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The International Comparative Legal Guide to:

Fintech 2017

1st Edition

A practical cross-border insight into Fintech law

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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
May 2017

ISBN 978-1-911367-49-9
ISSN 2399-9578

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Paper from responsible sources
FSC® C011748

General Chapter:

Country Question and Answer Chapters:

EDITORIAL

Welcome to the first edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

One general chapter. This chapter provides an overview of Artificial Intelligence in Fintech.

Country question and answer chapters. These provide a broad overview of common issues in fintech in 33 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Chapter 28

Spain

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Mirroring the global trend, Spain's financial sector has faced disruptive changes over the last few years due to the entrance of a considerable number of fintech businesses. In 2013, it was estimated that there were 50 Fintech companies; this number has increased to 238 as of February 2017 (source: Spanishfintech.net).

Fintechs are present in all financial sectors, providing a wide array of services both to final clients and traditional financial entities. They are particularly active in sectors where intermediation between parties is fundamental, including in lending, FX, brokerage and investment services such as investment advice and portfolio management. In those sectors, the development of platforms and big data, robotics and artificial intelligence (AI) tools represent the most recent trends in innovation (to date, mainly crowdfunding and crowdlending platforms and robo-advisors). Fintechs are also highly involved in the Spanish payments sector, in which they have played a key role in the recent development of online and mobile payments. The so-called *third party providers* (TPPs) under PSD2 have also emerged in the Spanish market. TPPs mainly focus on offering customers mobile-account information services and personal-finance management solutions; however, their expansion into new, unexpected business areas is predicted in the near future. 2017 is also expected to bring considerable growth of the insurtech business. Apart from the above, the main disruption in the global financial sector is expected to result from ledger technologies such as blockchain. Although the use of this type of technologies is not yet widespread, it is currently emerging in Spain in areas such as cybersecurity and cryptocurrencies.

In brief, the fintech sector is provoking a profound shift in the Spanish financial, investment and insurance sectors, encroaching on the *status quo* of traditional entities. As a natural result of the above, and in response to recent consumer patterns, the traditional model created by financial institutions is being pushed towards introducing new fintech elements into their product portfolio. Meanwhile, fintech businesses must face significant challenges in connection with the provision of financial services, both regulatory (as detailed in question 3.1) and, in some specific cases, regarding their activity's compatibility with that of the owner of the data required for it to operate.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction?

The feasibility of setting up and operating out a fintech or insurtech business in Spain should be analysed on a case-by-case basis. Although no fintech or insurtech business is prohibited or restricted in Spain *per se*, specific regulatory licences and compliance with regulatory requirements may be applicable in the financial and insurance sectors. However, except as explained in our response to question 3.1, as of today, there is no specific regulation governing fintech or insurtech companies in Spain.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Spanish law does not impose any restriction on the ability of fintechs to be founded via equity or debt. Nevertheless, at this point in time, most fintechs are financed through equity financing rounds at different stages, supported by an array of investors (private equity and venture capital houses, angel investors, and even specific institutions).

Crowdfunding has also grown of late as a funding alternative for fintech companies; there are also growing fintech incubators (some financed by financial entities) and accelerators.

Traditional bank financing is also available although, in practice, fintech companies in early stages of development usually face difficulties to demonstrate the required credit standing reliability based on a reliable business case.

IPOs on the Spanish stock exchanges and, particularly, on the Spanish Alternative Stock Exchange (requiring less-stringent conditions for IPOs), represent additional, highly efficient financing alternatives for fintech businesses that have achieved a certain level of growth in the market.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

The (i) Spanish "patent box" regime and the research, development and innovation tax credit potentially applicable to Spanish resident

companies engaged in tech/fntech activities, and (ii) the corporate income tax benefts for start-ups (e.g. a 15% rate for the start-up's frst two fscal year, instead of the general 25% rate) and Spanish-resident venture-capital entities (*entidades de capital riesgo*), along with (iii) tax credits for "business angels" in specifc start-ups (under specifc conditions) represent the main tax incentive schemes for investment in tech or fntech businesses generally applicable in Spain. Proper structuring is essential for investors in these companies to mitigate any Spanish tax leakage applicable to investments in tech/fntech companies.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

