

1.- JURISDICTION.

Spain.

2.- AUTHOR.

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3.- FOREIGN INVESTMENT RESTRICTIONS – (Eg CFIUS or similar).

Foreign investment in Spain is regulated by Royal Decree 699/1999 and Law 19/2003. Spain applies the principle of freedom of establishment and non-discrimination and, therefore, foreign investors may engage in any activity under the same conditions as a local investor.

There are, however, special regimes that affect foreign investments in Spain referring, among other matters, to air transport, radio, minerals and mineral raw materials of strategic interest and mining rights, television, gambling, telecommunications, private security, manufacture, trade or distribution of arms and explosives for civil use and activities related to Spain's National Defence.

If the foreign investor that will carry out the legal business in Spain is a natural person, such individual must have a Foreign Tax Identification Number (N.I.E.) and if it is a legal person, it must have a Non-Resident Tax Identification Number (N.I.F.).

Foreign investments in Spain, and their liquidation, shall be declared to the Ministry of Economy, for administrative, statistical or economic purposes through the completion of the relevant forms.

4.- EXCHANGE CONTROL OR CURRENCY REGULATIONS.

By means of such rules, all acts, businesses, transactions and operations between residents and non-residents, which involve or may involve payments abroad (or receipts from abroad) are completely deregulated. This deregulation includes payments or receipts made either directly or by offset of the underlying transactions, as well as transfers to or from abroad and variations in accounts or financial debtor or creditor positions abroad. It also covers the import or export of means of payment.

Nevertheless, in certain cases, in order to calculate the Spanish balance of payments and to maintain statistical control of monetary flows there are certain formalisms and registry obligations with the corresponding authorities.

5.- GRANTS OR INCENTIVES.

In order to boost investment, employment, competitiveness and economic growth, the Spanish authorities have developed and consolidated a wide and complete range of aid instruments and incentives, placing special emphasis on research, development and technological innovation (R&D&I). According to The Organization for Economic Co-operation and Development (OECD), Spain is one of the leading countries with the best tax incentives for these kinds of activities, for both large corporations and small and medium-sized companies.

Aid instruments and incentives are usually structured by means of grants or subsidies that partially cover the costs of the project, or by loans establishing variable grace periods and repayment schedules, according to the nature of the project. The tax incentives include deductions and reductions in the tax base.

The deductions can even generate a tax credit to be refunded from the tax authorities if the company does not generate enough corporate income tax to apply them. From 2015, these kinds of incentives have been implemented to boost film productions and musical show productions.

An example of the financial incentives for developing innovation projects is provided by the Centre for Industrial Technological Development ("*Centro para el Desarrollo Tecnológico Industrial*" or CDTI), a public enterprise controlled by the Ministry of Economy and Competitiveness of Spain, which promotes innovation and the technological development of Spanish companies. Depending on the characteristics of the project and the financing structure, in some cases the assistance to the project may be a partially refundable aid with financial coverage of up to 60% of the total approved budget, or even up to 70% in some circumstances.

Spain's fiscal pressure is below the average for the EU member states and the Eurozone, with a corporate income tax rebate system that includes:

- i. A generous patent box system.
- ii. The tax deductibility of intangible assets at the general annual rate of 5% including goodwill depreciation.
- iii. A wide participation exemption regime.

In addition, Spain has signed tax treaties with numerous countries, which makes investment attractive since international double taxation is avoided.

If the company is used as a holding platform to invest abroad, both companies and its foreign shareholders may benefit from the special tax regime applicable to Foreign Securities Holding Companies ("ETVE"), which consists on a special corporate income tax regime granting the whole exemption to incomes consisting of dividends and capital gains generated by the foreign subsidiaries. When the non-resident shareholder of the company transfers its shares on the ETVE, the capital gain generated by such transfer is not taxable in Spain, as it is not deemed to be generated in Spain.

The combination of both aspects makes the special corporate income tax regime of the ETVE very attractive for foreign investors that choose Spain as a platform in Europe to invest into Latin America (there is an extensive network of double taxation treaties with Latin American states, as well as a common language and culture).

Currently there is no tax on capital contributions made to Spanish companies.

The fact that Spain is an EU member state enables potential investors to benefit from European aid programs, as well as from European tax directives, which make investment in Spain even more attractive.

6.- MANAGEMENT REPRESENTATION AND/OR CONSULTATION IN RELATION TO CORPORATE TRANSACTIONS.

In Spain, neither workers nor their representatives are entitled to be on the Board of Directors.

The Spanish Law on Structural Modifications states that, before the publication of the notice of call of the shareholders' meetings that are going to decide on the approval of merger, the workers' representatives must be informed of the merger operation. In addition, some information such as the merger project shall remain at their disposal.

The legal representatives of the employees will continue to exercise their functions on the same terms and under the same conditions as before the operation.

In addition, the Spanish Workers' Statute lays down information obligations in the event of a transaction. The employers obliged to provide this information are both the transferor and the transferee and the information shall be submitted to the representatives of the workers affected by the change of company ownership.

