



**CHAMBERS**  
Global Practice Guides

# Banking & Finance

Law & Practice – Spain  
Contributed by  
Zunzunegui Abogados

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# SPAIN

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## **LAW AND PRACTICE:**

**p.3**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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**Zunzunegui Abogados** is a leading boutique firm mainly involved in financial regulation and securities law. The firm, which has practised law for more than 20 years, specialises in banking and financial services, including litigation, dispute resolution and regulatory compliance. It is at the forefront of securities litigation, handling individual and class

action cases related to structured and derivative products, and offers independent advice on financial regulation. Zunzunegui Abogados' office is located in the heart of Madrid but the practice has a presence in the whole of Spain and the firm covers four areas: bankruptcy, litigation, financial advice and consulting service.

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## 1. Loan Market Panorama

### 1.1 The impact of recent economic cycles and the regulatory environment

The assessment of the impact of economic cycles and the regulatory environment on the direction and trends of the loan market in Spain is analysed by the Bank of Spain on an annual basis.

The Bank of Spain 2015 Annual Report states that bank loans are the main source of Spanish firms' external financing. In the current slow recovery of the Spanish economy, firms' access to bank financing has improved, especially in the case of SMEs, and the demand for credit has also increased. Consequently, the volume of funds granted has increased, but accompanied by a certain degree of credit supply selection among lenders. Accordingly, the course of recent credit flows is directed to a greater extent towards more productive companies.

The Bank of Spain also states that both the range of fiscal and regulatory measures in the area of housing and the rental market, and the recent changes in financial regulation, should have contributed to reducing an excessive concentration of credit in real estate assets.

### 1.2 The high-yield market

While certain Spanish companies have eventually financed their activities by issuing high-yield bonds, it is a fact that bank loans remain the main financing option in Spain.

However, borrowers are increasingly aware of the need to explore alternative ways of financing. For instance, crowd-funding platforms are a pioneering solution in this field.

### 1.3 Alternative credit providers

The loan market has experienced a slight growth in alternative credit providers, especially private providers and crowd-funding platforms, due to the difficulties of obtaining bank financing. It is also worth mentioning the presence of credit funds.

### 1.4 Evolution of banking and finance techniques

Banking and finance techniques are not evolving enough to reflect the investor base and needs of borrowers.

### 1.5 Recent or expected legal, tax, regulatory or other developments

Law 5/2015 of 27 April, on corporate financing promotion, has been the most significant recent regulatory development.

One of the main innovations is allowing Spanish private limited liability companies (*sociedades limitadas*, “SLs”) to issue and guarantee standard desk securities, which was a possibility reserved for public limited companies only. Moreover, Law 5/2015 has made the debt issuance procedure more flexible and has reduced the formalities required for issuance. For instance, the requirement to grant and register a public deed of issuance only applies to issuances carried out by Spanish companies on international markets, when the securities are not admitted to trading on official secondary markets or multilateral trading facilities, and when they are not subject to a public offering in Spain that requires a prospectus subject to approval and registration by the Spanish Securities and Markets Commission (CNMV). Issuances of convertible bonds are also out of reach of this exception.

Additionally, Law 5/2015 regulates crowd-funding platforms, which entails a pioneering way of financing.

## 2. Authorisation

### 2.1 Requirements for authorisation to provide financing to a company

Lending activity is not regulated in Spain, and therefore it is not subject to any licensing requirements. The only limits to ending activity are the taking of deposits or other repayable funds from the public (which is an activity reserved for credit institutions supervised by the Bank of Spain), and the provision of other financial services (such as payment services or issuance of e-money). This lack of regulation has stimulated the activity of private loan providers.

Nevertheless, there are some exceptions to the previous principle. For instance, some entities which provide lending activities may be financial establishments of credit (*establecimientos financieros de crédito*). Despite not being credit institutions, these entities need to obtain an appropriate authorisation from the Ministry of Economy and Competitiveness (*Ministerio de Economía y Competitividad*) to operate, and are under the supervision of the Bank of Spain.

