

GUIDE TO ARBITRATION PLACES (GAP)

SPAIN

CHAPTER PREPARED BY

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OF GARRIGUES

GARRIGUES

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

- | | |
|--|---|
| 1. Law | ● |
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| d. Arbitrator immunity from civil liability | ● |
| 2. Judiciary | ● |
| 3. Legal expertise | ● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
| 6. Ethics | ● |
| Evolution of above compared to previous year | ☰ |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The importance of both domestic and international arbitration has increased in Spain since the [Arbitration Act¹](#) (the “SAA”) was passed in 2003, and the Spanish courts have generally displayed a pro-arbitration approach. In this regard, it is important to note that arbitration in Spain is mainly based on the principle of party autonomy and thus, the parties may decide how most part of the procedure will be developed. Consequently, the arbitral proceeding is characterized, as per its own nature, for its flexibility and efficiency. However, there are certain mandatory provisions on procedure from which the parties may not deviate (*i.e.*, odd number of arbitrators).

Key places of arbitration in the jurisdiction?	The key places of arbitration in Spain are Madrid and Barcelona.
Civil law / Common law environment? (if mixed or other, specify)	Spain has a civil law system based on comprehensive legal codes and laws rooted in Roman Law.
Confidentiality of arbitrations?	<p>According to Article 24(2) SAA, arbitrators, the parties and the arbitral institutions shall keep confidential any information received in the course of the arbitral proceedings.</p> <p>Although this provision seems to apply only to substantive information received during the proceedings, it is however extended to any kind of document and information provided during the arbitration (that is, the submissions, award, etc.).</p>
Requirement to retain (local) counsel?	No requirements exist.
Ability to present party employee witness testimony?	There are no specific rules either on who can or cannot appear as a witness. Therefore, there is no restriction on the ability to present party employee witness testimony.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	<p>Pursuant to Article 26 SAA, the parties are free to agree on the place of arbitration.</p> <p>However, arbitrators may, after consulting with the parties and unless otherwise agreed by them, meet at any place they deem appropriate for hearing witnesses, experts or the parties, examining or recognising goods, documents or persons.</p> <p>There is no rule regarding the remote holding of the meetings and hearings. Nevertheless, the SARS-CoV-2 pandemic has forced several Spanish institutions to ease the virtual holding of hearings, as is the case, for instance, of the Madrid International Arbitration Center and the Madrid Court of Arbitration, each of which have issued a note concerning the organization of virtual hearings.</p>
Availability of interest as a remedy?	Interest is allowed under Spanish law. As to the principal amount, it includes the interest agreed by the parties or, failing such agreement, the legal interest rate published annually in the Official Gazette, except for commercial operations, to which the interest

¹ Act 20/2003, of 23 December 2003, on Arbitration (*Ley 20/2003, de 23 de diciembre, de Arbitraje*).

	<p>rate provided in the Spanish Act 3/2004, of 29 December, against late payment in commercial transactions (which shall be the rate applied by the European Central Bank increased by 8 points) applies.</p>
<p>Ability to claim for reasonable costs incurred for the arbitration?</p>	<p>Pursuant to Article 37(6) SAA, the award will include the arbitrators' decision on costs related to the arbitration, which will include their own fees and expenses and, where appropriate, the fees and expenses of counsel or representatives of the parties, the cost of the service provided by the institution administering the arbitration, as well as any other costs incurred during the arbitration proceedings. Such costs do not usually include travel and/or accommodation arrangements for witnesses or experts.</p> <p>The SAA remains silent regarding the apportionment of arbitration costs. Even though the Spanish Civil Procedure Act establishes the criteria for apportionment of judicial costs -which, in general terms, provides for the recoverability of the costs by a party who is entirely successful (in case of partial success, each party bears its own expenses and the common costs are split)-, it does not always apply to arbitration proceedings.</p> <p>In order to decide on such costs, the arbitrators will take into account the parties' agreement; but if such agreement does not exist, the arbitrators are not bound by any specific rules in this regard. Generally, arbitrators take into consideration not only the outcome of the arbitration, but also the behaviour of the parties during the proceedings and if there has been frivolous disregard to the other party's rights.</p>
<p>Restrictions regarding contingency fee arrangements and/or third-party funding?</p>	<p>No restrictions regarding contingency fee arrangements exist. Contingency and success fees were historically banned, but were recently accepted as a pro-competitive measure (the prohibition of contingency fee arrangements under Article 16 of the previous Code of Conduct of Spanish Advocates –which was suspended by the agreements passed by the Plenary of the General Council of Spanish Advocates on 10 December 2002 and 21 July 2010- is not contained in the new Code of Conduct of Spanish Advocates, which enters into force on July 1st, 2021).</p> <p>The SAA does not regulate third-party funding. Although in practice this type of funding is being used (particularly after the prohibition of contingency fees was lifted), there is still scope for improvement and development.</p>
<p>Party to the New York Convention?</p>	<p>Spain is a Contracting State to the New York Convention since 12 May 1977, and no reservations or declarations were made. The Convention entered into force in Spain on 10 August 1977.</p>
<p>Party to the ICSID Convention?</p>	<p>Spain has been a Contracting State to the ICSID Convention since 21 March 2004, and no reservations or declarations were made. The Convention entered into force in Spain on 17 September 1994.</p>

