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In recent years, Spanish labor legislation has been evolving to become more flexible and modern. The main legislative changes have been designed to establish a labor law framework that contributes to the effective management of labor relations and facilitates job creation, as well as promoting job stability and entrepreneurial activity.

Also, a constant in recent years has been the approval of measures aimed at promoting the entry of foreign investment and talent into Spain and the modernization of legislation on cross-border posting of workers, bringing it into line with EU law.

On the other hand, the latest labor reform has modified the regime of fixed-term contracts (to simplify the variety contracts and reduce the temporality rate) and training contracts (to provide an ideal framework for the incorporation of the youth into the labor market) and has enhanced the use of the discontinuous permanent contracts.

Meanwhile, the Spanish labor and employment legislation has been including significant progress regarding social rights, equal treatment and opportunities in the labor market, and remote work.

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/ 1 Introduction

Employment contracts are generally regulated by the provisions of Legislative Royal Decree 2/2015, of October 23, approving the Workers' Statute (WS).

A major characteristic of Spanish labor legislation is that important employment issues can be regulated through collective bargaining, by means of collective labor agreements, that is, agreements signed between workers' representatives and employer representatives that regulate the employment conditions in the chosen sphere (areas within a company, company-wide or industry-wide).

In the last years, Spanish Labor legislation has adapted and updating through legislative modifications in order to be more flexible and to increase improve the labor market in terms of employability and investment. The latest labor reform has modified the regime of fixed-term contracts (to simplify the variety contracts and reduce the temporality rate) and training contracts (to provide an ideal framework for the incorporation of the youth into the labor market) and has enhanced the use of the discontinuous permanent contracts. Likewise, the legislation has included been including progress regarding social rights and equal treatment and opportunities in the labor market.

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/ 2 Contracts

2.1 GENERAL ASPECTS

This section deals with the main aspects to be considered when hiring workers in Spain.

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

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

2.2 TYPES OF CONTRACT

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

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

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

In the website of the National Public Employment Service¹ any can access a virtual assistant for employment contracts which, based on four basic types of employment contracts (indefinite-term, temporary, training and work-experience contracts), suggests and prepares the type of employment contract that best suits the characteristics of each new hire.

The principal features of these types of contracts are explained below.

2.2.1 Fixed-term contracts

Spanish legislation sets out specific grounds for the execution of fixed-term or temporary contracts. There are two types of contracts: contracts due to circumstances of production and contracts for the substitution of employees. After March 30, 2022 contracts for projects and/or services cannot be entered into.

The employment contract is presumed to be entered into for an indefinite term. All temporary contracts must be made in writing and must specify the reason for their temporary nature in sufficient detail, the specific circumstances justifying it and its connection with the foreseen term (additionally, as per contracts for the substitution of employees, the name of the person substituted must be specified). Otherwise, or if the ground for the temporary contract does not truly correspond to one of the legally-established grounds, the contract will be deemed to be made for an indefinite term, unless evidence of its temporary nature is provided.

If the fixed-term employment contract is made for a term of more than one year, the party intending to terminate the contract must serve notice at least 15 days in advance.

¹ <https://www.sepe.es/HomeSepe/en/empresas/Contratos-de-trabajo/mode-los-contrato.html>

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TYPE	GROUND	TERM	OBSERVATIONS
Contract due to circumstances of production	To cover production circumstances due to occasional and unforeseeable increase of the activity.	May not exceed a maximum of 6 months (extendable to 12 months by collective bargaining agreement for the industry).	Its termination entitles the employee to receive a severance equal to 12 days' salary per year worked. When the maximum periods established for any temporary contract have elapsed, workers will acquire the status of indefinite-term employees of the company.
	To cover oscillations that (even though within normal activity) generates a temporary mismatch between the permanent staff available and the one required (the oscillations include those derived from annual vacations).		When workers have been hired for more than 18 months within a 24-month period, with or without interruption, for the same or different position at the same company or group of companies, under two or more contracts due to circumstances of production, whether directly or through temporary employment agencies, using the same or different types of fixed-term contract, the contract will be automatically converted into an indefinite-term contract.
	To cover production circumstances due to occasional and predictable situation and for a reduced and limited term.	Maximum duration of 90 days per calendar year, regardless of the number of workers required on each of these days to meet the specific situations that justify the hiring, which must be duly identified in the contract.	Likewise, the status of permanent employee shall be acquired by a person who occupies a position which has been occupied with or without solution of continuity for more than 18 months in a period of 24 months through contracts due to circumstances of production, including contracts made available through temporary employment agencies. The performance of work under contracts, subcontracts or administrative concessions that constitute the usual/ordinary activity of the company may not be identified as a cause of this contract.
Fixed-term contracts for the substitution of employees	To substitute workers entitled to return to their job due to a statutory provision, or the provisions of a collective labor agreement or individual agreement.	From the beginning of the period (or up to 15 days before the beginning of the period) until the return of the substituted worker or expiry of the term established for the substitution.	The contract must state the name of the substituted worker and the grounds for the substitution.
	To complete the reduced working day of another worker, when such reduction is covered by legally or conventionally established causes.	For the entire duration of the reduced working day of the worker whose working day is to be completed.	The contract must state the name of the person whose working day is to be completed and the cause of the substitution must be identified.
	Temporary coverage of a job position during a selection or promotion process to be covered by a permanent contract.	Maximum of 3 months.	

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2.2.2 Training contracts

CONTRACT	PURPOSE	TERM	OTHER INFORMATION OF INTEREST
Training contract for obtaining professional practice	Hiring of university graduates or workers with higher or advanced vocational training qualifications (first degree, master's degree or doctorate) or officially recognized equivalent qualifications, or artistic or sports education, or workers holding a vocational qualification certificate (<i>certificado de profesionalidad</i>) entitling them to work in their profession.	<p>Minimum of 6 months and maximum of 1 year.</p> <p>Sick leave, birth leave, leave for adoption or custody for adoption or fostering, leave due to risk during pregnancy and during breastfeeding and gender violence all toll the duration of the contract.</p>	<p>As a general rule, no more than 3 years may have elapsed since completion of the relevant studies, or 5 years if the contract is made with a disabled worker.</p> <p>The job must allow for adequate professional practice according to the level of studies or training that is the subject of the contract.</p> <p>An individual training plan shall be drawn up and a mentor shall be assigned.</p> <p>No employee may be hired in the same or different companies for longer than the maximum period of time by virtue of the same professional qualification or certificate.</p> <p>The employee may not work overtime (except to prevent or repair extraordinary and urgent damage).</p> <p>The employee shall have the right to obtain certification of the content of the internship performed.</p> <p>The compensation shall be the one established in the collective bargaining agreement applicable to the company for these contracts or, if none, the one applicable to the professional group and compensation level corresponding to the functions performed, which can never be less than the established for training contract in alternation or the minimum wage.</p>
Training contract in alternation	<p>The purpose of this type of contract is making compatible paid work activity with the corresponding training processes (vocational training, university studies and the National Employment System's Catalog of Training Specialties).</p> <p>To be entered into by those who lack the occupational qualifications recognized by the vocational training system or education system required for a work experience contract for the position or occupation for which the contract is made.</p>	<p>Minimum of 3 months and maximum of 2 years.</p> <p>Sick leave, birth leave, leave for adoption or custody for adoption or fostering, leave due to risk during pregnancy and during breastfeeding and gender violence all toll the duration of the contract.</p>	<p>The theoretical training provided by the training center or workplace or the company itself, when so established, as well as the corresponding practical training provided by the company and workplace, are a substantial element of this contract.</p> <p>There must be a tutor both in the training entity and in the company, as well as the elaboration of individual training plans.</p> <p>Generally, only one contract may be concluded for each training cycle. The effective working time (compatible with training) is subject to limits 65% on the first year and 85% on the second year.</p> <p>Workers cannot work overtime (except to prevent or repair extraordinary and urgent damage), at night or in shifts.</p> <p>This contract may not be entered into when the activity or position has been previously performed by that employee in the same company for a period of more than 6 months.</p> <p>A trial period cannot be established.</p> <p>Where it does not regulate this, the compensation may not be less than 60% (during first year) or 75% (during second year) of the fixed salary corresponding professional group or level, never being under the minimum wage.</p>

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2.2.3 Part-time contracts

An employment contract will be part-time contract when a number of hours of work has been agreed with the worker per day, week, month or year, which is less than the working hours of a “comparable full-time worker”, that is, a full-time worker at the same company and workplace who performs identical or similar work.

Part-time workers have the same rights as full-time workers, although at times, according to their nature, such rights will be recognized proportionally, according to the time worked, having to guarantee, in any case, that there is no direct nor indirect discrimination between women and men.

Part-time workers cannot work overtime, except to prevent or repair losses and other urgent and extraordinary damages.

However, supplementary hours (hours worked in addition to those agreed in the contract, the performance of which is agreed beforehand) can be carried out. Supplementary hours may not exceed 30% of ordinary working hours (except where they are increased up to 60% in a collective labor agreement).

The employer is allowed to offer the employee hired indefinitely on a part-time basis no less than 10 weekly hours (on an annual basis), supplementary hours which are voluntary, which may not exceed 15% of the ordinary hours of the employment contract (30% if agreed in the applicable collective labor agreement).

The total ordinary hours and supplementary hours may not exceed the statutory limit for part-time work.

2.2.4 Discontinuous permanent contract

This type of contract may be used for the performance of work of a seasonal nature or linked to seasonal activities and for the performance of work that is not of a seasonal nature

but which, being of an intermittent nature, has certain, determined or undetermined periods of performance.

It may be used to carry out work in the context of commercial or administrative contracts which, being foreseeable, are part of the ordinary activity. In this case, periods of inactivity may only occur as waiting periods between reassignments between subcontracting. The maximum period of inactivity shall be three months, unless otherwise provided for in the collective bargaining agreement. Once this period has expired, the company must adopt the appropriate temporary or definitive measures.

The discontinuous permanent contract must be formalized in writing and reflect the essential elements of the work activity (among others, the duration of the period of activity, the working hours and its hourly distribution, although the latter may be stated on an estimated basis, to be specified at the time of the call).

Collective bargaining agreements (or company agreements) will establish the criteria to call the employee. Likewise, the legal representatives of the workers must be informed sufficiently in advance, at the beginning of the calendar year, of the forecasts of the calls.

2.2.5 Distance work (telework)

Law 10/2021 defines regular remote work where, within a reference period of 3 months, accounts for at least 30% of the working day, or the equivalent proportional percentage depending on the duration of the employment contract. The remote working agreement shall be in writing, voluntary and reversible for the employee and the company, and may be signed at the beginning of the employment relationship or later on.

Workers' statutory representative must receive a copy of each remote working agreement within 10 days since its signing, which must be subsequently sent to the corresponding Public Employment Service office.

Mandatory minimum required content of each remote working agreement is:

- a. Inventory of means, equipment and tools provided.
- b. Expenses that remote working may cause, as well as monetary compensation, timing and method in which the Company shall pay for them.
- c. Working hours and availability periods.
- d. Percentage and distribution between on site and remote working hours.
- e. Corresponding workplace.
- f. Designated remote working place.
- g. Reversibility advance notice period.
- h. Means of exercising corporate control.
- i. Procedure to be followed in the event of technical difficulties preventing remote working.
- j. Company instructions (participated by workers representatives) on data protection.
- k. Company instructions (after informing workers representatives) on information security.
- l. Length of the remote working agreement.

Any modification of the above must be subject of a new written agreement.

2.3 TRIAL PERIOD

Employers can assess a worker's abilities by agreeing on a trial period during which the employer or the worker can freely terminate the contract without having to allege or prove any cause, without prior notice and with no right to any indemnity in favor of the worker or the employer.

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However, the termination by the employer will be null in where terminating the contract of a pregnant employee, from the start date of the pregnancy until the beginning of the suspension for birth, unless there are grounds not related to pregnancy or maternity.

