

## 1. INTRODUCTION

Spain is one of the most significant economies in the world: 13<sup>th</sup> in terms of size and an attractive destination for foreign investment, making Spain the 9<sup>th</sup> largest recipient of Foreign direct investment (FDI) worldwide.

Spain's appeal for investment lies not only in its domestic market, but also in the possibility of operating with third markets from Spain. This is because Spain has a privileged geo-strategic position within the European Union giving access to over 1,700 million potential clients in the EMEA Region (Europe, Middle East and Africa). Its strong economic, historic and cultural ties also make Spain the perfect business gateway to Latin America.

Furthermore, Spain is a modern knowledge-based economy with services accounting for 71.27% of economic activity. The country has become a center of innovation supported by a young, highly-qualified work force and competitive costs in the context of Western Europe.

## 2. FOREIGN TRADE AND INVESTMENT

Rapid growth in international trade and foreign investments in recent years has made Spain one of the most internationally-oriented countries in the world. With regard to the trading of goods, Spain is ranked 17<sup>th</sup> in the world as an exporter and 14<sup>th</sup> as an importer; while in the trading of services it occupies 7<sup>th</sup> place as an exporter and 14<sup>th</sup> place as an importer.

Spanish exports and imports of goods account for 1.70% and 2.0%, respectively, of the worldwide total, while Spanish, exports and imports of services represent 3.40% and 2.40% respectively.

As would be expected, the countries of the EU are Spain's main trading partners. Accordingly, during 2012, Spanish exports to the European Union accounted for 62.8% of total exports and sales to the Eurozone represented 49.5% of the total. Imports from the European Union accounted for 50.2% of the total and those from the Eurozone represented 40.4%.

### 3. LEGISLATION ON FOREIGN INVESTMENT AND EXCHANGE CONTROL

Although deregulation is the dominant feature in exchange control and foreign investment matters, there are certain reporting requirements.

As a general rule, foreign investments are only subject to reporting requirements once the investment has been made, while exchange control and capital movements are fully deregulated in Spain, there being complete freedom of action in this regard in all areas.

#### 3.1. Legislation on foreign investment

Royal Decree 664/1999 deregulated practically all transactions of this kind (with the conditions and exceptions set forth below), adapting Spanish domestic law to the rules on the freedom of movement of capital contained in Articles 56 et seq. of the Treaty of the European Union.

The most noteworthy aspects of the regulations applicable to foreign investments are as follows:

- As a general rule, foreign investments must be reported afterwards, once the investment has been made.

The only exceptions are: (i) investments from tax havens, which in general must be notified beforehand; and (ii) foreign investments in activities directly related to national security, and real estate investments for diplomatic missions by non-EU Member States, which require prior authorization by the Spanish Council of Ministers. There is no obligation for foreign investments to be formalized in the presence of a Spanish public certifying officer (unless an express provision provides otherwise).

- Only foreign investments in the air transportation and radio industries, in industries relating to raw materials, minerals of strategic interest and mining rights, in the television, gaming, telecommunications and private security industries, in industries concerned with the manufacturing, marketing or distributing of arms and explosives and in national security-related activities (these latter activities are subject to the clearance rules), will be subject to the requirements imposed by the relevant bodies established by industry-specific legislation, although the general provisions may apply to them once those requirements are met.

## 4. DIFFERENT WAYS OF DOING BUSINESS IN SPAIN

Various alternatives are open to the foreign investor once the decision to invest in Spain has been taken:

### WAYS OF DOING BUSINESS IN SPAIN

#### 1. Creation of a Spanish company with its own legal personality

Spanish law provides for a variety of vehicles that can be used by foreign companies or individuals for investing in Spain. The most common forms used are the corporation (S.A.) and, principally, the limited liability company (S.L.).

#### 2. Branch or permanent establishment

Neither alternative has its own legal personality, meaning that their activity and legal liability will at all times be directly related to the parent company of the foreign investor.

Association with other businesses already established in Spain. It allows the parties to share risks and combine resources and expertise.

