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# International Arbitration

Spain

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Andersen in Spain

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## Law and Practice

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## Contents

<b>1. General</b>	p.3	<b>7. Procedure</b>	p.6
1.1 Prevalence of Arbitration	p.3	7.1 Governing Rules	p.6
1.2 Trends	p.3	7.2 Procedural Steps	p.6
1.3 Key Industries	p.3	7.3 Powers and Duties of Arbitrators	p.6
1.4 Arbitral Institutions	p.3	7.4 Legal Representatives	p.7
<b>2. Governing Legislation</b>	p.3	<b>8. Evidence</b>	p.7
2.1 Governing Law	p.3	8.1 Collection and Submission of Evidence	p.7
2.2 Changes to National Law	p.3	8.2 Rules of Evidence	p.7
<b>3. The Arbitration Agreement</b>	p.3	8.3 Powers of Compulsion	p.7
3.1 Enforceability	p.3	<b>9. Confidentiality</b>	p.7
3.2 Arbitrability	p.4	9.1 Extent of Confidentiality	p.7
3.3 National Courts' Approach	p.4	<b>10. The Award</b>	p.8
3.4 Validity	p.4	10.1 Legal Requirements	p.8
<b>4. The Arbitral Tribunal</b>	p.4	10.2 Types of Remedies	p.8
4.1 Limits on Selection	p.4	10.3 Recovering Interest and Legal Costs	p.8
4.2 Default Procedures	p.4	<b>11. Review of an Award</b>	p.8
4.3 Court Intervention	p.5	11.1 Grounds for Appeal	p.8
4.4 Challenge and Removal of Arbitrators	p.5	11.2 Excluding/Expanding the Scope of Appeal	p.8
4.5 Arbitrator Requirements	p.5	11.3 Standard of Judicial Review	p.9
<b>5. Jurisdiction</b>	p.5	<b>12. Enforcement of an Award</b>	p.9
5.1 Matters Excluded from Arbitration	p.5	12.1 New York Convention	p.9
5.2 Challenges to Jurisdiction	p.5	12.2 Enforcement Procedure	p.9
5.3 Circumstances for Court Intervention	p.5	12.3 Approach of the Courts	p.9
5.4 Timing of Challenge	p.5	<b>13. Miscellaneous</b>	p.9
5.5 Standard of Judicial Review for Jurisdiction/ Admissibility	p.5	13.1 Class-Action or Group Arbitration	p.9
5.6 Breach of Arbitration Agreement	p.5	13.2 Ethical Codes	p.9
5.7 Third Parties	p.6	13.3 Third-Party Funding	p.9
<b>6. Preliminary and Interim Relief</b>	p.6	13.4 Consolidation	p.10
6.1 Types of Relief	p.6	13.5 Third Parties	p.10
6.2 Role of Courts	p.6		
6.3 Security for Costs	p.6		

## 1. General

### 1.1 Prevalence of Arbitration

Arbitration is understood by international Spanish companies to be a quite efficient means. For some, it is even the only realistic option to solve outstanding disputes. Flexibility, confidentiality, expertise, timeframes and swift enforcement of awards are considered to be the elements at the core of accepting arbitration as a dispute resolution venue.

While international arbitration has significantly increased in Spain during the past few years, local players are still reluctant to arbitrate their disputes when entering into a contract (matters are analysed on a case-by-case basis to understand if arbitration is the best solution available). A decision is always taken in order to strike a balance between the benefits associated with arbitration and its higher costs compared to resorting to ordinary national courts.

### 1.2 Trends

Cybersecurity and data protection matters are still a challenge to the practice of international arbitration in Spain, given that sensitive information is exchanged between multiple cross-border companies in any international dispute. Trying to regulate these issues and ensure a safe exchange of the information is a growing trend.

Further, due to the COVID-19 outbreak, Spanish arbitration institutions have issued rules and/or guidance to conduct virtual hearings and have implemented some measures to help mitigate the effects of the COVID-19 pandemic on arbitral proceedings.

### 1.3 Key Industries

During 2019, investment arbitration proceedings initiated against the Kingdom of Spain related to cuts to renewable energies subsidies have continued to increase and this is despite the Court of Justice of the European Union (CJEU) decision on Achmea and the annulment of the arbitral award rendered in Eiser.