Crowd-funding platforms, which have been regulated in Spain since April 2015, need to obtain an authorisation from the Spanish Securities and Markets Commission (CNMV), and are also under the supervision of the Bank of Spain when they take the form of hybrid crowd-funding platforms and provide payment services. Furthermore, private loan providers and credit intermediaries contracting mortgage loans or credits with consumers must be registered in the corresponding Autonomous Regions’ registries.

## 3. Structuring and Documentation Considerations

### 3.1 Restrictions on foreign lenders granting loans

In compliance with the principles of the European Union (EU) treaties, free movement of capital is the norm in Spain, both for EU and non-EU residents. Therefore, the general rule is that all acts and transactions between residents and non-residents which involve or may involve payments or collection of payments (including the granting of loans) are unrestricted.

However, there are some limits to this general principle. For instance, it is necessary to request prior authorisation when investments affect the following areas: public authorities, public policy, public health, security and national defence, air transportation, radio, private security, minerals of strategic interest, raw materials, mining companies, telecommunications companies and those companies involved in gambling. In the same way, investment made by public authorities other than EU Member States and investment from non-EU countries which could put Spanish state interest in jeopardy require prior authorisation (except where there are international agreements ratified by Spain stating otherwise).

Furthermore, prohibitions and suspensions on the free movements of capital may be imposed in compliance with anti-money laundering and regulations countering the financing of terrorism. In addition, Spanish residents who carry out transactions with non-residents, who are different from providers of payment services or institutions registered in the Bank of Spain, must report the payment flows resulting from such transactions to the Bank of Spain. That reporting obligation has to be complied with on a different temporary basis, depending on the value of transactions with non-residents in the previous year: monthly, if it was EUR300 million or more; quarterly, if it was between EUR100 million and EUR300 million; and annually, if it was between EUR1 million and EUR100 million.

### 3.2 Restrictions on foreign lenders granting security

The same principle of free movement of capital is applicable to the granting of security or guarantees to foreign lenders. Nevertheless, foreign lenders are subject to certain reporting obligations for administrative, statistical and economic purposes but do not have to obtain prior authorisations.

As an exception to the prior general principle, foreign lenders may be subject to ex-ante filing obligations if they enforce their security interests over Spanish assets through a low tax jurisdiction. In addition, the enforcement by foreign lenders of security interests over companies in industries belonging to regulated sectors (such as security and national defence,

air transportation, radio, private security, minerals of strategic interest, raw materials, mining companies, telecommunications companies and those companies involved in gambling) is subject to additional industry-specific legislation.

### 3.3 Restrictions and controls on foreign currency exchange

There are no restrictions, controls or other concerns on and regarding foreign currency exchange.

### 3.4 Agent and trust concepts

Spain has not signed or ratified The Hague Convention on the Law Applicable to Trusts and on their Recognition 1985 (in force since 1 January 1992), and does not recognise the agent and trust concepts. Therefore, it is not possible to establish a trust in Spain. Nevertheless, Spanish law does recognise some institutions which in certain cases could be used as an alternative to the trust structure or could be used to understand the possible effects that a foreign trust could have in Spain.

For instance, the Spanish Civil Code establishes the institution of the ‘executor’, which is a person with legal capacity appointed by a testator to execute the testator’s will. The executor has all the lawful powers that the testator expressly grants to him or her and certain duties established by law, such as protecting all the assets and selling them when no cash is available to pay funeral costs. Despite the position of an executor not being a non-remunerated position, the will can establish a compensation for the executor. The main difference between this institution and the trust is that the executor is not the legal owner of the assets as the trustee of a trust is.

Another institution recognised in Spain is the *sustitución fideicomisaria*, which is established by the Spanish Civil Code as a way to transfer assets in a mortis causa context. This institution entails that the heir (the fiduciary) acquires the property as designated by the testator in his or her will, and is obliged to manage and keep the inherited assets and to transfer part or all of them to a third person (*fideicomisario*). There are different types of this institution, depending on the duties imposed on and powers granted to the fiduciary (first heir) regarding the assets to be transferred to the second heir or heirs (*fideicomisario*), ranging from managing them to selling them. In the *sustitución fideicomisaria*, the fiduciary acquires the legal and economic ownership from the beginning (as if it were a full heir), and the assets are inherited only after the fiduciary dies, when they must be transferred to the *fideicomisario*, who will also be considered a full heir.

