

spain



LR Abogados

Contact:	D. Jesús Castellano Gallego
Address:	Paseo de la Castellana 144, Edificio Feygon 28046 Madrid, Spain
Tel:	+34-91-458-1877
Fax:	+34-91-457-5332
Email:	jcg@legalresources1.com
Web:	www.legalresources1.com/

"It's the way services are delivered that they value."

In the last four years LR Law Firm has more than doubled in size and turnover.

LR Abogados' sustained growth is based on strong client relationships and a solid reputation for excellence. The firm's legal teams work closely with clients to deliver fast and effective business solutions.

The firm

The firm is client and industry focused, delivering multi-disciplinary expertise in key sectors such as private equity and finance, media, construction, technology and tourism. Its main office is in Madrid, with a local branch in Tenerife (Canary Islands).

LR Law Firm recruits lawyers who are commercially aware and who can deliver the business goals focus essential to successful client relationships.

The firm is well known for its pragmatic way of doing business and clients appreciate the contribution the firm makes in meeting their objectives.

Partners:	4
Assistants:	14
Trainees:	4
Staff:	4

Types of Work Undertaken

The firm is highly regarded in the following sectors:

CORPORATE

The team has built its reputation acting for management teams, lending institutions and investors in MBOs, MBIs, IBIs, acquisitions and mergers.

COMMERCIAL

The team gives specialist advice on a full spectrum of commercial agreements, often with an international element, which includes advice on intellectual property rights, trade marks, supply and logistics, licensing, joint ventures and competition law. Multi-disciplinary and cross-border transactions are undertaken as well as work in overseas jurisdictions. Clients for whom the firm acts range from governments, multinational companies, banks, and Private Equity Companies to entrepreneurs, private companies and individuals.

INSOLVENCY

Lawyers' skills are solid and prestigious as Trustees in Bankruptcies and Commissioners too, reporting to the Superintendent of Bankruptcy and performs duties as specified by the Bankruptcy and Insolvency Act.

EMPLOYMENT

A complete service by combining legal, human resources and industrial relations skills supplemented by practical training and HR consultancy services.

REAL ESTATE

This team advises on a wide range of investment, development, property, project management and construction issues. LR Abogados provides a high-value service to clients ranging from entrepreneurs to leisure and retail occupiers, property companies and institutional investors. Specialist services include environment, planning and zoning.

Due to a strong presence in Canary Islands LR offers a skill team specialized in Timesharing, representing the interest of one of most important German promoters in this area.

International: an increasing volume of cross-border work comes through overseas clients and contacts. This increasing volume is possible to attend through the International Law Firm Alliance "e-iure". - As a member of ILFA-e-IURE LR Law Firm has close links with top-tier law firms throughout the world.

Breakdown of work %:

- Real estate 20
- Corporate, commercial and insolvency 35
- Litigation 20
- Private client 5
- Employment 20

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Regulations and Rules

The legal framework of Corporate Law in Spain consists of:

- The Code of Commerce (1885) (Sections 116 to 237)
- The Joint Stock Companies (or Public Limited Companies) Act 1564/1989 (LSA)
- The Private Limited Companies Act 2/1995. (LSRL)
- The Rules of Mercantile Register (RD 1784/1996)

In European Law, the following are the main sources:

- Law of Mercantile Adaptation to the European Community Standards (Act 19/1989)

Types of Companies and Liability of Shareholders

A business may be set up in Spain under different legal forms. The forms most commonly adopted by foreign investors are:

- Sociedad Anónima (S.A.) (Public Limited Company or Joint-Stock Company): Corporation with a minimum capital stock of 60,101.21 euros of which at least 25% must have been paid at the time of incorporation, divided into freely transferable shares (similar to: UK: PLC; Germany: A.G.; France: S.A., Italy: SpA)
- Sociedad de Responsabilidad Limitada (S.L.) (Private Limited Company or Company Limited by Shares): Smaller corporation (a minimum capital of 3,000 euros, fully paid at the time of incorporation) which is subject to lesser reporting and auditing requirements than the S.A. and which may not issue stock (similar to UK: Ltd.; Germany: GMBH.; France: SARL., Italy: SRL)
- Sucursal (Branch): a division of a foreign company with separate accounting.

Other less common but valid legal forms are:

- Empresario individual (Proprietorship): an individual manages the business, providing the capital and assuming unlimited responsibility.
- Comunidad de bienes (Co-ownership): a business which is not an independent legal entity and belongs to two or several proprietors who assume unlimited responsibility.
- Sociedad Colectiva (General Partnership): an independent legal entity which is owned by two or more general partners, all assuming unlimited responsibility.
- Sociedad Comanditaria (Limited Partnership): an independent legal entity which is owned by one or more general partners assuming unlimited responsibility and by one or more limited partners whose liability is limited to the amount of capital contributed.

The establishment of a branch – amended by the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State - requires:

- A formal resolution of the foreign head office governing body authorizing the establishment of a branch in Spain and appointing a representative.
- The resolution must be duly legalized to be valid in Spain,
- Registration of the above resolution with the Mercantile Registry in Spain, including a copy of the head office's corporate bylaws duly stamped with an Apostille issued under the Hague Convention and a sworn translation into Spanish.

Share Capital (minimum and minimum paid in amount)

Company	Minimum (€)	Minimum paid in amount (€)
PLC or Joint-Stock Company (SA)	60.101,21	25%
Company Limited by Shares (Limited Liability Companies) (SRL)	3.005,06	100%
Banks	18.030.363,13	100%
Insurance Companies	9.015.181,57	50%
Real Estate Investment Company	9.015.181,57	100%
TV Channels	6.010.121,84	50%
Chartered Stock Brokers	4.507.590,78	100%
Sociedades de Capital Riesgo (SCR) Venture Capital (Private Equity)	1.202.024,21	50%
Quoted Companies	1.202.024,21	100%
Investment Companies	901.518,16	100%
Asset Back Securities Fund Mangmnt.	901.518,16	100%
Sociedades Gestoras de Fondos de Capital Riesgo (Venture Capital Fund Management) (Private Equity Management)	300.506,05	100%

Classes of Shares (Registered/Bearer, Preferred/Ordinary)**REGISTERED / BEARER**

Bearer shares are corporate stock certificates which are owned simply by the person who holds them, the "Bearer". These shares are not registered on the books of the issuing corporation and are transferred by delivery. These shares are only allowed when capital stock has been fully paid up.

Registered Shares are those which are registered on the books of the issuing corporation (Libro Registro de Acciones Nominativas) and certificates appoint the name of the owner.

COMMON (ORDINARIAS O COMUNES) STOCK AND PREFERRED (PRIVILEGIADAS O PREFERENTES)

Each class must have something that makes it different from the other classes, and all the shares within one class must have the same rights.

If there is only one class of shares issued, they may be called "common shares", "capital shares", or just "shares" or "stock".

Common Stock: A security that represents ownership in a corporation. Holders of common stock exercise control by electing a board of directors and voting on corporate policy.

Preferred Stock: These shares bestow certain rights and privileges not accruing to common stock. These rights or privileges shall be financial (mainly concerning dividends); and never "the right of vote" or "the preferred subscription right".

After the incorporation, the issuance of Preferred Stock is an amendment to the By-Laws.

