

Spanish Municipal Legislation Concerning Matters of Private International Law Published in 2004

This compilation was prepared at the Law School of the *Universitat de les Illes Balears* (University of the Balearic Islands) by Dr. Luis Garau Juaneda, Chair Professor of International Private Law, Dr. Federico F. Garau Sobrino, Professor of International Private Law and Ms. Silvia Feliu Álvarez de Sotomayor, Assistant Professor of International Private Law.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

II. INTERNATIONAL JURISDICTION

III. PROCEDURE AND JUDICIAL ASSISTANCE

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS AND DECISIONS

V. INTERNATIONAL COMMERCIAL ARBITRATION

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

VII. NATIONALITY

– Royal Decree 453/2004, of March 18, on granting Spanish nationality to the victims of the terrorist attacks of 11 March 2004 (*BOE* 70, 22.3.04).

VIII. ALIENS, REFUGEES AND CITIZENS OF EUROPEAN COMMUNITY

– Correction of errors in the Resolution of 29 December 2003, by the Under Secretariat, providing for publication of the Council of Ministers Agreement of 19 December 2003, determining the quota for non-EU foreign workers in Spain for 2004 (*BOE* 69, 20.3.04).

Note: On the December 2003 Resolution, see Section VIII de of the 2003 Yearbook.

– Resolution of 22 January 2004, by the Under Secretariat, providing for publication of the Instructions for implementing the Council of Ministers Agreement of 19 December 2003, determining the quota for non-EU foreign workers in Spain for 2004 (*BOE* 25, 29.1.04).

Note: On the December 2003 Resolution see Section, VIII de of the 2003 Yearbook.

– Royal Decree 285/2004, of February 20, regulating conditions for homologation and validation of foreign higher education degrees and programmes of study (*BOE* 55, 4.3.04).

Note: See Order ECI/3686/2004, of 3 November, below.

– Order HAC/916/2004, of 23 March, establishing the conditions for obtaining a professional license as a Customs Agent (*BOE* 85, 8.4.04).

Note: Article 1.1.a) establishes that only individuals who, *inter alia*, hold Spanish or EU nationality and are residents of Spain are entitled to be licensed as Customs Agents.

– Royal Decree 1830/2004, of 27 August, establishing a new deadline for the entry into force of certain articles of Royal Decree 285/2004, of 20 February, regulating the conditions for homologation and validation of foreign higher education degrees and programmes of study (*BOE* 210, 31.8.04).

Note: See above in this Section.

– Order ECI/3686/2004, of 3 November, setting forth rules of application for Royal Decree 285/2004, of February 20, regulating the conditions for homologation and validation of foreign higher education degrees and programmes of study (*BOE* 275, 15.11.04).

Note: See Royal Decree 285/2004 above.

– Royal Decree 2266/2004, of 3 December, modifying the Regulations on the eligibility of foreign nationals to be professional military soldiers and seamen, as approved by Royal Decree 1244/2002, of 29 November (*BOE* 292, 4.12.04).

Note: This provision sets a 3-year maximum quota for foreign nationals in the Armed Forces.

IX. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

X. FAMILY LAW

XI. SUCCESSIONS

XII. CONTRACTS

– Legislative Royal Decree 7/2004, of 29 October, approving the consolidated text of the Legal Statute of the Insurance Clearing Syndicate (*BOE* 267, 5.11.04).

Note: The following provisions are noteworthy here: Art. 3.1 (in order to fulfil its purpose, the Syndicate may enter into coinsurance agreements, or grant or readmit in reinsurance part of the risks covered for Spanish or foreign insurers); Art. 6.1 (personal injury derived from extraordinary events that took place abroad can be compensated by the Syndicate when the policy holder's habitual residence is in Spain); Art. 7, p. 1st (types of insurance with mandatory surcharges to enable the Syndicate to compensate for losses resulting from personal injury occurring abroad when the policy holder's habitual residence is in Spain).

– Legislative Royal Decree 8/2004, of 29 October, by which consolidated text of the Law on Civil Liability and insurance for motor vehicles (*BOE* 267, 5.11.04) is adopted.

Note: For the purposes of this Report, the following sections are worthy of note: Art. 2.2, paragraph 3 (verification of mandatory liability insurance for certain vehicles by customs authorities), and Art. 11.1.f) (reimbursement by the Insurance Clearing Syndicate of claims settled by insurance entities to injured parties residing in other States of the European Economic Space).

– Law 2/2004, of 27 December, on the General State Budget for 2005 (*BOE* 312, 28.12.04).

