific provisions regulating the qualifications of arbitrators: the parties are free to appoint any person they deem appropriate to serve as an arbitrator. The only exception to this general rule would be in domestic arbitrations, in which the arbitrator must be a lawyer admitted to a Bar; nevertheless, this requirement does not apply in *ex aequo et bono* arbitrations.

With respect to impartiality and independence, Article 17.1 of the Spanish Arbitration Law provides that every arbitrator shall be independent and impartial and will remain so during the proceedings and that they shall not maintain any personal, professional or commercial relationship with the parties. In this sense, according to Article 17.2, the person nominated to serve as arbitrator shall reveal every circumstance that may give rise to justified doubts as to their impartiality and independence. Additionally, it is quite frequent that arbitrators follow a code of conduct, such as the CEA's (see question 3.1 above) or the IBA guidelines (see question 12.1 below).

9.2 Are there provisions governing the challenge or removal of arbitrators? Do the courts or other jurisdictions play/have a role in any such challenge?

Yes, there are some provisions governing the challenge or removal of arbitrators. Firstly, whatever the parties have agreed to in this respect shall be applicable or, if it were the case, the rules of the institution in charge of administering the arbitration. In the absence of any of the aforementioned agreements or rules, the Spanish Arbitration Law foresees a specific procedure provided in Article 18.2 for the removal of arbitrators. This procedure

consists of stating the reasons why a particular arbitrator should be removed by the party challenging the arbitrator and then the arbitrators decide on the removal, unless the arbitrator who has been challenged resigns or the opposing party accepts the removal. If the removal is not successful according to the procedure agreed on by the parties or set forth in Article 18.2, the challenging party may request the removal upon challenging the award.

Said provisions prevail in *ad hoc* arbitrations; the general rule is that only arbitrators can decide on their removal, as courts do not play any role in this regard.

9.3 Does legislation govern, or have the courts developed rules regarding the liability of arbitrators for acts related to their decision-making function?

The latest rules on this subject mean that, as a general rule, arbitrators shall not be liable for their acts regarding their decision-making function, even when acting with negligence. Arbitrators can only be liable in cases where they act in bad faith or fraud.

10. PARTY REPRESENTATION

10.1 Are there particular qualification requirements for representatives ('counsel') appearing in the jurisdictions?

There are no particular qualification requirements for representatives appearing in the jurisdictions, apart from the requirement that the parties shall be represented by a lawyer. There is a general provision under Spanish Law, not related to arbitration, according to which only practising in-house or external lawyers may give legal advice.

11. PLACE OF ARBITRATION/PROCEDURES

11.1 Are there provisions governing the place (seat) of arbitration, or any requirement for arbitral proceedings to be held at the seat?

The seat of arbitration is governed by Article 26 of the Spanish Arbitration Law. In principle, it may be freely set by the parties, but in the absence of an agreement between them, it shall be fixed by the arbitrators, taking into account the circumstances of the case, as well as the parties' convenience. Nevertheless, Article 1.1 limits the scope of application of the Spanish Arbitration Law to arbitrations seated in Spanish territory; although, pursuant to Article 1.2, several of its provisions shall be applicable even if the arbitration is seated outside of Spanish territory.

Arbitrators may, however, after consultation with the parties, and unless they agree otherwise, meet anywhere they consider appropriate in order to examine the witnesses, the experts or the parties, or to examine objects, documents and persons. The arbitrators may also hold deliberations anywhere they consider appropriate.

11.2 Are specific procedures mandated in particular cases, or in general?

There are no specific procedures mandated in any case, provided all the requirements of due process are met.

12. EVIDENCE GATHERING

12.1 What is the general approach to the gathering and tendering of evidence at the pleading stage and at the hearing stage (production, discovery, privilege, use of witness statements etc)? Are there differences between domestic and international arbitrations?

The Spanish Arbitration Law is very open regarding evidence gathering and allows for many different approaches to be taken. Indeed, arbitrators can either agree to produce any evidence they deem appropriate or ask for judicial assistance in order to solve the controversy.

Domestic arbitrations usually follow the continental law system, which is very restrictive concerning the means of producing evidence (for example, there are not many oral testimonies). However, in international arbitrations, Spain follows the general tendency of a hybrid system, that of continental law and Anglo-Saxon law. In this sense, the IBA Rules on the Taking of Evidence in International Commercial Arbitration are frequently adopted (and thus, it is very usual to see witnesses' statements, etc); however, discovery as it is understood by common law lawyers, is alien to Spanish practice.

12.2 What powers of compulsion or court assistance are there for arbitrators to require attendance of witnesses or production of documents, either prior to or at the substantive hearing? Is there a difference between domestic and international tribunals or as between parties and non-parties? Do special provisions exist for arbitrators appointed pursuant to international treaties (ie bilateral or multilateral investment treaties)?