The time at which the information should be provided as follows:

- i. The transferor must provide the information sufficiently in advance of the transfer.
- ii. The transferring employer must provide the information sufficiently in advance and, in any event, before its employees are affected in their terms and conditions of employment by the transfer.
- iii. In the case of mergers and spin-offs of companies, the transferor and the transferee must provide the information at the time of publication of the notice of the call of the general meetings which must adopt the respective resolutions.

The content of the information must cover the following points: the date foreseen for the transfer, the reasons for the transfer, the legal, economic and social consequences for the workers and the measures envisaged in respect thereof.

7.- INDIVIDUAL EMPLOYMENT CONTRACTS – TERMINATION.

Disciplinary dismissal

Article 54 and 55 of the Spanish Workers Statute (hereinafter, “SWS”) establishes that the disciplinary dismissal is based on a serious breach of the employee’s obligation (theft, disobedience, addiction, etc.).

The Company must give a written notice of dismissal, stating a comprehensive explanation of the causes and the effective date of dismissal. Such notice shall be provided at least 15 days before the date of the effectiveness of the dismissal.

If an employees’ representative or labour union delegate is dismissed, an adversary procedure should be instituted in order to give the employee the possibility to defend his/her position and if the employee is a labour union member, the union delegates should be granted a hearing. The Collective Bargaining Agreement (hereinafter, CBA) could increase said safeguards.

Objective dismissal

Pursuant article 52 of the SWS, is based on financial, organizational, technical and productive grounds.

“It is understood that financial causes arise when the results of the company indicate a negative economic position, in cases such as the existence of actual or anticipated losses, or a persistent decrease in the level of revenue or sales. In any event, it is acknowledged that a persistent decline for three consecutive quarters has occurred if the level of revenue or sales in each quarter is lower than in the corresponding quarter of the previous year. It is understood that organizational causes arise when there are changes in the method to organize the production; productive causes when there are changes in the demand of products or services that the Company wants to collocate in the market; and technical causes when there are changes in the tools of production”.

In practice, according to article 53 of the SWS, dismissal on objective grounds proceeds as follows:

- i. The Company delivers a letter of dismissal containing a comprehensive explanation for the dismissal. It would be necessary to deliver a copy to the employees' representatives.
- ii. The Company pays an amount in compensation of 20 days of salary per year of service up to a maximum of 12 monthly instalments (bank check or bank transfer). The severance should be made available to the employee simultaneously with the written notice of dismissal.
- iii. The Company must provide the letter of dismissal 15 days' in advance, which may be replaced by payment of the salaries for said period.

Void dismissal

Dismissal is classified as null when there is discrimination for any of the conducts prohibited by the Spanish Constitution. Null dismissal shall also be considered when there is a violation of the fundamental rights and public liberties of the worker.

Along with the above, the dismissal will also be void in the cases listed below:

1. Maternity Period

When workers are dismissed during the period of suspension of the maternity contract. Also when there is a risk during pregnancy; risk during breast-feeding or illnesses caused by pregnancy, childbirth or breast-feeding. In the same way, in cases of adoption, guardianship for the purpose of adoption, foster care or paternity.

2. Breastfeeding leave, premature birth, legal guardianship and serious illnesses

Dismissals for which breastfeeding leave has been applied for or is being taken for a child under nine months of age. Also, when leave has been requested for the birth of a child who is premature or who must be hospitalized after childbirth. Along with the above, it includes the dismissal of workers who have applied for or are enjoying the right to reduced working hours for reasons of legal guardianship.

3. Leave of absence for the care of children or relatives

That of workers who have requested or are taking leave for the care of children or relatives.

4. Gender-based violence

Dismissal of workers who are victims of gender-based violence due to the exercise of reduction rights. Also in cases in which the reordering of their working time has been requested.

Exceptionally, the above cases shall not be classified as null dismissal when the origin of the dismissal is declared for reasons unrelated to pregnancy or to the exercise of the right to the leave and leave indicated.

What are the consequences of null dismissal?

Immediate readmission of the worker in the position he had been performing and payment of the lost wages from the date of dismissal until notification of the resolution.

Unfair dismissal

When the non-compliance alleged for the dismissal is not accredited or when the formal requirements established ("Disciplinary dismissal") have not been met. In the case of objective dismissal when the cause is not proven.

The Social Court will establish in the resolution the readmission of the worker in his job with payment of the processing salaries and the compensation to be given in the event that the employer opted not to readmission.

The employer may, within five days of notification of the judgment, choose one of these two options:

- i. The readmission of the worker with payment of the processing salaries. This salary will be equal to an amount equal to the sum of the salaries not received from the date of dismissal until the notification of the sentence declaring the inadmissibility. Also, until he had found another job if such placement was prior to that ruling and the employer proved what was received, for his discount from the processing wages.
- ii. An indemnity of 33 days' salary per year of service. Time periods of less than one year must be prorated by months up to a maximum of twenty-four monthly payments.

8.- REDUNDANCIES/LAYOFFS REGULATION.

Collective dismissal is regulated by the SWS. In this law, collective dismissal shall be understood as the termination of employment contracts based on economic, technical, organizational or production causes when, in a period of ninety days, the termination affects at least to:

- i. Ten workers, in companies of less than one hundred workers.
- ii. Ten percent of the workers of the companies that have between one hundred and three hundred workers.
- iii. Thirty workers in companies of more than three hundred workers.

