SPAIN

Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

Once a judgment has been passed, Spanish procedural legislation requires the defendant to disclose to the court that its assets are sufficient to satisfy the claim. Failure to comply with such requirement will result in the imposition of fines, and may give rise to a criminal offence.

If the defendant persists in this conduct, the claimant may request that the court requires any bank, public body or registry, and any natural or legal persons the claimant so designates, to disclose whatever goods, money or assets belonging to the defendant of whose existence they may be aware. In its request, the claimant must succinctly justify the reasons that led them to believe that the required person or institution may have information relating to the asset position of the defendant.

The ownership of landed property is publicly available information in Spain. The information relating to the ownership of other assets is not public, but must be revealed by the person that is aware of its existence if they are required by a court to do so in the manner outlined above. The intermediation of a court once a judgment has been rendered is the sole legal means whereby a party may identify another party's asset position.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

The following domestic judgments or non-judicial titles involve enforcement:

- any judicial decision rendered by a jurisdictional body of the state independently appointed that can be recognised or enforced. This includes not only court judgments, but also court decisions validating court settlements and agreements reached during the procedure, court documents as decrees, interim measures, etc; and
- authenticated public documents (first notarial copy of public deeds, commercial agreements with certain requirements, etc).

Different types of domestic judgments are available, as follows:

- declaratory judgments, where the court declares the existence of a right, a fact or a conduct;
- specific performance judgments, where courts order the defendant to do something, to refrain from doing something or to pay an amount of money. Specific performance judgments are enforceable, while declaratory judgments are not technically enforceable (divorce or affiliation);
- provisional or final judgments, whether an appeal is available or not;
- default judgments, where the defendant does not attend the hearing (ex parte or in audita parte) – such judgments are enforceable only if service was properly performed and the defendant was given adequate opportunity to present their case (ie, the defendant was given enough time to enable them to defend the enforcement proceedings);
- interim judgments or protective and provisional measures are enforceable if no breach of effective judicial protection has been committed when being adopted ex parte. As a general rule, these judgments or measures are adopted after a hearing attended by both parties. Ex parte relief is exceptional; and
- final judgments for a specific amount of money, etc.

2.2 Enforcement of Domestic Judgments

The legal framework for the civil and commercial enforcement of domestic judgments is governed by the Civil Procedural Act (CPA). The specific rules that apply to enforcement proceedings depend on the relief granted in the judgment.

Preliminary Draft Law on Procedural Efficiency Measures for the Public Service of Justice

This draft law was issued on 12 April 2022 by the Spanish government and contemplates ex novo regulation on mass class actions and improvements in judicial auctions when enforcing final judgments.

The preliminary draft law introduces the "Test Case" as an instrument to save time and judicial resources in cases dealing with nullity proceedings by unfair terms in general contracting conditions.

Claimants will have the option to:

- apply for the lifting of the suspension of their proceedings while the Test Case is resolved with res iudicata effect in order to:
  (a) carry on with their individual proceedings; or
  (b) finish their cases by the extension of the effect of the ruling in the Test Case; or
- apply for the extension of the effect of the ruling in the Test Case, if they did not file any lawsuit before the commencement of the Test Case proceeding. This will save claimants time and money because there will be no need to have a full trial.

The judge of the claimant's domicile will rule on the suitability to extend the effects of the Tests Case if substantial correlation between the Test Case and the claim is found. If the judge finds substantial correlation, the claimant will be granted with a ruling in their favour, which will be subject to enforcement. If the judge rejects the extension of the effects of the Test Case, fresh proceedings should be started by the claimant.

If the preliminary draft law is passed by Parliament, the enforcement of domestic judgments in class mass actions will be less costly and faster in cases related to nullity proceedings by unfair terms in general contracting conditions. Financial bank contracts will be directly impacted, and insurance contracts may also be affected, in relation to the contractual terms on Loss of Profit caused by COVID-19, by the incorporation of non-damage and prevention of access extensions into the insurance contract.

Options Available to Enforce Judgments

When enforcing domestic judgments or authenticated public documents, general rules are applied; specific rules will only apply depending on the type of relief that is granted (monetary obligations or specific performance). Special enforcement rules are only to be used when enforcing the first notarial copy of a mortgage deed (non-judicial title). The main difference is based on faster mortgage foreclosure proceedings and the action in rem that is exercised in mortgage foreclosure.

General proceedings (*Procedimiento de ejecución Ordinario*) enforce judgments with monetary and non-monetary obligations, such as specific performance, third-party debt order, etc. Therefore, in monetary obligations, all assets of the defendant are suitable to be targeted and used to pay for the debt being claimed. In money judgments, a court's enforcement order will include the attachments of all or part of the debtor's assets identified in the writ of enforcement. Otherwise, further means of investigation should be carried out by the court to trace a debtor's potential assets to attach.

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The monetary or non-monetary nature of the obligation to be enforced will determine the way coercive measures will be used by courts.

To enforce judgments ordering payment in monetary obligations when the opposition writ to enforcement is dismissed requires the following court actions:

- freezing bank accounts and seizure of assets (movable or immovable) or even a defendant's income, as professional wages with certain limitations (minimum wage cannot be seized); and
- judicial or extrajudicial auctions of a defendant's assets (a defendant's home will be one of the last assets used to pay back the debt). This debt will include the amount declared in the enforcement writ, plus legal interest and judicial costs.