Compatibility with the Delos Rules?	According to Article 14 SAA, the parties are able to pursue arbitration under the rules of arbitral institutions – Delos Rules among them.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period is generally 5 years for personal actions (pursuant to Article 1966 of the Spanish Civil Code). Nonetheless, it should be noted that there are specific cases in which such default time-limitation may not apply and, therefore, prior consideration should be given on a case-by-case basis.
Other key points to note?	ϕ
World Bank, Enforcing Contracts: Doing Business score for 2020, if available?	70.9 (26 th position in the global ranking).
World Justice Project, Rule of Law Index: Civil Justice score for 2020, if available?	0.73 (19 th position in the global ranking).

ARBITRATION PRACTITIONER SUMMARY

The Arbitration Act² (the “SAA”), amended in 2011, was drafted following the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law), adopted on 21 June 1985, and only a few modifications were introduced thereto. It applies to both domestic and international arbitration when Spain is the place of arbitration, and certain provisions apply even when the arbitration place is abroad.

Date of arbitration law?	23 December 2003, last amended by Law 11/2011, of 20 May 2011.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	<p>The SAA is based on the UNCITRAL Model Law adopted on 21 June 1985. Nevertheless, the SAA presents some differences:</p> <ul style="list-style-type: none"> - any dispute over matters that can be freely and legally disposed of by the parties are arbitrable (Article 2(1) SAA); - in international arbitration, States or State-controlled entities cannot invoke prerogatives provided by their national law to circumvent obligations deriving from the arbitral agreement (Article 2(2) SAA); - arbitral proceedings are considered international also if the legal relationship from which the dispute stems has an impact on international trade (Article 3(1c) SAA); - in international arbitration, the arbitration agreement is valid if it fulfils the requirements set forth in any of the following rules: the legal rules chosen by the parties, the rules applicable to the merits of the dispute or the SAA (Article 9(6) SAA); - capital companies may subject their internal disputes, including the challenge of corporate resolutions, to arbitration (Article 11 SAA); - awards setting aside a registrable agreement must be registered in the Mercantile Registry (Article 11 ter SAA); - the default rule requires a single arbitrator to be appointed (rather than three) (Article 12 SAA); - a specific procedure for the appointment of arbitrators in multi-party arbitrations is foreseen (Article 15(2b) SAA); - if arbitrators do not notify the acceptance of their appointment within the agreed period (default rule of 15 days from the nomination), the appointment shall be deemed to have been declined (Article 16 SAA); - arbitrators may incur liability in the event of bad faith, gross recklessness or wilful act (Article 21 SAA); and - arbitral proceedings are presumed confidential (Article 24(2) SAA).
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	On 25 November 2010, the Court of First Instance, No. 101 of Madrid (<i>Juzgado de Primera Instancia No. 101 de Madrid</i>) was assigned exclusive jurisdiction over arbitration matters. This was the first, and so far the only, specialized court in Spain for arbitration-related matters.

² Act 20/2003, of 23 December 2003, on Arbitration (*Ley 20/2003, de 23 de diciembre, de Arbitraje*).

	<p>However, since 1 January 2019, the Court of First Instance No. 101 of Madrid does no longer have exclusive jurisdiction over arbitration matters. Therefore, currently, there is no specialized court on arbitration in Spain.</p> <p>The success of this specialized court while it had assigned exclusive jurisdiction over arbitration matters, especially in terms of length of the proceedings, has led to several requests for more of these courts from different legal practitioners.</p>
Availability of <i>ex parte</i> pre-arbitration interim measures?	<p>Article 11(3) SAA provides that the arbitration agreement will not prevent any of the parties, prior to or during the arbitral proceedings, from requesting for interim measures to a court, or the court from granting such measures.</p> <p>Furthermore, Article 23(1) SAA provides that, subject to any contrary agreement by the parties, the arbitrators may, at the request of a party, grant any interim measures deemed necessary in connection with the object of the dispute.</p>
Courts' attitude towards the competence-competence principle?	<p>The <i>Kompetenz-Kompetenz</i> principle is enshrined in Article 22 SAA (as expressly admitted in its recitals), pursuant to which arbitrators can decide on their own jurisdiction, either through a partial or final award.</p> <p>Such principle is generally respected by Spanish courts, even when the validity or the existence of the arbitration agreement itself is challenged (see decisions of the Supreme Court n° 409/2017, of 27 June 2017 (RJ 2017\3021)³; and n° 776/2007, of 9 July 2007 (RJ 2007\4960)).</p> <p>Spanish courts may only review the decision of an arbitral tribunal on its own jurisdiction within the context of a request for set aside or a request for recognition and enforcement of an award deciding on the jurisdiction of the tribunal.</p>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	<p>Article 22(3) SAA establishes that questions regarding its competence can be solved either prior to the issuing of the award or in the same award.</p> <p>If the Tribunal declines any jurisdiction exception before the award, the annulment action against that interim decision will not cause the stay of arbitral proceedings.</p>
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	<p>In accordance with the criteria for the recognition and enforcement of awards under Article V of the New York Convention, Article 41(1) SAA states the grounds for the annulment of awards, establishing that an award may be set aside only if the party against whom it is requested evidences that:</p> <ol style="list-style-type: none"> a) The arbitration agreement does not exist or is not valid; b) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his

³ In this decision, the Supreme Court admitted that, in case the jurisdiction of a court is challenged due to the existence of an arbitration agreement, such court may fully examine the validity and effectiveness of the arbitration agreement.

