Spain: International Arbitration

This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Spain.

For a full list of jurisdictional Q&As visit here
1. **What legislation applies to arbitration in your country? Are there any mandatory laws?**

Arbitration in Spain is regulated by the Arbitration Act 60/2003, of 23 December 2003 (hereinafter, the Spanish Arbitration Act or “SAA”).

This legislation applies to any arbitration where the place of the arbitration is within the Spanish territory, whether of domestic or international character, without prejudice to those provisions contained in international treaties to which Spain is a party or to other legislation containing specific provisions relating to arbitration.

Certain provisions of the SSA shall apply even if the arbitration place is not in Spain (in particular, those contained in articles 8 (paragraphs 3, 4 and 6), 9 (except paragraph 2), 11, 23 and Titles VIII and IX.

Employment arbitration is excluded from the scope of the SAA.

2. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

Yes. Spain signed the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards on April 29, 1977, without formulating any reservations to date.

3. **What other arbitration-related treaties and conventions is your country a party to?**

Spain is a party to several multilateral and bilateral treaties and conventions related to arbitration, the most relevant of which are mentioned below:

- European Convention on International Commercial Arbitration done at Geneva, April 21, 1961. Originally signed by 16 States only, currently 31 countries are a party to it (including non-European ones, e.g. Burkina Faso, Cuba or Kazakhstan).
- Convention on the Recognition and Enforcement of Judgments and Arbitral Awards in Civil and Commercial Matters, of October 30, 2007. Commonly known as the “new Lugano Convention”, this treaty was conceived to achieve the same level of “circulation” of judicial decisions between the countries of the European Union and Switzerland, Norway and Iceland.
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) of October 14, 1966, which provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States.
- Convention on Legal Assistance and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (1973), with Italy.
○ Convention on Judicial Cooperation in Civil, Commercial and Administrative matters (1997) with the Kingdom of Morocco.

4. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

The SAA is clearly inspired by the Model Law adopted by the United Nations Commission on International Trade Law on 21 June 1985 (UNCITRAL Model Law), which is the point of departure of the Spanish legislation.

In addition, the Spanish legislator also took into consideration the successive works realized by that Commission with the purpose of incorporating the technical advances and attending to the new needs of the arbitration practice, particularly in the matter of requirements of the arbitration agreement and the adoption of interim measures.

There are minor differences between the Model Law and the SAA. For instance:

With regards to the number of arbitrators, Model Law stands that, in absence of agreement by the parties, there shall be three (3) arbitrators, while the SAA establishes it shall be one.

With regards to the determination of the international nature of an arbitration, apart from the criterion contained in the Model Law, the SAA incorporates an additional instance: where the legal relationship from which the dispute stems has an impact on international trade.

With respect to the arbitration agreement, the SAA reinforces the anti-formalist criterion in relation to the compliance of the requirement of a “written agreement”.

Regarding interim measures, the Model Law is more exhaustive describing the different types of interim measures available, which are not stated in the SAA but in the Spanish Civil Procedure Code.

Finally, it shall be highlighted that, although the UNCITRAL Model Law was specifically designed for international trade, the SAA is aligned with a monistic approach, by virtue of which the same provisions are applied to both domestic and international arbitration, with rare exceptions.

5. **Are there any impending plans to reform the arbitration laws in your country?**

At this moment, there are no plans to reform the arbitration laws.

After a significant modification of the SSA, which took place by Act 11/2011, of 20 May; the
SAA was last amended by Act 42/2015, of 5 October.

6. **What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?**

There are several arbitral institutions in Spain, which amend and update their rules from time to time. Some of the most relevant are the following:

- Spanish Court of Arbitration of the Spanish Chamber of Commerce (Corte Española de Arbitraje, de la Cámara de Comercio de España). Rules were last amended in 2019.
- Civil and Trade Court of Arbitration (Corte Civil y Mercantil de Arbitraje – CIMA). Rules were last amended in 2019.
- Madrid International Arbitration Center or MIAC (Centro Internacional de Arbitraje de Madrid o CIAM) is an arbitral institution established from the merger of the international branch of the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration (CIMA) and the Spanish Court of Arbitration. The Madrid Bar Association also became involved in the initiative as a strategic partner. MIAC has started its institutional activity in 2020 and was created with the purpose of being a major institution in the resolution of international matters in Spain. Rules into force from January 1st, 2020.
- Arbitral Tribunal of Barcelona (Tribunal Arbitral de Barcelona). Rules were last amended in 2018 and are into force from March 1st, 2019. Arbitrations initiated before that date shall be administered by 2004 Rules.
- Court of Arbitration of the European Association of Arbitration (Asociación Europea de Arbitraje -AEAD), which rules are into force from January 1st, 2017.
- Ibero-American Arbitration Center (Centro Iberoamericano de Arbitraje – CIAR), with offices in Madrid, Brasilia and Costa Rica, focused on the Portuguese and Spanish speaking countries on both sides of the Atlantic.

Since most of these arbitration institutions have recently amended their rules, no significant amendments are expected in the near future. Nevertheless, due to the impact that the corona crisis is having in the arbitration practice, it would be possible that arbitration institutions could consider further amendments to reinforce their rules as a result of this experience.