Where a trial period is agreed (provided that the worker has not performed the same functions before at the company under any type of employment contract, in which case the trial period would be null and void), it must be put in writing. Collective labor agreements may establish time limits for trial periods which, as a general rule and in the absence of any provision in the collective labor agreement, cannot exceed:

- Six months for college and junior college graduate specialists.
- Two months for all other employees. At companies with fewer than twenty-five employees, the trial period for employees who are not college or junior college graduate specialists cannot exceed three months.
- One month in the case of temporary fixed-term employment contracts agreed for a time-period of less than six months.

Training contracts and special employment contracts (domestic workers, senior managers, among others) have their own specific trial periods.

2.4 WORKING HOURS

The following table summarizes the fundamental legislation governing working hours:

ITEM	REGULATION
Maximum working hours	<p>The maximum working hours are those agreed in collective bargaining agreements or individual employment contracts (within the limits of the applicable collective bargaining agreements).</p> <p>In general, the maximum working week is 40 hours of time actually worked, calculated on an annualized average basis, and the irregular distribution of working hours throughout the year may be agreed. In the absence of any agreement, the company may distribute 10% of the working hours on an uneven basis.</p> <p>The company must guarantee the daily registration of the working day, without prejudice of the working time flexibility established, which must include the specific start and end time of each employee's working day, and these records must be kept for four years (they must be available to the workers, their legal representatives and the Inspection of Work and Social Security).</p> <p>In addition, employees have the right to digital disconnection to guarantee the respect of their rest time, permits and vacations, as well as their personal and family privacy outside of the legal or conventionally established work time.</p>
Overtime	<p>Overtime is time worked in excess of the maximum ordinary working hours. By collective bargaining agreement or, in the absence thereof, by individual contract, there shall be a choice between paying overtime at the amount established, which in no case may be less than the value of the ordinary hour, or compensating them with equivalent paid time off periods.</p> <p>Paid overtime may not exceed 80 hours per year. The compensation with time off must be given within four months of the date on which the overtime was worked, unless otherwise agreed.</p> <p>Overtime is generally voluntary.</p>
Rest periods / public holidays / vacation / paid leave	<p>A minimum of one and a half days off per week is mandatory, which may be accumulated by periods of up to 14 days.</p> <p>Official public holidays may not exceed 14 days per year.</p> <p>Workers are entitled to a minimum vacation period of 30 calendar days, and cannot be paid in lieu of that period, save in case of termination of the contract with accrued and unused vacation.</p> <p>Workers are entitled to paid leave in certain circumstances, such as marriage, performance of union duties, performance of unavoidable public or personal duties, breastfeeding, relocation of main residence, serious illness or accident, hospitalization or death of relatives up to the second degree of kinship or affinity, prenatal exams and birth preparation, etc.</p>
Reduction in working hours and right to adapt the duration and distribution of the working hours	<p>Workers may be entitled to a reduction in their working hours in certain cases, for example: to directly care for children under 12 or family members by consanguinity or affinity up to the second degree, who cannot take care of themselves, and during the hospitalization and continuing treatment of a child in their care with cancer or any other serious illness that entails a long hospital stay and who requires direct, continuing and full-time care, until the individual reaches 23 years.</p> <p>In addition, employees have the right to request adaptations of the duration and distribution of the working day, in the organization of working time and in the way they render their services, including the possibility of remote working, to make effective their rights to conciliation of family and work life. In the case that they have children, the right will exist until they reach 12 years.</p>

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2.5 WAGES AND SALARIES

The official minimum wage is established by the Government each year and in 2022 amounts to €33.33 per day or €1,000 per month, depending on if the salary is fixed on a daily or monthly basis.

However, the minimum wages for each professional group are usually regulated in collective labor agreements.

Salaries cannot be paid at intervals of more than one month.

At least two extra payroll payments must be paid each year: one at Christmas and the other on the date stipulated in the relevant collective labor agreement (generally before the summer vacation period). Thus, an employee's gross annual salary is usually spread over 14 payroll payments; however, the prorating of the extra payroll payments within the 12 ordinary monthly installments can be agreed on in a collective labor agreement.

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/ 3 Material modifications to working conditions

Employers may make material modifications to the working conditions of their employees (working hours, timetable, salary, functions, among others) provided that there are proven economic, technical, organizational or production-related grounds and that the legally provided procedure is followed (15 days' advance notice where individual workers are affected or a consultation period with the workers' representatives in the case of collective modifications).

There is also a specific procedure to opt out of the working conditions established in the applicable collective labor agreement (whether at industry or company level) on economic, technical, organizational or production-related grounds. In this case, since the conditions were established by collective bargaining, a consultation period must be followed, and only if an agreement is reached or the legally established procedures are fulfilled (arbitration, or the National Commission of Consultation of Collective Bargaining Agreements), the conditions can be left with no application. The agreement must establish the new working conditions applicable at the company and their duration, which may not extend beyond the moment at which a new collective labor agreement applies at the company.

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/ 4 Termination of employment contracts

4.1 DISMISSALS

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

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

- Collective layoff.
- Objective grounds.
- Disciplinary action.

The following table summarizes the grounds and main features of the various types of dismissal:

DISMISSAL	LEGAL GROUNDS	OBSERVATIONS
Collective layoff	<p>Grounds:</p> <p>Economic, technical, organizational or production-related grounds, whenever these affect, in a 90-day period, at least</p> <ul style="list-style-type: none"> • The entire payroll, if more than 5 workers are affected and the activity of the company ceases entirely. • 10 workers at companies with less than 100 employees. • 10% of the employees at companies with between 100 and 300 workers. • 30 workers, at companies with 300 or more employees. <p>According to the interpretation made by the Supreme Court, following the doctrine of the Court of Justice of the Europe Union, the above thresholds refer to the company as a whole and to each work center with more than 20 employees, being the 90-day period a mobile/dynamic timeframe.</p> <p>Definition of legal grounds:</p> <ul style="list-style-type: none"> • Economic: Where a negative economic situation transpires from the results of the company, in cases such as current or expected losses, or a persistent decline in ordinary revenues or sales. In all cases, the decline will be deemed persistent if for three consecutive quarters the level of ordinary revenues or sales in each quarter is lower than the figure recorded in the same quarter of the preceding year. • Technical: Where there are changes in the methods or instruments of production, among others. • Organizational: Where there are changes in the personnel working methods and systems or in the manner of organizing production, among others. • Production-related: Where there are changes in the demand for the products or services that the company intends to place on the market, among others. 	<ul style="list-style-type: none"> • Collective layoffs must follow the legal procedure established under article 51 of the Workers' Statute. This procedure involves a period of negotiation with the workers' representatives of no more than 30 calendar days, or 15 days at companies with less than fifty employees, and the outcome and final decision must be notified to the labor authorities. • The employer must give 7 or 15 days' prior notice of its intention to start a collective layoff procedure, depending if the communication is issued to the workers' representatives or the own employees (in case there are no workers' representatives). • After notifying the decision to the workers' representatives, the employer would be entitled to individually notify the workers concerned of the layoffs. At least 30 days must elapse between the date on which the commencement of the consultation period is notified to the authorities and the effective date of dismissal. • If the collective layoff affects more than 50 workers (except at companies subject to insolvency proceedings), the company must offer the workers concerned an outplacement plan through an authorized outplacement company, of at least six months' duration, which must include professional guidance and training measures, personalized assistance and an active job search. • The statutory severance consists of 20 days' salary per year worked, up to a maximum of 12 months' salary, or more if so agreed, the same notification requirements for individual objective dismissals must be complied with. • In general (except at companies subject to insolvency proceedings), when workers aged 55 or over are affected, special agreements must be signed with the social security authorities. • In some cases, if workers affected in the collective layoff are aged 50 or over, an economic contribution must be made to the Public Treasury.

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DISMISSAL	LEGAL GROUNDS	OBSERVATIONS
Objective grounds	<ul style="list-style-type: none"> Ineptitude of the worker coming to light or not foreseen until after being hired by the company. Inability of the worker to adapt to changes made to his job. Before dismissing the worker, employers must offer the worker a training course to facilitate adaptation to such changes. Workers cannot be dismissed until a minimum period of two months has elapsed since the changes were made or the training was completed. In case of economic, technical, organizational or production-related reasons (see definition of the reasons under collective layoff). In indefinite-term contracts arranged directly by not-for-profit entities to implement determined public plans and programs, without stable economic endowment and financed by the Public Administrations through annual budgetary or extra-budgetary appropriations as a result of external income of a final nature, for the insufficiency of the appropriate allocation of funds to enable the contracts to continue. 	<ul style="list-style-type: none"> The employer must serve at least 15 days' advance notice in writing on the worker (or pay the corresponding salary). Severance (20 days' salary per year worked, up to a maximum of 12 months' salary) must be made available to the worker at the same time the written notice of dismissal is served.
Disciplinary action	<p>Serious and culpable breach by the worker:</p> <ul style="list-style-type: none"> Repeated and unjustified absenteeism. Insubordination or disobedience. Physical or verbal abuse towards the employer. Breach of contractual good faith or abuse of trust. Willful reduction in job performance. Habitual drug or alcohol abuse which adversely affects job performance. Harassment by reason of race or ethnic origin, religion or beliefs, disability, age or sexual orientation, and sexual or gender harassment towards the employer or persons working at the company. 	<ul style="list-style-type: none"> The employer must serve written notice of disciplinary dismissal, stating the grounds and the effective date of dismissal. If a workers' representative or labor union delegate is dismissed, a disciplinary procedure in which all parties are heard (<i>expediente contradictorio</i>) must be followed. If the worker is a labor union member, the union delegates should be granted a hearing. These safeguards may be increased by collective agreement. If these formalities are not met, a further dismissal may be made in a period of twenty days by paying the employee the salary accrued in the meantime, with effect as of the date of the new notice.

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4.2 CLASSIFICATION OF THE DISMISSAL

A worker dismissed on any objective or disciplinary ground may appeal the decision made by the employer before the labor courts, although a conciliation hearing must first be held between the worker and the employer to attempt to reach an agreement. This conciliation hearing is held before an administrative mediation, arbitration and conciliation body.

The dismissal will be classified in one of the three following categories: justified, unjustified or null.

CLASSIFICATION	EVENTS	EFFECTS
Justified	Conforming to law.	Disciplinary dismissal: Validation of the dismissal, meaning the worker is not entitled to severance pay. Objective dismissal: Payment of 20 days' salary per year worked, up to a limit of 12 months' salary.
Unjustified	No legal ground exists for the dismissal or the procedure followed is incorrect.	The employer may choose between: <ul style="list-style-type: none"> Reinstating the worker, in which case the worker will be entitled to back pay accrued from the date of dismissal until the notification of the decision or until the worker found a new job, if this occurred prior to the decision. Terminating the contract, by paying severance of 33 days' salary per year worked, up to a maximum of 24 months' salary (for contracts formalized before February 12, 2012, severance will be calculated at 45 days' salary per year of service for the time worked up to such date and at 33 days' salary per year of service for time worked thereafter, case in which the severance can be no more than 720 days of salary, unless the severance corresponding to the period prior to February 12, 2012 results in an amount of days above, case in which this shall be the maximum severance, notwithstanding the 42 monthly installments cap. <p>If the dismissed worker is a workers' representative or a union delegate, the choice will rest with the worker and back pay will accrue in all cases.</p>
Null	<ul style="list-style-type: none"> The alleged ground is a form of discrimination. It implies a violation of fundamental rights. It affects pregnant workers, during the period of holding in abeyance of the contract due to maternity or paternity, risk during pregnancy, adoption, custody for adoption or fostering, reduction in working hours to care for children or relatives or for breastfeeding, and, in certain circumstances, female workers who have been the victims of gender violence. It also affects workers who have gone back to work after the period of holding in abeyance of the contract due to birth, adoption or custody for adoption or fostering has ended, provided that no more than twelve months have elapsed since the date of birth, adoption, custody for adoption or fostering of the child. Collective dismissals may also be considered null and void if the company has not carried out the consultation period or provided the legally required documentación. 	<ul style="list-style-type: none"> Immediate reinstatement of the worker. Payment of salaries not received.