### 1.4 Arbitral Institutions

To date, the Court of Arbitration of the International Chamber of Commerce is the institution most used for international arbitration in Spain.

## 2. Governing Legislation

### 2.1 Governing Law

International arbitration in Spain is governed by the Spanish Arbitration Act (SAA) of 2003 (amended in 2011), which is based on the UNCITRAL Model Law.

However, the SAA applies without prejudice to the provisions of any treaties ratified by Spain or to any specific Spanish regulations containing provisions related to arbitration (such as intellectual property and consumer-protection laws).

Although it is essentially based on the UNCITRAL Model Law, it is possible to find certain differences in the SAA. Those were included to promote the use of arbitration in the Spanish market. The most relevant amendments are the following:

- as of 2011, the arbitral institutions are obliged to supervise the capacity of arbitrators, the transparency of their designation and their independence throughout the arbitral proceedings. Additionally, arbitral institutions and arbitrators must subscribe to professional liability insurance;
- any person appointed as sole arbitrator must be a jurist, except if the matter is to be decided *ex aequo et bono*, unless otherwise expressly agreed by the parties within the arbitration clause. In the case of a three-member panel, at least one arbitrator must be a jurist. The term “jurist” is used as opposed to “lawyer” to include academics and other legal professionals who are not lawyers. In addition, the arbitrator(s) must not have acted as a mediator in the same dispute;
- issuing an arbitral award after the expiry of the deadline does not constitute grounds for annulment of the award, without prejudice to the arbitrators’ liability;
- awards must be always well-reasoned and parties cannot agree otherwise, except when an award is dictated based on agreed terms;
- the SAA allows the arbitrators to state in the award whether they voted for or against the final decision. This is also intended as a measure to avoid the dissenting arbitrator’s liability;
- the parties may request that the arbitrators correct an arbitral award on an excess of jurisdiction or to supplement an omitted petition. This is a measure that aims to avoid unnecessary annulment actions.

### 2.2 Changes to National Law

There was no significant change to the SAA in 2019 and no legislation is pending to be enacted that may affect arbitration.

## 3. The Arbitration Agreement

### 3.1 Enforceability

The legal requirements for an arbitration agreement to be enforceable in Spain are set out in Article 9.1 of the SAA.

Pursuant to this provision, an arbitration agreement may adopt the form of a clause in a contract or the form of a separate agree-

ment. In both cases, the arbitration agreement shall express the willingness of the parties to submit to arbitration all or certain disputes arising between them in respect of a specific legal relationship.

Furthermore, Article 9.3 of the SAA states that an arbitration agreement, to be valid, must be (i) in written form; and (ii) included in a document signed by the parties or in an exchange of letters, telegrams, telex, facsimile or any other means of telecommunications that ensures that a record of the agreement is kept. This requirement is fulfilled when the arbitration agreement appears and is accessible for its subsequent consultation in an electronic, optical or any other format.

If an arbitration agreement is included in a standard form of contract, its validity and its interpretation shall be governed by the rules applicable to that contract.

As regards international arbitration, Article 9.6 of the SAA specifically states that in order for an arbitration agreement to be valid it shall meet the requirements set out by either the law chosen to govern the arbitration agreement, the applicable substantive law or by Spanish law.

### 3.2 Arbitrability

The SAA is quite flexible with regard to arbitrability. It particularly states that a dispute may be arbitrated not only when it meets the Spanish law requirements but when either those rules of law chosen by the parties or the rules of law applicable to the merits of the case are met. In this regard, although Article 2 of the SAA provides that only disputes relating to matters within the free disposition of the parties may be subject to arbitration, there is no definition whatsoever determining which matters are “within the free disposition of the parties”.

As per matters expressly excluded, Article 1.4. of the SAA does not allow arbitration related to labour matters. In addition, it is also clear that disputes regarding criminal matters and parental issues are outside the scope of arbitration.

Finally, the subject matter of the particular legal relationship should be taken into account when determining the arbitrability of a dispute. For instance, Spanish law is very protective of consumers and users and, in some cases, it has declared void arbitration clauses into which they have entered.

### 3.3 National Courts' Approach

Spanish courts are bound by the provisions of the Spanish Arbitration Act. Article 7 thereof expressly mandates that no national court may act in a matter governed by the Arbitration Act. Spanish national courts of course respect this mandatory provi-

sion and thus favour the enforcement of any valid arbitration agreement when its validity is challenged by any of the parties.