Corporate Governance: Classes

SHAREHOLDERS MEETINGS

Decisions reserved to the Shareholders:

- Approval of financial statements and distribution of profits and Approval/Censure of Management (Section 195).
- Appointing and Removal of Directors (Sections 123-131-132) , Auditors (Section 204), Liquidators (Section 268-280).
- Changing the By-Laws: (Sections 103-144-152-164)
- Winding-Up or Dissolution (Sections 103-240-260-262)
- Acquisition of assets for a price exceeding 10% of Capital Stock (during the first 2 years of existence) (Section 41.1)
- Issuing Preferred Shares (Section 50)
- Issuing Bonds (Sections 103-292)

Minimum numbers of board meetings/year: Once a year (Annual General Meeting –AGM) in order to approve the financial statements, distribution of profits and Approval/Censure of Management

DECISION-MAKING BODIES

Classes and Power of Directors:

- Sole Director (Administrador Único)
- Sole and several Directors (Administradores Solidarios)
- Joint and several Directors (Administradores Mancomunados)
- Board of Directors (Consejo de Administración)

APPOINTMENT OF DIRECTORS

Directors shall be appointed by the Shareholders Meeting (Sections 123 LSA - 58.1 LSRL – 191 and 142 Rules of Mercantile Register)

MINIMUM NUMBER OF INDEPENDENT DIRECTORS

There is no binding rule. Nevertheless, “The Olivencia Report” and “The Aldama Report” – two Codes of Best Practice - provide some recommendations concerning this question.

TERM OF APPOINTMENT

For Joint-Stock Companies (SA) the term of appointment shall never be longer than 5 years (Section 126 LSA and Sections 144 y 145 Rules of Mercantile Register)

For Companies Limited by Shares (SL) directors may be appointed for an undetermined period of time (Section 60 LSRL)

RANGE OF DIRECTORS’ LIABILITIES

- Do law/regulation require a specific agreement – or disclosure - for determining the remuneration of Directors? (SA) The scope of Directors’ duties shall be determined by the Estatutes. (SRL) Directors’ duties are in principle not remunerated, unless the By-Laws provide for remuneration and the method of calculation. Remuneration is often in the form of a percentage of after-tax profit.
- Any limit? (SA) The Directors’ remuneration is set only after allocating the legal and statutory reserve and a 4% - or other higher percentage determined in the Estatutes - dividend in favor of shareholders. (SRL) The aggregate amount of Directors’ remuneration must not exceed 10% of the after-tax profit.

LIABILITIES

(SA and SRL) Directors’ liabilities, contribution to damages caused in the course of their duties and the procedure for claiming against them, are set forth in detail in Sections 133-134-135- 260 y 262 (LSA)

ANNUAL ACCOUNTS-FINANCIAL AND OPERATING RESULTS: DUTIES AND LIABILITIES

Necessary Documents: 1) Profit and Loss Account; 2) Balance Sheet; 3) Management Report; 4) Memory; 5) Auditors Report; and 6) the certification of the AGM Minutes in which the approval of Annual Accounts took place.

Time Limit for delivery of documents: Directors will draft the Annual Accounts (Cuentas Anuales) no later than 3 months after the end of the corporate year. The AGM will examine and approve or refuse these Annual Accounts no later than 3 months after the proposal by the Directors.

Time Limit for deposit/application/registration: No later than 30 days after the AGM approves the Annual Accounts.

Authentication: Secretary and Chairman's signature in the certification of AGM Minutes in which the approval of Annual Accounts shall be authenticated by a Public Notary.

Publication in a Legal Gazette/Mercantile Register: The Legal Gazette ("Boletín Oficial del Registro Mercantil") shall publish a report on the fulfillment of corporate duties, and a notice that the Annual Accounts are publicly available in full.- By-Laws are also publicly available in Mercantile Register.

QUOTED COMPANIES

There are no specific rules for Quoted Companies. However, "The Olivencia Report" and "The Aldama Report" - two Codes of Best Practice - provide some recommendations concerning Quoted Companies.

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CORPORATE TAXES

Taxes on Corporate Income

The general rate is 35%, which can be reduced in some cases for the specific business developed by the company. For small size companies (turnover not higher of 6.000.000 €), the first 90.151,82 € will be levied at 30%, the rest to 35%.

Corporate Residence

Any company that generates incomes in the Spanish territory are subject of corporate income tax, through a subsidiary, branch office or permanent establishment (in this specific case to the non-resident tax, as in the partnership case).

Other Taxes

VAT

VAT is levied in good supplies and services given and provided inside Spain, import/intra EU acquisition of goods. Three rates. General at 16%, reduced 7% and super-reduced at 4%. In Canary Islands, VAT does not apply, but the IGIC (Impuesto General Indirecto Canario), with an ordinary rate of 5%.

TRANSFER TAX (TT)

Applies in transfer "inter vivos" when there is no VAT. The rate can vary depending the Autonomous Region.

CAPITAL TAX (CT)

Levies the incorporation, any variation of capital and liquidation of entities. Incompatible with transfer tax and stamp duty, not always with VAT. General rate: 1% of the transaction.

STAMP DUTY (SD)

Notarial documents of valuable transactions (0,5%) and any other document that should be submitted to the Public Administration, administrative documents and bill of exchanges.

Compatibilities between the three taxes and the VAT:

COMPATIBILITY BETWEEN THEM		
	COMPATIBILITY	INCOMPATIBILITY
TT versus CT	—	X
TT versus SD (variable)	—	X
TT versus SD (fix)	X	—
CT versus SD (variable)	—	X
CT versus SD (fix)	X	—

COMPATIBILITY WITH VAT		
	COMPATIBILITY	INCOMPATIBILITY
Transfer tax	—	X
Capital Tax	—	X
Stamp duty (variable)	—	X
Stamp duty (fix)	X	—

PROPERTY TAX

Applies for non residents. The tax rate is 3% of the ratable value of the property. In case the nationality of the non resident has a double tax treaty signed with Spain with exchange of information, this tax does not apply.

Branch Income

The incomes generated by a branch in a foreign territory, will be part of the incomes of the head office. Nevertheless, any income obtained in Spain through a branch of a foreign entity, will be taxable at 35%, applying the general rules for Spanish entities. The incomes remitted from the Spanish branch to the head office are subject to a 15% withholding tax. Exemption applies to EU head offices and territories with double tax treaties signed with Spain, with the exception of Canada, Indonesia and US.

Income Determination

If the law does not say anything in the contrary, the Spanish Accounting Rules (Plan General de Contabilidad) will apply to the income determination. If the law applies in a different direction, two kind of differences between the financial P&L and the taxable will be generated:

TEMPORAL DIFFERENCES

They generate advance or deferred corporate tax, their appearance is conditioned to the specific moment of the deductibility of the costs.

PERMANENT DIFFERENCES

Includes the non deductible costs, as: capital retribution, corporate tax, penalties and sanctions supported from the Tax Administration, liberalities (with the exception of PR costs with clients or suppliers, sales promotion costs, moderate costs to employees, between others).