A joint venture can be set up under Spanish law in a number of ways:

-An Economic Interest Grouping (E.I.G.) and a European E.I.G. (E.E.I.G.).

#### 3. Joint ventures

-A Temporary Business Association ("Unión Temporal de Empresas" or U.T.E.).

-Under a type of silent partnership arrangement peculiar to Spanish law ("cuenta en participación") with one or more Spanish entrepreneurs.

-Joint ventures through Spanish corporations or limited liability companies.

The alternatives include:

Signing a distribution agreement.

Operating through an agent.

Operating through commission agents.

Franchising.

#### 4. Without setting up a business or entering into an association with existing business or establishing a physical center of operations in Spain

Each of these forms of doing business in Spain offer different advantages that must be balanced against the potential setbacks from a tax and legal standpoint.

## 4.1 FORMATION OF A CORPORATION

The most common forms of legal entity under Spanish corporate law are the corporation ("Sociedad Anónima" - S.A.), and the limited liability company ("S.L.")

The ordinary steps and expenses involved are similar for both legal forms and are detailed in the following tables, along with the simplified and super simplified steps for formation of limited liability companies established under Royal Decree-Law 13/2010, of December 3, on Tax, Employment and Deregulation Measures to Promote Investment and the Creation of Employment in order to expedite the formation of limited liability companies by telematic means.

### STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

	Ordinary regime	Simplified regime	Super simplified regime
<b>Requirements</b>	Applicable to any kind of limited liability company or corporation.	<p>Applicable only to limited liability companies with:</p> <ul style="list-style-type: none"> <li>-Shareholders that are exclusively individuals,</li> <li>-Capital not exceeding €30,000, and</li> <li>-Managing body: sole director, various directors acting severally or two joint directors (therefore excluding boards of directors).</li> </ul>	<p>-Applicable only to limited liability companies with:</p> <ul style="list-style-type: none"> <li>-Shareholders that are exclusively individuals,</li> <li>-Capital not exceeding €3,100, and</li> <li>-Bylaws in line with any of those approved by the Ministry of Justice.</li> </ul>
<b>Clear name search certificate</b>	Application to the Central Commercial Registry by the interested party or anyone authorized by it (may contain up to three alternative corporate names). The Central Commercial Registry will issue a name reservation certificate for the new company. Names are reserved for a period of six months as from the date of issue of the certificate.	The notary, the interested party or anyone authorized by it may apply by telematic means for a clear name search certificate (which may contain up to five alternative corporate names) from the Central Commercial Register, which shall issue the certificate within one (1) business day of the application.	

## 4.2. OPENING OF A BRANCH

In general terms, the requirements, procedural formalities and costs of opening a branch in Spain of a foreign company are very similar to those for the formation of a subsidiary (as a company). The main legal steps and costs are summarized below, highlighting the main differences with respect to the formation of a subsidiary.

## 4.3. OTHER ALTERNATIVES FOR OPERATING IN SPAIN

### - Forms of business cooperation

One of the most common forms of business cooperation between companies is the joint venture (J.V.). Spanish law provides for different forms of joint venture, allowing transactions to be performed between one or more parties:

#### *Temporary Business Associations (U.T.E.s):*

- Concept/purpose: Under Spanish law, U.T.E.s are temporary business alliances set up for a specified or unspecified period of time, for the purpose of carrying out a specific project or service. U.T.E.s allow several companies to operate together on one common project. This form of association is very common for engineering and construction projects but can be used in other sectors as well.

- Legal personality: U.T.E.s are not companies in the strict sense and have no legal personality.

- Fiscal transparency regime: While they have no legal personality, in order to qualify for the special fiscal transparency regime provided for U.T.E.s, they must be formed by notarial deed and registered on the Special Register of U.T.E.s at the Spanish Ministry of Finance and Public Administration and must comply with bookkeeping and accounting requirements similar to those of Spanish companies. They may be also registered at the Commercial Registry. Formalities for formalization of a U.T.E are similar to those for a company or branch, adjusted to reflect the special characteristics of this type of arrangement.

