

IN-DEPTH

# Dispute Resolution

EDITION 16

Contributing editor

Damian Taylor

Slaughter and May



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In-Depth: Dispute Resolution (formerly The Dispute Resolution Review) provides an indispensable overview of the civil court systems in major jurisdictions worldwide. It examines the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is also forward-looking, with astute analysis of likely future trends and developments.

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# Spain

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## Summary

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## Introduction

Spain is a non-denominational, social, democratic and sovereign state governed by the rule of law, which advocates freedom, justice, equality and political pluralism as higher values of its legal system.

Spain's government is a parliamentary monarchy. It has been a Member State of the European Communities since 1986 and of the European Union since 1993. Its territory is divided into 17 autonomous regions and two autonomous cities. Some of these regions have significant legal peculiarities.

The Spanish system is a civil law system. Its guiding principles are the principle of the rule of law, normative order, the publication of regulations, the non-retroactivity of punitive provisions that are unfavourable to or restrictive of individual rights, legal certainty and accountability, and prohibition of bias for public powers.

### i Sources of law

The Spanish legal system is hierarchical. The sources of law are classified as follows.

#### Legal and regulatory provisions

##### Constitution

The Constitution provides the basic regulations on fundamental rights and duties, the Crown, Parliament, the government, the relationships among the main institutions, the judiciary, territorial division, the distribution of powers between the state and the autonomous regions, the Constitutional Court and the procedure to amend the Constitution.

##### International provisions and EU law

Validly concluded international treaties constitute part of the internal legal order once officially published in Spain. In the event of a contradiction between the provisions of an international treaty and national law, the former will prevail.

EU law is also part of the Spanish legal system and, hierarchically, is above national laws.

##### Laws

Parliament, composed of two chambers, the Congress and the Senate, passes legislation on matters reserved by the Constitution to the state. When a law affects fundamental civil rights and liberties, it is denominated a basic law and is enacted through a special procedure requiring an absolute majority in Congress. Ordinary laws require simple majorities.

Each of Spain's 17 autonomous regions has its own parliament that may pass legislation on delegated matters.

The relationship between laws (national or regional) is not based on a hierarchical principle but on a material one: different matters or different territorial scopes require different laws.

#### **Decree-laws and legislative decrees**

Decree-laws are approved by the government. They regulate exceptionally urgent matters and must be ratified by Congress.

Parliament may occasionally authorise the government to make and enact legislative decrees, which have the same rank as law. Legislative decrees are generally used to consolidate and redraft existing laws.

#### **Decrees, ministerial orders and resolutions**

Legislation, both national and regional, is developed through these three types of provisions. Decrees are issued by the government, ministerial orders by the relevant minister, and resolutions by administrative bodies or authorities. In the event of conflict, laws prevail.

#### **Custom**

In the absence of applicable law, custom has the force of law, provided that it is substantiated and is not contrary to moral standards or public policy. Custom is considered as the primary source of law under the special civil legal framework in the region of Navarre.

#### **General principles of law**

In the absence of legislation and custom, general principles of law apply. They are unwritten principles underlying the legal system based on concepts such as fairness and logic.

#### **Case law**

Law is never created by court decisions, but case law issued by the Supreme Court is highly valued as a source of interpretation and application of the law.

## **ii Court system**

The Spanish court system is an independent power within the state. The courts forming the judicial system are structured in five jurisdictions: civil and commercial; criminal; administrative; labour; and military. At the top is the Supreme Court, featuring five chambers, one for each jurisdiction.

#### **Civil and commercial courts**

The civil and commercial jurisdiction deals with contractual claims, tort law, family law, inheritance and, in general, any matter that does not fall under the other jurisdictions. The courts of first instance are the core of this jurisdiction.

Specialised commercial courts have been created in some of the largest Spanish cities. They deal with claims lodged in relation to:

1. insolvency of companies and individuals;
2. unfair competition, antitrust, industrial property, intellectual property (IP) and advertising matters;
3. corporate law;
4. international or national inland transport, maritime law and air law (with specific exceptions); and
5. appeals against specific decisions issued by the Directorate General for Registries and Notaries.

If a commercial court does not exist in a particular judicial district, the corresponding matters remain under the jurisdiction of the courts of first instance.

Decisions of courts of first instance (or commercial courts) are subject to appeal before the civil chambers of the provincial courts. A provincial court's decision can, in certain cases, be appealed to the Supreme Court (see Section III.ii).

### **Criminal courts**

Criminal cases are investigated by a judge, assisted by the police. The public prosecutor is a party to the criminal proceedings. Victims (including the state (e.g., in a tax fraud case)) may also be a party to the proceedings as private accusers. Any person or legal entity can also become a party to criminal proceedings, even if they have not been a victim of the crime, by exercising a popular action.

Except for minor offences, cases are always heard by a court other than that in charge of the investigation. Offences punished with penalties of up to five years' imprisonment are heard by criminal courts (one judge), whereas cases involving more severe offences are heard by the criminal chamber of the corresponding provincial court (each chamber being formed by three judges).

A decision can always be appealed before a higher court: if the case is heard by a criminal court, the appeal must be filed before the corresponding provincial court; if the case is heard by the latter, the appeal must be filed with the corresponding high court of justice.

### **Labour courts**

A wide range of employment disputes are heard in this area of law, including claims regarding work shifts, holiday entitlement, discrimination in the workplace, the right to strike or challenge disciplinary measures and, more usually, claims for unfair dismissal. In addition to the individual exercise of labour-related actions by employees, trade unions can also act on behalf of their members.

At first instance, claims are heard by labour courts. Subject to statutory requirements, judgments issued by labour courts can be appealed before the high court of justice of

the corresponding autonomous region. Likewise, under certain circumstances, judgments issued by a high court of justice can be appealed to the Supreme Court.

### **Administrative courts**

Cases relating to resolutions issued by public authorities, the challenge of general provisions with lower hierarchical standing than a law or legislative decrees, appeals against a public authority's failure to act, and claims linked to the liability of the public authorities and their staff are heard by administrative courts.

This jurisdiction is the legal channel through which companies can challenge, inter alia, decisions of the regulators of the financial, telecommunications or utilities sectors and competition decisions.

Contentious administrative courts are the equivalent of the civil courts of first instance in administrative law. Their decisions may be appealed to the high court of justice of the relevant autonomous region and, under certain circumstances, to the Supreme Court.

### **Territorial organisation**

The whole territory is divided into judicial districts covering one or more municipalities. There is always at least one court of first instance and one criminal investigation court in the 'capital' of each judicial district (although in small judicial districts there may be only one judge with dual responsibility).

Labour courts, criminal courts and contentious administrative courts are located in the capital of each of Spain's 50 provinces and in certain larger cities.

Courts of appeal are distributed regionally and include the provincial courts, the high court of justice of each autonomous region and the Supreme Court.

There is also a central court, the National Court, which combines various levels of jurisdiction. The National Court is based in Madrid but has nationwide jurisdiction on matters regarding offences with considerable implications (e.g., terrorism and organised crime) and labour and administrative matters of special importance.