7. **Is there a specialist arbitration court in your country?**

Article 8 of the SAA determines the different courts with jurisdiction over arbitration assistance and supervision (appointment and dismissal of court-appointed arbitrators, assistance for taking evidence, adoption of interim measures, enforcement of awards, proceedings for setting the award aside, recognition of foreign awards...) in Spain.

On a general basis, there is no specialist arbitration courts in Spain, with one exception:
First Instance Court n. 101 has been attributed exclusively with the functions of support and control of the arbitration proceedings in this region.

8. **What are the validity requirements for an arbitration agreement under the laws of your country?**

The arbitration agreement may adopt the form of either a separate agreement or a clause incorporated into a broader agreement. In either case, the agreement shall express the will of the parties to submit to arbitration all or some of the disputes that have arisen or may arise with respect to a given legal relationship, whether contractual or not.

The arbitration agreement shall be in writing, in a document signed by the parties or in an exchange of letters, telegrams, telexes, faxes or other means of telecommunication that provides prove or record of the agreement. This requirement shall be deemed to have been duly met where the arbitration agreement is recorded and accessible for subsequent reference on electronic, optical or other media.

An arbitration agreement will be regarded to exist if in an exchange of statements of claim and defence the existence of an agreement is alleged by one party and not denied by the other.

Additionally, if the arbitration agreement is contained in a contract of adhesion, the validity of such agreement and its interpretation shall be governed by the rules applicable to such type of contract, it being worth mentioning the Legislative Royal Decree 1/2007, of November 16, which approved the revised text of the General Law for the Defense of Consumers and Users and other complementary laws.

In international arbitration, the arbitration agreement will be valid and the dispute arbitrable if the requirements laid down in any of the following are met: the legal rules chosen by the parties to govern the agreement, the rules applicable to the substance of the dispute, or the rules laid down in Spanish law.

9. **Are arbitration clauses considered separable from the main contract?**

Yes. Art. 22 of the SAA determines that the arbitration agreement that forms part of a contract shall be considered as an agreement independent of the other stipulations of the contract.

In Spain, as in many other countries, the autonomy of the arbitration clause is a tool available to arbitrators so that they can effectively enforce the “kompetenz-kompetenz” principle, by virtue of which arbitrators may rule on their own jurisdiction, including any pleas with
respect to the existence or validity of the arbitration agreement or any others whose acceptance would prevent consideration of the merits of the case.

10. **Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?**

As anticipated, the arbitration agreement shall be valid and enforceable if it meets the requirements established either by the legal rules chosen by the parties to govern the arbitration agreement, or by the legal rules applicable to the substance of the dispute, or by Spanish law.

11. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

SAA does not regulate any particular notes on multi-party or multi-contract arbitration, except for the following consideration made in Article 15(2): “b) In the event of multiple claimants or defendants, the defendant(s) shall appoint one arbitrator and the claimant(s) another. If the plaintiffs or the defendants do not agree on the arbitrator to be appointed, all the arbitrators shall be appointed by the competent court at the request of any of the parties."

However, it shall be highlighted that this provision, as well as those included in the rules of the main Spanish arbitration institutions, only refers to multi-party arbitration when such plurality exists originally and not when it is supervening.

Spanish legal doctrine has revealed that multi-party arbitration poses a challenge to the essential rights that every party has in arbitration, especially in relation to the appointment of the arbitral tribunal, the privacy and confidentiality of the proceedings and the subsequent enforcement of the arbitral award.

12. **In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?**

This issue is not regulated by the SAA nor by the International Conventions. Actually, few legal systems expressly regulate such matter.

From a general point of view, Spanish case law has been admitting the extension of the effects of the arbitration agreement to third parties who have not signed it when the third party in question has been or is directly involved in the execution of the contract (e.g. Supreme Court ruling of 26 May 2005). However, some authors within Spanish legal doctrine consider the arguments of the Spanish Supreme Court significantly implausible.
In addition, Spanish High Courts of Justice have also accepted the extension of the effects of the arbitration agreement, but only when the involvement of the third party in the execution of the contract containing the clause is established “without a shadow of a doubt”; that is, when in light of the facts an “unequivocal will” of the non-signatory party to the agreement to be bound by it can be appreciated (e.g. Superior Court of Justice of Madrid ruling of 16 December 2015). This is actually in line with the jurisprudence of the European Court of Justice on the extension of the effects of a court submission clause to third parties.

Notwithstanding the above, there are different cases in which, clearly, a third party who has not signed the arbitration agreement per se shall be bound by it. This may happen, for instance, in cases of mergers and acquisitions, or assignment and subrogation of a contract. In fact, the Spanish Supreme Court has expressly accepted the subrogation of an insurer in the arbitration agreement; qualifying, however, that the agreement does not reach those insurers that, far from acting as subrogates in the contractual position of their insured, are brought to the lawsuit by the exercise of the direct action.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The SAA regulates arbitrable matters based on a criterion of free of choice. To provide that a dispute can be settled by arbitration it suffices that its object is related to a matter that can be freely negotiated by the parties.