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/ 5 Senior management contracts

Special rules apply to certain types of employee, including most notably the special senior management labor relationship governed by Royal Decree 1382/1985, of August 1, 1985.

A senior manager is an employee who has broad management authority in relation to the company's general objectives and exercises that authority independently and with full responsibility, reporting only to the company's supreme governing and managing body.

The working conditions of senior managers are subject to fewer constraints than those for ordinary employees and, as a general rule, the parties (employer and senior manager) have ample room for maneuver in defining their contractual relationship.

The following provisions are established in relation to the termination of senior management employment contracts:

- Senior managers' contracts can be terminated without cause by serving notice at least 3 months in advance, in which case they are entitled to severance pay of seven days' pay per year worked, up to a maximum of six months' pay, unless different terms of severance have been agreed on.
- Alternatively, a senior manager can be dismissed on any of the grounds stipulated in general labor legislation (objective grounds, disciplinary action). If the dismissal is held to be unjustified, the senior manager is entitled to 20

days' pay in cash per year worked, up to a maximum of 12 months' pay, unless different terms of severance have been agreed on.

- In addition, the law establishes certain grounds on which the senior manager can terminate his or her contract and receive the agreed-upon severance pay and, failing that, the severance pay established for termination due to employer withdrawal.
- Senior manager may freely withdraw from their contracts by serving at least three months' advance notice.

Although the statutory severance for senior managers is currently lower than that for ordinary employees, in practice, senior management contracts usually provide for severance payments that are higher than the statutory minimum.

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/ 6 Contracts with temporary employment agencies

Under Spanish law, the hiring of workers in order to lend them temporarily to another company (the user company) may only be carried out by duly-authorized temporary employment agencies (*ETT*) and in the same scenarios in which temporary or fixed-term contracts can be made, including training contracts for obtaining professional practice and training contract in alternation.

Therefore, the hiring of workers through *ETTs* can only be used in specific cases and is expressly prohibited in the following cases:

- To replace workers on strike at the user company.
- To perform work and activities subject to regulation because they pose a particular hazard to health or safety (such as jobs which involve exposure to ionizing radiation, carcinogenic, mutagenic or reprotoxic chemicals, or to biological agents).
- Where the company has abolished the job positions it intends to fill by unjustified dismissal or on the grounds provided for termination of the contract unilaterally by the worker, collective dismissal or dismissal on objective grounds in the 12 months immediately preceding the hiring date.
- To lend workers to other temporary employment agencies.

Workers hired in order to be loaned to user companies will be entitled, during the period they provide services at the user company, to the basic working conditions and terms of employment (remuneration, working hours, overtime, rest periods, nighttime work, vacation and public holidays, among others) they would have enjoyed, had they been hired directly by the user company for the same position. The remuneration of the loaned workers must include all economic components, fixed and variable, linked to the position to be filled in the collective labor agreement applicable at the user company.

In addition to temporarily loaning workers to other companies, *ETTs* can also act as placement agencies where they meet the legal requirements to do so.

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/ 7 Worker representation and collective bargaining

Workers are represented by labor unions. At company level, workers are represented by directly-elected representatives (workers' delegates or works committees, which may or may not belong to a union) and by labor union representatives (workplace union branches and union delegates representing a labor union at the company).

Employers are not obliged to have workers' representatives if workers have not requested union elections. However, if requested by the workers, employers are obliged to allow union elections and appoint such representatives on the terms provided by law.

In general, the function of directly-elected workers' and labor union representatives is to receive certain information specified in the Workers' Statute in order to monitor compliance with labor legislation. They are entitled to participate in negotiations prior to the execution of collective procedures (such as material changes to working conditions, collective layoffs, etc.) and to request the issue of reports prior to full or partial relocation of facilities, mergers or any other modification to the legal status of the company, among others.

In addition, unions (within a company) or directly-elected workers' or labor union representatives can negotiate collective labor agreements with the employers' association (in the first case) or with the company (in the second case).

Collective labor agreements are agreements executed between the workers' representatives and the employers' representatives to regulate working conditions and terms of employment and are binding on the parties.

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/ 8 Non-employment relationships

8.1 ECONOMICALLY DEPENDENT SELF-EMPLOYED WORKERS

Although this is not strictly an employment matter, brief reference should be made to Law 20/2007, of July 11, 2007, on the Self-Employed Workers' Statute, which regulates the concept of economically dependent self-employed workers.

This concept defines independent professionals (self-employed workers) who pursue an economic or professional activity for profit, habitually, personally, directly and predominantly for one individual or legal entity, known as the client, on which they depend economically because they receive from that client at least 75% of their income from work performed and from economic or professional activities. Certain requirements must be met simultaneously by self-employed workers if they are to be treated as economically dependent self-employed workers.

The above law establishes specific regulations on the terms on which self-employed workers provide services to their clients.

8.2 INTERNSHIPS WITHOUT THE STATUTORY EMPLOYMENT RIGHTS AT COMPANIES

There are a number of cases in which a person can carry on activities at a company without such activities being treated as employed work:

- External academic placements for university students, defined as training completed by university students and

supervised by their universities, with a view to enabling students to apply and supplement the knowledge acquired in their academic training.

- Internships without the statutory employment rights at companies or business groups that enter into agreements with the Public Employment Service, aimed at young people (between 18 and 25 years of age) who, due to their lack of work experience, have difficulty finding employment. These internships can be taken by people in the above age group who have not had an employment relationship or other type of work experience of more than three months in the same activity, and may last between three and nine months. Interns will receive a grant from the company of at least 80% of the monthly Public Multi-Purpose Income Indicator (*IPREM*) in force at any given time (currently €579.02 per month).

A new Scholarship Statute is expected, regulating curricular and extracurricular internships foreseen in official study plans.

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/ 9 Acquisition of a Spanish business

Certain labor law provisions are particularly relevant when acquiring or selling a going concern in Spain. For example, if a business is transferred, both the seller and the buyer are jointly and severally liable in the three years following the transfer for any labor obligations arising prior to the transfer.

When a business is transferred, the new employer is subrogated to the previous employer's labor and social security rights and obligations, including pension commitments on the terms provided in the specific legislation and, in general, to as many supplementary employee welfare obligations as may have been entered into by the previous employer.

The seller and buyer must inform their respective workers' representatives in advance of certain aspects of the upcoming transfer. Specifically, the information provided must comprise at least the following:

- Proposed date of transfer.
- Reasons for the transfer.
- Legal, economic and social consequences of the transfer for the workers.
- Envisaged measures with respect to the workers.

If there are no workers' statutory representatives at the affected companies, the information must be supplied directly to the workers affected by the transfer.

There is also a binding obligation to hold a consultation period with the workers' statutory representatives where, as

a result of the transfer, labor measures are adopted for the personnel affected. The consultation period will address the envisaged measures and their consequences for the workers and must be arranged sufficiently in advance of the date on which such measures are to be implemented.

In the case of business succession or a significant change in ownership, which results in the renewal of the governing bodies or changes to the content and purpose of its core activity, senior management personnel will be entitled to terminate their employment contract within the 3 months following the occurrence of such changes and to receive severance equal to 7 days' pay in cash per year worked, up to a maximum of 6 months' pay, or such severance as may have been agreed on.

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/ 10 Practical aspects to be considered when setting up a company in Spain

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

FORMALITY	BASIC ASPECTS
Registration of the company with the Spanish social security authorities (obtainment of a social security contribution account code)	Registration must take place prior to commencement of activities. In general, companies register with the Social Security General Treasury by submitting the relevant official form ² and documentation identifying the company (deed of formation, document issued by the Ministry of Finance assigning the tax identification number and stating the economic activity of the company, powers of legal representation of the company, document of affiliation to the collaborator mutual insurance company, among others).
Notification of hiring of employees	The hiring of employees must be notified for social security purposes once the company has been registered with the social security authorities and before the workers start work. Notifications are generally made electronically, using the RED electronic document submission system.
Notification of opening of workplace	The commencement of activities at the workplace must be notified to the labor authorities within 30 days of its opening using the official form provided for such purpose in each Autonomous Community. An occupational risk prevention plan must usually also be attached.

² <http://www.seg-social.es/wps/portal/wss/internet/Empresarios/Inscripcion/10929/31193/48532>

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/ 11 Relocation of workers under a cross-border working arrangement within the EU and the EEA ("IMPATRIATES")

11.1 TEMPORARY CROSS-BORDER WORKING OF LOCAL HIRING

As a general rule, foreign employees temporarily posted to Spain under cross-border working arrangements can maintain the employment contract signed in their country of origin.

Both Regulation 593/2008 of the European Parliament and of the Council of June 17, 2008, on the law applicable to contractual obligations (Rome I) and Article 10.6 of the Civil Code, allows the parties to choose the applicable law, save for any mandatory matters under Spanish law.

The Law 45/1999, of November 29, 1999 establishes that in certain temporary secondments a number of minimum working conditions must be observed.

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

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

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

The minimum working conditions to be guaranteed by employers in the above countries in accordance with Spanish labor legislation and, regardless of the law applicable to the employment contract, are essentially: (i) working time; (ii) salary (which must be at least the amount provided for the same position under a statutory or regulatory provision or collective labor agreement); (iii) equality of treatment; (iv) the rules on underage work; (v) prevention of occupational risks; (vi) non-discrimination against temporary and part-time workers; (vii) respect for privacy, dignity, and the freedom to join a union, and (viii) rights of strike and assembly, (ix) accommodation terms and (x) allowances to cover travel, accommodation and meals expenses.

When the effective duration of the assignment exceeds 12 months, companies included in the scope of application of the referred Law 45/1999, in addition to the above conditions, must guarantee the rest of the working conditions provided by the Spanish employment law, with the exception of (i) the procedures, formalities and conditions of conclusion and termination of the employment contract, including the non-competition clauses and (ii) the complementary retirement regimes. Notwithstanding, more favorable conditions applied in their country of origin, will still apply to employees assigned in Spain.

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Employers in such cases must also notify postings to the Spanish Labor Authorities before the worker starts work and regardless of the duration of the posting (except for those lasting less than eight days), designating a representative in Spain. The notice must be served by the foreign company that posts the worker on the authorities of the Autonomous Community in which the posted worker is to work³ (a central electronic register of notices is still to be created). The basic contents of this notice are: identification of the company that posts the worker, as well as the company that hosts him; identification of the worker; commencement date and projected duration; and identification of the specific case of posting.

There is also an obligation to make the following documentation available (translated into Spanish or the co-official language of the place where the workplace is located) at the workplace to which the worker has been posted : employment contracts or essential elements of the contract; pay statements and evidence that workers have been paid; any records of hours kept, indicating the beginning, end and duration of the working day; work permit of third-country nationals in compliance with the legislation of the State of establishment.

Lastly, employers are under the obligation to notify the Spanish Labor Authorities of any damage to the health of posted workers occasioned upon or as a result of work performed in Spain.

The legislation on labor infringements and penalties classifies a series of infringements in this connection. Formal defects in notifying the relocation of workers to Spain or failing to serve notice of minor occupational accidents and professional diseases of those workers constitute a minor infringement, while notification of the relocation after it has taken place, or without designating a representative or giving false or inaccurate reasons for extension of the assignment, not having the aforesaid documents available during the relocation or failing to serve notice on the Labor Authorities of serious, very serious or mortal accidents of the posted workers are classed as a serious infringement as well as not complying with the request of the Inspection of filing documentation or filing it with no translation. Failing to notify the relocation or

any misrepresentation or concealment of the data contained in the notification are considered very serious infringements and the fraudulent transfer of workers that do not carry out substantive activities in their State of establishment, as well as the fraudulent transfer of workers who do not usually carry out their work in the Member State of origin.

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

We will be under situations of local hiring instead of temporary transfers when companies without establishment in Spain hire workers in the country.

