Enforcement of arbitral awards in Spain: overview

Mercedes Duch
San Simón & Duch

Enforcement of arbitral awards

1. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

Article 517.2 of the Spanish Civil Procedural Act (LEC 2000) states that arbitral awards or decisions are described as “enforceable instruments” and can be subject to enforcement proceedings. Article 523 of LEC 2000 contains the general rule for recognition and enforcement of foreign judgments and arbitral awards in Spain:

- For final judgments and other enforceable instruments that can be enforced in Spain, the provisions in international treaties and the legal provisions on international judicial co-operation will apply.
- In any case, the enforcement of foreign judgments and enforceable instruments will be carried out in Spain in accordance with the provisions of LEC 2000, unless otherwise provided for in the international treaties in force in Spain.

Accordingly, the Spanish legal system contains a remvata to international law because, in order to recognise or enforce foreign judgments and arbitral awards, international conventions and/or European Regulations will apply.

Article 46 of the Arbitration Act declares that a foreign award is an award that has been rendered outside of Spanish territory.

2. Are decisions in preliminary/provisional proceedings recognised and enforceable?

Under Article 722 of the Spanish Civil Procedural Act (LEC 2000) whoever is a party to an arbitration agreement can seek an injunction from the court prior to the arbitration proceedings. In addition, parties in pending arbitration proceedings in Spain can also seek injunctions or, as appropriate, any party who has sought the court’s certification referred to in Article 15 of Act 60/2003 of 23 December on Arbitration. In the event of institutional arbitration, the party which has filed an application or commission to the relevant institution according to their regulations can also seek an injunction.

Irrespective of any special rules set out in treaties and conventions or any European Union rules that may apply, a party to any jurisdictional or arbitration proceedings being conducted in a foreign country can seek injunctions from a Spanish court if the legally required prerequisites are met. This is with the exception of cases where the main matter at issue should solely lie within the competence of Spanish courts.

The enforceability of a non-final award is tempered by the entitlement of the other party to obtain a suspension of enforcement, subject to establishing security to cover the sum owed, plus costs and damages deriving from the delay in enforcement. These rules aim to counterbalance the interests of the parties involved.

Applicable conventions

3. What conventions is your jurisdiction a contracting party to?

The exequatur of foreign awards is governed by the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) without prejudice to the provisions of other more favourable international conventions, and will take place in accordance with the procedure established in the Spanish civil procedure rules for judgments rendered by foreign courts.

The New York Convention is applicable to any “foreign award” regardless of whether it was rendered in a country which is a signatory to the New York Convention or not. This is further explained in the Spanish Arbitration Act’s preamble, that is, given that Spain has not made any reservation to the New York Convention, it is applicable whether or not the dispute was of a commercial nature, and whether or not the award was rendered in a state that was a party to the New York Convention. The Supreme Court of Spain has also confirmed that a foreign award does not necessarily have to be rendered in a state that is a signatory to the New York Convention and, therefore, will virtually apply to any foreign award to be recognised or enforced in Spain.

In addition, Spain is party to bilateral treaties regarding the recognition and enforcement of arbitral awards with (among others):

- France.
- Colombia.
- Brazil.
- Italy.
- China.

Spanish legal domestic provisions on arbitration are inspired by the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Arbitration Law).
**Enforcing awards**

4. **What is the applicable statutory framework for enforcement of awards?**

Arbitration in Spain is governed by the Arbitration Act 60/2003, dated 23 December 2003, recently amended by means of the Arbitration Act 1/2011 which establishes some basic rules relating to the power of the arbitrators and challenges to arbitral awards.

A domestic arbitration award is effective from the date the parties are served with it. If a party does not comply with the award, the other party can request its enforcement before the Court of First Instance of the place where the award was issued. Proceedings to enforce the award are the same as those that apply to the enforcement of court judgments.

