

Treaties to Which Spain is a Party Concerning Matters of Private International Law, 2004

This survey, prepared and compiled by Dr. M. Guzmán Peces and J. I. Paredes Pérez (Associated Lecturers in Private International Law), under the direction of Dr. I. García Rodríguez (Lecturer in Private International Law), covers the treaties and other international agreements published in the *Boletín Oficial del Estado* (Official Journal of the State) during 2004. Its purpose is to record the legal consequences of such agreements and instruments for Spain, such as signature, ratification or accession, entry into force, provisional application, reservations or declarations, territorial application, personal sphere of application, material scope, termination, abrogation and relationship with other treaties or agreements.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

II. INTERNATIONAL JURISDICTION

– Resolution of 7 January 2004, by the General Technical Secretariat, on the Accession of Ukraine to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, done in The Hague on 5 October 1961 (published in the *Boletín Oficial del Estado*, on 25 September 1978, 17 October 1978, 19 January 1979 and 20 September 1984) (BOE 20.01.04).

Entry into force: 22 December 2003.

Note: “Ukraine – 2 April 2003 – Accession, entry into force 22 December 2003 between Ukraine and Contracting States of the Convention that did not formulate objections, with the exception of Belgium and Germany.”

III. PROCEDURE AND JUDICIAL ASSISTANCE

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND DECISIONS

V. INTERNATIONAL COMMERCIAL ARBITRATION

VI. CHOICE OF LAW/SOME GENERAL PROBLEMS

VII. ALIENS, REFUGEES AND CITIZENS OF THE EUROPEAN COMMUNITY

– Entry into force of the Exchange of Notes of 25 September 2003 constituting an Agreement between the Kingdom of Spain and the Republic of Colombia on reciprocal recognition and exchange of national drivers licences, done in Madrid on 30 and 31 July 2003 (*BOE* 17, 20.01.04).

Entry into force: 28 November 2003.

– Correction of errors in the Agreement between the French Republic and the Kingdom of Spain on the readmission of persons with irregular status, done in Malaga on 26 November 2002 (*BOE* 26.12.03, *BOE* 30.01.04).

– Correction of errors in the Exchange of Notes constituting Agreement between the Kingdom of Spain and the Republic of Uruguay on reciprocal recognition and exchange of national drivers licences (*BOE* 300 16.12.03, *BOE* 32 6.02.04).

– Protocol between the Government of Spain and the Government of the People's Democratic Republic of Algeria on the circulation of persons, done *ad referendum* in Algiers on 31 July 2002 (*BOE* 37, 12.02.04).

Entry into force: 18 February 2004.

– Entry into force of the Agreement between the Kingdom of Spain and the Republic of Poland on the Regulation and Organization of Migratory Flows between the two States, done in Warsaw on 21 May 2002, the provisional application of which was published in *Boletín Oficial del Estado* n. 226, of 20 September 2002 (*BOE* 85, 8.04.04).

Entry into force: 13 February 2004.

– Provisional application of the Exchange of Notes of 8 March 2003, constituting an Agreement between the Kingdom of Spain and the Kingdom of Morocco on the reciprocal recognition and exchange of national drivers licences (*BOE* 133, 2.06.04).

Provisional applications: from 8 June 2004.

– Provisional application of the Exchange of Notes of 22 December 2003, constituting an Agreement between the Kingdom of Spain and the Republic of Peru on the reciprocal recognition and exchange of drivers licences (*BOE* 133, 2.06.04).

Entry into force: 28 January 2004.

– Correction of errors in the provisional application of the Exchange of Notes of 8 March 2004, constituting an Agreement between the Kingdom of Spain and the Kingdom of Morocco on the reciprocal recognition and exchange of national drivers licences (*BOE* 167, 12.07.04).

– Agreement between the Kingdom of Spain and the Republic of Poland regarding the readmission of persons with irregular status, done in Warsaw on 21 May 2002 (BOE 176, 22.07.04).

Entry into force: 23 June 2004.

Note: “Article 1. *Definitions*

For the purposes of this Agreement the following definitions will be applied:

1. “Foreigner” will be understood to be any person who is neither a Spanish or Polish national.
2. “Entry or residence permit” will be understood to be any visa, residence permit or other type of document by which a foreigner is authorized to enter or stay in the territory of the Contracting Parties.
3. “Requested Party” will be understood to be the Contracting Party that is to readmit any person who does not meet the legal requirements for entering or staying in the territory of the other Party, or that should allow such person to re-enter its territory at the request of the other Party.
4. “Requesting Party” will be understood to be any Party that requests the other Party to readmit persons who do not meet with the legal requirements for entering or staying in its territory.

Article 2. Readmission of Contracting Party nationals

1. Each Contracting Party shall readmit, at the request of the other Contracting Party and without formalities, any person who in the territory of the requesting Party does not meet with or no longer meets with the requirements in force for entering or residing therein provided that there is proof or credible presumption that the person in question possesses the nationality of the requested Party.
 2. The requesting Party shall readmit the person in question, without formalities of any type, provided it has been demonstrated that he/she did not hold the nationality of the requested Party when he/she left the territory of the requesting Party.
- (...)

Article 4. Readmission of foreigners

1. Each Contracting Party shall readmit, at the request of the other Contracting Party and without formalities, any foreigner who does not meet or no longer meets conditions in force for entering or staying in the other Contracting Party, provided it is proven or presumed that said foreigner entered directly from the territory of the requested Contracting Party.
2. The obligation to proceed with readmission provided in the previous paragraph shall not be applied to the foreigner who, upon entry into the territory of the requesting Contracting Party, holds a valid residence permit issued by said Contracting Party or was issued a residence permit after entry.”