If it is not a temporary secondment, but rather, the provision of services in Spain has a vocation of permanence, the employer will sign an employment contract with the employee in accordance with Spanish regulation ("local hiring"). Foreign companies without an establishment in Spain hire locally without the need to establish a Spanish company. The foreign company, however, will have to follow the steps set out in [section 10 above](#), but referred to the foreign company.

11.2 APPLICABLE SOCIAL SECURITY

Council Regulations (EC) 883/2004 and 987/2009 on the coordination of social security schemes apply within the European Union, the Economic European Area, and Switzerland and ensure that the workers to whom they are applicable are not adversely affected from a social security standpoint by moving from one Member State to another.

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

The following bilateral agreements⁴ are currently in force:

BILATERAL AGREEMENTS WITH SPAIN	PERSONS TO WHOM IT APPLIES
Andorra	Any nationality
Argentina	Any nationality
Australia	Any nationality
Brazil	Any nationality
Canada	Any nationality
Cape Verde	Any nationality
Chile	Spaniards and Chileans
China	Any nationality
Colombia	Spaniards and Colombians
Dominican Republic	Spaniards and Dominicans
Ecuador	Any nationality
Japan	Any nationality
Morocco	Spaniards and Moroccans
Mexico	Spaniards and Mexicans
Paraguay	Any nationality
Peru	Any nationality
Philippines	Spaniards and Philippines
Republic of Korea	Any nationality
Russia	Spaniards and Russians
Tunisia	Spaniards and Tunisians
Ukraine	Spaniards and Ukrainians
Uruguay	Any nationality
USA	Any nationality
Venezuela	Spaniards and Venezuelans

³ https://www.mites.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores/datoscontacto-autlaborales/index.htm

⁴ <http://www.seg-social.es/wps/portal/wss/internet/InformacionUti/32078/32253>

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Finally, the Multilateral Latin American Social Security Agreement is also applicable in Spain, an instrument coordinating the different social security legislation on pensions of the different Latin American States that have ratified it and signed the Implementation Agreement (currently Bolivia, Brazil, Chile, Ecuador, El Salvador Paraguay, Portugal, Uruguay, Dominican Republic, as well as Spain).

Workers posted to Spain under the relevant social security agreements or regulations who continue to be subject to the legislation of their country of origin and evidence this by way of the relevant certificate, generally will not be registered with the Spanish social security system for the period envisaged in same, according to the terms of the agreement.

On the contrary, when a worker is employed in Spain to carry out services in this country on a permanent basis, the general rule of registration into the Spanish Social Security System shall apply irrespective of the worker's nationality.

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/ 12 Visas and work and residence permits^{5 6}

EU nationals and their family members may live and work (as employees or self-employed workers) in Spain without needing to obtain a work permit. However, in general they must obtain the relevant EU citizen registration certificate or EU citizen family member residence card.

Non-EU nationals must obtain prior administrative authorization to be able to live and work in Spain.

With the approval of Law 14/2013, of September 27, 2013, to support entrepreneurs and their internationalization, new situations of visas and residence and work permits have been introduced, including the following noteworthy examples:

- Visa and residence permit for investors:

Non-resident foreigners seeking to enter Spain may apply for the relevant visa, provided they make a significant capital investment in the country. The following cases will be deemed to constitute a significant investment of capital:

- An initial investment for an amount equal to or greater than €2 million in Spanish public debt instruments, or for an amount equal to or greater than one million euros in shares in Spanish companies institutions, or a million euros in investment funds, closed investment funds, capital risk funds constituted in Spain, or a million euros in bank deposits in Spanish financial institutions.

- The acquisition of real estate in Spain with an investment of an amount equal to or greater than €500,000 per applicant.
- A business project to be developed in Spain and deemed and evidenced to be of general interest, having regard to compliance with at least one of the following conditions:
 - Creation of jobs.
 - Making of an investment with a relevant socio-economic impact in the geographic region in which the activity is to be pursued.
 - Relevant contribution to scientific and/or technological innovation.

- Visa and residence permit for entrepreneurs

Provision is made for an entry and residence visa, as well as a residence permit for one year, for any person pursuing a entrepreneur activity of an innovative nature in Spain with special economic interest for the country, obtaining a favorable report from the central government authorities.

When it comes to issuing the relevant assessment on the part of the central government authorities, special regard will be had, on a priority basis, to the creation of jobs in Spain. Moreover, regard will be had:

- To the professional background of the applicant.
- To the business plan, including an analysis of the market, service or product, and the financing.

⁵ <https://prie.comercio.gob.es/en-us/Paginas/Emprendedores.aspx>

⁶ (We refer to [Chapter 2, section 3](#) on the Tax Identification Number (NIF) and Foreigner Identity Number (NIE) regarding the procedure for obtaining a NIF for directors not resident in Spain).

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- To the added value for the Spanish economy, innovation and investment opportunities.
- Visa and residence permit for highly qualified professionals

Applications for this permit may be made by companies who need to recruit foreign professionals to Spain in order to develop a professional or labor relationship, and who fall within one of the following categories:

- Executive or highly qualified personnel, where the company or group of companies meet one of the requirements indicated in Article 71 a) of Law 14/2013 (average headcount during the three months prior to the application of more than 250 workers in Spain; annual net revenues in Spain in excess of €50 million or annual net equity in Spain above €43 million; gross average annual inbound foreign investment of not less than €1 million in the three years prior to submission of the application; companies with a stock value or position in excess of €3 million; belonging, in the case of Spanish SMEs, to an industry deemed strategic).
- Executive or highly qualified personnel forming part of a business project entailing, alternatively and providing the circumstance alleged is deemed and evidenced to be of general interest:
 - A significant increase in the creation of direct employment on the part of the company seeking to hire.
 - The maintenance of employment.
 - A significant increase in job creation in the industry or geographic region in which the labor activity is to be pursued.
 - An extraordinary investment with a relevant socio-economic impact in the geographic region in which the labor activity is to be pursued.

- The concurrence of reasons of interest for Spain's commercial and investment policy.
- A relevant contribution to scientific and/or technological innovation.

- Graduates and postgraduates from prestigious universities and business schools.
- Visa and residence permit for training, research, development and innovation activities

Any foreigners looking to enter Spain and to pursue training research, or holding an authorization to stay, wish to perform development and innovation activities at public or private entities may apply for the relevant entry visa or residence permit provided they fall within one of the following categories:

- The research personnel referred to in Article 13 and Additional Provision no. 1 of Science, Technology and Innovation Law 14/2011, of June 1, 2011.
- Scientific and technical personnel performing scientific, development and technological innovation work at Spanish businesses or R&D&I centers established in Spain.
- Researchers taken on under an agreement by public or private research bodies.
- Lecturers hired by universities or higher education and research centers, or business schools established in Spain.

The residency authorization for research has the following two types:

- Residence authorization for EU research: For foreigners included in the first of the aforementioned cases who

hold a doctorate or an appropriate higher education qualification that allows them to access doctoral programs, and have been selected by the research entity to carry out a research activity.

- Residence authorization for national investigation: For foreigners in any of the cases mentioned that are not contemplated in the previous section.

The period of validity of this authorization will be two years or equal to the duration of the host agreement or contract, if it is less. Once this period has expired, its renewal may be requested for successive periods of two years, as long the conditions continue.

- Visa and residence permit for intra-company transfers

An application for the relevant visa and residence permit may be made in the case of foreigners transferring to Spain under a labor or professional relationship or for professional training reasons, within a company or group of companies established in Spain, provided the following circumstances are evidenced:

- The existence of an actual business activity and, as the case may be, of the business group.
- Graduate qualification or the like or, where appropriate, at least 3 years' professional experience.
- The existence of a prior, ongoing professional relationship of 3 months with one or more group companies.
- Company documentation evidencing the transfer.

As a general rule, the visas referred will be valid for one year and must be issued by the Spanish Diplomatic Missions and Consulates.

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The residence permits also provided for will be issued by the Large Businesses and Strategic Collectives Unit and granted by the Directorate-General of Migration. A decision on the application will be made in not more than twenty working days and will be deemed to have been approved by administrative silence.

The term of the residence permits established under Law 14/2013 will be, as a general rule, two years, and renewal may be requested for periods of two years as long as the conditions that generated the right are maintained.

In addition, there are the following administrative authorizations in place a summary of which can be found in the following table:

ADMINISTRATIVE AUTHORIZATIONS		
AUTHORIZATION TYPE	SCENARIO	DURATION/REQUIREMENTS
Initial residence and employed work permit	Non-EU nationals intending to work in Spain must obtain a special work visa and a work and residence permit beforehand.	Granted to a specific geographical area and occupation, except in cases where the requirement that the national employment situation does not permit the recruitment of the worker is not applicable, and shall be for a period of one year. After the one-year period, initial permits can be renewed for a two-year period. Once renewed, a permit will allow its holder to engage in any type of work anywhere in Spain.
Residence and self-employed work permit	Non-EU nationals intending to pursue a gainful activity for their own account must obtain a residence and self-employed work permit and the relevant visa.	Granted for a period of one year. After this period, they can be renewed for a two-year period. Where a foreign worker has resided legally and continuously in Spain for five years and has renewed his or her work and residence permits, he or she may obtain a long-stay residence permit.
Frontier workers	Employed or self-employed work permit for workers residing in the frontier area of a neighboring State to which they return each day. Its validity is restricted to the territory of the autonomous community or city where the worker has his residence.	Initial duration of a minimum of three months and a maximum of one year. It may be extended at the end of the initial period, and each successive renewal may not exceed one year.
Fixed-term employed work permits	Permitted types of work: <ul style="list-style-type: none"> Seasonal work: Maximum of 9 months within a period of 12 consecutive months. Project work or services (assembly of industrial plants, infrastructure, etc.). Senior management, professional sportsmen and women, artistes in public performances, and such other groups as may be determined by legislation. Training and professional work experience. 	The term of the contract or activity, subject to a one-year limit (except in the case of seasonal permits, which may not exceed 9 months within a period of 12 consecutive months) Non-renewable, except in exceptional circumstances.
Residence and work of highly qualified professionals in possession of an EU blue card	Granted to those who provide evidence of higher education qualifications (understood as those deriving from higher education lasting at least three years) or, exceptionally, have a minimum of five years' professional experience that could be considered comparable. Holders of EU blue cards that have resided for at least eighteen months in another EU country may obtain this authorization.	Duration of one year, renewable for two-year periods, unless a long-stay residence permit is applicable.

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13.1 INTRODUCTION

As a general rule, all employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel and civil servants who reside and/or perform their duties in Spain are required to be registered with, and pay contributions to, the Spanish social security system (except in specific cases of temporary secondments of employees, as indicated in [section 11.2](#) above).

There are different contribution programs under the Spanish social security system:

- a. General social security program.
- b. There are other situations included within the general social security program that qualify for special treatment, namely:
 - Artists.
 - Railroad workers.
 - Sales representatives.
 - Bullfighting professionals.
 - Professional soccer players and other professional sportsmen and women.
 - Agricultural workers.
 - Domestic personnel.

c. Special social security programs for:

- Seamen.
- Self-employed workers.
- Civil servants and military personnel.
- Coal miners.
- Students.

Classification under these programs depends on the nature, conditions and characteristics of the activities carried on in Spain.

As a general rule, employers and their employees will be subject to the general social security program.

13.2 BASIC ASPECTS OF THE GENERAL SOCIAL SECURITY PROGRAM

In those cases in which the employees or employers are subjected to the General Social Security program, social security contributions are paid partly by the employer and partly by the employee. Personnel are classified under a number of professional and job categories for the purposes of determining their social security contributions. Each category has a maximum and minimum contribution base, which are generally reviewed on a yearly basis. Employees whose total compensation exceeds the maximum base, or does not reach the minimum base, must bring their contributions into line with the contribution base for their respective category.

