

Spanish Municipal Legislation Concerning Matters of Private International Law, 2008¹

I. SOURCES OF PRIVATE INTERNATIONAL LAW

II. INTERNATIONAL JURISDICTION

– Royal Decree 863/2008, of 23 May, approving the Implementing Regulation of Law 32/2003, of 3 November, General Law on Telecommunications, regarding the use of the radio-electric public domain (*BOE* n. 138, 7.06.08).

Note: Art. 20 a) 5 provides for mandatory submission to the Spanish courts by aliens who apply for a licence that would allow exclusive use of the radio-electric public domain.

III. PROCEDURE AND JUDICIAL ASSISTANCE

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS AND DECISIONS

– Law 1/2008, of 4 December, on execution in the European Union of decisions imposing financial penalties (*BOE* n. 293, 5.12.08).

Note: This Law transposes Council Framework Decision 2005/214/JHA, of 24 February 2005, on application of the principle of mutual recognition to financial penalties, into Spanish law. Its scope of applicability is limited to firm decisions imposing payment of a financial penalty on a natural or legal person resulting from the commission of a criminal offence or administrative infraction, and provides in the latter case that any such penalties may be appealed to a criminal jurisdictional body.

– Organic Law 2/2008, of 4 December, amending Organic Law 6/1985, of 1 July, on the Judiciary, supplementary to the Law on Execution in the European Union of Decisions Imposing Financial Sanctions (*BOE* n. 293, 5.12.08).

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Note: As its name indicates, this provision is supplementary to the previous one and establishes the courts with the appropriate jurisdiction to implement it.

V. INTERNATIONAL COMMERCIAL ARBITRATION

– Royal Decree 231/2008, of 15 February, regulating the Consumer Arbitration System (*BOE* n. 48, 25.02.08).

Note: See Art. 33–3rd (law applicable to international consumer arbitration), and Art. 34–1st a) (submission of applications).

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

VII. NATIONALITY

– Royal Decree 1792/2008, of 3 November, on granting Spanish citizenship to volunteers who joined the International Brigades (*BOE* n. 277, 17.11.08).

Note: See Art. 18 (granting of Spanish citizenship to International Brigades volunteers) of Law 52/2007, of 26 December, recognizing and extending rights and establishing measures for persons who suffered persecution or violence during the Spanish Civil War and the dictatorship (see Section VII of the Chronicle in the 2007 Yearbook). See also Royal Decree 39/1996, of 19 January, on granting Spanish citizenship to persons who were members of the International Brigades during the Spanish Civil War (see Section VII of the Chronicle in the 1995 and 1996 Yearbooks).

– Instruction of 4 November 2008, by the Directorate General for Registries and the Notarial Corps, on the right to Spanish citizenship set forth under the Seventh Additional Provision of Law 52/2007, of 26 December (*BOE* n. 285, 26.11.08).

Note: The Seventh Additional Provision of Law 52/2007, of 26 December, recognizing and extending rights and establishing measures in favour of persons who suffered persecution or violence during the Spanish Civil War and the dictatorship (see Section VII of the Chronicle in the 2007 Yearbook), temporarily recognizes the entitlement to Spanish citizenship of persons whose father or mother was an original Spanish national, as well as the grandchildren of persons who lost or had to renounce Spanish citizenship as a consequence of exile after the Spanish Civil War from 1936 to 1939.

VIII. ALIENS, REFUGEES AND CITIZENS OF EUROPEAN COMMUNITY

– Resolution of 26 December 2007, by the Secretariat of State for Immigration and Emigration, providing for publication of the Council of Ministers Agreement of 21 December 2007 regulating the contingent of non-EU alien workers in Spain for 2008 (*BOE* n. 11, 12.01.08; *errata* correction *BOE* n. 68, 19.03.08).

– Royal Decree 323/2008, of 29 February, amending Royal Decree 2062/1999, of 30 December, regulating the minimum level of training required in the maritime trades (*BOE* n. 65, 15.03.08).

Note: See the new text of Art. 2.33rd of Royal Decree 2062/1999 (accreditation issued by a Member State of the European Union or the European Economic Space) and of Art. 10.8th of Royal Decree 2062/1999 (periods aboard foreign training ships).

– Order TAS/711/2008, of 7 March, amending Order TAS/2698/2006, of 22 November, regulating the registration of non-community alien workers in the Public Employment Service and Placement Agencies (*BOE* n. 66, 17.03.08).

– Royal Decree 382/2008, of 14 March, amending the General Regulation on membership and promotion in the Armed Forces, approved by Royal Decree 1735/2000, of 20 October (*BOE* n. 82, 4.04.08).