Therefore, a contrario sensu, non-arbitrable disputes would be those related to matters that do not involve free disposition from the parties. For instance:

- Rights relating to the marital status of individuals.
- Matrimonial matters related to the validity or nullity of the matrimonial bond, although those matters related to the marriage in which the autonomy of the will of the parties prevails will be able to be object of arbitration (i.e. decisions on the attribution of housing, alimony, or liquidation of the economic matrimonial regime).
- Rights relating to personality and, in general, all those that are settled in Section 1, Chapter II, Title II, of the Spanish Constitution. However, questions relating to the financial compensation for the infringement of those rights may be subject to arbitration.

Moreover, Spanish Law recognizes labor arbitration as a special one, which is expressly out of the scope of SAA, as well as those regulated by other special laws.

14. How is the law applicable to the substance determined? Is there a specific set of
choice of law rules in your country?

In international arbitration, arbitrators shall decide the dispute in accordance with such rules of law chosen by the parties, it being understood that any indication of the law or legal system of a given State refers, unless otherwise expressed, to the substantive law of that State and not to its conflict of laws rules.

Failing any indication by the parties, arbitrators shall apply those rules they deem appropriate.

In all cases, the arbitrators will decide in accordance with the terms of the contract, having regard to standard practice in connection with the transaction.

Under Spanish law there are several instruments that shall be considered in order to determine the substantive law, such as: the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), the Spanish Civil Code or other special laws.

15. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?

Spanish courts are subject to the rules of private international law about the forum. However, in the context of international commercial arbitration, parties are now generally authorized to choose instruments such as the UNIDROIT principles (soft law) as the rules of law on which arbitrators should base their decisions. Consequently, in arbitration, the UNIDROIT principles can apply excluding national law, subject only to the application of those rules of domestic law that are mandatory. Moreover, since such essential mandatory rules are, in general, of public law nature (anti-corruption rules, anti-trust rules, environmental protection rules, etc.), their application together with the UNIDROIT principles does not usually give rise to conflict.

There are several examples of both arbitral awards and court rulings applying the Unidroit Principles (e.g., Supreme Court Ruling No. 872/2011 of 12 December 2011; Arbitration Court (Permanent) Arbitration Award No. PCA 45863 of 17 December 2010; Lerida Provincial Court Ruling No. 289/2007 of 13 September 2007; Supreme Court Civil Chamber Ruling (RJ 2006/6080) of 4 July 2006).

If the parties have not agreed on the application of these principles, they can also apply when: (i) the parties have agreed that their contract shall be governed by the ‘general principles of law’, the ‘lex mercatoria’ or similar expressions; and (ii) where it is impossible to
establish the applicable law.

16. **In your country, are there any restrictions in the appointment of arbitrators?**

   The qualifications to be met by arbitrators are left to the discretion of the parties, by analogy to the rules in place in the countries where arbitration is most highly developed.

   The SAA lays down no requisites other than that arbitrators must be natural persons in full possession of their civil rights, provided that the legislation to which they shall be subject to in the exercise of their profession does not prevent them from doing so.

   In addition, unless otherwise agreed by the parties, in arbitrations that are not to be decided in equity and which are to be resolved by a sole arbitrator, the status of jurist shall be required. When the arbitration is to be resolved by three or more arbitrators, at least one of them shall be required to have such status. The parties may freely determine the number of arbitrators, provided that it is an odd number.

17. **Are there any default requirements as to the selection of a tribunal?**

   On a general basis, the parties are free to agree on the procedure for the appointment of the arbitrators. In the absence of agreement, the following rules shall apply:

   - If the parties do not agree on the number of arbitrators, only one will be appointed.
   - In arbitration with a sole arbitrator, he/she shall be appointed by the competent court at the request of any of the parties.
   - In arbitration with three arbitrators, each party shall appoint one, and the two appointed arbitrators shall appoint the third. If one party does not appoint the arbitrator within 30 days after receiving the request of the other party to do so, the appointment shall be made by the competent court at the request of any of the parties, and the same shall apply when the appointed arbitrators are unable to agree on the third arbitrator within 30 day from the last acceptance.

   Likewise, in the event of multiple claimants or defendants, if the plaintiffs or the defendants do not agree on the arbitrator they should appoint, all the arbitrators shall be appointed by the competent court.

18. **Can the local courts intervene in the selection of arbitrators? If so, how?**

   Local courts are able to intervene when the parties fail to reach an agreement on the selection of arbitrators. If that is the case and the appointment or judicial removal of arbitrators is required, competence shall lay on the Civil and Criminal Chamber of the High Court of Justice of the region: where the arbitration shall take place; failing that, where the domicile or habitual residence of any of the defendants is located; failing that, where the domicile or habitual residence of the plaintiff is located; and failing that, where the plaintiff
decides.

In such cases, claims shall follow the verbal trial proceedings.

Where arbitrators are to be appointed by the court, it will draw up a list of three names for each arbitrator to be appointed. When drawing up the list, the court will have due regard to the requirements established by the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. Where a sole or a third arbitrator is to be appointed, the court will also have regard to the advisability of appointing an arbitrator of a nationality other than those of the parties and, as appropriate, of those of the arbitrators already appointed, in light of the circumstances prevailing. The arbitrators are subsequently appointed by lot.

The final decisions adopted by the competent court will not be subject to appeal.