– Exchange of Notes constituting Agreement between Spain and Portugal on the creation of an arbitration commission to evaluate compensation owed to Spaniards whose property was confiscated in the 1974 Revolution, done in Lisbon on 8 and 9 October 2002 (BOE 198, 17.08.04).

Entry into force: 22 July 2004.

– Agreement between the Kingdom of Spain and the Republic of Costa Rica on the Free Pursuit of Gainful Employment by Dependents of Diplomatic, Consular Administrative and Technical Employees of Diplomatic Missions and Consular Offices (BOE 225, 17.09.04).

Entry into force: 23 August 2004.

– Entry into force of the Exchange of Notes of 25 September 2003 constituting Agreement between the Kingdom of Spain and the Republic of Uruguay on reciprocal recognition and exchange of national drivers licences, done in Madrid on 5 November 2003 (BOE 231, 24.09.04).

Entry into force: 5 August 2004.

– Provisional application of the Agreement between the Kingdom of Spain and the Republic of Peru on Cooperation in Immigration, done in Madrid on 6 July 2004 (BOE 237, 1.10.04).

Provisional applications: from 5 August 2004.

– Entry into force of the Exchange of Notes of 25 September 2003 constituting an Agreement between the Kingdom of Spain and the Republic of Peru on reciprocal recognition and exchange of national drivers licences, done in Madrid on 22 December 2003 (BOE 248, 14.10.04).

Entry into force: 3 September 2004.

– Agreement between the Kingdom of Spain and the Republic of Bolivia on the Free Pursuit of Gainful Employment by Dependents of Diplomatic, Consular Administrative and Technical Employees of Diplomatic Missions and Consular Offices, done in Madrid on 26 June 2002 (BOE 248 14.10.04).

Entry into force: 8 November 2004.

– Entry into force of the Exchange of Notes of 25 September 2003 constituting an Agreement between the Kingdom of Spain and the Republic of Ecuador on reciprocal recognition and exchange of national drivers licences (BOE 261, 29.10.04).

Entry into force: 8 September 2004.

VIII. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

– Ratification Instrument of the Convention on the Issue of a Life Certificate (number 27 CIEC), done in Paris on 10 September 1998 (*BOE* 194, 12.08.04).

Entry into force: 1 September 2004.

Note: “The Spanish authorities set forth in Article 4.1 of the Convention to issue a the life certificate, and as contained in Spain’s Ratification Instrument, deposited on 26 February 2001 with the Swiss Federal Council were subsequently modified and reported on 26 June 2003 to the Swiss Federal Council for the purposes of Article 4.2 of the Convention.

The authorities designated by Spain under Article 4.1 of the Convention to issue the life certificate are:

“In Spain: Notaries, Persons in charge of Municipal Civil Registries and their delegates.

Outside Spain: Persons in charge of Consular Civil Registries.”

With regard to the Declaration provided under Article 10 of the Convention, relating to the designation of the authorities empowered to translate the coded entries that appear on the life certificate or to undertake to decode them by translating the certificate into the official language of the State in which it will be used, Spain designates:

“Notaries, Persons in charge of Municipal Civil Registries and the Directorate General for Registries and Notaries of the Ministry of Justice.”

(. . .)

Article 1.

1. The Contracting States undertake to issue a life certificate when the existence of a person has to be proved in a Contracting State other than the one in which he or she is resident.
2. The certificate shall be issued by the competent authority of the State of residence of the person applying for it, regardless of his or her nationality.

Article 2.

1. Certificates drawn up in conformity with this Convention shall be recognised in all the Contracting States.
2. Such certificates must be accepted if they are presented within the time-limit prescribed by the law or the practice in force in the country where they are to be used.
3. Such certificates shall be accepted as correct unless and until the contrary is proved.

Article 3.

The competent authority shall issue the life certificate in accordance with the provisions of its domestic law.

Article 4

1. At the time of signature, ratification, acceptance, approval or accession, each State shall designate the authorities empowered to issue the certificate provided for in this Convention.
2. Any subsequent modification of such designation shall be notified to the Swiss Federal Council.
3. Diplomatic or consular authorities shall also be empowered to issue a life certificate to a national of their State residing in the State where they are performing their duties. They shall also be empowered to issue a certificate regardless of the nationality of the person concerned, if this is not precluded by the law of their State of residence and if the certificate is to be used in the territory of the State which they represent.

Article 5.

1. The certificate shall be drawn up in conformity with the model appearing in Appendix 1 to this Convention and shall be written in the language of the issuing authority and the French language.
(. . .)

Article 11.

1. Certificates shall indicate the name and capacity of the person issuing them. They shall be dated and signed and bear the requisite seal.
2. Certificates shall be exempt from translation and from legalisation or any equivalent formality in the territory of the Contracting States. However the authority or agency to which a certificate is presented may, in case of serious doubt as to the authenticity of the signature, the identity of the seal or stamp or the capacity of the signatory, have it verified by the authority that issued the certificate, in accordance with the procedure laid down by the Convention on the exemption from legalisation of certain records and documents, signed at Athens on 15 September 1977.”

IX. FAMILY LAW

– Statement of acceptance by Spain of the Accession of Guatemala to the Convention on the Civil Aspects of International Child Abduction, done in The Hague on 25 October 1980 (*BOE* 67, 18.03.04).