### 3.4 Validity

Article 22.1 of the SAA provides that an arbitration clause would be considered valid even when the main contract is held invalid. Therefore, the SAA expressly embraces the principle of separability.

## 4. The Arbitral Tribunal

### 4.1 Limits on Selection

Under Spanish law, arbitrators must be individuals, not legal entities. The parties are not limited in respect of the number of arbitrators, provided they are odd in number. If there is no agreement as to the number of arbitrators, a sole arbitrator will be appointed by the corresponding institution or national court.

If arbitration is to be conducted by a sole arbitrator, he or she must be a lawyer or, if not, have a background in law, unless expressly agreed otherwise by the parties to the arbitration. This is not required if the arbitrator must decide the dispute *ex aequo et bono*. In a tribunal formed of three or more arbitrators, at least one of them must be a jurist.

### 4.2 Default Procedures

As regards the appointment of arbitrators, Article 15 of the SAA expressly provides for a default procedure to select arbitrators, as follows:

- if there is to be a sole arbitrator, the competent ordinary court will appoint the arbitrator upon the request of any of the parties;
- if there are to be three arbitrators, each party shall nominate one arbitrator, and the two arbitrators thus appointed shall nominate the third arbitrator, who shall act as the chairman or president of the arbitration tribunal. If a party fails to nominate an arbitrator within 30 days of receipt of the demand to do so from the other party, the appointment of the arbitrator shall be made by the competent ordinary court, upon request of any of the parties. The same procedure shall apply when the two arbitrators cannot reach an agreement on the third arbitrator within 30 days from the last acceptance of any of the two first-appointed arbitrators; and
- in arbitrations with more than three arbitrators, the competent ordinary court shall appoint all of them upon request of any of the parties.

Finally, if there are multiple claimants or respondents, the former shall nominate one arbitrator and the latter another. If the

claimants or the respondents do not agree on their nomination of the arbitrator, the competent ordinary court shall appoint all the arbitrators upon request of any of the parties.

### 4.3 Court Intervention

Article 8.1 of the SAA gives competence to Spanish courts in order to appoint and remove arbitrators, following the procedure stated in Article 15.3 of the SAA, as previously explained.

The power of the ordinary court is limited to the appointment of the arbitrator and the prima facie review of the existence of the arbitration agreement.

### 4.4 Challenge and Removal of Arbitrators

The SAA is very flexible when governing the process to challenge or remove arbitrators. Article 18 of the SAA leaves it to the parties to set the process for these purposes. If no agreement exists, parties must file any challenge within 15 days as of the date when the particular circumstances giving rise to the challenge were known. It will be for the arbitrators to decide on the challenge unless the arbitrators uphold the challenge or the opposing party accepts the petition to remove. If the challenge is not upheld by the arbitrators, the petitioner may resubmit the challenge before the ordinary courts when applying to set aside the award.

### 4.5 Arbitrator Requirements

Article 17 of the SAA states that arbitrators must be and remain independent and impartial during the whole arbitration process and shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. An arbitrator shall, without delay, disclose to the parties the occurrence of any such circumstances within the arbitration.

There is no express definition of independence and impartiality in the SAA; this matter is analysed on a case-by-case basis under Spanish law. Although the IBA guidelines on independence and impartiality in international arbitration do not bind courts in Spain, recent case law shows that there is an increasing tendency to admit these guidelines as reference.

In any event, an arbitrator cannot maintain any personal, professional or commercial relationship with any of the parties to the arbitration.

## 5. Jurisdiction

### 5.1 Matters Excluded from Arbitration

The SAA provides that only disputes relating to matters within the free disposition of the parties may be subject to arbitration, specifically excluding from its scope of application arbitrations

related to labour matters. Criminal matters and certain specific civil matters (such as parental issues) are also out of the scope of application of the SAA.

### 5.2 Challenges to Jurisdiction

The SAA clearly states in Article 22 that arbitrators can adjudicate on their own jurisdiction. Thus, the principle of Kompetenz-Kompetenz is expressly admitted in Spain.

Furthermore, the decision of the arbitrators on their jurisdiction may only be challenged by means of an application to set aside the final or partial award on jurisdiction.