For 2022, the maximum contribution base will be €4,139.40 per month for all professional categories and groups. Therefore, the situation for 2021 under the general social security program (applicable to the great majority of workers) is as follows:

⁷ <http://www.seg-social.es/>

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CATEGORY	MINIMUM BASE (€/MONTH)	MAXIMUM BASE (€/MONTH)
Engineers and graduates	1,629.30	4,139.40
Technical engineers and assistants	1,351.20	4,139.40
Clerical and workshop supervisors	1,175.40	4,139.40
Unqualified assistants	1,166.70	4,139.40
Clerical officers	1,166.70	4,139.40
Messengers	1,166.70	4,139.40
Clerical assistants	1,166.70	4,139.40
CATEGORY	MINIMUM BASE (€/DAY)	MAXIMUM BASE (€/DAY)
Class 1 and class 2 skilled workers	38.89	137.98
Class 3 skilled workers and specialists	38.89	137.98
Laborers	38.89	137.98
Workers under 18 years of age	38.89	137.98

The contribution rates applicable to employers and employees under the general social security program in 2022 are as follows:

	EMPLOYER (%)	EMPLOYEE (%)	TOTAL (%)
General contingencies	23.6	4.7	28.30
UNEMPLOYMENT			
General rule	5.50	1.55	7.05
Fixed-term contracts (full-time and part-time)	6.7	1.6	8.3
Professional training	0.6	0.1	0.7
Wage Guarantee Fund	0.2	-	0.2
Total general rule	29.9	6.35	36.25
Total fixed-term contracts	31.1	6.4	37.51

The total employer contribution rate is increased by additional percentages relating to the occupational accident and disease contingencies provided for in the State Budget Law which will depend, as a general rule, on the activity of the company, although a common percentage will be applied across the board in the case of some occupations or situations.

Employers deduct the employees' portion of contributions from their paychecks and pay them over, together with the employer's portion of contributions, to the social security authorities. Similarly, following the above-mentioned Royal Decree-Law 16/2013 of December 2013, employers must notify the Social Security General Treasury in each settlement period of the amount of all the remuneration items paid to their employees, irrespective of whether or not they are included in the social security contribution base and even if single bases are applicable.

Included below are three practical examples for calculating the social security contribution for general contingencies

payable by employers for workers subject to the general social security program.

Case 1: A person works as an administrative assistant for a company under a full-time indefinite-term contract and receives a salary of €13,900 per year.

- Data used to calculate the contribution for general contingencies:
 - The contribution base to be used will be the minimum for administrative assistants, *i.e.*, €1,166.70 per month, given that the monthly salary received by the worker is lower than this amount.
 - The contribution rate applicable to the aforesaid amount will be 29.9% for the employer and 6.35% for the worker, bearing in mind that the contract is indefinite-term.

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- Monthly contribution (general contingencies):

	BASE (€)	CONTRIBUTION RATE (%)	MONTHLY CONTRIBUTION (€)
Employer	1,166.70	29.9	348.84
Worker	1,166.70	6.35	74.08
			422.93

Case 2: A person works as a technical engineer for a company under a full-time fixed-term contract and receives a salary of €24,996.00 per year.

- Data used to calculate the contribution for general contingencies:
 1. The contribution base to be used will be the monthly salary received by the worker, *i.e.*, €2,083.00
 2. The contribution rate applicable to the aforesaid amount will be 31.1% for the employer and 6.4% for the worker, bearing in mind that the contract is fixed-term.
- Monthly contribution (general contingencies):

	BASE (€)	CONTRIBUTION RATE (%)	MONTHLY CONTRIBUTION (€)
Employer	2,083.00	31.1	647.81
Worker	2,083.00	6.4	133.312
			781.12

Case 3: A person with the job category “graduate” (*licenciado*) works for a company under a part-time indefinite-term contract and receives a salary of €56,981.40 per year.

- Data used to calculate the contribution for general contingencies:
 1. The contribution base to be used will be the maximum for graduates, *i.e.*, €4,139.40 per month, given that the monthly salary of the worker is higher than this amount.
 2. The contribution rate applicable to the aforesaid amount will be 29.9% for the employer and 6.3% for the employee, bearing mind that the contract is indefinite-term.
- Monthly contribution (general contingencies):

	BASE (€)	CONTRIBUTION RATE (%)	MONTHLY CONTRIBUTION (€)
Employer	4,139.40	29.9	1,216.95
Worker	4,139.40	6.35	258.45
			1,500.53

In all cases, the employer must also contribute for professional contingencies at the premium rates stipulated in additional provision four of Law 42/2006, of December 28, 2007. The resulting amounts are borne exclusively by the employer.

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13.3 APPLICABLE PROGRAM TO ADMINISTRATORS OR MEMBERS OF THE BOARD OF DIRECTORS

The administrators or members of the Board of Directors of a company could be included in the General Program (*RGSS*), in the General Program as “assimilated” or in the Special Program for Self-Employed Workers (*RETA*).

The following table explains the different scenarios:

COLLECTIVE	CONDITIONS AND CHARACTERISTICS	CONTRIBUTION SCHEME	OBSERVATIONS
Administrators or members of the Board of Directors who receive compensation.	If the worker has the effective control of the company.	<i>RETA</i>	<p>It is presumed, unless there is proof to the contrary, that the worker has the effective control of the company when any of the following circumstances exists:</p> <ol style="list-style-type: none"> 1. At least half the company capital for which they render their services is distributed amongst partners in the company with whom they live and with whom they are linked by marriage or by blood, affinity or adoption family ties of up to a second degree. 2. Their participation in the company capital is equal to or greater than one third. 3. Their participation in the company capital is equal to or greater than one fourth, if they have been attributed with functions of direction and management of the company.
	If the worker has not the effective control of the company.	<i>RGSS</i>	
	They are employees of the company and the administrator post does mean carrying out the functions of direction and management.	<i>RGSS</i> as assimilated to employees (excluding unemployment protection and that of the Salary Guarantee Fund.	
	The post as administrator means carrying out the functions of direction and management.	<i>RGSS</i> as assimilated to employees (excluding unemployment protection and that of the Salary Guarantee Fund.	
	The post as administrator does not mean carrying out the functions of direction and management.	Non-affiliation in the Social Security system.	

These rules apply as long as the administrator or member of the Board of Directors resides in Spain. In case the administrator resides abroad, the Spanish Social Security would not be applicable.

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- 14 Equality in the workplace**
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/ 14 Equality in the workplace

Companies are obliged to respect equal treatment and opportunities in the workplace, for which they must adopt measures aimed at avoiding any type of labor discrimination between women and men.

Companies with 50 or more workers need to implement and apply an equality plan, with the scope and content established by law, which must be negotiated with the legal representation of the workers.

Equality plans must contain an ordered set of evaluable measures aimed at removing obstacles that impede or hinder the effective equality of women and men. Before establishing the plan, a negotiated diagnosis should be drawn up, where appropriate, with the legal representation of the workers, which will contain at least the following subjects:

- a. Selection and contracting process.
- b. Professional classification.
- c. Training.
- d. Professional promotion.
- e. Working conditions, including the salary audit between women and men.
- f. Co-responsible exercise of the rights of personal, family and work life.
- g. Under-representation of women.

h. Remuneration.

i. Prevention of sexual harassment and because of sex.

In addition, companies must keep a record with the average values of salaries, salary supplements and extra-salary perceptions, disaggregated by sex, professional groups, professional categories or positions of equal value. Employees have the right to access, through the legal representation of workers in the company, the salary record of their company. Where there are no workers' representatives, the employees can only have access to the percentage differences that exist between the averaged remunerations of men and women.

When in a company with at least fifty workers, the average remuneration for workers of one sex is higher than the other by 25% or more, taking the whole of the payroll or the average of the salaries paid, the employer must include in the salary record a justification that said difference responds to reasons not related to the sex of the workers. The wage registry has certain specialties in companies that have an equality plan and, thus, carry out a pay audit (that requires the evaluation of positions and the establishment of a plan to correct the remuneration differences).

The validity period of equality plans may not exceed four years and they are subject to compulsory registration in the Public Register of Collective Agreements and Collective Bargaining Agreements.

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Employers must guarantee the health and safety of their employees but without merely complying with legislation and remedying risk situations, meaning that they have an obligation to perform risk assessments, adopt measures in emergency situations, provide protective equipment and to guarantee the health of employees, including pregnant or breastfeeding women (ensuring they do not perform tasks which could put them or their unborn child/baby at risk).

All employers must have a risk prevention service to provide advice and assistance in prevention tasks and employers must appoint one or more workers to take charge of these activities. At companies with less than 10 workers, this service may be provided directly by the employer, provided that it habitually pursues its business at the workplace and has the necessary capacity to do so. An external risk prevention service may also be used in certain cases.

Failure to comply with occupational risk prevention obligations may give rise administrative, labor, criminal and civil liability.

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Spanish Intellectual Property (“IP”) legislation is consistent with other EU Member States’ IP laws. Spain has ratified the most relevant international treaties in this field, which entails that non-Spanish nationals may obtain protection of their IP rights in Spain, and that Spanish nationals may obtain such protection in virtually every other country in the world.

This Chapter describes the different ways existing to protect IP rights (trade marks, patents, utility models, plant varieties, industrial designs, topographies of semiconductor products, trade secrets, copyright and computer software) in Spain, also focusing on the legal remedies available against IP infringement.

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/ 1 Introduction

1.1 WHAT IS INTELLECTUAL PROPERTY?

Intellectual property (IP) guarantees businesses protection of their intangible assets through the legal recognition of exclusive rights in such assets (copyrights in creative works and industrial property rights in industrial assets, such as trademarks, patents, designs etc.). Before launching in a new market, the company must take the necessary steps to ensure that its intangible assets are correctly managed and protected.

	TRADE SECRETS	TRADEMARKS ®	COPYRIGHT ©	PATENTS- UTILITY MODELS	SPANISH DESIGNS	COMMUNITY DESIGNS
What is protected	Information	Identifiers	Creations	Inventions	Designs	Designs
Duration	It is a <i>de facto</i> right which lasts indefinitely, as long as the information remains secret.	10 years, renewable indefinitely.	70 years from the death of the author.	Patents: 20 years maximum, renewable annually. Utility models: 10 years maximum, renewable annually.	5 years extendible up to 25 years.	Unregistered: 3 years. Registered: 5 years, renewable for up to 25 years.
Protection requirements	(i) Secrecy and confidentiality (ii) it has commercial value because it is secret and (iii) reasonable steps must be adopted by its holder to keep it secret.	Distinctiveness and use.	Originality.	Novelty, useful and non-obvious subject matter.	Novelty and individual character.	Novelty and individual character.

1.2 WHAT IS THE REGISTRATION PRINCIPLE?

In Spain, registration at the relevant industrial property office is a prerequisite to obtain protection of intellectual property (as we will see, this principle does not govern copyright or trade secrets).

Spain, unlike the United States for example, follows the “first-to-file” system, which means that the first person to apply for registration will obtain the relevant rights. Use does not afford any rights against third parties except in the case of well-known marks.

Registration entails payment of the official fees, whose amount will depend on circumstances such as the specific type of right applied for, the number of classes, territory, etc.¹

¹ [Annex I](#) to this chapter includes a list with links to the official fees corresponding to the different types of rights.

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1.3 WHAT IS THE TERRITORIALITY PRINCIPLE?

The principle of territoriality entails that the protection conferred by intellectual property rights is only available, in principle, in the country or countries in which registration has been obtained (or in the case of copyright, in the country where protection is sought).

Thus, the registration of a trademark or a patent in the country of origin by the owner does not confer automatic protection in other countries. Consequently protection must be sought through additional registrations in each relevant country.

1.4 HOW TO OVERCOME THE LIMITS OF TERRITORIALITY?

In order to make it easier to protect intellectual property rights in different territories, Spain has ratified the main international conventions in this area.

With rare exceptions, international intellectual property treaties allow non-Spanish nationals to protect their rights in Spain, and Spanish nationals to enjoy protection in most other countries. Spain's membership of the European Union has also favored Spanish legislation to be in line with that of the rest of EU Member States.