Tax Incentives

The main tax incentives (to be done on the net tax due) are the following:

INCENTIVES	% OR AMOUNT	LIMIT
(1) Business incentive:		
- full business circle in Ceuta and Melilla	50% credit in CT	
- Local public services provided	99% credit in CT	
- Export of films, books and cultural items, if the tax credit is reinvested in the acquisition of assets of this specific activity.	99% credit in CT	
(2) To promote specific kind of investment:		
- Extraordinary profit reinvestment	20%	35% in all the cases
- Increase of number of disabled workers.	6.000 €	
- Antipollution investment	10%	
- R+D expenses	30%-50% In cost 20% investment	
- Cultural assets/book publishing/ films industry/coproduction	15%/5%/20%/5%	
- International fair, PR investment	25%	
- Branches and subsidiaries incorporated abroad	25%	
- Education programs to workers	5%-10%	
- New technologies staff training costs	5%-10%	
- New technologies (information and telecommunication) promotion	10%	
- Contribution to pension plan	10%	
- Renewable power plant investment	10%	
- Dividends	17,5%-35%	
- Donation	35%	

Group Taxation (Consolidation)

It is permitted for corporate tax effects, and the withholding on account of this tax. The decision must be taken and notified to the Tax Authorities at the beginning of the fiscal year. At this moment, the consolidating corporation

should have more than the 75% of the capital of the Spanish entity, directly or indirectly.

Special Tax Regimes

CANARY ISLANDS (RÉGIMEN ECONÓMICO Y FISCAL –REF)

CANARY ISLAND ZONE (ZEC)

All the companies incorporated between June 2000 and December 31, 2006 can apply to this special regime, and receive the tax benefits until December 31, 2008. The registration requires. (1) a minimum investment of €100.000 in the first two years of activity, (2) create at least 5 new jobs in the Canary Islands. The corporate tax vary between 1% and 5%, depending of the business, and limited to specific taxable base amount. The general rate will apply over this base. Exemptions regarding IGIC and transfer tax. The EU Parent-Subsidiary Directive applies for non EU countries, with the exceptions of tax haven.

FISCAL REGIME OF THE ETVE

Main features of the ETVE: (a) Their corporate purpose must primarily be the management and administration of shares in entities that are not resident in Spain. (b) They must have the corresponding organization of human and material resources. (c) The shares (or participations) held by the ETVE must be all nominative. (d) Incompatible with the regime of fiscal transparency. (e) Requires communication to the Ministry of Economical Affairs

About the regime:

a) Dividends resulting from benefits obtained by entities not resident in Spanish territory are exempt of Corporation Tax upon fulfillment of the following conditions:

- The investment is at least 5 % and is maintained continuously during the fiscal year prior to the day when the dividends or shares become due.

- The entity that is not resident in Spanish territory must be subject to and not exempt of a tax that has an identical or similar nature as the Spanish Corporate Tax.
- The income of the entity not resident in Spanish territory from which the dividends have been obtained must carry out business activities abroad, this condition is complied with in the event that at least 85% of the income of the accounting period corresponds to:
 - Income obtained abroad not imputed by means of the regime of international fiscal transparency (passive income).
 - Dividends resulting from benefits, as well as gains resulting from the transfer of the stake in entities not resident in Spanish territory.

b) Capital gains resulting from transfer of shares in entities not resident in Spanish territory, upon fulfillment in all the cases of the following requirements are exempt:

- Those indicated in point a) above (referred to all the accounting periods during which the stake was held, except the first one, referred only to the day of the transfer).
- That the acquirer is not resident in a Tax haven.
- This regime is also applied to the rent resulting from the events of separation of a shareholder or liquidation of an entity.

The most important difference with the general tax system is the treatment of the dividends paid by the Spanish Holding to its non-resident shareholders or the capital gains obtained by the non-resident shareholders in the case of transmission of the shares of the Spanish Holding.

In this case a distinction must be made between the perception of dividends and the obtaining of capital gains resulting from the transfer of shares in the Spanish Holding (or in the events of separation or liquidation of the entity):

- Dividends: The distributed benefit, when it results from income not integrated in the taxable base because of its exemption, it is considered not obtained in Spain and consequently not subject to taxation in Spain.

- Capital gains resulting from transfer of shares: The capital gain corresponding to either the provisions to cover exempt rent or to the differences in value imputable to shares in entities not resident in Spanish territory is considered not to have been obtained in Spain and are consequently not taxed in Spain.

Withholding Taxes (Table with All the Percentages on Dividends-Interests-Royalties)

The deductions of the amounts will, in all cases, the limit of the amount levied according to the Spanish tax law, being not deductible the difference between this amount and the deduction made in the country of origin.

Country	Dividends ¹	Interest	Royalties ²	Country	Dividends ¹	Interest	Royalties ²
Argentina	10/15	12,5	15	India	15	15	20
Australia	15	10	10	Indonesia	10/15	10	10
Austria	10/15	5	5	Ireland	15	0	10
Belgium	10/15	10	5	Israel	10	10	7
Bolivia	10/15	15	15	Italy	15	12	8
Brazil	10	15	12,5	Japan	10/15	10	10
Bulgaria	5/15	0	0	Korea	10/15	10	10
Canada	15	15	10	Latvia	5/15	10	10
Chile	5/10	15	10	Lithuania	5/15	10	10
China P.R.	10	10	10	Luxembourg	5/10/15	10	10
Cuba	5/15	10	5	Mexico	5/15	15	10
Czech Rep.	5/15	0	5	Morocco	10/15	10	10
Denmark	5/10	10	6	The Netherlands	15	10	6
Ecuador	15	10	10	Norway	10/15	10	?
Estonia	5/15	10	10	Philippines	10/15	10	15
Finland	10/15	10	5	Poland	5/15	0	10
France	15	10	5	Portugal	10/15	15	5
Germany	10/15	10	5	Romania	10/15	10	10
Greece	5/10	8	6	Russian Federation	15	5	5
Hungary	5/15	0	0	Slovenia	5/15	5	5
Iceland	5/15	5	5	Slovakia	5/15	0	5

Country	Dividends ¹	Interest	Royalties ²	Country	Dividends ¹	Interest	Royalties ²
Sweden	10/15	15	10	United Kingdom	10/15	12	10
Switzerland	10/15	10	5	United States	10/15	10	10
Thailand	10	15	15	USSR	18	0	5
Tunisia	5/15	10	10	Venezuela	10	10	5
Turkey	5/15	15	10				
NON TREATY: Dividends 15 Interest 15 Royalties 25							

¹Note that as Spain has implemented in its legal regulation the EU Parent/Subsidiary Directive, the dividends perceived from an EU subsidiary may be exempt of the withholding tax (under specific premises). For Luxembourg does not apply to entities under the paragraph one of the protocol to the tax treaty between Spain and Luxembourg.

²The percentage can vary depending of the specific intellectual property which generates the royalty.

DIVIDENDS

The minimum percentage will apply, generally, when the participation in the subsidiary which generated the dividend is higher than 25%. The 50% will apply for Austria, Denmark, Sweden and Tunisia, it is reduced to the 20% of the shares in Chile, and to the 10% of the votes in the United Kingdom. In the specific case of Luxembourg, if the dividend is received in a Spanish company, in case of participate the subsidiary in a percentage higher of 25%, the withholding will be 5%, in case is a Luxembourg company from a Spanish subsidiary, the minimum percentage is 10%.

Double Tax Deduction

According to the Spanish regulations, an Spanish entity should be taxable in all the incomes perceived, even when some of them were generated abroad. Nevertheless, the Corporate Tax law considers a special deduction to avoid some activities are taxable in two territories, or in other entity.

