

Rules of Evidence (Civil Proceedings) in Spain: Overview

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A Practice Note providing an overview of the rules governing disclosure and the admissibility of evidence in civil proceedings. In particular, it looks at the rules on the disclosure obligations of the parties, admissibility of evidence, witness evidence, the burden and standard of proof, as well as issues that arise in gathering cross-border evidence.

Evidence is fundamental to the outcome of any civil litigation case. Usually, the facts in issue in a case must be proved by evidence, and the court will decide the case on the evidence adduced by the parties.

One of the most challenging aspects for any cross-border practitioner is to adapt to the differences in the rules of evidence taking in various jurisdictions. These differences are evident in the manner in which evidence is produced, the issues surrounding relevance and admissibility, the probative value attached by the courts to the various types of evidence and the principles of burden and standard of proof across jurisdictions. Further, such disputes often give rise to situations where one of the parties to the litigation is required to produce evidence located in a jurisdiction foreign to the forum of proceedings. These are important legal issues that a practitioner should be aware of since they largely determine the way litigation is conducted in all the major civil law and common law systems around the world and ultimately influence its result.

This Note provides an overview of the rules of disclosure and evidence in civil proceedings in Spain. In particular, it looks at:

- The rules regarding the disclosure obligations of the parties.
- Admissibility of evidence.
- Witness evidence.
- Expert evidence and the role of experts (court hired independent experts and party hired experts) in civil proceedings.
- The rules regarding the burden of proof and standard of proof in civil proceedings.
- The rules regarding cross-examination.
- Issues that arise in gathering cross-border evidence, including:
 - the applicable international treaties, agreements, and regulations governing cross-border evidence;
 - how to obtain foreign evidence for use in Spanish civil proceedings; and
 - how to obtain evidence located in Spain for use in foreign civil proceedings.

Rules of Evidence and Evidence in Domestic Proceedings

Law 1/2000 of 7 January of Civil Procedure (LEC) states the main regulatory regime applicable to evidence in civil proceedings in Spain.

Obtaining Evidence

Disclosure or Discovery Obligations

There are no discovery or general disclosure obligations and procedures, but only a limited and specific duty to exhibit documents among the parties.

Each party may request that the other parties exhibit specific documents that are not in the possession of the requesting party and which refer to the matter at issue in the proceedings (*Article 328, LEC*). The requesting party needs to submit a simple copy of the document or, if this is not possible, they must indicate the document's contents as accurately as possible.

In case of an unjustified refusal to exhibit a document, the court may either:

- Taking into account the other evidence available, attribute probative value to the simple copy or to the version of the document submitted by the requesting party.
- Issue an order requiring that the documents be brought to the proceedings, when it is convenient considering the characteristics of the documents and/or the claims and allegations made by the requesting party.

A party can, before the start of main proceedings, request the following preliminary measures consisting of exhibition of documents, provision of information, and other evidence:

- Declaration under oath or exhibition of documents on a fact concerning capacity, representation, or standing of the defendant.
- Exhibition of an object in the defendant's possession.
- Exhibition of a will or inheritance title.
- Exhibition of a company or condominium's documents and accounts to a partner or shareholder.
- Exhibition of civil liability insurance.
- Exhibition of medical records.
- Measures to identify individuals for the purposes of collective legal actions for the defence of consumers' interests.
- Other specific exhibition and identification measures in relation to intellectual property and unfair competition actions.

(*Article 256, LEC*.)

The party requesting the preliminary measures must justify the grounds for its request, with detailed reference to the subject matter of the potential future claim.

Role of the Courts in the Evidence-Taking Process

The general rule under Spanish procedural law is that the court will resolve cases based on the submissions of facts and evidence provided by the parties.

Therefore, the parties propose the evidence to be taken and the court will decide whether to admit the proposal, based on the relevance of the evidence to the resolution of the dispute.

During the proposal and admission process, the court may indicate to the parties that it considers that there is not sufficient evidence, and suggest appropriate additional evidence. This possibility is generally considered exceptional, and is used by Spanish courts in a very limited manner.

Examination of the parties (or their legal representatives), witnesses, and experts admitted by the court takes place during a hearing conducted under the court's direction. The parties' lawyers carry out the examination, although the judge may also pose questions to the declarant.

