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Andersen Tax & Legal is an independent tax and legal firm with a worldwide presence through the member firms and collaborating firms of Andersen Global. Its main offices are located in Madrid, Valencia, Seville and Barcelona. The civil law, criminal law, litigation and insolvency department of Andersen Tax & Legal advises on all types of proceedings in civil and commercial matters, at all levels and before all

institutions. It also advises on alternative dispute resolution – arbitration and mediation – on the same matters. The department provides services on contracts, advice and full representation on questions of ownership, guarantees, personal and fundamental rights, probate, family law and civil contracts of all kinds. Currently, the litigation and arbitration department is composed of 38 lawyers.

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1. General

1.1 General Characteristics of Legal System

The Spanish legal system follows the so-called civil or codified law, even if, increasingly, it has been accepting and integrating different aspects of the common law system.

The sources of the law consist in statutory law, custom and general principles of law. Case law is not generally considered a source of Spanish law. Nonetheless, case law issued by the Supreme Court complements the other sources of Spanish law, assisting with the interpretation and application of the law.

Spanish civil legal proceedings are conducted through both written submissions and oral argument.

1.2 Court System

The principle of jurisdictional unity is the basis of the organisation and operation of the courts. The exercise of judicial authority in any kind of action, both in passing judgments and having judgments executed, lies exclusively within the competence of the courts and tribunals established by the law, in accordance with the rules of jurisdiction and procedure which may be established therein.

Spain has five distinct jurisdictional orders, which are classified by subject matter jurisdiction: civil, criminal, administrative, labour and military jurisdiction. Each jurisdiction has its own substantive and procedural rules. Under civil jurisdiction, specialised courts were created in order to deal with concrete subject matters – for example, commercial and family matters.

Civil Courts are organised within a pyramidal structure, including: (i) First Instance Courts (*Juzgados de Primera Instancia*) and Commercial Courts (*Juzgados de lo Mercantil*) at the lowest level; (ii) Courts of Appeals (*Audiencias Provinciales*) and Regional Superior Courts (*Tribunales Superiores de Justicia*) which are both above First Instance Courts; and (iii) the Supreme Court (*Tribunal Supremo*), which is located at the highest level of the Spanish Court system.

1.3 Court Filings and Proceedings

As a general rule, hearings of civil proceedings are open to the public. However, courts may restrict the public nature of civil proceeding hearings and rule that all or some of the procedural acts or measures adopted shall be kept secret to protect public order or the basic rights and freedoms of an individual (minors' rights, privacy rights, honour and intimacy rights, etc).

1.4 Legal Representation in Court

According to Section 23 of the Spanish Civil Procedural Act (SCPA), appearance before the court must be through-out a court agent (*procurador*), who must: (i) hold a law

degree or any other equivalent university degree; and, (ii) be authorised to exercise their profession in the judicial party of the court which will hear the case. Notwithstanding these provisions, parties may appear for themselves in the following cases: (i) in oral proceedings (*juicios verbales*), whose determination is based on the amount, which does not exceed EUR2,000, and in order for payment procedures (*procedimiento monitorio*); (ii) in universal trials, when the appearance is limited to the submission of entitlement credits or rights, or to attend meetings; and (iii) in incidents relating to a decision regarding legal aid and where urgent pre-hearing measures are requested.

In Spain, national lawyers may conduct cases throughout all the Spanish territory and be only an active member of a specific local bar association. According to Section 31 of the SCPA, litigants shall be counselled by lawyers duly authorised to exercise their profession. No applications may be filed without a lawyer's signature, with the exceptions of: (i) in oral hearings whose determination is based on the amount, and which does not exceed EUR2,000; and, (ii) written submissions with the intention of appearing before the court, request for urgent measures prior to trial or request for urgent suspension of hearings or proceedings.

2. Litigation Funding

2.1 Third-Party Litigation Funding

In Spain, litigation funding by a third party is permitted. Nevertheless, third-party funding is rare at most, due to the fact that it has not yet been regulated. Nonetheless, there are no significant legal obstacles for it to properly develop. There are promising prospects for third-party funding in Spain, given that: (i) the rule for the allocation of costs in civil proceedings implies that the party whose claim has been dismissed in full would face higher costs; (ii) besides state legal aid, there are no regulated alternative funding mechanisms for civil proceedings; (iii) third-party funding overwhelmingly facilitates access to justice because it allows a party to litigate or defend itself from an action that otherwise could not be pursued.

2.2 Third-Party Funding: Lawsuits

There are no restrictions when it comes to types of lawsuits available for third-party funding. In Spain, we may find that litigation funds are most commonly found in commercial litigation and arbitration.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is available to both the plaintiff and the defendant.

2.4 Minimum and Maximum Amounts of Third-Party Funding

As stated in 2.1 **Third-Party Litigation Funding**, there is no specific regulation of third-party litigation funding in the Spanish jurisdiction. Therefore, no minimum and maximum amount is fixed for a third party to fund.