Spanish legislation establishes the principle of freedom to issue and offer securities in Spain; nevertheless, the admission of securities to trading on offcial Spanish stock exchanges (i.e., a regulated market supervised by the National Securities Exchange Commission or CNMV) or on a multilateral trading facility (currently, the Alternative Stock Market, *Mercado Alternativo Bursátil* ("**MAB**"), a self-regulated entity that has grown signifcantly in recent years) is subject to verifcation of specifc eligibility and information requirements.

While distinct requirements apply for an IPO on the offcial Spanish stock exchanges as opposed to a listing on the MAB, common listing requirements include the following, among others: (i) the issuer must be a public limited company (*sociedad anónima*), or its equivalent under foreign law, validly incorporated and currently existing; (ii) the securities to be listed must meet all applicable legal requirements, and must be freely transferrable, represented in book-entry form, and grant the same rights to all holders in the same position; (iii) admission to trading is conditional upon submitting specifc documentation to the appropriate regulator evidencing compliance with the legal framework applicable to the issuer and the securities, the issuer's audited fnancial statements and a public offering or listing prospectus or informative document; and (iv) the application for admission to listing must cover all securities of the same class and a minimum volume and a minimum distribution of the securities among the public are required.

Generally speaking, the MAB provides an alternative for small and medium-sized companies to access capital markets through a less burdensome legal framework. As opposed to the Spanish stock exchanges, the MAB does not require a minimum activity period (i.e. business projections are permitted even if the fntech business has performed activities for fewer than two years). Also, while the offcial Spanish stock exchanges require a minimum capitalisation of €6m, only €2m is required for an IPO on the MAB. Thus, it may be an attractive, less-onerous platform for growing fntech businesses to access capital markets.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

There have been no IPOs of Spanish core fntech companies in Spain. That said, some companies listed on the MAB provide services that are ancillary to the fnancial industry (e.g. Think Smart, Lleida, and Facephi).

However, it has been estimated that the Spanish fntech sector has received approximately €300m in fnancing rounds (source: http://spanishfntech.net/entrevista-jesus-perez/). Among the most notable investments are Peer Transfer (international educational payment tool), which has received €18m from Bain Capital and SpotCap (alternative fnancing platform), which received €31.5m from the private equity house Finstar Financial Group. Other noteworthy fnancing rounds include NoviCap (invoice trading marketplace) and Housers (real-estate fnancing platform), which received $1.7m and €0.85m, respectively, in the latest fnancing rounds.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

As of today, there is no specifc regulatory framework in Spain governing fntechs. This is mainly due to the fact that fntech businesses in Spain cover a vast range of activities.

In general, fntech businesses focused only on developing IT solutions to support the provision of services by fnancial entities are not currently subject to any fnancial regulatory regime. However, fntechs that engage in fnancial activities such as payment services, deposit-taking activities, investment services, payment services and insurance, are subject to the general regulatory regime that applies to any company operating in those sectors.

Cybersecurity and data protection regimes may also be applicable to certain fntech businesses, as well as other regulatory regimes, as described in section 4.

However, specifc legal developments have already arisen in Spain in connection with some particular types of fntech businesses. This is the case of crowdfunding and crowdlending platforms, which are subject to Law 5/2015, of April 27, on the promotion of business fnancing, which, for the frst time in Spain, regulates the activities of these platforms.

3.2 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested?

Although no active legislative or governmental action has yet been taken other than the regulation of crowdfunding and crowdlending platforms, Spanish regulators show that they are receptive to the fntech activities. By way of example, the Spanish securities regulator (the *Comisión Nacional del Mercado de Valores*, "**CNMV**"), has created a section on its webpage aimed at establishing an informal communication space with fnancial entities and promoters of fntech businesses in which the latter may discuss and propose initiatives and be continually informed on legal developments and issues that may affect their projects. The insurance regulator (*Dirección General de Seguros y Reaseguros*, "**DGSFP**") has also communicated to the industry the importance of the challenge that technology represents to the market.