Note: Additional provision number twenty establishes the coverage ceiling for export credit insurance, excluding open-type policies for export management (PAGEX) and type-100 policies, that the *Compañía Española de Seguros de Crédito a la Exportación, Sociedad Anónima* (CESCE, Spanish acronym for *Spanish Export Credit Insurance Company, Inc.*) may insure and distribute.

XIII. TORTS

– Royal Decree 299/2004, of February 20, modifying the Regulation on civil liability and insurance for motor vehicles, approved by Royal Decree 7/2001, of January 12 (*BOE* n. 47, 24.2.04).

Note: The purpose of this provision is to adapt the Regulation on civil liability and insurance for motor vehicles to the Law it implements. The law was amended to adapt it to the Fourth Directive on Automobile Insurance, by means of Law 44/2002 (regarding this provision see Section XIII of the 2001–2002 Yearbook). The consolidated text of the Law on civil liability and insurance for motor vehicles was approved by Legislative Royal Decree 8/2004 (see Section XII and this same Section).

– Royal Decree 1892/2004, of 10 September, setting forth rules for the execution of the International Convention on civil liability as a result of damage owing to sea pollution caused by hydrocarbons (*BOE* 226, 18.9.04).

– Legislative Royal Decree 8/2004, of 29 October, by which the consolidated text of the Law on civil liability and insurance for motor vehicles (*BOE* 267, 5.11.04) is approved.

Note: Among others, Arts. 20 to 31 (claims arising in a State other than the policyholder's State of residence, in relation to mandatory insurance.).

XIV. PROPERTY

– Royal Decree 1937/2004, of 27 September, by which the Implementing Regulations of Law 20/2003, of 7 July, on legal protection of industrial designs (*BOE* 250, 16.10.04) are approved.

Note: This provision contains repeated references to the international classification of industrial drawings and models ("Locarno Classification", as per the Annex to the Locarno Arrangement of 8 October 1968): Art. 1.2, c), Art. 3.1, Art. 14.2, Art. 16.1, Art. 20.1, i), Art. 23, e), and Art. 50.1, f). On Law 20/2003 see sections II and XIV of the 2003 Report.

XV. COMPETITION LAW

– Royal Decree 2295/2004, of 10 December, on the application in Spain of the Community competition rules (*BOE* 308, 23.12.04).

Note: The purpose of this provision is to update the provisions contained in Royal Decree 295/1998 to include recent modifications in Community competition rules.

XVI. INVESTMENTS AND FOREIGN EXCHANGE

– Circular 5/2004, of December 22, to lending institutions, on the derogation of Bank of Spain Circulars 22/1992, 1/1993, 2/1997 and 12/1998 (*BOE* 314, 30.12.04).

Note: The purpose of this provision is to derogate a number of Bank of Spain Circulars on foreign currency that became obsolete when Spain joined the Economic and Monetary Union. This represents a radical change in the currency market, which went from being local to being European in scope.

XVII. FOREIGN TRADE LAW

– Resolution of 5 February 2004, of the Department of Customs and Excise Taxes of the State Tax Administration Agency, approving the form for the surety bond insurance certificate to insure payment of customs and tax on imports (*BOE* 38, 13.2.04).

– Order APA/400/2004, of 18 February, amending certain annexes of Royal Decree 2071/1993, of November 26, relating to measures to protect against the introduction and dissemination in national and European Economic Community territory of organisms harmful to plants or plant products, as well as their export and transit to third countries (*BOE* 46, 23.2.04).

– Instruction 1/2004, of 27 February, by the General Directorate of the State Tax Administration Agency, on customs appraisal of goods (*BOE* 63, 13.3.04).

– Resolution of 19 April 2004, by the Department of Customs and Excise Taxes. State Agency for Tax Administration, modifying the resolution of 15 December 2003 on Instructions for completion of the Single Administrative Document (SAD) (*BOE* n. 111, 7.5.04).

Note: Regarding the Resolution of 15 December 2003, see Section XVII of the 2003 Yearbook.

– Order APA/1075/2004, of 22 April, modifying certain annexes of Royal Decree 2071/1993, of 26 November, relating to measures to protect against the introduction and dissemination in national and European Economic Community territory of organisms harmful to plants or plant products, as well as their export and transit to third countries (*BOE* 99, 23.4.04).

– Order EHA/1703/2004, of 31 May, derogating Rules Three and Four of the Order of 22 March 2000, approving the new forms for recapitulation lists and the magnetic formats for supporting documents issued and for supporting documents received through intracommunity traffic, including simplified documents (*BOE* n. 139, 9.6.04).

