

GETTING THE DEAL THROUGH

Construction

in 31 jurisdictions worldwide

Contributing editor: Robert S Peckar

2009



Published by

GETTING THE DEAL THROUGH
in association with:

- AKD Prinsen Van Wijmen
- Akerman Senterfitt Wickwire Gavin
- Alem & Associates
- Arzinger & Partners
- BCM Hanby Wallace
- Bin Shabib & Associates (BSA) LLP
- Borden Ladner Gervais LLP
- Borislav Boyanov & Co
- Castrén & Snellman Attorneys Ltd
- Corporación Mexicana de Asesores en Derecho (COMAD SC)
- Drakopoulos Law Firm
- Fangda Partners
- Fladgate LLP
- Foyen Advokatfirma AB
- Hofmann & Partners
- Iason Skouzos & Partners Law Firm
- Jausas
- Konnov & Sozanovsky
- Lalive
- Lalive in Qatar LLP
- Larraín, Rozas, Lackington, Rencoret & Schultz y Cia Ltda Abogados
- Mallesons Stephen Jaques
- MV Kini & Co
- Oh-Ebashi LPC & Partners
- Özbek Attorneys at Law
- Peckar & Abramson PC
- Pinheiro Neto Advogados
- Regoli Merani & Associati
- Schwarz Kelwing Wicke Westpfahl
- Tanasescu Leaua Cadar & Asociatii
- Vaughan Avocats
- WongPartnership LLP

Spain

Mercedes Clavell and Roger Canals

Jausas

1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

Architects and engineers must be registered within their professional association in Spain and their projects should be legalised by such associations in order to be executed in Spain. Therefore, if they are not members of such associations, the usual solution is for the foreign designer to enter into an agreement with a registered member.

The agreements could be of several types, from a collaboration agreement (according to which the registered designer signs and presents the project drawn by the foreign designer before the professional associations) to an incorporated joint venture (consisting normally in a limited liability company plus a shareholders' agreement). It is not necessary that the local partner controls the joint venture. The registered member who signs the project would be considered liable for any design mistake that arises.

As regards foreign contractors, it is not necessary for them to enter into a joint venture with a Spanish contractor as they can operate directly in Spain. The only requirement is that they be registered before the tax authorities, either as a resident or non-resident contractor. Construction works that last more than 183 days in any one year are considered to be a permanent establishment in Spain of the foreign contractor, in which case they are taxed as resident entities. Non-resident contractors are taxed according to the tax treaty between its country and Spain. For labour requirements, please see question 4.

In some cases (eg, if all payments received or made by the contractor are from or to foreign companies), and the works last less than 183 days, it would not be necessary for the foreign contractor to register with the tax authorities.

2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

The first steps should be, of course, to obtain some information on the market and the legal framework. Once a foreign designer or contractor decides to have a legal presence in Spain, they could start by opening a representative office, which is the easiest way to start. A representative office cannot trade; it is just authorised to collect or to give information, and is exempt from taxes in Spain. It may have employees and rent an office. The only limitation, in order to be exempt from taxes, is not executing any operation, even if acting as a commercial agent of the mother company.

If the foreign contractor starts operating in Spain, then it may choose to set up a Spanish subsidiary or to operate through a branch or a permanent establishment of the mother company. There are no limits applicable to foreign investors setting up wholly owned

subsidiaries or joint ventures. The convenience of using one form or the other should be analysed in each case, but in general, for a medium- or long-term presence in Spain we usually recommend setting up a Spanish subsidiary.

The most usual forms of Spanish corporations are SL (*sociedad limitada*) or SA (*sociedad anónima*). The minimum share capital for a SL is €3,006, fully paid up from the moment of incorporation, and for a SA it is €60,102, with 25 per cent paid at the moment of incorporation. The requirements regarding corporate decisions are easier to fulfil for a SL than a SA.

3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

As mentioned in question 1, architecture and engineering projects need to be legalised by the corresponding professional association, which in practice means that a registered professional should sign the project. It is usual that foreign architects work in cooperation with Spanish ones in order to get projects legalised.

Foreign contractors need not be licensed, but they should fulfil all applicable tax and labour obligations in Spain. If the contractor is going to subcontract part of the works, it should be registered in a special registry within the labour authorities.