To enforce judgments related to non-monetary obligations (ordering the defendant to perform certain actions, to refrain from performing such actions or to undo actions already performed) when the opposition writ to enforcement is dismissed requires the following enforcement actions:

- financing a third-party service provided to comply with the enforcement judgment when the defendant fails to comply, at the defendant's expense; and
- issuing fines against the defendant when intuitus personae obligations are required and the defendant is unwilling to act accordingly. No third party can substitute the defendant's performance, service or skills, and fines are the only coercive way to compel the defendant to enforce the judgment.

Enforcement Procedure

Enforcement proceedings start without hearing the defendant or the debtor object to the enforcement and with an application (ex parte or in audita parte) to enforce the judgment. The application for an enforcement order should be filed before the Court of First Instance where the judgment has been rendered (Article 545 of the CPA), where the award has been rendered or, as a general rule for non-judicial documents (Articles 50 and 51 of the CPA), where the residence of the defendant is located or where the asset is located or the obligation has to be performed.

No security for cost is needed when starting enforcement proceedings. The Enforcement Court's order and enforcement application are served together to the defendant, who can oppose it during the following ten business days, on grounds for opposition on final judgments, on provisional judgments and on mortgage enforcements (Articles 556, 528 and 695 of the CPA).

The court order declaring the initiation of enforcement proceedings cannot be appealed, only opposed or objected, in order to avoid unnecessary delays. Opposing (objecting) the court order of enforcement takes place before the First Instance Court that dictated the order, and will not stay the proceeding, as a general rule. It is only possible for the court to decide to stay proceedings in exceptional circumstances (see **2.5 Challenging Enforcement of Domestic Judgments**).

When the opposition motion is served to the party seeking to enforce the judgment, fast-track proceedings will take place. The judge will render a ruling within the next five days after the hearing, declaring the following:

- the continuation of the enforcement order and attachment/seizure actions;
- the stay of proceedings with potential attachment/seizure actions; or
- the dismissal of the motions included in the enforcement writ and, therefore, the lifting of

attachment/seizure orders (if they were previously applied).

This ruling can be appealed but it will not stay the enforcement actions already taken, except in very limited cases, as listed in **2.5 Challenging Enforcement of Domestic Judgments**.

Domestic judgments and judicial decisions are immediately enforceable, as a general rule, regardless of any appeal, as follows:

- final judgments are enforceable after a period of 20 days (Article 548 of the CPA) to allow the debtor to comply with payment, for example, except for eviction judgments resulting from unpaid lease rent, which can be enforceable immediately; and
- domestic provisional judgments are enforceable despite being appealed, as a general rule, except in matters listed in **2.6 Unenforceable Domestic Judgments**.

Representation by lawyers and court agents in enforcement proceedings is legally mandatory if the economic value of the enforcement process is over EUR2,000.

2.3 Costs and Time Taken to Enforce Domestic Judgments

Typical Costs Involved

As a general rule, the debtor that is the target of the enforcement will bear the costs of proceedings for not complying voluntarily with the judgment within 20 days of it being rendered, and thereby forcing the creditor to start enforcement proceedings (Article 539.2 of the CPA).

The enforcement creditor will only bear the cost of incidental questions (ie, substantiating objections to enforce the judgment by the creditor) in the following cases:

- on grounds of procedural defects (Article 559.2 of the CPA) – when procedural defects or faults cannot be rectified within the ten-day time limit, a court order shall be issued voiding the dispatched enforcement and ordering the enforcement creditor to pay the costs; and
- on reasons of substance (Article 561 of the CPA) when the debtor's objections to enforcement are upheld, such as payment, fulfilment of the judgment, expiry of the enforcement action, excess of amount sought, arrangement with creditors with documentary evidence, etc (Articles 556 and 557 of the CPA).

The enforcement debtor will even bear enforcement costs if payment is made at the time of the request or prior to the dispatch of the enforcement order, unless they demonstrate that, for reasons not attributable to them, they were unable to make the payment before the enforcement creditor lodged the writ of enforcement, according to Article 583 of the CPA.

Estimated Length of Time

The time it takes to enforce domestic judgments depends on how easily the defendant's assets could be converted into cash money. Attaching the defendant's bank accounts is the easiest and fastest way to pay the debt. Unfortunately, such accounts do not normally cover the total debt and an auction of the defendant's assets will have to be carried out, delaying the payment of the debts, especially if there are third parties who claim ownership of the attached or seized assets (*tercería de dominio o de mejor derecho* – Articles 595 and 614 et seq of the CPA).

Most Efficient Option

The most efficient option consists in seeking enforcement of mortgage notarial deeds, as mortgage enforcement procedures are faster than the common ones. Therefore, banks seeking the enforcement of notarial deeds (ie, first

notarial copy of the mortgage deed) are recommended to use this option of enforcement, but only if there are no potentially "unfair terms" included in the mortgage contract (clauses of early termination based on trivial grounds of breach of contract, etc).

2.4 Post-judgment Procedures for Determining Defendants' Assets

The post-judgment procedure for determining the defendant's assets is described in Article 590 of the CPA (judicial investigation of the state of the enforcement debtor).

The defendant's assets must be identified by the judgment debtor in the enforcement claim (Article 549 of the CPA), but if there are concerns that the value of the debtor's assets will not cover the amount for which the enforcement has been ordered, further search and investigation by the court should be required.

At the expense and request of an enforcement creditor who cannot designate sufficient assets of the enforcement debtor, the court clerk shall issue an order to move the proceeding forward (Article 590 of the CPA). The following measures will be contemplated in the order:

- compelling any bank, public body, registry or persons stated by the creditor to provide the list of assets and rights of the enforcement debtor of which they are aware. The court clerk shall not claim data from bodies and registries when the enforcement creditor can obtain such information either themselves or through their court representative, who is duly empowered to do so by the grantor of their power of attorney;
- requesting co-operation with the above-mentioned parties; and
- issuing periodical coercive fines when co-operation is not provided. Sanctions are subject to appeal, according to Article 591.3 of the CPA.

