

Spain

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1. RELEVANT GOVERNMENTAL ENTITIES

Spain is a multinational country, made up of – to some extent – overlapping nations. This is reflected in the way the country is administratively organised. There are three levels of administrative government: central, autonomous and provincial.

Although immigration legislation is reserved to central administration, implementation of some aspects can be carried out by a lower administrative level. This has led to lack of uniformity in its application, as has been found by a recent report by CORA (*Comisión para la Reforma de las Administraciones Públicas* or Commission for the Reform of Public Administrations).

1.1 Administration

As indicated, immigration is within the central government's remit under the Ministry of Internal Affairs (*Ministerio del Interior*).

Royal Decree 400/2012 of 17th February structures the Ministry of Internal Affairs into the Estate's Security Secretariat (*Secretaría de Estado de Seguridad*) and the Interior's Sub-Secretariat (*Subsecretaría del Interior*), which are in turn structured into General Directorates and Secretariats.

The Estate's Security Secretariat has the duty to direct and organise the international police cooperation including the Schengen Information Systems.

One of its directorates is the General Directorate of International Relations and Immigration (*Dirección General de Relaciones Internacionales y Extranjería*) and exercises all functions in relation to other countries.

The Interior's Sub-Secretariat (*Subsecretaria del Interior*) is in charge of the implementation of the right to asylum via its General Directorate of Internal Affairs (*Dirección General de Política Interior*). It also coordinates and follows the implementation of EU directives and other EU regulations in relation to their attributions.

1.2 Enforcement

As indicated above, Royal Decree 400/2012 of 17th February establishes that the Ministry of Internal Affairs via the police authorities is entrusted with the enforcement of immigration legislation. The General Directorate of Police (*Dirección General de la Policía*) is under the Estate's Security Secretariat and has the duty to direct, organise and control enforcement of all immigration regulations.

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The General Commission of Customs and Immigration (*Comisaría General de Extranjería y Fronteras*) controls entry and exit into and from Spanish territory of Spanish and foreign citizens, will prevent, prosecute and investigate illegal immigration cartels and generally oversees the immigration police regime, refugee and asylum and immigration areas.

The General Directorate of the Civil Guard (*Dirección General de la Guardia Civil*) will act in cooperation with the Ministry of Employment and Social Security through the General Secretariat of Immigration and Emigration.

1.3 Legislative

Article 149.1.2 of the Spanish Constitution of 27th December 1978 refers all matters relating to nationality, immigration, emigration, migration and right of asylum to the central government.

1.4 Other, if relevant

Not applicable.

2. SOURCES AND CONFLICTS OF LAW

2.1 Outline the principal sources of law relating to immigration for this jurisdiction

The Spanish legal system is hierarchical, with the Spanish Constitution at the apex of its pyramid, followed by European Community law (others would invert such order), international treaties, organic laws, ordinary laws, Royal Law Decrees, Legislative Royal Decrees and normative laws emanating from the government level like Royal Decree, Decree, Ministerial Order, etc.

Custom will only be applicable in default of law and the general principles of law in default of both of them.

Case law complements the legal system and allows leave to appeal to the Supreme Court.

Primary law governing immigration

- Agreement on Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement. Instrument of Ratification of July 23, 1993 (BOE no. 81 of April 5, 1994. Correction of errors in BOE. 85 of April 9th). Amended by Regulation (EC) No 810/2009 of the European Parliament and of the Council of July 13, by Regulation (EU) No 265/2010 of the European Parliament and of the Council of March 25 and Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June.
- Organic Law 4/2000, of 11 January regarding the rights and freedoms of foreigners in Spain and their social integration (BOE no. 10, of January 12), as amended by Organic Law 8/2000, of December 22; Organic Law 11/2003, of September 29, by the Organic Law 14/2003, of 20 November, by Organic Law 2/2009, of December 11, by Organic Law 10/2011, of 27 July, by Royal Decree-Law 16/2012, of April 20 and judgment 17/2013, of January 31, of the Constitutional Court.
- Organic Law 1/1992, of February 21, of Protection of Public Safety

(BOE no. 46 of February 22), as amended by Judgment 341/1993, of November 18, by the Constitutional Court, by Law 4/1997, of August 4th – fourth additional provision, by Law 10/1999, of April 21, by the Organic Law 7/2006, of November 21 and Organic Law 3/2013, of 20 June.