Note: Of particular interest is the Second Additional Provision of this Regulation (Access by alien nationals to join the Military Health Corps).

– Resolution of 31 March 2008, of the Public State Employment Service, issuing the Catalogue of hard-to-fill occupations for the second quarter of 2008 (*BOE* n. 96, 21.04.08).

– Order INT/2058/2008, of 14 July, amending the Order by the Ministry of Home Affairs of 7 February 1997, regulating the Alien Identification Card, as regards the Alien Identification Number (*BOE* n.170, 15.07.08).

– Resolution of 27 June 2008, by the Public State Employment Service, issuing the Catalogue of hard-to-fill occupations for the third quarter of 2008 (*BOE* n. 173, 1.07.08).

– Resolution of 1 October 2008, by the Public State Employment Service, issuing the Catalogue of hard-to-fill occupations for the fourth quarter of 2008 (*BOE* n. 254, 21.10.08).

– Royal Decree 1837/2008, of 8 November, transposing Directive 2005/36/EC of the European Parliament and the European Council of 7 September 2005, and Directive 2006/100/EC of the European Council of 20 November 2006, on recognition of occupational qualifications and certain aspects of the practice of the legal profession, into Spanish law (*BOE* n. 280, 20.11.08).

Note: This provision transposes European Parliament and Council Directive 2005/36/EC, of 7 September 2005, on recognition of professional qualifications, and European Council Directive 2006/100/EC, of 20 November 2006, that adapts certain Directives on the free circulation of people, after accession by Bulgaria and Romania to the European Union.

The First Final Provision amends Royal Decree 607/1986, of 21 March, providing for the free provision of lawyers' services, as amended by Royal Decree 1062/1988, of 16 September. And, the same is done in the Second Final Provision as regards Royal Decree 936/2001, of 3 August, that regulates the permanent practice of the legal profession in Spain with a professional degree from another Member State of the European Union (see Part VIII of the 2001 and 2002 Yearbooks).

IX. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

– Royal Decree 1720/2007, of 21 December, approving the Implementing Regulation of Organic Law 15/1999, of 13 December, on personal data protection (*BOE* n. 17, 19.01.08).

Note: Of particular interest to this Chronicle is Art. 3.1, b), which sets forth the applicability of the Regulation when the person in charge of processing personal data is not established in Spanish territory but is subject to Spanish law under the rules of International Public Law. Also of interest are the provisions relating to the import of personal data and international data transfer: Art. 5.1st, ñ) and s); Art. 54, e); Art. 55.2nd; Art. 60.2nd; Art. 73.2nd, e); Arts. 65 to 70; Arts. 137 to 144.

– Royal Decree 230/2008, of 15 February, regulating the General Council on Spanish Citizenship Abroad (*BOE* n. 41, 16.02.08; *correction of errors* *BOE* n. 80, 2.04.08).

Note: Art. 10 of Law 40/2006, of 14 December, the Spanish Citizenship Abroad Statute provides for the creation of this General Council (see Section IX of the Yearbook).

– Royal Decree 1123/2008, of 4 July, on diplomatic passports (*BOE* n. 165, 9.07.08; *and corr. of errors* *BOE* n. 170, 15.07.08).

Note: This provision abolishes the previous regulation on the subject contained in Royal Decree 1023/1984, of 23 May, on diplomatic passports.

– Resolution of 27 August 2008 by the Electoral Census Office, on claims and consultation of registration data and other aspects of Electoral Census management (*BOE* n. 209, 29.08.08).

Note: Of interest are Instructions 1.1, 2.1, 2.2, 2.3, 3.1.a) and Fourth, that regulate certain aspects of the Census relating to residents abroad and alien residents of Spain.

X. FAMILY LAW

– Instruction of 28 May 2008, by the Directorate General for Registries and the Notarial Corps, on the functioning and organization of delegated Civil Registries under Justice's Courts and their computerization (*BOE* n. 146, 17.06.08).

Note: This provision contains references to actions formalized abroad that are subject to registration (see the fourth directive and different registry entries contained in the annexes).

– Law 12/2008 of the Valencian Community, of 3 July, on comprehensive protection of children and adolescents in the Valencian Community (*BOE* n. 200, 19.08.08).