- Regulation: U.T.E.s are governed by Law 18/1982, concerning the Tax Regime of Temporary Business Groupings and Associations and Regional Industrial Development Companies, amended, among others, by Law 12/1991, Law 43/1995 and Law 62/2003.

*Economic Interest Groupings (E.I.G.s):*

- Concept/purpose: E.I.G.s are created with a view to facilitating the pursuit or enhancing the profitability of the activities of their members. E.I.G.s may not act on behalf of their members nor may they substitute them in their operations. Consequently, the E.I.G. is most commonly used to provide secondary services, such as centralized purchasing, sales, information management or administrative services, within the context of a broader association or group of companies.

- Legal personality: One of the key differences between U.T.E.s and E.I.G.s is that E.I.G.s are commercial entities with a separate legal personality.

- Formation requirements: Spanish law sets out certain requirements for the formation of E.I.G.s:

They may not interfere with their members' decisions on personnel, finance or investment matters, nor are they allowed to manage or control the activities of their members.

**4.4. ACQUISITION OF SHARE OF AN EXISTING CORPORATION OR OF A LIMITED LIABILITY COMPANY**

The following table summarizes the fundamental legal steps involved in the acquisition of shares of an existing corporation or limited liability company:

**FUNDAMENTAL LEGAL STEPS INVOLVED IN THE ACQUISITION OF SHARES OF AN EXISTING CORPORATION OR LIMITED LIABILITY COMPANY**

Formality	S.A.	S.L.
<b>Attestation by public authenticating officer</b>	Necessary where required by Spanish law or by the bylaws or where so agreed by the parties.	Always required.
<b>Documentation to be provided to the notary</b>	Title to the shares being transferred. Powers of attorney, as the case may be, to appear in the name of the buyer or seller,	

Formality	S.A.	S.L.
	as appropriate.	
	If the powers of attorney were granted abroad, they must be duly legalized	
	N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller	
	Declaration by the beneficial owner, from both the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the deed itself	
	Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).	
<b>Subsequent declaration of the investment to the D.G.C.I.</b>	File of the form D-1A before the Ministry of Economy and Competitiveness. In some cases, prior declaration is required	
	Depending on the Spanish public authority before which the acquisition is made:	
<b>Costs</b>	<ul style="list-style-type: none"> <li>• Notary fee: the scale applicable for the formation of a branch is also applicable here.</li> <li>• Fee of Spanish Consul abroad: the fee will be determined in the legislation in force on notarial fees.</li> </ul>	

## 5. TAX SYSTEM AND CORPORATE INCOME TAX INCENTIVES FOR INVESTMENT

### 5.1 INTRODUCTION TO THE SPANISH TAX SYSTEM

The Spanish tax system is modern and competitive. The Spanish State Tax Agency has distinguished itself through its technological leadership within the Government. It is one of the most modernized European tax agencies, in the vanguard of offering electronic public services, such as the possibility of obtaining tax certificates or filing tax returns online.

The Spanish tax system comprises three kinds of taxes: "impuestos" (true taxes), "tasas" (dues and fees) and "contribuciones especiales" (special levies). The "tasas" and "contribuciones especiales" are collected in return for a public service provided by the authorities or for any type of benefit as a result of public works or services.

In Spain taxes are levied by the Central Government, by the Autonomous Communities (regional) and by local authorities. Due to their relevance, this chapter concentrates exclusively on the taxes levied by the Central Government, including those administered and collected by regional and local authorities, albeit with a brief reference to the special regimes applicable in the Canary Islands, the Basque Country and Navarra.

## 5.2 CENTRAL GOVERNMENT TAXES

National taxes in Spain can be classified as follows:

- Direct taxes:

- On income:

Corporate income tax

Personal income tax

Nonresident income tax

- On assets (affecting only individuals):

Inheritance and gift tax

Wealth tax

- Indirect taxes:

Value added tax (VAT)

Transfer tax and stamp tax

Excise taxes

Customs duties on imports

Tax on insurance premiums

Given its importance, in this chapter we include a new reporting obligation relating to assets and rights abroad, the breach of which affects personal income tax and corporate income tax.