- Royal Decree 557/2011, of 20 April, which approved the Regulation of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after reforming Organic Law 2/2009 (BOE no. 103 of April 30. Correction of errors in BOE no. 145 of June 18), as amended by Judgment of March 12, 2013 of the Supreme Court.
- Royal Decree 240/2007 of 16 February regarding the entry, free movement and residence of citizens of Member States of the European Union in Spain and other States party to the Agreement on the European Economic Area (BOE no. 51 of February 28), as amended by Royal Decree 1161/2009, of July 10, by judgment on June 1, 2010, of the Supreme Court – rectified in turn by Order of March 13, 2011, by Royal Decree 1710/2011, of 18 November, by Royal Decree-Law 16/2012, of April 20 and Royal Decree 1192/2012, of August 3.
- Royal Decree 1325/2003, of 24 October, which approved the Regulation on temporary protection in the event of a mass influx of displaced persons (BOE no. 256 of October 25).
- Royal Decree 1398/1993 of 4 August, which approved the rules of procedure for the exercise of sanctioning powers (BOE no. 189 of August 9), as amended by Royal Decree 747/2008, of 9 May.
- PRE/1490/2012 Order of July 9, which establishes rules for the application of Article 7 of Royal Decree 240/2007 of 16 February regarding the entry, free movement and residence in Spain of citizens of United European Union members and other States party to the Agreement within the European Economic Area (BOE no. 164 of July 10).
- INT/3321/2011 Order of 21 November on travel document issued to foreigners (BOE no. 292 of December 5).
- PRE/1803/2011 Order of June 30, sets out the amount of processing fees for administrative permits, visa applications and border identity immigration and immigration (BOE no. 156 of July 1).
- PRE/1283/2007 Order of May 10, sets forth the terms and conditions for the issue of individual invitation letter for foreigners wishing to enter the territory for private or tourism purposes (BOE no. 113 of May 11).
- PRE/1282/2007 Order of 10 May on available financial resources which foreigners must prove to make their entry into Spain (BOE no. 113 of May 11).
- PRE/237/2002 Order of 8 February provides general instructions regarding the designation of visa application reference numbers (BOE no. 37, of 12 February).
- Order of February 7, 1997 which regulates foreign identity cards (BOE no. 40 of February 15), as amended by Order INT/2058/2008 of 14 July.
- Resolution of January 26, 2012, by the Undersecretary of the Ministry of

the Presidency, which publishes the Agreement between the Ministry of Foreign Affairs and Cooperation and the Ministry of Interior about the issue of visas at point of entry and the extension of visas in Spain (BOE no. 29th of February 3).

2.2 Discuss the potential conflicts, if any, which arise between these various sources of law

The hierarchical system provides a systematic solution to any potential conflict of law. When a higher ranked regulation contravenes a lower one, the latter will be repealed or amended so that the conflict is resolved. In addition, the principles of newer law versus older law and specialisation versus generic also applies. This task is carried out by central government mainly via the Ministry of Justice but individuals also have recourse to the Ombudsman (*Defensor del Pueblo*).

In addition, a court or a party to a proceeding may raise the conflict with the Constitutional Court if the regulation contravenes the Spanish constitution or with the Court of Justice of the European Union in so far as it affects the application of European legislation.

3. BUSINESS IMMIGRATION

3.1 Un-sponsored business-related immigration

3.1.1 Self-Employment

Temporary Residence status and self-employment is attained by a foreign citizen over 18 years old who is allowed to stay in Spain for a period exceeding 90 days and less than five years, for the purpose of developing gainful employment on his own.

The initial authorisation for temporary residence and self-employment will last for one year and is limited to a geographic area and sector of activity.

Residency conditions:

- The applicant must not be irregularly within Spanish territory when the application is submitted.
- The applicant must not have a criminal record, both in Spain and in his previous country of residence for the last five years.
- The applicant must not be listed as non-acceptable in the territorial space of countries with which Spain has signed a treaty to that effect.
- The applicant must not be in a situation whereby having previously agreed to return to his country of origin due to previous irregularity status in Spain, he submits the application to return to Spain from abroad before the agreed term.
- The applicant must have duly paid the relevant fee for processing the temporary residence permit.