Entry into force: 1 April 2004.

Note: “In accordance with Article 38.4 of the Convention on the Civil Aspects of International Child Abduction, done in The Hague on 25 October 1980, Spain states its acceptance of the accession of the Republic of Guatemala to said Convention.

At the time of its accession Guatemala made the following statements and reservations:

- “1. The Central Authority for Guatemala is the *Procuraduría General de la Nación*, address 15 Avenida 9.69 Zona 13, Ciudad de Guatemala, Código Postal 01013, telephone nos.: (502) 331 0006–8. Fax: (502) 3321804.
2. The Republic of Guatemala makes the following reservations under Article 42 of the Convention:
 - I. The Republic of Guatemala objects to the use of French for any application, communication or other document sent to the Central Authority on the basis of Article 24.2 of the Convention (as the case may be).
 - II. The Republic of Guatemala is not obliged to bear any of the costs referred to in Article 26.2 of the Convention resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.”

X. SUCCESSION

XI. CONTRACTS

– First Protocol on the Interpretation by the Court of Justice of the European Communities of the Convention on the Law Applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, done in Brussels on 19 December 1988 (BOE 243, 8.10.04).

Entry into force: 1 August 2004.

Note: “Article 1.

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of:

- a) the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as “the Rome Convention”;
- b) the Convention on accession to the Rome Convention by the States which have become Members of the European Communities since the date on which it was opened for signature;
- c) this Protocol.

Article 2.

Any of the courts referred to below may request the court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

(...)

in Spain: the Supreme Court,

(...)

Article 3.

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the provisions contained in the instruments referred to in Article 1 if judgments given by court of that State conflict with the interpretation given by the Court of Justice or in a judgment of one of the courts of another contracting State referred to in Article 2. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.
2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.
3. The Procurators-General of the Supreme Court of Appeals of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1.
4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.
5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 4.

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the instruments referred to in Article 1.
2. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Economic Community."

– Second Protocol conferring on the Court of Justice of the European Communities Certain Powers to interpret the Convention on the Law Applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, done in Brussels on 19 December 1988 (BOE 243, 8.10.04).

Entry into force: 1 August 2004.

Note: "Article 1.

1. The Court of Justice of the European Communities shall, with respect to the Rome Convention, have the jurisdiction conferred upon it by the First

Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the Law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of the Court of Justice shall apply.

2. The Rules of Procedure of the Court of Justice shall be adapted and supplemented as necessary in accordance with Article 188 of the Treaty establishing the European Economic Community.”

XII. TORTS

– Instrument of Accession of Spain to the Protocol of 1997 that amends the International Convention for the Prevention of Pollution from Ships, 1973, amended by the Protocol of 1978, concluded in London on 26 September 1997 (*BOE* 251, 18.10.04).

Entry into force: 19 May 2004.

XIII. PROPERTY

– Agreement on Cinematographic Co-Production between the Kingdom of Spain and the United Mexican States, concluded in Madrid on 8 April 2003 (*BOE* 60, 10.03.04).

Entry into force: 30 January 2004.

– Ratification Instrument of the Second Protocol of The Hague Convention of 1954 on the Protection of Cultural Assets in the Event of Armed Conflict, done in The Hague on 26 March 1999 (*BOE* 77, 30.03.04).

Entry into force: 30 March 2004.

– Amendments to the Regulations under the Patent Cooperation Treaty (PCT) (published in the *Boletín Oficial del Estado*, 7 November 1989), adopted at the 27th Session of the International Patent Cooperation Union Assembly, on 29 September 1999 (*BOE* 167, 12.07.04).

Entry into force: 1 January 2001.

– Amendments to the Regulations under the Patent Cooperation Treaty (PCT) (published in the *Boletín Oficial del Estado* on 7 November 1989), adopted at the 28th Session of the International Patent Cooperation Union Assembly, on 17 March 2000 (*BOE* 168, 13.07.04).

Entry into force: 1 March 2001.

– Amendments to Article 22 of the Patent Cooperation Treaty (PCT), amendments to the Regulations under the PCT (published in the *Boletín Oficial del Estado* on

7 November 1989), decisions on the entry into force and transitory provisions and amendments to rate tables outside the Regulations of the PCT, adopted at the 30th Session of the International Patent Cooperation Union Assembly, on 3 October 2001 (*BOE* 169, 14.07.04).

Entry into force: 1 April 2002.

– Denunciation by Spain of the International Convention for the unification of certain rules relating to Maritime Liens and Mortgages, concluded in Brussels on 10 April 1926 (*BOE* 242, 7.10.04).

Entry into force: 27 May 2005.

Note: “By Note Verbale dated 25 May 2004, sent by the Embassy of Spain in Brussels to the Belgian Federal Public Service, Foreign Affairs, Foreign Trade and Cooperation for Development, Spain denounced the International Convention for the unification of certain rules relating to Maritime Liens and Mortgages, done in Brussels on 10 April 1926”.

XIV. COMPETITION LAW

XV. INVESTMENT AND FOREIGN EXCHANGE

– Provisional application of the Agreement between the Kingdom of Spain and the Republic of Equatorial Guinea on Reciprocal Investment Promotion and Protection, concluded in Malabo on 22 November 2003 (*BOE* 10, 12.01.04).

Provisional application: from 22 November 2003.

