

# Spain

ILP Abogados



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**BANKING AND FINANCE**  
**COMPANY LAW AND**  
**CORPORATE**  
**GOVERNANCE**  
**COMPETITION**  
**CORPORATE AND COMMERCIAL**  
**FAMILY BUSINESS AND PRIVATE**  
**CLIENTS**  
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**INTELLECTUAL PROPERTY**  
**LABOUR**  
**LITIGATION AND ARBITRATION**  
**MERGERS AND ACQUISITIONS**  
**PRIVATE EQUITY**  
**PROJECT FINANCE**  
**REAL ESTATE**  
**TAX**  
**UNFAIR COMPETITION**  
**WHITE COLLAR CRIME**

# Spain Corporate Law

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## Regulations and Rules

The legal framework of Corporate Law in Spain consists of:

- ∴ The Code of Commerce (1885)  
(Articles 116 to 150; 169 to 237)
- ∴ The Joint Stock Companies or Public Limited Companies  
(RD 1/2010 Ley de Sociedades de Capital, LSC)
- ∴ The Private Limited Companies  
(RD 1/2010 Ley de Sociedades de Capital, LSC)  
The Rules of Mercantile Register (RD 1784/1996)
- ∴ Private Equity Act 25/2005
- ∴ Bankruptcy Act 23/2003
- ∴ The Securities Exchange Act (24/1988)

In European Law, the main sources are:

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

## Types of Companies and Liability of shareholders

Joint Stock Companies (Sociedades Anónimas), Private Limited Liability Companies (Sociedades de Responsabilidad Limitada), Collective Companies (Sociedades Colectivas), Partnership Companies - both simple and with registered shares (Sociedades Comanditarias Simples o por acciones) - and other associative forms have a diverse range of commercial uses

For setting up a business in Spain there are 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 60,000 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): Generally but not necessary small sized corporations (a minimum capital of 3,000 euros, fully paid at the time of creation) which are subjected to lower 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 separated accounting.
- ∴ Permanent Establishment: any company operating in Spanish territory by a permanent establishment, when by any title there is, in a continuous way, installations or places of work of any kind, in which all or part of their activity is carried out, through an agent authorized to close deals, who habitually exercises said powers, on behalf of a non-resident.

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 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
- ∴ Sociedad Profesional (Limited or Joint Stock Companies): their corporate purpose is to develop the exercise of professional activities

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 authorizing the establishment of a branch in Spain and appointing a representative
- ∴ The resolution must be duly legalized to be valid in Spain, in order to constitute the branch with a Spanish Notary
- ∴ Application for CIF (tax identification number) in the Tax Office's of the registered branch office with the articles of the association and the DNI or NIE of the representative agent in Spain
- ∴ Sell off the ITP tax (Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados); it is mandatory to lodge it, but there is an exemption for the incorporation and for the capital increase
- ∴ Registration of the public deed in the Mercantile Registry in Spain (of its register office), 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 (S)	Minimum paid in amount (S)
PLC or Joint-Stock Company (SA)	60.000	25%
Company Limited by Shares (Limited Liability Companies) (SRL)	3.000	100%
Banks	18.000.000	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	4.507.590,80	100%
Sociedades de Capital Riesgo (SCR) Venture Capital (Private Equity)	1.200.000	50%
Sociedades Gestoras de Fondos de Capital Riesgo (Venture Capital Fund Management) (Private Equity Management)	300.000	100%
Private Equity Funds	1,650,000.00	100%
Private Equity Companies	1,200,000,00	50%
Hedge Funds	3,000,000.00	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 the name of the owner.

Common (ordinarias o comunes) Stock and Preferred (privilegiadas o preferentes) Stock.

The shares can grant different rights. The shares that have the same content of rights constitute the same class. When inside a class several series are constituted, those that integrate a series must equal nominal value.

The preferred stocks grant some privilege out of the ordinary ones, there will be necessary to observe the formalities prescribed for the modification of By-laws.

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

## Common Stock

They represent ownerships in a corporation. Holders of common stock exercise control by of the society 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); but never political, such as “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 (160 LSC):

- ∴ Approval of financial statements and distribution of profits and Approval/Censure of Management (Art. 160)
- ∴ Appointing and Removal of Directors (Art. 209- 252), Auditors (Art.264), Liquidators (Art. 376-382)
- ∴ Changing the By-Laws: (Art. 285-345)
- ∴ Winding-Up or Dissolution (Art. 360-370)
- ∴ Approval of the liquidating balance sheet
- ∴ Approval legal merger, spin-off, disposals of existing fixed assets
- ∴ Other matters determined by the By-Laws or the LSC

The board members must meet minimum 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 (Art 214 LSC and Art. 142 Rules of Mercantile Register).
- ∴ When the administrative body is constituted by a board of directors, this one shall be formed by a minimum of three directors and in the SRL (Private Limited Liability Companies) shall not be more than twelve members.