### 5.3 Circumstances for Court Intervention

A Spanish court can only address the question of the jurisdiction and competence of the arbitral tribunal when one of the parties commences a proceeding in apparent breach of an arbitration agreement or when the award rendered by the arbitral tribunal is being challenged or the enforcement order is appealed on the basis that the arbitral tribunal's decision on jurisdiction was wrong.

Unlike other jurisdictions, such as France or Switzerland, there is no ex novo review of jurisdiction under the SAA. However, negative rulings on jurisdiction may be reviewed by Spanish courts by means of annulment actions (Article 41 of the SAA). Relevant case law shows that parties seeking a review of negative jurisdiction will invoke infringement of public policy (Article 41.1.f of the SAA) as a ground for annulment of the award.

### 5.4 Timing of Challenge

The parties have the right to challenge the jurisdiction of the arbitration tribunal before the seat court once the decision on jurisdiction is rendered by the arbitrators in the form of an award (interim or final). The arbitrators are allowed under Article 22.3 of the SAA to render their decision on jurisdiction and merits in the final award jointly.

### 5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

If a challenge on jurisdiction is brought before the national court, that court will analyse the specific jurisdiction of the arbitral tribunal by means of a de novo review.

### 5.6 Breach of Arbitration Agreement

Article 11.1 of the SAA prevents ordinary courts from hearing disputes submitted to arbitration. The court should uphold the arbitration agreement unless it finds the arbitration agreement to be invalid.

Any claim commenced in apparent breach of an arbitration agreement should be rejected by the court unless the defendant

answers to the claim without objecting to the court's jurisdiction within ten business days as of the date when the claim was served on the defendant (in which case the parties are deemed to have agreed to waive the arbitration agreement).

## 5.7 Third Parties

Spanish law does not grant the tribunal the power to hold jurisdiction over individuals/entities that are not actually a party to the arbitration agreement. However, certain case law in Spain has admitted that arbitration agreements may bind non-signatories if they have had a very close and strong relationship with one of the signatories and/or played a relevant role in the performance of the contract subject to arbitration (the so-called "tacit acceptance of the arbitration agreement").

This is an issue that has to be analysed on a case-by-case basis, given there is no specific case law in Spain that is applicable (the decision of the Supreme Court of 9 July 2007 as contrary to the extension of the arbitration clause to non-signatories and the decision of the Supreme Court of 26 May 2005 may be cited as favourable to such an extension).

## 6. Preliminary and Interim Relief

### 6.1 Types of Relief

Unless otherwise agreed by the parties, arbitrators are entitled to issue interim measures linked to the subject matter of the dispute. Interim measures issued by arbitrators are enforceable before any court. The provisions related to the setting aside and enforcement of awards apply to the enforcement of interim measures, regardless of the form of those measures.

The interim measures that may be granted by an arbitrator are those generally accepted by the Spanish Civil Procedure Act, the purpose of which is to secure the potential future enforcement of any award issued. These may include:

- attachments and freezing orders;
- deposits;
- registrations in public registries;
- orders to cease provisionally any specific conduct; and
- in general, any relief which is suitable to protect the effectiveness of the future enforcement of the award.

### 6.2 Role of Courts

Under the SAA, interim relief may be requested before either ordinary courts or the arbitrators (if the parties did not expressly agree to prevent arbitrators from doing so). If the interim relief is requested before the ordinary courts, the applicant must provide evidence of the existence of the arbitration agreement or the existence of the arbitration process.

Petitions for interim measures will ordinarily be applied before ordinary courts when the requesting party intends to enforce any such measures against third parties that are not bound by the arbitration agreement.

Applications of a party before a court to grant interim relief in support of arbitration will have no negative effect on the jurisdiction of the arbitral tribunal.

## 6.3 Security for Costs

The SAA does not specifically address the possibility of a court or an arbitral tribunal ordering security for costs. Despite the fact that arbitrators and ordinary courts would be empowered to order such security for costs, this is an uncommon practice in Spain.

## 7. Procedure

### 7.1 Governing Rules

The parties are free to determine the procedure applicable to their arbitration within the arbitration agreement, either directly or by reference to arbitration rules issued by any particular institution to which the parties may expressly submit. However, the principles of due process or deference to the parties' procedural rights shall be respected when doing so.

