JAVIER ÍSCAR DE HOYOS

Managing partner - Íscar Arbitraje

QUALIFICATIONS

1986-1991	DEGREE IN LAW - C.E.U. SAN PABLO UNIVERSITY OF MADRID.
1989-1991	MBA AT KNOW HOW BUSINESS COLLEGE OF MADRID.
1992-1993	LEGAL PRACTICE DEGREE AT ESCUELA DE PRÁCTICA JURÍDICA OF MADRID.
1994-1995	MASTER'S DEGREE OF BUSINESS MANAGEMENT CONSULTANCY WITH CENTRO DE ESTUDIOS FINANCIEROS OF MADRID.
2006	ARBITRATION EXPERT SEMINAR AT THE INSTITUTO DE EMPRESA DE MADRID.

PROFESIONAL EXPERIENCES

1992-current	Lawyer since 1993. Member of the Madrid Bar Association. Founding Partner of ISCAR ABOGADOS SLP
2000- current	Secretary General of the European Association of Arbitration
2006- current	Member of the Spanish Arbitration Club (Club Español del Arbitraje).
2007- current	President of the Hispano-Moroccan International Court of Arbitration (Corte Internacional Hispano Marroquí de Arbitraje).
2013-2017	Member n°3 of the Board of the Madrid Bar Association.
2015- current	Acting Secretary General of the Ibero-American Center of Arbitration (Centro Iberoamericano de Arbitraje), CIAR
2016 February	*Georgetown International Arbitration Society. 4th ANNUAL INTERNATIONAL ARBITRATION MONTH February 2nd - March 1st, 2016 Tuesday, February 2: "Recent Developments in National Policies Toward Arbitration" 6:30 – 8:30 PM location TBD. Speakers include Crenguta Leaua, Javier Iscar de Hoyos, and Gonzalo Stampa Casas*

2016 Noviembre Harvard Law School. HIALSA. Spanish and European International Arbitration: Institutional and Practitioner Perspectives. "Viewpoint from the practitioner's side, while Javier Iscar de Hoyos, as head of the European Center of Arbitration, will offer an institutional perspective".

PROFESSIONAL ARBITRATION INFORMATION

Managing partner at Iscar Arbitraje.Since 2018 just as arbitrator.

Javier Íscar is experienced in administered arbitration under ICC Rules, Madrid International Arbitration Center (MIAC), Madrid Chamber of Commerce Court of Arbitration (Corte de Arbitraje de la Cámara de Comercio de Madrid), Madrid Bar Association Court of Arbitration (Corte de Arbitraje del Ilustre Colegio de Abogados de Madrid), as well as being an arbitrator in ad hoc arbitration.

He is listed with the Valencia Chamber of Commerce Court of Arbitration and in the list of foreign arbitrators with the CAESP Brazil.

He is a member of the Argentinian Committee for National and Transactional Arbitration (CARAT).

He has experience in arbitration concerning the field of Construction and Banking and Finance, in Commercial Law and also in Insurance Law.

Javier has been in practice since 1993. He holds an MBA with the Know How Business College, a Master's degree in Legal Practice and a Master's degree in Business Management Consultancy with the School of Legal Practice of the Complutense University of Madrid, and has completed the Advanced Course at the Instituto de Empresa of Madrid.

As an expert in arbitration, he is the author of a number of articles and publications. He is a founding member of the Asociación Europea de Arbitraje; President of the Hispano-Moroccan Court of Arbitration and founding member of the Mediation and Conflict Resolution Centre (Cemed).

Co-Director for the Advanced Course on Commercial Arbitration and Civil and Commercial Arbitration at the UNED university. Professor for the Master's degree for Access to the Legal Profession at Camilo José Cela University of Madrid (Module on "Out of Court Conflict Resolution"). Professor with the Pablo de Olavide University of Seville. University Extension Diploma. "Extrajudicial and Notary Law".

He is currently the Secretary General of the European Association of Arbitration and President of the Hispano-Moroccan Court of Arbitration.

He is also currently the Secretary General of the Ibero-American Arbitration Centre (CIAR) and President of the Mediation and Conflict Resolution Centre, (Cemed).