4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Spanish law does not require a minimum amount of local labour to be employed. If a foreign contractor is going to use its own labour in Spain, the department of social security should be notified and, depending on the time the workers will spend in Spain, they may have to obtain a residence and work permit. There are international social security conventions between Spain and some other countries that facilitate the paperwork and social protection of foreign workers in Spain.

If a subcontractor fails to meet its labour obligations, the contractor becomes jointly liable; owners are jointly liable for the contractors' labour debts.

5 Local labour law

Are there any labour laws applicable to construction and infrastructure projects?

Yes, there are collective bargaining agreements (CBAs), applicable to the construction sector, which contain very detailed information about salaries and other payments to workers. The CBAs are different for each Spanish province or region. The minimum wage

and some other issues are updated each year; sometimes they are extended from one year to the following one, until there is a specific agreement for that year.

Besides, labour relationships are governed in Spain by the Workers' Statute, which establishes the basic principles of duties and rights of both employers and employees, maximum working hours per week (forty), paid leave, dismissal procedures, etc. Collective bargaining agreements establish further details or better conditions for the employees.

6 Healthy and safety regulation

Are there any specific health and safety rules regulating the construction industry?

Yes, Spain ratified the 62nd International Work Organisation Treaty, dated 1937, regarding safety in the building industry, and more recently it has implemented EC Directive No. 57/1992.

The local applicable law is Royal Decree No. 1627/1997. This establishes the necessity for the owner to appoint a coordinator for health and safety matters during the drafting of the project. If more than one company participates in the construction works, or one company and self-employed workers, the owner should appoint a health and safety coordinator.

In general, the obligations of owners and constructors regarding health and safety are to:

- evaluate the labour risks;
- organise the safety and the work;
- integrate prevention into all the company's activities and at all hierarchical levels;
- take into account the workers' capacities;
- limit the labour risks;
- cooperate and coordinate with other companies;
- set up the necessary safety services;
- take the necessary measures regarding:
 - first aid;
 - fire prevention;
 - evacuation and rescue;
 - serious and immediate danger; and
 - urgent medical assistance;
- have updated documentation regarding:
 - evaluation of labour risks;
 - prevention and protection measures;
 - lists of and information on accidents;
- take information and training measures; and
- oversee mechanisms regarding consultation with, and the participation of, the workers.

Since April 2007, Law No. 32/2006 regarding subcontracting in the construction industry has been in force. The main purpose of this law is to increase safety in this industry and reduce the number of accidents. Abuse of subcontracting is considered an important cause of the high accident rate in the construction industry. The law establishes a limit of three tiers of successive subcontracting for specialised activities, and only one tier for labour-intensive jobs, with some very limited exceptions. Companies that breach these limits will be jointly liable for any damage caused. Companies that wish to subcontract or be subcontractors must be registered with a special registry of the labour authorities, and they should keep a 'subcontracting book'.

7 Close of operations

If a foreign contractor, who has been legally working, decides to close its operations, what are the legal obstacles to closing up and leaving?

If the foreign contractor has acted in Spain through a company, it should respect the corporate and tax rules regarding liquidation and winding-up. Winding-up is not possible if the company has any outstanding debts. If this is the case, the debts must be paid or assigned to the parent company, otherwise the company should apply for insolvency.

Foreign contractors acting directly (through a permanent establishment or otherwise) in Spain can close their activities without having to fulfil such corporate requirements. However, they have to fulfil their labour, tax, environmental and other obligations; serious breaches of such obligations could be considered a criminal offence.

Termination of labour agreements in Spain is not at will. If the reason for the termination is the finishing of the works, depending on the type of labour agreement the contractor may be obliged to pay each employee compensation equal to twenty days' salary per each year of service. If the contractor fail to meet its salary and social security payments, the owner may be declared liable for such payments. Therefore, it is usual in Spain that owners regularly check the fulfilment by the contractor of its legal obligations. The same applies to contractors in respect of subcontractors.