2.5 Types of Costs Considered under Third-Party Funding

Third-party funds may cover both procedural costs – such as court agent's fees, lawyer's fees and expert's fees – and court fees. The coverage extension will depend on the contract signed between the third-party funder and the party.

2.6 Contingency fees

Contingency fees have been allowed in Spain since the Supreme Court declared them to be legal by a judgment rendered on 4 November 2008. Since then, no restriction may be found in this field; consequently, they may be freely agreed.

2.7 Time Limit for Obtaining Third-Party Funding

No specific time requirements have been established in order to obtain third-party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

In most cases, it is common practice that parties may reach to an amicable solution before initiating a proceeding before national courts. Nowadays, it is still not mandatory.

Nevertheless, on 11 January 2019, the Draft Law on Mediation Promotion was approved by the Spanish Government. This law aims at the definitive introduction of mediation as a complementary figure of the Administration of Justice for dealing with out-of-court settlement disputes in the civil and commercial fields in a more agile manner and with lower economic costs for the parties. The new law will try to resolve the most common civil and commercial conflicts through the participation of a mediator before going to the judge, thereby seeking to reduce the workload of the courts and shorten the response times of the justice system.

3.2 Statutes of Limitations

Under Spanish law, there are two types of statute of limitations applicable to civil actions. One may be interrupted by way of a judicial or non-judicial claim (*“prescripción”*).

This first type has different periods depending on the action brought to court: (i) for actions based on in rem rights (*“derechos reales”*) over immovable property, the period for the statute of limitation is generally of 30 years, whereas the period for actions over movable property is generally of six years after possession was lost. Actions based on mortgages

last for 20 years. The statute of limitation period for actions brought to protect personal rights is, as a general rule, of five years. This statute of limitation is also generally applicable to actions arising from contractual obligations. The statute of limitation for actions based on tort is of one year since the claimant became aware of the damages caused.

The second type of statute of limitations applicable to civil actions may not be interrupted (*“caducidad”*). Such is the case with (i) actions relating to the enforcement of final judgments or awards (a five-year period from the date of the judgment); (ii) actions to amend or rescind contracts (a four-year period); or (iii) claims brought to the courts within an existing proceeding (a two-year period if there has been no procedural activity at first instance level, and a one-year period at higher levels).

3.3 Jurisdictional Requirements for a Defendant

The SCPA requires a defendant to own capacity to be a party and own the condition of legitimate party to the proceeding. Section 6 of the SCPA determines that the following may be parties in the proceedings before civil courts, for example:

- natural persons;
- those conceived but not born;
- legal persons;
- entities lacking legal personality which the law recognises as having the capacity to be a party; and
- groups of consumers or users affected by a damaging event when the parties which compose these are determined or easily determined.

In order to lodge a claim in court, the group must necessarily be constituted by the majority of those affected. According to Section 10 of the SCPA, a legitimate party shall be one which appears and acts in court as party to the judicial relationship or the matter in dispute.

3.4 Initial Complaint

In Spain, two main different types of proceedings may be differentiated – ordinary proceedings and oral proceedings. Both initiate with the filing of a claim; their main difference lies in their formal requirements, with these being simplified for oral proceedings.

In both cases, according to sections 399 and 437 SCPA, the claim must:

- properly identify the court to which the claim is brought, the parties and their domiciles, and the claimant's attorney and court agent if their intervention is mandatory;
- neatly and separately expose the facts and the grounds of law supporting the claim;
- clearly describe the relief sought; and,
- include the date and the signatures of the intervening lawyer and court agent.

Moreover, the complaint shall also include all the documents on which the claim is based and that are either known, or should be known, at the time the complaint is filed, as no further documents may be added at a later date, except if they are also of a later date or could not be produced at the time of its filing (Section 270 of the SCPA).

3.5 Rules of Service

As a general rule, once the claim has been filed and declared admissible, the court shall be responsible for serving it to the defendant, and shall grant a 20-business-day period to file the statement of defence.

According to Section 155.1 of the SCPA, when the parties involved are not represented by a court agent, or when the notice is an initial summons or order to attend, notices shall be sent to the party's address. Section 155.2 of the SCPA establishes that, for the purposes of the initial summons or order to attend sent to the defendant, the claimant shall likewise designate as the defendant's address the one appearing in the municipal registry of inhabitants or in any other official record. Should the claimant designate several places as addresses, the claimant shall indicate the order in which notice may be successfully served.

Section 156.1 of the SCPA, determines that if the claimant states that he is unable to designate the defendant's address or place of residence for serving purposes, the court clerk shall use any suitable means to find any new domicile and may, as appropriate, get in contact with registries, organisations and professional associations in order to do so.

Serving the complaint abroad requires to follow the procedure set out in: (i) Regulation EC 1393/2007 on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters if the complaint is being served in an EU member state; or (ii) The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters if the complaint is being served outside the EU.

