

The background of the entire page is a dark, high-tech image. It features a hand on the left side, reaching out towards a glowing, wireframe globe of the Earth. The globe is composed of numerous interconnected points and lines, creating a mesh-like structure. The lighting is dramatic, with the hand and the globe's edges highlighted against the deep black background.

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# AR Factsheet

SPAIN



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EU Factsheet

## SPAIN

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### Business structure. What types of business structures are there?

- The most common types of companies in Spain are:
- **Sociedad Limitada, or SL**
  - The minimum corporate capital for this kind of company is EUR 3,000.
- **Sociedad Anónima, or SA**
  - The minimum corporate capital for this kind of company is EUR 60,000.
- For both SL and SA, the shareholders' assets are not affected by the company's debts, and it is necessary to prove in the presence of a judge that the administrators are following bad practices.
- A third more popular type of businesses is Community of Goods
  - In this type, the co-owner's assets are affected by the company's debts if the company do not have enough assets to pay all their debts.

### Data sources. Where can I find information about a company?

- Corporate information is available at; the Central Mercantile Register\* (Registro Mercantil Central) (RMC) – [www.rmc.es](http://www.rmc.es); OR
- National Securities Market Commission (Comisión Nacional del Mercado de Valores) – [www.cnmv.es](http://www.cnmv.es)

\*Subscription Required

### Credit Checks. Where can I find financial information about a business?

- You can obtain information on the financial state of affairs for companies and industry at the Central Mercantile Register or National Securities Market Commission. There are also numerous private reporting agencies offering credit checks.



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## Judgment Search. Can I find out if a business already has a judgment against it?

- Normally you find this information in a credit report. Credit reports are offered as a service online.

## Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- In order to apply the legal dunning procedure, you will need the following documents as a minimum:
  - Copy of the contract(s)
  - Copy invoices AND full statement of account (including the allocation of payments and/or credit notes)
- In the case of a regular lawsuit procedure, original versions of the complete contractual documentation should be available, starting with
  - the contract, orders, order confirmations, delivery notes and invoices.
- Every stage of the trading relationship between the debtor and the creditor should be provable by documentation.
- In case of dispute, all notes of conversations between the creditor and the debtor should be kept and provided to your lawyer(s).
- In case of any verbal negotiations, you should notarise the dates and notes of any visits and negotiation reports should be kept, along with the names of the witnesses.

## Retention of title

- This is not a common title in Spain. Having a contract of this type is not binding between parties.
- Unless the contract has been signed by a notary, it is not an executive title, so you must follow the normal legal proceedings.
- This means starting a declarative procedure where the judge will have to recognise your right to cover the debt or remove the merchandise. If the merchandise has been seized, it will be necessary to start a special legal proceeding called Tercería de Dominio, in which you will have to prove your right of divesting ownership and possession to a third party.

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## PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- Before going to court, It is best practice to serve a legal demand notice before issuing court proceedings a to the debtors registered address.
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- The notice should contain:
  - The name of the creditor and the basis of the claim
  - The total amount of the claim, including any penalty interests
  - Prescription on how to transfer the payment, i.e. bank account etc.
  - A warning that the claim will be enforced through the enforcement authority in case the claim is not settled within from the date of the notice
  - Information on how they object to the claim if not acknowledged by the debtor.
- If this measure has been taken and the payment still has not been made after the two-week notice period (according to the law), the creditor may file for enforcement.

Can you claim interest and collection costs from customers if their payment is late?

- If the contracting parties have not agreed this in the contract, then statutory default interest and collection costs are applicable.



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- The creditor may in addition to the claim demand to recover from the debtor:
  - Penalty interest of the claim: 8,00%
  - From a cultural point of view, Spanish debtors are not used to paying late payment interest at the amicable phase, and the actual amount of the interest payment is considered a matter of negotiation.
  - Debt collection costs are chargeable to debtors, representing your claims for late payment damage based on the Spanish Civil Code and Commercial Code.
  - From a cultural point of view, Spanish debtors are not used to paying debt collection costs, though often the actual amount of these costs can be considered a matter of negotiation.

## LITIGATION

### Limitation period. How much time do you have before you must start legal proceedings?

- Debts incurred after 7th October 2015 have a general limitation of five years.
- For debts prior to that date, the general limitation is 15 years, starting from the day after the invoices are due.
- The limitation period is suspended when:
  - The creditor claims payment judicially;
  - The creditor makes an extrajudicial claim by fax or notary requirement;
  - The debtor performs an act of acknowledgement of the debt.

### ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- The following ADR methods are commonly used:
  - Mediation; and
  - Arbitration
- Agreeing to a private arbitral tribunal has three advantages compared to a regular legal proceeding.
  - It is quicker, as the arbitral tribunals are less busy;
  - There is no appeal;
  - It is also more cost-efficient, and the hearing and process are confidential.
- However, agreeing to arbitration also means exclusion of the jurisdiction of the ordinary courts.
- The second way of solving a dispute is by mediation or conciliation proceedings, which focus on finding the root cause of the dispute in order to find constructive agreements and solutions and create a win-win situation for both the creditor and the debtor.



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- Mediation or conciliations are done by professional organisations like the Chambers of Industry and Commerce or by professional mediators.
- The resulting agreement is not a judgment, and parties can ignore the mediator's advice if they wish.

## Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- The procedure, named 'Monitorio' in Spain, is only applicable for monetary debts (less than EUR 250,000) and only when the debt is due and payable, and not disputed. The responsible court in the first instance is the local court. The court only declares the creditor's right and urges the debtor to pay the principal amount and the interest.
  - If the debtor does not agree, they can present an opposition and an ordinary proceeding will have to start (either 'Ordinario' or 'Verbal', depending on the amount). This is also performed in the first instance, since the first judge only has to declare that the 'Monitorio' proceeding is not possible.
  - If the debtor pays the debt, the procedure will end. If the debtor does not pay the debt, an enforcement procedure will start.
  - In any case, the plaintiff will have the final decision to start the 'Ordinario' proceeding, where a decision will be taken about the debt.
- The regular lawsuit ('Ordinario' procedure or 'Verbal' procedure) is initiated either directly after the amicable collection has failed, or the solvency of the debtor is satisfactory or in cases where there is a prior dispute between the parties. Both the plaintiff and the defendant will submit allegations based on evidence that will be assessed and discussed during the hearing. Evidence may include documentation, witnesses and experts.
- After the verbal hearing, the judge sets a date to publish the final judgment, and both parties will be informed about the outcome in writing by the responsible court.

## Time frame. How long does it take before you can get a judgment against a debtor?

- The average duration of a legal process depends on the type of procedures and if the case is in the first instance or second.
  - The 'Monitorio' proceeding takes about three months.
  - The 'Ordinario' proceeding can take more than a year to obtain the court's judgment.



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## How much does it cost to go to Court?

- There are different types of costs to consider:
  - Fixed costs like court and solicitor fees. These are official rates.
  - Lawyers' fees. In this case, you should consider a minimum fee related to the proceeding's type and a maximum fee referring to the collected amount.
  - Extra costs like witnesses and experts' reports, translations and others.
- Legal taxes have to be paid at the same time that you take legal action; if they are not, the lawsuit will not be accepted by the court.
- The cost of the tax will be fixed, depending on the judicial procedure. The most common procedure for a claim is:
  - The 'Monitorio' proceeding – EUR 100
  - The 'Ordinary' proceeding – EUR 300
  - The cost of enforcement – EUR 200
- These taxes are not rechargeable to the debtor and cannot be reimbursed in any case, except if both parties reach an agreement during the legal process, in that case, 60,0% of the tax paid will be returned.

## Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- Once a judgment is issued by the court and the parties did not appeal in the legal period, this becomes definitive. The defendant will have to serve the judgment within 20 days following its publication.
- Spanish law allows the provisional enforcement of the judgment when the defendant presents an appeal, and this is admitted. To put it into effect, it must be requested by writ to the same court of first instance that has issued the judgment and can be enforced once the final judgment is pronounced. The warrant is used to obtain a statutory declaration from the debtor.
- Should the defendant do not pay within the 20-day period following the publication of the judgment, the executing party can submit an execution claim to the court, designating the debtor's assets known by them, without further requirements of payment. Otherwise, the executing party can ask the court to locate them or indicate the banks, public organisations or companies that could help locate the assets.
- Once the assets have been located, they will be auctioned and the due amount will be delivered, returning the balance to the condemned party. The cost of this phase will be paid by the condemned party after the assets have been liquidated. Until then, the applicant must bear its costs.

## Insolvency

- Insolvency proceedings, also named 'concurso de acreedores', can be classified as 'ordinarios' and 'abreviados'.



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- The aim of the insolvency proceedings is to create a restructuring of the debtor company in order to pay out all their creditors with the same percentage of the debt value by liquidating the assets of the debtor company or collecting the enforceable income of the individual who is declared bankruptcy.
- **‘Procedimiento Abreviado’**
- This insolvency proceeding can be managed by an insolvency mediator. This type of proceedings is more flexible and briefer than the usual ones; it is applicable for smaller insolvencies (with less than 50 creditors and less than EUR 5 million in liabilities). Its principal characteristics are that the payment plan cannot be longer than three years and the reduction cannot be higher than 25%.
- **‘Procedimiento Ordinario’**
- All the insolvencies that do not respect the previous requirements will have to be managed via court. Depending on who will present the insolvency to the court, the insolvency will be nominated as:
  - ‘Procedimiento Voluntario’: Issued by the debtor when the company is in the bankruptcy situation
  - ‘Procedimiento Necesario’: Issued by a creditor once the debtor interrupts the payments.
- Once the insolvency situation is confirmed by the court (after possible demands in contrary are checked), trustees of bankruptcy will be appointed. They will act as administrators of the debtor company during the procedure. They should be composed of:
  - One lawyer or a law firm
  - One economic expert
  - One of the biggest creditors (usually a bank).
- The insolvency will be published in the Official State Gazette. The date of the publication is very important because the creditors will have one month (‘ordinarios’ proceedings) or 15 days (‘abreviados’ proceedings) to lodge their credit claims.
- Once the term for lodging credits is finished, the trustees of bankruptcy will prepare a financial report with a list of all the credits and a balance sheet including active and passive claims to the debtor company.
- If any creditor thinks that their rights are not recognised in full, they can present an incident before the trustees. Only when all incidents are solved and the trustees prepare the definitive report, including the result of the incidents, will the procedure continue.
- If the debtor company has enough assets for a payment plan, they will present an agreement to the creditors that normally includes a discount and a payment plan for the balance sheet. The creditors can accept or reject the plan and present their decision to the court. If a debtor gets more than 50% agreement from all creditors, the agreement will be accepted by the court, which will affect all creditors (not only those who signed it). However, if the debtor does not have enough assets or does not get 50% of favourable votes, the company will be liquidated, and the creditors will recover their debts depending on the total amount recognised and the qualification of their credits.



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*The information in this document is accurate to our knowledge as of October 2020*

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