- Internal double tax deduction: Is focused in the double tax of the same income for two different entities (generally dividends).
- International double tax deduction: There is a juridical double taxation, which applies to the same income taxed in two countries (withholding tax at source), and an economic double taxation, the same income taxed in two companies in two different territories.

The dividends or profit-sharing income from a foreign entity, (from June 26, 2000 to 2007) are exempt in Spain if:

- The Spanish entity has at least 5% of the shares of the foreign entity, during the last fiscal year,
- The foreign entity is subject to a similar tax to the Spanish corporate tax, and it is not a tax heaven country. If a double tax treaty is signed between that country and Spain with exchange of information clause, this clause is presumed; AND
- The income of the dividend was generated in foreign activities of the foreign entity carried out abroad.

About the juridical double taxation, the imputation method applies, it means, gross foreign income (including the withholding tax already paid) is considered for Spanish tax calculation purposes, and then a tax credit for the foreign withholding tax is applied, limited to the corporate tax that it would have paid if such gross income (with the deduction of all associated costs), had been obtained in Spain.

Tax Administration

RETURNS

If there is a tax credit, a return can be applied.

PAYMENT OF TAX

The last day of payment is 25th of July. After the first year of activity, three advanced payment are required (Oct. 20th, Dec 20th, Apr 20th). The advance payment may be calculated according to the company size:

- Large entities: 25% of the profit at Sep30th, Nov 30th and March 30th.
- Small entities: Can decide at the beginning of the fiscal year between the large entities system, or applying the 18% to the corporate tax paid the year before.

INDIVIDUAL TAXES

Non Residents

Dividends and other incomes from the participation in other entities, interests and incomes from capital cessions, are taxable at 15%. Capital gains are levied from 35%, including the incomes from real state sales to non residents, all the other incomes will be taxable at 25%.

UE residents without permanent establishment in Spain do not pay any tax for interest and patrimonial increases derived from other properties (except, between other causes if the shares/bonds transmission is about a company with real state in Spain). There is an exception, the cases when this income is generated through a tax heaven entity.

Incomes from Public Bonds (Deuda Pública) received from non residents are not taxable, if there are not perceived through an permanent establishment or a tax heaven entity.

Taxable at 3% of the real value (valor catastral) the real state owners, with some exceptions.

Non residents buyers of real state should deduct a 5% of the acquisition price, with some exceptions.

Double tax treaty may apply for some cases.

Rates for individual tax (the general table may vary depending the Autonomous Region):

Taxable Base (not over €)	Tax on Euros	Over	Percentage of excess
0	0	4,000	15
4,000	600	9,800	24
13,800	2,952	12,000	28
25,800	6,312	19,200	37
45,000	13,416	over	45

Social Security Deductions:

Rate	Employer	Employee	Bases
General 28,30%	23,66%	4,7%	Max: 32,778.00 year Min: 6,447.00 year
Freelance: 29,80%	29,80%	N/A	Min: 9,064.80 year

Not included the work accident and professional sickness, to be paid exclusively by the employer, they may vary between 0,81% and 13,5%.

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In the context of implementation of the European Union Maastricht Treaty, Spain made significant revisions to its legislation on foreign investment. Royal Decree 664/1999 has set up as a general rule complete freedom of capital movements, both in relation to foreign investments in Spain as well as to Spanish investments in other countries. However, this general regime does not apply to certain specific sector legislation such as the defense sector. These exceptions to the general regime of complete freedom of capital movements is only allowed on the basis of public order and security, public health, and the exercise of sovereign authority.

Governmental Declarations (of Capital), authorizations and Permits

Foreign investments in Spain, as well as their liquidation, must be declared to the "Registro de Inversiones del Ministerio de Economía y Hacienda" (Registrar of Investments of the Ministry of Economy), for administrative, statistic or economic purposes.

Where the declaration concerns an investment coming from a tax haven jurisdiction, the declaration must be made by the investor prior to the actual investment. This declaration is in addition to the declaration to be made subsequent to the actual investment.

No prior declaration is required in the following cases:

- Investments in negotiable instruments, as well as participations in investment funds registered in the records of the "Comisión Nacional del Mercado de Valores (CNMV)" (Securities and Investments Board).
- When the foreign participation does not exceed 50% of the capital of the Spanish company target of the investment.

Prior declarations of investments are made by the investor on the preprinted applications DP-1 (Previous declaration of foreign investment coming from tax havens in non listed companies, branches and other type of investment) or DP-2 (Previous declaration of foreign investment coming from tax havens in real assets). No documents are annexed to these applications.

The prior declaration of investment is valid for six months, from its filing, so that, should the investment not materialize in that time, a new prior declaration is required.

The subsequent declaration of the actual investment shall comply with the following rules:

In most cases, the investment is declared by the non resident investor. However, when the operation requires the intervention of an Spanish commissioner for oaths, this commissioner shall submit information about the operation directly to the Investments Registry.

SUBSEQUENT DECLARATIONS RELATED TO INVESTMENT OPERATIONS IN PRIVATELY HELD COMPANIES, BRANCHES, REAL ASSETS AND OTHER TYPE OF INVESTMENT

The declaration (application D1-A for the declaration of foreign investment in privately held companies, branches and other types of investment) shall be addressed to the Investment Registry of the Ministry of Economy within a maximum period of one month from the actual investment, supporting documents shall be attached to the said declaration to evidence the following:

- non resident status of the investor.
- where applicable, compliance with any requirement of sector legislation.
- Having obtained an authorization in the hypothetical cases of a suspension of the liberalization regime.
- Having made a prior declaration, if required.
- For investments in real assets, a concise explicative report which states the main features of the investment.

SUBSEQUENT DECLARATIONS RELATED TO INVESTMENTS IN REAL ASSETS

The declaration shall be submitted to the Investments Registry through the printed application D-2A (Declaration of foreign investment in real assets) within one month from the actual investment.

SUBSEQUENT DECLARATIONS RELATED TO INVESTMENTS IN NEGOTIABLE INSTRUMENTS

Non residents who subscribe to or purchase negotiable instruments in the Spanish market, on their own account or that of third parties, shall maintain their securities and assets in a registered account opened with an authorized market compensation and liquidation institution.

The depository or administrator for the assets represented by account entries, shall submit to the “Dirección General de Comercio e Inversiones” (General Direction of Trade and Investments) about a report on flows in the ordinary or extraordinary market operations for non residents, subscriptions to share capital made directly with the issuing company or through the Bank, registrations and discharges of non resident deposits related to security transactions other than sales and purchases thereof.

These reports are rendered on a monthly basis between day 1 and 20 of each month for transactions during the previous month.

Likewise, the deposits and balances in accounts of non residents on the Entries Central of the depository, as at 31 December must be declared during the month of January

Transfer of Dividends, Interests and Royalties

The acts, businesses, transactions and operations of any kind which suppose, or require, charges or payments between residents and non residents, or transfers to or from abroad, on a general basis, are free.

However, as an exception to this general rule, the Ministry of Economy, may forbid or limit certain categories of transactions with specified foreign countries or specified operations of charging, payment or transfer, whenever these dramatically affect the interests of Spain, or in application of measures adopted by international bodies of which Spain is a member.

