

ARBITRATION IN SPAIN

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1. The Spanish Arbitration Act

- 1.1.1 The new Spanish Arbitration Act 60/2003 (**Spanish Arbitration Act**) was officially published in the Official Gazette of the Spanish State¹ on 26 December 2003 and came into force on 26 March 2004.
- 1.1.2 The changes brought about by the Spanish Arbitration Act responded to demands from international commercial parties who routinely choose arbitration to resolve disputes. There has been a notable expansion of domestic and international arbitration in Spain in recent years. Through the Spanish Arbitration Act, the Spanish legislator has made a firm commitment to fostering domestic arbitration and making Spain a centre for international arbitration, particularly for Spanish-speaking parties.
- 1.1.3 The Spanish Arbitration Act is based on the Model Law (1985)² and contains the following key features:
- it opts for uniform regulation of domestic and international arbitration;
 - it is governed by non-formalistic criteria;
 - it provides for arbitration in law (as opposed to arbitration in equity) absent express agreement between the parties to the contrary; and
 - it provides that the parties are free to decide the number of arbitrators, although there must be an uneven number.

2. Historical background

- 2.1.1 Before the Spanish Arbitration Act came into force, Spanish arbitration law was scattered between the Arbitration Acts 1953 and 1988.
- 2.1.2 On 7 December 1988, the Official State Gazette published Law 36/1988, of 5 December, concerning arbitration (**1988 Act**). This legislative text closed a long period of unsuccessful attempts to modify the Arbitration Act of 22 December 1953 (**1953 Act**).
- 2.1.3 The 1953 Act was based on political principles radically different from those of a democratic country. At that time, lawmakers viewed arbitration unfavourably, as it was the judicial monopoly of the state to resolve conflicts. From an economic standpoint, the 1953 Act was enacted during a period of autocracy and foreign

¹ Boletín Oficial del Estado.

² See CMS Guide to Arbitration, vol II, appendix 2.1.

isolation, thus there was little or no activity within Spain with respect to international arbitration.

- 2.1.4 In 1975, Spain ratified the 1961 European Convention and in 1977 it ratified the New York Convention.³ At this time, as a result of the publication of these international treaties concerning international commercial arbitration, the idea began to take hold in Spanish legal doctrine that the international treaty provisions had become rules of domestic law, and they were therefore binding on international arbitrators in Spain alongside the provisions of the 1953 Act. Ratification of these conventions had introduced a dual and differentiated legal framework; one for domestic arbitration (in the 1953 Act) and the other for international arbitration (in the provisions contained in the international treaties ratified by Spain).
- 2.1.5 Changes in the business world, technical advances and new needs of the practice made the arbitration provisions of the 1988 Act insufficient. The Spanish Arbitration Act aims to provide for technical advances and meet the changing needs of arbitral practice, particularly with regard to requirements of the arbitration agreement and interim precautionary measures.
- 2.1.6 The main reason for the Spanish Arbitration Act is to bring Spanish arbitration in line with the Model Law (1985).⁴ The Spanish Arbitration Act has subsequently been amended by Act 13/2009, Act 11/2011 and the Organic Act 5/2011. These reforms have included minor amendments aimed at improving the practice of arbitration.

3. Scope of application and general provisions of the Spanish Arbitration Act

- 3.1.1 The Spanish Arbitration Act applies to any arbitration where the seat of the arbitration is in Spanish territory, whether domestic or international in nature.
- 3.1.2 Certain provisions of the Spanish Arbitration Act apply even if the seat of the arbitration is outside Spain. These include:
 - Article 8, Paragraphs 3, 4 and 6, which concern competent courts for assistance and supervision of arbitration;

³ See CMS Guide to Arbitration, vol II, appendix 1.1.

⁴ *Ibid.*

- Article 9 (except Paragraph 2), which concerns the form and content of the arbitration agreement;
- Article 11, which concerns the arbitration agreement and its impact on substantive claims before a court;
- Article 23, which concerns the power of the arbitral tribunal to order interim measures;
- Title VIII, which concerns the enforcement of awards; and
- Title IX, which concerns the recognition of foreign awards.