### **5.2.1 CORPORATE INCOME TAX.**

The regulation of Corporate Income Tax is contained in the Revised Corporate Income Tax Law, approved by Legislative Royal Decree 4/2004, of March 5, and in the Regulation approved by Royal Decree 1777/2004, of July 30.

The key factor in determining the application of corporate income tax is "residence". A company is deemed to be resident in Spain for tax purposes if it meets any of the following conditions:

- It was incorporated under Spanish law.
- Its registered office is located in Spain.
- Its place of effective management is in Spain.

### **5.3 CORPORATE INCOME TAX INCENTIVES FOR INVESTMENT**

Tax incentives applicable to the tax base	Accelerated depreciation/amortization
	Unrestricted depreciation/amortization
	Special regime applicable to finance lease agreements
	Partial exemption for income derived from the licensing of certain intangible assets (Patent box)
	Financial goodwill.

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	Tax credit for reinvestment of extraordinary income.
	Tax credit for job creation for disabled workers
	Tax credit for job creation.
Tax credits applicable to tax payable	Tax credits for investment: <ul style="list-style-type: none"> <li>-Tax credit for investment in R&amp;D&amp;i.</li> <li>-Other tax credits for investments made in assets of a cultural interest, training expenses, environmental expenses, Spanish film or audiovisual productions, book edition.</li> </ul>

#### **5.4. STATE INCENTIVES FOR SPECIFIC INDUSTRIES.**

The Central Government provides financial aid and tax benefits for activities pursued in certain industries which are considered to be priority industries in view of their potential for growth and their impact on the nation's overall economy (e.g. energy, mining, technological development, research and development, etc.). Additionally, Autonomous Community governments provide similar incentives for most of these industries.

Financial aid includes both nonrefundable subsidies and interest relief on loans obtained by beneficiaries, or combinations of the two.

The main official programs supporting the industrial development projects to support innovation currently in force are:

##### **5.4.1 Research, development and technological innovation:**

- Spanish Strategy for Science and Technology and for Innovation (2013-2020).

Encouraging innovation, technological improvement and research and development projects continues to be one of the priority objectives of the Spanish public authorities, since this is doubtless a determining factor of the increase in a country's competitiveness and economic and social development.

Currently Science, Technology and Innovation Law 14/2011, of June 1, 2011, establishes the legal framework for the fostering of scientific and technical research, experimental development and innovation in

Spain, founded on a scheme based on the approval of the related Spanish Strategies for Science, Technology and for Innovation, which serve as multi-year reference documents for reaching the statutory objectives and as a basis for the preparation of a State Plan through which to instrument in detail the initiatives required to perform such objectives.

In line with the foregoing, at the beginning of February 2013 the Council of Ministers approved, in a combined document, "*the Spanish Strategy for Science and Technology and for Innovation*" for the 2013-2020 period, whose essential purpose is to promote the scientific, technological and business leadership of the country as a whole and to increase the innovation capacities of the Spanish company and the Spanish economy, defining in this connection the following general objective:

Recognizing and promoting R&D and TI talent and its employability, with a view to improving the System's R&D and TI training capacities, boosting labor market integration and employability of the trained human resources, both in the public and in the business sectors, and facilitating their mobility among public institutions and between such institutions and the private sector for the pursuit of R&D and TI activities.

#### **5.5 "SME" INCENTIVES: "InnoEmpresa" Program to Support Innovation at Small- and Medium-sized Enterprises (2007-2013)**

In recent years the Spanish Government and the Autonomous Community Governments have shown special interest in promoting and developing SMEs, in view of their proven ability to create jobs and make a determined contribution to the growth of the economy.

In this connection, the Secretariat General of Industry and of the SME under the Ministry of Industry, Energy and Tourism, promotes the granting of certain incentives and aid schemes designed especially for SMEs through the InnoEmpresa Program to support innovation at small- and medium-sized enterprises for the 2007-2013 period.