Employment conditions:

- The applicant must meet the requirements of the law for nationals regarding the opening and operation of the planned activity.
- The applicant must possess professional qualifications legally required or possess sufficiently proven experience in the exercise of the professional activity.

- The applicant must provide evidence that the planned investment for the implementation of the project is complete and has impact, if any, on job creation.
- The applicant must provide proof of sufficient subsistence funds and in the event that those are claimed to be derived from the self-employment activity, the assessment will be carried out after deducting any costs required to fund the activity. If the applicant has dependants, after deducting the funds required for their subsistence.
- The applicant must provide proof of payment of the relevant working permit fee.

Procedure:

- The permit application must be made by the applicant personally before the consulate corresponding to his country's domicile.
- The application for the permit must be accompanied by relevant documentation of compliance, in particular: (i) a valid copy of the applicant's passport or travel document; (ii) authorisations or licences required for the installation, opening and operation of the proposed activity or for professional practice, indicating the current application process including, where appropriate, the certification of application to the agencies concerned; (iii) accreditation of good standing and professional qualifications legally required for the exercise of the profession; (iv) proposed facility or activity to be performed, indicating the planned investment, the expected gains and, where appropriate, jobs that might be created, as well as proof that the required funds are in place to implement the project, or that have guaranteed financial support by financial or other institutions.
- The diplomatic mission or consular office shall register the request and will provide the applicant with a communication of the initiation of the process upon verification of payment of the required processing fee for the application procedure. (Paragraph amended by the Supreme Court decision of March 12, 2013). In the event of lack of the documents required above or where the fee has not been paid, the diplomatic mission or consular office shall require the applicant to correct the position within 10 days, failing which the petition will be denied and closed.
- If the application has been correctly filed the diplomatic mission or consular office of the Ministry of Foreign Affairs and Cooperation will record the application within 24 hours of receipt and proceed with the application by electronic means. In the event that the transfer of the application and the documentation cannot be effected by electronic means, the diplomatic mission or consular office will send the application by regular post through the Directorate General of Consular and Migration Affairs who will in turn submit it to the jurisdictional organ of the Central Government or Autonomous Community in whose territory the applicant seeks residence.

- The relevant organ of Central Government will decide to grant or deny the authorisation. For these purposes, criminal records reports from the Police, Civil Guard and Penitentiary Authorities will be issued within seven days. The initial authorisation for temporary residence and self-employment shall be withheld if all the requirements are not met. Authorisation shall also be refused if the applicant has a past impediment preventing him from carrying out the activity in Spain.
- Once the application has been granted, the diplomatic mission or consular office will notify the applicant, who should request the visa to enter in Spain within one month. Along with the visa application, the applicant must submit the following documents: (i) ordinary passport or travel document validly recognised by Spain with an expiration date of no less than four months; (ii) a certificate of criminal records, which must be issued by the authorities of the country of origin or the country or countries where the applicant has resided during the past five years; (iii) a medical certificate in order to certify that the applicant has no diseases as those listed in the International Health Regulations 2005.
- The applicant should apply for his work permit to carry out the activity within three months following legal entry into Spain at the Spanish Social Security.
- Within one month of the applicant being registered within the relevant Social Security scheme, he must personally apply for his Foreigner Identity Card before the Foreign Office or Police Station concerned. This card shall be issued for the period of validity of the authorisation and shall be collected by the applicant.
- If the applicant fails to register with the correct Social Security office, he will lose his right to stay in Spain and will be deported having committed a serious offence of irregular residence in Spain. Upon expiration, the self-employment temporary residence may be renewed for a two year period unless an authorisation for long-term residence applies.

3.1.2 Entrepreneurs

See above.

3.1.3 Investors

On 28th September the long-awaited Law in Support and Internationalisation of Entrepreneurs came into force, which includes an Investor Visa scheme. It is further explained in point 6.2 below.

3.1.4 Business Visitors

Business visitors or people on a business visa do not require a visa as long as the length of the visit does not exceed 90 days and the applicant is within the list of those countries whose nationals have visa-free access to the Schengen Area for 90 days in any 180 period and as long as no employment relationship ensues with local employers.