Prior to the enactment of the new Spanish Arbitration Act, domestic arbitration awards could not be enforced if an application to set aside such an award was pending before the judicial courts. In other words, it was only possible to obtain the enforcement of an award if it had not been challenged before the courts or, if it had been challenged, the application to set aside the award had been rejected.

The new Arbitration Act has significantly improved this situation. The award is now immediately enforceable, even if an application to set aside the award has been submitted to the judicial courts. The enforcement procedure follows the existing rules to enforce judicial decisions provided in the Spanish Civil Procedural Act (LEC 2000). The defendant can apply for the temporary suspension of the enforcement, provided that a guarantee is offered covering the amount granted by the award and the estimated damages which could originate from the suspension of the enforcement of the award.

A foreign award will be recognised and enforced in Spain in accordance with the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

5. **What are the grounds for refusing enforcement?**

**Domestic awards**

The reasons to refuse the enforcement of a domestic award are ruled by the Spanish Arbitration Act 60/2003. An award will not have an effect if the party making the application alleges and proves:

- That the arbitration agreement does not exist or is not valid.
- That the claimant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case.
- That the arbitral tribunal decided questions beyond its jurisdiction.
- That the appointment of the arbitrators or the arbitral procedure was not in accordance with the provisions of the Spanish Arbitration Act nor with the agreement of the parties, unless such an agreement was in conflict with a provision of the Spanish Arbitration Act from which the parties cannot derogate.
- That the arbitral tribunal decided questions not capable of settlement by arbitration.
- That the award is in conflict with public policy.

**International awards**

Recognition and enforcement of international awards can be refused for the reasons listed in Article V of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

6. **Is the enforcing court required to examine the refusal grounds during the enforcement proceedings ex officio?**

Defendants should raise the available defences (listed in the Spanish Arbitration Act 60/2003 or in the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)) against the recognition and the enforcement of the awards which are to be considered by the enforcing court.

However, these defences could also be raised by the public prosecutor who intervenes in the recognition and enforcement proceedings in defence of public policy.

7. **What is the effect of pending challenge proceedings in the foreign state where the decision is granted?**

Under Article VI of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), if an application for the setting aside of the award has been made to a competent authority referred to in Article V, the authority before which the award is sought to be relied upon can, if it considers it proper, adjourn the decision on the enforcement of the award and/or order the enforcing party to give suitable security.

8. **What types of arbitral awards are enforceable?**

**Money awards**

Money awards are enforceable.

**Awards containing injunctions ordering or prohibiting the doing of acts**

Awards containing injunctions ordering or prohibiting the doing of acts are enforceable.

**Decisions or awards by arbitral tribunals (including emergency arbitrators) granting provisional measures**

Decisions or awards by arbitral tribunals (including emergency arbitrators) granting provisional measures are enforceable.

**Declaratory awards**

Declaratory awards are not enforceable.

9. **Can parties seek to enforce only part of the award?**

The Spanish Arbitration Act 60/2003 provides for the possibility of partial awards, which can address any part of the substance of the dispute or other issues, including arbitrators’ competence or interim measures.

The Arbitration Act aims to accommodate flexible formulae for settling litigation often arising in arbitration practice. For example, the respondent’s possible liability is determined before the damages, if any, are quantified.
Partial awards carry the same weight as final awards and their content with respect to the issue settled is invariable.

10. Are any class of awards excluded from recognition and enforcement? If so, what types of awards?

Only disputes relating to matters within the free disposition of the parties can be subject to arbitration. Criminal matters or family law issues are excluded from arbitration.

Regarding foreign awards, it is to be noted that lack of arbitrability is a matter to be decided by each jurisdiction.

11. Will service that does not conform to the requirements of international treaties/regulations in force automatically result in a denial of the enforcement of a judgment/award/deed?

If service does not conform to the Spanish Procedural Act and to the requirements of the international regulations, the competent courts will automatically deny the enforcement of a judgment/award/deed.