	<p>case;</p> <ul style="list-style-type: none"> c) The award contains decisions on matters not submitted to arbitration; d) The appointment of the arbitrators or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with an imperative provision of the SAA, or, failing such agreement, was not in accordance with such act; e) The subject-matter of the dispute cannot be submitted to arbitration; f) That the award is contrary to Spanish public policy. <p>In conclusion, all the grounds for annulment of awards provided for by the SAA are based on the standard set-out for the recognition and enforcement of awards under the New York Convention.</p>
<p>Do annulment proceedings typically suspend enforcement proceedings?</p>	<p>In accordance to Article 45 SAA, the award is enforceable even if there is a pending annulment proceeding against it.</p> <p>Nonetheless, the aforementioned provision allows the party against whom enforcement is sought to apply to the competent court to have the enforcement suspended, provided that security is offered for the amount awarded, plus the damages and losses that could arise from the delay in the enforcement of the award.</p> <p>The security may be in any of the forms provided in paragraph 3(2) of Article 529 of the Civil Procedure Act: cash, first demand bank guarantee or any other means that, in the opinion of the court, guarantees the immediate availability of the amount of the security.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>There is no express legal provision regarding the enforcement of annulled foreign awards in Spanish Law.</p> <p>However, the granting of <i>exequatur</i> for foreign awards is governed by the New York Convention. Pursuant to Article V(1e) of the Convention, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, if that party demonstrates that the award has been set aside by a competent authority in the country where the award was rendered.</p> <p>In that line of reasoning, Spanish courts have generally adopted the view that an annulled award cannot be recognized and enforced.</p> <p>Notwithstanding the foregoing, it is important to note that the European Convention on International Commercial Arbitration concluded in Geneva on 21 April 1961 ("the Geneva Convention"), ratified by Spain in 1975, provides, to a certain extent, a more favourable regime regarding the recognition and enforcement of arbitral awards than the one established in the New York Convention.</p> <p>Concretely, with regard to the recognition and enforcement of foreign awards that have been annulled at the seat of arbitration, the Geneva Convention provides that their recognition and enforcement may only be refused when their annulment was</p>

	<p>based on any of the grounds set out in its Article IX (incapacity of the parties or invalidity of the arbitral convention, lack of due process, abuse of powers by arbitrators, and when the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the Convention). Therefore, if the award was annulled on a different ground, the Convention does not prohibit its recognition or enforcement.</p> <p>However, the scope of application of the Geneva Convention is more limited than the New York Convention, since it is only applicable to commercial matters, and only if the parties are located in different contracting States.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party’s objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>There is no such stipulation in the SAA or in the New York Convention of 1958.</p>
<p>Key points to note in relation to arbitration with an enforcement of awards against public bodies at the jurisdiction?</p>	<p>There are no specific rules regarding the enforcement of awards against public bodies in the SAA or in the New York Convention.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>Spanish Law doesn't prevent blockchain-based evidence from being recognised. Nonetheless, its evidentiary value would be subject to the Tribunal’s discretionary assessment.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>On the one hand, Article 4(1) of the New York Convention of 1958 requires the presentation of the original award or a copy that complies with the authenticity requirements. The award must be in “written form”, according to Article 2(1).</p> <p>On the other hand, both Article 9(3) and the Third Point of the Exposition of Motives SAA recognise the validity of the arbitration agreement recorded based on “new technology methods”, not necessarily in written form.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Following the aforementioned articles, blockchain arbitration awards could be considered as originals were they considered valid. However, there is no specific provision regarding this matter, nor significant Spanish case law.</p>
<p>Other key points to note?</p>	<p>∅</p>

JURISDICTION DETAILED ANALYSIS

1. Legal Framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

1.1.1 If yes, what key modifications, if any, have been made to it?

The current SAA is based on the UNCITRAL Model Law on International Commercial Arbitration, adopted on 21 June 1985.