3.2 Sponsored business-related immigration

3.2.1 Types of sponsor-based employment visas

There are six sponsor-based employment visas, which allow the applicant to temporarily reside and work in Spain:

- temporary residency authorisation to work for a third party;
- temporary residency authorisation to work for scientific research purposes;
- temporary residency authorisation to work for highly-skilled workers with EU Blue Card;
- temporary residency authorisation to work for a third party and for a fixed term;
- temporary residency authorisation to work within the scope of transnational services procurement;
- temporary residency authorisation without authorisation to work requirement.

Temporary residency authorisation to work for a third party

This is applicable to any non-EU foreign citizen over 16 authorised to reside and work in Spain for a period between 90 days and five years.

The applicant must: (i) not reside in Spain unlawfully; (ii) have no criminal records both in Spain and in the previous country of residence for the past five years; (iii) not be listed as rejectable; (iv) not apply before the expiry of the term of commitment to not return to Spain; (v) have paid relevant fees; and (vi) the national employment situation should allow employment of the applicant according to Article 65 of the Royal Decree 557/2011, of 20 of April.

- The employer will file the application before the relevant authority within the locality where the business is domiciled.
- Once the application has been accepted the authorities will make a decision within three months. Once authorised, it will be communicated to the applicant's consular office, which will in turn communicate this to the applicant.
- The applicant will personally apply for the visa before the Spanish consulate within a month.
- The Spanish Consulate office will review the application and accompanying documentation and decide whether to grant or refuse the visa application within a month.
- Once granted, the successful applicant will then have another month to collect the visa from the consulate. Failing this the visa will become null and void.
- Once collected, the applicant will then have three months to enter Spain and register with the local Social Security office. Failing this his residence will be considered illegal and he will face deportation.
- Within one month from registration at the local Social Security office, the foreigner (employee) must apply for his Foreigner Identity Card before the correspondent Foreigner's Office or Police Station.

Any application extension must be filed within 60 days from expiration.

Temporary residency authorisation to work for scientific research purposes

This applies to any foreign researcher whose sole purpose is to stay in Spain for a period between three months and five years to carry out research within a reception programme developed by a research entity.

In general, the applicant: (i) must not reside in Spain unlawfully; (ii) must not have criminal records both in Spain and in the previous country of residence for the past five years; (iii) must not be listed as rejectable; (iv) the relevant fees must have been paid.

Specific to this application, the research centre: (i) must be authorised by the authorities to grant reception programmes; (ii) must be duly registered with the Spanish Social Security regime, and have no Social Security payments outstanding; (iii) must submit a reception research contract signed by the applicant and by the researcher which guarantees an ongoing activity for the duration of the research programme period; and (iv) the applicant must have the required qualification to carry out the research.

- The research centre will submit the application.
- The appropriate authority will consider the application and provide an opinion as to its viability within 45 days. If accepted, subject to a successful visa application, the visa will start from the date the researcher enters Spain. This must take place within six months from the date it was granted.
- In the event that the authorisation had been granted for a period in excess of six months, the researcher must apply for his Foreigner's Identification Card before the Immigration Office or Police Office.
- The applicant must register with the Social Security office within one month of entry into Spain.

This authorisation is renewable on a yearly basis and should be applied for within 60 days before expiration. Once authorised, the applicant must renew his Foreigner Identification Card within one month from the date the application was granted.

Any foreign researcher authorised to reside carrying out a research programme in any EU member state will be authorised to carry on with his research work in Spain for a period of up to three months. An extension of the three-month limit can be requested by the applicant submitting a fresh application for a Temporary Residency authorisation to work for scientific research purposes.

Temporary residency authorisation to work for highly skilled workers with an EU Blue Card

Foreigners with a superior academic degree or exceptionally, a minimum of five years professional experience are allowed to reside and work in Spain for a minimum of one year.

If the applicant has been authorised to work in any other EU member state, no authorisation will be required.

In general, the applicant: (i) must not reside in Spain unlawfully; (ii) must not have criminal records both in Spain and in the previous country

of residence for the past five years; (iii) must not be listed as rejectable; (iv) relevant fees must have been paid; and (v) the national employment situation must allow employment of the applicant according to Article 65 of Royal Decree 557/2011, of 20 of April.