Formal member (n° 3) of the Board of the Madrid Bar Association from 2013 to 2017.

He is a foreign Corresponding Member of the Colombian Academy of Jurisprudence.

He is a Jurist Emeritus with the Jurists' Association of Colombia.

Professor "Adr´s in juridic conflicts" in the ICC Spain Executive Programme in Commercial Arbitration in 2020

Professor in virtual session number VI Seminar: Relevance and use of Soft Law instruments in Arbitration of the "Course on Alternative Dispute Resolution Methods: a domestic and international perspective" organized in July 2020 by HAY and Lexincorp..

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PROFESSIONAL ARBITRATION CASES (LAST 5 YEARS)

		President of tribunal	Sole Arbitrator	Co-arbitrator	Counsel		Total
National Arbitration	institucional	3	5	4	0		14
	ad-hoc	0	2	0	0		
International Arbitration	institucional	1	0	4	2		7
	ad-hoc	0	0	0	0		
	TOTAL	4	7	8	2		21

*Does not Include arbitrations where he carried out as Secretary at the Court of Arbitration.

1. AS COUNSEL: (Since 2018 the firm Works just as arbitrator)

- 2017. Ad Hoc Arbitration. UNICITRAL Rules. Montreal. Representation of a Public company in Latin America requesting damages derived from aerport issues. (english. Amount in dispute: US$ 3.600.000).

- 2018. Ad hoc Arbitration, UNCITRAL Rules , Montreal, Incinerator Construcction Contract. (English. Amount in dispute US$ 3.300.000).

2. AS ARBITRATOR

- ICC CASE. (Current) Co-arbitrator. Damages derived from a EPc contract involving companies from Brazil, Uruguay, Grance and Japan. (spanish; Amount in dispute US$ 680.000.000 aprox.).

- ICC CASE. 2020. President of theTribunal. “design, manufacture and supply of photovoltaic modules in México. Spanish. Amount in dispute US$ 1.500.000 , aprox.)

- ICC CASE (current) . Co-arbitrator. “Commercialization agreement”. Spanish. Amount in dispute. US$ 2.500.000 aprox)

- Madrid Court of Arbitration 2019. Co-arbitrator Engineering and construcction conflict. Spanish amount in dispute € 10.000.000, aprox.)

- Madrid Court osf Arbitration. (current) Co-arbitrator. M&A and sharehold agreement. (spanish.€ 40.000.000 aprox.).

- ICC CASE (2016) Shareholder agreement.(spanish; Amount in dispute US$ 900.000.).

- Madrid Court of Arbitration (2019) Co-arbitrator , M&A Hotels (spanish; Amount in dispute € 10.000.000 aprox).

- “Ad hoc” Arbitration. Sole arbitrator Construcction spanish. Amount in dispute € 20.000.000.