3.6 Failure to Respond

If the defendant does not file a statement of defence after 20 business days since serving, the proceedings will continue in its absence. In such case, the court will declare the defendant in default. It should be taken into consideration that default declaration does not imply an acceptance of the claim or an admission of the facts of the claim. The defendant may appear at any stage during the proceedings. It being the case, the procedural actions and measures already agreed in its absence will be valid and will not be repeated.

3.7 Representative or Collective Actions

Generally speaking, representative or collective actions are permitted by the Spanish legal system, but they have slight differences with those existing in common law countries.

Spanish law allows for representative or collective actions to be filed: (i) to defend the "collective interest" of consumers, which may be brought by a consumer association or other authorised legal entity when the affected individual claimants are identified or are easily identifiable; and (ii) to protect "widespread interests" of consumers, which may be brought by a sufficiently representative consumer association for the protection of common interests of consumers whose identity is unknown or difficult to determine.

Additionally, public prosecutors and certain qualified bodies from any EU member state are allowed to seek injunctions for the protection of consumers' interests in Spain, pursuant to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests.

The Spanish legal system provides that individual consumers may freely opt-in but they may not opt-out of the proceedings. This is due to the fact that once they have joined the proceedings they will be bound by the final judgment.

To guarantee that all individual consumers are aware of the proceedings and have the opportunity to join: (i) the admission of the complaint is published in the media of the territory wherein the damages occurred; and (ii) if the members of the group are identifiable, the claimant sends a letter to all of them prior to filing the complaint.

3.8 Requirements for Cost Estimate

Lawyers must provide clients with a cost estimate of their fees as soon as possible. Commonly, these costs are written down in an order sheet, but this document is not mandatory.

4. Rules on Pre-action Conduct

4.1 Interim Applications/Motions

Parties may initiate pre-trial proceedings in order to prepare a future legal action. These pre-trial proceedings are known as "*diligencias preliminares*", regulated under sections 256 to 263 of the SCPA, which basically consist in collecting information and/or documents needed to lodge a future claim.

4.2 Early Judgment Applications

According to Section 405.1 of the SCPA, the defendant must argue specific procedural matters in its Statement of Defence, the court having to take a decision during the pre-trial hearing (Section 416 SCPA).

These specific procedural matters consist in:

- the litigants lack of capacity or representation of several kinds;
- *res iudicata* or *lis pendens*;
- lack of due joint litigation;

- inappropriateness of proceedings; and
- legal defect in the way the claim/counterclaim has been filed.

Depending on the decision rendered by the court, the proceeding may be closed if any of the above-referred matters are irremediable.

4.3 Dispositive Motions

See 4.1 Interim Applications/Motions.

4.4 Requirements for Interested Parties to join a Lawsuit

The SCPA allows any interested party, not named as plaintiff or defendant, to join the proceeding at any point, as long as they hold a direct and legitimate interest in its outcome. Direct and legitimate interest is held whenever the judgment may constitute, modify or extinguish a legal relationship to which the third party is also a party.

The new party may: (i) voluntarily join the proceedings, without interrupting the normal course of the proceedings and only after the court has heard all of the parties, or; (ii) be requested to join by any of the parties, with the claim if it is requested by the plaintiff or within the time period to file the statement of defence if it is requested by the defendant, whenever such requests are authorised by the law.

Section 14 of the SCPA determines that, in the event that the law permits the claimant to call a third party to intervene in the proceedings, without it being considered a defendant, the application for intervention must be included in the claim unless the law expressly states otherwise.

4.5 Applications for Security for Defendant's Costs

There is no provision in the SCPA which allows a defendant to apply for a court's order consisting of a plaintiff's obligation of paying a sum of money as security for the defendant's costs.

4.6 Costs of Interim Applications/Motions

Rules concerning costs of interim applications/motions are the same as the general ones – see Section 11. Costs.

4.7 Application/Motion Timeframe

The timeframe will depend on if the application is urgent or not. Evidently, there will be some motions that will need a quick decision and, due to their urgency, they can be alleged even before the lawsuit (Section 730 SCPA). In addition, that urgency can also withhold from the other party their right to be heard exceptionally (Section 733 SCPA). See also Section 6. Injunctive Relief, below.

5. Discovery

5.1 Discovery and Civil Cases

The Spanish legal system does not provide for discovery.

Regardless of the above, a party may request the other party to exhibit certain documents that the petitioner does not have, as long as these documents refer to the object of the proceedings or the efficacy of other means of evidence. This petition may be requested before filing the complaint or at a later date, at the evidentiary phase.

If the petition is made at the evidentiary phase, the petitioner shall provide a copy of the documents or, if no copy is available, give a precise indication of its content. If the petitioned party refuses to exhibit a document, the court may give evidentiary value to the copy provided by the petitioner, or to the version of the document's content given by the petitioner which will be assessed jointly with the other available evidence. Alternatively, the court may issue a court order so that the requested documents are included in the proceeding's file.