Specifically, the employer must: (i) submit an employment contract signed by both the applicant and by the employer guaranteeing ongoing activity for the duration of the initial authorisation period for temporary residence and work permit; (ii) be duly registered with the Spanish Social Security system and have no Social Security payments outstanding; (iii) have sufficient financial, material or personal means to employ the applicant and to meet his obligations under the employment contract; (iv) the conditions laid down in the employment contract must conform to those established by current legislation and the collective agreement for the same activity, professional category and locality and the salary must be from 1.2 to 1.5 times the average gross national salary depending on the specific profession of the applicant; (v) the applicant must possess the training and, where appropriate, professional qualifications legally required for the exercise of his profession.

- The employer will file the application before the competent authority within the locality where the business is domiciled.
- Once the application has been accepted the authorities will make a decision within 45 days. Once authorised, it will be communicated to the applicant's consular office, which will in turn inform the applicant within 15 days.
- The applicant will then have a month to apply in person for the visa before the Spanish Consulate.
- The Spanish Consulate office will examine the application and any accompanying documentation and will decide whether to grant or refuse the visa application within one month.
- Once granted, the successful applicant will then have a month to collect the visa from the consulate failing which it will become null and void.
- Once collected, the applicant will then have three months to enter Spain and register with the local Social Security office, failing which his residence will be considered illegal and he will face deportation.
- Within one month from registering at the local Social Security office, the foreign employee must apply for his Foreigner Identity Card before the correspondent Foreigner's Office or police station. This card will also contain the inscription 'Blue Card EU'.

The application for an extension must be filed within 60 days from expiration and may be extended for a maximum period of two years.

Either the applicant or his/her employer will be authorised to simultaneously apply for a family reunion visa for his/her dependants and such an application will follow the rules and procedures laid out for that visa.

Temporary residency authorisation to work for a third party and fixed term

This applies to foreigners over 16 years old authorised to reside and work in Spain for a third party in seasonal activities, campaigns, services or training

and internships.

The general requirements for this visa are the same as the temporary residency authorisation to work for a third party.

More specifically, this visa is intended to cover the following activities:

- (i) seasonal or campaign activities lasting no longer than nine months;
- (ii) services for a maximum period of 12 months and for: (a) building of industrial or electrical plants (the employer must provide travel and accommodation); (b) buildings or electric, telephone, gas or train networks (the employer must provide travel and accommodation); (c) installation and maintenance of production equipment, its start up and reparations. The employer will be required to produce administrative licences to carry out the work.
- (iii) temporarily for athletes, artists and CEOs.
- (iv) training and internship activities – training or internship contracts are required to be produced.

As a general requirement, all applicants must return to their country of origin upon termination of the stay provided in the visa and within one month of expiration, the applicant will appear before the consulate where the visa was provided. Failing to comply with this obligation will result in the applicant being banned from entry to Spain for the following three years.

The procedure for obtaining the visa is the same as for the previous temporary residency authorisation to work for a third party with the following relevant specialities:

- Employers seeking applications for workers under (ii) (a) and (b) above must firstly offer unemployed workers in Spain the chance to apply for it for 25 days, before making it available to foreign nationals.
- The national employment situation must allow employment of the relevant applicant according to Article 65 of Royal Decree 557/2011, of 20 of April.
- Applications in the case of the remaining applicants mentioned above must be filed by the employer three months in advance of the start of the activity.

Applications for extension for workers under (ii) above can be obtained and will last for nine months. Applications for extension under points (i), (ii) and (iv) can be obtained for the duration of the work or an extra 12 months, whichever is the shortest.

Temporary residency authorisation to work within the scope of transnational services procurement (intra companies visa)

This visa is granted to workers employed and transferred by a company located in a non-EU country in any of the following cases:

- when the employee is to render services established by a contract between the transferring company and the transferee company active or located in Spain;
- when the receiving company is the same company or forms part of the same group of companies as the transferring company;
- when the transferred employees are highly qualified workers transferred

to Spain for the purposes of supervising or advising on works or on services to be carried out by a Spanish company abroad.

The visa will not extend to transfers for training purposes under the first or third points above, nor does it apply to personnel at shipping companies.

The visa authorisation will be geographically limited, up to one occupation and for a maximum of one year.

The requirements regarding the applicant's residency are as follows. The applicant: (i) must not reside in Spain unlawfully; (ii) must not have criminal records both in Spain and in the previous country of residence for the past five years; (iii) must not be listed as rejectable; (iv) must not be in a situation whereby having previously agreed to return to his country of origin due to previous irregularity status in Spain, submits the application to return to Spain from abroad before the agreed term; (v) must have paid the relevant fees.

