

FIFTH EDITION

# ARBITRATION WORLD

*INTERNATIONAL SERIES*

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# SPAIN

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## 1. EXECUTIVE SUMMARY

### 1.1 What are the advantages and disadvantages relevant to arbitrating or bringing arbitration related proceedings in your jurisdiction?

Arbitration in Spain has come a long way in the recent past.

The last decades of the twentieth century saw Spain take significant steps in the direction of creating a solid, modern and favourable legal framework for arbitration.

While the Arbitration Act of 1988 was an important step forward in the development of Spanish arbitration law, it was not until the enactment of the Arbitration Act in 2003 (Law 60/2003 of 23 December; the Arbitration Act or the Act) based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law) that Spain created a modern legal structure for arbitration.

Governmental bodies, universities, bar associations and entities of various levels and types (notably the Spanish Arbitration Club, or Club Español del Arbitraje; CEA) have picked up the gauntlet during the past decade to promote the acceptance and use of arbitration in domestic disputes, as well as to develop the attraction of Spain as an arbitral seat in international disputes. The local arbitral institutions have also taken significant strides towards modernising their rules, upgrading their technological capacities, internationalising their appeal and profile, and more generally marketing both their services and the attractiveness of Spain as an arbitral seat.

Still, the 2003 law has not itself been reformed and the series of minor 2011 amendments are insufficient to bring about fundamental changes to the perceptions and conceptions of judges, lawyers, clients and society at large. Spanish lawyers and their clients have historically looked somewhat askance at the institution of arbitration, preferring judicial processes and their lengthy appeals (the first of which being an appeal that may not only encompass matters of law, but also a full review of the facts). This view has been especially pronounced in respect of non-international disputes, but even in this area such perceptions are changing. The future of Spanish arbitration – particularly international arbitration, where the backgrounds, mindset, and general “baggage” of both arbitrators and counsel tend to lend a more modern orientation to the process – appears highly propitious.

A generation ago, Spain was on some groups’ blacklist of jurisdictions unfriendly to arbitration. Such instances are becoming increasingly rare. Varied and talented groups of professionals, and an increasingly understanding and receptive judiciary, augur well for the future of arbitration in Spain, creating a fertile and promising culture for the effective, efficient, peaceful and extra-judicial resolution of (particularly international) disputes.

### 1.2 How would you rate the supportiveness of your jurisdiction to arbitration on a scale of 1 to 5, with the number 5 being highly supportive towards arbitration and 1 being unsupportive of arbitration? Where your jurisdiction is in the process of reform, please add a + sign after the number

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## 2. GENERAL OVERVIEW AND NEW DEVELOPMENTS

### 2.1 **How popular is arbitration as a method of settling disputes? What are the general trends and recent developments in arbitration in your jurisdiction?**

Arbitration has become a popular method of resolving commercial disputes in Spain, especially in international disputes (where it is often viewed as the only option). It is less popular in domestic disputes, although its use appears to be increasing. Arbitration is typically used in disputes involving large, sophisticated and/or international companies, particularly in the context of sales contracts, energy, stock agreements, financial derivatives, joint venture agreements, mergers and acquisitions, construction projects, and supply and distribution agreements.

Arbitrations in Spain generally follow more specific and defined time lines in the resolving of a dispute than is typically the case in Spanish judicial proceedings, resulting in swifter final decisions (an aspect much appreciated by users). Commercial disputes demand prompt responses, and the Spanish commercial courts have neither the time nor the means to resolve complex litigations quickly. Arbitration has, therefore, become a real alternative to court proceedings in Spain.

The amendments that were made to the Arbitration Act in 2011 (Acts 5/2011 and 11/2011 of 20 May 2011) have enhanced the Act's application. The key alterations include:

- Changes to the competent courts with respect to arbitration-related matters aimed at providing greater specialisation in the high courts regarding arbitration matters, relieving the workload of the courts of first instance, ensuring greater consistency in the application of arbitration law and increasing legal certainty.
- Amendments to Law 1/2000 of 7 January 2000 of Civil Procedure (Civil Procedure Act) to permit parties to an arbitration agreement to seek interim measures from the courts prior to the commencement of arbitration proceedings.
- Incorporating the possibility of including arbitration clauses in corporate by-laws with respect to the challenging of corporate resolutions (this point is being reviewed and may be amended with regard to the requisite criteria for inclusion of an arbitration clause in corporate by-laws).
- Amendments to the Insolvency Act 22/2003 of 9 July 2003 to provide for the validity of arbitration and mediation agreements notwithstanding an initiation of insolvency proceedings, and for the implementation by the insolvency courts of interim or preservation measures issued by arbitral tribunals (provided that the insolvency court does not view the arbitration agreement or interim measures as detrimental to the insolvency proceedings).
- Several amendments with respect to arbitration awards designed to increase the quality and enforceability of awards, including:
  - requiring that the award must always state the reasons upon which it is based (unless made on the basis of an agreement reached between the parties);

- allowing parties to request rectification of the award when the tribunal has dealt with matters going beyond the scope of the arbitration agreement or the tribunal's jurisdiction, meaning that parties can request rectification in place of commencing an action to set aside the award; and
- eliminating any distinction between a partial and a final award.

## **2.2 Are there any unique jurisdictional attributes or particular aspects of the approach to arbitration in your jurisdiction that bear special mention?**

Unless otherwise agreed by the parties, the tribunal must decide the dispute within six months of the date of the filing of the statement of defence or the deadline for its submission. This period may be extended by the tribunal for a term not exceeding two months. Failure to render the award within this period, however, will not affect the validity of the award or the arbitration agreement, although the arbitrators may incur liability for the delay (*Article 37, Arbitration Act*).

## **2.3 Principal laws and institutions**

### **2.3.1 What are the principal sources of law and regulation relating to international and domestic arbitration in your jurisdiction?**

Arbitration in Spain is governed by the Arbitration Act. The Act is based on the UNCITRAL Model Law, although minor amendments were made in order to adapt its application to the Spanish legal system.

The Arbitration Act also applies to legislation containing specific provisions relating to arbitration, including legislation relating to consumer protection and intellectual property, and the provisions of international treaties to which Spain is a party (*Articles 1.1 and 1.3, Arbitration Act*). Its application does not extend to employment arbitration (*Article 1.4, Arbitration Act*).

There are no major distinctions between domestic and international arbitration in Spain. The only differences refer to the form and content of the arbitration agreement (*Article 9.6, Arbitration Act*), the rules applicable to the substance of the dispute (*Article 34.2, Arbitration Act*), and the correction and clarification of – or the issue of a supplement to – the award (*Article 39.5, Arbitration Act*).

In addition to the Arbitration Act, the Civil Procedure Act also contains provisions with application to arbitration in areas such as the judicial enforcement of interim measures and the recognition and enforcement of awards in Spain.

