



**CHAMBERS**  
Global Practice Guides

# Litigation

Spain – Trends & Development

Contributed by  
Pérez-Llorca

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# SPAIN

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## **TRENDS & DEVELOPMENTS:**

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The ‘Trends & Developments’ sections give an overview of current trends and developments in local legal markets. Leading lawyers analyse particular trends or provide a broader discussion of key developments in the jurisdiction.

## Trends & Developments

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**Pérez-Llorca** litigation team advises on all kinds of commercial and civil disputes. The team is highly recommended at national and international level, and is assisted by a multidisciplinary team with expertise in a wide range of matters. This allows the teams to offer thorough and effective legal advice tailor-made to client's needs. Every issue and every client receives an immediate response and a timely follow-up from the partners and lawyers in charge. The team is characterised by its initiative and rigour, its precise, technical writing, and its superb preparation for proceed-

ings before the courts, which allows clients to make their declarations securely and confidently. Clients are mainly large national and international companies. They specialise in managing particularly complex disputes which require meticulous attention to detail, careful strategic analysis, and the right approach to the dispute. Lawyers have acted as legal advisors on some of the most important cases in the country in recent times. In addition, the team advises small and medium-sized companies on all kinds of civil and commercial conflicts.

### Authors



**Ana Ribó** is a partner and heads the litigation and arbitration practice at Pérez-Llorca's Barcelona office. Her practice covers civil, commercial and corporate litigation and arbitration. Ana is the director of the Master's degree in Civil and Commercial Litigation at Instituto Superior de Derecho y Empresa (ISDE) in Barcelona. She also lectures at Universitat Pompeu Fabra, Barcelona. She has published widely in industry publications. Ana is included in the registry of arbitrators for the Tribunal Arbitral in Barcelona.



**Albert Poch** is a senior associate specialising in litigation and arbitration. He is a member of CEA-40 (the Spanish Arbitration Club). Albert has authored a number of litigation-related articles in industry publications.

### The end of the crisis?

One of the most useful indicators for measuring the impact of the global recession on companies in Spain has been to take note of the number of insolvency proceedings filed before the commercial courts. These figures show that insolvency proceedings rose steadily from 2007 to 2013, making the insolvency practice a leading area of many law firms' litigation departments across the country.

In 2014, this upward trend in litigation was reversed for the first time, as the number of insolvency proceedings filed before the commercial courts sharply declined, by nearly 25%. This decrease, which can be interpreted as the result of Spain's improving economic conditions, continued in 2015 and throughout the first quarter of 2016, and is likely to considerably reduce the duration of proceedings, which has been one of the main handicaps to providing relief to companies in crisis.

However, the consequences of the economic recession are far from being resolved. The courts will continue to deal

with the avalanche of proceedings related to the banking and financial sectors for years. These proceedings are a result of one of the most controversial issues to be decided by the courts: the mass-market sale of investment and investment-related products, which have been deemed to breach the protection and transparency rules governing the banking market.

In addition, it should be noted that, despite seeing a general improvement in the economic situation of Spain, the act of the banks selling non-performing loans (or "vulture funds") on a mass scale, allowing them to clean their accounts of toxic assets, has resulted in the reactivation of many enforcement and foreclosure proceedings involving these loans. This has also provoked a notable increase in payment proceedings (*procedimiento monitorio*), for the purpose of claiming the amount of outstanding debts.

For all of these reasons, the average duration of civil proceedings in Spain will continue to be lengthy, although there will be significant differences between the Autonomous

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Contributed by Pérez-Llorca **Authors:** Ana Ribó, Albert Poch

Communities, with Murcia being the slowest and Asturias the fastest Communities in Spain for litigation. Madrid and Catalonia are the two Communities with the largest workloads concerning proceedings, and produce similar results in that they resolve proceedings slightly faster than the national average.

The approval of the amendment to the Civil Procedure Act by Act 42/2015, dated 5 October (RLEC), was a milestone for Spanish civil procedural law in 2015. Although the amendment changed many seemingly unrelated aspects of Spanish civil procedure, all of them led to the same purpose: the modernisation of Spanish civil procedure, speeding up proceedings.