On the other hand, the Spanish Fintech and Insurtech Association (*Asociación Española de Fintech e Insurtech*, "**AEFI**") is calling for a review of the current regulatory environment to promote the development of fntech businesses in Spain. In particular, the following measures are being proposed:

(i) the implementation of a "regulatory sandbox", understood as a defned authorisation programme under which entities that meet specifc requirements would receive a temporary, limited licence to test the market's reaction to their products and services;

(ii) advice programmes offered by regulatory authorities to businesses that are ineligible for the regulatory sandbox programme; and

(iii) certain regulatory amendments seeking to define which activities do not trigger licensing requirements and establishing a licensing regime that is proportionate to the activities undertaken by fintechs. Among others, the amendments include the request of a longer deadline for the complete down payment of the minimum capital requirements applicable to be eligible for certain regulatory licences (e.g. investment firms), the simplification of the conditions are required to be authorised as a certain type of regulated entity as well as various specific amendments to Law 5/2015, of April 27, on the promotion of business financing.

3.3 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

There are no specific regulatory hurdles for fintechs that are established outside Spain. These fintechs face the same entry barriers as those established in Spain, namely, the obstacles resulting from the provision of financial services that trigger licensing requirements. The current legal regime for the authorisation of financial entities, which is established by reference to EU law, does not provide for a simplified procedure for businesses that only provide a limited range of services, as is the case of many fintechs. Hence, as of today, fintechs providing regulated services such as payment or investments services must navigate complex and burdensome procedures in Spain or in their country of establishment before having access to customers.

Also, other requirements under other domestic legislation (e.g. those resulting from Spanish data protection laws) may create burdens on certain fintech businesses or activities that are designed to support the activities of financial companies, as described in section 4.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Spanish Basic Law 15/1999 on the Protection of Personal Data ("**Spanish Data Protection Law**") transposes the EU Data Protection Directive (Directive 95/46/EC) into Spanish law. The Spanish Data Protection Law thus sets out the main rules and principles in Spain that apply to the collection and further processing of individuals' personal data. In Spain, fintech businesses must comply with the data-quality principle, as well as with information and consent duties, security standards and other registration and notification duties *vis-à-vis* the Spanish data protection authority (the "**Spanish DPA**").

As a general rule, the Spanish Data Protection Law and its ancillary regulations (mainly Spanish Royal Decree 1720/2007) are consistent with the rules set out in the EU Directive; however, certain local peculiarities nevertheless exist. As regards the legal basis entitling companies, including fintech businesses, to collect and process personal data, the Spanish Data Protection Law recognises, among other grounds, informed consent and the existence of a law authorizing or imposing that processing as legitimate grounds to process the data. However, the "legitimate interest" of companies, which is a legal ground to process persona data recognised by the EU Directive, was not correctly implemented in, and recognised by, the Spanish Data Protection Law. For this reason, for many years it was not possible (or extremely complex) to ground the processing of personal data on the existence of a legitimate business interest and this made many processing activities that were generally accepted in other EU jurisdictions difficult to legally ground in Spain.

In Judgment C/468/10, of 24 November 2011, the Court of Justice of the European Union ruled that Article 7.f of the EU Directive (recognising legitimate interest as a legal basis for data processing) has direct effect in Spain. However, since that time, the Spanish DPA has nevertheless followed a very restrictive interpretation of this legal ground and has on several occasions emphasised that, for the correct application of the "legitimate interest" criterion, a balancing test must be performed − i.e., the legitimate interests must be balanced against the rights and freedoms of data subjects − and the data controller must adopt effective measures mitigating the impact on data subjects' privacy. It is expected that a wider interpretation of this legitimate interest will be able to be argued more effectively following the implementation of the new General Data Protection Regulation (EU Regulation 2016/679), which clearly recognises legitimate interest as a legal ground for the processing of personal data.