Nevertheless, this injunction is limited to specific cases, for example: (i) an application against the future defendant to declare under oath or promise to tell the truth on a fact concerning his capacity, representation or legal competency required to be known for the case, or to exhibit the documents proving such capacity, representation or legal competence; (ii) an application against the future defendant to exhibit the object in his or her possession that shall be referred to at the hearing, and (iii) application by a partner or joint owner for the exhibition of documents and accounts of the company or condominium.

Additionally, since the implementation of Directive 2014/104/EU took place, the SCPA regulates a specific proceeding regarding the disclosure of evidence in order to bring legal actions for damages arising from infringements of competition law.

Spanish courts will not allow fishing expeditions and will only accept precise and justified requests of particular documents.

Regarding the costs, the party who requests the preliminary injunction will bear with the costs incurred by individuals who participated in the referred proceeding, as well as any damages which may arise while executing the measure. This is the reason why the party will have to provide a security when filing the preliminary injunction.

5.2 Discovery and Third Parties

As established in 5.1 Discovery and Civil Cases, it is also possible to ask a third party to exhibit a document. For example, Section 256.1.5 bis of the SCPA determines that

any hearing may be prepared by requesting medical records to the healthcare centre or professional having custody of such records, under the terms and with the content provided for by the law.

5.3 Discovery in This Jurisdiction

As previously stated, discovery is not allowed in the Spanish legal system. However, it is possible to ask for documents or information in order to prepare the trial; see **5.1 Discovery and Civil Cases** and **5.2 Discovery and Third Parties**.

5.4 Alternatives to Discovery Mechanisms

See **5.1 Discovery and Civil Cases**, **5.2 Discovery and Third Parties** and **5.3 Discovery in This Jurisdiction**.

5.5 Legal Privilege

The Spanish legal system does recognise attorney-client legal privilege.

Thus, attorneys are legally, contractually and ethically bound to keep secret all information, facts and issues known due to their professional activity and they cannot be compelled to testify about them. Actually, it is a criminal offence to reveal information subject to client-attorney legal privilege.

Moreover, the European Court of Justice has recently established that in-house attorneys are not protected by legal professional privilege in the EU competition context. Therefore, if the advice given by an in-house attorney could relate to a competition issue, then the attorney must note the real risk that his or her communications – though containing legal advice – can be seized and used by European competition authorities in any subsequent investigation (see C-550/07 P – Akzo Nobel Chemicals and Akcros Chemicals against European Commission).

5.6 Rules Disallowing Disclosure of a Document

The party will have to disclose the requested document once the court has rendered such decision. According to Section 261 of the SCPA, if the summoned party fails to comply with the request and does not file any objection, the court shall, for example: (i) consider the applicant replied in an affirmative manner and the corresponding facts shall be considered admitted for the purposes of the subsequent trial; and (ii) order the entry to and search of the place, and if the required documents are found, the court shall put them at the disposal of the applicant at the court premises.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Injunctive reliefs are admitted under Spanish law and their purpose is to secure the potential enforcement of the future judgment rendered in a process.

The competent court to adjudicate any injunctive relief is the First Instance Court or Commercial Court competent to hear the principal claim. If the relief is intended to protect a foreign action, the competent court would be the court of the place where the assets are located or of the place where the relief must produce effects.

Section 726 of the SCPA determines that the court may order an injunctive relief in the following circumstances:

- when it is aimed exclusively at guaranteeing the effectiveness of the judicial protection that may be granted in a possible affirmative judgment, to ensure that it cannot be prevented or hampered by situations occurring while the relevant proceedings are still pending;
- when they cannot be replaced by another measure equally effective for the purposes of the preceding paragraph but less burdensome or damaging for the defendant.

Section 727 of the SPCA establishes specific reliefs that may be requested by any plaintiff, consisting of, by way of example: (i) attachment of assets; (ii) judicial intervention of productive assets; (iii) deposit of movable assets; (iv) preventive registrations in public registries; (v) orders to provisionally cease any specific conduct and (vi) stay of corporate resolutions. The list is open, as Spanish law grants the opportunity to request any relief necessary to secure potential enforcement of the future judgment.

The applicant of any injunctive relief has to meet three requisites for the relief to be granted.

- First requisite: the petitioner has to provide evidence about the good standing of its position (*fumus boni iuris*). This means that the petitioner would have to provide solid arguments about a positive outcome of the principal claim. All means of evidence have to be proposed by the petitioner with the request for the injunctive relief.
- Second requisite: the petitioner has to provide the court with solid arguments about the need to urgently adopt the relief and the dangers that the claimant may be facing if the relief is not granted (*periculum in mora*).
- Third requisite: the petitioner has to deposit a bond, which will be determined by the competent judge and shall be enough to cover the possible damages that the defendant suffers if the claim is dismissed. Therefore, the pursued objective of the bond is to bear the risk of possible damages which the interim measure may cause in the defendant's wealth.