The national legal system for arbitration is further complemented by provisions in various enacted laws applying to areas such as insolvency and administrative law. There is also legislation on special arbitrations, such as those regarding consumer protection, sport, brands, private insurance and transport.

Spain is also a party to a number of multilateral and bilateral treaties that provide for arbitration and the recognition and enforcement of arbitral awards, including the New York Convention. Article 46 of the Arbitration Act provides for the application of the New York Convention to the recognition and enforcement of foreign awards in Spain.

### **2.3.2 Which are the principal institutions that are commonly used and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?**

The main arbitration institutions in Spain are:

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- The Court of Arbitration of the Official Chamber of Commerce of Madrid (or Corte de Arbitraje de la Cámara Oficial de Comercio e Industria de Madrid; CAM, [www.arbitramadrid.com](http://www.arbitramadrid.com)), with approximately 200 arbitrations filed in 2013.
- The Barcelona Arbitral Tribunal (or Tribunal Arbitral de Barcelona; TAB, [www.tab.es](http://www.tab.es)), with 51 arbitrations filed in 2014.
- The Civil and Commercial Court of Arbitration (or Corte Civil y Mercantil de Arbitraje; CIMA, [www.cimaarbitraje.com](http://www.cimaarbitraje.com)), with approximately 40 arbitrations filed in 2013.
- The Spanish Court of Arbitration (or Corte Española de Arbitraje, [www.corteespanolaarbitraje.es](http://www.corteespanolaarbitraje.es)).
- The European Arbitration Association (or Asociación Europea de Arbitraje; AEDAE, [www.asociacioneuropeadearbitraje.org](http://www.asociacioneuropeadearbitraje.org)), with 26 arbitrations filed in 2013, together with almost 700 accelerated proceedings for specialised arbitrations in residential lease disputes and disputes involving small and medium-sized enterprises.

All of the above institutions administer both domestic and international arbitrations.

In terms of international institutions, the International Chamber of Commerce (ICC) and the London Court of International Arbitration remain the most popular for Spanish arbitrations.

Whilst not an arbitration court or institution per se, it is also important to again mention the CEA as Spain's leading organisation for professionals working in the field of arbitration. The CEA has nearly 1000 members residing in some 40 countries and more than 20 active international branches. More than half of its members are foreign residents. The objectives of the CEA include promoting arbitration in the business community, promoting Spain as an international arbitration centre, and bringing the attitudes of the Spanish legislature, judiciary and arbitration practitioners more into line with international standards. The CEA maintains its own journal entitled *Spain Arbitration Review* and has published various codes and recommendations (including a set of model arbitration rules which have been used by many of Spain's leading arbitral institutions as a basis for their own institutional rules).

### **2.3.3 Which courts or other bodies have judicial oversight or supervision of the arbitral process?**

Articles 7 and 8 of the Arbitration Act set out the nature and extent of the intervention of Spanish courts in the arbitration process. Article 7 provides an overriding principle of minimum intervention: no court shall intervene in cases that are governed by the Arbitration Act except where the Act specifically provides to the contrary. Article 8 outlines the situations in which the courts may intervene and sets forth which courts are competent in any given circumstance.

Under Article 8, actions to set aside arbitral awards and the exequaturs of foreign awards are decided by the civil division of the high courts of each of the 17 autonomous regions of Spain (or *Salas de lo Civil de los Tribunales Superiores de Justicia de las Comunidades Autónomas*). These high regional courts are also competent to appoint and remove arbitrators in the absence of an agreement between the parties. Other matters (such as the court's assistance in obtaining evidence, the adoption of interim measures, or the enforcement of awards) remain within the jurisdiction of the courts of first instance (or *Juzgados de Primera Instancia*).

### 3. ARBITRATION IN YOUR JURISDICTION – KEY FEATURES

#### 3.1 The appointment of an arbitral tribunal

##### 3.1.1 Are there any restrictions on the parties' freedom to choose arbitrators?

The parties are free to appoint any person they deem appropriate as an arbitrator and it is not necessary for an arbitrator to be admitted to any bar, whether in Spain or elsewhere. The only legal restrictions are first that a sole arbitrator in an arbitration must be a jurist unless the contrary is expressly agreed between the parties (that is, this requirement does not apply to *ex aequo et bono* arbitrations) and, second, that where there is a panel of arbitrators, at least one member of that panel must be a jurist (*Article 15(1), Arbitration Act*). A jurist is generally considered to be someone with a thorough knowledge of the law – for example, a person who practices in the legal profession, who holds a law degree, or who is engaged in the study, interpretation and application of the law (although not necessarily practising or having been formally admitted to practise law in any jurisdiction).

##### 3.1.2 Are there specific provisions of law regulating the appointment of arbitrators?

Pursuant to Article 15 of the Arbitration Act, parties may expressly agree upon any procedure for the appointment of the tribunal, provided that the principle of equality is respected. Where the parties have not done so, the procedure stated in Article 15(2), described in *Section 3.1.3* below, will apply.

If it is impossible to appoint the tribunal through the procedure agreed between the parties, either party may apply to the competent court for the appointment of the tribunal (*Article 8(1), Arbitration Act*) or, if appropriate, for the adoption of necessary measures to achieve this (*Article 15(3), Arbitration Act*).

##### 3.1.3 Are there alternative procedures for appointing an arbitral tribunal in the absence of agreement by the parties?

In the absence of an express agreement between the parties, Article 15(2) of the Arbitration Act provides that:

- In an arbitration with a sole arbitrator the court will, upon the request of any of the parties, appoint the arbitrator.
- In an arbitration with three arbitrators, each party nominates one arbitrator and the two party-appointed arbitrators nominate the third arbitrator, who will act as the presiding arbitrator of the tribunal. If a party does not nominate an arbitrator within 30 days of receiving the request to do so from the other party then the court will, upon the request of either of the parties, make the appointment. The same procedure applies when the two arbitrators cannot reach an agreement as to the identity of the third arbitrator within 30 days of the date on which the later of those two arbitrators accepted their appointment.
- Where there are multiple claimants and/or respondents in an arbitration with three arbitrators, the claimants must jointly nominate one arbitrator and the respondents must jointly nominate another. If the claimants or the respondents cannot agree on the joint nomination of their arbitrator then the court will, upon the request of any of the parties, appoint all arbitrators.
- In arbitrations with more than three arbitrators the court will, upon the request of any of the parties, appoint all arbitrators.

### **3.1.4 Are there requirements (including disclosure) for “impartiality” and/or “independence”, and do such requirements differ as between domestic and international arbitrations?**

Article 17(1) of the Arbitration Act requires that every arbitrator be independent and impartial, must remain so throughout the proceedings, and must not maintain any personal, professional or commercial relationship with the parties. Article 17(2) further requires that an arbitrator who has been nominated disclose every circumstance that may give rise to justified doubts as to their impartiality or independence. This is an ongoing duty and applies to both domestic and international arbitrations.