### **The Constitutional Court**

The Constitutional Court is not part of the court system, but rather is an independent national institution that resolves disputes between the state and autonomous regions, disputes relating to the constitutionality of laws and violations of constitutional rights.

### **The General Council of the Judiciary**

The General Council of the Judiciary is in charge of the organisation and inspection of Spanish courts. Its functions are supervising judges and courts, selecting and training judges and magistrates and assigning them to a court, and electing its own President and the President of the Supreme Court from among its members. It also names two judges to the Constitutional Court.<sup>[2]</sup>

## Year in review

### i Legislation

Among others, the following legislative developments are noteworthy.

#### **Royal Decree-Law 5/2023 of 28 June amending the cassation appeal**

This Royal Decree-Law has introduced numerous legislative reforms, including an exhaustive reform of the cassation appeal in the fields of civil, administrative, labour and criminal law. With regard to cassation appeals in civil law, the main areas of the reform are the following:

1. The extraordinary appeal owing to procedural infringements is eliminated. Therefore, the cassation appeal is currently the only way to challenge final rulings of provincial courts before the Supreme Court. The cassation appeal may now be based on the infringement of substantive or procedural rules, provided that – in both cases – the decision on the appeal has reversal interest.
2. The possibility of lodging a cassation appeal in cases in which the value or economic interest at stake exceeds €600,000 is also eliminated. Parties may now lodge cassation appeals only if the decision on the appeal has reversal interest or if the proceedings concern specific fundamental rights.
3. The concept of 'reversal interest' is modified slightly. Reversal interest exists if (1) the appealed decision contradicts the Supreme Court's case law, (2) the case relates to a matter on which there is divergent case law among the provincial courts, or (3) the appealed decision applies laws on which there is currently no Supreme Court case law (in the last scenario, the former time requirement that the corresponding rule has not been in force for more than five years is therefore eliminated).
4. A new concept of 'manifest reversal interest' is introduced, which must be assessed by the Supreme Court when the appealed decision has been handed down in proceedings involving a legal dispute that is of general interest for the uniform interpretation of law. In particular, it will be understood that general interest exists when the issue potentially – or effectively – affects a large number of situations.
5. Some provisions that had previously been included only in interpretative agreements of the Plenary of the First Chamber of the Supreme Court have been legislatively introduced. This is the case, for example, with the impossibility of challenging the evaluation of the evidence and the establishment of facts in the appealed decision through a cassation appeal, unless a patent and immediately verifiable error exists.
6. The legal authority to regulate the length, format and other formalities of cassation appeals (previously existing in administrative cassation appeals) is transferred to the Government Chamber of the Supreme Court (the criteria had previously operated merely as guidelines).<sup>[3]</sup>
- 7.

In those cases in which the Supreme Court considers that the appealed decision runs afoul of its jurisprudence, the case will be remanded to the lower court to ensure that its decision is consistent with the jurisprudential doctrine.

The reform also includes various other procedural innovations, including the simplification of the admission phase and the holding of a hearing only if the court deems it necessary.

### **New framework on structural changes in corporations**

Royal Decree-Law 5/2023 has also been used to transpose the Mobility Directive<sup>[4]</sup> and introduce important changes to the legal framework governing structural changes. It repeals the previous regulations set out in Law 3/2009, bringing cross-border structural changes into line with the Mobility Directive and creating a new framework applicable to both domestic and cross-border structural changes.

The structure of the new law differs substantially from that of Law 3/2009, as it contains a general part that applies to all structural changes – both domestic and cross-border – including provisions regulating the preparation of the structural change draft terms, the directors' and independent expert's reports, the approval of the operation and the protection of partners and creditors, and a special part that includes the framework applicable to each type of domestic structural change, to intra-EU cross-border structural changes and to extra-EU cross-border structural changes.

The new framework affords new protection mechanisms to creditors, partners and employees. Thus, the traditional creditor's right of opposition is eliminated and replaced by a system of 'adequate safeguards' that the company must provide to creditors adversely affected by the structural change. Two reports are now required to be prepared by the directors: one addressed to the shareholders and the other to the employees (or a single report with a specific section addressed to each of them), all of whom are entitled to submit comments on the reports. The draft terms must now include accreditation of being current with tax and social security obligations by submitting the corresponding certificates issued by the corresponding authority.

### **Law 11/2023 of 8 May on the digitalisation of notarial and registry proceedings**

Law 11/2023, among many other provisions, includes significant measures that promote digitalisation in the field of notarial, registry and corporate actions, transposing Directive 2019/1151<sup>[5]</sup> into Spanish legislation. Among the novelties introduced by the Law, the following are noteworthy:

1. The possibility of incorporating a limited liability company entirely online (provided that all contributions are monetary), with the possibility of also using standardised articles of association and public deeds that, if used, would facilitate registration of the incorporation with the Commercial Registry within six hours. All other operations that are entitled to registration – as well as those aimed at satisfying legal obligations – can also be done online.
2. Notaries and registrars are now entitled to carry out certain granting actions and authorisations via videoconference.

3. The generalisation of the use and issuance of electronic certified copies of public deeds.
4. The creation of a general single nationwide electronic registry office available to all citizens through which they can submit, process and access all available registry information and services.

Nevertheless, the legislation establishes a lengthy period for these measures to enter into force (between six months and one year), so it will be necessary to wait for their effective implementation in order to adequately assess their real practical scope.

### **Law 12/2023 of 24 May on the right to housing**

This Law seeks to develop the constitutional right to decent housing and seeks to, among other goals, increase the supply of affordable housing, avoid situations of tension in the rental market, and support young people and vulnerable groups in obtaining access to housing. To do so, it introduces measures aimed at promoting public housing, establishes limits on the price of rent and tax incentives and disincentives to encourage a sufficient and adequate supply of affordable housing, and makes certain changes in connection with the landlord–tenant relationship.

The Law establishes specific provisions for 'stressed residential market zones' and 'large property owners',<sup>[6]</sup> including extraordinary extensions of leases in favour of tenants and specific limits on the price of rent.

The Law also provides for new rights of information in favour of buyers or lessees, the creation in 2024 of a new index for updating rents that seeks to avoid disproportionate increases and extends the obligation to bear the costs of real estate management, and the formalisation of the contract to all lessors in general.

Finally, the Law establishes specific amendments that have procedural implications. Among them, it establishes some new admissibility requirements for certain eviction claims, foreclosure claims and the auction of real estate in proceedings of this kind. The claim must indicate whether or not the real estate corresponds to the habitual residence of the occupant, whether the claimant is a large property owner and whether the defendant is in a situation of vulnerability. If these conditions are met, the procedure will be continued only if the claimant proves that they have previously sought recourse through the conciliation or intermediation procedures introduced by the Law itself (and which the corresponding public authorities must create for this purpose).

### **Law 6/2023 of 17 March on the securities market and investment services**

This Law replaces the previous framework enacted in 2015 and transposes various European directives into Spanish law, modernising the operation of the Spanish securities markets in order to increase their competitiveness and enhance their capacity for corporate financing.