2.5 Challenging Enforcement of Domestic Judgments

As a general rule, the enforcement court's orders can be challenged on the following grounds:

- procedural matters (Article 559 of the CPA); and
- substantive law matters (Article 560 of the CPA).

These grounds of opposition differ depending on whether the domestic judgment or non-judicial enforcement document is:

- a final judgment (Article 556 of the CPA);
- a provisional judgment (Article 528 of the CPA); or
- a mortgage foreclosure (Article 695 of the CPA).

Common grounds to stay enforcement proceedings based on domestic judgments or non-judicial enforcement documents are as follows:

- on procedural matters – irregularities on the procedural rules affecting the right to be heard and to a fair process of law. For example:
  - (a) judgments rendered without valid service of proceedings;
  - (b) lack of capacity or representation of the party seeking enforcement (Article 559 of the CPA);
  - (c) fraudulent enforceable document (Article 569 of the CPA);
  - (d) enforcement judgment revoked (Article 566 of the CPA); or
  - (e) previous insolvency proceedings (Article 568 of the CPA and Articles 55 to 57 of the Insolvency Act); or

- on substantive law matters (Article 560 of the CPA):
  - (a) payment already made;
  - (b) non-monetary obligation already performed;
  - (c) expiration of the enforcement action;
  - (d) error on the amount of the debt;
  - (e) unfair terms on the enforceable non-judicial document (first copy of the mortgage deed), etc.

Specific grounds to challenge provisional judgments (Article 528 of the CPA) are the same as those listed for final judgments, plus grounds based on the impossibility to reverse the situation created by the provisional enforcement of a judgment that is not final, but potential serious damages could arise when enforcing a provisional judgment (Article 525 of the CPA). The burden of proof remains with the party seeking to stay enforcement, and they should provide security to cover any potential losses of the party seeking to enforce the judgment.

There are specific grounds to challenge mortgage enforcement proceedings (Article 695 of the CPA). As a general rule, enforcement proceedings will not be stayed, despite the filing of the writ of opposition to enforce the notarial document (ie, mortgage deed). As an exception to the general rule, mortgage foreclosure may be stayed when:

- unfair terms are alleged (Article 557.2 of the CPA) in the mortgage contract;
- parties agree to stay proceedings (Article 565.1 of the CPA);
- there was a third-party ownership claim over the asset before the mortgage contract was executed (Article 696 of the CPA); or
- the mortgage deed was fraudulent.

Once proceedings are stayed, precautionary measures such as attaching/seizure assets could be enforced or remain operative if they were already in force.

Rulings on motions to stay enforcement can only be appealed on the following grounds (Article 695.4 of the CPA):

- termination of enforcement proceedings; or
- dismissal of the motion to stay enforcement, due to unfair terms in the mortgage contract.

2.6 Unenforceable Domestic Judgments

Provisional judgments are unenforceable in the following matters:

- filiation, paternity, annulment of marriage, divorce, abduction of minors, etc (excluding the economical obligations), due to the difficulty, or even impossibility, of reversing the situation created by the provisional enforcement of a judgment that is not final (Article 525 of the CPA);
- condemnation of a statement of intent;
- judgments declaring the annulment or expiration of intellectual property titles;
- foreign provisional judgments, unless otherwise provided by an international treaty to which Spain is a signatory; and
- a violation of rights to honour, privacy and family life.

Final judgments are unenforceable in the case of:

- default judgments where service was not properly performed or, if made, was not performed with sufficient time to prepare a defence;
- judgments or arbitration awards not containing any statement of sentence (Article 559.1 of the CPA);
- the expiration of the enforcement action (Article 556.1 of the CPA), etc.

2.7 Register of Domestic Judgments

There is no specific judgment debtor register, but it is possible to make a note or inscription in the suitable public registry (Land Property Registry, Public Bankruptcy Registry, etc), declaring the starting of enforcement proceedings. Once the debt is paid (in the case of a monetary obligation), the inscription in the registry will be cancelled. To provide evidence to the Property Registrar that the enforcement judgment has been complied with, the defendant needs to provide the appropriate court ruling stating the satisfaction or settlement of the claim.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The principal legal issues relating to enforcing a foreign judgment in Spain depend on the foreign country issuing the judgment, because different legal instruments will be applied and, therefore, an automatic recognition and enforcement will or will not be applied.

Automatic Recognition and Enforcement without Any Declaration of Enforceability or Exequatur Proceedings for EU Member States (Except Denmark)

The general rule is that approval and enforcement are automatic, without any need of an exequatur, according to Article 36 (recognition), Article 39 (enforcement) and Article 66.2 of EU Regulation No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Recast Brussels Regulation") Chapter III, sections 1, 2, 3 and 4, notwithstanding a potential opposition to the recognition and enforcement of the judgment on the ground of Article 45 of the Recast Brussels Regulation.

For the recognition and enforcement of judgments on specific matters not included in the scope of the Recast Brussels Regulation, the following EU Regulations will apply aside from international treaties to which Spain is a signatory:

- Regulation 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (except Denmark);
- Regulation 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations;
- Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (except Denmark, Ireland and the UK);
- Regulation 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims; and
- Regulation 848/2015 of 20 May 2015 on insolvency proceedings (except Denmark).

Recognition and Enforcement Applicable to Third Countries that Are Not Members of the EU

In this context, the following treaties are worth mentioning.