The most relevant change introduced by the RLEC was to enforce the widespread use of technology within the administration of justice. It is important to note that, until the adoption of the RLEC, almost every action carried out before the court was filed on paper, so in this sense the amendment represents an enormous change: from 1 January 2016, all proceedings will be managed electronically, following a zero-paper target. However, the reform has not amended the mandatory use of court agents in the proceedings. After much uncertainty during the parliamentary process, the court agents will still be in charge of conducting communications with the courts, and will also play an important role in the implementation phase and regarding notifications.

With the same overarching purpose of modernising the justice system, the Spanish legislature also amended the current auction system by way of Act 19/2015, dated 13 July. The specific objective of this act was to increase participation in auctions and make it easier for bidders to place their bids. According to the old system, bidders had to appear in court in person on the day of the auction in order to place their bids; as of October 2015, all auctions now last for 20 days and are processed online ([www.subastas.boe.es](http://www.subastas.boe.es)).

Despite the reforms' good intentions, the zero-paper target has not yet been fully implemented in many courts. The reason for this is that the administration's technology is somewhat out-of-date, causing a number of technical problems.

## Oral proceedings

In addition to the technological improvements, another important amendment introduced by the RLEC was to change the oral proceedings (*juicio verbal*) and make them more similar to ordinary proceedings (*procedimiento ordinario*). This was implemented by introducing a written statement of defence, which did not exist previously, and removing the obligation to hold oral hearings in all cases. Oral proceedings take place when the amount claimed is less than EUR6,000, regardless of the matter or when the proceedings refer to specific matters. The most common oral proceedings relate

to: tenant and owner disputes; possession rights over an asset against disturbances caused by a third party; the suspension of new construction works; and actions to demolish buildings, pillars or trees that threaten to damage the claimant. The new changes provided by the Act intend to solve some of the practical problems that judges and lawyers have had to face in oral proceedings, especially in the position of the defendant.

## Non-contentious proceedings

As part of the general process to modernise the system of procedural law, which began more than a decade ago with Act 1/2000 of 7 January and the reform of the Civil Procedure Code, the Spanish Parliament also passed Act 15/2015 on Non-contentious Proceedings on 2 July.

This Act includes significant amendments to, among others, the Civil Code, the Commercial Code, the Civil Procedure Code, the Civil Registration Act and the Mortgage Act. It separates non-contentious proceedings from common procedural regulation and has been used to meet a demand which had been left unattended for a number of years.

The act regulates specific proceedings involving, among others, family matters (marriage, separation, divorce), succession, minors, judicial consignment, voluntary auctions or judicial dissolution of companies, distributing competences among court clerks, notaries, and property and commercial registrars in order to reduce the work of the courts.

## International legal co-operation

The trend for reforms has also affected private international law regulations, with Act 29/2015 on international legal co-operation in civil matters entering into force on August 20 2015.

The purpose of this new law is to establish a general framework that supplements EU law and international treaties, and facilitates legal co-operation between Spanish and foreign authorities in civil and commercial matters (including civil liability arising from criminal offences and employment contracts).

The Act also operates on a supplementary basis regarding specific sectoral legislation, such as the Insolvency Act, the International Act on Adoption, the Civil Registry Act, the Users and Consumers Act, the Arbitration Act, the Mortgage Act, the Commercial Code and Commercial Registry Regulations, and the rules of private international law within the Non-contentious Proceedings Act, which will prevail without prejudice to the supplementary application of the International Legal Cooperation Act.

One of the key elements of this new Act relates to the recognition and enforcements of foreign judgments, authentic

instruments and the exequatur procedure. In particular, obsolete articles 951 to 958 of the 1881 Civil Procedure Code have been replaced, in order to design a whole new process that facilitates the recognition and enforcement of foreign judgments, with the same effects that they would have had in their original jurisdiction.

### **Regulation (EU) no. 1215/2012**

Finally, the entry into force of Regulation (EU) no. 1215/2012, on 10 January 2015, has also led to positive changes in the Spanish procedural framework. This Regulation updates

the provisions on jurisdiction, and on the recognition and enforcement of judgments in civil and commercial matters included in Regulation no. 44/2001. This Regulation will facilitate the execution of judgments within Spain, which will be of great importance, given that Spain has traditionally been a country that receives judgments from other EU countries.

### **Pérez-Llorca**

Paseo de la Castellana 50  
Madrid  
Spain 28046

Tel: +34 91 436 04 20  
Fax: +34 91 436 04 30  
Email: [pll@perezllorca.com](mailto:pll@perezllorca.com)  
Web: [www.perezllorca.com](http://www.perezllorca.com)

Pérez-Llorca