

URÍA MENÉNDEZ

1. INTRODUCTION

Uría Menéndez originates from the firm established in the 1940's by the late Rodrigo Uría González, a highly respected lawyer and Chaired Professor of Commercial Law at the Universidad Complutense of Madrid. Faithful to the tradition begun by Professor Uría, the Firm continues to combine the day-to-day practice of law with its scholarly study and is actively taking part in the new challenges posed by legal practice and the evolution of the Spanish legal system.

We aim to distinguish ourselves through the quality of our legal advice and service, our capacity for innovation and our ability to assist our clients to achieve their business objectives. The aforementioned skills contribute in large measure to our success in establishing enduring relationships with our clients.

Uría Menéndez has offices in [Madrid](#), [Barcelona](#), [Valencia](#), [Bilbao](#), [Brussels](#), [London](#), [Lisbon](#), [New York](#), [Buenos Aires](#), [Lima](#), [Santiago de Chile](#), [São Paulo](#) and [Mexico City](#), the principal cities in which our clients operate. Our presence in these locations enables us to provide clients with technical excellence and our extensive experience where their interests are located.

At present U&M is integrated by 326 lawyers, 57 of which are partners. Our firm is organised by Practice Groups, each structured to guarantee that every matter is handled by specialised lawyers and to ensure that we provide a personal service of the highest quality to our clients.

Uría Menéndez's Litigation Department is made up of 58 lawyers and is represented in all of our offices in Spain and Portugal. Uría Menéndez's experience extends to all jurisdictions, including procedures and actions before Courts of First Instance, pre-trial proceedings, Criminal and Contentious-Administrative Courts, Labour and Economic Courts, Provincial Courts, the Supreme Court, High Courts, the Constitutional Court, the European Court of Human Rights and other international courts. U&M has also taken part in multi-jurisdictional proceedings (i.e., proceedings which are being handled in various countries, including Spain).

Likewise, the Firm offers a well-recognised capacity to handle all types of arbitration proceedings, both in Spain and abroad, regardless of the Tribunal or arbitration rules selected by the parties. The Firm deals with all types of problems arising from arbitration proceedings, such as Court proceedings to compel arbitration, obtaining of interim measures for the enforcement of awards, obtaining of a declaration that an award is null and void or obtaining the recognition ("exequatur") in Spain of foreign awards. Many of the firm's partners regularly take part in arbitration proceedings, as counsel, sole arbitrators or as members of an arbitration Tribunal.

This Spanish Section has been co-ordinated by Jesus Remón (jrp@uria.com) and Álvaro Argumedo (ala@uria.com), with the contribution of Ana María Gutiérrez, Thais Argenti, Agustín Capilla and Elena Gutiérrez. All of them are lawyers of Uría Menéndez's Litigation Department in the Madrid Office.

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2. **JURISDICTION IN SPAIN**

2.1. **Constitutional principles**

The Spanish Constitution of 1978 (“Constitución española de 1978”) refers to the judiciary as a State power and sets for the main principles applicable to it, which are the following:

2.1.1. **Constitutional principles applying to the judiciary, in general:**

a) **Unity**

Article 117-5 of the Spanish Constitution establishes that “the principle of jurisdictional unity is the basis of the organisation and operation of Courts”. This principle has also been laid down in the Basic Act on the Judiciary 6/1985, of July 1st (“Ley Orgánica del Poder Judicial”; hereinafter, “LOPJ”), pursuant to which, “there is only one jurisdiction and it is exercised by the Judges and Courts foreseen in this Act, without prejudice to the jurisdictional powers of other bodies recognised by the Constitution” (Article 3-1), being the latter the Accountancy Court (“Tribunal de Cuentas”), the Military Courts, the jury, the traditional Courts and the Constitutional Court (“Tribunal Constitucional”), which are not part of the judiciary, but are expressly recognised by the Spanish Constitution.

b) **Exclusivity**

The principle of exclusivity has (i) a positive meaning according to Article 117-3 of the Spanish Constitution, pursuant to which, only Judges and Courts are allowed to judge, and are obliged to enforce judgements; and (ii) a negative meaning according to Article 117-4 of the Spanish Constitution, since Judges and Courts cannot exercise powers other than those previously mentioned or those specifically granted to them by Law.

c) **Legal Judge (or previously determined Judge)**

From a positive perspective, according to Article 24-2 of the Spanish Constitution, “everyone is entitled to an ordinary Judge previously determined by Law”. As regards the jurisdictional bodies, this essentially means that (i) the Judge or Court which will deal with a certain matter must pre-exist to that matter, and that (ii) the extent of the power held by the Judges and Courts must also be established in advance, so as to exclude any discretion in this regard by any jurisdictional body. It follows consequently that, such a principle implies the fundamental right to request that a particular case is judged by a Judge or Court which meets these requirements.

From a negative perspective, Article 117-6 of the Spanish Constitution forbids Courts of exceptional nature, i.e., those whose purpose is to judge only a particular case and ex post facto, i.e., after the relevant facts have occurred.

2.1.2. Constitutional principles applying to the bodies making up the judiciary, in particular

Article 117-1 of the Spanish Constitution sets out that Judges and Magistrates must be independent, non-dismissable, responsible and only submitted to the Law.

a) Independence and submission to the Law

The basic principle in connection with Judges and Magistrates and which allows the existence and effectiveness of all other principles is their independence, which means that Judges and Magistrates (i) are only submitted to the Law (to be understood as the Spanish legal framework as a whole) in the exercise of the jurisdictional powers granted to them; (ii) are independent, in the performance of their duties, from all jurisdictional and administrative bodies within the judiciary (Article 12-1 of the LOPJ); (iii) are not subject to the principle of hierarchy, since Judges and Courts cannot review the interpretation of Law made by Judges or Courts hierarchically inferior, unless it is as a consequence of the appeals procedures provided for by the Law (Article 12-2 of the LOPJ); and (iv) cannot receive instructions from either their administrative bodies, hierarchically superior Judges and Courts, or the General Counsel of the Judiciary (“Consejo General del Poder Judicial”) as to the interpretation of the legal framework made during the exercise of jurisdictional power. (Article 12-3 of the LOPJ).

In order to guarantee and protect such independence, Article 122-1 of the Spanish Constitution sets forth that the LOPJ will be the only norm regulating the composition, operation and management of Judges and Courts, as well as the regulatory statute for both professional Judges and Magistrates (which form a single body) and of the staff that serve the judiciary.

b) Dismissal only as provided for by the Law

This principle means, pursuant to Article 117-2 of the Spanish Constitution, that Judges will not be removed, suspended, transferred or made redundant, except in the cases and with the guarantees provided for by the LOPJ. This principle consequently enables the Judges and Magistrates to be independent in the exercise of their duties.

c) Responsibility

Judges and Magistrates are responsible for the acts carried out in the course of their duties. Article 16-1 of the LOPJ distinguishes between civil, criminal and disciplinary liability.

Judges and Magistrates will be civilly liable for those damages caused by them due to wilful misconduct (“dolo”) or negligence during the course of their duties (Article 411 of the LOPJ). Additionally, they will be criminally liable if they have committed major or minor criminal offences (“delitos” or “faltas”, respectively) during the course of their duties (Article 405 of the LOPJ). Finally, Judges and Magistrates may also incur disciplinary liability in the cases and with the guarantees provided by the LOPJ (Article 414 of the LOPJ), e.g. if they join a political party or trade union or hold any employment or office during their service (Article 417-1 of the LOPJ); in the event of lack of respect towards hierarchically superior jurisdictional bodies in their presence, by means of a writ addressed to them or publicly (Article 418-1 of the LOPJ); etc.

2.2. The different jurisdictional divisions

The jurisdictional divisions established by Article 9 of the LOPJ are the following:

- a) The civil division, regarding not only matters of a civil nature, but also other matters not allocated to other jurisdictional divisions, like, for example, commercial matters.
- b) The criminal division, concerning matters of a criminal nature, except for those allocated to the military division.
- c) The contentious-administrative division, regarding cases related to (i) resolutions of the public authorities (“Administración Pública”) subject to administrative law; (ii) general provisions inferior to the Law (“disposiciones generales de rango inferior a la ley”); (iii) legislative decrees (“decretos legislativos”) as provided for by Article 82.6 of the Spanish Constitution; (iv) appeals against the inactivity of the public authorities; and (v) claims linked to the liability (“responsabilidad patrimonial”) of the public authorities and their staff.
- d) The labour division, regarding matters related to labour law, both in individual and in workers collective conflicts, as well as claims regarding Social Security or against the State, provided Labour Law attributes responsibility to the latter.

2.3. Structure of the Courts (depending on the relevant jurisdictional division)

2.3.1. Courts pertaining to the civil jurisdictional division

a) Magistrates Courts (“Juzgados de Paz”)

Magistrates Courts are located in small towns where there are no Courts of First Instance (and/or Criminal Investigating Courts) and have jurisdiction both in civil and criminal matters of minor significance. In connection with those civil matters of minor importance Magistrates Courts have jurisdiction to conduct civil proceedings at first instance. In addition, Magistrates Courts perform functions related to the Civil Registry.

b) Courts of First Instance (“Juzgados de Primera Instancia”)

Courts of First Instance are located in the capital of the respective judicial district and have general jurisdiction over the first instance of civil proceedings not attributed by Law to other jurisdictional bodies. They also have jurisdiction on acts of voluntary jurisdiction (“actos de jurisdicción voluntaria”), appeals challenging the decisions of Magistrates Courts, and disputes between Magistrates Courts with regard to their jurisdiction over civil matters. Additionally, Courts of First Instance may be in charge of the Civil Registry, unless they delegate the relevant powers to the Magistrates Courts.

Courts of First Instance may simultaneously act as Criminal Investigating Courts (“Juzgados de Primera Instancia e Instrucción”).

c) Courts of Appeal -Civil Section- (“Audiencias Provinciales, Sección de lo Civil”)

Courts of Appeal are located in the capital of the relevant province and their Civil Division has general jurisdiction over the appeals challenging decisions issued by Courts of First Instance, disputes between Courts within the province regarding their respective civil jurisdiction (if there is no other Court hierarchically superior to the disputing Courts) and over the challenging (“recusación”) of the Magistrates of the Court of Appeal (provided this is not attributed to a special Division of the High Court of Justice).

d) High Courts of Justice -Civil Section- (“Tribunales Superiores de Justicia, Sección de lo Civil”)

High Courts of Justice are located in the capital of the Autonomous Region and their Civil Division has general jurisdiction (in certain cases) over certain cassation appeals against judgements (“sentencias”) rendered by jurisdictional bodies of the civil jurisdictional division

based in the respective Autonomous Region, over complaints regarding civil responsibility against e.g. members of the Regional Government, Magistrates of the Court of Appeal, etc., as well as over disputes between jurisdictional bodies of the civil jurisdictional division regarding their respective jurisdiction.

e) Supreme Court -Civil Division; also called First Division- (“Tribunal Supremo, Sala de lo Civil / Sala Primera”)

The Supreme Court is located in Madrid and its Civil (or First) Section has jurisdiction over cassation appeals (“recurso de casación”) and any other extraordinary appeals provided for by Law. Its jurisdiction extends to complaints concerning civil responsibility against e.g. the President of the Central Government, the Presidents of the Congress and of the Senate, the President of the Supreme Court and of the General Counsel of the Judiciary, etc., or against the Magistrates of the National Court (“Audiencia Nacional”) or the High Courts of Justice (“Tribunales Superiores de Justicia”) in certain cases, as well as applications for the enforcement of judgements rendered abroad, unless otherwise provided for by an international treaty.