In order for a company to proceed with a collective dismissal ("ERE") one of the following reasons shall be apply:

- i. **Economic.** The reason for the ERE will be for economic reasons when the dismissals occur to ensure the continuity of the company and overcome the imbalance of their accounts. In other words, when the company's results give rise to a negative economic situation. Such as current or expected losses, or a persistent decrease in the level of income or sales. The economic situation will be understood to be negative if, for three consecutive quarters, the level of income or sales for each quarter is lower than that recorded in the same quarter of the previous year.
- ii. **Technical.** The causes of the ERE will be technical when there is a proven surplus of labor after processes of renewal of equipment.
- iii. **Organizational.** When changes occur in the demand for products or services that the company intends to place in the market.
- iv. **Productive.** The reasons will be productive when they are related to changes in the systems and working methods of the staff, or in the way of organizing production.

Types of ERE:

1. ERE of extinction or collective dismissal

This type of ERE means the definitive extinction of an employment relationship between a company and the affected workers. It is commonly known as collective dismissal and is the most unfavourable option for workers, as it implies the loss of their job.

2. Suspension ERE

A Suspension ERE is the one by means of which the employment contract is suspended for justified reasons. The period in which there will be no work activity shall be indicated in the relevant report.

During this type of ERE the worker has the right to maintain his social security contribution for 100% of the working day. However, he will not receive a salary.

3. Reduction ERE

The reduction ERE is the ERE by means of which the affected person continues to work at his or her workplace, but working fewer hours or fewer days. This implies reducing their salary in the same proportion. This is a substantial collective change in working conditions, specifically in relation to the working day.

The ERE process:

In relation to the ERE's process, the first step in order to initiate an ERE is to communicate it to workers' representatives indicating the causes of such dismissal. From the date on which the ERE is communicated to employees and sent to the labour authority, a period of consultations begins. From such date an agreement shall be reached with the workers' representatives. Once the specific term has come to an end, two different scenarios may occur:

- i. **Agreement.** The agreement shall be communicated to the labour authority, which must state whether the agreement shall be approved or rejected in case of fraud. However, if the authority does not reply within a maximum period of 15 days the agreement shall be considered as approved.
- ii. **No agreement.** If no agreement can be reached, the period of consultations without agreement will end. In this case, the authority will also have 15 days to decide whether the measure finally adopted by the employer is appropriate or not.

9.- TAX CHARGES – SALE OF SHARES/ASSETS AND ISSUES OF SHARES.

The following is a brief analysis of the taxation of transactions involving the sale of shares of a Spanish company to a company resident outside Spanish territory and the issue of shares by a Spanish company. Sticking to the taxation of these operations in Spanish territory we will say that:

From the point of view of corporate income tax (IS), the sale of shares carried out by a Spanish entity will generate a capital gain or loss in the selling entity which must be included in the company's accounting result and which will be included in its taxable income and will be taxed at the general IS rate set at 25%.

However, it should be noted that if the seller had incurred intermediation expenses as a result of the sale operation itself, these will be considered transaction costs and will reduce

the amount of the consideration for the transfer, which means a lower accounting profit attributable to the taxable income of the tax.

As far as Value Added Tax (VAT) is concerned, the sale of shares involves the delivery of goods and their taxation in VAT will depend on the location of the buyer. Thus, if the buyer were a resident of the European Union (EU) we would be faced with an operation subject to and exempt from VAT, but if, on the contrary, the buyer was a non-resident of the EU we would be faced with an operation not subject to tax by application of the rules of location. In this sense, it should be noted that brokerage services in the sale of shares provided in Spain constitute an activity subject to but exempt from VAT, so that the brokerage service would not be taxed in this tax either.

Finally, taking into account the Transfer Tax (ITP) and Documented Legal Acts (AJD), this sale of shares, regardless of whether all or only a number of them are transferred, is subject to and exempt from the payment of the ITP, so it will only have to pay a fixed amount per ADJ (0.30 euros per sheet or 0.15 per sheet).

As far as the issue of shares by a Spanish entity is concerned, the operation will have no effect on the IS. The same is true for VAT purposes, the issue of shares by a company in itself does not constitute a transaction subject to the tax. Finally, with respect to the taxation of the operation in ITPAJD we are dealing with a corporate operation subject to and exempt from ITP in the form of Corporate Operations which must only be taxed as a fixed AJD (0.30 euros per sheet or 0.15 per sheet).

On the sale of the assets, from the point of view of Corporate Income Tax (*Impuesto sobre Sociedades*, IS), the sale of assets by a Spanish entity generates a loss or capital gain which is reflected in the company's accounting profit. This means that the result of the sale will be included in the IS tax base and will be taxed at a general rate of 25%.

With respect to Value Added Tax (VAT), the sale of assets between entrepreneurs or professionals within their business activities represents a delivery of goods. Specifically, the supply of goods is defined as the transfer of the power to dispose of tangible property and will be taxed at the general rate of VAT set at 21% of the taxable base.

