

# **DOING BUSINESS IN SPAIN**

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**IAN BLACKSHAW**

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19-50

# DOING BUSINESS IN SPAIN

No international business concern today can afford to ignore the soaring foreign investment and economic growth in Spain. Recent figures, together with the expected membership of the European Community, confirm Spain's increasing importance as a major West European country for overseas business and investment.

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**Doing Business in Spain** gives the essential information and guidance which in practice can mean the difference between a successful venture and profits, or a missed opportunity and losses.

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SHERWOOD O. JONES



## Doing Business in Spain

To my wife, Christine, and my sons, Rupert  
and Daniel, this book is affectionately  
dedicated

# **Doing Business in Spain**

**Ian S Blackshaw**

**Oyez Publishing Limited**

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## Preface

In writing this book, I have endeavoured to fulfil the need for an English language text which will provide company executives, businessmen, entrepreneurs, and their professional advisers, with a clear and concise general introduction to the legal, fiscal, and exchange control aspects of doing business in Spain.

The work is not – neither does it claim to be – an exhaustive treatment of such an immense and, at times, technical subject. My intention, however, has been to guide the reader through the subject, to enable him to appreciate the business opportunities which are available, and to focus his attention on the principal substantive and procedural rules which apply.

For general reference purposes, I have included English translations of the texts of the Foreign Investment Law and Regulations of 31 October 1974 in the Appendices. I have also compiled and included at Appendix VII a select glossary of some of the principal Spanish legal and business terms in common use, which I hope readers will find of practical help and assistance.

This book is not, however, intended to supplant the need for taking professional advice in Spain at an early stage in the formulation of any investment project, but it is hoped that the reader will be in a better position for asking the right questions and understanding the replies and advice given.

I should like to express my sincere gratitude to Illmo Sr Don Enrique Puig y Rojas, Director General, General Directorate of Foreign Transactions, Madrid, for writing the Foreword; to my good friends and colleagues in Gomez-Acebo y Pombo of Madrid for reading the manuscript; and to my secretary, Susan Evans, for typing it. I should also like to thank Ian Campbell, of Price Waterhouse & Co, Madrid, for providing certain material on taxation.

Whilst the book was in its final pre-publication stages, the Ministry of Commerce made an Order (No 23231 of 14 September 1979), under which certain 'current invisible foreign transactions' have been liberalized. In view of its importance, I have included English translations of its provisions and of relevant extracts from its schedules as Appendix VI, which you will find at pp 179 to 183. This Order replaces the previous exchange control practice, whereby a prior administrative authorization was generally required, in order to effect certain payments and transfers abroad, with a general authorization

from the General Directorate of Foreign Transactions ('DGTE'). For example, remittances arising under Technical Assistance Agreements are liberalized up to 10 million pesetas per annum per contract, and prior declaration to the DGTE in respect of such amounts is no longer required. This general authorization, however, is without prejudice to verification, from time to time, by 'delegates of the competent Exchange Control Authority' as to the 'regularity and authenticity' of the transactions concerned. In most cases, 'financial intermediaries' (eg commercial banks) are authorized to act as such delegates (referred to in the text of the Order as 'Delegate Entities'). The Order also enables the DGTE to authorize residents, subject to certain prescribed conditions, to open and operate special accounts, known as 'cuentas para pagos al exterior a justificar', through which 'typical and habitual' business payments and transfers abroad may be freely made. It should be noted that the Order applies to both outward and inward foreign investments.

I have endeavoured to state the Law and the Procedural Rules as they stood on 30 September 1979, according to the sources available to me at that date.

Tranquilo  
Cala Llonga  
Sta Eulalia del Rio  
Ibiza  
Baleares  
Spain

Ian S Blackshaw

# Foreword

by

*The Director General of Foreign Transactions*

I am pleased to welcome Ian Blackshaw's book, *Doing Business in Spain*, which is being published at an important and interesting time in the political and industrial evolution of Spain.

For many years it has been part of the official economic policy of Spain to encourage and welcome foreign capital and technological investments, and such a policy will continue to play an ever-increasing role in meeting the challenges of the eighties. This is particularly so in view of Spain's pending application to become a full member of the European Common Market. The value and advantages of the Spanish Market for international business have been recognized and endorsed in several recent substantial investments here.

Written in a clear and concise style, this book will guide the reader through the intricacies of the subject. Its coverage is impressive and comprehensive. The author draws on his practical experience, and this lends weight to the text and adds to the general usefulness of the work.

I wish the author and the publishers well in this enterprising and distinguished undertaking.

Madrid  
5 October 1979

Enrique Puig



# Chapter 1

## Introductory Background

Spain is the second largest country in Western Europe: it is also a developing and interesting one for the potential foreign investor.

Occupying the greater part of the Iberian Peninsula, the Spanish National Territory includes the Balearic and Canary Islands, and also extends to the enclaves of Ceuta and Melilla in North Africa. The total population is around 36 million.

The country is divided into '50 provinces ('provincias'), which are subdivided into municipalities ('municipalidades'). The central Government is based in Madrid, the country's capital, and branches of the various Ministries ('Delegaciones Provinciales') are located in the provinces. The principal industrial centres are based on Barcelona and Bilbao, although most of the important business negotiations are conducted and finalized in Madrid. There is a strong movement for the devolution of power from the centre to the regions, and an autonomous regional government has already been established in Cataluña, with its administrative headquarters in Barcelona. The Basque Country and Andalusia are also seeking autonomy, and, in the case of the former, not always by non-violent and democratic means. Since the death of General Franco in November 1975, there has been a remarkably swift and relatively peaceful transition from a rather old-fashioned right-wing dictatorship to a modern and progressive parliamentary democracy, and this has led to a growing acceptance of Spain into the comity of Western Nations. On 15 June 1977, Spain held its first free parliamentary elections for more than forty years, and, on 6 December 1978, a new Constitution was approved in a national referendum.

Under this Constitution, which came into force on 29 December 1978, the political form of the Spanish State is declared to be that of a parliamentary monarchy, with full power vested in a bi-cameral Parliament ('Cortes EspaÑolas'), elected by universal suffrage, with the monarch acting as a unifying and symbolic Head of State. Under the Constitution certain fundamental rights and liberties are granted and guaranteed, and, in general, these are equally available to foreigners in Spain. Particular mention may be made of the freedom of access to the courts, in pursuit of one's legitimate rights and interests, and the general principle of equality before the Law. The Constitution recognizes and applies the doctrine of the separation of powers, and provides for a totally independent judiciary, separate from Parliament and the Administration. Article 9 (3) 'guarantees the principle of legality, the hierarchy of rules, the publicity surrounding rules, the non-retroactivity of punitive

## *Introduction*

measures unfavourable or restrictive to individual rights, legal security and the accountability of the public authorities, as well as protection against arbitrary action on the part of the latter.'

Spanish law is based mainly on Roman law, and the Spanish legal system is the result of a long historical process. Much of the basic law derives from Codes, which were compiled in the course of the last century, under the influence of the Napoleonic Codes. These Codes, including the Civil and Commercial Codes, survive today, but in a revised form. The Supreme Court of Justice ('Tribunal Supremo') was established in its present form in 1812, with the task of unifying case law by means of a special appeal procedure known as '*recurso de casación*'. In general, however, case law, or jurisprudence as it is known under the Civil Law system, does not play the same important role as under the Common Law tradition. Indeed, the doctrine of judicial precedent does not apply, and the judge is not necessarily bound to follow previous decisions, although jurisprudence is regarded by the Civil Code as one of the sources of law.

Under the Civil Code, a judge is bound to give a decision in every case brought before him, and, in the absence of a specific law, must apply custom, and, in the absence of both, must resort to the 'general principles of law'. This expression has been widely interpreted to include natural law and equity. However, it must not be thought from this that equitable principles applied in Spain approximate to the specialized and comprehensive body of law known as 'Equity' under the Common Law System. For example, the concept of a Trust is unrecognized in Spanish Law.

At present, there is no jury system in either civil or criminal proceedings, but its re-introduction is foreshadowed in the new Constitution. In the past, however, it was never particularly successful, due, in some measure, to the Latin temperament.

All legislation passed by the Government, known as Decrees and Decree-Law ('Decreto-Ley'), and all subordinate legislation passed by Ministerial Departments, known as Ministerial Orders ('Ordenes Ministeriales'), must be published in the official State Gazette ('Boletín Oficial del Estado'), and comes into force, in the absence of any provision to the contrary, 20 days from the date of such publication. This Gazette is published daily.

The legal profession in Spain is unified, although certain interlocutory pleadings and procedures in the courts are dealt with by procurators ('procuradores de los tribunales') in addition to the lawyer ('abogado') who is assigned to the case. The judges are professional lawyers who are selected by competitive examination on graduating from law school, and receive a specialized training in a special judicial school. Based on experience, judges progress within the judicial hierarchy, and specialization is more by accident than design. Procedure is predominantly written in civil cases and oral in criminal matters, but, in both cases, the parties are guaranteed a hearing. Litigation in Spain, as elsewhere, is a lengthy, often frustrating, and costly process, and

should be avoided if at all possible. Before a writ ('demanda') can be issued, a process known as an 'act of conciliation' ('acto de conciliación') must generally be followed, under which an attempt is made by the parties, in the presence of the judge, to reach an amicable settlement of the dispute. In civil cases, each party generally pays his own costs, and an award of costs will only be made against a party when, in the view of the judge, he has acted in 'bad faith', that is, recklessly, maliciously, or unreasonably. Exceptionally, in certain special proceedings, for example shareholders' actions to annul decisions of a general meeting which are contrary to the Law, costs are awarded to the successful party.

At present there is no specialized body of consumer law in Spain, similar to that generally found in other modern industrialized societies. However, legislation can be expected in this field, as the new Constitution lays down the lines along which future economic and social policy is to develop, and such policy makes particular reference to the protection of consumers.

In the last few years, the Spanish economy has been characterized by slow growth, falling investment, a substantial increase in the level of unemployment, and one of the highest inflation rates in Europe. Although inflation has been reduced to 16 per cent from the 26 per cent average for 1977, there are signs that the Government's target of reducing the inflation rate to single figures during 1979 will not be achieved. Over the last 12 months there has been a substantial improvement in the balance of payments, largely attributable to increased exports, which are above the OECD average, and receipts from tourism. The marked dependence of Spain on imported energy, of which oil accounts for 25 per cent of the import bill, will continue to have a crucial impact on the balance of payments.

With the advent of political stability and international respectability, investment, both domestic and foreign, is likely to pick up considerably, and there is already evidence of this in the inflows of foreign capital officially recorded during 1979. The private sector is also likely to respond to new fiscal investment incentives. Exports are again expected to have grown substantially during 1979, and the balance of payments is likely to show a modest surplus. Overall economic growth will again be around 3 per cent to 3½ per cent, which is below the Government target of 5 per cent needed to bring Spain onto a comparative level with her prospective European partners and reduce unemployment. As in the past, foreign capital and technology will continue to play an important role in the growth and development of the Spanish economy and the competitiveness of Spanish industry.

As a member of the Organization for Economic Co-operation and Development, Spain subscribes to its Code on the Liberalization of Capital Movements, under which members are required to abolish progressively, as between one another, restrictions on international movements of capital, in the interests of effective economic co-operation. This is reflected in the general liberal policy of the Spanish Government in regard to the making of foreign

## *Introduction*

investments, which finds expression in the Foreign Investments Law and complementary Regulations. This policy has been officially expressed in the following terms:

'Companies with foreign participation are contributing substantially to the industrial development of the host countries throughout the developed world. Spain needs foreign capital and, therefore, not only places no obstacles in its way, but also encourages the carrying out of investments in this country, undertaking to take an even more active part than hitherto in the strong world competition established in this field.'

On 28 July 1977, Spain applied for full membership of the European Common Market, and on 6 February 1979 formal negotiations opened in Brussels. Although these negotiations are expected to be long and difficult, there can be little doubt about Spain's ultimate accession to the European Communities, which is expected in 1983, with full integration by the end of the decade. While Spanish membership, which has been generally welcomed, will bring political and economic benefits to Spain, it will also expose Spanish Industry to the full rigours of competition inherent in the Common Market. Spain's forthcoming membership of the Common Market will also attract foreign industrial investments, both of an offensive and a defensive nature.

Other attractions for doing business in Spain include a relatively undervalued peseta, and a reasonably well-trained and under-utilized work-force, with a good capacity for assimilating new techniques. Spain also provides a good exporting base, not only for serving the markets of Western Europe, Africa and the Middle East, but also from which the increasingly important markets of Central and South America can be successfully entered and developed. Trade between Spain and Eastern European countries is also increasing. Spain also offers a number of free ports and duty-free zones, which manufacturers and exporters can use as trans-shipment points for other markets.

As will be seen, export-orientated and labour-intensive investments will be especially welcome, and are subject to a special expedited approval process.

The recent fiscal reforms will also facilitate the making of foreign investments, particularly in existing Spanish enterprises, and will enable foreign firms to compete on an equal footing with Spanish firms, which, in future, will have to bear a more equitable share of the tax burden. Additionally, the foreign investor may be attracted by the various fiscal incentives and development grants, which are available in respect of certain industrial projects and in certain areas. Other incentives to investors include preferential access to official credits and the provision of cheap land. For example, the recent \$1.6 billion investment by General Motors in two new plants, to be built in Cádiz and Zaragoza, qualifies for official credits of up to 25 per cent and 10 per cent and official subsidies of 20 per cent and 10 per cent respectively of the fixed investment costs of the projects. As two-thirds of the production of these plants will

be earmarked for export, General Motors will also qualify for comparatively cheap export financing facilities.

In general, air, road and rail communications are good, as also are postal and telecommunication services, and the country is widely served by modern ports with good handling and warehousing facilities. On the other hand, local authority services and facilities in a number of areas have, in the past, left something to be desired, but improvements can now be expected, following the first fully democratic municipal elections since 1931, which were held on 3 April 1979.

Although English is becoming more widely used in Spanish business circles, a good working knowledge of Spanish will prove invaluable. The foreign investor will also need to appreciate and understand the Spanish way of doing things and, at times, adjust to the requirements and realities of Spanish bureaucracy. The Government is fully aware of administrative delays, and steps are being taken to improve matters.

All in all, in the opinion of the author, the current opportunities for doing business in Spain are immense and exciting: so also are the country's future prospects.



# Chapter 2

## General Position on Foreign Investments

### Foreign investment code

The various legal provisions relating to foreign investments in Spain were consolidated, clarified and supplemented in a 'Reformulated Text', published on 31 October 1974 as Decree No 3021/74. The background and basic object of the Foreign Investment Law is stated in the preamble as follows:

'The legislation on foreign investments has efficiently served the purposes for which it was enacted, as part of the economic policy aimed at opening up the Spanish economy more extensively to the outside world and the improvement of its competitive capabilities. It has also provided, in addition, an adequate legal framework for the attraction of foreign capital, which has played an important role in the economic development of this country. However, the great quantity of provisions published at different times, the existence of certain legal gaps and certain practices contrary to the spirit of the existing legislation, have made it desirable to publish a reformulated text that will resolve these problems without altering the basic structure of the legislation or its character as a means of attracting foreign capital.'

At the time of its introduction, the Minister of Commerce made the following observations on the new text:

'... the new provisions do not modify substantial aspects of legislation which has proved its efficacy, they rather tend to clarify the various rules, to improve the system and to complement those aspects, which required bringing up to date, simply due to the time which has passed since the appearance of new legal points. In addition, and this is very important, they increase and guarantee security.'

The Law is supplemented by regulations published at the same time and approved by Decree No 3022/74.

The Law and the Regulations are, for convenience of citation, collectively referred to in this Book as the 'Foreign Investment Code'. Their texts are reproduced in an English translation in Appendix I.

## *Chapter 2 General Position on Foreign Investments*

The Foreign Investment Code is supplemented by subsequent legal provisions issued in the form of Decrees, Resolutions and Ministerial Orders. Particular mention should be made here of Royal Decree No 2.619/1978 of 29 September 1978, which replaces and supplements the original text of the 'Additional Provisions' of the Regulations without altering their basic tenor. These changes have been incorporated into the translation referred to above.

Foreign investments made in Spanish companies operating in certain business sectors are governed by special legislation, but are also subject to the application of the Foreign Investment Code in all respects not regulated by the special legislation. Examples include mining and insurance companies, banks, news agencies, and companies engaged in the exploration and exploitation of hydrocarbons.

On the subject of industrial sectors open to foreigners, see *Fields of Investment*, at p 12 below.

### **Administrative bodies**

Several Government bodies have various roles to play in the administration and control of foreign investments in Spain. Each of them will now be considered briefly in turn.

#### *(i) Role of the Council of Ministers*

The Council of Ministers ('Consejo de Ministros'), consisting of the members of the Spanish Cabinet and presided over by the Prime Minister, and exceptionally by the King, is the body charged with the responsibility of granting or denying special authorizations required for majority foreign investments in certain prescribed circumstances and fields. They may attach conditions to their authorizations. Their competence in this sphere is laid down in Art 33 of the Regulations. (See Appendix I, at p 144 below.)

#### *(ii) Role of the Ministry of Commerce*

In general, the Ministry of Commerce exercises all the powers relating to the administration of foreign investments not assigned to the Council of Ministers or to some other Ministerial department (Art 34 (1) of the Regulations).

In addition, the Ministry of Commerce has the specific functions assigned to it under the provisions of Art 34 (2) of the Regulations. Reference should again be made to Appendix I for the details.

#### *(iii) Role of the General Directorate of Foreign Transactions*

The General Directorate of Foreign Transactions ('Dirección General de

'Transacciones Exteriores') is part of the Ministry of Commerce, and was created by Decree No 1.794 of 26 July 1973. It is referred to throughout the text in its popular abbreviated form as 'DGTE', and consists of three sections dealing with foreign investments, Spanish investments abroad, and statistical analysis.

In practice, the DGTE plays a large and varied part in the administration and control of foreign investments in Spain, and performs many of the functions of the former Spanish Foreign Money Institution ('Instituto Español de Moneda Extranjera'), particularly in the field of exchange control authorizations. Its specific competencies are laid down in Art 35 of the Regulations. (For details, see Appendix I, at p 145 below.) Under Art 28(3) of the regulations, the DGTE also has important responsibilities in connection with the procedural formalities concerning the registration of acquisitions and disposals of foreign investments in the special Investments Registry ('Registro de Inversiones'), which is maintained by the Ministry of Commerce.

(iv) *Role of the Foreign Investments Board*

The same Decree, which created the DGTE, also created, within the Ministry of Commerce, the Foreign Investments Board ('Junta de Inversiones Exteriores'), consisting of representatives of various Ministries, including those of Foreign Affairs, Finance, Public Works, Industry, Agriculture, Commerce, Tourism and Housing. The President of the Board is the Under-Secretary of Commerce or his delegate, the Director General of the DGTE.

Its main function is to advise the Council of Ministers on foreign investment applications, and it also performs the other functions assigned to it by Art 36 of the Regulations (see Appendix I, at p 129 below).

(v) *Role of the Bank of Spain and Delegate Banks*

The Bank of Spain ('Banco de España') is the Central Bank, and exercises the usual functions of such an institution. All the functions of the former Spanish Foreign Money Institution, other than those attributed to the Ministry of Commerce, were transferred to it under Decree No 1.791 of 17 July 1973. It is particularly active, therefore, in the control of the money supply, the provision of credit, and the purchase and sale of foreign currency.

A number of the functions of the Bank of Spain have been delegated to the commercial banks ('delegate banks'). For example, the delegate banks are authorized to grant mortgage loans in pesetas to non-resident individuals for the acquisition in Spain of private houses on certain conditions (Art 2 of the Resolution of the DGTE of 20 December 1974). They also issue the currency and other certificates required under the Foreign Investment Code.

## **Foreign investors**

### **(i) Definition**

Foreign investors are defined by the Foreign Investment Code as 'foreign private persons, physical or juridical, whatever their residence, and Spaniards resident abroad'. This legalistic definition is rather important, because the Code only applies to those persons falling within its parameters.

By 'foreign private juridical person' is meant a foreign private company or corporation. In this sense, 'private' means a company or corporation organized and operating in the private sector, and does not exclude so-called 'public' companies, whose shares are quoted on an official Stock Exchange. It does, however, exclude public corporations, in the sense of Government bodies and entities, or companies or entities of any kind, which are, in any way, controlled by 'Foreign States, Entities of Foreign Sovereignty, Foreign Official and Public Entities and Foreign Public Companies' (Second Additional Provision of the Foreign Investment Regs).

The International Finance Corporation is also considered as a 'foreign investor' in Spain, and permitted to make such investments in accordance with the provisions of Decree-Law No 2 of 25 January 1962 (First Additional Provision of the Foreign Investment Regs). In effect, the International Finance Corporation can make investments in Spain on similar terms as foreign private corporate bodies.

Under the revised Additional Provisions of the Foreign Investment Regs, foreign Governments and all official agencies of foreign powers require a special authorization, to enable them to make foreign capital investments in Spain. Such authorization may be granted where there is diplomatic reciprocity, or where the foreign interest to be acquired does not involve effective control of the Spanish company.

Effective control is considered to be more than 50 per cent equity participation (Additional Provision 2(2), *ibid*).

In the case of investments made by foreign private companies, which become nationalized in their country of origin, the administrative authorizations covering their investments will generally expire (Additional Provision 4(1), *ibid*). Nationalization, for these purposes, is defined by the same provision as follows:

'it will be understood that nationalization exists when the ownership of the foreign investment which was originally private passes to the companies or entities referred to in No 1. of the second additional provision of these Regulations.'

### **(ii) General legal status**

Foreigners in Spain, in general, are entitled to the same civil and commercial

rights and the same treatment under the Law as Spanish nationals (Art 27 of the Civil Code and Art 15 of the Commercial Code).

Some of the exceptions to this general rule are provided by the Foreign Investment Code itself, despite the provisions of Art 1 (2) of the Foreign Investment Law. For example, in the exercise of the civil right of owning real estate, foreigners are restricted to four hectares of rural irrigated land (Art 22 (1) of the Regs). In the exercise of commercial activities, foreigners, in general, may only own up to 50 per cent of the share capital of a Spanish company (Art 5 (1), *ibid*).

(iii) *Expropriation of property*

The property of foreigners and Spanish nationals alike, may be expropriated by the competent Authority, on the grounds of public utility, subject to the payment of the corresponding compensation (Art 349 of the Spanish Civil Code). If property is expropriated contrary to this rule, redress may be sought from the courts and, where applicable, the judges may order the return of the property (*ibid*).

Property may, however, be expropriated in time of war, and this right is generally reserved in Special Permits issued by the Military Authorities, whereby foreigners are authorized to acquire real estate in certain areas of Spain designated as being of strategic importance.

## **Residence**

(i) *Generally*

For certain purposes, which will be distinguished in the course of this book, the Foreign Investment Code differentiates between resident and non-resident individuals and legal entities.

In this section, we shall examine the rules whereby such status may be proved in official transactions. We shall also consider how residence in Spain may be acquired by individuals.

Residence of individuals and legal entities, for tax purposes, will be considered in Chapter IV (see *Taxation*, at p 30 below).

(ii) *Individuals*

Foreign individuals must prove their non-residence status by means of a 'negative certificate' ('certificación negativa') issued not more than two

## *Chapter 2 General Position on Foreign Investments*

months previously by the Police Authority ('Dirección General de Seguridad'). They must prove their residence status by means of a residence card ('tarjeta de residencia'), issued by the same Authority.

In general, under Art 14 of Decree No 522 of 14 February 1974, foreign individuals present in the National Territory are regarded as either residents, if they have obtained a permission to remain ('permiso de permanencia') or a residence authorization ('autorización de residencia'), or as tourists.

Foreign individuals are permitted to enter and remain in Spain as tourists for a period of three months. This period may be extended for two further periods, each of three months' duration and known as a 'permanencia'. Such a 'permanencia' does not entitle the individual to work, either on his own account or that of a third party. Neither does such a 'permanencia' confer on the foreigner residence status for the purposes of the Foreign Investment Code. After two consecutive 'permanencias', an application, supported by two Spanish referees, may be made to the Police Authority for a residence permit ('Permiso de Residencia'). Likewise, the residence permit does not entitle the holder to work. Such permits are normally granted for two years.

A Spaniard proves his non-residence status, for the purposes of the Foreign Investment Code, by means of a Consular Certificate, confirming his inclusion in the Residents' Register maintained by the Spanish Consulate in the foreign country concerned. Such certificate must not be more than two months' old.

### *(iii) Companies*

In general, companies are resident in the country in which they are legally established (ie incorporated). Their residence may be proved by a certified and legalized copy of their certificate of incorporation. In certain cases, foreign companies with branches and permanent establishments in Spain will be regarded as resident.

In Spain, a company is legally incorporated as from the moment of its registration in the Commercial Registry ('Registro Mercantil').

## **Fields of investment**

### *(i) Generally*

Foreigners are permitted by the Foreign Investment Code to make a wide range of investments in Spain. Apart from the usual forms specified by Arts 3, 4 and 5 of the Regs, for example, corporate, portfolio and real estate investments, non-typical forms of investment may also be made by foreigners in Spain, but only with prior Government Authorization (Art 6 of the Regulations).

Foreign Investments in Spanish Companies, are, in general, subject to a 50–50 foreign–Spanish participation rule. The exceptions to this rule will be considered under the general heading of 'Majority Direct Investments' in the next chapter. Such investments may take the form of either the incorporation of a new Spanish company, or the acquisition of all or part of the shares or 'participations' in an existing one (Art 3.1.1.). The acquisition of subscription rights is treated as an acquisition of shares (Art 3.1.2.).

In the case of investments in Spanish companies made in the form of capital equipment of foreign origin, the value of such equipment is that fixed by the Customs authorities, and the equipment must be imported in accordance with the Customs regulations (Art 2.1.2.).

However, foreign investments in certain industrial sectors are either prohibited or restricted, while in other sectors they are 'liberalized'. For details of liberalized investments, see Chapter 3. The fields in which foreign investors are denied or only permitted limited access will be considered in the following two sections.

#### (ii) *Prohibited sectors*

Under no circumstances can foreign investments be made in Spanish companies and firms, whose business activities are directly related to national defence (Art 28 of the Foreign Investment Law).

This prohibition applies to any form or kind of investment made in such companies or firms by foreign individuals and legal entities. It also applies to non-resident Spaniards.

#### (iii) *Restricted sectors*

Equity participation by foreign investors in Spanish companies operating in the following industrial sectors is restricted by the Special Laws cited to the percentages and on the conditions stated below:

<i>Field of operation</i>	<i>Applicable law</i>	<i>Foreign equity limit</i>
Processing and production of films	Decrees of 25 January and 26 April 1946 (Arts 2 and 5)	No foreign participation is allowed, except in cases of reciprocity or major national interest subject to prior administrative approval.
Local broadcasting	Decree of 9 July 1954 (Art 4)	No foreign participation is allowed.
Newspapers and magazines	Law No 14 of 18 March 1966	No foreign participation is allowed (Art 17).

## *Chapter 2 General Position in Foreign Investments*

<i>Field of operation</i>	<i>Applicable law</i>	<i>Foreign equity limit</i>
News agencies	Law No 14 of 18 March 1966	No foreign participa- tion is allowed (Art 44) although Spanish non-residents may have up to 20 per cent.
Publishing companies	Law No 14 of 18 March 1966	No foreign participa- tion allowed (Art 50), although Spanish non-residents and Ibero-Americans may have up to 50 per cent.
Mining	Law No 22 of 21 July 1973 (Art 89)	Up to 49 per cent.
Exploration and exploitation of hydrocarbons	Law No 21 of 27 June 1974 (Arts 6 and 7)	No limitation on foreign participation subject to provision of foreign capital, technology and equipment.
Banking	Royal Decree No 1388 of 23 June 1978	Up to 100 per cent subject to pre- conditions.
Insurance	Law of 16 December 1954	Up to 100 per cent subject to pre- conditions.
Oil refining	Ministerial Order of 5 March 1970	No foreign participa- tion, although some foreign participation may be allowed, in practice, in 'excep- tional circumstances'.
Air transportation	Law No 48 of 21 July 1960 (Art 80 (1))	Maximum foreign participation is 25 per cent.
Shipping	Decree No 390 of 10 February 1966 (Art 1)	Maximum foreign participation is 40 per cent.
Commercialization of public waters	Decree No 672 of 17 March 1966 (Arts 1-4)	Up to 100 per cent subject to pre- conditions.

<i>Field of operation</i>	<i>Applicable law</i>	<i>Foreign equity limit</i>
Contracting public works and services	Law No 923 of 8 April 1965 and Decree No 3740 of 16 December 1965 (Arts 1, 2, 3 & 7)	Up to 100 per cent subject to pre-conditions.

Under subsections (1) and (2) of Art 40 of the Foreign Investment Regulations, prior Government authorization is required for foreign investments in excess of the percentages mentioned above.

## Repatriation

### (i) Rights generally

In general, foreign investors, who make their investments in Spain with foreign convertible currency legally introduced from abroad and duly register those investments in the Investments Registry of the Ministry of Commerce, will be entitled to transfer abroad, without any quantitative limitations, the following items:

- (a) legally distributed profits and dividends;
- (b) proceeds of sale of subscription rights to shares and securities;
- (c) original capital invested; and
- (d) any capital gains ('plusvalías') arising on the disposal of the investment (Arts 9 (1) and 23 of the Foreign Investment Law).

By 'foreign convertible currency' is meant foreign currency admitted to official quotation on the Spanish Foreign Exchange Market. All the major world currencies generally traded on foreign exchanges are included. The entry to Spain of such currency for the purpose of making a foreign investment is through banking channels, and is proved by a 'Currency Certificate' ('Certificado de Divisas') issued by a Spanish Delegate Bank.

The right of repatriation is subject, in every case, to the prior settlement of all or any corresponding taxes or duties.

### (ii) Restrictions

These rights of transfer abroad may only be denied if the Authorities have prior proof that the moneys concerned have been obtained by infringement of the legal provisions on foreign investment, or by non-compliance with any conditions attached to any Government Authorization (Art 9 (2), *ibid*).

## **Appeals**

Discretionary acts and executive decisions made under the Foreign Investment Code, by abuse of power or in conflict with a rule of higher authority, may be challenged in a ‘contentious – administrative appeal’ brought under the provisions of the Law of 27 December 1956 (Third Final Provision of the Foreign Investment Code).

# Chapter 3

## Majority Direct Investments

### Introductory

In this chapter, we shall consider the exceptions to the general rule that foreign participation in a Spanish company may not exceed 50 per cent of its capital, or, in those companies subject to special legislation, the percentage of unrestricted investment.

The Foreign Investment Code makes such exceptions subject to the condition precedent of obtaining Government authorization. Such authorization may be granted under the Foreign Investment Decrees of 31 October 1974 and 26 November 1976.

We shall also consider the cases of so-called 'liberalized' investments allowed under the provisions of Decree No 3023 of 1974.

### Authorization under Foreign Investment Decree No 3021 of 1974

#### (i) *Competence and Cases*

Article 25 empowers the Council of Ministers (ie the Cabinet) to authorize, *inter alia*:

- (a) foreign investments where the foreign interest exceeds 50 per cent of the capital of the Spanish company;
- (b) investments by Spanish companies, with foreign participation, in other Spanish companies in excess of 50 per cent of the capital of the latter;
- (c) foreign investments, regardless of the percentage, when expressly so provided by the special applicable legislation;
- (d) the amendment of the corporate purpose, increases in capital, or an increment in the percentage of foreign participation, whenever the foreign investment required their authorization;
- (e) the amendment of any conditions imposed upon the foreign investment as part of the authorization; and
- (f) foreign investments in excess of 25 per cent of the capital of companies engaged in public services or utilities.

### *Chapter 3 Majority Direct Investments*

It should be generally noted that, once the Government authorization has been granted, any of the changes contemplated in paragraphs (d) and (e) above must be the subject of a further authorization (Art 5 (2) of the Regs).

#### *(ii) Criteria for authorization*

The granting, with or without any conditions, or refusing of applications for authorization in such cases is entirely at the discretion of the Council of Ministers. What policy does the Spanish Government apply in relation to majority investment in non-liberalized sectors? When introducing the Foreign Investment Code of 31 October 1974, the Minister of Commerce, at that time, commented on this important subject that '... selectivity is based on objective criteria, widely spread about and never exclusive, except for a totally justified cause'.

He went on to summarise the criteria under the following five headings:

- (a) dimension;
- (b) technology;
- (c) finance;
- (d) export capacity; and
- (e) location,

and made the following comments about each one:

- '(a) We wish majority foreign investment to have adequate dimensions and not to aggravate the problem of small and medium firms which exists in certain sectors.'
- (b) We have a natural preference for those sectors of more advanced technology, where the company may encourage new methods and products.
- (c) We wish the majority company to have an appropriate capital structure in regard to the relation of its own and deposited resources, and, in particular, between external and internal resources.
- (d) We assign great importance to the export commitments which the new company may establish. We consider that exports are not only important from the point of view of their future contribution to the balance of payments, but also as a guarantee that the new company is competitive on an international scale and has not come to hide in a corner, more or less protected, of our economy.'
- (e) We naturally prefer investments which contribute to balance regional inequalities in our economy.'

Finally, he stressed that the application of these criteria would be 'clear, objective, flexible and never exclusive'.

These basic criteria have been consistently applied in practice, and remain a useful guide for the potential large-scale foreign investor.

(iii) *Form and content of application*

The procedure is laid down in Art 37 of the Foreign Investment Regs, and involves the submission of an application to the DGTE, supported by a memorandum containing the particulars specified in Sched 1 of the Resolution of the DGTE of 25 January 1975. Article 1 of this Resolution calls for six copies of the application and supporting particulars to be filed. For ease of reference, the scheme of this memorandum is reproduced in translation as Appendix II.

Copies of the application and supporting particulars are circulated to the interested Ministries, who are asked to report on the technical aspects of the proposed investment project within two months. The project is then considered by the Foreign Investments Board, after which the appropriate recommendation is prepared by the board for submission to the Council of Ministers. The process of approval can take between six and 12 months, depending upon the complexity of the project and the number of other items of business competing for inclusion in the agendas of the Council of Ministers.

Notification to the interested parties of the decision of the Council of Ministers is by the Ministry of Commerce.

(iv) *Undertakings and enforcement*

As previously mentioned, the Council of Ministers may, and frequently do, attach conditions to their authorizations, eg export undertakings by the foreign investor. In the case of majority investments in Spanish pharmaceutical companies, the authorization must be granted subject to the following conditions:

- (a) exportation of a defined percentage by value of the production sold;
- (b) investment of a fixed percentage of the annual sales in research and development; and
- (c) use of a fixed percentage by value of raw materials and ingredients of Spanish origin.

Any manufacturing patents, which result from the research and development, must be registered in Spain in the name of the Spanish company (Ministerial Order of 29 October 1967).

Failure to fulfil any such conditions can result in a denial or restriction by the Administration of the right of remittability (Art 9 (2) of the Foreign Investment Regs), and may also involve the cancellation of the authorization.

in certain circumstances.

**Authorization under Royal Decree No 3099 of 1976**

The text of this Decree is reproduced in an English translation in Appendix I (at pp 151–154 below).

(i) *Object of the Decree*

The nature and purpose of this Decree may be gleaned from the preamble, which states (*inter alia*) as follows:

'The World economic situation, and in particular the influence which the crisis is having on the capital markets, together with the need which the Spanish economy feels to step up its rate of investment so as to absorb the greatest possible quantity of labour, makes it advisable to adopt certain measures that will help to facilitate the access of foreign capital to the Spanish market.'

Therefore, the Government has resolved to grant a general and automatic authorization for investments carried out in compliance with certain requirements. That is to say, those which, in view of their size and their contribution to the solution of employment and balance of payments problems, deserve this treatment. It is considered that the measures hereby introduced will facilitate the access of foreign capital to the Spanish economy by encouraging an increase in the flow of capital in this respect, without prejudicing the interests of the national industry.'

(ii) *Scope of the Decree*

The Decree draws a distinction between foreign investments in new Spanish companies and those in existing Spanish companies. It does not apply to investments made in companies whose activities are directly related to national defence, or to companies providing public services.

To qualify for authorization under the Decree, investments in new Spanish companies must satisfy the following conditions:

- (a) the paid up capital on formation must be at least 100 million pesetas;
- (b) the company must provide at least 100 permanent jobs as from its inception; and
- (c) after a year in operation, the company must show a positive annual foreign currency balance.

As an alternative to this latter requirement, the company must either export at least 50 per cent of its production, valued at a minimum of 100 million

pesetas, or, provide 1,000 permanent jobs on start-up of production.

Investments in existing Spanish companies qualify for authorization if they meet the following requirements:

- (a) increase, by at least 30 per cent, the capital and cash reserves of the company;
- (b) create, after one year, at least 100 additional permanent jobs; and
- (c) after one year, maintain a positive annual foreign currency balance.

In both cases, the investment must be made in the form of foreign convertible currency injections from abroad, and transfer of technology payments, or payments of a fixed amount or geared to the level of business activity, to foreign affiliates and associates are disallowed, although counter-payments for services appropriately defined and justified can be remitted.

The expression 'positive annual balance of foreign exchange' is defined in Art 1, 2 (b) (see Appendix I, at p 152 below).

Authorizations granted pursuant to this Decree do not exonerate the foreign investor from obtaining any authorization required for installation of the particular investment project (eg from the Ministry of Industry in the case of a factory manufacturing pharmaceutical products).

The elimination by the Fourth Article of this Decree of the necessity in certain circumstances of obtaining a further Administrative Authorization in the case of an increase in capital should be particularly noted. Companies wishing to make use of this provision must submit Form TE14, duly completed, to the DGTE within one year.

### *(iii) Procedure and implementation*

This is laid down by Art 5 of the Decree as supplemented by the Order of the Ministry of Commerce of 25 March 1977. Application is made on Form TE13 to the DGTE, which acts on the report of the Foreign Investments Board, and which, if satisfied, issues a Certificate of Compliance with the Decree to the promoters of the investment project. The application must be supported by a memorandum containing certain prescribed information. Form TE13 and this supporting memorandum are reproduced in English translations in Appendix II (at pp 160-166 below).

If nothing is heard by the applicant after 90 days from the submission of the project in the prescribed form, it can be assumed that the application has been successful.

The promoters of the investment project must proceed with the incorporation of the new company, which must be completed within a maximum period of six months of receiving the Certificate of Compliance or the

Document issued by the DGTE, and referred to in the next paragraph. This period can be extended if the Administration is satisfied that there are 'sufficient grounds' for doing so.

The Certificate of Compliance issued under Art 5 (1), or, in default thereof, part 2 of Form TE 13 issued by the DGTE pursuant to Art 3 of the cited Order, must be produced to the notary (or other authenticating officer) at the time of formalization of the foreign investment. The investment must be registered at the Investments Registry of the Ministry of Commerce using Form TE1.

(iv) *National interest rule*

Authorization under this Decree can only be denied, assuming that the investment project satisfies the objective requirements, on the ground that, the project may have 'exceptionally detrimental consequences for the national interest' (Art 6).

**Firms producing capital equipment goods not manufactured in Spain**

(i) *Decree No 3023 of 1974*

Decree No 3023 of 31 October 1974 has liberalized foreign investments dedicated to the manufacture in Spain of certain capital equipment goods.

There is provision in Art 33 (4) of the Foreign Investment Regs of the same date for the Council of Ministers to liberalize other industrial sectors.

In view of its importance, the text of this Decree is reproduced in translation in Appendix I (at pp 150–151 below).

(ii) *Scope of the Decree*

This general authorization applies to foreign investments made with foreign convertible currency from abroad in Spanish companies 'whose corporate object is solely and exclusively the manufacture in Spain of one or more of the items of capital equipment included in the Appendix List of the Customs Tariff, providing the contrary has not been expressly stipulated at the time of their inclusion' (Arts 1 and 5).

This list covers basically all the capital goods not currently produced in Spain, and is amended from time to time. Examples include such items as special automatic furnaces for controlled-atmosphere pressure forming and hardening of clutch diaphragms, and aeroplanes for aerial agricultural treatments.

The authorization does not, however, relieve the parties concerned from obtaining any Governmental authorizations required under any other

legislation. Equally, the foreign investor is not relieved of the general duty of declaring the foreign investment in the Investments Registry of the Ministry of Commerce, in order to enjoy the right of repatriation.