3.1.3 The Spanish Arbitration Act is of supplementary application to any arbitral proceedings provided for in other legislation. The Spanish Arbitration Act is intended as a general law applicable to all arbitration: either providing rules for proceedings which have no special rules or providing additional rules to arbitrations which already have their own rules, except when the rules specified by the parties are contrary to the provisions of the Spanish Arbitration Act or any law expressly disapplying the Spanish Arbitration Act.

3.1.4 Employment arbitration is excluded from the scope of the Spanish Arbitration Act. Employment disputes should be resolved using the Spanish courts.

4. The arbitration agreement

4.1 Formal requirements

4.1.1 The arbitration agreement must be made in writing, in a document signed by the parties, in an exchange of correspondence or by any other means of telecommunication that provides a record of the agreement.⁵ This requirement is satisfied when the arbitration agreement appears and is accessible for subsequent consultation in any other format.

4.1.2 A valid arbitration agreement, which may be in the form of a clause in a contract or contained in a separate agreement, shall express the will of the parties to submit all or some disputes to arbitration that have arisen or which may arise between them in respect of a determined legal relationship, whether contractual or non-contractual.⁶ If the arbitration agreement is included in a standard form agreement, its validity and its interpretation shall be governed by the rules applicable to these types of contracts.⁷

⁵ Spanish Arbitration Act, art 9.4.

⁶ *Ibid*, art 9.1.

⁷ *Ibid*, art 9.2.

4.1.3 An arbitration agreement from another document shall be deemed incorporated into a contract if it exists in any of the forms set out in paragraph 4.1.1 above and is expressly referenced in the agreement between the parties.⁸ An arbitration agreement is also deemed to exist when, in an exchange of statements of claim and defence, the existence of an arbitration agreement is alleged by one party and not denied by the other.⁹

4.2 Legal consequences of a binding arbitration agreement

4.2.1 A valid arbitration agreement obliges the parties to comply with the agreement and prevents the courts from hearing disputes on matters relating to or submitted to arbitral proceedings, provided that an interested party does not raise an objection to jurisdiction.

5. Composition of the arbitral tribunal

5.1 The constitution of the arbitral tribunal

5.1.1 The parties are free to determine the number of arbitrators, provided that there is an uneven number. In the absence of any agreement between the parties, a sole arbitrator shall be appointed.¹⁰ The Spanish Arbitration Act provides that, unless agreed otherwise, a person appointed as sole arbitrator must be a jurist, except if the matter is to be decided *ex aequo et bono*. If a three-member tribunal is constituted, at least one of the three must be a jurist. The term jurist is used (as opposed to lawyer) to include academics and other legal professionals who are not practising lawyers.

5.1.2 Any natural person who has not been declared legally barred may act as an arbitrator, provided that they are not restricted by the legislation applicable to them in the exercise of their profession.¹¹ Unless otherwise agreed by the parties, no person shall be prevented by reason of their nationality from acting as an arbitrator.¹²

5.1.3 The parties may agree on the procedure for the appointment of the arbitrators, provided that there is no violation of the principle of equal treatment. If it is not

⁸ *Ibid*, art 9.2.

⁹ *Ibid*, art 9.5.

¹⁰ *Ibid*, art 12.

¹¹ In accordance with the Organic Law of the Judicial Branch (1985), court clerks cannot be arbitrators. In addition, other individuals employed by public authorities cannot be arbitrators according to various prohibitions that exist in special laws.