This Program aims to boost, inter alia, aspects such as the prioritization of lines of aid directly related to improving the innovative capacity of businesses (in a broad sense, not purely technological innovation), the opening of all envisaged lines of aid at the direct request of the SMEs, an increase in the maximum aid for investment in tangible or intangible assets, or a specific focus on projects implemented by different companies and agencies under a cooperation or consortium arrangement, etc.

SMEs belonging to the following sectors: (i) industry, including agrofood; (ii) construction; (iii) tourism; (iv) trade and (iv) services, are eligible for the aid granted under the "InnoEmpresa" Program. The aforesaid aid can also be applied to the intermediary bodies which pursue SME support activities.

- The lines of aid envisaged in the "InnoEmpresa" program are classed in three groups:

- Organizational Innovation and Advanced Management.
- Technology and Quality Innovation
- Innovation and Cooperation Projects.

- Potential beneficiaries include:

- SMEs that have one or more employees, with special emphasis on entities with growth potential and the capacity to create innovation.
- Intermediary bodies (i.e., public and private not-for-profit organizations which habitually provide services to support innovation at SMEs and which have sufficient human and material resources).

- If the beneficiaries are SMEs, the following may be regarded as eligible expenses:

- Tangible or intangible investments, excluding the acquisition and fitting out of real estate, furniture expenses, means of transportation and office equipment (other than computer-related items).

## **5.6 PREFERRED FINANCING OF THE OFFICIAL CREDIT INSTITUTE (INSTITUTO DE CRÉDITO OFICIAL OR ICO)**

Consistent with its objective to contribute to economic growth and to the improvement of the distribution of national wealth, the ICO cooperates with other national and international bodies and institutions which work for the benefit of industries which, given their social, cultural, innovative or ecological significance, merit priority attention.

Thus, for a number of years the ICO has been executing multilateral institutional and/or financial cooperation agreements with similar bodies, Autonomous Communities, ministries and financial institutions with a view to helping Spanish enterprises start up new investment projects.

Notwithstanding other lines instrumented in connection with certain specific sectors, the following are the main ICO lines of financing for 2013: (i) Enterprises and Entrepreneurs; (ii) Mutual Guarantee Society Guarantee; (iii) Exporters; and (iv) International, whose most notable characteristics are:

“Línea ICO Empresas y Emprendedores 2013” (ICO Enterprises and Entrepreneurs Line):

- Independent professionals and enterprises who make productive investments in Spain and/or need to cover their liquidity needs may apply for these loans.
- Transactions are processed directly via credit institutions with which the ICO has executed a cooperation agreement for the implementation of this line.
- The loans may be used to finance:
  1. Liquidity: working capital needs such as current expenses, payroll, payments to suppliers, purchase of goods, etc.
  2. Investment:
    - New or second-hand productive fixed assets.
    - Cars, whose price does not exceed €30,000 plus VAT. Industrial vehicles may be financed 100%.
    - Acquisition of enterprises.
    - Value added tax (VAT) or Canary Islands general indirect tax (IGIC).
    - Operating expenses, with a limit of 50% of the financing obtained for this investment purpose.
- The maximum amount that can be applied for is €10 million, in one or more transactions per client per year. Where used to finance "Investment", it can be requested in the form of a loan or leasing arrangement.

## **5.7 EU AIDS AND INCENTIVES**

Most of the European Union incentives (specifically loans and subsidies) supplement development plans financed by the Spanish Government. Such aid is routed through Spanish official institutions and finance entities, which act as intermediaries. Accordingly, the related applications for subsidies must be addressed to these entities.

The broad range of instruments at the EU's disposal includes, most notably the following:

### **5.7.1 European Investment Bank (EIB)**

Projects eligible for EIB support are basically those which promote the development of less favored regions and those of common interest to several Member States or benefiting the EU as a whole, such as environmental protection, improved use of energy resources, improved industrial competitiveness in the EU, the development of SMEs and improved European transport and telecommunications infrastructures. Additionally, projects aiming at extending and modernizing infrastructure in the health and education sectors may also qualify for EIB support.

At the Lisbon European Council in March 2000, the European Union established the strategic objective of creating, prior to 2010, a competitive economy based on knowledge, capable of sustained economic growth with more and better jobs and greater social cohesion.