Companies formed pursuant to this Decree are, however, permitted to increase their capital without the necessity of obtaining any further authorization whatsoever.

(iii) *Procedure and implementation*

This is laid down by Art 2 of the Decree. Application is made to the DGTE. The applicant must submit a copy of the objects clause of the company, to enable the Authorities to check whether or not the corporate objective falls within the scope of the Decree.

The application is subject to a kind of negative clearance procedure, in that, if nothing is heard to the contrary within 30 business days, it can be taken as granted.

The proposed company must be incorporated within a maximum period of six months and adequately capitalized.

(iv) *Infringement*

It is provided by Art 4 of the Decree that, if the company carries out any activity other than the one specified in its objects clause, the authorization shall lapse, the rights of transfer abroad of the capital invested shall automatically be forfeited, and, in addition, the company will be responsible for any liabilities incurred.



# Chapter 4

## Financial Aspects

### **Financial and fiscal investment and export incentives**

#### *(i) Introductory*

There are a number of financial and fiscal benefits available to promote Spanish investments and exports, and in this section the principal ones will be noted.

However, it should be mentioned that the obtaining of these benefits is often surrounded by a lot of 'red tape', although the Authorities are endeavouring to co-ordinate and streamline the bureaucratic processes and procedures involved. The current trend in this field is towards the giving of higher cash benefits, rather than the granting of indirect fiscal incentives, and the emphasis is being placed more on regional development than on industrial restructuring.

It is likely that, on joining the EEC, Spain's industrial and regional development incentives and aids will have to change, in order to bring them into line with Community requirements.

In general, capital gains realized on the disposal of fixed assets, which are reinvested in new fixed assets of a similar nature and purpose, are not taxable.

There are no general tax holidays granted to investors in Spain.

#### *(ii) 'Industrial expansion areas'*

A number of these areas ('área de expansión industrial') have been designated, and others are expected to be established in the future.

For example, under Royal Decree No 2622 of 30 October 1976, Andalusia has been designated as a major development area. This area includes 48 municipalities within the eight provinces comprising the region, and takes in three large development areas consisting of Guadalquivir, Sevilla-Antequera-Granada and Castero.

New industries and commercial activities set up in industrial expansion

## *Chapter 4 Financial Aspects*

areas will qualify for a number of financial and fiscal benefits, which comprise the following:

- (a) Expropriation of land or building plots on which to set up the new facilities or to expand existing ones, with rights of way to reach them and/or to instal electric power transmission and distribution lines and/or to lay out pipelines for liquids or gases, as may be necessary.
- (b) Reduction of up to 95 per cent of the following taxes for five years:
  - (i) transfer taxes on new capital subscriptions and loans;
  - (ii) sales taxes on plant, machinery and installation equipment not available in Spain;
  - (iii) customs duties and equalization tax on equipment imported, when equivalent equipment is unavailable in Spain (unavailability must be certified by the Ministry of Industry and the Association of Capital Goods' Manufacturers ('SERCOBE'));
  - (iv) business licence tax ('licencia fiscal') during the installation period;
  - (v) withholding tax on interest on loans, granted by Spanish enterprises, foreign banks or financial institutions, for investment in new tangible assets; and
  - (vi) local taxes payable on the establishment or expansion of industrial plants.
- (c) Freedom of depreciation during the first five years, which is normally applied by way of accelerated depreciation, although no depreciation may be charged at all where, for example, a programme of advanced investment applies.
- (d) Government subvention of up to 20 per cent of fixed investment.
- (e) Priority in obtaining official loans, that is, loans granted by Spanish Official Credit Institutions and those available from Development Loan Funds. These loans may cover up to 75 per cent of the cost of the investment, and terms depend mainly on the location of the project and its desirability (for example, type of industry, contribution to employment, and export capacity and potential). In general, however, loans made by the official Industrial Credit Bank ('Banco de Credito Industrial') are granted at one or two points above the base lending rate of the Bank of Spain. Loans are granted for five years, and may be extended for a further maximum period of five years, if the particular circumstances merit such an extension.

In addition to the above benefits, it is often possible to obtain further concessions from the municipal authorities, such as free or cheap land; a reduction of up to 80 per cent in the Urban Real Estate Tax ('Contribución Urbana');

and total exemption from property transfer taxes leviable on contracts and deeds relating to land, building plots and buildings in urban development projects.

(iii) *'Industries of preferential interest'*

Special benefits are available to investments in industries which are declared to be of preferential or national interest. These benefits may be claimed in addition to those available in industrial expansion areas in respect of investment projects carried out in those areas by qualifying enterprises.

For example, Law No 6 of 8 January 1977 was passed to promote certain mining activities in Spain, and confers various tax and financial benefits on mining enterprises. For instance, enterprises which exploit certain minerals will enjoy freedom of depreciation for a ten-year period commencing on 9 January 1977, and, by application of a 'depletion factor for mineral deposits', introduced by the Law, can reduce their taxable income by up to 30 per cent.

Automobile manufacture in Spain is also an industry of 'preferential interest', provided the investment meets certain industrial criteria; pharmaceutical companies also qualify for preferred status, if they produce and use local base materials.

(iv) *Export incentives*

The promotion of exports has become one of the priority objectives of Spanish economic policy, and companies and firms involved in export activities enjoy certain financial, fiscal and other benefits, which are summarized in this section.

Perhaps the most important benefits available to exporters are those derived from the holding of an Exporter's Card ('Tarjeta de Exportación'). This is granted for four years by the Ministry of Commerce, on application being made by 30 June to the General Directorate of Exportation ('Dirección General de Exportación'), if the following conditions are satisfied:

- (a) the applicant firm's exports average at least 3.5 million pesetas per annum over the previous three years, and account for a minimum of 10 per cent of the relevant sector's total exports; or
- (b) the applicant, if a commercial enterprise, had exports averaging at least 100 million pesetas in the previous two years; or
- (c) the applicant, if an industrial enterprise, has exports of at least 140 million pesetas per annum; or
- (d) in any case, the applicant has exports averaging at least 35 million pesetas per annum during the previous three years, and such exports represent at least 50 per cent of the applicant's total sales.

## *Chapter 4 Financial Aspects*

Subject to these conditions being satisfied, the Exporter's Card confers the following benefits on its holder:

- (a) granting of export credits on more favourable terms;
- (b) preferential terms for export credit insurance;
- (c) assistance with overseas promotional campaigns; and
- (d) other benefits granted by the State, from time to time, to promote exports.

Credits for exporting are granted by the Banco Exterior de España (Foreign Bank of Spain), which is 50 per cent State-owned, out of funds provided by the Official Credit Institute ('Instituto Oficial de Credito'). Additionally, the Commercial and Industrial Banks are required to earmark a certain proportion of their deposits for export financing at privileged rates. Export loans made by these banks to Spanish companies with foreign participation and which are holders of an Exporter's Card, are not subject to the limitations imposed under Art 5 (2) of the Order of the Ministry of Finance of 5 March 1975 (see p 79).

Exporting enterprises may also obtain rebates on indirect taxes and local charges paid during the 'production, elaboration and commercialization processes' affecting the merchandise concerned. These rebates, which are known as 'desgravación fiscal a la exportación', are granted at the discretion of the Government, and their rates vary according to the type of product involved. Applications must be submitted to the General Directorate of Customs ('Dirección General de Aduanas'), which is part of the Ministry of Finance.

Exporting enterprises may also obtain credits, ranging between 15 and 25 per cent of their previous year's export volume, from the Bank of Spain, in order to finance their working capital. These loans are at fixed rates of interest, and can only be applied for by companies or firms holding an Exporter's Card, or duly registered with the Ministry of Commerce as Exporters.

### *(v) Tax credits*

Under the new Corporation Tax Law of 27 December 1978, certain credits against the tax due are given to companies as incentives for making investments in new fixed assets (excluding land but including new quoted securities), and preserving or increasing the number of jobs.

These credits are as follows:

- (a) 10 per cent of investments in new fixed assets (as defined above) and on subscription of qualifying shares ('acciones calificadas');
- (b) 15 per cent of investments in new fixed assets, where the company does not, of its own volition, reduce the payroll during the following two years;

- (c) 25 per cent of the increase in the payroll and social security costs over a two-year period, as a result of employing new personnel.

The following limits, however, are imposed on these credits:

- (a) 20 per cent of the tax due in respect of credit for investments alone;
- (b) 20 per cent of the tax due in respect of credit for increase in the payroll alone;
- (c) 25 per cent of the tax due in respect of credit for investments without any reduction of the payroll; and
- (d) 40 per cent of the tax due in respect of investments and increase in the payroll.

Export companies may also deduct from the general tax due the expenses of creating branches, permanent establishments, or subsidiaries abroad, which are directly related to their export activity, up to a maximum of 10 per cent. In the case of overseas subsidiaries, the Spanish equity participation must be at least 25 per cent, for the formation costs to qualify for this relief.

The expenses incurred abroad by Spanish export companies in respect of 'propaganda and publicity for the launching of products, the opening and prospectus of markets, and attendance at fairs, exhibitions and other similar occasions' are also entitled to similar tax relief.

These tax credits may be carried forward against tax due in the following three years, in cases where the amounts credited exceed the tax due, subject to the maximum limits mentioned above.

This system of credits can be varied by the Annual Budget Law (see Law No 1 of 19 July 1979).

(vi) *Mergers and joint ventures*

Application may be made to the Ministry of Finance for the reduction of transfer taxes in respect of mergers and joint ventures considered to be in the national interest. In principle, such applications will be refused where the merging companies have the same shareholders and common control.

Under Art 25 (3) of the Corporation Tax Law of 27 December 1978, 95 per cent of the tax payable on the 'increases in value' ('plusvalías') resulting from an amalgamation ('fusión') of companies, which is considered to benefit the Spanish economy, will be discounted. Joint ventures, formed by temporary unions of companies, and which are considered to be 'beneficial for the Spanish economy', may opt, under Art 19 of the Corporation Tax Law of 27 December 1978, to have their profits taxed under the Personal Income Tax Law. This generally will result in a lower tax burden.

## **Taxation**

### **(i) Generally**

The Spanish tax system has recently undergone some major reforms.

Under Law No 50 of 14 November 1977, tax evasion is now a criminal offence ('Delito Fiscal') under the General Criminal Law ('Código Penal'). This new tax offence is defined by Art 35 (1) as follows:

'A tax offence is committed by anyone who defrauds the national or local Tax Office by evading the payment of taxes or by illicit use of tax profits to an amount equal to, or greater than, 2 million pesetas. It is understood that the intent to defraud exists in the case of falsification or substantial anomalies in the accounts or in the case of a negative or obstructive attitude in the event of investigations by the Tax Authorities.'

The offence is punishable by a fine amounting to six times the sum involved. If this sum is more than 10 million pesetas and the amount involved in the fraud exceeds one-tenth of the amount due, the offence is also punishable by imprisonment up to a maximum term of six years. Where the offender is a company, the offence will be attributable to the 'directors, managers, managing directors or persons who effectively administer, unless absence of responsibility is proved' (Art 35 (3)).

A complementary reform is the abolition of bank secrecy in tax investigations (Art 41, *ibid*). The duty of co-operation in such investigations extends to 'Banks, Savings Banks, Credit Co-operatives and any physical or legal persons concerned with banking or finance' (*ibid*). Such entities and persons are '... obliged to inform the tax authorities ... of the credit and debit balances of accounts and of the deposits of transferable assets of their clients, with details of identification of the respective holders' (Art 43).

On 11 September 1978, a new Law on Personal Income Tax was published (Law No 44/78), and was followed, on 30 December 1978, by a new Corporation Tax Law (Law No 61/78). Both these measures, which are mutually exclusive, became effective on 1 January 1979, and apply throughout the Spanish National Territory. The provision of international tax treaties and agreements is not, however, affected by these new laws.

Liable to the personal income tax are individuals who are resident in Spain, in which case they are assessed on their world-wide income, and non-resident individuals, who are only liable to tax on their Spanish source income. A person is deemed to be a resident for these purposes if he remains in Spain for more than 183 days during the calendar year. Temporary absences are disregarded provided they do not exceed three years.

Liability for corporation tax likewise depends upon residence. Resident companies and legal entities are liable on their world-wide income; whereas,

non-resident entities are only liable on their Spanish-source income. Under Art 9 of the Corporation Tax Law, companies constituted in accordance with Spanish Law, or which have either their registered office, or their seat of effective management, within the Spanish National Territory, are considered to be resident, for tax purposes. Income derived from the business operations of a 'permanent establishment' situated in Spain are also liable to corporation tax (see section (iv), at p 37 below).

For the purposes of both personal income tax and corporation tax, income includes all capital gains ('incrementos de patrimonio'), and non-resident taxpayers are required to designate an individual or a legal entity, resident in Spain, to represent them before the Tax Authorities. All taxpayers must register with the local Tax Office ('Delegación de Hacienda'), and be assigned a fiscal identity number.

The tax year for individuals is the calendar year; for companies, it is the accounting year ('año de ejercicio'), which is also the calendar year, unless the bye-laws of the company provide otherwise. Individuals must file annually a return of income by 31 May following the end of the tax year; companies must file their returns within 20 working days of the holding of their annual general meeting, which must be held within six months of the end of their accounting year. In general, tax is due on the submission of the return.

For most purposes, there is a five-year limitation period counted from the date of filing, covering the non-payment of taxes and penalties, and this period also applies even in the case of fraud. The limitation period in the case of Succession Duty is 10 years.

#### (ii) *Personal income tax*

It is considered that a detailed discussion of this subject is beyond the scope of this book. Suffice to say, however, that personal income tax is determined by adding income from all sources and capital gains, and deducting certain prescribed expenses, allowances and credits (eg wife and child benefits and life assurance premiums). It is applied at progressive rates, which range from an average minimum of 15 per cent to a maximum average of 40 per cent, which, when combined with the special wealth tax on individuals, is increased to 55 per cent.

It may also be mentioned that, when services are rendered or an asset or right is made available, it is presumed that a financial consideration is involved, which is taxable accordingly, unless evidence to the contrary can be adduced by the taxpayer. Tax for services rendered must, in general, be deducted at source according to prescribed tax tables, taking into account the taxpayer's allowances with effect from the first day of the tax period.

Reference may also be made to the new concept of a family unit taxpayer ('unidad familiar') introduced by Law No 44/78, and enabling a combined return to be filed on behalf of the husband, wife, and any children below the

age of majority (ie 18 years), living with them.

(iii) *Corporation tax*

(a) *Nature and scope* – Corporation tax is defined by Art 1 of Law No 61/78 as ‘a levy of a direct and personal nature upon the revenue of companies and other legal entities in accordance with the rules of this Law’.

Under Art 3, taxable income includes ‘the yield on economic exploitations of any nature and those deriving from professional or artistic activities’, as well as capital gains, referred to as ‘increases in patrimony’ (‘incrementos de patrimonio’). Subventions and subsidies ‘of any kind’ are also to be taken into account on computing taxable income (Art 12 (d)).

The provision of personal services and goods of any kind will be presumed to be in return for a financial consideration, unless there is proof to the contrary (Art 3 (3)).

Certain State and autonomous administrative bodies (eg Bank of Spain) are exempt from corporation tax, and certain welfare institutions and charitable organizations (eg Spanish Red Cross) are subject to tax at a reduced rate (see section (h), at p 34 below).

(b) *Basis of assessment* – Companies and legal entities liable to corporation tax are assessed directly on the true results of their operations, as shown in their books of account, and other business records, which they must preserve for five years from the date of the last entry.

There are two bases for the determination of taxable income: the aggregate of income (from all sources), less permitted deductions, plus capital gains, less capital losses; or, the difference between shareholders’ equity (‘Capital Fiscal’) at the beginning and end of the tax period. The Law does not indicate which one shall have preference, but, in either case, capital subscriptions, amounts withdrawn by shareholders and non-deductible items, will be disregarded. It appears, however, that corporate taxpayers must file their returns based on the first method. The second method is apparently an alternative basis to be applied by the tax authorities.

A specimen corporation tax computation in respect of a Spanish company with 50 per cent foreign participation in a non-tax treaty case is given in Appendix IV.

(c) *Deductible expenses* – All expenses ‘necessary’ to obtain the corporate income are allowable in computing the taxable income (Art 13). In general, therefore, all expenses, which a company nowadays is likely to incur in the course of carrying on and promoting its business, will be tax deductible. Article 13 illustrates some specific items which are deductible, and mention may be made of the following:

- (i) social security contributions;
- (ii) industrial injury insurance premiums;
- (iii) loan interest;
- (iv) preservation and repair costs of 'material assets';
- (v) doubtful debts (subject to transfer to a 'special suspense account');
- (vi) management and administrative expenses charged by a foreign parent to its permanent establishment in Spain ('in the proportion to which they may be applied to the said establishment');
- (vii) management participation in profits up to 10 per cent; and
- (viii) donations to industrial promotion enterprises in Regions where the per capita income is below the national average.

Depreciation of assets, referred to as 'deterioration' in the Law, is also specifically allowable as a deduction under Art 13.

(d) *Depreciation*—The 'straight line method' of depreciation is the one ordinarily applied by the Spanish tax authorities. In general, depreciation is computed in accordance with Tables, laid down by the Ministry of Finance, but higher rates may be obtained, where these can be justified by the taxpayer.

The following maximum rates and depreciation periods generally apply:

Industrial buildings:	3% - 4%	;	50-38 years
Plant and machinery:	8% -12%	;	18-12 years
Vehicles (including heavy lorries):	14% -20%	;	12-8 years

Accelerated depreciation is a matter for specific agreement by the tax authorities under special regulations.

In general, all intangible assets may be depreciated, and particular mention may be made of the following:

- (i) formation expenses (to be written off over 10 years);
- (ii) debenture expenses (usually written off on the basis of redemptions made);
- (iii) patents and trade marks (to be written off in accordance with their remaining useful life); and
- (iv) goodwill.

Although there are no special rules in respect of extraordinary losses arising on the destruction of an asset or similar event, the general view is that such losses can be claimed and allowed as deductible expenses.

(e) *Losses*—Trading and non-trading losses may be carried forward and set off against profits and capital gains of the same business during the following

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five years (Art 18). It is understood that a ‘FIFO’ basis will be applied by the tax authorities.

Amounts authorized in excess of the normal guidelines of depreciation may be brought into the computation of general losses. Exchange losses are also included in the computation of ordinary losses.

The Law does not allow the carry-back of losses against profits earned in previous tax years.

(f) *Tax credits* – Certain credits are given by the Law against the tax payable. These include the investment and employment incentives under Art 26 (see section (a) (v), at p 26 above); dividends distributed by groups of companies; the amount paid abroad in respect of tax of an identical or similar nature to the Spanish corporation tax or the ‘notional’ Spanish tax (whichever is the lesser); and the amounts withheld on the revenue of the taxpayer under the Withholding Taxes Rules (see section (v), at p 37 below).

In the last case, where the amount retained exceeds the tax due, the tax authorities must reimburse or compensate the taxpayer. Additionally, the taxpayer may deduct the overpaid tax from successive corporation tax payments.

(g) *Non-deductible items* – Article 14 specifies several items which may not be deducted for the purpose of calculating taxable income. These include:

- (i) amounts of whatever nature for the direct or indirect compensation of the company capital;
- (ii) profit sharing, other than payments for personal services;
- (iii) fines and penalties imposed on the taxpayer by any public body; and
- (iv) donations other than those made to legally recognized charities and public bodies.

Other items may be disallowed under the general necessity rule referred to in section (iii) (c), at p 32 above.

(h) *Allocation of income and expenditure* – In general, income and expenditure will be allocated to the financial period in which ‘the revenue was earned and the expenses were produced, independent of the moment in which the corresponding payments are received and made’ (Art 22).

Taxpayers may use different criteria, provided –

- (i) in doing so, no change occurs in the fiscal classification of the income or expenses;
- (ii) the criteria are justified and reported on filing the Return for the first tax period in which they are to be used;
- (iii) the period during which the criteria will be applied is specified; and
- (iv) the taxpayer adheres to the chosen criteria during such period.

In no case may a change in criteria result in any increase or expenditure becoming discountable for tax purposes.

Instalment income, subventions, and exchange gains or losses are subject to special treatment as follows –

- (i) instalment income is deemed to be earned in proportion to the rate of receipt or, at the option of the taxpayer, as it arises, ie on an accrual basis;
- (ii) subventions are deemed to accrue at the same rate as the fixed assets, which are financed by them, are depreciated, or, if not depreciable, or depreciable over a period of more than 10 years, they are to be assessed at the rate of 10 per cent per annum;
- (iii) foreign currency gains or losses, resulting from changes in the official exchange rates, are deemed to arise at the moment of their receipt or payment respectively.

(i) *Transactions between 'associated companies'* – Transactions between 'associated companies' ('sociedades vinculadas') are to be computed, for tax purposes, on an 'arm's length basis', that is, 'in accordance with the prices agreed under normal market conditions by independent companies' (Art 16 (3)).

For this purpose companies are associated when 'they participate directly or indirectly to at least 25 per cent in the company capital of the other or when, in the absence of this circumstance, one company has the power of decision in relation to the other' (Art 16 (5)).

This rule also applies to companies directly or indirectly associated with other companies not resident in Spain (Art 16 (4) (a)).

(j) *Tax rates* – A general rate of 33 per cent applies to the taxable income of the companies, whether they are joint stock companies ('sociedad anónima') or private limited liability companies ('sociedad de responsabilidad limitada') (Art 23). This rate can be modified by the Annual Budget Law (Second Additional Provision).

Savings banks, rural savings banks, and general insurance societies and co-operatives ('mutuas de seguros generales co-operativas') are taxed at the rate of 18 per cent.

The rate of 24 per cent applies to interest and commissions on loans received by non-resident corporations, unless they elect to be assessed under the general corporation tax Rules. Certain income of exempt companies, for example, friendly and mutual benefit societies ('montepíos y mutualidades de provisión social'), is subject to a tax rate of 15 per cent.

(k) *'Fiscal clarity'* – In certain circumstances, company profits or losses may or must be computed directly to shareholders, whether or not any distribution has, in fact, been made. If the shareholders are companies, they are subject to

corporation tax; if individuals, they are subject to the personal income tax. This computation system is referred to as 'fiscal clarity' ('transparencia fiscal'), and is regulated by Art 19 of Law No 61/78. This method of assessment is obligatory, for example, in the case of legal entities constituted to carry out professional activities, in which all the shareholders (more in the nature of partners) are all professionals in those activities (Art 19 (2) of Law No 61/78 and Art 12 (B) of Law No 44/78).

It is optional, for instance, for companies, of whatever nature or activity, where shareholders do not exceed 25 in number and whose equity is less than 100 million pesetas (Art 12 (3) of Law No 44/78). Such companies must opt for this method of assessment for a period of not less than three successive years. Joint ventures, which are considered to be beneficial for the Spanish economy, afford another example (see section (vi), at p 29 above).

Taxable income is determined in accordance with the Corporation Tax Rates, and such income will be imputed to shareholders or partners, according to the method laid down in the bye-laws or agreement, or, in their absence, in accordance with their participation in the paid-up capital. Furthermore, companies affected by this system of fiscal clarity will 'enjoy all the fiscal benefits which may be recognized for other companies, and which will be applied proportionally in the personal income tax or in the company tax, as the case may be' (Art 19 (4)).

(*i*) *Consolidation* – In general, the results of the operations of subsidiary joint stock companies may be consolidated during a maximum period of 12 months with those of the Spanish parent company, provided that the latter company continuously held throughout this period more than 50 per cent of the capital of the subsidiary, and such holding represented more than 50 per cent of the voting rights.

Consolidation is not permitted in a number of cases, of which mention may be made of the following:

- (*i*) where the subsidiary is exempt from corporation tax;
- (*ii*) where the subsidiary has formally suspended payments to creditors ('suspensión de pagos');
- (*iii*) where the subsidiary has been declared bankrupt ('en quiebra'); and
- (*iv*) where the subsidiary has lost more than two-thirds of its capital and has not taken legal corrective action.

Application to file consolidated tax returns is made to the Ministry of Finance, and, if granted, will normally apply for three financial accounting periods, which may not exceed 12 months. The financial statements of the parent and subsidiary companies must, of course, close on the same date.

(iv) *Branches and permanent establishments*

Branch profits and losses are subject to the same tax treatment as those of companies under the provisions of the Corporation Tax Law.

Likewise, 'revenue from the economic operations of any kind obtained by means of a permanent establishment situated in Spanish Territory' is also liable to be taxed under the Corporation Tax Law (Art 7 (a)). The expression 'permanent establishment' is widely defined as follows:

'It will be understood that a company carries out operations in Spain by means of a permanent establishment when it possesses directly or through an agent a headquarters, branch, offices, factories, workshops, works of construction, installation or assembly, when the duration is more than twelve months, agencies or representations authorized for contracting in the name of and on behalf of the subject liable to the tax, or when it possesses mines, quarries, oil wells or gas deposits, agricultural establishments, forest or livestock farms or any other land for the extraction of natural resources, or when it carries out professional or artistic activities or possesses other places of work in which some or all of its activities are carried out.'

(*ibid*)

Branches and permanent establishments of foreign non-resident companies and individuals are also liable to corporation tax on any capital gains ('incrementos patrimoniales'), arising on the disposal of any kind of property situate in Spain which they own, and on all other income derived from property and other assets and rights situate in Spain (Art 7 (b), (c), (d) and (e)).

(v) *Withholding taxes*

Under Royal Decree No 357 of 20 February 1979 on 'Withholding Taxes on account of Corporation Tax', tax is to be withheld from income derived from personal services rendered and also from that derived from assets and rights, for example, dividends, interest, and royalties.

In general, payments to non-resident entities and individuals are subject to these withholding taxes, except in the case of interest and commissions on loans paid to the permanent establishment in Spain of a non-resident financial entity, or to a non-resident entity, which elects to be subject to tax at the rate of 24 per cent under Art 23 (2) of Law No 61/78 (see section (j) at p 35 above).

(a) *Dividends* – The amount to be withheld is 15 per cent, and this withholding also applies to dividends paid by non-resident companies out of that part of their profits, which is estimated to have been earned by their permanent establishment in Spain.

It is presumed that the amounts, which have been paid on account of

dividends, have been paid net of the withholding tax.

(b) *Interest* – In general, the rate of withholding tax on interest payments, including interest paid by Banks, is 15 per cent.

The general rate is also applicable on that part of debenture interest paid by a non-resident which is estimated to have been paid out of profits earned by a permanent establishment in Spain.

(c) *Royalties* – The rate of withholding tax on royalties, technical assistance fees, sales of patent rights, leasing and rental income, and all other income derived from the assignment of rights and assets is 15 per cent.

(d) *Double taxation treaty rates* – All the above rates of withholding tax may be varied by any applicable Double Taxation Agreement. For example, withholdings on dividends, interests, and royalties paid to recipients resident in the United Kingdom are reduced under the Convention of 21 October 1975 to 10 per cent (if the recipient is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends), 12 per cent, and 10 per cent respectively.

However, under a special and novel provision of Royal Decree No 357/1979 (see p 37 above), where tax treaties apply and the income concerned enjoys partial tax exemption under Spanish Law, the normal tax rate and not the treaty rate shall apply to that part of the income not exempted from Spanish tax. The application of this rule results in a slightly higher tax burden on the recipient taxpayer.

(vi) *Turnover taxes*

Sales tax, known as 'impuesto general sobre el tráfico de las empresas', includes in most cases a provincial levy, 'arbitrio provincial', which is not of separate significance and so all rates mentioned here cover both, where applicable. They are collected as one. However, the levy, which averages about 25 per cent of the total rate, is not generally reduced under sales tax concessions granted.

In general, all enterprises are required to account for sales tax on their billing of items and services supplied in accordance with activities for which they have a business licence. The following points relating to sales tax should be noted:

(a) The seller has the right to recover the tax from the buyer, but has no obligation to do so. The amount of the tax may be included in the price without figuring separately on the invoice, but in such cases a note must be included with the amount or the rate.

(b) Enterprises are required to make a return each year listing all

suppliers and customers with whom operations of more than half a million pesetas took place in the preceding calendar year.

- (c) The base for the tax may be reduced by normal discounts and rebates.
- (d) No sales tax arises at the retail level.
- (e) Sales tax on exports is payable by the seller. This is required as the export rebates are calculated on the basis of interior transactions involving sales tax. It is thus recovered in the export rebate, which may be claimed in most cases.

(f) Sales tax cannot be invoiced to Government entities and departments. Company salesmen must adjust the price quoted appropriately to cover this, but the seller's books may show the sales tax, if he normally treats it as if it had been separately billed.

(g) Liability as a manufacturer can easily arise through quite insignificant assembly work, although mere bottling or packing and labelling does not involve liability except as a wholesaler.

(h) Non-existence of an 'invoice' does not preclude the liability to sales tax. It is a cumulative, cascade tax, and it cannot be levied as well as transfer tax.

(i) Sales tax at 2.7 per cent arises on commissions, although commissions paid to overseas agents or individuals do not attract any sales tax.

Legislative changes in the field of indirect taxation can be expected in the foreseeable future (see Law No 6 of 25 September 1979).

Sample sales tax rates currently applicable are as follows:

	Percent
Imports (collected by the customs authorities, as part of equalization taxes, exempt from Provincial Levy) .....	1.50
Sales by manufacturer to wholesaler.....	2.00
Sales by manufacturer to retailer .....	2.40
Sales by importer or wholesaler to retailer.....	0.40
Sales by retailers (provisions exist specially for taxpayers who retail their own manufacture) .....	Exempt
Exports (by manufacturer or wholesaler, respectively (and paid by the exporter) .....	1.50 or 0.30
Services rendered (professional fees for work done by companies not by individual professionals, repairs, advertising, leasing of movables, etc) .....	2.00
Cinema shows.....	5.20
(Note: such other 'spectacles' are generally liable also to the '5 per cent protection of minors' tax', which may put the total rate over 6.35 per cent of the price of the ticket, eg, where meals and drinks are also available on the premises.)	
Activities as per business licence not covered by any specific rate	

given in the law (not retailers) ..... 2.00

Special rates, both manufacturing and wholesale where applicable, cover banking, insurance, transport, paper, cardboard, glass, cement and others.

(vii) *Luxury and special taxes*

(a) *Luxury tax* – A luxury tax ('impuesto sobre el lujo') is imposed on the acquisition and ownership and enjoyment of a wide range of goods, and also on certain services. For example, entrance fees to clubs and luxury travel are subject to a 20 per cent tax. The tax on new motor vehicles, for example above 1.3 cc, is 35 per cent. Luxury tax is also payable at varying rates on the acquisition of motor boats, yachts, television sets and holiday homes.

An annual luxury tax is also levied on motor vehicles, motorcycles, private aeroplanes, power boats, second homes and shooting rights. For example, this tax is payable at the rate of 0.60 per cent of the assessed value of a private dwelling, which is not the taxpayer's principal residence, and is valued at more than half a million pesetas.

(b) *Special taxes* – Special taxes ('impuestos especiales') are payable on the manufacture of alcohol, alcoholic drinks, beers, syrups, and refreshments; on the production of sugars, molasses, chicory, and tea and coffee substitutes; on the sale of petroleum products and industrial alcohol; and on the distribution of alcoholic drinks. Such taxes can be of significant amounts, and are generally included in the sale prices of the products concerned.

(viii) *Local taxes*

A number of taxes are levied by local authorities, but these are relatively insignificant cost-wise. Examples are the licence to open new business premises ('licencia de apertura') (see section (iv), at p 65 below), and the annual taxes assessed on urban and rural properties ('contribución urbana' and 'contribución rústica y pescuaria') (see section (iii), at p 105 below).

Local taxes are generally deductible expenses in computing liability for personal income and corporation tax purposes.

### **Consultations with the administration on fiscal matters**

Under a unique and special provision of the General Tax Law (as amended), taxpayers may formulate theoretical cases for the opinion of the tax authorities, who will generally be bound by the advice given.

Such consultations with the authorities must be made either before the

taxable fact has arisen, or within the time fixed for its declaration. The authorities must be given all the relevant background information and facts of the case. They will be bound by their 'ruling' on the tax problem concerned, unless the consultation does not coincide with the reality of the situation or the applicable legislation is subsequently modified.

The presentation of any such consultation does not affect the time limits prescribed by Law for the fulfilment of any tax obligations.

## **Double taxation treaties**

### *(i) Countries*

Spain has signed Double Taxation Agreements with Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Portugal, Sweden, Switzerland, and the United Kingdom.

An agreement for the avoidance of double taxation between Spain and the United States of America is in the process of negotiation.

### *(ii) General features*

These agreements are based on the Model Convention of the Organisation for Economic Co-operation and Development, of which Spain is a member, as laid down in 1963 and subsequently revised. As such, they cover taxes on both income and capital, including taxes levied on gains derived from the disposal of real and personal property.

They employ the credit method, rather than the exemption method, of avoiding double taxation, and, where income continues to be taxable in both Spain and the other contracting State, relief from double taxation is to be given by the country of the taxpayer's residence. Credit must also be given in the other contracting State in respect of any tax 'spared' in Spain, under any special provisions of Spanish Law.

They also contain provisions safeguarding nationals and enterprises of one contracting State against discriminatory tax treatment in the other, and profits and certain payments made by and between 'associated enterprises' (as defined) are adjusted, for general taxing purposes, onto an arm's length basis.

A comprehensive and detailed definition of 'permanent establishment' is also a feature of these agreements, and certain trading profits not arising through a permanent establishment are taxable only in the country of the taxpayer's residence. Likewise, shipping and air transport profits are taxable only in the country in which the recipient enterprise has its effective management, while directors' fees are taxable in the country in which the company concerned is resident.

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There is general provision for the exchange of information and consultation between the tax authorities of the Contracting States.

### *(iii) Credits for foreign taxes generally*

There is no general rule whereby, in the absence of a tax treaty, credit is automatically given in Spain for foreign tax paid on any sums remitted to Spain from abroad.

## **Price control**

Price control is part of the Spanish Government's economic policy for combatting inflation, and, under Royal Decree No 2695 of 28 October 1977, the prices of certain goods and services in Spain are controlled.

The Decree lays down two systems of control: 'authorized prices' and 'notified prices'.

### *(i) Authorized prices*

The prices of goods and services falling within this category cannot be increased without the authorization of the Government Commission for Economic Affairs ('Comisión Delegada del Gobierno para Asuntos Económicos'). The application is submitted through the Price Control Board ('Junta Superior de Precios'), which is part of the Ministry of Commerce. The applicant must satisfy the authorities that the price increase is justified on the grounds of higher costs, including not only production and distribution costs, but also the cost of borrowed capital. Included within this system of control are pharmaceuticals, detergents, fertilizers, cement, and most basic food products.

If the increase is granted, all producers of the item concerned may apply the new price.

### *(ii) Notified prices*

Price increases of goods and services subject to this system of control must be notified to the Price Control Board, and, if no objection is raised within 30 days of the date of such notification, the new price is deemed to have been approved and may be applied immediately. However, the Board may disallow price increases, which it considers to be excessive.

Examples of goods subject to this procedure are processed foods, wine, footwear, non-ferrous metals, industrial vehicles and glass bottles.

(iii) *De-controlled items*

In theory, the prices of goods and services not included under either of the above systems of control may be fixed or raised without any restraints. However, the Price Control Board is also empowered to investigate the pricing of any goods or services, either on its own initiative or at the request of any interested party, and recommend action by the Government Commission for Economic Affairs against those prices which it considers to be 'abnormal or unjustified'.

**Bank accounts**

(i) *Ordinary accounts*

Ordinary accounts ('cuentas ordinarias') may only be opened and operated by Spaniards and by resident foreigners. These accounts are in domestic pesetas and their balances are fully disposable within Spain. However, moneys standing to the credit of these accounts may not generally be transferred abroad without special permission. For example, a Spanish importer must obtain authorization from the Ministry of Commerce to remit funds abroad in payment of the imported merchandise.

(ii) *Foreign accounts*

These accounts are of various kinds and, in general, may only be opened and operated by non-residents.

A Foreign account in foreign convertible currency ('cuenta extranjera en divisas convertibles') may be opened by a non-resident without any prior authorization being required. These accounts may only receive foreign convertible currency from abroad, that is, foreign currency which is admitted to official quotation on the Spanish Foreign Exchange Market. Such currency includes, amongst others, the Pound Sterling, US and Canadian Dollars, the German Mark, French, Swiss and Belgian Francs, the Italian Lira, the Danish Crown, the Dutch Florin, and the Japanese Yen. One of the common uses of this type of account is for the deposit of funds, as security for the due performance by a foreign firm of certain works contracted by the Spanish State. These accounts are regulated by Circular No 3-DE of the Bank of Spain, dated 12 July 1974.

Foreign accounts in pesetas for payments in Spain ('cuentas extranjeras en pesetas para pagos en España') may be opened, without any prior authorization being required, and operated by foreign legal entities and non-resident individuals, either of foreign or Spanish nationality. They are known as 'A'

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Accounts, and were created under an Order of the Ministry of Finance of 16 March 1973. They may not be overdrawn, and the balances cannot be converted. They bear interest and can be used for making a variety of payments within Spain. They may receive pesetas from other 'A' Accounts, as well as from 'B' Accounts, which will now be described.

'B' Accounts are foreign accounts in convertible pesetas ('cuentas extranjeras en pesetas convertibles'), and are also regulated by the above-mentioned Order of the Ministry of Finance. These accounts may be opened and operated by the same persons as 'A' Accounts, and, likewise, without any prior consent. They also bear interest, and are used for making payments outside Spain. They may not receive moneys from 'A' Accounts, neither may they be overdrawn. They may, however, receive peseta amounts, which have been authorized for remission abroad – for example, the proceeds of sale of a liquidated foreign investment made in accordance with the Foreign Investment Code. Transfers between one 'B' Account and another are permitted.

Foreign accounts in internal pesetas ('cuentas entranjeras de pesetas interiores') may be opened by non-residents with the prior authorization of the Directorate General of Foreign Transactions. They bear interest and may never be overdrawn. They may receive moneys from other such accounts. They may be used for the making of portfolio investments, and also for the purchase of urban properties for the private use of the account holder. They may even be used for the purchase of national lottery tickets, one of the most popular pastimes of Spaniards, and any cash prizes won may be credited to the account. These accounts are regulated by various circulars of the Bank of Spain, and Resolutions of the former Spanish Foreign Money Institute and the Directorate General of Foreign Transactions.

### *(iii) Tourist accounts*

Non-residents may open tourist accounts, which are operated in ordinary pesetas ('cuentas en pesetas ordinarias a turistas').

Under an Order of the Presidencia of the Government of 2 June 1960, these accounts, which must always be in credit, may never exceed 200,000 pesetas. Their balances may never be transferred abroad. They may receive pesetas from the conversion of foreign currency introduced from abroad for the sole purpose of tourism, and they may also receive ordinary pesetas received in Spain by the tourist.

As their name suggests, these accounts may only be operated for the 'exclusive purpose of facilitating the stay in Spain of tourists'. They may not be used for any other purpose – for example, making foreign investments in Spain. They may, however, be used for making payments in respect of light, water, telephone and other outgoings incurred in respect of a property owned in Spain by the foreign non-resident.

#### (iv) *Monetary offences*

Exchange control is very strict in Spain, and infringement of the rules, classified as Monetary Offences ('Delitos Monetarios'), is subject to severe penalties, including imprisonment in very serious cases.

### **Loans and credits**

#### (i) *Generally*

Foreign investors may, in certain circumstances and on certain conditions, finance their business operations in Spain by various forms of borrowing.

In general, bank overdraft facilities are only available to a limited extent. However, a common and widespread method of financing the day-to-day operations of a business is by discounting unaccepted bills of exchange ('*letras de cambio*'). By this means, a more or less permanent source of bank finance is secured.

As a general rule, mortgage loans, which are only available from the State-owned Mortgage Banks and certain Savings Institutions, do not exceed 40 per cent of the valuation of the security offered.

The powers of Spanish companies, with foreign participation, to raise loans within Spain are generally limited and subject to certain conditions, which may not be acceptable to the company concerned. The details will be found at p 79 below, section (i). Likewise, external borrowings are also controlled.

Borrowings, however, from non-Banking and official credit sources – for example, other trading companies in Spain – are not restricted, but may be subject to very high rates of interest and onerous repayment terms, particularly when credit is short.

In the case of debenture issues made by Spanish companies with majority foreign participation, the authorities often require, in practice, a major portion of the issue to be subscribed abroad.