¹² Spanish Arbitration Act, art 13.

possible to appoint the arbitrators by the procedure agreed upon by the parties, any party to the arbitral proceedings may apply to the competent court for the nomination of the arbitrators or, if appropriate, the adoption of the necessary measures for this purpose. In this case, the court shall only refuse the request filed when it considers that the existence of an arbitration agreement is not established.¹³

- 5.1.4 Unless the parties have otherwise agreed, each arbitrator shall, within 15 days from receiving the nomination, communicate acceptance of the nomination to the nominating party. If an acceptance is not communicated within the period established, the arbitrator is deemed not to have accepted his or her nomination.¹⁴ This time frame relates to all arbitral proceedings whether domestic or international.

5.2 The procedure for challenging and substituting arbitrators

- 5.2.1 The appointment of an arbitrator may be challenged only if circumstances give rise to justifiable doubts as to that arbitrator's impartiality or independence or if the arbitrator does not possess the qualifications as required and agreed to by the parties. A party may only challenge its party-nominated or party-appointed arbitrator if it becomes aware of the reasons giving rise to the challenge after the appointment has been made.¹⁵
- 5.2.2 The parties are free to agree on a procedure for challenging an arbitrator.¹⁶ If a party challenges the arbitrator in accordance with the agreed procedure, the challenging party may in due course rely upon the challenge in applying to set aside the award.¹⁷
- 5.2.3 An arbitrator's mandate terminates if the arbitrator is unable to perform the functions of an arbitrator, fails to act without undue delay, withdraws from the office or if the parties agree to the termination.¹⁸ If the parties fail to agree upon the termination of the mandate and there is no agreed procedure to overcome such disagreement, the following rules shall apply:
- the application for termination shall take the form of oral proceedings before the court in which the arbitral proceedings were taking place.¹⁹ This application

¹³ *Ibid*, art 15.

¹⁴ *Ibid*, art 16.

¹⁵ *Ibid*, art 17.3.

¹⁶ *Ibid*, art 18.1.

¹⁷ *Ibid*, art 18.3.

¹⁸ *Ibid*, art 19.

¹⁹ Sala de lo Civil y de lo Penal del Tribunal Superior de Justicia de la Comunidad Autónoma.

may be joined with the request for the nomination of a replacement arbitrator if the application for termination is granted;²⁰ and

- in an arbitration with more than one arbitrator, the challenge of an arbitrator must first be decided by the remaining arbitrators. If they are unable to reach a decision, the application shall take the form of oral proceedings before the court in which the arbitral proceedings were taking place.²¹

5.2.4 The withdrawal of an arbitrator or the agreement by a nominating or appointing party to terminate the mandate of an arbitrator does not imply acceptance as to the validity of the basis for the challenge.²²

5.3 The appointment of substitute arbitrators

5.3.1 Irrespective of the reason for the appointment, any new arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. Once the substitute arbitrator is appointed, the arbitral tribunal, after hearing the parties, shall decide if it is appropriate to repeat any prior proceedings.²³

5.4 Responsibility of an arbitrator

5.4.1 The acceptance of a mandate obliges the arbitrators and, where applicable, the arbitral institution to comply faithfully with their responsibility. If they do not do so, by reason of bad faith, recklessness or fraud, they will be liable for the damage and losses they cause.²⁴ Where the arbitration is entrusted to an arbitral institution, the injured party shall have a direct action against the institution, regardless of any actions for compensation available against the arbitrators.²⁵ Arbitrators and arbitral institutions are obliged to subscribe for professional liability insurance or equivalent insurance in the amount established by regulation. Public entities and arbitration systems which are integrated or dependent on public administration are not required to take out insurance.

5.5 Provision of funds

5.5.1 Unless otherwise agreed, both the arbitral tribunal and the arbitral institution may require from the parties the provision of funds that they consider necessary to

²⁰ See Spanish Arbitration Act, art 15.

²¹ *Ibid*, art 19.1.

²² *Ibid*, art 19.2.

²³ *Ibid*, art 20.

²⁴ *Ibid*, art 21.1.