The decision rendered by the tribunal may be subject to appeal before the Provincial Court.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

The Spanish legal system allows injunctive reliefs, considering that they must be requested with the claim.

Nevertheless, Section 730.2 of the SCPA allows injunctions to be sought prior to the claim if, at the relevant time, the applicant alleges and evidences reasons of urgency or necessity. In this case, the measures adopted shall cease to have effect if the claim is not filed before the court who heard the request for the said measures within 20 days following their adoption. The court clerk shall issue *ex officio* an order lifting or revoking any acts of compliance that have been performed, ordering the applicant to pay the costs and declaring that the latter is liable for the damages caused to the person in relation to whom the measures were adopted.

Moreover, exceptionally, if the applicant justifies the existence of urgency, the court may order an injunctive relief in the following five days without hearing the defendant (Section 733.2 SCPA).

6.3 Availability of Injunctive Relief on an Ex Parte Basis

In general terms, injunctive reliefs are decided prior to hearing the defendant (Section 733.1 SCPA). However, *ex parte* reliefs may be also requested under exceptional circumstances if serving on the defendant could jeopardise a proper enforcement of the relief granted by the court.

In other words, the injunctive relief can be granted without hearing the defendant, but this performance must be justified at the court (Section 733.2 SCPA). In addition, that decision must be notified to the other party as soon as possible.

6.4 Liability for Damages for the Applicant

The injunction's petitioner will be held liable for damages suffered by the respondent if the respondent successfully later discharges the injunction (Section 745 SCPA).

Therefore, and unless expressly decided otherwise, Section 728.3 of the SCPA determines that the applicant for the injunction shall post security sufficient to compensate, in a speedy and effective manner, the damages that the adoption of the injunction may cause to the estate of the defendant.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Section 726 SCPA does not limit the assets that can be the object of an injunctive relief, in terms of location. Therefore, injunctive relief can be granted against worldwide assets of the respondent.

6.6 Third Parties and Injunctive Relief

Injunctive relief cannot be obtained against third parties due to the fact that Section 726 of the SCPA highlights that those

measures may only be directed against assets and rights of the defendant.

6.7 Consequences of a Respondent's Non-compliance

According to Section 738.1 of the SCPA, once the injunction has been established and the security posted, it shall be complied with immediately *ex officio*, using to this end any necessary required means, including those established for the enforcement of judgments.

7. Trials and Hearings

7.1 Trial Proceedings

Trials in the Spanish jurisdiction are preceded by the claim, filed by the plaintiff, and the statement of defence (or counterclaim), filed by the defendant within a 20-day period since the notification of the claim. This phase of the procedure is conducted in writing.

Later on, parties are summoned to attend a prior hearing. The prior hearing is an act whereby the parties may reach an agreement. If the dispute persists, the claimant and the defendant will normally ratify the content of their claim and statement of defence, respectively. Thereupon, the court will examine if there are any circumstances that may impede the proceedings from being validly conducted, such as, for example: (i) *res iudicata*, (ii) the proceeding's inappropriateness, and (iii) the existence of a legal defect in the way the claim or the statement of defence have been filed.

During the prior hearing the parties may also propose additional evidence to that which accompanied their claim/statement of defence (if it complies with certain requisites established in the SCPA), and may also contest the evidence proposed by the contrary. Finally, the court will determine when the trial will be held.

At trial, admitted evidence in the prior hearing is practised before the judge and the parties present their conclusions orally. The judgment is subsequently issued in writing.

Nevertheless, it has to be taken into consideration that in oral proceedings both the prior hearing and the trial are conducted at once.

7.2 Case Management Hearings

The SCPA doesn't regulate any specific provisions for case management hearings. All cases will be held following either the ordinary or oral proceeding.

7.3 Jury Trials in Civil Cases

Spanish civil law does not allow jury trials to take place.

7.4 Rules That Govern Admission of Evidence

No evidence which is considered to be useless or irrelevant will be admitted. Evidence is useless, if according to reasonable and secure rules and criteria, it cannot contribute to clarifying controversial facts, and irrelevant if it bears no relation to the subject of the proceedings.

The Spanish legal system states that evidence obtained with a breach of fundamental rights shall not be admissible in court and may also affect subsequent evidence.

7.5 Expert Testimony

The Spanish legal system allows for expert testimony to be taken at trial.

The plaintiff shall attach (or announce) experts' testimonies with the claim, whereas the defendant shall attach (or announce) experts' testimonies with the statement of defence or counterclaim.

The experts' testimonies may only be announced if it is impossible for any of the parties to attach them to the complaint, the statement of defence or the counterclaim. If this is the case, experts' testimonies shall be submitted, at most, five days before the prior hearing in ordinary proceedings, or before the hearing in oral proceedings, provided that the court is informed of the delay.

Likewise, if the need for an expert testimony becomes apparent only after the statement of defence or the allegations made at the prior hearing, parties will be able to file the expert testimony five days before the trial takes place (Section 338 of the SCPA).