Note: Of special interest in this provision are Art. 4, letter *a*), Art. 5.1, Art. 7, paras. 1 and 4, Art. 162.2 and Art. 163.1, letter *g*), all relating to respect for and consideration of international rules. Art. 30.3, created the «International Children's Unit» with powers in the area of international adoption and immigration. Art. 63, deals with alien children who are in the Valencian Community. Art. 123, letter *b*), Art. 125, Art. 126, paras. 1, 3 and 4 and Art. 127.1, contain specific provisions for cases of international adoption.

XI. SUCCESSIONS

XII. CONTRACTS

– Royal Decree 103/2008, of 1 February, amending Royal Decree 225/2006, of 24 February, regulating certain aspects of distance sales and inclusion in the registry of distance sales companies (*BOE* n. 46, 22.02.08).

Note: The new Art. 10 of Royal Decree 225/2006 regulates procedures for sanctioning foreign companies directly registered in the Distance Sales Register of the Ministry of Industry, Tourism and Trade, taking into account the sanctioning authority of the Autonomous Community in this area.

– Law 2/2008, of 23 December, on the General State Budget for 2009 (*BOE* n. 309, 24.12.08).

Note: The 32nd Additional Provision sets forth the 2009 ceiling for new policy coverage that can be insured and distributed by the *Compañía Española de Seguros de Crédito a la Exportación, Sociedad Anónima* (CESCE, Spanish acronym for Spanish Export Credit Insurance Company).

XIII. TORTS

– Royal Decree 1795/2008, of 3 November, setting forth rules for civil liability coverage of bunker oil pollution damages (*BOE* n. 278, 18.11.08).

Note: The purpose of this provision is to set forth rules to implement the International Convention on Civil Liability for Bunker Oil Pollution, done in London on 23 March 2001 and ratified by Spain on 10 December 2003, and whose entry into force is scheduled for 21 November 2008. Furthermore, given the similarity between the insurance coverage and/or financial guarantees under said Convention and what is set forth in Royal Decree 1892/2004, of 10 September, that estab-

lishes rules for the implementation of the 1992 International Convention on Civil Liability for Oil Pollution of the Sea (see Section XIII of the Chronicle of the 2004 Yearbook), this rule amends Royal Decree 1892/2004 to bring it into line with procedures as regulated for issuing certificates accrediting the existence of an insurance policy or financial guarantee.

– Royal Decree 2090/2008, of 22 December, approving the Regulation on partial implementation of Law 26/2007, of 23 October, on Environmental Liability (*BOE* n. 308, 23.12.08).

Note: This provision implements Chapter IV of Law 26/2007, of 23 October, on Environmental Liability, in reference to the obligation of certain operators to provide a financial guarantee enabling them to meet the inherent environmental liability of activity in which they intend to engage. Of special interest is the Fifth Additional Provision that refers to recognition of financial environmental liability guarantees from another Member State of the European Union.

XIV. PROPERTY

– Royal Decree 1431/2008, of 29 August, amending certain regulatory provisions regarding industrial property (*BOE* n. 223, 15.09.08).

Note: The following are of special interest in this provision: elimination from the Regulation of the Law on Trademarks of mandatory designation of a domicile in Spain for notification purposes by parties involved in proceedings at the Spanish Patent and Trademark Office in which they are acting alone and do not have a domicile or office in Spain; amendment of Art. 4.1.b) of the Regulation of the Law on Patents and Trademarks and the Second Additional Provision of the Regulation of the Law on Legal Protection of Industrial Designs extending to patents and designs the same notification system that exists for trademarks in all cases in which the address of the interested party is outside Spain; determination of time limits for responding to questions that arise in processing international trademarks and for representations to the Spanish Office of Patents and Trademarks; amendment of Art. 29 of the Law on Patents to broaden the content of the report on the state of technology by using the model that is in general use for all patents applied for in Europe for use in Spain and for research services offered by the Spanish Office of Patents and Trademarks as the Authority in charge of international research under the system established by the Patent Cooperation Treaty; amendment of Arts. 7 and 8 of Royal Decree 2424/1986 on the application of the Convention on the Grant of European Patents, introducing a new European patent limitation procedure that is centralized at the European Patent Office, and regulating its Spanish-language presentation.

– Law 3/2008, of 23 December, regarding the right of the author of an original work of art to share in profits (*BOE* n. 310, 25.12.08).

Note: This provision recognizes the right of the author of works of graphic or plastic art to receive from the seller a share of the re-sale price of such works of

art when sold again after the first sale by the author. Of special interest is Art. 2.2, that establishes the personal scope of application of the Law.

XV. COMPETITION LAW

– Royal Decree 261/2008, of 22 February, approving the Regulation in Defence of Competition (*BOE* n. 50, 27.02.08).