²⁵ *Ibid*, art 21.1.

meet the fees and expenses of the arbitral tribunal and those that may be incurred in the administration of the arbitration. Should the parties fail to provide the funds, the arbitral tribunal may suspend or terminate the arbitral proceedings.²⁶ If one of the parties has not made its provision within the time fixed, the arbitral tribunal, before deciding whether to terminate or suspend the proceedings, shall inform the remaining parties so that they may provide the funds within a further period fixed by the arbitral tribunal, should they wish to do so.²⁷

6. Jurisdiction of the arbitral tribunal

6.1 Competence to rule on jurisdiction

6.1.1 The arbitral tribunal may determine its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any other objection, the acceptance of which would prevent the arbitral tribunal from entering into the merits of the dispute. For this purpose, an arbitration agreement which forms part of a contract shall be treated as severable from the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not invalidate the arbitration agreement.²⁸

6.1.2 Any objection referred to in the previous paragraph must be raised no later than the submission of the statement of defence. The fact that a party has appointed an arbitrator or participated in the appointment of the arbitral tribunal shall not preclude that party from raising such an objection.²⁹ The objection that the arbitral tribunal is exceeding the scope of its jurisdiction shall be made as soon as the matter alleged to be beyond the scope of the arbitral tribunal's jurisdiction is introduced to the arbitral proceedings.³⁰

6.2 Power to order interim measures

6.2.1 Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of any party, order such interim measures as it considers necessary in respect of the subject of the dispute. The arbitral tribunal may require appropriate security from the applicant.³¹

²⁶ *Ibid*, art 21.2.

²⁷ *Ibid*, art 21.2.

²⁸ *Ibid*, art 22.1.

²⁹ *Ibid*, art 22.2.

³⁰ *Ibid*, art 22.2.

³¹ *Ibid*, art 23.1.

- 6.2.2 The provisions relating to the setting aside and enforcement of awards apply to the arbitral decisions in respect of interim measures, regardless of the form of those measures.³²

7. Conduct of proceedings

7.1 Commencement of arbitration

- 7.1.1 Unless otherwise agreed by the parties, the arbitral proceedings commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.³³

7.2 General procedural principles

- 7.2.1 The parties shall be treated with equality and each party shall be given the opportunity to present its case fully. Also, the arbitral tribunal, the parties and the arbitral institutions, if applicable, are obliged to keep any information coming into their knowledge during the course of the arbitral proceedings confidential.³⁴

- 7.2.2 The parties may freely agree on the procedure to be followed by the arbitral tribunal in the conduct of the proceedings.³⁵ Failing such agreement, the arbitral tribunal may, subject to the provisions of the Spanish Arbitration Act, conduct the arbitration in such manner as it considers appropriate. The powers conferred upon the arbitral tribunal include the power to determine the admissibility, relevance and usefulness of any evidence, the manner of taking evidence (including evidence obtained or introduced on the arbitral tribunal's own motion) and the weight of such evidence.³⁶

7.3 Seat, place of hearings and language of the arbitral proceedings

- 7.3.1 The parties are free to agree on the seat of the arbitration. If there is no agreement, the seat of the arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case and the convenience of the parties. The arbitral tribunal may, after consulting the parties, meet at any place it considers appropriate

³² Spanish Arbitration Act, art 23.2.

³³ *Ibid*, art 27.

³⁴ *Ibid*, art 24.

³⁵ *Ibid*, art 25.1.

³⁶ *Ibid*, art 25.2.

for hearing witnesses, experts or the parties or to inspect objects, documents or persons. The arbitral tribunal may deliberate at any place it considers appropriate.³⁷

- 7.3.2 In respect of the language of the arbitration, the parties are free to agree on the language to be used in the arbitration. Failing such agreement, the arbitral tribunal shall determine the language, having regard to the circumstances of the case.³⁸

7.4 Oral hearings and written proceedings

- 7.4.1 Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of oral arguments, the taking of evidence and the submission of conclusions or whether the proceedings shall be conducted solely in writing. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.³⁹