## 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 6 years (Art. 221.2 LSC and 145 Rules of Mercantile Register)
- ∴ For Companies Limited by Shares (SL)  
Directors may be appointed for an undetermined period of time (Art. 221.1 LSRL)

## Range of Directors’ liabilities

- A. **Does Law require a specific agreement - or disclosure - for determining the remuneration of Directors?**  
On the Joint stock companies, the scope of Directors’ duties shall be determined by the By-Laws. On the limited liability companies, the Directors’ duties are generally not remunerated, unless the By-Laws establish a remuneration and the method of calculation. Remuneration is often in the form of a percentage of after-tax profit.
- B. **Any limit?**  
(SA) The Directors’ remuneration is set only after allocating the legal and statutory reserve and at least the 4% - or other higher percentage determined in the Estatutes – of dividends in favour of shareholders.

(SRL) The aggregate number 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 of claiming against them, are set in detail in Articles 236-241; 25LSC

## Annual Accounts-Financial and operating results

### Duties and Liabilities

Necessary Documents: 1) Profit and Loss Account; 2) Balance Sheet; 3) cash flow statement; 4) Statement of Changes in equity; 5) Memory; 6) Management Report; 7) Auditors Report; and 8) 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 (December, 31). The AGM will examine and approve or refuse these Annual Accounts no later than 6 months after the end of the corporate year.

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 fulfilment of corporate duties, and a notice that the Annual Accounts are publicly available in full. By-Laws are also publicly available in Mercantile Register.

## Private Equity Companies

The Private Equity Act (November 2005) regulates the so-called "Venture Capital Entities" and their Management Entities.

A Venture Capital Company is legally qualified as a Financial Entity with the purpose of investing in: (i) Non-Financial Business, or (ii) Business that are not dedicated to non-listed Real Estate businesses.

These Entities may acquire listed companies within the term of 12 months of acquisition; squeeze-out measures have not been approved yet, to facilitate taking 100% of shares.

## Bankruptcy

The reform of the Spanish Insolvency Act (Ley Concursal) carried out in September 2003 was a very relevant change because it finished off a legal system which had finally become obsolete. The modification of credit categories and its preferences was one of the most important elements of this reform.

## Quoted Companies

### Regulation

Ley de Sociedades de Capital (Arts. 495-528)  
Ley 24/1988, de 28 de julio, del Mercado de Valores.

"The Olivencia Report" and "The Aldama Report" - two Codes of Best Practice - provide some recommendations concerning Quoted Companies. However, there is a new -January 2006 - specific Best Practice Blueprint for quoted Companies, known as "The Conthe Report" and properly named "Unique Code for Best Practice Corporate Governance of Quoted Companies". This Code includes the European Commission Recommendations (2005/162/EC) and (2004/913/EC).

# Spain Tax Law

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## Corporate income Tax

### Tax rate

The prevailing general rate is 25% from January 2016.

### Corporate Residence

Any company, which is considered as resident, that generates incomes in the Spanish territory is subjected to corporate income tax, through a subsidiary, branch office.

Permanent establishments opened in Spain: non-resident's tax at a 25% rate on their tax profit from 2016.

### 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 general rate, applying the general rules for Spanish entities.

Incomes remitted from the Spanish branch to the head office are subject to a 19% withholding tax. Exemption is applied to EU head offices and to those territories that signed double taxation treaties with Spain.

## Income determination

If the law does not say anything on the contrary (transfer pricing new policies are highly relevant in this particular area), the Spanish Accounting Rules (Plan General de Contabilidad Español - PGCE) will be applied to the income determination. If the law is applied in a different direction, two kinds of differences between the P&L financial and taxable will be generated:

- ∴ Temporal differences: They generate advance or deferred corporate tax, their appearance is conditioned to the specific moment of the deducibility of the costs
- ∴ Permanent differences: It includes the non-deductible costs, such 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 next tax due) are the following:

Deductions for Research and Development (art. 35.1 Corporate Tax Act - CTA)	8/25 %
Deductions for technological innovation activities (art. 35.2 CTA)	12%
Deduction for investments in the production of Spanish films (it must fulfill art. 36.1 CTA requirements)	25/20 %
Deduction for investments in the production of Spanish films (it must fulfill art. 36.2 CTA requirements)	20%
Deduction for investments in life shows (Theater) (it must fulfill art. 36.3 CTA requirements)	20%
Deduction for job creation (it must fulfill art. 37 CTA requirements)	3000 € / 50%
Deduction for job creation disabled person (it must fulfill art. 38 CTA requirements)	9000 € / 12000 €

## Group taxation (tax 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 consolidated corporation should have more than the 75% of the capital of the Spanish entity, directly or indirectly.