Any of the parties may ask the court to designate an expert in any proceedings. The request shall be accepted if the court considers the testimony to be useful and pertinent. In this case, the petitioner shall bear the cost of the expert testimony, unless the court dismisses the other party's claims and orders it to pay all costs.

Moreover, the court may seek expert testimony or guidance ex officio in certain proceedings, such as, filiation, maternity, paternity, legal capacity or in matrimony proceedings.

7.6 Extent to Which Hearings are Open to the Public

As a general rule, civil proceeding hearings are open to the public. However, courts may restrict the public nature of civil proceeding hearings and rule that all or some of the procedural acts or measures adopted shall be kept secret to protect public order or the basic rights and freedoms of the individual (minors' rights, privacy rights, honour and intimacy rights, etc).

7.7 Level of Intervention by a Judge

The level of intervention by a judge may vary depending on the act which is being conducted.

During the prior hearing, the judge leads the lawyers from one stage to another, stages which are regulated under sections 414 and 429 of the SCPA. During the trial, the court may question the witness or expert summoned to testify in order to obtain clarifications and additional information. The court may also pose questions to the experts and request explanations from them regarding the subject matter of the submitted opinion, although the judge may not agree to extend it ex officio.

The final judgment will be issued by writing once the hearing has taken place.

7.8 General Timeframes for Proceedings

Section 434 of the SCPA determines that the final judgment will be granted 20 days after the trial has been held. Nevertheless, on most occasions, it is not possible to determine a specific timeframe for civil proceedings, due to the fact that this may rely on: (i) the workload of each court, (ii) the type of procedure that has been conducted, with ordinary proceedings tending to last longer than oral proceedings, and (iii) the complexity of the particular case.

8. Settlement

8.1 Court Approval

The Spanish legal system grants the parties the right to settle their dispute at any time. Court approval is not required to settle a lawsuit.

8.2 Settlement of Lawsuits and Confidentiality

Parties to a proceeding may opt for the settlement of lawsuits to remain confidential. In order to do so, parties are allowed to include a clause in the agreement which states this, due to the fact that Section 1255 of the Spanish Civil Code allows contracting parties to establish covenants, clauses and conditions as they deem appropriate, provided that they are not contrary to law, morality or public order.

8.3 Enforcement of Settlement Agreements

If the parties are aiming at turning their agreement into an enforceable title, then they have to submit the agreement to the court for its approval. The court shall validate the agreement unless there is a legal prohibition or there are specific limitations applicable for the protection of the general interest or a third party.

If the agreement is not approved by the court, the party looking for the enforcement of the agreement will have to initiate judicial proceedings in order to prove the existence and the infringement of the agreement.

8.4 Setting Aside Settlement Agreements

The same regime as contracts is applied for setting aside settlement agreements.

9. Damages and Judgment

9.1 Awards Available to Successful Litigant

The court may issue:

- a declaratory judgment;
- a judgment through which it affirms or denies a party to perform a specific act;
- a judgment including an obligation to pay;
- a judgment including an obligation to hand over something other than an amount of money; and
- a judgment including a penalty.

9.2 Rules Regarding Damages

The Spanish legal system states that compensation must be paid for all damages caused in contract and in tort, including material and moral damages. Nonetheless, the Spanish legal system applies the compensatory principle to damages. Therefore, damages are calculated on the basis of the actual harm caused to the aggrieved party and punitive damages are not admitted.

Incidentally, the Spanish legal system provides that compensation for damages arising from a contract shall include both the actual loss (*damnum emergens*) and the loss of profit (*lucrum cessans*). Only the loss of reasonably probable (given the circumstances and normal course of events) profits shall be compensated.

However, the Spanish legal system allows the parties to agree on liquidated damages ("*cláusula penal*"). These clauses are presumed to cover all remedies – including interests – for the losses caused due to breaches or delays, except if the parties agree that the liquidated damages are to be added to any damages that may also result from non-performance of the obligation(s) for which the liquidated damages were established.

9.3 Pre and Post-Judgment Interest

The party whose monetary claim has been upheld may collect interest accrued before and after the judgment is rendered.

Interest accrued before the judgment is rendered shall be calculated on the basis of the rate set out by the parties in contract, or lacking an agreement, the legal interest rate fixed annually by the Spanish government.

Interest accrued from the date the judgment is rendered (also known as procedural default interest) shall be calcu-

lated applying 2% over the legal interest rate to the claimed amount, up until the compensation is paid.

9.4 Enforcement Mechanisms of a Domestic Judgment

The enforcement of a domestic judgment may be obtained through, for example: (i) seizure of cash, salary and bank accounts, (ii) constitution of administration over all or part of the assets so that their yield may be used for payment, and (iii) attachment and appraisal of assets.

9.5 Enforcement of a Judgment from a Foreign Country

The enforcement of judgments is governed by three different sets of rules, depending on whether or not the state issuing the judgment belongs to the European Union.