#### (ii) *Euro-loans*

In practice, authorization is freely given to Spanish companies, with or without foreign participation, to raise loans abroad in Eurodollars and other foreign currencies. This authorization, which is granted by the Bank of Spain, in effect guarantees to the borrower the availability of the necessary foreign exchange to service and repay the loan.

The borrower may also apply for and obtain from the Ministry of Finance a 95 per cent exemption from the normal Spanish withholding taxes levied on

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the interest payments, when the loans are used for actual productive investment. In this connection, it should be noted that the new Royal Decree on Withholding Taxes of 20 February 1979 contains a special and novel provision, to the effect that, where income enjoys partial tax exemption and a tax treaty applies, the normal tax rate and not the treaty rate shall apply to the unexempted portion. This rule results in a slightly higher tax burden on the recipient of the loan interest. The granting of this exemption is evidenced by a letter from the Ministry of Finance, which will only be issued after the loan has been made, although the availability of this exemption can be 'agreed' in advance.

# Chapter 5

## Labour Aspects

### Introductory

At the time of writing, according to the Official Statistics Institute, there are 1.13 million people unemployed, representing 8.6 per cent of the Spanish labour force. Unemployment is particularly high among younger workers and in the construction and services sectors. Unemployment has increased steadily over the past two years, and there is no sign of any levelling off. Because of this high unemployment rate, the Spanish Government particularly welcomes foreign investments which create new jobs.

Under the new Corporation Tax Law of 27 December 1978, a new investment tax credit was introduced to stimulate investments by companies in new fixed assets and personnel. For example, credits for investments alone or for increase in the payroll alone amount to 20 per cent of the tax due; whereas, those for investment, without reduction of the payroll and with increase of the payroll amount to 25 per cent and 30 per cent respectively. The level of these credits can be varied by the Annual Budget Law.

Labour Law in Spain is voluminous; the subject is technical; and the Law is in a state of transition. The Law is administered and enforced through a system of labour magistrates ('Magistrados de Trabajo'), the Central Labour Court, and a special Chamber ('Sala Social') of the Supreme Court. The procedure is laid down in a special Law of Labour Procedure ('Procedimiento Laboral') of 21 June 1972. The Labour Courts are free of charge, and offer equality of treatment. The procedure is oral, informal, and, in general, disputes are resolved expeditiously. In general, it is virtually impossible to dismiss workers without paying compensation. In proved cases of unfair dismissal, the worker, in the absence of 'exceptional circumstances', is entitled to be reinstated. Nevertheless, in cases where the employer is not able to reinstate the employee, the Labour Magistrate will substitute the obligation of reinstatement by the payment of an indemnification (Art 37 (3) of Royal Decree Law No 317 of 4 March 1977).

Under the new Spanish Constitution of 29 December 1978, one of the freedoms considered to be 'fundamental to political order and peace' is the freedom to join a trade union, granted under Art 28, and guaranteed by a special procedure for amending the Constitution. Trade Union freedom includes the right to found Trade Unions, to join the Union of one's choice, and conversely,

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the right not to join any Trade Union. In general, the new Trade Unions in Spain are still in the process of organizing themselves, but have already made their presence felt in business and political circles. The traditional Unions of 'UGT' ('Unión General de Trabajadores' – General Union of Workers) and 'CCOO' ('Comisiones Obreras' – Workers' Commissions) continue to be very active in labour matters and are politically supported.

There is a Social Security system ('Seguridad Social'), of which membership is compulsory, under which various benefits are payable to workers, for example in cases of sickness, industrial accidents, and unemployment. Contributions to the system are payable by employers and employees in prescribed proportions. Following the recent political changes in Spain, one of the pressing needs of the Government is the reform of Labour Law. The new Law of 8 April 1976 on Labour Relations is an important step in this direction. However, further new legislation designed, using the words of the preamble to the new Labour Relations Law, 'to bring up to date and perfect fundamental aspects of the labour regulations by introducing new provisions or updating others which are felt to have become out of step with the times', can be expected in the foreseeable future. Some of the further reforms can be expected particularly in the field of industrial democracy and worker participation.

### **Application of Spanish labour law**

#### *(i) Definition of 'labour relations'*

Article 1 (1) of the Labour Relations Law of 8 April 1976, provides as follows:

'All salaried work carried out for the account of and dependent upon a third party, except for those activities expressly excluded by Article 2, shall be considered as included within the scope of this Law and all other provisions governing labour relations.'

In general, therefore, work performed for one's own account is not subject to the Labour Legislation (Art 1 (2), *ibid*).

Under Art 2, the following are also excluded from this

- (a) civil servants and personnel of local Corporations and independent Public Bodies;
- (b) compulsory personal services;
- (c) company directors;
- (d) occasional work performed out of friendship, benevolence, or neighbourliness; and
- (e) work within the family, unless evidence is produced of the wage-

earning status of the person performing the same.

(ii) *'Special labour relations'*

By virtue of Art 3, the application of Spanish Labour Law is extended to certain persons, who are also considered to perform work 'for the account of a third party' but of a 'special nature'. Amongst such persons, mention may be made of the following:

- (a) apprentices;
- (b) commercial representatives; and
- (c) senior company managers or executives, who are not directors.

(iii) *'Contracting-out'*

It is provided by Art 5 (1) that workers may not relinquish their rights under the labour legislation, and also that any act which ignores or limits those rights shall be null and void. Thus, it is not possible to validly exclude or modify workers' statutory rights by any express provision in any employment contract.

In every case, in deciding whether or not the employment is subject to the labour legislation, the courts will look to the substance rather than the form.

(iv) *Trial periods*

These must be stipulated in writing, in order to be legally effective, and may not exceed six months for technical graduates, nor three months for all other workers, except for unskilled workers, in whose case the maximum trial period is fixed at two weeks (Art 17 (1)).

During the trial period, the worker has the same rights and obligations as those of a member of the permanent staff, and either party may terminate the employment without indemnification (Art 17 (2)). After the trial period has elapsed without termination having occurred, the employment automatically becomes permanent, and the trial period counts towards the worker's seniority, for purposes of notice, indemnification or otherwise (Art 17 (3)).

(v) *Minors*

There are special provisions governing the work of minors. For example, the minimum age of admission to work is 16, and workers under the age of 18 may not be employed on night work and certain other proscribed activities.

(vi) *Women's rights*

Spanish Labour Law applies equally to women workers, who 'may enter into

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any kind of employment contract and exercise the appropriate rights on the same conditions as men, and receive equal pay for equal work' (Art 10 (1) and (2)). However, certain restrictions apply to women workers – for example, night-work is prohibited, and certain benefits are given in maternity cases.

### **Contracts of employment**

#### *(i) Generally*

In general, verbal contracts of employment are valid, but to facilitate proof of their terms and conditions, it is advisable to make them in writing. Unless stipulated otherwise, all contracts of employment are presumed to have been entered into for an indefinite period of time (Art 14). The contract should be sealed by the local labour authorities.

The employment is subject to any National Labour Regulations, which may be applicable in the field of activity of the employing company or firm, and is usually also made subject to any internal regulations and disciplinary procedures laid down by the company or firm concerned. In the case of conflict between the two, the regulation more favourable to the worker will apply, provided that it does not infringe any compulsory legal provision (Art 4 (1)).

#### *(ii) Termination*

Contracts of employment can be terminated either by mutual consent of the parties or unilaterally.

As to mutual termination, a document setting out the agreed terms of the cessation of the employment will be signed by the parties. It should be noted, however, that the employee may renege on this agreement and challenge the termination in a labour court. He is unlikely to do so, however, if the financial terms are generous.

As to unilateral termination, the employee can terminate the employment on 15 days' notice, whereas, in general, the employer can only terminate the employment on certain specified grounds.

#### *(iii) Dismissal*

The justified causes of dismissal are laid down in Arts 30–44 of Royal Decree Law of 4 March 1977, and relate either to the personal behaviour and professional competence of the employee or the necessities of running the employer's business. They include such matters as indiscipline, breach of national or company labour regulations, fraud, unauthorized outside business

activities, habitual drunkenness, incompetence and inability to adapt to technological changes.

In the case of dismissal occasioned by the conduct or incompetence of the employee, the employer must give written notice to the employee of the grounds for the dismissal and the date on which it is to take effect. In the case of dismissal occasioned by the necessities of the business, the notice of dismissal must be one month in the case of employees with less than a year's service; two months where the service exceeds one year but not two; and three months in all other cases. In addition to giving the appropriate notice, the employer must also pay to the employee an indemnification amounting to one week's salary for each year or part of a year of service completed by the employee. If the foregoing requirements are not satisfied, the dismissal in either case will be considered null and void.

The employee may refuse to accept the termination, and challenge the dismissal before a labour court on the grounds that it is unjustified, that is, unfair. If the dismissal is upheld by the labour magistrate, that if the end of the matter. If, however, the labour magistrate rules that the dismissal was unfair, the employee is entitled to certain remedies.

It should be noted, however, that, if the ground of the employer's complaint is not considered serious enough to justify dismissal, and the worker concerned has been penalized within the last 18 months for two or more very serious faults, the labour magistrate may rule that there is just ground for the dismissal (Art 35 (3)).

#### (iv) *Remedies for unfair dismissal*

The remedies for unfair dismissal are either reinstatement or, if this is not possible, indemnification (Art 35 (1) and (4)).

If the labour magistrate considers that there is no just ground for the dismissal, he must generally order the employer to readmit the worker, on the same terms on which he was employed prior to the dismissal, and pay him his wages during the intervening period. If, however, the magistrate considers that there are 'exceptional circumstances . . . which prevent normal co-existence between the worker and employer . . .', he may substitute a financial compensation. This compensation may not be less than two months' wages for each year of service, with a minimum of six months' wages, nor more than five years' wages. These amounts are increased in respect of workers with large families, certain older workers, and handicapped workers.

#### (v) *Temporary and casual work*

Temporary and casual work contracts are defined in and governed by Art 15, and are not subject to the dismissal rules, although, in cases where the worker is hired for the accomplishment of a specific job or service and this takes longer

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than two years, an indemnity of not less than one month's full wage for each year, or fraction of a year exceeding six months, is payable.

### *(vi) Sales and mergers*

Any change in the ownership of the employing company or firm, or in any independently organized division, shall not *per se* entail the cancellation of the labour relation, but the new employer shall be subrogated to the rights and obligations of his predecessor (Art 18 (2) ).

## **Plant closures and reorganizations**

Plant closures and reorganizations on economic and technical grounds require the prior approval of the Ministry of Labour, which acts in consultation with the local trade union representatives. Such approval, if granted, will be subject to the payment of the statutory minimum compensation to the workers affected, according to the circumstances of each case (Art 18 (1) ).

## **Wage control**

### *(i) Generally*

Spanish Law lays down the minimum salary to be paid to employees in general, and also, in certain cases and subject to certain conditions, prescribes the maximum salary increases which may be paid to employees. For example, salary increases for 1979 are limited to between 11 and 14 per cent, subject to revision upwards if the consumer price index at the end of June 1979 increased by more than 6.5 per cent (see Decree No 1.955, 3 August 1979).

Under Spanish Labour Law, an employee is entitled to paid holidays, and, in the case of public holidays, is not required to make up the time off by working overtime. The minimum annual holiday entitlement, excluding public holidays, is 21 days, or fractionally less, where the employee has been employed for less than one year. The holiday entitlement may not be exchanged for financial compensation. He is also entitled to be paid a bonus in July and December, in each year, of not less than 21 days' wages. Further, a minimum weekly uninterrupted rest period of one and a half days, including, as a general rule, Sunday, and a maximum working week of 44 hours is laid down. The number of overtime hours that may be worked is also controlled.

Any employer breaking these rules, or failing to comply with any of the other provisions of the labour law, can be fined by the labour authorities.

(ii) *Collective agreements*

Minimum salaries for the different categories of workers and employees are often laid down in collective agreements ('convenios colectivos de trabajo'), which are negotiated annually in various sectors of the manufacturing and service industries in Spain.

These agreements also lay down other terms and conditions of employment, which are to be observed and applied by companies and firms operating in the particular sector or field concerned. For example, the working week is normally reduced to 40 hours, and the holiday entitlement is increased to 30 days.

(iii) *Wage guarantees*

Under Art 31 of the Labour Relations Law of 8 April 1976, employers are required to contribute to an inter-Company Wage Guarantee Fund, out of which employees' outstanding wages and social security contributions for a maximum period of three months can be paid, in the event of the insolvency, suspension of payments, or bankruptcy of the employing company.

Furthermore, under Art 32, outstanding wages and compensation in lieu of them are given the status of preferential credits with respect to the goods produced by the workers still owned or in possession of the employer. These preferential credits, if not exercised within one year of the wages or compensation becoming payable, will be lost.

### **Social security, pensions and other employee benefits**

(i) *Social security*

Employers and employees are obliged to register under the Spanish Social Security System ('Seguridad Social'). The system is funded by Government grants and by the obligatory contributions of employers and employees. The rates of these contributions are fixed annually by Law, and are applied on the basis of the real salary received by the employee.

Under Royal Decree No 82 of 19 January 1979, the general rates fixed for the current year are 37.48 per cent, payable by the employer, and 5.50 per cent, payable by the employee. The contributions are also payable in respect of the July and December bonuses.

Agreements exist between Spain and other countries for the reciprocal recognition of social security contributions and schemes. For example, contributions made by US citizens to the Spanish Social Security Scheme will

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count towards welfare benefits and other entitlements payable under the United States' Scheme.

### *(ii) Pensions*

There is a State Pension Scheme ('Seguro de Jubilación'), which is based on the social security contributions of workers and employers. Pensionable age for the payment of the corresponding benefits is 65 years' old, both for men and women. There is a compulsory retirement age in Spain of 65 years, but an employee may retire on reaching the age of 60 years, provided he or she has completed 40 years' service.

Many companies and firms operate retirement benefit schemes, which are of a 'complementary' nature to the State scheme. Benefits usually accrue under private schemes as at specified retirement age. This is normally set at 65 for men and women. Employers' contributions towards such schemes are deductible expenses for tax purposes.

Workers may be retired prematurely on full pension in cases of 'economic crisis' in the industrial or service sector concerned, under a special procedure known as 'Expediente de Regulación de Empleo'.

### *(iii) Other employee benefits*

Many companies and firms voluntarily provide their employees with other employment benefits. Common examples include the provision of transport to and from work, canteen facilities, medical and social centres, and subsidized housing.

The provision and/or expansion of such social benefits to employees is one of the specific items, on which information is sought in connection with applications for Government approval of majority foreign direct investments in Spain (see para 3.2 of the Supporting Memorandum). The presence or absence of such benefits and facilities could well be one of the major determining factors in granting or refusing such applications.

In any event, further legislation in the fields of social security and employee benefits is generally expected in the future.

## **Work permits**

### *(i) Generally*

In general, foreigners, in order to work in Spain, on their own account or that of a third party, must obtain a work permit ('permiso de trabajo') from the Ministry of Labour, acting through the Provincial Civil Governor. The permit

is renewable annually. The following persons are not required to have a work permit:

- (a) duly accredited diplomatic and consular personnel;
- (b) foreign technicians and scientists invited or contracted to work in Spain by the Public Administration;
- (c) duly accredited correspondents of the foreign press; and
- (d) priests and members of religious orders.

Foreigners, for these purposes, are individuals who do not possess Spanish Nationality. Under certain reciprocal arrangements, certain Central and South Americans, Filipinos, Portuguese and Andorrians are permitted to work in Spain without a work permit. They need only register with the Ministry of Labour for statistical purposes.

Foreigners who work in Spain without a permit are liable to fines and expulsion.

(ii) *Applications*

In general, applications for work permits will be refused, where the job, in respect of which the permit is sought, is one which can equally be performed by a Spanish national. For this purpose, the applicant must produce a certificate from the local employment office ('oficina de colocación'), to the effect that there is no Spaniard able and available to do the work. The application must also be supported by a current medical report, which must be satisfactory.

In view of the serious unemployment situation in Spain at the time of writing, work permits are becoming increasingly more difficult to obtain and renew, at least in relation to business activities and projects of self-employed individuals.

Pursuant to Royal Decree No 1874 of 2 June 1978, at the same time as the foreigner applies for a work permit, an application must also be submitted for a residence permit. The one will not be granted without the other, except in the case of foreign applicants, who are retired or who are not working, and who only require a residence permit, in support of which proof of adequate means must be given.

(iii) *Professional Activities*

In order to work in Spain in certain professional fields, for example as a doctor or an engineer, the foreigner must either obtain the necessary Spanish qualification ('Título'), or have his foreign professional or academic qualifications 'convalidated' ('Convalidación'), that is, recognized by the Spanish Professional Body or Institute concerned.

## **Worker participation**

### **(i) Trade Union activities**

Workers are free to join or not to join Trade Unions, and participate and hold office in such unions.

The unions must be consulted in cases of plant closures and relocations. There is a special dismissal procedure, which applies to workers holding union appointments.

Re-admission of dismissed workers, who hold union appointments, will be considered on precisely the same principles as those applying to other workers (Art 35 of the Labour Relations Law of 18 April 1976).

### **(ii) Workers' delegates and committees**

Under Art 5 (1) of Royal Decree No 3149 of 6 December 1977, all production or service companies, which employ between 11 and 50 workers, must establish a 'workers' delegate' ('delegado de personal') to represent the workers before the management of the company. Such companies with more than 50 workers must constitute a workers' committee ('comité de empresa') to represent the interests of the workers vis-à-vis the organs of management of the company (Art 5 (2) *ibid*).

The number of workers' delegates and members of the workers' committee is established in accordance with Art 6 of the Decree as follows:

- (a) Delegates: companies with 11–25 workers – one delegate; from 26–50 workers – three delegates;
- (b) Workers' Committee: companies with 51–100 workers – 5 members; from 101–250 workers – 9 members; from 251–500 workers – 13 members; from 501–750 workers – 17 members; from 751–1,000 workers – 21 members; and above that, three additional members for every 1,000 workers, with a maximum membership of 48 workers.

These requirements are without prejudice to any other arrangements for the representation of the workers' interests made by the Trade Unions of the relevant industrial or commercial sector. For the time being, the workers' committee proposes worker representatives for membership of the Board of Directors (see below).

### **(iii) Board representation**

By virtue of Art 1 of Law No 41 of 21 July 1962, firms, which adopt the legal form of an 'SA' company ('sociedad anónima') and employ more than 50

workers, are obliged to include on the Board of Directors ('Consejo de Administración') a worker representative ('representante de trabajo'), in the proportion of one such representative for each six (or fraction higher than three) board members representing the capital, ie the shareholders. If there are less than three board members, there will be no worker representation. Worker representatives are nominated to the board according to a prescribed procedure. The workers' committee submits three names for each seat to be filled. Of these three names, the board chooses one or rejects all three of them. In the latter case, the workers' committee proposes three different names, one of whom the board is obliged to accept.

Worker representatives generally inform the workers' committee on labour matters, and, in their reports, they may not include information on the progress of the business of a confidential nature, whether economic or technical, without the prior permission of the Board of Directors. This permission can only be withheld on a two-thirds' majority vote of the members of the board. Failure by the worker board representative to respect this general confidentiality rule may constitute a ground for his dismissal from this office.



# Chapter 6

## Principal Forms of Business Organization

### **Introductory**

Spanish Law, particularly the Commercial Code of 22 August 1885 (as amended), recognizes the usual forms of business organization – companies, partnerships (both general and limited), branches, and sole proprietorships. In this chapter, we shall consider the main characteristics of each of these forms. We shall also consider the available forms of joint venture, and the peculiar Spanish institution of Contract of Joint Accounts ('Contrato de Cuentas en Participación'), which is one of the special forms of investment allowed under the Foreign Investment Code, subject to the obtaining of a prior administrative authorization.

The basis of Spanish business associations, whether incorporated or unincorporated, is the 'sociedad', which is defined by Art 1.665 of the Civil Code as 'a contract by which two or more persons agree to put their money, property or labour in common, with the intention of sharing the profits amongst themselves'. This, in essence, is a contract of partnership. The Civil Code distinguishes between 'Public Corporations, Associations, and Foundations' and 'Private Associations' formed for commercial and industrial purposes (Art 35).

For the sake of completeness, brief mention may be made of the Civil Partnership ('Sociedad Civil'), which, as may be expected, is governed by the Civil Code (Arts 1.665–1.708). It may be constituted in any form, except where real estate is contributed, or real property rights are involved, in which case it must be formed by Public Deed ('Escritura Pública') (Art 1.667). The liability of its members is unlimited and joint, and it is little used in practice.

### **Companies**

#### *(i) Generally*

There are two forms of commercial company, with legal personality

independent of the members who compose it and whose liability is limited, recognized by Spanish Law. They are the limited liability company ('sociedad de responsabilidad limitada') and the joint stock company ('sociedad anónima'). They are known, in abbreviated form, as the 'SL' (or 'SRL') and 'SA' respectively.

(ii) *The S L company*

This type of company is primarily regulated by the Law on Limited Liability Companies of 17 July 1953, and is subsidiarily subject to certain provisions of the Commercial Code (Art 3).

Its capital, which may not exceed 50 million pesetas, is divided into equal indivisible portions ('participaciones'), which may not be incorporated into negotiable securities ('títulos negociables') nor denominated as shares ('acciones') (Arts 1 and 3). The capital must be expressed in pesetas, and fully paid up from the inception of the company (Art 3). Its members may not exceed 50 in number, and they are not personally liable for the company's debts (*ibid*). The minimum number of members is two (Art 116 of the Commercial Code).

The corporate name ('razón social') may not be the same as that of an existing company and the words 'Limited Liability' must appear as part of that name (Art 2). The registered office of the company ('domicilio social') must be situated in Spain (Art 4). It must be formed by Public Deed ('Escritura de Constitución') and registered in the Commercial Registry, from which moment it acquires legal personality ('personalidad jurídica') (Art 5). Contracts entered into in the name of the company prior to its incorporation will be valid provided the company ratifies them within three months (Art 6).

(iii) *The S A company*

This type of company is principally regulated by the Law of Joint Stock Companies of 17 July 1951.

Its capital is divided into shares ('acciones'), consisting of the contributions of its members, who are not personally liable for the company's debts (Art 1). The capital must be fully subscribed on formation, although only a minimum of one quarter need actually be paid up (Art 8). The membership is not limited, but, on formation, there must be a minimum of three promoters (Art 10). Subsequently, there may be a minimum of one member.

There are the same restrictions on the situation of the registered office and on the choice of corporate name, as in the case of an 'SL' company (Arts 2 and 5). Likewise, the corporate name shall include the words 'Sociedad Anónima' (Art 2).

Again, it must be formed by Public Deed and registered in the Commercial

Registry, at which time it is considered to be duly incorporated (Art 6). The same principle of ratification of pre-incorporation contracts applies. In the absence of such ratification by the company, the promoters, who entered into the contracts, will be held jointly and severally liable on them (Art 7).

## **Partnerships**

### *(i) Generally*

The Spanish Commercial Code recognizes several forms of commercial partnerships ('Sociedades de Personas'), but does not attribute legal personality to them. In general, the liability of the partners is unlimited, but, in certain cases, Limited Partnerships may be formed. In this section, we shall briefly consider the legal features of General Partnerships and those of Limited Partnerships, including the special variety of partnership limited by shares recognized by Spanish Law. It should be generally noted that partners' contributions to the firm may consist of cash or kind, the latter being contributed at an agreed valuation.

### *(ii) General partnerships*

They are regulated principally by Arts 125–144 of the Commercial Code. In this kind of partnership, known as a 'Sociedad Colectiva', all the partners ('socios colectivos') have unlimited joint and several personal liability, which can extend to their private assets, in respect of the debts of the firm. They have the right to take part in the general management of the firm, but cannot transfer their rights in the partnership to a third party without the consent of all the other partners.

They may operate under either the name of all the partners, or of some or only one of them, but, in the latter case, the words '& Co' ('y Compañía') must be added to the names or name used.

### *(iii) Limited partnerships*

They are regulated principally by Arts 145–150 of the Commercial Code.

In this kind of partnership, known as a 'Sociedad Comanditaria', the liability for the firm's debts of some of the partners, known as limited partners ('socios comanditarios') is limited to the amount of their financial contribution to the firm, provided that they do not take part in the general management of the firm, nor their names appear in the firm's name. The other partners are known as general partners ('socios colectivos'), and the firm must consist of at

## *Chapter 6 Principal Forms of Business Organization*

least one partner of each of the two groups.

The name of the firm must include the words 'Sociedad en Comandita'.

### *(iv) Partnerships limited by shares*

They are regulated principally by the same provisions relating to limited partnerships (see above) and also by certain of the provisions governing 'SA' companies.

This kind of partnership, known as a 'Sociedad Comanditaria por Acciones', is a variety of limited partnership, in which the financial contributions of the limited partners are represented by and divided into shares.

### *(v) Formation*

All the above forms of partnership must be constituted by Public Deed ('Escritura Social'), and registered in the Commercial Registry. The Escritura Social must contain the following particulars:

- (a) the names and addresses of the partners;
- (b) the firm name;
- (c) the names of the partners participating in the management of the firm and entitled to sign on its behalf;
- (d) the capital contributed by each partner;
- (e) the duration of the partnership;
- (f) the annual expenses assigned to each of the managing partners; and
- (g) all other special partnership conditions or terms agreed between the partners (Art 125 of the Commercial Code).

The first registration of the firm at the Commercial Registry must incorporate the same particulars (Art 98 of the Decree of 14 December 1956 Approving the Regulations of the Commercial Registry).

## **Joint ventures**

### *(i) Generally*

Joint ventures may be formed as an association of enterprises ('asociación de empresas') under an Order of 20 April 1966 and under Law No 196 of 28 December 1963, or may take the form of a contract of joint accounts ('cuentas en participación') in accordance with Arts 239–243 of the Commercial Code.

Each of these forms is considered briefly below.

(ii) *Association of enterprises*

These may be formed with or without a separate legal entity.

(a) *Without legal personality* — If formed without separate legal entity, they are governed by an Order of the Ministry of 20 April 1966.

In such case, the arrangement assumes the exercise in common of some business activity, which promotes the individual activity of the parties, who may be individuals or companies. The arrangement must be approved in advance by the authorities, and the parties must specify how the profits and expenses of the association are to be shared amongst them.

Profits of such associations are not subject to any direct or withholding taxes, although the participants must include their shares of the entire profits in their own tax returns, whether or not any distribution may have been made.

(b) *With legal personality* — Associations with legal personality are regulated by the Law of 28 December 1963, and are constituted as a separate SA Company, with at least three shareholder/participants, who may be individuals or companies (either 'SA' or 'SL').

The objects of the joint venture company are those laid down in Art 2 of the Law, which include, for example, the expansion, modernization and rationalization of manufacturing facilities, and any other object approved by the Council of Ministers. Participants in the joint venture company may not hold more than 33 per cent of its capital, or 30 per cent of their own paid-up capital, whichever is the lower (Art 3 (4)).

Such joint venture companies enjoy certain fiscal benefits granted by the Ministry of Finance, for example, a reduction of 99 per cent in the taxes payable on constitution of the company (Art 4 (1) (A)).

Furthermore, under Art 19 (2) (b) of the Corporation Tax Law of 27 December 1978, they may opt to have their profits imputed to their members, who, if individuals, will be taxed at a comparatively lower rate under the Personal Income Tax Law.

(iii) *Contract of joint accounts ('cuentas en participación')*

This particular institution consists of the conduct of a business in the name of one party, known as the 'promoter' ('gestor'), in the interests of several parties, and the sharing of the resulting gains or losses in predetermined proportions (Art 239). No special formalities are required to constitute this arrangement (Art 240). On liquidation of the arrangement, the promoter must render an account of the results of the operations (Art 243).

Article 3 (2) of the Foreign Investment Code permits a foreign investment to be carried out in the form of a contract of joint accounts executed with an individual resident in Spain or with a Spanish legal entity.

## *Chapter 6 Principal Forms of Business Organizations*

### *(iv) Instituto Nacional de Industria ('INI')*

The Spanish National Institute of Industry, created in 1941 to promote the reconstruction of Spanish industry in sectors 'important to the national economy' after the Civil War, enters into joint ventures with foreign companies in many industrial fields. Perhaps the best known example of such a joint venture company is 'SEAT' ('Sociedad Española de Automóviles de Turismo'), jointly owned by FIAT of Italy and 'INI' of Spain.

Foreign partners in 'INI' joint venture companies usually have a minority holding, and must be prepared, in future, to be exposed to a greater degree of worker participation, if recent examples of the voluntary publication by certain 'INI' companies of 'social balance sheets' continue and increase.

## **Branches**

### *(i) Legal status*

A branch ('Sucursal') is formed by the notarization and registration of certain documents at the Commercial Registry (see p 86 below). For fiscal purposes, a branch is considered to have legal personality, and, as such, is taxed as though it were a company.

### *(ii) Advantages*

A branch enjoys, however, certain advantages over a company. It is generally cheaper and easier to form; it is more flexible to administer; it may be 100 per cent foreign controlled without any formalities; and it is generally easier to get head office expenses allowed.

### *(iii) Disadvantages*

On the other hand, a branch suffers from certain disadvantages. Its liability is not limited to the amount of the capital assigned to it. Furthermore, the right to remit branch profits and repatriate its capital has to be specially authorized on each occasion.

## **Sole proprietorships**

### *(i) Legal status*

Sole proprietorships, known as 'empresas individuales', do not have any distinct legal personality and their liability is unlimited. Any individual, who has

attained the age of majority, that is to say, is 18 years old, and has free disposition of his property, is entitled to engage in business and commence commercial operations on his own account.

Registration of 'empresas individuales' (ie individual businesses and firms) in the Commercial Register is optional. However, documents requiring registration, which are not registered, do not have legal effects vis-à-vis third parties. Conversely, anything which is registered is presumed to be known by everyone, and ignorance of the registered particulars cannot be pleaded as a defence.

(ii) *Position of foreigners generally*

In general, foreign individuals enjoy the same rights to engage in commercial activities in Spain and on the same terms as Spanish Nationals. As such, they are subject to the provisions of the Commercial Code and the Spanish courts and tribunals (Art 15 of the Commercial Code). However, under Art 13 of the Foreign Investment Law, non-resident individuals must obtain a prior administrative authorization in order to engage in business operations in Spain.

(iii) *Licencia fiscal*

All businesses, whether run by individuals, partnerships or companies, must first obtain a Business Licence ('Licencia Fiscal') from the local authority. This licence is a fixed annual tax, payable in two equal instalments in May and November of each year.

The business licence must be taken out in respect of each business establishment, if more than one, and each commercial and/or industrial activity, operating in each local authority's area, and the corresponding tax must be paid in each case.

(iv) *Opening of commercial establishments by foreign individuals*

Royal Decree No 1. 884 of 26 July 1978, represents a further exception to the general rule under Art 15 of the Spanish Commercial Code mentioned above.

Under the Decree, foreign individuals, resident in Spain and wishing to obtain the licence for the opening of commercial establishments ('Licencia de Apertura de Establecimientos Comerciales'), must satisfy the authorities that they are in possession of residence and self-employed work permits, and must produce documentary evidence of the fulfilment of all their tax obligations (Art 1 (1)).

Foreigners, not resident in Spain, also wishing to open a commercial establishment in Spain, must prove that they have fulfilled their obligations under the Foreign Investment Code, have obtained the corresponding work permit and residence permit (if applicable), and that they have satisfied any other

relevant legal requirements (Art 1 (2) ). In certain Provinces, it will be necessary for the person granted the licence to register with the Provincial Authorities within 15 days of the licence being granted (Art 2).

The criteria to be applied in considering applications by foreigners for such work permits are laid down in Art 1 (3) of the Decree, which provides as follows:

'The Regional Delegate of Commerce will advise on the obtaining of the work permit for self-employed persons, taking into account the following circumstances:

- (a) The degree of saturation of the area of the commercial activity in question and the balance between the different activities.
- (b) The commercial structure and evolution foreseeable in the same area in relation to construction projects in the medium and long term.
- (c) The repercussions which the commercial establishment planned may have in regard to the creation of jobs, the supply of commercial services, the increase in productivity, the benefits for the consumer, the advantages for tourism, and exports or other circumstances which benefit the Spanish economy. For this purpose, the Delegation of the Ministry of Commerce and Tourism may require the interested party to produce any complementary information which it deems necessary.
- (d) The principle of reciprocity, that is, the treatment given to Spaniards in the countries to which the applicants belong in regard to this subject.'

As previously noted, work permits for self-employed persons are being more strictly controlled by the Ministry of Labour.

# Chapter 7

## Companies

### Introductory

The Foreign Investment Code allows foreign individuals and legal entities to invest in Spanish companies in the following ways:

- (i) acquisition of shares or 'participations' ('participaciones') in the case of companies whose capital is not represented by shares (for example, 'SL' companies);
- (ii) acquisition of 'subscription rights';
- (iii) direct contribution of capital equipment of foreign origin; and
- (iv) direct contribution of foreign technical assistance, patents and manufacturing licences.

Acquisitions of shares or 'participations' embrace, for these purposes, not only investments in existing Spanish companies, but also investments in newly-incorporated ones. Acquisitions of 'subscription rights' are treated, for the purposes of the Foreign Investment Code, as acquisitions of shares.

The above-mentioned contributions must be approved and valued by the competent authorities.

### The 50–50 rule

In general, foreign participation in a Spanish company is limited to 50 per cent of its capital (Art 5 (1) of the Foreign Investment Regs). Majority foreign investments are subject to prior administrative authorization. In determining whether this limit has been reached or not, account will be taken of any existing foreign investment in the Spanish company concerned. For this purpose, foreign participation includes investments made with ordinary pesetas by foreign individuals resident in Spain, and also investments made by other Spanish companies, in which there is also foreign participation. Such corporate investments are known as 'cascade' or 'linked' investments, and are subject to special treatment under the Foreign Investment Code.

### **'Cascade' investments**

One of the new provisions in the Foreign Investment Code is aimed at eliminating the practice, which had developed over the years, of avoiding the 50 per cent rule by making investments in Spanish companies through other Spanish companies which were foreign-controlled. Although this practice was not against the letter of the law, it was certainly against its spirit. The new rules, which put the issue beyond doubt and are contained in subsections (2)–(4) of Art 7 of the Foreign Investment Regulations, will now be explained.

If the investment is made by a Spanish company in which the foreign participation exceeds 50 per cent of its capital, the investment will be considered to be 100 per cent, and will, therefore, require Government approval (Art 7 (2)).

If the foreign participation in the investing company is between 25 per cent and 50 per cent of its capital, the percentage of foreign participation in the company in which the investment is made will be deemed to be proportional to the foreign participation in the capital of the investing company itself (Art 7 (3)). For example, an investment by a Spanish company, which has a 40 per cent foreign interest in its capital, in 50 per cent of the share capital of another Spanish company, will be computed as a 20 per cent foreign participation in the latter company. However, where the foreign members enjoy a position of 'dominance or prevalence' in the investing company (eg the Board of Directors is controlled by foreigners), although their participation is only between 25 per cent and 50 per cent in its capital, the foreign participation in the company in which the investment is made will be considered as being 100 per cent (Art 7 (3) (1)).

If the foreign participation in the investing company does not exceed 25 per cent, such participation will be disregarded for these purposes (Art 7 (4)(a)). Likewise, where the State directly or through the National Institute of Industry ('INI'), also participates in the capital of the investing company, the foreign participation in that company will be discounted (Art 7 (4)(b)).

### **Formation**

#### *(i) Generally*

As the majority of foreign investments are made in SA Companies rather than in the SL type of company, mainly because, in the case of the latter, a Deed of Modification is necessary every time there is any change in the composition of its members, the remarks in this and succeeding sections of this chapter will be confined to SA Companies, which, as mentioned above (see p 60), are governed by the Law of 17 July 1951.

Suffice to say, however, that SA and SL companies are formed in essentially the same manner, but SL companies are subject to a lower rate of capital duty of 1.9 per cent.

SA companies may be formed by a 'simultaneous' process, that is, in a single act by agreement amongst the founder members, or by a 'staggered' process, where the shares are offered for public subscription. In practice, the former process is more common than the latter.

(ii) *Capital and subscription requirements*

There is no minimum capital laid down by Law for the formation of an SA company. However, in order that the company, once formed, may be taken seriously in the market place, the capitalization should be realistic, bearing in mind the intended sphere of operations of the company concerned. Regard must also be paid to the costs of establishing the company, and the required amount of initial working capital (say, over the first six months).

On formation, the capital must be fully subscribed and one quarter of it paid up.

(iii) *Bank certificate and share capital account*

In order to enjoy the right of repatriation, the investment must be made with foreign convertible currency legally introduced into Spain from abroad, that is, through banking channels.

The entry of the required funds is proved by the issue of a Bank Certificate ('Certificado de Divisas'), issued by the Spanish Delegate Bank through which the funds were transferred. This certificate must not only show the name of the foreign investor and the amount of the funds, but also give details of the concept, that is, the purpose for which the funds were transferred (for example, to acquire 50 per cent of the shares in XYZ, SA).

These funds must also be deposited in a special account, appropriately designated, pending completion of the formation or share transfer formalities, as the case may be.

(iv) *Founder members*

A minimum of three persons, natural and/or juridical, is required for formation purposes (Art 10). After incorporation, the company may consist of only one member, as there is no express prohibition against this in the Company Law.

(v) *Bye-laws*

The bye-laws or statutes ('estatutos sociales') of the company lay down the

## *Chapter 7 Companies*

rules for its internal working, and, in general, the founder members may make such provision as they see fit on this subject, provided such provisions do not conflict with the Law. For example, every shareholder has the absolute preferential right to subscribe to new share issues in the proportion to the shares which they actually hold in the company. However, the bye-laws must contain the following information:

- (a) the name, objects, duration and date of commencement of operations of the company;
- (b) the registered office ('domicilio social');
- (c) the places where any branches or agencies are to be established;
- (d) the amount of the capital;
- (e) the number, nominal value, class or series of the shares, if more than one, and whether registered or bearer;
- (f) the unpaid portion of the capital and the manner in which the balance is to be paid up;
- (g) the organs of management, the manner in which vacancies are to be filled, and the person or persons in whom the representation of the company is vested;
- (h) the time limits and manner in which shareholders' meetings are to be convened; and
- (i) the manner in which resolutions are to be debated and adopted.

A specimen set of common-form bye-laws of an SA company will be found in Appendix V.

### *(vi) Formation deed*

The formation deed, known as an 'escritura de constitución', must contain the bye-laws, together with the following additional particulars:

- (a) the forenames, surnames, and marital status of the founder members, in the case of individuals, and, in the case of legal entities, their corporate name or style, and, in both cases, their nationality and address;
- (b) the intention of the founder members to incorporate a company;
- (c) the amount of and the terms on which money, property or rights have been contributed by each shareholder, and the value assigned to non-monetary contributions; and
- (d) the number of shares allotted to each shareholder.

### *(vii) Appearance before notary public*

The founder members must execute the formation deed before a Spanish notary public, and all necessary supporting documents must be produced at

the time, for example, the Bank currency certificate and any Government authorization(s). In the case of corporate founder members, they are represented by their lawful attorneys acting under powers of attorney granted for the purpose, which must be produced to the notary.

(viii) *Transfer tax*

The formation deed attracts a transfer tax ('impuesto general sobre transmisiones patrimoniales y actos jurídicos documentados') at the rate of 3.00 per cent of the amount of capital paid in and/or on the value of any assets contributed as part of the capital. This formation deed must be presented for assessment of tax within 30 days of being granted.

A 'gestor' (administrative agent) arranges the payment of this Tax and also attends to the registration formalities. A small fee is payable to the gestor for these services according to a fixed scale.

(ix) *Registrations*

The formation deed should be registered at the Commercial Registry as soon as possible after the transfer tax has been assessed and paid. A basic fee for 'study of the documents to be filed' and an ad valorem registration fee, based on the amount of the nominal capital of the company to be incorporated, is payable to the Registry under the Commercial Registry Tariff ('Arancel Registro Mercantil').

The foreign investment in the Spanish company must also be declared at the Investments Registry maintained by the Ministry of Commerce, in order to secure the rights of repatriation granted by the Foreign Investment Code. For this purpose, Form TE 1 ('Declaration of Direct Investments') must be used.

(x) *Incorporation*

Once the Formation Deed is registered at the Commercial Registry, the company is legally incorporated, and, as such, acquires a legal existence separate from the members who compose it.