Although it is not mandatory, arbitral tribunals in Spain also frequently follow codes of conduct, such as the CEA's Code of Good Arbitration Practices and its Recommendations on Independence and Impartiality of Arbitrators. Tribunals also frequently rely on the International Bar Association Guidelines on Conflicts of Interest in International Arbitration 2004, particularly in international arbitrations.

### **3.1.5 Are there provisions of law governing the challenge or removal of arbitrators?**

The parties are free to agree on a specific procedure for the challenge or removal of an arbitrator (*Article 8(1), Arbitration Act*). The agreement of the parties includes the parties' adoption, by reference, of the rules of an arbitration institution or the drafting by the parties of a specific ad hoc clause. In the absence of such an agreement, Article 18(2) of the Arbitration Act provides that a party who wishes to challenge an arbitrator must state the grounds for such challenge within 15 days of either having actual knowledge of the arbitrator's acceptance of the appointment, or of becoming aware of any circumstance that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Unless the challenged arbitrator decides to withdraw voluntarily or the opposing party agrees to the challenge, the tribunal will then decide on the challenge. The Arbitration Act does not prevent a challenged arbitrator from taking part in any decision regarding the challenge by the tribunal, and in Spain it is common practice for the challenged arbitrator to participate in such a decision.

If a challenge is unsuccessful, subject to the procedure elected by the parties (that is, the procedure provided for in any arbitration rules adopted or in accordance with the ad hoc agreement between the parties) or, if the parties have no such agreement, the procedure outlined in Article 18(2) of the Arbitration Act, the challenging party may later use the unsuccessful challenge as the basis for a challenge to set aside the award.

### **3.1.6 What role do national courts have in any such challenges?**

Pursuant to Article 18 of the Arbitration Act, national courts do not play a role in the challenge procedure; instead, it is left to the arbitral tribunal. Where the parties have agreed on a procedure (for example, by reference to institutional rules) to govern such arbitrator challenges, the agreed procedure will apply.

### **3.1.7 What principles of law apply to determine the liability of arbitrators for acts related to their decision-making function?**

Generally, the tribunal will not be liable, even in negligence. However, pursuant to Article 21(1) of the Arbitration Act, members of the tribunal will be liable for acts of bad faith, recklessness or wilful misconduct. Pending litigation in a case involving an award that was set aside on grounds of alleged misconduct by the majority of the panel can be expected to clarify the issue of arbitrators' liability for their conduct. The Arbitration Act also includes an obligation

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on arbitrators and arbitral institutions to take out adequate insurance in order to cover these potential liabilities (*Article 21(1)*).

## **3.2 Confidentiality of arbitration proceedings**

### **3.2.1 Is arbitration seated in your jurisdiction confidential? What are the relevant legal or institutional rules which apply?**

Article 24(2) of the Arbitration Act provides that the tribunal, the parties and the arbitral institutions must maintain the confidentiality of the information they acquire through the arbitration proceedings. The parties can also contractually agree to such a duty, and indeed any institutional arbitration rules adopted by the parties may also cover the issue. Most of the Spanish arbitral institutions guarantee the confidentiality of arbitration proceedings.

### **3.2.2 To what matters does any duty of confidentiality extend (for example, does it cover the existence of the arbitration, pleadings, documents produced, the hearing and/or the award)?**

At face value, Article 24(2) appears to apply only to information received during the proceedings; however, in practice, this duty of confidentiality usually extends to any type of document and information produced during the arbitration, including the parties' submissions and the award itself.

As noted in *Section 3.2.1* above, the issue of confidentiality may also be addressed by any institutional arbitration rules that have been adopted or an agreement between the parties.

### **3.2.3 Can documents or evidence disclosed in arbitration be used in other proceedings or contexts?**

The Arbitration Act does not specifically provide for the extension of the duty of confidentiality to civil litigation or to any other contexts. As a general rule, however, the duty of confidentiality contained in Article 24(2) of the Arbitration Act will be interpreted widely, preventing the disclosure of such evidence.

### **3.2.4 When is confidentiality not available or lost?**

Confidentiality is not available or will be lost when:

- The parties have so agreed (*Article 1255, Spanish Civil Code*).
- The criminal courts are investigating a possible crime.
- The involvement of the courts is sought – for example, with respect to matters of arbitral support or the recognition and enforcement of the award (*Article 955, Civil Procedure Act 1881* and *Article 517(2), Civil Procedure Act*).

## **3.3 Role of (and interference by) the national courts and/or other authorities**

### **3.3.1 Will national courts stay or dismiss court actions in favour of arbitration?**

As evidenced by the numerous court decisions supporting the submission of disputes to arbitration, the Spanish courts have shown themselves to generally be friendly to arbitration. The role of the courts is subject to the overriding principle of minimum intervention stated in Article 7 of the Arbitration Act, except where specifically provided to the contrary. Article 8 of the Act specifies those circumstances in which the courts may intervene. These circumstances are generally limited to functions of support, including the provision of assistance with respect to the appointment



and removal of arbitrators, the obtaining of evidence, interim measures, and the execution and enforcement of awards.

Article 11 of the Arbitration Act prevents the courts from hearing disputes where there is an arbitration agreement in existence and a party to the court proceedings files an objection to the jurisdiction of the court (or *declinatoria*). Where an arbitration agreement exists, the courts will generally order a stay of court proceedings or dismiss court proceedings in favour of arbitration. In accordance with Article 22 of the Arbitration Act, any disputes as to the existence or validity of the arbitration agreement will be referred to the arbitral tribunal for decision. Any decision of the tribunal with respect to jurisdiction may only be challenged by means of an application to set aside the award (Article 22(3), *Arbitration Act*).

### **3.3.2 Are there any grounds on which the national courts will order a stay of arbitral proceedings?**

The law does not expressly regulate the circumstances in which the Spanish courts can order a stay of arbitration proceedings. Potentially, a party wishing to stay an arbitration could request a stay of the arbitral proceedings by way of interim relief provided that the necessary requirements for the granting of such relief are met (see *Section 4* below).

With respect to the stay of arbitral proceedings with a seat outside of Spain but within the European Union, the Spanish courts will consider the precedent of the European Court of Justice in *Allianz Spa v West Tankers (C-185/07) [2009] ECR I-663* (which had an undeniable influence on the review of the Brussels I Regulation) by reinforcing the arbitration exclusion of its Article 1.2 (d). However, the revised Regulation did not go as far as reversing the said ECJ ruling with respect to anti-suit injunctions, which are deliberately omitted.