In this sense, the taxation for VAT purposes will depend on the place where the taxable event took place and it will be understood that the taxable event has taken place in Spanish territory and, therefore, it will be a transaction taxed by VAT, provided that the disposal of the acquirer is made in Spain (with the exception of the Canary Islands, Ceuta and Melilla).

With regard to the Transfer Tax (ITP) and Stamp Duty (AJD), it should be pointed out that they will only be applicable in the case of non-business or professional transactions. This is why, in general, the incompatibility between VAT and ITP and AJD is recognized.

Therefore, that the determining factor in assessing the taxation of the transaction for VAT, ITP and AJD purposes is the condition of the transferor of the asset, since if the transferor is a businessman or professional, the sale will be subject to VAT, whereas if, on the contrary, the seller makes the sale outside the scope of his business, it will be a transaction subject to ITP and AJD. Consequently, the legal status of the acquirer of the assets is irrelevant for these purposes.

10.- ANTITRUST JURISDICTION TRIGGERING EVENTS/THRESHOLDS.

Business concentration is a situation in which two or more companies are united with the aim of expanding their capacity and market power.

With business concentration, companies seek to share decision-making and financial power among a few members and the reduction or elimination of the figure of the intermediary that connects the companies with each other. Corporations can practice business concentration through: mergers, acquisitions, agreements, economic participations, etc.

As for the types of business concentration that exist, we can find the following:

- i. **Horizontal concentration:** This occurs with companies that work in the same sector and have the aim of eliminating competition.
- ii. **Vertical concentration:** It results from the companies that complement their productive activity to improve their profitability.

Whenever an M&A operation may imply the concentration of the companies participating in the deal, the Spanish Competition Authorities must be informed so the issue the relevant approval for the execution of the operation. The notification thresholds (which shall be taken into account in order to determine whether the notification shall be carried out) are set out in Article 8 of Law 15/2007. The control procedure provided in this Act shall apply to economic concentrations where at least one of the following two circumstances applies:

- a. as a result of the concentration, a participation equal to or greater than 30 per cent of the relevant product or service market is acquired or increased nationally or in a defined geographic market within the same.

Exempted from the control procedure are all those economic concentrations in which, although complying with the provisions of this letter a), the overall turnover in Spain of the acquired company or of the assets acquired in the last accounting year does not exceed 10 million euros, provided that the ventures do not have an individual or joint market share equal to or greater than 50 per cent in any of the affected markets, at national level or in a defined geographical market within the same.

- b. the aggregate turnover in Spain of all the ventures exceeds EUR 240 million in the last accounting year, provided that at least two of the ventures individually achieve a turnover in Spain of more than EUR 60 million.

A concentration has a "European dimension" when:

- i. the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million, and
- ii. the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million, unless each of the undertakings concerned achieves more than two thirds of its aggregate EU-wide turnover in one EU country.

Even if the abovementioned thresholds are not met, it may be a concentration with a European dimension if:

- i. the aggregate worldwide turnover of all the undertakings concerned is more than EUR 2500 million;
- ii. in each of at least three EU countries, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;
- iii. in each of at least three EU countries, the combined aggregate turnover of at least two of the undertakings concerned is more than EUR 25 million;
- iv. the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million, unless each of the undertakings concerned achieves more than two thirds of its aggregate EU-wide turnover within one EU country.

11.- SIGNING/CLOSING MEETINGS DOCUMENTS – PRIVATE COMPANY SHARE SALES.

The documentation required in the Signing is the Share Purchase Agreement (SPA) which will be usually subject to a series of conditions precedents. In addition, a series of guarantees may be added, such as a bank guarantee or a parent corporate guarantee. At the same time, other series of contracts or documents may be signed. For example, a shareholders' agreement in the event that 100% of the share capital is not going to be acquired.

It is convenient to explain the importance and functions of the public deed. A public deed is a public document in which a certain fact or a right authorized by the notary public is made before a notary public, who signs with the grantor or grantors, showing the legal capacity of the content and the date on which it was made. The public deed is a notarial instrument that contains one or more declarations of the parties involved in an act or contract, issued before the notary, which complements it with the specific legal requirements of each act, for its incorporation into the protocol of the notary himself and, where appropriate, so that it can be registered in the corresponding public registers.

Before explaining the essential elements of the Closing, it would be convenient to mention that in the SL (*Sociedad Limitada*) the granting of the public deed is mandatory while in the SA (*Sociedad Anónima*) the execution of the public deed is usual. With regard to the Closing, a public deed must be granted stating that all the conditions precedent have been fulfilled, the price has been paid and the shares are transferred. Additionally, all the contracts that initially appeared as annexes to the SPA with their corresponding modifications will be formalized.

In the SA the free transfer principle applies. However, some restrictions may be established in the company's bylaws.

If the shares are bearer shares ("*acciones al portador*"), the simple tradition of the document will produce its transmission. If the shares are nominative, their transfer must be registered in the aforementioned register book, and the company will only consider the shareholder who is registered as such in said book. However, before that registration, the transfer could be reflected in the title itself through an endorsement, to which the rules of the Exchange and Check Law apply. Once the title with the endorsement has been presented to the directors, they must register the transmission in the Shareholders' Register Book.