7.5 Court assistance in taking evidence

- 7.5.1 The arbitral tribunal, or any party with their approval, may request assistance from the competent court in taking evidence, in accordance with the applicable Spanish rules on the taking of evidence. This assistance may comprise the taking of evidence before the competent court or the adoption by the competent court of specific measures necessary so that the evidence may be taken before the arbitral tribunal.⁴⁰

- 7.5.2 If requested, the court shall take evidence under its exclusive supervision. Otherwise, the court shall limit itself to ordering only those measures necessary. In either case, the court shall deliver to the applicant a certified copy of the proceedings to use in the arbitral proceedings.⁴¹

7.6 Specific rules

- 7.6.1 The Act also provides for specific rules regarding arbitration of corporate disputes and for an arbitration mechanism for disputes between different bodies of the Spanish Public Administration.

³⁷ *Ibid*, art 26.2.

³⁸ *Ibid*, art 28.1.

³⁹ *Ibid*, art 30.1.

⁴⁰ *Ibid*, art 33.1.

⁴¹ *Ibid*, art 33.2.

8. Making of the arbitral award and termination of proceedings

8.1 Choice of law

- 8.1.1 The arbitral tribunal shall base its decision on equitable principles only if the parties have expressly authorised them to do so.⁴²
- 8.1.2 When the arbitration is international in nature, the arbitral tribunal must decide the dispute in accordance with the law chosen by the parties. Any designation of the law or legal system of a given state shall be construed, unless otherwise stated, as referring to the substantive law of that state and not to its conflict of law rules. If the parties fail to specify the applicable law then the arbitral tribunal shall apply the law that it considers appropriate.⁴³
- 8.1.3 In all cases, the arbitral tribunal shall decide the applicable law in accordance with the terms of the contract and shall take applicable usages and commercial customs into account.⁴⁴

8.2 Timing, form, content and notification of the arbitral award

- 8.2.1 Unless otherwise agreed by the parties, the arbitral tribunal shall decide the dispute in a single reasoned award or in as many partial awards as it deems necessary.⁴⁵
- 8.2.2 Unless otherwise agreed by the parties, the arbitral tribunal must decide the dispute within six months of the date of submission of the statement of defence or the expiry of the submission deadline. This period of time may be extended by the arbitral tribunal by means of a reasoned decision, for a period not to exceed two months; although this is also subject to an agreement by the parties to the contrary.⁴⁶
- 8.2.3 If a final award is not issued within the submission deadline, the arbitral proceedings and the mandate of the arbitral tribunal shall terminate. Unless otherwise agreed by the parties, the expiry of the period to issue the final award shall not affect the efficacy of the arbitration agreement or the validity of the award issued, without

⁴² Spanish Arbitration Act, art 34.1.

⁴³ *Ibid*, art 34.2.

⁴⁴ *Ibid*, art 34.3.

⁴⁵ *Ibid*, art 37.1.

⁴⁶ *Ibid*, art 37.2.

prejudice to any liability that the arbitrators may have incurred.⁴⁷ Accordingly, if a party wished to pursue its claim further, it would be required to commence new arbitral proceedings.

- 8.2.4 The award shall be made in writing and shall be signed by the arbitrators, who may add any dissenting opinions. Where there is more than one arbitrator, the signatures of the majority of members of the arbitral tribunal, or, alternatively, the signature of the chair alone, shall make the award binding, provided that the reason for any omitted signature is stated.⁴⁸
- 8.2.5 The award shall state the reasons upon which it is based, unless the parties have agreed otherwise.⁴⁹
- 8.2.6 The arbitral tribunal shall provide the award to the parties in the form and time agreed by the parties. In the absence of any agreement, each party should receive a copy of the award signed in accordance with the requirements set out in paragraph 8.2.4 above.⁵⁰

8.3 Settlement

- 8.3.1 If, during arbitral proceedings, the parties wholly or partially settle the dispute, the arbitral tribunal shall terminate the proceedings in respect of the points agreed. If requested by both parties and not objected to by the arbitral tribunal, the settlement shall be recorded in the form of an award on agreed terms.⁵¹

8.4 Costs

- 8.4.1 Subject to the agreement of the parties, the arbitral tribunal shall determine which party (if any) is liable for costs in the award. Such costs may include the fees and expenses of the arbitral tribunal, the cost of the services provided by the institution administering the arbitration, the fees and expenses of counsel or representatives of the parties (where applicable) and other expenses of the arbitral proceedings.⁵²

8.5 Termination of the proceedings

- 8.5.1 The arbitral proceedings and the mandate of the arbitral tribunal both terminate with the final award.