### **3.3.3 What is the approach of national courts to parties who commence court proceedings in your jurisdiction or elsewhere in breach of an agreement to arbitrate?**

A challenge to the jurisdiction of the court (or *declinatoria*) made by any party pursuant to Article 11 of the Arbitration Act (referred to in *Section 3.3.1* above) must be made within a period of time that depends upon the type of court proceedings commenced. In ordinary proceedings (or *juicio ordinario*), the objection must be filed within the first ten days of the 20 days that the defendant has to answer the claim. In oral proceedings (or *juicio verbal*), reserved for disputes under EUR 6,000 and other summary disputes, the objection must be filed within the first five days of the defendant being served with notification of the proceedings. If the challenge is upheld by the court, then the court will deem itself incompetent and will refer the matter to arbitration.

If the parties participate in the court proceedings (without prejudice to the *declinatoria*), they will be deemed to have agreed to waive the arbitration agreement.

A challenge does not prevent the commencement or continuation of existing arbitration proceedings; nor does it prevent the tribunal from deciding on the question of its own jurisdiction, even if the court is considering the issue at the same time (Article 22, *Arbitration Act*). We are not aware of any precedents where a Spanish court has issued an anti-suit injunction against arbitration proceedings.

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**3.3.4 Is there a presumption of arbitrability or policy in support of arbitration? Have national courts shown a willingness to interfere with arbitration proceedings on any other basis?**

There is no presumption of arbitrability expressly provided for under Spanish law.

**3.3.5 Are there any other legal requirements for arbitral proceedings to be recognisable and enforceable?**

There are no other legal requirements. In practice, however, the legal representatives of the parties usually obtain powers of attorney confirming the client's consent to have that legal representative act on its behalf.

**3.4 Procedural flexibility and control****3.4.1 Are specific procedures mandated in particular cases, or in general, which govern the procedure of arbitrations or the conduct of an arbitration hearing? To what extent can the parties determine the applicable procedures?**

The only mandatory provisions with respect to the conduct and procedure of an arbitration are contained in Article 24 of the Arbitration Act, which provides that the tribunal must treat the parties equally and give each party a full opportunity to present its case.

Article 25 of the Act provides that parties may freely agree upon the procedure of the arbitration, but if the parties fail to reach an agreement then the tribunal may conduct the arbitration in the manner it deems appropriate (subject to the provisions of the Act), including with respect to the admissibility, relevance, usefulness and weight to be given to evidence. As detailed in this chapter, the Arbitration Act provides numerous default procedures to apply to instances in which there is no agreement between the parties.

**3.4.2 Are there any requirements governing the place or seat of arbitration, or any requirement for arbitral hearings to be held at the seat?**

Article 26 of the Arbitration Act governs the seat of arbitration. The parties are free to choose the seat but, in the absence of such agreement, it will be fixed by the tribunal, taking into account the circumstances of the case (that is, the domicile of the parties and the place where an eventual award is likely to be enforced) and the convenience of the parties. Nevertheless, some arbitration rules published by Spanish arbitral institutions set forth that, in the absence of an agreement between the parties, the seat of arbitration will be the seat of the court of arbitration.

Article 1(1) of the Act limits its scope and application to arbitrations with a seat in Spanish territory, although Article 1(2) provides that several of its provisions will be applicable to arbitrations seated outside of Spanish territory.

Article 26 further provides that the tribunal may, in the absence of an agreement between the parties and after consultation with them, meet anywhere that the tribunal considers appropriate in order to examine witnesses, experts or the parties, or to examine objects, documents and persons. The tribunal may also hold deliberations and (subject to any agreement between the parties) hearings anywhere that it considers appropriate.

**3.4.3 What procedural powers and obligations does national law give or impose on an arbitral tribunal?**

The arbitral tribunal's powers are very broad and, as provided for by Article 22 of the Arbitration Act, include the power to decide on its own jurisdiction as well as on any questions regarding the existence or validity of the

arbitration agreement. The only limit to the powers of the tribunal is that it must treat the parties equally and ensure due process.

### **3.4.4 Evidence**

#### *3.4.4.1 What is the general approach to the gathering and tendering of written evidence at the pleading stage and at the hearing stage?*

The Arbitration Act provides the tribunal with wide-ranging discretion with respect to the gathering and tendering of evidence and permits a variety of approaches to be taken. Article 25 of the Act provides that, if the parties fail to come to an agreement in accordance with the Act, the tribunal may conduct the arbitration in the manner that it deems appropriate; this includes the power to decide on the admissibility, relevance and utility of (and weight to be given to) evidence. The tribunal can also decide on the production of evidence that it deems to be appropriate and, if necessary, seek judicial assistance in this regard.

Domestic arbitrations in Spain tend, from a procedural perspective, to follow a Spanish civil law approach to the gathering and tendering of evidence. That approach is more restrictive than other approaches and entirely different from the common law procedure. In international arbitrations, however, tribunals tend to follow a mixture of procedures, taken from both the continental and common law legal systems. There is also a growing tendency to use the IBA Rules on the Taking of Evidence in International Arbitration, together with other similar “soft law” documents, as guidelines.

Witness statements are generally presented through direct oral questioning, as in Spanish court proceedings, although the use of written statements and cross-examination is frequent in international arbitrations and is slowly increasing in domestic arbitrations. The arbitrators themselves also typically question witnesses after cross-examination has taken place.

Generally, evidence is submitted together with the pleadings or written memorials, as in Spanish court proceedings.

The Arbitration Act does not itself address the issue of legal privilege; however, mandatory laws on the protection of trade secrets, military secrets and professional privilege apply.

#### *3.4.4.2 Can parties agree the rules on disclosure? How does the disclosure in arbitration typically differ to that in litigation?*

Parties can agree the rules on disclosure, but the concept of discovery as understood in common law countries is alien to Spanish practice. As such, Spanish courts will generally not assist foreign courts with a general discovery-related request. There is the possibility of discovery under Spanish law, but this is quite restrictive and its use is limited.

#### *3.4.4.3 What are the rules on oral (factual or expert witness) evidence? Is cross-examination used?*

See Section 3.4.4.1 above.

Expert witnesses usually deliver their testimony in the form of a report. Pursuant to Article 32(2) of the Arbitration Act, unless otherwise agreed between the parties, the expert must attend the evidentiary hearing to be questioned on their expert report and cross-examined should either party request that they so attend or the arbitrator deem it necessary.