Furthermore, several fintech businesses may act as data processors on behalf of other companies. The Spanish Data Protection Law imposes specific duties on such processors including, in particular, the necessity of implementing a list of mandatory security measures (as listed in Spanish Royal Decree 1720/2007) when processing personal data on behalf of Spanish companies. It is likely that those measures will cease to be mandatory upon the new General Data Protection Regulation's enactment, but will remain as a market standard in Spain.

Finally, as indicated, the General Data Protection Regulation will enter into force in May 2018 and will provide a more unified legal framework on the processing of personal data within the EU. This will undoubtedly benefit fintech businesses given that the same general rules will apply throughout all EU jurisdictions. Nevertheless, specific local data protection rules will remain applicable in Spain and, in particular, it is expected that a new Spanish Basic Data Protection Law – adapted to the general framework under the General Data Protection Regulation – will be made public and approved in the following months.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

As a general rule, the Spanish Data Protection Law and its ancillary regulations apply to data controllers incorporated and located in Spain, such as Spanish companies and Spanish branches of foreign companies. However, under certain circumstances and regardless the applicability of their local data protection laws, foreign fintech businesses may also fall within the scope of the Spanish Data Protection Law. This is the case, for instance, of EU and non-EU fintech businesses that operate in the Spanish market through an establishment in Spain. It should be noted that the Spanish DPA has interpreted the concept of "establishment" broadly and, in their opinion may include, for instance, affiliates providing ancillary consultancy services or sales support. This approach has been contested by the market.

The applicability of the Spanish Data Protection Law to non-EU fintech businesses may also result from the use by that fintech business of processing means located in Spain other than for transit purposes. For example, the Spanish DPA has on certain occasions (and contentiously) considered that the mere use of cookies implemented on Spanish devices qualifies as the use of "means located in Spain".

Finally, the Spanish Data Protection Law sets out various additional requirements to transfer personal data outside the Economic European Area ("**EEA**") or to other white-listed countries or companies apart from the requirements applicable in other EU jurisdictions. In general, an international transfer may be grounded on the individual consent of each affected data subject or, alternatively, on prior authorisation by the Spanish DPA. Other limited legal grounds exist, such as in the event of transfers required for the execution of money transfers. Conversely, the mere execution by the data exporter and the data importer of the "EU Model Clauses" is not in itself sufficient for carrying out international data transfers. EU Model Clauses properly executed by the parties must be filed with the Spanish DPA for analysis and a decision on whether or not to grant the authorisation previously indicated.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Administrative sanctions arising from data protection breaches in Spain are among the highest potential sanctions in the EU. It is also worth noting that the Spanish DPA is very active and opens hundreds of sanctioning proceedings per year. For these reasons, compliance with data protection duties is of the utmost importance for fintech business operating in Spain.

The amount of the fines depends on the severity of the breach. The Spanish Data Protection Law sets out three different ranges of sanctions: (i) minor infringements, which are subject to fines ranging from €900 to €40,000; (ii) severe infringements, ranging from €40,001 to €300,000; and (iii) very severe infringements, ranging from €300,001 to €600,000. The Spanish DPA is also vested with other sanctioning powers, including the power to immobilise data files if data subjects' rights and freedoms are put at stake. Some of the data processing that is likely to happen within the fintech activities, such as international transfers of data flows outside the EEA are considered very severe infringements and, thus, may be sanctioned with fines of up to €600,000.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