- Lugano Convention 2007: automatic recognition, but enforcement still requires the initiation of any declaration of enforceability or exequatur proceedings. The Lugano Convention is applicable to Norway, Iceland and Switzerland; for Liechtenstein, Lugano 1988 is still applicable.
- Convention No 16 on the recognition and enforcement of foreign judgments in civil and

commercial matters of the Hague Conference on Private International Law (HCCH). This relates to countries that are not EU Member States, nor Lugano members, but are signatories of the Convention.
- Bilateral international treaties between Spain and a foreign country.
- Domestic Law 29/2015 on international legal co-operation in civil matters (the "Legal Co-operation Act"), Title V, Articles 41 to 61, in the absence of the foregoing items.
- Civil Procedural Rules Act 2000, Chapter II (Article 523 of the CPR Act).

The United Kingdom

Since the end of the transition period on 31 December 2020, the Recast Brussels Regulation and the other European regulations mentioned above no longer apply for the recognition and enforcement of UK judgments in Spain.

Since 1 January 2021 onwards, the recognition and enforcement of UK judgements will no longer have the benefit of a direct recognition and enforcement process. Joining the Lugano Convention 2007 was an alternative for the UK due to its similar advantages of quasi-automatic recognition and enforcement of judgments that were applicable between EU Members States at the time under the Brussels I Regulation 44/2001.

On 8 April 2021, the UK applied to accede to the Lugano Convention in its own right.

On 4 May 2021, the European Commission published a diplomatic note informing that it was not able to consent to the UK's application.

France opposed the application, Germany was undecided and Spain, Portugal, Ireland and the Netherlands were in favour.

On 18 November 2021, the European Parliamentary Research Service issued a briefing confirming the Commission's grounds for rejecting the UK application, stating that accession to the Lugano regime is bound up with the notion of close economic integration and interconnection based on the four freedoms. For the EU, the Lugano Convention is a flanking measure of the internal market and relates to an EU-EFTA/EEA context: "The UK is a third country without a special link to the internal market. Consequently, the Hague Conventions should provide the framework for future co-operation between the EU and the UK in the field of civil and judicial co-operation."

Hague Conventions

It must be highlighted that the regime of the Hague Conventions is less effective than those of the Recast Brussels Regulation or the Lugano Convention.

The Hague Choice of Court Convention 2005 is narrower in scope because it is only applicable to exclusive jurisdiction agreements. Therefore, contracts with asymmetric jurisdiction clauses will fall outside the scope of the Convention. Interim protective measures such as injunctions, and consumer, employment and IP disputes are beyond the scope of the Convention.

The Hague Judgments Convention 2019 has a wider scope than the Hague Choice of Court Convention 2005 because no exclusive jurisdiction clauses are required in order for it to apply. Employment and consumer contracts fall within its material scope.

However, only five States have signed the Convention. This situation could change when the EU and the UK accede to the Hague Judgements Convention 2019 because then free movements of judgments between the UK and the EU will be effective in some civil matters.

Legal Co-operation Act

So far, the recognition and enforcement of UK judgments in the EU and EU judgments in the UK will be governed by the national law of the UK and EU Member States and the Hague Choice of Court Convention 2005, where applicable.

Consequently, since 1 January 2021, the recognition and enforcement of UK judgments in Spain is governed by an old bilateral treaty: the Convention on Civil and Commercial Procedure signed in London on 27 June 1929. Matters not covered by this bilateral convention in Spain come under the provisions of the Legal Co-operation Act. The Legal Co-operation Act distinguishes between the two steps of recognition and enforcement, which will make procedures last longer.

Only final UK judgments can be recognised in Spain. With respect to UK injunctive relief, it is worth noting that UK "ex parte" orders or orders dictated with due process of law will not be recognised in Spain.

The Legal Co-operation Act also requires a reasonable connection between UK jurisdiction and the litigated matter. A reasonable connection is deemed to exist if the judgment of the UK court is based on similar criteria as those followed in the Organic Law 1/1985. The Spanish criteria are very similar to those provided by the Recast Brussels Regulation. In practical terms, this means that UK judgments dictated as a result of forum presentiae will not be accepted by Spanish Courts.

Spain is not a member of the Convention of 30 June 2005 on Choice of Court Agreements.

After Brexit and its transition period, Regulation Rome I and Regulation Rome II on choice of law will remain applicable by Spanish judges, since their application is universal (EU Member States apply these regulations to third countries).

Notice of claims, demands and other judicial documents

Finally, Spain will apply the provisions of the Hague Convention of 1965 to notices and documents coming from UK courts, which in essence requires service through the Spanish Ministry of Justice as Central Authority and local court of the domicile of the defendant, a procedure that takes considerable time to be completed.

As a result of all these changes, the English jurisdiction is expected to become a less attractive route for deals involving Spanish enforcement. Therefore, as an alternative solution, some international businesses are considering including arbitration clauses in their contracts, as arbitration does not come within the scope of the Recast Brussels Regulation or the Lugano Convention.

With 168 signatory states, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 is a valuable alternative.

3.2 Variations in Approach to Enforcement of Foreign Judgments

Judgments from EU Member States differ from those from third countries, as they do not need to be final in order to be enforceable.

Enforcement for EU Judgments

In civil and commercial matters, the recognition and enforcement of EU judgments or authentic instruments from Member States adopt the same approach if they had an enforceable nature in the Member State of origin, according to Chapters III and IV of the Recast Brussels Regulation. No distinction is made for different types of judgment. Recognition and enforcement may be suspended according to Article 38 of the Recast

Brussels Regulation, if the EU judgment is challenged in the Member State of origin.