Likewise, whenever short term capital movements are exceptionally ample and may cause significant tension in the foreign exchange market or dramatic alterations in the direction of the economic and foreign exchange policy, the Government, at the request of the Ministry of Economy, is able to adopt safeguard measures as necessary, submitting certain types of transactions to a regime of administrative authorization.

The charges and payments between residents and non residents, as well as the transfers to or from outside of Spain, may be coded in euros or in foreign currency, and must be made through a Deposit Entity inscribed in the “Registros Oficiales del Banco de España” (Official Registrar of the Bank of Spain, “Registered Entities” hereinafter).

In any case, the resident shall declare to the “Registered Entity”, his name or company name, domicile, tax identification code, name or company name and domicile of the non resident sender or beneficiary of the charge or payment, amount, currency, country of origin or destiny, and concept of the operation by which the charge, payment or transfer takes place. The “Registered Entities”, in their case, shall provide, in the manner determined by the Ministry of Economy and within thirty days after each calendar month, such information.

The “Registered Entities”, as well as the resident natural or corporate persons who carry out this type of operations, shall be subjected to the obligation of providing the competent bodies of the Government Administration and the Bank of Spain, in the manner established, the data required for the purposes of statistic and fiscal follow-up of the operations.

Repatriation of Capital: Procedures and Restrictions

PROCEDURE OF LIQUIDATION OF INVESTMENTS IN PRIVATELY HELD COMPANIES, BRANCHES, REAL ASSETS AND OTHER TYPES OF INVESTMENT

For the total or partial liquidation of such investments, the holder of the same, commissioner for oaths or other person obliged to declare, as the case may be, shall submit the declaration of liquidation in the printed application D-1B (Declaration of liquidation of foreign investment in non listed companies, branches and other types of investment) duly filled in and subscribed. Each holder shall fill in a single application for each liquidation referred to even if there are several documents of declarations of investment in one same Spanish company.

PROCEDURE OF LIQUIDATION OF INVESTMENTS IN REAL ASSETS

For the total or partial liquidation of a foreign investment in real assets, the holder or the commissioner for oaths shall submit the declaration of liquidation in the application D-2B (Declaration of liquidation of foreign investment in real assets) duly filled in and subscribed by the non resident holder.

In case of partial desinvestments, either for the change of one or several of the holders of a property "pro indiviso", either for the transmission of a part of the real assets declared in one same instrument of declaration, such partial desinvestment shall be declared to the Registry of Investments.

NEGOTIABLE INSTRUMENTS EXCHANGE

In the event of the exchange of securities in a privately held company for negotiable instruments of another company, the printed application D-1B (Declaration of liquidation of foreign investment in privately held companies, branches and other types of investment) of the investment liquidation, through the intervention of the company or Securities Brokers or the member of a secondary market, official or not, of values which are part of the operation, along with the Significant Participations Communication, if deemed suitable, shall be submitted. The values acquired through the exchange shall be included

as the "purchase flow" in the mandatory report by the depository or administrator.

In those cases where the exchange of negotiable instruments for values of other privately held companies takes place, the relevant Significant Participations Communication for the securities delivered in exchange shall be submitted, if suitable, along with the printed application D-1A (Declaration of foreign investment in non listed companies, branches and other types of investment) of foreign investment declaration in non negotiable instruments, with the intervention of the entity which orchestrated the transaction, shall be submitted. The values delivered in exchange shall be included as the "purchase flow" in the mandatory report by the depository or administrator.

Foreign Personnel; Permits and Other Aspects to be Considered

Prior work permits are required for all foreign citizens over sixteen years of age who wish to carry out in Spain any lucrative, work-related or professional activity, on their own behalf or that of others.

This regime shall not be applied to the nationals of the member States of the European Union, to the nationals of Third States to whom, by reason of relationship, the communitarian regime can be applied, except the nationals of the new States (save for Cyprus and Malta) that joined the European Union on 1st May 2004, for the application of a transitory period of two years from that date.

Work permits will only be delivered to new immigrants only if in Spain it is not possible to find adequate workers with the skills needed in order to perform the work as determined by the State agency which handles job offers.

The application for work and residency permits must be presented personally by the prospective immigrant to the appropriate State agency. In the event that the applicant is also an employer, the application must be submitted by the applicant or a legal representative of the employer.

Where the applicant resides outside of Spain, the application may be submitted before the Diplomatic Mission or Consular Office in the district where he may live.

The application will be processed in the following manner: Upon completion of a review of the application, the relevant authority (Government Vice Delegate or Government Delegate in the autonomous communities made out of one sole region) shall deliver a unique resolution by which the foreign citizen is authorized to work and live in Spain, the beginning of his work activity and carry out his membership of, registration in and quotation to the "Seguridad Social" (Social Service).

The resolution shall be notified to the businessman, indicating the amounts that need to be satisfied in concept of taxes, expiring if after a month from the date of such notice the corresponding visa was not, in its case, requested.

Once the application has been submitted to an Embassy or Spanish Consular Office, the resolution shall be notified to the interested party by the mentioned instance, through the Ministry of Foreign Affairs. The resolution and notice shall be carried out within a three month period, counting from the day after that one of the date in which the entry of the application in the registry of the competent body to handle it has taken place. After that period has expired, the initial work permit applications shall be understood as dismissed.

spain | **labor law**

Prior Warning

In Spain the Labor Jurisdiction is quite protective of workers. It's difficult to obtain a favorable ruling defending investor's rights against the worker. In addition, there are no court costs before the Labor Jurisdiction, so suing the employer is very popular in Spain because no legal costs are incurred if the worker is defeated by the Company in the hearing.

CONTRACTS

It is generally possible to form verbal contracts, when the employee is of age (except for freelance workers).

TYPES OF CONTRACTS

Contracting under Labor law in Spain is a broad subject, but can be summarized as follows:

Permanent Contracts: Contracts with workers aged less than 30 years or more than 45 years, long-term unemployed and unemployed women can benefit from reductions in Social Security contributions, if the firm is up to date with its tax and social security payments and has not been sanctioned for infringements.

Part-Time Contracts: This is not strictly speaking a different type of contract, but rather a form of dividing the working day. It must always be in writing and is divided into two forms: part-time and relief work. All contracts can be full-time or part-time (except for training). The part-time mode denominated 'relief' is used to hire a worker to partially substitute a retired worker.

Contracts of defined duration (Temporary). There are three types:

- **WORKS:** Used for a particular work or service, of uncertain duration, but always subordinate to the work or service to be performed.
- **TEMPORARY:** Serves to replace a worker until his/her reincorporation, e.g. Forced Absence (exercise of Public Positions); must be in writing.
- **CASUAL:** Used to attend to market conditions (circumstances and production) resulting from the accumulation of orders and/or an excess of tasks. Cannot exceed 6 months within a period of 12 months (Otherwise the contract must be made permanent). The contract must be in writing if the period is longer than 4 weeks.

The transformation of these contracts (Works, Temporary and Casual) to permanent contracts gives rise to bonuses. In the event of failure to comply with the specific requirements of one of these contracts (Works, Temporary and Casual), the contract can be recharacterized as a permanent contract.