1.5 WHAT ARE THE MOST IMPORTANT CONVENTIONS SIGNED BY SPAIN?

INTERNATIONAL CONVENTION	INTELLECTUAL PROPERTY RIGHTS REGULATED	ORGANIZATION
Agreement on Trade-related aspects of intellectual property rights (TRIPS)	Intellectual Property	World Trade Organization
Paris Convention	Industrial Property	World Intellectual Property Organization (WIPO)
Patent Cooperation Treaty (PCT)	Patents	World Intellectual Property Organization
European Patent Convention	Patents	European Patent Organization
Madrid Agreement	Trademarks	World Intellectual Property Organization
Madrid Protocol	Trademarks	World Intellectual Property Organization
Berne Convention for the Protection of Literary and Artistic Works	Copyright	World Intellectual Property Organization

1.6 CAN INTELLECTUAL PROPERTY RIGHTS BE MARKETED?

Intellectual property rights are assets, and may therefore be assigned, encumbered or transferred by any means provided by Law.

Licenses are the contracts most frequently used in this area, through which a third party is authorized to use the rights granted in exchange for payment.

1.7 WHAT CHANGES ARE EXPECTED IN THE SPANISH INTELLECTUAL PROPERTY LEGISLATION?

A preliminary draft law amending the three main industrial property laws (Law 17/2001, of 7 December, on Trademarks, Law 20/2003, of 7 July, on the Legal Protection of Industrial Design and Law 24/2015, of 24 July, on Patents) was announced last October.

The objective of amending these laws by means of a single legal text is threefold: adapting these laws to the current market reality, making them more coherent and precise, and providing greater legal certainty for the users of the industrial property system.

These amendments are also aimed at adapting the content of the aforementioned laws to the regulatory and interpretative changes that have taken place at international level and, in particular, in neighboring countries. If the preliminary draft goes ahead, it should be approved by the Council of Ministers by means of a final draft in the upcoming months.

In addition, as a result of the entry into force in toto of the First Additional Provision of the Trade Mark Law, the Spanish Patent and Trademark Office (SPTO) will be competent to declare the invalidity or revocation of a trademark as of 14 January 2023.

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/ 2 Trademarks

2.1. WHAT IS A TRADEMARK?

A trademark is an exclusive right in a distinctive sign the main function of which is to distinguish the goods and services of one undertaking from those of its competitors. It also plays an important role in advertising and goodwill consolidation.

2.2. WHAT FACTORS NEED TO BE BORNE IN MIND TO REGISTER A TRADEMARK IN SPAIN?

1. That it is free to be used.
2. That it is free to be registered.
3. That it has no negative connotations, *i.e.* it is commercially suitable.

Before marketing goods or services, it is advisable to verify that no identical or similar mark has been registered previously for identical or similar goods or services, since this could prevent the use of the sign in the relevant territory.

After confirming that no prior third-party rights are being infringed, one of the various procedures for obtaining registration should be chosen in order to secure exclusive rights and prevent the mark from being used by other companies. Obtaining registration also involves assessing that the mark is not generic, deceptive, descriptive or contrary to public policy or accepted principles of morality.

2.3. WHAT ARE THE WAYS OF REGISTERING A MARK IN SPAIN?

- National system.
- International system: [Madrid Agreement/Madrid Protocol](#).
- European Union Trademark.

2.4. HOW DO YOU OBTAIN A SPANISH TRADEMARK?

By filing an application at the Spanish Patents and Trademarks Office ([SPTO](#)).

The application process takes approximately between 6 and 15 months.

Spanish trademarks may consist of words, names or surnames, signatures, numbers and number combinations, slogans, drawings, sounds, colors and three-dimensional shapes, including packaging.

2.5. WHAT CHECKS DOES THE SPTO CONDUCT WHEN IT RECEIVES THE APPLICATION?

The SPTO only examines *ex officio* whether the trademark falls within [absolute grounds for refusal](#) (mainly, that the mark is not generic, misleading, descriptive or contrary to public policy), but does not carry out an examination of [relative grounds for refusal](#), that is, the existence of identical or similar earlier marks registered for identical or similar goods, likely to be confused with the new trademark. Relative grounds for refusal are only examined where the owners of prior marks file an opposition against the trademark application.

In short, the SPTO will not refuse trademarks *ex officio* based on relative grounds, and instead performs a computer search to notify the holders of prior identical or similar signs, for informative purposes only, of the application, in case they are interested in filing an opposition.



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2.6. HOW LONG DOES SPANISH TRADEMARK REGISTRATION LAST?

Trademark registration is valid for **10 years** and can be renewed indefinitely for further ten-year periods. However the registration may lapse or be revoked if the trademark is not renewed, if it is not effectively used during an uninterrupted 5-year period, or if it becomes generic or deceptive in connection with the goods and/or services it covers.

2.7. WHAT IS AN INTERNATIONAL TRADEMARK?

An international trademark is linked to the Madrid system for the international registration of trademarks “Madrid System”, comprising the [Madrid Agreement of 1891](#) and the [Madrid Protocol of 1989](#), and administered by the World Intellectual Property Organization ([WIPO](#)), with headquarters in Geneva.

Although known as “international trademarks”, this is **not strictly speaking** the case since the Madrid system unifies administrative procedures at a single Office, enabling various national registrations to be obtained, but does not offer unitary worldwide protection.

2.8. HOW TO OBTAIN AN INTERNATIONAL TRADEMARK?

The applicant must designate the countries where it wishes to obtain protection from among those countries that have ratified either the Agreement or the Protocol. WIPO subsequently proceeds to notify the national Offices of the designated countries and if no oppositions are filed pursuant to the national laws of each of the countries concerned within one year (pursuant to the Agreement) or 18 months (pursuant to the Protocol), the international trademark will be registered.

Since April 1, 2004 international trademark applications filed under the Madrid system for the international registration of marks may be processed in Spanish.

The application process usually takes between 12 and 20 months.

2.9. WHO CAN FILE AN INTERNATIONAL TRADEMARK?

International trademarks can only be filed by natural or legal persons who have ties to a State that is party to one or both of the treaties (due to nationality, domicile, or real and effective establishment) and may, on the basis of an application filed at the Trademark Office of such State, obtain an international registration effective in all or some of the countries of the Madrid Union.

2.10. WHAT IS AN EU TRADEMARK²?

A EU trademark confers its proprietor the right to prevent unauthorized use of the trademark by third parties throughout the entire European Union, as well as the use of identical or similar signs that could generate a likelihood of confusion among consumers.

Therefore, an undertaking that seeks to market its products or provide its services in Europe, does not have to file an application in each EU Member State, but rather is able to obtain one sole EU registration that automatically gives it exclusive rights in all of them.

Another important advantage of the EU trademark is that no evidence of use is required to obtain registration, and use of a mark in a relevant part of the EU is sufficient to maintain its validity.

The EU trademark does not replace trademark rights in each Member State. The national, international and EU trademark systems coexist and, in some cases, complement each other.

EU trademark infringement actions are brought before EU trademark courts, which are national courts designated by each of the Member States. In Spain, the function of EU trademark court corresponds exclusively to the Commercial Courts of Alicante and, at the appeal stage, to the Eighth Section of the Court of Appeals of Alicante.

2.11. WHO CAN FILE AN EU TRADEMARK?

Any physical or legal person, regardless of its domicile or nationality.

2.12. HOW TO OBTAIN AN EU TRADEMARK?

The EU trademark is administered by the **European Union Intellectual Property Office (EUIPO)**, which is based in Alicante, Spain. The application may be submitted in any of the official languages of the European Union, although the applicant is required to designate a second language out of the EUIPO's five official languages, (German, Spanish, English, Italian and French) which may be used as the language of opposition, revocation or invalidity proceedings.

The application process takes approximately 5 months if there are no oppositions or ex officio objections.

2.13. WHAT CHECKS DOES THE EUIPO CONDUCT WHEN IT RECEIVES THE APPLICATION?

The EUIPO only examines marks on **absolute grounds for refusal** (*i.e.* it mainly verifies that the mark is not descriptive, generic or deceptive in any of the European Union countries).

However, it does not examine applications *ex-officio* on **relative grounds for refusal**, *i.e.* it will not refuse registration on account of the existence of any earlier trademark registrations in the European Union), but rather it is up to the owners of these registrations to file an opposition against such marks at the EUIPO.

² Previously designated as Community Trademark.

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2.14. EU... AND INTERNATIONAL TRADEMARK?

The European Union's accession to the Madrid Protocol connects the registration procedure of an EU trademark application to the [International trademark registration system](#). Thus, any physical or legal person may file an application at the EUIPO not just to protect his mark as an EU trademark but also as an international trademark in the Member States of the Madrid Protocol.

2.15. HOW LONG DOES AN EU TRADEMARK LAST?

10 years. This period can be renewed for further 10-year periods subject to payment of the appropriate fees.

2.16. BREXIT

Following the United Kingdom's (UK) withdrawal from the European Union, European Union trademarks were "cloned" by the United Kingdom Intellectual Property Office (UKIPO) into comparable UK trademarks.

Such comparable UK trademarks were created automatically, in the case of EU trademarks registered as of January 1 2021, or at the request of their owners, in the case of EU trademark applications that were still pending on January 1 2021.

Comparable UK trademarks must be renewed independently of the relevant European Union Trademark. This implies paying separate renewal fees for the equivalent mark on the one hand and for the European Union trademark on the other hand, to be paid separately to the competent Office (UKIPO and EUIPO, respectively).

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/ 3 Protection of inventions in Spain

Inventions may be protected in Spanish law through patents and utility models.

3.1. WHAT IS A PATENT?

Patents are exclusive rights granted by the State to the inventor in his invention for a specific term (**20 years**) on the understanding that once this period has expired, the invention will enter the public domain. Thus society benefits from the technical advantage provided by the invention.

3.2. HOW CAN YOU REGISTER A PATENT IN SPAIN?

In addition to filing a patent application at the [SPTO](#), regional registration systems are also available. Such systems allow the applicant to obtain protection for the invention in one or more countries and each country determines whether or not to protect the patent in its territory pursuant to applicable legislation.

The application process before the SPTO can take a minimum of 30 months.

The patent owner may exploit the invention and prevent third parties from exploiting, marketing, or launching it in the market without consent. While the patent is in force, third parties may only exploit the invention if the owner has granted a license.

3.3. WHAT KINDS OF INVENTIONS ARE PATENTABLE?

In order for an invention to be patentable, it must be new, involve inventive step and be capable of industrial application. Consequently, the three main requirements to obtain a patent are as follows:

- Absolute novelty.
- Inventive step.
- Industrial application.

Scientific discoveries or theories, mathematical methods, literary, scientific, artistic works and any other aesthetic creations, rules and methods of performing a mental act, playing a game or doing business are not considered patentable. Neither is it possible to obtain a patent for inventions that are contrary to public policy, plant varieties (which have their own special legislation) animal breeds, essentially biological processes for the production of plants or animals and the human body.

3.4. ARE BIO-TECHNOLOGICAL INVENTIONS PATENTABLE IN SPAIN?

The Spanish Patents Law includes the legal protection of bio-technological inventions, although clear restrictions are established based on ethics and public policy.

3.5. ARE PHARMACEUTICAL PRODUCTS PATENTABLE IN SPAIN?

In Spain both product and process patents are admitted and pharmaceutical products have been patentable since 1992.

Indeed, the inclusion of the “Bolar clause” or “Bolar exemption” in the Spanish Patent Law refers precisely to pharmaceutical products. According to this clause performing within certain time periods the necessary studies, tests and trials to obtain authorization for generic drugs does not constitute patent infringement.

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Patents are granted for a period of 20 years from the date on which the application is filed. However, a maintenance fee, which is subject to a gradual annual increase, is due yearly.