However, the SAA presents the following differences:

- any disputes over matters that can be freely and legally disposed of by the parties are arbitrable (Article 2(1) SAA);
- in international arbitration, States or State-controlled entities cannot invoke prerogatives of their national law to circumvent obligations deriving from the arbitral agreement (Article 2(2) SAA);
- arbitral proceedings are considered international also if the legal relationship from which the dispute stems has an impact on international trade (Article 3(1c) SAA);
- in international arbitration, arbitration agreements are valid provided that the requirements set forth in the legal rules chosen by the parties, the rules applicable to the merits of the dispute or the SAA are met (Article 9(6) SAA);
- capital companies may subject their intra-company disputes, including the challenge of corporate resolutions, to arbitration (Article 11 SAA);
- awards setting aside a registrable agreement must be entered in the Mercantile Registry (Article 11 SAA); the default rule is a single arbitrator to be appointed (Article 12 SAA);
- a specific procedure for the appointment of arbitrators in the case of several parties is foreseen (Article 15(2b) SAA);
- if arbitrators do not notify the acceptance of their appointment within the agreed period (default rule of 15 days from the nomination) it will be understood to be declined (Article 16 SAA);
- arbitrators may incur liability in the event of bad faith, gross recklessness or wilful act (Article 21 SAA); and
- arbitral proceedings are presumed confidential (Article 24(2) SAA).

1.2 When was the arbitration law last revised?

The SAA was last amended by [Law 11/2011, of 20 May 2011](#).

Even though [Law 29/2015, of 30 July 2015, on International Legal Cooperation](#) did not amend the SAA, it amended the legal regime for the recognition and enforcement of foreign decisions, which applies when the foreign country where the decision was rendered is not a party to the New York Convention.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

As per Article 34 SAA, arbitral tribunals must decide disputes in accordance with the law or rules chosen by the parties. Any designation of the law or legal system of a particular State is deemed to refer directly to the substantive laws of that respective state.

In international arbitration, in the absence of an agreement between the parties, the arbitral tribunal may directly – without resorting to conflict of law rules – apply the law that it considers the most appropriate.

Arbitrators may decide the case *ex aequo et bono* (i.e., according to what is fair and equitable) only if expressly authorised to do so by the parties.

If the arbitration agreement is included in a broader contract, it will be possible to apply the law applicable to the contract to the arbitration agreement itself. This remains without prejudice to the principle of separability that will be explained below.

At any rate, regardless of the substantive law chosen by the parties, if the seat of arbitration is Spain, mandatory laws affecting Spanish public policy may not be infringed. Otherwise, the award may be annulled.

2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?

Arbitrators will determine the seat of arbitration agreement in the absence of an express designation in the arbitration agreement, in attendance to the particular circumstances and the parties’ convenience, according to Article 26(1) SAA.

Nonetheless, Article 26(2) SAA allows arbitrators to hold meetings, following prior consultation with the parties and in the absence of objections from them, in any place they consider appropriate.

At any rate, the wording of Article 26 SAA, which refers to a broader term than “seat” (“*lugar*”), may be more aptly translated to “place” or “venue” of arbitration and would therefore allow to cover such references as well.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which is set forth?

Yes. The principle of separability or autonomy of the arbitration clause is enshrined in Article 22(1) SAA, which establishes that an arbitration clause that forms part of a broader contract will be considered as an independent agreement from the other terms thereof.

This means that the invalidity of the underlying contract will not automatically extend to the arbitration agreement contained therein, unless it is proven that the arbitration agreement itself is vitiated by fraud, or initial lack of consent.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

Regarding the formal requirements of an arbitration agreement, the SAA follows Article 7 of the UNCITRAL Model Law and provides in Article 9(3) that the arbitration agreement should be in writing, in a document signed by the parties or in an exchange of letters, telegrams, telex, facsimile or any other means of telecommunication that provides a record of the agreement. This requirement is considered to be met when the arbitration agreement is accessible for its subsequent consultation in an electronic, optical or any other format.

Article 9(5) SAA establishes that there is an arbitration agreement 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.

Lastly, as regards of international arbitration, under Article 9(6) SAA, the arbitration agreement shall be deemed valid and the dispute arbitrated if it meets the requirements set by any of the following: the rules of law chosen by the parties to govern the arbitration agreement, the rules of law applicable to the merits of the dispute, or the SAA.

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Arbitration agreements may bind non-signatories if they have a very close and strong relationship with a signing party, or have played a strong role in the performance of the contract.

In practice, the criteria as put forward in the ICC case *Dow Chemical France v Isover Saint Gobain's* (whereby a non-signatory may benefit from or be bound by an arbitration agreement signed by a group company because of its active role in the transaction) is generally followed. In any event, according to Spanish case law, third parties' tacit acceptance of the arbitration clause may only be deduced from unequivocal and conclusive facts of the case. Thus, extending arbitration clauses to parent companies is certainly not automatic, but based on fact-intensive tests. Contrary to the extension of the arbitration clause to non-signatories, we refer to the decision of the [Supreme Court, Civil Section, of 9 July 2007](#) and, in favour of the extension of the arbitration clause to non-signatories, we refer to the decisions of the [Supreme Court, Civil Section, of 26 May 2005](#) and the *La Coruña* Court of Appeal, 4th Section, of 22 June 2005.

2.6 Are there restrictions to arbitrability? In the affirmative:

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

The SAA favours arbitrability. In fact, pursuant to Article 2 SAA, it has been established that any matters that can be freely and legally disposed of by the parties can be submitted to arbitration.