Other Mechanisms to Obtain Disclosure from an Adverse Party and Third Parties

Parties may request that third parties exhibit documents when their knowledge is relevant to the purpose of the dispute (*Article 330, LEC*). The court can order the third parties to appear and, after hearing them, decide on the exhibition request.

Public administrations have a duty to issue any certifications and attestations and exhibit any documents required by the courts, unless the information is classified as secret or reserved.

Standard of Proof and Burden of Proof in Civil Proceedings

Article 217 of the LEC sets out the general principles of the allocation of the burden of proof in civil proceedings in Spain.

The claimant must prove the certainty of the facts on which the cause of action of the claim is based in accordance with the applicable substantive legal rules (the law does not specify the degree of proof required).

The defendant must, if applicable, prove the facts which, according to the applicable substantive legal rules, prevent, extinguish, or weaken the legal effectiveness of the cause of action of the claim.

If, at the time of passing its judgment, the court considers that certain facts relevant to the decision are uncertain, it will dismiss the corresponding pleadings of the party to whom the burden of the proof corresponds, according to the above rules.

When applying the above rules, the court will take into account the availability and ease of evidence of each party.

There are special rules for particular actions and subject matter, such as unfair competition and advertising or gender discrimination.

Failure to Give Evidence at Trial: Consequences

In case of unjustified refusal by a party to exhibit a document, the court may attribute probative value to the simple copy or to the version of the document submitted by the party that requested the exhibition (see *Disclosure or Discovery Obligations*). Note that refusal to exhibit a document on the basis of attorney-client confidentiality would be considered justified.

If a party does not appear at the trial, refuses to testify, or gives evasive or inconclusive responses, the court may draw adverse inferences against that party (*Article 304, LEC*).

The rules on the burden of proof must be construed and applied taking into account the availability and ease of evidence of each of the parties (see *Standard of Proof and Burden of Proof in Civil Proceedings*).

Admissibility of Evidence

The parties propose what evidence to present at a hearing, and the court will rule on whether to admit each piece of evidence.

This decision can be challenged by the parties at the same hearing through appeals for reversal, which are also decided by the judge at the hearing.

If the judge refuses the appeal, the aggrieved party can make an objection, for the purpose of being able to further propose the rejected evidence in any second instance proceedings.

Grounds for challenge include the following:

- Relevance and use of the evidence for the resolution of the dispute.
- Fulfilment of relevant procedures and timelines to submit the evidence (especially for documentary and expert report evidence).
- Illegality of evidence arising from breach of fundamental rights.

When to Apply

Generally, an appeal challenging the admissibility of evidence in civil proceedings is made orally and resolved in the same hearing at which evidence is proposed and decided.

Exclusionary Rules of Evidence

The legal protection offered in relation to lawyer-client communications is regulated under the category of professional secrecy set out in Article 542.3 of the Judiciary Law (*Ley Orgánica del poder Judicial*) and, more specifically, in:

- Article 5 of the Code of Conduct of the Spanish Legal Profession (*Código Deontológico de la Abogacía Española*).
- Articles 21 to 23 of the General Statute for the Legal Profession (*Estatuto General de la Abogacía*).

Professional secrecy is generally conceptualised as a right and duty of lawyers, according to which lawyers are exempted from the disclosure to third parties of communications maintained with their clients, counterparties, or other lawyers involved by reason of their profession. This mainly applies to disclosure to the public administration authorities and judges.

Therefore, in civil proceedings, lawyers can both:

- Oppose the disclosure of confidential communications which are protected by professional secrecy.
- Refuse to testify as witnesses at court.

Discretion of Court to Exclude Evidence

The courts will not admit evidence that:

- Is irrelevant or useless for the purposes of the resolution of the dispute.
- Has been submitted in breach of the legal procedures and time limits.
- Is illegal evidence (that is, evidence obtained or submitted in breach of fundamental rights).

The courts will assess the admissibility of the evidence according to the law, with no discretion other than a reasonable interpretation of the law based on the above criteria

Witness Evidence: Oral and Written

Witnesses must give evidence orally at court, specifically at the hearing for taking evidence.

In exceptional circumstances, for example illness, they can give evidence (also orally) at their domicile.

As a general rule, written witness statements are not admissible.

There are no different requirements for non-trial submissions, such as for applications or motions.

Requirements for the Content of Written Evidence (Witness Statement or Affidavit)

As a general rule, written witness statements are not admissible.

