

# SPAIN

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## **LAW AND PRACTICE:**

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*Contributed by Pérez-Llorca*

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.



# Law and Practice

Contributed by Pérez-Llorca

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**Pérez-Llorca** has a Litigation & Arbitration practice in both its Madrid and Barcelona offices. The team is composed of eight partners, two counsel and 35 other qualified lawyers. Lawyers act for clients before all legal forums throughout Spain, and focus on both commercial litigation and international and domestic arbitration. The firm has extensive experience in defending clients' interests before the Public Administrations, and before the CJEU (Court of Justice of

the European Union). The lawyers have broad experience in complex cases relating to corporate issues, shareholders' disputes, directors' liability, contractual disputes, unfair competition, intellectual property, energy, construction, engineering, insurance, banking, tort liability, privacy and personal image, and restructuring and insolvency.

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## 1. General

### 1.1 General Characteristics of Legal System

The Spanish legal system is based on civil law and follows an inquisitorial model. The Spanish legal system is hierarchical and is characterised by the primacy of statutory law, customs and general principles of law. Moreover, the Spanish legal process is conducted through both written submissions and oral argument.

### 1.2 Structure of Country's Court System

Spain's court system is structured hierarchically. Courts are divided into municipalities, districts, provinces and autonomous communities. There are national courts which have nationwide jurisdiction, such as the Spanish Supreme Court ("Tribunal Supremo") or the National Criminal and Administrative Court ("Audiencia Nacional"). There are also regional high courts, or autonomous community courts, such as the High Courts of Justice, which have authority over an autonomous community ("Tribunal Superior de Justicia"), and provincial courts ("Audiencia Provincial") which have jurisdiction over a single province. There are also lower courts, such as First Instance Courts ("Juzgados de Primera Instancia"), which are assigned to judicial districts.

Courts are also organised by subject matter jurisdiction. Specifically, there are civil courts, criminal courts, administrative courts and labour courts. There are also military courts. On the other hand, ordinary courts exist which specialise in specific matters, such as family or commercial courts.

### 1.3 Court Filings and Proceedings

Court hearings and trials are generally open to the public. However, certain exceptions are established by statute. For

instance, certain hearings and/or trials may be kept confidential when the court deems it necessary for public order reasons, or to preserve the rights of a criminal defendant, their family or those of a minor. Court filings and proceedings are open to the individuals who can prove their legitimate interest in the information sought.

### 1.4 Legal Representation in Court

Lawyers who studied law in Spain must be active members of a Spanish bar association in order to conduct cases before Spanish courts. A lawyer is able to conduct a case in any Spanish court, regardless of which local bar association in the country they are admitted to.

Foreign lawyers may conduct cases in Spanish courts if certain requirements are met. The specific requirements depend on whether the foreign lawyer is from a European Union country or not. Moreover, European Union lawyers must meet different requirements depending on whether they wish to conduct cases in Spain permanently or temporarily. Certain restrictions apply if a lawyer from a country in the European Union wishes to conduct a case before Spanish courts on a temporary basis. For instance, the visiting lawyer must act together with a Spanish lawyer.

## 2. Litigation Funding

### 2.1 Third Party Litigation Funding

In the Spanish legal system, litigation funding is permitted with no restrictions, but it has not yet been specifically regulated. Litigation funds arrived to the Spanish market very recently.

### 2.2 Third Party Funding: Lawsuits

All kind of lawsuits are available for third party funding, but litigation funds that are already established are focused on arbitration and commercial litigation cases.

### 2.3 Third Party Funding for Plaintiff and Defendant

Even though resorting to third party funding is more common for plaintiffs, defendants can also seek to fund a counterclaim or their defence against the plaintiff.

### 2.4 Minimum and Maximum Amounts of Third Party Funding

There is no pre-established minimum and maximum amount, which leaves the decision of funding a certain claim up to the third party funder, who decides on the basis of their commercial interests. Many of the litigation funds require a minimum amount of between €8 and €10 million.

### 2.5 Third Party Funding Costs

A third party funder can consider funding all legal fees required to pursue a claim before the court, such as lawyer, court agent, and expert fees, in addition to all necessary expenses incurred during the proceedings as well as the other party's expenses in the event that there is an award on costs.

### 2.6 Contingency Fees

Lawyers' fees may be agreed on a contingency basis, and Spanish law does not restrict this in any way. However, it is not common to agree on contingency fees except in labour cases, where it is the usual practice.

### 2.7 Time Limit for Obtaining Third Party Funding

There are no time limits for obtaining third party funding.

## 3. Initiating a Lawsuit

### 3.1 Rules on Pre-action Conduct

The court does not impose any rules on the parties in relation to pre-action conduct, nor are there any requirements on the potential defendant(s) to respond to a pre-action letter.

### 3.2 Statutes of Limitations

Legal actions expire by the running of the statute of limitations by the mere lapse of the time set forth in the law. The statute of limitations is specified in the Spanish Civil Code and the Catalan Civil Code for the territory of Catalonia and varies depending on the legal action that is being sought.