Notwithstanding the foregoing, matters related to criminal law or constitutional law, as well as those related to civil status, nationality, family or inheritance, cannot be resolved by arbitration.

Furthermore, according to Article 1(4) SAA, labour arbitration is expressly excluded from the scope of the SAA.

Civil and corporate matters can be arbitrated. In fact, submitting intra-company disputes to arbitration is expressly recognised in Article 11 bis SAA.

Likewise, intellectual and industrial property issues, as well as disputes related to competition law, are arbitrable. However, there are some restrictions over these matters. For instance, regarding trademark registration, disputes related to the existence of formal defects or to absolute registration prohibitions are not arbitrable; with regard to patents, only disputes between two private parties are arbitrable; and with reference to competition law, only disputes over civil aspects and compensations are arbitrable.

2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers, etc.)?

Arbitration regarding consumers falls under [Royal Decree 1/2007, of 16 November, on the Revised Text of the General Defence of Consumers and Users, which regulates relationships between consumers and users and entrepreneurs](#). In such cases, the SAA will only apply to those issues that are not addressed in Law 1/2007.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside of the jurisdiction?

Pursuant to Article 11(1) SAA, the arbitration agreement prevents courts from hearing disputes submitted to arbitration, so that a jurisdictional objection (*declinatoria*, which is comparable to a motion to stay the proceedings, inasmuch as it suspends the proceeding until the jurisdiction matter is solved) may be invoked if the conflict is submitted to ordinary courts.

The defendant must file such objection before the court within the first 10 days of those provided to file the answer to the claim (20 days).

In this regard, it is relevant to note that the decisions of Spanish courts are consistent and clear with regard to the court not being able to assess, of its own motion, the submission to arbitration. Therefore, it is necessarily the interested party who has to file the jurisdiction objection.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

According to Article 1(2) SAA, although the scope of application of the Act is limited to the arbitration proceedings conducted in Spain, rules contained in certain articles, including those contained in Article 11, will be applicable even when the place of arbitration is outside Spain.

Therefore, Spanish courts will also stay litigation when there is a valid arbitration agreement, even if the place of arbitration is outside the jurisdiction, provided that the interested party files a jurisdictional objection (*declinatoria*).

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Arbitrators cannot initiate any action whatsoever in order to stay litigation proceedings. As explained in the question above, Article 11(1) SAA provides that it is the interested party who has to file a jurisdictional objection (*declinatoria*) in order to prevent courts from hearing the dispute.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders but not only)

As per Articles 1(2) and 8(3), (4) and (6) SAA, the Spanish courts will intervene in arbitrations seated outside of Spain on the following grounds:

- the adoption of interim measures when the award is to be enforced in Spain, or when such measures are to carry legal consequences in Spain; irrespective of whether they are requested by the interested party or by the arbitrators; and
- the recognition and enforcement of foreign awards in Spain.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

The SAA remains silent regarding whether an obligation or not from a party exists to be represented by a counsel within the arbitration proceedings. Therefore, parties may retain outside counsels or be self-represented.

However, pursuant to Article 539(1) of the Spanish Civil Procedure Act, the involvement of counsel and court representative (in Spanish, *procurador*) shall be required for enforcement actions arising from arbitration awards whenever the amount for which the enforcement is being ordered exceeds 2,000 euros.

In such cases, outside counsel will have to meet the special requirements applicable to them in order to be entitled to appear before Spanish courts. Until a couple of years ago, the only requirements to be admitted as a lawyer in Spain were to hold a Spanish law degree (or an equivalent foreign degree officially approved) and to be a member of a local bar association, which would entitle a lawyer to practise anywhere in Spain.

New legislation was enacted in line with other European jurisdictions, according to which prospective lawyers – apart from holding a law degree – will need to hold a Master's degree, which will be followed by a period of apprenticeship and passing a written national exam.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

According to Article 17(2) SAA, a person proposed to act as arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of nomination, shall disclose to the parties without delay the occurrence of any such circumstances.

However, an arbitrator may only be challenged where there are grounded doubts regarding his/her partiality or independence (Article 17(3) SAA).

In this sense, Spanish courts tend to seek guidance from the IBA Guidelines on Conflicts of Interest, as well as the [recommendations published by the Spanish Arbitration Club \(Club Español del Arbitraje\)](#).

Notwithstanding the foregoing, it is relevant to note that, unless otherwise agreed by the parties, courts do not play any role in the procedure to challenge an arbitrator. This is exclusively handled by the arbitral tribunal.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

The appointment of arbitrators is regulated under Article 15 SAA.

Pursuant to this article, the parties may freely agree the procedure for the appointment of arbitrators, as long as the principle of equality is honoured.

Failing such agreement, the following rules will apply:

- a) In arbitrations with a sole arbitrator, he/she will be appointed by the competent court (Regional Superior Courts, *Tribunales Superiores de Justicia*) upon request of the interested party.
- b) In arbitrations with three arbitrators, each party will appoint one arbitrator, and the two arbitrators appointed will appoint the third arbitrator, who will chair the proceedings. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of the latest acceptance, the appointment will be made by the Regional Superior Court upon request of the interested party.