Enforcement for Third-Country Judgments

There is no distinction between different types of judgments from third countries: they are all considered foreign judgments, regardless of the state of origin. In order to enforce third-country judgments, it is necessary to apply the following:

- bilateral treaties concerning the enforcement of foreign judgments; or
- domestic legislation, in the absence of any bilateral treaty, such as the Legal Co-operation Act or the CPA, as a subsidiary provision should apply.

In principle, only final judgments coming from third countries are enforceable in Spain. Interim orders dictated by third-country courts can only be enforced if refraining from enforcement will run against the principle of due process of law (*tutela efectiva*), and provided such foreign measure would not have been adopted ex parte.

3.3 Categories of Foreign Judgments Not Enforced

The following paragraphs list and categorise the foreign judgments that are not suitable to be enforced, depending on the grounds alleged for the refusal of recognition and enforcement.

Categories of EU Judgments

Grounds for refusal of recognition

Despite the automatic recognition of any EU judgments, the following judgments will be refused enforcement, according to Article 45 of the Recast Brussels Regulation:

- any judgment that is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
- any judgment given in default of appearance, if the defendant was not served with the document that institutes the proceedings in sufficient time;
- any judgment that is irreconcilable with a judgment given between the same parties in the Member State addressed;
- any judgment that is irreconcilable with an earlier judgment given in another Member State, or in a third state, involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or
- any judgment conflicting with:
  (a) Sections 3, 4 or 5 of Chapter II of the Brussels Recast Regulation where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or
  (b) Section 6 of Chapter II of the Brussels Recast Regulation.

Grounds for refusal of enforcement

According to Article 46 of the Recast Brussels Regulation, enforcement of a judgment shall be refused where one of the grounds for refusal listed in Article 45 is found to exist.

Categories of Third Countries

If no bilateral treaty is applicable, grounds for not enforcing third-country judgments are subject to the provisions of the Legal Co-operation Act.

The grounds for refusal of enforcement according to Article 46 of the Legal Co-operation Act are very similar to the grounds in Article 45 of the Recast Brussels Regulation. As an additional ground for refusal of enforcement, the Legal Co-operation Act includes the following: where Spanish courts have exclusive jurisdiction or, in respect of other matters, if the jurisdiction of the court of origin is not based on a reasonable connection.

As a general rule, declaratory judgments are not enforceable.

3.4 Process of Enforcing Foreign Judgments

Process when Enforcing an EU Judgment

The steps that need to be taken can be summarised as follows:

- providing the addressed court with the following documents:
  (a) an original of the foreign judgment, preferably legalised and apostilled;
  (b) the certificate using the form set out in Annex I, issued by the court of origin, according to Article 53 of the Recast Brussels Regulation; and
  (c) an official translation, if required; and
- filing the recognition and enforceable lawsuit in the Court of First Instance where the defendant is domiciled, or in the place where the judgment is to be enforced (where there are assets to freeze, for example). Where the subject matter of the judgment is related to commercial issues, the commercial courts will have jurisdiction to enforce the foreign judgment, in application of the CPR Act.

Process when Enforcing a Third-Country Judgment

According to Articles 44 to 55 of the Legal Co-operation Act, the requirements are very similar to the Recast Brussels Regulation; the difference is based on extra requirements such as a certificate issued by the court of origin declaring the following:

- the judgment is a final judgment – appeals have been exhausted; and
- service to the defendant was properly effected, with sufficient time to prepare their defence, where default judgments have been rendered (ex parte or in audita parte). Procedural strategy consisting in avoiding being served is no longer acceptable.

These steps are common in both proceedings. Once the defendant is served, they have 30 days in which to file their opposition to enforcement. The defendant can appeal the decision to the Appeal Court and to the Supreme Court.

3.5 Costs and Time Taken to Enforce Foreign Judgments

EU judgments by means of application of the Recast Brussels Regulation provide for faster recognition and enforcement proceedings. In the event of an uncontested monetary claim, the fastest option to enforce a judgment is by application of Regulation 805/2004 and not the Recast Brussels Regulation.

In the case of EU protective measures, it is faster to apply for the order directly to the addressed court, rather than through the recognition and enforcement of a protective measure issued by the Member State of origin.

Dealing with judgments of third countries is a longer process due to the need to start a declaration of enforcement proceedings, which is not necessary with EU judgments.

When international or bilateral treaties are silent in relation to judgment enforcement and recognition costs, the CPA's enforcement costs provisions will be applied in accordance with Article 50.2 of the Legal Co-operation Act.

In general terms, costs associated with the enforcement of third-country judgments are higher due to the length of the proceedings, by virtue of the required declaration of enforceability.

3.6 Challenging Enforcement of Foreign Judgments

Once the defendant is served, they have 30 days in which to file their opposition to the enforcement. The grounds for challenging the enforcement of an EU or third-country judgment are set out in **3.3 Categories of Foreign Judgments Not Enforced**. The defendant can appeal the decision to the Appeal Court and to the Supreme Court.

Under Spanish law, and a result of Regulation Rome I on the law applicable to contractual obligations, the time limitation for contractual claims will be determined by the governing law of the contract, which can obviously be a law other than Spanish law. The Spanish time limitation for contracts is five years. This substantive limitation will be applicable to judgments coming from EU countries. However, in the case of third-county judgments, bilateral treaties should apply. If there is no applicable bilateral treaty, Article 50.2 of the Legal Co-operation Act provides that the limitation period action to enforce third-country judgments will be governed by the CPA. Article 518 of the CPA also establishes a five-year limitation period.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

The European Parliamentary Research Service briefing and the Commission's grounds for rejecting the UK application to the Lugano Convention 2007 have no impact on the recognition and enforcement of arbitral awards, nor does Brexit, because arbitration does not come within the scope of the Recast Brussels Regulation or Lugano Convention.