19. **Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?**

Yes. An arbitrator may only be challenged if circumstances that result in justifiable doubts as to his/her impartiality or independence arise, or if he/she does not possess the qualifications agreed upon by the parties or those required by law. When a party has appointed an arbitrator, or has participated in such appointment, such party may only challenge the appointed arbitrator if the reasons have become aware after the appointment.

The parties shall be free to agree on the procedure for the challenging of arbitrators.

Failing such agreement, a party who intends to challenge an arbitrator will state the grounds for the challenge within fifteen days after becoming aware of the acceptance or of any circumstance that may give rise to justified doubts about the arbitrator’s impartiality or independence. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitrators will decide on the challenge.

Finally, if the abovementioned challenge procedure is not successful, the challenging party may, if appropriate, assert the challenge when contesting the award.

20. **Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators**

Most recent developments concerning the duty of independence and impartiality of the arbitrators are related to private initiatives.

In 2019, the Spanish Arbitration Club (“CEA”) published its “Arbitration Code of Good
Practices”, which aims to raise standards of behavior in order to consolidate society’s confidence in arbitration. Within the recommendations made in this Code, duties of independence and impartiality have a significant importance. And even if this Code is considered as “soft law”, which means that these rules are not binding unless the parties agree to do so in the arbitration agreement or within the framework of the procedure, this can be considered as a step forward from the previous situation.

In addition, the IBA Guidelines on Conflict of Interest in International Arbitration (2014) are also a very important reference for arbitral practitioners in Spain, since they are usually taking into consideration both by arbitrators, the parties and their lawyers when assessing the impartiality and independence of arbitrators. These provisions include a “Red List” with circumstances that, if present, shall lead to a situation of reasonable doubts about the arbitrator’s impartiality or independence.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Where an arbitrator is prevented in fact or in law from performing his/her functions, or where for any other reason he/she does not perform his/her functions within a reasonable time, he/she shall cease to hold office, or the parties may agree to his/her removal. If there is a disagreement on the removal and the parties have not stipulated a procedure to overcome such disagreement, the following rules shall apply:

a) The claim for removal shall be substantiated by the proceedings of the Spanish oral trial. The claim may include a request to appoint arbitrators, should the court rule in favour of termination. Final decisions will not be subject to appeal.

b) In arbitration with multiple arbitrators, the other arbitrators shall decide. If they are unable to reach a decision, the provisions of the previous paragraph shall apply.

Once the substitute has been appointed, the arbitrators, after hearing the parties, shall decide whether there is a need to repeat the proceedings conducted prior to the substitution.

22. Are arbitrators immune from liability?

No. Once the arbitrators accept their appointment, such acceptance obliges them (and, as appropriate, the arbitration institution) to fulfill the assignment in good faith and, if they fail to do so, they will be liable for damages that they cause due to bad faith, recklessness or means rea.

In arbitrations entrusted to an institution, the injured party shall have direct action against the institution, regardless of the actions for compensation that the institution may have against the arbitrator(s).
In regard of the above, arbitrators or the arbitration institutions on their behalf shall be required to subscribe a civil liability insurance or an equivalent guarantee, in the amount established by regulation.

23. **Is the principle of competence-competence recognized in your country?**

   Yes. The principle of competence-competence is recognized in article 22 of the SAA.

24. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

   The arbitration agreement binds the parties to its terms and prevents courts from hearing disputes submitted to arbitration, where invoked by the party concerned as a plea to the jurisdiction of the court.

   Where one party commences litigation regardless of the existence of an arbitration agreement, the defendant can submit a plea to challenge the jurisdiction of the court within the first ten days of the period envisaged for submitting the defence. In those cases, when local courts verify the effective existence and validity of the arbitration agreement, they tend to decline its jurisdiction, terminating the judicial proceedings and imposing the judicial costs to the claimant.

   With regard to the eventual liability of a party commencing litigation in breach of an arbitration agreement, there is no record of Spanish case law on the consequences of failure to comply with an arbitration agreement.

25. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

   The parties are free to agree on the procedure to conduct the arbitral proceedings.

   On a general basis, the arbitration shall start with a request for arbitration by one of the parties, indicating the other party its intent to submit the dispute to arbitration. Unless otherwise agreed by the parties, the date on which the respondent has received such request for arbitration shall be deemed to be the date of commencement of the arbitration.

   Where the parties have agreed to conduct the arbitration through an arbitration institution, the rules of such institution shall be taken into consideration.

   The party commencing the arbitration shall be aware of any limitation period or time bars contained in the law applicable to the dispute.
26. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

This issue is regulated in Law 16/2015, of 27 October, on the privileges and immunities of foreign States, International Organizations, and national courts have also expressed their view.

According to article 4 of the Law 16/2015, every foreign State and its assets shall enjoy immunity from jurisdiction and execution before the Spanish courts, under the terms and conditions provided in the law. Articles 5 and 6 detail a series of particular cases in which the foreign State cannot invoke such immunity.

With regards to arbitration, article 16 of the same law determines that if a foreign State has agreed with a natural or legal person who is a national of another State to submit to arbitration any dispute relating to a commercial transaction, unless the parties have agreed otherwise in the arbitration agreement, the State is not able to invoke immunity before Spanish courts if the proceedings deals with the following matters:

- The validity, interpretation or application of the arbitration clause or the arbitration agreement;
- The arbitration procedure, including the judicial appointment of arbitrators;
- The confirmation, annulment or revision of the arbitral award; or
- The recognition of the effects of foreign awards.