PUBLICATIONS

November 2019	"El Principio Kompetenz-Kompetenz en la jurisprudencia estadounidense. Un análisis comparado del caso Henry Schein v. Archer & White". Revista Argentina de Arbitraje - Número 4
October 2019	ARBITRAJE DE INVERSIÓN. Coautor de la guía ""Investor-State Arbitration Laws and Regulations 2020" publicada en la revista ICLG - International Comparative Legal Guides por Global Legal Group, analizando la situación y actualidad de España ante el arbitraje de inversión. (attached as docment n° 1)
June 2018	"La denegación del reconocimiento de un laudo extranjero con fundamento en la causa del art. V.1 e) de la CNY: comentario del Auto 3/2017, de 14 de febrero, dictado por el TSJM". Revista del Club Español del Arbitraje 32/2018
December 2014:	"El arbitraje acerca la relación asegurado-asegurador". Mediadores en Red.
February 2014	"El arbitraje en la relación asegurado-asegurador". Fecor, Federación Española de Corredores de Seguros.
January 2014	"Abogacía e información, la necesidad de adaptarse a la realidad global". Revista de Derecho Práctico.
October 2013	Caso de éxito de la Corte Hispano Marroquí de Arbitraje" at the I Foro Económico del Mediterráneo Occidental, in Barcelona.
January 2013	Foro Jurídico Iberoamericano. "Hacia una profesionalización del arbitraje".
December 2012:	"Introducción al desarrollo de la mediación en el espacio mediterráneo". Co-author with Fernando Oliván for VIII Conferencia Internacional del Foro Mundial de Mediación, España 2012
October 2012	"El arbitraje institucional: Las cortes de arbitraje en España. Arbitraje y mediación. Problemas actuales, retos y oportunidades". Special Monographic edition of Revista juridica de Castilla y León. Editorial Lex Nova – Thomson Reuters.
May 2012:	"Pinceladas de la situación actual del arbitraje y la mediación en España". Mediario, Revista Oficial del Colegio de Mediadores de Seguros.
2011	"Les tours d'arbitrage comme moyen pour gérér les arbitrages". Revue marocaine de médiation et d'arbitrage, edition n° 5. Review published by Centre de Médiation et Arbitrage à Rabat (CIMAR).
May 2011	"El acuerdo arbitral. Apuntes teóricos y prácticos". Co-author of the first volumen of the work, "Tratado de Derecho Arbitral". Published by Instituto Peruano de Arbitraje and Editorial Ibáñez, with the support of Pontificia Universidad Javeriana university in Colombia.
January 2011	"La elaboración de un calendario procesal". Review "Cuadernos de Arbitraje", n° 6. Published by Wolters Kluwer, Iberdrola and Asociación de Ingenieros del ICAI.
November 2010:	"El arbitraje internacional: una aplicación práctica". Co-author with Jorge Campos Moral for "Estrategia Financiera", a Wolters Kluwer publication (n° 277).

July-August 2010	"Los ingenieros y los abogados, parte esencial en los arbitrajes". Co-author with Higinio García Pi for "Anales de Mecánica y Electricidad", REview of Asociación de Ingenieros del ICAI (volume LXXXVII, fascicle IV).
July 2010	"Demandar a un incobrable vía arbitraje es rentable". Expansión newspaper 09/07/2010
June 2010	"Reforma de la Ley de Arbitraje", Legal Today newspaper 11/06/2010 "Reforma de la Ley de Arbitraje" Juris Madrid 1/06/2010
March 2010:	"Reflexiones sobre las últimas reformas en materia de arbitraje y mediación", Diario Jurídico 17/03/2010. Interview in the review Foro Esine, n° 100
February 2010:	Interview for a Spanish media, n° 30
January-March 201	"¿Qué papel cumple el arbitraje en los procesos de inversión extranjera?", Invest in Spain
December 2005	"Notificaciones y comunicaciones en la vigente ley de arbitraje Validez del artículo 5.a)" Review "Actualidad Jurídica Aranzadi" n° 692 Editorial Aranzadi.
April 2005:	"El arbitraje privado en los arrendamientos urbanos. Aspectos prácticos" Revista de Derecho Procesal Civil y Mercantil, "Práctica de Tribunales". Editorial la Ley Actualidad. Año II – Número 15 – Abril 2005.
March 2005	"El arbitraje privado y los consumidores y usuarios". Revista de Derecho Procesal Civil y Mercantil "Práctica de Tribunales" Editorial la Ley Actualidad. Año II – Número 14 – March 2005.
June 2004	"Adecuación de la cláusula de sumisión a arbitraje privado a la legislación protectora de los derechos del consumidor". Revista de Actualización Jurídica of Editorial Aranzadi.

Publications:

2015: Co-author of the book "La Franquicia (Duo)" Editorial Aranzadi. In particular the chapter on arbitration and mediation in the franchise sector.

2012: Co-author "Introducción al desarrollo de la mediación en el espacio mediterráneo". On occasion of the VIII World Mediation Forum held in Valencia (18 and 19 de October).

Co-author inl Diccionario Terminológico del Arbitraje Nacional e Internacional (Comercial y de Inversiones). Volume 18. Biblioteca de Arbitraje del Estudio Mario Castillo Freyre. Editorial Palestra.