Note: Of interest to this Chronicle are the following provisions related to community regulations on competition: Art. 7–3, Art. 8–1, Art. 15, Art. 38–2, Art. 39–5, Art. 45–5, Art. 48, Art. 60–5 and Art. 64.

XVI. INVESTMENTS AND FOREIGN EXCHANGE

– Order EHA/114/2008, of 29 January, regulating compliance by Notaries with certain obligations to prevent money laundering (*BOE* n. 27, 31.01.08).

Note: This provision specifies the way Notaries are to fulfil their obligations in regard to client identification, document preservation, screening and evaluation procedures, and reporting to competent authorities, aimed at preventing money laundering.

– Resolution of 3 April 2008, by the Directorate General of Trade and Investment, amending Resolution 21 of February 2002, in regard to forms D-4, Annual Report on investment development in Spanish corporations with foreign stakeholders and subsidiaries, and D-8, Annual Report on investment development abroad (*BOE* n. 99, 24.04.08; *corr. of errors* *BOE* n. 127, 26.05.08).

– Resolution of 10 September 2008, by the Directorate General of Treasury and Financial Policy, issuing the Agreement of 14 July 2008, by the Commission for the Prevention of Money Laundering and Monetary Offences, determining jurisdictions that may establish requirements equivalent to those established by Spanish law to prevent money laundering. (*BOE* n. 238, 2.10.08).

– Royal Decree 1804/2008, of 3 November, in development of Law 36/2006, of 29 November, on Measures to prevent tax fraud, amending the Regulation on the application of the tax regime for not-for-profit entities and tax incentives for patronage, approved by Royal Decree 1270/2003, and amending and approving other tax regulations (*BOE* n. 278, 18.11.08; *corr. of errors* *BOE* n. 303, 17.12.08).

Note: Of interest is Article 1, number Two, which amends Art. 177 of the Regulation on the Organization and System of the Notarial Corps, which sets forth the possibility of determining the price or amount of fees in foreign currency or securities.

– Law 2/2008, of 23 December, on the 2009 General State Budget (*BOE* n. 309, 24.12–08).

Note: Additional Provision 31 sets forth the 2009 funding allotment for promoting Spanish investment abroad.

XVII. FOREIGN TRADE LAW

– Order SCO/362/2008, of 4 February, amending Order SCO/256/2007, of 5 February, establishing detailed clinical best practice directives and requirements for authorising the manufacture or import of medicines whose use in human beings is being researched (*BOE* n. 41, 16.02.08).

– Order ITC/426/2008, of 13 February, on the system for controlling the import of hemp seed not for sowing (*BOE* n. 46, 22.02.08).

– Royal Decree 339/2008, of 29 February, adopting import control measures for certain products in regard to applicable product safety rules (*BOE* n. 62, 12.03.08).

– Order PRE/696/2008, of 7 March, included in Annex I of Royal Decree 2163/1994, of 4 November, implementing the harmonised community authorisation system for trade in and use of plant health products, active substances dimethoate, dimethomorph, glufosinate, metribuzine, phosmet, propamocarb, beflubutamide, *spodoptera exigua* nuclear polyhedrosis virus, ethoprophos, pirimiphos methyl and fipronil, as well as regarding the expiration of the deadline for inclusion of active substances azoxystrobin, imazalil, kresoxyme-methyl, spiroxamine, azimsulfuron, prohexadione-calcium and fluroxypyr (*BOE* n. 65, 15.03.08).

– Order ITC/822/2008, of 19 February, amending the annexes of Royal Decree 1782/2004, of 30 July, approving the Regulation to control foreign trade in defence materiel, other materiel and dual use products and technologies (*BOE* n. 76, 28.03.08).

Note: This provision amends the Annexes of Royal Decree 1782/2004, of 30 July, approving the Regulation on the control of foreign trade in defence and other materiel and dual use products and technologies (see this Section of the Chronicle for the 2004 Yearbook). It also abolishes Order ITC/713/2007, of 15 March, amending Annex I of Royal Decree 1782/2004, of 30 July.

– Circular of 10 April 2008, by the Secretariat General for Foreign Trade, regarding the procedures for and processing of goods exports and their trade regimes (*BOE* n. 105, 1.05.08).

– Order ARM/2505/2008, of 28 August, amending Annexes I, II, III and IV of Royal Decree 58/2005, of 21 January, adopting measures to protect against the introduction and dissemination in national and European Community territory of organisms that are harmful to plants or plant products, as well as for export or transit to third countries (*BOE* n. 210, 30.08.08).