Finally, the doctrine has traditionally considered that investment funds are fiduciary institutions as their activity is based on trust.

### 3.5 Loan transfer mechanisms

The loan transfer mechanisms that exist in Spain are the assignment of credit rights, which suppose the transfer of rights but not obligations, and the assignment of contract, which suppose the transfer of both creditor’s rights and obligations. The difference between these transfer mechanisms is that the former does not require the consent of the debtor, while the latter does. However, this is subject to the parties’ agreement. In relation to the formalities of the transfer, the general rule is that the assignment does not have to meet any special formalities to be valid. Nevertheless, the assignment has to be made in writing and formalised in a public document granted by a Spanish notary in order to be enforceable against third parties.

### 3.6 Debt buy-back

Debt buy-back by the borrower or sponsor is not frequently contemplated in agreements governed by Spanish law.

### 3.7 Public acquisition finance

Including rules regarding “certain funds” with respect to public acquisition finance transactions is standard in Spain. These rules restrict the circumstances in which the lenders are entitled to refuse to fund the transaction.

Spanish regulation requires that takeover bidders provide the CNMV with a bank guarantee or documents showing that a cash deposit has been made with a credit institution. Although there is no obligation to publish the financing agreements in relation to the takeover offer, some information does need to be disclosed publicly. For instance, information related to the bidder’s guarantee and the identification of the relevant guarantors.

## 4. Tax

### 4.1 Withholding tax

Generally speaking, Spanish resident companies are subject to corporate income tax on worldwide income, while non-resident companies are taxed only on Spanish-source income. Although repayment of principal is not subject to withholding tax (“WHT”) in Spain, payment of interest to a non-resident is subject to a 19% WHT.

### 4.2 Other taxes, duties, charges or tax considerations

The main tax issue for lenders making loans to entities incorporated in Spain is the stamp duty levied on mortgages, chattel mortgages and certain pledges that have been documented by means of a public deed. Moreover, the novation of loans and the assignment of loans or credits secured by a mortgage are also subject to stamp duty. As for ordinary pledges, they are not levied with stamp duty tax.

### 4.3 Usury laws

The Spanish Law of 23 July 1908 on the nullity of usury loan contracts (nowadays in force) establishes the nullity of loan contracts in which the interest is significantly greater than usual and obviously disproportionate considering the circumstances. It also declares the nullity of loan contracts in which the interest is abusive (predatory loans), when there are reasons to appreciate that it has been accepted by the borrower because of its stressful situation, its inexperience, or its limited mental faculties.

According to the most recent case law, a loan will be considered usurious if the applicable interest is excessive. The Spanish Supreme Court has recently defined this excess as two times the legal interest rate.

An abusive interest is one which attempts to enrich and provide an advantage only to the lender or because the loan was accepted by the debtor due to its situation of extreme poverty, inexperience or mental disability.

## 5. Guarantees and Security

### 5.1 Assets typically available and forms of security

It is worth noting that security interests are numerous *clausus in Spain*, and that they are created and perfected with *erga omnes* effects only when certain formalities are met (eg, a public deed granted by a Spanish notary and, if applicable, registration of the security), which may entail incurring notarial fees and registration costs.

The main security interests are real estate mortgages, possessory pledges, chattel mortgages and pledges without the transfer of possession.

With respect to real estate mortgages, they have to be executed in a public deed granted by a Spanish notary which must be registered with the land registry.

As for the possessory pledges, which are granted over moveable assets such as shares and credit rights arising from bank accounts, they should be notarised and the pledge provider must deliver possession of the pledged assets.