8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

Use of FIDIC rules is not very widespread in Spain, even though in engineering projects they are becoming better known. Instead, many contracts are inspired by the same principles as those included in the law regulating constructions works awarded by public administrations (this law has been substantially amended by the Public Sector Act 30/2007 of 30 October, which came into force on 1 May 2008), which are favourable to the owner, but not abusive. When the owner has a stronger position in the negotiations, it should propose a contract based on the principles of Public Sector Act for public works.

9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

All kind of agreements are possible regarding this matter. The agreement depends on the negotiating power of each party in each case. However, it is a common practice to include provisions within contracts for the execution of long-term works (ie, works lasting for more than a year) limiting price escalation, linked to the price evolution of raw materials with a strong connection with construction works (copper, concrete, energy, etc). On the other hand, the contractor usually bears the risk of shortage of raw materials. Nevertheless, it is common to include in the contract strikes and other events beyond the control of contractors which may cause shortages, such as force majeure events, excluding in such cases contractors' liability for delays in completion of works.

10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

No, the only advantage for local contractors is their knowledge of the market and local laws. Spain has recently updated its local law regarding defence of competition with Law No. 15/2007, which follows European Council Rulings 1/2003 and 139/2004.

11 PPP and PFI

In certain forms of construction such as PPP and PFI, where the contractor is responsible for long-term quality control and maintenance, how is the risk of additional future costs considered and mitigated?

Although in Spain PPP and PFI are less developed than in other countries that started using these forms earlier (eg, the UK), several major projects have been awarded over the past two years with PPP and PFI systems (such as underground lines in Madrid, tramway lines in Barcelona, Madrid and Tenerife, and several toll roads and motorways), mainly due to public budget shortages and restrictions.

PPP and PFI projects have been mainly launched in Spain by regional governments, who have authority to execute infrastructure projects within their territories, leading to a lack of uniformity in the types of agreements used in this field. In general, direct toll, shadow toll and direct payments from the governmental entity are used to finance these investments. To date, the interests of the government entities have been focused more on the raising of funds than in the quality of the service, therefore no special instruments to consider the increase in quality control and maintenance costs have been designed.

An increase of shadow toll projects is foreseeable or other PPP/PFI systems not leading to direct public payments over the forthcoming years, as it is a priority for Spanish public entities that are responsible for building public infrastructure, meeting Eurostat requirements, to avoid the consolidation as public debt of the costs of the construction within the public account statements. To this effect, to this date, all PPP/PFI projects in Spain have required a turnkey construction contract by which contractors assume all deviation of costs from the initial budget, if any. Nevertheless, in some exceptional cases, contractors can recover such extra costs from the administration insofar as they arise as a consequence of a force majeure event or any other circumstance utterly unforeseeable at the time of signing the contract.

Moreover, the new Spanish Public Contracts Act (in force since 1 May 2008) introduced a public-private collaboration agreement. Such a contract intends to become the Spanish version of the British/US public-private partnership, creating a new regime of collaboration of partnership between the public and private sectors for carrying out projects or infrastructure of special complexity.

12 Payment of fees

How may a contractor secure payment of its fees from an owner? May the contractor place liens on the property?

It is possible to place liens on the land or the property but not usual, as it leads to a significant tax burden, especially in the case of large projects. Normally, Spanish construction contracts include clauses which balance the obligations of both parties regarding payments: if payment in advance by the owner is requested (before the completion of works), then normally the contractor should provide bank guarantees payable at the first call for the same amount. Alternatively (if the contractor is paid upon completion of works), the contractor usually requests bank guarantees payable at the first call from the owner covering the value of the works executed and paid in arrears.

Usually, payment for executed works is made according to the development of the works, based on certificates approved by a neutral technical supervisor. It is normal that the owner withholds a percentage of each invoice as a guarantee, or withholds the last payment for some time (ie, until the provisional guarantee has expired or the works are accepted).

13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

Under Spanish law, all parties involved in a construction project (owner, general contractor, subcontractors) are in principle jointly liable for the damages caused to third parties, and the specific liability of each party is discussed at the correspondent trial and decided by a judge. Therefore, a general contractor is usually considered liable before the owner or third parties for damages caused by itself (its company) and subcontractors. The remedies it has recourse to are the possibility of claiming against the subcontractor or agreeing a limit to its liability with the owner.