– Resolution of 15 September 2008, by the Department of Customs and Excise Taxes of the State Agency for Tax Administration, setting forth instructions for completing the Single Administrative Document (SAD) (*BOE* n. 231, 24.09.08).

– Circular of 10 November 2008, by the Secretariat General for Foreign Trade, regarding procedures for and processing of imports and the entry of goods and their trade regimes (*BOE* n. 281, 21.11.08).

– Order EHA/3799/2008, of 23 December, by Economy and Treasury, setting thresholds for statistics on trade in goods among European Union Member States for 2009 (*BOE* n. 315, 31.12.08).

Note: Also see above Section XXIII (Tax Law) in this Chronicle on International Private Law.

XVIII. BUSINESS ASSOCIATION / CORPORATIONS

– Royal Decree 4/2008, of 11 January, amending certain articles pertaining to the Regulation on Private Security (*BOE* n. 11, 12.01.08).

Note: This provision adapts the Regulation on Private Security, approved by Royal Decree 2364/1994, of 9 December (see Section XVIII of the Chronicle of the 1995 Yearbook), to the decision by the Court of Justice of the European Communities of 26 January 2006, that condemned Spain because its Law and Regulation on Private Security imposed a series of requirements on private security firms and personnel from other Member States that are incompatible with Community Law.

– Royal Decree 1611/2007, of 7 December, approving the Regulation on Registration of Foundations under State jurisdiction (*BOE* n. 17, 19.01.08).

Note: Of interest for the purposes of this Chronicle are the following provisions regarding foreign foundations, their establishments in Spain and alien nations linked thereto: Art. 3.2; Art. 11.b); Art. 12.3; Art. 13; Art. 23.1, d) and f); Art. 23.2, b); Art. 24.1, j); Art. 32; Art. 35.2, a); Art. 40.1, d); Art. 44, a); Art. 47; Art. 51; and Art. 52, b).

– Royal Decree 216/2008, of 15 February, on the equity of financial institutions (*BOE* n. 41, 16.02.08).

Note: In regard to foreign entities and their establishments in Spain, of interest are the following: Art. 1.1°, letters f) and j); Art. 8; Art. 12, a); Art. 14.2; Art. 65.2; Art. 83; Art. 88.2; Art. 108.1, e); Final Provision 3 no. 1, b); Final Provision 3 no. 2, c).

– Royal Decree 217/2008, of 15 February, on the legal regime affecting investment service firms and other entities that provide investment services, partially amending the Regulation of Law 35/2003, of 4 November on Collective Investment Institutions, approved by Royal Decree 1309/2005, of 4 November (*BOE* n. 41, 16.02.08).

Note: Of interest is Art. 1, paras. 43 and 4 (scope of application in relation to foreign credit-granting entities), Art. 7.2 (denomination of foreign investment service firms), Art. 18 (licensing of investment services companies subject to foreign control), Art. 49 (financial transactions with foreign entities), Art. 51.2, b) (acquisition of securities abroad), Arts. 54 to 56 (cross-border activities of investment service firms), and Art. 65.3 (reporting on financial instruments deposited abroad to clients).

– Royal Decree 322/2008, of 29 February, on the legal system for electronic monetary institutions (*BOE* n. 54, 3.03.08).

Note: Of interest for the purposes of this Chronicle is Art. 5 (authorisation of electronic monetary institutions under foreign control) and Art. 6.1, letter f), para. 4 (commercial and professional honesty requirement for involvement in electronic monetary activity).

– Order/596/2008, of 5 March, by Economy and Treasury, regulating certain aspects of the legal regime affecting depositors in collective investment institutions and specifying the content of financial position statements (*BOE* n. 58, 7.03.08).

Note: See Art. 5–4 (custody of foreign securities and assets of collective investment institutions).

– Order/888/2008, of 27 of March, by Economy and Treasury, on the financial transactions of collective investment institutions involving financial derivatives and to clarify certain aspects of the Regulation of Law 35/2003, of 4 November, on collective investment institutions, approved by Royal Decree 1309/2005, of 4 November (*BOE* n. 80, 2.04.08).

Note: See Art. 14 (Spanish Collective Investment Institutions seeking to market themselves in other Member States of the European Union under Directive 85/611/EEC.), as well as paras. 2 and 4 of Art. 16 (Money Market Instruments issued by foreign administrations or international organizations).

– Royal Decree 863/2008, of 23 May, approving the Implementing Regulation of Law 32/2003, of 3 November, General Law on Telecommunications, in regard to the use of the radio-electric public domain (*BOE* n. 138, 7.06.08).