The approval in July 2016 of the EU Directive on Security of Network and Information Systems (the so-called "**NIS Directive**") has been the most important recent milestone on cybersecurity. It represents the first EU-wide rules on cybersecurity; it has not yet been transposed into Spanish law. Until transposition occurs, the regulation of cybersecurity matters in Spain remains disseminated and insufficient. In general, the most important Spanish rules currently in force regarding cybersecurity that could potentially affect fintech businesses are those set out in (i) the Spanish Criminal Code (according to which specific acts, mainly related to hacking or the illicit collection or discovery of information and communications, may qualify as a criminal offence), (ii) data protection laws (establishing a list of mandatory security measures applicable to all entities that process personal data in Spain), and (iii) Spanish e-commerce law, which was amended in 2014 to establish specific obligations in connection with cybersecurity incidents applicable to information society services providers, domain names registries and registrars. These obligations, resulting from e-commerce law, are twofold: to collaborate with the corresponding computer emergency response teams in the wake of cybersecurity incidents affecting the internet network and to follow specific recommendations on the management of cybersecurity incidents, to be developed through codes of conduct (which have not yet been developed).

Also, operators of critical infrastructure (i.e. entities responsible for investments in, or day-to-day operation of, a particular installation, network, system, physical or IT equipment designated as such by the National Centre for Critical Infrastructure Protection (CNPIC) under Law 8/2011) are subject to specific obligations such as providing technological assistance to the Ministry of Home Affairs, facilitating the inspections performed by the appropriate authorities and creating the specific protection plan and the operator's security plan, etc. Fintech businesses providing services to any of the operators appointed as operators of critical infrastructure may then be subject to the specific requirements set out in these rules.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

In general, fintech businesses providing services that are catalogued as financial, investment or insurance-related services (including payment entities and electronic money institutions, currency exchange services and transfer of funds services) and the related intermediation services are subject to AML and prevention of terrorist financing requirements. The Spanish laws regulating both the prevention of money-laundering and terrorist financing were recently unified. Those regulations impose various obligations, although primarily relating to the formal identification of the beneficial owner of any legal or natural persons intending to enter business transactions with them, the application of simplified or enhanced due-diligence measures and the potential reporting of various events to the corresponding authorities.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Apart from the financial regulatory frameworks already addressed in question 2.1 above, along with data-protection and AML regulations, other regulatory regimes may also apply to Spanish fintech businesses. One notable instance is Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the general law on the protection of consumers and users. This regulation establishes guiding principles applicable to relationships with consumers and users (understood as legal or natural persons acting in a context that falls outside entrepreneurial or professional activities) and entrepreneurs. Also of note is Law 34/2002, of 11 July, on services of the information society and electronic commerce, which is of particular importance for online businesses, as it establishes a regulatory regime for electronic agreements (e.g. the information to be provided to the contracting parties prior to and after the execution of the relevant agreements, the conditions applicable for the validity of electronic agreements, other obligations applicable to the electronic providers). For the financial sector in particular, another notable instance is Spanish Law 22/2007 on the commercialisation by distant means of financial services addressed to consumers, setting out the rules for electronic agreements and electronic marketing communications.

In view of the above and of the highly complex financial regulatory environment to which fintech companies may be subject (see section 3), the growing sector of regtech businesses in Spain should not be ignored (i.e. businesses that, based on big data or blockchain technologies, are creating solutions to facilitate other fintechs' regulatory compliance).

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The Statute of Workers ("**SW**") acts as the basic law for all matters related to employment. The SW was approved by a consolidated text passed by Royal Legislative Decree 2/2015 of 23 October.

In general, it is necessary to comply with certain requirements from employment and Social Security perspectives before hiring employees in Spain (e.g. registering employees with the Social Security, notifying the Social Security of the employment, health and safety and work obligations, registering employment contracts).

On the dismissal side, Spanish law recognised the "stability in employment" principle, implying that the duration of contracts is essentially indefinite (i.e., the SW specifies fixed causes for temporary contracts) and that dismissal can be complicated and expensive for employers. Pursuant to the SW, an employee can only be dismissed: (i) on a disciplinary basis as a result of serious, wilful non-compliance with his/her duties; or (ii) for objective reasons based on the need to eliminate specific positions for economic, technical, production, or organisational reasons. Under Spanish labour law, an employee can only be dismissed under those specified reasons. Therefore, if an employee claims files a judicial claim with a labour court alleging the dismissal to be unfair and the reasons set out above are not proven or not sufficiently serious, the court will declare the dismissal to be unfair and the employee will be entitled to a severance payment equivalent to 33 days of salary per year of service, subject to a maximum limit of 24 months of salary.