2.3.2. Courts pertaining to the criminal jurisdictional division

a) Magistrates Courts (“Juzgados de Paz”)

As stated above, Magistrates Courts have jurisdiction both in civil and criminal matters of minor significance. In connection with criminal matters in particular, Magistrates Courts have jurisdiction to conduct the first instance criminal proceedings arising from minor offences (“faltas”) provided for by Law. Additionally, Magistrates Courts may possess or be delegated powers to order criminal interim measures (“actuaciones penales de prevención”).

b) Criminal Investigation Courts (“Juzgados de Instrucción”)

Criminal Investigating Courts, as stated above, are located in the capital of the respective judicial district and have jurisdiction over the investigative (“instrucción”) stage of proceedings arising from serious criminal offences (“delitos”) which must be subsequently tried by the Courts of Appeal (“Audiencias Provinciales”) and by Criminal Courts (“Juzgados de lo Penal”). It also has jurisdiction over the investigation and ruling in proceedings dealing with minor criminal offences (“faltas”), unless attributed to Magistrates Courts, “habeas corpus” proceedings, as well as appeals against decisions issued by Magistrates Courts and disputes relating to the respective jurisdiction of the latter.

c) Criminal Courts (“Juzgados de lo Penal”) -within each judicial district-

Criminal Courts are located in the capital of each province and have jurisdiction to render judgement in connection with those major offences provided for by Law.

d) Courts of Appeal -Criminal Section- (“Audiencia Provincial, Sección de lo Penal”)

Courts of Appeal are located, as stated above, in the capital of the province, and their Criminal Division has jurisdiction, in general, over proceedings regarding serious offences (unless attributed to Criminal Courts or any other Court). Its jurisdiction also extends to appeals against decisions issued by Criminal Investigating Courts, Criminal Courts of the province, and Prison Custody Courts with respect to the enforcement of penalties and framework applicable thereto. It also has jurisdiction over appeals from Courts with Jurisdiction over minors located within the province, as well as over the disputes regarding the respective jurisdiction of those courts.

e) High Courts of Justice -Criminal Section- (“Tribunales Superiores de Justicia, Sección de lo Penal”)

High Courts of Justice are located, as stated above, in the capital of the Autonomous Region, and their Criminal Section has general jurisdiction over criminal proceedings provided for by the relevant Regional Statute (“Estatuto de Autonomía”), and over the investigation and adjudgement in criminal proceedings against Judges, Magistrates and members of the Department of Public Prosecutions as a result of criminal offences committed in the exercise of their duties within the Autonomous Region (provided this matter is not attributed to the Supreme Court). It also has jurisdiction over appeals (“recursos de apelación”) as provided by Law, and over the ruling on disputes regarding the respective jurisdiction of criminal jurisdictional bodies located within the Autonomous Region without any other jurisdictional body hierarchically superior to them, as well as over the ruling on disputes regarding the respective jurisdiction of Courts with Jurisdiction over minors located in different provinces of the same Autonomous Region.

f) Central Criminal Courts (“Juzgados Centrales de lo Penal”) in the National Court (“Audiencia Nacional”)

Central Criminal Courts are located in Madrid and have jurisdiction over the whole Spanish territory and over proceedings arising from serious criminal offences referred to in Article 65 of the LOPJ (relating to the powers of the Criminal Division of the National Court) and also over any other matters provided for by Law.

- g) Central Criminal Investigation Courts (“Juzgados Centrales de Instrucción”), which depend on the National Court (“Audiencia Nacional”)

Central Criminal Investigation Courts are located in Madrid and have jurisdiction over the whole of the Spanish territory in the investigation of all proceedings to be trialed by the Criminal Division of the National Court or, if applicable, by the Central Criminal Courts, and over actions regarding passive extradition.

- h) National Court -Criminal Section- (“Audiencia Nacional, Sección de lo Penal”)

The National Court is located in Madrid and its Criminal Division has general jurisdiction over cases involving certain major criminal offences of a specialised nature (e.g. terrorism, serious criminal offences against the Crown, or regarding the forgery of currency, drug trafficking, etc.), provided they have not been attributed at first instance to Central Criminal Courts. It also has jurisdiction over criminal proceedings initiated abroad, the enforcement of judgements rendered by foreign Courts in certain cases, appeals against decisions issued by Central Criminal Courts and Central Criminal Investigating Courts, and judicial proceedings regarding passive extradition, etc.

- i) Supreme Court -Criminal Division or Second Division- (“Tribunal Supremo, Sala de lo Penal / Sala Segunda”)

The Supreme Court, as stated above, is located in Madrid, and its Criminal (or Second) Division has general jurisdiction over cassation appeals and other extraordinary appeals provided by Law, the investigation and judgement in cases involving certain serious criminal offences (e.g. against the President of the Central Government, the Presidents of Congress and Senate, etc.) and in cases involving those serious criminal offences contained in the respective Regional Statute. Its jurisdiction also extends to the investigation and ruling in cases involving serious criminal offences against the Magistrates of the National Court or of any High Court of Justice.

- j) Prison Custody Courts (“Juzgados de Vigilancia Penitenciaria”)

Prison Custody Courts are located in each province and are, subject to the General Prison Custody Law (“Ley General Penitenciaria”). They have jurisdiction over the enforcement of imprisonment and security measures (“medidas de seguridad”), the jurisdictional control of the disciplinary powers of prison authorities, custody of the rights and benefits of the inmates (“internos”) of prison institutions and any others provided for by Law.

k) Youth Courts (“Juzgados de Menores”)

Courts with Jurisdiction over Minors are located in each province and have jurisdiction as provided by Law over minors who have carried out acts classified as serious or minor criminal offences, and to carry out any other function which, regarding minors, has been attributed to those Courts by the Law.

2.3.3. Courts pertaining to the contentious-administrative jurisdictional division

a) Contentious-Administrative Courts (“Juzgados de lo Contencioso”)

Contentious-Administrative Courts are located in the capital of each province and have general jurisdiction, at first or single instance, on appeals based on administrative law regarding certain decisions taken by local entities or the Regional or State authorities whose jurisdiction is limited to the province, and, additionally, over authorisations to enter into domiciles and other premises where the consent of the owner is required, in order to ensure the enforcement of acts of the Administration.

b) High Courts of Justice -Contentious-Administrative Division- (“Tribunales Superiores de Justicia, Sala de lo Contencioso-Administrativo”)

The High Courts of Justice are located in the capital of the autonomous region and its Contentious-Administrative Division has general jurisdiction (i) at single instance, over appeals based on administrative law against acts carried out, resolutions issued and provisions provided by, among others, local entities, Administrations of the Autonomous Regions, etc., as well as over any other administrative act not expressly attributed to another body of this jurisdictional division; (ii) at second instance, over certain appeals against Contentious-Administrative Courts; and (iii) in addition to the above, the Contentious-Administrative Section of the High Court of Justice also has jurisdiction over disputes regarding the respective jurisdiction of Contentious-Administrative Courts based in the Autonomous Region and over appeals to ensure a uniform application of the Law.

c) Central Contentious-Administrative Courts (“Juzgados Centrales de lo Contencioso”)

Central Contentious-Administrative Courts are located in Madrid and have jurisdiction at first or single instance over the whole Spanish territory, in appeals based on administrative law against resolutions

and provisions of authorities, public entities, etc. with powers over the whole Spanish territory.

**d) National Court -Contentious-Administrative Division-
(“Audiencia Nacional, Sala de lo Contencioso”)**

The Contentious-Administrative Division of the National Court has general jurisdiction at single instance, over appeals based on administrative law against provisions and acts of Ministers and State Secretaries not attributed by Law to Central Contentious-Administrative Courts. Its jurisdiction extends to certain appeals provided for by Law against decisions of Central Contentious-Administrative Courts, as well as certain appeals not attributed to High Courts of Justice and disputes concerning the respective jurisdiction of Central Contentious-Administrative Courts, etc.

**e) Supreme Court -Contentious-Administrative or Third Division-
(“Tribunal Supremo, Sala de lo Contencioso-Administrativo / Sala Tercera”)**

The Contentious-Administrative or Third Section of the Supreme Court has general jurisdiction at single instance, over appeals based on administrative law against resolutions and provisions of the Counsel of Ministers, of the Delegated Commissions of the Government and of the General Counsel of the Judiciary, and against resolutions and provisions of the empowered bodies of certain institutions (such as the Congress and the Senate, the Constitutional Court, etc.). Additionally, it has jurisdiction over cassation and other appeals as provided by Law.

2.3.4. Courts pertaining to the labour jurisdictional division

a) Labour Courts (“Juzgados de lo Social”)

Labour Courts are located in the capital of each province and have general jurisdiction at first or single instance over matters of a labour nature not attributed to other bodies of this jurisdictional division.

b) High Courts of Justice -Labour Division- (“Tribunales Superiores de Justicia, Sala de lo Social”)

The Labour Division of the High Courts of Justice has general jurisdiction at single instance over proceedings provided for by Law, regarding disputes affecting the interests of workers. It also has jurisdiction over appeals against decisions issued by the Labour Courts of the Autonomous Region and over disputes regarding the respective jurisdiction of those Labour Courts.

- c) National Court -Labour Division- (“Audiencia Nacional, Sala de lo Social”)

The Labour Division of the National Court has general jurisdiction at single instance over special proceedings challenging collective labour agreements (“convenios colectivos”) to be enforced in territories superior to the Autonomous Region, as well as over proceedings regarding collective disputes (“conflictos colectivos”) whose resolution affects a territory superior to the Autonomous Region.

- d) Supreme Court -Labour or Fourth Division- (“Tribunal Supremo, Sala de lo Social / Sala Cuarta”)

The Labour or Fourth Section of the Supreme Court has general jurisdiction over cassation appeals and over other extraordinary appeals provided for by Law regarding matters pertaining to this jurisdictional division.

2.4. The Constitutional Court

2.4.1. Members

The Constitutional Court (“Tribunal Constitucional”) is composed of 12 members who are appointed for a term of 9 years by the King of Spain out of which: (i) 4 are nominated by the Congress; (ii) 4 by the Senate; (iii) 2 by the Government; and (iv) 2 by the General Counsel of the Judiciary.

In order to be nominated, the relevant individuals must have Spanish nationality, be a Magistrate, Public Prosecutor, University Professor, public officer or an attorney with more than 15 years experience and of recognised competence.

One third of the Magistrates of the Constitutional Court are renewed every 3 years, without the possibility of being re-elected.

The President of the Constitutional Court is appointed by the King of Spain following nomination by the plenary session (“Pleno”) of the said Constitutional Court for a term of 3 years, one re-election being possible. The Vice-President is appointed following the same procedure.

2.4.2. Jurisdiction

Pursuant to Article 2 of the Basic Act 2/1979, of October 3rd, 1979, regulating the Constitutional Court (“Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional”; hereinafter, “LOT”), the Constitutional Court has jurisdiction over the following matters:

- a) Appeals and “issues of non-constitutionality” (“recurso” and “cuestión de inconstitucionalidad”) challenging laws, provisions or acts with the status of law.

- b) Appeals seeking constitutional protection (“recurso de amparo”) based on infringement of rights and public freedoms pursuant to Article 53-2 of the Spanish Constitution (which refers to the Articles of the Spanish Constitution relating the principle of equality before the law, the right to life and integrity, freedom of religion, the right to liberty and security, etc.).
- c) Constitutional conflicts of authority between the State and the Autonomous Communities (“Comunidades Autónomas”) or among the latter themselves.
- d) Conflicts between the constitutional bodies of the State.
- e) Declaration of non-constitutionality of international treaties.
- f) Appeals by the Government challenging provisions enacted and resolutions passed by the bodies of the Autonomous Communities.
- g) Assessment of the appointed Magistrates of the Constitutional Tribunal, to check whether they comply with the applicable requirements.
- h) Any other issues over which the Constitutional Tribunal has jurisdiction, according to the Spanish Constitution and Basic Laws (“Leyes Orgánicas”).

2.4.3. Internal organisation of the Constitutional Court

The Constitutional Court may act (i) at a plenary session (“Pleno”), where all its members are present, with jurisdiction on all the issues stated above; (ii) as Divisions (“Salas”), composed of 6 magistrates, which are empowered to hear appeals in which constitutional protection is sought; and (iii) as Sections (“Secciones”), composed of 3 magistrates.

2.5. The general Counsel of the Judiciary

The General Counsel of the Judiciary is the governing body of the Judiciary and is ruled by the LOPJ.

2.5.1. Members

The President of the General Counsel of the Judiciary is the President of the Supreme Court and is appointed by the King of Spain following nomination by the Congress. The President is chosen from amongst judges or renowned legal experts (“juristas”) with more than 15 years experience, and can be re-elected only once.

In addition to the President, the General Counsel of the Judiciary is composed of 20 members appointed by the King of Spain for a term of 5 years following nominations by both the Congress and the Senate. Specifically, the Congress and

the Senate nominate (i) 4 members each, chosen from amongst attorneys (“abogados”) and other renowned legal experts with more than 15 years experience; and (ii) another 6 members each, chosen from amongst serving Judges and Magistrates of all judicial divisions.

2.5.2. Matters within its jurisdiction

The General Counsel of the Judiciary has the power, amongst other matters:

- a) To nominate an individual for the office of President of both the Supreme Court and the Constitutional Court.
- b) To nominate 2 Magistrates of the Constitutional Tribunal.
- c) To inspect Courts.
- d) For the selection, instruction, improvement, allotment of positions, promotions, administrative situations and disciplinary procedures applying to Judges and Magistrates.
- e) To appoint Judges by Order (“Orden”) and propose for Royal Decree the appointment of Magistrates of the Supreme Court and of Presidents and Magistrates (of other Courts).
- f) To rule on issues related to the General Counsel of the Judiciary itself and to judges and magistrates.
- g) To inform on draft bills (“anteproyectos”) and general provisions affecting the judiciary, etc.
- h) To issue a Memorandum to the parliamentary Chambers on a yearly basis analysing the situation, operation and activities of the General Counsel of the Judiciary itself and that of the jurisdictional bodies.
- i) To have its opinion heard prior to the appointment of the Attorney General (“Fiscal General del Estado”) by the Government.

2.5.3. Internal organisation

Pursuant to Article 122-1 of the LOPJ, the General Counsel of the Judiciary is organised as follows: (i) President; (ii) Vice-President; (iii) Plenary Session (“Pleno”); (iv) Permanent Commission (“Comisión Permanente”); (v) Disciplinary Commission (“Comisión Disciplinaria”); and (vi) Assessment Commission (“Comisión de Calificación”).