## Special tax regimes

### Canary Island Zone (ZEC)

All the companies incorporated between June 2000 and December 31, 2020 can apply to this special regime, and receive the tax benefits until December 31, 2026. The registration requires: (1) a minimum investment of 100.000 (Gran Canaria y Tenerife) in the first two years of activity, (2) to create at least 5 new jobs in Gran Canaria or Tenerife or 3 in the other islands. The corporate tax is 4%, and limited to specific taxable base amount. The general rate will be applied over this base. There are exemptions regarding IGIC and transfer tax. The EU Parent-Subsidiary Directive are applied for non-EU countries, with the exceptions of tax haven.

### ETVE Companies (Spanish holdings of foreign entities)

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) It is required to communicate to the Ministry of Economical Affairs about the regime going to be used:

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 % or the acquisition value exceeds 20 million euros, 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 subjected 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:

I. Income obtained abroad not imputed by means of the regime of international fiscal transparency (passive income).

II. 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 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 subjected to taxation in Spain.

Capital gains resulting from transfer of shares: The capital gains 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 are considered gained out of Spain and are consequently not taxed in Spain.

### Venture capital companies and funds and collective investment institutions

The venture capital companies, regulated under Law 22/2014 will be exempted in a 99% of the revenues generated by shares transmission of related companies, if the investment has been in their assets at least 1 year and no more than 15.

During the investment of the venture capital in the related company, at least the 85% of the buildings of the related company must have been used for the main activity of the company.

The exemption is available for dividends received from related companies, no matter how long the shares have been in the venture capital assets.

### There are other special tax regimes such us

∴ Temporary consortia of companies

∴ Restructuring transactions

∴ Fiscal transparency (international-controlled foreign corporation rules)

∴ Special tax regime of the Basque country

### Double taxation deduction

According to the Spanish regulations, a 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 taxation deduction: It is focused in the double taxation over a single income for two different entities (generally dividends).
- ∴ International double taxation deduction: There is a juridical double taxation, system which is applied to the same income taxed in two countries (withholding tax at source), and an economic double taxation, the same income taxed in two companies and/or in two different territories.
- ∴ The dividends or profit-sharing income from a foreign entity are exempt in Spain if:
  - The Spanish entity has at least 5% or the acquisition value exceeds 20 million euros, of the shares of the foreign entity, during the last fiscal year,
  - The foreign entity is subjected to a similar tax to the Spanish corporate tax, and it is not a tax haven country. When a double taxation treaty is signed between that country and Spain with exchange of information clause, this clause is presumed;
  - The income of the dividend was generated in foreign activities of the foreign entity carried out abroad.

About the double taxation, the imputation method is used, 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 would be 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 25 th 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.

## Withholding taxes

Country	Dividends <sup>1</sup>	Interest	Royalties <sup>2</sup>	Country	Dividends <sup>1</sup>	Interest	Royalties <sup>2</sup>
Algeria	5	5	7-14	Italy	15	12	4-8
Arab Emirates	5	0	0	Japan	10-15	10	10
Argentina	10	12,5	3-15	Korea	10-15	10	10
Australia	15	10	10	Latvia	5	10	5-10
Austria	10	5	5	Lithuania	5-15	10	5-10
Belgium	15	10	5	Luxembourg	5-15 / 10-15	10	10
Bolivia	10	15	15	Macedonian	5-15	5	5
Brazil	10	15	15	Malta	5	0	0
Bulgaria	5	0	0	Mexico	5-15	10-15	10
Canada	15	15	10	Morocco	10-15	10	5-10
Chile	5-10	5-15	5-15	The Netherlands	15	10	6
China P.R.	10	10	10	New Zealand	15	10	10
Croatia	15	8	8	Norway	10-15	10	15
Cuba	5-15	0	5	Philippines	10-15	10-15	10-15-20
Czech Rep.	5-15	10	5	Poland	5-15	0	10
Denmark	5-10	10	6	Portugal	10-15	15	5
Ecuador	15	10	10	Romania	10-15	10	10
Egypt	12	10	12	Russian Federation	5-15	5	5
Estonia	5-15	10	5-10	Slovakia	5-15	0	5
Finland	10-15	10	5	Slovenia	5-15	5	5
France	15	10	5	Sweden	10-15	15	10
Germany	10-15	10	5	Switzerland	10-15	10	5
Greece	5-10	8	6	Thailand	10	10-15	5-8
Hungary	5-15	0	0	Tunisia	5-15	5-10	10
Iceland	5-15	5	5	Turkey	5-15/5-25	10-15	10
India	15	15	10-20	United Kingdom	10-15	12	10
Indonesia	5-15	10	10	United States	0-15	0	0
Iran	5-10	7,5	5	USSR	10-15	42278	10
Ireland	15	0	5-10	Venezuela	10	10	5
Israel	10	10	5-7	Vietnam	7	10	5
				Non teatry	15	15	25

