



iurispan

An Association of Spanish Law Firms
www.iurispan.org

Offices in:
Alicante, Elche, Gijón, Barcelona, Bilbao, Canary Islands (Gran Canaria, Fuerteventura, Lanzarote and Tenerife), Cantabria, Huesca, La Coruña, León, Lugo, Madrid, Marbella, Orense, Palma de Mallorca, Pamplona, Pontevedra, Salamanca, Tarragona, Teruel, Zamora, Zaragoza.
Please see addresses of our offices on reverse side.

The London Office:
Iurispan c/o Fernando Scornik Gerstein - Spanish Lawyers.
Holborn Hall - 193 - 197 High Holborn - 1st Floor - Suite F - London WC1V 7BD
Tel. (44) 207 404 8400 - Fax: (44) 207 404 8500 - E-mail: london@scornik-gerstein.co.uk
Contact: Antonio Arenas López

Debt Recovery In Spain

General Considerations About Legal Procedures In Spain

A remarkable characteristic of Spanish legal procedures – and of Spanish justice in general – is that it is extremely formalistic.

In the first place any plaintiff in Spain is obliged – almost in every case – to grant a Notarial Power of Attorney which is called “Poder a Procuradores”. It is absolutely necessary that this Power of Attorney is granted before a Notary Public (legalized with the Apostille of The Hague, if it is not a Spanish Notary) or before a Spanish Consul. Letters of instructions or simple authorizations to lawyers are not valid in Spain. This Power of Attorney must contain the name/s of the Procuradores that shall represent the plaintiff (or the defendant in its case) in Court. The “Procurador” is a professional whose duty is to receive notices from the Court and notify them to the parties. He formally represents the party before the Court. He is usually a lawyer (although some of them are not as it was not mandatory in earlier times to be a lawyer). Usually this “Poder a Procuradores” includes also the names of the instructed lawyers, but it is not essential. The writs would be signed by the Procurador on behalf of the Plaintiff (or the defendant) and by the instructed lawyer as the legal director (“letrado director”).

This formality of Spanish procedures is expressed also in the fact

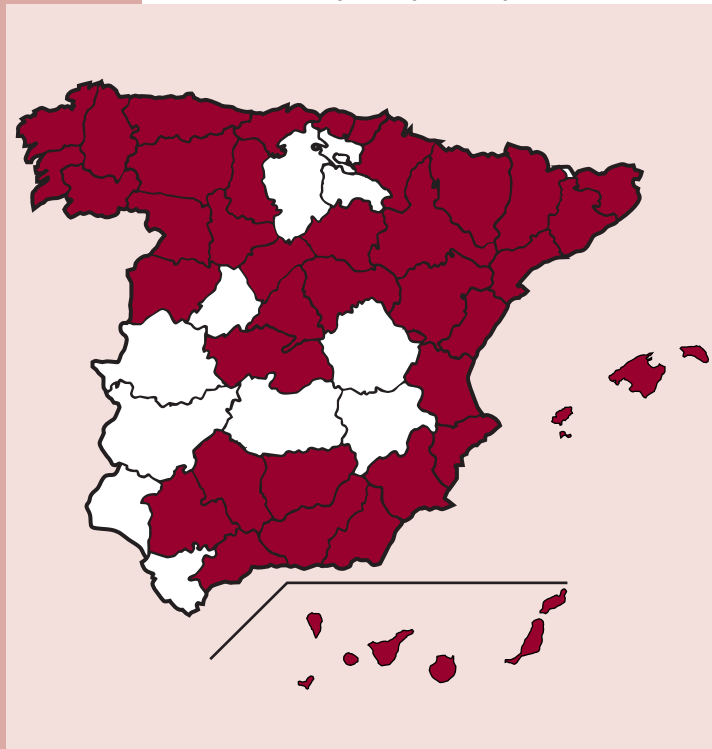
that all documents should be presented in originals and if they are in a foreign language, duly translated into Spanish. A simple translation may be filed, but if objected by the counter-party a translation done by a Sworn Translator would be necessary. Translations to Spanish done in foreign countries should be notarized and legalized – when possible – with the Apostille of

the Convention of The Hague and if not by the Spanish Consul, although many courts accept non legalized translations.

SUMMARY

General Considerations About Legal Procedures In Spain

1. The Monitory Process
2. The Executive Procedure
3. The Normal Procedures
4. Provisional Enforcement Of The Judgement
5. Appeal To The Supreme Court And To The Constitutional Court.
6. Preventive Attachments
7. Documents
8. Enforcing Judgements
9. Costs
10. Interest
11. Miscellaneous



All public documents issued in foreign countries should always be legalized with the Apostille of the Convention of The Hague or by the Spanish Consul, unless that, in the case of Europe, they are issued according to the EC regulations.