Once the 20-year period has lapsed, the subject matter of the patent passes into the public domain and may be used by any third party. The Complementary Protection Certificate for pharmaceutical and phytosanitary products, which has been in force since 1998, extends the patent by up to a maximum of five years for the time it took to obtain the relevant administrative authorization, which is essential in order to market such products.

Following the United Kingdom's withdrawal from the European Union, only applications for supplementary protection certificates for plant protection products and medicines (or applications for the extension of such certificates) which were submitted to a UK authority before January 1 2021 will continue to be governed by European Union law.

3.6. WHAT IS A EUROPEAN PATENT?

Since Spain's ratification of the [European Patent Convention](#) (EPC) in 1973, Spain may be designated with a European patent application. European patents are administered by the European Patent Office, based in Munich. Via a single procedure and applying legislation in common (the European Patent Convention), this system allows the registration of a bundle of national patents enforceable in the countries designated by the applicant.

3.7. WHAT IS A UNITARY PATENT?

The long-awaited unitary patent system will provide uniform protection and will have equal effect in all participating Member States. The aim is to provide legal certainty and to reduce the costs of protecting a patent, in order to encourage investment in R+D+i.

A European patent with unitary effect may only be limited, transferred, revoked or lapse in respect of all the participating Member States, but it may be licensed for all or some of those States.

In January 2022, Austria became the thirteenth EU Member State to ratify the Agreement on the Unified Patent Court ("UPC Agreement").

The entry into force of the UPC Agreement will determine the entry into force of Regulation (EU) 1257/2012, which will take place on the first day of the fourth month in which Germany ratifies the UPC Agreement.

If, as expected, Germany's ratification takes place in the forthcoming months, we could expect the unitary patent system to enter into force throughout 2022 or in early 2023.

Spain, together with Poland and Croatia, are not taking part in the system.

3.8. WHAT IS THE PCT?

Spain has ratified the [Patent Cooperation Treaty](#) (PCT) which unifies the initial filing of applications and the performance of search reports which are necessary to determine the novelty of the invention and the inventive step, with a view to reducing costs and simplifying the grant of a patent. However, as opposed to the European patent, registration is granted by each of the relevant national Offices.

3.9. WHAT IS A UTILITY MODEL?

A utility model is a form of protection for inventions which although new and with inventive step, only give the subject matter a configuration, structure, or constitution that results in an advantage, appreciable for its use or manufacture, but with a lower standard of inventiveness.

A lower standard of inventiveness is therefore required for utility models than for patents. They are granted for a non-extradable period of 10 years, and therefore have a shorter term than patents. This system of protection is particularly suitable for protecting tools, objects and devices used for practical purposes. The application process usually takes between 8 and 14 months.

3 (i) Regulation (EU) 1257/2012, of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, (ii) Regulation (EU) 1260/2012, of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements and (iii) Agreement on a Unified Patent Court of February 19, 2013.

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/ 4 Plant varieties

4.1. WHAT ARE PLANT VARIETIES?

Plant varieties constitute a category of intellectual property with a legal status similar to that of patents. A plant variety is a group of plants that are distinguishable from any other group since they have specific features that remain unchanged after repeated propagation processes and can propagate without changing.

In Spain, applications for plant varieties are processed by the autonomous community authorities.

Finally, the Spanish Criminal Code expressly includes the counterfeiting of plant varieties, the unauthorized propagation or multiplication of a plant variety, and the unauthorized use of the name of said varieties as criminal offences, which are punishable with fines, special disqualification and even prison.

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/ 5 Industrial designs

5.1. WHAT ARE INDUSTRIAL DESIGNS?

Industrial designs are industrial property rights that protect the aesthetic appearance of goods rather than their functional novelty. Therefore, the owner of an industrial design has exclusive rights in the appearance of the whole or part of a product (in particular, the lines, contours, colors, shape, texture or materials of the product itself or its ornamentation), if it is novel and has individual character.

5.2. WHAT IS NOVELTY AND INDIVIDUAL CHARACTER?

A design is considered to meet the **novelty** requirement if no other identical design has been made available to the public beforehand. Two designs are deemed to be identical where they only differ in irrelevant aspects.

As far as **individual character** is concerned, a design is considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced by any design that has been made available to the public beforehand.

5.3. HOW CAN YOU OBTAIN PROTECTION IN A DESIGN?

At present there are three procedures through which designs may be protected:

- Spanish system.
- Community designs.
- International system.

5.4. HOW DO YOU OBTAIN A SPANISH DESIGN?

Industrial designs are filed at the [SPTO](#). The application process can take approximately between 6 and 10 months.

The most relevant feature includes the so-called “grace period”, which consists of a 12-month period during which the disclosure of the design by its author or a related third party does not jeopardize the possibility of registration by its lawful owner. The aim of this grace period is to grant the owner of the design a term before registration without such term destroying its novelty.

Once the design has been granted, the owner is entitled to use it and to obtain relief should any third party use it after its grant has been published.

5.5. HOW LONG DOES A SPANISH DESIGN LAST?

Registration is granted for a period of 5 years from the filing date, renewable for further 5-year periods up to a maximum of 25 years.

5.6. HOW DO YOU OBTAIN A COMMUNITY DESIGN?

Community designs are protected in the European Union by [Council Regulation 6/2002⁴](#).

The essential feature of the Community design system is the recognition of exclusive rights throughout the EU, via a dual system of protection: registered and unregistered designs. In both cases the design must meet the requirements of novelty and individual character.

⁴ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

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A registered community design is filed at the OHIM. The application process is very fast, it can take six days, but there is not a fixed term for third parties opposition.

Once granted confers its owner the exclusive right to use and prevent use of said design by unauthorized third parties.

5.7. HOW LONG DOES A COMMUNITY DESIGN LAST?

Registration is granted for a period of 5 years from the filing date, renewable for further 5-year periods up to a maximum of 25 years.

5.8. WHAT DOES AN UNREGISTERED COMMUNITY DESIGN CONSIST OF?

An unregistered Community design is a form of protection under Community legislation, through which rights are acquired automatically without the need for filing, simply by disclosing the products to which the design is applied.

Protection of an unregistered Community design is restricted to a period of three years from the date on which the design was first made available to the public within the EU. These types of designs are particularly advantageous for those commercial sectors, such as the fashion industry, which produce short-lived designs and in which the three-year protection period without the need for registration is sufficient and reasonable.

5.9. BREXIT

On January 1 2021, Community designs were replaced by equivalent rights in the United Kingdom, in a similar manner to that indicated for European Union Trademarks ([see section 2.16](#)).

Holders of unregistered Community designs will continue to enjoy the protection conferred on them by European Union law, becoming holders of an enforceable intellectual property right in the United Kingdom. The term of protection of such right would be equivalent to the term of protection remaining under EU law.

5.10. HOW DO YOU OBTAIN AN INTERNATIONAL DESIGN?

There is an international registration system consisting of filing the application at the World Intellectual Property Organization ([WIPO](#)), pursuant to the Hague Agreement.

Through this treaty nationals of the contracting states of the Hague Agreement can obtain protection for their designs in all those states by filing those designs — or a graphic reproduction pursuant to WIPO requirements— at WIPO'S headquarters in Geneva.

A single application is sufficient to protect the design in the member States, subject to the conditions envisaged in each national legislation.

The European Union's accession to the Hague Agreement on January 1, 2008, means that the applicants of an international design may designate the 28 EU Member States with a single application and also base the application for an international design on a Community design. This is aimed at simplifying registration procedures, reducing the costs deriving from the international protection of designs and simplifying the management of such rights.

Spanish is one of the working languages of The Hague System, which means on the one hand that it is an excellent tool for the international protection of Spanish companies' designs, and on the other acts as an incentive to attract more Spanish-speaking Member States to the System.

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/ 6 Topographies of semiconductor products

6.1. WHAT ARE TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS?

Spanish legislation grants a period of protection of 10 years for topographies of semiconductor products, (integrated semi-conductor circuits known as “chips”). The subject-matter of protection is not the integrated circuit itself but the way in which it is physically mounted, that is, the physical arrangement of all its elements.

6.2. HOW DO YOU OBTAIN TOPOGRAPHIES OF SEMICONDUCTOR PRODUCTS?

In order for the [SPTO](#) to grant protection of the semiconductor product, the topography must be the result of the creator's own intellectual efforts and must not be commonplace in the semiconductor industry, that is, the [law](#) requires originality and creativity⁵.

⁵ The governing provisions are to be found in Law 11/1988, the result of the transposition to Spanish law of Directive 87/54/EEC of December 16, 1986.

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/ 7 Copyright

7.1. WHAT IS COPYRIGHT?

Copyright generates various types of rights, economic rights and “moral” rights. Moral rights cannot be waived or assigned and they entitle the author to decide, *inter alia*, whether his work is to be published and to demand acknowledgement as author of the work. Consequently, economic or exploitation rights can be traded and transferred to third parties.

All original literary, artistic or scientific works which are original are protected by copyright, in particular, books, music compositions, audiovisual works, projects, plans, graphics, computer programs and databases. The [Copyright Law](#)⁶ also grants related rights to performers, phonogram producers, producers of audiovisual recordings and broadcasting organizations.

7.2. HOW DO YOU OBTAIN COPYRIGHT PROTECTION?

In Spain, copyright protection is automatic, since it exists from the very moment the work is created. However, it is also possible to register the work on the Copyright Register in order to obtain stronger evidence vis-à-vis third parties.

The application for registration in the Copyright Registry requires payment of the corresponding fees to the Provincial Registry in question. The time for the Registry to issue a decision is approximately 6 months.

7.3. WHO OWNS THE RIGHTS?

In Spain, the rights are always owned by the author of the work, unless the work was created in the course of an employment relationship, is a collective work or the rights are assigned to a third party.

7.4. HOW LONG DOES COPYRIGHT PROTECTION LAST?

Copyright protection is granted for 70 years from the death of the author, where the author is a natural person. For authors deceased before 7 December 1987, copyright protection shall last 80 years from their death. In those cases in which the author is a legal person, the term of protection is 70 years from January 1 of the year following that in which the work was lawfully published, or following the year of its creation, if the work has not been published.

⁶ In Spain, copyright is governed by Legislative Royal Decree 1/1996 of April 12, 1996. In addition, Spain is party to the Berne Convention for the Protection of Literary and Artistic Works.

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/ 8 Unfair competition

8.1. WHAT DOES UNFAIR COMPETITION CONSIST OF?

Any conduct objectively contrary to good faith is deemed to be unfair. The amendments introduced by Law 29/2009 significantly extend the scope of consumer protection, whereby in relations between businesses or professionals and consumers, there are two requirements for behavior to be deemed unfair: that the behavior of the business or professional be contrary to professional diligence and capable of significantly distorting the economic behavior of the average consumer. Intellectual property can often be protected via unfair competition legislation.

8.2. WHAT ACTS ARE DEEMED UNFAIR?

Unfair competition torts include acts of confusion, misleading acts and omissions, aggressive acts, acts of denigration, comparison, imitation, exploitation of a third party's reputation, violation of trade secrets, incitement to breach of contract, infringement of laws relating to discrimination and selling at a loss. The 2009 reform also considers the breach of industry codes of conduct to which businesses have freely adhered, an act of unfair competition.

Unfair competition regulations also include the protection of know-how by deeming unfair the disclosure or exploitation, without the consent of their proprietor, of industrial or business secrets obtained lawfully, in the understanding that they would be kept confidential.

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/ 9 Trade secrets

9.1. WHAT IS A TRADE SECRET?

Although there are many similarities with intellectual property rights, a trade secret does not fall within this category. The intangible asset which is protected is information.

Information, relating to any part of the business (including technological, scientific, industrial, commercial, organizational or financial areas), may constitute a trade secret, provided it meets three requirements:

1. It must be secret, meaning that it is not generally known among or readily accessible to persons within the circles that normally deal with it.
2. It must have commercial value because it is secret.
3. Reasonable steps must be adopted by its holder to keep it secret.

The protection of trade secrets is regulated in the [Trade Secrets Law 1/2019, of February 20, 2019 \(TSL\)](#).