Entry into force:

“Article 12. *Entry into force, duration and termination*

1. This Agreement shall enter into force one month after receipt through diplomatic channels of the last notification by which the Contracting Parties inform each other of having complied with their internal constitutional requirements for entry into force.

(. . .)”

Note:

“Article 1. *Definitions*

For the purposes of this Agreement,

1. “Investor” shall be any national or any company of one of the Contracting Parties that invests in the territory of the other Contracting Party:
 - a) “National” shall be any individual who holds the nationality of one of the Contracting Parties in accordance with its legislation;
 - b) “Company” shall be understood to be any legal entity constituted or duly organized under the laws of that Contracting Party that has its headquarters

in that same Contracting Party, such as corporations, general partnerships or business associations.

(...)

Investments made in the territory of one Contracting Party by a company from that same Contracting Party, that is owned or effectively controlled by investors of the other Contracting Party, shall also be considered investments made by the such investors, provided they are in accordance with the legal provisions of the first Contracting Party.

No modification in the way the assets are invested or reinvested shall affect their investment status, provided such modification is done in accordance with the legislation of the Contracting Party that receives the investment.

(...)

Article 11. Conflict between one Contracting Party and Investors of the other Contracting Party

1. Any investment-related conflict that may arise between one of the Contracting Parties and an investor from the other Contracting Party, regarding issues regulated by this Agreement, shall be notified in writing by the investor to the Contracting Party receiving the investment. To the extent possible, the parties in conflict shall attempt to resolve their differences by friendly agreement.
2. If the conflict cannot be resolved in this way, after a period of six months from the date of written notification mentioned in Paragraph 1, the conflict may be submitted, at the investor's option, to:
 - the competent courts of the Contracting Party on whose territory the investment was made; or
 - an *ad hoc* arbitration panel established in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL); or
 - the International Centre for Settlement of Investment Disputes (ICSID) created by the “Convention for the Settlement of Investment Disputes between States and Nationals of Other States” opened for signature in Washington on 18 March 1965, when every State party to this Agreement has acceded to it. In the event one of the Contracting Parties is not a Contracting State to this Agreement, the dispute can be resolved through the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings by the ICSID Secretariat; or
 - an arbitration panel established in accordance with the arbitration rules of the Organisation for the Harmonisation of African Business Law (OHADA).
3. Arbitration shall be based upon the provisions of this Agreement, the domestic law of the Contracting Party in whose territory the investment was made, including rules relating to legal conflicts, and any applicable rules and principles of international law.

4. The Contracting Party that is involved in the dispute may not invoke in its defence the fact that the investor, by virtue of an insurance or guarantee agreement has received or is going to receive damages or any other compensation for all or part of the damages suffered.
5. The arbitration decisions shall be final and binding on the parties in dispute. Each Contracting Party commits itself to execute the decisions in accordance with its national legislation.”

– Agreement between the Kingdom of Spain and the Republic of Albania on Investment Promotion and Protection, concluded in Madrid on 5 June 2003 (BOE 38, 13.02.04).

Entry into force: 14 January 2004.

Note: We refer only to differences from the Agreement cited above.

“Article 11. *Disputes between one Party and investors of the other Party.*

1. Any dispute that arises between an investor from one of the Parties and the other Party in regard to an investment in the context of this Agreement shall be notified in writing by the investor to the second Party. To the extent possible, the interested Parties shall make efforts to resolve such disputes in a friendly manner.
2. If the dispute cannot be resolved in a friendly manner within six months from the date of written notification referred to in Paragraph 1, it may be submitted, at the option of the investor, to:
 - the competent court of the Party in whose territory the investment was made; or
 - an *ad hoc* arbitration panel established in accordance with the Regulation of the United Nations Commission on International Trade Law; or
 - the International Centre for Settlement of Investment Disputes (ICSID) created by the “Convention for the Settlement of Investment Disputes between States and Nationals of Other States” opened for signature in Washington on 18 March 1965, when every State party to this Agreement has acceded to it. In the event one of the Contracting Parties is not a Contracting State to this Agreement, the dispute can be resolved through the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings by the ICSID Secretariat.
3. Arbitration shall be based upon the provisions of this Agreement, the domestic law of the Contracting Party in whose territory the investment was made, including rules relating to legal conflicts, and any applicable rules and principles of international law.”

– Agreement on Reciprocal Investment Promotion and Protection between the Kingdom of Spain and the Republic of Uzbekistan, concluded in Madrid on 28 January 2003 (BOE 78, 31.03.04).

Entry in force: 3 December 2003.

Note: We indicate only the differences from the Agreement cited first in this section.

“Article 11. Disputes between a Contracting Party and investors of the other Contracting Party

1. Disputes that arise between a Contracting Party and an investor of the other Contracting Party with regard to an investment, in the context of this Agreement, shall be notified in writing with detailed information by the investor to the first Contracting Party. To the extent possible, the interested parties shall make efforts to resolve the dispute in a friendly manner.
2. If such disputes cannot be resolved in a friendly manner within six months from the date of written notification referred to in Paragraph 1, they can be submitted, at the option of the investor to:
 - the competent court of the Contracting Party in whose territory the investment was made; or
 - an *ad hoc* arbitration established under the Regulations on Arbitration of the United Nations Commission on International Trade Law; or
 - the International Centre for Settlement of Investment Disputes (ICSID) created by the “Convention for the Settlement of Investment Disputes between States and Nationals of Other States” opened for signature in Washington on 18 March 1965.
3. Arbitration shall be based on:
 - the provisions of this Agreement;
 - the domestic legislation of the Contracting Party in whose territory the investment was made, including rules relating to Legal conflicts; and
 - generally accepted rules and principles of international law.”