For instance, actions in rem relating to immovable property are barred by statute of limitations after thirty years. On the other hand, mortgage remedies become barred by statute of limitations after twenty years. Personal remedies for which

no special statute of limitation has been provided are barred after ten years in Catalonia and five years in the rest of Spain.

The time required for the barring of all kinds of actions by statute of limitations is counted from the day on which they could be exercised, unless provided by a specific provision.

The statute of limitations on actions is interrupted by the filing of such actions before the courts, by an out-of-court claim issued by the creditor and by any act of acknowledgment of the debt by the debtor.

### 3.3 Jurisdictional Requirements for a Defendant

The "Ley de Enjuiciamiento Civil" (Spanish Civil Procedure Act, SCPA) stipulates the jurisdictional requirements for a defendant to be subject to suit in Spain. Specifically, a defendant may act in court if it is a party to the judicial relationship or the matter in dispute. This requirement does not differ between civil courts. However, there are certain cases in which, by law, standing is attributed to a person other than the party.

The SCPA also stipulates that several persons may appear in court as defendants when the actions arise from a single claim.

### 3.4 Initial Complaint

The proceedings begin with a claim in which the facts and the grounds in law are put forward separately and numbered accordingly. What is being requested must be presented clearly and precisely.

Together with the designation of the claimant and the defendant, the names and surnames of the court representative and the counsel for the claimant shall be given, if applicable.

When what is requested in the claim could be based on several facts or on different legal grounds or entitlements, the claim must include all those which are known or may be invoked when the claim is filed. It is not admissible to reserve an allegation for subsequent proceedings.

Once the matter at issue in the proceedings has been established in the claim, in the defence of claim or, as appropriate, in the counterclaim, the parties may not subsequently amend the document.

### 3.5 Rules of Service

The procedure for informing an adversary that it has been sued is specified in the SCPA. Service of process is the responsibility of the court. Where the notice is an initial summons or order to attend, notices shall be sent to the defendant's address. If the claimant provides several addresses for the defendant, the claimant shall indicate the order in which notice could successfully be served.

If service of process cannot take place at the defendant's address provided in the claim or if the claimant states that they are unable to provide the defendant's address, the court clerk can use any suitable means to investigate the defendant's address. The court clerk may contact registries, organisations, professional associations and entities to do so.

If the defendant's address cannot be found, or when service of process cannot take place at the defendant's known addresses, the court clerk shall issue an order stating that notice shall be served through public notices, ie by publishing the court's notice on the court's bulletin board.

A party may be sued outside the jurisdiction. If service of process takes place within the European Union, the defendant may be notified pursuant to Article 8 of the Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007, on the service in the member states of judicial and extrajudicial documents in civil or commercial matters. Pursuant to such regulation, the claim must be duly translated into the official language of the place where service is to be effected or in the language that the served upon defendant(s) understands.

Service of process outside of the European Union can take place pursuant to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

### 3.6 Failure to Respond to a Lawsuit

If the defendant does not respond to a lawsuit, the defendant will be declared to be in default. The declaration of default will not be considered an acceptance of the claim or an admission of the facts of the claim, except in the cases in which the law sets forth otherwise.

### 3.7 Representative or Collective Actions

The Spanish legal system permits representative or collective actions, such as class actions, as long as the actions arise from a single claim.

Notwithstanding the individual standing of those aggrieved, legally constituted consumer and user associations will be authorised to defend the rights and interests of their members and of the association in court, as well as the general interests of consumers and users.

In proceedings filed by associations or entities constituted for the protection of the rights and interests of consumers and users or by affected groups, those who have been damaged due to being consumers of the product or users of the service which gave rise to the proceedings shall be called to appear in order to assert their individual rights or interests.

Class actions in Spain are opt-in. Specifically, when the proceedings involve:

(i) determined or easily determined damaged parties, the claimant(s) must have previously notified those concerned of their intention to file a claim. In this case, after the call, the consumer or user may participate in the proceedings at any time, but may only conduct the procedural acts which have not been precluded.

(ii) an indeterminate number of persons or a number which is difficult to determine, the call shall suspend the course of the proceedings for a time limit which shall not exceed two months and which shall be determined by the court clerk in each case depending on the circumstances or complexity of the event and the difficulties concerning the determination and localisation of those damaged individuals. The proceedings will continue with the intervention of all the consumers who have obeyed the call, and the individual appearance of consumers or users shall not be allowed subsequently.

### 3.8 Requirement for Cost Estimate

The attorney must provide clients with a cost estimate of the attorney's fees, as soon as it is possible for the attorney to determine such costs.

## 4. Pre-trial Proceedings

### 4.1 Interim Applications/Motions

The SCPA allows the parties to start preliminary proceedings, which are usually aimed at collecting information or documents required to prepare for a forthcoming lawsuit.