Another characteristic of Spanish legal procedures is that they are rather slow and hence preventive measures as attachment of property or goods belonging to the defendant should always be considered as an option.

1. The Monitory Process

This type of process, introduced in Spain some year ago, permits a quicker procedure regarding the settlement of unpaid bills or invoices. If the plaintiff does not respond, judgment will be immediately entered in default without the right to appeal, whilst in other type of procedures the period for filing evidence is unavoidable. If the defendant opposes the claim then a normal procedure would have to be filed within 30 days. For this reason is always advisable to have a full case duly prepared before filing the monitory process.

Unfortunately the monitory process is limited only to claims up to 30.000 Euros.

2. The Executive Procedure

It is also a speedy procedure in which the notice to the defendant is served jointly with an order of attachments of property or/and goods or/and cash.

It is limited to very specific cases, mainly when the claim is based in unpaid bills of exchange, debts recognized in Public Notarial Documents, firm Judgements, etc...

3. The Normal Procedures

Besides the above mentioned there are no other special procedures for debt recovery in Spain.

In the normal procedure, even if the claim is undefended it will usually take approximately 5/6 months before a Judgement is obtained. At any stage of the Procedure the defendant declared

in default may appear before the Court and join the proceedings, although he would have lost the right to file the precluded parts of the procedure (filing a defence, submitting evidence, etc...) He also may appeal to the High Court.

If the claim is defended the procedure could take 12/16 months and if there is an appeal to the Audiencia (High Court), the appeal could take 6/8 months to be heard. All judgements may be appealed before the Audiencias.

4. Provisional Enforcement Of The Judgement

The Spanish procedural law admits what is called "provisional enforcement of a Judgement". This means that when a judgement is obtained in the First Instance Court for a monetary claim, the said Judgement may be enforced even if it has been appealed.

No guarantees are requested by the Court to file the provisional enforcement. Of course, if the Judgement is repealed by the Audiencia, the claimant would have to pay back the amount he obtained.

5. Appeal To The Supreme Court And To The Constitutional Court.

The possibility of appealing to the Supreme Court is extremely restricted in Spain. The restrictions come not only from the amount of the claim (only appeals for claims for over 150.000 € are admitted) but also by the strict conditions that the appeal must fulfil to be admitted. The outcome is that few appeals to the Supreme Court are admitted. If it is, then the judgements of the 1st Instance Court and of the Audiencia may not be enforced until the appeal is substantiated. Of course if it is a judgement on a monetary claim it could had been enforced as explained in 4. A case before the Supreme Court can take 6/8 years.

The appeals before the Constitutional Court do not suspend the enforcement of the previous judgements, but again is difficult that these type of appeals – which only may be filed arguing



violations of constitutional rights – may be admitted.

6. Preventive Attachments

In some very specific cases a preventive attachment filed against the debtor may be enacted by the claimant. Usually the Court requests a Guarantee (cash or Bank Guarantee) to grant the attachment

As the attachment – if granted – is carried out without previous notice to the defendant, it is always interesting to study this possibility which may secure solvency for the future.

7. Documents

Debtors can be compelled to hand over information in respect of a pending case, including information in respect of the whereabouts of assets. A debtor can also be compelled to hand over documents that are relevant to the case, even if they are detrimental to the debtor's case.

8. Enforcing Judgements

Firm judgements may be enforced by means of a special executive procedure, which will usually take approximately 3 or 4 months, or maybe less, to finalise. The methods of enforcement available include attachment of real property, seizure of goods etc...

This includes also Foreign Judgements, as long as they are firm (not subject to any appeal) and that the case when enacted was duly notified to the defendant.

9. Costs

The award of Costs although discretionary to the Court is normally granted in successful monetary claims.

a) Legal Fees

A free system operates in Spain in connection with the agreements between client and lawyer but if there is any controversy about legal fees in a litigation

matter the court will request the opinion of the Law Society who would usually apply the “recommended fees rules” published periodically by each local Spanish Law Society. Of course, if there is a signed agreement with the client it should prevail over the Law Society Rules. Contingency fees are not generally allowed, but some Law Societies admit them. Fees are not usually calculated on a hourly basis; only international firms would charge on an hourly rate.

b) Usual amount for fees in Judicial Claims recommended by the Law Societies and accepted by the Court.