1. The legislation includes measures to simplify the securities market, reducing the requirements for the issuance and admission to trading of securities and eliminating or relaxing specific administrative burdens.

2. The new Law introduces a number of new developments in the area of takeover bids, including the extension of the scope of application of its regulations to companies listed on a multilateral trading system and domiciled in Spain.
3. It adapts national regulations to facilitate the implementation of the EU Digital Finance Package, including the provisions of Directive 2022/2556, which accompanies the proposals for EU regulations concerning crypto-asset markets, the pilot regime for market infrastructures based on distributed ledger technology and digital operational resilience.
4. It introduces, for the first time in Spain, a specific framework for special purpose acquisition companies, which are listed vehicle companies incorporated to raise financing on the securities markets and whose purpose is to acquire all – or a stake in – the capital of another listed or unlisted company.
5. It also amends the framework on investment firms in order to adapt it to the new EU regulatory framework (primarily the Investment Firms Directive),<sup>[7]</sup> and creates a new category of financial advisory firm – national financial advisory firms – with lower initial capital requirements and that are entitled to operate only at the national level.
6. Finally, the penalties system is simplified, updated and improved.

## ii Court practice

Among many notable decisions handed down in 2023, the following are particularly noteworthy.

### **Supreme Court judgment dated 31 October 2023 on the prescription period for the liability of directors for company debts**

With this decision, the Supreme Court ends the contradictory jurisprudence of provincial courts on the prescription period for the liability of directors for corporate debts.

This judgment is the result of a claim for payment corresponding to supplies delivered to a limited liability company. The company could not be summoned, as it had become extinct, and was ultimately summoned through its director, against whom the actions for individual liability of directors (Articles 236 and 241 of the Spanish Capital Companies Law) and liability for debts (Article 367) were brought.

The Supreme Court rejects the application of the two rules on which the discussion had previously focused. It rejects the prescription period under Article 241 bis of the Capital Companies Law (four years since the action could have been brought), stating that the period was provided exclusively for individual and corporate liability actions, which are typical actions for damages, while the liability action for corporate debts is a legal liability action for another's debt with its own assumptions (not to promote the dissolution of the company upon the occurrence of a legal or statutory cause of dissolution). It also rejects the prescription period established in Article 949 of the Commercial Code (four years from the date of leaving office), stating that with the introduction through Law 31/2014 of the prescription established in Article 241 bis, its scope of application has been limited to

partnerships, as regulated in the Commercial Code itself, without it being applicable to capital companies.

Based on the foregoing, the Supreme Court held that (1) the prescription period for the action under Article 367 is that of the joint and several guarantors (i.e., the same period that the guaranteed obligation (the corporate debt) carries pursuant to its nature (contractual obligations, obligations arising from civil liability and tort, etc.)), (2) the dies quo of the prescription period for the action against the director will be the same as that against the debtor company, and (3) the same interruptive effects are applicable to the director as those applicable to the action against the debtor company.

Finally, when applying this doctrine to the specific matter before the Court, given that the debt resulted from the non-payment of the consideration agreed for a purchase and sale, the prescription period for personal obligations applies (since 2015, that period has been five years), which period had not yet lapsed.

### **Supreme Court judgment dated 11 January 2023 on the forced distribution of dividends**

The Spanish Capital Companies Law provides for the possibility of challenging corporate resolutions that the majority imposes abusively. A resolution is considered abusive when it is not linked to a reasonable need of the company and is adopted by the majority in furtherance of its own interest and to the unjustified detriment of other shareholders. For example, this could occur when, in an economically healthy company in which there is no accreditation of a future need for reserves, a distribution of dividends is systematically rejected by a majority shareholder who, in addition, often obtains an economic benefit from the company in other ways, such as through remuneration as a director.

The immediate consequence of this challenge being upheld was the annulment of the resolution, and the shareholders' meeting would once again have to decide on the distribution of profits. This meant that the majority shareholders who had initially rejected the distribution of dividends were those who had to decide again on the distribution and could once again adopt a resolution that still did not satisfy the interests of the minority shareholder (agreeing, for example, on the distribution of a minimum percentage of profits).

Based on this situation, the possibility of a court compelling a commercial company to make a mandatory distribution of dividends had been discussed. This option is not expressly established in the law and was a matter on which courts had taken divergent positions.

With its ruling, the Supreme Court has ruled in favour of this possibility and upheld the second instance ruling that had ordered the company to pay out 75 per cent of distributable profits. In particular, the Court bases its decision on the importance of guaranteeing the effective judicial protection of the minority shareholder and understands that compelling the distribution of a specific amount of dividends does not imply supplanting the will of the shareholders.

Finally, in response to the defendant company's arguments, the Supreme Court points out that the right of the shareholder to withdraw in the absence of a dividend distribution as permitted pursuant to the Capital Companies Law neither affects nor limits the possibility of challenging the corporate resolution on the application of the result and of requesting a forced distribution of dividends. These are two different routes, each with specific

requirements, and shareholders may opt for the one they consider most beneficial to their interests.

### **Supreme Court judgment dated 31 October 2023 on state liability for damages resulting from covid-19 restrictions**

In this decision, the Supreme Court has for the first time dismissed a claim for state liability for damages that a company in the hospitality industry alleged as a result of harm resulting from the application of the regulations adopted to prevent or mitigate the spread of the covid-19 pandemic. These regulations imposed, among other things, the temporary suspension of the business activity in which the appellant was engaged.

First, the financial liability of the state as the 'legislating state' is rejected because the damage suffered is not unlawful, since the measures adopted are deemed necessary, adequate and proportionate to the severity of the situation and were sufficiently general as regards the entities (or natural persons) that were subject to them, with such entities being legally obliged to bear them without having any right to compensation for any potential injury suffered (the Court points out that the way to seek recourse in terms of reparation or mitigation of the injury for those who suffered them with greater intensity, if appropriate, is public aid – which was widely granted – but not by seeking recourse in connection with the state's financial liability). The Court also rejects this liability given that the specific declaration of partial unconstitutionality of the royal decrees by virtue of which the state of alarm was declared is not in itself the basis for claims of this nature according to the Constitutional Court's unconstitutionality ruling.

The resolution also rejects (1) liability for the abnormal functioning of public services, which the claimant cited in connection with the alleged delay in the state's response to the pandemic and which the Supreme Court concluded had not been proven, and (2) the application of the institute of compulsory expropriation as a mechanism for remedying the injury resulting from compliance with covid-19 regulations.

Finally, the Supreme Court concludes that the administration did not violate the principles of legitimate trust, efficiency, legal certainty, proportionality, motivation and good governance insofar as the Constitutional Court qualified the administrative activity as reasonable, proportional and adequate to the existing situation.

The relevance of this resolution for the numerous pending liability claims against the state is undeniable and has already resulted in dozens of claimants withdrawing their claims.