Arbitral awards in Spain may be enforced on equal terms as court rulings. It must be noted that arbitral awards cannot be challenged based on substantive reasons (ie, on account of the legal reasoning of the award).

However, arbitral awards may be set aside if the applicant alleges and furnishes due proof that:

- the arbitration agreement does not exist or is invalid;
- the applicant was not given proper notice of the appointment of the arbitrator or of the proceedings;
- the award contains decisions on questions that were not submitted to arbitration;
- the dispute is not apt for settlement by arbitration; or
- the award is in conflict with public policy.

Awards may be enforced even when an action has been brought to set them aside. Nevertheless, in such cases, the party may request the suspension of the enforcement from the competent court, providing that they provide security for the value of the sentence plus damages that stem from the delay.

4.2 Variations in Approach to Enforcement of Arbitral Awards

Spanish legislation does not distinguish between different categories of arbitral awards, so the provisions relating to the enforcement of these resolutions are applicable regardless of their nature.

4.3 Categories of Arbitral Awards Not Enforced

The only arbitral awards that may not be enforced are those that by the nature of their adopted decision are not subject to enforcement. Therefore, arbitral awards that dismiss the case or merely grant a declaration devoid of material orders may not be enforced.

The enforcement of awards may be suspended if the corresponding action to set them aside has been brought forth, and if the interested party provides security for the value of the sentence, as well as damages stemming from the delay resulting from the suspension.

4.4 Process of Enforcing Arbitral Awards

In the first place, a claim to enforce the arbitral award must be filed before the lower courts of the place where the award must have its effects. The deadline is set at five years from the arbitral award being notified, otherwise the action of enforcement may no longer be brought. Spanish procedural legislation establishes that no enforcement of arbitral awards may be initiated until 20 days have elapsed.

Once the court has examined the request and if it deems that the request meets all the applicable requirements, it dictates that the enforcement procedure shall be carried out and notifies the affected party.

The affected party may oppose the enforcement of the award within ten days on the grounds that the payment has already been met, or that an agreement between debtor and creditor has been reached. It may also oppose the enforcement in view of procedural defects.

The claimant is subsequently granted five days to allege whatever it deems opportune regarding the opposition, and the court finally renders its verdict.

The enforcement of arbitral awards may only be suspended in very special cases, such as when insolvency proceedings have been initiated before the respective Commercial Court. The enforcement of the arbitral award shall be completed once the creditor has been paid in full.

4.5 Costs and Time Taken to Enforce Arbitral Awards

Unless otherwise agreed by the parties, arbitrators shall decide the dispute within six months of the date of the submission of writ of defence or by the expiration of the time limit for submitting the writ, according to Article 37.2 of the Spanish Arbitral Law Act 2003. Arbitration proceedings can be extended for a maximum period of two months, unless agreed to the contrary by the parties.

Arbitration costs will include the following:

- arbitration centre expenses, such as rent of the meeting rooms and administrative costs;
- fees for the translation of documents;
- fees for advisers, experts, lawyers and arbitrators; and
- costs related to witness(es).

4.6 Challenging Enforcement of Arbitral Awards

In general terms, the grounds for challenging awards (domestic or foreign) do not include revision on substantive matters of law applied or the proper applicable law to the arbitration.

Grounds for challenging domestic and foreign arbitral awards are different, as are the actions and procedural rules established to challenge them.

Nevertheless, the grounds for challenging foreign awards under the New York Convention 1958 (the “NY Convention”) and the grounds for challenging domestic awards under the Spanish Arbitral Law Act 2003 (AA) are very similar. The aim is to provide flexible enforcement proceedings for foreign awards, due to the undeniable extent and use of the NY Convention.

Foreign awards have the same category as domestic judgments. They are considered to

be a similar category as judicial titles, and are suitable to be enforced without any exequatur proceedings.

Domestic Awards

Domestic awards can be challenged in two different ways:

- by exercising the action of annulment on grounds established in Article 41 of the AA (numerus clausus), which is very similar to Article V of the NY Convention; or
- by exercising the action of review of the award on the following grounds according to Article 43 of the AA and Article 501 et seq of the CPA:
  - (a) decisive documents have been obtained that could not be made available in the arbitration proceedings by reason of force majeure or by the party favoured by the arbitration award;
  - (b) the award was made on the basis of documents subsequently found to be false in criminal proceedings, or were not known to the requesting party at the time the award was made;
  - (c) the award was made on the basis of witness or expert evidence that was found to be false in criminal proceedings; and
  - (d) the award was made unjustly on the basis of bribery, violence or fraudulent schemes.

Foreign Awards

Foreign awards can be challenged through exequatur proceedings on grounds of Article V of the NY Convention or on grounds established in another international or bilateral treaty ratified by Spain.

Grounds for challenging foreign arbitral awards are split into two different proceedings:

- recognition proceedings (exequatur); and
- enforcement proceedings of the recognised foreign award as a national judgment (Article 517 et seq of the CPA).

Recognition proceedings are known as exequatur and only final awards are subject to recognition or enforcement.

Once the foreign award is recognised, it could be enforced as a domestic judgment (Article 46.2 of the AA) under the domestic enforcement procedure established in the Spanish CPA.

Grounds for challenging foreign awards are subject to international treaties and bilateral treaties signed by Spain. The main such treaties are as follows:

- the NY Convention: a foreign award could be challenged in application of Article V of the NY Convention;
- the European Convention on International Commercial Arbitration (Geneva 1961); and
- bilateral treaties that cover the recognition and enforcement of foreign awards: France (1969), Mexico (1989), China (1992), Morocco (1997), Colombia, El Salvador, Israel, etc.