2008: As co-author: "MANUAL DE DERECHO PARA INGENIEROS" Published by LA LEY Grupo Wolters Kluwer, IBERDROLA S.A. and Colegio Ingenieros ICAI.

2004: As co-author. "VADEMÉCUM DE PRINCIPIOS INSPIRADORES DEL ARBITRAJE Y DE PRACTICA ARBITRAL DE TRIBUNALES ARBITRALES SEGÚN LA NUEVA LEY DE ARBITRAJE 60/2003" published by Instituto Vasco de Derecho Procesal.

ANNEX 1

SPAIN: INVESTOR-STATE ARBITRATION 2020

The ICLG to: Investor-State Arbitration Laws and Regulations - Spain covers common issues in investor-state arbitration laws and regulations - including treaties, legal frameworks, case trends, funding, international tribunals, domestic courts, recognition and enforcement - in 24 jurisdictions. (ARTICLE)

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Chapter Content

1. Treaties: Current Status and Future Developments

1.1 What bilateral and multilateral treaties and trade agreements has your jurisdiction ratified?

As of 15th February 2019, Spain has ratified 72 bilateral investment treaties with different countries. Moreover, Spain is a party to the multilateral Energy Chapter Treaty and additionally, as an EU Member State, Spain is party to the trade agreements and treaties with investment provisions which have been ratified by the EU.

1.2 What bilateral and multilateral treaties and trade agreements has your jurisdiction signed and not yet ratified? Why have they not yet been ratified?

The only BITs which are not in force are those with: Haiti; Ethiopia; Congo; Gambia; Yemen; Angola; and Ghana, according to the United Nations Conference on Trade and Development. All of them have yet to be ratified by Spain, except for the BIT with Ghana which was ratified by Spain in 2008; the Parliament of Ghana has not ratified it, thus it is not in force.

1.3 Are your BITs based on a model BIT? What are the key provisions of that model BIT?

Yes, the BITs ratified by Spain do follow a pattern. They are based on two BIT models prepared by an independent group of experts and the OECD back in 1959 and 1967. Ever since, these models have been used and, consequently, its usage and application have originated a basic sort of BIT scheme.

As a practical example, one may look at the BITs between Spain and Latin American countries, which do have a very analogous skeleton. In those BITs, the general key provisions to be found are:

- promotion and admission of investments;
- fair treatment (absolute perspective);
- MFN principle (relative perspective);
- prohibition of expropriation;
- free movement/transfer of benefits;
- protection of the concession contract; and
- dispute resolution mechanism between the host State and the investor.

1.4 Does your juridiction publish diplomatic notes exchanged with other states concerining its treaties, including new or succeeding states?

The verbal notes exchanged between the States are not published. Only when the negotiations come to an end and a treaty is enacted, then it will be duly published under the Boletín Oficial del Estado.

1.5 Are there offcial commentaries published by the Government concerning the intended meaning of treaty or trade agreement clauses?

No, there are no oficial commentaries that have been published by the Government of Spain.

2. Legal Frameworks

2.1 Is your jurisdiction a party to (1) the New York Convention, (2) the Washington Convention, and/or (3) the Mauritius Convention?

Spain is party to the New York Convention and the Washington Convention. However, Spain has not signed the Mauritius Convention.

2.2 Does your jurisdiction also have an investment law? If so, what are its key substantive and dispute resolution provisions?

Yes, the Law 18/1992 of 1st July 1992 regulates the general investment scheme in Spain. This law emanates from the CEE Council Directive 88/361/CEE from 1988, which deals with the free movement of capital between the residents of member States. The Royal Decree 664/1999 of 23rd April 1999 further establishes a system for foreign investment in
Spain.

With regards to the dispute resolution provisions, those will be found in the BITs ratified by Spain. The Parties have the opportunity to bring any dispute to international tribunals or arbitration after a "cooling-off" period. ICSID and ad hoc tribunals under UNCITRAL are the most common options. However, there are also referrals to ICC International Court of Arbitration in addition to the possibility of bringing the dispute to the SCC, under the Energy Charter Treaty.