⁴⁷ *Ibid*, art 37.2.

⁴⁸ *Ibid*, art 37.3.

⁴⁹ *Ibid*, art 37.4.

⁵⁰ *Ibid*, art 37.7.

⁵¹ *Ibid*, art 36.1.

⁵² *Ibid*, art 37.6.

- 8.5.2 The arbitral tribunal shall also issue an order for the termination of the arbitral proceedings when:
- the claimant withdraws the claim, unless the respondent objects to the withdrawal and the arbitral tribunal recognises the respondent’s legitimate interest in obtaining a final settlement of the dispute;
 - the parties agree to terminate the proceedings; or
 - the arbitral tribunal finds that the continuation of the proceedings has for whatever reason become unnecessary or impossible.⁵³

8.6 Correction, clarification and issue of a supplemental arbitral award

- 8.6.1 Within one month of receipt of the award,⁵⁴ unless another period of time has been agreed upon by the parties, any party, with notice to the other party, may request that the arbitral tribunal:
- corrects any errors in the issued award such as errors in computation, clerical or typographical errors or other errors of a similar nature;
 - clarifies a point or a specific part of the award;
 - supplements the award by taking into account other claims presented in the arbitral proceedings, but not resolved in the issued award; or
 - corrects any excesses of jurisdiction.

8.6.2 In this sense, the Spanish Arbitration Act avoids the reference in Article 33 of the Model Law (1985) to an “additional award” to address omissions.⁵⁵ The practical difference is that a successful application under Article 33(3) of the Model Law (1985) results in two separate awards (the original award and an additional award), while the procedure under the Spanish Arbitration Act results in a single (although supplemented) award.

8.6.3 After hearing the other party’s comments, the arbitral tribunal shall decide on applications for the correction of errors and for clarification within one month. The application for issuing a supplement to the issued award shall be decided within two months.⁵⁶

⁵³ *Ibid*, art 38.2.

⁵⁴ One month is the time frame that relates to “international” arbitral proceedings. For “domestic” arbitral proceedings, the applicable time frame is 10 days. See Spanish Arbitration Act, art 39.1. Factors that render arbitral proceedings “international” are: i) that, at the time of conclusion of the arbitration agreement, the parties have their addresses in different states; ii) that the seat of arbitration as determined in the arbitration agreement or the place of substantial performance of the obligations under the contract or the place most associated with the contract, is situated outside the state in which the parties have their address; or iii) that the legal relationship underlying the dispute affects international trade interests.

⁵⁵ See CMS Guide to Arbitration, vol II, appendix 2.1.

⁵⁶ Spanish Arbitration Act, art 39.2.

- 8.6.4 Within one month of the date of the issued award, the arbitral tribunal may at its own instigation correct any computational, clerical or typographical errors or other errors of a similar nature.⁵⁷

9. Role of the courts

9.1 Jurisdiction of the courts

- 9.1.1 The Spanish Arbitration Act follows the Model Law (1985)⁵⁸ in this regard and no court shall intervene except where provided by the Spanish Arbitration Act. The appropriate court of first instance will likely depend on the issue to be determined, as discussed below.