To obtain remedies from the court before the proceedings commence, the SCPA provides the parties with the possibility of seeking injunctions in order for the court to rule on precautionary measures, which is the common remedy sought by the parties to obtain protection in case a favourable judgment is rendered.

### 4.2 Early Judgment Applications

Procedural matters are addressed by the defendant in the statement of defence and the court shall render a decision on them at the pre-trial hearing. Depending on the outcome of such decision the proceedings may be stayed until the matter at issue is rectified or closed if the matter is irremediable.

These procedural matters are tackled at the beginning of the pre-trial hearing and decided by the court after having heard the parties' allegations.

### 4.3 Dispositive Motions

See **section 4.1 Interim Applications/Motions** and also all these matters related to procedural requirements.

### 4.4 Requirements for Interested Parties to Join a Lawsuit

The SCPA foresees the procedure by which parties who are neither claimants nor defendants can intervene in the proceedings.

The parties who prove having a direct and legitimate interest in the outcome of the case can apply to join the proceedings. In such case, the claimant and the defendant shall be given the opportunity to make allegations and once the court has heard both, it shall rule on the admissibility of the request to intervene.

Claimants can also call a third party to intervene in the proceedings, who has certain interest on the outcome of the case and is given the same opportunities to act and defend itself as the parties in the proceedings.

### 4.5 Applications for Security for Defendant's Costs

The SCPA does not allow a defendant to apply for an order that the plaintiff must pay a sum of money as security for the defendant's costs.

### 4.6 Costs of Interim Applications/Motions

The general rules on costs established by the SCPA apply when awarding or denying costs of interim motions. See **section 11 on Costs** below.

### 4.7 Application/Motion Timeframe

The timeframe for a court to deal with a motion depends on the type of motion requested. For instance, motions to stay proceedings or motions asking the court to grant an injunction on an urgent basis shall be decided by the court promptly. However, the court may take longer to render a decision for other kind of motions, such as the application for third party intervention.

## 5. Discovery

### 5.1 Discovery and Civil Cases

Discovery is not allowed in our country. However, certain disclosure mechanisms are specifically regulated.

The SCPA foresees a type of preliminary injunction that may be lodged in order to collect information or documents required to prepare a forthcoming lawsuit, but only limited to the following cases:

- application against future defendant to declare under oath or provide evidence regarding their capacity, representation or legal competency or to exhibit the object in their possession that shall be referred to at the trial;
- application to be filed by whom considers to be an heir, co-heir or legatee for the exhibition of the deed of last will;

- application by a partner or joint owner for the exhibition of documents and accounts of the company or condominium;
- application for the exhibition of the insurance contract that could cover the damages arising out of civil liability;
- application for medical records addressed to the health centre or professional who holds those records;
- application filed by a party intending to bring legal action for the defence of collective interests of consumers and users in order to specify the aggrieved parties;
- application by the party intending to file a lawsuit due to infringement of a right of industrial or intellectual property to obtain certain details regarding how the infringement was carried out.

After the lodging of the application, the court shall examine whether the preliminary injunction is in accordance with the object pursued by the applicant and that there is just cause and legitimate interest in the application.

Moreover, the implementation of the Directive 2014/104/EU introduced specific regulation regarding the disclosure of evidence in order to bring legal action for damages arising from infringements of the competition law.

In this case, the evidence requested may refer to (i) the identification of the infringers and aggrieved parties, (ii) the infringement itself, or (iii) the identification, volume and prices of the products and services affected by the infringement.

Disclosure or preliminary injunction under SCPA is very limited and does not include the taking of witness testimonies.

The exhibition of documents is always administered by the court.

The party against whom the preliminary injunction is lodged may object to the injunction on the grounds that it is not justified. In this case, parties shall be summoned to attend a hearing after which the court shall issue a decision.

In addition, when it comes to injunctions regarding legal action for damages arising from infringements of competition law, the SCPA foresees the possibility of (i) removing sensitive sections, (ii) limiting the number of people that can examine the documentation, (iii) instructing experts to produce summaries of the information in an aggregated non-confidential form.

The party who is filing a preliminary injunction shall cover the costs incurred by individuals who participate in the injunction. For this purpose, the party shall provide a security when filing the preliminary injunction.



## 5.2 Discovery and Third Parties

With the limitations set forth above, it is possible to file a preliminary injunction against third parties in some cases if they are in possession of the document to be exhibited, provided it is duly identified. For instance, case no. (ii) described above.

The injunction proceedings are the same regardless of the person against whom it is filed.

## 5.3 Discovery in Your Jurisdiction

Under Spanish jurisdiction, discovery is not allowed and disclosure is limited to certain cases and documents (see above, **section 5.2 Discovery and Third Parties**).

Parties are not obliged to disclose documents that have not been requested by the counterparty and admitted by the court either during the preliminary injunction proceedings or proposed and admitted during the hearing that takes place after the filing of the lawsuit.

## 5.4 Alternatives to Discovery Mechanisms

See **section 5.1 Discovery and Civil Cases** and **section 5.3 Discovery in Your Jurisdiction**.