3.4.4.4 *If there is no express agreement, what powers of compulsion are there for arbitrators to require attendance of witnesses (factual or expert) or production of documents, either prior to or at the substantive hearing? To what extent are national courts willing or able to assist? Are there differences between domestic and international arbitrations, or between orders sought against parties and non-parties?*

As mentioned in Section 3.4.4.1 above, a tribunal has wide-ranging powers to request evidence from the parties (Articles 25 and 32, Arbitration Act). The tribunal does not, however, have jurisdiction or authority over individuals or entities that are not party to the arbitration agreement itself. As such, if third parties refuse to disclose documents or attend the arbitration, then judicial assistance, as provided for by Articles 8(2) and 33 of the Arbitration Act, may be sought.

Pursuant to Article 33 of the Act, either the arbitral tribunal or the parties may request judicial assistance for the production of evidence. The court may provide this assistance in one of two ways: by requiring the production of the requested evidence before the court (if so requested by the parties); or by the adoption of necessary measures to compel the production of the evidence before the arbitral tribunal. The competent court will be either the court of first instance of the seat of the arbitration or the physical location where the taking of the evidence will occur. The court will order the production of such evidence in accordance with Articles 281 to 386 of the Civil Procedure Act which require, amongst other things, that the evidence must be necessary, relevant and legally obtained. Articles 297 and 299 to 386 of the Civil Procedure Act are also applicable with respect to the use and admissibility of evidence in arbitral proceedings and the power of the court to compel the production of evidence, as well as to sanction parties who do not obey the court's order. These articles outline the nature and form of evidence that can be requested by the parties and ordered by the court, as well as the procedure for the presentation and consideration of such evidence.

3.4.4.5 *Do special provisions exist for arbitrators appointed pursuant to international treaties (that is, bilateral or multilateral investment treaties)?*

No.

### **3.4.5 Are there particular qualification requirements for representatives appearing on behalf of the parties in your jurisdiction?**

The Arbitration Act does not specifically provide any requirements with respect to the qualifications of representatives appearing in arbitration proceedings on behalf of parties in Spain.

However, when judicial assistance is required, Article 31 of the Civil Procedure Act provides that only practising lawyers may provide legal advice and appear before a Spanish court (subject to the limited exceptions listed in Article 31(2)).

## **3.5 The award**

### **3.5.1 Are there provisions governing an arbitral tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at the arbitral proceedings?**

If a defendant, having been duly summoned to arbitration proceedings, fails to appear at the proceedings, the arbitration will continue in its absence.

When the arbitration proceedings are in process, Article 31 of the Arbitration Act provides that, in the absence of any agreement between the parties and without providing sufficient cause in the opinion of the tribunal:

- If the claimant does not file its claim on time, the tribunal shall terminate the proceedings unless the defendant affirms its desire to bring an action.
- If the defendant does not file its statement of defence on time, the tribunal will continue the proceedings without considering that the said omission constitutes an acceptance of the claim or an admission of the facts alleged by the claimant.
- If one of the parties fails to attend a hearing or does not file evidence, the tribunal may continue the proceedings and issue an award based on the evidence it has before it.

### **3.5.2 Are there limits on arbitrators' powers to fashion appropriate remedies, for example, punitive or exemplary damages, specific performance, rectification, injunctions, interest and costs?**

The Arbitration Act does not limit the power of the tribunal to grant appropriate remedies. The tribunal or sole arbitrator may, however, be limited by the law applicable to the dispute as agreed by the parties, as well as by the public policy of the seat of the arbitration (for example, punitive damages are not permitted under Spanish law, so arbitrators cannot award them in cases governed by such law).

### **3.5.3 Must an award take a particular form? Are there any other legal requirements, for example, in writing, signed, dated, place stipulated, the need for reasons, method of delivery?**

The formal requirements for an award to be valid are set out in Article 37 of the Arbitration Act. In summary (and subject to limited exceptions) the award must:

- Be in writing and signed.
- State the reasons on which it is based.
- State the seat and the date upon which it was issued.
- Subject to the agreement of the parties, include a declaration regarding the costs of the arbitration.

The tribunal must serve the award on the parties in the manner and under the terms agreed between the parties or, in the absence of such agreement, by delivering a signed copy to each of them in the manner and in accordance with the terms set out in Article 37(7) of the Arbitration Act. The award may be recorded by a public notary at the expense of the requesting party.

Pursuant to Article 37(2) of the Arbitration Act, unless otherwise agreed between the parties, the tribunal must decide the dispute within six months from the date of filing the answer (or the deadline for its submission). This period may be extended by the arbitrator for a term not exceeding two months. Failure to render the award within this period will not affect the validity of the award or the validity of the arbitration agreement.

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**3.5.4 Can an arbitral tribunal order the unsuccessful party to pay some or all of the costs of the dispute? Is an arbitral tribunal bound by any prior agreement by the parties as to costs?**

The Arbitration Act makes no mention of the criteria for the apportionment of costs by the tribunal. As such, the tribunal may decide on the issue of costs and their apportionment, taking into account any agreement between the parties (including any provisions in the arbitration rules selected – for example, Article 39.6 of the CAM Arbitration Rules sets out that “unless the parties agree otherwise in writing, the arbitrators may make their orders on arbitration costs on the basis of the principle that the decision proportionally reflects the parties’ relative success and failure of their respective positions in the case, except when it appears to the arbitrators that in the particular circumstances of the case the application of this general principle is inappropriate”).

Hence, in deciding on the apportionment of costs, the tribunal will usually take into consideration the conduct of the parties during the proceedings and the relative success of the parties’ respective claims.

**3.5.5 What matters are included in the costs of the arbitration?**

Article 37(6) of the Arbitration Act provides that the costs of the arbitration shall include the fees and expenses of the tribunal as well as, where applicable, the fees and expenses of the counsel or representatives of the parties and the cost of services provided by the administering arbitral institution, together with other expenses incurred in the arbitration. As such, subject to any agreement between the parties and any arbitration rules adopted, the tribunal has considerable discretion and is free to reduce or exclude any costs claimed by the parties that it deems inappropriate, excessive or unjustified.

**3.5.6 Are there any practical or legal limitations on the recovery of costs in arbitration?**

No.

**3.5.7 Are there any rules relating to the payment of taxes (including VAT) by foreign and domestic arbitrators? If taxes are payable, can these be included in the costs of arbitration?**

No specific rules apply to arbitrators as far as their Spanish tax treatment is concerned.

If the arbitrator is resident for tax purposes in Spain, any income received would be subject to Spanish personal income tax (20% to 47%, depending on the arbitrator’s total income and region of residence; 19% to 45% from 2016 onwards). Payments by Spanish companies to Spanish resident arbitrators are subject to Spanish withholding tax (currently 19% (18% from 2016 onwards) or 9% for self-employed arbitrators during the first two years of self-employment).

If the arbitrator is not resident for tax purposes in Spain then any income received would, in principle, be subject to Spanish non-resident income tax. Assuming that the arbitrator has no permanent establishment in Spain (that is, a fixed place of business), a flat rate of 24% (or 20% (19% from 2016 onwards) if the arbitrator is resident in another EU member state with a double taxation treaty with Spain that includes a clause for the exchange of information) would apply if either of the following is the case:

- The arbitrator’s work was carried out in Spain (that is, the arbitration is seated in Spain).