### 7.2 Procedural Steps

The parties must respect the rules agreed by them and/or those of any appointed institution governing the arbitration process, which, in any event, must always respect the principles of due process and equal treatment within the arbitration.

### 7.3 Powers and Duties of Arbitrators

The SAA grants certain general powers and impose some duties for the arbitrators. The most relevant of these are:

#### Powers

- They may withdraw from their appointment immediately when they cannot properly exercise their powers and duties.
- They may rule on their own competence.
- They may grant interim measures and injunctions.
- They have the power to conduct the arbitration process, deciding on hearings, means of evidence and conclusions.
- They may appoint experts (unless expressly agreed to the contrary by the parties).

#### Duties

- They must be independent and impartial and remain so during the whole arbitration process.
- They must respect the principle of due process and equal treatment to all of the parties to the arbitration.

- They must keep confidential all information received as arbitrators.
- They must issue the award within the provided time limits and they have to explain the rationale behind their decision.

## 7.4 Legal Representatives

There are no specific rules concerning particular qualifications for legal representatives acting in Spain within an arbitration process. The representative must provide evidence demonstrating that he or she is empowered to act as a representative to any party of the arbitration.

## 8. Evidence

### 8.1 Collection and Submission of Evidence

It is for the parties to the arbitration, together with the tribunal, to set the rules applicable to the collection and submission of evidence at the pleading stage and at the hearing stage.

The general approach to certain features regarding the collection and execution of means of evidence will greatly depend on the nature of the arbitration (whether it is international or local) and whether the arbitration process is governed by a particular institution or not.

Within international arbitration processes held in Spain it is very common to abide by international standards allowing for limited discovery and disclosure (always controlled by the arbitrators). Use of witness statements, cross-examination and redirect examination at the hearings are regular means of evidence in arbitration proceedings in Spain.

As per national arbitrations, discovery and disclosure requests are much more limited and are normally intended to request from the adverse party specific, previously identified documents and means of evidence which may serve the purposes of the subject matter of the arbitration. In addition, the production of witness statements with the pleadings will very much depend on the rules of the particular institution governing the arbitration. Similarly, these rules also govern the evidence stage at the hearing.

As regards ad hoc national arbitrations, Spain tends to follow the approach taken by local courts, where there are no witness statements, and at the hearings it is customary to have only direct and cross-examination, but not redirect examination.

Concerning privilege, all communications between outside counsel and its client are subject to legal privilege and no arbitrator may ask for production of evidence. This privilege may only be waived by express consent from the counsel's client.

On a general basis, communications with and/or from in-house counsel are not considered to be covered by legal privilege, thus production of these communications could be requested.

### 8.2 Rules of Evidence

The SAA gives ample room to the parties to choose the applicable rules of evidence governing the arbitration process.

If the arbitration is administered by any particular institution, it would be the rules of that institution which would govern the evidence within the arbitration process.

If it is an ad hoc arbitration and the parties have agreed no rules of evidence (for instance, the IBA), the arbitrators will have wide powers to decide on these, always respecting the principle of equal treatment to all parties, allowing them sufficient opportunity to present their case.

### 8.3 Powers of Compulsion

The arbitrators are invested with the authority to request the production of documents from the parties and non-parties to the arbitration, and to order the attendance of witnesses at the hearings. Requests for statements from witnesses not appearing before the hearings are limited and only allowed when, for whatever reason, it is envisaged that a witness relevant to the arbitration will not be able to attend or provide a statement at the hearings.

The arbitrators, or any of the parties with the arbitrators' consent, may request from the competent ordinary court all assistance needed to execute means of evidence admitted by the arbitration tribunal. The competent court will be the court of first instance of the seat of the arbitration or the court of the place where the assistance shall take place.

## 9. Confidentiality

### 9.1 Extent of Confidentiality

Pursuant to Article 24(2) of the SAA, arbitrators, parties and arbitral institutions shall keep the information received in the course of the arbitral proceedings confidential. Although this provision seems to apply only to substantive information received during the proceedings, it is extended to any kind of document and information provided during the arbitration (submissions, award, etc).

The confidentiality provisions apply vis-à-vis third parties but not before any other competent Spanish court to hear any matter brought by any of the parties to the arbitration.