### **Supreme Court judgments on the follow-on actions arising from the truck cartel<sup>[8]</sup>**

In June 2023, the Supreme Court handed down the first 15 judgments resolving appeals referring to actions for damages in connection with the conduct sanctioned by the European Commission's Decision of 19 July 2016. The judgments concern five manufacturers (Man, DAF, Iveco, Daimler Mercedes and Volvo/Renault (the 'truck cartel')) and address the following issues:

1. Following the criterion of the Court of Justice of the European Union (CJEU) judgment of 22 June 2022 (C-267/20, Volvo/DAF), the Supreme Court concludes that the dies a quo for the computation of the limitation period for an action for

damages was the date of publication in the Official Journal of the European Union of the European Commission's decision (6 April 2017), and that the prescription period should be the five-year period established in Article 74.1 of the Antitrust Law.

2. The Supreme Court concludes that the European Commission's decision stated that the object of the collusive agreements was price-fixing and gross price increases in the European Economic Area and not merely an exchange of information.
3. The Supreme Court agrees with the provincial courts' presumption that the cartel has caused damage to truck buyers due to the characteristics of the cartel: duration (14 years), geographical extension (the entire European Economic Area), market share (approximately 90 per cent) and the object of the collusive agreement. The Court also states that the fact that there were discounts in the commercialisation of trucks does not prevent that conclusion, given that, if a higher gross price attributable to the cartel is assumed, the final price would also be higher.
4. Regarding the quantification of the damage, the Supreme Court considers it appropriate to resort to its judicial estimation. Making reference to European case law,<sup>[9]</sup> it considers that there is a scenario of high difficulty in quantifying the damage and that, in these cases, the insufficiency of the claimant's expert report or the failure to request the production of evidence by the defendant does not necessarily imply that the impossibility of assessing the damage is attributable to the claimant's inactivity. As such, the Court assesses the specific circumstances of the cases, such as the fact that the appeals refer to the first wave of claims relating to this cartel and that they were filed when there was no general jurisprudence rejecting expert reports such as those submitted by these claimants (based on specific statistical methods to assess the damage) and when there was no consensus on prescription period for bringing the action. It also considers that there could be a disproportion between the litigious interest and the cost that could be generated for the claimant in connection with the necessary proceedings to access the relevant documentation and prepare the resulting expert report.
5. Finally, the Supreme Court considers that the estimate of the damage of 5 per cent of the truck price made by the provincial courts is reasonable. In any case, this percentage is not considered to be a definitive figure and may ultimately be higher or lower depending on what is ultimately proven in future proceedings and should be increased on the basis of legal interest accruing from the purchase date of the truck.

## Court procedure

### i Overview of court procedure

All civil, criminal and labour proceedings may have written and oral phases. Administrative proceedings are mainly conducted in writing.<sup>[10]</sup>

The oral principle is linked to the immediacy principle. Immediacy requires that the judge who renders the judgment be the same as the one who heard the oral trial and has therefore

had direct contact with the parties, the witnesses, the experts and the subject of the trial, enabling the judge to form an opinion on the case.

## **Principles inherent to civil proceedings**

### **Principle of controversy or dual parties**

The parties must provide the court with all the relevant facts, which must be duly evidenced. The court's task is to consider the allegations and means of evidence provided by each party.

### **Principle of equality of arms**

Parties acting in a process must have access to the same resources in preparing their respective claims and defences. This includes the right to access all evidence produced or observations made.

## **Principles inherent to the object of the proceedings**

### **Principle of initiative**

Only the parties to an action may initiate civil proceedings and may determine the matter under dispute through the initial claim and counterclaim. This principle entails that once an action has been brought before the court, only the parties to the claim may have any bearing on the action. Therefore, in general terms, the claimant is free to continue or withdraw the claim.

### **The right of the defendant to be heard**

This right establishes that no judgment may be rendered against anybody without the party having had the opportunity to be heard. This practice entails notifying the defendant of the initiation of proceedings and the main procedural acts. A breach of this principle would render the proceedings void.

## **ii Procedures and time frames**

Civil and commercial claims must be resolved through either ordinary or oral proceedings.

### **Ordinary proceedings**

Economic claims exceeding €6,000 and some specific matters set out in the Civil Procedure Law, regardless of their economic value (most significantly, challenge of corporate resolutions and protection of honour, personal image and privacy), are resolved through ordinary proceedings.

Once the defendant has answered the complaint and, as the case may be, the claimant does the same with the counterclaim, or the corresponding terms to answer have elapsed, the court will summon both parties to a preliminary hearing to try to settle the dispute by agreement, or, if that is not possible, preparations for trial will begin, allowing both the claimant and the defendant to specify, clarify or rectify their allegations, raise procedural objections and propose evidence.

In the preliminary hearing, the court will decide on the procedural objections raised, accept the corresponding means of evidence and set a trial date.

In the trial, the evidence will be produced (examination of the parties, the witnesses and the experts) and the parties will orally present their closing statements summarising the facts in dispute and the evidence supporting their allegations.

Following the trial, the court will render its judgment.

### **Oral proceedings**

Oral proceedings are used to resolve complaints with a value or economic interest not exceeding €6,000, as well as other actions such as specific injunctive relief actions for the protection of collective and diffuse interests of consumers, some disputes over lease agreements, vacant possession actions, maintenance claims, actions for the rectification of inaccurate harmful data, actions relating to matters not included among those reserved for ordinary proceedings and, with certain special procedural features, appeals against decisions in industrial property matters handed down by the Spanish Patent and Trademark Office that exhaust the available administrative remedies.

As in the case of ordinary proceedings, oral proceedings are initiated by filing a complaint with the court. Claims must be answered in writing and may be followed by a hearing when so requested by either party and accepted by the court. Counterclaims in oral proceedings are accepted only in limited cases. If the hearing does not take place, the court will render its judgment directly. If the hearing does take place, it will include the submission and production of evidence and eventually the presentation of oral conclusions if so requested by the parties.

### **Summary proceedings**

Monitory proceedings are a special type of proceeding available for the repayment of economic debts of any amount. It is a fast-track procedure through which parties seek to obtain an enforceable resolution quickly.

If the debtor does not submit a challenge and fails to pay, the court will issue an order declaring the termination of the summary proceedings, allowing the creditor to seek enforcement and payment of the amount owed. If the debtor submits a challenge, proceedings will continue as ordinary proceedings, except if the amount does not exceed €6,000, in which case they will continue as oral proceedings and the parties will be summoned to a hearing before the court.

EC Regulation 1896/2006 provides for monitory proceedings at the European level. This fast-track procedure is applicable to civil and commercial matters in cross-border cases

in which at least one of the parties is domiciled or habitually resident in a Member State (except Denmark) other than the country hearing the action.

Law 15/2015 provides for notarial monitory proceedings for claims of specific economic debts involving any amount (not applicable for claims involving debts arising from a contract between a consumer and a businessperson or professional). At the creditor's request, the corresponding notary public will order the debtor to pay the amount due within 20 working days. If the debtor cannot be located or the debt is challenged, the notarial proceedings will end without prejudice to the creditor's right to claim the debt through judicial proceedings. If the order is made and the debtor fails to pay without challenging the debt, the notarial proceedings will be terminated and the notarial act obtained will constitute an enforceable instrument.