The requirements are as follows: (i) the national employment situation must allow employment of the transferred worker unless the employer is able to prove that the employment activity requires the employee to have had knowledge and experience of the transferring company (ii) that the employment activity to be carried by the applicant has been the habitual employment activity of the applicant within the transferring company for at least the previous nine months and that his work experience overall exceeds one year (iii) the transferred company must be duly registered with the Spanish Social Security system and must not have any Social Security payments outstanding; (iv) the transferring company must guarantee the worker that all conditions and requirements as provided by Law 45/1999 of 29th November are fulfilled.

- The transferring company will file the application for transfer before the correspondent Spanish Consulate or the Foreigner's Office where the services are to be provided.
- Once the visa application is granted by the relevant consular office, the worker should enter Spain within three months and once entered, should start the activity within three months and register with Spanish Social Security unless he remains registered with the social security of his/her country of origin in which case the authorisation is deemed to be granted upon entrance of the worker into Spain.
- Within one month of the start of the authorisation the worker shall apply for his residency card if the authorisation to work is for more than six months. The card will be granted by the corresponding Police Office or foreign office and will be valid for the same period that the authorisation is granted.

An extension of the temporary residency authorisation will be allowed for the period originally envisaged up to a maximum of one year or as long as permitted by the relevant international treaties signed by Spain, providing that the same conditions as those that were applicable when the authorisation was granted are still in place.

Any renewal must be applied for within 60 days from expiration.

Temporary residency authorisation without authorisation to work requirement

Certain workers will be exempt from obtaining work authorisation to reside and work in Spain as long as they are found in the following situations:

- Technicians, scientists, researchers, professors invited or employed by the General Administration of the State, the Autonomous Communities, universities, local authorities or bodies whose purpose is the promotion and development of research mainly promoted and participated by the abovementioned. Applicants are required to produce the invitation or employment contract, signed by the authorised legal representative of that authority, stating the description of the project and the professional profile required for its development.
- Management personnel or faculty of cultural or educational institutions officially recognised by Spain, developing cultural and educational programmes from their respective countries so far as their activity is limited to the execution of such programmes.
- Civil servants and military officials of foreign state governments in order to carry out activities under cooperation agreements with the Spanish Administration.
- Foreign media. This category includes media information professionals serving foreign media to develop their reporting activities in Spain, duly certified by the Spanish authorities as correspondents or as special correspondents.
- Members of international scientific missions to develop work and research in Spain, authorised by the Administration, state or autonomous communities.
- Artists who come to Spain to perform specific performances on a non-continuous basis. The activities carried out may not exceed five consecutive days or 20 non-consecutive days in a period of less than six months.
- Religious ministers and members of the hierarchy of different churches, creeds, religious communities, and religious orders.
- Foreigners who are part of the representative bodies, government and administration of internationally recognised trade unions and business organisations, providing their activity is strictly limited to the performance of the duties pertaining to that status.
- Foreign minors allowed to work supervised by child protective services.

The procedure for granting the visa is as follows:

- Provided that the worker is non-resident in Spain and that the expected duration of the activity is not longer than 90 days, the foreigner must apply for a residence visa at the Spanish consular office of his/her place of residence, with the appropriate documentation.
- The consular office will verify whether the exemption applies and will respond within seven days.
- Issuance of the residence permit shall be communicated through the computer application corresponding to the Foreign Office in the province where the activity is to be developed. Extensions may

be applied for but the total duration of the stay and their possible extensions may in no case exceed 90 days.

- In the event that the applicant is currently residing in Spain, the foreigner must apply for recognition of the exception arguing that they meet these conditions at the Foreign Office where the activity begins, producing the relevant documentation in support of the application.
- The length of the authorisation will be granted in accordance with the need of the activity and in any case for no longer than a year from its first authorisation and for two extensions of two years each, provided that the conditions for the exemption are still met.
- Once the visa with work permit exempted is granted, the applicant must enter Spain within three months.
- The term of the visa will be valid from the date on which entry is made and this will be stated on the visa, passport or travel document. If the authorisation is for a period longer than six months, the foreign worker will have to apply for his Foreigner Residency Card before the Police Office or Foreigner Office within one month of entry into Spain. If the foreigner already had resident status in Spain, the validity of the work permit will begin on the date when the resolution was granted.