Where more than one claimant or respondent is involved, the latter will appoint one arbitrator and the former another. If claimants or respondents cannot agree on the appointment, all arbitrators will be appointed by the Regional Superior Court at the request of the interested party.

- c) In arbitrations with more than three arbitrators, they will be appointed by the competent Regional Superior Court upon request of the interested party.

Where the appointment of arbitrators under the procedure agreed to by the parties is not possible, any party may apply to the competent Regional Superior Court to appoint the arbitrators or, if appropriate, to adopt the necessary measures therefor. The court may dismiss a request for appointment of arbitrators only when, in light of the documents produced, it deems that no arbitration agreement exists.

Where arbitrators are to be appointed by the court, it will draw up a list of three candidates for each arbitrator to be appointed. When drawing up the list, the court will take into consideration any requirements agreed by the parties, and will take the necessary measures to ensure their independence and impartiality. Where a sole or a third arbitrator is to be appointed, the court will also have regard to the advisability of appointing an arbitrator of a nationality other than those of the parties and, as appropriate, of those of the arbitrators already appointed, in light of the circumstances prevailing. The arbitrators are subsequently appointed by lot.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Courts have the power to issue interim measures in connection with arbitrations whenever any of the parties request their issuance, even prior to the starting of the arbitration proceedings.

In fact, Article 11(3) SAA states that the arbitration agreement will not prevent a party, prior to or during the arbitral proceedings, from applying to a court for interim measures, or the court from granting such measures.

Concretely, as stated under Article 8(3) SAA, competence to adopt interim measures will be incumbent upon the court with jurisdiction in the place where the award is to be enforced and, failing that, upon the court in the place where the measures are to carry legal consequences.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

As stated under Article 24(2) SAA, arbitrators, parties and arbitral institutions are bound to honour the confidentiality of the information received on the occasion of arbitration.

4.5.2 Does it regulate the length of arbitration proceedings?

Article 37(2) SAA provides that, unless otherwise agreed to by the parties, arbitrators shall render the award within 6 months of the date of submission of the defence (usually, the last rejoinder or counterclaim by the defence) or the expiration of the deadline therefor.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The parties are free to agree on the procedure to be followed by the arbitrators when conducting the proceedings (Article 25(1) SAA).

In particular, according to Article 26 SAA, the parties are free to agree on the place of arbitration. Notwithstanding, the arbitrators may, in consultation with the parties and unless otherwise agreed by them, meet at any place they deem appropriate for hearing witnesses, experts or the parties, or recognising goods, documents or persons. Arbitrators may hold consultation meetings at any place they deem appropriate.

There is no rule regarding the remote holding of the meetings and hearings. Nevertheless, the SARS-CoV-2 pandemic has forced several Spanish institutions to ease the virtual holding of hearings, as is the case, for instance, of the Madrid International Arbitration Center, the Madrid Court of Arbitration and the Civil and Commercial Arbitration Court, each of which have issued a note concerning the organization of virtual hearings.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Pursuant to Article 23(1) SAA, once the arbitration proceedings have started, except otherwise agreed by the parties, the arbitrators may, at the request of a party, grant any interim measures deemed necessary or appropriate with respect to the subject-matter of the dispute.

As regards the specific conditions under which such interim measures may be issued, whilst the SAA does not include such conditions (apart from the possibility of requiring a security), several arbitral rules provide for the same. For instance, [Article 37 \(1\) of the 2020 Rules of the Madrid Court of Arbitration](#) requires that the "*measures must be proportionate to the purpose pursued and as little burdensome as possible for achieving that purpose*" and Article 37 (2) states that "*the arbitrators may require sufficient security from the petitioner of*

such measures". In the same line, Article 41.1 of the 2020 Rules of the Madrid International Arbitration Center provides that the *"measures shall be proportionate to the intended purpose and they must be the least burdensome means to achieve the aims pursued"* and Article 45.2 equally states the arbitrators' authority to request security. Also, [Article 37 of the Rules of the Civil and Commercial Arbitration Court](#) provides that *"in any case, the measure should be proportionate to its objective" and that "the Arbitral Tribunal may require sufficient security from the claimant for the precautionary measure"*.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

As stated under Article 25 SAA, the parties are free to agree on the procedure to be followed by the arbitrators in conducting the proceedings, although subject to certain provisions established under Article 24 SAA (*i.e.*, that the parties will be treated with equality, that each party will be given a full opportunity to present its case and that the arbitrators, parties and arbitral institutions, as appropriate, are bound to honour the confidentiality of the information received on the occasion of arbitration).

However, in the absence of such agreement between the parties, the arbitrators may conduct the proceedings as they deem appropriate. This faculty includes the power to decide over the admissibility, relevance, materiality and usefulness of the evidence, as well as over its taking and evaluation.

Specifically, even though the SAA does not provide for any restrictions to the presentation of testimony by a party employee, the parties may agree on such restrictions and/or the arbitrator(s) rule on the same in setting out the procedural rules applying to the arbitration (most often, within procedural order no. 1).