In relation to chattel mortgages and pledges without the transfer of possession, they also must be granted in a public deed and registered with the chattel mortgages and pledges without the transfer of possession registry. Chattel mortgages are usually granted over business premises and industrial plants, transport elements, machinery and equipment. Pledges without the transfer of possession may be created over, for example, raw materials and merchandise in a warehouse.

Financial collateral arrangements, regulated in Royal Decree-Law 5/2005, of March 11th, which implements the provisions of Directive 2002/47/EC, are characterised by an expedited enforcement procedure.

### 5.2 Floating charges or other universal or similar security interests

Spanish law does not permit a floating charge or other universal or similar security interest over all present and future assets of a company. Nevertheless, in financial collateral arrangements the asset given as collateral can be replaced with others of similar value by the collateral provider if the parties so agree. Law 41/2007 regulates floating liability mortgages, which entails the creation of real estate mortgages to secure an undetermined number of liabilities up to a maximum amount over a specific time period.

### 5.3 Downstream, upstream and cross-stream guarantees

To give downstream, upstream and cross-stream guarantees is possible for entities in Spain. However, according to Spanish Insolvency Law, 22/2003, of July 9th, the granting of these guarantees might be subject to claw-back if they are considered detrimental to the guarantor becoming insolvent within the next two years.

### 5.4 Restrictions on target

According to Royal Legislative Decree 1/2010 of July 2nd, approving the consolidated text of Spanish Corporation Law, both private limited liability companies (*sociedades limitadas*, "SLs") and public limited companies (*sociedades anónimas*, "SAs") have financial assistance restrictions for the acquisition of their own shares.

On the one hand, SLs cannot grant loans, guarantees or financial assistance for the acquisition of its own shares or the shares issued by a company from the same group.

On the other hand, SAs cannot grant loans, guarantees or financial assistance for the acquisition by a third of its own shares or the shares issued by its parent company. However, this prohibition does not apply to the transactions aimed at facilitating the acquisition by company staff, nor to banks' transactions within the scope of its ordinary operations according to its corporate object when they are funded under company's assets free and clear of any security right.

### 5.5 Other restrictions

It is worth noting that sectorial regulations may establish additional restrictions to the granting of security over specific types of assets (for instance, shares in regulated entities).

### 5.6 Release of typical forms of security

The typical forms of security released are the repayment or cancellation of the secured obligations. Despite the fact that

these actuations entail the automatic release of the security, it is usual that the parties take the same formalities as those applicable to the creation of the security. In addition, the release of possessory pledges require the return of possession of the asset.

### **5.7 Rules governing the priority of competing security interests**

Generally speaking, the priority of competing security interests is determined by the date of constitution. Moreover, the priority of real estate mortgages, chattel mortgages and pledges without transfer of possession is determined by the date of registration in the relevant registry, and the priority of possessory pledges is determined by the date on which all the perfection requirements are met, including the transfer of possession.

Spanish Insolvency Law, 22/2003, of July 9th, recognises contractual subordination as soon as the contractual subordination provision states the creditor's subordination to all the creditors, and not only with respect to certain creditors.

## **6. Enforcement**

### **6.1 Circumstances in which a secured lender can enforce its collateral**

A secured lender can enforce its collateral upon default by the borrower. In recent years, Spanish legislation has become aware of the situation of consumers facing foreclosures of their residences following mortgage loan defaults. For instance, since 2013, Spanish law requires that the debtor has failed to make at least three consecutive monthly payments before the credit institution can take any foreclosure action. Moreover, according to the most recent case law of the Court of Justice of the European Union, the consumer may claim abuse in the foreclosure action.

Furthermore, in relation to enforcement methods, it is worth noting that appropriation of collateral by the enforcing lender is prohibited as a general rule in Spain. Enforcement usually entails a public auction supervised by a court or a notary public. Besides, lenders usually document both the financing agreement and the related security package in public documents and include provisions that allow them to have access to the most expeditious proceedings.

However, it is worth noting that Article 322 of Spanish Commercial Code states an especial enforcement procedure according to which, unless there is agreement to the contrary, once the term of the loan has expired, the creditor shall be authorised to require disposal of the securities given as collateral, without the need to demand the debtor. To that end, the creditor shall deliver the governing bodies of the relevant secondary market the policy or deed of the loan and the

titles pledged or the certificate issued by the body in charge of the relevant account entry which proves registration of the guarantee.