## 10. The Award

### 10.1 Legal Requirements

Article 37 of the SAA sets forth the legal requirements that an award must contemplate in order to be valid:

- it must be made in writing and signed by the arbitrators;
- it must be reasoned, unless it sets out the agreement reached by the parties;
- it must include the date and place of issuance;
- it must rule on costs and expenses of the arbitration, respecting any agreement of the parties in this regard; and
- it must be duly served on all parties to the arbitration.

### 10.2 Types of Remedies

Spanish law does not allow punitive damages. However, when the contract subject to arbitration contains provisions for punitive damages, arbitrators may grant them if the conditions provided for in the contract are met, carefully assessing their proportionality, based on the principle of the free will of the parties. Nevertheless, enforcement of this kind of damages in Spain is difficult, since, if it is enforced, the party bearing the payment of punitive damages may seek the annulment of the award on infringement of public order.

The arbitral tribunal may also, under Spanish law, award rectifications and injunctions.

### 10.3 Recovering Interest and Legal Costs

Article 37 of the SAA provides that, unless otherwise agreed by the parties, the award shall set the costs to be borne by each party.

The arbitral costs will include arbitrators' fees and expenses and, as appropriate, the fees and expenses of the parties' defence or representatives, the cost of the service rendered by the institution conducting the arbitration and all other expenses incurred in the arbitral proceedings.

Failing an agreement between the parties, the arbitrators are entitled to decide on the distribution of costs. Costs usually "follow the event". However, the arbitrators may also decide in the award that one of the parties shall compensate the other party for the incurred costs and expenses.

In addition, the arbitrators may award interest. Under Spanish law, the parties may have agreed to capitalise interest in order to accrue additional interest.

The general principle is that the applicable interest rate will be agreed between the parties. Failing an agreement between the parties, the applicable interest rate will be the legal inter-

est rate approved by the Spanish Government every year (3% per annum in 2020). In the case of commercial receivables, the interest rate of Act 3/2004 of 29 December 2004 may apply. This interest rate is equal to the interest rate applied by the CEB to its most recent financing transaction, plus 7%.

## 11. Review of an Award

### 11.1 Grounds for Appeal

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;
- that 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;
- that the arbitrators have adjudicated matters that were not subject to their decision;
- that the appointment of the arbitrators and/or the proceeding is in breach of the agreement of the parties, or, failing any such agreement or when that agreement is contrary to the Spanish Arbitration Act, that the appointment or the proceedings were made in breach of the Spanish Arbitration Act;
- that the arbitrators have decided on matters that may not be subject to arbitration; or
- that the award is contrary to public order.

Any action for annulment must be filed within two months of the date of the serving of the award and before the Superior Court of Justice corresponding to the seat of arbitration unless any of the parties request that the arbitrators clarify any extent of the award (Article 41.4).

The request for annulment shall include all supporting documentation and propose any relevant means of evidence. The court will serve the request to the adverse party, which will have a 20 business-day term to oppose, also providing documentation and proposing relevant means of evidence.

A hearing may take place if requested by the parties and/or when any admitted means of evidence must be executed before the court. After the hearing, or when no hearing takes place, the court will issue its judgment, which is final and not subject to further appeal.

### 11.2 Excluding/Expanding the Scope of Appeal

The parties cannot exclude or expand the scope of appeal or challenge under the Spanish Arbitration Act. The grounds con-

tained under Article 41 of the SAA are *numerus clausus* and must always be respected.

### 11.3 Standard of Judicial Review

In Spain, ordinary courts cannot review the merits of cases decided in arbitration. They are only entitled to review any particular challenge based on any of the grounds set forth in Article 41 of the SAA.

## 12. Enforcement of an Award

### 12.1 New York Convention

Spain ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 29 April 1977. Spain made no reservations to the Convention. Once ratified by Spain, the original text of the Convention was incorporated into the Spanish legal system.

Spain also ratified on 5 March 1975 the European Convention on International Commercial Arbitration of 21 April 1961.

### 12.2 Enforcement Procedure

The enforcement of an award in Spain varies depending on whether the award is domestic or foreign (an award issued outside Spain is considered a foreign award pursuant to Article 46 of the SAA).

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 Spanish Civil Procedure Act, starting with an application filed by the party wishing to enforce the award.