As to the ratification by the company of pre-incorporation transactions, see the section on **Companies** at p 59 et seq above.

Until the company has been registered at the Commercial Registry, no shareholder may validly transfer his shares (Art 14).

### **Statutory books**

A Spanish SA company must legally keep the following books of account and records:

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- (i) journal ('diario');
- (ii) balance sheet, profit and loss accounts, and schedules of debtors and stocks ('balances y inventarios');
- (iii) minutes of directors' and shareholders' meetings ('actas'); and
- (iv) register of shareholders ('libro de acciones').

The entries must be in Spanish, chronological order, and all amounts expressed in pesetas.

The books attract stamp duty ('derechos judiciales') payable to the local judicial authority at the rate of 180 pesetas per book.

The books of account must be based on generally accepted accounting criteria, and valuation methods used must be consistent. Annual accounts, consisting of the balance sheet and the profit and loss accounts, must be drawn up by the directors within a maximum period of five months from the end of the financial year, and must 'clearly and accurately reflect the financial situation of the company, as well as the profit made or loss suffered during the year' (Art 102).

In general, account books and other business records must be preserved for five years from the date of the last entry (Art 45 of the Commercial Code).

### **Shareholders**

#### *(i) Rights generally*

In general, a share, which is an aliquot part of the capital of the company, confers upon its rightful owner the status of shareholder, and grants the following minimum rights:

- (a) the right to participate in the distribution of the corporate profits;
- (b) the right to participate in the assets remaining after the liquidation of the company;
- (c) the right to pre-emptive subscription of new share issues; and
- (d) the right to vote at shareholders' meetings (Art 39).

As to the distribution of dividends, they may only be paid if the value of the assets is higher than the capital stock, and must be paid out of actual profits or out of freely disposable cash reserves. Dividends must be distributed to the holders of ordinary shares in proportion to the capital paid up in respect of those shares. The right to claim payment of any dividend is subject to a five-year limitation rule (Art 107).

As to the right to share in the distribution of any surplus assets on liquida-

tion of the company, see section (v) (*Distribution of Surplus Assets*), at p 83 below).

The pre-emptive right of existing shareholders to subscribe to issues of new shares cannot be exercised in the case of certain mergers, conversion of debentures into shares, and where new shares are paid for by non-monetary contributions. The minimum term within which the right of pre-emption must be exercised is one month, and each shareholder is entitled to subscribe in the new issue for the number of shares proportionate to those he already holds.

The right to vote is subject to a number of qualifications. It may not be exercised by shareholders who are in default in the payment of any calls on their shares, and it is lost when the shares have been redeemed by the company, unless the bye-laws provide otherwise.

#### (ii) Shareholders' meetings

Shareholders' meetings ('juntas de accionistas') are generally of two kinds, 'ordinary' ('junta general ordinaria') and 'extra-ordinary' ('junta general extraordinaria'). In general, shareholders' meetings are convened by the board of directors.

The ordinary meeting must be held once a year within six months following the end of the financial year, which usually follows the calendar year, unless the bye-laws provide otherwise. In other words, this meeting constitutes the annual general meeting of the shareholders of the company. This meeting must be called by publishing a notice in the Official State Gazette, and in one of the largest-selling newspapers in the Province in which the company's registered office is situated, at least 15 days before the date fixed for the meeting (Art 53).

The following matters fall within the competence of the annual general meeting:

- (a) the approval of the annual management and running of the company;
- (b) the approval of the annual accounts;
- (c) the approval of the distribution of dividends;
- (d) the appointment or removal of directors; and
- (e) the appointment of auditors.

The extraordinary meeting may be held at any time the directors call it, or within 30 days when it is called by the shareholders representing at least 10 per cent of the capital stock. It is called to discuss and agree any matters of interest to the company. These would include the amendment of the bye-laws; the increase or reduction of the capital; the issue of preference shares; and the dissolution of the company.

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In general, the quorums needed for convening and passing resolutions at shareholders' meetings are as follows:

*First call:* quorum — one half plus one of the shareholders, or any number of shareholders representing at least 50 per cent of the capital stock;

resolutions — one half plus one of the voters present.

*Second call:* quorum — any number of shareholders;

resolutions — one half plus one of the voters present.

Where, however, the shareholders' meeting is called to discuss and agree upon any amendment of the bye-laws of the company, the necessary quorums are as follows:

*First call:* quorum — two-thirds of the shareholders representing two-thirds of the capital stock;

resolutions — one half plus one of the voters present.

*Second call:* quorum — one half plus one of the shareholders representing at least 50 per cent of the paid-up capital stock;

resolutions — one half plus one of the voters present.

These general rules for holding and passing resolutions at shareholders' meetings operate as a legal minimum, but the quorums can be varied upwards by agreement of the shareholders in general meeting. If varied, the bye-laws of the company will need to be amended, and the amendment registered at the Commercial Registry, in order to have full legal effects (especially vis-à-vis third parties).

Such variations, especially in regard to the general voting rule, are particularly advisable in the case of foreigners having only minority interests in Spanish companies, in order that their views are always taken into account when any important decisions have to be taken by either the board of directors or at the shareholders' meeting.

Meetings may be attended by shareholders in person or by their duly appointed proxies. In general, all shareholders are bound by the decisions taken, even those who voted against the resolution and those who were absent and not represented at the meeting. As to the protection of minority interests, see section (iv), at p 75 below.

In the absence of the above general requirements on the convening and holding of ordinary and extra-ordinary shareholders' meetings, if all the paid-in capital of the company is represented and it is unanimously agreed by the shareholders, any meeting can validly be held to transact any kind of business (Art 55). Such a meeting is known as a 'junta universal'.

(iii) *Auditors*

Under the Stock Exchange Rules, quoted companies must appoint independent auditors, who must be members of the Spanish Institute of Professional Accountants ('Instituto de Censores Jurados de Cuentas'). The appointment of auditors under the Company Law is dealt with in Arts 108 and 109. These provisions will now be summarized.

Two principal shareholder-auditors ('accionistas censores') are appointed by the shareholders' meeting (at which the previous year's accounts are approved), and they remain in office until the accounts of the next financial year are approved. Their function is to examine the financial statements and the annual report submitted to them by the directors, and they must propose their approval, or raise any objections, in writing within one month. In carrying out this task, they may thoroughly examine, either by themselves or with the help of experts, the books of account and records of the company. However, neither the shareholder-auditors, nor the experts, may privately disclose the results of their investigations to the other shareholders or third parties. Their right of inspection may only be restricted by the directors in 'exceptionally important cases in which the company's interests are placed in serious jeopardy'. Their reports must be made available by the board of directors for inspection by the shareholders at the company's registered office at least 15 days before the date of the annual general meeting.

Exceptionally, at the request of shareholders representing at least one-third of the paid-up capital, the auditors must carry out, at any time, a special investigation of any particular points or irregularities submitted to them for their examination.

(iv) *Protection of minority interests*

Minority interests are protected in several ways by the Company Law, and brief mention may be made of the following.

Shareholders representing at least one-tenth of the paid up capital of the company may call upon the directors at any time to convene a meeting, in order to discuss certain specified matters of concern to them. The request is made by a notarial demand ('demanda notarial'), and the meeting must be held within 30 days of the date on which the demand was served upon the directors (Art 56).

Any resolutions which are 'contrary to the Law or to the bye-laws, or are harmful to the interests of the company to the benefit of one or more shareholders' can be challenged in the courts under the provisions of Arts 67-70 (inclusive).

The resolutions may be contested not only by the shareholders who voted against them, but also by those shareholders who were absent or who were

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unlawfully prevented from casting their vote. The action must be brought within 40 days from the date the resolution concerned was passed, and, if the resolution has been registered at the Commercial Registry, the action may also be filed within one month of the date of such registration. Actions to nullify resolutions contrary to the Law may be brought after these time limits have expired (Arts 68 and 69). In general, the costs incurred in these proceedings must be borne by the losing party (Art 70 (11)).

Again, under Art 80, shareholders representing at least one tenth of the capital stock may oppose the compromise or waiver by the shareholders' meeting of any right of the company to bring any action against any director. If the company fails to exercise any such action within three months of the date of the resolution concerned, such minority shareholders may jointly bring the action themselves.

Minority groups of shareholders may also call for special investigations of the company's accounts (see section (iii), at p 75 above).

### *(v) Shareholders' agreements*

Shareholders' agreements, reserving various management matters to certain parties and making other arrangements relating to the running of the company, generally enjoy the status of private agreements only. As such, they do not affect third parties. Their provisions may also, and, in practice, often do, conflict with certain rights recognized by the Company Law as being of an unrenounceable and irrevocable nature – for example, the creation of special shares, which do not carry the right to vote, or to participate in dividends declared by the company. Such restrictions are contrary to the minimum rights of shareholders given by Art 39 of the Company Law. Such agreements, therefore, are of little legal or practical effect, and are generally binding in honour only.

## **Board of directors**

### *(i) General nature*

Apart from the general shareholders' meeting, the other principal organ of an SA company is the board of directors ('consejo de administración'), in whom the legal representation of the company, both inside and outside court, is vested. Such representation extends to all matters relating to the ordinary course of the company's business (Art 76).

The board, acting on a two-thirds' majority vote, may delegate the day-to-day matters in favour of a managing director ('consejero delegado'), and any powers thus delegated must be granted in a public deed before a Spanish

notary public, and be registered at the Commercial Registry, in order to be binding on third parties. The board, however, may not delegate the submission of the annual accounts to the annual general meeting of the shareholders.

Unless otherwise provided in the bye-laws of the company, the board may appoint its own chairman ('presidente') and regulate its own operation.

(ii) *Meetings*

Meetings must be held in Spain, and, subject to the exception mentioned in section (i) above, decisions are by absolute majority. Meetings are validly assembled when attended, personally or by proxy, by one half plus one of the members.

All discussions and decisions of the board must be recorded in a minute book ('libro de actas'), and signed by the chairman and the secretary (Art 78).

(iii) *Appointment and removal of directors*

In general, any person of full age and legal capacity can be appointed a director, and need not be a shareholder, unless the bye-laws provide otherwise. There is no discrimination against foreigners acting as directors of Spanish companies, although regard must be paid to the provisions of the Foreign Investment Code on 'cascade investments' (see p 68 above). Foreign directors working in Spain will need work permits, but being considered high-level personnel of confidence, they are usually granted such permits without much difficulty. The position of director, however, may not be held, *inter alios*, by an undischarged bankrupt, anyone disqualified from holding any public office, and any person convicted of any serious violation of any social laws or regulations (Art 82).

The appointment of directors rests with the shareholders' general meeting, and the directors may be removed from office at any time by the same body. The first directors may not hold office for more than five years, although they may be re-elected indefinitely (Art 72). The appointment of directors is legally effective as from the moment of its acceptance, and details of the appointment must be registered at the Commercial Registry within 10 days. Casual vacancies are filled by shareholders, who are appointed by the directors and hold office until the next annual general meeting of the shareholders is held (Art 73).

Finally, the board may only be renewed on a partial basis (*ibid*), and the remuneration of the directors may be fixed by the bye-laws of the company (Art 74).

(iv) *Duties of directors*

Article 79 of the Company Law provides that directors must perform their

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duties 'with the diligence of a methodical merchant and a loyal representative'. They are liable to the company, the shareholders and the creditors for any damage caused by 'malicious intent, misuse of powers or gross negligence' (*ibid*). However, directors who voted against any resolution which caused such damage, will be exonerated from any corresponding liability (*ibid*).

Directors may not occupy a similar position in a rival company, neither may they act when their own interests conflict in any way with those of the company (Art 83).

On appointment, directors may be required, under the bye-laws of the company, to give a fidelity bond (Art 71).

### *(v) Secretary and legal adviser*

The board of directors must appoint a secretary to record the minutes of their meetings.

Spanish companies with a capital of 50 million pesetas or more, or a turnover of more than 100 million, or that employ more than 50 employees on a permanent basis, must appoint a legal adviser to the board of directors. He must advise, in particular, on the convening of shareholders' general meetings (Law No 39 of 31 October 1975 and Royal Decree No 2288 of 5 August 1977). Spanish branches or establishments of foreign firms, with a turnover of 50 million pesetas or more, or which employ more than 50 workers on a permanent basis, must also appoint legal advisers.

As the secretary of the board has the right to speak, but not to vote, the two offices of secretary and corporate legal adviser are often, in practice, combined in the same person.

### *(vi) Administrator*

The company may be managed by an administrator ('administrador') instead of a board of directors. In such a case, the administrator exercises all the powers normally vested in the board.

## **Capital**

### *(i) Contributions*

All contributions to the capital of the company, in return for which shares are issued, must be contributed either in cash, or in the form of easily realizable assets, which are valued by the competent authorities.

The contribution of services, ideas, initiative, experience and other intangible items of a similar nature is permitted. Such contributions, however, may

only be rewarded by the issue of various kinds of securities, other than shares, such as bonds or other certificates embodying some right or entitlement in respect of the company's profits.

(ii) *Increases*

Any increase in the capital of a Spanish company involves the amendments of the bye-laws, and, as such, requires an extraordinary general meeting of the shareholders ('junta general extraordinaria'). In general, an issue of new shares cannot be made unless and until payment has been made in full for all the existing shares.

(iii) *Reductions*

Reductions of the registered capital of Spanish companies are subject to the same rules of procedure as increases. Ordinary creditors may oppose such reductions, however, if, within a period of three months from the date of the last announcement of the resolution, which must be published three times in the Official State Gazette and in three of the largest-selling newspapers in the Province in which the Company has its registered office, their credits are neither paid nor secured by the company (Art 98). If the reduction of the capital is duly approved, the company may acquire its own shares, in order to redeem them and thereby effect the reduction of its capital (Art 47).

## **Loans**

In practice, Spanish companies may not raise loans unless and until their registered capital has been fully paid up.

(i) *Internal*

Spanish companies with foreign participation may have access to local credit, subject to certain conditions, which are laid down in Art 8 of the Foreign Investment Regulations, as supplemented by an Order of the Ministry of Finance of 5 March 1975. These conditions generally depend upon the percentage of foreign participation, and a threshold of 25 per cent has been set for this purpose.

Spanish companies with foreign participation, irrespective of its percentage, may resort to local short-term (ie up to 18 months') credit on the same conditions as Spanish companies without any foreign participation in their capital. Where there is up to and including 25 per cent foreign participation, Spanish companies may arrange medium and long-term (ie more than 18

months') borrowings within Spain on precisely the same conditions as any Spanish company without any foreign participation.

Where, however, the foreign participation exceeds 25 per cent of the capital, the Spanish company may, in general, obtain local credit up to an amount equivalent to 50 per cent of the total of its paid-up capital and reserves. Special authorization will be required from the Ministry of Finance ('Ministerio de Hacienda') for local borrowings in excess of this limit, except in those cases in which the company previously or contemporaneously obtains foreign credit on similar terms and in an amount at least proportional to the percentage of foreign participation in its capital. No limitation is placed on the local borrowings of Spanish companies with foreign participation in excess of 25 per cent of their capital if such credits are used to finance their exports.

Likewise, the discounting of drafts, a popular method of financing business operations in Spain, by Spanish companies with foreign participations greater than 25 per cent, will also be permitted, without the above limitations, where the drafts represent the deferred portion of the price of goods manufactured in Spain by the company concerned, or by another company with which the discounting company is associated, as a result of either of them holding more than 50 per cent of the other's capital.

For the purposes of these general rules, interests in Spanish companies held by foreigners resident in Spain, which have been acquired with 'ordinary pesetas', or 'domestic capital' considered as such, will not be counted as foreign participation, even though they exceed 50 per cent of the capital.

(ii) *External*

Foreign loans to Spanish companies, with or without foreign participation in their capital, require prior authorization by the Bank of Spain.

(iii) *Debentures*

Spanish companies may issue debentures ('obligaciones') up to the amount of their paid-up capital.

The terms of the issue must be recorded in a notarial deed, and published in the Official State Gazette. The deed attracts stamp duty at rates between 3 per cent and 3.20 per cent on the amount of the loan. The applicable rate depends upon the nature of the guarantee given in support of the loan. An association of debenture-holders, known as a 'syndicate' ('sindicato de obligacionistas'), must be formed under the chairmanship of a 'trustee' ('comisario'), who acts as the liaison between the company and the syndicate.

The debentures may be either registered or bearer, are freely transferable, and may be secured by a mortgage of certain of the company's assets. First debenture issues take priority over subsequent ones.

## **Winding up**

### *(i) Introductory*

Dissolution of a Spanish company does not lead to the extinction, that is, liquidation, of the company, until all its corporate activities have been totally wound up. Indeed, Art 154 of the Company Law of 17 July 1951, specifically provides that the dissolved company shall retain its legal personality, whilst the liquidation is in progress. During this period, the phrase 'in process of liquidation' must be added to the corporate name.

The resolution or, as the case may be, the decision of the court ordering dissolution, must be registered at the Commercial Registry, and also published in the Official State Gazette and in one of the largest-selling daily newspapers in the place where the company has its registered office (Art 153). Once the company has been declared to be in liquidation, the authority of its directors to enter into new contracts and assume further obligations on its behalf automatically expires.

During the liquidation process, which involves the settlement or completion of all pending transactions with third parties, in which the company may be either debtor or creditor, and, finally, the realization of the corporate assets and the proper distribution of any surplus, the provisions of the bye-laws relating to the calling and holding of ordinary and extraordinary meetings must be observed by the liquidators (Art 158).

### *(ii) Grounds for dissolution*

These are laid down by Art 150 and are mandatory. They are as follows:

- (a) expiration of the term fixed by the bye-laws for the duration of the company;
- (b) the accomplishment of the corporate objective, or its evident impossibility;
- (c) losses which reduce the net worth ("patrimonio social") below one-third of the capital, unless the capital is restored or reduced;
- (d) merger or amalgamation;
- (e) resolution of the shareholders in general meeting; and
- (f) any other cause for which specific provision is made in the bye-laws.

In the case of ground (c), the time limit fixed for covering the deficit is one year from the date of the relevant balance sheet. The shortfall may be covered by profits, as well as capital injections or reductions.

As to grounds (b), (c) and (f), the dissolution will only be effective on a resolution duly passed by the shareholders in general meeting.

Bankruptcy of the company is not per se a ground for dissolution. It only becomes so if the court, declaring the bankruptcy, orders the company to liquidate, and the Government does not rule that it would be 'in the national interest' for the company to continue in operation.

(iii) *Appointment and duties of liquidators*

During the liquidation process, the affairs of the company are placed in the hands of liquidators, who are appointed in accordance with the provisions of the bye-laws, or, in the absence of any such provisions, by the shareholders in general meeting. There must always be an odd number of liquidators appointed (Art 156).

Additionally, shareholders representing one-twentieth of the capital stock of the company may apply to the court for the appointment of a 'controller' ('interventor') to supervise the liquidation (Art 157). This right also applies to any syndicate of debenture-holders ('sindicato de obligacionistas') (*ibid.*).

The duties of the liquidators are generally laid down by Art 160, as follows:

- (a) to sign, together with the directors, upon commencing their duties, the inventory and balance sheet of the company as at the date of commencement of the liquidation;
- (b) to keep and safeguard the books and correspondence of the company and to ensure the preservation of its net worth;
- (c) to complete any outstanding business and undertake such further transactions as may be necessary for the liquidation of the company;
- (d) to dispose of the company's property, by public auction in the case of real estate;
- (e) to collect credits and calls on capital to the extent necessary to pay creditors;
- (f) to negotiate settlements and compromises in the interests of the company;
- (g) to pay creditors and shareholders in accordance with the prescribed rules; and
- (h) to represent the company for the accomplishment of the above-mentioned purposes.

Under Art 163, the liquidators must also, from time to time, report to the shareholders and the creditors on the progress of the liquidation. The liquidators are liable to the shareholders and the creditors for any damage or loss sustained by them, as a result of fraud or gross negligence in the performance of their duties (Art 169).

If, in the course of the liquidation, it becomes apparent to the liquidators

that the company is insolvent, they must seek a declaration of 'suspension of payments' or bankruptcy (Art 170). Their duties cease on completion of the liquidation; revocation of their powers under a resolution of the shareholders in general meeting; and by court order obtained by a group of shareholders, representing one-twentieth of the capital stock of the company, on the grounds of 'just cause' ('justa causa') (Art 161).

(iv) *Approval of final accounts*

On completion of the liquidation, the liquidator must prepare the final balance sheet, which must be audited by any controllers appointed to supervise the liquidation. This balance sheet must be submitted for approval by the shareholders in general meeting, and also published in the Official State Gazette and in one of the largest-selling newspapers in circulation where the company maintains its registered office.

The balance sheet may be challenged by any shareholder who considers himself to be prejudiced by it.

(v) *Distribution of surplus assets*

This is governed, *inter alia*, by Arts 162 and 167 of the Company Law. Under Art 162, the liquidators cannot distribute the surplus assets of the company without having paid all the creditors, or having deposited the amount of their claims at the court ('consignación judicial'), or having satisfied themselves that security exists for credits which have not yet matured (eg mortgages).

Under Art 167, after the balance sheet has been approved, or after any shareholders' claims have been finalized, the surplus assets must be distributed amongst the shareholders in accordance with it. Any amounts which are not claimed within 90 days from the publication of the resolution approving distribution must be deposited with the Bank of Spain or the Ministry of Finance ('Caja General de Depositos'), at the disposal of their lawful owners (*ibid*).

(vi) *Cancellation of entries at the Commercial Registry*

After the final balance sheet has been approved, the liquidators must apply to the Commercial Registry for the cancellation of the entries relating to the extinguished company. They must also deposit all the books of account and business records of the company at the Registry (Art 168).

(vii) *Registration at the Investments Registry*

The liquidation of the company and/or the foreign investment in that company must also be recorded at the Investments Registry maintained by the Ministry of Commerce. Form TE2 ('Declaration of the Liquidation of Direct

Investments') must be completed for this purpose.

(viii) *Repatriation*

Foreign investors in Spanish companies generally enjoy the right to transfer abroad, without any quantitative limitation, the profits and dividends lawfully distributed; the proceeds from the sale of subscription rights; the original capital invested; and any capital gains obtained on the disposal of the investment.

This right of repatriation is subject to several stipulations, as follows: the investment having been made with moneys from abroad; the investment having been duly registered at the Investments Registry; all Spanish taxes having been paid; all conditions of any Government authorization having been observed; and all other relevant provisions of the Foreign Investment Code having been satisfied.

# Chapter 8

## Branches

### **Introductory**

The Foreign Investment Code allows foreign individuals and legal entities to conduct business activities through the creation of branches or establishments (Art 3 (3) ). Such investments always require a prior administrative authorization (Art 13), which rests with the DGTE (Art 35 (2) of the Regs). Likewise access to local credit is subject to a similar authorization (Art 14).

The procedure for obtaining the required authorization to form branches or establishments is laid down in a Resolution of the DGTE dated 20 January 1975, which will now be considered.

### **Authorization procedure**

In the case of applications for the formation of branches of foreign companies the following documentation must be filed with the DGTE, pursuant to the Resolution mentioned above:

- (i) a memorandum giving particulars of the name, registered office, nationality, corporate purpose, amount of capital and reserves and central bodies of management of the parent company;
- (ii) copies of the bye-laws and certificate of incorporation;
- (iii) a certificate from the Spanish consul, attesting that the company concerned is legally established and entitled to operate in its country of origin;
- (iv) the form and amount of any existing interest of the parent company in any Spanish company;
- (v) the amount and conditions of any royalties received by the parent company from any Spanish company;
- (vi) the details of any Spanish representative through whom the parent company may have acted;
- (vii) a draft of the formation deed ('proyecto de escritura'), containing particulars of the name, Spanish domicile, capital assigned, and representatives and agents of the branch; and

(viii) a financial memorandum, specifying the definite activities to be carried out by the branch in Spain (Art 2).

In the case of applications for authorization of business operations in Spain of non-resident individuals, a supporting memorandum, giving details of the specific activities to be undertaken, the name, address and nationality of the applicant, and any other relevant particulars, must be filed with the DGTE (Art 3).

### **Formation and registration**

Once authorization is obtained, the branch is constituted in a Public Deed ('Escritura'), which is granted by the duly authorized representative of the parent company (acting under a power of attorney for this purpose issued by the company) before a Spanish notary public. The deed may also be granted before the local Spanish consul, who exercises *ex officio* all the faculties of a Spanish notary public.

Article 21 (12) of the Spanish Commercial Code and Art 88 of the Regulations of the Commercial Registry require the following documents to be filed at the Commercial Registry:

- (i) the incorporation deed of the parent company;
- (ii) the bye-laws of the parent company;
- (iii) the consular certificate; and
- (iv) the formation deed of the branch ('escritura de creación de sucursal'), incorporating the powers and faculties of the local manager(s).

The first entry of such branches must specify the same particulars as are required for Spanish business organizations, according to their classification, together with the names of the persons who will manage the branch in Spain, details of their powers, and the capital assigned to the branch for its Spanish operations, expressed both in foreign currency and in Spanish pesetas, converted at the official exchange rate (Art 88 of the Regs of the Commercial Registry). On completion of these formalities, the branch is duly established in Spain and ready to commence business.

The formation of the branch must also be registered in the Investments Registry of the Ministry of Commerce, for which purpose Form TE7 must be completed and filed, together with a copy of the Escritura de Constitución Social.

### **'Liaison accounts'**

#### **(i) General requirements and form**

A Branch is required to file with the General Directorate of Foreign Trans-

actions in January of each year a 'Liaison Account' ('Cuenta de Enlace') with its parent company ('Casa Matriz'), as at 31 December of the preceding year.

Such account must be presented in the following form:

	<i>Pesetas</i>
(a) Capital assigned to the branch	.. ..
(b) Non-refundable allocations received from the parent company	.. ..
(c) Reserves	.. ..
(d) Loans received from the parent company, to be refunded	.. ..
(e) Profits of the branch not transferred, broken down by years	.. ..
(f) Participation in the general overheads of the parent company not transferred, broken down by years	.. ..
(g) Other financial items due to the parent company and not transferred, broken down by years	.. ..
<b>TOTAL in favour of the parent company</b>	<b>_____</b>
	<b>_____</b>
	<i>Pesetas</i>
(h) Losses of the branch, broken down by years	.. ..
(i) Other financial items due from the parent company, broken down by years	.. ..
<b>TOTAL due from the parent company</b>	<b>_____</b>
	<b>_____</b>

It is on the basis of this 'Liaison Account' that authorizations for transferability of items abroad are granted or refused (see section (iv), at p 88 below).

In addition to the 'Liaison Account', Branches are required to maintain the same official books of account as an SA company, with the exception of the minute book.

#### *(ii) Head office management expenses*

As will be seen from the 'Liaison Account' above, a concept of the sharing by the branch of the general overheads of the parent company is included. In principle, therefore, such head office management expenses are allowable, but permission must be obtained by the branch for their remission. In general, such permission is usually granted if these expenses are considered to be reasonable and justifiable. Conditions or limitations may, however, be imposed (Art 16 of the Foreign Investment Regs).

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Furthermore, Art 13 (*n*) of the Corporation Tax Law of 27 December 1978, allows such expenses to be deducted for tax purposes in the proportion to which they may be imputed to the Branch.

### *(iii) Royalties and interest*

These items fall to be considered under concept (*g*) in the form of 'Liaison Account' above. Normally, the question of the payment of royalties will be dealt with on the original application for permission to establish the branch, and remittances will be subject to any conditions or limitations imposed by the authorization obtained.

The remission of fees for technical assistance provided by the parent company will be subject to the general rule of reasonableness and justification. The remittability of interest on loans from the parent company to the branch will depend upon the same criteria.

### *(iv) Transferability generally*

Applications for permission to transfer amounts abroad arising under concepts (*e*), (*f*) and (*g*) of the 'Liaison Account' must be made to the DGTE, which, in the light of documents produced in support and the conditions appertaining to the Government authorization for the branch, may grant the necessary authorization in whole or in part. In exercising this control, the DGTE is particularly concerned to ensure that branch profits are not transferred to the parent company under the guise of other non-taxable items (eg expenses).

The branch is free to retain amounts authorized for transfer abroad, in which case such amounts must be included under the appropriate items in the 'Liaison Accounts' for subsequent years. After such transferable sums have been accumulated for three years or more, the DGTE may order the splitting-up of the total amounts to be transferred.

As a matter of principle, amounts authorized for transfer to the parent company will be deferred until amounts due under items (*h*) and (*i*) of the 'Liaison Account' from the parent company have been paid (Art 4 (5) of Resolution of the DGTE of 20 January 1975).

### *(v) Reserves*

Any amounts in respect of which the transfer abroad has been refused by the DGTE, for whatever reason, must be incorporated by the branch as 'Reserves', and shown under item (*c*) in the 'Liaison Accounts' for subsequent years (Art 4 (1) (*b*) and (3) *ibid*).

## **Loans**

### *(i) Internal*

Article 15 of the Foreign Investment Regulations provides as follows:

'Non-resident individuals and branches and establishments of foreign companies in Spain may have recourse to local credit subject to prior government authorization.'

Article 35 (3) of the Regulations provides that the control of such loans shall be exercised by the Directorate General of Foreign Transactions.

Article 1 of Section III of the Resolution of the DGTE of 20 January 1975, concerning branches and establishments in Spain of non-residents, provides that applications for the opening or renewal of credits in favour of such branches shall be filed at the DGTE, or, if granted by a Spanish credit agency, shall be processed through that agency.

In practice, on applying for permission to establish the branch, the applicant may be asked to give an undertaking to the effect that all financial needs of the branch will be met by the foreign parent company.

Branches of Foreign Banks are subject to their own special legislation regarding access to local credit.

### *(ii) External*

The obtaining of external credit by Spanish branches of non-residents is subject to the same control as that applicable to internal credit.

## **Property**

Spanish branches of foreign companies are permitted to acquire real estate for their exclusive use.

Payment may be made in ordinary pesetas, but the cost may not exceed the amount of the capital assigned to the branch (Art 2 of Section III of the Resolution of the DGTE of 20 January 1975).

## **Portfolio investments**

In general, Spanish branches and establishments of foreign legal entities cannot use the balances of their foreign accounts in domestic pesetas to make

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investments in shares, quoted on the Stock Exchange, Government stock and private fixed-interest securities (Art I (1) of the Resolution of the DGTE of 23 January 1975).

However, branches of foreign companies authorized to write insurance business in Spain may acquire quoted shares as part of their technical reserves, using ordinary pesetas (Art 3 of Section III of the Resolution of the DGTE of 20 January 1975).

## **Winding up**

### *(i) Declarations*

On liquidation of the branch, the holder of the foreign investment must complete Form TE8 and produce it to the authenticating officer (eg Spanish notary public) intervening in the act of dissolution.

### *(ii) Other formalities*

The authenticating officer seals the form, retaining copy number 5 for his records. Copies 1, 2, 3 and 4 are filed at the Investment Registry. Copy number 2 is then returned to the authenticating officer, and copies 3 and 4 are returned to the holder of the foreign investment, duly stamped as evidence of registration.

Copy number 4 is delivered to the designated delegate bank, which applies to the DGTE for permission to remit abroad the funds arising on the dissolution of the investment. Pending such permission, the funds are held by the bank.

No remittances abroad will be allowed unless and until the DGTE is satisfied that all applicable taxes have been paid.

# Chapter 9

## Portfolio Investments

### Definition

Portfolio investments ('inversiones de cartera') are defined by the Foreign Investment Code as shares admitted to official quotation on the Stock Exchange, Government stock, private fixed-interest securities and participations in unit trust companies ('participaciones de fondos de inversión mobiliaria'). The latter kind of investment is also known in Spain as an investment in mutual funds.

### De-control

#### (i) *Cases*

The Foreign Investment Code draws a distinction between direct investments and investments on the stock market, on the basis that these latter investments do not give rise to the problems of political control or domination of companies.

Portfolio investments by foreigners are welcome in Spain since, although they do not directly create new production lines, they do, if maintained reasonably stable, reinforce the financing of the internal capital market. They are, therefore, accorded different treatment to direct investments under the Code.

In particular, no prior administrative authorization is required, and the foreign investor is not required to complete any formalities at the Investments Registry of the Ministry of Commerce in regard to the acquisition and disposal of these investments. In general, the remission abroad of income from these investments (eg dividends, interest, proceeds from the sale of subscription rights), and repatriation of the original investment and any capital gains on disposal, is speedier — at least, that is the theory. As the Minister of Commerce remarked at the time of the introduction of the Foreign Investment Code:

'... we propose to make the mechanics of these operations in securities quoted on the stock market more rapid and agile, and adapt them to the requirements of the new system of settlements which the Ministry of Finance has recently introduced on the Spanish stock markets. Our objective in this connection is to achieve total operational fluidity so that the settlement of stock market operations in which foreigners are involved shall take place automatically and following the pattern of

greater agility introduced by the new system of settlement.'

It can fairly be said, therefore, that portfolio investments made by foreigners are largely de-controlled and liberalized. However, there is one important and practical distinction to be made and, that is, investments made by foreigners in Spanish companies through the acquisition of their shares or participations are subject to the general 50/50 rule, or any other prescribed limitation on foreign investment in companies engaged in specified activities. If the investment exceeds the legal limit, authorization is required. For the purposes of this rule, investments in private fixed-interest securities convertible into shares are regarded as direct investments in the above sense. Otherwise, portfolio investments can be made by foreigners 'freely and without any limitation' (Art 11 (2) of the Foreign Investment Regulations).

(ii) *Source of funds*

In general, the foreign portfolio investment must be made with foreign convertible currency introduced from abroad, in order to ensure repatriability. However, under a Resolution of the Directorate General of Foreign Transactions of 23 January 1975, a general authorization is granted to foreign legal entities (excluding their establishments in Spain) and non-resident foreign and Spanish individuals, to purchase shares quoted on the stock exchange, as well as Government stock and private fixed-interest securities, using the balances of their foreign accounts in domestic pesetas. This authorization is subject to the proviso that the permission for the opening of the account in the first place does not impose any such restriction.

A foreign investor may also re-invest the proceeds of sale of portfolio investments in other similar investments, and the new investment will count as a foreign investment for repatriation purposes, assuming that the original investment was duly made as such.

A foreign individual resident in Spain may also make a portfolio investment using 'internal pesetas' pursuant to Art 2.2 of the Foreign Investment Regulations. In such circumstances, however, the investment will not be repatriable.

## **Formalities**

(i) *Bolsa de comercio*

There are three stock exchanges ('bolsa de comercio') in Spain, situated in the main business centres, namely Madrid, Barcelona and Bilbao. There is also a 'mini-exchange' in Valencia. The largest exchange is that in Madrid, on which

over 600 companies are quoted. Of the stocks quoted, ten stocks account for more than 75 per cent of the market's capitalization, which is in the region of £19 billion, and only a small fraction of stocks are actively traded.

In the past, Spanish stock markets have rarely been a significant source of capital for business expansion, although there are signs that they may play an increasing role in this field in the future.

Transactions are subject to the rules of the exchanges, particularly as to form and procedure, and dealings, to have full legal effects, must be made through a duly registered stock agent ('agente de cambio colegiado') (Arts 74 and 75 of the Commercial Code).

#### (ii) *Agente de cambio y bolsa*

It is obligatory under the Foreign Investment Code for foreign investments to be formalized in a public document before a Spanish authenticating officer ('fedatorio público Español'). For the purposes of portfolio investments, this official may be either a notary public or an official stock agent ('agente de cambio y bolsa').

It will be necessary for the foreign investor to produce the 'certificado de divisas' and any governmental authorizations required, together with evidence of identification (ie national identity card or passport). In the case of a company, it will be represented by an individual, duly authorized to act under the terms of a general or special power of attorney, granted before a public notary, and, where necessary, duly legalized.

#### (iii) *Stock transfer form*

This will be in the form of a deed and will record the sale and purchase of the relevant stock, which will be duly described and identified, the names, addresses, civil status and occupations of the seller and the buyer, and the official price paid. The document will be signed by the parties. The notary will add his certificate of good faith and official seal, or the stock agent will add his signature and official stamp (as the case may be). If the transaction is completed before a notary, the document will be recorded in his official register ('protocolo notarial') and a first copy ('primera copia') supplied to the purchaser.

In the case of a transfer of a 'SA' company's shares which have not been fully paid up, the transferee will, at the election of the directors, be jointly and severally liable with all the previous transferors for the balance outstanding on the shares (Art 45 of the Company Law of 17 July 1951). The transferors will remain liable for three years from the date of the transfer, and any covenant in the document of transfer purporting to exclude this liability will be null and void (*ibid*).

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### *(iv) Stamp duty*

If the stock is transferred before a notary public, the transfer deed will attract stamp duty at the rate of 2.2 per cent on the declared price.

In the case of the transaction being completed before an official stock agent, the rate of duty will be lower. If the shares are quoted, the rate will be 0.11 per cent; if not, a rate of 0.55 per cent will apply.

### *(v) Official fees*

Again, it is cheaper fee-wise if an official stock agent rather than a notary certifies the transaction. Commission at the rate of 0.50 per cent, based on the value of the transaction, is payable to the stock agent. This cost is borne equally by the seller and the buyer.

### *(vi) Deposit of stock certificates*

It is obligatory to place the stock certificates on deposit at the bank through which the transaction has been made, and through which the receipts and payments, relating to the investment, will be channelled. The bank is known as 'the designated Delegate Bank'.

If, for exchange control, or any other reason, the holder of the investment wishes to deposit the stock certificates abroad, the certificates may only be exported through the designated delegate bank, in accordance with the procedures laid down by the Spanish Ministry of Finance, provided the investment has been paid for in full.

## **Registrations**

### *(i) On acquisition*

Acquisition of portfolio investments need not be the subject of an individual declaration by the foreign investor for registration in the Investments Registry of the Ministry of Commerce, if made with a foreign contribution or 'domestic' pesetas (Art 28(2) of the Foreign Investment Regs). Investments in Unit Trust Companies or Mutual Funds, however, must duly be entered in the appropriate Special Register (Art 1.1 (a) of the Resolution of the DGTE of 25 January 1975).

Notification of all incoming portfolio investments, however, has to be made 'globally' to the Investments Registry of the Ministry of Commerce by the delegate bank on Form TE9. Specified returns must also be made to the Registry by the stock agent or notary authenticating the transaction.

Portfolio investments made in 'ordinary' pesetas by foreign residents, by Spanish companies with foreign participation in their capital, and by branches of foreign companies have to be declared to the Registry on Form TE5 (adding the reference 'portfolio').

(ii) *On disposal*

Equally on disposal, an individual declaration to the Investments Registry is only necessary in the last case mentioned above, and the form to be used is TE6 with the reference 'portfolio' added.

The 'global' notification of disposals is made by the delegate bank on Form TE10.

(iii) *General procedure*

In general, the obligation to declare foreign investments will be considered to have been fulfilled by the foreign investor on delivery of the relevant registration form, duly completed, to the public authenticating officer (ie the notary or stockbroker).

On liquidation of the foreign investments, the foreign investor, after completing the necessary registration form, must deliver a copy to the designated delegate bank, which shall apply to the DGTE for permission to remit the funds abroad, retaining them until such permission has been given.

## **Repatriation**

(i) *Interest and dividends*

The foreign investor, who has made his investment with foreign contributions (as defined at p 43 above), including pesetas deriving from the balances of foreign accounts in convertible pesetas, may transfer abroad interest and dividends lawfully distributed after payment of the appropriate tax.

The foreign investor, who has made his investment with domestic pesetas under the Resolution of the DGTE of 23 January 1975, may also, subject to satisfaction of tax liabilities, transfer abroad interest and dividends lawfully distributed.

(ii) *Subscription rights*

The proceeds from the sale of subscription rights on the stock exchange may also be remitted abroad in each of the above cases.

(iii) *Proceeds of sale*

On disposal of the investment, the proceeds of sale may generally be remitted abroad, except in the case of a domestic peseta investment. In that case, the proceeds may only be transferred abroad if 'the investment shall have remained uninterruptedly in the same securities during a period exceeding three years' (Art I (1) (2) of the Resolution of 23 January 1975). In any other case, the proceeds of sale must be credited to a foreign account in domestic pesetas (*ibid*).

(iv) *Capital gains*

Subject to tax, these may be remitted abroad, provided that the disposal of the investment has not been made at a rate higher than the official rate (Art 12 (2) of the Foreign Investment Regs). In such a case, Art 9 (2) applies, and provides as follows:

'The administration may refuse the right of transfer if, following official verification, it is found that the profits and capital gains have been obtained by infringement of the legal provisions on foreign investment. . . .'