The transfer of shares by means of share purchase agreements shall not have access to the relevant commercial registry.

12.- ACQUISITIONS – JURISDICTION RESTRICTIONS (SIGNING/CLOSING) & ADVANTAGES.

The notarial deed is a public document which offers maximum security in Spanish law, with effects that exceed those of the private document. Among its characteristics the following ones shall be taken into account:

- i. Authenticity, since everything that is stated it is considered to be true.
- ii. It has probative force of the facts and statements it contains. Once the individuals have signed it, they can be sure that no one can doubt the veracity of the document.
- iii. It also has probative force of the dates, facts and statements it contains.

The original public deed, which contains the signatures of the grantors, is kept in the office of the notary authorizing it, only circulating the copies in paper or by electronic means.

13.- GAP REQUIREMENT BETWEEN SIGNING & CLOSING.

In Spanish Law it is not mandatory to proceed with the signing and closing of the deal simultaneously nor to separate the transaction in two different milestones (the existence of the different milestones will depend on how the whole transaction is designed). The closing is usually subject to the compliance of several conditions, known as "conditions precedents".

In general, in agreements, there is no fixed a period or term between signing and closing and, therefore, this period will depend on the conditions agreed by the parties.

It shall be taken into account that the effectiveness of the transaction depends on the completion of the condition precedent, understood as a future and uncertain event. As the obligation has not yet arisen, the parties cannot demand performance. In particular, until the event in which the condition consists occurs, the rights or obligations of the parties do not arise. In this way, the parties will have a mere expectation protected by the law in order to avoid it being illusory. When the event subject to the condition occurs, then the closing of the agreed agreements will take place.

For this reason, the duration of these Conditions Precedents will depend on the specific case and on what the parties agree, hence the existing casuistry in this type of clauses.

The typical example of conditions precedent would be the request of authorization of the regulatory authorities.

Finally, in the corporate Spanish practice, it is also usual to establish a Long-stop Date clause, which will be considered as the latest point in time at which the acquisition can be completed. The purpose of agreeing a long-stop date is to terminate a contract which has not been finally executed.

14.- REGULATORY REQUIREMENTS - DEPOSIT MONIES & THIRD-PARTY INTERMEDIARY.

In Spain, there is an often used atypical type of contract known as "escrow account", which is not included in any regulation as such. Among the different types of operations, it is an effective formula for guaranteeing a company acquisition operation.

In this type of contract, the parties undertake to use the services of a third party as depositor of goods (such as the price). For example, in the event of the sale of a company, through the escrow account, part of the price would be deposited in guarantee. These escrow accounts will serve to protect the buyer, since he is protected from any breach or claim by the seller, by retaining part of the price to be paid to the seller. However, it also protects the seller, in the sense that if the seller agreed on a deferred price, the escrow account ensures the collection of the outstanding price.

15.- PROOF IDENTITY AND AUTHORITY TO SIGN.

Under Spanish jurisdiction, one of the main responsibilities of the Notary is to attest the identity of the parties involved in a public deed, in order to avoid identity supplanting.

In order to sign public deeds, the individuals will exhibit to the Notary their Passport or National Identity Document while the legal entities will be represented by an individual

with sufficient power for this purpose, who will also have to prove its identity and powers. If the signatory is a foreign company, the certificate accrediting the powers of the Mercantile Registry of the foreign country must be apostilled.

Once the Notary has accredited the identity of the signatories and the legal capacity of each one of them, they will be authorized to sign and, therefore, they may proceed with the notarization of the documents.

If the signatory is a foreigner, and the public deed has an economic content, such individual must have the corresponding Foreign Identity Number (N.I.E.) and passport.

16.- DIFFERENT EXECUTION FORMALITIES FOR DOCUMENT TYPES.

Under Spanish law, an agreement between parties can be formalized with the sole will of the parties to make an agreement if the parties have the capacity to engage themselves and there are no vices in the consent of either of them.

For the agreement between the parties to have greater legal certainty and to be enforceable against third parties, it would be advisable to execute the document into the relevant public deed.

The most common public documents are: the public deed and the mercantile policy. The first one is one is a public document in which a certain fact or a right authorized by the notary public is made before a notary public, who signs with the grantor or grantors, proving the legal capacity of the content and the date on which it was made. (*Cf. answer of the 11th question*).

If the notarization does not take place the policy would lack of its full executive effects (especially when it comes to judicially demanding the compliance of the obligations agreed to any of the parties). In fact, the banks do not usually ask for notarial intervention when it comes to non-material loans.

The policy is kept in the power of the notary, who has the obligation of the custody of the policy, for which he becomes responsible. The file of this can be carried out, at the choice of the notary, in his ordinary protocol or in the Operations Record Book.

The acts and contracts that are usually documented in the policy are acts that have three requirements in common:

- i. They must be acts and contracts of a commercial or financial nature,
- ii. At least one of its grantors shall be part of the ordinary trade.
- iii. Operations non-related to real estate assets.

According to the Civil Code, the contracts concluded are compulsory, regardless of the form in which they were concluded, provided that they contain the essential elements for their validity. In addition, in some contracts required by law, it is mandatory the granting of a public deed or other special form of validity.