However, an exception applies to obtain information from legal and public entities, if the information refers to the public entity's activity and it is not possible to redirect the facts to a particular individual (for example, a public employee) (*Article 381, LEC*). In these cases, a party can request that the legal entity responds in writing about the relevant facts, at the request of the court.

There are no different requirements for non-trial submissions, such as for applications or motions.

Oral Evidence in Support of Written Evidence

In the exceptional case of written witness evidence (*see above*) the court may, *ex officio* or at the request of any of the parties, summon a natural person to attend the hearing for taking evidence (whose testimony may be relevant and useful to clarify obscure or incomplete written evidence).

Timing for Filing Written Witness Evidence

Written witness statements must be obtained no later than ten days before the hearing for taking evidence.

Evidentiary Value of Witness Evidence

There is no general legal rule on this. Both documentary and witness evidence will be freely assessed by the court according to principles of logic and reason and in light of the rest of the evidence.

Cross-Examination and Re-Examination

The witness will first be examined by the attorney representing the party that proposed them as a witness.

The attorneys representing the other parties may then examine the witness. The court may also question the witness to obtain clarifications and additions.

Witness Unwilling or Unable to Provide Evidence or Attend Court

Witnesses have a duty to appear at the hearing for taking evidence on the day and time set out in the judicial summons.

The court can take the following measures if witnesses do not attend to the hearing:

- Fines of between EUR180 and EUR600.
- Charge them with a crime of disobedience of authority, if they persist in their intention not to go to the hearing.

(*Article 292, LEC.*)

Witness Immunity

Witnesses in court must take an oath that they will tell the truth and answer all the questions put to them unless the witness is subject to a duty to keep information secret (for example, due to their profession) or the facts about which the witness is being questioned relate to matters legally declared or classified as confidential or secret (*Article 371, LEC*).

In case of taking an oath, all participants in a legal proceeding, whether they are witnesses, experts, or even expert witnesses (those who have knowledge of the facts and have professional knowledge of the subject matter of the dispute) are obliged to take an oath that they will tell the truth.

This obligation in the case of experts is contained in Article 335 of the LEC.

A witness who gives false testimony in court may commit the offence of making a false statement (*Article 458, Criminal Code*). This offence is punishable with fines and with six months to two years of imprisonment. A witness can also be sued in these circumstances.

Expenses

Witnesses who appear before the court in response to a court summons have the right to obtain compensation expenses and damages from the party which proposed them (*Article 375, LEC*). The amount of the compensation will be set by the court.

Expert Witnesses

Court-Appointed Experts

One or both parties can request the court to appoint an expert who will be responsible for issuing a report. The parties must make the request at the beginning of the proceedings (along with the claim or the statement of defence).

The court can appoint an expert *ex officio* in certain exceptional cases (declaration of kinship, paternity or maternity, capacity of individuals, and matrimonial proceedings).

Party-Appointed Experts

The parties can freely and directly designate expert witnesses at their convenience.

As a general rule, an expert report should be submitted along with the statement of claim or the statement of defence.

If a party is unable to submit the expert report together with their initial statements, they must indicate in the statement their intention to submit a report at a later stage (this is typically the case for the defendant, as the time limit to submit its statement of defence is 20 days from when the claim is notified). They must then submit the report no later than five days before the hearing for proposal of evidence.

There are exceptional circumstances in which submission of expert reports can be admitted at a later stage in the proceedings.

Fees of a Court-Appointed Expert

In principle, the party that requests the appointment of an expert witness will bear the cost of the expert (if both parties request an expert, the cost will be equally divided). This is without prejudice to what the court ultimately decides about the litigation costs.

Role of Party-Appointed and Court-Appointed Experts

The role of experts is to provide the court with scientific, technological, or artistic knowledge and data that will help the judge to resolve the dispute.

Both court-appointed and party-appointed experts are legally valid means of evidence, as party-appointed experts are presumed to be independent and impartial. However, in practice, the courts generally tend to rely more on reports of court-appointed experts than those issued by party-appointed experts.

Presentation of Expert Evidence

Expert evidence must be submitted in writing at the procedural stages explained above (as a general rule, together with the parties' initial statements) (see *Party-Appointed Experts*).