The President has, among other powers granted by Law, the power to (i) represent the General Counsel of the Judiciary; (ii) call and chair the Plenary Session and the Permanent Commission -the president casting the deciding vote in the case of a tie- (“voto de calidad”); (iv) determine the agenda of the latter; (v) sign resolutions passed by the Plenary Session and by the Permanent Commission.

The Vice-President is nominated by the Plenary Session from amongst its members and is appointed by the King of Spain. As regards his powers, the Vice-President (i) replaces the President in certain cases; (ii) assumes those functions delegated to him by the President or entrusted to him by the Plenary Session; (iii) may exercise any other power granted by Law.

The Plenary Session is composed of the President and the 20 members of the General Counsel of the Judiciary. However, the Plenary Session is validly constituted with the attendance of, at least, 14 members (plus the President). In general, the powers of the Plenary Session are all those not expressly attributed to other bodies of the General Counsel of the Judiciary.

The Permanent Commission is appointed by the Plenary Session each year and is composed of a President and 4 members, 2 from the judicial profession. For it to be validly constituted, the attendance of at least 3 members -including the President- is necessary. The Permanent Commission (i) prepares the Plenary Session; (ii) supervises the correct implementation of resolutions passed by the Plenary Session; (iii) decides, on certain occasions, on the appointment of Judges and Magistrates, on their compulsory retirement, etc.; (iv) approves the granting of licences to Judges and Magistrates in those cases provided for by the law; (v) authorises promotions (“escalafón”) within the judicial profession; (vi) exercises any other powers delegated by the Plenary Session or granted by Law.

The Disciplinary Commission is appointed by the Plenary Session each year and is composed of 5 members, 3 from the judicial profession, all 5 members having to attend the meetings of the Disciplinary Commission, which is empowered to launch investigations (“instrucción de expedientes”) and to impose penalties upon Judges and Magistrates.

The Assessment Commission is appointed in the same way as the Disciplinary Commission, i.e., by the Plenary Session each year, it also being composed of 5 members and also having to attend the relevant meetings. The Assessment Commission informs the Plenary Session about the appointments which are within the power of the latter.

3. ATTORNEYS AND PUBLIC PROSECUTION IN SPAIN

3.1. The legal profession (lawyers and Court representatives). The State Attorney and Attorneys of the Autonomous Communities and Local Entities

3.1.1. Attorneys (“abogados”)

Pursuant both to Article 436 of the LOPJ and to Article 6 of the General Statute on the Profession of Attorney enacted by Royal Decree 658/2001, of June 22nd, 2001 (“Estatuto General de la Abogacía”; hereinafter, “EGA”), *“the name ‘attorney’ and its corresponding functions exclusively refers to individuals with a degree in Law (“licenciado en Derecho”) who professionally assume the*

management and defence of the parties in any kind of proceedings or legal advice”.

The above definition is completed by Article 9-1 of the EGA, according to which, *“attorneys are those who, having joined a Spanish Bar of Attorneys (“Colegio de Abogados”) as practising attorneys (“ejercientes”) and meeting the relevant requirements thereof, are professionally dedicated to the advice, and defence of third parties’ public or private legal interests.”* Such activities are carried out on the basis of a services agreement between the attorney and his clients.

The EGA sets out the rights and obligations of attorneys, the most relevant ones being: (i) the attorney-client privilege (“secreto profesional”) (Articles 437-2 of the LOPJ and 32 of the EGA); (ii) the right to act freely and independently (Articles 437-1 of the LOPJ and 33-2 of the EGA); (iii) the right to the corresponding professional fees, which are agreed between attorneys and their clients (Article 44-1 of the EGA); and (iv) the obligation to join a Bar of Attorneys (Article 11 of the EGA).

Lawyers in Spain usually work individually, instead of being organised as a collective law firm. However, there is a trend towards collective law firms, both as small law firms specialising in certain legal fields (tax law, labour law, commercial law, criminal law, etc.) and as larger law firms with different departments covering all legal disciplines.

Bars of Attorneys are subject to public law, forming an independent legal entity, and have the capacity to act to achieve their objectives (Article 2-1 of the EGA). The main functions of the Bars of Attorneys are: (i) to regulate the practice of law; (ii) to represent exclusively the profession of attorney; (iii) to defend the professional rights and interests of their members; (iv) to control professional ethics (“deontología”) and the enforcement of disciplinary provisions; (v) to defend a social and democratic State of law according to the Spanish Constitution and to promote the defence of Human Rights; and (vi) to co-operate in the operation, promotion and improvement of the Administration of Justice (Article 3 of the EGA).

Additionally, pursuant to Article 47-2 of the EGA, Bars of Attorneys are composed of: (i) a Dean (“Decano”), who legally represents the relevant Bar of Attorneys, is entrusted with the functions of advice, custody and correction and chairs all corporate bodies of the relevant Bar of Attorneys, etc. (Article 48-2 of the EGA); (ii) the Managing Committee (“Junta de Gobierno”) which, among others functions, controls the admission of law graduates (“licenciados en Derecho”), regulates the operation and allotment of lawyers for the rendering of free legal advice (“asistencia jurídica gratuita”), determines the joining fee of the Bar and the subscription fee to be paid regularly thereafter, proposes to the General Committee the variation of subscription charges in appropriate circumstances, exercises control over disciplinary matters regarding the members of the Bar, etc. (Article 53 of the EGA); (iii) the General Committee (“Junta General”), which may be ordinary or extraordinary, the former meeting twice a year (Articles 57 and 58 of the EGA) and the latter, whenever a certain number of

members of the Bar attend the meeting (Article 59 of the EGA); and (iv) a Permanent Assembly (“Asamblea Colegial de carácter permanente”) when the number of attorney members of the relevant Bar is large enough to make a Permanent Assembly advisable.

The organisation superior to and co-ordinating all Bars of Attorneys in Spain is the Spanish General Counsel of Attorneys (“Consejo General de la Abogacía Española”) (Article 67-1 of the EGA).

3.1.2. Court representatives (“procuradores”)

Pursuant to Article 438 of the LOPJ, Court representatives are entrusted, exclusively, with the representation of parties in all types of proceedings, unless otherwise stated by Law. The relationship between the Court representative and his clients is subject to the rules governing the mandate and by the provisions of the General Statute of Court representatives enacted by Royal Decree 2046/1982, of July 30th, 1982 (“Estatuto General de los Procuradores de los Tribunales”; hereinafter, “EGP”).

The rights and obligations of Court representatives, pursuant to the EGP are, among others: (i) to preserve professional secrecy (“secreto profesional”) (Article 438-2 in connection with Article 437-2 of the LOPJ and Article 14-15 of the EGP); (ii) to represent, free of charge, parties who can be legally classified as “poor” (Article 13 of the EGP); (iii) to be a member of and pay the relevant subscriptions to the relevant Bar of Court representatives (“Colegio de Procuradores”) (Articles 6 and 14-16 of the EGP); and (iv) to receive payment for their services according to the relevant schedule of legal fees (“arancel”), “no win no fee” being forbidden; i.e., the agreement to receive payment only if the case is successful and depending on the relevant judgement obtained (Article 17 of the EGP).

Bars of Court representatives are subject to public law, forming an independent legal entity with a capacity to act (Article 38 of the EGP) and being composed of: (i) the General Committee (“Junta General”), which is the supreme governing body of the Bar (Article 54 of the EGP); (ii) the Managing Committee (“Junta de Gobierno”), whose functions are, among others, to assess applications for admission to the Bar, to propose to the General Committee all issues to be decided by the latter which are of interest to the Bar and the profession, etc. (Article 48-1 and 11 of the EGP); and (iii) the Dean (“Decano”), who represents the relevant Bar of Court representatives, has custody and disciplinary powers over the Bar members, etc. (Article 49 of the EGP).

There is also a Spanish General Counsel of Bars of Court representatives (“Consejo General de los Ilustres Colegios de Procuradores”) (Article 60 of the EGA).

3.1.3.State Attorney (“Abogado del Estado”)

Pursuant to Article 447-1 of the LOPJ, the representation and defence of the State, of its autonomous bodies (“organismos autónomos”) -unless otherwise provided for in the legal framework applicable to the latter- and of the constitutional bodies, corresponds to lawyers who are part of the Department of Legal Services of the State (“Servicio Jurídico del Estado”). However, the representation and defence of the Managing Bodies (“Entidades Gestoras”) and of the General Treasury of the Social Security (“Tesorería General de la Seguridad Social”) corresponds to the Lawyers of the Social Security Administration, without prejudice to the possibility of assigning such representation and defence to an attorney specially appointed for the relevant case, subject to the legal requirements.

3.1.4.Attorneys of the Autonomous Communities and of the Local Entities (“Letrados de las Comunidades Autónomas y Letrados de los Entes Locales”)

In accordance with Article 447-2 of the LOPJ, the representation and defence of the Autonomous Communities and of the Local Entities (“Entes Locales”) corresponds to attorneys pertaining to the legal services of the above-mentioned Public Administrative bodies, unless they specifically appoint another lawyer for that purpose. Additionally, lawyers of the Department of Legal Services of the State can represent and defend the Autonomous Communities subject to the applicable legal requirements.

3.2. The public prosecution office

3.2.1.Internal organisation

Articles 12 et seq. of the Basic Statute on the Department of Public Prosecutions (“Estatuto Orgánico del Ministerio Fiscal”; hereinafter, “EOMF”) regulates the composition of the Department of Public Prosecutions, at the head of which is the Attorney General (“Fiscal General del Estado”), who is appointed by the King of Spain following nomination by the Government, and after the General Counsel of the Judiciary has been consulted. The Attorney General is chosen from amongst renowned legal experts with more than 15 years experience.

The bodies making up the Department of Public Prosecutions are:

- a) The Attorney General, who is assisted by the Prosecution Inspectorate (“Inspección Fiscal”), the Technical Secretary (“Secretaría Técnica”) and two advisory bodies, which are (i’) the Prosecution Counsel (“Consejo Fiscal”) and (ii’) the Committee of Divisional Prosecutors (“Junta de Fiscales de Sala”).
- b) The Public Prosecution Counsel (“Consejo Fiscal”), which is composed of (i) a President, who is the Attorney General; (ii’) the Deputy Prosecutor of the Supreme Court (“Teniente Fiscal del Tribunal Supremo”); (iii’) the Inspector Prosecutor (“Fiscal

Inspector”); (iv’) an elected Divisional Public Prosecutor of the Supreme Court (“Fiscal de Sala del Tribunal Supremo”); (v’) an elected Prosecutor of the High Court of Justice (“Fiscal del Tribunal Superior de Justicia”); (vi’) an elected provincial Prosecutor; and (vii’) three members with the status of Prosecutors and another three with the status of Prosecuting Attorney (“abogado fiscal”), elected for 4 years;

- c) The Committee of the Divisional Public Prosecutors (“Junta de Fiscales de Sala”), composed of (i’) the Attorney General as President; (ii’) the Deputy Prosecutor of the Supreme Court; (iii’) the Divisional Prosecutors (“Fiscales de Sala”); (iv’) the Inspector Prosecutor; (v’) the Prosecutor of the National Court (“Fiscal de la Audiencia Nacional”); and (vi’) the Prosecutor of the Technical Secretary (“Fiscal de la Secretaría Técnica”);
- d) The Inspection Prosecution (“Inspección Fiscal”), composed of the Inspector Prosecutor, a Deputy Inspector Prosecutor (“Teniente Fiscal Inspector”) and the relevant Prosecutor Inspectors (“Inspectores Fiscales”);
- e) The Technical Secretary of the Crown Prosecution Service (“Secretaría Técnica de la Fiscalía General del Estado”), which is chaired by a Chief Prosecutor (“Fiscal Jefe”) and is composed of the relevant Prosecutors;
- f) The Public Prosecution Office of the Supreme Court (“Fiscalía del Tribunal Supremo”), which is chaired by the Attorney General and is composed of the Deputy Prosecutor, the Divisional Prosecutors and the relevant Prosecutors;
- g) The Public Prosecution Office before the Constitutional Court (“Fiscalía ante el Tribunal Constitucional”), which is chaired by the Attorney General and is composed of a Divisional Prosecutor and the relevant Prosecutors;
- h) The Public Prosecution Offices of the National Court, of the High Courts of Justice and of the Courts of Appeal, which are composed of a Chief Prosecutor (“Fiscal Jefe”), a Deputy Prosecutor and the relevant Prosecutors;
- i) The Special Public Prosecution Office for the Prevention and Reduction of Illegal Drug Trafficking (“Fiscalía Especial para la Prevención y Represión del Tráfico Ilegal de Drogas”), at the head of which is the Attorney General and is composed of a Divisional Prosecutor, a Deputy Prosecutor of the 2nd category and the relevant Prosecutors;

- j) The Special Public Prosecution Office for the Reduction of Criminal Offences of an Economic Nature linked to Corrupt Practices (“Fiscalía Especial para la Prevención de los Delitos Económicos relacionados con la Corrupción”);

As regards the Public Prosecution Office of the Accountancy Court (“Tribunal de Cuentas”), this is regulated by the Basic Act on that Accountancy Court.