Note: Of interest is Art. 20, letter a), nos. 1, 2 and 5, referring to special conditions applicable to alien nationals when applying for licenses for exclusive use of the radio-electric public domain and Art. 36.3, on the granting of licenses for use of the radio-electric public domain for access to land stations linked to a space station owned by a foreign administration.

– Circular 3/2008, of 22 May, by the Bank of Spain, to credit-granting institutions on determination and control of minimum required equity (*BOE* n. 140, 10.06.08).

Note: On the scope of application to credit-granting institutions located in the European Economic Space or in third countries, see Rule 1, paras. 2 and 5.

– Law 9/2008 of the Valencian Community, of 3 July, amending Law 8/1998, of 9 December, on Foundations in the Valencian Community (*BOE* n. 192, 9.08.08).
Note: Of interest here is Art. 1, whose scope of application includes delegations of foreign foundations, as well as foundations whose main activities are carried out abroad.

– Circular 3/2008, of 11 September, by the National Securities Exchange Commission, on accounting standards, annual accounts and confidential reporting statements of collective investment institutions (*BOE* n. 238, 2.10.08).
Note: See Rule 9th, no. 3 (on the foreign investment portfolios of Collective Investment Institutions), and Rule 16th (criteria regarding foreign currency).

– Royal Decree-Law 7/2008, of 13 October, on Urgent Measures in Economic-Financial Matters related to the Concerted Plan of Action Plan for the Eurozone Countries (*BOE* n. 248, 14.10.08).
Note: See Art. 1 (Authorization to grant guarantees for financial transactions for entities resident in Spain and subsidiaries of foreign entities) and Art. 2 (Authorization for entities resident in Spain to acquire equity-reinforcing instruments).

– Decision of 20 October 2008, by the Directorate General for Insurance and Pension Funds, on information obligations of insurance entities offering Insured Pension Plans (*BOE* n. 260, 28.10.08).
Note: The first Provision establishes that, before entering into a contract, insurance entities offering insured pension plans must provide the holder with a note containing, *inter alia*, the address of the entity's main office and, where appropriate, of the branch established in Spain.

– Circular 5/2008, of 5 November, by the National Securities Exchange Commission, on statistical information requirements regarding assets and liabilities of European Union collective investment institutions (*BOE* n. 279, 19.11.08).

– Law 14/2008 of the Valencian Community, of 18 November, on Associations in the Valencian Community (*BOE* n. 294, 6.12.08).
Note: As regards this provision's scope of application, its Art. 4.1 establishes that the Autonomous Community government has exclusive jurisdiction over associations whose main area of activity is the Valencian Community. In relation thereto, Art. 18 establishes that associations constituted under this law must be domiciled in the Valencian Community, and sets forth the associations that must have their domicile in the Valencian Community.

– Circular 7/2008, of 26 November, by the National Securities Exchange Commission, on accounting rules, annual accounts and confidential information statements of investment services firms, collective investment management firms and venture capital entity management firms (*BOE* n. 313, 29.12.08).
Note: Regarding this provision, Rule 17 (Foreign Currency Transactions) and Rule 18 (Business Abroad) are of special interest.

Also see above Section XXIII (Tax Law) in this Chronicle on Private International Law.

XIX. BANKRUPTCY

– Royal Decree 158/2008, of 8 February, amending Royal Decree 685/2005, of 10 June, on publicity of bankruptcy decisions, and the Regulation on the Business Registry (RRM, Spanish initials for *Reglamento del Registro Mercantil*) approved by Royal Decree 1784/1996, of 19 July, on registry publicity of bankruptcy decisions, amending also the Regulation on the Business Registry to enhance the information held by the central business registry (*BOE* n. 35, 9.02.08).

Note: The second article of this provision amends certain aspects of Regulation on the Business Registry (RRM, Spanish initials for *Reglamento del Registro Mercantil*) for purposes of identifying alien individuals. See paras. 4 (amends Art. 386.5 RRM), 6 (amends Art. 387.2.8th RRM), 8 (amends Art. 388.3), 9 (amends Art. 389) and 12 (amends Art. 421.1).

XX. TRANSPORT LAW

– Order FOM/2181/2008, of 22 July, setting forth rules for cabotage transport services in Spain (*BOE* n. 179, 25.07.08).

Note: This Order fundamentally regulates the time the alien carrier may remain on Spanish territory.

– Order FOM/2185/2008, of 23 July, amending Order FOM/734/2007, of 20 March, on authorization for road transport of goods (*BOE* n. 179, 25.07.08).