### **Interim relief**

The Civil Procedure Law regulates interim relief, allowing Spanish courts to admit any kind of interim measure to ensure the enforcement of a potential judicial ruling in favour of the petitioner.

The court may allow the requested interim measure provided that:

1. the claimant is able to show that there is a reasonable probability of success on the merits of the case;
2. in its absence there is a real risk that a judgment in favour of the claimant might not be executed (for instance, the assets might be taken abroad or otherwise removed);
3. the measure is appropriate for securing the effectiveness of the resolution; and
4. there are no less harmful measures that may be equally effective in securing the pending final determination of the proceedings.

If the court ultimately allows the measures, the petitioner must provide a bond to cover any potential damage that the adoption of the interim measure may cause to the defendant. The Spanish system on interim measures establishes a strict liability regime, meaning that if the petitioner loses on the merits, he or she will be liable for any damages arising as a result of harm suffered by the defendant because of the measures adopted.

The Spanish Civil Procedure Law does not contain an exhaustive list of these measures, so the petitioner may call for the adoption of any interim measure that will be useful to secure the future judgment.

A request for interim measures is usually submitted to the court together with the complaint, but they may also be requested prior to the filing of a lawsuit. In this case, the petition for interim measures must be filed within 20 working days of the granting of the measures with the court with jurisdiction to render a judgment in the main proceedings. Nevertheless, petitions for interim measures may be admitted after the filing of a lawsuit under exceptional circumstances. If the interim measure is revoked, the petitioner will be ordered to make restitution for any harm caused to the defendant by implementing the measure. The court may allow the defendant to substitute the interim measure for alternative security.

The parties may appeal the court order accepting or rejecting the interim measure. If the order accepts the measure, filing the appeal will not prevent the measure from being enforced.

### Appeals on civil matters

Appeals on civil matters are as follows:

1. Appeal for reversal: allows parties to challenge interlocutory decisions issued by judges or court clerks (formerly referred to as judicial secretaries), lodging an appeal heard by the authority that issued the decision.
2. Appeal for review: allows parties to challenge decisions issued by court registrars that state the termination of the proceedings or prevent their continuation, lodging an appeal heard by the judge of the court in charge of the proceedings.
3. Remedy of appeal: final rulings (on the merits of the case, in whole or in part) may be challenged by the party whose claims have been rejected by lodging a remedy of appeal. The appeal will be heard by the provincial court with territorial jurisdiction, which is the court immediately above the first instance court that issued the decision. If both parties are unsatisfied, each may appeal the decision.
4. Cassation appeal: by lodging this appeal with the Supreme Court, parties challenge final rulings issued by provincial courts owing to an infringement of substantive rules or procedural formalities when the appeal has reversal interest<sup>[11]</sup> or the proceedings concern specific fundamental rights.<sup>[12]</sup>
5. Extraordinary appeals in the interest of law: these may be lodged with the Supreme Court by the public prosecutor, the ombudsman and other public authorities with respect to the interpretation of procedural rules in which the holdings of the civil and criminal chambers of the high courts of justice diverge.
6. Complaint: this allows parties to challenge a court's decision to reject admission of a remedy of appeals or a cassation appeal. The complaint is heard by the court with jurisdiction to hear the rejected appeal.

### Judicial fee

The payment of a fixed fee is required from legal persons to initiate specific proceedings in civil or commercial courts.

### iii Class actions

Class actions in Spain are reserved for consumer associations, certain authorised legal entities and other affected groups seeking damages arising from the same matter.

It is understood that only those actions where the issues of fact that underlie each of the actions are sufficiently common could be considered class actions. In any event, there is no express regulation on the requisites with which class actions must comply, such as numerosity, commonality, typicality or adequacy of representation, nor the existence of a certification of class that certifies the fulfilment of such requisites.

The Civil Procedure Law establishes several publicity requirements regarding class actions with the aim of ensuring sufficient protection of the corresponding private interests. The decision could have *res judicata* effects. Furthermore, any action filed while the class action is litigated could not be admitted in application of the *lis pendens* rule.

There is no opt-out procedure for consumers who wish to initiate proceedings independently.

#### **iv Representation in proceedings**

Spain has a peculiar representation system. The general rule is that litigants must be represented in proceedings by a court representative, who is an independent legal professional acting as an intermediary between the party and the court, filing the briefs that the party's lawyer prepares and notifying the party of the resolutions issued by the court.

In criminal proceedings, representation by a court representative is optional at the investigation stage but mandatory as from the trial stage.

#### **v Service out of the jurisdiction**

Within the European Union, service of process between Member States is governed by Regulation (EU) 2020/1784. The system established by this Regulation allows the service of judicial and extrajudicial documents in civil or commercial matters through direct communication between the agencies designated by the Member States (rather than the usual method of transmitting notifications through central authorities).

The applicant who forwards documents to the transmitting agency must translate the document into a language that the addressee understands or into the official language of the Member State where service is to be effected. The documents are exempt from legalisation or any equivalent formality. The receiving agency should either serve the document itself or have it served within one month, according to the law of the receiving Member State, or by a particular method if this is requested by the transmitting agency and it conforms to the national law. The Regulation also allows for the possibility of direct service by electronic means under specific conditions.

Beyond the European Union, the first serving of an initial claim to a person or company domiciled in one of the countries that has ratified the Hague Service Convention will be dealt with in accordance with the legal system established in that Convention, to which Spain is a party. The Spanish central authority, pursuant to the Convention, would deliver the claim and attached documents to the other country's central authority, which is responsible for passing them on to the defendant together with a translation of both the claim and the attached documents into the official language of the country.

Law 29/2015 on international legal cooperation in civil matters applies in the absence of European regulations or international conventions. It provides for the application of the general principle in favour of international cooperation, according to which Spanish authorities must cooperate with foreign authorities even in the absence of reciprocity (the government may allow non-cooperation with authorities of states that have repeatedly denied cooperation or in which there is a legal prohibition to cooperate). Judicial documents

may be served through central authorities or by direct communication between the corresponding courts, or Spanish authorities may serve documents to the final recipient by certified mail or an equivalent means of communication with acknowledgment of receipt or any other guarantee of proof of receipt. Extrajudicial documents may be served through central authorities or a notary. The documents must be translated into a language that the addressee understands or into the official language of the recipient state. Parties may request that the recipient state issue a certificate of completion of service of process and how it has been carried out.

## **vi Enforcement of foreign judgments**

The recognition and enforcement of foreign judgments are regulated by international treaties, Regulation 1215/2012 in the European Union and Law 29/2015.