Regulation 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters will apply if the judgment is rendered by the courts of an EU member state.

If the judgment has been issued by a non-EU member state, then international treaties should be consulted.

In the event that no international treaty is signed in between Spain and the country in which the judgment wants to be enforced, then Law 29/2015 on International Judicial Cooperation on Civil Matters will apply. The exequatur proceeding regulated therein will have to be followed.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

The Spanish legal system grants the parties the right to appeal the judgments issued by First Instance Courts before Provincial Courts. Moreover, even Second Instance judgments may also be subject to appeal before the Supreme Court.

10.2 Rules Concerning Appeals of Judgments

As a general rule, a first instance judgment may always be appealed. As an exception, judgments rendered in oral proceedings in which the amount claimed does not exceed EUR3,000 may not be appealed.

Some grounds for appeal against a first instance judgment include: (i) infringement, by the First Instance Court, of the party's right of defence, provided that a complaint was filed at the earliest possible opportunity; (ii) mistakes regarding the interpretation of the factual and legal considerations presented to it. In this case, the Provincial Court will have to fully re-examine the proceeding held before the First Instance Court.

Moreover, a judgment issued by a Provincial Court may also be subject to an extraordinary appeal before the Supreme Court, based on one of the following.

- Procedural infringements (“*recurso extraordinario por infracción procesal*”). The grounds for this extraordinary appeal include the infringement of:
 - (a) rules on functional and objective jurisdiction;
 - (b) procedural rules on the content of judgments;
 - (c) due process causing nullity or compromising a party’s right of defence; or
 - (d) the fundamental right to receive effective judicial protection.
- Infringement of the law regarding the merits of the case (“*recurso de casación*”). In order for the Supreme Court to agree to process the appeal, one of these requirements must be followed:
 - (a) protection of fundamental rights, except those ones recognised in Section 24 of the Spanish Constitution which may be sometimes arguable under the extraordinary appeal for breach of procedure (Section 477.2.1 of the SCPA);
 - (b) the amount at stake exceeds EUR600,000 (Section 477.2.2 of the SCPA);
 - (c) when the amount of the proceedings does not exceed EUR600,000 or the proceedings have been conducted due to their subject matter, provided that in both cases the decision on the appeal has to be decided by the Supreme Court to dictate case law (Section 477.2.3 of the SCPA).

10.3 Procedure for Taking an Appeal

Appeals against first instance judgments must be filed before the court that issued the challenged judgment within 20 business days of the notice of the judgment.

Later on, the court clerk will confirm the formal validity of the appeal, declare its admissibility and notify the other party/parties. In case the judgment is not eligible for appeal, the court shall decide on its admissibility.

If the appeal is granted, the court clerk shall summon the counterparties, giving them a period of ten business days in order to file their opposition to the appeal, and/or challenge the decisions rendered in the judgment with which they do not agree with.

Once the counterparties have filed their opposition, the court clerk will send the case file to the Provincial Court.

10.4 Issues Considered by the Appeal Court at an Appeal

The appeal court will consider only the pleas in which the appeal and the opposition to the appeal is based on.

Normally, admission of new evidence before Provincial Courts does not take place. Nevertheless, according to Section 460.2 of the SCPA, the taking of the kind of evidence set forth below may additionally be sought in the written statement to lodge the appeal:

- any evidence that may have been unduly rejected in the first instance, as long as the decision dismissing such evidence has been appealed or the protest filed at the hearing;
- any evidence proposed and admitted in the first instance which could not be taken for reasons which were not imputable to the applicant; and
- any evidence referring to relevant facts for the decision on the case that may have occurred after the time limit to issue a judgment in the first instance, or after such time limit, as long as in the latter case the party can prove he became aware of such evidence subsequently.

10.5 Court-Imposed Conditions on Granting an Appeal

According to the 15th Additional Provision of the Spanish Judiciary Act, the lodgement of an ordinary and an extraordinary appeal in the civil jurisdiction requires the payment of a deposit which amounts to EUR50.

Additionally, the Supreme Court’s Governing Chamber issued an agreement on 27 January 2017 which established the maximum length and other extrinsic conditions of the procedural documents relating to extraordinary appeals.

10.6 Powers of the Appellate Court After an Appeal Hearing

The Provincial Court may confirm, dismiss (partially or fully) and reverse the judgment issued by the First Instance Court. The judgment cannot be more harmful to the party who has appealed than the decision rendered by the first instance’s judgment (*reformatio in peius*).

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

According to Section 394 of the SCPA, in declaratory proceedings, the costs arisen in the first instance shall be imposed to the party who has had his or her pleas rejected unless the court considers and reasons that the case may pose serious *de facto* or *de iure* doubts.

The costs with which the party will have to bear are: court agent’s fees, lawyer and expert fees (limited to one-third of the procedure’s amount) and other expenses related to certifications and tariffs.