NY Convention

The NY Convention is the most commonly used international treaty, due to its natural tendency to facilitate the recognition and enforcement of foreign awards. Therefore, in most cases, a foreign award could be challenged on the following grounds in application of Article V of the NY Convention:

- the invalidity of the arbitration agreement;
- violation of due process;
- the arbitrator exceeded their authority;
- irregularity in the composition of the arbitral tribunal or the arbitral procedure; and
- the award is not binding or has been set aside.

The grounds in Article V (2) can be examined ex officio and, therefore, can be examined even if the request for enforcement is unopposed. They are:

- the non-arbitrability of the subject matter of the award; and
- the violation of public policy.

Special consideration has to be taken when defining "public policy", which is an abstract concept linked with national sovereignty and jurisdiction as designated in the domestic Constitution. The Spanish Supreme Court has limited and framed "public policy" as grounds causing "real and substantive constitutional breach of rights" (lack of impartiality of the arbitrator, lack of reasoning of the award, res iudicata or non bis in idem, etc).

Arbitration

The AA identifies what legal issues are suitable to be settled by arbitration:

- Article 2 of the AA establishes the domestic criteria for identifying the subject matter of the legal controversy suitable of settlement by arbitration; and
- Article 6 of the AA establishes the international criteria for identifying the subject matter of the legal controversy, and its suitability for settlement by arbitration.

In relation to time limits to challenge the awards, domestic awards should be challenged no later than two months after the notification of the award (Article 41.4 of the AA). The time limit for challenging foreign awards depends on the specific content of each international treaty signed by Spain. Silence in the NY Convention means that domestic laws should be applied to establish the limitation period for challenging or enforcing the foreign award under the NY Convention.

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Trends and Developments

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Upcoming Legal Reforms Regarding Insolvency, General Litigation and the Reorganisation of the Judiciary

This article will summarise the most fundamental issues of two of the legislative reforms that are in the process of being approved in Spain.

Insolvency Aspects

Since its entry into force in 2003, Spanish insolvency legislation has undergone dozens of amendments. This article will focus on the most important aspects of the upcoming Insolvency Law reform. Although it is still undergoing the parliamentary discussion process and is therefore subject to change, any changes will be minor and will not alter the fundamental basis of the reform.

The Preliminary Draft Reform of the Insolvency Law distinguishes between legal and individual persons when defining what the purpose of the Spanish insolvency system should be.

For legal persons, it should be to facilitate the restructuring of the liabilities of viable companies to enable their continuity while safeguarding the rights of creditors and, in the case of non-viable companies, to obtain the highest possible value for their assets in order to achieve maximum creditor satisfaction in an orderly manner.

With regard to individuals, the legislation aims to avoid the black economy and marginalisation, provided that the debtor is a bona fide debtor, by offering a second chance through the exoneration of unsatisfied liabilities, albeit with exceptions.

Legal Persons

Starting with legal persons, the most important aspects of the reform are as follows.

Restructuring Plans

The scope of pre-insolvency law is strengthened by the introduction of so-called Restructuring Plans, which replace the previous refinancing agreements and are aimed at overcoming insolvency without the need to enter into insolvency proceedings, thus avoiding the stigma that this entails for companies.

For this reason (ie, in order to overcome insolvency without entering into insolvency proceedings), a new concept of "probable insolvency" has been coined, in which it is understood that insolvency is expected to occur in the next two years. This is in contrast to the case previously, where a company was required to be in a situation of current or imminent insolvency (ie, within the next two months) in order to resort to refinancing agreements.

In this way, the debtor is granted a wide margin of time to be able to resort to the instrument of the Restructuring Plan, overcoming insolvency at an early stage, reducing the loss of business value and the resulting damage for creditors and for the debtor itself, and also avoiding insolvency proceedings.

Micro-companies

The regulation of a special procedure for so-called Micro-companies is introduced as a necessary part of the transposition into Spanish law of Directive (EU) 2019/2013 of the European Parliament and of the Council of 20 June 2019,

which until now was included in the general regulation.

A Micro-company is defined as a company with fewer than ten employees and liabilities of less than EUR2 million.

Under this concept, Micro-companies make up 94% of Spanish businesses, hence the need for a new regulation specifically addressing their needs, which are much lower in terms of deadlines and controls than those that may be required by companies exceeding the above parameters.

The aim is to overcome the defects of the current regulation, in which so-called "out-of-court payment agreements" have been used very little and in which the subsequent insolvency proceedings entail disproportionate and unjustified costs for a Micro-company, with the consequent detriment to the already scarce resources with which these small and medium-sized companies arrive at the insolvency proceedings, thus damaging the creditors' prospects of recovery.

The special procedure for Micro-companies is characterised by cost reduction and maximum procedural speed.

Thus, all processing will be carried out by electronic means.

Judicial intervention will only take place in relation to the most relevant decisions for the procedure or when there is a dispute between the parties.

However, perhaps the most relevant and novel aspect of the regulation of the procedure for Micro-companies is that it contemplates the possibility of dispensing with the intervention of a receiver (insolvency administrator) for the first time.

Likewise, the intervention of other professionals such as mediators, restructuring experts, lawyers or solicitors will only be required to fulfil certain functions or when requested by the parties.

As a counterbalance to the maximum reduction of the intervention of professionals beyond the debtor, the veracity of the information is configured as an essential element of the procedure, so that the concealment of relevant information, the manipulation of data or the provision of incorrect or untruthful documents will constitute grounds for declaring guilt in the insolvency proceedings.