### **EU Regulation 1215/2012**

The recognition and enforcement of judgments in civil and commercial matters issued in the European Union countries were governed by Council Regulation (EC) No. 44/2001. The Regulation was applicable to enforce any judgment given by a court or tribunal of a Member State. Enforcement under the Regulation included a two-stage process: first, declaration of enforceability through exequatur proceedings and, second, enforcement under the applicable lex fori. This international enforcement model was amended through Council Regulation (EC) No. 1215/2012, which replaced Council Regulation (EC) No. 44/2001 from 10 January 2015. The exequatur proceedings prior to the enforcement of judgments, court settlements and public documents were abolished by the new Regulation. Mutual trust in the administration of justice in the European Union and the aim of making cross-border litigation less time-consuming and costly justify the abolition of the declaration of enforceability prior to enforcement in the Member State addressed.

### **Law 29/2015 on international legal cooperation in civil matters**

Law 29/2015 regulates the recognition and enforcement of foreign judgments. It amends exequatur proceedings previously governed under the Spanish Civil Procedure Law of 1881 that are applicable for the recognition and enforcement of foreign judgments in the absence of a treaty or special regulation. According to Law 29/2015, recognition and enforcement will be granted when the following requirements are met:

1. exclusive domestic jurisdiction is respected;
2. foreign judgments are not contrary to domestic public policy;
3. the parties' rights of defence have been respected;
4. the foreign resolution is not incompatible with a domestic resolution or a previous foreign resolution that is recognised in Spain; and
5. no national proceedings involving the same subject matter and parties were initiated prior to the foreign proceedings.

Law 29/2015 also regulates:

1. the partial and incidental recognition of foreign judgments (in the latter case, the judge conducting the proceedings in which incidental recognition is sought must rule only on the matter for those proceedings);
2. the possibility of amending foreign judgments concerning matters that, by their own nature, can be modified (e.g., resolutions establishing child support payments or protective measures for minors and legally incapacitated adults);
3. the recognition, enforcement and registration of foreign judgments and public documents containing measures not recognised in the Spanish legal system through adaptation to other measures recognised in domestic legislation with equivalent effects and for a similar purpose; and
4. the recognition and enforcement of foreign judgments issued in class action proceedings.<sup>[13]</sup>

## vii Assistance to foreign courts

Assistance to foreign courts is governed by several different sets of rules, including the following:

1. Regulation (EU) 2020/1783 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters. The Regulation provides a swift procedure for the transmission of requests for the taking of evidence directly between the courts of all the Member States of the European Union, with the exception of Denmark.
2. The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. The system provided in this Convention differs essentially from that outlined in Regulation (EU) 2020/1783, in that such requests are not transmitted directly from the requesting court to the required court but to the central authority of the state where the evidence is sought. In Spain, that central authority is the Ministry of Justice's General Subdirectorate for International Legal Cooperation.

Spain is also party to many bilateral and multilateral treaties, including the Inter-American Convention on Letters Rogatory.

When no convention or treaty applies, assistance to foreign courts is governed by Law 29/2015 on international legal cooperation in civil matters. Cooperation will be granted pursuant to this framework under the following conditions:

1. the request is not contrary to Spanish public policy;
2. the request is addressed to the Spanish court with authority to perform the taking of evidence;
3. Spanish courts do not have exclusive jurisdiction over the proceedings where evidence sought is intended to be used;
4. the request meets certain content and information requirements established by law; and

5. the government has not ordered non-cooperation with the requesting country (because it may have repeatedly refused to cooperate or this is expressly prohibited in its legal system (see Section III.v)).

### **viii Access to court files**

In principle, access to court files is restricted to the parties, their lawyers and their court representatives. As a general rule, attendance at trial and access to the judgments is public, except if there are reasons to protect privacy.

In the investigation stage of criminal proceedings, under certain special circumstances (risk of destruction of evidence or of compromising the investigation), a court may keep a file (or a part of it) secret from the parties. The court's decision must be grounded and the secrecy period cannot exceed one month, which is extendable for additional monthly periods by subsequent court orders. Additionally, secrecy must be applied automatically if the judge orders the interception of communications.

### **ix Litigation funding**

There are no specific legal limits on the funding of litigation by third parties. Although this practice has historically been uncommon in Spain, it is usually reported in international arbitration involving foreign parties and appears in certain litigation cases.

## **Legal practice**

### **i Conflicts of interest and Chinese walls**

There are certain Spanish regulations on the protection of information subject to conflicts of interest; however, there are no express regulations on the implementation of Chinese walls in law firms.

In practice, information barriers are a reality in most legal services providers. Chinese walls are allowed and in some cases are even an obligation (including for professional legal services) in accordance with professional codes of practice.

In certain cases, especially in large mergers or acquisitions where both parties wish to be advised by the same law firm, the consent in writing of both parties is requested.

### **ii Money laundering, proceeds of crime and funds related to terrorism**

Law 10/2010 of 28 April provides unified regulations on the prevention of money laundering and of terrorist financing, which were traditionally regulated separately.

A range of non-financial businesses and professions are subject to Law 10/2010 for the prevention of money laundering, including lawyers and court representatives, when:

- 1.

they take part in the preparation or assessment of any transaction on behalf of their clients for:

- the acquisition of real property or companies;
  - the management of funds, securities or any other assets;
  - the opening or management of current accounts, savings accounts or securities accounts; or
  - the creation or management of a company, a trust or any analogous structure; or
2. they act on behalf of their clients in any financial or real estate transaction.

Money laundering is deemed to exist regarding any goods derived from any criminal activity, regardless of the punishment foreseen for such activity.

There are three levels of due diligence measures to be adopted depending on the type of client, business relationship, product or transaction, as well as certain other obligations that must be fulfilled.

Law 10/2010 has been amended multiple times since its enactment. In particular, it was:

1. developed by Royal Decree 304/2014 (which establishes stronger due diligence measures and expands the information duties imposed on lawyers and other professionals);
2. amended by Royal Decree 11/2018 (which transposes Directive (EU) 2015/849 of 20 May 2015, establishing additional duties and measures to improve supervision and sanction of infractions, such as the obligation of private parties subject to the law to create internal procedures so that their employees, managers and agents can communicate – including anonymously – relevant information on potential breaches of this legislation);
3. amended by Royal Decree 7/2021 (which transposes Directive 2018/843 of 30 May 2018, increasing the scope of activities subject to regulation, imposing new due diligence measures and obligations relating to the identification of beneficial ownership in connection with legal persons, greater protection for whistle-blowers and establishing the creation of a single, central register of beneficial ownership under the auspices of the Ministry of Justice);
4. amended by Law 18/2022 (which, among other modifications, allows obliged entities belonging to the same category to create common information systems for the fulfilment of the due diligence obligations set out in Law 10/2010); and
5. recently amended by Royal Decree-Law 5/2023 (which regulates the infringement consisting of the absence of a declaration to the register of beneficial ownership and includes modifications on the access and use of this register to adapt it to the latest European jurisprudence).