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- The services were rendered for the benefit of activities located in Spain and/or related to assets located in Spain (that is, if one of the parties to the arbitration has a business in Spain and the services of the arbitrator related to this business or its assets then, in principle, the income of the arbitrator would be subject to Spanish non-resident income tax).

If the services were only partially connected to Spain, then a proportional allocation scheme would apply.

Notwithstanding the above, if the arbitrator is resident for tax purposes in a jurisdiction that has signed a tax treaty with Spain, the provisions of this tax treaty with respect to self-employed providers must be considered to determine whether or not the income received by the arbitrator should be subject to Spanish taxation or not. In order to rely on the provisions of a tax treaty, the arbitrator should provide a certificate issued by the tax authorities of his or her jurisdiction of residence stating that they are a resident for the purposes of such tax treaty, so that its provisions are applicable.

According to the Spanish value added tax (VAT) rules, the supply of services by arbitrators is subject to Spanish VAT to the extent that the beneficiary of the services is located, for VAT purposes, within Spanish VAT territory. If the arbitrator is not established for VAT purposes within Spanish VAT territory, the Spanish beneficiary of the arbitration services (if it is subject to VAT itself) should normally apply the reverse charge method and self-assess the relevant Spanish VAT quota (21%). If the beneficiary is not a Spanish VAT-liable entity or individual, the arbitrator may have to charge foreign VAT. VAT charges are recoverable by the beneficiary if it carries out transactions that are subject to, and not exempt from, VAT (or if an exemption applies that entitles the VAT-liable entity or individual to recover input VAT, such as the exemption applicable to exports).

In general terms, should the VAT be recoverable by a given party, its amount should not be included as part of the costs of the arbitration.

## **3.6 Arbitration agreements and jurisdiction**

### **3.6.1 Are there form, content or other legal requirements for an enforceable agreement to arbitrate? How may they be satisfied? What additional elements is it advisable to include in an arbitration agreement?**

The formal requirements of an arbitration agreement are set out in Article 9 of the Arbitration Act, which follows Article 7 of the UNCITRAL Model Law. Spanish courts, however, do not tend to view the formal writing requirements in a strict sense; rather, they assess overall whether there is sufficient evidence to demonstrate the unequivocal will of the parties to submit the dispute to arbitration.

When the arbitration is international, Article 9 provides that the arbitration agreement will be valid and the dispute arbitrable if it meets the requirements for validity specified by any of: the laws selected by the parties to govern the arbitration agreement; the law applicable to the substance of the dispute; or Spanish law. There is no provision with respect to whether one of these laws should be applied in preference to any other.

In terms of additional elements, to avoid unnecessary disputes it is always advisable to include in the arbitration agreement the seat of the arbitration, any institutional rules to be followed, the number of arbitrators (as well as the method for their appointment), and the language of the arbitration.

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### **3.6.2 Can an arbitral clause be considered valid even if the rest of the contract in which it is included is determined to be invalid?**

Pursuant to Article 22(1) of the Arbitration Act, an agreement to arbitrate which forms part of a contract is to be considered as an agreement separate from that of the terms of the contract in which it is contained. Accordingly, any decision by the tribunal declaring the contract null and void will not mean that the arbitration agreement is null and void. For example, where a contract was procured by fraud or misrepresentation and subsequently declared null and void, the question of whether the arbitration agreement remains valid would be considered separately.

### **3.6.3 Can an arbitral tribunal determine its own jurisdiction (“competence-competence”)? When will the national courts deal with the issue of jurisdiction of an arbitral tribunal? Need an arbitral tribunal suspend its proceedings if a party seeks to resolve the issue of jurisdiction before the national courts?**

Article 22 of the Arbitration Act expressly recognises the principle of competence-competence, stating that only the tribunal is entitled to determine its own jurisdiction. The tribunal may rule on a challenge to its jurisdiction either prior to, or together with, the final award.

Article 22(3) provides that a tribunal’s decision on jurisdiction may only be challenged through an action for annulment of the award. If the tribunal rules on jurisdiction at the outset of the arbitration, the action for annulment of the partial award will not suspend the arbitration proceedings.

Outside of such scenarios, the Arbitration Act makes no mention of whether the jurisdiction of an arbitrator can be challenged before the national courts. Therefore, if a challenge were to be made, it would be likely to be dismissed given that, under Spanish law, arbitrators are entitled to determine their own jurisdiction. However, were a party to seek to resolve the issue of jurisdiction before the national courts, pursuant to Article 11(2) of the Arbitration Act, such a challenge would not prevent the initiation or continuation of arbitration proceedings.

### **3.6.4 Is arbitration mandated for certain types of dispute? Is arbitration prohibited for certain types of dispute?**

Spanish law does not provide for the mandatory arbitration of any type of dispute. The agreement to arbitrate is based on the will of the parties to submit to arbitration all or some of the disputes that have arisen or may arise between them with respect to a certain legal relationship.

Article 2 of the Arbitration Act states that only those disputes which relate to matters within the free disposition of the parties are arbitrable and, as such, certain family law and criminal law matters are excluded. Article 1(4) of the Act also excludes from the Act’s application arbitrations with respect to labour disputes. Article 2 further provides that, in an international arbitration where one of the parties is a state (or a company or an organisation controlled by a state), such party shall not be able to appeal to the prerogatives of the law governing it in order to avoid the obligations arising from the agreement to arbitrate. The Arbitration Act specifically recognises the arbitrability of intellectual property disputes. Pursuant to Article 22(1) of the Arbitration Act, the question of arbitrability is a matter for the consideration of the tribunal.

As expressly provided in Article 11 bis, corporate disputes (specifically, challenges by shareholders and administrators to company resolutions) may be submitted to arbitration.



### **3.6.5 What, if any, are the rules which prescribe the limitation periods for the commencement of arbitration proceedings and what are such periods?**

There are no specific rules under Spanish law which prescribe the limitation period for the commencement of an arbitration seated in Spain. Where the substantive law of the dispute is specified to be Spanish law, as a general rule, Articles 1961 to 1975 of the Spanish Civil Code apply with respect to the prescription of actions. However, these periods vary depending on the nature of the dispute and are assessed by the courts on a case-by-case basis. The prescription period for contractual actions is 15 years, with such period commencing from the time at which the cause of action arose (*Article 1964, Spanish Civil Code*).