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 High Court 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. The process to recognise a foreign award in Spain is the same process as that applicable to a foreign court judgment or resolution, following the procedures set out in Act 29/2015, of July 30th, on international co-operation.

Once recognised in Spain, a foreign award must be enforced before the court of first instance of the domicile of the respondent or of the place where the award must produce effects.

### 12.3 Approach of the Courts

The general approach of the Spanish courts towards the recognition and enforcement of arbitration awards, including the

standard for refusing enforcement on public policy grounds, is positive.

Article 43 of the SAA establishes that awards produce the effects of *res iudicata* and the only recourse against an award is the action to set aside provided under Article 41 of the SAA. Even if one of the parties has initiated an action to set aside an award, the latter will be subject to provisional enforcement.

In addition, concerning foreign awards, Spanish courts respect the contents of Article III of the New York Convention of 1958, establishing that they must respect the authority of any foreign award.

There is no express definition of public policy or order under Spanish law, and Spanish case law has not been consistent in this respect throughout all matters adjudicated. In general terms, the enforcement of an award may be rejected based on public policy issues when it is contrary to social standards applicable in Spain and/or when it has granted petitions unknown to and/or not accepted by the Spanish legal system (for instance, punitive damages not admitted in Spain). Breach of a mandatory law will not be considered sufficient to defend the existence of a breach of Spanish public order.

## 13. Miscellaneous

### 13.1 Class-Action or Group Arbitration

Mediation and arbitration for collective claims regarding consumers' and users' rights are regulated under the Royal Decree 231/2008 of February 15th on the Consumer Arbitral System (Real Decreto 231/2008, de 15 de febrero, Sistema Arbitral de Consumo).

There is no other specific regulation concerning class-action and/or group arbitrations in Spain.

### 13.2 Ethical Codes

Spanish Lawyers participating in arbitration are subject to the provisions of the Code of Ethics of Spanish Lawyers approved on 6 March 2019. Besides, non-binding Codes of Ethical conduct apply in Spain, for instance, IBA Guidelines on Party Representation in International Arbitration (2013) or the recently published "Arbitration Code of Good Practices" launched by the Spanish Arbitration Club (Club Español del Arbitraje, CEA) in June 2019.

### 13.3 Third-Party Funding

Third-party funding is relatively recent in Spain, but it seems to have become established, definitively catching the interest of the arbitration community. There is no regulation as such which

makes it difficult to set any limits or restrictions to amounts permitted.

### **13.4 Consolidation**

Under Spanish Law there is no specific provision on joinder or consolidation of a third party. There is also no regulatory framework for consolidation of arbitration proceedings.

However, there may be provisions regulating these issues in the regulations of several Spanish and International Arbitral Institutions (for instance, Article 6.3. of the ICC Arbitration Rules).

### **13.5 Third Parties**

Under Spanish law, there is no specific provision allowing an arbitral tribunal to assume jurisdiction over third parties that are not actually a party to the arbitration agreement.

However, according to certain provisions of Spanish case law, non-signatory parties may be bound by an arbitration agreement when they have had a very close and strong relationship with one of the parties to the arbitration agreement and/or played a relevant role in the performance of the contract subject to arbitration (the so-called “tacit acceptance of the arbitration agreement”).

The possibility to extend the arbitration clause to non-signatory parties must be evaluated on a case-by case basis. By way of example, the decision of the Supreme Court of 9 July 2007 is contrary to the extension of the arbitration clause to non-signatories but the decision of the Supreme Court of 26 May 2005 rules in favour of such an extension.

**Andersen** in Spain has offices in Madrid, Barcelona, Valencia and Seville. The team is made up of more than 250 professionals led by 40 partners and the managing partner in Spain, Jaime Olleros. Andersen is a member firm of Andersen Global, an international association of separate, independent firms comprised of tax and legal professionals in more than 190 several locations worldwide through its member firms and collaborating firms. The association allows the team to provide best-in-class service in complex transactions to important domestic

and international clients in Spain and across the globe in a seamless and consistent manner everywhere. Headed by Elena Sevilla, the international arbitration team focuses its practice in international high-stakes arbitration proceedings across a wide range of industry sectors and jurisdictions. The team holds relevant expertise and in-depth knowledge of a wide range of institutional rules. Members of the team are regularly appointed to serve as arbitrators.

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