2.3 Does your jurisdiction require formal admission of a foreign investment? If so, what are the relevant equirements and where are they contained?

Spain has a favourable legal framework for foreign investors. Spanish law has adapted its foreign investment rules to a system of general liberalisation, without distinguishing between European Union (EU) residents and non-EU residents, except for certain sectors: Law 18/1992 of 1st July 1992, which establishes rules on foreign investment in Spain, provides restrictions for non-EU residents in the following sectors: national defence-related activities; gambling; television; radio; and air transportation. For EU residents, the only sectors with a specific regime are the manufacture and trade of weapons, or national defence-related activities.

Likewise, the types of corporations which may be constituted in Spain are aligned with those at the OECD, which Spain is party to. The flexibility of the legal and corporate framework does allow for any kind of solution, since there are plenty of options to cater to the needs of the potential investments arriving in Spain.

Furthermore, and in order to analyse how investments are catalysed in Spain, it shall be noted that according to the 2019 World Investment Report published by UNCTAD, Spain was the 9th largest host for FDI inflows in the world in 2018, meaning that Spain received 43,591 million USD. Additionally, and looking at the 2019 Doing Business report by the World Bank, Spain holds the 30th position out of 190 on the ease of doing business.

3. Recent Significant Changes and Discussions

3.1 What have been the key cases in recent years relating to treaty interpretation within your jurisdiction?

There have been plenty of disputes related to renewable energy issues which lately come up in Spain. There have been only two awards in which Spain was found in favour, meanwhile the other disputes have been lost by Spain (11 as of 11th September 2019), amounting to EUR800 million of losses. As of relevance, the Nextera case itself equals to EUR290 million, there are 30 additional investment arbitrator disputes on the same grounds to be settled. The issue of the cuts related to renewable energy in Spain had its roots in 2008 and in 2013 and ever since, claims have arisen.

Apart from that, another relevant case is Urbaser, in which a Spanish company is involved. In terms of the development of international law, it is interesting to analyse that this was the first case in which the investor (the Spanosh company) was requested to comply with international human rights, such as the right of access to water.

3.2 Has your jurisdiction indicated its policy with regard to investor-state arbitration?

Spain is one of the States with the largest number of ongoing claims related to investment disputes. Only at ICSID, there are 38 registered files in which Spain appears as the Respondent. Considering the above, it is fair to say that Spain does comply with the international investment treaties in which Spain is party to, as Spain does appear as a party in those procedures.

Moreover, in the last years, due to the large number of investment disputes related to the cutbacks on renewable energy, the activity of the Spanish Supreme Court and the Constitutional Court has increased in relation to investor State arbitration. There have been several judgements in such matter and the general position of the Spanish courts is to allow investment arbitration.

However, because of the Achmea case (see question 3.4), there will be changes in the BITs amongst Member States, since the intra-EU BITs will be terminated, as stated by Spain in the declaration.

3.3 How are issues such as corruption, transparency, MFN, indirect investment, climate change, etc. addressed, or intended to be addressed in your jurisdiction's treaties?

Spain is party to international treaties which condemn issues related to corruption. As a member of the OECD, Spain fights against corruption in the context of cross border business activities and has ratified the Convention on Combating Bribery of Foreign Public Oficials in International Business Transactions. Besides, Spain has also ratified the United Nations Convention against Corruption.

With reference to the MFN principle, Spain, as a member of the WTO, agrees to accord such status to the other members because the intention is to avoid discrimination and to treat each member on equal terms. Further, the MFN principle is recurrent in the BITs ratified by Spain with other States.

As per climate change, Spain is a signatory, inter alia, of the Paris Agreement and the Kyoto Protocol. Furthermore, Spain's energy sector leads innovation in the area of renewable energies in the world and even spreads its know-how to countries like the Unites States with green and pioneering projects.

On the other hand, Spain has yet to sign treaties on transparency, such as the Mauritius Convention, which actually has been ratified only by five countries.