### **3.6.6 Does national law enable an arbitral tribunal to assume jurisdiction over persons who are not party to the arbitration agreement?**

The Arbitration Act does not specifically address whether third party non-signatories may be bound by an arbitration agreement. Generally, the tribunal and the courts will analyse the situation on a case-by-case basis and, in the past, have ruled that an arbitration agreement may bind third parties if they have a close and strong relationship with a signatory to the agreement or have played a significant role in the performance of the contract.

The courts have extended the application of the arbitration agreement in instances where one party has subrogated its rights under law, where there has been a company merger and also, under the “group of companies” doctrine, following the principles of the *Dow Chemical France v Isover Saint Gobain decision, ICC Case No 4131* (where a non-signatory may benefit from or be bound by an arbitration agreement signed by a group company due to the role that it played in the transaction). However, in this respect, the courts have generally held that a third party’s tacit acceptance of an arbitration agreement may only be deduced from unequivocal and conclusive facts.

## **3.7 Applicable law**

### **3.7.1 How is the substantive law governing the issues in dispute determined?**

Article 34 of the Arbitration Act provides that, when the arbitration is international, the tribunal shall decide the dispute in accordance with the rules of law chosen by the parties. The indication of the chosen law or legal system of a particular state will, unless otherwise stated, be understood to mean the substantive law of that state and not its conflict of laws rules.

Article 34 further provides that, if the parties do not indicate the applicable law, the tribunal will apply the law that it deems to be appropriate. While the Act does not provide further guidance with respect to how a tribunal should decide in such a case, Article 34(3) provides that the tribunal should make its decision in accordance with the terms of the underlying contract and take into account any relevant trade practice.

### **3.7.2 Are there any mandatory laws (of the seat or elsewhere) which will apply?**

Article 1 of the Arbitration Act defines its scope of application. The Arbitration Act will apply to arbitrations seated within Spanish territory, whether domestic or international, without prejudice to the provisions of any treaties to which Spain is a party or special laws containing provisions on arbitration. Article 1(2) establishes the mandatory application to both domestic and international arbitrations of: Articles 8(3), (4) and (6) (adoption of interim measures, the enforcement of awards and the recognition of foreign awards); Article 9 (form and content of an arbitration agreement – but not with respect to standard form contracts); Article 11 (arbitration agreement and

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jurisdiction of the courts, statutory arbitration and awards annulling registrable agreements); Article 23 (power of the arbitrators to adopt interim measures); Title VIII (enforcement of the award); and Title IX (exequatur of foreign awards).

Furthermore, the decisions of the tribunal must also be consistent with Spanish public policy, which is generally understood to be the fundamental rights contained in the Spanish Constitution of 1978.

## 4. SEEKING INTERIM MEASURES IN SUPPORT OF ARBITRATION CLAIMS

### 4.1 Can an arbitral tribunal order interim relief? If so, in what circumstances? What forms of interim relief are available and what are the legal tests for qualifying for such relief?

Article 23 of the Arbitration Act states that, in the absence of an agreement between the parties to the contrary, either party may request that the tribunal grant such interim measures it deems necessary or appropriate with respect to the subject matter of the dispute. In granting such relief, the tribunal may require the requesting party to provide sufficient security to cover any potential damage that the other party might suffer as a result of the imposition of such measures (should the requesting party be unsuccessful in its claim).

The Arbitration Act does not elaborate with respect to the form of interim relief that may be sought or with respect to the legal tests that should apply in order to qualify for such relief. However, in practice, arbitrators will follow the provisions on interim relief as outlined in the Civil Procedure Act (as further detailed below). The relief may be issued in the form of an order or an award but, whichever form is taken, the relief will be subject to the provisions of the Arbitration Act on the setting aside and enforcement of awards.

### 4.2 Have national courts recognised and/or limited any power of an arbitral tribunal to grant interim relief?

No. The tribunal can grant any form of interim relief so long as the relief awarded is granted in respect of the subject of the arbitration (*Article 23, Arbitration Act*).

### 4.3 Will national courts grant interim relief in support of arbitration proceedings and, if so, in what circumstances?

Article 11(3) of the Arbitration Act provides that the existence of an arbitration agreement will not prevent a party, either prior to or during the arbitration proceedings, from requesting interim measures from the court, particularly in instances where the requesting party intends to enforce the measure against third parties.

Article 8(3) of the Act, in accordance with Article 724 of the Civil Procedure Act, provides that the competent court for interim measures requests will be the competent court of the place where the award is to be executed or, failing that, the place where the measures should take effect.

In requesting the interim relief, Article 728 of the Civil Procedure Act provides that the requesting party must demonstrate each of the following before the court:

- A prima facie case (*fumus boni iuris*).

- The adverse consequences that would arise if the court were to reject the application for the relief sought (*periculum in mora*).
- Proportionality between the measure sought and the right to be protected.

In granting the relief, the court may order the requesting party to provide appropriate security as compensation for any possible detriment which may be caused to the other party by the relief granted. When requesting interim relief prior to the commencement of arbitration proceedings, a party must also demonstrate that it is indeed a party to an arbitration agreement and provide reasons as to why the measure should be adopted (*Article 722, Civil Procedure Act*).

Article 726 of the Civil Procedure Act establishes that the competent court may grant any form of interim relief, provided that it complies with certain general conditions also outlined in that article and does not offend Spanish public policy or any mandatory law (thus giving a party considerable flexibility to seek relief tailored to its needs). Article 727 of the Civil Procedure Act provides specific examples of interim measures that may be sought.

Court-ordered interim measures will remain in force after the arbitral tribunal's constitution (*Article 724, Civil Procedure Act*).

#### **4.4 Are national courts willing to grant interim relief in support of arbitration proceedings seated elsewhere?**

Article 722 of the Civil Procedure Act provides that, notwithstanding any special rules set forth in international treaties and conventions or any European Union rules that may apply, an applicant who can demonstrate that it is party to arbitration proceedings being conducted in a foreign country may seek injunctive relief from a Spanish court should the general prerequisites for the issue of such relief be met (as set out in Article 728 of the Civil Procedure Act and discussed in *Section 4.3* above) – except in cases where, under Spanish law, the main issue in dispute falls within the exclusive competence of the Spanish courts and so cannot be decided by arbitration.

Interim relief granted in the form of an award with respect to arbitration proceedings seated outside of Spain would be subject to the regulations on the enforcement of foreign awards and judgments.

## **5. CHALLENGING ARBITRATION AWARDS**

### **5.1 Can an award be appealed to, challenged in or set aside by the national courts? If so, on what grounds?**

Article 43 of the Arbitration Act provides that an arbitral award has *res judicata* effect and cannot be appealed on its merits. However, the Act does provide for the revision of an award by the civil division of the High Court (or *Sala de lo Civil del Tribunal Supremo*) or, where regional law was applied, the civil division of the high courts of each of the 17 autonomous regions of Spain (or *Sala de lo Civil de los Tribunales Superiores de Justicia*), in either case on the limited grounds outlined in Article 510 of the Civil Procedure Act. Those grounds include:

- Pertinent decisive documents were obtained after the issuance of the award, where such documents date from before the date of issuance of the award and were not previously made available due to *force majeure* or an act of the party in whose favour the award has been rendered.