14 Insurance

Do local laws require the maintenance of any specific type of insurance on construction projects?

According to article 19 Spanish Edification Act (Law No. 38/1999), construction companies should have the *seguro decenal*. This is an insurance valid for a term of 10 years, during which the constructor and the owner are liable for any structural defects that directly threaten the mechanical resistance and stability of the building. This insurance must be in place for each construction work. The obligation is applicable only to buildings that are to be primarily used as a dwelling. The minimum insured capital shall be 100 per cent of the final cost of the construction works, including professional fees. The deductible fee of the insurance shall not exceed 1 per cent of the insured capital for each registered real property.

In addition, pursuant to article 19 of Spanish Edification Act, contractors may obtain a *seguro anual* (annual insurance to cover liability for damages caused minor construction defects) and *seguro trienal* (triennial insurance to cover liability for damages caused by construction defects preventing the building from meet minimum standards for dwelling), although to this moment they are not compulsory according to the Second Additional Disposition of the Spanish Edification Act.

15 Insolvency and bankruptcy

If a contractor files for insolvency, or is declared insolvent, may its contract be terminated for default and a new contractor retained to prevent delay on the project?

No, the Spanish Insolvency Act provides just the opposite. It is not possible for any party to terminate an agreement because of the insolvency of the other party. Judges and receivers may oblige a party to continue fulfilling the contractual obligations entered into with the insolvent party. However, it is possible to introduce some clauses in the correspondent agreement in order to avoid or reduce the risk of being in such situation.

16 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

No. Government agencies may be slow to pay, but in the end they meet their legal obligations. The delay in public agencies paying their debts is usually very long (sometimes more than 18 months after the due date), but there are some legal instruments to try to avoid this delay or at least mitigate its effects (eg, overdue invoices accrue an annual interest equal to the ECB basic rate plus seven points). In contrast to private companies, government agencies cannot be insolvent or bankrupt; therefore credits against them are usually considered 'safe'.

17 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

Such acts are considered crimes under Spanish law, and both the public authority and the contractor may be declared guilty and sentenced. If any aspect of the procedure to award the contract to a party has been irregular (not only because of bribery, but also because of formal defects in the award procedure, for example) the contract may be declared void. If the contract has already been executed, the party who legally argues, through the corresponding lawsuit, to have been damaged by such illegal award of the contract could apply for compensation.

Please note that most construction contracts are awarded through public tender procedures, and the companies participating in them have full defence rights in case any infringement of the law is produced during the allocation procedure.

A new law regarding contracts entered into by the public administrations has been in force in Spain since May 2008, and it is aimed to introduce more transparency in the whole awarding procedure.

18 Arbitration

Can a government agency agree to arbitrate disputes privately rather than go to court?

Yes, a government agency could commit to arbitrate disputes privately. The limits for arbitration refer to those subjects that are considered, under the scope of compelling laws (*jus cogens*) cannot be settled by arbitration, and should necessarily be seen by the courts of justice: ie, labour, health and safety, environment, etc. Spain has entered into many bilateral conventions for the promotion and protection of foreign investments, and all of them foresee arbitration as a possible dispute resolution mechanism.

19 Foreign corruption

Do local laws prohibit illegal actions in foreign jurisdictions?

The articles of the Spanish Criminal Code do not expressly mention the location where the illegal act must be committed in order to be considered a crime. Traditionally, only crimes committed in Spain are prosecuted, but in the past few years we have seen judges prosecuting foreigners who have committed very serious crimes outside Spain. Therefore, we could say that the possibility of prosecuting crimes committed outside Spain depends on the interpretation by the judges.

20 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

For private construction contracts, the concept of force majeure is defined by article 1,105 of the Spanish Civil Code as 'those facts which could not be foreseen or that, even when they had been foreseen, they cannot be avoided', and is a cause for the termination or suspension of a contract.

For public construction contracts, article 214 of the Spanish Public Contracts Act (Law No. 30/2007), provides a list of force majeure events containing fires caused by atmospheric electricity, natural catastrophes such as earthquakes, tsunamis, flooding or similar events, and damages caused by wars, terrorism, riots or severe alterations of public order. This list of force majeure events can be extended to include more events within public contracts to be signed with public agencies or administrations.