However, where the addressee of the notice is found to be at the address and refuses to receive the document/award or to sign the certificate of service, the court representative in charge of serving the notice must inform him that a copy of the document remains at his disposal at the Court Office and that the effects of having served notice will have come about, all of which will be stated in the certificate.

12. What methods of service are not acceptable against defendants domiciled in the State where enforcement is sought?

Personal service is requested when the domicile of the defendant is known. The enforcing party has the obligation to provide the court with the domicile and address of the defendant.

Public policy

13. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or international award?

Domestic awards

Domestic awards will not be recognised if they are in conflict with Spanish public policy.

International awards

International awards will not be recognised if they are in conflict with Spanish public policy.

14. In which cases and against which awards has the principle of public policy generally been applied?

The principle of public policy is always applied in exequatur proceedings. The public prosecutor plays an essential role in these proceedings, reviewing whether the principle of public policy has been applied in all cases.

ENFORCEMENT PROCEEDINGS

15. What is the procedure for enforcing arbitral awards?

Domestic awards

The court of first instance at the place where the award was issued will have jurisdiction to enforce the award, in accordance with Article 545.2 of the Spanish Civil Procedure Act (LEC 2000) and, where applicable, Article 958 of the Old Spanish Civil Procedural Code (LEC 1881).

The procedure established in LEC 2000 (Articles 517 and seq) can be summarised as follows:

- The application to enforce an award must be filed before the court after 20 days have expired since the award was notified to the parties.
- The court will issue its decision, whereby it will verify that the award complies with all the legal formalities and that the relief sought by the enforcing party complies with the award. The court will then order the enforcement of the award.

Ex parte or on notice. The party seeking the enforcement of the award must make an ex parte application to the court.

Applicable court. The application must be brought before the court of first instance at the place where the award was issued.

Limitation period. Under Article 518 of LEC 2000, an action for the enforcement of a domestic award must expire if the enforcement proceedings are not commenced within five years of the award becoming final.

Timing. Enforcement proceedings take between nine and 12 months.

Court fees. The court fees depend on the amount of the award.

Recourse. The party against whom enforcement is being sought has ten days after receiving the court's decision to oppose the enforcement on the following grounds, established in Articles 556 and 559 of LEC 2000:

- The party has already paid or complied with the award.
- Enforcement has been requested after the expiry of the maximum period to enforce the award (five years after the award was notified).
- There is a formalisation of the parties' agreements and transactions in a public document.
- There is a lack of capacity or representation of the enforcing party or the party against whom enforcement is sought.
- The award is null and void because it contains no ruling.

The court enforcing the award is also the competent court to rule on the grounds raised against the enforcement. Filing an objection against the enforcement will not stay the enforcement of the award according to Article 556.2 of the LEC 2000.

International awards

Recognition and enforcement of international awards will follow the procedure established in Article 523.2 of LEC 2000, which provides that the enforcement of foreign judgments and enforceable instruments must be carried out in Spain in accordance with the provisions in the law, unless otherwise provided for in the international treaties in force in Spain. Article 42 of the Arbitration Law expressly refers to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) unless a more favourable instrument is applicable.

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Therefore, in order to recognise and enforce a foreign arbitral award in Spain, the procedure established in the LEC 2000 for the recognition and enforcement of foreign judicial decisions must be followed, along with an application of the rules of the New York Convention.

The recognition or homologation takes place under a procedure called “exequatur” which provides effectiveness to the decision in Spain. As a result, the review of the merits of the award by the Spanish courts is excluded.

Jurisdiction to recognise foreign arbitral awards or decisions corresponds to the Civil and Criminal Chambers of the High Court of Justice of the domicile or place of residence of the party against whom the recognition is sought, or of the domicile or place of residence of the person to whom they apply. The territorial jurisdiction is determined by the place of enforcement or where those arbitral awards or decisions ought to take effect. For the enforcement of foreign arbitral awards or decisions, jurisdiction resides with the Court of First Instance in accordance with the same criteria.