Articles 8.2 and 33 of the Spanish Arbitration Law foresee judicial assistance for arbitrators in order to produce the evidence. This assistance was brought about due to the lack of authority of arbitrators to oblige the parties and third parties in the production of evidence. Judicial assistance regulated in Article 33.1 can have a two-fold objective: (i) the production of a certain piece of evidence before the judge; or (ii) the judge granting the measures required to make it possible for the evidence to be produced before the arbitrators within the arbitral proceedings. The assurance of the evidence shall be ruled according to the Spanish Procedural Law and may consist of measures to protect the source of the evidence or to reliably record the existence and characteristics of the source; furthermore, the judge may summon a party to do or not to do something, under warning to proceed, in case of infringement, for serious disobedience of the authority.

In cases in which international judicial assistance is required, two regulations have to be taken into account: the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and the Council Regulation (EC) no. 1206/2001 of 28 May 2001 on Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters.

13. INTERIM MEASURES/ROLE OF THE TRIBUNAL

13.1 Are there special provisions relating to the granting of interim and preliminary relief? Have the courts recognised and/or limited any such authority? Do the courts themselves play a role in interim relief in arbitration proceedings?

Article 23 of the Spanish Arbitration Law expressly foresees the arbitrators' authority to grant interim measures. Unless there is an agreement between the parties to the contrary, the arbitrators may grant, at any of the parties' request, the interim measures they deem necessary with respect to the object of the controversy. To that effect, the arbitrators may require sufficient guarantees from the requesting party. Arbitral resolutions on interim measures, regardless of the form they adopt, shall be subject to the provisions on annulment and the enforcement of awards.

The role played by the courts in interim relief in arbitration proceedings is referred to in Article 8.3 of the Spanish Arbitration Law. According to this provision, for judicial granting of interim measures, the competent court shall be that of the place in which the award must be enforced and, in its absence, that of the place in which the interim measures must produce their effectiveness, in accordance with Article 724 of the Spanish Procedural Law. In this regard, Article 11.3 of the Spanish Arbitration Law states that the agreement to arbitrate shall not prevent any of the parties, prior to the arbitral proceedings or during their processing, from requesting the granting of interim measures, or the court from granting them. In fact, interim measures may be requested at the same time both from the judge and the arbitrators.

14. TAXATION OF ARBITRATORS' FEES

14.1 Does the state, or any of its sub-divisions, purport to tax domestically the fees of foreign arbitrators conducting hearings in the state? Is there a difference if the arbitration is 'seated' in the state or elsewhere?

If the arbitrators are not residents for tax purposes in Spain and assuming their services are not performed through a permanent establishment located within the Spanish territory, according to the Spanish Non-Residents Income Tax Law, income obtained by the arbitrators in such a case would only be subject to taxation in Spain (at a flat rate of 24%) if the following requirements are met: (i) the arbitrator's work is physically carried out in Spain (ie the arbitration is seated in Spain) and (ii) the services are rendered for the benefit of activities located in Spain and/or relate to assets located in Spain. A proportional allocation criteria would be followed should the services be partially connected to Spain.

Notwithstanding the above, should the arbitrator be resident for tax purposes in a jurisdiction that has signed a tax treaty with Spain, the provisions of such tax treaty concerning services by self-employed providers would have to be taken into consideration for the purposes of determining whether or not the income obtained should be subject to Spanish taxation.

15. DEFAULT PROCEEDINGS

15.1 Are there provisions governing a tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at or seek adjournment of the arbitral proceedings?

The failure of the parties to appear is foreseen in Article 31 of the Spanish Arbitration Law in the absence of agreement between the parties. In the event that, without alleging a sufficient cause in the arbitrators' opinion:

- (1) the claimant does not file their lawsuit on time, the arbitrators shall terminate the proceedings, unless, having heard the defendant, they state their will to exercise a request;
- (2) the defendant does not file their statement of defence on time, the arbitrators shall continue with the proceedings, without considering said omission as acceptance of the claim or admission of the facts alleged by the claimant;
- (3) one of the parties does not attend one of the hearings or does not file any evidence, the arbitrators may continue with the proceedings and issue the award based on the evidence they have.

The arbitral institutions mostly follow these provisions.

16. THE ARBITRAL AWARD

16.1 Must an award take any particular form, eg in writing, signed, dated, place, the need for reasons, delivery etc?

Pursuant to the provisions of Article 37.3-37.8 of the Spanish Arbitration Law, the award:

- (1) must be in writing and signed by the arbitrators, who may express a different opinion. If there is more than one arbitrator, signatures of the majority of the tribunal or of only its presiding arbitrator shall be sufficient, provided they state the reasons for the omission of one or more signatures. The award shall be understood to be in writing when its content and signatures are recorded and accessible to further consultation in an electronic, optical or other medium;
- (2) must be grounded, unless the parties have agreed otherwise or it is an award issued at the agreement of the parties;
- (3) must contain the date on which it has been issued, as well as the seat of the arbitration; it shall be considered that the award has been issued in the place stated; and
- (4) must include a declaration regarding the arbitration costs and, if the case may be, the fees and expenses of the parties' counsels or representatives, the cost of the services provided by the arbitral institution and the rest of the expenses during the arbitration proceedings.