Notwithstanding this, given the lack of detailed rules on this matter both in private and public law, it is highly advisable to include

a clause in the agreement which further regulates the events considered by the parties as force majeure events (such as strikes, lockouts, shortage of raw materials under defined circumstances, and any other circumstances beyond the control of the parties), and its effects and implications (ie, for how long the contract can be suspended, communications among the parties, under which circumstances it can be terminated, etc).

21 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

There are no special procedures in Spain for the settlement of construction disputes.

Starting legal proceedings in Spain before the courts may lead to quite a long wait before getting a final judgment, as the Spanish legal system has two tiers of appeal, and, in exceptional cases, an additional appeal before the Supreme Court.

Such delays may be avoided by submission to arbitration, although the cost of an arbitration procedure may be significantly higher than proceedings before the court. Several arbitration bodies (such as the Corte de Arbitraje de la Cámara de Comercio de Madrid, the Tribunal Arbitral de Barcelona) are functioning in Spain with rather good results in terms of quality and speed of judgments obtained.

22 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

No, there are no specialised courts for this matter.

23 Dispute review boards

Are dispute review boards (DRBs) used?

Dispute review boards are not well known in Spain. Nevertheless, it is an increasing practice to include among the provisions of construction contracts dispute review boards to address technical disputes which may arise between the parties. However, parties are always entitled to challenge DBR resolutions before the courts or in an arbitration procedure.

24 Mediation

How is mediation defined? And is it commonly used to resolve project disputes?

Mediation is not used in Spain in commercial matters. It is used in family and consumer matters, but not in construction, except where consumers are involved. The disadvantage of mediation when used in these areas is that the agreement is not directly enforceable; that is, if a party does not fulfil it, the other party should file a lawsuit and obtain a judgment, which is then enforced.

25 Confidentiality in mediation

Are statements made in mediation confidential?

Not applicable.

26 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Article 46(2) of the Spanish Arbitration Act provides that the acknowledgement and enforcement of foreign arbitral awards should follow

the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, except if there is a more favourable international convention applicable to the case. Spain has entered into 51 bilateral agreements regarding the promotion and protection of foreign investments, and all of them acknowledge arbitration as a possible dispute resolution mechanism.

There are very limited reasons for a Spanish Court rejecting the enforcement of an arbitral award. The reasons are mentioned in a close list in the Arbitration Act: for example, if the arbitral award does not exist or is not valid, if the arbitrators have decided on subjects of public order, etc.

27 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

There are no special preferences among Spanish companies. Of course, the nearest entities (the ICC – London International Court for Arbitration) are preferred to those further away.

The Spanish Arbitration Act allows for the performance of international arbitration procedures by Spanish Arbitration Tribunals, and Barcelona and Madrid, especially, have arbitrators with international experience.

28 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Spain is a signatory to the Stockholm Declaration of 1972, and there are local laws that provide for preservation of the environment and its wildlife while advancing infrastructure and building projects – for example, Law 9/2006 which implements in Spain the principles of EU Directive 2001/42.

This law establishes the obligation of government entities to make the corresponding evaluation on the consequences for the environment of investment projects. The procedure consists of three main steps:

- The production of an environmental report by the government entity promoting the investment. This report should include reasonable alternatives to the investment project, including, if necessary, the ‘zero alternative’, which means not executing the project.
- The opening of a consultation period, for a minimum of 45 days, during which other government entities and the public are invited to analyse the project and raise their opinions. Non-profit environmental organisations are also invited if they have been incorporated at least two years before.
- The drafting of a memorandum to include environmental aspects in the investment plan.

29 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business?

There is no such legal consideration that would present a difficulty or an obstacle for a foreign contractor attempting to do business in Spain. The only obstacles could be the limited knowledge of the market and legal system, and cultural barriers.

30 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define ‘investment’?