According to Article 42 (together with Article 8.6) of the Arbitration Act, the application for recognition of a foreign arbitral award must be carried out as follows:

- Applications for the recognition of a foreign arbitral award must be filed with the corresponding High Court of Justice, except when international law requires otherwise (Article 73.1, Spanish Judicial Power Act (LOPJ)).

- The party against whom enforcement is sought will then have 30 days to appear in court to oppose the enforcement. However, if the opposing party refuses to appear, the court will continue with the proceeding. Once the opposing party appears in court, he or she will have nine days to be heard. The Public Prosecutor will also provide an opinion as to the lawfulness of the foreign arbitral award within the same time limit.

Once the statement of claim is filed, the exequatur procedure begins. The proceedings will be carried out in accordance with the rules of procedure of the territory where the award is relied upon. There must not be substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which the New York Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

A decision granting the exequatur cannot be appealed.

### Formalities

17. What are the documentary requirements for enforcement?

**Documentary requirements**

The party requesting the recognition must furnish, together with the statement of claim, the following documents set out in Article IV of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention):

- The duly authenticated original award or a duly certified copy of the award.
- The original arbitration agreement or a duly certified copy of the agreement.

If the award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award must produce a translation of these documents into the official language.

**Authentication**

The authentication of documents is required. Usually, the authentication follows the procedure set out in the HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961 (Apostille Convention). In the case of documents issued in a country that is not signatory to the Apostille Convention, then local consulates must deal with the authentication of documents.

18. Is it required to translate the award into the language of the state where enforcement is requested?

Although Article 28 of the Arbitration Act declares that parties are free to agree on the language or languages to be used in the arbitral proceedings and that unless a party takes exception, the arbitrators can allow any document to be furnished, or proceedings to be conducted, in a language other than the arbitration language, with no need for translation, when seeking the enforcement of an award before the courts, translations are needed.

Under Article 144 of the Spanish Civil Procedural Act (LEC 2000) any document worded in a language other than Spanish or, as appropriate, the official language of the regional authority in question must have a translation of such a document attached to it.

### Award

The petition for the exequatur of the award must include:

- The background of the case.
• A description of the arbitration proceedings with the details of the notice served on the defendant.
• A declaration (or proper evidence) regarding the enforceability of the decision.

Claim as awarded
A brief explanation of the claim as awarded in the award must be included in the application.

Facts and legal grounds
Information regarding the facts and legal grounds of the case must be detailed in the application. It is important to include a full description of the arbitration clause and of the foreign arbitration proceedings, mainly with regard to the notice served on the defendant.

Appeals
The application must include if the decision is appealable.

21. Is it possible to request the enforcing court for provisional measures pending the enforcement proceedings?

Under the Spanish Arbitration Act, courts can implement interim measures relating to arbitration proceedings in the following cases:

• If arbitration proceedings were carried out in Spain, and interim measures were requested by one of the parties in these proceedings, or by the party who has applied for the judicial appointment of the arbitral tribunal, and when the parties do not reach an agreement regarding the appointment of such a tribunal.

• If international arbitration proceedings took place, in accordance with the applicable international treaties and conventions, and interim measures were requested by one of the parties in these proceedings, provided that the Spanish courts do not have exclusive jurisdiction to decide on the matter.

Finally, the possibility of adopting interim measures in relation to current arbitration proceedings has been extended by the new Spanish Arbitration Act of 2003. According to the Spanish Arbitration Act, and unless otherwise agreed by the parties, the arbitral tribunal can also adopt interim measures. Interim measures granted by the arbitral tribunal must be enforced by the ordinary courts.

The court of first instance at the place where the award will be enforced must have jurisdiction in respect of interim measures. In the absence of such a court, the court of first instance at the place where the measures must be implemented will have jurisdiction.

Article 724 of the Spanish Civil Procedural Act (LEC 2000) states that the competent court in special cases where injunctions are sought while arbitration proceedings, or a court’s certification of arbitration, are pending, will lie with the court of the place where the arbitration award has to be enforced or, failing that, the court of the place where the injunction has to take effect.