With regards to the indirect investment that may arrive in Spain, in general terms, the legislation imposes the same requirements as for direct investments. For instance, the stock market Spanish authority Comisión Nacional de Mercado de Valores, CNMV, must authorise the acquisition of a direct or indirect holding which represent a 1, 5, 10, etc, per cent of the voting rights.

In line with the above-mentioned topics, Spain has established some requirements to be met in order to comply with anti-money laundering regulation. The main obligations applicable in Spain are established in Law 10/2010, of 28th April 2010, which is the result of the transposition of Directive 2005/60/EC. The legislation applies to the situation when a party seeks to carry out in Spain procedures such as opening a current account, executing a public deed or acquiring real estate. The relevant persons dealing with the transaction must perform certain formalities to identify their customers and the origin of their funds.

3.4 Has your jurisdiction given notice to terminate any BITs or similar agreements? Which? Why?

The Achmea case is of relevance for this question, since it may change the way investment arbitration works in Europe, and thus, in Spain. In the judgement, the ECJ declared that an investment arbitration clause in a BIT between Member States is incompatible with the EU law. Because of the Achmea case, all investor-State arbitration clauses contained in bilateral investment treaties concluded between Member States are contrary to Union law and thus inapplicable. As such, Spain became a party to a declaration of the legal consequences of the Achmea judgement with other Member States and agreed to terminate its intra-EU BITs without undue delay.

4. Case Trends

4.1 What investor-state cases, if any, has your jurisdiction been involved in?

Spain has been involved in a total of 51 investor-State arbitrations to date. Thirty-eight of these cases have been administered by ICSID, 10 by SCC Rules, and three by ad hoc Tribunals under UNCITRAL Rules. Most of these cases are currently pending.

4.2 What attitude has your jurisdiction taken towards enforcement of awards made against it?

The very first ICSID-award made against Spain was Maffezini v. Kingdom of Spain (ICSID Case No. ARB/97/7), rendered on 13th November 2000. Spain did not challenge the award and honoured it. However, the trend has varied with awards issued after 2017, involving disputes related to the renewable energy sector, under the Energy Charter Treaty.
To date, Spain has lost 11 of these disputes. Spain has decided not to comply voluntarily with these awards and will seek their annulment, according to the ICSID Convention or Swedish Law.

4.3 In relation to ICSID cases, has your jurisdiction sought annulment proceedings? If so, on what grounds?

To date, Spain has sought the annulment of four ICSID awards: Eiser Infrastructure Limited (UK) & Energia Solar Luxembourg S.À.R.l. v. Kingdom of Spain (ICSID Case No. ARB/13/36); Masdar Solar & Wind Cooperatief U.A. (Dutch) v. Kingdom of Spain (ICSID Case ARB/14/1); Antin Infrastructure Services Luxembourg S.à.r.l. (Luxemburg) & Antin Energía Termosolar B.V. (Dutch) v. Kingdom of Spain (ICSID Case No. ARB/13/31); and NextEra Energy Global Holdings
B.V. (Dutch) & Nextera Energy Spain Holdings B.V. v. Kingdom of Spain (ICSID Case No. ARB/14/11). Spain's main reasons for annulment are based on the Tribunal's failure to comply with the applicable EU Law, the hierarchical supremacy of EU law and the illegality of the intra-EU BIT. All these cases are currently pending.

4.4 Has there been any satellite litigation arising whether in relation to the substantive claims or upon enforcement?

There has not been any satellite litigation related specifically to the arbitration proceedings against Spain. Notwithstanding, the Achmea decision has had an important influence on Spanish strategy, not only in arbitration but also in the enforcement proceedings of several awards.

4.5 Are there any common trends or themes identifiable from the cases that have been brought, whether in terms of underlying claims, enforcement or annulment?

Forty-nine of the 51 investor-State arbitrations against Spain are related to the subsidy cutbacks for renewables, undertaken by the Spanish Government between 2010 and 2014. Apart from the challenge of four ICSID awards, Spain also has sought to set aside two SCC awards in the Svea Court of Appeals. The trend is for challenging the next awards rendered in these disputes raised under the Energy Charter Treaty. In all these cases, the former investors are seeking to enforce the awards in the United States and the Spanish defence is founded on European Law and supported by the European Commission.