– Agreement between the Kingdom of Spain and the Federal Republic of Yugoslavia for Reciprocal Investment Promotion y Protection, concluded *ad referendum* in Madrid on 25 June 2002 (BOE 146, 4.06.04).

Entry into force: 31 March 2003.

Note: The text of the Agreement is quite similar, with only minor differences, to the text cited first.

– Agreement between the Kingdom of Spain and the Republic of Guatemala on Reciprocal Investment Promotion and Protection, concluded in Guatemala on 9 December 2003 (BOE 146, 17.06.04).

Entry into force: 21 May 2004.

Note: The text of the Agreement is quite similar, with only minor differences, to the text cited first.

– Agreement between the Kingdom of Spain and the Islamic Republic of Iran on Reciprocal Investment Promotion and Protection, concluded in Madrid on 29 October 2002 (BOE 192, 10.08.04).

Entry into force: 13 July 2004.

Note: The text of the Agreement is quite similar, with only minor differences, to the text cited first.

– Agreement between the Kingdom of Spain and the Republic of Namibia on Reciprocal Investment Promotion and Protection, concluded in Windhoek on 21 February 2003 (*BOE* 199, 18.08.04)

Entry into force: 28 June 2004.

Note: The text of the Agreement is quite similar, with only minor differences, to the text cited first.

– Agreement between the Kingdom of Spain and the Government of the Republic of Trinidad and Tobago on Reciprocal Investment Promotion and Protection, concluded *ad referendum* in Port of Spain on 3 July 1989 (*BOE* 252, 19.10.04).

Entry into force: 17 September 2004.

Note: The text of the Agreement is quite similar, with only minor differences, to the text cited first.

XVI. FOREIGN TRADE LAW

– Resolution of 6 April 2004, by the General Technical Secretariat, on the correction of an error in substance in the language of Article 6 of the Protocol of Amendment to the European Convention on Transborder Television, concluded in Strasbourg on 9 December 1998 (*BOE* 92, 17.04.02, *BOE* 158, 3.07.02, *BOE* 97, 21.04.04).

– Provisional application of the International Convention agreeing to establish an Iberian Electrical Energy Market between the Kingdom of Spain and the Portuguese Republic, concluded in Lisbon on 20 January 2004. (*BOE* 132, 1.06.04).

Provisional applications: from 22 April 2004.

XVII. BUSINESS ASSOCIATION/CORPORATION

XVIII. BANKRUPTCY

XIX. TRANSPORT LAW

– Ratification instrument of the Convention to Unify Certain International Air Transport Rules, concluded in Montreal on 28 May 1999 (*BOE* 122, 20.05.04).

Entry into force: 28 June 2004.

– Agreement between the Kingdom of Spain and the Islamic Republic of Iran on international road transport, concluded in Teheran on 7 February 1999 (*BOE* 147, 18.06.04).

Entry into force: 12 April 2004

Note: “Article 2. Scope of Application.

1. Carriers of the Contracting Parties using vehicles registered in the territory of the Contracting Party in which they have their headquarters are authorized to engage in international road transport between the territories of the two Contracting Parties and in transit therein, pursuant to the terms established in this Agreement.
2. Similarly, and subject to the conditions established in this Agreement, transport operations may be authorized with destination or origin in third countries, as well as unoccupied entry.
3. Nothing in this Agreement is to be interpreted as authorizing carriers from one Contracting Party to perform transport services between two points located inside the territory of the other Contracting Party.”

– Agreement between the Kingdom of Spain and the Democratic and Popular Republic of Algeria regarding International Road Transport and Transit of Passengers and Goods, concluded *ad referendum* in Madrid on 7 October 2002 (BOE 159, 2.07.04).

Entry into force: 18 June 2004.

Note: “Article 2. Scope of Application

1. Carriers of each of the Contracting Parties shall be entitled to transport passengers and goods to or in transit in one of the two territories with vehicles registered in one of the Contracting Parties in which the transport operator has its corporate headquarters, in accordance with the modalities set forth by this Agreement.
2. Within the framework of this Agreement, transport operations whose destinations are third countries and unoccupied entry of vehicles are authorized. The Joint Commission provided under Article 17 of this Agreement may authorize operations with destinations in third countries (triangular operations).
3. Carriers of one Contracting Party may not provide transportation services between two points located in the territory of the other Contracting Party (cabotage)”.

– Multilateral RID Agreement 9/2003 under Section 1.5.1 of the Regulations on International Transport of Hazardous Goods by Rail (RID) (published in *Boletín Oficial del Estado* n. 42, of 18 February 2003), regarding the classification of water pollutants and their solutions and mixtures (such as preparations and waste) that cannot be assigned to entries in classes 1 to 9 or others in class 9, concluded in Madrid on 7 April 2004 (BOE 162, 6.07.04).

“This Multilateral RID Agreement 9/2003 will enter into in force on 31 December 2004 for transport carried out in the territory of the member states of COTIF that have signed it.”

– Multilateral Agreement M-150 under Section 1.5.1 of the European Agreement on International Transport of Hazardous Goods by Road (ADR) (published in the *Boletín Oficial del Estado* n. 33, of 7 February 2003), regarding the classification

of water pollutants and their solutions and mixtures (such as preparations and waste) that cannot be assigned to entries in classes 1 to 8 or to others in class 9, concluded in Madrid on 26 April 2004 (*BOE* 171, 16.07.04).