With this aim, the EU program "2010 Innovation Initiative" was created, under which the governing bodies of the EIB have approved a number of measures, still in force, to facilitate the financing of projects in the following four strategic areas:

- Research, development and innovation.
- Human capital training.
- Dissemination of technologies and development of information and communication technology.
- Fostering of the business spirit.

The EIB offers a global loans:

Global loans are similar to credit lines granted to financial institutions, which lend the funds to small or medium-scale investment projects meeting the EIB's criteria. This is the main instrument with which the EIB supports SMEs since, by granting loans to intermediary banks, funding is provided to small and medium-scale business initiatives.

The loans are granted by the EIB to banks in all the Member States, which act as intermediaries. These financial intermediaries conduct an analysis of the investment, and of the economic, technical and financial viability of each of the projects. They are responsible for granting the loans for small and medium-scale investments and for the administration of such loans.

## **6. LABOR AND SOCIAL SECURITY REGULATIONS**

### **6.1. INTRODUCTION**

Employment contracts are generally regulated by the provisions of Legislative Royal Decree 1/1995, of March 24, approving the Workers' Statute (WS).

Labor legislation has adapted in recent years to the special economic circumstances through the approval of various laws, the most significant and ambitious being Law 3/2012, of July 6, 2012, on Urgent Measures to Reform the Labor Market, which aims to establish a clear labor and employment law framework that will contribute to more efficient management of employment relationships and facilitate job creation and stable employment.

### **6.2. CONTRACTS**

In general, discrimination in hiring or in the workplace on the grounds of gender, marital status, age, race, social status, religion or political ideology, membership of a labor union or otherwise, or on the basis of the different official languages in Spain is prohibited.

The minimum employment age is 16 years old and there are certain special rules applicable to the employment of persons under the age of 18 (who, for example, cannot work overtime or at night).

## Types of contract

Contracts can be made verbally or in writing, unless there are express provisions that require a written contract (for example, temporary contracts, part-time contracts and training contracts). If this formal requirement is not met, the contract is understood to be permanent and full-time, unless evidence is provided to the contrary.

Companies must provide the workers' statutory representatives (if any) with a basic copy of all contracts to be made in writing (except for senior management contracts). The hiring of workers must be notified to the Public Employment Service within ten days of the contracts being made.

There are various different types of contract, including indefinite-term, temporary, fixed-term, training, distance work and part-time contracts.

Spanish legislation sets out specific grounds for the execution of fixed-term or temporary contracts.

All temporary contracts must be made in writing and must specify the reason for their temporary nature in sufficient detail. Otherwise, or if the ground for the temporary contract does not truly correspond to one of the legally-established grounds, the contract will be deemed to be made for an indefinite term, unless evidence of its temporary nature is provided.

### 6.3 PRACTICAL ASPECTS TO BE CONSIDERED WHEN SETTING UP A COMPANY IN SPAIN

In general, from a labor and social security standpoint, the following essential formalities must be performed in order to open a company or workplace in Spain.

#### ESSENTIAL FORMALITIES

Formality	Basic aspects
<b>Registration of the company with the Spanish social security authorities (obtainment of a social security contribution account code)</b>	Registration must take place prior to commencement of activities. In general, companies register with the Social Security General Treasury by submitting the relevant official form and documentation identifying the company (deed of formation, document issued by the Ministry of Finance and Public Administration assigning the tax identification number and stating the economic activity of the company, powers of legal representation of the company, document of affiliation to the occupational accident and disease mutual insurance company, among others).
<b>Notification of hiring of employees</b>	The hiring of employees must be notified for social security purposes once the company has been registered with the social security authorities and before the

Formality	Basic aspects
	workers start work. Notifications are generally made electronically, using the RED electronic document submission system.
<b>Legalization of labor inspection visits book</b>	Employers must have a visits book for each workplace and make it available to the labor and social security inspectors for the recording of any inspections carried out and it must be legalized at the Provincial Labor Inspectorate corresponding to the workplace in question.
<b>Notification of opening of workplace</b>	The commencement of activities at the workplace must be notified to the labor authorities within 30 days of its opening using the official form provided for such purpose in each Autonomous Community. An occupational risk prevention plan must usually also be attached.