Outside of these particular cases, immunity from jurisdiction may be invoked provided that the general requirements established by law are met.

Likewise, this is also the understanding of our courts, it being worth mentioning orders number 12/2016 of November 14, and 11/2016 of September 28, of the Superior Court of Justice of Madrid, among others.

27. **What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?**

Unless otherwise agreed by the parties or, as appropriate, in the rules of the arbitral institution which could be applicable, when, without sufficient cause in the opinion of the arbitrators, the respondent does not file its reply within the corresponding term, the arbitrators shall continue the proceedings, without this omission being considered as an acquiescence or admission of the facts alleged by the plaintiff.

Moreover, if one of the parties does not appear at a hearing or does not present evidence, the arbitrators may continue the proceeding and issue the award on the basis of the evidence available to them.
28. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

The SAA does not include any reference to this issue. However, regulations of most arbitral institutions grant the arbitrators the power to admit the intervention of third parties, at the request of any of the parties and after hearing all of them.

It seems that there is no impediment for a third party to be part of the arbitration process, provided that all parties agree (although, as it was mentioned, there may be some additional requirements depending on the arbitral institution), in which case the tribunal shall be bound by such agreement.

However, if parties do not agree, a case by case analysis shall be made.

29. Can local courts order third parties to participate in arbitration proceedings in your country?

No.

30. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Under Spanish law, interim measures can be adopted directly by the arbitrators or by local courts.

Subject to any contrary agreement by the parties, the arbitrators may, at the request of a party, grant any interim measures deemed necessary in connection with the object of the dispute. However, the SAA does not contain a specific list of precautionary measures to be taken within an arbitration proceeding or in connection with arbitration.

On the contrary, the Spanish Civil Procedure Code provides a list of the interim measures that can be adopted by Spanish tribunals, including but not limited to, the following: preventive seizure of assets; judicial intervention or administration of productive assets; deposit of movable property; formation of assets’ inventories; court order to provisionally cease an activity, to temporarily refrain from carrying out a conduct or to temporarily prohibit the interruption or cessation of the performance of a service that was being carried out; or suspension of the challenged corporate resolutions.

The fact that there is an arbitration agreement shall not prevent any of the parties from requesting the judicial adoption of interim measures or the judicial granting of such measures, prior to or during the arbitration proceedings. The competent court for the adoption of interim measures shall be the court of the place where the award is to be
executed and, failing that, the court of the place where the measures are to be effective (and the same shall be observed when the proceeding is being conducted before a foreign court, except as otherwise provided in the Treaties).

31. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Anti-suit injunctions (“ASI”) are not expressly regulated in the Spanish legal system (nor generally in the rest of the EU countries, except for the United Kingdom). The European Court of Justice decided in Turner and in West Tankers that the ASI are contrary to the Brussels I Regulation on civil and commercial jurisdiction, although it has recently maintained in Gazprom that the Regulation does not oppose the recognition of an anti-suit injunction issued by an arbitration court (as it considers this to be outside the scope of the Regulation). However, successive rulings of the ECJ have failed to clarify the exact scope of the European prohibition on ASI. The decisions of the ECJ leave certain margins of doubt (which will certainly be exploited by and before local courts). In this case, the most likely answer is that (i) where European regulation applies, ASI are not permitted, but (ii) when these regulations are not applicable (as, for example, in an arbitration proceeding), the ASI are possible. Thus, it seems that the arbitration tribunals have a power which ordinary courts do not.

Regarding anti-arbitration injunctions, which aim is to prevent the initiation or continuation of arbitration proceedings, although this figure does not exist as such in the Spanish legal system either, it does not seem to pose as many problems as the ASI’s. In other words, the parties, when formalizing a contract, can agree, and they usually do so, to submit any disputes that may arise in the future regarding the contract to a specific forum. Arbitration is an instrument that, in order to be used, requires the consent of both parties. If there is no arbitration agreement, arbitration proceedings can only be used if both parties agree to do so (and provided that the matter under discussion allows to be submitted to arbitration). Likewise, if there is no agreement and one of the parties try to start this type of procedure, the arbitrators themselves shall appreciate the absence of competence. Even if the other party could challenge the jurisdiction, we must specify that, according to the SAA, the pendency of a judicial proceeding in which its jurisdiction has been challenged does not prevent the arbitration proceeding from being initiated or continued.

32. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The parties are free to agree on the procedure to be followed by the arbitrators in their proceedings. However, in the absence of such agreement, the arbitrators may, subject to the provisions of the SSA, conduct the arbitration in any manner they deem appropriate. This power of the arbitrators includes the faculty to decide on the admissibility, relevance and usefulness of the evidence, on its practice, even ex officio, and on its assessment.
In this way, the parties, when formulating their arguments, may provide all the documents they consider relevant or make reference to the documents or other evidence they are going to present or propose.

As regards judicial assistance for the taking of evidence, the arbitrators -or any of the parties with the arbitrators’ approval- may request assistance from the competent court for the taking of evidence. This assistance may consist on the taking of evidence before the competent court or the adoption by such court of the specific measures necessary for the evidence to be taken before the arbitrators.