Training Contracts: Provide the worker with knowledge and techniques in the development of his/her work and are of two types:

- **TRAINING-** Must provide training and the employer must provide a certificate of the training received and the end of the period. They are always full-time and the age of the worker must be between 16 and 21 years and not be in possession of a qualification for which the contract provides training. The number of these contracts in the firm is limited by its size. The salary cannot be less than the minimum inter-professional salary or at 85% of this salary in the case of a worker aged under 18.
- **APPRENTICESHIP:** This is for workers with diplomas, degrees and equivalents. It can be part-time and the task to be undertaken must be at the level of studies attained. It can only last for the four years required to finance the studies. The salary cannot be less than 60% in the first year, 65% to 70% in the second year of the official salary according to the applicable Collective Bargaining.

Other special contracts:

- **SUBSTITUTION,** to cover anticipated premature retirements stating whom is being substituted, in writing.
- **WORKING FROM HOME,** without supervision by the firm, in writing.
- **GROUP WORK** is for a group of workers having a link with the firm and a group leader; not necessarily in writing.

Contracts for the disabled: If the contract is Permanent, a disability must exist for at least 33% with accredited certification and the worker cannot be related to the employer more closely than to the second degree. The contract must remain in force for at least three years, and in the case of a justified termination, there is an obligation to hire for the remaining period. These contracts give rise to an automatic subvention for the firm and a bonus of four monthly social security quotas. If the contract is Temporary, it must be for at least 12 months and not more than 3 years. The same requirements prevail as for the permanent contract, but must not have been previously employed by the same firm. Includes a bonus of social security quotas, and its conversion to a permanent contract generates a subvention. Can be offered for Training; the training in this case has no age limit and the firm is not limited in the number of contracts it can offer. Bonuses are paid in social security. If the contract is for Apprenticeship, the disabled person must provide the disability certificate, as well as the education certificates. The apprenticeship period may start up to 6 years from completing the studies.

Contracting Administrative and Top Management Staff. The authorized Employers and/or Top Manager of the business must be distinguished to determine what type of contract may be made. If the employer chooses to be self-employed, he/she is inscribed in the self-employed regime and with regard to Social Security, works for him/herself. However, in the case of a limited or non-limited company, non-labor, he/she can work either as self-employed or as employed because the regime will vary depending on his/her functions and participation as capital partner of the company.

- If a partner performs management or advisory functions, or personally offers other paid services and also possesses effective control of the company, either directly or indirectly, he/she should register in the self-employed regime (SELF-EMPLOYED). It is

understood that effective control of the company in terms of participation is possessed when: The shares of other partners related to the second degree constitute more than or equal to 50%; his/her share alone is equal to or more than 33%; or he/she is the managing director of the company in possession of at least 25% share.

- In any other case, the inscription is made in the general social security regime (NORMAL REGIME for executives or persons in charge) and the general professional regime (PROFESSIONAL REGIME for top managers with certain executive power)

With respect to the General Professional Regime: At the end of the contract, no right to unemployment benefit is generated (Worker unemployment). Top Management personnel are regulated under Royal Decree 1382/1985, 1st of August. The general characteristics of top management indicate a specific regulation in terms of previous notice of contract termination, non-simultaneity agreements, indemnification for contract termination, etc...

CONTRACT SUSPENSION

In specific circumstances, the worker or employer can suspend the labor contract, interrupting it without terminating it. During the suspension of the contract, the employer doesn't pay. The worker will resume his/her position when the causes that motivated the suspension are over. The contract may be suspended: a) By mutual agreement between the parties, b) For causes set out in the contract, c) For temporary incapacity. Here the employee continues to pay social security, (if the incapacity becomes total, absolute or great invalidity, the contract is cancelled), d) For maternity of the working woman: The suspension for maternity is 16 weeks, 18 in the case of multiple births. The woman can opt to take 6 weeks leave before childbirth. The father can use the last 4 weeks, if both work. e) For privation of freedom (in the absence of a condemning sentence), f) By temporary force majeure, g) Because of strike h) Due to legal closure of the workplace, i) Due to the suspension of work and salary for disciplinary measures; f) For training permission or professional development; g) To take part in an adaptation or retraining course (maximum of 3 months), h) For adoption and fostering of minors of less than 5 years.

There are other circumstances that imply suspension of the contract:

- For leave of absence: a) Forced: In some cases, the firm is obliged to suspend the contract and maintain the job post for the employee. The period of leave is calculated according to seniority: b) Voluntary: The position is not maintained, but rather preferential treatment is given should a vacant position arise. c) For child care: With a maximum duration of 3 years, from the birth of the child. Only one of the parents can apply for it, and it doesn't lead to the conservation of the position, except during the first year. d) Circumstances stated in Collective Bargaining.
- For suspensions for economic, technical, organizational or production causes, or those derived from force majeure, at the employer's initiative. These causes cannot be whimsily alleged by the employer, but rather their existence and temporary character must be accredited and the contract suspension must lead to future viability. In order to obtain the suspension, the employer must undertake an Expediente de Regulación de Empleo.

PERMITS AND HOLIDAYS

Permits: The worker has the right to absence for diverse causes. The Holiday Period may not be less than 30 natural days. Holidays cannot be compensated for economically and the dates must be known two months beforehand.

TERMINATION OF THE CONTRACT - DISMISSALS.

Contracts can be terminated for various reasons all of which oblige the employer (or worker, depending on the situation) to notify the other party. The employer must calculate the appropriate quantity owed to the worker (settlement), always including the proportional part of extra pays and holidays not taken, discounting advances paid to the worker and holidays taken in excess.

The causes for termination are:

- Mutual agreement between the parties.
- Causes agreed in the contract.

- End of the period contracted of termination of the work or service contracted. Temporal contracts, except for temporary and training contracts, give the employee the right to receive an indemnification of eight days of salary for every year worked.
- Resignation of the employee.
- Death, permanent total incapacity, absolute or great invalidity of the employee. In the case of total permanent incapacity of the worker being declared, the firm can choose to offer him/her another position more fitting with their capability. In the case of permanent total incapacity or great invalidity, the work contract is terminated, but the position is reserved for a period of two years.
- Death, retirement, incapacity or termination of the judicial character of the contractor
- Retirement of the employee
- Force majeure
- Collective dismissal. There must be economic, technical, organizational or production causes. The employer must provide proof of their existence, the temporary character of the causes and the guarantee of future viability of the business as a whole. In order to effect these dismissals, an Expediente de Regulación de Empleo is required, which affects a determined number of employees during a minimum period of 90 days. It generates the right to an indemnification of 20 days of salary per year worked, to a maximum of 12 months.
- At the employees will, with justified cause. These are causes fixed by Law and generate the right to an indemnification of 45 days work for each year worked, to a maximum of 42 monthly payments. However, in order to obtain the indemnification, it is necessary to apply for it in the Social Court of Law. The causes are: (i) Substantial modification of the work conditions that damage the workers professional training or dignity; (ii) The lack of pay or continued delays in the payment of the salary agreed; (iii) Any other grave breach of the obligations of the employer, (except force majeure) and the refusal of the employer to reintegrate the employee in the same position when a legal sentence for geographical mobility or substantial modification of the work conditions has declared the mobility or modification as unjustified.