# Chapter 10

## Real Estate

### Introductory

The Foreign Investment Code distinguishes between investments made by foreigners in real estate for private and business purposes. In the case of the former, no administrative authorizations are generally required, whereas, in the case of the latter, a prior administrative authorization is always needed. Investments made by foreign legal entities are, in every case, subject to prior authorization.

A distinction is also made between urban and rural estate, and, in certain areas, which are considered to be of strategic importance, a permit granted by the military authorities must be obtained.

In general, foreign investments in real estate must be made with foreign currency introduced from abroad through banking channels.

### Urban and rural properties

The acquisition of urban property by foreign non-resident individuals is governed by a Resolution of the DGTE of 30 July 1975. Non-resident foreign individuals may invest in urban land, provided the area does not exceed 5,000 square metres, and provided also that it is used for a single-family dwelling for the purchaser's own use (Art (1)).

Foreign individuals or legal entities may only acquire in total up to four hectares of irrigated rural property and, if unirrigated, up to twenty hectares (Art 22 (1) of the Foreign Investment Regulations). Where such property is partly irrigated and partly not, the area is to be computed, for the purposes of determining whether or not an authorization is required, in the proportion of five hectares of unirrigated land to one hectare of irrigated land. Further, it should be noted that this control over rural real estate applies whether the property is acquired by sale or by gift, or by any other means of transfer *inter vivos*.

Foreign investments in urban and rural properties in excess of those limits are subject to prior administrative authorization. So also are the acquisition and assignment of rights and encumbrances on rural real estate in favour of

foreign investors. Whether property is urban or rural, and, in the latter case, irrigated or not, is determined by either the particulars recorded in the Land Registry, or, by its classification for the purposes of the rural land tax ('contribución rústica'), whichever information is the more recent. In any event, the purchaser must produce, on formalization of the purchase deed, a certificate from the Land Registry which clearly indicates the nature of the property.

## **Flats**

Foreign non-resident individuals may only acquire up to three flats in the same building without prior administrative authorization (Art 1 (2) of the Resolution of the DGTE of 30 July 1975). Acquisitions in excess of this number are considered to be business investments and, as such, are subject to such authorization.

The rights of flat owners *inter se*, particularly in regard to common parts and services, are governed by the Law on Horizontal Property of 21 July 1960.

## **Business investments**

### *(i) Individuals*

The acquisition by non-resident foreign individuals of 'villas, chalets, and, in general, dwellings for individual or family use' are considered to be private investments (Art 23 (2) of the Foreign Investment Regs).

The following acquisitions made by such individuals, however, are considered to be business investments:

- (a) rural real estate;
- (b) plots of urban land (as defined in the Law on Land and Urban Organization); and
- (c) more than three dwellings in the same building (Art 23.1.1, *ibid*).

Such investments are subject, in all cases, to a prior administrative authorization, and are also subject to the general provisions of the Foreign Investment Code which regulate the business activities in Spain of non-residents.

### *(ii) Companies*

Under Art 23.1.2 of the Foreign Investment Regs, the acquisition by foreign

legal entities of real estate, both urban and rural, is regarded in every case as a business activity.

### **Special controls**

#### *(i) Major investments in rural real estate*

Investments by foreigners in rural real estate, in excess of the normal permitted limits mentioned at p 97 above, require prior authorization from the Council of Ministers. The application must be submitted in triplicate to the Directorate General of Foreign Transactions and supported by a memorandum containing certain prescribed particulars (Art 2 of the Resolution of the DGTE of 25 January 1975). The form and contents of this memorandum are reproduced in an English translation in Appendix III. It will be seen that the particulars required of the financing arrangements of the investments are the same as those required in an application under the Foreign Investment Code for a majority foreign investment in a Spanish company.

The DGTE obtains reports on the investment proposal from the Ministries of Agriculture and Justice, and from any other Ministries which, by the nature of the proposal, are also concerned or involved.

#### *(ii) 'National tourist interest'*

Acquisitions by foreigners of rural property situated in areas designated as being of 'National Tourist Interest', under Law No 197 of 28 December 1963, are not subject to the above restrictions or special authorization. Neither are military permits required, although the property acquired remains subject to the conditions and easements established in the special legislation relating to national defence.

#### *(iii) Military permits*

In general, acquisitions of real estate by foreigners in areas of strategic importance are subject to the obtaining from the military authorities of a special permit, known as a 'military permit' ('permiso militar'). In general, coastal areas and the Spanish Islands are designated as strategic areas for National Defence purposes.

Applications for such permits must be supported by a 'certificate of good conduct' ('certificado de buena conducta') in the case of individuals, and, in all cases, by plans of the property to be acquired, showing, in particular, the accommodation and its lay-out. The certificate of good conduct can either take

the form of a certificate issued by the police authority, confirming the absence of anything adverse recorded against the individual, or, more usually, two character references. Individuals must also supply dates and details of all previous visits to Spain. These permits, which can take several months to obtain, are granted on the express condition that the property can be expropriated in time of war.

Formalization of the purchase deed and registration of such properties in the local Land Registry cannot take place without the production of the necessary military permit.

(iv) *Acquisition of commercial premises by non-resident foreign individuals*

The Resolution of the DGTE of 30 July 1975 grants a general authorization under Art 3 (1) to foreign non-resident individuals to acquire up to three commercial premises ('locales comerciales'), provided that the combined total area does not exceed 200 square metres, and that the purchaser only uses the premises for his own business purposes when duly authorized. The rents from such premises are not considered as a business investment.

Specific prior authorization will be required from the DGTE if these conditions are not satisfied. For example, such authorization will be required if the premises exceed 200 square metres, and, in such case, the individual will be regarded as carrying on a business activity.

## **Funding**

(i) *Internal resources*

Under Art II of the Resolution of the DGTE of 23 January 1975, foreign individuals resident abroad are generally permitted to use the balances of their foreign accounts in domestic pesetas for the acquisition of urban real estate for their exclusive use and enjoyment. Such funds may not, however, be used for these purposes, if the authorization for the opening of the account provided otherwise.

Such properties may not be leased, and, in the event of sale, the full proceeds must be credited to a foreign account in domestic pesetas. In other words, the investment is regarded as a domestic one.

(ii) *External resources*

In general, acquisitions of real estate by foreigners must be made by a 'foreign monetary contribution' in order to ensure repatriation of the investment.

In other words, the foreign investor must legally enter into Spain foreign

convertible currency from abroad, designated for the purpose of acquiring real estate in Spain. Such entry into Spain must be proved by the production of a currency certificate ('certificado de divisas'), issued by a delegate bank through which the funds were transferred.

Without this certificate, the purchase deed may not be formalized, neither may the purchaser's legal title to the property be recorded at the local Land Registry (Arts 19 (1) and 20 (1) of the Foreign Investment Regs).

Only in the limited circumstances and subject to the conditions described in the preceding section, is the use of 'domestic pesetas' permitted.

### (iii) *Mortgages*

Non-resident foreign individuals are generally authorized to raise mortgage loans in pesetas from Official Credit Institutions, Delegate Banks, and Savings Banks, in connection with the acquisition of real estate in Spain. Such loans, however, must comply with the following conditions:

- (a) they may only be used for the purchase of a newly-constructed building, or in a first transfer, from a person of Spanish nationality resident in Spain;
- (b) they may not be granted on terms more favourable than those usually applied to similar loans granted to residents;
- (c) they must be repaid by any of the means of foreign monetary contribution specified in Art 2.1.1 of the Foreign Investment Regs; and
- (d) they must be used for the payment of the property mortgaged (Art 5 (1) of the Resolution of the DGTE of 30 July 1975).

## **Leasing of business premises**

### (i) *Generally*

Leases of business premises are governed by the 'Ley de Arrendamientos Urbanos' approved by Decree No 4104 of 24 December 1964. Business premises are defined, by Arts 1 and 5.2.3 of this Law, as those in which an industrial, commercial, and/or any other profitable activity is carried on.

Under Art 6 (3), the parties enjoy general freedom of contract as to the terms and conditions under which the premises will be let and taken, except in regard to the right of 'compulsory extension' ('prorroga forzosa') granted by the Law, which cannot be excluded by agreement. The right of compulsory extension also applies to foreign tenants and sub-tenants, subject to their producing evidence that the same treatment is accorded to Spanish tenants and sub-tenants in their country of origin (Art 7).

The tenant is obliged to deposit two months' rent as security for the due performance of his obligations under the lease (Art 105).

(ii) *Duration and termination*

The leases may be granted for an indefinite or fixed term, as may be agreed between the parties. If granted for a fixed term, the tenant is obliged to pay the rent agreed until the termination of the lease. If the tenant wishes to terminate the lease before the end of the term, he must pay an indemnification to the landlord equal to the amount of the rent payable during the remainder of the term (Art 56).

Leases granted for an indefinite term may be terminated by the tenant on 30 days' notice. No rental indemnification is payable, unless the parties agreed otherwise in the lease (Art 57).

(iii) *Security of tenure*

Whether the lease is granted for a fixed or indefinite term, the tenant is entitled to remain in the premises and extend the lease indefinitely (Arts 6.3 and 57).

Such right of compulsory extension, however, does not apply in the following cases:

- (a) where the premises are needed for the personal use of the landlord and/or his 'ascendants' or 'descendants';
- (b) the building is to be demolished and replaced by a new one; and
- (c) where the premises are not used by the tenant for more than six months within the same year.

Ground (a) must be fully proved to the satisfaction of the tenant or the court. The landlord's right of re-possession under ground (c) may be defeated if the tenant is able to show 'reasonable cause' for such non-occupation.

(iv) *Rent and rent control*

The amount of the rent can be freely negotiated and fixed by the parties at the time of entering into the lease (Art 97).

The lease can also provide for periodic adjustments of the initial rent, but such increases may not exceed the percentage fixed under sub-group 3.1 (Lettings) of the Official Consumer Prices Index ('Indice de Precios al Consumo'), published by the National Statistics Institute ('Instituto Nacional de Estadística') (Art 1 of Royal Decree-Law No 3 of 4 January 1978). This is irrespective of any agreement between the parties to the contrary.

In the case of leases compulsorily extended by the tenant after the express

termination date has expired, the rent is subject to automatic adjustment, determined in accordance with the same index, every two years, unless otherwise agreed by the parties in the lease (eg, annual adjustment of the rent). If no provision is made in the lease on this subject, the landlord is considered to have relinquished his right to the statutory increase (Art 100).

(v) *Assignment*

Assignment is defined as the transfer of the lease by the tenant to a third party ('assignee') against payment of an agreed price ('premium'), and known as 'traspaso' (Art 29). The tenant of office premises is not entitled to assign such premises (Arts 5 (3) and 30).

Under Art 32 of the Law, however, the tenant of other business premises (eg a shop) is entitled to assign the lease in the following circumstances:

- (a) the lease is granted for more than 12 months;
- (b) the assignee must undertake to use the premises for the same business activity for a minimum of 12 months;
- (c) the proper price for the assignment must be paid;
- (d) the assignment must be formalized in a public deed ('escritura pública');
- (e) the proposed assignment and the price must be notified to the landlord; and
- (f) the landlord must be notified within eight days of the granting of the deed of assignment, giving details of the full name and address of the assignee, the price paid, and his undertaking to maintain the lease for at least one year.

By virtue of Arts 35 and 36 of the Law, the landlord has the pre-emptive right to recover possession of the premises and cancel the lease on payment of the price for the assignment (hence requirement at (e) above). If this pre-emptive right is not exercised, and the assignment is completed, the landlord is entitled to increase the rent by at least 15 per cent (Art 42). He is also entitled to receive between 10 per cent and 15 per cent of the agreed price of the assignment, depending upon the particular case.

(vi) *Sub-letting*

The sub-letting of business premises is always subject to the prior consent in writing of the landlord. The mere fact of giving such consent does not entitle the landlord to increase the rent or to participate in any premium paid for the sub-letting. The rent for the sub-letting is fixed by agreement between the tenant and the sub-tenant (Art 22).

The sub-tenant cannot sub-let the premises either in whole or in part

(Art 20). Neither does the sub-tenant enjoy the right of ‘compulsory extension’ (see section (i), at p 101 above). From the point of view of the tenant, the sub-letting should be for a fixed term, at the end of which the sub-letting will automatically expire by effluxion of time (Arts 57 and 61).

(vii) *Stamp duty*

The tenant and, in the case of a sub-letting, the sub-tenant are liable to pay the stamp duty attracted by the lease or sub-lease. This is assessed, at the option of the taxpayer, under either ‘efectos timbrados’ (which is a variable tariff, depending on the rent and term of the lease), or at the rate of 1.50 per cent on the value of the rent for the term fixed by the lease or on six years’ rent, if the term is indefinite, under the General Capital Transfer and Documentary Tax (‘Impuesto General de Transmisiones Patrimoniales y Actos Jurídicos Documentados’).

### **Purchase deeds**

(i) *Escritura de compraventa*

The title deed is known as an ‘Escritura de compraventa’ and is generally granted before a Spanish notary public. It is, therefore, a public deed, and is recorded in the official register (‘protocolo Notarial’) of the notary concerned. The grantee is given a certified ‘first copy’ (‘primera copia’) of the deed by the notary before whom it is granted.

In Spain the notary not only acts as a witness to the deed, but also as a semi-Government official, who must also certify that the contents are correct and comply with the law. Accordingly, if he is not satisfied as to any particular, or, if any of the requisite supporting documents (eg the bank currency certificate) are missing, he will not grant the deed. The vendor will not usually be willing for the purchase deed to be granted where the purchase price is payable by instalments, until the final instalment has been paid.

The parties may attend before the notary in person, or be represented by some other person, acting under a duly authorized power of attorney, which must be produced at the time. The parties or their legal representatives must produce evidence of their identities to the notary. Such evidence may take the form of a passport or national identity card.

(ii) *Declaración de obra nueva*

In the case of the acquisition of land followed subsequently by the erection of a new building, eg a factory, the transaction is formalized in two stages. First,

the land is conveyed under an escritura de compraventa, and, secondly, the factory, when built, is covered by a second document, known as a 'declaration of new work' ('declaración de obra nueva'). Both documents are granted before the notary.

As before, a gestor deals with the assessment and liquidation of the transfer taxes, and also attends to formalities of registration of the transaction at the local Land Registry, including the settlement of the registration fees.

## **Property taxes**

### **(i) *Transfer tax***

Transfer tax, known as 'impuesto general sobre transmisiones patrimoniales y actos jurídicos documentados', is levied at the rate of 8.20 per cent of the value of the property declared in the escritura de compraventa, or, on the value as assessed by the state lawyer ('abogado del estado'), if higher. This transfer tax is also levied on the value of the building comprised in the declaración de obra nueva, but at the lower rate of 0.50 per cent.

### **(ii) '*Plus valía*'**

This is a type of capital gains tax, which is levied on the increase in value of the property since the last recorded transfer took place. It is payable on a sliding scale, according to the length of time during which the property has been held by the vendor.

By concept, this is a tax which should be borne by the vendor, and, in fact, the general rule is that, in the absence of agreement between the parties to the contrary, it will be the personal responsibility of the vendor. If, however, the vendor fails to pay the tax when it is assessed, since it is an 'obligación real' (an obligation 'in rem'), it will be leivable against the property itself. In practice, therefore, the purchaser will be obliged to pay, and seek reimbursement from the vendor.

### **(iii) *Local taxes***

Local taxes are levied by the municipalities on urban and rural properties, as a kind of annual general rate. Known respectively as 'contribución territorial urbana' and 'contribución territorial rústica y pecuaria', these taxes are assessed on the actual or notional rental income attributed to the property by the district valuer. The maximum rates are 20 per cent and 25 per cent respectively, but in practice they are applied on a comparatively low assessment.

## **Registrations**

### *(i) Land registry*

Throughout Spain, titles to real estate, including corresponding rights and interests (eg mortgages and easements) in such estate, are recorded in the local Land Registry ('Registro de la Propiedad'). Only on such registration of the estate or interest in the property concerned is the legal title perfected. In theory, therefore, adverse interests can be registered, which will affect or defeat the rights of the true unregistered owner.

Registration of the real estate investment at the local Land Registry is also a condition of repatriation of the investment.

### *(ii) Investments registry*

Likewise registration of the investment in the Investments Registry of the Ministry of Commerce is also a pre-condition of repatriation.

Investments and disposals of real estate made by foreign non-resident individuals and legal entities are declared on Forms TE7 and TE8 respectively.

## **Repatriation**

### *(i) Generally*

In general, where the acquisition of real estate has been made with foreign convertible currency, which has been legally introduced from abroad, and the investment has been duly registered at the Land Registry and in the Investments Registry of the Ministry of Commerce, the foreign investor will be entitled to repatriate his investment.

### *(ii) Capital gains*

The above right of repatriation also applies to any capital gains accruing on the disposal of the investment, provided the price obtained on the sale of the property was not the result of 'speculative activity' (Art 26 (1) of the Foreign Investment Regs).

The expression 'speculative activity' is not defined, but the meaning will become clear from administrative practice and precedents.

### *(iii) Rents*

Rental income derived from real estate investments made in accordance with

*Repatriation*

the applicable provisions of the Foreign Investment Code is remittable abroad if the purchase price of the property has been fully paid and the owner has paid all the corresponding taxes (Art 27 of the Foreign Investment Regs).



# Chapter 11

## Transfer of Technology

### **Patents; know-how; manufacturing licences; technical assistance agreements**

Article 2(1)(c) of the Foreign Investment Regulations provides that investments may be made in the form of 'direct contribution to a company of foreign technical assistance, patents and manufacturing licences'. However, such foreign investments are subject to the prior authorization of the contracts concerned and valuation by the competent authorities. Valuation is made by the customs authorities according to the General Customs Law.

Approval of licensing and technical assistance agreements is by the Ministries of Industry and Commerce in a two-stage procedure under Decree No 2343 of 21 September 1973, as supplemented by a Ministerial Order of 5 December 1973.

### **Regulation of transfer of technology**

#### *(i) Introductory*

Spain needs foreign technology and know-how, which is described in the Preamble to Decree No 2343/73, as 'a strategic supply . . . for (the) country in its . . . industrialization . . .'. This need will intensify as Spain moves towards full membership of the EEC, in order to enable Spanish industrial products to compete internationally. From time to time, the Ministry of Industry publishes data relating to the acquisition of foreign technology.

Spain, however, requires such technology on certain terms and subject to certain conditions. Hence the intervention of the State in foreign technology transfer contracts. The rationale of such intervention is declared to be for the purpose of ' . . . supervising the selection and acquisition of foreign technology . . . and . . . encouraging the utilization of this technology in conditions which rebound in the maximum yield for the domestic economy' (*ibid*).

#### *(ii) Application*

*(a) Generally – The controls on transfer of foreign technology in Spain apply*

## *Chapter 11 Transfer of Technology*

to contracts between a foreign individual or body corporate, and an individual or body corporate residing or legally established in Spain, and concerned with one or more of the following matters:

- (i) the grant of patent and other industrial property rights;
- (ii) the transfer of 'know-how';
- (iii) the provision of engineering services, preliminary surveys or projects, as well as executive projects of a technical type, assembly services, construction and operation of plants and their maintenance and repairs;
- (iv) advice on negotiations and management services generally;
- (v) recruitment and training of personnel;
- (vi) provision of technical or economic manuals and information; and
- (vii) other forms of technical assistance (Art 1 of Decree No 2343 of 1973).

Contracts made between individuals or bodies corporate, with a place of business, residence or legal establishment in Spain, and relating to technology acquired abroad are also subject to control (Art 3, para 3).

(b) *State contracts* – Technology contracts made between foreigners and the 'Administration', that is, the Spanish State itself, are not within the scope of this Decree (Art 2, para 1).

### *(iii) Controls*

General control is exercised by the Ministry of Industry (General Directorate of Promotion of Industry and Technology – 'DGPII') over restrictive conditions, and by the Ministry of Commerce (General Directorate of Foreign Transactions – 'DGTE') over royalty payments abroad.

Where the transfer of technology is concerned with national defence, or involves related research organizations, control is also exercised by the relevant military department.

Once approved, the contract is registered in a special Transfer of Technology Contracts Registry, maintained by the Ministry of Industry. Failure or refusal to register blocks the transfer of royalties and payments abroad.

In the case of transfer of foreign technology contracts entered into pursuant to an International Technical Co-operation Convention and in the prescribed form and on the prescribed conditions, such contracts are registered without any critical examination of their terms (Art 5, para 4 of the Decree).

### **Restrictive clauses**

#### *(i) General prohibition*

Under Art 5 of the Decree, contracts, which include restrictive clauses which,

in the opinion of the Ministry of Industry, 'prevent, harm or hamper the technological development of the receiver, limit the liberty of the same, or represent an abuse by the party granting the technology', will not be approved, and, therefore, cannot be registered.

(ii) *Specific examples*

This broad general control is supplemented by the provisions of Art 3 of the implementing Order of 5 December 1973, which lays down the procedural formalities for the registration of transfer of technology contracts in the special Registry of the Ministry of Industry.

This article enumerates fifteen different kinds of restrictions, which, *prima facie*, are considered to be adverse, and, therefore, unacceptable. It should be noted, however, that this list is not to be considered as exhaustive, but merely illustrative. Other restrictions, not mentioned in this article, may, therefore, be held to be bad within the meaning and ambit of the general prohibition in Art 5 of the Decree.

In view of its importance, an English translation of the text of Art 3 of the Order of 5 December 1973, is reproduced as follows:

'For the purposes of the provisions of Art 5 of Decree 2343/1973, the Ministry of Industry and, where appropriate, the Ministry competent according to the subject matter, shall undertake a joint assessment of the situation of the sector and of the features of the process and product to which the technology relates and is the subject of the contract, in relation to the rights and obligations which it establishes for the parties.'

In this general assessment, the following points, amongst others, shall be taken into account as unfavourable terms or aspects of the contract:

1. To prohibit, condition or limit the use of the receiver's own technology or the acquisition of the same from other sources, the utilization of unpatented know-how, after the contract has expired, and the results of research, innovation and technological development of the receiver.

2. To require the assignment of patents, improvements or innovations made or developed by the receiver from the use of the technology, the subject of the contract.

3. To transfer the technology in the form of packages which include unnecessary parts or components or for which there is proven domestic supply capacity of the equivalent quality and reliability, provided such parts or components are technically separable from the whole package, the subject of the contract.

4. To provide for the transfer of technology, which is completely or partially inadequate due to obsolescence, insufficient competitive capacity, or other similar reasons, as well as to require standardization or categorization of quality, which is not compatible with the standards laid down by Spanish legislation, except in those cases in which production is intended mainly for markets where such standards and qualities are required.

5. To prohibit, overlimit the geographical scope, or expressly to refuse authorization of certain export areas in respect of the goods produced by the receiver, as well as requiring the acquisition of raw materials or components and other intermediate goods or equipment from the grantor or from suppliers nominated in the contract.

6. To fix minimum activity levels or to limit the receiver's liberty in deciding upon the features of production regarding levels, types, competitive articles, prices and periods or to provide for the grantor's right to fix unilaterally the prices of the goods produced by the receiver.

7. To make conditions in favour of the grantor's interests regarding the sale on the domestic market of the goods produced by the receiver, and likewise to force the latter to accept an exclusive relationship with the grantor or to impose the use of trademarks registered by the grantor in Spain.

8. To impose an obligation on the part of the receiver of supplying, on terms against the interest of the Spanish economy, the grantor or designated third parties with the goods produced with the assistance of the technology transferred.

9. To confer on the grantor a right, not previously acquired by other means, of intervening, controlling or making conditions regarding the receiver's business management, or his expansion or diversification strategy.

10. To impose payments which are considerably higher than those normally made in the market in similar situations, or minimum counterservices, when such payments are based on royalties proportionate to the level of activity in differing amounts.

11. To establish payments in the form of royalties in proportion to the level of production, without deducting the value of the products or components imported and incorporated in the production process, to which the acquired technology is applied, or excluding turnover corresponding to product lines not affected by such technology.

12. To impose royalty payments based on the level of activity of the receiver, where the receiver is a subsidiary of the grantor, with the latter having a participation of more than 50 per cent in the former's capital stock, or where the grantor of the technology supplies raw materials or intermediate products used in the process amounting to more than 30 per cent of the overall cost of the product, or where the receiver is a consultant or engineering concern, except, in this latter case, where a transfer of process technology, in which such consultation is continuous, is involved.

13. To fix higher prices (differences between the prices agreed in the contract and those applied in the international market by the supplier or his main competitors), regarding supplies, materials and equipment associated with the transfer of technology process, provided by the grantor or suppliers nominated in the contract.

14. To impose an inadequate duration of the contract or of its direct consequences, either by brevity or extension, or to provide for the automatic extension thereof, or to impose payments for a period beyond the validity of the patents involved.

15. So far as interpretation is concerned, to provide that the foreign language version of the contract shall prevail, in cases where the contract is signed in other languages besides Spanish.'

As will be apparent from this list, the usual clauses generally considered to be restrictive and abusive of the licensee (referred to as 'the receiver') or the industrial property rights granted are included.

In the case of contracts concerning the transfer of technology for the production or utilization of equipment for defence, special restrictive clauses can be justified on the grounds of 'national interest'.

(iii) *Renegotiation and revision of contracts*

If approval of the transfer of technology contract is refused, reasons have to be given, and the applicant for registration is given one month in which to make the necessary changes (Art 5, para 5 of the Decree). These changes, once negotiated between licensor and licensee, have to be embodied in a 'document of renunciation'. This document must be signed by the contracting parties.

Negotiations with the Ministry of Industry are not only possible, but often, in practice, advisable, to enable full explanations and reasons to be advanced for upholding and justifying any restrictions which have been challenged or questioned.

## **Royalties**

(i) *Levels and periods of authorization*

Royalty formulations and levels are considered as part of the general assessment of the transfer of technology contract by the Ministry of Industry. In particular, reference should be made to paragraphs 10, 11 and 12 of Art 3 of the Order of 5 December 1973 (reproduced above in translation).

In general, minimum royalties are not allowed, and royalty levels of 2½ per cent, and approval periods of five years appear to be the current general norms. One extension of the contract approval period of up to a maximum of five years is also generally granted, depending naturally upon the circumstances.

(ii) *Effect of acquisition of an interest in the licensee*

If the foreign licensor acquires a shareholding in the Spanish licensee during the subsistence of an approved transfer of technology contract, royalties generally continue to be payable and remittable abroad. If the foreign interest acquired is a majority one, details of all royalty and technical assistance payments and fees have to be included in the application for the necessary Government authorization. The cessation of royalty payments is generally one of the 'quid pro quos' for the granting of this authorization.

(iii) *Remittance procedures*

All transfers of royalty payments and technical assistance fees abroad must be sanctioned by the Ministry of Commerce, acting through the General Directorate of Foreign Transactions (DGTE) (Art 6, para 4 of the Decree).

Application must be made to the DGTE in respect of each transfer, and approval will be granted to and the transfer made through the delegate bank designated by the parties for the handling of payments (Art 6, para 5, *ibid*).

The DGTE must be satisfied as to the 'authenticity and regularity of transactions before granting the exchange control authorization (*ibid*).

### **Foreign Technology Transfer Register**

(i) *Registration procedure*

As mentioned above, registration of foreign transfer of technology contracts is obligatory, in order that the foreign licensor may receive his royalties and other corresponding payments abroad. The procedure is laid down by the Order of 5 December 1973. The application is made in triplicate on a prescribed form to the Director General of Industrial Promotion and Technology, and must be supported by the following documents:

- (a) a transfer of technology contract;
- (b) the power of attorney of the applicant (if applicable);
- (c) a copy of the establishment registration in the Industrial Registry;
- (d) a copy of the management resolution authorizing foreign investment (if applicable);
- (e) the complete texts of the agreed quotations and technical specifications, in the case of consultation or engineering services; and
- (f) all other relevant documents required by the Ministry of Industry (Arts 1 (3), (4) and 5 of the Order of 5 December 1973).

In the case of consulting contracts for foreign engineering surveys and technical services, a certificate, issued pursuant to Decree No 617/1968, must also be filed. This certificate is to the effect that the services contemplated by the contract are not available from Spanish companies. The applicant need only approach two such companies, which are registered in the Special Section of the Consultant Company and Industrial Engineering Registry, created by the above Decree, and which operate in the same field as the contract (Art 1 (6) of the Order of 5 December 1973).

The application together with the supporting documents is filed in the Gen-

eral Directorate of Industrial Promotion and Technology ('Dirección General de Promoción Industrial y Tecnología') of the Ministry of Industry. The approval is to be notified to the applicant and the DGTE within 10 days of its being granted. Copies of the application and supporting documents, together with copies of any reports from other interested Ministerial Departments, must also be sent to the DGTE at the same time (Art 4 (1) of the Order of 5 December 1973). In any event, the decision must also be notified to other interested Ministries (Art 4 (4)).

(ii) *Annotations*

Instead of refusing registration, the Ministry of Industry may register the Transfer of Technology Contract with a note, detailing the restrictive clauses which are considered to be questionable. In such a case, this qualified registration may result in the refusal of the Ministry of Industry to grant any 'administrative authorization' required for the installation, extension or transfer of the industry concerned (Art 7, para 1 of the Decree).

Amongst the Spanish industries requiring such authorizations are the public utilities, extractive and pharmaceutical industries.

(iii) *Modifications and renewals*

Any modification or variation in the original terms and circumstances relating to the approved and registered transfer of technology contract must be notified to the Ministry of Industry within two months, and the changes duly approved (Art 8 of the Decree). Likewise any extensions or renewals of the contract must be the subject of a fresh application for approval and registration (*ibid*).

### **Registration in the Investments Registry**

The foreign investor will also be obliged to register his approved transfer of technology contract in the Investments Registry of the Ministry of Commerce pursuant to Art 28 of the Foreign Investment Regulations. This type of investment is classified as a direct investment, and therefore, declaration is made on Form TE1. Likewise, the foreign investor will also be required, in due course, to declare the liquidation of this investment on Form TE2.

### **Research and development grants**

Spanish companies, including those with foreign capital participation, are

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eligible to apply for Government grants to cover up to 50 per cent of the cost of approved R & D projects. Applications are processed by the Advisory Commission on Scientific and Technical Research ('Comisión Asesora de Investigación Científica y Técnica') in Madrid.

If the research project, when completed, produces income, the grant must be repaid. If not, no repayment will be necessary.

# Chapter 12

## Miscellanea

### Imports and exports

#### (i) *Generally*

Spain is a member of the General Agreement on Tariffs and Trade ('GATT'), and classifies goods for customs purposes according to the Brussels nomenclature. In June 1970, a Preferential Trade Agreement was signed with the EEC, under which tariffs on trade between Spain and member countries are being progressively reduced. Licences have to be obtained for all imports, including capital equipment of foreign origin contributed to the capital of a Spanish company by way of investment, and all exports. Under an agreement signed in October 1970 with the EEC, a frontier charge is levied on certain agricultural products, in order to bring the export prices of those products up to the levels fixed under the Common Agricultural Policy. In view of the general policy of the Spanish Government to promote import substitution by local manufacture and sales, it is becoming increasingly difficult for enterprises to maintain or increase their penetration of the Spanish market by sales from abroad.

On 26 June 1979, Spain signed a Preferential Trade Agreement with the European Free Trade Association. Under this Agreement, which is due to come into force on 1 January 1980, trade between Spain and EFTA member countries will be liberalized by a reduction of tariffs, with the ultimate aim of achieving almost unfettered trade in industrial products by the time Spain becomes a full member of the EEC.

#### (ii) *Imports*

Spain distinguishes three types of imports, as follows:

- (a) 'liberalized' ('comercio liberalizado');
- (b) 'globalized' ('comercio globalizado'); and
- (c) 'specialized' ('regímenes especiales').

Under the 'liberalized' system, certain goods, which are included in a list published periodically by the Ministry of Commerce in the Official State Gazette, may be freely imported. Although an import licence must be obtained from the Ministry of Commerce, such licences are granted almost automatically, but

## *Chapter 12 Miscellanea*

administrative delays are encountered on occasion. Most goods fall within this category. Import licences are applied for on special forms issued by the Ministry of Commerce, and there is a particular form for each import system.

Customs duties are levied on an 'ad valorem' basis, and goods are considered to have been officially imported once the corresponding import duties have been paid or guaranteed, and a customs clearance certificate ('certificado de despacho') has been issued.

In general, imports must be paid for within 90 days of being officially imported. The following documentation is needed:

- (a) import licence;
- (b) bill of lading or 'CMR';
- (c) commercial invoice;
- (d) certificate of origin and/or quality;
- (e) customs clearance certificate ('certificado de despacho de aduana');
- (f) certificate of customs value ('certificado de valor en aduana');
- (g) insurance policy (in the case of a 'CIF' transaction);
- (h) declaration of customs debt ('declaración de adeudo'); and
- (i) packing list.

Foreign exchange needed to cover the cost of imports may be bought forward.

### *(iii) Exports*

All goods to be exported from Spain must be covered by an export licence issued by the Ministry of Commerce. In general, such licences are granted on application, except in the case of goods needed for the national economy.

Export licences are of three kinds:

- (a) 'global' ('licencias globales');
- (b) 'individual' ('licencias por operación'); and
- (c) 'special' ('licencias especiales').

A global export licence allows an individual or a company to export any quantity of certain goods to a certain destination during one year. Although originally established for agricultural products, they are now available in respect of practically any kind of goods. Under the 'globalized' system, certain goods are subject to 'quotas', which are usually fixed every six months. Details are likewise published in the Official State Gazette.

Under the 'specialized' system are included goods subject to temporary admittance (eg samples for an exhibition); 'drawback' (ie repayment of duty on re-exportation); replacement ('reposición'); importation without transfer of foreign exchange ('importación sin cesión de divisa'); State business ('comercio de Estado'); and goods imported under bilateral agreements.

Under the 'reposición' system, exporters declare, when exporting, the

imported ingredients of those goods and apply for exemption from import duties on such materials. Exporters themselves need not necessarily have imported the material being exported; neither are they required to re-export the material imported under the replacement permission.

Under the 'draw-back' system are included goods, which are imported in order to be incorporated in Spanish goods, and which are subsequently exported.

Under 'State business' are included goods which, for various policy reasons, are imported by the Public Administration. Such goods include certain basic agricultural products, which are considered to be of 'primary necessity', and whose prices the Government wishes to control.

Under the system of importation without transfer of foreign exchange are included those goods, which have been imported into Spain, in order to be transferred or assigned to an individual or a company, as partial or complete payment for some other purpose or concept. An example would be the importation of foreign goods in exchange for the issue of shares in a Spanish company.

An individual export licence, as its name suggests, is one which allows an individual or a company to export certain goods, or a certain quantity of such goods, for one time only. Special export licences are granted in respect of particular items, for example, films and weapons.

Export procedure is laid down in Circular No 604/68 of the Ministry of Commerce of 21 December 1968.

As to the fiscal and other incentives and facilities available to Exporters, see the section on *Export Incentives*, at p 27 above.

## **Commercial contracts**

### **(i) Generally**

Under Spanish Law, an enforceable contract only exists if the following elements are present (Art 1.261 of the Spanish Civil Code):

- (a) consent of the parties ('consentimiento de los contratantes');
- (b) certainty of object ('objeto cierto'); and
- (c) consideration ('causa de la obligación').

There is complete freedom of contract, provided the contracts are not contrary to the Law, morals or public order ('orden público') (Art 1.255, *ibid*).

In general, commercial contracts ('contratos mercantiles'), which may be defined as those contracts that arise in the course of the exercise of a business activity, are regulated by the Spanish Commercial Code. As such, they are not

generally subject to the strict requirements of form prescribed by the Civil Code. They may thus be formed without any particular formality under the general rule established by Art 51 of the Commercial Code.

To facilitate proof, however, it is generally advisable to reduce them to writing, in what are known as 'private agreements' ('contratos privados'). Such agreements have legal effect only as between the contracting parties; whereas, contracts recorded in a 'public deed' ('escritura pública') also affect third parties. A private agreement can always be raised to a public deed before a Spanish notary public, on payment of the corresponding stamp duty and fines for late stamping.

Commercial contracts made by correspondence are completed from the moment the acceptance is sent, whereas, civil contracts only give rise to legal obligations on receipt by the other party of the letter of acceptance (Art 54 of the Commercial Code; Art 1.262 of the Civil Code). Compensation awarded by Spanish courts for breach of commercial contracts tends, in practice, to be comparatively on the low side.

(ii) *Agency Contracts*

In appointing an agent ('representante') to conclude contracts with third parties in the name of and for the account of a named principal ('representación directa'), the agency agreement should be made by public deed ('escritura pública') before a Spanish notary public and registered in the Commercial Registry, in order to have full legal effects. The terms of the agency are a matter of agreement between the parties, subject to the general limitations of contract mentioned in the preceding section.

(iii) *Distributorship contracts*

The appointment of a distributor ('distribuidor'), that is an independent businessman selling in his own name and for his own account the goods of a third party, eg a manufacturer, can be made by private contract.

The distributorship agreement should provide for notice of termination on both sides, and also for cancellation in certain defined circumstances, eg, persistent breaches of the terms of the agreement by the distributor. Provision should also be made in the agreement for safeguarding the industrial property rights of the manufacturer, which might otherwise be lost to the distributor.

If the distributorship agreement is validly terminated, the distributor will not generally be entitled, under Spanish Law, to any compensation for loss of the distributorship, even though he may have made, to the knowledge of the manufacturer, investments in property and personnel for the purposes of the distributorship.

To avoid any problems of proving the distributorship arrangements or any

difficulties of raising any action through the courts to enforce them, it is advisable to make the distributorship agreement in a public deed before a Spanish notary.

## **Banking**

### **(i) *Generally***

Foreign investments made in companies dedicated to the business of banking are subject to the provisions of the special legislation regulating this activity ('Ley de Ordenación Bancaria'). The Foreign Investment Regulations generally apply to such investments to the extent that such special legislation does not provide to the contrary (First Final Provision of the Foreign Investment Regulations).

Spanish banking law distinguishes between commercial banks, industrial banks, and savings banks ('cajas de ahorros'). Industrial banks, which were set up in 1964, approximate to merchants banks. The distinction between commercial and industrial banks is now largely fiscal, although industrial banks are mainly involved in the promotion and financing of industrial and agricultural enterprises. The entire banking system is subject to strong controls exercised by the Bank of Spain (Banco de España), which acts as the central bank.

In the case of already existing industrial banks, foreign individual investors are allowed to participate in their capital up to 15 per cent (Art 3 (5) of Decree No 2246 of 9 August 1974). Foreign participation requires the prior permission of the Bank of Spain. The savings banks are a peculiarly Spanish institution and foreign investment is restricted, although permitted subject to pre-conditions. In the case of already existing commercial banks, the foreign capital participation may not exceed 15 per cent, and the chairman and two-thirds of the members of the board of directors must be Spanish. The shareholders must necessarily be individuals (Decree No 63 of 13 January 1972). Again, foreign participation needs the prior consent of the Bank of Spain.

Foreign banks may open representative offices ('oficinas de representación') on obtaining an authorization from the Minister of Finance, acting on a proposal of the Bank of Spain and a report from the Superior Banking Council ('Consejo Superior Bancario'). These offices may carry out purely advisory and informative activities relating to banking, financial, commercial and economic questions in general, but are not permitted, under any circumstances, to carry out credit, deposit or financial transactions within Spain.

### **(ii) *Creation of new foreign banks***

Foreign banks may be established in Spain under, to the extent, and on the

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conditions laid down by the Royal Decree No 1388 of 23 June 1978. This Decree applies equally to commercial and industrial banks.

The Decree implements Art 7 (d) of Law No 2 of 14 April 1962, which provides that 'there shall be controlled by the Government, through the Ministry of Finance, the establishment of foreign banks, fixing, where applicable, the precise limitations, and bearing in mind, to the extent that this is expedient, the principle of reciprocity'.

Under Art 1 of Decree No 1388 of 1978, foreign banks may establish in Spain:

- (a) representative offices;
- (b) subsidiary banking companies with 100 per cent foreign capital participation; and
- (c) branches.

As to the creation and operation of representative offices, see section (i) above.