To date, Spain has signed the following bilateral agreements for the reciprocal protection and promotion of investments (BARPPI), which apply to investments in general. The countries who have signed a BARPPI with Spain are: Albania, Algeria, Argentina, Bolivia, Bosnia-Herzegovina, Bulgaria, Colombia, Costa Rica, Croatia, Cuba, Czech Republic (and Slovakia), Chile, China (amended in 2006, but the amendment is not in force yet), Dominican Republic, Ecuador, Egypt, Estonia, El Salvador, the Philippines, Gabon, Guatemala, Equatorial Guinea, Honduras, Hungary, India, Indonesia, Iran, Jamaica, Jordan, Kazakhstan, Korea, Kuwait (not in force yet), Latvia, Lebanon, Lithuania, Macedonia (not in force yet), Malaysia, Morocco, Moldova, Mexico, Namibia, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Poland, Philippines, Romania, Russia, Serbia and Montenegro, Slovenia, Syria, South Africa, Trinidad and Tobago, Turkey, Tunisia, Ukraine, Uruguay, Uzbekistan, Venezuela and Yugoslavia.

Most BARPPIs include in the definition of investment the following concepts: real estate properties and rights on such properties as mortgages, pledges and other; shares and bonds; IP rights; rights to perform economical activities granted by the law or through an agreement. The usual interpretation by the arbitral courts is that the objective of the BARPPI is the protection of ‘investments’ in general, and this includes investments through local companies.

31 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Yes, Spain has subscribed to tax treaties with the following countries: Argentina, Algeria, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Czech Republic, Chile, China, Croatia, Cuba, Cyprus, Denmark, Equator, Egypt, Slovakia, Slovenia, Estonia, Finland, France, Greece, Germany, the Netherlands, Hungary, India, Indonesia, Iran, Ireland, Iceland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Malaysia, Morocco, Mexico, Norway, New Zealand, the Philippines, Portugal, Poland, United Kingdom, Romania, South Africa, Russia and the former Soviet countries, Sweden, Thailand, Switzerland, Tunisia, Turkey, Venezuela, United Arab Emirates, the United States and Vietnam.

These tax treaties follow the OCDE model (except the treaty with the US, which has its own pattern). They introduce the principle that a company’s profits can only be taxed in the country where the company is domiciled, provided it does not execute business in the other country through a ‘permanent establishment’.

32 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

No, currency controls have gradually disappeared in Spain and they are not in force now. The controls existing now are aimed at preventing tax evasion and money laundering.

33 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

No. Contractors must only fulfil very straightforward tax and banking formalities before removing profits and investments from

Update and trends

Over the last year, two significant Acts with a direct impact in construction matters have been passed:

- Law No. 41/2007 on the Reform of the Mortgage Market:** the law introduces substantial modifications in the mortgage legal regime, such as the admission in Spain of floating mortgages (well known in Anglo-Saxon countries), and a significant cut in notary and registry fees for setting up mortgages.
- Law No. 30/2007 on Public Sector Contracts:** Spanish legislation was adapted to the provisions of EU regulations on public contracts, regulating, among many other issues, the regime of construction turnkey contracts executed for public bodies, price escalation provisions, subcontracting provisions, etc. PPP and PPF are also regulated.

Spain. Of course, all applicable corporate and tax obligations should first be fulfilled. For example, payment of dividends, interests, capital gains, royalties or professional fees are subject to a withholding tax. If the recipient of such payments is resident in a country having a tax treaty with Spain, then the withholding rate is lower or even zero. The recipient should provide a tax certificate stating its country of residence in order to obtain the reduced withholding rate established by the tax treaty.

34 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

In principle, owners contract directly with contractors, but it is common practice for contractors to subcontract a big part of the work, and such subcontractors also subcontract part of their work. In order to limit the tier of subcontractors, the Law on Subcontracting in the Construction Sector, which has been in force since April 2007, establishes a limit of three tiers of successive subcontracting for specialised activities, and only one tier for labour-intensive jobs, with some very limited exceptions. In the past, but also today, architects and engineers used to act as coordinators, but the use of specialised project managers is getting more popular, and in big projects it becomes essential.

Jausas

Mercedes Clavell
Roger Canals

mclavell@jausaslegal.com
rcanals@jausaslegal.com

Passeig de Gràcia 103
08008 Barcelona
Spain

Tel: +34 93 425 00 88
Fax: +34 93 415 20 51
www.jausaslegal.com