1. Note 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 protocols to the tax treaty between Spain and Luxembourg.

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

## Other Taxes

### Vat

VAT is levied in good supplies and services given and provided inside Spain, import/intra EU acquisitions of goods. There are three different rates: general at 21%, reduced at 10% and super-reduced at 4%.

In Canary Islands, VAT does not apply, but the IGIC (Impuesto General Indirecto Canario) with an ordinary rate of 7%.

### Transfer Tax (Tt)

It is used in “inter vivos” transfers when there is no VAT. The rate can vary, depending on the Autonomous Region.

### Stamp Duty

Notarial documents of valuable transactions (fix rate: 0,15 per sheet, variable rate:0,5). Other documents submitted to the Public Administration, administrative documents and mercantile documents (such as a bill of exchanges), have a scale. Compatibilities between the three taxes and the VAT:

	Compatibilities between them			Compatibilities with vat	
	Compatibility	Incompatibility		Compatibility	Incompatibility
TT versus CT	-	X	Transfer tax	-	X
TT vs SD (variable)	-	X	Capital Tax	-	X
TT vs SD (fix)	X	-	SD (Variable)	-	X
CT vs SD	-	X	SD (Fix)	X	-
CT vs SD (fix)	X	-			

# Spain Labor Law

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## Prior Warning

In Spain the Labor Jurisdiction is quite protective for workers. It's difficult to obtain a favorable ruling defending investor's rights against the worker. Likewise, legal costs for employees are exceptional in the Labor Jurisdiction, so suing the employer is easy and economical in Spain because no legal costs are incurred if the worker is defeated by the Company.

## Contracts

It is generally possible to form verbal contracts, when the employee is over 18 (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:** unlimited in time. When we use this modality for hiring people with some specific conditions, we can benefit from reductions in Business Social Security contributions, if the firm is up to date with its tax and social security payments and has not been sanctioned for infringements. Those special workers are those aged under 30 years or over than 45 years, long-term unemployed (over 2 years), handicapped unemployed for more than 3 months, and unemployed women.

**Part-Time Contracts:** This is not strictly speaking a different type of contract, but rather a form of dividing the working day. There must be always a written contract 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 progressively substitute a worker who is going to retire.

## Contracts of defined duration (Temporary)

There are two types:

### Replacement

Used to replace a worker until his or her reinstatement, for a determined period of time, when he or she is entitled to reserve his or her job, e.g. maternity, paternity, medical leave.

### Temporary due to production circumstances

allows companies to hire workers for a specific period of time to cover a temporary and unforeseen increase in activity. It can be of two types:

∴ The occasional and unforeseeable increase in demand and oscillations in demand: we are talking about an increase in market demands in an occasional and unforeseeable manner, not subject to seasonality. In other words, in cases of increases in demand that were not foreseen and are not permanent, but one-off. The maximum duration of this contract is 6 months, applicable to twelve months if permitted by the applicable collective bargaining agreement.

∴ The punctual and foreseeable increase in demand, as long as it has a reduced and clearly delimited duration. The maximum duration of this contract is 90 non-continuous days in a calendar year, per company.

The contract must be in writing if the period exceeds 4 weeks.

The transformation of these contracts (Replacement, and • Temporary due to production circumstances) to permanent contracts once that maximum duration has been completed operates automatically. In case the contract stops fulfilling all the requirements for a modality ((Replacement and Temporary due to production circumstances), the contract can be renamed as a permanent contract, and the worker can ask the employer or the Public Entity in charge for a document to prove his/her new status.

## Training Contracts

It consists on providing the worker with knowledge and techniques to develop his/her work, there are two types:

## Training

These contracts could only be used to combine employment with vocational training. They can be formalized with those pursuing university studies or other lower education. . It shall last minimum 6 months, and maximum 2 years. The number of these contacts in the firm is limited depending on its size. The effective working time must be compatible with the study time at the training center. Thus, it may not exceed 65% during the first year and 85% during the second year. The salary cannot be under the minimum inter-professional and must be between the 60 and 75% of the official salary according to the applicable Collective Convention.