3.2.2. Matters within its jurisdiction

In general, pursuant both to Article 124-1 of the Spanish Constitution and to Article 1 of the EOMF, the Department of Public Prosecutions defends the Law, the rights of citizens, the public interests protected by Law, the independence of the Courts and the social interest.

In particular, Article 3 of the EOMF states that it is the task of the Department of Public Prosecutions, among others, to (i) ensure that constitutional institutions and public freedoms are respected; (ii) launch civil and criminal actions arising as a result of criminal offences or oppose those filed by third parties, as the case may be; (iii) intervene in criminal proceedings, applying for the adoption of interim measures and for the production or collection of evidence to clarify the facts, being entitled to instruct the Criminal Investigation Department (“Policía Judicial”) in this regard; (iv) take part, defending the Law and the public or social interest in proceedings affecting marital status (“estado civil”) and in any other provided for by the law; (v) assume or promote the representation and defence of those who cannot act for themselves due to their lack of capacity to act (“capacidad de obrar”) or due to lack of legal representatives; (vi) file appeals seeking constitutional protection and intervene in the subsequent proceedings arising therefrom; (vii) intervene in proceedings before the Constitutional Court to defend the Law; (viii) exercise all other powers attributed to the Department of Public Prosecutions according to the legal framework.

3.2.3. Principles

Article 124-2 of the Spanish Constitution and also Article 2-1 of the EOMF set out, in connection with the organisation and activity of the Department of Public Prosecutions, the following principles:

- a) Unity, which implies that there is only one Department of Public Prosecutions for the whole of the Spanish State (Article 22-1 of the EOMF). This is the reason why the EOMF establishes certain mechanisms for the preservation of unity of criteria among its members (Article 24 of the EOMF).
- b) Hierarchical dependency, which means that the hierarchically superior members of the Department of Public Prosecutions are entitled, according to the EOMF, to give instructions to hierarchically inferior members, both in general and regarding specific issues (Article 25 of the EOMF).

- c) Submission to the Law, pursuant to which, the members of the Department of Public Prosecutions must act subject to the provisions of the Spanish Constitution, of the Law and of other provisions of the legal framework in force (Article 6 of the EOMF).
- d) Impartiality, which obliges the members of the Department of Public Prosecutions to act independently and objectively in protecting the relevant interests. (Article 7 of the EOMF).

4. CIVIL ACTION PROCEEDINGS

4.1. Sources of Civil Law Procedure

Sources of Spanish Procedural Law are the same as those of Spanish Civil Law (i.e., statutes, custom and general principles of law). We refer to these sources more specifically below:

4.1.1. Statutes

Article 1 of the Civil Procedure Act (CPA) establishes the supremacy of procedural law as a source in this specific legal field by setting out that both the Courts and the parties must act in accordance with the CPA.

The most important pieces of Spanish Procedural Legislation are (i) the Basic Act on the Judiciary (“Ley Orgánica del Poder Judicial” -LOPJ-), which essentially regulates the fundamental organisation of the Judiciary and (ii) the New Spanish Civil Procedural Act (Act 1/2000 -CPA-), recently enacted, which has replaced the Old Civil Procedural Act in force since 1881. The CPA must be regarded as an important step in the modernisation of Spanish Procedural Law.

As regards its structure, the CPA is divided into four “books” which are subdivided into headings. These are further subdivided into chapters which are in turn divided into sections:

- a) The first book (Articles 5 to 247) contains the general regulations on civil law procedure. All aspects of civil procedure are regulated: jurisdiction and competence, pre-trial discovery, accrual of actions and proceedings, abstention and objection, legal actions, resolutions and procedural writs.
- b) The second book (Articles 248 to 516) regulates the new common procedures (essentially, ordinary and verbal proceedings); the means of proof; an improved second appeal and a special appeal system (“*recursos extraordinarios*”).
- c) The third book (Articles 517 to 747) establishes a sole system of execution, not only for judicial documents (i.e., judgements) but also for extra-judicial documents (i.e., notarial deeds, bills of exchange, etc.). At the same time it establishes an effective system of precautionary measures.

- d) The fourth book (Articles 748 to 827) regulates special processes with particular reference to the monitory process.

4.1.2. Custom

Custom must be considered as a source of procedural law of minor importance. In fact, some legal scholars consider that custom may not be regarded as a source of procedural law at all. In any event, it is clear that forensic practices may be taken into consideration, particularly when there is no specific legal provision regulating a procedural matter under discussion.

4.1.3. General Principles of Law

These are principles which are basic postulates of justice (like the right to be heard before a judicial decision is issued, the principle of equality between the parties, etc.), in essence necessary and accepted. Some of these General Principles of Law are recognised in the Spanish Constitution of 1978, especially under Article 24.

4.1.4. Case Law

Case Law is not a source of procedural Law. On the contrary, the Spanish Civil Code establishes that Case Law complements the Spanish legal framework. Notwithstanding that, Case Law is treated in Spain (as, in all countries) with respect, and the decisions of the Supreme Court tend to be regarded as 'precedents' which the lower courts may follow when they are called upon to determine issues of a similar nature. In any case, it is important to note that the Courts are not obliged to follow the decisions of the Supreme Court (although they usually do).

4.2. International Jurisdiction of Spanish Civil Courts (Article 22 of the Basic Act on the Judiciary)

International jurisdiction of Spanish Courts is essentially governed by Article 22 of the Basic Act on the Judiciary and by the Brussels Convention (now superseded by the EU Regulation 44/2002). In this respect, it is important to note that Article 22 may only be applied when the above EU Regulation is not applicable.

Article 22 establishes that Spanish Courts will have exclusive jurisdiction, regardless of the nationality or legal domicile of the plaintiff or the defendant, in the following cases:

- a) Litigation related to real estate located in Spain as well as leases of real estate located in Spain.
- b) Litigation over the constitution, validity, annulment and dissolution of a company or partnership domiciled in Spain.

- c) Litigation over the validity or invalidity and annulment of registrations made at a Spanish Registry such as the Commercial Register or Land Registry.
- d) Litigation over registration or validity of patents and other intellectual property rights subject to deposit or registration in Spain.
- e) Recognition and enforcement of foreign judgements and arbitration awards in Spain.

Likewise, Article 22 provides that when Spanish Courts do not have exclusive jurisdiction to decide on a specific matter, they may also have jurisdiction if (i) the defendant expressly or implicitly submits to Spanish Courts or (ii) the defendant's domicile is located in Spain.

Finally, if none of the above criteria may be applied, Spanish Courts may also have jurisdiction in the following cases: (i) successions where the deceased had his last place of residence in Spanish territory or owns real estate in Spain; (ii) non contractual obligations, where the act from which they derive occurs in Spanish territory or both the person causing the nuisance and the victim have domicile in Spain; and (iii) procedures for adoption, where the adopter or the adoptee hold Spanish nationality or permanently reside in Spain.

4.3. Principles of Civil Proceedings

Principles of civil proceedings are those which, beneath the Procedural Law, affect the capacity of decision and influence of the jurisdictional body as well as the commencement of the process, its object, development and conclusion. Consequently, they affect both the parties and the Judge. We refer below to the main procedural principles of Spanish Procedural Law:

4.3.1. Principle of Dual parties

The principle of controversy or dual parties implies that the parties must furnish the Court with all the relevant facts, and their corresponding evidence on which the subsequent judgement must be based.

4.3.2. Principle of equality of the parties

The principle of equality between the parties means that the different parties acting in a process must have access to the same resources in forming their respective claims and defences (i.e., there must be substantial equality or equivalent opportunities for the parties to defend their positions).

4.3.3. Principle of initiative of the parties

According to this principle, only the parties to an action may initiate civil proceedings. Likewise, this principle entails that once the action has been brought before the Court, only the parties may influence said action. A necessary

consequence of this principle is that the plaintiff is absolutely free to continue or to abandon the action he has instigated.

4.3.4. Principle of the right of the defendant to be heard

This principle essentially means that no judgement may be entered against anybody without having granted him the opportunity to be heard. This implies, in turn, that if the defendant has been improperly summonsed, all the proceedings must be considered null and void, that if the defendant is in default due to reasons not attributable to him, he has the opportunity to file a special appeal against the judgement rendered against him, etc.

4.3.5. Oral and immediacy principles

Article 120.2 of the Spanish Constitution provides for proceedings in Spain to be principally oral, a requirement that the CPA has consolidated recently. This Act establishes the oral principle as one of the fundamental features of proceedings in our country.

Accordingly, the two main stages of civil proceedings (the preliminary hearing and the trial), during which the pleadings and the presentation of evidence takes place, are conducted verbally. Thus, the trial is likely to be concluded within a shorter period of time.

The oral principle leads to the immediacy principle. The principle of immediacy demands that the same judge who examined the evidence and heard the allegations and final conclusions of the parties should carry out the rendering of the final judgement. Thus, the judge must have had direct contact with the parties, the witnesses, the experts, and the subject of the trial in such a way as to enable him or her to form a personal opinion on the case. This principle seeks to avoid judges basing their rulings upon factors that are not relevant to the case in point. As such, only in oral proceedings can the principle of immediacy be considered to have been fully applied.

4.3.6. Principle of concentration

Principle of concentration directly derives from the principles of orality and immediacy. It entails that all oral proceedings should be concentrate in just one session and, if this is not possible, in several successive sessions.

4.4. Acts Prior to Proceedings: Conciliation Process and Pre-Trial Proceedings

Generally, Spanish civil proceedings are initiated with the filing of a claim before the competent court. However, in certain cases the CPA allows the plaintiff to engage in some activities prior the filing of a lawsuit, in order to prepare for the proceedings.

Amongst the most significant judicial actions taking place before the filing of a claim are the process of conciliation and the pre –trial proceedings ordering the

disclosure of certain documentation or information, which are considered judicial activities since they are conducted before a Judge. Yet, they are not of a jurisdictional nature but are regarded as of voluntary jurisdiction, due to the fact that there is no real conflict between the parties.

4.4.1. The Process of Conciliation

Conciliation is a pre-trial activity, non-jurisdictional and discretionary, by which the parties may resolve their differences before a Judge and reach an amicable agreement, thus avoiding the commencement of judicial proceedings.

Generally, there are two main characteristics of conciliation: (i) it is voluntary, and therefore only takes place upon the mutual agreement of the parties; and (ii) it is conducted before a Judge.

The process of conciliation at Law adheres to the following rules:

- a) The Courts within whose jurisdiction is the conducting of processes of conciliation are the Courts of First Instance and the Magistrates Courts (“*Juzgados de Paz*”) of either (i) the place of residence of the defendant, (ii) the place where the defendant was ordered to reach an agreement or, in default of this, (iii) the domicile of the defendant.
- b) Parties do not need to be represented by a Court representative, and the legal assistance of an attorney is not mandatory.
- c) The proceedings begin by means of a simple written document stating the name, profession and address of the interested parties and their petition. Once the Court has admitted the document, the interested parties will be summoned for a court appearance, which will take place in the eight days following the date of the summons.
- d) The results of the conciliation depend exclusively on the will of the parties. There are three possible outcomes of the conciliation:
 - i) Attempt with no results: this occurs when one or both of the parties do not appear before the Court or if appearing, one party challenges the jurisdiction of the Judge. In such cases, the proceedings will be declared as attempted and the party who did not appear before the Court will be obliged to pay legal costs.
 - ii) Attempt without a settled agreement: occurs when both parties appear before the Court but a settlement is not reached.
 - iii) Attempt with agreement: when the parties appear before the Court and reach an agreement.
- e) The agreement reached by the parties in the process of conciliation is a contract between the parties that binds them in the same way as a regular agreement, and will come into effect when presented before

the Court where the agreement was signed. Furthermore, in any event, the record of the conciliation has the status of an official document.

- f) An action for the annulment of what is agreed upon in the conciliation can be brought where there is due cause to invalidate the contract. This action should be filed within fifteen days following the occurrence of the relevant cause.

4.4.2. Pre-trial proceedings

Pre-trial proceedings are a series of procedural steps that parties can take in order to obtain all the relevant information they need to file an action. The fundamental reason for the existence of these proceedings is that without the assistance of the judicial authorities, a future plaintiff may find it impossible to obtain all the necessary information needed to file an action.

These pre-trial proceedings are *numerus clausus* limited to those issues set out in Article 256.1 of the CPA, namely:

- a) The presentation of documents or evidence of facts regarding capacity, representation and legal standing.
- b) The disclosure of documents or items in possession of the person to be tried, and upon which the trial shall be based.
- c) The disclosure of wills and other testamentary documentation.
- d) The disclosure of accountancy documentation of companies and communities of owners.
- e) The disclosure of insurance policies.

The pre-trial proceedings are conducted as follows:

- a) The Court having jurisdiction for these pre-trial proceedings is the Court of the domicile of the person required to comply with the corresponding judicial order (derived from the proceedings) or in default of this, the jurisdiction will be granted to the Court where the action which is being prepared should be filed.
- b) Parties need to be represented by a Court representative and the legal assistance of an attorney is mandatory, save in the case of certified urgency.
- c) The proceedings begin with a written petition, which must explain the substance of the case. In this way, the grounds upon which the case is to be based are determined. The Court must then accept the petition by an express resolution and summon the interested parties. The counterpart will then be granted a five day period to raise written objections. Likewise, the petitioner is requested to grant a sufficient

guarantee in order to cover any hypothetical damage which may occur in the case of an action not being filed following the completion of the pre-trial proceedings.