### **6.2 Foreign law and jurisdiction**

Firstly, the choice of a foreign law as the governing law of an agreement is valid and enforceable by Spanish courts according to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations. Secondly, the submission to a foreign jurisdiction is valid in Spain provided that the exclusive jurisdiction rules established either under Council Regulation (EC) No 1215/2012 of 12 December 2012 or Spanish law (as applicable), are complied with. Finally, a waiver of immunity is valid in Spain, apart from some exceptions applicable to entities or individuals in the public and diplomatic sectors.

### **6.3 A judgment given by a foreign court**

According to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, judgments given by a foreign court from another EU Member State are enforceable in Spain. In this sense, final judgements falling within the scope of Regulation (EU) No 1215/2012 and given by a EU Member State are enforceable in Spain without need of any proceeding. The specific rules on enforcement of those judgments are stated in Spanish Civil Procedure Law.

On a separate note, foreign states' judgements are enforceable according to Spanish Law 29/2015, of July 30th, on international judicial co-operation on civil matters.

Finally, as a general rule, foreign arbitral awards are enforceable in Spain without retrial of the merits of the case since Spain is a party to the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards, notwithstanding that the recognition and enforcement might be denied for reasons of public policy.

### **6.4 A foreign lender's ability to enforce its rights**

Generally speaking, according to what has been stated above, the foreign or domestic origin of a lender does not affect its ability to enforce its rights under a loan or security agreement in Spain.

## **7. Bankruptcy and Insolvency**

### **7.1 Company rescue or reorganisation procedures outside of insolvency**

The procedures outside of insolvency proceedings which aim to rescue or reorganise the company in Spain are: the

insolvency pre-filings, the refinancing agreements and the court-approved agreements with creditors.

- Insolvency pre-filing provides debtors with additional time to negotiate an agreement with the creditors before having to file for insolvency. In this respect, Spanish Insolvency Law 22/2003, of July 9th, allows debtors to notify the court that they have commenced negotiations with their creditors to seek support for the formalisation of a refinancing agreement or an early composition agreement. Therefore, the debtor has four months to formalise the agreement, additional to the two months established in the law to file for insolvency once they are or should have been aware of their insolvency situation. If the negotiations do not succeed, at the end of the aforesaid period the debtor will be declared insolvent.
- Spanish Insolvency Law recognises that refinancing agreements are non-terminable when they enhance the debtor's financial situation (eg, it expands significantly the credit available) according to a viability plan which allows the continuity of the entrepreneurial activity in the short or medium term. These refinancing agreements must be approved by the creditors whose claims represent at least three fifths of the debtor's liabilities; it requires that an accounts auditor certify the sufficiency of the debtor's liabilities required for the adoption of the agreement, and must be formalised in public deed.
- Spanish Insolvency Law recognises that refinancing agreements which comply with the requirements stated above and are approved by creditors which represent at least 51% of the debtor's financial liabilities, can be sanctioned by the court.

### 7.2 Impact of insolvency processes

According to Spanish Insolvency Law, the enforcement of security interests over assets that are required for the continued performance of the borrower's professional or business activity is suspended after the commencement of the insolvency process. The enforcement will be reset when the composition agreement is approved or when a year has passed since the declaration of the insolvency. Generally speaking, the declaration of insolvency of the borrower also suspends the accrual of interest.

### 7.3 The order creditors are paid on insolvency

Spanish Insolvency Law 22/2003, of July 9th, divides creditors' claims into claims against the insolvency estate and insolvency claims.

On the one hand, Spanish Insolvency Law lists the claims against the insolvency estate exhaustively. Among other elements, fees and expenses of the insolvency proceedings and certain claims arising after the insolvency proceeding (eg, those related to bilateral agreements that are compelled to remain in force) are considered claims against the insolvency

estate. These type of claims have to be paid as they fall due and their total amount is deducted from the insolvency estate prior to its distribution to the rest of the lenders.