## For Professional Practice

These contracts can be used to obtain the professional practice appropriate to the corresponding level of studies. There is no age limit but it must be arranged within 3 years (or 5 years if arranged with a person with a disability) following the completion of the corresponding studies. This contract cannot be formalized if professional experience has already been obtained or if the training activity has been carried out in the same company for more than 3 months. The duration may not be less than 6 months or exceed one year. The remuneration must be that agreed in the collective agreement for that professional group and level corresponding to the functions performed.

## Other special contracts

- ∴ Working from home, without supervision by the firm, written
- ∴ Early retirement, to cover anticipated premature retirements, in written

## Contracts for the handicapped

If the contract is Permanent, a 33% of disability is required and must be accredited with a certification, and the worker cannot be related to the employer more closely than 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 of hiring for the remaining period. These contracts give access 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 rest of requirements of this modality are the same as for the permanent contract. It includes a bonus of social security quotas, and its conversion to a permanent contract generates a subvention. It can be offered for Training; It may be held for persons over 16 years of age and with 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 • for Professional Practice , the handicapped person must provide the disability certificate,. It is required to hold a university degree or an intermediate or higher vocational training degree or degrees officially recognized as equivalent and that no more than seven years have elapsed since the completion of the studies.

### **Contracting Administrative and Top Management Staff**

The Authorised Employers and/or Top Manager of the business must be distinguished from the ordinary labor relation. 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-labour, 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 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 related parents to the second degree or less 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 25% shares (minimum)

∴ In any other case, the inscription is made in the Social Security Offices: NORMAL REGIME for executives or persons in charge, and PROFESSIONAL REGIME for top managers with certain executive power

As far as the General Professional Regime is concerned its main singularity is that the contract finishes it does not involve right to un-employment benefit (Worker unemployment). Top Management personnel are regulated under Real Decreto 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, which involves to interrupt it without terminating it. During the suspension of the contract, the employer does not pay the salaries. The worker will continue in 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 will be cancelled)
- D. For maternity/paternity leave (for both parents) may be divided as follows: 6 weeks mandatory, uninterrupted, full-time following childbirth (court decision or administrative decision in the case of adoption)

The biological mother can anticipate this period up to 4 weeks before the foreseeable date of birth.

The remaining 10 weeks will be enjoyed in weekly periods, accumulated or interrupted, within the 12 months following the birth or the judicial resolution or administrative decision in the case of adoption.

- E. For privation of freedom (in the absence of a condemning sentence)
- F. By temporary major force
- G. Because of strike
- H. Due to legal closure of the workplace
- I. Due to the suspension of work and salary for disciplinary measures
- J. For training permission or professional development
- K. To take part in an adaptation or retraining course (maximum of 3 months)
- L. For adoption and fostering of minors under 6
- M. As a result of being a victim of gender violence

## 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 when a vacant position arises.
- 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 Conventions**

Due to economic, technical, organizational or production causes, or those derived from force majeure. The existence and temporary character of these causes must be proved and the contract suspension requires future viability. In order to obtain the suspension, the employer must undertake the same process as for an Expediente de Regulación de Empleo, in art. 51 of Worker Law. These circumstances can also be solved with a reduction between a 10% or a 70% of the working day, week, month or year.

## Permits and Holidays

The worker has the right to absence for diverse causes.

The Holiday Period cannot be less than 30 natural days. Holidays cannot be compensated economically and the dates must be known at least two months beforehand.

## Employees' Years of Service

Dismissal compensations are calculated depending specially on employee's years of service in the company that is the reason of temporary contracts lasting over their limits shall be presumed to be for an indefinite period.

Royal Decree-Law 32/2021, of December 28, on urgent measures for labor reform, guarantee of employment stability and transformation of the labor market. provided a new wording for article 15.5 of the Workers' Statute, with the following literal reading:

Notwithstanding the foregoing, workers who in a period of twenty-four months have been hired for a period of more than eighteen months, with or without solution of continuity, for the same or different job with the same company or group of companies, by means of two or more contracts due to circumstances of production, either directly or through their provision by temporary employment agencies, will acquire the status of permanent workers.

Likewise, the person who occupies a job position that has been occupied with or without continuity solution, for more than eighteen months in a period of twenty-four months by means of contracts for circumstances of production, including the contracts of provision made with temporary employment agencies, will acquire the status of permanent employee.

This provision shall also apply in the event of business succession or subrogation in accordance with legal or contractual provisions.

With regard to the peculiarities of each activity and the characteristics of the job, collective bargaining shall establish requirements aimed to prevent the abusive use of temporary contracts with different employees for performing the same job.

The provisions of this section shall not be applied to the use of training, or replacement contracts.