- d) Once the objection is filed, the parties are summoned to a hearing at which the Judge will render his decision of acceptance or dismissal of the objections.
- e) In the case of the summoned party failing to raise written objections and or failing to appear before the Court, the judge will rule in favour of the petitioner.
- f) The petitioner will then be granted a one month period in which to initiate the main proceedings that were the cause of the request of preliminary proceedings.

4.5. Types of proceedings

The CPA provides for that all civil and commercial claims must be decided either through the so called (i) ordinary proceedings or (ii) verbal proceedings, which are described in brief herein below:

4.5.1. Ordinary proceedings

Claims referred to the matters set forth in Article 249 of the CPA (among others, judicial challenges of company's resolutions, protection of the constitutional rights to honour, personal image, privacy or the exercise of pre-emption rights), as well as those complaints with a value or economic interest exceeding Euro 3,000 and that relate to matters not included in those reserved to verbal proceedings, are decided in ordinary proceedings.

These types of proceedings are commenced by filing a claim with the Court. The plaintiff must file together with the complaint among other documents, (i) the power of attorney evidencing the representation of the Court representative and (ii) the documents on which the plaintiff bases his claim. The Judge must then admit the complaint by an express resolution. Once the claim has been formally admitted, the Court will serve it upon the defendant, who will be granted a 20 days term to answer the complaint.

When answering the complaint, the defendant may: (i) admit the facts (in which case, judgement against the defendant will be rendered immediately); (ii) oppose the complaint; and/or (iii) file a counterclaim ("reconvención"). The answer to the complaint will be delivered to the plaintiff and, if a counterclaim has been filed by the defendant, the plaintiff will be granted a 20-day term to reply to such counterclaim.

Once the defendant has answered the complaint and, as the case may be, the plaintiff has answered the counterclaim, or the corresponding legal terms have elapsed, the Court will summon both parties to a preliminary hearing ("audiencia

previa”) in order to try to reach an agreement on the dispute. If this is not possible, both the defendant and the plaintiff may specify, clarify or rectify the facts of their allegations. Likewise all the procedural objections must be solved in this preliminary hearing.

It is important to note that this hearing is the appropriate moment at which the parties may ask the Court about the provision of evidence within the proceedings. Upon the admission of the relevant means of evidence, the Court shall fix a date for the hearing (“juicio”).

In this hearing, the evidence shall be produced and, once the production of evidence has been concluded, the parties will orally summarise the facts at issue and the evidence supporting their version of the facts. Having presented their conclusions on the facts and the evidence, the parties will present the legal arguments supporting their positions. Following the hearing, the Court will render its judgement.

4.5.2. Verbal proceedings

Claims which refer to the matters set forth in Article 250 of the Spanish Civil Procedural law (among others, injunctive relief actions, disputes over lease agreements, vacant possession actions or actions whose objective is the rectification of inaccurate harmful data), as well as those complaints with a value or economic interest not exceeding Euro 3,000, and that relate to matters not included in those reserved to ordinary proceedings, are decided in verbal proceedings.

These types of proceedings are initiated by filing a claim with the Court. As in the case of the ordinary proceedings, the claimant must file together with his complaint the power of attorney evidencing the representation of the Court representative and the documents on which his claim is based. The Judge must then accept the complaint by an express resolution. Once the claim has been formally accepted, the Court will summon both parties to a hearing (“juicio”).

In this hearing, the defendant will be given the opportunity to respond to the claim orally. Counterclaims in verbal proceedings are only accepted in limited cases. The submission of evidence by both parties and the production of evidence accepted as relevant by the Judge will follow. Once the submission of evidence has been concluded, the parties will orally summarise the facts at issue and the evidence supporting their version of the facts. Having presented their conclusions on the facts and the evidence, the parties will present their allegations supporting their claims. The Court will then have a ten-day period within which to render its judgement. However, it must be noted that some stages of the verbal proceedings may vary on account of the matter at issue. For example, injunctive relief actions or vacant possession actions present some procedural peculiarities.

4.5.3. Legal Costs

In civil proceedings the general rule is that legal costs are borne by the unsuccessful party. These costs include, among others, the Attorney's and Court representative's fees, but do not include Court costs, as these have been abolished in Spain.

In the case of partial success, the costs are generally not divided. Each party is responsible for the costs it incurred. Costs may, in exceptional cases, be imposed on just one party where the Judge concludes that the party came to Court with "ill intent or wanton" ("temeridad").

Should the defendant accept the plaintiff's claim before filing a statement of defence, he will not be obliged to bear the costs that the plaintiff incurred. Here again, the Court may exceptionally assign the costs to the defendant if it determines that there was an element of "temeridad".

The costs will be determined in the course of a separate procedure, on the basis of the rules contained for this purpose in the CPA.

4.6. Special Proceedings

Articles 812 to 818 of the CPA sets out a special procedure (monitory proceedings) for dealing with the repayment of monetary debts that are due and subject to demand and whose financial value does not exceed Euro 3000.

It is a fast track procedure through which the parties seek to obtain in a very limited period of time an enforceable right to demand payment.

The competent Court to hear the monitory proceeding shall be the First Instance Court of the debtor's domicile. If this domicile is unknown, the proceedings will take place in the Court with jurisdiction over the place to which the debtor could be summonsed to effect the payment. Neither express nor tacit submissions to alternative Courts shall be deemed valid.

Actions are commenced by the filing of a brief in demand of payment attaching to it a document that is suitable for evidencing that the claimed amounts are due and do not exceed the aforementioned value. The document may take any form and must be signed, sealed or stamped by the creditor. The document may be physical or electronic (e.g. a bill, delivery invoice, certificate, telegram, fax or any other document, unilaterally created by the creditor and commonly used in commercial agreements).

Due amounts may also be evidenced through the presentation of trading documents evidencing a prior and lasting relationship or by means of certificates of non-payment on amounts owed in joint real estate ownership expenses.

The document evidencing the debt must be an original or a copy certified by a commissioner for oaths. Non certified copies may also be presented, but are subject to be challenged by the counterpart.

As simplicity is the key to these proceedings, parties do not need to be represented by a Court representative and the legal assistance of an attorney is not mandatory. In this way, the Spanish monitory procedure resembles that of most other European countries where the monitory procedure is in force: Holland, France, Germany and Austria.

It should be pointed out that the fact that parties do not the assistance of a Court representative and a lawyer only refers to the presentation of the initial petition of the monitory process. If later the debtor is ordered to pay and decides to object, then according to the general regulations, if the amount exceeds 900 Euros, the objection shall be in writing and signed by a lawyer and a Court representative.

Once the initial petition is presented along with the aforementioned documents, the Judge shall announce a decision on the admissibility of the petition. If the petition is admitted, the Judge shall proceed to summon the debtor to pay or to defend his or her position, and will give him or her a 20-day period to do so. The objection should include a succinct statement of the reasons why he or she believes that all or part of the debt is not owed.

If the debtor fails to pay or reply to the claim, the Court will automatically issue an enforcement order for the amount owed.

Were the debtor to pay, as soon as the payment is recognised, an acknowledgement of payment shall be issued and the corresponding amount will be given to the plaintiff.

Lastly, if the debtor punctually replies to the claim, then proceedings will continue. In the event that the financial value of the claim does not exceed Euro 900, then the Judge shall summon the parties to a hearing.

If the requested amounts exceed the aforementioned value, the petitioner will have one month from the issuing of the objection by the debtor to file his claim, pursuant to the rules set forth for ordinary proceedings. If he fails to do so, the action shall be dismissed and the creditor shall be obliged to pay legal costs. If a lawsuit is filed, proceedings will continue as stipulated for ordinary proceedings.

The burden of proof of the facts forming the basis of the petition of the creditor evidently falls on the creditor.

The creditor, in case of objection by the debtor, may request precautionary measures to secure the enforcement of a hypothetical judgement ordering payment of the claimed amounts.

4.7. Evidence

Courts in Spain will only admit evidence deemed relevant, or in other words, evidence which is or may be useful to prove the facts alleged by the parties. Both the admission and refusal by the Judge of the production of a particular piece of evidence is subject to appeal by the parties. The different means of evidence allowed by the CPA are the following:

4.7.1. Interrogatory of the parties

Any party may request the declaration before the Judge of any other party over the facts at issue. The declaration of the parties is carried out orally through an interrogation conducted directly by the attorneys of the parties. The Judge may also formulate questions to the declarer. The effect of the interrogation of the parties on the result of the proceedings is limited, as this type of evidence is not binding for the Judge. The Judge will repute as true facts those expressly recognised by the party which are contrary to that party's interests.

4.7.2. Documentary evidence

Documentary evidence refers to all written material filed with the Court in order to prove the truth or falsehood of the facts at issue. The CPA allows the parties to adduce the use of mechanically produced duplicates of documents instead of originals so long as any other party does not challenge the accuracy of the copy.

The CPA distinguishes between public documentary evidence and private documentary evidence.

Public documents refer to those that are certified by a commissioner for oaths. The CPA regards as public documents (i) all judicial resolutions, (ii) any document certified before a Public Notary, (iii) certificates issued by Company and Land Registrars, and (iv) certificates issued by civil servants. The effect of the public documents on the result of the proceedings is wide, as they are regarded to give full evidence on the date of the document, the involved parties, and the actions of those parties performed before such commissioner for oaths.

Private documents refer to all documents that are not considered as a public documents by Law. Private documents will give full evidence of the facts at issue were they not to be challenged by the counterparty. In such a case, the opponent may request a handwriting examination in order to attest the authentication of the document or produce any other evidence to determine the real existence and accuracy of the document.

4.7.3. Expert testimony

The testimony by experts is a type of evidence aimed at furnishing the Court, when necessary, with scientific, technical, or other specialist knowledge which is likely to be outside its experience. The CPA distinguishes between two modalities of testimony by experts, the one adduced to the procedure by the parties together

with their complaint, answer to the complaint, counterclaim or reply to the counterclaim, and that delivered by an expert appointed by the Judge. In all cases, experts must ratify their conclusions and are subject to cross-examination by both the parties and the Judge during the production of evidence phase. The effect of the testimony by experts on the result of the proceedings is limited, as this type of evidence is not binding for the Judge. Notwithstanding that, Judges usually follows the conclusions stated in the expert report, unless they are arbitrary or unreasonable.

4.7.4. Investigation by the Court

This evidence consists of a personal inspection by the Judge of objects, places or persons in order to clarify the facts at issue. The investigation of the Court is carried out in the presence of the parties Court representatives and Attorneys. The result of such investigation is recorded by the Court clerk in the proceedings minutes and signed it by the Judge and by those attending it. The production of this type of evidence may also be recorded via the use of audio-visual means.

4.7.5. Testimonial evidence

Testimonial evidence may be described as oral evidence given by witnesses, who testify before the Court, regarding what they have seen, heard or otherwise observed. Before testifying, every witness is required to declare that he/she will testify truthfully, by oath or affirmation. The testimonial evidence is given by means of interrogation conducted directly by the attorneys of the parties. Witnesses are also subject to cross-examination by the party not calling the witness. The Judge is empowered to exercise reasonable control over the mode and order of interrogating witnesses so as to make the interrogation effective in ascertaining the truth. The Judge also ensures that there is no needless wasting of time, and protects witnesses from harassment or undue embarrassment. The Judge may also interrogate witnesses. The effect of the testimony of witnesses on the result of the proceedings is limited, as this type of evidence is not binding upon the Judge. In practice, Courts tend to regard testimonial evidence as weaker than documentary evidence.

4.7.6. Reproduction of voice, sound and image

The CPA allows recordings of voice, sound and image such as photographs, videotapes and motion pictures to be used as evidence in civil proceedings. Authentication of such recordings as an accurate depiction of a voice, person, scene, or event shall not be required so long as the counterparty does not challenge that piece of evidence. In such a case, the burden of establishing the authenticity of the evidence falls upon the proponent party. This must be done by producing evidence capable of supporting a finding that the record is what its proponent claims it to be. For example, the testimony of an expert witness asserting that a videotape has not been altered may authenticate the recording. The effect of the testimony of witnesses on the result of the proceedings is limited, as this type of evidence is, again, not binding upon the Judge.

4.7.7. Electronic evidence

The CPA permits electronic data including any record, file, e-mail, program, internet session, or other data on a computer or any other type of electronic storage device, to be used as evidence in civil Courts. Authentication of electronic evidence shall not be required so long as the counterparty does not challenge that piece of evidence. In such a case, the burden of establishing the authenticity of the evidence will fall upon the proponent party. This must be done by producing evidence capable of supporting a finding that the record is what its proponent claims it to be. The testimony of an expert witness asserting that the electronic evidence has not been altered would be sufficient to authenticate it.