Foreign banks wishing to establish subsidiaries and/or branches must first obtain an authorization from the Council of Ministers, acting on the advice of the Minister of Finance, the Bank of Spain and the Superior Banking Council. In deciding whether or not to grant the authorization, the Council of Ministers must have regard to the national economic interest and the principle of reciprocity in the applicant's country of origin. The subsidiary must then comply with the following conditions:

- (a) assume the form of a Spanish joint stock company ('sociedad anónima') created by 'simultaneous foundation';
- (b) maintain a minimum capital of 750 million pesetas, fully subscribed on formation; and
- (c) pay up 50 per cent of the issued capital on formation, and the balance within two years.

The capital must be paid up in cash, by currency exchange, by debits from foreign pesetas accounts for payment in Spain, or in convertible pesetas. Furthermore, the capital must be shown in separate accounts and cannot be disposed of without the permission of the Minister of Finance (Art 3).

The shares may only be transferred or pledged with the prior authorization of the Bank of Spain, and this limitation must be stated in the bye-laws and on the share certificates (Art 4).

Spanish banks controlled by foreign investors wishing to open branches are restricted to three branches, and their main office ('oficina principal') shall be considered to be one of these (Art 7 (b)).

Their operations are subject to the same general controls as those applicable to Spanish banks. Additionally, they are subject to specific controls on 'outside

financing' on the domestic market, which, without express authorization from the Bank of Spain, is limited to 40 per cent of their investments plus their 'cash coefficient' ('coeficiente de caja'); the range of their portfolios of stocks; and to inspection by the Bank of Spain once a year during the first five years of their existence (Art 7). Financing on the Spanish interbank market is not, however, restricted. Remission of profits abroad is subject to the provisions of the Foreign Investment Code.

Their banking licence may be revoked by the Council of Ministers in cases of breaches of 'particular gravity' of the Banking Regulations.

The Spanish branches of foreign banks must comply with the following requirements:

- (a) the branch name must be the same as the parent company's corporate name;
- (b) the branch must be assigned with capital of at least 750 million pesetas;
- (c) all liabilities and/or responsibilities of the branch must be covered by the parent company;
- (d) the authorization obtained to establish the branch cannot be transferred to third entities and/or individuals;
- (e) the branches so authorized are subject to the same rules on distribution of dividends as a pure Spanish bank in connection with the repatriation of profits, share of expenses, or otherwise, to the parent company ('Casa Matriz') (Art 8).

## **Insurance**

Foreign investment in Insurance Companies is similarly subject to special legislation.

### *(i) Opening of branches*

In order to operate in Spain, a foreign insurance company must obtain a special authorization from the Ministry of Finance, granted under the provisions of the Law of Private Insurances of 16 December 1954.

Under Art 5 of this Law, the following documents must accompany the application for authorization:

- (a) a declaration of submission to Spanish Law ('declaración de sometimiento');
- (b) an official certificate of having functioned legally in the country of origin;

- (c) the balance sheets and profit and loss accounts for the last five financial years; and
- (d) particulars of the person who will act as legal representative in Spain, and the address from which the business will be centralized.

All these documents must be submitted in Spanish. If the application is granted, registration in a special Register maintained by the General Directorate of Insurances and Savings ('Dirección General de Seguros y Ahorro') will be required. They will also be required to be constituted in their own country with a capital equivalent to that legally required by Spanish insurance companies, and also to deposit 2 million pesetas in Spain for 'general purposes' (Art 8).

In general, they will be able to write the same kind of insurance business in Spain as Spanish insurance companies, and will be subject to the general requirements of Spanish Insurance Law.

*(ii) Investments in Spanish insurance companies*

It would appear that foreign participation in Spanish companies conducting insurance business in Spain is subject to the general 50/50 rule, following the repeal of the Decree Law on Foreign Capital Investments in Spanish companies of 27 July 1959, under whose third article such participation was unlimited. The question is not definitely settled, however, since Art 2 of the Insurance Regulations of 2 February 1912, in defining a Spanish insurance company, provides that the amount of foreign participation is immaterial. Nevertheless, the better and safer view is that participation is limited to 50 per cent, and majority participation is, therefore, subject to prior administrative authorization.

## **Restrictive practices and monopolies**

*(i) Restrictive and abusive practices*

Restrictive agreements and practices are regulated by the Restraints of Competition Act of 20 July 1963. Under Art 1 (1), agreements, decisions or conduct consciously parallel, which have the aim or produce the effect of 'preventing, misrepresenting or restricting competition in all or part of the national market' are prohibited.

Article 2 (1) prohibits abusive practices ('prácticas abusivas') by one or several companies, by which they exploit their dominant position over the whole or part of the market without justification and damage the national economy, the interests of consumers, and the position of other competitors.

Article 3 illustrates the kinds of agreements and practices within the ambit of the law. Amongst other things, the following are caught:

- (a) price fixing (directly or indirectly);
- (b) production, distribution and technical development limitations;
- (c) commercial policies designed to eliminate competitors;
- (d) discriminatory conditions; and
- (e) unrelated tying clauses.

This article, it should be noted, is not exhaustive but merely illustrative.

Under Art 5, restrictive agreements and practices otherwise caught under Art 1 of the Law, may be exempted by a body known as the Competition Defence Tribunal ('Tribunal de Defensa de la Competencia'), if certain conditions are satisfied. These conditions are substantially similar to the corresponding requirements for exemption of contracts and concerted practices under Art 85 (3) of the Treaty of Rome establishing the EEC. If exemption is granted, the agreement or practice concerned must be registered in a special Registry, known as the Register of Restrictive Practices, which is open to public inspection (Arts 5 and 21).

A body known as the Competition Defence Department ('Servicio de Defensa de la Competencia'), which is part of the Ministry of Commerce, has the general responsibility of investigating, on its own initiative or on a complaint from any person, whether interested or not, the possible existence of any practices prohibited by the Law (Art 22 (1)). Another body, called the Competition Defence Council ('Consejo de Defensa de la Competencia'), is charged with the principal responsibility of keeping the operation of the Law under review, by studying and analysing the degree of competition in the various economic sectors, and proposing to the Government any legal measures required to remove any underlying causes of restraints of competition found.

Despite all this detailed legislation and its elaborate enforcement machinery, a rather laissez-faire attitude on the part of the authorities in relation to competition control has, in general, prevailed to date. As a result, however, of Spain's application to join the EEC, more activity in this field can be expected in the future.

#### *(ii) Monopolies*

Mergers, which result in or involve an enterprise having control of 30 per cent or more of the national market in any given product or service, must be registered in the Restrictive Practices Register within one month of their consummation (Art 21 (7) of the Law of Restraints of Competition). Having thus come to the attention of the authorities, their trading practices, and especially their pricing policies, can be expected to be subjected to periodic scrutiny.

## **Arbitration**

### *(i) General substantive and procedural requirements*

Private arbitrations in Spain are regulated by a Law of 22 December 1953, which has the declared aims of simplifying and making the settlement of disputes by this process both swift and effective. It replaces the earlier provisions of the Civil and Commercial Codes on this subject. It does not apply to arbitrations under Public Law, whether ‘international, corporative, syndical or otherwise’.

Arbitration (‘arbitraje’) is defined by Art 2 of the Law as ‘the institution by which one or more persons settle a dispute referred to them by others who previously undertake to accept the decision of such person or persons’. Arbitration shall be either in accordance with the Law (‘Arbitraje de Derecho’) or of Equity (‘Arbitraje de Equidad’) (Art 4). In the latter case, the decision of the arbitrators (‘arbitros’) will be based on ‘the best of their knowledge and belief’. Unless stipulated by the parties to the contrary in their arbitration clause or agreement, they will be deemed to have chosen arbitration at law (*ibid*).

In general, arbitration must be established by contract in the form of a public deed (Art 5). A general agreement, however, to refer disputes to arbitration, known as a ‘preliminary arbitration contract’ (‘contrato preliminar de arbitraje’) must satisfy the normal contractual requirements of capacity, object and form; it can be enforced judicially in the event of either of the parties refusing to appoint an arbitrator and carry out any other acts necessary for the arbitration to proceed. The process is known as ‘judicial formalization of the commitment’ (‘formalización judicial del compromiso’) (Art 9). All matters of private law, on which the parties may validly decide, may be the subject of arbitration (Art 14).

The validity of the reference to arbitration depends upon there being an unresolved dispute between the parties. If the matter is, therefore, *res judicata* (ie finally settled by the courts), the reference to arbitration is null and void (Art 15).

The arbitrators in an arbitration at law must be practising lawyers. In arbitrations in equity, however, the parties may appoint whomsoever they like, provided they are ‘natural persons enjoying full civil rights and are literate’ (Art 20). The number of arbitrators must be one, three or five persons (Art 21), who must be appointed in all cases by common consent (Art 22).

Arbitration at law follows a set procedure involving submissions by the parties of written claims and counter-claims, the production of evidence, and an actual hearing before the arbitrators, at which the parties may be legally represented (Art 27). Arbitration in Equity is less formal, although the parties must be given an adequate opportunity of being heard and submitting

such evidence as they may deem necessary (Art 29). In both cases, the award ('laudo') must be given on the basis of a simple majority and before a notary public.

In the case of an award given in an arbitration at law, the only right of appeal lies to the First Division of the Supreme Court ('Sala Primera del Tribunal Supremo') on the ground of breach of law or formal procedure ('recurso de casación') (Art 28). In the case of an arbitration in equity, the award may only be upset in an appeal for annulment ('recurso de nulidad') before the First Division of the Supreme Court. Once the award has become final, it may be executed under the Procedural Law for the Enforcement of Judgments (Art 31).

#### (ii) *Form and content of arbitration clause*

The arbitration clause, known as a 'contract of commitment' ('contrato de compromiso') to arbitration, must be recorded in a public deed (Art 5); if contained in a private contract, such contract must first be raised to a public deed before a Spanish notary public, in order to establish the arbitration (Art 16). Alternatively, the commitment may be enforced by the process of 'judicial formalization' (*ibid*). The execution of the commitment to arbitration precludes the courts and tribunals from having 'cognizance' of the dispute referred to arbitration (Art 19).

In practice, it is advisable to stipulate in the arbitration clause the kind and place of arbitration; the time within which the award must be made; the number of arbitrators and the formula of their appointment (eg 'three lawyers, one designated by each of the parties, and the third designated by both of them or, in default of agreement, by the College of Abogados of the place of arbitration'); and the time within which the reference to arbitration must be made.

#### (iii) *International arbitrations*

Spain is a signatory to several treaties concerning the recognition and enforcement of foreign arbitration awards, including the New York Convention of 10 June 1958. The settlement of disputes arising under International Commercial Contracts, by arbitration under the Rules of the International Chamber of Commerce in Paris, is recognized, and awards made by this body are, in principle, enforceable in Spain. To obtain this enforceability, however, the formalities of the arbitration and the making of the award must first be approved by the Supreme Court of Spain, under the procedure laid down in any applicable bi-lateral treaty, or, otherwise, under a special process known as 'Exequatur'.

In practice, therefore, foreign arbitrations are not advisable if they are to be enforced in Spain, because of the lengthy and tedious approval procedures

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referred to above. It is wise, therefore, to submit to Spanish arbitration, and appoint, in cases involving an international element, a foreign arbitrator residing in Spain, eg the President of the American Chamber of Commerce in Spain.

# Appendix I

## REFORMULATED TEXT OF THE LEGAL PROVISIONS ON FOREIGN INVESTMENTS IN SPAIN

as approved by Decree No 3021 of 1974

### CHAPTER I

#### General provisions

Art 1.—1. For the purposes of the present Law, foreign investments shall be those investments made in Spain by private foreign individuals or legal entities, wherever resident, as well as by Spaniards residing abroad.

2. The said individuals and legal entities may invest capital in Spain in accordance with the requirements laid down by Spanish Law and on the same conditions as resident Spaniards, subject to the limitations established in this Law or in special Laws.

3. In the same way, for the purposes of this Law, investments by Spanish companies with foreign participation in their capital, made through the incorporation of other Spanish companies or through the acquisition of shares or other interests in such companies, shall also be considered as foreign investments up to the percentages to be established.

Art 2.—1. Foreign investments may be carried out

(a) By means of foreign monetary contributions, in the cases and forms to be determined in the Regulations.

(b) By the direct contribution to a

company of capital equipment of foreign origin.

(c) By the direct contribution to a company of foreign technical assistance, patents and manufacturing licences.

(d) By the contribution of any other means, subject to prior government authorization.

2. Foreign investments may also be made by the use or contribution of domestic capital having the status of 'blocked pesetas' or ordinary pesetas.

Art 3.—Foreign investments may be carried out in the following ways:

1. Participation in a Spanish company.

2. Execution of a contract of joint accounts with an individual resident in Spain or with a Spanish legal entity.

3. Conduct of business activities in Spain by non-resident individuals or by foreign legal entities through the creation of branches or establishments.

4. Acquisition of government stock, private fixed-income securities or participations in Unit Trust Companies.

5. Acquisition of rural or urban real estate.

6. Any other way not contemplated in the preceding paragraphs, subject to prior government authorization.

## CHAPTER II

### Participations in companies. Direct investments

Art 4.—1. The provisions of this chapter shall be applicable to those investments which are intended to be made through participation in a Spanish company, in accordance with the provisions of art 3, para 1.

2. However, investments made through the acquisition of securities admitted to official quotation on the Stock Exchange shall be governed by the provisions of chapter III.

Art 5.—1. Foreign investments subject to the provisions of this chapter shall require prior government authorization if, as a consequence of the investment, the foreign participation exceeds 50 per cent of the capital of the Spanish company, or such percentage of unrestricted investment as is established in the special legislation.

2. Once the government authorization has been obtained, in accordance with the provisions of this article, prior authorization shall again be required for any amendment of the corporate purpose, the increase in capital or any increment in the percentage of foreign participation authorized, as well as for the modification of any condition which the previous government authorization may have laid down.

Art 6.—The Council of Ministers may authorize, in general, foreign investments over and above the 50 per cent limit established in the preceding article, with respect to companies engaging in certain types of activity.

Art 7.—For the purposes of determining the percentage of foreign

investment in a company, in the manner to be established by the Regulations, account shall be taken of the investment made therein by any other Spanish company which has, in turn, foreign participation in its capital, as well as of the investments made by the contribution of domestic capital referred to in art 2, para 2, of this Law.

Art 8.—Spanish companies with foreign participation may have recourse to local and foreign credit on the conditions to be determined in the Regulations.

Art 9.—1. The holders of foreign investments coming under the provisions of this chapter, which have been carried out with foreign capital in accordance with the provisions of art 2, para 1, shall enjoy the right to transfer abroad, without any limitation whatsoever as to amount, the profits and dividends lawfully distributed and the proceeds of the sale of subscription rights of securities. They shall also enjoy the right to transfer abroad both the capital invested and any capital gains obtained on the disposal of the investment.

2. The Administration may only refuse the right of transfer when, following official verification, it is found that the profits and capital gains have been obtained by infringement of the legal provisions on foreign investment or the conditions imposed by the government authorization, if any.

## CHAPTER III

### Portfolio investments. Acquisition of securities admitted to official quotation on the Stock Exchange

Art 10.—The provisions of this chapter shall be applicable to those

investments which are intended to be made by means of the acquisition of shares admitted to official quotation on the Stock Exchange, as well as the acquisition of government stock, private fixed-income securities or participations in Unit Trust Companies, pursuant to the provisions of art 3, paras 1 and 4, of this Law.

Art 11.—The foreign investments referred to in this chapter may be freely made, up to the percentages to be determined in the Regulations.

Art 12.—1. The holders of foreign investments referred to in this chapter, which have been carried out in accordance with the provisions of art 2, para 1 (a), may transfer abroad:

(a) The interest or dividends lawfully distributed and the proceeds obtained on the sale of subscription rights on the Stock Exchange.

(b) The proceeds obtained on the sale of the securities on the Stock Exchange.

2. If the disposal of the investment is made at a rate higher than the official rate, the transfer abroad of the proceeds shall be accorded the treatment contemplated in the case of the investments regulated in the preceding chapter.

#### CHAPTER IV

##### **Business activity of non-residents**

Art 13.—Foreign investments intended for the creation, functioning and operation in Spain of establishments of branches of foreign companies, or operations carried out by non-resident individuals, shall be subject in all cases to the provisions of this

Law and shall at all times require government authorization.

Art 15.—Non-resident individuals and branches and establishments of foreign companies in Spain, may have recourse to local credit subject to prior government authorization.

#### CHAPTER V

##### **Other forms of investment**

Art 15.—Prior government authorization shall be required for investments intended to be made by means of the execution of a contract of joint accounts, or in any form not contemplated in the foregoing chapters.

#### CHAPTER VI

##### **Special provisions governing the acquisition of real estate by foreigners and non-resident Spaniards**

Art 16.—1. Spanish or foreign individuals resident abroad and foreign legal entities may acquire — subject to the limitations and requirements established in the Law — rural and urban real estate providing the price thereof is paid by means of the foreign monetary contribution referred to in art 2, para 1 (a), of this Law.

2. The Ministry of Commerce may authorize, upon such conditions as may be established in general, the use by persons not resident in Spain of 'blocked' or 'domestic' pesetas for the acquisition of urban real estate.

Art 17.—Where the acquisition of real estate is carried out by foreigners,

whether or not resident, it shall be subject to the legislation issued for reasons of strategy or national defence, if the real estate in question is located in any of the areas of national territory specified in such legislation.

Art 18.—1. Rural estate located in Spanish territory the area of which exceeds four hectares in the case of irrigated land or twenty hectares in the case of unirrigated land, or real estate having a lesser area but which, together with that already owned by the persons intending to acquire it, makes up an area exceeding the aforementioned, may not be transferred by purchase, exchange, public or private bidding, donation or, in general, by any act of assignment *inter vivos*, to foreign individuals or legal entities without prior government authorization. Such authorization shall also be required for the establishment or assignment of rights or encumbrances on the said real estate in favour of the aforesaid persons.

2. Entry at the Property Registry shall be of the essence for the acts and contracts referred to in the preceding paragraph and they shall not be effective in any respect until duly registered.

Art 19.—Without prejudice to the application of the provisions of arts 17 and 18 of this Law, the acquisition of real estate by foreign individuals resident abroad and by foreign legal entities, shall be governed by the provisions of chapter IV when the acquisition constitutes of itself a business activity proper to the holder of the investment.

Art 20.—The declaration of 'national tourist interest', pursuant to the provisions of Law 197/1963 of 28

December, shall automatically carry with it the granting of the authorization required in art 18 of this Law, for the acquisition of rural real estate in excess of four hectares of irrigated land or twenty hectares of unirrigated land, as well as the authorization contemplated in art 17, the latter being without prejudice to the easements and conditions established in the legislation enacted for reasons of strategy and national defence.

Art 21.—Except as provided in arts 17 and 18, resident foreign individuals may acquire real estate in Spain in ordinary pesetas on the same conditions as resident Spaniards.

## CHAPTER VII

### Registration of foreign investments

Art 22.—The following are under the obligation of declaring foreign investments, and the disposal thereof, for recording in the Register of Investments of the Ministry of Commerce, in the cases and forms to be determined in the Regulations:

(a) The holders of the foreign investment.

(b) The public authenticating officers (e.g., notaries or stockbrokers) certifying any of the transactions involved.

(c) The banks in which the foreign receipts and payments deriving from the foreign investment are to be domiciled, and through which the relevant transactions are to be carried out.

Art 23.—The right of transfer abroad granted by this Law to the holder of foreign investments shall only apply as from the time such investments have been properly

declared for entry in the Investments Register.

Art 24.—The Directorate General of Foreign Transactions, through the Investments Register of the Ministry of Commerce, shall supervise the fulfilment of the provisions of this Law, especially as regards the percentages of foreign participation, direct or indirect.

## CHAPTER VIII

### Competence and procedure

Art 25.—It shall rest with the Council of Ministers:

1. To authorize foreign investments where the foreign interest exceeds 50 per cent of the capital of the Spanish company.

2. To authorize investments by Spanish companies with foreign participation, in other Spanish companies, where such investment exceeds 50 per cent of the capital of the latter, computed as provided in development of art 7.

3. To authorize foreign investments regardless of the percentage, when expressly so provided by the special legislation applicable thereto.

4. To authorize in general foreign investments over and above the limit of 50 per cent, in companies engaged in certain types of activity.

5. To authorize, where appropriate, the amendment of the corporate purpose, the increase in capital or an increment in the percentage of foreign participation, whenever the foreign investment has required the authorization of the Council of Ministers.

6. To authorize the amendment of

the conditions, if any, imposed upon the foreign investment by the authorization of the Council of Ministers itself.

7. To authorize foreign investments when intended to be made in companies rendering public services or utilities, whenever the foreign investment exceeds 25 per cent of the capital of the company.

8. To authorize the transfer *inter vivos*, in favour of foreigners, of the ownership of, the establishment or assignment of mortgages on, rural real estate located in Spanish territory the area of which exceeds four hectares in the case of irrigated land, or twenty in the case of unirrigated land.

9. In general, all such attributions as are vested therein by this Law and the Regulations.

Art 26.—The powers not assigned to the Council of Ministers shall rest with the Ministry of Commerce, unless expressly attributed to other Ministerial Departments. The Regulations shall determine the powers that may be exercised by the Directorate General of Foreign Transactions and the Foreign Investments Board.

Art 27.—The procedure for the granting of prior government authorization, in those cases requiring the same, shall be established in the Regulations.

## CHAPTER IX

### Regulation of foreign investments in specific activities

Art 28.—Companies whose activities are directly related to national defence are excluded from this Law.

Art 29.—1. Prior government authorization shall be required for foreign investments intended to be made in companies providing public services or utilities, whenever the foreign investment exceeds 25 per cent of their capital stock.

2. Government authorization shall also be required for investments intended to be made in companies operating in sectors or activities which are subject to special regulations, if as a result of the investment the foreign participation in the company concerned exceeds the percentage of unrestricted investment established in the specific legislation applicable thereto.

#### FINAL PROVISIONS

First.—Foreign investments made in companies engaging in the activities indicated below shall be governed by their specific provisions, without prejudice to the application of this Law in all respects not therein regulated:

(a) Firms or companies possessing or operating studios, laboratories or, in general, establishments for the production of films in Spain, as well as those engaged in productions of this type, or in 'dubbing' or other similar activities.

(b) Companies operating local broadcasting stations.

(c) Companies publishing newspapers or magazines.

(d) News agencies.

(e) Publishing companies.

(f) Mining companies.

(g) Companies engaged in the exploration and exploitation of hydrocarbons.

(h) Banks.

(i) Insurance companies.

(j) Companies engaged in oil refining.

(k) Air transport companies.

(l) Shipping companies.

(m) Concessions for the utilization of public water, granted to foreigners and foreign companies.

(n) Companies contracting work, services and supplies with the State or Autonomous Agencies.

Second.—In accordance with the provisions of art 6, paras 3 and 4, of the preliminary chapter of the Civil Code, any acts carried out in contravention of this Law, or performed in fraud thereof, are declared null and void by operation of Law.

Third.—Administrative acts performed in application of this Law may be the subject of the relevant appeals, including a contentious-administrative appeal, in accordance with the provisions of the Law governing the contentious-administrative jurisdiction.

Fourth.—The Government shall, within a term of six months, publish the relevant table of provisions relating to foreign investments in Spain which remain in force, or are modified or repealed by this Law.

Fifth.—The Government shall, within a term of one month, publish the Regulations on Foreign Investments in Spain, for the development of this Law.

Sixth.—Any provisions of equal or lower rank which contradict the provisions of this Law are hereby repealed.

#### ADDITIONAL PROVISIONS

First.—The International Finance Corporation may make investments in Spain in accordance with the provisions of Decree-law 2/1962, of 25 January.

Second.—Authorizations for investment in Spain, granted to

foreign private legal entities, shall lapse in the event the legal entity so authorized is nationalized in its country of origin, unless the provisions of the following additional provision are applicable.

Third.—Governments, and all official agencies of foreign powers, shall require special authorization in order to make foreign capital investments in Spain.

The Government may grant such authorization where there exists diplomatic reciprocity or where the foreign interest does not involve the effective control of the Spanish company or firm.

Fourth.—1. The persons listed in article 1 who, by testate or intestate succession, donatio mortis causa or acts of a similar nature, acquire the ownership of any of the investments contemplated in article 3, shall require prior government authorization in order:

(a) To transfer such investments to any of the persons listed in article 1.

(b) To transfer abroad the profits and income produced thereby.

(c) To transfer abroad the capital so acquired and the proceeds of its disposal.

2. The authorizations referred to in paragraph 1 of this additional provision shall not be necessary in the event the deceased or transferor already satisfies the conditions of foreign investor defined in article 1 of this Law, and the investment has been made in accordance with article 2 (1).

## INTERIM PROVISIONS

First.—Individual investment situations existing prior to the effective date of this Law, which have arisen under the provisions applicable in each instance, shall be respected provided they have not been brought about in fraud of the Law.

Second.—Branches of foreign individuals or legal entities operating in Spain without government authorization shall notify to the Ministry of Commerce such particulars relating to their activity as are specified in the Regulations.

## REGULATIONS ON FOREIGN INVESTMENTS IN SPAIN

as approved by Decree No 3022 of 1974

### CHAPTER I

#### General provisions

Art 1.—1. For the purposes of these Regulations, foreign investments shall be those investments made in Spain by private foreign individuals or legal entities wherever resident, and by Spaniards resident abroad

(Art 1 (1) of the Law on Foreign Investments).

1.1 Spaniards shall prove their non-resident status by means of a certificate from the Spanish consular authority, certifying their inclusion on the Residents' Register of the Consulate in question, issued not more than two months previously.

1.2 Foreign individuals shall

prove their status as residents or non-residents, as the case may be, either by means of the residence card provided for in Decree 522/1974 of 14 February, or by means of a negative certificate issued by the Directorate General of Security not more than two months previously.

2. The above-mentioned individuals and legal entities may invest capital in Spain in accordance with the requirements laid down by Spanish law and on the same conditions as resident Spaniards, subject to the limitations established in these Regulations or in special laws (Art 1 (2), LFI).

3. In the same way, for purposes of these Regulations, investments by Spanish companies with foreign participation in their capital, made through the incorporation of other Spanish companies or through the acquisition of shares or other interests in such companies, shall also be deemed to be foreign investments up to the percentages established in Art 7 (Art 1 (3), LFI).

**Art 2.—1. Foreign investments may be carried out:**

(a) By means of foreign contributions, in the cases and forms specified below.

(b) By the direct contribution to a company of capital equipment of foreign origin.

(c) By the direct contribution to a company of foreign technical assistance, patents and manufacturing licences.

(d) By the contribution of any other means, subject to prior government authorization (Art 2 (1), LFI).

1.1 By foreign monetary contributions shall be meant contributions made by the following means:

(a) Peseta equivalent of convertible currency admitted to quotation on the Spanish market.

(b) Pesetas deriving from the balances of foreign accounts in convertible pesetas.

(c) Any other means permitted by the regulations on foreign transactions and transfers.

1.2. The maximum valuation of capital equipment of foreign origin, which must be used by the company itself, shall be the value fixed for the purposes of customs duties. The importation thereof must be authorized by the competent Agencies.

1.3 The contribution of foreign technical assistance, patents and manufacturing licences, shall be carried out subject to the prior authorization of the contracts concerned and the valuation thereof by the competent Agencies.

2. Foreign investments may also be made by the use or contribution of domestic capital having the status of 'internal pesetas' or ordinary pesetas (Art 2 (2), LFI).

2.1 For these purposes, foreign legal entities, excluding their establishments in Spain, and non-resident Spanish or foreign individuals, may use the balances of their foreign accounts in domestic pesetas, subject to prior government authorization.

2.2 Foreign individuals resident in Spain may use, for the same purpose, their funds in ordinary pesetas.

**Art 3.—Foreign investments may be carried out in the following ways:**

1. Participation in a Spanish company (Art 3 (1), LFI).

1.1 This form of investment shall

be deemed to include both the incorporation of a company and the acquisition of interests in the case of companies whose capital is not represented by shares.

1.2 The acquisition of subscription rights is equated, for these purposes, with the acquisition of shares.

2. Execution of a contract of joint accounts with an individual resident in Spain or with a Spanish legal entity (Art 3 (2), LFI).

2.1 Non-typical forms of collective investment are equated, for these purposes, with contracts of joint accounts.

3. Conduct of business activities in Spain by non-resident individuals or by foreign legal entities through the creation of branches or establishments (Art 3 (3), LFI).

4. Acquisition of government stock or private fixed-income securities, as well as participations in Unit Trust Companies (Art 3 (4), LFI).

4.1. Investment in private fixed-income securities, convertible into shares, shall be considered, for the purposes of these Regulations, as included in paragraph 1 of this article.

4.2. Mutual Investment Funds must be duly authorized and entered on the relevant Special Register.

5. Acquisition of rural or urban real estate (Art 3 (5), LFI).

6. Any other form not contemplated in the preceding paragraphs, subject to prior government authorization (Art 3 (6), LFI).

## CHAPTER II

### Participations in companies. Direct investments

Art 4.—1. The provisions of this chapter shall be applicable to those investments intended to be made through participation in a Spanish company, in accordance with the provisions of art 3, para 1 (Art 4 (1), LFI).

2. However, investments made through the acquisition of securities admitted to official quotation on the Stock Exchange shall be governed by the provisions of chapter III (Art 4 (2), LFI).

Art 5.—1. Foreign investments subject to the provisions of this chapter shall require prior government authorization if, as a consequence of the investment, the foreign participation exceeds 50 per cent of the capital of the Spanish company or the percentage of unrestricted investment established in the specific legislation (Art 5 (1), LFI).

2. Once the government authorization has been obtained, in accordance with the provisions of this article, prior authorization shall again be required for any amendment of the corporate purpose, the increase in capital or any increment in the percentage of foreign participation authorized, as well as for the modification of any condition which the previous government authorization may have imposed (Art 5 (2), LFI).

Art 6.—The Council of Ministers may authorize, in general, foreign investments over and above the 50 per cent limit established in the preceding article with respect to companies engaging in certain types of activity (Art 6, LFI).

Art 7.—1. For the purposes of determining the percentage of foreign investment in a company, account shall be taken of the investment made therein by any other Spanish company which has, in turn, foreign participation in its capital, as well as of the investments made through the contribution of domestic or 'blocked' capital referred to in article 2, paragraph 2, of these Regulations (Art 7, LFI).

2. Investments made by Spanish companies in which the foreign participation exceeds 50 per cent of their capital shall be counted as 100 per cent foreign participation.

3. If the foreign interest in the investing company exceeds 25 per cent of its capital but does not exceed 50 per cent, the percentage of foreign participation in the company in which the investment is made shall be deemed to be proportional to the foreign participation in the capital of the investing company itself.

3.1 Exceptionally, it shall be considered that there is 100 per cent foreign participation in the case of an investment made by a Spanish company having foreign participation equal to or lower than 50 per cent, but in excess of 25 per cent, of its capital, where the foreign partners enjoy a position of dominance or prevalence in the company deriving from any circumstance permitting the Administration to verify the existence of a decisive influence of such foreign partners on the management of the company. Such verification shall be carried out in accordance with the formalities established in the Law on Administrative Procedure.

4. Investments made by Spanish companies having foreign participation shall not be counted for these

purposes in the following cases:

(a) Where the foreign participation does not exceed 25 per cent of the capital of the Spanish company.

(b) Where the State participates in the capital thereof either directly or through the National Institute of Industry or any other autonomous agency.

5. For the determination of the percentage of foreign investment, in the case of non-typical forms of investment, whether or not they adopt the name of joint accounts ('cuentas en participación'), the provisions of the relevant government authorization shall be applicable as established in Chapter V.

Art 8.—1. Spanish companies with foreign participation may have recourse to local credit (Art 8, LFI).

2. The access of such companies to local medium and long-term credit shall be subject to the following conditions:

(a) If the foreign participation does not exceed 25 per cent of the capital, on the same conditions as Spanish companies having no foreign participation.

(b) If the foreign participation exceeds 25 per cent of the capital stock, they may obtain local credit up to an amount equivalent to 50 per cent of the sum of their paid-up capital plus reserves.

3. The Ministry of Finance, subject to the prior report of the Ministry of Commerce, is empowered to adopt the appropriate measures:

(a) To adjust, if necessary, the contents of the provisions of this article to the requirements of financial policy.

(b) To lay down the conditions on which the companies referred to in paragraph 2(b) above may have

recourse to domestic credit in an amount in excess of that established in said paragraph.

Art 9.—1. The holders of foreign investments coming under the provisions of this chapter, which have been carried out with foreign capital, in accordance with the provisions of art 2, para 1, shall enjoy the right to transfer abroad, without any limitation whatsoever as to amount, the profits and dividends lawfully distributed and the proceeds of the sale of subscription rights of securities. They shall also enjoy the right to transfer abroad the capital invested and any capital gains obtained on the disposal of the investment.

2. The Administration may refuse the right of transfer if, following official verification, it is found that the profits and capital gains have been obtained by infringement of the legal provisions on foreign investment or non-fulfilment of the conditions imposed by the government authorization, if any (Art 9, LFI).

### CHAPTER III

#### **Portfolio investments. Acquisition of securities admitted to official quotation on the Stock Exchange**

Art 10.—The provisions of this chapter shall be applicable to those investments intended to be made through the acquisition of shares admitted to official quotation on the Stock Exchange, as well as the acquisition of government stock, private fixed-income securities or participations in Unit Trust Companies (Mutual Funds), in accordance with the provisions of art 3, paras 1 and 4, of these Regulations (Art 10, LFI).

Art 11.—1. Foreign investment by means of the acquisition of shares of a Spanish company admitted to official quotation on the Stock Exchange may be carried out without the need of government authorization, as long as the total foreign participation does not exceed 50 per cent of the capital thereof or such percentage as is specified in the special legislation.

2. The acquisition of all other securities referred to in the preceding article may be carried out freely and without any limitation, except as provided in para 4.1 of art 3.

Art 12.—1. The holders of foreign investments referred to in this chapter, which have been carried out in accordance with the provisions of art 2, para 1 (a), may transfer abroad:

(a) The interest or dividends lawfully distributed and the proceeds obtained on the sale of subscription rights on the Stock Exchange.

(b) The proceeds obtained on the sale of the securities on the Stock Exchange.

2. If the disposal of the investment is carried out at a rate higher than the official rate, the transfer abroad of the proceeds shall be accorded the treatment contemplated in the case of the investments regulated in the preceding chapter (Art 12, LFI).

### CHAPTER IV

#### **Business activity of non-residents**

Art 13.—Foreign investments intended for the creation, functioning and operation in Spain of establishments or branches of foreign companies, or operations carried out by

non-resident individuals, shall be subject in all cases to the provisions of these Regulations and shall at all times require government authorization (Art 13, LFI).

Art 14.—1. In all cases, as regards the establishment of branches, the provisions of arts 86 and 87 of the Regulations of the Commercial Registry shall be complied with.

2. Branches may in no case use their funds to make investments in Spanish companies, except in the case of portfolio investments through the acquisition of securities admitted to official quotation on the Stock Exchange.

Art 15.—Non-resident individuals and branches and establishments of foreign companies in Spain may have recourse to local credit subject to prior government authorization (Art 14, LFI).

Art 16.—The holders of investments subject to the provisions of this chapter, which have been carried out in accordance with the provisions of art 2, para 1, of these Regulations, shall enjoy the right to transfer abroad their share in the general expenses of the parent company and the profits obtained on the activity proper to the company in Spain, within such limits and on such conditions as may have been established in the government authorization.

## CHAPTER V

### **Other forms of investment**

Art 17.—Prior government authorization shall be required for foreign investments intended to be made by

means of the execution of a contract of joint accounts ('cuentas en participación'), or in any form not contemplated in the foregoing chapters (Art 15, LFI).

Art 18.—The holders of investments regulated in this chapter, which have been carried out in accordance with the provisions of art 2, para 1 (a), of these Regulations, shall enjoy the right to transfer abroad the amount of the capital invested and the profits, if any, obtained, subject to such limitations and on such conditions as shall have been laid down in the government authorization.

## CHAPTER VI

### **Special provisions governing the acquisition of real estate by foreigners and non-resident Spaniards**

Art 19.—1. Spanish or foreign individuals resident abroad, and foreign legal entities may acquire – subject to the limitations and requirements established in these Regulations – rural and urban real estate, providing the price thereof is paid by means of the foreign monetary contribution referred to in art 2, para 1 (a), of these Regulations.

2. The Ministry of Commerce may authorize, in accordance with such conditions as may be established in general, the use by persons not resident in Spain of 'internal pesetas' for the acquisition of urban real estate (Art 16, LFI).

Art 20.—1. The relevant public deed of purchase may not be executed or entered at the Property Registry,

without the production by the interested party of a Bank certificate issued by a Bank having delegated functions of the Bank of Spain, setting forth the particulars showing the reality of the contribution and the fact that it is intended for the purchase of real estate.

2. With the prior authorization of the Directorate General of Foreign Transactions, the persons referred to in art 19, para 1, of these Regulations may obtain mortgage loans from Spanish Credit Institutions for the acquisition of real estate.

Art 21.—Where the acquisition of real estate is carried out by foreigners, whether or not resident, it shall be subject to the legislation issued for reasons of strategy or national defence, if the real estate in question is located in any of the areas of national territory specified in such legislation (Art 17, LFI).

Art 22.—1. Rural real estate located in Spanish territory, the area of which exceeds four hectares in the case of irrigated land, or twenty hectares in the case of unirrigated land, or real estate having a lesser area but which, together with that already owned by the persons intending to acquire it, makes up an area exceeding the aforementioned, may not be transferred by purchase, exchange, public or private bidding, gift or, in general, by any act of assignment 'inter vivos', to foreign individuals or legal entities, without prior government authorization. Such authorization shall also be required for the establishment or assignment of rights or encumbrances on the said real estate in favour of the aforesaid persons (Art 18 (1), LFI).

1.1 In the event the real estate transferred is partly unirrigated and

partly irrigated, it shall be computed for the purposes of determining the need for government authorization, in the proportion of five hectares of unirrigated land to one hectare of irrigated land.

1.2 The classification of the real estate as unirrigated or irrigated shall be that resulting from the particulars recorded at the Property Registry or the classification for the purposes of Rural Land Tax, whichever information is more recent. To this end, the seller shall be obliged to produce in all cases, for incorporation in the deed of sale, the pertinent particulars of registration and a certificate from the Land Registry ('Catastro') referring to the appropriate technical document which indicates quite clearly the irrigated or unirrigated nature of the property.

1.3 If the acquisition is made pro indiviso, the above mentioned authorization shall be required where the division of the area of the property by the quota or interests acquired gives rise to a quotient exceeding the maximum areas specified above.

2. Registration at the Property Registry shall be of the essence for the acts and contracts referred to in para 1 of this article, and they shall not be effective in any respect until duly registered (Art 18 (2), LFI).

Art 23.—1. Without prejudice to the application of the provisions of arts 21 and 22 of the Regulations, acquisitions of real estate by foreign individuals resident abroad, and by foreign legal entities, shall be governed by the provisions of Chapter IV, where the acquisition constitutes of itself a business activity proper to the holder of the investment (Art 19, LFI).

1.1 For the purposes of this para 1, the following shall be con-

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sidered a business activity of foreign individuals resident abroad:

(a) The acquisition of rural real estate.

(b) The acquisition of land considered as urban real estate, in accordance with the Law on Land and Urban Organization.

(c) The acquisition of more than three dwellings in the same building.

1.2 For the same purposes, the acquisition of real estate, both rural and urban, shall be considered as a business activity of foreign legal entities.

2. The acquisition by non-resident foreign individuals of villas, bungalows and, in general, dwellings for individual or family use shall not be considered as a business activity, and shall be governed by the provisions of this chapter.

Art 24.—The declaration of 'national tourist interest', pursuant to the provisions of Law 197/63 of 28 December shall automatically carry with it the granting of the authorization required in art 22 of these Regulations for the acquisition of rural real estate in excess of four hectares of irrigated land or twenty hectares of unirrigated land, as well as the authorization established in art 21, the latter being without prejudice to the easements and conditions established in the legislation relating to strategic and national defence requirements (Art 20, LFI).

Art 25.—Without prejudice to the provisions of articles 21 and 22, resident foreign individuals may acquire

real estate located in Spain, in ordinary pesetas, on the same conditions as resident Spaniards (Art 21, LFI).

Art 26.—1. If the acquisition of real estate has been made by means of a foreign monetary contribution, the owner of the real estate shall enjoy the right to transfer abroad the whole of the market price in the event of sale, providing such price is not the result of speculative activity.