9.2 Judicial appointment of arbitrators

- 9.2.1 The court of first instance at the seat of the arbitration shall have jurisdiction in respect of the judicial appointment of arbitrators. If the seat of the arbitration has not yet been determined, then jurisdiction shall reside with the court of first instance at the domicile or habitual place of residence of any of the respondents. If none of the respondents have their domicile or habitual place of residence in Spain, the court of first instance of the domicile or habitual place of residence of the claimant shall have jurisdiction. If the claimant's domicile or habitual place of residence is not in Spain, then the claimant is allowed to choose the court of first instance.⁵⁹

9.3 Interim measures

- 9.3.1 The court of first instance at the place where any award will be enforced shall have jurisdiction in respect of interim measures. In the absence of such a court, the court of first instance at the place where the measures must be implemented shall have jurisdiction.⁶⁰

- 9.3.2 The following interim measures may be ordered, among others:

- a pre-judgment schedule, aimed at ensuring the enforcement of judgments ordering the delivery of amounts of money or yields, rents and perishable goods that can be estimated in cash by applying fixed prices. In addition to these examples, a pre-judgment schedule would also be appropriate if it

⁵⁷ *Ibid*, art 39.3. With regard to "domestic" arbitral proceedings, the time frame is 10 days.

⁵⁸ See CMS Guide to Arbitration, vol II, appendix 2.1.

⁵⁹ Spanish Arbitration Act, art 8.1.

⁶⁰ *Ibid*, art 8.3. With regard to courts where interim measures must be enforced, see Spanish Civil Procedure Act (2000), art 724.

- would be the most suitable measure and could not be substituted by another measure that is equally or more efficient and less damaging for the respondent;
- the intervention or court-ordered receivership of profitable assets, when a judgment is sought ordering their delivery on the basis of legal, beneficial or any other title involving a legitimate interest in maintaining or improving profitability. Similarly, when guaranteeing profitability is deemed to be of paramount importance for the effectiveness of the final judgment court-ordered receivership may be a valid interim measure;
 - the deposit of a moveable asset, when through the arbitration the claimant is seeking delivery of the said asset and the asset is in the possession of the respondent;
 - the drawing up of inventories of assets in accordance with conditions to be specified by the court;
 - the precautionary registration of the claim when the claim refers to assets or rights subject to recording in public registries;
 - other registrations where publication in the relevant register may assist in ensuring effective enforcement;
 - a court order to provisionally cease an activity. This may involve an order to temporarily abstain from certain conduct or an activity or an order prohibiting the suspension of specific conduct or an activity;
 - the intervention and deposit of income obtained through an activity considered illicit and whose prohibition or cessation is requested in the claim, as well as the deposit of amounts claimed as compensation for breaches of intellectual property rights;
 - the temporary deposit of works or objects allegedly produced in breach of rules on intellectual and industrial property, as well as the deposit of any material or devices used for their production;
 - The suspension of a company resolution by the claimant or claimants who represent at least one or five per cent of the company's capital, depending on whether or not the respondent company has issued securities that, at the time of the dispute, are listed on an official secondary market; and
 - any other measures expressly established by law for the protection of certain rights or deemed necessary to ensure the effective enforcement of an award that may be granted at judgment.

9.4 Obtaining evidence and other court assistance

- 9.4.1 The court of first instance at the seat of the arbitration or that of the place where the assistance is required has jurisdiction in respect of judicial assistance in the obtaining of evidence.⁶¹

⁶¹ See Spanish Arbitration Act, art. 8.4.

9.5 Enforcement of the arbitral award

- 9.5.1 The court of first instance at the place where the award was issued shall have jurisdiction to enforce the award, in accordance with Article 545.2 of the Spanish Civil Procedure Act (2000) and, where applicable, Article 958 of the Spanish Civil Procedure Act of 1881.