“This Agreement will be in force until 31 December 2004 to carry out transport between the territories of the Contracting Parties of the ADR that have signed it, except where revoked by one of the signatory, in which case, it will continue to be applicable solely to transport between the territories of the ADR Contracting Parties that have signed it and not revoked it.”

– Customs Agreement relating to the International Transport of Goods under the TIR Handbooks concluded in Geneva on 14 November 1975 (published in the *Boletín Oficial del Estado*, on 9 February 1983), Amendments to Article 26.1 of the TIR Agreement, adopted by the Administrative Committee on 26 October 2001, circulated by the Secretary General of the United Nations on 19 June 2003 (*BOE* 179, 26.07.04).

Entry into force: 19 September 2004.

– Customs Agreement relating to the International Transport of Goods under the TIR Handbooks concluded in Geneva on 14 November 1975 (published in the *Boletín Oficial del Estado*, on 9 February 1983), Amendments to Annex 6, relating to Article 2.1(B) of Annex 2 of the TIR Agreement, adopted by the Administrative Committee on 7 February 2003, circulated by the Secretary General of the United Nations on 23 June 2003 (*BOE* 181, 28.07.04).

Entry into force: 7 November 2003.

– Agreement between the Kingdom of Spain and the Government of the Republic of Albania on international transport of passengers and goods by road, concluded in Tirana on 10 April 2003 (*BOE* 193, 11.08.04).

Entry into force: 25 June 2004.

– Correction of errors in the Resolution of 5 July 2004, of the General Technical Secretariat, relating to Multilateral Agreement M-143, under Section 1.5.1 of the European Agreement on International Transport of Hazardous Goods by Road (ADR) (published in the *Boletín Oficial del Estado*, n. 33, of 7 February 2003), relating to the transport of diagnostic samples, done in Madrid on 1 March 2004 (*BOE* 221, 13.09.04).

– Exchange of Notes extending the validity of the Agreement between the Kingdom of Spain and the Principality of Andorra on the transport and management of waste, done in Madrid on 27 January 2000 (*BOE* 13.09.04).

In force until 10 July 2006.

– Multilateral RID Agreement 2/2004, under Section 1.5. of the Regulations on International Transport of Hazardous Goods by Rail (RID) (published in the

Boletín Oficial del Estado n. 42, of 18 February 2003), and Articles 6–12 of Directive 96/49 EC, regarding the carriage of hydrogen peroxide in stabilized water solution containing over 60% of hydrogen peroxide (UN 2015) in portable tanks whose characteristics follow the T9 transport instruction, done in Madrid on 7 April 2004 (*BOE* 240, 5.10.04).

In force until 31 December 2006.

– M-159 Multilateral Agreement under Section 1.5.1 of the European Agreement concerning the International Transport of Dangerous Goods by Road (ADR) (published in the *Boletín Oficial del Estado*, n. 33, of 7 February 2003), relating to the technical provisions on lateral stability of tank vehicles, done in Madrid on 22 July 2004 (*BOE* 250, 28.10.04).

In force until 31 December 2004.

XX. LABOUR LAW AND SOCIAL SECURITY

– Ratification instrument of the ILO Convention n. 180 regarding Seafarers' Hours of Work and Manning of Ships, done in Geneva on 22 October 1996 (*BOE* 31, 5.02.04)

Entry into force: 7 July 2004.

– Ratification instrument complementary to the Administrative Agreement between Spain and Peru on Social Security of 24 November 1978, done in Valencia on 14 May 2002, the provisional application of which was published in *Boletín Oficial del Estado* n. 225, of 19 September 2002 (*BOE* 79, 1.04.04).

Entry into force: 24 February 2004.

– Entry into force of the Complementary Convention to the Social Security Convention between the Kingdom of Spain and the United Mexican States of 25 April 1994, done *ad referendum* in Madrid, on 8 April 2003 (*BOE* 56, 5.03.04)

Entry into force: 1 April 2004.

– Resolution of 2 December 2003, of the General Technical Secretariat, providing for the publication of the Administrative Agreement for the application of the Social Security Agreement between the Kingdom of Spain and the Republic of Bulgaria, done in on 28 October 2003 (*BOE* 72, 24.03.04).

Entry into force: 1 November 2003.

Note: “Article 5. *Processing of exceptions under applicable legislation.*”

- 1) In the cases referred to in Article 7.1), subparagraphs 1, 3, 5, 11 and 12 of the Convention, the Competent Institution of the Contracting Party whose legislation continues to be applicable shall issue, at the request of an employer or of a self-employed person, a form accrediting the period during which the employee or self-employed person continues to be subject to the

legislation of that Contracting Party. A copy of such form shall be sent to the Competent Institution of the other Contracting Party, and another copy shall remain in the possession of the interested party to accredit that the other Contracting Party's provisions on obligatory insurance are not applicable to such party.