2. If the acquisition of real estate is made against a foreign account in domestic pesetas, in the manner established in art 19 (2) of these Regulations, then the owner of the real estate shall have such right to transfer abroad as is determined in the authorization referred to in said article.

Art 27.—The rentals of real estate acquired in accordance with the provisions of this chapter shall be transferable abroad providing:

(a) the purchase price has been fully paid; and

(b) the owner is up-to-date in the tax liabilities applicable to the real estate.

## CHAPTER VII

### **Registration of foreign investments**

Art 28.—1. The following are under the obligation of declaring foreign investments, and the disposal thereof, for recording on the Investments Register of the Ministry of Commerce:

(a) The holders of the foreign investment.

(b) The public authenticating officers certifying any of the transactions involved.

(c) The banks in which the foreign receipts and payments deriving from the foreign investment are to be domiciled, and through which the relevant transactions are to be carried out (Art 22, LFI).

2. Investments made in any of the forms contemplated in art 3, para 4, of these Regulations, and such investments in ordinary pesetas as the Directorate General of Foreign Transactions may determine, shall be excluded from the above obligation.

3. The Directorate General of Foreign Transactions shall establish the procedure and issue the relevant standard printed forms for making such declaration.

**Art 29.—1.** Foreign investments shall be recorded in a public document before a Spanish authenticating officer. Such officers, as well as the Registrars of Property, prior to exercising the functions and duties incumbent upon them under the legislation in force, shall request the production by private parties of documents evidencing having obtained the authorizations.

2. The subsequent transfers of the stock certificates carried out abroad between non-residents, with payment in foreign currency, shall require the certification of a Spanish authenticating officer if the new acquirer wishes the securities to be registered in his or its name on the Investments Register.

**Art 30.—1.** The receipts and payments deriving from the foreign investment shall be domiciled at such bank

having delegated functions of the Bank of Spain as the holder may designate, through which bank all the foreign transactions relating to the said investment shall be carried out.

2. As long as the stock certificates remain in Spain, the holder of the investment may at any time change the bank at which the receipts and payments deriving from the investment are domiciled, notifying the Investments Register accordingly.

**Art 31.—**The right of transfer abroad recognized in these Regulations for the holders of foreign investments shall become applicable as from the time the investments have been duly declared for entry on the Investments Register (Art 23, LFI).

**Art 32.—**The Directorate General of Foreign Transactions, through the Investments Register of the Ministry of Commerce, shall supervise the fulfilment of the provisions of these Regulations, especially as regards the percentages of direct or indirect foreign participation (Art 24, LFI).

For this purpose:

1. The Directorate General of Foreign Transactions, based on the criterion of the proportion of foreign investment, shall publish in the Official State Gazette, by means of a Resolution, periodic lists of Spanish companies having foreign participation in their capital, in accordance with the particulars recorded on the Investments Register of the Ministry of Commerce.

2. As from the publication of such Resolution, the companies in question shall comply with the provisions of these Regulations as regards foreign

majority investments.

3. In the same way, said companies, as from the publication of the aforesaid Resolution, shall declare to the Investments Register of the Ministry of Commerce all and any investments which they have already made or thereafter make in other Spanish companies, either by participating in their incorporation or by the acquisition of their shares or interests ('participaciones').

4. At the request of the Directorate General of Foreign Transactions, Spanish companies having foreign participation in their capital shall notify to the said Directorate General the amount of their capital stock as at such date and thereafter any alterations thereof.

5. To authorize, where appropriate, the amendment of the corporate purpose, the increase in capital or an increment in the percentage of foreign participation, whenever the foreign investment has required the authorization of the Council of Ministers.

6. To authorize the amendment of the conditions, if any, imposed upon the foreign investment by the authorization of the Council of Ministers itself.

7. To authorize foreign investments when intended to be made in companies rendering public services or utilities, whenever the foreign investment exceeds 25 per cent of the capital of the company.

8. To authorize the transfer 'inter vivos', in favour of foreigners, of the ownership of, or the establishment or assignment of liens on, rural real estate located in Spanish territory the area of which exceeds four hectares in the case of irrigated land or twenty hectares in the case of unirrigated land.

9. In general, all such attributions as are vested therein by the Law on Foreign Investments and supplementary provisions (Art 25, LFI).

Art 34.—1. The powers not assigned to the Council of Ministers shall rest with the Ministry of Commerce unless expressly attributed to other Ministerial Departments (Art 26, LFI).

2. It shall rest with the Ministry of Commerce:

(a) To submit to the Council of Ministers, for approval, regulations on the subject of foreign investments.

(b) To approve the provisions on foreign investments in Spain, within its sphere of competence.

(c) To submit recommendations to the Council of Ministers in connec-

## CHAPTER VIII

### Competence and procedure

Art 33.—It shall rest with the Council of Ministers:

1. To authorize foreign investments, where the foreign interests exceed 50 per cent of the capital of the Spanish company.

2. To authorize investments by Spanish companies with foreign participation, in other Spanish companies, where such investment exceeds 50 per cent of the capital of the latter, computed as provided in art 7.

3. To authorize foreign investments, regardless of the percentage, when expressly so provided by the special legislation applicable thereto.

4. To authorize, in general, foreign investments over and above the 50 per cent limit, in companies engaged in certain types of activity.

tion with the authority attributed to it in the preceding article.

(d) To notify to the interested parties the resolutions of the Council of Ministers on foreign investment applications.

(e) To resolve administrative appeals, over which it has jurisdiction in regard to foreign investments.

(f) To supervise fulfilment of the provisions on foreign investments.

(g) Any other powers entrusted to it by the Council of Ministers in connection with foreign investments in Spain, and those attributed to it by the legislation in force.

Art 35.—It shall rest with the Directorate General of Foreign Transactions:

1. To authorize the use, for purposes of foreign investment, of any other means of payment as provided in art 2, para 1 (d), of these Regulations, as well as the balances of foreign accounts in domestic pesetas.

2. To authorize foreign investments intended for the creation, functioning and operation in Spain of establishments or branches of foreign companies, or business operations carried on by non-resident individuals.

3. To authorize the opening of lines of credit in pesetas for non-residents or for residents on behalf or with the guarantee of non-residents.

4. To authorize foreign investments intended to be made through the execution of contracts of joint accounts ('cuentas en participación') or through other forms not contemplated in these Regulations.

5. To report on applications for permission to resort to foreign credit submitted by Spanish companies with foreign participation.

6. To authorize the transfer of the

ownership of any of the investments contemplated in art 3 of these Regulations, where such ownership has been acquired in accordance with additional provision fourth hereof.

7. To process applications on foreign investments in Spain.

8. To act as Secretary to the Foreign Investments Board.

9. Any other powers entrusted to it by the Ministry of Commerce in connection with foreign investments in Spain, and such other powers as are conferred upon it under the legislation in force.

Art 36.—It shall rest with the Foreign Investments Board:

1. To draw up the appropriate recommendations with respect to applications to be submitted to the Council of Ministers.

2. To report on applications for the declaration of 'national tourist interest'.

3. To report on such matters as are submitted to it in connection with foreign investments in Spain.

4. Any other attributions entrusted to it by the legislation in force.

Art 37.—1. If the planned foreign investment requires the authorization of the Council of Ministers, the procedure shall commence by the submission of an application to the Directorate General of Foreign Transactions. This application shall be signed by the investor, or by one of the promoters in the case of a company in process of formation. The interested parties referred to above may act through a representative, subject to compliance with the requirements of art 24 of the Law on Administrative Procedure.

2. The Directorate General of

Foreign Transactions, in a Resolution published in the Official State Gazette, shall specify the documentation to be submitted together with the request for authorization.

3. The said Directorate General shall forward a copy to each of the Ministries having competence, in order that said Ministries may submit, within a term of two months, a report to the Directorate General on the planned foreign investment, it being the duty of the Departments having competence on account of the subject-matter to draw up the proposal as to the technical aspects that are to be included in the authorization in accordance with the sectional objectives the achievement of which is entrusted to them.

4. After all the reports on the planned foreign investment have been received, and in any event after the said term of two months has elapsed, the Directorate General of Foreign Transactions shall include in the agenda of the Foreign Investments Board the foreign investment application in question, with respect to which reports shall be delivered by the representatives of the Ministries directly concerned by reason of the subject-matter, after which the appropriate recommendation shall be prepared by the Board for submission to the Council of Ministers.

Art 38.—1. The application for authorization from the Council of Ministers for the acquisition, establishment or assignment of liens or encumbrances in favour of foreigners, of rural estate having an area in excess of four hectares of irrigated land or twenty hectares of unirrigated land, shall be submitted to the Directorate General of Foreign Transactions.

2. The said Directorate General shall request the reports of the Minis-

tries of Justice and Agriculture, and such others as may be deemed necessary by reason of the questions raised, and shall prepare the appropriate recommendation for submission by the Minister of Commerce to the Council of Ministers.

## CHAPTER IX

### **Regulation of foreign investments in specific activities**

Art 39.—Companies whose activities are directly related to national defence are excluded from these Regulations (Art 28, LFI).

Art 40.—1. Prior government authorization shall be required for foreign investments which are intended to be made in companies providing public services or utilities, whenever the foreign investment exceeds 25 per cent of their capital stock.

2. Government authorization shall also be required for investments intended to be made in companies operating in sectors or activities which are subject to special regulation, if as a consequence of the investment, the foreign participation in the company concerned exceeds the percentage of unrestricted investment established in the specific legislation applicable thereto (Art 29, LFI).

## ADDITIONAL PROVISIONS

First.—The International Financial Corporation may make investments in Spain in accordance with the contents of Law Decree 2/1962, of 25th January

(first additional provision of the Law on Foreign Investments).

Second.—1. Governments and all official entities of foreign sovereignty will need special authorization to make investments of foreign capital in Spain (third additional disposition, first paragraph, of the Law on Foreign Investments).

For this purpose, the following shall be understood as Governments and official entities:

(1) Foreign States, entities of foreign sovereignty, foreign official and public entities and foreign public companies.

(2) Foreign companies and entities of any type, whose decisions are subject in any way to the control of the entities listed in the preceding paragraph.

2. The Government may grant the said authorization where there is a system of diplomatic reciprocity or when the foreign participation does not represent an effective control of the Spanish firm or company. (Third additional disposition, paragraph 2, of the Law on Foreign Investments.)

Effective control will be understood to exist when the foreign participation on the part of Governments and official entities referred to in No. 1 of this second additional disposition, individually or together, is in excess of 50 per cent of the capital of the Spanish company or when the Government considers, independent of this percentage, that such a participation represents a position of predominance or prevalence in the company. The Government will take into consideration the principle of reciprocity.

In the case of investments not made by acquisition of securities officially quoted on the Stock Market, once the authorization has been obtained, it will be similarly necessary to have

special authority for any modification of the activity of the Spanish company, as well as for the modification of any condition imposed by the previous authorization and for subsequent transmissions of participations which may be made by the foreign entities, although within the limits authorized and to the advantage of the entities or private or public individuals of Spanish or foreign nationality.

Third.—1. The Government will be responsible for the granting of the special authorization referred to in the preceding additional disposition, by means of agreement reached by the Council of Ministers and in accordance with the procedure established in Chapter VIII of these Regulations.

2. The special authorization by reference, where applicable, to the precepts of general legislation on foreign investments in Spain which may apply to them, will determine the particular system of investment.

Fourth.—1. The authorizations to invest in Spain in favour of private foreign legal entities will expire where the entity authorized is the subject of nationalization in its country, except where the contents of the second additional disposition of these Regulations apply. (Second additional provision of the Law on Foreign Investment.)

It will be understood that nationalization exists when the ownership of the foreign investment, which was originally private, transfers to one of the companies or entities referred to in No. 1 of the second additional disposition of these Regulations.

The Government will be responsible for declaring void the authorization as referred to in paragraph one of this number by means of a Decree agreed upon by the Council of Ministers at

the proposal of the Ministry of Commerce and Tourism and following a hearing given to the interested parties and in particular to the Spanish company affected.

2. If the nationalization affects foreign legal entities of a private nature which have not needed to obtain administrative authorization for the making of investments in Spain, the Government, by means of a Decree agreed upon by the Council of Ministers at the proposal of the Ministry of Commerce and Tourism and following a hearing of the interested parties, may declare the foreign investors included in the cases indicated in number 1 of the second additional disposition of these Regulations.

3. In any case and at the request of the interested parties, the Government may grant the special authorization foreseen in the second additional provision, both when the declarations foreseen in numbers one and two above have been made and when they have not, in which case they will not be necessary.

In any case the Government may, if it deems it advisable, adopt the precautionary measures of vigilance which it considers necessary.

4. If the special authorization referred to in the preceding number is not granted, the foreign investors will settle their investment, selling the shares or participations within the period established in the corresponding declaration of 'expiry' or of 'inclusion', in accordance always with the legal system applicable to the company. At the end of the period fixed for the sale without this having taken place, the Spanish company, within a period of six months, may acquire the securities or participations in the company to pay off with the consequent reduction in capital of the company or

so as to proceed, where applicable, to their immediate sale in accordance with Art 47 of the Joint Stock Company Law.

Failure to fulfil what is laid down in the above paragraphs will occasion, in accordance with the second final disposition of these Regulations, the nullity of the foreign investment from the date indicated by the Decree of expiry or of inclusion.

The said nullity will not prejudice the rights acquired in good faith by third parties.

Fifth.—1. When the investment of capital in Spain is made by foreign States for the purchase of premises destined for their official diplomatic or consular representatives, the Government may grant the special authorization taking into account the system of diplomatic reciprocity. The procedure will be that established in Chapter VIII of these Regulations and will require a prior report from the Ministry of Foreign Affairs.

The applicant representatives will be notified of the result of their application by the Ministry of Foreign Affairs.

Sixth.—1. The Notaries, Mercantile Registrars or Registrars of Property, Exchange Notaries and Collegiate Commercial Brokers and, in general, public officials will abstain from authorizing any type of document or from registering investments of capital in Spain which, in accordance with the contents of these additional provisions, require the special authorization of the Government, when the interested parties do not produce this.

Nevertheless, they will be exempt from responsibility for written evidence of the statements made by interested parties, if these are not included

among those referred to in paragraph 2 of number one of the second additional disposition.

2. The foreign investments referred to in the previous additional dispositions, together with their settlement, must be declared before the Registry of Investments of the Ministry of Commerce and Tourism, in accordance with the contents of Chapter VII of these Regulations.

Seventh.—1. The persons listed in Art 1 of these Regulations, who by inheritance under a will or of another nature, a donation due to death or events of a similar nature, acquire ownership of any of the investments foreseen in the third article of the same, will require prior administrative authorization for:

- (a) The transmission of the same to any of the persons listed in Art 1.
- (b) The transfer abroad of the profits and yields they produce.
- (c) The transfer abroad of the capital thus acquired and the amount resulting from their sale.

2. The authorizations referred to in No. 1 of this additional disposition will not be necessary in cases where the originator or transferor fulfils the conditions of foreign investor defined in Article 1 of these Regulations and where the investment has been made in accordance with No. 1 of Article 2 (fourth additional provision of the Law on Foreign Investments).

#### **INTERIM PROVISIONS**

First.—Individual investment situations existing prior to the effective date of these Regulations, which have arisen under the provisions applicable in each instance, shall be respected provided they have not been brought about in fraud of the Law. (First inter-

im provision, LFI.)

Second.—Branches of foreign individuals or legal entities operating in Spain without government authorization shall notify to the Ministry of Commerce such particulars relating to their activity as may be determined in the regulation manner. (Second interim provision, LFI.)

#### **FINAL PROVISIONS**

First.—Foreign investment made in companies engaging in the activities indicated below shall be governed by their specific provisions, without prejudice to the application of these Regulations in all respects not therein regulated:

- (a) Firms or companies possessing or operating studios, laboratories or, in general, establishments for the production of films in Spain, as well as those engaged in productions of this type, or in 'dubbing' or other similar activities.
- (b) Companies operating local broadcasting stations.
- (c) Companies publishing newspapers or magazines.
- (d) News agencies.
- (e) Publishing companies.
- (f) Mining companies.
- (g) Companies engaged in the exploration and exploitation of hydrocarbons.
- (h) Banks.
- (i) Insurance companies.
- (j) Companies engaged in oil refining.
- (k) Air transport companies.
- (l) Shipping companies.
- (m) Concessions for the utilization of public waters, granted to foreigners and foreign companies.
- (n) Companies contracting work, services and supplies with the State or

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autonomous Agencies. (First final provision, LFI.)

Second.—In accordance with the provisions of art 6, paras 3 and 4, of the preliminary chapter of the Civil Code, acts carried out in contravention of these Regulations, or performed in fraud thereof, are hereby declared null and void by operation of law. (Second final provision, LFI.)

Third.—Administrative acts performed in application of these Regulations may be the subject of the relevant appeals, including a contentious-administrative appeal, in accordance with the provisions of the Law governing the contentious-administrative jurisdiction. (Third final provision, LFI.)

Fourth.—The Government shall, within a term of six months, publish the relevant Table of provisions relating to foreign investments in Spain which remain in force, or are modified or repealed hereby. (Fourth final provision, LFI.)

Fifth.—Any provisions of equal or lower rank which contradict the provisions of these Regulations are hereby repealed.

Sixth.—Chapter VII of these Regulations, dealing with the declarations of foreign investments on the Investments Register of the Ministry of Commerce, shall come into effect on 1 February 1975. Until such date, the declarations shall be governed by the provisions currently in force.

### **DECREE 3023, of 31 October 1974, exempting foreign majority investments in certain activities from prior authorization**

Article 6 of the Law governing foreign investments in Spain empowers the Government to grant general authorization for foreign investments over and above 50 per cent in companies engaging in certain types of activity.

Given the interest existing at the present time for the Spanish economy of having available the greatest possible flow of foreign capital, with a view to maintaining the rate of development determined by the Government, it is appropriate to make use of the aforesaid authorization, while, however, establishing a suitable procedure to make the automatic nature of such investments compatible with the requirements of registration and knowledge on the part of the Administration, so as to enable supervision of the proper functioning of the invest-

ment processes as contemplated in chapter VII of the Investment Law.

By virtue whereof, on the recommendation of the Ministry of Commerce and following deliberation by the Council of Ministers at its meeting on 11 October 1974,

#### **BE IT ENACTED AS FOLLOWS:**

Art 1. The persons listed in art 1 (1) of the Foreign Investments Law may transfer capital to Spain, in foreign currency admitted to quotation on the Spanish currency market, for the unrestricted investment of the counterpart thereof, without any limitation whatsoever as to the percentage of participation, in the creation or subsequent expansion of new companies engaging in any of the

activities specified in art 5 hereof.

This authorization shall not relieve the parties concerned from obtaining any governmental permissions that may be required under the legislation in force, independently of whether or not there is foreign participation in the company.

In any event, investments made under the provisions of this Decree must be declared to the Investments Register of the Ministry of Commerce, and shall be subject to the provisions of chapter VII of the Regulations on Foreign Investments, in order to enjoy the right of transfer.

Art 2. Persons interested in making investments under the provisions of this Decree shall forward to the Directorate General of Foreign Transactions a transcription of the corporate purpose of the company, in order that the said Directorate General may check as to whether or not the said purpose is included in the cases contemplated in this Decree.

If, within a term of 30 business days, the interested party has received no answer, it shall be understood that there is no objection whatsoever to the incorporation of the proposed company, which shall be carried out within a maximum term of six months and adequate capital shall be contributed for the development of the corporate purpose.

Art 3. Companies formed under this general authorization may increase their capital without the need for any authorization whatsoever.

Art 4. The conduct of any activity other than the one specifically contained in the objects clause shall cause the lapsing of the authorization granted pursuant to this Decree, and the automatic forfeiture of the rights of transfer abroad of the capital invested, and the profits and capital gains thereof, all of which shall be in addition to any liability that may be incurred by the company.

For this purpose, the Directorate General of Foreign Transactions shall commence proceedings in accordance with the provisions of title VI, chapter II, of the Law on Administrative Procedure.

Art 5. The benefits of this Decree shall be applicable to investments in companies whose corporate purpose is solely and exclusively the manufacture in Spain of one or more of the items of capital equipment included in the Appendix List of the Customs Tariff, provided the contrary has not been expressly stipulated at the time of their inclusion.

Art 6. The Ministry of Commerce is authorized to issue such provisions as may be necessary for the development of this Decree.

#### **ROYAL DECREE No. 3099 of 1976 concerning foreign investments in Spain**

Art 1.—Direct investments of foreign capital are authorized in general in the incorporation of Spanish companies, over and above the limit established in Art 5 of the Law on Foreign Investments, except as regards those sectors in which prior

administrative authorization is required for installation, and provided the following conditions are satisfied:

First.—That the foreign investment is made with the contribution of the foreign means of payment referred to

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in Art 2.1 of the current Regulations on Foreign Investments.

Second.—That the paid-in capital at the moment of incorporation is not less than one hundred million pesetas.

Third.—That the Spanish company makes no payments, in respect of transfer of technology, to the foreign investor, its subsidiaries or affiliated companies, except for payments for services duly stipulated and justified, and in no case makes payments of a constant amount or geared to the level of activity of the Spanish company.

2. In order to benefit by this authorization, the investment project must contain the following binding conditions for the Company:

(a) That the Company provides not less than one hundred fixed employment positions upon the start-up of the production process.

(b) That, after the first year of operation, the Company maintains a positive annual balance of foreign exchange.

By balance of foreign exchange is meant the difference between the value of the foreign exchange surrendered and the value of foreign exchange acquired to make payments abroad, excluding from the calculation the funds received for the constitution of the capital stock or under the head of foreign loans, and payments for the importation of capital equipment to be incorporated into the fixed assets of the company. The calculation shall, however, include loans received from the parent company itself and repayable within a term of not less than three years.

Art 2.—The authorization contemplated in the preceding article may be applied, even if the second requirement established therein is not satisfied, in the event that the investment

project contemplates the export by the Company, as from one year after start-up of operations, of a minimum of fifty per cent of the invoicing of its own production, providing such invoicing is not less than one hundred million pesetas.

The said authorization shall also be applicable even if the condition established in para 2 (b) of said article is not satisfied in the event that upon the start-up of the production process one thousand fixed employment positions are established.

Art 3.—1. Authorization is granted in general for direct investments of foreign capital which, except for the sectors mentioned in Art 1 hereof, are made, over and above the limit established in Art 5 of the Foreign Investments Law, by means of the subscription of shares in the increase in capital of Spanish companies, or through the acquisition of shares and simultaneous subscription, providing the following requirements are satisfied:

First.—That the foreign investment is made by the contribution of the foreign means of payment referred to in Art 2.1 of the current Regulations on Foreign Investments in Spain.

Second.—That the total figure of the capital stock plus reserves of the Company is increased at least thirty per cent, as a result of the foreign investment, and a minimum payment of one hundred million pesetas is made, through a foreign contribution, at the time of subscription of the shares.

Third.—That the Spanish company makes no payments, in respect of transfer of technology, to the foreign investor, its subsidiaries or affiliated companies, except for payments for services duly stipulated and justified,

and in no case makes payments of a constant amount or geared to the level of activity of the Spanish company.

2. In order to benefit by the authorization contained in the preceding section of this article, the investment project must contain the following binding conditions for the company:

(a) That the company increase, as from one year following the making of the foreign investment, its fixed employment positions by at least one hundred.

(b) That, as from one year from the making of the investment, the company maintains, on the terms set forth in para 2 (b) of Art 1, a positive annual balance of foreign exchange.

Art 4.—1. For the purposes contemplated in Art 5.2. of the Foreign Investments Law in force, Spanish companies having foreign participation in their capital by virtue of an individual administrative authorization are authorized to carry out increases in capital providing the existing percentage of foreign capital is not increased.

2. Subject to the same conditions, increases in capital are authorized in companies formed in accordance with the provisions of Arts 1, 2, and 3 hereof.

3. Companies with foreign participation incorporated under the general authorization contained in the repealed Decree 701/63, of April 18, may request permission from the Ministry of Commerce to benefit by the system established in para 1 of this article.

Art 5.—Promoters or persons interested in making a foreign investment may in each case make the same in accordance with the following rules:

1. If they wish to benefit by the

authorizations contained in Arts 1, 2, 3, and 4 of this Decree, they must submit their investment project, in such manner as is determined by the Regulations, to the Directorate General of Foreign Transactions in order that, with the prior report of the Foreign Investments Board, it may verify whether or not the said project is included in the cases contemplated in this Decree and issue a certificate to that effect.

Without prejudice to the provisions of para 3 of this article, after ninety days have elapsed from the presentation of the project in the proper form, without the interested parties having received any notification in connection therewith, they may proceed with the incorporation of the planned company, or formalization of the transaction, which must be carried out within a maximum term of 6 months, subject to extension by the Administration itself when, in the opinion thereof, there are sufficient grounds for such extension.

2. In cases of foreign investments not benefiting from the provisions of Arts 1, 2, 3 and 4 of this Decree the procedure contemplated in Art 37 of the Regulations on Foreign Investments in Spain shall continue to be observed.

3. Notaries or other public functionaries through whom foreign investments are officially recorded, in accordance with the provisions of para 1 of this article, shall request from the parties the production of the certificate contemplated therein, or, in default thereof, the official document which, according to the regulations legally prescribed, will permit the verification as to whether or not the said time limit has been complied with.

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Art 6.—The Council of Ministers, upon the recommendation of the Ministry of Commerce, following the prior report of the Foreign Investments Board, issued at the request of any interested Department, and within the said time limit, may exclude from the application of this Decree those investments planned to be made under Arts 1, 2, 3, and 4, where the project may have exceptionally detrimental consequences for the national interests.

Art 7.—1. The authorizations contained in this Decree do not exempt fulfilment of the remaining obligations imposed by the Law and Regulations on Foreign Investments, among them those deriving from the provisions of Arts 1.3; 5 and 7 of the current Regulations on Foreign Investments in Spain.

2. Companies benefiting by the said authorizations must submit to the Directorate General of Foreign Transactions of the Ministry of Commerce a Memorandum of Activities, in accordance with the provisions issued in development of this Decree, in order that the Ministry of Commerce, and the other Ministries interested by reason of the subject-matter, and with regard

to their respective spheres of jurisdiction, may verify the fulfilment of the conditions and requirements set forth herein.

Art 8.—1. The scope of application of the provisions of this Decree is confined to foreign investments carried out in accordance with the provisions of chapter II of the Foreign Investments Law.

2. Excluded from the provisions of the preceding articles are investments made in companies whose activities are directly related to national defence, and companies providing public utilities.

3. Also excluded are the sectors referred to in the first final provision of the Foreign Investment Regulations, approved by Decree 3022/1974, of October 31.

Art 9.—Without prejudice to the provisions of this Decree, the Decree of October 31, 1974, whereby majority foreign investments in certain activities are exempted from the need for prior authorization, remains in force.

Art 10.—The Ministry of Commerce shall issue the appropriate regulations for the development of this Decree.

## Appendix II

### PARTICULARS TO BE SET FORTH IN THE MEMORANDUM ACCOMPANYING APPLICATIONS FOR THE AUTHORIZATION OF FOREIGN INVESTMENTS IN SPANISH COMPANIES UNDER DECREE NO 3021 OF 1974

0. *Identification.*
1. *Intended location.*
2. *Technology for the production processes.*
3. *Labour aspects.*
4. *Organization of the future capital.*
5. *Necessary supplies.*
6. *Economic survey.*
7. *Markets.*
8. *Foreign exchange requirements and generation.*
9. *Benefit which the foreign capital investment will contribute to the Spanish firm and/or to the economy in general.*

#### 0. *Identification.*

- 0.0 Of the Spanish enterprise (1).
- 0.00 Legal form of organization.
- 0.11 Name.
- 0.02 Number in the National Census of Legal Entities.

0.03 Registered address.  
0.04 Corporate purpose.  
a) Companies already formed. –  
Transcription of objects of company as they appear in the articles of association.

b) Companies yet to be formed. –  
Transcription of objects of company as they will appear in the articles of association.

0.05 Capital. Reserves. National interest and foreign interest, if any (2).

0.06 List of Shareholders. Composition of Board of Directors and list of executive officers.

(1) In the case of companies to be formed, the intended characteristics. In the case of existing companies, the present characteristics.

(2) If foreign holding is greater than 50% of the company's capital, it must be shown to be duly authorized.

0.07 Annual report and balance sheet for, at least, the last two financial years (copies of the Corporation Tax return to be attached as Exhibit I).

0.08 Composition of portfolio of securities.

0.09 Factories in operation and range of products.

0.10 Quantities and valuation of production.

0.1 Of the foreign investor (give the applicable description. Reports, balance-sheets, etc. to be attached as Exhibit 2).

0.10 Spaniard normally resident abroad; or

0.11 Foreign individual; or

0.12 Private foreign legal entity. Characteristics.

0.2 General information on the

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business to be created, enlarged or modernized.

### *1. Intended location.*

- 1.0. Specification.
- 1.7. Reasons therefor.

### *2. Technology for the production processes.*

2.0. Technical characteristics of the project.

- 2.00. Estimate.
- 2.01. Preliminary drawings (to be

attached as Exhibit 3).

2.02. Flow-sheet of manufacturing process.

2.03. Scheduled date for start-up of plant.

2.1. Technological description of processes (to be attached as Exhibit 4).

### *3. Labour aspects.*

3.0. Present and future number of employment positions.

	Present No.		Future No.			
	Spain	Foreign	Total in one year		Total in..... Years	
			Spain	Foreign	Spain	Foreign
Managerial staff .....						
Administrative staff .....						
Qualified technical staff .....						
Skilled labour .....						
Unskilled labour .....						
Totals .....						

3.1 Professional training given by the firm to its staff.

3.2 Other social advantages received by the staff.

	Present	Percent- age	Expans- ion	Percent- age	Total	Percent- age
4. Organisation of the future capital.						
4.0 Investment requirements (1).						
Fixed capital.						
—Land .....						
—Buildings .....						
—Installations .....						
—National machinery .....						
—Foreign machinery (2)....						
—Furniture .....						
—Vehicles .....						
—Participations in other com- panies (specify as Exhibit 5)						
—Other tangible assets .....						

(1) In the case of a firm to be set up, use only the 'total' column.

(2) Specify whether the machinery is new or used, and describe it in point 4.3.1.

	Present	Percent-age	Expansion	Percent-age	Total	Percent-age
—Patents .....						
—Manufacturing licences .....						
—Technical assistance .....						
—Other intangible assets .....						
4.00. Total fixed capital .....						
4.01. Total working capital.....						
4.02. Total investment .....						
4.1. Means of financing.						
4.10. Own resources.						
Capital stock .....						
—Spanish interest .....						
—Foreign interest .....						
Reserves .....						
Other resources owned by the company .....						
4.11. Borrowed resources.						
Local .....						
—Long- and medium-term ...						
—Short-term .....						
Foreign (authorizations obtained. To be attached as Exhibit 6) .....						
4.12 Total resources .....	100			100		100

4.2. Manner in which contribution of foreign capital will be made (Art 3, Decree of 31 October 1974).

4.21. Capital equipment for the firm's operation. List of foreign machinery and tooling: specifications, value and origin.

4.22. Pesetas from A accounts.  
 4.23. Pesetas from B accounts.  
 4.24. Technical assistance, patents and manufacturing licences.

4.3. Application of the foreign

capital investment for which authorization is requested:

Pesetas

(a) Subscription of new shares:

— Par value  
 — Issue premium

(b) Purchase of shares in pos-

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session of Spanish nationals, representing . . . nominal pesetas  
[actual pesetas]

Total foreign investment

4.4. Period within which the investment will be carried out.

### 5. Necessary supplies.

5.0. Estimate of power requirements.

5.00. Electricity.

5.01. Solid fuels.

5.02. Liquid fuels.

5.1. Raw materials.

5.10. Local:

Detailed list of annual requirements, quantity and value. In the case of expansion, those already being used and those needed for expansion should be specified separately.

5.11. Foreign.

Detailed list of annual requirements, quantities and value. In the case of expansion, those already in use and those needed for expansion should be given separately.

5.2. Auxiliary materials.

5.20. Local.

List of annual requirements, quantities, and value.

5.21. Foreign.

List of annual requirements, quantities, value and source.

### 6. Economic survey.

6.0. Production.

6.00. Creation of firms. Output capacity for main products, components or parts in the new industry.

6.000. In three hundred eight-hour days.

6.001. In three hundred two-shift days.

6.002. In round-the-clock operation.

6.01. Expansion or modernization

of existing firms. Output capacity for main products, components or parts, distinguishing present output from that for which authorization is sought.

6.010. In three hundred eight-hour days.

6.011. In three hundred two-shift days.

6.012. In round-the-clock operation.

6.1. Estimate of cost price, specifying percentages.

Where a range of products is involved, estimates should cover those representing at least 75% of the production value.

6.10. Cost of raw materials.

6.11. Cost of labour.

6.12. Other costs.

### 7. Markets.

7.0. Estimated sales turnover of the company.

7.00. Specification by destination.

7.000. Local.

7.001. Foreign.

7.1. Comparison of selling prices with equivalent international prices.

7.2. Foreign trade.

(a) Expansion of existing companies.

List of exports by markets of destination over the last three years.

—List of imports by sources of supply and products during the last three years.

—Definitive imports.

—Imports subject to subsequent re-exportation with value added.

(b) Newly-established firms.

b.1. Planned relations of the investor in the Spanish market.

—Activities of the investor company in Spain, both commercial (imports into Spain) and financial, during the

last three years.

—Description of mechanism through which the commercial activities have been carried out and reference to the Spanish concessionary or representative, if any, and a copy of the agreement between the two.

b.2. Commercial activities of the new company.

—Envisaged exports, by products and sources of supply.

*8. Foreign exchange requirements and generation.*

	At present	After the invest- ment is made
8.0. Annual outflow of foreign currency:		
8.00. Imports .....	.....	
8.01. Loan interest and principal .....	.....	
8.02. Royalties .....	.....	
8.03. Technical assistance .....	.....	
8.04. Dividends .....	.....	
Total annual payments .....	.....	
8.1. Annual inflow of foreign currency:		
8.10. Exports .....	.....	
8.11. Other Items .....	.....	
Total annual income .....	.....	
8.2. Positive or negative balance .....	.....	

*9. Benefit which the foreign capital investment will contribute to the Spanish firm and/or to the economy in general.*

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**PRESENTATION OF PROJECT FOR FOREIGN INVESTMENT  
UNDER DECREE NO 3099 OF 1976**

- |                                |                                       |
|--------------------------------|---------------------------------------|
| 1. Spanish company             | 2. Registration                       |
| 3. Holder of the investment    | 4. Addressee and domicile for notices |
| 5. Declaration of presentation |                                       |

Don....., on his own behalf or as representative of.....is submitting a project for foreign investment as authorized by Decree 3099/1976, the details of which are indicated below:

- |   |    |   |
|---|----|---|
| A) Authorised by Decree 3099/1976 in:   | B) | Economic data:  |
| Art 1 (Establishment of a new Spanish company)                                |    | 1. Present registered capital ..... foreign percentage .....pts.      |
| Art 2 (Establishment of a new Spanish company under qualified circumstances)  |    | 2. Expansion of capital .....pts.                                     |
| Art 3 (Purchase and/or under-writing of shares)                               |    | 3. Capital acquired*.....   |
| Art 4 (Expansion of capital in company with authorized foreign participation) |    | 4. Resulting registered capital..... foreign percentage .....         |
| Date.....   |    | 5. Actual investment amount .....pts.                                 |
|   |    | 6. Prior authorization date ..... foreign percentage authorized ..... |
|   |    | Signature .....   |

7. Request for procedure

Don ....., representing Messrs ....., states that having submitted the investment project registration number ....., on the date shown in no 2, no reply has been received from the Administration within the 90 day period, and therefore he requests that the document for presentation of the project be dealt with, for the purpose of the provisions of art 50, no 1, of the second paragraph of Decree 3099/1976.

8. Registration of the request for procedure

9. Procedure of the DGTE

Having checked the records, they do not show that any notification or attestation relating thereto has been made within the period of ninety days from submission of the project for foreign investment, registration number.....

Place..... Date..... Signature.....

FORM TE 13

Copy for procedure (2)

## **Supporting Memorandum and Documentation**

0. *Identification.*
1. *Intended location.*
2. *Technology for the production processes.*
3. *Labour aspects.*
4. *Organization of the future capital.*
5. *Necessary Supplies.*
6. *Economic survey.*
7. *Markets.*
8. *Foreign exchange requirements and generation.*
9. *Benefit which the foreign capital investment will contribute to the Spanish firm and/or to the economy in general.*

### **0. Identification**

#### **0.0 Of the Spanish company (1).**

- 0.00 Legal form.
- 0.01 Name.
- 0.02 Number in the National Census of Legal Entities.
- 0.03 Registered address.
- 0.04 Company objects—
  - a) Established companies – Literal transcription of the company objects stated in the articles of association.
  - b) Companies to be formed – Literal transcription of the company objects which will appear in the articles of association.
- 0.05 Registered capital. Reserves. National and foreign holdings, where applicable (2).
- 0.06 Ratio of shareholders. Composition of the Board of Directors and ratio of the managerial staff.
- 0.07 Report and balance sheet, for at least the last two business years (attached to them, as annex I, copies of the Corporation Tax declaration) (3).
- 0.08 Composition of the share portfolio.
- 0.09 Operating works and range of products.
- 0.010 Quantities and evaluation of the products.
- 0.1 Of the foreign investor (specify the corresponding concept. Reports, balance sheets, etc. shall be attached as annex 2).
- 0.10 Spanish with normal residence abroad; or
  - (1) In the case of companies to be formed, the intended characteristics.  
In the case of existing companies, the present characteristics.
  - (2) If foreign participation were greater than 50% of the registered capital, it must be proved that this is duly authorized. In all cases where there is foreign participation a photocopy of the declaration must be submitted to the Registration Office for Investments at the Ministry of Commerce.
  - (3) Include a copy of the deed for starting up or the last inspection note.

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- 0.11 Foreign individual; or
- 0.12 Foreign corporate body of a private nature. Characteristics.
- 0.2 General information of the business which will be created, expanded or modernized.

### *1. Planned location*

- 1.0 Specification
- 1.1 Reasons for the above

### *2. Technology for the production processes*

- 2.0 Characteristics of the project—
  - 2.00 Budget
  - 2.01 Preliminary project plans (attach as annex 3)
  - 2.02 Diagram of the manufacturing process
  - 2.03 Period anticipated for commissioning of the installations.
  - 2.1 Technological description of the processes (attach as annex 4).

### *3. Labour aspects*

- 3.0 Present and future number of jobs (1)
  - 3.1 Professional training given by the Company to its staff
  - 3.2 Other social advantages received by the staff

	PRESENT NUMBER		FUTURE NUMBER			
	Spain	Abroad	Total in a period of one year		Total in a period of ..... years	
			Spain	Abroad	Spain	Abroad
Managerial staff						
Administrative staff						
Qualified technical staff						
Skilled labour						
Totals						

- (1) Submit a photocopy of the Social Security contribution card.

	<i>Present</i>	<i>%</i>	<i>Expansion</i>	<i>%</i>	<i>Total</i>	<i>%</i>
4. Organization of future capital						
4.0 Investment requirements						
(1) —						
Fixed capital.						
— Land						
— Buildings						
— Installations						
— National machinery						
— Foreign machinery (2)						
— Furniture						
— Vehicles						
— Participations in other companies (give details as annex 5)						
— Other material assets						
— Patents						
— Manufacturing licences						
— Technical assistance						
— Other intangible assets						
4.00 Total fixed capital						
4.01 Total working capital						
4.02 Total investment		100		100		100
4.1 Financing—						
4.10 Own resources						
Registered capital						
— National share						
— Foreign share						
Reserves						
Other own resources						
4.11 Outside resources						
National						
Financial						
— Medium and long term						
— Short term						
Commercial						
Other						
Foreign (authorizations obtained, attach as annex 6)						
4.12 Total resources		100		100		100

- (1) In the case of a company still to be established, only the total column shall be used.  
(2) State whether it is new or used machinery and describe it in point 4.2.1.

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### 4.2 Conditions for the contribution of foreign capital—

- 4.20 Currency
- 4.21 Capital equipment for the operation of the company.  
Report on the foreign machinery and tooling: characteristics, valuation and origin.
- 4.22 Transferable pesetas.
- 4.23 Convertible pesetas.
- 4.24 Technical assistance, patents and manufacturing licences.