## 5.5 Legal Privilege

Spain recognises the concept of legal privilege in the Organic Act on Judiciary Power. As a rule, communications between an attorney and their client are confidential and therefore an attorney shall not be compelled to declare any facts or news that come to their knowledge due to their professional activity.

The law does not distinguish between external and in-house counsel. However, courts tend to make such distinction in accordance with the judgment issued by the EU Court of Justice on September 14th 2010, Case C-550/07 P – Akzo Nobel Chemicals and Akros Chemicals/Commission.

## 5.6 Rules Disallowing Disclosure of a Document

Once the court has issued the injunction, the party must always disclose the document.

Refusal to comply with the request can lead to the adoption of measures, such as (i) considering the fact admitted for the purposes of the subsequent trial, (ii) issuing of an order to enter and search the premises where the relevant document may be, or (iii) considering the copy of the document submitted by the applicant to be authentic.

# 6. Injunctive Relief

## 6.1 Circumstances of Injunctive Relief

The SCPA establishes that the court may order an injunctive relief in the following circumstances:

- if the injunctive relief is aimed exclusively at guaranteeing the effectiveness of the judicial protection that may be granted in a possible affirmative judgment, to ensure that it cannot be prevented or hampered by situations occurring while the relevant proceedings are still pending;
- if the injunctive relief cannot be replaced by another measure equally effective for the purposes of the preceding paragraph but is less burdensome or damaging for the defendant.

The applicant must comply with the following requirements:

- an injunctive relief may only be awarded if the applicant justifies, during the course of the proceedings that, in the current case, failure to award an injunctive relief could prevent or hinder the effectiveness of the protection that may be granted in the event that an affirmative judgment is ultimately passed.
- together with the applicant's request for an injunctive relief, the applicant must also submit the details, arguments and documentary evidence allowing the court, without prejudging the merits of the case, to make a provisional and circumstantial judgment in favour of the basis of their claim. If the applicant lacks such documentary evidence, they may offer other forms of evidence, which the applicant must propose in due form in the same brief.
- unless expressly decided otherwise, the applicant for the injunction must post sufficient security, in a swift and effective manner, to compensate for the damages that the adoption of the injunction may cause to the defendant's estate.

The following types of injunctions are available, among others:

- a pre-judgment attachment, aimed at ensuring the enforcement of judgments ordering the delivery of certain amounts of money or yields, rents and fungible goods that can be estimated by applying fixed prices;
- apart from the preceding subparagraph, a pre-judgment attachment shall also be appropriate if it proves to be the most suitable measure and cannot be replaced by another measure that is equally or more efficient and less damaging for the defendant;
- the intervention or court-ordered receivership of productive assets, when a judgment is sought ordering their delivery under the title of the owner, usufructuary or any other title involving a legitimate interest in maintaining or improving productivity or when guaranteeing that the latter is of paramount importance to ensure that the judgment is passed in due time;
- the deposit of a moveable asset, when the applicant seeks a court order for the delivery of the asset that is in the possession of the defendant;
- the drawing up of inventories of assets in accordance with the conditions to be specified by the court;

- the precautionary registry notation of the claim when the latter refers to assets or rights subject to inscription in public registries;
- other registry notations in cases where registry publication can ensure adequate enforcement;
- the court order to provisionally stop an activity: the temporary abstention from a certain conduct or the temporary obligation to suspend or to cease an action that was being carried out;
- the intervention and deposit of income obtained through an activity considered illicit and whose prohibition or cessation is requested in the claim, as well as the consignment or deposit of the amounts claimed as compensation for the intellectual property;
- the temporary deposit of the works or objects allegedly produced contrary to the rules on intellectual and industrial property, as well as the deposit of the material used for their production;
- the suspension of the disputed corporate resolutions when the claimant or claimants represent at least 1% or 5% of the corporate capital, depending on whether or not the defendant company has issued securities that, at the time of the dispute, are admitted to negotiation on an official secondary market;
- any other measures expressly established by the laws for the protection of certain rights or deemed necessary to ensure effective judicial protection necessary in the event that an affirmative judgment is given at the trial.

### 6.2 Arrangements for Obtaining Urgent Injunctive Relief

As a general rule, injunctive relief must be requested together with the claim. However, an injunctive relief may also be sought prior to the claim if, at the relevant time, the applicant alleges and evidences urgency or necessity. In this case, the measures adopted shall cease to have effect if the claim is not filed with the same court that heard the request for the said measures within 20 days following their adoption.

The court may order an injunctive relief within a time limit of five days if (i) the applicant requests that the court grant the injunctive relief without hearing the defendant; and (ii) the applicant evidences the existence of urgency or that the prior hearing may jeopardise the efficiency of the injunction.

### 6.3 Availability of Injunctive Relief on an Ex Parte Basis

As a general rule, the court shall rule on the petition for an injunctive relief after hearing the defendant. However, as mentioned in the previous question, an injunctive relief may be obtained exceptionally on an ex parte basis, without the respondent present.