– Circular of 18 June 2004, from the Secretariat General for Foreign Trade, on procedures for and processing of imports and entering goods and their trade regimes (*BOE* n. 158, 1.7.04; correction of errors *BOE* n. 163, 7.7.04).

– Order EHA/2376/2004, of 8 July, modifying the Order of 21 December 1998 which implemented Council Regulation (EEC) n. 2913/92, of 12 October 1992, establishing the Community Customs Code and Commission Regulation (EEC) 2454/93, of 2 July 1993, that establishes certain provisions to be implemented in relation to the simplified domiciliation procedure (*BOE* n. 172, 17.7.04).

– Royal Decree 1782/2004, of 30 July, approving Regulations for control of foreign trade in defence materiel and other dual use material, products and technology (*BOE* n. 210, 31.8.04; correction of errors *BOE* n. 248, 14.10.04).

– Resolution of 17 December 2004, of the Department of Customs and Excise Taxes, State Agency for Tax Administration, modifying the Resolution of 15 December

2003, on Instructions for completing the Single Administrative Document (SAD) (*BOE* n. 313, 29.12.04).

– Resolution of 17 December 2004, of the Department of Customs and Excise Taxes, State Agency for Tax Administration, updating the Integrated Tariff of Application (TARIC) (*BOE* n. 315, 31.12.04).

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

– Order EHA/4246/2004, of 27 December, setting thresholds relating to statistics on trade in goods between member states of the European Union for 2005 (*BOE* n. 313, 29.12.04).

XVIII. BUSINESS ASSOCIATION/CORPORATIONS

– Circular 3/2003, of 29 December, of the National Commission of the Securities Market, on information from foreign Collective Investment Institutions registered in the Registries of the National Commission of the Securities Market (*BOE* n. 11, 13.1.04; correction of errors *BOE* n. 24, 28.1.04).

– Royal Decree 297/2004, of 20 February, amending the Regulation on Organization and Supervision of private insurance, approved by Royal Decree 2486/1998, of 20 November (*BOE* n. 45, 21.2.04).

Note: This provision is to make the necessary amendments in the Regulation on organization and supervision of private insurance to adapt it to the various Community Directives regulating the solvency demands and requirements of insuring entities. Legislative Royal Decree 6/2004 approved the consolidated text of the Law on the organization supervision of private insurance (see below in this Section).

– Circular 1/2004, of 17 March, from the National Commission of the Securities Market, on the annual corporate governance report of listed companies and other entities issuing securities that are negotiable in official securities secondary markets, and other information instruments of listed companies (*BOE* n. 76, 29.3.04).
Note: This provision contains specific rules for foreign entities.

– Royal Decree 1717/2004, of 23 July, amending Royal Decree 786/1979, of 16 March, which establishes regulations under the General Statute of Spanish Chambers of Commerce Officially Recognized Abroad (*BOE* n. 207, 27.8.04).

Note: This Royal Decree includes in Royal Decree 786/1979 the possibility of official recognition of new forms of associations that are supranational in nature.

– Legislative Royal Decree 6/2004, of 29 October, approving the consolidated text of the Law on the organization and supervision of private insurance (*BOE* n. 267, 5.11.04; correction of errors *BOE* n. 28, 2.2.05).

Note: For the purposes of this report, the following provisions are highlighted: Art. 5.2, g), and 5.8, Art. 20.3, e), Art. 25.2, Art. 26.2, Art. 30.2, Art. 39.2, d), 4º, Art. 57.1, subparagraphs c) and d), Art. 76.1, Art. 77.6, along with Arts. 78 to 90 (on the activities of foreign insurance entities in Spain).

– Royal Decree 2387/2004, of 30 December, by which the Regulation of the Railroad Sector (*BOE* n. 315, 31.12.04) is approved.

Note: It is of interest in this report to cite Art. 65.4 (reporting to the Administration when the entity seeking a license as a railroad company is part of an international corporate group), along with Art. 78.3, m) (obligation of railroad company license-holders to comply with the applicable agreements on international rail transport and abide by customs and tax provisions).

XIX. BANKRUPTCY

XX. TRANSPORT LAW

XXI. LABOUR LAW AND SOCIAL SECURITY

XXII. CRIMINAL LAW

– Royal Decree 1774/2004, of 30 July, by which the Regulations for Organic Law 5/2000, of 12 January, regulating the criminal liability of minors (*BOE* n. 209, 30.8.04) are approved.