### 4.3 Purpose of the planned investment of foreign capital—

	<i>Pesetas</i>
a) Underwriting of new shares:	
– Nominal value	.. ..
– Issuing premium	.. ..
b) Purchase of shares in the possession of nationals representing . . . (1) ptas. nominal amount	.. ..
Total foreign investment	.. .. (2)

### 4.4 Period over which the investment will be carried out.

## 5. *Necessary Supplies*

### 5.0 Assessment of energy requirements—

- 5.00 Electricity.
- 5.01 Solid fuels.
- 5.02 Liquid fuels.

### 5.1 Raw materials—

- 5.10 National.  
Detailed report on annual requirements, quantity and valuation.  
In the case of an expansion, distinguish between those being used at present, and those necessary for the expansion.
- 5.11 Foreign.  
Detailed report on annual requirements, quantity and valuation.  
In the case of an expansion, distinguish between those being used at present and those necessary for the expansion.

### 5.2 Ancillary materials—

- 5.20 National.  
Report on the annual requirements, quantity and valuation.
- 5.21 Foreign.  
Report on the annual requirements, quantity, valuation and origin.

(1) Nominal pesetas

(2) Actual pesetas

6. *Economic survey*

6.0 Production—

- 6.00 Creation of companies. Production capacity for the principal products, elements or parts in the new industry.
  - 6.000 Over three hundred eight-hour working days.
  - 6.001 Over three hundred working days with two shifts.
  - 6.002 With continuous operation.
- 6.01 Expansion or modernisation of existing companies. Production capacity for the main products, elements or parts, distinguishing between the present capacity and the one being requested.
  - 6.010 Over three hundred eight-hour working days.
  - 6.011 Over three hundred working days with two shifts.
  - 6.012 With continuous operation.
- 6.1 Assessment of the cost price, with percentage specification. When it is a case of a range of products, this shall be done for those which represent at least 75% of the value of production.
  - 6.10 Cost of raw materials.
  - 6.11 Labour costs.
  - 6.12 Cost of other items.

7. *Markets*

7.0 Assessment of the Company's sales figure—

- 7.00 Specified by destination
  - 7.000 Home
  - 7.001 Abroad
- 7.01 Comparison of the sales prices with equivalent international prices.
- 7.02 Foreign trade
  - a) In the case of the expansion of an existing company.
    - Report on exports with regard to the destination markets over the last three years.
    - Report on imports with regard to sources of supply and products over the last three years.
    - Final imports.
    - Development trade.
  - b) Newly established companies.
    - Intended exports with regard to products and destination markets.
    - Intended imports with regard to products and sources of supply.

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8. Foreign Exchange Requirements and Generation

8.0 Annual currency outgoings—

- 8.00 Imports
- 8.01 Interest and principle on loans
- 8.02 Royalties
- 8.03 Technical assistance
- 8.04 Dividends

Total annual payments

8.1 Annual currency income—

- 8.10 Exports
- 8.11 Other items

Total annual income

8.2 Positive or negative balance

<i>At present</i>	<i>Once the requested investment has been made</i>

9. Benefit which the foreign capital investment will contribute to the Spanish firm and/or to the economy in general.

## Appendix III

### PARTICULARS TO BE INCLUDED IN THE MEMORANDUM SUBMITTED TOGETHER WITH APPLICATIONS FOR THE AUTHORIZATION OF THE PURCHASE BY FOREIGNERS OF RURAL REAL ESTATE UNDER DECREE NO 3021 OF 1974

#### *0. Identification.*

- 0.0. Of the Spanish firm.
- 0.00. Name and surname(s) of the owner.
  - 0.01. Area of the estate.
  - 0.02. Distribution into unirrigated and irrigated.
  - 0.03. Other features.
    - 0.1. Of the foreign investor.
    - 0.10. Spaniard normally resident abroad;  
or
      - 0.11. Foreign individual; or
      - 0.12. Foreign private legal entity.
      - 0.13. Characteristics.
  - 0.2. Broad general information on the business to be created, expanded or modernized, specifying the exact application to be made of the rural property for the acquisition of which authorization is sought.
  - 0.3. Sketch plan indicating the location of the property.

#### *1. Present use of the estate.*

- 1.1. Agricultural production.
- 1.1. Cattle-raising.
- 1.3. Forestry produce.
- 1.4. Means of production used.
- 1.5. Labour aspects (labour force employed).

#### *2. Future structure of the property.*

- 2.1. Plans of improvement to be carried out.
  - 2.2. Increase to be made in the machinery used.
  - 2.3. New buildings to be erected.
  - 2.4. Employment (creation of new work positions).
  - 2.5. Effect on future agricultural production.
  - 2.6. Planned marketing (domestic and foreign markets).
- 3. *Envisaged financing (1).*

(1) See point 4 of questionnaire 1.



## Appendix IV

### SPECIMEN CORPORATION TAX COMPUTATION

#### SPANISH COMPANY WITH 50% OF FOREIGN PARTICIPATION (WITHOUT TAX TREATY)

	Pesetas	Tax borne
SPANISH COMPANY		
Profit	1 000 000	
Corporate tax 33%	330 000	330 000
	670 000	
Assuming all net profit distributed withholding tax at 15%	100 500	100 500
	569 500	430 500
NET distribution		
FOREIGN 50%		215 225
Net dividend	284 750	
Withholding tax	50 250	
TOTAL income	335 000	
Deductible expenses 50%	167 500	
	167 500	
TAXABLE income		
Corporate tax at 33%	55 275	
Tax withheld by Spanish Co 50%	50 250	
Tax due	5 025	5 025
TOTAL taxes paid by foreign participant		220 250
EFFECTIVE TAX RATE FOR THE FOREIGN PARTICIPANT	46.055%	



# Appendix V

## SPECIMEN BYE-LAWS OF AN SA COMPANY

### ART 1

The grantors of the Deed of Constitution and owners of the shares created by virtue of these Bye-Laws, constitute a Corporation with industrial purposes, which shall be regulated by the Law on Corporations of 17 July 1951, and provisions relative to the legal régime for foreign capital investments in Spain.

### ART 2 NAME

The name of the Corporation shall be '.....'

### ART 3 PURPOSE

The purpose of the Corporation shall be . . . as well as any other purpose complementary to this primary purpose.

### ART 4 DOMICILE

The domicile of the Corporation shall be at . . . and the Corporation may locate its factories, warehouses, branches, agencies, offices and delegations wherever the Board of Directors might deem convenient and with the possibility of changing the social domicile by agreement of the General Shareholders' Meeting, in which event the provisions established by the Legislation in force for such cases will be fulfilled.

### ART 5 DURATION

The duration of the Corporation shall be for an indefinite period of time. The corporate activities shall commence on the date on which the Corporation shall be recorded at the Mercantile Registry, without prejudice to the provisions of Art 7 of the Law on Corporations of 17 July 1951.

The fiscal year shall begin on the first day of January and shall terminate on the last day of December of each year. Exceptionally, the first fiscal year shall begin on the date of constitution of the Corporation.

### ART 6 SOCIAL CAPITAL

The social capital is of . . . PESETAS (Pts . . .) represented by . . . nominative shares with a par value of . . . pesetas each, numbered correlatively from 1 to . . . inclusive.

The shares have been entirely subscribed and up to 25% of their amount has been paid in.

The Board of Directors shall determine, if applicable, the dates and the manner in which the uncalled portion of the social capital subscribed is to be paid in, and shall also be entitled to adjust the wording of the present Article to the real amount of the capital paid in.

**ART 7 SHARES**

The founder members can freely transfer their shares to any of their associated corporations or affiliates (already existing on the date of these Bye-Laws or to be created in the future). The shares can also be freely transferred by the founders to any officer or employee of the above-mentioned corporations. At any moment the shares in likewise manner transferred can revert to the founder member who has exercised such right. Apart from these cases the shares shall be transferred in the manner specified in Art 13 of these Bye-Laws.

**ART 8**

All the shares of the Corporation will have the same political and economical rights subject to what is established in the preceding article.

**ART 9**

The shares are nominative and will be cut from stub-books. The shares will be registered in a special book in which the respective transfers and creation of charges and liabilities on the shares will be noted.

The new issuance of shares that may be created in view of future capital enlargements will also be nominative. The shares to be subscribed in exercise of the pre-emptive subscription right will have the same transmission rights as those already existing.

Each share certificate shall include the information prescribed in Art 43 of the Law on Corporations of 17 July 1951.

**ART 10**

Each share shall confer a right to take part in the operations of the Corporation within the legal and statutory faculties of the General Shareholders' Meeting, to a participation proportional to the paid-in capital in the social net-worth upon liquidation, and to a participation proportional to the paid-in capital of profits and payments, as well as to the proportional pre-emptive right for the subscription of new shares.

**ART 11**

In case of an increase of the social capital and issuance of new shares, if a shareholder renounces the subscription of the shares that correspond to him, this right will pass to the other shareholders, who can subscribe them proportionally to the shares they have, increasing proportionally the subscription right by the renouncement of one or more shareholders. In case none of the shareholders exercise this right, the Board of Directors can freely dispose of the shares.

**ART 12**

The shares are indivisible and individual and the Corporation will acknowledge only one owner for the exercise of the corresponding rights.

**ART 13 TRANSFER OF SHARES**

The shares can be transferred by any of the means admitted by the Law and in accordance with the Bye-Laws herein stated.

When any shareholder wishes to sell all or part of his shares and does not use the right

conferred on him by Art 7 of these Bye-Laws, he shall notify the Board of Directors by registered letter of his desire, and the Board will notify the rest of the shareholders by registered letter within a period of 90 days, as well as the price of the shares (which will be specified by the procedures established in Art 14). The shareholders will have a pre-emptive right to this acquisition (in proportion to their shares), answering by registered letter to the Board of Directors within a period of 10 days. If any of the shareholders does not exercise this right of acquisition (it is understood that he does not wish to purchase if he does not answer within a period of 10 days), the other shareholders may purchase the shares always in proportion to the number of shares they own.

If none of the shareholders purchases the shares, the selling shareholder may sell them to any other party at the price he may deem convenient.

#### **ART 14 VALUATION OF THE SHARES**

As soon as the Board of Directors is informed that any shareholder has the intention of selling his shares, the Board will advise the firm of ... of this fact, requesting said firm to value the shares in accordance with the requirements of this article. In the event that such auditing firm should not exist at that time, or should not accept the request to value the shares, the Board shall request the valuation of the shares offered in sale to any other firm with the same characteristics.

As soon as the auditing firm informs the Board about the valuation of the shares, the Board, still within the period of 90 days mentioned in art 13 of these Bye-Laws, shall report it to the shareholders.

If the period of 90 days elapses before the Board informs the shareholder intending to sell about the price of the shares, the shareholder intending to sell will be free to designate any firm to perform such valuation and the Corporation shall surrender any information required for that purpose.

The valuation effected by the auditing firm shall not be subject to any appeal.

In order to value the shares ... the firm designated as mentioned above shall follow these rules:

- (a) The amounts shown on the accounting books for land, buildings, machinery equipment, tools, warehouses, supplies and other tangible assets will be disregarded and will be valued according to the price in the market at that time and the actual conditions of the assets shall also be considered.
- (b) Any other assets will be valued in accordance with the principles generally accepted in accounting, adequately applied to each specific case.
- (c) The assets (exceeding the amortized cost of acquisition) regarded as patents, trademarks and commercial names, licences and other rights and similar intangible assets owned by the Corporation, shall be disregarded.
- (d) From the amount of all the assets of the Corporation reached in the above-mentioned manner, will be deducted the amount of all the liabilities plus an amount, sufficient in the opinion of the auditor, to cover any other foreseen liability.

#### **ART 15 MORTIS-CAUSA TRANSMISSION OF THE SHARES**

The transmission of shares due to death, will create in favour of the members a right to their acquisition that will have to be executed through the Board of Directors. The persons entitled of the deceased shareholder will have to communicate to the Board of

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Directors of the Corporation the member's death within a period of two months from the date of decease.

In the event that the deceased shareholder held shares as a consequence of the transfer rights specified in Article 7 of these Bye-Laws, the Board of Directors shall offer the shares to the founder member who transferred those shares.

In any other event, the Board of Directors will offer the shares to the other shareholders in proportion to those they already own. In case the latter do not acquire the shares, the Board will be entitled to freely dispose of them. In case the transmission is of only one share, the Board of Directors will freely offer it to any shareholder. The shares will be valued by the same procedure specified in Art 14 of these Bye-Laws.

### **ART 16 MANAGEMENT OF THE CORPORATION**

The Corporation shall be managed and administered by the General Shareholders' Meeting and by the Board of Directors.

### **ART 17 THE GENERAL SHAREHOLDERS' MEETING**

The General Shareholders' Meeting shall exercise the full social rights and shall be either an Ordinary or an Extraordinary Shareholders' Meeting.

#### **ART 18**

The Ordinary Shareholders' Meeting shall:

- (a) Examine the Annual Report, Accounts and Balances of the previous fiscal year, review the corporate operations and decide upon the distribution of profits;
- (b) Designate members for the Board of Directors; and
- (c) Designate shareholders to audit the Accounts.

#### **ART 19**

The Extraordinary Shareholders' Meeting shall take notice of any question or matter which does not specifically correspond to the Ordinary Shareholders' Meeting, and especially:

- (a) Dissolve the Corporation;
- (b) Modify the Bye-Laws and their interpretation;
- (c) Merge with one or more Corporations;
- (d) Increase or decrease the social capital; and
- (e) Issue bonds or debentures.

#### **ART 20**

At the first General Meeting held by the founder members at the act of constitution of the Corporation, the members, who will form the Board of Directors, and a General Director, who will exercise the powers conferred by Art 33 of these Bye-Laws, shall be designated.

#### **ART 21**

The Ordinary Shareholders' Meeting will take place once a year within the first six months following the closing date of the fiscal year, and shall be called by the Board of Directors in the manner established by Art 53 of the Law on Corporations of 17 July

1951, and shall be held at the registered office on the date stated by the Board.

Furthermore, the Secretary of the Board shall send notice of the meeting directly to each member to the last address which appears in the files of the Corporation, by means of registered letter (airmail when to a member not residing in Spain), cable or telex sent 30 days in advance.

The Ordinary Shareholders' Meeting shall be validly constituted when the majority of members are present, or whatever the number might be if the majority of the paid-in capital stock is present. On second notice, such Meeting shall be validly constituted whatever the number of members present might be, provided that notice has been given with the same formalities.

#### **ART 22**

The Extraordinary Shareholders' Meeting shall be called in the same manner as the Ordinary Meeting by the Board of Directors when the Board deems it to be necessary for the interests of the Corporation. This Meeting shall also be called at the request of a minority of shareholders representing at least 10% of the paid-in capital stock and such request shall state the purpose of the proposed Meeting. In this case, the Meeting shall be called to be celebrated within 30 days following the date of the request through a Notary Public to the Board of Directors.

#### **ART 23**

The Meeting will be considered as convened and shall be validly constituted in any place within the Spanish territory as Ordinary or Extraordinary without the previous notice, when all the paid-in capital stock is present and its celebration is unanimously accepted.

#### **ART 24**

The Meeting shall be presided over by the President of the Board of Directors or, if absent, by any other member of such Board designated at each Meeting. The Secretary of the Meeting shall be that of the Board or, if absent, someone designated by each Meeting. A list of attendants shall be prepared stating the number of shares present, fixing the number of shareholders and the amount of paid-in capital. Only the members, whose shares have been recorded in the shareholders' register five days prior to the date on which the Meeting will take place, shall have the right to attend the Meeting.

#### **ART 25**

With the exception provided for by Art 23 of these Bye-Laws, all the Meetings will be held at the same place where the Corporation has its legal domicile, with the prorrogations provided for by Art 63 of the Law on Corporations of 17 July 1951.

The number of attending members, together with the number of shares owned by each one of them, shall be recorded in the minutes, as well as the questions dealt with and the decisions adopted.

The minutes will be approved by the Meeting after such has been held and will be authorized by the Secretary of the Meeting and verified by the President.

#### **ART 26**

The agreements will be adopted by the majority of the shareholders present in person or by proxy with voting power.

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Each share gives a right to one vote. Nevertheless, in order that the Ordinary or Extraordinary Shareholders' Meeting may validly agree on the issuance of bonds and debentures, increase or decrease of the social capital, the transformation, merging or dissolution of the Corporation, and, generally, any modification to the Bye-Laws, two thirds of the members and paid-in capital shall have to be present at such Meeting on first notice. The Shareholders' Meeting will be validly constituted on second notice when shareholders representing at least 50% of the paid-in capital are present.

### **ART 27 THE BOARD OF DIRECTORS**

The number of Directors which shall constitute the whole Board shall not be less than five nor more than nine and among themselves they will elect a President as well as a Secretary, who does not necessarily have to be a Director. In the case of the first Board of Directors, these positions shall be designated by the General Shareholders' Meeting.

The fees of the members of the Board shall be fixed by the General Meeting.

The members of the Board of Directors do not necessarily have to be shareholders.

### **ART 28**

The members of the Board of Directors will exercise their powers during a period of ten years, subject to the provisions of the Law on Corporations of 17 July 1951, regarding officers designated upon the act of constitution and partial replacements thereof.

The directors may be re-elected indefinitely.

### **ART 29**

The Board of Directors shall be held upon requisition by any of its members. The decisions of the Board shall be valid when the majority of the members are present or represented by another member with written authorization.

The Meetings of the Board will be called at least ten days in advance, by means of registered letter, telex or cable, in the two latter cases confirmed by a registered letter. In order that the agreements reached by the Board may be valid, it will be necessary to call the meeting in the above-mentioned manner.

### **ART 30**

The agreements reached by the Board of Directors shall be adopted by a simple majority of votes; shall have full force; may be carried out immediately; and shall be registered in a Minute Book of the Board, which minutes shall be recorded by the Secretary and approved by the President.

### **ART 31**

The Board of Directors has full powers to manage and administer the Corporation, to acquire rights and obligations, of any legal nature whatsoever, with the exception of the limitations established by Arts 18 and 19 of these Bye-Laws regarding the attribution of some specific social functions to the General Meeting, and those specified by the Law.

### **ART 32**

The Board of Directors may make a total or partial delegation of its functions in a permanent or temporary manner to the committees, directors, representatives or managers, designated as deemed convenient by the Board, who may use the corporate seal

for the fulfilment of the delegated functions. These delegated functions may terminate in any manner and at any time without any right of claim whatsoever.

#### **ART 33 THE MANAGING DIRECTOR**

The Managing Director will be freely designated by the Board and will have the full executive powers of the Corporation, to which effects the Board will grant him in each case the powers that might be required. However, the first Managing Director shall be designated by the General Shareholders' Meeting at the act of constitution of the Corporation. Regarding the first Managing Director designated directly by the General Meeting, his nomination shall be in force for as long as the Board of Directors does not expressly revoke it, who, in case of deciding upon such revocation, need not hold a General Shareholders' Meeting.

The Managing Director at all times shall have the following powers:

- (1) Direct and inspect the business of the Corporation; execute the agreements of the Board of Directors; and present to the Board those matters and operations deemed convenient to the corporate purposes.
- (2) Represent the Corporation in all its official acts, and sign in the Corporation's name.
- (3) Authorize with his signature the contracts, the correspondence and any other documents relative to the operations and business of the Corporation.
- (4) Open accounts in national and foreign banks, especially in the Banco de España, whether in their principal offices or branches, and issue the necessary cheques, drafts and orders of payment.
- (5) Participate in the name of the Corporation in any type of biddings and auctions.
- (6) Represent the Corporation in legal, administrative or labour matters and, to this effect, grant or revoke the powers of legal agents.
- (7) Ensure that all the results of the operations handled by any office of the Corporation are registered in the central accounting office.
- (8) Submit to the Board of Directors the names of the persons he may deem capable to occupy the vacant permanent positions, appoint and terminate freely the temporary employees informing the Board of Directors of the number of these, terminate any employee informing the Board of Directors of this fact, replace provisionally indispensable employees pending the decision of the Board, and grant licences and leaves of absence to the employees of the Corporation.

#### **ART 34 BALANCE SHEET AND ACCOUNTS**

The Board of Directors shall issue during the four first months from the closing date of each fiscal year, the Balance Sheet, Profit and Loss Account and the Annual Report, all of which shall be in accordance with Chapter VI of the Law on Corporations of 17 July 1951. These documents shall be at the disposal of the shareholders at the Corporation's registered office 15 days prior to the holding of the General Meeting.

#### **ART 35 PROFITS**

Net profits shall be those resulting after reserving for exploitation expenses, administration and management, financing and fiscal liabilities, insurance and amortization and general expenses.

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### **ART 36 DISSOLUTION**

The Corporation shall be dissolved due to the causes specified in Article 150 of the Law on Corporations of 17 July 1951. The General Meeting may also agree to the dissolution when the quorum provided for in Art 26 of these Bye-Laws is present.

### **ART 37 LIQUIDATION**

In the event of the dissolution, the General Meeting shall designate the liquidator or liquidators, always an odd number, who will make the liquidation in prescribed periods or terms. The liquidators shall have the powers specified in Art 160 of the Law on Corporations of 17 July 1951 and any others granted to them. In the event that the liquidators should not be named, the liquidation shall be performed by the members constituting the Board of Directors.

The Corporation being liquidated shall continue holding Ordinary and Extraordinary Shareholders' Meetings and the liquidators shall inform the Meetings about the progress of their functions.

### **ART 38 DISTRIBUTION OF ASSETS**

The distribution shall be made in proportion to the paid-in capital, also taking up the corresponding losses, all this in accordance with Art 162 and succeeding Articles of the Law on Corporations of 17 July 1951. The quotas unclaimed within the following 90 days shall be deposited in the Banco de España or in the Caja General de Depositos\*, bearing in mind the provisions of the Decree of 3 June 1955.

### **ART 39 APPLICABLE JURISDICTION**

The Shareholders expressly submit themselves to the Courts, which have jurisdiction in the place of legal domicile of the Corporation, waiving any right they might have with regard to any other judicial jurisdiction.

### **ART 40 INTERPRETATION OF THE BYE-LAWS**

The General Meeting has the power to interpret and supplement the present Bye-Laws, always in accordance with the Law in force.

\* This is a special department of the Ministry of Finance (Ministerio de Hacienda).

## Appendix VI

**ORDER OF THE MINISTRY OF COMMERCE AND TOURISM NO 23231,  
DATED 14 SEPTEMBER 1979, AND PUBLISHED IN THE OFFICIAL STATE  
GAZETTE ON 27 SEPTEMBER 1979.**

First.—Current invisible transactions enumerated in Sched I of this Order, and payments and transfers deriving from the same, become liberalized and consequently require no previous administrative authorization by the General Directorate of Foreign Transactions.

Second.—(1) The General Directorate of Foreign Transactions, either itself or through Delegates in Foreign Exchange matters (Delegate Entities) will be able to verify the authenticity of the transaction, its regularity and legality.

(2) Payments and transfers should be carried out through the Delegate Entities, and in accordance with the provisions regulating their execution.

Third.—(1) Payments and transfers from residents to non-residents for the reasons and amounts specified in Sched II of this Order will be carried out through the Delegate Entities without any previous declaration to the General Directorate of Foreign Transactions being necessary.

(2) Payments and transfers from residents to non-residents for liberalized transactions not enumerated in Sched II of this Order, or whose amount exceeds the limits stipulated in the same, will require prior declar-

ation to the General Directorate of Foreign Transactions, for statistical purposes and for verifying the transaction's authenticity, regularity, and compliance with regulations established by the law in force.

Fourth.—In order to effect payments and transfers referred to in the two previous articles, the interested parties must present to the Delegate Entities documentation justifying the same. The General Directorate of Foreign Transactions will issue a circular to the Delegate Entities informing them of the specific documentation required in the case of requiring such authorization.

Fifth.—When transacting payments and transfers referred to in this Order, the Delegate Entities must comply with the following instructions:

(a) Demand and verify the documentation giving sufficient proof of the existence of the debt or transaction, origin of payment and transfer.

(b) Observe the specific conditions, limits and formalities laid down for each case in Sched II of this Order, and in the circular, which will be issued by the General Directorate of Foreign Transactions.

(c) Account to the Bank of Spain for each payment and transfer in

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conformity with the current regulations and the established forms and procedures.

(d) Account to the General Directorate of Foreign Transactions any irregularity observed in the processing of transactions submitted to them, and which might constitute a misdemeanour or administrative infringement of the law.

(e) Preserve the documentation corresponding to each transaction in the manner laid down by the General Directorate of Foreign Transactions.

Sixth.—(1) To facilitate the speedy execution of those payments and transfers abroad which are of a typical and habitual character in the firm's business or in the resident's affairs, the General Directorate of Foreign Transactions will be able to grant residents, who wish to apply for such, a 'payments abroad account to be justified' which will obviate the need to apply for prior formal justification, up to an amount and over a period of time to be determined.

(2) The payments and transfers which come under this form of 'accounts for payments abroad to be justified' must be made through a sole Delegate Entity, to be chosen freely by the interested party.

(3) The opening of such 'accounts' will require authorization by the General Directorate of Foreign Transactions, which will determine their content, scope, amount and period of operation.

Seventh.—The liberalization contained in the first article of this Order

applies equally to the payments received by residents from non-residents for the concepts enumerated in Sched I. These payments will be transacted freely through the Delegate Entities, the only requirement being declaration by the interested parties of the concept for which payment is being received, and the corresponding communication of such payments to the Bank of Spain by the Delegate Entities, in accordance with the regulatory established procedure.

Eighth.—The General Directorate of Foreign Transactions will inform the Delegate Entities, by means of a circular, of the operative provisions for the carrying out of this present Order.

## REVOCATION PROVISION

Resolutions of the now non-existent IEME (Spanish Institute of Foreign Exchange) of 17 March, 1961 (Official State Gazette of 20 March, 1961), on liberalisation of transactions, of 5 March, 1962 (Official State Gazette of 7 March, 1962), on common invisible transactions of 6 June, 1964 (Official State Gazette of 8 June, 1964), on invisible transactions concerning travel, publicity, pensions and retirement payments and family aid payments, are hereby revoked.

## FINAL PROVISION

This Ministerial Order will come into force thirty days after its publication in the Official State Gazette.

**EXTRACTS FROM SCHEDULE I***LIBERALIZED OPERATIONS\****Different services and operations related to Industry and Commerce**

<i>Concept</i>	<i>Specification</i>
Technical aid*	
Machine hire	
Costs of transformation and finishing of goods and similar services	
Assembly costs of exported or imported machinery	
Patents, designs and trade marks*	Grant or acquisition of patents, designs, trade marks and inventions, protected or not, and registration costs for the same
Contracts of works	Construction and maintenance work on buildings, roads, bridges, ports, and execution of plants for immediate use, etc, carried out by specialized firms, generally for a higher price, after adjudication in public tender or bid
Participation in general costs	Participation of subsidiaries, branches or establishments in general costs of the parent company [prior notification to DGTE required]
Other services	Real estate and property maintenance.

**Operations related to foreign trade**

Commissions and brokerages for imported goods*	To be decided between banks
Commissions and brokerages for exported goods*	Customs duty and different taxes related to movement of goods (tariffs and other Customs duties and taxes) and Customs Agents' fees
Commissions and brokerages on other imports and exports	Goods storage inside or outside of Customs
Banking interests, commissions and costs	Supplementary costs of import or export of goods, apart from transport and insurance, such as analysis, supervision, transfer, tax, stamp duty costs, etc
Customs duty and storage costs	Those conceded or granted by services or by goods transfer, the latter according to the corresponding declaration or licence.
Bonuses and discounts*	

\* Asterisk indicates that liberalization includes payments and transfers. According to their nature, transactions are governed by their specific rules.

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Machinery repairs  
Differences, guarantees  
Deposits derived from hire-purchase operations within normal commercial practice

### **Personal Transactions**

Receipts and payments of lesser importance      Allowances for attendance at company board meetings

### **Private income**

**In accordance with the rules applicable to foreign investments in Spain or Spanish investments abroad.**

Income from direct investment	Interests (not dividends) from non-shareholding establishments (branch, agency, office, etc), in accordance with administrative authorization for investment
Dividends	
Sale of subscription rights	
Real estate income	
Bond dividend warrants	For bonds not convertible into shares

## **EXTRACTS FROM SCHEDULE II**

### *GENERAL AUTHORIZED TRANSFERS WHOSE EXECUTION WILL BE CARRIED OUT BY THE DELEGATE ENTITIES WITHOUT PRIOR DECLARATION TO THE GENERAL DIRECTORATE OF FOREIGN TRANSACTIONS*

#### **Different services and operations related to industry and commerce**

<i>Concept</i>	<i>Limit of exemption from prior declaration</i>
Technical aid	Up to equivalent of Ptas 10,000,000—per annum per contract
Machinery hire	No limit, according to licence
Costs of transformation and finishing of goods and similar services	Up to equivalent of Ptas 10,000,000.—
Imported or exported machinery assembly costs	Up to equivalent of Ptas 10,000,000—and no limit if under licence
Patents, designs, trade marks and inventions	Up to Ptas 10,000,000—per contract

Other services	Up to equivalent of Ptas 500,000—except in the case of profits from theatrical tours, travelling circuses and other touring company costs, in which case there shall be no limit.
<b>Operations related to foreign trade</b>	
Commissions and brokerage on imported goods	No limit on quantity or percentage when commission is authorized or under licence
Commissions and brokerage on exported goods	No limit on quantity or percentage when authorized or under licence
Other commissions and brokerage for import and export of various goods	Up to equivalent of Ptas 100,000—per transaction and up to equivalent for Ptas 1,000,000—per annum per agent for total operations
Interests, commissions, bank and postal charges	No limit
Customs duties, storage and transit costs	No limit
Machinery repairs	Up to Ptas 5,000,000—per transaction, and no limit if under licence
Personal payments (fees, salaries, etc)	Up to Ptas 5,000,000—per contract. Up to 50% of salary or income of foreign residents
Receipts and payments of minimal importance	Up to Ptas 25,000—per month.
<b>Income from private investment</b>	
Dividends	No limit; as long as the transfer abroad is effected within 6 months from the date of payment
Sale of subscription rights	No limit
Real estate income	No limit, as long as it is not a commercial activity
Bonds	No limit



# Appendix VII

## SELECT GLOSSARY OF SPANISH LEGAL AND BUSINESS TERMS

account	cuenta	bad faith	mala fe
accountant	contable	bailment	deposito
accounts payable	cuentas a pagar	balance	saldo
accounts receivable	cuentas a cobrar	bank	banco
acknowledgment (formal)	acta notarial de reconocimiento	bank draft	letra bancaria
act of God	fuerza mayor	bank statement	extracto de cuentas
action at law	acción judicial	bankruptcy	quiebra
adjournment	aplazamiento	Bar Association	Colegio de Abogados
administrator	administrador	bearer	portador
adviser	asesor, consejero	bid	oferta
advocate	abogado	bid bond	fianza de licitador
affidavit	declaración jurada	bill	factura
affreightment	fletamento	bill of exchange	letra de cambio
age	edad	bill of lading	conocimiento de embarque
—, of full	mayor de edad	bill of sale	documento de venta
agency	agencia	board of directors	consejo de administración
agenda	orden del dia	bona fide holder	tenedor de buena fe
agent	agente	bond	obligación, bono de caja
agreement	convenio	bonded warehouse	almacén franco
alien	extranjero	book value	valor según libros
allotment	asignación	books of account	libros de contabilidad
appeal	recurso	bottomry bond	hipoteca del buque
approval	visto bueno	branch	sucursal
arbitration	arbitraje	brand	marca de fábrica
—award	laudo	broker	agente mediador
arbitrator	arbitro	budget	presupuesto
articles of association	estatutos	business	negocios, comercio
articles of partnership	sociales	business agent	gestor
assets	contrato de asociación	business day	día hábil
assignment	activo	business premises	locales comerciales
associated company	cesión, traspaso	buyer	comprador
attorney-at-law	sociedad vinculada	bye-laws	estatutos, reglamentos anteriores
auction	abogado		
audit	subasta		
auditor	revisión de cuentas		
	interventor		
bad debt	deuda incobrable	Cabinet	Consejo de Ministros

## *Doing Business in Spain*

cable transfer	transferencia cablegráfica	customs clearance	despacho de aduana
capacity	capacidad	customs duties	derechos de aduana
capital	capital		
capital gains	plusvalías del capital	damages	daños y perjuicios
capital goods	bienes de equipo	days of grace	plazo de gracia
capital increase	ampliación de capital	dead freight	falso flete
capital stock	capital social	debenture	obligación
carrier	empresa de transporte	debt	deuda
cash	efectivo	decision (court)	sentencia
cash against documents	pago contra presentación de documentos	decree	Decreto
cash book	libro de caja	deed	escritura
cash discount	descuento por pronto pago	defendant	demandado
cash on delivery (cod)	envío contra reembolso	delivery	entrega
certificate	certificado	demand bill	letra a la vista
certificate of deposit	certificado de depósito	demurrage	demora
certificate of indebtedness	certificado de adeudo	deposit	deposito,
certificate of origin	certificado de origen	deposit in escrow	consignación
certificate of protest	certificado de protesto		deposito sujeto a condiciones
Chamber of Commerce	Camara de Comercio		
charges	gastos	director	consejero
chattels	bienes muebles	discharge	finiquito
cheque	talón	disclaim	renunciar
claim	reclamación	dishonour (draft)	falta de pago
collateral	seguridad colateral	dismiss (employee)	despedir
commission	comisión	disparagement of goods	menosprecio de mercancías
commission agent	agente comisionista	dissolution	liquidación
commodities	productos básicos	dividend	dividendo
common stock	acciones ordinarias	documentary letter of credit	carta de crédito
company	sociedad, compañía	drawback	documentario reembolso parcial de derechos
compensation	indemnización		aduaneros
compromise	compromiso	duty free	franco de derechos, libre de impuestos
contract	contrato		
convene	convocar		
co-owner	copropietario		
copyright	derecho de autor		
costs	costas		
counsel	asesor jurídico	easement	servidumbre
counterclaim	contrademand	employee	empleado
court	tribunal	employer	empleador
credit	crédito	employment	empleo
creditor	acreedor	employment contract	contrato de trabajo
creditors' meeting	junta de acreedores	enterprise	empresa
current account	cuenta corriente	errors and omissions excepted (E & OE)	salvo error u omisión (SEuO)
customs	Aduana	escalation clause	cláusula de revisión plica
		escrow	impedimento
		estoppel	sin dividendo
		ex dividend	franco en almacén
		ex warehouse	cambio exterior
		exchange	tesoro
		exchequer	
		executive	ejecutivo

expert	perito	indemnity	indemnización
export	exportación	indemnity bond	contrafianza
export quota	cuota de exportación	industry	industria
extension	prorroga	inland bill	letra sobre el interior
FOB	libre abordo	inland freight	flete terrestre
fact	hecho	in bond	en deposito
fault	culpa	in stock	en almacén
fees (professional)	honorarios	in working order	en buen estado de funcionamiento
file	expediente	injunction	requerimiento judicial
fine	multa	insolvency	insolvencia
firm name	razón social	instalment	pago a cuenta
fiscal year	año de ejercicio	insurance	seguro
fixed assets	activo fijo	interest	interés
fixed liabilities	pasivo fijo	inventory	inventario
fixed terms	plazo fijo	investment	inversión
foreclosure	ejecución de hipoteca	investor	inversionista
foreign	extranjero	issue	emisión
foreign exchange	divisas	item	partida
fraud	estafa	itemized invoice	factura detallada
funds	fondos		
garnishee	embargado		
gentleman's agreement	acuerdo de caballeros	joint and several	conjunta y solidariamente
gift	donación	judge	juez
going concern	empresa en funcionamiento	judgment	sentencia
goods	mercancías, bienes	jurisdiction	fuero, competencia
goodwill	valor de un comercio en marcha	just cause	causa justificada
government bond	título del estado	keep the books	llevar los libros
gross	bruto	key figures	cifras clave
guarantee	garantía, fianza	kind (in)	en especie
harbour dues	derechos de puerto	labour	mano de obra
headquarters	casa matriz	labour agreement	convenio colectivo de trabajo
health authorities	Autoridades de Sanidad	labour court	Magistratura del Trabajo
hearing	vista, audiencia	land	terreno
hold harmless	mantener libre de perjuicio	landlord	arrendador
holder for value	tenedor legítimo	law	ley, derecho
holding company	sociedad de control	law merchant	derecho mercantil
IOU	pagaré sobre papel sin timbrar	law of procedure	ley de enjuiciamiento
identity card	carnet de identidad	lawsuit	pleito, acción
import duties	derechos de importación	lease	arrendamiento
import licence	licencia de importación	leave and licence	defensa de permisión del demandante
imprest fund	fondo fijo		en una acción de transgresión
income	ingresos, renta	letter of authority	carta de autorización
		letter of credit	carta de credito
		liabilities	pasivo
		licence	licencia

## *Doing Business in Spain*

lien	embargo preventivo	paid	pagado
line of credit	línea de crédito	part performance	cumplimiento parcial
liner terms	condiciones de las líneas marítimas regulares	partner	socio
liquid assets	activo disponible	partnership	sociedad colectiva
liquidity	disponibilidad	party	parte
listed securities	valores cotizados en bolsa	patent	patente
litigation	pleito	paying agent	agente pagador
loan	préstamo	pending	en trámite
long-term	a largo plazo	period	plazo
loss	perdida	personnel	personal
lot	partida	plaintiff	demandante
magistrate	magistrado	pledge	prenda
management	dirección	policy	póliza
manager	gerente	port	puerto
market	mercado	postdated	posfechado
master	capitán	power of attorney	poder
matter	asunto	price	precio
maturity date	fecha de vencimiento	principal and agent	mandante y mandatario
medium term	a medio plazo	proof (evidence)	prueba
meeting	reunión, junta, asamblea	proxy	apoderado
member	socio, vocal	purchasing agent	agente de compras
merchant	comerciante	quantum meruit	tanto como se ha merecido
merger	fusión	questionnaire	cuestionario
mineral rights	derecho al subsuelo	quid pro quo	una cosa por otra
Ministry	Ministerio	quiet enjoyment	quieta y pacífica posesión
minutes	actas	quorum	quorum
money	moneda, dinero	quota	cuota
mortgage	hipoteca	quotation	cotización
net	neto	rate	tipo
net assets	activo neto	real estate	bienes inmuebles, inmobiliario
network	·red	receipt	recibo
notary public	notario público	receivership	administración judicial
noteholder	tenedor del pagaré	reconvene	convocar de nuevo
notice	aviso	refund	devolución
novation	novación	register	registro
null and void	sin efecto ni valor	registration	inscripción
oath	juramento	regulation	reglamento
opinion (of Counsel)	dictamen	renew	renovar
option	opción	rent	alquiler
overdraft	descubierto	report	informe, memoria
overheads	gastos generales	representative	representante, delegado
own account	cuenta propia	reserves	reservas
ownership	propiedad, dominio	right	derecho
pact	acuerdo	royalty	canon de producción
		running costs	gastos de explotación

safe-deposit box	caja fuerte	trial	juicio
salary	sueldo		
sale	venta	unearned income	renta de inversiones
salvage	salvamento	unemployment	desempleo
sample	muestra	unencumbered	libre de cargas
savings bank	caja de ahorros	union	sindicato obrero
securities	valores, títulos	utilities	servicios públicos
sell forward	vender a término		
sequestration	embargo	vacant possession	posesión
share	acción		abandonada
share capital	capital social	valuation	valoración
share issue	emisión de acciones	value	valor
shareholder	accionista	value date	fecha efectiva
short-term	a corto plazo	vendor	vendedor
sole trader	comerciante individual	vote	voto
strike	huelga		
SR & CC clause	cláusula sobre riesgos de huelga, alzamiento y desordenes internos	waiver	renuncia
	fiador	warehouse	almacén
surety	informe de inspección	warranty	garantía
surveillance report	suspensión de pagos	wholly-owned	
		subsidiary	
suspension of payments		witness	subsidiaria en propiedad absoluta
		writ	testigo
		write-off	demanda
			amortización
tariff	arancel	year-end balance	
tax	impuesto	sheet	balance de fin de año
tenant	arrendatario	yield	rendimiento
tender	oferta, propuesta		
title	título	zoning	reglamentación
town hall	ayuntamiento	zone	urbanística
trade name	nombre comercial	—, duty free	zona
trading company	sociedad mercantil		zona franca



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