The court may order an injunctive relief without the respondent present if the applicant requests this and evidences

the existence of urgency or that the prior hearing may jeopardise the efficiency of the injunction.

The court order shall be notified to the parties without delay and, if it cannot be notified sooner, immediately after the enforcement of the measures.

### 6.4 Liability for Damages of the Applicant

The applicant can be held liable for damages suffered by the respondent if the respondent successfully later discharges the injunction.

The same result would apply when the injunctive relief is obtained on an ex parte basis. Specifically, the SCPA establishes that where an injunction has been adopted without previously hearing the defendant, the latter may file an objection. If the court upholds the objection, at the request of the defendant, the damages caused, as appropriate, by the revoked injunction shall be determined. Once determined, the applicant for the measure shall be required to pay the said damages. Should the applicant fail to do so, their compulsory exaction shall be carried out immediately.

The applicant seeking an injunction shall post sufficient security to compensate, in a speedy and effective manner, the damages that the adoption of the injunction may cause to the estate of the defendant, unless expressly stated otherwise. The court shall determine the security taking into account the nature and contents of the claim and its assessment.

The court clerk shall lift ex officio all the injunctions adopted if a judgment of acquittal is granted and becomes final. The procedure shall continue in accordance with the provisions established in the preceding paragraph concerning the damages the defendant may have incurred.

The security must be sent prior to any act of compliance with the established injunction. The court shall decide whether the security amount is suitable and sufficient by means of a procedural court order.

### 6.5 Respondent's Worldwide Assets and Injunctive Relief

The SCPA stipulates that an injunctive relief can be granted against the assets of the respondent. Therefore an injunctive relief may be granted against the respondent's worldwide assets in line with the applicable regulations, such as Regulation (EU) No. 655/2014 of the European Parliament and of the Council of 15 May 2014, establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

### 6.6 Third Parties and Injunctive Relief

An injunctive relief cannot be obtained against third parties. The court may only order an injunctive relief regarding the assets and rights of the defendant.

### 6.7 Consequences of a Respondent's Non-compliance

Once the injunction has been established and the security posted, if a respondent fails to comply with the terms of an injunction, they will be forced to comply with it immediately ex officio, using any means necessary, including those established for the enforcement of judgments.

Regarding the enforcement of judgments, the SCPA establishes that all persons and authorities must abide by and comply with the stipulations in the judgments. Those who are party to the proceedings or prove to have a direct and legitimate interest may request the proceedings from the court in order to overcome potential resistance to what has been decided in such decisions.

## 7. Trials and Hearings

### 7.1 Trial Proceedings

The process consists of two main parts before a final judgment is given. The first part involves the filing, in writing, of both the lawsuit and the statement of defence. The second part consists of the pre-trial hearing and the trial, which are conducted orally. In ordinary proceedings, the pre-trial and the trial hearings are held on separate dates, whereas in verbal proceedings both hearings are conducted at once.

### 7.2 Case Management Hearings

After the filing of an interim motion, the defendant is given the chance to orally present his arguments at the hearing that is held before the court decides whether to accept or reject the motion. During the hearing, the parties can also submit and present evidence for examination by the court.

The SCPA does not regulate any procedure to hold case management hearings before more complex trials or hearings. All cases shall be conducted following one of the two procedures set forth in the SCPA, which do not include extraordinary hearings to deal with complex cases.

### 7.3 Jury Trials in Civil Cases

The Spanish legal system does not allow jury trials in civil cases.

### 7.4 Rules That Govern Admission of Evidence

For evidence to be admissible it must be relevant and relate to the subject of the proceedings. Therefore the criteria the court uses is whether the evidence submitted contributes to clarifying the facts that are deemed as controversial.

Evidence shall be presented within the time period granted by the SCPA. In this sense, the SCPA distinguishes between documents and other forms of evidence.

For instance, to ensure that evidence is admissible, all documents used by the parties to support their claim or defence shall be provided together with the claim or the statement of defence. In the pre-trial hearing, new documents can be submitted as long as the parties became aware of its existence after filing the claim and the response to the claim or the documents are dated subsequent to such filing.

On the other hand, any evidence regarding witness or expert testimonies can be introduced at the pre-trial hearing.

### 7.5 Expert Testimony

Expert testimony is permitted in cases where scientific, artistic, technical or practical knowledge may be necessary to prove any facts or circumstances that are relevant to the matter at issue.

The parties can appoint an expert themselves or ask the court to appoint an expert to present the requested report. If neither party deems the appointment of an expert necessary, the court itself may not appoint an expert. The only exception to this rule is during proceedings that concern the declaration or contest of kinship, paternity or maternity, the capacity of an individual or during matrimonial proceedings. In these situations the court is allowed, by the SCPA, to appoint ex officio an expert to issue an opinion.