When there is no special agreement, fees are calculated according to the amount of the claim. The fees for smaller claims will be calculated at approximately 20% of the amount of the claim; for medium sized claims they will be calculated at approximately 15% of the amount of the claims and for large claims, they will be calculated at approximately 10% of the amount of the claim.

c) Other Expenses

It is possible to obtain information regarding solvency of a firm from both the Companies House and Land Registry and it will generally take approximately 2 or 3 days to obtain such information. The cost of obtaining a simple registry note is not high, but it contains very summary information. Obtaining an extended note is more expensive, depending upon the Registry. One characteristic of the Spanish system is that Registrars are professionals in private practice (they pay for all their overheads) but with a public function. The fees they charge tend to be higher than in other countries, although they are regulated by the Government.

d) Procurador Fees

The Procurador Fees are calculated according to the rules of the Procuradores Society (Colegio de Procuradores) of each

ALICANTE
JOSÉ-LUIS CAMPILLO & ASOCIADOS –
ABOGADOS

GRAN ALACANT - ALICANTE
 Avda. Escandinavia, nº 72,
 Conjunto Altomar II, L-8, M-E.
 03103 Urb. Gran Alacant,
 Santa Pola, Alicante,
 Tel: (34) 966 698 796
 Fax: (34) 966 699 570
 E-mail: info@jlcawyers.com
 http://www.jlcawyers.com
 Contact: José Luis Campillo

ELCHE
 Avda. de Alicante, nº 24, 2º
 03203-ELCHE (Alicante)
 Tel: (34) 966 612 816
 Fax: (34) 966 699 570
 E-mail: info@jlcawyers.com
 http://www.jlcawyers.com
 Contact: José Luis Campillo

ASTURIAS
BUFETE ASUETA ABOGADOS
 C/ Conde Guadalhorce, nº 2, 1º C
 33206 Gijón (Asturias)
 Tel: (34) 985 171 708
 Fax: (34) 985 171 708
 E-mail: afa1514@colegiados.ica.gijon.com
 Contact: Alberto Fernández Asueta

BARCELONA
FERNANDO SCORNIK GERSTEIN –
ABOGADOS
 Avda. Diagonal 407, 4º 2º
 08008 Barcelona
 Tel: (34) 932 386 850 Fax: (34) 934 160 587
 E-mail: barcelona@scornik-gerstein.com
 administracio@arealegal.info
 Contact: Antonio Gómez Pérez

BILBAO
BUFETE LEZA & PERGO ABOGADOS
 C/ Gran Vía, nº 17 – 48001 Bilbao
 Tel: (34) 944 160 489 Fax: (34) 944 160 489
 E-mail: jgomez@lezaypergo.com
 Contact: Jose Ángel Gómez de la Cruz

CANARIAS (CANARY ISLANDS)
FERNANDO SCORNIK GERSTEIN –
ABOGADOS

GRAN CANARIA
 LAS PALMAS
 Franchy y Roca, 5 –4º planta - oficina 6
 35007 Las Palmas
 Tel: (34) 928 273 724 – 928 273 728
 Fax: (34) 928 22 38 77
 E-mail: laspalmas@scornik-gerstein.com
 Contact: Satoria Ortega Félix

PLAYA DEL INGLÉS
 Edif. Mercurio – Torre II – planta 4º E
 35100 Maspalomas
 Tel: (34) 928762306 – 928 760 992
 Fax (34) 928 760 547
 E-mail: playadelingles@scornik-gerstein.com
 Contact: Eva Gross Pérez

FUERTEVENTURA
 Véase / See Las Palmas
 Contact: Satoria Ortega Félix

LANZAROTE
 Véase / See Las Palmas
 Contact: Satoria Ortega Félix

TENERIFE
 Edif. Valdés Center - Torre A - of. I, piso 2º
 38650 Los Cristianos – Arona
 Tel: (34) 922 750 060 – 922 794 412
 Fax: (34) 922 794 208
 E-mail: tenerife@scornik-gerstein.com
 Contact: Mariano Zunino Siri

CANTABRIA
BUFETE ASUETA ABOGADOS
 Véase / See Asturias
 Contact: Alberto Fernández Asueta

HUESCA
BUFETE GIMENO DEL BUSTO (BGdB)
 Véase / See Zaragoza
 Contacts: Joaquín Gimeno del Busto
 José María Pabán Arranz

LA CORUÑA
BUFETE ASUETA ABOGADOS
 Véase / See Asturias
 Contact: Alberto Fernández Asueta

LEÓN
ANGEL ARMESTO ALONSO –
ABOGADOS
 Av. Palencia, 5 – 1º Dcha – 24009 León
 Tel: (34) 987 208 202
 Fax: (34) 987 208 635
 E-mail: angelarmesto@angelarmesto.com
 http://www.angelarmesto.com
 Contact: Ángel Armesto Alonso