5.2 What, if any, mandatory employment benefits must be provided to staff?

The SW sets forth an "interprofessional" minimum annual, monthly, or daily salary that is determined annually by the central government taking into consideration the next year's forecasts for several financial indexes. For 2017, the interprofessional minimum monthly salary was set at €707.70.

The maximum statutory work schedule is 40 hours of effective work per week, calculated on an annual basis. Workdays of more than nine hours are not permitted, unless a different distribution of the workday is established by collective agreements or, in its absence, by agreements between the employer and the employee representatives. In all cases, a minimum 12-hour break must be provided between the end of one workday and the beginning of the next. Employees are also permitted to a weekly uninterrupted rest period of one and a half days (generally, Saturday afternoons or Monday mornings and all of Sunday).

Vacation time is regulated in the applicable collective bargaining agreement or individual labour contract. Nevertheless, employees are mandatorily entitled to enjoy at least 30 calendar days per year of vacation. Employees in Spain enjoy 14 days per year as official paid holiday.

Generally speaking, in the event of the birth, adoption, or fostering of a child, employees are entitled 16 weeks of paid leave. Furthermore, employees who apply for legal custody of a child under 12 years of age, or a physically or mentally handicapped relative not able to perform a remunerated activity, are entitled to a reduction of between one-eighth and one-half of their working time, in which case the remuneration will be reduced proportionally.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

There is no special route for obtaining permission for individuals who wish to work in fintech businesses. On the one hand, according to EU and domestic regulations, citizens of EU/EEA Member States can exercise the rights of entry and exit, free movement, residence, and work in Spain. Ordinary registration certificates and residency cards may be required. On the other hand, foreign non-EU/EEA citizens must obtain a residence and work authorisation by filing the required documentation with the labour authorities.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

We refer separately to inventions (which generally include innovations) and works.

Inventions are typically the result of research. That result may essentially be protected by patents, utility models or, if such protection is not available or the parties do not wish to request it, inventions can also enjoy certain degree of protection as "know-how" or a "trade secret":

- Spanish patents provide protection for the relevant invention for 20 years as of the filing date.
- Utility models protect inventions of lower inventive rank than patents, and are granted for a period of 10 years.
- Once the referred protection periods have expired, the invention will enter the public domain and any person can use it freely.
- Know-how and trade secrets have a value as long as they are kept confidential, as opposed to patents, and therefore it is a matter of contract (confidentiality agreements) and of fact (other protective measures adopted) that the invention remains valuable.

On a separate note, software would not be deemed an invention but would be protected by copyright (*derecho de autor*) from the very moment of its creation. Registration is not necessary for protection of software. The exploitation rights in the work will run for the life of the author and survive 70 years after the author's actual or declared death.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Again, the rules applicable to the ownership of inventions and of works should be analysed separately.

These are default rules under Spanish law to attribute ownership of inventions:

(a) Absent other applicable rules, the natural person who creates the invention (i.e., the inventor) is the owner.

(b) If the inventor is an employee (private or public):

(1) In case the invention is a result of his/her work for a company, pursuant to the terms of his/her employment agreement or to the instructions received from the company, then the owner of the rights to the invention is the company.

(2) In case the invention is a result of his/her independent work but used relevant knowledge obtained from a company or the company's facilities, then the company can claim ownership rights to the invention or a right to use the invention, subject to payment of fair compensation.