## Termination of The Contract Dismissals

Contracts can be terminated for various reasons, and in all of them the parties are obligated to notify it to the other party. The employer must calculate the appropriate quantity owed to the worker (settlement), always including the proportional part of extra pays and spear holidays, discounting to the worker the advanced payments and holidays in excess.

### The causes for Termination are

∴ **Mutual agreement between the parties**

∴ **Causes agreed in the contract**

End os the temporary due to production circumstances of contract. Temporal contracts, except for replacement and training contracts, grant the employee the right to receive an indemnification of 12 days of salary per year of service worked.

∴ **Resignation of the employee**

∴ **Permanent total incapacity**, absolute or great invalidity of the employee. In case of total permanent incapacity of the worker is declared, the firm can choose to offer him/her another position more fitting with his/her capability. In 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

∴ **Collective dismissal**

When the process affects a determined number of employees during a minimum period of 90 days. There must be economic, technical, organizational or production causes. The employer must provide proof of their existence and the character of these causes, which might be provoking negative results, or might produce a continued decrease of the incomes.

It generates the right to an indemnification of 20 days of salary per year worked, to a maximum of 12 months. In order to articulate these dismissals, an Expediente de Regulación de Empleo is required, which requires a period of discussions between the employers and the representation of the workers, to try to verify the causes of the redundancies, and to set some measures of readaptation for workers that can reduce the damages.

∴ **A unfair cause**

When the dismissal is based on causes out of the Law, the judge shall declare by sentence the dismissal was unfair, so the employer will have 5 days to decide the compensation, which might be:

- A. The readmission of the employee and the salaries unpaid since the dismissal date
- B. 33 days for each year worked, to a maximum of 24 monthly payments and the salaries unpaid since the dismissal date. However, in order to obtain the indemnification, it is necessary to apply for it in the Social Court of Law
  - I. Substantial modification of the work conditions that damage the workers professional training or dignity
  - II. Unpayment 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 has declared it unjustified

∴ **For legally causes**

There are some objective causes which turn a dismissal declared as fair. Objective DISMISSAL of the worker, with an indemnification of 20 days per year worked, limited to 12 monthly payments, in limited circumstance: a) Ineptitude, b) Lack of adaptation of the employee to his/her position, after technical modifications, c) d) Amortization of job places. (e) Substantial modification of the work conditions that damage the workers professional training or dignity when it does not affect a number of workers enough of collective dismissal.

In all of these cases, the dismissal must be notified in written, within previous 15 days 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 braches of attendance or punctuality; lack of discipline or disobedience; verbal or physical offences 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

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.

∴ Trade union affiliation, being a candidate to represent a trade union, race, sex, civil status, pregnancy, religion, political opinions, etc. can never be a cause for dismissal.

∴ 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).

∴ 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 rehired within 5 days or indemnified with 45 days of salary 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.

## SUMMARY TABLE OF TERMINATION OF CONTRACT (Royal Decree 3/2012)

Cause of extinction Unemployment Compensation Maximum legal

Cause of termination	Compensation	Maximum	Right to Collect Unemployment
1 Mutual consent	If agreed	-	No
2 Temporary work or service	12 days per year	-	Yes
3 Termination clause included in contract	If included	-	Yes
4 Worker resignation with compensation	20 days/year	9 to 12 months	Yes
5 Unfair cause	33/45 days/year	-	Yes
6 Worker resignation	No	-	No
7 Incapacity	No	-	Yes/No
8 Died	15 days	-	No
9 Retirement	No	-	No
10 Died, incapacity or retirement of the employer	1 month	-	Yes
11 Termination with extinction of the corporation	20 days/year	12 months	Yes
12 Objective/Fair causes	20 days/year	12 months	Yes
13 Unfair causes	33/45 days/year	24/42 months	Yes
14 Promoting for permanent contracts:			
A. Unfair	33/45 days/year	24/42 months	Yes
B. Fair	20 days/year	12 months	Yes

## The Salary of the Worker

### Salary and economic Rights for services rendered

In consideration of services rendered, the employee may receive money or payment of any kind, and also accrues a right to a month of vacation pay. Two bonus payments per year are obligatory, the amount being fixed by the applicable Collective Convention. IRPF (income tax) and social security payments must be withheld by the employer on these amounts.

The salary comprises the salary base and/or “salary extras”. Remuneration in kind may not exceed 30% of the total salary. The minimum inter-professional wage is the minimum for all professions, is reviewed annually and its amount may not be embargoed for debts of any kind. The minimum wage for any activities in agriculture, industry and services, without distinction between the employees’ sex or age, is set at 1,000 euros gross per month divided into 14 payments for the year 2022. Both monetary remuneration and remuneration in kind are computed in the minimum wage. This wage is understood to refer to the legal working day for each activity, without including in the case of daily wage the proportional amount for Sundays and public holidays. If the working day is lower than standard then the pro rata amount is to be received.