#### **6.4 RELOCATION OF WORKERS UNDER A CROSS-BORDER WORKING ARRANGEMENT WITHIN THE EU AND THE EEA**

Foreign employees temporarily posted to Spain under cross-border working arrangements can maintain the employment contract signed in their country of origin, although a number of minimum working conditions established in Law 45/1999, of November 29, 1999 must be observed.

This Law applies to workers relocated by employers from the European Union, and from the European Economic Area (the EU plus Norway, Switzerland, Iceland and Liechtenstein) for a limited time period in the following cases:

- Within the same company or within a group of companies.
- Under international services contracts.
- When the workers of a temporary employment agency are posted to a client company in another EU Member State.

The only exceptions to the above are in the case of employee relocations during training periods and postings lasting less than eight days, unless they involve workers employed by temporary employment agencies.

The minimum working conditions to be guaranteed by employers in the above countries in accordance with Spanish labor legislation are: (i) working time; (ii) salary (which must be at least the amount provided for the

same position under a statutory or regulatory provision or collective labor agreement); (iii) equality of treatment; (iv) the rules on underage work; (v) prevention of occupational risks; (vi) nondiscrimination against temporary and part-time workers; (vii) respect for privacy, dignity, and the freedom to join a union; and (viii) rights of strike and assembly. However, if employees relocated to Spain enjoy more favorable conditions in their country of origin, those conditions will apply.

Employers in such cases must also notify postings to the Spanish labor authorities before the worker starts work and regardless of the duration of the posting (except for those lasting less than eight days).

The legislation on labor infringements and penalties classifies a series of infringements in this connection. Formal defects in notifying the relocation of workers to Spain constitute a minor infringement, while notification of the relocation after it has taken place is classed as a serious infringement. Failure to notify the relocation or any misrepresentation or concealment of the data contained in the notification are considered very serious infringements.

Failure to meet the minimum working conditions mentioned above, which are classified according to the penalties applicable to Spanish employers, are considered administrative infringements.

## **6.5 SOCIAL SECURITY SYSTEM**

As a general rule, all employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel and civil servants who reside and/or perform their duties in Spain are required to be registered with, and pay contributions to, the Spanish social security system. Even unemployed persons (subject to certain conditions) must pay social security contributions.

There are a number of bilateral social security agreements between Spain and other countries, which regulate the effects on Spanish public benefits of periods of contribution to the social security systems of other States. These agreements also determine the State in which social security contributions are to be paid in cases of relocation and temporary or permanent assignments abroad.

Council Regulations (EC) 883/2004 and 987/2009 on the coordination of social security schemes apply within the European Union and ensure that the workers to whom they are applicable are not adversely

affected from a social security standpoint by moving from one Member State to another (Switzerland is included for these purposes).

The following bilateral agreements are currently in force:

## BILATERAL SOCIAL SECURITY AGREEMENTS

Bilateral Agreements with Spain	Persons to whom it applies
Andorra	Any nationality
Argentina	Any nationality
Australia	Any nationality
Brazil	Any nationality
Canada	Any nationality
Chile	Spaniards and Chileans
Colombia	Spaniards and Colombians
Dominican Republic	Spaniards and Dominicans
Ecuador	Spaniards and Ecuadorians
Japan	Any nationality
Morocco	Spaniards and Moroccans
Mexico	Spaniards and Mexicans
Paraguay	Any nationality
Peru	Any nationality
Philippines	Spaniards and Philippines
Russia	Spaniards and Russians

### 6.6 TERMINATION OF EMPLOYMENT CONTRACTS

#### Dismissals:

An employment contract may be terminated for a number of reasons which normally do not give rise to any dispute, such as mutual agreement, expiration of the contractual term, death or retirement of the employee or of the employer, and so on.

In the event of termination by the employer, there are three main grounds for dismissal of an employee:

- Collective layoff.

- Objective grounds.
- Disciplinary action.