The arbitrators shall serve the award to the parties in the manner and terms agreed by the latter or, in its absence, by delivering a signed copy to each of them in the manner and terms foreseen by the Spanish Arbitration Law. The award may be recorded by a public notary at the requesting party's expense.

16.2 Are there limits on arbitrators' powers to fashion appropriate remedies, eg punitive or exemplary damages, rectification, injunctions, interest and costs?

The Spanish Arbitration Law does not provide any type of limit on arbitrators to fashion appropriate remedies. The only limits they may have would derive from the law applicable to the controversy agreed on by the parties. For example, if the parties agreed to apply American Law, the arbitrators would be able to set punitive damages, as these are contemplated in American law; however, if the parties agreed to apply Spanish Law, the arbitrators could not set punitive damages, as they are not foreseen in Spanish Law.

17. RECOURSE FROM AN AWARD

17.1 Are there provisions governing modification, clarification or correction of an award?

Article 39 of the Spanish Arbitration Law governs correction, clarification and complementation of the award. In particular, it states that within 10 days of the notification of the award – unless the parties have agreed on another term – any of them may, upon notification to the other, ask the arbitrators for:

- (1) correction of any miscalculation, error of copy, misprint or any error of a similar nature;
- (2) clarification of a point or a specific part of the award;
- (3) complementation of the award regarding requests made and not resolved in it.

Prior to hearing the rest of the parties, the arbitrators must resolve the requests of correction of errors and clarification in a period of 10 days, and the complementation request in a period of 20 days. For an international arbitration, the aforementioned periods of 10 and 20 days shall be periods of one and two months, respectively.

Provisions governing the deadline, content and notification of the award, established in Article 37 of the Spanish Arbitration Law, shall be applicable to the arbitral resolutions on correction, clarification and complementation of the award.

17.2 May an award be appealed to or set aside by the courts? If so, on what grounds and by what procedures?

According to the majority of legal doctrine, the process foreseen in the Spanish Arbitration Law to set aside an award is not an appeal or a second instance, but a challenging action – the action of annulment – regulated in Articles 40-42.

The award can only be annulled when the party that requests the annulment alleges and proves the following:

- (1) the agreement to arbitrate does not exist or is not valid;
- (2) the party has not been duly notified of the nomination of an arbitrator or of the arbitral proceedings or has not been able, for any reason, to assert its rights;

- (3) the arbitrators have resolved questions that have not been submitted for their decision;
- (4) the nomination of arbitrators or the arbitral procedure has not adequately fit the agreement between the parties, unless said agreement is contrary to an imperative provision of the Spanish Arbitration Law or, in the absence of such an agreement, the agreement has not fit this law;
- (5) that the arbitrators have resolved questions that are not susceptible to arbitration;
- (6) the award is contrary to public order.

Points 2, 5 and 6 may be revealed *ex officio* by the court that is hearing the action of annulment or at the Public Prosecutor's request in relation to the interests, which the defence has legally attributed to it. In cases foreseen under points 3 and 5, the annulment shall only affect the pronouncements of the award regarding questions that have not been submitted to the arbitrators' decision or that are not susceptible to arbitration, provided that they can be separated from the rest.

The action of annulment will have to be brought within two months of the notification of the award or, in case correction, clarification or complementation of the award has been requested, as of the notification of the resolution of this request or from the expiration of the term.

18. ENFORCEMENT OF AWARD

18.1 What are the procedures and standards for enforcing an award? Is there a difference between 'domestic' and 'non-domestic' awards?

Domestic awards are enforceable in the same way that state court rulings are. In cases of non-domestic awards, the applicable rules would be those provided in the Convention of New York of 10 June 1958, on the recognition and enforcement of foreign arbitral awards, which has been adopted by Spain without reservation and is fully enforceable (see point 2.2 above); also, the Geneva Convention of 26 September 1927, on recognition and enforcement of foreign arbitral awards as well as the Washington Convention of 1965 on investment dispute resolution would be applicable.

19. CONFIDENTIALITY OF PROCEEDINGS

19.1 What are the confidentiality requirements of the arbitral process, ie existence of the arbitration, pleadings, documents produced, hearing, award?

As Article 24.2 of the Spanish Arbitration Law states, arbitrators, parties and arbitral institutions, as the case may be, are obliged to maintain the confidentiality of the information they have been made aware of in the arbitral proceedings.