4.5.6 Does it make it mandatory to hold a hearing?

In Spain, it is not mandatory to hold a hearing; the proceedings may be conducted in writing only.

In fact, pursuant to Article 30 SAA, except otherwise agreed by the parties, the arbitrators will decide whether it is necessary to hold a hearing for the presentation of opening statements, evidence and/or closing statements, or whether the proceedings will exclusively be conducted in writing.

4.5.7 Does it prescribe principles governing the awarding of interest?

As indicated in Section I above, arbitrators may award interest. However, the SAA does not prescribe principles governing the awarding of interest.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

The SAA does not prescribe principles governing the allocation of arbitration costs.

Regarding arbitration costs, the Act only establishes that the award will include the arbitrators' decision on costs, which will include their own fees and expenses and, where appropriate, the fees and expenses of counsel or representatives of the parties, the cost of the service provided by the institution administering the arbitration, as well as any other costs incurred during the arbitration proceeding (Article 37(6) SAA). Such costs do not usually include travel and/or accommodation arrangements for witnesses or experts.

However, as explained in Section I above, arbitrators usually take into consideration not only the outcome of the arbitration ("loser pay" rule), but also the behaviour of the parties during the proceedings and if there has been frivolous disregard to the other party's rights.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Arbitrators are not immune from liability (nor are arbitral institutions).

In fact, Article 21 SAA states that the acceptance of the arbitration proceedings by the arbitrators requires

them to comply with their mission in good faith, and that arbitrators will be liable for any damages they cause resulting from bad faith, recklessness or *mens rea*.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Arbitrators, as well as arbitral institutions, as the case may be, may incur, not only in civil, but also in criminal liability, again in those cases where damages were intentionally caused or when they acted with gross negligence.

In arbitrations held before an arbitral institution, the injured party may file suit directly against it, irrespective of any action for indemnity lodged against the arbitrators.

With regard to lawyers intervening in the arbitral proceedings, they may also incur in criminal liability if they commit certain crimes regulated under the [Spanish Criminal Code](#). For instance, the destruction, disablement or hiding of documents received as a lawyer (article 465 of the Criminal Code); the defence of two parties with opposing interests in the same matter or the causing of damage to the interests of his/her client by actions or omissions (article 467 of the Criminal Code).

5. The award

5.1 Can parties waive the requirements for an award to provide reasons?

Pursuant to Article 37(4) SAA, the award will state the grounds upon which it is based, except for awards delivered on the terms agreed by the parties, when they have decided to settle the dispute wholly or partially.

Consequently, the parties cannot waive the requirements for an award to provide reasons, except in the case of settlement of the dispute by agreement.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

No, the parties cannot waive the right to challenge an arbitration award.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical mandatory requirements as per SAA.

Nonetheless, Article 37 SAA sets forth the formal requirements that an award must fulfil to be valid:

- a) it shall be rendered within 6 months from the date when the statement of defence was or should have been filed, unless otherwise agreed by the parties (this period may be extended by the arbitrators for no more than 2 months by means of a reasoned decision, unless the parties agreed otherwise);
- b) it shall be made in writing, qualifying as such when its content and signatures are recorded and accessible for consultation in an electronic, optical or other type of format;
- c) it shall be signed by the arbitrators, who may manifest their favourable or dissenting vote (where there is more than one arbitrator, the signatures of the majority of the members of the arbitral panel or that of its presiding arbitrator alone shall suffice, provided that the reason for any omitted signature is stated);
- d) it shall state the reasons upon which it is based, unless it is an award by consent of the parties; and
- e) it shall state its date and place of arbitration, as well as the allocation of costs.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

In Spain, the awards cannot be appealed.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

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

- In relation to the enforcement of domestic awards, Article 44 SAA refers to the [Civil Procedure Act](#), except for certain provisions regarding the stay, dismissal and restart of the proceedings.

Consequently, domestic awards may be enforced directly by the court of first instance of the place where the award was issued, following the procedure established in the Civil Procedure Act (Articles 517 and seq.), which may be summarised as follows:

- a) the application to enforce an award may be filed before the court only after 20 days have expired since the award was notified to the parties; and
- b) the court will issue its decision (*auto*), whereby it will verify that the award complies with all the legal formalities and that the relief sought by the enforcing party complies with the award, ordering enforcement of the award.

The party against whom enforcement is being sought has 10 days after receiving the court's decision to oppose enforcement on the following grounds, established in Articles 556 and 559 of the Civil Procedure Act:

- a) the party has already paid or complied with the award;
- b) enforcement has been requested after the expiry of the maximum period to enforce the award (five years after the award was notified);
- c) the parties' agreements and transactions have been formalised in a public document (notarization in the Spanish case);
- d) lack of capacity or representation of the enforcing party or the party against whom enforcement is sought;
- e) radical nullity of the award, if it contains no ruling; and
- f) if the award has not been notarized, lack of authenticity of the latter.