5. Funding

5.1 Does your jurisdiction allow for the funding of investor-state claims?

This area has yet to be specifically regulated under Spanish law. However, in the absence of specific laws dealing with such aspect, article 1,255 of the Spanish Civil Code shall apply. This article refers to the principle of freedom of contract and states that, should the agreement between the parties not be against the law, moral or public order, the agreement would be valid. Therefore, and in conjunction with the Supreme Court sentence dated 4th November 2008 (see question 5.2), TPF agreements shall be based on this position.

Additionally, there is no regulation under European Union law, only a few references to certain issues related to TPF, such as the duty to disclose the existence of financing agreements in bilateral treaties, as requested under Article 8.26 of CETA.

Considering the above, in the event the requirements laid down by article 1,255 of the SCC are met, the parties will be able to agree on the funding of the respective dispute.

5.2 What recent case law, if any, has there been on this issue in your jurisdiction?

IIn recent years, there have not been remarkable judgments referring to TPF. However, looking back some years ago, we shall point out the landmark decision of 4th November 2008, issued by the Supreme Court, which is very relevant in our jurisprudence. In such judgement, the Tribunal allowed the usage of the no win, no fee agreement, which had been prohibited from the time of Roman Law. This interpretation triggered an eye-opening reaction in the Spanish legal fraternity, since the sentence left an open door for the financing of disputes by third parties.

5.3 Is there much litigation/arbitration funding within your jurisdiction?

In terms of arbitration, TPF has become much trendier in Spain, as it is in constant development. The advent of TPF in Spain is a reality which may be a consequence of the sharp increase of TPF in the UK from 2009 to 2015. However, TPF has yet to become as popular in Spain as in common law jurisdictions.

As it is an option in the Spanish legal market, the parties have started to consider this alternative more frequently, studying the advantages of bringing an external funder before proceeding with their disputes. Thus, in recent disputes and due to the high initial arbitration costs, the parties have been more receptive to bring a TPF to the dispute.

Under Spanish courts, its practice is not as common as in arbitration. Besides, there are few reasons which may explain why the TPF is not that developed to litigate:

- Length of national courts to deliver a judgment. Proceedings may last long enough to try the funder's patience.
- Costs related to access to justice are more affordable than in other jurisdictions. It is possible for a party to submit its claim for a "reasonable cost" or even get free access to justice, whilst in other jurisdictions fees are so high that the parties may not proceed or shall gather to proceed under class actions. It is indeed under class actions, widely famous in common law jurisdictions, where TPF has an important role.

6. The Relationship Between International Tribunals and Domestic Courts

6.1 Can tribunals review criminal investigations and judgments of the domestic courts?

It depends on the international instrument from which the tribunal derives its jurisdiction. Most of the Spanish bilateral investment treaties provide jurisdiction to international tribunals to decide claims of treaty protection, such as MFN, national treatment or fair and equitable treatment. Therefore, criminal investigations and local judgments could be subject to review under these standards of protection, in limited cases and only for pecuniary compensation purposes. According to the Spanish law, tribunals can't vary their decisions once they are issued as a general rule and final judgments are parts of iure imperii. Finally, as Spain is a Member State of the Council of Europe, the European Court of Human Rights has the jurisdiction to overturn final judgments in Spain.

6.2 Do the national courts have the jurisdiction to deal with procedural issues arising out of an arbitration?

According to the Spanish Arbitration Act, domestic courts shall not intervene in the arbitration, except in those cases where it is expressly foreseen (article 7). Intervention is foreseen for the appointment or challenge of arbitrators, the taking of evidence, application for interim measures, challenge of the validity of the award or its enforcement.

6.3 What legislation governs the enforcement of arbitration proceedings?

In Spain, the Arbitration Act (Ley 60/2003) entered into force on 23rd December and is based on UNCITRAL Model Law on International Commercial Arbitration. Nevertheless, according to the principle of the party autonomy, arbitration proceedings seated in Spain are first governed by the law set up in the arbitration agreement.