Expert witnesses can (and usually do) speak at the hearing for taking evidence if requested to do so by the parties. They will explain their report and can be examined by the parties and the court.

Documentary Evidence: Certification of Documents

The parties do not need to certify the authenticity of documents for them to be admitted as evidence. If the authenticity of documents is challenged by the other parties, then the party who submitted the document must propose evidence to support its authenticity.

Legal Framework Governing Cross-Border Evidence

Taking of Evidence Regulation

Spain is an EU member state and Regulation (EC) No 1206/2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters (Taking of Evidence Regulation) is directly applicable.

Hague Evidence Convention

Spain signed the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (Hague Evidence Convention) on 21 October 1976 and ratified it on 22 May 1987. It came into force in Spain on 21 July 1987.

Other International Instruments

Other international conventions regulating cross-border evidence that Spain is a party to include the:

- Inter-American Convention on Evidence of and Information on Foreign Law 1979 (Montevideo Convention).
- Bilateral conventions signed with other countries, for example, the:
 - Judicial Cooperation Convention signed between Spain and Uruguay on 4 November 1987;
 - Judicial Assistance on Civil Matters Treaty signed by Spain and China on 2 May 1992; and
 - Convention on Judicial Cooperation in Civil Matters signed by Spain and Brazil on 29 November 1990.

Hague Evidence Convention

Central Authority

For contact details of the designated Central Authority and the additional authorities, see *Authorities, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*.

Reservations, Declarations, and Notifications

See *Status table, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*, for a complete list of reservations, declarations, and notifications made by Spain in relation to:

- Language of letter of request (Article 4).
- Execution of letter of request in the presence of judicial personnel (Article 8).
- Evidence by diplomatic officers, consular agents, and commissioners (Articles 15-17).
- Pre-trial discovery (Article 23).

Request from Foreign Litigants

In relation to the timeframe, even though Article 9 of the Hague Evidence Convention states that letters of request must be executed expeditiously, in practice this depends on the courts' workload and on the co-operation of both jurisdictions' authorities.

Spain has made the reservation under Article 8 of the Hague Evidence Convention. Spain has declared that prior authorisation by the Spanish Ministry of Justice (the Spanish Central Authority) must be obtained for members of the judicial personnel of the requesting authority of another contracting state to be present at the execution of a letter of request.

The local procedure to execute a letter of request is that contained in Law 29/2015 on International Judicial Assistance in Civil Matters (LCJI) (see *Procedure to Enforce a Request for Witness Evidence*). Exceptionally, and at the request of the requesting foreign authority, formalities or special procedures may be accepted if they are compatible with Spanish law and are practicable (*Article 13, LCJI*).

Other procedures could prevail if they have been adopted at EU or international level (in bilateral or multilateral agreements).

Spain has not made any objections to Chapter II of the Hague Evidence Convention (Articles 15 to 22) or any of its provisions on the possibility of evidence being taken by diplomatic or consular agents.

In a civil or commercial matter, a diplomatic officer or consular agent of a contracting state can, in the territory of another contracting state and within the area where they exercise their functions, take evidence without compulsion from nationals of a state they represent, in aid of proceedings commenced in the courts of a state which they represent (*Articles 15 to 22, Hague Evidence Convention*).

A contracting state can declare that evidence can only be taken by a diplomatic officer or consular agent if permission to that effect is given upon application made by them or on their behalf to the appropriate authority designated by the declaring state.

A contracting state can declare that a diplomatic officer, consular agent, or commissioner authorised to take evidence can apply to the competent authority designated by the declaring state for appropriate assistance to obtain the evidence by compulsion. The declaration can contain such conditions as the declaring state may see fit to impose.

If the authority grants the application, it will apply any measures of compulsion that are appropriate and prescribed by its law for use in internal proceedings.

The competent authority, in giving the permission or in granting the application, can impose such conditions as it deems fit, including as to the time and place of the taking of the evidence. Similarly, it can require that it be given reasonable advance notice of the time, date, and place of the taking of the evidence; in such a case, a representative of the authority is entitled to be present at the taking of the evidence.

In the taking of the evidence, persons concerned can be legally represented.