Section 245 of the SCPA allow parties to challenge the amount of the costs to be paid, within a period of ten days, if they consider the amount inappropriate or excessive.

11.2 Factors Considered When Awarding Costs

The factors which the court considers when awarding costs are: (i) if the party's pleas have been partially or totally accepted, (ii) the complexity of the case, and, (iii) the litigant's temerity – meaning the litigant making an outrageous claim (Section of the 394.2 of the SCPA).

11.3 Interest Awarded on Costs

Interests awarded on cost are a controversial issue in Spanish jurisdiction. Some courts consider them applicable on costs (eg, Judgment No 2109/2005 issued on 21 November 2005 by Guipuzcoa's Provincial Court), while others disagree (eg, Judgment No 19/2010 issued on 20 January 2010 by Barcelona's Provincial Court).

If interests are awarded, they will be heard from the issuance date of the court clerk's decree approving the costs.

12. Alternative Dispute Resolution

12.1 Views of Alternative Dispute Resolution Within the Country

Three alternative dispute resolution (ADR) methods are regulated in Spain: conciliation, mediation and arbitration.

Conciliation is the less popular ADR method in Spanish civil law, while it is more popular in labour law. Arbitration is commonly used for commercial and international disputes and mediation for family law issues.

12.2 ADR Within the Legal System

On one hand, until the Law on Civil and Commercial Mediation was approved in 2012, Spain lacked a set of rules to govern mediation as an ADR mechanism.

Due to the delay in having a proper regulation, Spain has been unable to properly promote mediation and, as a result, courts do not currently require mediation as a mandatory way to try and avoid litigation.

Nevertheless, on 11 January 2019, the Draft Law on Mediation Promotion was approved by the Spanish Government (see **3.1 Rules on Pre-action Conduct**). Consequently, mediation will increase in future and become a common practice in Spain.

On the other hand, arbitration is an extended practice in Spain. Legal entities are increasingly reaching agreements in order to solve a controversy through arbitration, the arbitration clause being legally binding.

Finally, conciliation is regulated by statutory law and forms part of court procedures. Nevertheless, if a party to the conciliation refuses to attend the conciliation act, no sanctions will be imposed.

12.3 ADR Institutions

On 16 October 2019, the constitution of the International Arbitration Centre of Madrid (CIAM) was announced. CIAM is the result of the merger of the international activities of the three most outstanding arbitration institutions in the country: the Madrid Court of Arbitration (CAM), the Civil and Commercial Court of Arbitration (CIMA) and the Spanish Court of Arbitration (CEA).

As of 1 January 2020, the CIAM will be competent to administer two types of international arbitrations arising from new arbitration agreements. First, those arising from agreements in which the parties directly designate CIAM as the administering court. Second, those arising from agreements in which the parties agree to submit to arbitration administered by CAM, CIMA or CEA.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Arbitration proceedings conducted in Spain are governed by the Spanish Arbitration Act 60/2003, of 23 December 2003. However, the Spanish Arbitration Act (SAA) applies without prejudice to the provisions of any treaties that may have been ratified by Spain or to any specific Spanish regulations containing provisions related to arbitration (such as intellectual property and consumer protection laws).

The UNCITRAL Model Law served as the main guide for the text of the SAA. However, the latter has established certain differences in order to promote arbitration within the Spanish jurisdiction.

13.2 Subject Matters not Referred to Arbitration

Section 2 of the SAA provides that only disputes relating to matters within the free disposition of the parties may be subject to arbitration. However, there is no definition whatsoever determining which matters are "within the free disposition of the parties". Specifically, the SAA excludes within its Article 1.4 arbitration proceedings related to labour matters. In addition, it is also clear that disputes regarding criminal matters and parental issues, for example, would be outside the scope of arbitration.

13.3 Circumstances to Challenge an Arbitral Award

Section 41 of the SAA provides the grounds on which an award can be challenged, stating that an award may be set aside when the applicant demonstrates that:

- the arbitration agreement does not exist or, if it does exist, is void;
- the applicant has not been notified about the appointment of an arbitrator or about any order or when the applicant has not been able to exercise its rights;
- the arbitrators have adjudicated matters that were not subject to their decision;
- the appointment of the arbitrators and/or the proceeding is in breach of the agreement of the parties or, failing such agreement or when such agreement is contrary to the Spanish Arbitration Act, that such appointment or the proceedings were made in breach of the Spanish Arbitration Act;
- the arbitrators have decided on matters that may not be subject to arbitration;
- the award is contrary to public order.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The enforcement procedure of an award in Spain varies depending on whether the award is domestic or foreign.

Domestic awards may be enforced directly before the Court of First Instance of the place where the award was issued, following the procedure established in the SCPA.

A foreign award will be recognised pursuant to the New York Convention of 1958, and the general rule is that the competent authority for the recognition of a foreign award is the Superior Court of Justice of the domicile or residence of the party against which the recognition is sought or, on a subsidiary basis, of the place where the award is to produce effects.

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