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- The award was made on the basis of documents that, unknown to the tribunal at the time of the award, had been declared as false in criminal proceedings (or were subsequently declared as false in criminal proceedings).
  - The award was made on the basis of evidence given by witnesses or experts subsequently convicted of giving false testimony with respect to that evidence.
  - The award was unfairly obtained by bribery, violence or fraud.

Articles 40 to 42 of the Arbitration Act provide for the annulment or challenge of an award. Article 41 states that an award may be annulled if the applicant proves one of the following grounds:

- The arbitration agreement does not exist or is invalid.
- Proper notice of the appointment of an arbitrator or of the arbitral proceedings was not given, or the party was otherwise unable to present its case.
- The tribunal has resolved questions that were not submitted for its decision.
- The appointment of the tribunal or the arbitral procedure was not conducted in accordance with the agreement between the parties (unless such agreement is contrary to a mandatory provision of the Arbitration Act) or, in the absence of such an agreement, was not conducted in accordance with the Arbitration Act.
- The tribunal has decided questions not capable of arbitration.
- The award is contrary to public policy.

An action for annulment of the award must be made within two months of the notification of the award to the parties.

## **5.2 Can the parties exclude rights of appeal or challenge?**

According to Spanish case law, parties cannot exclude rights of appeal or challenge.

## **5.3 What are the provisions governing modification, clarification or correction of an award (if any)?**

The grounds for the correction, clarification or issue of a supplement to an award are outlined in Article 39 of the Arbitration Act.

Unless the parties have agreed on a different period of time, within ten days from receiving notification of the award a party may request that the tribunal to do any of the following:

- Correct any computational, clerical or typographical error, or any other errors of a similar nature.
- Clarify a point or a specific part of the award.
- Supplement the award with respect to claims presented in the arbitral proceedings but not resolved in the award.

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- Rectify the award where the tribunal has exceeded its authority and decided upon any issues which either were not submitted to the tribunal's decision or were issues incapable of submission to arbitration.

After hearing the other party, the tribunal will resolve the application for the correction or clarification of the award within a period of ten days of such hearing when the arbitration is domestic, or within one month when it is international. With respect to the issuance of a supplement to the award and/or the rectification of the award due to excess of jurisdiction, the tribunal must resolve the issue within a period of 20 days when the arbitration is domestic, or within two months when it is international.

However, the tribunal may, within a period of ten days from the issuance of an award, correct any computational, clerical, typographical or similar error *ex officio*.

## 6. ENFORCEMENT

### 6.1 Has your jurisdiction ratified the New York Convention or any other regional conventions concerning the enforcement of arbitration awards? Has it made any reservations?

As reflected in Article 46 of the Arbitration Act, Spain has ratified the New York Convention without any reservations.

Spain is also a party to other multilateral treaties, including the Geneva Convention of 1961 (*Article 46, Arbitration Act*), the Geneva Protocol on Arbitration Clauses of 1923, the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 and the ICSID Convention.

Spain is a party to numerous bilateral treaties providing for arbitration and the recognition and enforcement of arbitral awards, including treaties with Brazil, China, Colombia, Czech Republic, Italy, France, Mexico, Morocco, Switzerland and Uruguay. In total, Spain has ratified over 70 bilateral investment treaties.

Spain has also signed several multilateral conventions regarding the protection of investments which provide for arbitration to resolve any investor-state disputes. These include the North American Free Trade Agreement, the Colonia Protocol for the Promotion and Protection of Investments in Mercosur, the Agreement on Trade Related Investment Measures, the General Agreement on Trade in Services, and the Energy Charter Treaty.

### 6.2 What are the procedures and standards for enforcing an award in your jurisdiction?

The proceedings for the enforcement of an arbitral award in Spain differ depending on whether the award is domestic or foreign. For the purposes of Article 46(1) of the Arbitration Act, a foreign award is one issued outside of Spain.

If an award has been issued in Spain, direct enforcement is possible. If the award is a foreign award, recognition by the Spanish courts must be obtained before seeking enforcement. Pursuant to Article 517 of the Civil Procedure Act, domestic awards are to be enforced in the same way as local court judgments and in accordance with the Civil Procedure Act. The competent court will be the court of first instance of the place where the award was issued (*Article 545(2), Civil Procedure Act*) and the party against whom the award is being enforced will have ten days from the receipt of the court order dispatching the enforcement to lodge any objection (*Article 556, Civil Procedure Act*). The bases upon which such objections can be raised are set out in Articles 556 to 559 of the Civil Procedure Act, with

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the court competent to rule on any such objection being the court before which enforcement of the award is sought. An objection against enforcement will not stay the enforcement of the award (*Article 556(2), Civil Procedure Act*).

Article 46(2) of the Arbitration Act provides that foreign awards will be recognised and enforced pursuant to the New York Convention, without prejudice to the provisions of other, more favourable, international conventions granting recognition and enforcement, and in accordance with the procedure provided in the Civil Procedure Act for foreign court judgments. The New York Convention applies in its entirety, Spain having ratified the Convention without reservations. The procedure for the recognition and enforcement of foreign awards is governed by Articles 953 to 958 of the Civil Procedure Act (further to Article III of the New York Convention), with Articles 953 to 954 acting in a supplementary manner to the Convention. In particular, Article 953 outlines the principle of reciprocity for the recognition of foreign awards as embodied in the New York Convention.

The competent court for the recognition of foreign awards, unless international treaties or laws of the European Union establish otherwise, is the civil division of the regional high court of the domicile of the residence of the party against whom the recognition is requested (or the person who is affected by the award) or, where this is not possible, the civil division of the regional high court of the place of enforcement or the place where the award will produce its effects (*Article 8, Arbitration Act*). The competent courts for the enforcement of a foreign award are the courts of first instance (*Article 8(6), Arbitration Act*). If an action for enforcement is not brought within five years from the date upon which the award was notified to the parties, the right to bring the action will lapse (*Article 518, Civil Procedure Act*).

The process of enforcement in Spain usually takes from 9 to 12 months.

The cost of such proceedings would depend on the amount of the award that is being enforced (*Article 539, Civil Procedure Act*). However, it should be noted that the jurisprudence with respect to the liability for the costs of enforcement is not entirely clear, as there is a precedent that suggests that the defending party cannot be held liable for the costs of enforcement proceedings.

### **6.3 Is there a difference between the rules for enforcement of “domestic” awards and those for “non-domestic” awards?**

See *Section 6.2*.