10. Challenging and appealing an arbitral award

10.1 Applications to set aside an arbitral award

- 10.1.1 An award may be set aside only if the party making the application alleges and proves:
- that the arbitration agreement does not exist or is not valid;
 - that the claimant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
 - that the arbitral tribunal decided questions beyond its jurisdiction;
 - that the appointment of the arbitrators or the arbitral procedure was not in accordance with the provisions of the Spanish Arbitration Act nor with the agreement of the parties, unless such agreement was in conflict with a provision of the Spanish Arbitration Act from which the parties cannot derogate;
 - that the arbitral tribunal decided questions not capable of settlement by arbitration; or
 - that the award is in conflict with public policy.⁶²
- 10.1.2 The provincial court of appeal at the place where the award was made shall have jurisdiction in an application to set aside an award.⁶³
- 10.1.3 An application for setting aside an award shall be made within two months of the date on which the party making that application received the award or, if a request for correction, clarification or a request to supplement the award is made, the date on which the party making that application received the decision on that request or the date on which the term for making a decision concerning that request expired.⁶⁴

⁶² *Ibid*, art 40 and 41.

⁶³ *Ibid*, art 8.5.

⁶⁴ *Ibid*, art 41.4.

- 10.1.4 The application to set aside an award shall follow the procedure for oral proceedings as set out in the Spanish Arbitration Act.⁶⁵
- 10.1.5 The statement of claim that seeks to set aside the award shall be accompanied by documentation evidencing the arbitral agreement and the award. If applicable, it shall also propose the evidence upon which the applicant intends to rely.⁶⁶
- 10.1.6 There is no appeal from the judgment made by the provisional court of appeal on the application to set aside the award.⁶⁷
- 10.1.7 The award is not sent back to the arbitral tribunal for amendment and the arbitral tribunal may not be reconstituted to address the dispute again. The judgment takes effect *res judicata*, and so a party cannot start the arbitration afresh and a new arbitral tribunal cannot be constituted to address the dispute anew.

10.2 **Res judicata and the revision of final arbitral awards**

- 10.2.1 The final award has *res judicata* effect and shall only be subject to an appeal in accordance with the procedure established in the Spanish Civil Procedure Act (2000) for final judgments.

11. Recognition and enforcement of arbitral awards

11.1 **Domestic arbitral awards**

- 11.1.1 An award is enforceable even though an application to set it aside has been made. However, the party against whom enforcement is sought may apply to the competent court for the suspension of enforcement, provided that this applicant offers security for the amount awarded, plus the damages and losses that may arise from the delay in the enforcement of the award.⁶⁸
- 11.1.2 The suspension shall be lifted and the enforcement will continue when the court is satisfied that the application to set aside has been rejected, without prejudice to the rights of the party seeking enforcement to demand, if applicable, indemnification for the damages and losses caused by the delay in the enforcement.⁶⁹

⁶⁵ Spanish Arbitration Act, art 42.1.

⁶⁶ *Ibid*, art 42.1.

⁶⁷ *Ibid*, art 42.2.

⁶⁸ *Ibid*, art 45.1.

⁶⁹ *Ibid*, art 45.2.

11.1.3 If a court grants an application to set aside an award, any previous enforcement of the set aside award will be revoked.⁷⁰

11.2 Foreign arbitral awards

11.2.1 The recognition of foreign awards (i.e. any award which has been issued outside Spanish territory⁷¹) is governed by the New York Convention⁷² (without prejudice to the provisions of other, more favourable, international conventions) and takes place in accordance with the procedure set out in the civil procedure rules for judgments issued by foreign courts.⁷³

12. Concluding thoughts and themes

12.1.1 In conclusion, the provisions of the Spanish Arbitration Act mark a progressive step forward in the Spanish regulation of arbitration, which undoubtedly encourages its greater use.

12.1.2 The Spanish Arbitration Act has made Spain an attractive place for arbitration. The quality of Spain's legal services and its traditional hospitality are now joined by modern legislation that both protects and promotes arbitration as a means of resolving civil and commercial disputes, at national and international levels.

13. Contacts

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⁷⁰ *Ibid*, art 45.3.

⁷¹ *Ibid*, art 46.1.

⁷² See CMS Guide to Arbitration, vol II, appendix 1.1.

⁷³ See Spanish Arbitration Act, art 46.2.