4.7.8. Presumptions

In certain circumstances a Court may presume a fact at issue as established if other facts associated to it are proved. Presumptions are either conclusive or rebuttable. Most presumptions are interpreted to be rebuttable. If contrary evidence is received to rebut the consideration of such fact as established, the presumption has no further effect. A conclusive presumption is that which does not admit contrary evidence. A presumption will not be interpreted to be conclusive unless the law creating it specifically says that it is conclusive.

4.8. Appeals

Spanish Civil Procedural Law distinguishes between two different kinds of appeals, devolutive appeals (i.e. appeals which are heard by a Court superior to that which rendered the decision being challenged), and non devolutive appeals, which refer to those heard by the same Judge who made the previous ruling.

4.8.1. Reconsideration Appeal (Recurso de Reposición)

The parties may challenge interlocutory rulings issued by Courts by filing an appeal with the same Judge that rendered said decision, requesting that the judicial decision be reconsidered. The appeal must be lodged within the five days following the notification of the resolution being challenged; the counterparty is then granted the opportunity to oppose the appeal. Following that opposition (if any), the Court must either reject or admit the appeal.

4.8.2. Remedy of Appeal (Recurso de Apelación)

The party whose claims have been rejected by a final ruling (a judgement which decides on the merits of the case in whole or in part), may file an appeal before the Court immediately above to the First Instance Court, that is the Court of Appeal (“Audiencia Provincial”). If both parties are dissatisfied, each may appeal against part of the decision. The Court of Appeal has the power to decide on the issues in question and modify the judgement of the lower Court.

The procedure for the appeal is as follows:

- a) The party that wishes to appeal shall announce its intention to the First Instance Court. Once the appellant has filed the appeal application, the First Instance Court will study it and decide whether or not it should be admitted and filed, or dismissed. If it admits the appeal, the appellant will then be granted a twenty-day period in which to file a brief presenting their arguments in favour of a modification of the judgement by the Court of Appeal.
- b) The respondent party will then be given notice of the appellant's brief and will have a ten-day period to oppose the Appeal, giving an explanation as to why the Court of Appeal should affirm the judgement of the lower Court. The respondent may also adhere to the appeal and challenge the ruling, should he consider it is incorrect.
- c) In certain specific cases, the Court of Appeal may allow some new evidence to be produced in the appeal proceedings. Likewise, in certain specific cases, the Court of Appeal may call, upon the parties' request, an oral hearing.
- d) Following the filing by the respondent of its opposition to the appeal or, as the case may be, after the hearing, the Court of Appeal will render its decision.

4.8.3. Appeals to the Supreme Court

Appeals to the Supreme Court may have several objectives (e.g. the correction of errors committed by the trial Court, development of Law, ensuring a uniform application and construction of Law throughout the Court System, and more generally, the pursuit of justice). An appeal to the Supreme Court does not entail an automatic retrial in either the trial court or the appellate court. Rather, it involves a review by the Supreme Court of the trial record to determine if the trial Judge made any errors of law or legal oversights in conducting the trial. Factual issues are not reviewable on this appeal.

4.8.3.1. Extraordinary appeal due to infringement of rules of procedure (Recurso extraordinario por infracción procesal)

The parties may challenge final rulings issued by Courts of Appeal by filing before the Supreme Court an extraordinary appeal due to infringement of formalities based on one of the following grounds: (i) infringement of laws related to the Court's jurisdiction and competence, (ii) infringement of procedural laws regulating the format and content of judicial decisions, (iii) infringement of laws regulating the procedural guarantees when said infringement implies the invalidity of the judicial act or has created a lack of defence, or (iv) infringement of the fundamental rights contained in Article 24 of the Spanish Constitution.

The procedure for this appeal is as follows:

- a) The party that wishes to appeal shall announce its intention to the Court of Appeal within a period of five days following the notification of the disputed decision.
- b) Once the appellant has filed the appeal application before the appropriate Court, this Court will study it and decide whether or not it should be admitted and filed, or dismissed. If it admits the application, the appellant will then be granted a period of twenty days within which to file a written brief stating the reasons for the appeal, as well as specifying the procedural laws which the party considers have been violated by the disputed ruling.
- c) The Supreme Court will then decide by express resolution whether or not to accept the Appeal. If the appeal is accepted, then the respondent party will be given notice of the appellants' brief and will be given twenty days to appear before the Supreme Court and oppose the Appeal.
- d) In certain specific cases, the Supreme Court may allow some new evidence to be produced in the appeal proceedings. Likewise, in certain specific cases, the Supreme Court may approve, upon the parties request, an oral hearing.
- e) Following the filing by the respondent of its opposition to the appeal or, as the case may be, after the hearing, the Supreme Court will render its decision.

4.8.3.2. Cassation Appeal (Recurso de Casación)

The parties may challenge final rulings issued by Courts of Appeal by filing before the Supreme Court a Cassation Appeal which will only be admitted (i) when the value or economic interest of the proceedings exceeds Euro 150,000 and/or (ii) the object of the proceedings concerns fundamental constitutional rights, with the exception of those rights provided for in Article 24 of the Spanish Constitution and/or (iii) the case relates to a matter upon which there is conflicting Case Law and an appeal may help to ensure a uniform application of Law.

The procedure for this Cassation Appeal is as follows:

- a) The party that wishes to appeal shall announce its intention to the Court of Appeal within a period of five days following the notification of the disputed decision.
- b) Once the appellant has filed the appeal application before the appropriate Court, this Court will study it and decide whether or not it should be admitted and filed, or dismissed. If it admits the appeal, the appellant will then be granted a period of twenty days within which to file a written brief stating the reasons for the appeal, as well as

specifying the Case Law which the party considers have been violated by the disputed ruling.

- c) The Supreme Court will then decide by express resolution whether or not to accept the Appeal. If the appeal is accepted, then the respondent party will be given notice of the appellant brief and will have twenty two days within which to appear before the Supreme Court and oppose the Appeal.
- d) In certain specific cases, the Supreme Court may approve, upon the parties request, an oral hearing.

Following the filing by the respondent of its opposition to the appeal or, as the case may be, after the hearing, the Supreme Court will render its decision.

4.8.3.3. Extraordinary Appeal in the interests of the Law (Recurso en interés de la Ley)

Exceptionally, the Public Prosecutor and the Ombudsman, as well as certain other Public authorities, may lodge an appeal before the Supreme Court with respect to rulings on specific procedural matters rendered by the High Courts of Justice (“Tribunales Superiores de Justicia”). This appeal may be filed when different High Courts of Justice have rendered different decisions on the same specific procedural matter. The extraordinary appeal in the interests of the law must be filed before the Supreme Court within a year following the most recent decision which is being challenged.

4.8.4. Remedy of Reconsideration (Recurso de queja)

By filing a remedy of reconsideration, the parties may challenge interlocutory rulings by which the Courts reject an application for (i) leave to appeal, (ii) an extraordinary appeal due to infringement of rules of procedure, or (iii) a Cassation Appeal. The remedy of reconsideration will be heard by the Court with jurisdiction to hear the rejected appeal and must be filed within 5 days of the notification of the ruling denying the leave to appeal.

4.8.5. Individual Appeal For Constitutional Protection (Recurso de Amparo)

Any individual citizen, the Ombudsman and the Public Prosecutor, may file a claim to protect the freedoms and rights recognised under Part I, Chapter II, Articles 14 to 29 of the Spanish Constitution by lodging an individual appeal for protection to the Constitutional Court against administrative or judicial acts of the State or Regional Public Authorities that may violate said fundamental rights and freedoms.

The appeal is heard by the Constitutional Court, which is not part of the Judiciary and is only subjected to the Constitution itself and the Organic Law by which it is regulated.

The proceedings begin with the filing of an appeal before the Constitutional Court within twenty days of the notification of the relevant decision which is being challenged. It must be noticed that, in order to challenge before the Constitutional Court an administrative or a judicial decision, it is necessary to file before all the ordinary appeals permitted by Spanish Law. Only once all those appeals have been filed and rejected (i.e. once the ordinary judicial way is ended-up) it is possible to file an appeal before the Constitutional Court.

The Constitutional Court will then decide by express resolution whether or not to accept the Appeal. It is important to note that the Constitutional Court has broad powers to dismiss appeal applications and very few of them are actually heard.

If the appeal is admitted, then the Constitutional Court will request that the administrative or judicial authority against whom the appeal is addressed, to forward the case files to the Constitutional Court. The respondent party will then be given notice of the appellant brief and will have twenty days within which to appear before the Constitutional Court and oppose the Appeal. The Public Prosecutor will also be notified of the proceedings.

Following the filing by the respondent of its opposition to the appeal, the Constitutional Court will render its decision.

4.9. Enforcement of judgements

4.9.1. Enforcement of Judgements

In accordance with Article 117.3 and 118 of the Spanish Constitution “the exercise of judicial authority in any kind of action, both in ruling and having judgements enforced, is vested exclusively in the courts and tribunals laid down by the Law, in accordance with the rules of jurisdiction and procedure which may be established therein”, and “it is compulsory to comply with sentences and other final resolutions of judges and courts, as well as to give them such assistance as they may require in the course of proceedings and for the enforcement of judgements”.

The Law as yet cannot grant debtors solvency, and therefore, the “CPA” aims to strengthen once and for all the creditor’s position, attempting to introduce procedures that guarantee the effectiveness of the enforcement.

4.9.2. Enforcement of final and definitive judgements

The enforcement of final and definitive judgements rendered by Spanish Civil Courts is regulated under Articles 517 to 523 and 538 to 720 of the CPA.

The new regulation introduces a unitary provision upon the various enforcing titles, being applicable to enforcing titles of jurisdictional origin, as well as to those of non jurisdictional origin. Notwithstanding this, the unitary provision does not prevent the legislator from providing an specific regulation where appropriate.

As to the enforcement itself, it starts by means of the application for the final enforcement (“*demanda ejecutiva*”) submitted by the enforcing party or the plaintiff. Its content shall comply with the provisions of Article 549 of the CPA and as a consequence, express the title on which his claim is based and the actual tutelage demanded, assets belonging to the defendant liable to be seized, person or persons against whom the application is filed, and localisation measures of the defendant’s assets that are requested.

The judge shall grant the enforcement by means of a judicial decree or writ (“*auto despachando ejecución*”), against which there is no appeal available.

One of the most noteworthy novelties of the CPA refers to the possible challenge of the defendant to the granting of the final enforcement of sentences and judicial titles and even titles of non-jurisdictional origin. This challenge shall always be based on one of the limited causes established by the Law. In addition to this global opposition, we can refer as well to a challenge of concrete enforcing acts, which represent a breach of procedural laws or of the enforcing title itself.

On the whole, under Spanish Law we can distinguish between monetary enforcement and non-monetary enforcement (“*ejecución dineraria*” and “*ejecución no dineraria*”).

As to the main form, monetary enforcement follows the following scheme: it starts, as explained above, with the application for final enforcement, and continues with the granting of the definitive enforcement (which includes localisation and inquiry measures on the defendant’s assets), the seizure and the selling-up of the defendant’s possessions, in order to fulfil the payment demanded by the applicant.

It is of extreme importance, that the concrete amount demanded is clearly assessed at the initial application for enforcement, including the principal and the ordinary interests, and those accrued during the enforcement, as well as the judicial costs, at least provisionally.

The localisation of the defendant’s assets, in view of the future seizure, concerns the plaintiff initially, without prejudice to the fact that the CPA introduces the debtor’s obligation to collaborate in achieving that goal, under threat of being prosecuted for contempt of Court and of being fined periodically until he complies with the requirement. Furthermore, the Court can request, at the request of the plaintiff, information on the defendant’s possessions subject to seizure, from public entities, legal entities and individuals.

The granting of the definitive enforcement implies the request of payment to the defendant. If the amount demanded is not totally and immediately satisfied, the next step involves the seizure of the defendant’s assets, up to the amount requested by the Court.

The enforcement of monetary obligations entails the sell-up of the debtor’s assets, which have been seized for that purpose. It can take place by means of a unique

sale by auction, or by alternative methods of compulsory sale, such as a realisation agreement (“convenio de realización”) or the realisation by a specialised person or entity (“realización por persona o entidad especializada”).

We should add that the civil action requesting the payment of debts guaranteed by mortgage or pledge, can be brought directly against the assets handed over as security, provided that (i) the guarantee deed determines the price the interested parties impute to the real estate, that can be considered as the reference price for the sale by auction, and that (ii) the debtor’s domicile appears in the deed as well, in view of future requests and notifications.

To conclude, we should point out non-monetary enforcement, as the second form of general enforcement under Spanish Law. The CPA introduces requests and fines, designed to secure the compliance with the obligation to do or not to do something, or to hand over certain assets, as distinguished from the former Spanish Procedure Act that tended to immediately provide for compensation , renouncing the fulfilment of the initial duty.

4.9.3. Temporary enforcement of judgements

Temporary Enforcement of judgements rendered by the First Instance Courts is regulated under Articles 524 to 537 of the “CPA”. Temporary Enforcement is carried out through independent proceedings that may be initiated by the party (the “plaintiff”) who has provisionally obtained a favourable judgement which has been appealed by the losing party (the “defendant”), and which is, therefore, not yet final.