On the other hand, insolvency claims are divided in three categories: claims with especial privilege, claims with general privilege and subordinated claims. Claims that cannot be classified in these categories are considered ordinary claims.

By way of example, claims secured by a real estate mortgage, chattel mortgage, pledge or non-possessory pledge are considered claims with especial privilege; several tax and social security obligations, and certain salaries and labour claims, are listed as claims with general privilege; claims not notified on time in accordance with insolvency proceeding rules, contractually subordinated credits, and credits held by individuals and companies specially related to the borrower (eg, shareholders with certain minimum shareholdings in the insolvent debtor, directors, other companies within the group, etc) are ranked as subordinated claims.

### 7.4 Risk areas for lenders

Claw-back risk is the major concern for lenders. Moreover, the current state of collapse of Spanish courts may delay the insolvency proceeding considerably.

## 8. Project Finance

### 8.1 Introduction to project finance

Before the financial crisis, the project finance market was considerably developed in Spain, especially through public-private partnership transactions in energy and infrastructures sectors (eg, wind farms, solar projects, toll roads, hospitals, schools, port terminals, trains, etc).

While the project finance market has been one of the most affected by the financial crisis in Spain (particularly due to deficit reduction commitments), it has experienced a slight increase since the first quarter of 2015.

### 8.2 Overview of public-private partnership transactions

Public-private partnership transactions have been especially significant for carrying out many projects such as roads, railways and hospitals during the 2000s.

Currently, most public-private partnership transactions are governed by Royal Legislative Decree 3/2011 of November 13th, approving the consolidated text of Spanish Law on Public Contracts. Nevertheless, according to the Resolution of the Directorate General of State Heritage, of 16 March 2016, which issues the Recommendation of the Public Contracts Consultation Board on the direct effects of the new Community Directives on public contracts, some aspects of

Directive 2014/23 on concession contracts were applicable from 18 April 2016, until its transposition to the Spanish legal framework.

### 8.3 Government approvals, taxes, fees or other charges

As a general rule, it is not necessary to obtain any government approvals or pay any taxes, fees or other charges for a project finance transaction in Spain. Nevertheless, the creation of security interests over the relevant project assets in public-private partnership transactions may be subject to authorisation. Moreover, healthcare, energy, transport, national defence and telecommunications sectors are heavily regulated in Spain and subject to strict procedures.

### 8.4 The responsible government body

The responsible government bodies with respect to the principal project sectors are the Ministry of Industry, Energy and Tourism, the relevant Autonomous Regions and the National Markets and Competition Commission (“CNMC”).

Some previously state-owned companies in Spain became private after the privatisation process carried out since 1996. Nevertheless, the Spanish State has already some equity interest in the system operators. Furthermore, mineral resources continue to be under the full control of public authorities.

### 8.5 The main issues when structuring deals

Project finance structures are usually a special-purpose company in the form of an SA, which lenders may require to maintain certain equity ratios. With respect to the funding techniques, Law 5/2015 of April 27th, on corporate financing promotion, has introduced many new ways of financing, apart from the most common way of lending.

There are no restrictions on foreign investment in Spain that could prevent foreign lenders entering into project-finance transactions in Spain, apart from the restrictions that may apply in the case of holding a significant stake in certain companies.

For instance, with respect to private (commercial) television, a shareholder is prohibited from holding a significant stake in more than one TV company broadcasting in the Spanish territory; this applies when the average audience of the channels of the TV companies considered exceeds 27% of the total audience during 12 consecutive months prior to the acquisition. Moreover, there are limits to the acquisition of shares and voting rights of TV companies to non-EU investors. Furthermore, in relation to the electric sector, the sum of percentages of the capital in companies of the electric sector, directly or indirectly, should not exceed 40%. In the hydrocarbon sector, an investor may only hold up to a maximum of 5% of the share capital and a maximum of 3%

of voting rights in the company ENAGÁS S.A., and may only hold up to a maximum of 5% of the share capital or voting rights of the company OMI, Polo Español, S.A.