From a criminal law standpoint, it is a criminal offence to acquire, process or transfer property in the knowledge that it was obtained as a consequence of a crime; to commit any other act to conceal its unlawful origin; or to assist any person involved in the acts with the

aim of avoiding the corresponding legal consequences. It is also a criminal offence to carry out these actions recklessly. Law 10/2010 also makes express reference to evaded tax debts as likely to be used for money laundering. This implies that tax fraud can constitute the illegal origin of money laundering offences and, consequently, the benefits of said tax fraud can constitute the object of a money laundering offence.

### iii Data protection

Data protection in Spain is regulated by the General Data Protection Regulation<sup>[14]</sup> and Basic Law 3/2018 on Data Protection and Digital Rights.

It is necessary to provide information to data subjects before the implementation of personal data processing and to base the processing on a legal basis recognised by the applicable regulations (such as prior consent or the existence of a legitimate interest).

The current data protection regulations:

1. recognise the accountability principle, which imposes a proactive responsibility obligation that obliges organisations to establish measures guaranteeing and enabling the demonstration of compliance with the regulations;
2. focus on internal recording obligations, implying that, unless one of the legally established exceptions applies, companies must maintain an internal, written record of the processing activities carried out; and
3. in addition to the traditional rights of access, rectification, cancellation and opposition, recognise and regulate rights such as the right to data portability, the right to be forgotten and the right to oppose profiling activities.

When personal data is to be transferred to a country outside the European Economic Area in which regulations have not been identified by the EU authorities as ensuring an adequate level of protection, the controller must adopt additional safeguards (such as the use of EU standard contractual clauses for data transfers or to obtain data subjects' specific consent for the transfer).

For legal professionals, it is important to fulfil the obligations under data protection regulations, since the provision of legal services implies the processing of personal data.

## Documents and the protection of privilege

### i Privilege

Confidentiality of information exchanged between lawyers and clients is established in the Judiciary Law and in the General Regulation of the Legal Profession.

All lawyers must keep confidential all the facts or information acquired as a result of their professional activity and cannot be required to testify with regard to such facts or information. Confidentiality also extends to communications between lawyers of different parties, which may not be provided to the courts or clients except with the express

authorisation of the other professionals subject to confidentiality or when the sender has expressly stated that the communications are not subject to professional confidentiality.

Confidentiality is therefore both a privilege and a legal obligation, encompassing all facts and documents known or received in the exercise of the legal profession. A breach of this obligation could lead to criminal liability as well as sanctions from the Bar Association.

The text of the recent new General Regulation of the Legal Profession expressly recognises professional confidentiality in the case of in-house lawyers. Nevertheless, under EU law, the confidentiality and secrecy of communications for in-house counsel may not apply in situations such as antitrust investigations initiated by the European Commission.<sup>[15]</sup>

## ii Production of documents

Under Spanish law, parties may be required to produce any document considered relevant or useful by the court. The Civil Procedure Law establishes that a party may require the counterparty to produce documents unavailable to the former and relating to the subject matter of the dispute or to the effectiveness of the means of evidence.

The test performed by Spanish courts is usually rigorous and the requested document must be directly connected with the dispute. Spanish courts expect the document requested to be specific; in other words, the requesting party must be certain of its existence, and it must refer to that specific, identifiable document and to no other document that relates to the general issue.

Naturally, criminal investigation courts operate under different standards and often request the parties or third parties (banks, telecommunications companies and airlines, etc.) to provide information and documents. This can be done either at the initiative of the investigating judge or following a request by the public prosecutor, the police or any party to the proceedings.

Decree Law 9/2017 specifically regulates the production of documents applicable only to procedures of claims for damages derived from antitrust infringements. It entitles claimants to request that the judge order the counterparty or third parties to grant access to specific sources of evidence necessary to substantiate the claim. This regulation is governed by the principle of proportionality and does not permit indiscriminate searches of information. The production of documents may be requested before the proceedings commence, at the time of the submission of the claim or while the proceedings are under way. In all cases, production will be ordered only after the claimant has presented sufficient facts and evidence to justify the viability of the claim for damages. The claimant will bear all expenses derived from the proceedings and damages that may rise from an inappropriate use of the sources of evidence obtained by these means or if no claim is filed following the completion of the disclosure.

### Pretrial proceedings

The Spanish Civil Procedure Law allows parties to obtain the information necessary to file an action through pretrial proceedings. The basis for these proceedings is that in some cases the future claimant may find it impossible to obtain all the information necessary to

file an action without the assistance of judicial authorities. According to the Civil Procedure Law, pretrial proceedings are limited to the following issues:

1. the production of documents or evidence of facts regarding capacity;
2. representation and legal standing;
3. the disclosure of items in possession of the respondent and upon which the trial will be based;
4. the disclosure of wills and other testamentary documentation;
5. the disclosure of accounting documentation of companies and owners associations;
6. the disclosure of insurance policies;
7. the disclosure of medical records;
8. the determination of the members of the group who initiate legal actions for the defence of the collective interest of consumers; and
9. the disclosure of information regarding the origin and distribution of merchandising networks pertaining to disputes involving industrial and IP matters.

In any event, the petitioner must lodge a sufficient guarantee to cover any hypothetical damage that may occur if no action or claim is filed following the completion of pretrial proceedings.

### **Taking of evidence in advance**

The Civil Procedure Law also allows the parties to request that evidence be taken in advance (even before the initiation of legal proceedings) when there is justifiable fear that, owing to the activity of persons or owing to the circumstances, the evidentiary acts may not be carried out at the usual procedural moment.

## **Alternatives to litigation**

### **i Overview of alternatives to litigation**

Arbitration and other alternative dispute resolution means are a real and effective channel for settling commercial disputes in Spain. This section provides a brief outline of the current status of extrajudicial mechanisms in Spain, focusing on arbitration, mediation and expert determination.

### **ii Arbitration**

The Spanish Arbitration Law passed in 2003 established a very favourable legal framework for arbitration. Its main goal was to provide economic agents with an efficient and flexible dispute resolution mechanism, in both the domestic and the international arenas. It was hoped that this would have two positive effects for the legal system: from a domestic

perspective, it should relieve the courts of a significant number of cases for which the flexibility of the procedure and the specialisation of the arbitrators prove to be a more appropriate alternative; and from an international perspective, it should promote Spain as a seat of international arbitration. In general, it can be said that the Arbitration Law has fulfilled those expectations.

Spanish awards are immediately enforceable, even if a request to set aside the award has been filed. The Arbitration Law provides that Spanish awards may be set aside only on the following grounds:

1. the arbitration agreement does not exist or is void;
2. the party challenging the award has not been given proper notice or an opportunity to present its case;
3. the arbitrators have ruled on questions not submitted for their consideration;
4. the composition of the arbitral tribunal or the arbitration proceedings has been irregular;
5. the arbitrators have decided on questions that cannot be settled by arbitration; or
6. the award is contrary to public policy.

The action to set aside the award is not an appeal and therefore does not entail a review of the merits of the case. Spanish case law is consistent with this approach, making clear that the scope of review in proceedings to set aside an award is strictly limited to verifying that the essential principles of due process have been observed during the arbitration.