This procedure entitles the plaintiff to receive, prior to the result of the appeal, the amount, specific performance or whatever other order may have been made by the contested judgement. Notwithstanding this, and as provided for in Article 533 of the CPA, if the contested decision is finally reversed (totally or partially), the plaintiff will have to return to the defendant, in full or in part, the amount or the thing (or performance) received, and pay the judicial costs as well as any compensation due for the damage caused by the Temporary Enforcement.

The main stages of this procedure can be summarised as follows:

- a)** Application for the Temporary Enforcement (“demanda ejecutiva”).
This application can be filed at any time up until a decision is reached by the Court of Appeal. The application must be filed before the First Instance Court that rendered the contested judgement. In this respect, the CPA, as distinguished from the former Spanish Civil Procedural Act, does not require the plaintiff to give any caution or guarantee in order to obtain the Temporary Enforcement.

If the contested judgement ordered a monetary payment, the plaintiff must indicate in the application assets of the defendant to be attached by the Court in order to obtain the amount granted by the appealed judgement.

b) Granting of the Temporary Enforcement (“despacho de la ejecución”). Once the Temporary Enforcement is requested by the plaintiff, the Court will immediately grant it provided that the judgement does not contain a declaratory judgement but a condemnatory decision. No appeal is available against the resolution granting the Temporary Enforcement, regardless of the opposition referred to in paragraph d) below.

c) Statement of Assets (“relación de bienes y derechos”). In the resolution granting the Temporary Enforcement, the Court usually requires the defendant to file a statement of his assets (such as cash, current accounts, credit rights, real properties, etc.) in order to attach them for the enforcement of the judgement.

In this statement the defendant must also indicate any existing liens or encumbrances over the assets. If the defendant does not file the statement, nor indicate the liens or encumbrances or includes assets that belong to another person, the Court could charge him with contempt, and may impose periodical fines until the defendant complies with the requirement.

d) Opposition of the defendant to the Temporary Enforcement. The CPA is very restrictive on this point. When the contested judgement orders the defendant to pay a certain amount to the plaintiff, the defendant is not entitled to make observations or raise objections against the Temporary Enforcement granted by the Court. He is only entitled to raise objections against specific enforcement measures (“actuaciones ejecutivas concretas”) -such as the attachment of certain assets-, if such measures may cause irreparable damage to the defendant. In this case, the defendant must indicate other alternative measures and offer a bond to guarantee the damages which may be caused to the plaintiff as a consequence of the delay in the enforcement.

The defendant’s challenge must be filed in writing within five business days following the notification of the specific enforcement measure.

e) Notification of the opposition to the plaintiff. The defendant’s challenge is thereafter notified to the plaintiff, who is granted a five day period within which to file his response to the defendant’s challenge.

f) Court's decision. If the Court finds merits in the challenge of the defendant, the specific enforcement measure will be substituted by the measure proposed by the defendant.

If the Court does not find merits in the challenge, the proceedings will continue up until the public sale of the attached assets of the defendant and the payment to the

plaintiff of all the outstanding amounts, which will be made with the amount obtained from the public sale.

In any event, the decision of the Court in this respect cannot be appealed against either by the defendant or the plaintiff.

4.9.4. Recognition and enforcement of foreign judgements

Pursuant to the Repeal provision, paragraph 1.3, of the CPA, the recognition and execution of foreign judgements in Spain is governed by Articles 951 to 958 of the Spanish Civil Procedural Law of 1881 (CPA - 1881), which has not been repealed and continue to be applicable until a Law on International Judicial Cooperation on Civil Matters is enacted.

In order for a foreign judgement to be eligible for enforcement in Spain, it must be first granted recognition in an “*exequatur*” proceeding before the competent Court of First Instance. The CPA - 1881 provides for the following systems of recognition of a foreign judgement in Spain:

a) Conventional recognition and enforcement regime

Spain is party to many bilateral and multilateral treaties on the recognition and enforcement of foreign judgements, the most important of which are the Brussels Convention of 1968 (now replaced by the Union Regulation 44/2001) and the Lugano Convention of 1988. Both of these prevail over prior bilateral Treaties signed between the parties to such Conventions. These Conventions must be applied when the foreign judgement to be recognised has been rendered by a Court of a State which has ratified those Treaties.

b) Internal recognition and enforcement regime

i) In the absence of an applicable Treaty, a foreign judgement may be recognised and enforced in Spain, provided there is reciprocity between Spain and the State of origin of the judgement.

In other words, a foreign judgement may be recognised in Spain if it is evidenced by the party seeking the recognition of the foreign judgement that the Courts of the country of origin would recognise a similar Spanish judgement (“positive” reciprocity, Art. 952 CPA - 1881). On the contrary, requests for recognition of a foreign judgement will be dismissed where there is evidence that in the State of origin of the foreign judgement Spanish judgements are “de facto” not recognised and enforced (“negative” reciprocity, Art. 953 CPA - 1881).

ii) If there is no international Treaty with the country where the judgement was rendered and if the reciprocity regime is not

applicable (e.g., can neither be proved nor disproved), the foreign judgement will be recognised in Spain if it meets the following conditions (Art. 954 CPA - 1881): (i) the foreign judgement was rendered as a consequence of the exercise of a personal cause of action (as opposed to an action in rem); (ii) the foreign judgement was not rendered by default (i.e., without appearance of the defendant); (iii) the obligation to be enforced through the judgement is lawful in Spain and (iv) the judgement meets all the necessary requirements for validity in the country where it was rendered as well as the requirements of Spanish Law. In practice, even if reciprocity is proved, the said conditions are reviewed for the “exequatur” purposes.

c) As regards foreign judgements capable of recognition, the following should be noted (i) recognition must refer to judgements and not other types of judicial decisions or orders; (ii) judgements must be final and conclusive; and (iii) judgements must refer to private Law as opposed to administrative or public Law.

d) The general system for recognition of a foreign judgement is to seek an “exequatur” order from the Court of First Instance. This is the applicable procedure for the conventional, reciprocity and autonomous regimes (if the applicable Treaty has no special procedural rules).

The “exequatur” is the declaration that a foreign judgement can produce legal effects in Spain (other than merely constituting evidence of its existence). Consequently, “exequatur” should not be confused with the enforcement of a judgement. The “exequatur” is a prior and necessary condition for the enforcement of a foreign judgement in Spain.

e) The procedure for “exequatur” is established by Articles 955 to 958 of the CPA - 1881 and may be summarised as follows:

i) The recognition must be sought by a party with legitimate legal standing. Such parties are those who took part in the foreign proceedings or their successors. The assistance of an Attorney and representation by a Court representative are required.

ii) The application must be accompanied by the foreign resolution for which recognition is being sought, duly apostilled and translated into Spanish.

iii) Once the petition for recognition has been submitted, the respondent is given 30 days to appear before the Court. If the party has not appeared after the 30 day period has elapsed, the proceedings will continue (however, this does not necessarily mean that the judgement will be recognised). If the party appears, it will have a period of 9 days to enter its pleadings.

Given that the “exequatur” is a procedure for official recognition, and not of substantial review, the only argument that the “defendant” will be allowed to present is the lack of one of the requirements or conditions for recognition. It is therefore not possible to try to review the merits of the case.

- iv) Next, notice is given to the Public Prosecutor and then the Court renders its decision. The only appeal from this decision is to the Constitutional Court in the event that a fundamental right has been violated. There is also the possibility of reapplying for an “exequatur” if the cause for the denial can be remedied.
- v) Once recognised, the foreign judgement has been “nationalised” and has the force of a Spanish judgement. It will be enforced by the Court of First Instance.

4.10. Precautionary measures

Precautionary measures consist of resolutions of the Courts ordering or prohibiting something in order to secure the effectiveness of a judgement (or arbitration award).

Spanish Courts are allowed to admit any kind of precautionary measure in order to ensure the enforcement of a hypothetical judicial ruling in favour of the petitioner (Art. 727-11 CPA).

The Court may allow the requested precautionary measure provided that (i) the measure is appropriate to secure the effectiveness of the resolution and (ii) there are no less harmful measures that may be equally effective in securing the future ruling. Furthermore, if the Court finally allows these measures, the petitioner must grant a bond in order to cover any hypothetical damage that the adoption of the precautionary measure may cause to the defendant.

4.10.1. Types of precautionary measures regulated under Spanish Law

The CPA does not contain a close list of these measures, so basically, the petitioner may call for the adoption of any precautionary measure that will be useful in securing the future ruling. Nevertheless, the CPA provides examples of precautionary measures commonly adopted. Certain specific measures involve the fulfilment of additional requirements for their adoption. Among others, the following precautionary measures may be requested:

- a) Precautionary attachment: it can be adopted to secure the enforcement of judgements ordering payment of money or handling of products, rents, interests or fungible goods with monetary value. Likewise, a precautionary attachment can also be adopted to secure other kind of obligations provided that it is the most suitable measure and that it cannot be replaced by another measure that is equally or more effective and, which may be less harmful for the defendant.

- b) Court control or administration to secure profitable properties (“bienes productivos”) in litigation. This measure is mostly suitable (i) in the event that the plaintiff claims for the handing over of such profitable property and there is a risk that the defendant might attempt to manage the property in such a way as to decrease its profitability and/or (ii) to secure the enforcement of judgements ordering payment of money. Court control of the property consists of the appointment of a controller by the Court from whom the defendant must request authorisation to perform acts of administration. Court administration of the property in litigation implies the appointment of an administrator by the Court who will replace the defendant in the managing of the property subject to litigation.
- c) Other regulated measures are (i) the deposit of a chattel, when the plaintiff claims for the handing over of that chattel and (ii) the inventory of the defendant’s assets.
- d) Precautionary record of the complaint at the Land Registry and in other Public Registries: in certain cases, the plaintiff may call for the recording at the Land Registry of a complaint related to real property. Should this measure be adopted, the acquisition by a third party of the litigated property will be affected by the result of the proceedings.
- e) Precautionary measures related to unfair competition and intellectual and industrial property rights are also regulated. Among others: (i) the judicial resolution ordering the temporary suspension of an illegal act or activity; (ii) the deposit of incomes obtained as a result of an unlawful activity, provided that the plaintiff claims for the prohibition or cessation of such activity; and (iii) the deposit of copies of works or goods produced or manufactured in breach of intellectual or industrial property rights, as well as the deposit of the equipment and materials used for the said production.
- f) Stay of resolutions adopted by either a company’s shareholder’s meeting or its board of directors (“suspensión de acuerdos sociales”): Pursuant to the CPA, this measure can be requested by petitioners representing at least one per cent of the share capital of the company, provided that the company has issued listed shares at the time the petition for the precautionary measure is filed. In the event that the aforesaid circumstances do not apply, the measure may also be requested by petitioners representing five per cent of the share capital.

4.10.2. Proceedings for the adoption of precautionary measures

The request for precautionary measures is usually submitted to the Court alongside the complaint. Precautionary measures may also be requested prior to the filing of a lawsuit. In this case, the petition for precautionary measures must be filed with the Court that has jurisdiction to render a judgement in the main

proceedings. In addition, the complaint regarding the main petition must be filed within twenty days following the granting of the measures.

After the filing of the lawsuit, petitions for precautionary measures may only be admitted in exceptional circumstances.

Once the petition for the precautionary measure is filed, the Judge may decide either to (i) grant the measure without hearing the defendant or (ii) to call the parties to a public hearing in order that they defend their positions based upon specific evidence.

If the Court finally allows the requested measure, the petitioner must grant a sufficient bond to cover any hypothetical damage that the adoption of the precautionary measure may cause. The resolution of the Court allowing or rejecting the measure can be appealed by the parties. Nevertheless, in the event that the resolution allows the measure, the filing of the appeal will not prevent the measure being enforced.

In case the adoption of the precautionary measure is urgent or if the hearing of the defendant may jeopardise the effectiveness of the adoption of the measure, the Court may decide to allow and enact the measure without hearing the defendant. Should this be the case, after the measure is allowed, the defendant will be granted a 20-day term in which to oppose the measure. This challenge will be notified to the petitioner and both parties will be called to a public hearing in order for them to defend their positions. Then, the Court may decide either (i) to retain the measure, in this case the defendant will be ordered to pay legal costs, or (ii) to revoke the measure, in this case the petitioner will be ordered to compensate all the damage that the adoption of the measure may have caused to the defendant.

The Court may permit the defendant to substitute the interim measure for an alternative security. Likewise, in the course of the proceedings, a party may request and obtain the alteration of a precautionary measure provided it can give evidence of the existence of facts and circumstances that could not be taken into consideration either (i) when the Court allowed the measure or (ii) within the term granted to the defendant to oppose the measure.

Under certain circumstances, the Court may order the revocation of the precautionary measure. Among others: (i) after the rendering of a judgement favourable to the defendant by the Court of First Instance; (ii) after the rendering of a definitive final judgement favourable to the defendant; and (iii) when there is a 6-month (or longer) stay of proceedings for which the petitioner of the measure is responsible.