In the latter case, there are two options. On the one hand, if requested, the Court will take the evidence under its exclusive direction. On the other hand, the Court will limit itself to agreeing on the relevant measures.

33. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

Counsels in Spain are subject to the provisions contained in the Code of Ethics of the Legal Profession (*Código Deontológico de la Abogacía*) and the Spanish Lawyer’s Statute (*Estatuto General de la Abogacía Española*) and so will be those counsels acting as arbitrators in arbitration proceedings.

In addition, and regardless of its consideration as soft law, both counsels and arbitrators shall be expected to comply with the “Arbitration Code of Good Practices”, recently published by the CEA and which aims to raise standards of behavior in order to consolidate society’s confidence in arbitration.

34. **In your country, are there any rules with respect to the confidentiality of arbitration proceedings?**

According to Article 24(2) of SAA, the arbitrators, the parties and the arbitration institutions, if any, are obliged to keep the information they are aware of through the arbitration proceedings confidential.

35. **How are the costs of arbitration proceedings estimated and allocated?**

Subject to the agreement of the parties, the arbitrators shall decide in the award on the costs of the arbitration, which shall include (i) the fees and expenses of the arbitrators; and, if applicable, (ii) the fees and expenses of the counsels or representatives of the parties, (iii) the cost of the service provided by the institution administering the arbitration and (iv) other expenses incurred in the arbitration proceeding.
36. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Although nothing is expressly regulated on this subject in the SAA, both pre- and post-award interest can be included on the principal claim and costs incurred, as far as it is requested by the parties.

37. **What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?**

Awards will be enforced in accordance with the provisions of the Civil Procedure Rules and the SAA. As to the recognition and enforcement, a difference between a domestic award and a foreign award shall be made.

A domestic award has the consideration of “enforceable title” itself and, therefore, there is no need to conduct a prior recognition proceeding. The tribunals shall have the power to enforce a domestic award as far as the party requesting the enforcement submits the enforcement request, together with the award, the arbitration agreement and those documents supporting the notification of the award to the parties (see articles 517.2 and 550.1.1º of the Spanish Civil Procedural Code). Awards are enforceable even when action has been brought to set them aside.

A foreign award shall meet some additional requirements, which are detailed in Q39 below.

38. **What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?**

According to article 570 of Spanish Civil Procedural Code, the enforcement shall end with the complete satisfaction of the executing creditor. In practice, this means that the timeframe for the complete enforcement of an award in Spain can vary substantially from one case to another, specially depending on the assets that the debtor may have to face its payment obligations.

39. **Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

Yes. A foreign award shall be submitted in Spain, as in many other countries, to an exequatur procedure prior to its enforcement.

In this sense, Article 46(2) of the SAA determines that such procedure shall be governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, made in
New York, June 10, 1958 (or any other convention considered more favorable), without prejudice to the provisions of other international conventions more favorable to the granting of such awards, and shall be conducted in accordance with the procedure established in the Civil Procedure Act for awards made by foreign courts.

To that end, the provisions contained in the International Legal Cooperation on Civil Matters Act 29/2015 of 30 July 2015, regulating the exequatur procedure (articles 44 and sq.), shall also be considered.

40. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts**

In principle, Spanish law does not impose limits on the available remedies that can be enforced by local courts.

41. **Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?**

Yes. An arbitration award can be challenged before Spanish courts through the exercise of the action of annulment by at least one of the parties.

- This action shall be exercised within two (2) months of the notification of the award or, in the event that a correction, clarification or supplement to the award has been requested, from the notification of the decision on this request, or from the expiration of the period for adopting it.
- The award may only be annulled when the party challenging it is able to claim and provide proof:
  - That the arbitration agreement does not exist or is not valid.
  - That the appointment of an arbitrator or of the arbitral proceedings has not been duly notified, or that it has not been possible for the claimer party, for any other reason, to assert his rights.
  - That the arbitrators have resolved issues not submitted to their decision.
  - That the appointment of the arbitrators or the arbitration proceedings have not been in accordance with the agreement reached by the parties, unless such agreement is contrary to a mandatory rule of Law, or, in the absence of such agreement, that they have not been in accordance with the Law.
  - That the arbitrators have ruled on matters not subject to arbitration; or
  - That the award is contrary to public policy.

As to the proceedings to follow, they are those of the oral trial: a claim shall be filled by the party, then it shall be transferred to the other party for contesting, and a court hearing shall be celebrated if the parties request so.
Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

In the Spanish legal system, in order to effectively waive a right, it shall be an already existing subjective right. Therefore, there is no room for early waivers of rights, such as the right of challenge to an award before the dispute arises.

43. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

As stated in Q26 above, Law 16/2015 details a series of proceedings in respect of which States are not able to invoke their sovereign immunity within an arbitration proceeding (unless the parties have agreed otherwise in the arbitration agreement), including the recognition of the effects of a foreign award. Therefore, it does not seem possible to state such immunity at the enforcement stage.

44. **In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?**

As anticipated, Spanish courts have stated the possibility of extending the arbitration agreement to a non-signatory third party when it has been or is directly involved in the execution of the contract. When this occurs, the effects of the issued award shall be extended to the third party who, although not a signatory of the arbitral agreement, has met a series of requirements, within concrete circumstances, in order to be able to be a party to the arbitration proceedings. Once such third party is an effective party to the process, the necessary consequence is the bounding by the award.