Note: Of special interest are Arts. 10, letter b), and 24.1st, that refers to specific requirements for alien holders of transport permits.

XXI. LABOUR LAW AND SOCIAL SECURITY

– Royal Decree 8/2008, of 11 January, regulating the provision of benefit by reason of need to Spanish nationals who reside abroad and returnees (*BOE* n. 21, 24.01.08).

Note: This measure regulates provisions of benefit by reason of need as contemplated in Art. 19 of Law 40/2006, of 14 December, on the Statute on the Rights of Spaniards Abroad.

– Resolution of 31 January 2008, by the Secretariat General for Public Administration, publishing the Resolution of 25 January 2008 by the Council of Ministers approving the Agreement of 3 December 2007 by the General Negotiating Commission of the General State Administration on labour conditions for employees abroad (*BOE* n. 34, 8.02.08).

– Resolution of 25 February 2008, jointly by the Directorate General for Emigration and the Directorate General of the National Social Security Institute, regulating procedures for access to health care by Spanish natural born citizen returnees and Spanish natural born citizen pensioners and employees who are residents abroad and temporarily travel to national territory (*BOE* n. 53, 1.03.08).

– Resolution of 8 April 2008, by the Directorate General for Emigration, developing the procedure for determining total disability status included under need-based benefit provision in certain cases (*BOE* n. 107, 3.05.08).

Note: Royal Decree 8/2008, of 11 January, regulating the need-based provision of benefits to Spanish national residents abroad and returnees (see above in this section), regulates disability benefits in its Arts. 19 and 20. In view of the difficulties that may exist in some countries in carrying out the evaluation, this Resolution regulates the procedure for determining total disability.

– Order PRE/1797/2008, of 18 June, on accreditation of pensioner status under the Social Security system for the purpose of recognition of entitlement to pharmaceutical benefits (*BOE* n. 152, 24.06.08).

Note: Art. 1, paras. 2nd and 3rd, contains provisions that refer to the accreditation of Social Security system pensioner status with entitlement to health care benefits on the account of another country in accordance with international agreements.

– Law 6/2008 by the Valencian Community, of 2 June, on Public System Health Insurance of the Valencian Community (*BOE* n. 153, 25.06.08).

Note: In accordance with Art. 1.2, the Law is applicable to all persons, whether they be Spanish or alien nationals, who reside in or are physically present in the Autonomous Community. Art. 9.2 provides health care benefits to alien nationals physically present in the Valencian Community who show a lack of sufficient economic means and are unable to accredit their residence in same. Art. 12.1 guarantees the right to health care to Spanish and alien nationals who are physically present in the Autonomous Community. Art. 13.2 deals with health benefits under international agreements or community rules.

– Law 8/2008, of 20 June, by the Valencian Generalitat, on healthcare rights of children and adolescents (*BOE* n. 171, 16.07.08).

Note: Art. 23, letter b), deals with specific care for unaccompanied alien national minors.

– Law 8/2008, of 10 July, on Health by Galicia (*BOE* n. 202, 21.08.08).

Note: See Art. 4.1, that regulates individual applicability, and Title IV, that regulates relations between the Public Health System of Galicia and the European Union (Arts. 82 and 83), the General State Administration (Art. 84), other autonomous communities (Art. 85) and Galician communities abroad (Art. 86).

– Royal Decree-Law 4/2008, of 19 September, on cumulative advance payment of the contributive unemployment benefit to non-community alien nationals who voluntarily return to their countries of origin (*BOE* n. 228, 20.09.08).

– Royal Decree 1579/2008, of 26 September, amending Royal Decree 1561/1995, of 21 September, on special working hours and regulating certain aspects of the working conditions of mobile employees who render cross-border inter-operability services in the rail transport sector (*BOE* n. 240, 4.10.08).

Note: This provision transposes Directive 2005/47/EC of the Council, of 18 July 2005, into Spanish law.

– Royal Decree 1800/2008, of 3 November, providing for the implementation of Royal Decree-Law 4/2008, of 19 September, on cumulative advance payment of the contributive unemployment benefit to alien, non-community nationals who voluntarily return to their countries of origin (*BOE* n. 272, 11.11.08).

Note: See above in this Section, Royal Decree-Law 4/2008, of 19 September.

XXII. CRIMINAL LAW

XXIII. TAX LAW

– Order EHA/451/2008, of 20 February, regulating the composition of the tax identification number for legal and non-legal entities (*BOE* n. 49, 26.02.08).