The delay in salary payment generates an annual interest of 10%. In case of insolvency, 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: to receive information from the employer, to report on certain matters, to carry out monitoring and to control of certain rules, to negotiate agreements with the employer, to participate and to 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 not to do it may be considered a crime against trade union freedom.

Personnel delegates or committee members are elected every 4 years. The period can be shortened if the representative stands down, is substituted in partial elections or if he/she is revoked by the same employees who elected the delegate or member.

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

On June 2011, Spain’s Government approved new labor reforms, affecting the collective bargaining system. The bill aims to introduce more flexibility within companies so that when they undergo changes or go through difficult situations they can adapt to new conditions.

The main change implies that company pacts shall have more legal weight than Sectoral agreements when conflicts arise. Thus, the *Company Agreements* must respect the minimums of national and regional Legislation, but they shall be over Sectoral Agreements in the following areas: Base salaries and incentives, Overtime, Flexible work hours, Job classification and Contract modality.

Another measure to increase the flexibility consist on allowing the employer to redistribute 10 percent of employees’ work time.

## 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 after the month of payment to the employee, through two forms:

- I. contributions register, where the wages and contributions to be paid are detailed)
- II. which is obligatory via Internet if the workforce consists of more than 10 or 15 workers.

To calculate the value of the contributions, we shall multiply 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.

Although 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
- ∴ 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.

## Retirement

After the pension reform carried out by the Government in 2013, the general legal retirement age was increased from 65 to 67 years over a 15-year horizon. In other words, a progressive increase that will culminate in 2027.

Thus, from 2013 to 2027 the retirement age will increase proportionally month by month, and at the end the retirement age will be 67 years, and the compensation will be calculated on the income of the last 25 years.

# Spain

# Foreign Investment

ILP Abogados

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 are only allowed on the basis of public order and security, public health, and the exercise of sovereign authority.

## Foreign investments

- ∴ Participation in Spanish companies
- ∴ Establish and increase capital allocated to branches
- ∴ Subscription for and acquisition of marketable debt securities issued by residents
- ∴ Participation in mutual funds recorded in the Registers of the Spanish National Securities Market Commission (CNMV)
- ∴ Acquisition by non-residents of real estate located in Spain valued at more than 3.005.060,52 € (or regardless the value if the investment is originated in a tax haven defined in Royal Decree 1080/1991 of 5 July)
- ∴ Formation or participation in joint ventures, foundations, economic interest groupings, and cooperatives if the total value of the investment exceeds 3.005.060,52 € (or regardless the value if the investment is originated in a tax haven defined in Royal Decree 1080/1991 of 5 July)

## Governmental Declarations (of capital), authorizations and permits

Order of 28th May 2001 puts into effect the guidelines from the Royal Decree 664/1999. It establishes the necessary procedures to declare foreign investments and its liquidation, as well as procedures for obtaining authorizations and annual reports. Direct foreign investments are subjected to a notification after the investment has been made. The form and the deadline of the declaration are determined by the 1st July 2010 Resolution.

Foreign investments in Spain, as well as their liquidation, must be declared to the Register of Ministry of Industry, Tourism and Trade, for administrative, statistic or economic purposes. These documents can be downloaded at <http://subsede.comercio.mityc.gob.es> ≥ Proceeds and Electronic Services ≥ Download assistance programs.

Typically, non-resident investors are required to report the investment once it has been made. The general regulation may be suspended in exceptional cases by decision of the Council of Ministers, so a prior authorization is required in the certain circumstances:

- ∴ When 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).

∴ Where the foreign participation does not exceed 50% of the capital of the Spanish company target of the investment.

#### I. **Prior declarations of investments are made by the investor on the preprinted applications DP**

- (Previous declaration of foreign investment coming from tax havens in non listed companies, branches and other type of investment) or DP
- (Previous declaration of foreign investment coming from tax havens in real assets). No documents are annexed to these applications.

II. Foreign investments in Spain in activities directly related to national security, such as those intended for the production or sale of weapons. Except when the foreign investment does not exceed 5% of the share capital of the Spanish company and it is not allowed to be a member of the management board of the company, directly or indirectly.

III. Foreign investments in Spain that affect or might affect activities related to the enforcement of the public order or which affect or might affect public security and health.