6.4 To what extent are there laws providing for arbitrator immunity?

In Spain, arbitrators are not immune from liability. Pursuant to article 21 of the Spanish Arbitration Act, arbitrators may incur liability in cases of bad faith, gross recklessness or wilful default. Consequently, the Spanish Supreme Court has established that arbitrators will only incur liability in those cases where damages are intentionally caused or when they have acted with gross negligence (STS 5722/2009).

6.5 Are there any limits to the parties' autonomy to select arbitrators?

Any person in full possession of their civil rights may be an arbitrator, unless prevented therefrom by his or her professional rules (article 13 SAA). Nationality shall not be an impediment, unless otherwise agreed by the parties. Notwithstanding, for arbitration proceedings in which only one arbitrator is appointed, the arbitrator shall be a jurist (except parties that have agreed otherwise or in ex aequo et bono), and when arbitration is to be conducted by three or more arbitrators, at least one of them shall be a jurist (article 15 SAA).

6.6 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If arbitrators cannot be appointed under the procedure agreed to by the parties, any party may apply to the competente Commercial and Criminal Branch of the High Court of Justice to appoint the arbitrator or to adopt the necessary measures therefor (articles 8 and 15,3 SAA).

6.7. Can a domestic court intervene in the selection of arbitrators?

The competent Civil and Penal Branch of the High Court of Justice will draw up a list of three names for each arbitrator to be appointed. When drawing up the list, the court will give due regard to the requirements established by the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. The arbitrators will be appointed by lot.

7. Recognition and Enforcement

7.1 What are the legal requirements of an award for enforcement purposes?

According to the SAA (article 46), the exequatur of foreign awards is governed by the New York Convention, save any other more favourable international convention. The ICSID awards and domestic awards are directly executable by Courts of First Instance. In all cases, the Civil Procedure Rules govern the execution procedure and provides very limited grounds for opposition.

7.2 On what bases may a party resist recognition and enforcement of an award?

In general, Spanish courts have a favourable attitude towards recognition and enforcement of foreign awards. The grounds for refusing the recognition and enforcement of non-ICSID awards are the same as those foreseen in article V of the New York Convention, which Spain signed without reservations. The High Courts of the Autonomous Communities generally grant the exequatur in a short period of time, according to the requirements of the New York Convention; after that, the parties must seek the enforcement of the award before the Courts of First Instance (articles 8 and 46 SAA).

Regarding ICSID awards, it has been established through the practice (Pey Casado v. Republic of Chile) that are directly executable by Court of First Instance. However, according to article 54 (2) of the Convention, the Kingdom of Spain should formally notify the ICSID Secretary of this designation. Spain is the only Contracting State in its environment that has not complied with this obligation.

7.3 What position have your domestic courts adopted in respect of sovereign immunity and recovery against state assets?

Spain is a Member State of The United Nations Convention on Jurisdictional Immunities of States and Their Property since 21st September 2011. Based on this Convention and the case law, in 2015 Spain introduced two new Acts, one on Sovereign Immunity (Organic Law 16/2015) and another on International Legal Cooperation (Law 29/2015). As a general rule, assets that are part of the State's commercial activities are lacking sovereign immunity, while those intended for acta iure imperii are immune. Notwithstanding, the new legislation in matters of international legal cooperation and sovereign immunity establish the intervention of the Ministry of Foreign Affairs and Cooperation when a foreign State is sued in Spanish Courts.

The practice has shown that the content of the Ministry's reports often reveals a position close to the doctrine of absolute immunity, leading to a greater review of the award by the court, in order to refute the Ministry's positions or may imply a shift of jurisprudence towards positions closer to absolute immunity.

7.4 What case law has considered the corporate veil issue in relation to sovereign assets?

Over these issues, there are no publically Spanish Court decisions in the context of sovereign assets. Nonetheless, enforcing an OHADA award against Equatorial Guinea in Spain, the petitioner obtained the exequatur of the award and achieved the attachment of the plane owned by Ceiba Intercontinental S.A, the flagship airline company in Equatorial Guinea (Commercial Bank Guinea Ecuatorial v. Guinea Ecuatorial).