Note: In this provision it is important to note Art. 4 (Foreign Entity code) and Art. 5 On (Permanent establishment code for a non-resident entity in Spain).

– Royal Decree 160/2008, of 8 February, approving the Regulation on tax exemptions relating to the North Atlantic Treaty Organization, its international Headquarters, and the States Parties to said Treaty, and establishing application procedures (*BOE* n. 52, 29.02.08).

– Royal Decree-Law 2/2008, of 21 April, on measures to promote economic activity (*BOE* n. 97, 22.04.08).

Note: Art. 4 amends Art. 14.2 of the consolidated text of the Law on Non-Resident Taxation, approved by Legislative Royal Decree 5/2004, of 5 March (see Title XXIII of the Chronicle of the 2004 Yearbook). The acquisition of Spanish Public Debt by establishments located in tax havens is hereby exempt from taxation.

– Royal Decree 1793/2008, of 3 November, amending the Regulation on Corporate Tax, approved by Royal Decree 1777/2004, of 30 July (*BOE* n. 278, 18.11.08; and *corr. of errors* *BOE* n. 305, 19.12.08).

Note: It is relevant to point to Article 10, which amends Chapter V of Title I of the Regulation on Corporate Taxation in regard to determination of normal market value and the documentation requirements for linked operations and operations with persons or entities residing in tax havens.

– Royal Decree 1794/2008, of 3 November, approving the Regulation on friendly procedures in regard to direct taxation (*BOE* n. 278, 18.11.08; and *corr. of errors* *BOE* n. 304, 18.12.08).

Note: Within this provision's scope of application, Art. 1 includes certain friendly procedures provided under the international conventions or treaties to avoid double taxation signed by Spain (number 1), also establishing their applicability to the persons defined in the international conventions or treaties and to the Spanish Administration (number 2).

– Royal Decree 1804/2008, of 3 November, in application of Law 36/2006, of 29 November, on measures to prevent tax fraud, amending the Regulation on the application of the tax regime affecting non-profit entities and tax incentives for sponsorship, approved by Royal Decree 1270/2003, and amending and approving other tax regulations (*BOE* n. 278, 18.11.08).

Note: It is important to underscore the Second Additional Provision that refers to limitations on the exchange of tax information with other countries.

– Law 4/2008, of 23 December, eliminating Property Tax, generalizing the system for monthly return of Value Added Tax, and introducing other changes in tax regulations (*BOE* n. 310, 25.12.08).

Note: Regarding this provision it is relevant to refer particularly to Art. 1, paras. 1st, 4th, 7th, 9th and 10th, referring to non-resident persons and entities in the framework of the Law on Corporate Tax; Art. 5, para. 5th, referring to imports in the context of the passenger regime under the Law on Value Added Tax; Art. 7, paras. 3rd and 4th, on non-resident legal entities in relation to the Law on the Tax on the Transmission of Property and Documented Legal Acts; and y Art. 8, para. 4th, referring to means of transport with prior registration abroad in relation to the Law on Excise Taxes.

Also see above Section XVII (Foreign Trade Law) in this chronicle on Private International Law.

XXIV. INTERLOCAL CONFLICT OF LAWS

– Law 1/2008 of the Autonomous Community of Catalonia, of 20 February, on Crop Contracts (*BOE* n. 84, 7.04.08).

– Law 4/2008 of the Autonomous Community of Catalonia, of 24 April, Third Volume of the Civil Code of Catalonia, on legal entities (*BOE* n.131, 30.05.08).

Note: For the purposes of this Chronicle, and regarding foreign legal entities, it is important to refer to Art. 311–1 (Scope of Application), Art. 311–9 (Foundations and Associations Regulated by other Laws), Art. 315–1, para. 2nd (Registers of Legal Entities), Art. 321–3, letter b) (Constitution of Associations), Art. 331–4, letter a) (Foundational Charters), Art. 336–1, para. 2nd and 3rd, and Art. 336–2, para 2nd, letter a) (Organization, Scope of Activity and Functions of Foundation Boards of Trustees).

– Law 2/2008 of the Autonomous Community of Galicia, of 6 May, implementing freedom in the provision of maritime passenger services in internal waters of Galicia (*BOE* n. 135, 4.06.08).

Note: In its scope of application, Art. 1 includes, under certain conditions, freedom to provide maritime passenger service in internal waters under the exclusive jurisdiction of the Autonomous Community of Galicia by community ship-owners.

– Law 10/2008, of 10 July, on the fourth book of the Civil Code of Catalonia, on Inheritance (*BOE* n. 190, 7.08.08).