IV. **Direct or indirect investments in Spain by non EU member states for the acquisition of property intended to be used as diplomatic and consular offices.**

The prior declaration of investment is valid for six months, from its filing, so that, when the investment not materialize in that time, a new prior declaration is required. It should be pointed out that once the prior declaration has been made investors can make their investment without having to wait for prior notification from the government, even though they are still subjected to the notification after the investment has been made.

### Order of 28th May 2001 establishes that the actual investment shall comply with the following rules

∴ Declarations related to investment operations in privately held companies, branches, real assets and other type of investment

The declaration (application DI-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:

- I. Non-resident status of the investor.
- II. where applicable, compliance with any requirement of sector legislation.
- III. Having obtained an authorisation in the hypothetical cases of a suspension of the liberalization regime.
- IV. Having made a prior declaration, if required.
- V. For investments in real assets, a concise explicative report which states the main features of the investment.
- VI. 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.
- VII. 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 depositary 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. 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-IB (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 disinvestments, 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 disinvestment shall be declared to the Registry of Investments.

In the event of the exchange of securities in a privately held company for negotiable instruments of another company, the printed application D-IB (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-IA (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.

## Annual Report

Spanish companies participated by non-resident must file an Annual Report on investments to the Administration in the following cases:

- ∴ Branches in Spain, in all cases
- ∴ Spanish companies with capital or shareholder's equity of over 3.005.060,52 euro and in which 50% or more of the equity capital is held by non-resident investors.
- ∴ Spanish companies with capital or shareholder's equity of over 3.005.060,52 euro and in which a single non-resident investor holds 10% or more of the company's equity capital or of the total voting rights.
- ∴ Spanish companies that belong to a company group or in which 50% or more of the equity capital is held by a non-resident investor or in which a single non-resident investor holds 10% or more of the company's equity capital or of the total voting rights. In such cases, neither the capital nor the shareholder's equity is considered.

The report must be presented within 9 months from closing the accounting period. For this procedure the application D4 must be completed, and a copy of the Business Tax or the annual accounts must be attached to it.

## 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 1 st 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 authorised 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 dates 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 Real Estate

ILP Abogados

## **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 element that distinguishes the Spanish Registry System from other systems around the world is the Land Registrar, with professional qualifications and his/her enrolled to the office (by a Civil Service Examination).

In Spain, any property is firstly related to legal businesses, and later registration in the Registry provides a pledge to their purchasers before any third party. The Land Registry provides a secure, stable and trustworthy record of land ownership and recorded interests therein, so it promotes social and economic reliability and contributes to national development.

The protection of third party's rights by Law in Spain is so high 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 Anglo-Saxon 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 Spain 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 by Roman Law, on which Spanish Law is based.

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 missfunctions very difficult to solve. For instance, any clause that may exonerate promotor’s liability is null.

## Land Register (if appropriate)

The Real Property Registration in Spain is managed by Land Registry Offices throughout the whole country which registers, stores and manages 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 to 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 (rentals, usufructs...) However, the bare (or naked) possession can not be registered in the Land Registry.

To be registered those acts or contracts must be have been recorded as a public instrument or been acknowledged by a judicial authority or by the Government.

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

## The Land Registry attests the title against third-parties

Those who acquire their right from a person who appears in the Registry as entitled to transfer that right, are supposed to possess the real estate according to bonas fides requirements. So, their possession is going to be presumed as according to Law once that they register their right. Even though 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 any third party can proved that the information recorded in the Registry was not accurate.

### Caution

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 registration is highly recommended, because it implies a presumption of legality and it is a prove itself against third parties who claim a right on the same real estate. The rights that have not been recorded in the Land Registry are presumed as 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 is related to its tax functions.

## Reliance on register positive-negative

Registration is considered negative because once a first entrance is registered in the Land Registry, any intend of registration coming afterwards are going to be refused, until you prove the transfer. Transfer formalities e.g. notary deed

To be able to reap the benefits of the protection provided by the Land Registry, any holder must communicate the acts or contracts which can modify, transfer 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 they are created, and 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, express agreement excepted.

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

The carrying out of any works or building requires a licence: 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 Licence) and a Licencia de Obra Menor (Minor Works Licence).

Moreover, any land or underground usage (partitions, 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, or protected land that can not be urbanized). Land usage and land classes limit building rights. In addition, each type of land has a percentage of urban development permitted.

Any license is subjected to the payment of a fee called Impuesto sobre Construcciones Instalaciones y Obras which has to be paid by the owner. This tax is calculated by applying to the current costs of the building or the works, a rate that is determined by the Town Hall, and will NOT be over 4%.

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

The Technical Project is carried out by the Work Manager -who is responsible for it- who may be or not the author of the Technical Project. Local Building Codes do not require a dateline of the works.

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