Note: These regulations contain several specific provisions affecting cases involving foreign minors. See Art. 3.1, Art. 32.3, Art. 41.3, and Art. 72.2 c).

XXIII. TAX LAW

– Legislative Royal Decree 3/2004, of 5 March, by which the consolidated text of the Law on Personal Income Tax (*BOE* n. 60, 10.3.04; correction of errors *BOE* n. 61, 11.3.04) is approved.

Note: Of interest in this chronicle are Articles 8 (taxpayers), 9 (customary residence in Spanish territory), 66 (rate applicable to foreign residents), 82 (deduction for international double taxation) and 92 (recording of income under the international transparency system).

– Legislative Royal Decree 4/2004, of 5 March, by which the consolidated text of the Law on Corporate Tax (*BOE* n. 61, 11.3.04; correction of errors *BOE* n. 73, 25.3.04) is approved.

Note: For the purposes of this chronicle we would highlight: Articles 3 (effect of international treaties and agreements), 21 (exemption to avoid international double economic taxation of foreign-source dividends and income derived from the

transmission of securities representing the equity of entities that are non-residents of Spanish territory), 22 (exemption of certain income earned abroad through a permanent establishment), 23 (deduction of investments for setting up a company abroad), 31 and 32 (deductions to prevent international double taxation), 37 (deduction for export activities), 49 (European Groups of Economic Interest), 107 (inclusion of certain positive income obtained by non-resident entities in taxable income) and 116 to 119 (system for entities holding foreign securities).

– Legislative Royal Decree 5/2004, of 5 March, by which the consolidated text of the Law on Income Tax of Non-Residents (*BOE* n. 62, 12.3.04) is approved.

– Order HAC/665/2004, of 9 March, regulating certain aspects of the management of VAT income collections from extra-community operators who provide services through electronic means to final consumers and modifying the Order of 27 December 1991, issuing instructions regarding the financial and economic system of the State Agency for Tax Administration (*BOE* n. 64, 15.3.04).

– Royal Decree 1775/2004, of 30 July, by which the Regulations for the Personal Income Tax (*BOE* n. 187, 4.8.04) is approved.

Note: For the purposes of this chronicle, the following provisions are highlighted: Art. 2.2, paragraphs 3 and 4 (exemption of international awards), Art. 4 (exemption for participation in peacekeeping or humanitarian missions), Art. 5 (exemption of income from work performed abroad), Art. 8 (*per diem* for travel abroad as income), Art. 61 (obligation to report and international double taxation), Art. 64 (request for reimbursement owing to international double taxation), Art. 69.1, paragraphs. a) and b) (reporting obligation of entities under system of assignment of income earned abroad), Art. 73.3, d) (income subject to withholding and withheld by permanent establishments abroad), Art. 74 (obligation to withhold or make interim payments for foreign depositors), Art. 87.5 (withholding and interim payment owing to change of residence).

– Royal Decree 1776/2004, of 30 July, by which the Regulations on the Tax on the Income of Non-Residents (*BOE* n. 188, 5.8.04), is approved.

– Royal Decree 1777/2004, of 30 July, approving the Regulations for Corporate Tax (*BOE* n. 189, 6.8.04).

Note: Of interest in this chronicle are the following provisions: Art. 41 (foreign securities-holding entities), Arts. 46 to 48 (Spanish and European special economic interest groups, temporary unions of companies), Art. 59, paragraph c) and l) (exceptions to mandatory withholding and interim deposit by foreign entities), Art. 60.2 and 60.6, paragraph 2 (entities subject to mandatory withholding and interim deposit).

– Royal Decree 1778/2004, of 30 July, establishing reporting obligations regarding

preferential shares and other debt instruments and on certain income earned by individuals who are residents in the European Union (*BOE* n. 190, 7.8.04).

– Resolution of 16 September 2004, by the Department of Customs and Excise Taxes of the State Tax Administration Agency, establishing the rules for filling out the supporting documents providing for the circulation of products subject to product excise taxes, the system for electronic transmission of such documents and statements used in the management of excise taxes and approving form 511 (*BOE* n. 245, 11.10.04).

– Order PRE/3297/2004, of 13 October, including new Annexes in Royal Decree 2163/1994, of 4 November, by which the Harmonized Community system of Authorisation for marketing and using plant health products (*BOE* n. 248, 14.10.04) is approved.

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

XXIV. INTERLOCAL CONFLICT OF LAWS