The same rules will apply where the proceedings are being conducted in a foreign court, unless any other treaties state otherwise.

22. Is it required to convert the value of the award into the local currency?

Amounts awarded must be converted to Euros during enforcement proceedings. The court must be provided with evidence of the equivalence (the currency equivalence published in the Official Gazette, for instance) of the value of the award in the local currency.

23. Can the enforcing court stay the enforcement proceedings pending the outcome of proceedings to set aside the award at the seat of arbitration? If so, will the court order the party seeking the stay to provide security?

An award is enforceable even though an application to set it aside has been made. However, the party against whom enforcement is sought can apply to the competent court for the suspension of enforcement, provided that this applicant offers security for the amount awarded, plus the damages and losses that may arise from the delay in the enforcement of the award.

The suspension must be lifted and the enforcement will continue when the court is satisfied that the application to set aside has been rejected, without prejudice to the rights of the party seeking enforcement to demand, if applicable, indemnification for the damages and losses caused by the delay in the enforcement.

24. What is the enforcement procedure when a declaration of enforceability is granted?

Once the recognition (exequatur) is granted by the High Court of Justice, the applicant must go to the competent court of first instance to commence the enforcement under the enforcement procedure contained in Articles 517 et seq of the Spanish Civil Procedural Act (LEC 2000) or, in other words, as if it were a judgment rendered by a Spanish local court.

Jurisdiction will correspond to the court of first instance of the domicile or place of residence of the party against whom the recognition or enforcement is sought, or of the domicile or place of residence of the person to whom they apply. Territorial jurisdiction must be determined by the place of enforcement or where such judgments or decisions ought to take effect.

25. Can defendants oppose the actual enforcement procedure, and if so, on what grounds/defences?

Under domestic procedural rules, an appeal is not possible against specific measures laid down in the decision granting enforcement, but the debtor can oppose the adoption of specific measures.

The debtors can oppose the enforcement for the following procedural reasons:

• The debtor does not have the capacity or representation required.

• There is a lack of capacity or representation on the part of the plaintiff or the plaintiff is unable to prove the capacity or representation required.

• Absolute invalidity of the enforcement granted because:
  - it does not contain the judgment or arbitration decision finding against the defendant; or
  - the document produced does not comply with legal requirements for enforceability; or
  - of a violation, when the enforcement was granted, of the rules governing the proceedings to be followed before granting an enforcement measure.

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• If the enforcement instrument was an arbitration decision that was not placed on record by a notary, the lack of authenticity of this decision.

In addition to the above grounds, the debtor can, within ten days following the notification of the act in which enforcement is granted, oppose this in writing on one of the following grounds (material grounds):
• Comply with what is ordered in the judgment.
• The time limit for the enforcement action lapsed.
• An excessive evaluation of the debts owed.

• Agreements and settlements were reached to avoid the enforcement, provided that these agreements and settlements are recorded in a public document.

**PROPOSALS FOR REFORM**

26. Are any changes to the law currently under consideration or being proposed?

There are no reforms currently under consideration or being proposed.

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**Practical Law Contributor profiles**

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**Mercedes Duch, Partner**
San Simón & Duch
T + 34 91 357 92 98
F + 34 91 357 50 37
E sansimonduch@lsansimon.com
W www.lsansimon.com

**Professional qualifications.** Spain, 1992

**Areas of practice.** Shipping/ maritime law; arbitration, international trade law; insurance law.

**Non-professional qualifications.** LLB, Universidad de San Pablo CEU, Spain

**Languages.** Spanish, English

**Professional associations/memberships.**
• Member of Bar Association of Madrid.
• Member of Board of Directors of the Spanish Association of Maritime Law.
• Founding member of Women’s International Shipping & Trading Association (WISTA).
• Member of the IBA.

**Publications.**
• Spanish Association of Maritime Law.
• The International Comparative Legal Guide and the Shipping Law Review.

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