### 7.6 Extent to Which Hearings are Open to the Public

Hearings are generally open to the public unless the court reasonably decides otherwise. However, transcripts of hearings are usually of limited access to the parties.

### 7.7 Level of Intervention by a Judge

At the pre-trial hearing, the judge shall lead the parties' lawyers from one stage to another and rule regarding the admissibility of evidence.

During the trial, once the lawyers have had the chance to question the witnesses or experts, the judge may intervene to ask some other questions that have been omitted by lawyers and are relevant to clarify the matters at stake.

After the trial, judgments are reserved for a later date as they are in writing.

### 7.8 General Timeframes for Proceedings

The timeframes for proceedings are dependent on the caseload of each court and the type of proceeding. On average, the timeframe may vary from a period of several months to one or two years in the first instance.

## 8. Settlement

### 8.1 Court Approval

Court approval is not required to settle a lawsuit due to the litigants' right of disposition of the matter at issue in the proceedings. Should the parties reach an agreement, the claimant can file a written statement by means of which he declares his abandonment of the proceedings or that he is waiving the action or the right upon which the pleas are founded.

The parties can also allow for the agreement to be sanctioned by the court for the purpose of closing the proceedings which, in turn, will have the same outcome as the now unnecessary court decision.

### 8.2 Settlement of Lawsuits and Confidentiality

In order for the parties to ensure that the settlement agreement remains confidential, it is a common practice to include a confidentiality clause upon which the parties oblige themselves not to disclose the terms of such agreement.

### 8.3 Enforcement of Settlement Agreements

If the agreement is sanctioned by the court, it can be enforced easily as the enforcement proceedings are equivalent to the enforcement proceedings following a court's decision.

On the other hand, to enforce settlement agreements that have not had the approval of the court, the party who seeks their enforcement must initiate judicial proceedings in order to prove the existence of the agreement and that the other party has infringed the settlement agreement so that the court can declare an infringement and order the party to comply with the agreement.

### 8.4 Setting Aside Settlement Agreements

Settlement agreements can be set aside on the same grounds as contracts.

## 9. Damages and Judgment

### 9.1 Awards Available to a Successful Litigant

The final judgment may consist of (i) a declaratory award, (ii) an affirmative or negative obligation to do something, (iii) an obligation to pay (iv) an obligation to hand over something other than an amount of money, and/or a (v) penalty.

### 9.2 Rules Regarding Damages

Damages compensation comprises the loss suffered and the gain which the creditor failed to obtain.

Should the debtor be in good faith, they will only be liable for foreseen damages or damages which could have been foreseen and are a necessary consequence of the breach or infringement. On the contrary, if the debtor is considered

to have acted with wilful misconduct they will be liable for all known damages.

Courts may not award punitive damages unless the parties expressly included the application of a penalty clause in the contract. Nonetheless, the court is allowed to reduce the amount of the penalty where the principal obligation has been performed only partially or irregularly by the debtor.

### 9.3 Pre- and Post-Judgment Interest

In general, a successful party may collect legal interest based on the period before judgment is entered. Additionally, from the day of the judgment the party may claim two percentage points over the legal interest rate until the date the compensation is paid.

Moreover, Act n° 3/2004 foresees a specific interest of eight percentage points over the legal interest rate in order to discourage late payment in commercial transactions.

There are no statutory limits on the awarding of interest.

### 9.4 Enforcement Mechanisms of a Domestic Judgment

Broadly speaking, the mechanisms available for the enforcement of a domestic judgment are: (i) seizure of cash, salary, wage pension, bank accounts, remuneration or similar; (ii) attachment and appraisal of assets (eg securities, financial instruments, real estate, moveable property...) for future realisation or auctioning; (iii) constitution of administration over all or part of the assets so that their yield may be used for payment; (iv) employment of personal distraining measures or monetary fines where the enforceable right contains a penalty or an affirmative or negative obligation; (v) publication of the judgment in the media.

### 9.5 Enforcement of a Judgment From a Foreign Country

The enforcement procedure for a judgment from a foreign country may vary depending on whether that country is an EU member, part of an international convention or not part of any.

If the judgment comes from an EU member, Regulation 1215/2012 would be applicable. In this case, the party seeking to initiate the enforcement proceeding shall submit a copy of the judgment and a certificate issued in accordance with annex I of the regulation.

Should the judgment come from a third country (ie, a non-European country), the procedure will depend on the bilateral or multilateral agreement entered into with Spain.

In the event that no convention is applicable, we shall resort to Act n° 29/2015 on international judicial co-operation on

civil matters, which foresees the application of an exequatur procedure.

In this case, the party seeking the recognition of judgment shall file a lawsuit against the debtor together with (i) the original or an authentic copy of the judgement; (ii) a document stating whether the judgment was given in default of appearance; (iii) any other document stating that the judgment is final and enforceable; and (iv) the corresponding translations into an official language in Spain. The court will decide after hearing the defendant and, if the judgment is recognised, it will be subject to enforcement according to the general regulation stated in the SCPA.