- For legally fitting objective causes. Recognized as Objective DISMISSAL of the worker, with an indemnification of 20 days per year worked, limited to 12 monthly payments, in determined circumstance: a) Ineptitude, b) Lack of adaptation of the employee to his/her position, after technical modifications, c) Absenteeism, d) Amortization of job places. In any of these cases, the dismissal must be notified in writing, expressing the cause and paying the legal indemnification.
- Disciplinary DISMISSAL: Must be based on a grave and guilty breach of the workers' obligations, such as: Repeated and unjustified breaches of attendance or punctuality; lack of discipline or disobedience; verbal or physical offenses against the employer, fellow workers or relatives that live with them; breach of contractual faith or abuse of confidence in the course of the job, continued and voluntary decrease in the normal or agreed work yield, habitual and serious drunkenness or drug-addiction with negative repercussions at work.

In relation to Dismissal, it is important to note that:

- The dismissal is notified in writing, detailing the facts that motivate it and the date of effect. (There are more requirements in the Collective Conventions). If a Legal representative or trade union delegate is dismissed, the process is initiated through an "expediente contradictorio" and the rest of the members of the representation and/or trade union of affiliation are heard.
- These are not causes for dismissal: trade union affiliation, being a candidate to represent a trade union, race, sex, civil status, pregnancy, religion, political opinions, etc.
- The firm has a period of 60 days from knowledge of the facts (or 6 months from their occurrence) to communicate the dismissal. If it fails to do so, the cause expires.
- The Dismissal can be legally challenged within a period of 20 working days, but before going to Court, the case must be heard by the Servicio de Mediación, Arbitraje y Conciliación (SMAC), Arbitration Public Service.

- The Dismissal is declared, in the SMAC (by the parties) or in the Court (by the Judge) as: Fair, in which case, there is no indemnification. Null, for violation of basic rights or discrimination, in which case, the employee must be reinstated immediately. Unfair, because the circumstances were not as claimed by the employer, in which case, the employee must either be reinstated within 5 days or indemnified with 45 days work for each year worked, to a maximum of 42 monthly payments. If the employer acknowledges the unfairness of the dismissal within 48 hours of the ruling by the SMAC or the Court, the worker need not claim its legal recognition. If the employer chooses readmission, the worker must be notified within 10 days from the sentence and readmit the worker within a further 3 days. As an exception to the indemnification for unfair dismissal, in the permanent contracting of disabled workers, the indemnification is 33 days salary for each year of service, with a maximum of 24 monthly payments and 12 days of salary for temporary contracts.

The Salary of the Worker. Salary and Economic Rights for Services Rendered

In consideration of services rendered, the employee may receive money or payment in kind, and also accrues a right to a month of vacation pay. No more than one month of IRPF (income tax) and social security payments may be withheld on these amounts. Two bonus payments per year are obligatory, the amount being fixed by the applicable Collective Convention.

The salary is composed of basic salary and/or "salary complements." The salary in kind cannot exceed 30% of the total salary. The minimum inter-professional salary (SMI) is the minimum amount for all professions, that is revised annually and the amount can never be seized by debts of any kind. SMI 2004 is 17.10 €/day or 513 €/month.

The delay in salary payment generates an annual interest of 10%. In bankruptcy or suspension of payments, the first to receive payment are the employees. In

the case of insolvency, the employees are paid by the Fondo de Garantía Salarial (FOGASA). All employees and representatives have the right to receive advances. The employer must keep salary receipts and contribution slips for at least 4 years.

Non-salary items are the amounts paid for expenses incurred at work, social security payments and indemnifications for transfers, suspensions and dismissals.

Employees' Representatives and Union Representation

The participation of the workers in the Firm can take place through Unitary and/or Trade Union Representation. According to the number of workers in the firm, the Unitary Representation is by the delegation of personnel or firm committees elected by the employees. The Trade Union is the representation of the employees affiliated to the Union. The Law establishes a minimum number of trade union delegates for trade union representation.

Specific responsibilities are conferred to these representatives by Law: Receive information from the employer, report on certain matters, carry out monitoring and control of certain rules, negotiate agreements with the employer, participate and collaborate in the business activity, etc...and to facilitate exercise of these functions, the employer must provide specific materials (use of premises, notice board,...) and time (paid), and failure to do so may be considered a crime against trade union freedom.

Personnel delegates or committee members are elected for a 4 year term, and are maintained in their office until new elections. The period can be shortened if the representative stands down, is substituted in partial elections or is be revoked by the same employees who elected the delegate or member.

In disciplinary matters, they have the right that a disciplinary file be opened before any sanction is applied, and if the dismissal is unfair, they can opt for indemnification or readmission.

Social Security

CONTRIBUTIONS AND BASIS FOR CONTRIBUTIONS:

The employer pays monthly contributions to social security, consisting of: The Firm's Quota + the Employee's Quota. The payment is made in the month following the month of payment to the employee, through two forms: TC1 (contributions register, where the wages and contributions to be paid are detailed); and TC2, which is obligatory via Internet if the workforce consists of more than 10 or 15 workers.

The payment is calculated by multiplying the rate legally established by the basis for contribution, deducting the bonuses applicable to the case.

The basis for contributions is the employee's monthly salary plus the proportional part of the extra payments and other income of the worker with a periodicity greater than monthly.

But, there are minimums and maximums for the Basis of Contributions, that differ depending on whether the position is full-time or part-time, and whether the contributions are made for common contingencies, work accidents, unemployment, Fondo de Garantía Salarial or professional training.

Contributions due and their basis: There are various special regimes, (such as sea workers, artists, bullfighters, etc.) but we will only consider the contributions to the general regime that consist of the following:

- Common contingencies;
- Work accidents and illnesses
- Professionals;
- Unemployment;
- Fondo de Garantía Salarial (Public Fund for Wages Guarantee);
- Professional training;
- Overtime

Employers must make contributions for all of the above, whereas employees only contribute for common contingencies, unemployment and professional training.

The contributions depend on the salary and professional category of the employee, as well as if the contract is permanent or not and the professional activity in which he/she works.

SOCIAL SECURITY BONUSES

Recent labor reforms establish bonuses for permanent contracting, which effectively reduce the employer's social security contributions.

If a person has the right to two different bonuses, they are not cumulative, but rather it is obligatory to choose one of them.

The bonuses are available to certain employers (companies or individual businesses) that have had no personnel the last twelve months and hire their first permanent employee. To qualify, the employer must be up to date with Inland Revenue and Social Security payment.

Bonuses are only available with respect to the hiring of the following categories of personnel:

- Unemployed women between 16 and 45 years: Bonus of 25% during the 24 months following the start of the contract;
- Women offering services in professions with a low proportion of female workers: If they are older than 45 years, or were registered in INEM for 6 months, 70% in the first year, 60% in the second, and 35% during the first two years for other cases.
- Unemployed registered in the employment offices for more than six months: 20% during the first 24 months;
- Unemployed between 45 and 55 years: 50% in the first year, 45% for the rest of the contract;
- Unemployed between 55 and 65 years: 55% in the first year, 50% for the rest of the contract;
- Beneficiaries of unemployment benefit if they have one year remaining: 50% in the first year, 45% in the second.
- Unemployed women registered for at least one year in INEM and hired in the 24 months following childbirth: 100% during the first year;

- People in special social circumstances: 65% during the first two years;
- The conversion of a temporary contract to a permanent one: 25% in the first two years.