4.10.3. Judicial precautionary measures to guarantee the effectiveness of arbitration awards

The CPA opens the door to requests for the adoption of precautionary measures, in order to ensure the effectiveness of the enforcement of both national and international arbitration awards.

Under the former Spanish Civil Procedural Act there were no provisions for the adoption of precautionary measures, neither before nor during arbitration proceedings. The only applicable provision in this respect was Article 50 of the Spanish Arbitration Act of 1988, which allowed requests for precautionary measures once the award had been rendered, provided that the losing party had appealed to the Court of Appeal to obtain a declaration that the award was null and void. Consequently, the likelihood of adopting interim measures pending arbitration proceedings was a controversial matter, pored over in Case Law and by jurists.

The relevant provisions contained in Article 722 of the CPA may be summarised as follows:

- a) Requests for adopting and enforcing precautionary measures may be submitted to the Spanish Courts, or to the arbitrator.
- b) Precautionary measures may be requested as soon as arbitration proceedings are deemed to have been initiated.

In national proceedings, it is worth noting that the CPA deems proceedings to have commenced from the moment the petitioner applies for the judicial formalisation of the arbitration.

With respect to institutional arbitration, the petitioner may request interim measures before the Court as soon as he has filed the application for initiating the proceedings before the relevant arbitration institution. Therefore, interim measures may be requested prior to the convening of the arbitration tribunal.

Finally, it is possible to apply to the Court for precautionary measures in order to secure the effectiveness of an award in international or foreign arbitration proceedings, subject to the provisions of the relevant international Treaties and Conventions ratified by Spain and provided that the Spanish Court does not have exclusive jurisdiction over the matter in hand. According to Article 24 of the Brussels Convention of September 27, 1968 (now EU Regulation 44/2001), as construed by the Judgement of the ECJ dated November 17, 1998, Spanish Courts may grant interim measures when the foreign arbitration is carried out in a State that has ratified this Convention.

- c) For a foreign award to be eligible for enforcement in Spain, it must first be granted recognition in an “*exequatur*” proceeding before the Court of First Instance. This raises doubt as to whether or not interim measures may be requested once the foreign award has been granted and whilst “*exequatur*” proceedings are in progress.

Although nothing is set out in the CPA, there might be grounds to support the possibility of requests for such measures pending the “*exequatur*” proceedings. By parity of reason, the same grounds which

justify the order of interim measures to avoid the risk of a foreign award becoming ineffective (as set out in Article 722 of the New Spanish Civil Procedure Act) should also apply to “*exequatur*” proceedings, thus avoiding awards becoming ineffective after their recognition.

4.11. Regulation of arbitration proceedings in Spain

Arbitration proceedings are governed by the Spanish Arbitration Act and by specific International Conventions ratified by Spain.

Pursuant to Article 2 of the Spanish Arbitration Act, commercial and civil matters may be solved through arbitration. However, the following disputes cannot be submitted to arbitration: (i) where there is a final and definitive judgement on that dispute, except with regard to the enforcement of the judgement; (ii) when the matter is linked to other issues that cannot be disposed of by the parties; and (iii) when the public prosecutor must take part in the proceedings in the name and on behalf of a party who does not have legal standing or legal representation and so, consequently, cannot act on his/her own.

As regards the types of arbitration, it must be noted that the parties to the dispute may opt for *de iure* arbitration or for *ex equo et bono* arbitration. In the absence of any mention in this regard, the arbitrator must elect *ex equo et bono*. Should this be the case, the arbitrator will not be obliged (i) either to settle the dispute in accordance with the law (as provided in Article 4-2 of the Spanish Arbitration Act), or (ii) to state the reasons on which the award is based (as it can be inferred from Article 32-2 of the Spanish Arbitration Act).

4.11.1. The arbitration agreement

By virtue of an arbitration agreement, the parties agree to submit all or some disputes that may arise between them to arbitration. The arbitration agreement may be entered into separately or form part of a main agreement. Likewise, it can be executed before or after the controversy has arisen.

The arbitration agreement is independent from the main agreement. This means that in the event that the main agreement is rendered null and void, the arbitration agreement will remain valid and effective.

Pursuant to Article 5 of the Spanish Arbitration Act, the arbitration agreement must contain (i) the unequivocal will of the parties to submit the settlement of all or some disputes that have arisen or that may arise in relation to a certain legal relationship, contractual or not, to the decision of one or more the arbitrators and (ii) a declaration that the parties are bound to comply with the resolution of the arbitrator(s). Nevertheless, there are some grounds to support that the latter requirement (i.e., the commitment to comply with the arbitrator’s resolution) is redundant and therefore not necessary, as it is implicit in the former requirement (i.e., in the declaration by the parties of their will to submit the matter to arbitration).

The arbitration agreement must be executed in writing. Nevertheless, it will be deemed that the parties have agreed to submit a dispute to arbitration not only when there is a single written document executed by the parties, but also if such an agreement results from the mailing between the parties or from any other means of communication that may provide evidence of the will of the parties to submit to arbitration.

It is not required that the arbitration agreement appoints the arbitrators, nor establishes the rules governing the proceedings.

4.11.2. The arbitrators

In principle, any natural person in full exercise of his/her civil rights may act as arbitrator, provided he/she accepts his/her appointment as arbitrator. In *de iure* arbitration, the arbitrator must be a practising attorney.

The following people cannot serve as arbitrators: (i) practising Judges, magistrates, public prosecutors or people participating in remunerated public functions and (ii) those who have any connection with the parties or with the dispute, when this connection may lead to the possibility of abstention or removal of the arbitrator.

The appointment of the arbitrators may be carried out by the parties in the arbitration agreement or in subsequent agreements. The parties may also refer the appointment of the arbitrators to a third individual or entity, or to an arbitration corporation.

The number of arbitrators shall be odd. If there are several arbitrators, the president of the arbitration tribunal shall be appointed in accordance with the agreement of the parties. In the absence of agreement in this regard, the number of arbitrators will be three and the president of the arbitration tribunal will be chosen by a majority of arbitrators. In the absence of such majority, the oldest arbitrator will be appointed as president. When the appointment of the arbitrators is referred to an arbitration corporation, the appointment of the president will be made in accordance with the rules of that corporation. In the absence of agreement of the parties as regards the appointment of arbitrators, the parties may resort to the judicial formalisation of the arbitration proceedings.

It will be deemed that an arbitrator has declined the appointment in the event that he/she does not accept his/her appointment in writing within 15 days following the date of notification of his/her appointment.

Once the arbitrator has accepted, he/she will be bound to comply with his/her duties. If he/she fails to do so, he/she will be liable for all damage that may be caused.

The arbitrators may request from the parties a deposit of funds so as to cover their fees and any expenses they may incur as a result of the arbitration proceedings.

4.11.3. Arbitration proceedings

Articles 21 to 29 of the Spanish Arbitration Act provide for some minimum requirements that must be fulfilled in the arbitration proceedings. These minimum requirements may be summarised as follows:

- a) The arbitration proceedings must comply with the provisions contained in the Spanish Arbitration Act. In addition, these proceedings are subject to the principles of hearing (*audiencia*), opposition (*contradicción*) and equal opportunity (*igualdad*) of the parties.
- b) The parties may act on their own or represented by a practising attorney.
- c) The arbitration proceedings are deemed to commence on the date on which the arbitrators notified the parties in writing of their acceptance of their duties.
- d) The parties are allowed to allege in the initial pleadings that the arbitrator lacks jurisdiction to decide on the matter, that the arbitration agreement is null and void, or does not exist or that its period of validity has elapsed.
- e) The place of the arbitration shall be determined by the arbitration agreement. In the absence of any mention in this regard, it will be determined by the arbitration rules that may be applicable and, in their absence, by the arbitrators.
- f) The language of the arbitration shall be determined by the arbitration agreement. In the absence of any mention, it will be chosen by the arbitrators.
- g) The parties may state an address for notification purposes.
- h) The arbitration award must be rendered within a period of six months. The arbitrators may determine the terms according to which the parties will submit their allegations and legal briefs.
- i) The arbitrators may produce any evidence they deem appropriate provided it does not contravene the Law, at their own discretion or as a consequence of a prior request by a party. The parties will be summoned to the production of evidence and may take part in the production of evidence on their own or through their legal representatives.
- j) Under certain circumstances, the arbitrators may request the assistance of the competent First Instance Court in the process of production of evidence.

- k) In the event that a new arbitrator replaces a former arbitrator, the production of evidence shall be repeated, unless the new arbitrator considers that he/she can be informed by reviewing the records of the case.

4.11.4. The arbitration award

The arbitration award must be rendered within 6 months following the date of the acceptance by the arbitrator of his/her duties. The parties may extend this period, provided they notify this to the arbitrator prior to the date on which the aforesaid 6-month period elapses. In the event that the award is not rendered within the 6-month period (or within the extended period granted by the parties, if applicable), the parties will be free to resort to the Courts to settle the dispute.

The award shall be decided by majority of votes of the arbitrators.

The arbitration award must be rendered in writing and must comply with certain requirements to be valid. Among other requirements, it must contain: the personal details of the arbitrators and the parties; the date and place where it was rendered; the signature of the arbitrators; a brief summary of the allegations of the parties and the evidence submitted. The award shall also mention the allocation of the legal costs of the arbitration proceedings. In *de iure* arbitrations the award must also state the legal reasons on which it is based.

The award must be notarised in a public deed and notified to the parties in a reliable manner. Any party may request rectification of mistakes or clarification of the award within 5 days following the notification of the award.

4.11.5. Challenging an arbitration award

The appeal to set aside the arbitration award must be submitted (i) before the Court of Appeal corresponding to the place where the award was rendered and (ii) within a 10-day term following the notification of the award, or its clarification or rectification by the arbitrator(s), if applicable.

Pursuant to Article 45 of the Spanish Arbitration Act, an award may only be set aside on the following grounds:

- a) When the arbitration agreement is null and void;
- b) When the formalities and essential principles established by Law have not been observed in the appointment of the arbitrators or in the conduct of the arbitration proceedings;
- c) When the award is rendered after the stipulated time period has elapsed;
- d) When the award deals with issues not submitted to arbitration, or the subject matter to the dispute can not be settled by arbitration. In these cases, the award shall be set aside only with regard to those issues not

submitted to, or not capable of being settled by arbitration, provided that these issues can be separated from the main dispute;

- e) When the award contravenes public policy (“orden público”). To be contrary to public policy, an award must be contrary to the fundamental principles of social, economic and legal organisation, which are the basis of national law, such as constitutional principles and human rights. In this regard, it must be taken into account that most petitions to set aside an award based on the fact that it is contrary to public policy are rejected. In fact, in most cases, Spanish Courts consider that the petitioner’s true aim is to obtain a review on the merits of the case (i.e., a review of either the finding of facts or the Law applied by the arbitrator), which is contrary to the Spanish Arbitration Act.

4.11.6. Enforcement of an arbitration award

A distinction should be drawn between the enforcement of (i) arbitration awards rendered in Spain and (ii) international or foreign arbitration awards.

a) Enforcement of arbitration awards rendered in Spain

Arbitration awards rendered in Spain are enforced in accordance with the rules governing enforcement of judgements. Nevertheless, the Arbitration Act provides some specific requirements which apply to these proceedings. Among others:

- i) The petition for the enforcement of the award must be submitted before the First Instance Court with jurisdiction in the place where the award was rendered.
- ii) The petition for enforcement must be filed along with the following documents: (i) a certified copy of the award, (ii) certified copies of the notification of the award to the parties, (iii) copy of the arbitration agreement, and (iv) certified copy of the judicial resolution accepting or dismissing the appeal to set aside the award, if applicable.
- iii) The First Instance Court will notify the petition for enforcement to the other party. The latter will be granted a 4-day period in which to declare if a petition to set aside the award is pending. Should this be the case, the Court will order a stay in the enforcement proceedings. Otherwise, it will proceed as in the case of the enforcement of judgements.

b) Enforcement of foreign and international arbitration awards

International arbitration awards are enforceable in Spain in accordance with (i) the International Treaties to which Spain is a party; and (ii) Articles 955 to 958 of the

CPA of 1881 (which will continue to apply until a Law on International Judicial Cooperation on Civil Matters is enacted).

Spain is party to several international treaties for the enforcement of international arbitration awards, the most important of which is the New York Convention of June 10, 1958. As Spain did not make any reservation as to the scope of the Convention, the Convention applies to the enforcement of any foreign arbitration award, even if it was rendered in a non-contracting State (provided that the matters it deals with can actually be submitted to arbitration). As a consequence, Spanish Supreme Court Case Law tends to be favourable to the recognition and enforceability of foreign and international arbitration awards.

The Convention (Article III) refers to national proceedings for the recognition and enforcement of the international arbitration awards. Under Spanish Law, the general system for recognition of a foreign arbitration award is the “*exequatur*” before the Supreme Court, as explained in section 4.9.4. The “*exequatur*” is the declaration that a foreign arbitration award produces effects in Spain and may, therefore, be enforced in Spain as a domestic award. If the “*exequatur*” is granted, the award will be enforced by the competent First Instance Court.