Therefore, the civil law provides a list of certain documents that must be granted by means of a deed.

It is important to consider in this type of contract (in which it is necessary to grant by public deed), is that either of the contractors may require the other to execute the contract in this manner.

Thus, the Civil Code states that they must be recorded in public deed:

- i. Acts and contracts whose object is the creation, transfer, amendment or extinction of royalties of properties.
- ii. Leases of properties for 6 or more years, provided that they must be detrimental to third parties.
- iii. Marriage settlements and amendments thereto.
- iv. The cession and renouncement of the inheritance rights or those of the conjugal partnership.
- v. The transfer of shares or rights resulting from an act recorded in a public deed.
- vi. And finally, certain powers that must also be granted before a notary, such as: the power to contract marriage, the general power for lawsuits and the special powers that must be presented in court; the power to administer property, and any other that has as its object an act drawn up or that must be drawn up in a public deed, or that must harm a third party.
- vii. Therefore, in accordance with the law, a notary must be consulted in order to be able to grant all these contracts by means of a public deed in order for them to become valid.

17.- DOCUMENT EXECUTION FORMALITIES FOR INCORPORATED COMPANIES.

According to Spanish law, there are certain resolutions or agreements adopted by the governing bodies of the Company that require the granting of a public deed for proper execution. For example, capital increases, the granting of powers of attorney, the approval of mergers and other specific resolutions to be adopted by the General Meeting and the Board of Directors (amendments of the bylaws, appointment of directors, etc.) shall be executed into the relevant public deed for their subsequent registration in the relevant Commercial Registry.

As indicated, once adopted, in order to be enforceable a vis-a-vis third parties, they must be registered in the Mercantile Registry.

Some corporate private documents (e.g. minutes of the General Meeting of Shareholders or the Board of Directors), must be recorded in the respective minutes. Those minutes recorded shall be transcribed in the Official Minutes Book.

18.- FORMALITIES FOR EXECUTION OF DOCUMENTS – INDIVIDUALS.

Individuals must have different identification document depending on their nationality. Nationals need to present their passport or National Identity Card. Foreigners must present their Foreign Identification Number and Passport. For more details, please check section 19 below.

It shall also be taken into account that, under Spanish Law, the consent of the spouse of the individual may be needed in order to carry out a transaction (if they are both married under community of property regime).

19.- FORMALITIES FOR EXECUTION OF DOCUMENTS – FOREIGN COMPANIES.

In order to guarantee the validity of the representation invoked by virtue of a foreign power of attorney, it would be mandatory for this power of attorney to be apostilled (or legitimated by a legally accepted mechanism) and, in addition, to contain the so-called "trial or rule of equivalence of functions". In compliance with this rule, the foreign notary should state in such power of attorney that (i) the notary has duly identified the natural person appearing

in its presence and that he has sufficient capacity for the granting of such power of attorney; (ii) the notary shall perform functions equivalent to those of the Spanish notary's office and that he has therefore been involved in the drawing-up of the power of attorney; and (iii) that the power of attorney gathers the solemnities required by the national legislation where this power of attorney would have been granted and that it does not require registration in any local register in order to be effective.

Finally, it should be borne in mind that there are countries where the foreign notary will not accept to include the aforementioned equivalence judgment, arguing that they are contrary to his functions as a notary in the corresponding country, and therefore, in such cases, other alternatives should be sought, such as, for example, the granting of power of attorney before the Spanish consulate of said territory.

Additionally, the Spanish authorities may require an excerpt of the foreign commercial registry containing the general information of the non-resident company, which shall also be apostilled and duly translated (sworn translation may be required for these effects).

20.- NOTARIES – SHARE AND ASSET PURCHASES ROLE/ TYPES OF DOCUMENTS/ DIRECTOR APPOINTMENTS.

In the Spanish jurisdiction, the notary is an indispensable and fundamental figure in M&A operations. The role of the Notary is to provide legal certainty to the parties that formalize the operation and his participation in the share purchase operation is mandatory.

As previously explained in section 16, there are different types of documents that could be granted in the framework of the execution process of an M&A transaction. For more details, please check section 16.

The appointment of the directors corresponds to the Shareholders' General Meeting, which may also, by means of a majority resolution, establish their number in the event that the bylaws establish only the maximum and minimum of such members. (Art. 215 Capital Companies Act).

When the company is incorporated, the first appointed directors must appear in the incorporation public deed. The directors shall hold office for the period specified in the Articles of Association, which may not exceed six years and may be re-elected one or more times for periods of the same maximum duration (in the case of the "*Sociedades Anónimas*"). The appointment of directors shall expire when, on expiry of the term, the next General Meeting has been held or the legal period for holding the meeting that must resolve on the approval of the previous year's accounts has elapsed. The directors could be appointed for an indefinite period of time in the Spanish limited liability companies ("*Sociedades Limitadas*").

Directors must accept the appointment. Acceptance may be made at the General Shareholders' Meeting itself or at a later time and from the moment of acceptance the appointment takes effect, the directors may not be registered with the Mercantile Registry until their acceptance is recorded. Registration in the Mercantile Registry is obligatory but not constitutive, being valid the acts carried out by the directors after their acceptance and before the registration of their appointment.