## 10. Appeal

### 10.1 Levels of Appeal or Review to a Litigant Party

The SCPA establishes a two-tier system, where decisions ruled by the Courts of First Instance are subject to appeal if one of the parties lodges an appeal.

Judgments ruled by the Provincial Courts may be subject to (i) an extraordinary appeal for breach of procedure and/or (ii) an appeal in a court of cassation for infringement of the law regarding the merits of the case. According to the temporary regime established in the SCPA, the Supreme Court is currently the pertinent body to hear both extraordinary mechanisms of review except for cassation for infringement or the law of an Autonomous Community, in which case the competent bodies are the High Courts of Justice of each Autonomous Community. Furthermore, once this temporary regime is no longer in force, the SCPA provides the High Courts of Justice of each Autonomous Community as the competent bodies to decide on the extraordinary appeal for breach of procedure.

### 10.2 Rules Concerning Appeals of Judgments

Decisions rendered by the Courts of First Instance need not comply with any specific requirements in order to be appealable to the Provincial Courts. The sole exception to this rule are the judgements issued in oral trials for amounts below €3,000, which cannot be appealed.

On the other hand, decisions rendered by the Provincial Courts shall follow the rules concerning the extraordinary appeals before the Supreme Court, which must comply with certain requisites to be admissible.

In order for the Supreme Court to accept to process the extraordinary appeal for breach of procedure it must be based on the following grounds:

- a breach of the rules with objective or functional jurisdiction and competence;
- a breach of the procedural rules governing the judgment;

- a breach of the legal rules governing the procedures and safeguards of the proceedings, where such breach gives rise to their nullity in accordance with the law or could have caused a lack of proper defence;
- a violation of the fundamental rights recognised by Article 24 of the Spanish Constitution in the civil procedure.

The above-mentioned infringements must be raised by the party who intends to lodge the appeal at the same stage of the proceeding as when the infringement or violation has taken place.

In order for the Supreme Court to agree to process the appeal in a court of cassation for infringement of the law, in terms of the details of the case, at least one of the following requirements must be met:

- the case seeks to protect fundamental rights (except for those foreseen in Article 24 of the Spanish Constitution, which are arguable under the extraordinary appeal for breach of procedure);
- the cost of the proceedings exceeds €600,000.

The decision on the appeal has reversal interest.

### 10.3 Procedure for Taking an Appeal

The appeal shall be lodged before the court that has rendered the judgment subject to be challenged within the period of 20 business days from the day after the date that the appellant party is notified of the court's decision.

Once the court clerk has checked that the decision that has been challenged is eligible for appeal and the appeal has been lodged within the timeframe permitted, the court clerk shall agree to process the appeal. In the event that the decision is not eligible for appeal, the court shall decide on its admissibility.

Should the appeal be granted, the court clerk shall serve notice to the other parties in the proceeding, who will be given a period of ten business days to submit a written statement contesting or joining the appeal by challenging the part of the decision that is unfavourable to them.

After having filed the aforementioned written statements, the court clerk shall send the case file to the appellate court which holds jurisdiction to decide on the appeal.

### 10.4 Issues Considered by the Appeal Court at an Appeal

The Court of Appeal shall only decide on the pleas upon which the appeal or the written statements contesting the appeal are based. Thus, the role of the Court of Appeal is to review the approach of the appealed decision to such pleas and rule on its rightfulness.

Admission of evidence in the context of an appeal is restricted to the following categories:

- any evidence that may have been unduly rejected in the first instance, as long as the decision dismissing such evidence has been appealed or the appropriate protest filed at the hearing;
- any evidence proposed and admitted in the first instance which could not be produced for reasons not attributed to the applicant;
- any evidence relating to relevant facts for the decision on the case that may have occurred after the time limit to issue a judgment in the first instance had commenced, or after such time limit had expired, as long as in the latter case the party can prove they became aware of such evidence subsequently.

The rule behind such restriction on the submission of evidence is that all points discussed during the appeal must have been raised by the parties at first instance. Therefore only new facts are permitted to be introduced over the course of the appeal proceedings.

### 10.5 Court-imposed Conditions on Granting an Appeal

A deposit of €50 is the common formal requisite for the appellate courts to grant an appeal. Also, specific formalities regarding the length and content of the appeal must be fulfilled in order for the Supreme Court to grant it.

### 10.6 Powers of the Appellate Court After an Appeal Hearing

The appellate court can confirm the judgment subject to appeal or set aside such judgment partially or fully. In case of the latter, the appellate court renders its own judgment, which shall include a decision exclusively on the matters raised in the appeal or in the written statements opposing to the appeal. The appellate court's judgment cannot be more damaging to the party who has appealed the decision than the judgment rendered by the Court of First Instance.

When the nullity of the procedures is the object of the appeal, the appellate court shall declare such nullity if it considers that a breach of procedure has taken place. Consequently, unless the breach can be rectified at the time of the appeal, the appellate court must reverse the proceedings to the stage when the breach was committed.