Where a diplomatic officer, consular agent, or commissioner is authorised to take evidence:

- They can take all kinds of evidence which are not incompatible with the law of the state where the evidence is taken or contrary to any permission granted pursuant to the above, and has power within such limits to administer an oath or take an affirmation.
- A request to a person to appear or to give evidence will, unless the recipient is a national of the state where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language.
- The request will inform the person that they can be legally represented and, in any state that has not filed a declaration, will also inform them that they are not compelled to appear or to give evidence.
- The evidence can be taken in the manner provided by the law applicable to the court in which the action is pending, provided that this manner is not forbidden by the law of the state where the evidence is taken.

Rules for Taking Evidence by Video

There is no special rule relating to taking evidence by video in the Hague Evidence Convention.

Failing that, the general requirements that apply to applications for international legal co-operation in civil matters apply.

In Spanish law, Article 17 of the LCJI provides the following regarding technical and electronic means:

- The use of any technical and electronic means of communication can be requested for the purpose of international legal co-operation measures to be carried out in the territory of another state.
- If access to such means is not available in the court of the requesting or requested state, any agreements allowing for their facilitation are admissible.

Domestic Requests

See *Obtaining Evidence from Another Jurisdiction*.

Taking of Evidence Regulation

Competent Body, Court(s), and Authority(ies)

For a complete list of Central body, requested court(s), and competent authority(ies) under the Taking of Evidence Regulation, see *Spain*.

Request from Foreign Litigants

In relation to the timeframe, the requested court must execute the request without delay, and at the latest within 90 days of receipt of the request (*Article 10, Taking of Evidence Regulation*).

No additional binding deadline or procedure has been implemented in Spain. In practice, the timeframe will depend on the courts' workload and the co-operation of both jurisdictions' authorities.

If the requested court is not able to execute the request within 90 days of receipt, it must inform the requesting court (*Article 15, Taking of Evidence Regulation*). It must state the grounds for the delay, as well an estimate of the time it will need to enforce the request.

If permitted by the law of the member state of the requesting court, the parties and their representatives (if any) have the right to be present at the performance of the taking of evidence by the requested court (*Article 11, Taking of Evidence Regulation*).

A requirement for the execution of a letter of request relating to the taking of evidence is that all interested parties, their representatives, or any official of the requesting state assist with the necessary diligence (*Article 30.d, LCJI*). In light of this, it can be understood that the presence of parties and their representatives during the taking of evidence is permitted by the LCJI.

Performance of the taking of evidence with the presence and participation of representatives of the requesting court is permitted if it is compatible with the law of the member state of the requesting court (*Article 12, Taking of Evidence Regulation*). Therefore, representatives of the requesting court have the right to be present at the performance of the taking of evidence by the requested court.

A requirement for the execution of a letter of request relating to the taking of evidence is that all interested parties, their representatives, or any official of the requesting state assist with the required diligence (*Article 30.d, LCJI*). In light of this, the presence of judicial personnel of the requesting court during the taking of evidence is permitted by the LCJI.

The Spanish authorities are generally empowered to go to a foreign state to carry out or intervene in the taking of evidence that they must carry out in the required state (*Article 16, LCJI*).

However, and where applicable, Spain has made a reservation to the Hague Evidence Convention (see [Request from Foreign Litigants](#)). The presence of judicial personnel of the requesting court at the execution of letters of request is subject to prior authorisation from the Spanish Ministry of Justice.

Spanish legislation does not impose any conditions for taking evidence directly following a request under Article 17 of the Taking of Evidence Regulation.

Costs

The execution of a request will not give rise to a claim for any reimbursement of taxes or costs (*Article 18.1, Taking of Evidence Regulation*).

However, the Taking of Evidence Regulation leaves the regulation of two matters at the discretion of the member states, and the situation in Spain is as follows.

Costs to be Reimbursed

As an exception to the general rule of zero costs, if the requested court requires it, the requesting court must ensure the reimbursement, without delay, of:

- Fees paid to experts and interpreters.
- Costs due to an application for the request to be executed in accordance with a special procedure provided by the law of its member state.
- Costs due to an application by the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference or teleconference.

(Article 18.2, Taking of Evidence Regulation.)

The duty for the parties to bear these fees or costs is governed by the law of the member state of the requesting court (*Article 18.2, Taking of Evidence Regulation*).

Therefore, the LCJI provides that:

- Costs relating to the proceedings and execution of requests for international legal co-operation are borne by the requesting authority or the party at whose instance the request is carried out.
- The interested party can request free of charge benefits that may apply in accordance with the rules on legal assistance.