In the end, the main objective of the new regulation is to ensure that an agreement is reached quickly and swiftly with creditors and allows the continuity of the company's activity while preserving the maximum possible value, or that the company is liquidated within a period of time that as a general rule does not exceed three months; an extension of one additional month is envisaged.

Individuals

With regard to individuals, new features are introduced in the regulation of the exoneration of unsatisfied liabilities (also known as "second chance"), the aim of which is to avoid the economic and therefore social marginalisation to which insolvent individuals were subject before the introduction of the exoneration in insolvency legislation.

The new regulation aims to correct the low usage of this feature in Spain compared to other EU countries, which in the legislator's opinion can be explained by the current legislation's two requirements for eligibility:

- the debtor's obligation to make a minimum debt payment; and
- the need to previously liquidate the debtor's assets in their entirety, which is not logical as

it deprives the debtor of the ability to generate income with which to meet its debts.

The requirement for the exoneration to be preceded by a frustrated attempt by the debtor to reach an out-of-court payment agreement with the creditors has been eliminated, as in most cases there was no possibility of drawing up a payment schedule due to the debtor's lack of resources.

In order to correct the defects and deficiencies observed in the current regulation, the new regulation chooses to introduce two different ways to obtain the exoneration of unsatisfied debts.

The first route allows for immediate discharge after liquidation of the debtor's assets. This route is aimed at those debtors who really have no means or possibilities of generating resources with which to agree a payment schedule with their creditors, in the legislator's understanding that it does not make sense to prolong the procedure.

In contrast, the second route does not require the liquidation of the debtor's assets, but rather the discharge is achieved through the fulfilment of a payment schedule with creditors, which logically requires the debtor to have the necessary means to generate the necessary resources.

Another relevant novelty of the new regulation is that the exoneration by payment schedule can be transformed at any time into an exoneration by liquidation. This brings Spanish law closer to the US and French systems.

In any of these cases, one essential point remains unchanged in order to be eligible for the benefit, which is that the applicant must be considered a bona fide debtor.

Some of the defining elements of this bona fide status are altered – for example, the period in which to apply for exoneration is reduced from ten to five years, and the requirement that the debtor cannot refuse offers of employment in the four years prior to the declaration of insolvency proceedings is eliminated.

Finally, certain debts are excluded from exemption because the legislator considers that the benefits to the debtor would not justify the detrimental effects on society in general or on certain areas of the economy.

Thus, quantitative limits are set for the exemption of public law credits, as it is considered to be appropriate for a fair and just society, and credits that are secured by collateral are excluded from the exemption, as otherwise the possibilities of access to credit in a country where the majority of the population opts for the acquisition of their home through mortgage financing would be harmed without any justification whatsoever.

Procedural aspects and reorganisation of the judiciary

Within the framework of the so-called "Justice 2030 Strategy", the Spanish government has submitted a bill to Parliament regarding procedural efficiency, which, if finally enacted and notwithstanding the eventual amendments it may undergo throughout its legislative proceedings in Congress and the Senate, would amount to the most ambitious and in-depth transformation of civil and corporate litigation since the passing of the Civil Procedural Act in 2000.

Its most relevant aspect is the introduction of a mandatory attempt at a friendly, out-of-court settlement between the parties prior to resorting to litigation. This attempt may consist, among other means, in a conciliation, a mediation or a confidential negotiation carried out with the intervention of a third, neutral expert. This good-

faith attempt must be duly documented and attested as a prerequisite to filing a lawsuit; with some exceptions, failure to engage in it will result in the automatic and immediate dismissal of the claim by the court.

While some experts have praised this initiative, arguing that it will reduce the number of lawsuits, promote a culture of co-operation and reduce the notoriously heavy workload of most Spanish courts, other sources remain sceptical, citing that it will only serve to "bureaucratise" the process and add unnecessary, cumbersome formalities.

The bill expands on the use of digital communications as a means of replacing classic, paper-based notifications, thereby facilitating the interaction between the courts, law professionals and third parties, and expediting the process. It also regulates the use of videoconferences for the deposition of witnesses and the interventions of lawyers in trials and hearings. This replacement of face-to-face acts with videoconferences has been trialled with some degree of success over the past two years as a result of the COVID-19 pandemic and will now be codified into law.

In order to promote conciliation between work and family for law professionals, for the first time the bill contemplates the possibility of suspending the course of proceedings during maternal leave, and stipulates that the period between 24 December and 6 January will be considered as non-working days in the judiciary, except in urgent matters.

The bill introduces a new procedure for class actions and mass litigation of banking and insurance disputes between consumers and companies, and increases the application of the more agile and versatile oral trial as opposed to declaratory actions. It suppresses some extraordinary appeals before the Supreme Court that had no practical application, and simplifies challenges before the Provincial Courts.

It does not include any noteworthy modification to family, inheritance or incapacitation-related processes.

Finally, the bill implements several changes to the enforcement of judgments, particularly regarding public auctions of seized assets, which are somewhat simplified to promote more active participation from the public.

While the main aim of this project is to modify the procedure for civil and corporate disputes, the bill also introduces some minor reforms in criminal, labour and administrative lawsuits, which exceed the purposes of this article.

Concurrently with this project, the government has presented its companion organisational efficiency bill, which radically transforms the traditional Spanish judicial structure, replacing single-judge courts with a new model of "Instance Tribunals". Sources from the Ministry of Justice expect this new design to provide for better allocation of human and material resources in the justice administration, enabling a swift transfer of means to where they are needed most and improving its overall functioning.

Unless the government fails to gather the necessary parliamentary votes due to political instabilities, the bills outlined above are expected to be approved and enter into effect by the end of 2022.

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