The enforcement of foreign awards in Spain is governed by the New York Convention. Since Spain made no reservation as to its scope of application, the New York Convention governs the enforcement of any foreign arbitration award, even if the place of arbitration is located in a non-signatory state. Spanish courts favour simplicity and expeditiousness when enforcing foreign awards.

The Arbitration Law represents a real breakthrough in developing Spanish arbitration as an efficient alternative to litigation and promoting Spain as an attractive seat for international arbitration, especially in connection with investments and transactions relating to Spanish-speaking countries. Spanish arbitration institutions and practitioners are fully committed to this active arbitration process, leading initiatives to encourage recourse to arbitration in Spain.

Law 11/2011 was passed to amend the Arbitration Law. Two features of the amendment stand out. First, the amended Law retains the fundamental pillar of arbitration: that of party autonomy. Second, to unify case law and guarantee greater legal certainty, the – limited – competence for judicial control of arbitration was concentrated in the high courts of justice. It falls within their authority to hear actions for annulment of arbitral awards rendered in arbitration where Spain is the seat of arbitration and to hear requests for recognition of foreign awards. The role of supporting arbitration (except the judicial appointment of arbitrators) falls to first instance courts: they continue to assist in the taking of evidence, the judicial granting of interim measures and the enforcement of awards.

### **iii Mediation**

Mediation is expressly regulated as an alternative to judicial proceedings and arbitration by Law 5/2012 on mediation in civil and commercial matters. It incorporates European Parliament and Council Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters into Spanish law. The aim of the Law was to regulate a fast and effective process for solving conflicts, reducing the burden of litigation weighing down Spanish courts.

It is applicable to civil and commercial matters, including cross-border disputes, except as regards rights and obligations that are not at the parties' disposal under the relevant applicable law. This regulation is not applicable to criminal mediation, mediation with public authorities, labour mediation or mediation in consumer matters.

The final agreement or settlement ultimately reached by means of mediation is binding on the parties. It can cover all or only part of the matters subject to mediation. If the parties wish it to be enforceable, the agreement must be converted into a public deed.

On 13 December 2013, Royal Decree 980/2013 was approved, developing specific aspects of Law 5/2012.

#### **iv Other forms of alternative dispute resolution**

Apart from arbitration and mediation, expert determination is considered a valid alternative to litigation in Spain. Expert determination is a flexible procedure for the resolution of disputes based on the decision of an independent third party: the expert. Expert determination is regarded as especially suitable for factual disputes.

Recourse to expert determination is also common in disputes in which a high degree of technical knowledge is required, such as those resulting from construction contracts.

## **Outlook and conclusions**

The year 2023 has been one of moderate economic growth for Spain (with positive figures on growth and inflation compared with the rest of the European Union), which has leant on the EU Recovery Plan, and pre-pandemic levels have already been reached. Growth is expected to slow in 2024 given deteriorating global prospects in an environment of high uncertainty.

This year's legislative activity has been significantly affected by the holding of general elections. Thus, legislative reforms were concentrated in the first half of the year and included, among others, a new securities market law, the law on the right of housing, the amendment of cassation appeals (a project that had been discussed for years as part of the Justice 2030 modernisation plan to which we have referred in previous editions) and a new framework on structural changes in corporations (see Section II.i).<sup>[16]</sup>

Judicial activity has been marked by the strikes called by judicial officers and court clerks in the first half of the year. In annual terms, the number of new cases has increased slightly, but the complications resulting from the strikes have led to a drop in the number of resolved cases and an increase in pending cases.

The Supreme Court has continued to review an array of doctrines and legal concepts. EU law's influence on domestic law continues to grow, with the first Supreme Court rulings on follow-on actions arising from the truck cartel deserving special mention this year (see Section II.ii).

International arbitration has also continued to expand (in both commercial and investment arbitration), highlighting Spain's status as a reference country in the field, especially for disputes involving Latin American parties.

## Endnotes

- 1 Ángel Pérez Pardo de Vera is a partner and Francisco Javier Rodríguez Ramos is an associate at Uría Menéndez. [^ Back to section](#)
- 2 The General Council of the Judiciary comprises the President of the Supreme Court, who presides over it, and 20 members, 12 of whom are sitting judges and eight of whom are jurists of extensive renown. The General Council must be renewed in full every five years. Its members are appointed by the Congress and Senate by a qualified three-fifths majority. The existence of this qualified majority and the lack of agreement between Spain's two majority parties has resulted in a current failure to renew the Council, whose members will continue to serve until the Council is renewed as publicly reported. [^ Back to section](#)
- 3 Pursuant to this authorisation, the Governing Chamber of the Supreme Court established, through a resolution of 8 September 2023, the rules on the extent of – and formal requirements to be met by – the pleadings and opposition briefs in civil cassation appeals. [^ Back to section](#)
- 4 Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions. [^ Back to section](#)
- 5 Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019, amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law. [^ Back to section](#)
- 6 Legal or natural persons owning more than 10 urban properties for residential use (or five or more properties in stressed residential market areas) or a built-up area of more than 1,500 square metres. [^ Back to section](#)
- 7 Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms. [^ Back to section](#)
- 8 Judgments 923/2023, 924/2023, 925/2023, 926/2023, 927/2023 and 928/2023 of 12 June; 939/2023, 940/2023, 941/2023 and 942/2023 of 13 June; and 946/2023, 947/2023, 948/2023, 949/2023 and 950/2023 of 12 June. [^ Back to section](#)

- 9 Particularly, CJEU judgment of 16 February 2023 (C-312/21Tráficos Manuel Ferrer). <sup>^</sup> [Back to section](#)
- 10 As from 1 January 2016, all legal professionals, judicial bodies and public prosecutors must use existing electronic systems – mainly, the Lexnet system – for filing briefs and documents and making judicial communications (Law 42/2015 amending the Spanish Civil Procedure Law). <sup>^</sup> [Back to section](#)
- 11 The decision contradicts the Supreme Court's case law, the case relates to a matter on which the case law of provincial courts diverges or the appealed decision applies laws on which there is currently no Supreme Court case law. <sup>^</sup> [Back to section](#)
- 12 See Section II.i in relation to the reform of cassation appeals. <sup>^</sup> [Back to section](#)
- 13 The resolution will not be applicable to those affected in Spain who have not expressly adhered to the foreign class action if it has not been communicated or published in Spain by means equivalent to those provided for in the Spanish Civil Procedure Law, or those affected in Spain have not had the same opportunities to participate in or to opt out of the proceedings in the foreign state. <sup>^</sup> [Back to section](#)
- 14 General Data Protection Regulation, (EU) Regulation 2016/679. <sup>^</sup> [Back to section](#)
- 15 See the CJEU's decision in Akzo Nobel Chemicals Ltd v. Commission. <sup>^</sup> [Back to section](#)
- 16 After the dissolution of Parliament, these last two regulations were approved via royal decree-law, together with the transposition of other European directives for which the transposition deadline had already been met. <sup>^</sup> [Back to section](#)

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