- 2) The extension set forth in Article 7.1), subparagraphs 2 and 4 of the Convention must be requested by the employer or the self-employed person three months in advance of the end of the two-year period referred to in Article 7. 1), subparagraphs 1 and 3 of the Convention. The request should be addressed to the Competent Institution of the Contracting Party under whose legislation the employee or self-employed person is insured. Such Institution shall reach agreement on the extension with the Competent Institution of the other Contracting Party.
- 3) If an employer-employee relationship ceases to exist between the employee and the employer before the end of the period of time for which the employee was sent, the employer must notify the Competent Institution of the Contracting Party to whose legislation the employee is subject, and such Party must immediately notify the Competent Institution of the other Contracting Party. This will also apply when an employee returns ahead of time to the territory of the Contracting Party to whose legislation he/she is subject.
- 4) If the self-employed person ceases to work before the end of the period indicated in the form, he/she must notify this situation to the Competent Institution of the Contracting Party to whose legislation he/she is subject, which will immediately inform the Competent Institution of the other Contracting Party. This will also apply when such person returns ahead of time to the territory of the Contracting Party to whose legislation he/she is subject.
- 5) When an employee referred to in Article 7.1), subparagraphs 9 and 10 of the Convention exercises the option set forth therein, he/she shall report same, through his/her employer, to the Competent Institution of the Contracting Party whose legislation he/she has chosen. This Competent Institution shall report this to the Competent Institution of the other Contracting Party by means of the appropriate form. A copy of this form shall remain in the possession of the interested party to accredit that this Contracting Party's obligatory insurance provisions are not applicable to him/her.

(...)

Article 7. Determination of the Competent Institution to initiate the procedure.

The initiation of processing a benefit request shall correspond to a single Competent Institution, to be determined in accordance with the following rules:

1. If the interested party resides in the territory of one of the Contracting Parties it will be the Competent Institution of the place of residence.

2. If the interested party resides in a third country, it will be the Competent Institution of the Contracting Party under whose legislation such party or the principal was last insured..
3. When in the benefit request reference is only made to insurance periods in one of the Contracting Parties, it will be the Competent Institution of that Contracting Party."

– Ratification instrument of the Agreement on Social Security between the Kingdom of Spain and the Republic of Argentina, done in Madrid on 28 January 1992 and the Administrative Agreement for the application of the Convention, done in Buenos Aires on 3 December 1997 (*BOE* 297, 10.12.04).
Entry into force: 1 December 2004.

XXI. CRIMINAL LAW

– Provisional application of the Agreement between the Kingdom of Spain and the Republic of Latvia on Cooperation in the Fight against Terrorism, Organised Crime, Illegal Trafficking in narcotic drugs, psychotropic substances and their precursors, and other offences, done in Madrid on 24 November 2003 (*BOE* 32, 6.02.04).

Provisional applications: from 24 December 2003.

Entry into force:

Article 13: "The last day of the month following the date of receipt of the last notification in writing between the Parties (...)."

– Agreement between the Kingdom of Spain and the Republic of Colombia on cooperation to Prevent the Use of and to Control Illegal Narcotic Drugs and Psychotropic Substances, done *ad referendum* in Bogotá on 14 September 1998 (*BOE* 40, 16.02.04).

Entry into force: 5 March 2004.

– Agreement between the Kingdom of Spain and the Federative Republic of Brazil on Cooperation to Prevent the Use of and to Control Illegal Trafficking in Narcotic Drugs and Psychotropic Substances, done *ad referendum* in Madrid on 11 November 1999 (*BOE* 182, 29.07.04).

Entry into force: 13 July 2004.

XXII. TAX LAW

– Agreement between the Kingdom of Spain and the Republic of Turkey to Avoid Double Taxation and Prevent Income Tax Evasion (*BOE* 16, 19.01.04).

Entry into force: 18 December 2003.

Note: "Article 1. Persons included.

This Agreement is applicable to persons who are residents of one or the other Contracting States.

Article 2. Taxes included.

1. This Agreement is applicable to the income tax required by each of the Contracting States, their political subdivisions and local entities, whatever the system of collection may be.
2. Income tax is considered to be all taxes on all or part of income, including tax on earnings from the sale of movable property or real estate and taxes on the whole amount of wages or salary paid by employers.
3. The current taxes to which this Agreement applies are, in particular:
 - a) In Spain:
 - i) the Tax on Personal Income;
 - ii) the Tax on Corporate Income;
 - iii) the Tax on Non-Resident Income, and
 - iv) local Income taxes;
 - b) In Turkey:
 - i) the Tax on Income (*Gelir Vergisi*);
 - ii) the Tax on Corporations (*Kurumlar Vergisi*), and
 - iii) the surcharge on the Tax on Income and on the Tax on Corporations (*Gelir Vergisi ve Kurumlar Vergisi Uzerinden Al nan Fon Pay*) (hereinafter "Turkish tax").
4. The Agreement shall apply equally to taxes identical or analogous in nature that may be established subsequent to its signature and added to current taxes or replacing them. The competent authorities of the Contracting States shall inform each other of any relevant modifications they have introduced in their respective tax legislations.
(. . .)
2. For the application of this Agreement at any time by a Contracting State, any term or expression that is not defined herein shall have, unless its context would indicate otherwise, the meaning given to it at that time by that State's legislation relating to taxes covered by this Agreement, with the meaning given to it under tax legislation prevailing over that given by other branches of Law in that State.

Article 4. Resident

1. For the purposes of this Agreement, the expression "resident of a Contracting State" means any person who, under that State's legislation, is subject to tax by reason of domicile, residence, corporate headquarters, place of management or any other analogous criteria, including also the State and its political subdivisions and local entities. This expression does not include, however, persons subject to tax in that State solely on income obtained from sources located outside said State.