As to the challenge of an award by a third party, SAA states that the award may only be annulled when the party requesting annulment pleads, from which it can be inferred that the condition of party in the process is necessary for that purpose. However, the Public Prosecutor’s Office, in relation to the interests whose defense has been legally attributed, may urge the court to assess only the following circumstances: (i) that the appointment of an arbitrator or of the arbitral proceedings has not been duly notified, or that the parties has not been able, for any other reason, to assert their rights; (ii) that the arbitrators have ruled on matters not susceptible to arbitration; or (iii) that the award is contrary to public order.

45. **Have courts in your jurisdiction considered third party funding in connection with arbitration proceedings recently?**

In Spain there is no specific regulation for this figure and there are no records of Spanish courts considering third party funding in connection with arbitration.

42. One of the most publicized cases in our country has been that of Acciona and the ATLL (Aigües Ter Llobregat) dispute, which ended up in the hands of the US Fortress fund, with a
lawsuit valued at 1,036 million. But this has not been the only case: Acciona sold another package of lawsuits also to Fortress, valued at 300 million euros, added to other lawsuits that this fund has bought -or is in process to buy- from big Spanish companies like Telefónica or Iberdrola. Also, Abengoa announced last year that the company was negotiating the sale of the pending arbitration against the Kingdom of Spain.

In sum, many experts consider this type of operation to be a “booming business” and many of the advisory and legal firms are considering offering this type of service to their clients. As a result, the arbitral community is wondering how the arbitral practitioners shall deal with these new situations in order to comply with best arbitration practices (e.g conflicts of interest, confidentiality…)

46. Is emergency arbitrator relief available in your country? Is this frequently used?

Although this figure is not regulated in the SAA, it appears, in the rules of certain arbitral institutions.

For instance, article 38 of the Regulation of the Madrid Court of Arbitration establishes that, prior to the constitution of the arbitration tribunal, any of the parties may request the appointment of an emergency arbitrator to agree on urgent precautionary measures, or measures of anticipation or securing of evidence. However, the decisions adopted by this arbitrator, as well as the grounds for such decisions, shall not be binding on the arbitration tribunal.

Notwithstanding the above, parties may prefer to request such measures to local courts, as they also have power to agree on interim measures even if an arbitration agreements exists.

47. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

SAA does not regulate this type of procedure, but some arbitration institutional rules do. For instance:

- Regulation of the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid establishes an “abbreviated procedure” that shall be applied, by decision of the Court, to all cases in which the total amount of the proceedings (including, if applicable, the counterclaim) does not exceed 100,000 euros, and provided that there are no circumstances which, in the opinion of the Court, would make the use of the ordinary procedure advisable.
- Regulation of the European Association of Arbitration settles the same quantity (100,000 euros) in order to determine whether the abbreviated procedure shall be held or not.
- According the Spanish Court of Arbitration of the Spanish Chamber of Commerce Regulation, the abbreviated procedure shall apply whenever the maximum total amount
of the case is equal to or less than 1,000,000 euros (considering both the claim and the eventual counterclaim).

- Regulation of the Arbitral Tribunal of Barcelona allows the parties to follow the abbreviated procedure whenever they want and, additionally to such agreement, the Tribunal shall follow this procedure in all cases in which the total amount of the procedure (including, where appropriate, the counterclaim) does not exceed 50,000 euros.
- As to the International Chamber of Commerce Regulation, the limit is ≤ 2,000,000 US dollars.

48. **Have measures been taken by arbitral institutions in your country to promote transparency in arbitration?**

The recommendations made by the aforementioned Arbitration Code of Good Practices, recently published by the CEA, address issues related to the governance, structure, functioning and mission of arbitral institutions, whose particular aim is to ensure their transparency and independence.

Thus, for example, every arbitration institution should publish on its website (i) information about its structure and functioning, (ii) a list of the cases it manages with an anonymized reference to the nature of the parties, (iii) as well as all the awards issued, also in anonymized form.

Although this is soft law, most arbitral institutions may consider those recommendations.

49. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

Again, the CEA’s Arbitration Code of Good Practices provides that the board or governing body of any arbitration institution, as well as the Arbitration Court itself, should encourage diversity in its composition. It also compels the Court to establish objective criteria to ensure, among other things, that the process of selecting arbitrators is inclusive and promotes diversity, “and in particular, diversity of generation, gender and origin”.

50. **Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

There are no records on judicial decisions on this matter.

51. **Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?**

It is not easy to find an univocal concept of corruption. Even the United Nations Convention
against Corruption does not include a concrete definition. Instead, it provides a list of conducts that the Contracting Parties shall criminalize.

In this regard, the Spanish Criminal Code does not contain a concept of corruption either. As of the reform operated in 2010, a new section referred to “Crimes of corruption in business,” was created, and it includes crimes of bribe to obtain competitive advantages (whether within the private sector or in relation to a foreign public agent).

However, although the crime of corruption does not exist as such, our Criminal Code includes ten specific crimes which can be considered as such: urban development malfeasance, administrative malfeasance, infidelity in the custody of documents and violation of secrets, bribery, influence peddling, misappropriation, fraud and illegal exactions, negotiations and activities prohibited to public officials and abuses in the exercise of their duties or corruption in international commercial transactions.