(Article 18, LCJI.)

Deposit or Advance

A deposit or advance must be made by the parties if this is provided by the law of the member state of the requesting court (*Article 18.3, Taking of Evidence Regulation*).

Therefore, the LCJI provides that the Spanish Central Authority is not obliged to assume any expense relating to applications filed or costs of the participation of lawyers or other required professionals (*Article 18, LCJI*). The Spanish Central Authority can request a provision of funds to cover these costs.

Rules for Taking Depositions by Video

The use of any technical and electronic means of communication can be requested for the purpose of international legal co-operation measures to be carried out in the territory of another state. If access to such means is not available in the court of the requesting or requested state, any agreements allowing for their facilitation are admissible (*Article 17, LCJI*).

Domestic Requests

See *Obtaining Evidence from Another Jurisdiction*.

Obtaining Evidence from Another Jurisdiction

General Requirements

An application to obtain evidence from abroad is submitted, if the law of both states allows the collection of evidence, through one of the following channels:

- The consular or diplomatic channels.
- The respective central authorities (set up under the Hague Evidence Convention).
- Directly between the judicial bodies.
- A notary, if this is compatible with the nature of the specific request.

(*Article 9, LCJI*.)

Form or Application Along with the Documents

Requests must specify:

- The applicant authority and, if known, the required authority, and their contact details.
- The name and address of the parties and, where appropriate, of their procedural representatives.
- The name and address of the person who the request concerns, and all additional identification data that is known and necessary to fulfil the request.
- The judicial proceedings and the subject matter, and a brief statement of the facts.
- A detailed description of the required evidence and the resolutions or decisions on which the request is based.
- Documents duly translated and, where appropriate, duly legalised or apostilled, and a detailed list of the documents.

- If the required evidence is subject to term or is urgent, an indication of the precise deadlines for compliance and the reasons justifying the urgency.
- A description of the evidence to be taken.
- Whether taking the evidence is requested in accordance with a procedure laid down in the legislation of the requesting state, and the necessary clarifications to apply the procedure.
- Whether the use of technological means of communication is required.
- A request for attendance at the taking of the evidence directed at the interested parties, their representatives, or an official of the requesting state.

The request must be accompanied by a translation into an official language of the foreign state, or another language accepted by it.

Notice Requirements

In the case of acts of notification and transmission of judicial documents, the Spanish courts are responsible for transmitting applications to recipients in other jurisdictions:

- Through the Spanish central authority, which will forward the application to the competent authorities of the requested state by consular or diplomatic channels, or through its central authority.
- Directly to the competent authority of the requested state.

Provided that the legislation of the state of destination does not oppose it, the Spanish authorities can send the communications directly to the recipients by registered post or any other guarantee that allows proof of receipt to be recorded.

In the case of extrajudicial documents, these can be forwarded to a notary, authority, or public official via the central authority or directly.

(Articles 21 and 28, LCJI.)

The adverse party in Spanish proceedings will normally have the opportunity to challenge the evidence requested before it is admitted.

Grounds

The main ground for initiating an application for international legal co-operation is for giving response to the needs of the court of a state that needs the co-operation of another court in another state to carry out a judicial act in its own territory (this can relate to the transmission of judicial documents, the taking of evidence, or otherwise).

Costs and Expenses

Costs relating to the proceedings and execution of requests for international legal co-operation are borne by the requesting party.

The Spanish Central Authority is not obliged to assume any expense relating to applications filed or the costs of the participation of a lawyer or other professional.

The Spanish Central Authority may request a provision of funds to cover any anticipated costs.

Application and Procedure Irrespective of the Applicable International Instruments (If Any)

This application and procedure will apply unless the applicable international instrument contains contrary provisions.

Admissibility of Overseas Evidence

The court will apply general admissibility criteria to evidence that is taken abroad.