21.- NOTARY POWER & DEAL TERMS.

The notary acts to confirm the identity of the parties and to certify the validity of the contract but has no power to modify the terms of the contract. In any case, the notary may explain the terms of the contract to the parties if required to do so.

22.- NOTARIES FEE – LEVEL/NEGOTIABLE?

The price charged by notaries for their services is set by the Notary Tariff which applies equally to all notaries. Notaries cannot change such Notarial Tariff, but they can interpret it.

Generally, the amount of the fee for notarial services will depend on (i) the amount of the operation being executed and (ii) the extension of the contractual documents related to the transaction.

In any case, the notaries' fee above certain threshold are negotiable.

23.- NOTARY IMPACT ON TRANSACTION TIMETABLE.

In the course of a M&A operation, in accordance with Spanish jurisdiction, the presence of a Notary will be necessary (i) for the execution of the SPA into the relevant public deed, (ii) at the closing of the operation in order for the notary to state the payment of the price and the delivery of the shares, as soon as the relevant conditions precedent occur, (iii) as well as in any event of the operation whenever it is provided by mutual agreement of the parties.

Finally, once the notary signs the documentation relating to the operation, he will have to issue the copies (these usually takes a few days).

In most cities in Spain, notaries can formalize the relevant public deeds outside the Notary's office. However, in Barcelona, it is forbidden by the Notarial Chamber.

24.- APPOINTMENT PROCESS FOR CHANGING STOCKHOLDERS (ANY TAX PAYABLE) OFFICERS AND DIRECTORS.

An M&A operation that entails the change of control over a company normally involves the appointment of its new management body.

If the company's management body is intended to be modified, the corporate resolutions the company's for the appointment of the new directors shall be notarized for its subsequent registration in the Commercial Registry.

This appointment may also be registered by means of a certification with the relevant signatures duly legalized.

The change of the company's shareholders may solely have access to the Commercial Registry when such change is due to a share capital increase (as the private transfer of the shares are not communicated to the registry). The Registry shall also be informed whenever the company turns into a single shareholder company.

25.- PRIVATE LIMITED COMPANY – TRANSFER TITLE TO SHARES.

In the first place, the notary has the duty to examine this title (the antecedents) and to verify in it, with respect to the right contained in it, its identity and extension, its possible limitations (suspensive and resolute conditions, etc.), as well as the faculties and dispositive capacity of the holder (who is now going to be transferor). Likewise, it must analyze whether such shares bear any burden or encumbrance, its formal title, value and possible defects or alterations in it.

Then, once the new operation has been formalized on the basis of the previous title, the notary must note the operation carried out in the previous title (this is usually known as "*rebajes*") so the title cannot be used again by the previous owner of the shares.

The acquisition title must be presented to the notary and neither testimonies nor simple copies may be accepted for this purposes (only originals would work).

26.- APPOINTMENT TO EXECUTE DOCUMENTS AT SIGNING/CLOSING MEETING & REQUIREMENTS.

The person authorized to sign those documents would be the legal representatives of the companies. Specific proxies may be granted in favour of individuals for them to be able to execute such specific transaction. All the corporate resolutions regarding the granting of these faculties must be adopted by the managing body of each of the companies, when appropriate.

These agreements must then be certified by the Secretary to the Board of Directors. In any case, it must be signed by the Chairman of the Board, or by the Vice-Chairman, as the case may be. In addition, these agreements may be notarized and subsequently executed into the relevant public deed by the notary.

27.- POWERS OF THE ATTORNEY RESTRICTIONS.

A power of attorney is a unilateral declaration of will by the person who wishes to be represented. It does not require acceptance by the attorney-in-fact, since a specific obligation is not agreed upon, but rather a general obligation to perform various actions on behalf of the represented party.

In the powers of attorney, one or more representatives may be appointed, and if there are several of them, it is possible to allow each one to act independently of the others (joint and several attorneys-in-fact), or that all need to act together (joint attorneys-in-fact). It is even possible to distinguish and allow everyone to act independently for most acts, but to require the consent of everyone for those acts considered most relevant, e.g. the transfer of real estate assets.

Powers of attorney may be limited for a specified period of time (or for a specific transaction) but are usually made without any time limitation. The powers of attorney may also have quantitative limitations that are imposed on the attorney.

28.- EVIDENCE OF DUE EXECUTION – FAXED/EMAILED DOCUMENTS ADMISSIBLE IN COURT?

Civil procedural law in Spain is regulated by the Law of Civil Procedure ("*Ley de Enjuiciamiento Civil*"). The article 268 of this law establishes that "Private documents to be provided shall be presented in original or by means of a copy authenticated by the competent notary public (...) If the party only possesses a simple copy of the private document, he may present it, either on paper or by means of a digital image in the form described in the previous paragraph, which shall have the same effects as the original, provided that the conformity of the former with the latter shall not be questioned by any of the other parties".

In order to be able to use an e-mail as evidence in a trial, the following guidelines should be followed: (i) the electronic mail would have to be digitally signed; (ii) it would have to be verified in an expert's report; (iii) a notarial mirror copy; and, (iv) notarial deed.