2. When, under the provisions of paragraph 1, an individual is a resident of both Contracting States, the situation shall be resolved as follows:
 - a) such person shall be considered a resident solely of the State in which he/she has a permanent home at his/her disposal; if such individual has a permanent home at his/her disposal in both States, he/she will be considered a resident of the State with which he/she has closer personal and economic relations (centre of vital interests);
 - b) If the State in which such person has a centre of vital interests cannot be determined, or if he/she does not have a permanent home at his/her disposal in either State, he/she will be considered a resident solely of the State in which he/she habitually lives;
 - c) If the person lives habitually in both States, or in neither State, he/she will be considered a resident only of the State in which he/she is a national;
 - d) If the person is a national of both States, or of neither State, the competent authorities of the Contracting States shall resolve the issue by mutual agreement.
3. When, under the provisions of Paragraph 1, an entity that is not an individual is a resident of both Contracting States, it is considered a resident of the Contracting State in which its effective management is located. Nonetheless, when this entity has a site of effective management in one of the States and its corporate headquarters in another, the competent authorities of the two Contracting States shall hold consultations to determine by mutual agreement whether the corporate headquarters of the taxpayer should be considered its place of effective management or not.

Article 5. Permanent establishment

For the purposes of this Agreement, the expression “permanent establishment” means a fixed place of business through which a company does all or part of its business.

(...)

2. In Turkey double taxation shall be avoided in the following way:
 - a) Subject to the provisions of Turkish legislation relating to the possibility of deducting tax paid abroad from Turkish tax, Spanish tax payable under the legislation of Spain and pursuant to this Agreement on income from Spain (including profit and taxable earnings) obtained by a resident of Turkey may be deducted from the Turkish income tax. Nonetheless, such a deduction may not exceed the Turkish tax, calculated before the deduction, on such income.
 - b) When, pursuant to any provision of this Agreement, the income obtained by a resident of Turkey is exempt from tax in Turkey, Turkey may, nonetheless, take into consideration such income in calculating the tax on the remainder of such a resident's income.

Article 23. Non-Discrimination

1. The nationals of one Contracting State shall not be subject in the other Contracting State to any tax or tax-related obligation that is not required or is heavier than the other State's nationals are or may be subject to under the same conditions, in particular, with regard to residence. Notwithstanding the provisions of Article 1, this provision is also applicable to persons who are not residents of either of the Contracting States.
2. Subject to the provisions of Article 10.4, the permanent establishments that a company in a Contracting State has in the other Contracting State shall not be subject to tax in such State in such a way that is less favourable than the companies of that State that are in the same business are subject to.
3. Unless the provisions of Article 9.1, Article 11.6 and Article 12.6, are applied, the interest, royalties and other costs paid by a company of one Contracting State to a resident of the other Contracting State shall be deductible in determining the profit subject to tax of said company, under the same conditions as if they were paid to a resident of the first State.
4. The companies of a Contracting State whose capital is totally or partially held or directly or indirectly controlled, by one or various residents of another Contracting State, shall not be subject in the first State to any tax or obligation relating thereto that is not required or that is more burdensome than those to which other similar companies of the first State are subject.
5. These provisions should not be interpreted as obligating a Contracting State to grant residents of the other Contracting State personal deductions or tax reductions that it grants to its own residents in consideration of their civil status or family burdens.
6. Notwithstanding the provisions of Article 2, the provisions of this Article shall be applied to all taxes, whatever their nature or denomination.
(. . .)".

– Agreement between the Kingdom of Spain and the Republic of Lithuania to Avoid Double Taxation and Prevent Income and Property Tax Evasion (*BOE* 28, 2.02.04).

Entry into force: 26 December 2003.

Note: The text of this Agreement, with only slight differences, is similar to the Agreement with Turkey, set forth above in this report.

– Agreement between the Kingdom of Spain and the Republic of Chile to Avoid Double Taxation and Prevent Income and Property Tax Evasion, done in Madrid on 7 July 2003 (*BOE* 28, 2.02.04).

Entry into force: 23 December 2003.

Note: The text of this Agreement, with only slight differences, is similar to the Agreement with Turkey, set forth in this report.

– Correction of errors in the Agreement between the Kingdom of Spain and the Republic of Turkey to Avoid Double Taxation and Prevent Income Tax Evasion, done in Madrid on 5 July 2002 (*BOE* 60, 10.03.04).

Entry into force: 30 January 2004.

– Correction of errors in the Agreement between the Spanish State and the Government of the Kingdom of the Netherlands to Avoid Double Taxation in regard to Income and Property Tax, done in Madrid on 16 June 1971. (*BOE* 67, 18.03.04).

– Correction of errors in the Agreement between the Kingdom of Spain and the Republic of Turkey to Avoid Double Taxation and Prevent Income Tax Evasion, done in Madrid on 5 July 2002. (*BOE* 16, 19.01.04, *BOE* 60, 10.03.04).

– Correction of errors in the Agreement between Spain and Belgium to Avoid Double Taxation and Prevent Income and Property Tax Evasion and Fraud, done in Brussels on 14 June 1995 (*BOE* 98, 22.04.04).

– Agreement between the Kingdom of Spain and the Bolivarian Republic of Venezuela to Avoid Double Taxation and Prevent Income and Property Tax Evasion and Fraud, done in Madrid on 8 April 2003 (*BOE* 144, 15.06.04).

Entry into force: 29 April 2004.

Note: The text of this Agreement, with only slight differences, is similar to the Agreement with Turkey, set forth in this report.