Additionally, although there are no restrictions on the investment, it is necessary to obtain an authorisation in the following cases: any person who has decided to acquire a significant stake in a Spanish credit entity, or to increase the participation in it, so that the percentage of voting rights or capital held is equal or more than certain quotas or, after the acquisition, could take the control of the credit institution, must previously have notified the Bank of Spain; it is necessary to obtain an authorisation from the Spanish Securities and Markets Commission to launch a take-over bid.

### 8.6 The acquisition and export of natural resources

A company wishing to obtain the qualification as wholesale supplier or retail supplier in the oil, gas or electricity sectors needs to comply with several requirements and regulatory obligations. Furthermore, the activity of extraction and exploitation of a business regarding natural resources may be subject to concessions, authorisations and/or licences. Besides, some specific taxes could apply in certain cases.

More specifically, Spanish regulations provide that natural gas imports, exports and exchanges are free subject to EU regulations, as with oil and oil products. With respect to the acquisition or sales of electricity using intra-EU interconnectors or with third countries, it may be carried out without any further requirements by generators, wholesale suppliers or direct market consumers, following a notification to the Spanish System Operator, OMI-Polo Español S.A.

### 8.7 Environmental, health and safety laws

Spanish environmental laws establish the environmental requirements that a project must fulfil and the environmental obligations that the company must comply with in order to avoid incurring a breach of environmental legislation. Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage was implemented by Law 26/2007 on environmental liability. This regulation disposes the operators' responsibility of preventing, avoiding and remedying the environmental damages according to article 45 of Spanish Constitution, the preventing principles and the 'polluter pays' principle. The regulatory bodies overseeing compliance with environmental legislation in Spain are: the Spanish State, which controls activities where more than one Autonomous Region is affected, namely in relation to fresh water; the Autonomous Regions, which control many important environmental issues, such as waste production; and Municipalities, which have powers in relation to municipal environment (for instance, noise limits).

## 9. Islamic Finance

### 9.1 Overview of the development of Islamic finance

The development of Islamic finance in Spain is currently minimal. In fact, the principles and products of Islamic finance are almost unknown. Nevertheless, there is a growing interest on the issue, especially in the academic field. As has been highlighted in one of the main publications of the Bank of Spain, the growing Muslim population in Spain constitutes a potential source of business in retail banking (Alicia García-Herrero, Carola Moreno y Juan Solé, *Finanzas islámicas: desarrollo reciente y oportunidades*, Estabilidad Financiera, Banco de España, No 15, p 129).

In fact, some well-known Spanish business institutes, like Instituto de Empresa (IE) have created Islamic finance studies, such as the ones offered by the Saudi-Spanish Islamic Economics and Finance Center.

Moreover, the Bank of Spain itself has assessed the evolution and perspectives of Islamic finance in Spain on its latest Economic Bulletin (October, 2016).

### 9.2 Regulatory and tax framework for the provision of Islamic finance

In order to let shari'a-compliant products be competitive enough, Spain should adapt its fiscal and regulatory structure. For instance, Spain should recognise sukukas debt for companies, so that its revenues would be subject to equal direct taxes as revenues from fixed-income products like traditional bonds, and they could be deductible in terms of corporation taxes.

In short, Spain should adapt its regulations to take into account Islamic finance's specificities in regulatory and tax fields, in order for the Islamic entities to be able to fit into the national regulatory framework on equal competence terms.

### 9.3 Requirements for Islamic banks and takaful operators to operate

Islamic banks do not have any special requirements to be authorised or admitted to carry out business in Spain. Notwithstanding the foregoing, among the entities registered in the Bank of Spain, there is no special licence for the activity of banks under Islamic standards.

### 9.4 Shari'a-compliant products and transactions

As the market for shari'a-compliant products is not already developed in Spain, the framework and supervisory system are not clearly defined. However, it can be expected that Spanish Securities and Markets Commission would be in charge of the supervision of Islamic financial products and issuers, with the specificities the field may require.

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