29.- DIGITAL SIGNATURES ADMITTED AS EVIDENCE OF EXECUTION?

Private agreements between the parties that are formalized through an electronic signature have legal validity in accordance with Spanish law, provided that:

- i. the will or consent of the parties exists (Articles 1.262 to 1.270 of the Civil Code),
- ii. there is an object or a contractual purpose (Articles 1271 to 1273 of the Civil Code) and
- iii. the object must be based on a lawful cause (Articles 1274 to 1277 of the Civil Code).

In addition, Article 26 of the Regulation (EU) N° 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, add that the advanced electronic signature shall meet the following requirements:

- i. it is uniquely linked to the signatory;
- ii. it is capable of identifying the signatory;
- iii. it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and
- iv. it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

Although the digitally signed agreement is legally valid and has legal effect between the parties, the agreement may not be notarized if the digital signatures are not duly legalized.

If the agreement is intended to be formalized in the context of an M&A operation, we strongly recommend to notarize the agreement and, as we have seen, the electronic signature is not enough to complete this process.

Furthermore, in recent years, remote signature apps have been used in practice, especially among start-ups it is common.

30.- EXECUTE DOCUMENTS IN COUNTERPART?

Under Spanish jurisdiction, the agreements formalized between parties may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

31.- STRICTLY ENFORCED “UNDERTAKINGS”?

In Spain there is no specific regulation in relation to binding/non-binding obligations. However, the parties shall always negotiate in good faith.

In Spain, there is the principle of good faith that the parties must maintain throughout the negotiation process. If the contract is not negotiated in good faith, it can be annulled. Any liability incurred by either party may not be subject to limitation if any party acts with malice.

32.- CLOSING MECHANISM (SUBJECT TO FULFILL OF OUTSTANDING FORMALITY)?

The closing refers to the final moment of the acquisition operation, when the exchange of the object for the price takes place, with both parties fulfilling their main obligations.

For the successful closing of an operation, the parties should specify the date and place where the closing will take place.

It will also be necessary to refer to the form of payment. There are different methods of payment (either cash or deferred) as well as the currency or parity in which it will be made.

It is common practice to include a list of each and every item that the seller has to deliver at closing. Such elements, in a purchase-sale of shares, would usually be:

- i. the titles of ownership of the shares,
- ii. the minutes books of the corporate bodies of the company whose shares are transferred,
- iii. resignations of directors of the company, and
- iv. notifications of revocations of power of attorney.

33.- SHARE SALE CLOSING FORMALITIES?

In order to carry out the closing of the sale of the shares, it must be verified that the payment of the price, the delivery of the shares and the payment letter has been issued for the price paid.

In addition, two particularities may be need in order to carry out the transaction.

First, if there were several shareholders in the acquired Spanish company, they first would need to provide the seller with their consent (or otherwise, state that they will be preferably acquiring the shares). The Company may also preferably acquired its shares if agreed by the shareholders general meeting. Therefore, the rest of the shareholders must renounce their preferential acquisition right for the inclusion of a third party in the share capital.

Secondly, article 160 f) of the Spanish Companies' Act establishes that the transaction shall be approved by the shareholders of the parties whenever the transaction implies the acquisition or sell of an essential asset (it shall be considered that an essential asset is being transfers when it value is equal or superior to the 25% of the total assets of any of the parties taking part in the M&A operation).

34.- REQUIRED DUE EXECUTION LEGAL OPINIONS, REQUIREMENTS, RULES CONCERNING THE GIVING OF OPINIONS?

In Spain, in the process of the M&A no legal opinions are required. In any case, one of the main functions of the notary is to provide legal certainty.

35.- SHARE & ASSET SALES TIMETABLE.

There is no specific timetable or calendar to be followed for the execution of an operation strictly defined in Spanish law. The timing of the companies' acquisitions is primarily subject to the will of the parties.

However, we hereby indicate the following timetable for the acquisition of a company for more informative purposes:

1. Letter of Intent (LOI) or Memorandum of Understanding (MOU).
2. Carrying out the Due – Diligence process for the issuance of the relevant Report. This process may last several weeks depending on the volume of the documentation to be analyzed.
3. Negotiation of the SPA.
 - i. Signing.
 - ii. Conditions Precedents (CPs).
 - iii. Closing.

36.- NON-COMPETE ENFORCEABLE? IF SO, HOW LONG FOR?

The non-compete clauses between the parties involved in an M&A operation are valid in accordance to Spanish law.

Nevertheless, the parties should bear in mind that the duration of the non-compete clause may not exceed a period of 2 years. If a non-compete clause is agreed for more than 2 years, it could be considered invalid and unenforceable.

Furthermore, it should also be noted that the party affected by the non-compete clause (the one obliged to not compete) must be economically compensated in accordance with the duration of the non-compete limitation.

The seller, when not employed, the case law accepts up to 3 years without competing. In case of breach of this obligation, damages could be claimed but is not an essential condition for terminating the contract.

37.- MISCELLANEOUS.

There are no further comments to be made regarding the questions posed in relation to M&A in Spain.