The court enforcing the award is also the competent court to rule on the grounds raised against the enforcement. Filing an objection against the enforcement will not stay the enforcement of the award pursuant to Article 556.2 of the Civil Procedure Act.

- With regard to foreign awards, Article 46 SAA provides that they will be recognised pursuant to the New York Convention, save any other most favourable international convention.

The competent authority for the recognition of a foreign award is the Civil and Criminal Chambers of the High Courts of Justice of the region where the party against whom recognition is requested or who is affected by such award or decision has his place of business or residence (Article 8(6) SAA). The enforcement procedure of foreign awards will be the same as for domestic awards above explained.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Article 45 SAA provides that an award is enforceable even if it is being challenged. Hence, annulment proceedings do not automatically stay the exercise of the right to enforce an award.

Nonetheless, the aforementioned provision allows the party against whom enforcement is sought to apply to the competent court to have the enforcement suspended, provided that security is offered for the amount awarded, plus the damages and losses that could arise from the delay in the enforcement of the award.

The security may be in any of the forms provided in paragraph 3(2) of Article 529 of the Civil Procedure Act: cash, first demand bank guarantee or any other means that, in the opinion of the court, guarantees the immediate availability of the amount of the security.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

There is no express legal provision regarding the enforcement of annulled foreign awards in Spanish Law.

However, as it was explained in Section II.5.E above, *exequaturs* for foreign awards are governed by the New York Convention. Pursuant to Article V(1e) of the Convention, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, if that party proves that the award has been set aside by a competent authority of the country in which the award was made.

Spanish courts have adopted the view that an annulled award cannot be recognised. However, some isolated decisions have been favourable to the enforcement of vacated awards, as it was explained in Section I above.

5.8 Are foreign awards readily enforceable in practice?

Once a foreign award has been recognized in Spain pursuant to the New York Convention, enforcement may take approximately nine months.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

No restrictions regarding contingency or alternative fee arrangements exist. Contingency and success fees were historically banned, but were recently accepted as a pro-competitive measure (the prohibition of contingency fee arrangements under Article 16 of the [Code of Conduct of Spanish Advocates](#) was suspended by the agreements passed by the Plenary of the General Council of Spanish Advocates on 10 December 2002 and [21 July 2010](#) and is not contained in the new [Code of Conduct of Spanish Advocates](#), which enters into force on July 1st, 2021).

The SAA does not govern third-party funding. Although in practice this type of funding is being used (particularly after the prohibition of contingency fees was lifted), there is still scope for improvement and development.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

The SAA doesn't prevent blockchain-based evidence from being recognised. Nonetheless, its evidentiary value will be subject to the Tribunal's discretionary assessment.

As previously stated, in accordance with Article 25 SAA, the parties are free to agree on the procedure to be followed by the arbitrators in conducting the proceedings, although subject to certain provisions established under Article 24 SAA.

Consequently, parties could agree on the recognisability of block-chain evidence. In the absence of such agreement, the arbitrators will decide over the admissibility, relevance, materiality and usefulness of the evidence as they deem appropriate.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

If we attend to the applicable legislation, Article 4(1) of the New York Convention of 1958 requires the presentation of the original award or a copy that complies with the authenticity requirements. The award must be in “written form”, according to Article 2(1).

However, the SAA eases off formalities and recognises the validity of the arbitration agreement recorded on “new technology methods”, not necessarily in written form, so that the agreement recorded on blockchain technology could be recognised as valid.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

Following the previous justification, blockchain arbitration awards could be considered as originals were they considered valid. However, there is no specific disposition regarding this matter, nor significant Spanish case law.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

As per [the Regulation \(EU\) No 910/2014 of the European Parliament and of the Council of 23 July 2014](#) on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC and, namely, its Article 25.1: *“an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures”*. As such, we understand that both the electronic signature - “electronically signed (by inserting the image of a signature)”, and the qualified one - *“more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate)”* – should be deemed admissible. Spanish courts are yet to consider such admissibility.

8. Is there likely to be any significant reform of the arbitration law in the near future?

There is not likely to be any significant amendment of the SAA.

9. Compatibility of the Delos Rules with local arbitration law?

According to Article 14 SAA, the parties are able to pursue arbitration under the rules of arbitral institutions – Delos Rules among them.

10. Further reading

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ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> , with offices and a case team?	The Madrid International Arbitration Center stands as a key arbitral institution for international arbitration matters. Founded in 2020, it was established from the merger of the international branches of the most reputed institutions in Spain: Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration and the Spanish Court of Arbitration. The Madrid Bar Association also became involved in the initiative as a strategic partner.
Main arbitration hearing facilities for in-person hearings?	Whilst the market offers multiple options, there is no provider that may be qualified as the main provider of such facilities.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	Whilst the market offers multiple options, there is no provider that may be qualified as the main provider of such facilities.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Whilst the market offers multiple options, there is no provider that may be qualified as the main provider of such services.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Whilst the market offers multiple options, there is no provider that may be qualified as the main provider of such services.
Other leading arbitral bodies with offices in the jurisdiction?	∅