Arbitral institutions also guarantee confidentiality. In the case of the Court of Arbitration of Madrid, unless the parties have agreed otherwise, both the court and the arbitrators are obliged to maintain confidentiality regarding the arbitration and the award. The arbitrators may adopt the measures they deem appropriate in order to protect commercial or industrial secrets or any other confidential information. Deliberations of the arbitral

tribunal are confidential and an award may be published should the following conditions concur:

- (1) the corresponding request for publication is filed with the court or the court considers that there is a doctrinal interest;
- (2) any reference to the parties' names and the data that may identify them are suppressed;
- (3) any of the parties in the arbitration is opposed to the publication within the deadline fixed by the court to that effect.

The Spanish Court of Arbitration states that the parties shall maintain confidentiality regarding the whole arbitration process, as well as the confidentiality of the documentation generated in the arbitration, both by the court and the parties, their lawyers, counsel, experts and possible witnesses.

20. UNIQUE JURISDICTIONAL ATTRIBUTES

20.1 Is there any particular aspect of the approach to arbitration in the jurisdiction that bears special mention?

On 3 October 2006 the General Board of the Judicial Power and the Spanish Club of Arbitration signed an agreement to set up an expert committee on the judicial treatment of the arbitration and to hold an annual forum on the subject. The purpose of the agreement is the collaboration of both institutions in those activities that are carried out in the field of their respective competences. These activities are the analysis of legislation in force on arbitration and the study of the proposals or amendments that may take place in the future as well as the monitoring and analysis of the judicial resolutions already issued or issued in the future regarding the application and interpretation of the provisions on arbitration.

Singapore
Maxwell Chambers,
#02-09 32 Maxwell Road,
Singapore 069115
T: +65 62257230
F: +65 62249462
E: michaeltselentis@aol.com;
mlee@20essexst.com;
dlewis@20essexst.com

London Office
20 Essex Street,
London WC2R 3AL
T: +44 20 7842 1200
F: +44 20 7842 1270

SOUTH AFRICA

Desmond Williams
Werksmans Inc
155 Fifth Street Sandown
Sandton
Johannesburg
South Africa
T: +27 11 535 8000
F: +27 11 535 8600
E: dwilliams@werksmans.co.za
W: www.werksmans.co.za

SOUTH KOREA

Tae Hee Lee
Lee & Ko
18th Floor Marine Center Main Bldg 118
2-Ka Namdaemun-ro
Chung-Ku Seoul, 100-770
Korea
T: +82 2772 4000
F: +82 2772 4001
E: mail@leeko.com
W: www.leeko.com

SPAIN

David Arias and Tatiana Portillo
Perez-Llorca
Alcalá 61
Madrid 28014
Spain
T: +34 91 436 0416

F: +34 91 436 0430
E: darias@perezllorca.com;
t.portillo@perezllorca.com
W: www.perezllorca.com

SWEDEN

Claes Lundblad
Roschier
Keskuskatu 7
A 00100 Helsinki
Finland
T: +358 20 506 6000
F: +358 20 506 6100
E: claes.lundblad@roschier.com
W: www.roschier.com

SWITZERLAND

Dr. Georg von Segesser, Alexander
Jolles and Dr. Andrea Meier
Schellenberg Wittmer
Löwenstrasse 19, PO Box 6333
CH-8023 Zurich
Switzerland
T: +41 44 215 52 52
F: +41 44 215 52 00
E: georg.vonsegesser@swlegal.ch
alexander.jolles@swlegal.ch
andrea.meier@swlegal.ch
W: www.swlegal.ch

TURKEY

Dr. Ismail G. Esin
Esin Law
Büyükdere Caddesi Maya Akar Center
No: 100-102 B Blok Kat: 19
34394 Esentepe
Istanbul
Turkey
T: +90 (212) 376 64 00
F: +90 (212) 376 64 64
E: ismail.esin@esin.av.tr
W: www.esin.av.tr

UNITED ARAB EMIRATES

Essam Al Tamimi and
Claire Clutterham
Al Tamimi & Co
29th Floor Dubai World Trade Centre
Dubai
United Arab Emirates
T: +971 4 331 7090
F: +971 4 331 3177
E: tamimi@tamimi.com
z.anani@tamimi.com
c.clutterham@tamimi.com
W: www.tamimi.com

UNITED STATES

David W. Rivkin and
Donald Francis Donovan
Debevoise & Plimpton LLP
919 Third Avenue
New York
NY 10022
United States
T: +1 212 909 6671
F: +1 212 521 7671
E: dwrivkin@debevoise.com
dfdunovan@debevoise.com
W: www.debevoise.com

Tower 42
Old Broad St
London EC2N 1HQ
England
T: +44 20 7786 9171
F: +44 20 7588 4180