Willing Witness (Unable to Travel)

If the witness is in another jurisdiction and willing to give evidence in support of legal proceedings in Spain, but is unable to (or not required to) attend trial, under the LCJI, the request must, in addition to what is set out above (see *Obtaining Evidence from Another Jurisdiction*), contain the following:

- Where the witness is an individual:
 - their name and address;
 - the questions to be asked of them or the facts on which their statement is based;
 - where appropriate, information about the existence of a right to refuse to give a statement according to the law of the requesting state;
 - a request to receive the declaration under oath or affirmation to tell the truth or, if applicable, the formula that is to be used; and
 - any other information that the requesting court deems necessary.
- For an examination of witnesses:
 - details of the identity and location of the site where the examination will take place;
 - if applicable, the questions to be asked of the witness or the statement to be reviewed;
 - information about the right to refuse to testify under the legislation of the requesting state;
 - the request to examine the witness under oath or affirmation, or in the form of declaration; and
 - any other information that the requesting court deems necessary.
- For examination of other evidence, details of the documents or other objects to be examined. If the display of documents or other information media is requested, these documents must be reasonably identified. An argument that the requested documents are under the control or custody of the person required to produce

them must be given. The request must specify, where appropriate, the right to not provide documents according to the law of the requesting state.

Video-Link, Teleconference, or Depositions

Technical and electronic means of communication can be requested for use in proceedings for international legal co-operation performed in the territory of another state (*Article 17, LCJI*).

The provision does not expressly mention video-links or teleconferences, but these means are permitted by the LCJI and are becoming more common.

The LCJI does not provide an exhaustive list of technical and electronic means of communication, as an open list will enable new technological developments to be used in future.

Obtaining Evidence in Support of Foreign Litigation

National Rules

The LCJI applies, on a subsidiary basis to EU law and/or international treaties to which Spain is a party. A party involved in foreign litigation wishing to collect evidence in Spain should make a request through one of the following channels:

- Consular or diplomatic channels.
- The respective central authorities.
- Directly between the judicial bodies.
- A notary, if this is compatible with the nature of the specific request.

Direct Application

As is established in Article 177 of the LEC, a dispatch for the practice of judicial acts in another jurisdiction is carried out in accordance with the following provisions:

- The applicable EU rules, including Regulation 1215/2012 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, and the Taking of Evidence Regulation.
- In the absence of applicable EU rules, international judicial assistance is requested through the treaties to which Spain is party, such as the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters 1965 and the Hague Evidence Convention.
- If no EU rules, convention, or treaty applies, domestic legislation will be applied. In Spain, this is the LCJI.

Procedure to Enforce a Request for Witness Evidence

Requests for witness evidence submitted by foreign authorities should be transmitted (without prejudice to the possibility of direct judicial communications) to the Spanish Central Authority, which will forward them to the competent Spanish authorities.

This may be done by any means that ensure the security and confidentiality of the communications, and that the documents are authentic and readable. Once the requests are executed, they will be returned by the transmission route used to study them.

Exceptionally, and at the request of the requesting foreign authority, formalities or special procedures may be accepted if they are practical and compatible with Spanish law.

Evidence taken in Spain to be submitted in foreign proceedings must comply with the guarantees provided by Spanish legislation and practice under Spanish procedural regulations.

Where no international instrument applies, the requirements that the Spanish Central Authority will consider in executing a request for evidence from another country are set out below.

Grounds

The Spanish judicial authorities will refuse a letter of request if:

- The object or purpose of the requested co-operation is contrary to public order.
- The process that originated the request for co-operation falls under the exclusive competence of the Spanish jurisdiction.
- The content of the act to carry out does not fall under the responsibility of the required Spanish judicial authority (in which case, it can forward the request to the competent authority).
- The request for international co-operation does not meet the content and minimum requirements demanded by this law for processing (see *Content of Requests*).
- Following repeated refusal of co-operation or legal prohibition by the authorities of a state, the Spanish government has stated that the Spanish authorities will not co-operate with the authorities of that state.

A refusal will be communicated to the requesting authorities, by a resolution indicating the reasons for denying the request for co-operation.

Time Frame

Requests for international legal co-operation are implemented without delay in accordance with the Spanish procedural rules (*Article 13, LCJI*). In practice, this will depend on the court's workload and on the co-operation of both jurisdictions' authorities. No binding deadline has been implemented in Spain, other than the 90-day deadline provided by the Taking of Evidence Regulation (see *Taking of Evidence Regulation*).

Content of Requests

Requests must specify certain information (see *Form or Application Along with the Documents*).

Language

Requests for international legal co-operation addressed to the Spanish authorities, and their attachments, must be accompanied by a translation into Spanish under Article 144 of the LEC (*Article 11, LCJ*).

END OF DOCUMENT