## 11. Costs

### 11.1 Responsibility for Paying the Costs of Litigation

The general rule is that, in declaratory proceedings, the party who has had all of their pleas rejected is responsible for paying the costs of litigation. Exceptionally, should the case

present serious *de facto* or *de iure* doubts, the court would order each party to pay its own costs. In any case, the court's decision on costs can be appealed.

The costs deemed recoverable under Spanish Law are mainly the following:

- lawyer and expert fees up to one third of the cost of the proceedings;
- court agents' fees for technical representation before the court;
- court's fees;
- any expenses incurred by the prevailing party during the proceedings, such as the cost of the placement of advertisements or public notices and the cost of copies, certifications, notes, affidavits or other similar documents that need to be requested in accordance with the law.

The appraisal of costs is conducted by the court clerk and can be challenged within a time limit of ten business days. The grounds for challenging the appraisal may be that the items included as costs are inappropriate or their amount excessive, or the failure of the court to include all the fees that shall be reimbursed.

### 11.2 Factors Considered When Awarding Costs

When awarding costs, the court mainly considers the following:

- if the pleas of the parties have been fully or partially dismissed;
- the complexity of the case, which may present serious *de facto* or *de iure* doubts;
- if one of the parties is litigating recklessly.

### 11.3 Interest Awarded on Costs

According to Spanish law, any settled amount deemed to be due shall bear interest. Therefore litigation costs should not be an exception. However, this matter has provoked some controversy since some Spanish courts have ruled that such costs do not bear interest.

Such interest is calculated from the day upon which the appraisal of costs decision is rendered by the court clerk.

## 12. Alternative Dispute Resolution

### 12.1 Views of Alternative Dispute Resolution in Your Country

Arbitration, mediation and conciliation are the three ADR methods regulated in Spain.

Mediation is popular and commonly implemented in the family law field, although it is also implemented in other fields such as civil law, criminal law or labour law.

Arbitration is an ADR method which is viewed as a method to resolve international commercial disputes. One of its advantages is the fact that it is tailored to accommodate the specific controversy.

Conciliation is another ADR method regulated in Spain and commonly implemented in the labour law field, although it is less popular in the other fields.

## 12.2 ADR Within the Legal System

The Spanish legal system promotes ADR by implementing statutes that regulate them, and by permitting parties to resolve their controversies through ADR. No sanctions are imposed for unreasonably refusing ADR. However, as we will now see, some ADR proceedings are binding.

Regarding mediation, the statutes that regulate mediation proceedings attempt to provide certain principles and guarantees, such as the impartiality of the mediators, neutrality and confidentiality of the proceeding.

Mediation is also promoted by permitting the parties to decide how a mediation proceeding will be organised and to establish its scope. Moreover, courts may not resolve a certain dispute if it is being resolved through mediation and the mediation proceeding is still ongoing.

However, mediation is not compulsory. Thus, if two parties agree to resolve a controversy through mediation, neither party is obliged to stay in the mediation proceeding or to reach an agreement.

As for arbitration, parties may agree to resolve a controversy through arbitration by introducing a contractual clause in this regard. Such clause is legally binding, as well as the arbitration award, which is enforceable in the courts.

Conciliation is regulated by statutory law and forms part of court procedures. Conciliation is not compulsory. Thus, there are no sanctions for unreasonably refusing such ADR.

## 12.3 ADR Institutions

There are institutions offering and promoting mediation and arbitration. For instance, the Spanish Arbitration Court is an institution which provides detailed information regarding

arbitration proceedings, its advantages, price and duration, and other factors.

## 13. Arbitration

### 13.1 Laws Regarding the Conduct of Arbitrations

The conduct of arbitrations is foreseen in Act no. 60/2003 of December 23rd on Arbitration.

The enforcement of a domestic arbitration award follows the general procedure for judgments stated in the SCPA, whereas a foreign one shall follow the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NY, 1958).

### 13.2 Subject Matters not Referred to Arbitration

Arbitration is only applicable to matters that are of free disposition between individuals.

### 13.3 Circumstances to Challenge an Arbitral Award

An arbitral award may be challenged and declared null on the following basis: (i) that the arbitration agreement does not exist or is void; (ii) that the appointment of the arbitrator was not duly notified or the party challenging the award could not exercise its rights; (iii) that the arbitrators decided on issues not subject to their decision; (iv) that the appointment of arbitrators or the arbitral procedure did not follow what the parties agreed or what is stated in the applicable law; (v) that the arbitrators decided on matters not subject to arbitration; or (vi) that the arbitration award is against public order.

### 13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Arbitration awards follow the same enforcement procedure as domestic judgments (see **section 13.1 Laws Regarding the Conduct of Arbitrations** above).

In case of foreign arbitration awards, the party seeking its enforcement shall file a lawsuit against the debtor accompanied by an original or authenticated copy of the award and of the arbitration agreement, all duly translated into an official language in Spain.

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