The rule in connection with works is that the original owner of the rights to the work is the author or co-authors (or, in very specific and limited cases, an individual or a legal private or public entity who leads and coordinates personal contributions and publishes the result under its own name – usually in the case of software). The general rule is that the author is the owner of all moral and exploitation rights to the work. However, there exist specific legal presumptions as well as some important exceptions:

(a) Regarding copyrightable work created by an employee under his/her employment agreement, Spanish law presumes that, unless otherwise agreed, all exploitation rights in the work have been assigned, on an exclusive basis, to the company for the purposes of its ordinary course of business. This assumption applies in particular, but is not limited to, the creation of software.

(b) In the event of joint co-authors, either:

(1) all co-authors have equal exploitation rights, unless otherwise agreed; or

(2) the exploitation rights to the work correspond to the (legal or natural) person that assumes responsibility for the creation of the work and publishes it under the person's own name.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

When referring to IP rights ("**IPRs**"), we refer to trademarks, patents, utility models, designs, know-how and business information (trade secrets).

Under Spanish law, enforceable IPRs are those having effects in Spain. This is the case, for instance, of: (a) domestic rights resulting from domestic applications with the SPTO; (b) community rights (e.g. European Union trademarks and designs); and (c) domestic rights resulting from an international application with regional/international IP offices (e.g., international trademark applications under the scope of the Madrid Agreement).

Apart from registered rights, protection is also granted to specific, unregistered rights, including:

(a) Well-known and reputed trademarks and tradenames, which are protected from unauthorised use by third parties that might take unfair advantage of their reputation or affect their distinctive character (in accordance with article 6 "*bis*" of Paris Convention for the Protection of Industrial Property).

(b) Non-registered European Union designs (if they have already been marketed in the European Union), which are protected for a period of three years following the date on which the design was first made available to the public (and only from uses resulting from its copy).

(c) Know-how and business information (trade secrets) may be protected if the requirements set forth in Spanish law on unfair competition and Spanish case law are satisfied.

As regards copyright and related rights, since there is no registry and no formal requirements, the owner is entitled to enforce the right irrespective of any "local" or "national" character. Given the territoriality of this category of rights, the *lex loci protectionis* principle applies. The Spanish Copyright Act is directly applicable not only to Spanish and EU citizens but also to nationals of third countries who are ordinarily residents of Spain, and even from nationals of third countries not ordinarily residents of Spain if their works have been published for the first time in Spain. Nationals of third countries must, in all cases, enjoy the protection available under the international conventions and treaties to which Spain is a party and, should there be none, must be treated in the same way as Spanish authors when Spanish authors are themselves treated in the same way as nationals in the country concerned. In the field of copyright, the main multi-jurisdictional treaty is the Berne Convention for the Protection of Literary and Artistic Works, which has been ratified by Spain and more than 170 countries.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

In general, the holder of an IP right may exploit the right: (i) directly; or (ii) through third parties through a licence. Note that, unless otherwise indicated, licences are understood to be non-exclusive, national, for the whole life of the IPR and must be registered with the appropriate office in order to be enforceable against third parties. In addition, licences for patents must be granted in writing.

Under Spanish law, the exploitation of all IPRs is subject to various limitations (most of which result from Spain being party to specific international treaties on industrial property). Those limitations include, but are not restricted to: (i) the exhaustion of IPRs; and (ii) the permitted uses for patents (e.g. private acts with no commercial purposes and acts carried out for experimental purposes).

With respect to copyright and related rights, the author is granted the power to exploit the work in any form (and especially through reproduction, distribution, public communication and transformation). For some activities, the author only has a right to remuneration (e.g., private copying). Usually, the author is not the one who directly exploits the work, but transfers the right through an assignment to specialised entrepreneurs. Although Spanish law does not create a specific presumption, the transfer of copyright usually involves remuneration in the form of a percentage or royalty in connection with the assignee's income generated from the exploitation of the right. As in other jurisdictions, exploitation rights are limited by a number of exceptions that allow the general public, or certain beneficiaries, to make specific, free use of the work without requiring permission from the author. In such cases, the author will not receive any remuneration, unless equitable compensation of some kind is appropriate.

Acknowledgment

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