For the self-employed, these reductions are applicable, incremented by 5%. Also, in certain situations, if the employee is a woman, the reduction increases by another 10%.

Finally, these are bonuses for the hiring of the disabled:

- Permanent contract: 70% of the reduction per worker under 45 years and 90% for each worker over 45 years hired, during the entire contract period;
- Temporary contract: 75% of the reduction in quota for common contingencies, during 3 years, (except for relatives to the second degree);
- Training contract: 50% of the reduction, for the whole contract period;
- Apprenticeship contract: 50% of the reduction in common contingencies, for full-time contracts only, for the whole contract period.

Health and Safety

In Spain the main legislation is: Ley de Prevención de Riesgos Laborales LEY 31/1995, 8th November. BOE nº 269, 10th November.

Contracting and Outsourcing of Work or Services

In matters relating to the contracting and subcontracting of services, the employer and the contractors and subcontractors are jointly liable. (Ley 31/1995).

In Spain, there are so called Empresas de Trabajo Temporal that must be authorized, according to the Law 14/1994, through which specified workers contracted by them may be temporarily made available to work for another firm (user) for a term set on a case by case basis. If the worker continues to work in the user firm after the end of the contract, he/she becomes linked to the user firm as a permanent worker.

spain | real estate

The Registry System development has stamped Real Estate in Spain.

The Spanish Registry System is a mixture of the French system (where inscription is voluntary) and the German system (where inscription is compulsory). Estate transfer takes place unrelated to the Registry while estate inscription or registration is made by properties: one property per register sheet.

Other basic elements that distinguish the Spanish Registry System from other systems in the world are the Land Registrar's reputation, professional qualifications and his/her appointment to the office (by a competitive exam).

In Spain any real property rights-related legal businesses and its later registry entering provide a pledge to their purchasers before any third parties.

The Land Registry provides a secure, stable and trustworthy record of land ownership and recorded interests therein so as to promote social and economic well-being and contribute to national development.

The protection of third party's rights under the Legislation in Spain is such that one of the purchaser's duties of care is to previously enquiry at the Registry about the ownership and encumbrances of the property he/she wants to purchase.

The information and protection provided by the Spanish Land Registry is basic to understand Real Estate in this country. The Spanish Registry System has replaced fiduciary and trustee systems (more frequent in Anglosaxon countries) in the field of Real Estate.

In fact, practice shows that it is becoming really complex to apply Directive 94/47/EC (Timesharing) through the Ley de Aprovechamiento por Turno de Bienes Inmuebles (Act 42/98), because it is very difficult to match the "Club System" with the Spanish Registry System. The situation is becoming really delicate as Spain is the second country in the world (after USA) on the number of Timesharing resorts.

Types of Ownership

In España there is the so-called actual right of “ownership” regardless other real property rights such as leasehold, possession – in deed or bare or bona fides... -, accretion , easement, emphyteusis , antichresis, usufruct, mortgage, acquisitive prescription... All of them are inspired on Roman law, where Spanish Law is based on.

Timesharing is called “Aprovechamiento por Turno de Bienes Inmuebles” in Spain; it is an atypical real property right and is regulated by Act 42/98 in Spain. Act 42/98 requires the resorts to register their structure and working in the Land Registry; it mixes thus the Anglo-Saxon Fiduciary system with the Spanish Registry System , and creates some misfunctions very difficult to solve. For instance, any clause that may exonerate promotor’s liability is null.

Land Register

The Real Property Registration in Spain manages and operates Land Registry Offices throughout the whole country which register, store and manage documents such as deeds, mortgages, plans of survey and a wide range of property real rights. All registered and deposited records are available to the public (for a fee) to search title or obtain information about the ownership of any real property.

The Land Registry’s object is to register the acts and contracts related to ownership and other real rights on real estate.

To be registered those acts or contracts must be put on record as a public instrument or be acknowledged by a judicial authority or by the Government.

Moreover, any acts or contracts granted in a foreign country which are to have force of law in Spain (Apostille...), have to be entered in the Spanish Land Registry.

The bare (or naked) possession can not be registered in the Land Registry.

The Land Registry attests the title before third-parties.

Any third party that bona fides acquires by purchase any right from a person who appears in the Registry as entitled to transfer said right, is to be kept in his/her

acquisition once he/she has registered his/her right even when the seller’s right is set aside or discharged for reasons that are not recorded in the Registry.

The third party’s bona fides is presumed as long as it is not proved that said third party was aware that the information recorded in the Registry was not accurate.

Holders of any title acquired gratuitously do not enjoy the same protection.

The parties in a contract are not required to register the acquisition of a real right. However, the entering of the acquisition of a real right is recommended to the point that the no recording in the Land Registry is thought to be a “manifest negligence and a clear breach of duty of care”; it does not mean it is illegal but it may cause damages to the purchaser or the real right holder that has not entered it.

Another important question is the difference between the Land Registry and the Cadastre or Land Survey.

The Land Registry records and states real estate ownership; on the other side, the Cadastre represents real estate through a more detailed and graphical description. The Cadastre’s purpose has a tax nature.

Reliance on Register Positive-Negative

Publishing in the Registry is to be considered negative; it means that the person who enters his/her acquisition in the Land Registry is safe from any attack from any individual that intends to enter his/her right or who registers it afterwards.

Transfer Formalities, e.g. Notary Deed

To be able to profit from or to enjoy the protection provided by the Land Registry, any holder must place on record the acts and contracts the object of which is to transfer, create, modify or extinguish any real right on any real estate. Moreover, any real estate leasehold for six or more years must always be entered in the Registry.

Mortgages How Created, Main Rights of Mortgagees

A mortgage gives a security for all kind of liabilities and does not alter the debtor’s limitless responsibility.

A mortgage covers improvements and betterments as well as any compensations granted or due to the owner. However, a mortgage does not cover any personal property, proceeds or any earnings due and not paid, save express agreement.

Any real estate, any real property rights (save easements), any legal usufruct (save the usufruct granted by the widowed spouse) can be mortgaged.

Construction and Use Restrictions e.g. Permits, Zoning...

The carrying out of any works or building requires a license: Licencia de Obra Mayor (with a large budget or works on structural elements) and Licencia de Obra Menor (a sensu contrario). In any case, the Municipal Ordinances and the Local Building Code define the differences between a Licencia de Obra Mayor (Large Works license) and a Licencia de Obra Menor (Minor Works license).

Moreover, any land or underground usage (parcelling out, land movements, demolition...) requires a permit that is regulated in the Local Zoning Regulations.

The Zoning Regulations ascribe different usages (residential, turistic, tertiary) to each land class (urban land, land which may be developed, protected land that can not be urbanized). Land usage and land classes limit building rights. Besides each land class has a percentage of building allowed or of urban development.

Any license rights are subject to an Impuesto sobre Construcciones Instalaciones y Obras to be paid by the works owner. Said tax is calculated by applying to the building or works actual costs a rate that is NOT over 4%, as determined by the Municipality.

The application for the license requires filing a Technical signed by an Architect and approved by the Architects Professional Association.

The Technical Project is carried out by the Works Manager – who is responsible for it- who may be or not the author of the Technical Project. No Local Building Codes require a works dateline.

It is usual for the works owner to keep an amount of money (a percentage) from the promotor as a security for the proper completion of the works.