9.2. HOW LONG DOES A TRADE SECRET LAST?

Since it is a *de facto* right it lasts indefinitely, as long as the information remains secret.

9.3. HOW CAN SENSITIVE BUSINESS INFORMATION BE PROTECTED?

Among other measures, it is important that companies have an adequate level of cybersecurity protection, that they

implement appropriate confidentiality obligations in their contracts with employees and third parties (manufacturers, suppliers, distributors, etc.) and that they establish restrictions on staff access to restricted areas where confidential documents are kept.

9.4. WHAT STEPS ARE CONSIDERED UNLAWFUL UNDER THE TRADE SECRETS LAW?

The acquisition of a trade secret without the consent of its holder is considered unlawful when it is carried out by unauthorized access to, appropriation of, or copying of any medium containing the trade secret or from which the trade secret can be deduced; or any other conduct which is considered contrary to honest commercial practices.

Additionally, the use or disclosure of a trade secret will be considered unlawful whenever carried out without the consent of the trade secret holder, if the trade secret had been acquired unlawfully or with a breach of a confidentiality or similar duty.

Moreover, the TSL prohibits the production, offering, placing on the market of products that significantly benefit from trade secrets unlawfully acquired.

9.5. IS A TRADE SECRET TRANSFERABLE?

Yes. Like intellectual property rights, trade secrets may be assigned and licensed on an exclusive or non-exclusive basis.

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/ 10 Action against infringement of intellectual property rights

The owner of intellectual property rights may take both civil and criminal action against those that infringe its rights in Spain:

10.1. CIVIL ACTIONS

The procedure for bringing action before the Civil Courts is governed by the Civil Procedure Law, which establishes the ordinary trial as the procedural means for the trademark owner to defend its rights against third parties.

The IP owner whose rights have been infringed may claim:

- The cessation of the infringing acts.
- Damages.
- Seizure of the infringing goods.
- To be awarded the seized objects or their means of production.
- The adoption of necessary steps to prevent the continuation of the infringement.
- Publication of the judgment against the infringer.

The owner of the rights may also seek injunctive relief to ensure the effectiveness of the available actions.

10.2. CRIMINAL ACTIONS

Industrial property rights are also covered by criminal law.

In addition to activities related to the marketing, use, manufacture and imitation of inventions and distinctive signs without the IP owner's consent, the Criminal Code also includes the counterfeiting of plant varieties and parallel imports.

Another aspect that should be underscored is the extension of the grounds for determining that an offense is particularly serious. In this regard the Criminal Code establishes sterner penalties consisting of imprisonment (from one to four years), a fine (from twelve to twenty-four months) and special disqualification from practicing the profession related to the offence committed (for a period ranging from two to five years).

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B) Patents and Utility models

1. [National Patent and Utility Model.](#)
2. [European Patent.](#)
3. [PCT.](#)

C) Industrial designs

1. [National Design.](#)
2. [Community Design.](#)
3. [International Design.](#)

D) [Topographies of semiconductor products](#)

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Afghanistan	X	X		X					X
African Intellectual Property Organisation (OAPI)				X				X	
Albania	X	X	X	X		X	X	X	X
Algeria	X	O	X	X		X			X
Andorra	X	O							X
Angola	X	X				X			
Antigua and Barbuda	X	X		X		X			X
Argentina	X	X							X
Armenia	X	X	X	X		X		X	X
Australia	X	X		X		X			X
Austria	X	X	X	X	X	X	X		X
Azerbaijan	X	O	X	X		X		X	X
Bahamas	X	O							X
Bahrain	X	X		X		X			X
Bangladesh	X	X							X
Barbados	X	X				X			X
Belarus	X	O	X	X		X		X	X
Belgium	X	X	X	X	X	X	X	X	X

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- ¹ WTO: World Trade Organization
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Belize	X	X				X		X	X
Benin	X	X				X		X	X
Bhutan	X	O	X	X					X
Bolivia	X	X							X
Bosnia and Herzegovina	X	O	X	X		X	E	X	X
Botswana	X	X		X		X		X	X
Brazil	X	X		X		X			X
Brunei	X	X		X		X		X	X
Bulgaria	X	X	X	X	X	X	X	X	X
Burkina Faso	X	X				X			X
Burundi	X	X							X
Cambodia	X	X		X		X	V	X	X
Cameroon	X	X				X			X
Canada	X	X		X		X		X	X
Cape Verde		X				X			X
Central African Republic	X	X				X			X
Chad	X	X				X			X
Chile	X	X		X ⁷		X		X	X
China	X	X	X	X		X			X
Colombia	X	X		X		X			X
Comoros	X	O				X			X
Congo	X	X				X			X
Cook Islands									X
Costa Rica	X	X				X			X
Côte d'Ivoire	X	X				X		X	X
Croatia	X	X	X	X	X	X	X	X	X
Cuba	X	X	X	X		X			X
Curaçao		O							
Cyprus	X	X	X	X	X	X	X		X

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Czech Republic	X	X	X	X	X	X	X		X
Democratic People's Republic of Korea	X		X	X		X		X	X
Democratic Republic of the Congo	X	X							X
Denmark	X	X		X	X	X	X	X	X
Djibouti	X	X				X			X
Dominica	X	X				X			X
Dominican Republic	X	X				X			X
Ecuador	X	X				X			X
Equatorial Guinea	X	O				X			X
Egypt	X	X	X	X		X		X	X
El Salvador	X	X				X			X
Estonia	X	X		X	X	X	X	X	X
Ethiopia		O							
European Communities		X		X				X	
Fiji		X							X
Finland	X	X		X	X	X	X	X	X
France	X	X	X	X	X	X	X	X	X
Gabon	X	X				X		X	X
Gambia	X	X		X		X			X
Georgia	X	X		X		X		X	X
Germany	X	X	X	X	X	X	X	X	X
Ghana	X	X		X		X		X	X
Greece	X	X		X	X	X	X	X	X
Grenada	X	X				X			X
Guatemala	X	X				X			X

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Guinea	X	X				X			X
Guinea-Bissau	X	X				X			X
Guyana	X	X							X
Haiti	X	X							X
Honduras	X	X				X			X
Hong Kong		X							
Hungary	X	X	X	X	X	X	X	X	X
Holy See	X	O							X
Iceland	X	X		X		X	X	X	X
India	X	X		X		X			X
Indonesia	X	X		X		X			X
Iran, (Islamic Republic of)	X	O	X	X		X			
Iraq	X	O				X			
Ireland	X	X		X	X	X	X		X
Israel	X	X		X		X		X	X
Italy	X	X	X	X	X	X	X	X	X
Jamaica	X	X		X		X		X	X
Japan	X	X		X		X		X	X
Jordan	X	X				X			X
Kazakhstan	X	X	X	X		X			X
Kenya	X	X	X	X		X			X
Kiribati	X								X
Kuwait	X	X				X			X
Kyrgyzstan	X	X	X	X		X		X	X
Laos	X	X		X		X			X
Latvia	X	X	X	X	X	X	X	X	X
Lebanon	X	O							X
Lesotho	X	X	X	X		X			X
Liberia	X	X	X	X		X			X

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Libya	X	O				X			X
Liechtenstein	X	X	X	X		X	X	X	X
Lithuania	X	X		X	X	X	X	X	X
Luxembourg	X	X	X	X	X	X	X	X	X
Macao		X							
Madagascar	X	X		X		X			X
Malawi	X	X		X		X			X
Malaysia	X	X		X		X			X
Maldives		X							
Mali	X	X				X		X	X
Malta	X	X			X	X	X		X
Mauritania	X	X				X			X
Mauritius	X	X							X
Mexico	X	X		X		X		X	X
Micronesia									X
Monaco	X		X	X		X	X	X	X
Mongolia	X	X	X	X		X		X	X
Montenegro	X	X	X	X		X	E	X	X
Morocco	X	X	X	X		X	V	X	X
Mozambique	X	X	X	X		X			X
Myanmar		X							
Namibia	X	X	X	X		X		X	X
Nauru									X
Nepal	X	X							X
New Zealand	X	X		X		X			X
Nicaragua	X	X				X			X
Niger	X	X				X		X	X
Nigeria	X	X				X			X
Niue									X
Norway	X	X		X		X	X	X	X

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Oman	X	X		X		X		X	X
Pakistan	X	X		X					X
Panama	X	X				X			X
Papua New Guinea	X	X				X			
Paraguay	X	X							X
Penghu, Kinmen and Matsu (Customs Territory other than Taiwan)		X							
Peru	X	X				X			X
Philippines	X	X		X		X			X
Poland	X	X	X	X	X	X	X	X	X
Portugal	X	X	X	X	X	X	X		X
Qatar	X	X				X			X
Republic of Korea	X	X		X		X		X	X
Republic of Macedonia (the former Yugoslav Republic of Macedonia)	X	X	X	X		X	X	X	X
Republic of Moldova	X	X	X	X		X	V	X	X
Romania	X	X	X	X	X	X	X	X	X
Russian Federation	X	X	X	X		X		X	X
Rwanda	X	X		X		X		X	X
Saint Kitts and Nevis	X	X				X			X
Saint Vincent and the Grenadines	X	X				X			X
Saint Lucia	X	X		X		X			X

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- 7 O: Observer Governments which should commence negotiations for admission within 5 years of becoming observers.
- 8 V: Non-Member States in which a European patent may be validated

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Intellectual property law



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COUNTRY	IP		TRADEMARKS			PATENTS		DESIGNS	COPYRIGHT
	PARIS CONVENTION	WTO ¹ (TRIP'S) ²	MADRID AGREEMENT	MADRID PROTOCOL	EUTM ³	PCT ⁴	EPC ⁵	HAGUE AGREEMENT	BERNE AGREEMENT
Samoa	X	X				X		X	X
San Marino	X		X	X		X	X	X	X
Sao Tome and Prince	X	O		X		X		X	X
Saudi Arabia	X	X				X			X
Senegal	X	X				X		X	X
Serbia	X	O	X	X		X	X	X	X
Seychelles	X	X				X			
Sierra Leone	X	X	X	X		X			
Singapore	X	X		X		X		X	X
Solomon Islands		X							X
Somalia		O							
Slovakia	X	X	X	X	X	X	X		X
Slovenia	X	X	X	X	X	X	X	X	X
South Africa	X	X				X			X
South Sudan		O							
Spain	X	X	X	X	X	X	X	X	X
Sri Lanka	X	X				X			X
Sudan	X	O	X	X		X			X
Suriname	X	X						X	X
Swaziland	X	X	X	X		X			X
Sweden	X	X		X	X	X	X		X
Switzerland	X	X	X	X		X	X	X	X
Syria	X	O		X		X		X	X
Tajikistan	X	X	X	X		X		X	X
Thailand	X	X		X		X			X
The Netherlands	X	X	X	X	X	X	X	X	X
Timor-Leste		O							
Togo	X	X				X			X
Tonga	X	X							X

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- 1 WTO: World Trade Organization
- 2 TRIP'S: Trade-Related aspects of Intellectual Property Rights
- 3 EUTM: European Union Trademark (formerly Community trademark)
- 4 PCT: Patent Cooperation Treaty
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Trinidad and Tobago	X	X	X	X		X			X
Tunisia	X	X		X		X	V	X	X
Turkey	X	X		X		X	X	X	X
Turkmenistan	X	O		X		X		X	X
Tuvalu									X
Uganda	X	X				X			X
Ukraine	X	X	X	X		X		X	X
United Arab Emirates	X	X		X		X			X
United Kingdom	X	X		X		X	X	X	X
United Republic of Tanzania	X	X				X			X
United States of America	X	X		X		X		X	X
Uruguay	X	X							X
Uzbekistan	X	O		X		X			X
Vanuatu		X							X
Venezuela	X	X							X
Viet Nam	X	X	X	X		X		X	X
Yemen	X	X							X
Zambia	X	X		X		X			X
Zimbabwe	X	X		X		X			X

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