Therefore, we cannot expect a decision (or a set of them) to detail all the requirements needed to prove corruption, since it will depend on its specific type. The only common feature to all of the aforementioned crimes is the deviation of power to act in a particular interest for the purpose of obtaining an undue advantage (financial or otherwise) in your favor or in that of another.

Finally, with respect to the burden of proof, following the inspiring principle of the Spanish criminal law, it is up to the person who accuses to prove the existence of the conduct that gives rise to the crime.

52. **Have there been any recent court decisions in your country considering the definition and application of “public policy” in the context of enforcing or setting aside an arbitral award?**

The First Chamber of the Spanish Constitutional Court has recently decided on the concept of “public policy” regarding the arbitral award, on its ruling of 15 June 2020.

In this judgment, the Court has highlighted that public order comprises the fundamental rights and freedoms guaranteed by the Spanish Constitution, as well as other essential principles that are unavailable to the legislator due to constitutional requirements or the application of internationally accepted principles. The judgment notes that, since the concept of public order is so vast, there could be a risk that it could become a pretext for the judicial body to re-examine the issues discussed in the arbitration proceedings, thus distorting the arbitration institution and ultimately violating the autonomy of the will of the parties.

In that regard, the Spanish Constitutional Court has highlighted that the judicial tribunals cannot, under the pretext of an alleged violation of public order, review the merits of a matter submitted to arbitration.
53. **Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?**

The Contested-Administrative Chamber of the Supreme Court has considered this judgement in ruling num. 817/2019, of June 13 (RJ 2019/2886), stating: "In the same vein, the judgment of the European Court of Justice of 6 March 2018 (ECJ 2018, 66) “Achmea”, in case C 284/16, rejects as contrary to EU law an arbitration mechanism for the resolution of disputes in which EU law is applicable, since it does not guarantee that disputes will be settled before a court belonging to the EU’s judicial system, and only such a court can ensure the full effectiveness of European Union Law".

There are no records of other pending decisions.

54. **Have there been any recent decisions in your country considering the General Court of the European Union’s decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?**

To this day, there is no record.

55. **What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?**

Many arbitration courts have already taken action to adapt themselves to new demands and to continue to provide answers to conflicts that, despite this health emergency, have not ceased to occur, including a new way of working: online arbitration.

At a national level, for example, the Spanish Court of Arbitration is still operating in full, as it has resources and systems to manage arbitration proceedings by telematic means.

On the other hand, the International Centre for Settlement of Investment Disputes has designed a videoconference platform that does not require special hardware or software and, in case of poor Internet connectivity, participants can also connect by phone.

The Civil and Commercial Court of Arbitration has also adopted different measures such as teleworking, or the suspension of hearings and appearances. However, it has also adopted a series of rules to enhance audiovisual media in hearings with testimonial and technician evidence.

The option that the Barcelona Court of Arbitration has taken is to establish a “Fast track” process for conflict resolution during the COVID-19, in which procedural hearings will be
held preferably by videoconference and will be recorded so that it is accessible for later consultation, and in which the identification of the parties is clearly stated.

Finally, the Court of Arbitration of the Official Chamber of Commerce, Industry and Services of Madrid also postponed its hearings, which have now been reinstated and continues to offer remote service.

56. **In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?**

According to the new Spanish Insolvency Royal-Decree, 1/2020, of 5 May, the declaration of insolvency shall not affect, by itself, the validity of the mediation agreements or the arbitration agreements signed by the debtor. In this respect, the mediation procedures and the arbitration procedures which are in process on the date of the declaration of insolvency shall continue until the termination of the mediation or until the arbitration award becomes final.

However, the judge of the insolvency proceeding, ex officio or at the request of the debtor (in the case of intervention) or of the insolvency administrator (in the case of suspension), may agree, before the arbitration procedure is initiated, to suspend the effects of those agreements or arrangements, if he/she considers that they could be detrimental to the insolvency proceeding.

Finally, in case of fraud, the insolvency administration may challenge before the judge the arbitration agreements and procedures.

57. **Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?**

Spain is a Contracting party of the Energy Charter Treaty (ECT), being the country with the highest number of disputes for allegedly violating it.

In September 2020, a Statement on the modernization of the Energy Charter Treaty was made by some EU deputies (among them, 22 were from Spain), who believe that the ECT is threatening the climate ambition of the EU domestically and internationally, and requires EU negotiators to ensure that the provisions in the ECT that protect foreign investment in fossil fuels are deleted and thus removed from the ECT. In sum, they believe the Energy Charter Treaty is neither consistent with the European Green Deal, nor with the proposed EU climate law and national carbon neutrality targets, nor with the EIB (European Investment Bank) energy lending policy and the EU taxonomy for sustainable investment.
Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There are no remarkable news on this matter, although it is true that Spanish governors seem to be concerned about the challenge that climate change poses to our society, as it can be inferred from, for instance, the fact that we currently have a Ministry for Ecological Transition.

Additionally, many regulations have already been drawn up regarding, for example: the regulation of the greenhouse gas emission rights trading scheme, or the establishment of a framework for achieving a sustainable use of phytosanitary products.