LUGO
BUFETE ASUETA ABOGADOS
 Véase / See Asturias
 Contact: Alberto Fernández Asueta

MADRID
FERNANDO SCORNIK GERSTEIN –
ABOGADOS
 Alberto Alcocer, 7 - 8º Dcha - 28036 Madrid
 Tel: (34) 913 507 262
 Fax: (34) 913 507 306
 E-mail: madrid@scornik-gerstein.com
 http://www.scornik-gerstein.com
 Contact: Eduardo Hidalgo

MARBELLA (and Málaga) Contact the Lon-
 don office of Fernando Scornik Gerstein
 193-197 High Holborn-Holborn Hall
 First Floor- Suite F, London WC1V /BD.
 Tel.: (44) 207 404 8400
 Fax: (44) 207 404 8500
 E-mail: london@scornik-gerstein.co.uk
 Contact: Antonio Arenas López.

ORENSE
ANGEL ARMESTO ALONSO –
ABOGADOS
 Véase / See León
 Contact: Ángel Armesto Alonso

PALMA DE MALLORCA
BUFETE GINARD – ALEMANY
ABOGADOS
 Paseo Mallorca, 16 – Entlo.
 07012 Palma de Mallorca
 Tel.: (34) 971 724 119
 Fax (34) 971 72 21 47
 E-mail: ginard.alemany@mallorcanet.com
 Contact: Juan Ginard Nicolau

PAMPLONA
BUFETE GIMENO DEL BUSTO (BGdB)
 Véase / See Zaragoza
 Contacts: Joaquín Gimeno del Busto
 José María Pabán Arranz

PONTEVEDRA
ANGEL ARMESTO ALONSO –
ABOGADOS
 Véase / See León
 Contact: Ángel Armesto Alonso

SALAMANCA
BUFETE DÁVILA ABOGADOS
 Zamora, 49-55 - 3º A - 37002 Salamanca
 Tel: 923 21 58 51
 Fax: 923 27 20 52
 E-mail: clientes@davilaabogados.net
 http://www.davilaabogados.net
 Contact: Antonio Dávila González

SEVILLA Contact the London office of
 Fernando Scornik Gerstein
 193-197 High Holborn-Holborn Hall
 First Floor- Suite F, London WC1V /BD.
 Tel.: (44) 207 404 8400
 Fax: (44) 207 404 8500
 E-mail: london@scornik-gerstein.co.uk
 Contact: Antonio Arenas López.

TARRAGONA
VAHUSARI ADVOCATS
 Rambla Nova, 118-120 – baixos
 43001 Tarragona
 Tel: (34) 977 217 064
 Fax (34) 977 219 578
 E-mail: mvallve@vahusari.com
 celestino@vahusari.com
 http://www.vahusari.com
 Contacts: Manuel Vallvé Marsol
 Celestino Rivera Velasco

TERUEL
BUFETE GIMENO DEL BUSTO (BGdB)
 Véase / See Zaragoza
 Contacts: Joaquín Gimeno del Busto
 José María Pabán Arranz

ZAMORA
ANGEL ARMESTO ALONSO –
ABOGADOS
 Véase / See León
 Contact: Ángel Armesto Alonso

ZARAGOZA
BUFETE GIMENO DEL BUSTO (BGdB)
 C/ Don Jaime I, 6 – duplicado.
 50001 Zaragoza
 Tel: (34) 976 221 320
 Fax: (34) 976 217 046
 E-mail: bufete@bgdbabogados.com
 http://www.bgdbabogados.com
 Contacts: Joaquín Gimeno del Busto
 José María Pabán Arranz

jurisdiction. They are never calculated on a time basis. When an award of costs is granted it will normally include the Procurador Fees

10. Interest

Where parties have not agreed a rate of interest in default, interest will be calculated according to the interest rates of the Bank of Spain (approximately 4% or 5% but, of course they may vary).

11. Miscellaneous

a) Personal liability of managers/directors

A managing director who has ordered goods whilst he knew that the company would not be able to pay can be held personally liable for payment of such goods.

b) Bankruptcy

Bankruptcy is not generally an attractive option for creditors in Spain. It is a long, uncertain, complicated and expensive procedure. The applicant will usually have to pay substantial costs which may exceed the amount of the claim.

c) Debts in foreign currencies.

Whatever the currency in which the debt is expressed, it has to be claimed in its equivalent in euros. The Court shall always issue a monetary judgement in euros.

Please note that the above information is only intended to be used as a general guide to debt recovery in Spain. You are strongly advised to seek advice from a Spanish lawyer before taking any action to recover a debt in Spain as the above information might not apply in every case.