3.2.2 Role, requirements, and reporting duties of sponsors

Already explained where applicable above.

3.2.3 Civil and criminal penalties for sponsors

Civil/administrative penalties

There are three types (minor, serious and very serious) of administrative penalties that can be applied to non-compliant sponsors:

Minor penalties (up to EUR 500 fine)

- failure to communicate a change of circumstances;
- hiring workers not authorised to carry out the specified works.

Serious penalties (from EUR 501 to 10,000 fine)

- not registering an employee with Social Security or not registering the employment contract. The sponsor will be also be fined the costs or repatriation;
- facilitating the continuity of the illegal worker invited by the sponsor and to maintaining the worker's employment after the authorisation has expired;
- committing three minor penalties of the same nature within one year.

Very serious penalties (from EUR 10,001 to 100,000 fine)

- hiring foreign workers without residency and work authorisation. A penalty will be imposed for each worker found in such a situation. In addition to the pecuniary penalty, the sponsor's premises will be shut down for a period ranging from six months to five years;
- discriminating practices for racial, ethnic, national or religious reasons;

- simulating an employment relationship with a foreign citizen for a gainful purpose;
- committing three serious penalties of the same nature within one year.

Criminal penalties

Illegal immigration practices and labour offences against basic rights such as the right to syndicate, the right to creed, racism practices etc, might lead to committing criminal offences. Sponsors may be imprisoned for two to five years and ordered to pay a pecuniary penalty if found guilty of promoting or supporting the transfer of a worker using a false contract, offer to work/application or any other deceptive practice.

3.3 Discuss any common issues or concerns that may arise under business immigration in this jurisdiction

Unfortunately, as explained above, there is a lack of uniformity as to how the law should be executed by the authorities and accordingly it is highly advisable to always make contact with the specific authorities that will be handling the application both locally and where applicable at the relevant Consulate, to ensure that all requirements are met. This is an ongoing concern that has been detected by the CORA report mentioned above.

4. DEPENDANTS

Each type of visa provides specific regulations for the dependants of foreigners applying for it.

Generally however, any dependant of a foreigner entitled to stay in Spain will be allowed to accompany him/her for the relevant period for which the foreigner has been authorised.

Married and unmarried partners, children under 18 or if above disabled and unable to look after themselves will be considered dependants.

The accompanied foreigner must be legally authorised to stay in Spain, capable of economically supporting the dependant(s) and be able to prove their relationship.

Dependants will be entitled to stay in Spain legally for the same period as the foreigner upon which they depend is authorised and as long as the foreigner remains entitled to stay.

If the period of stay is longer than six months, the dependant must request the corresponding Foreigner's Residency Card within one month of entering into Spain.

Dependants are not entitled to work.

5. SETTLEMENT AND CITIZENSHIP

5.1 General process and time frame for obtaining permanent residence

'Long-term residence', rather than 'permanent residence' according to Spanish law, will be obtained after a period of five years of continued and legal residency or under the following circumstances:

- UE Blue Card holders who have resided in Spain for the last two years.
- Contributory Spanish Retirement and Disabled Pension holders.
- Spanish-born residents who have continuously resided in Spain for the last three years.
- Those who were originally Spanish but had lost Spanish nationality.
- Statutorily accepted refugees and stateless persons.
- Those foreigners who have positively contributed to the Spanish economy, science, culture or international promotion.

If the applicant resides in Spain he must file his application for long-term residency before the Foreigner Office corresponding to his place of residency or where he wishes to fix his domicile.

If the applicant does not reside in Spain, he must file the application before the Spanish consulate office corresponding to his country of residency.

For refugees and stateless persons, the application will be carried out by the Ministry of Employment and Immigration.

The application will be decided within three months. If granted, the foreigner must apply for his Foreigner Identity Card within one month of having been informed of the decision.

5.2 General process and time frame for obtaining citizenship

After 10 years (in some cases one, two or five years as explained below) of continued residency a foreign citizen is entitled to obtain Spanish nationality, which implies a right to permanent residence.

Nationality by residence

This form of acquisition of citizenship requires the applicant to reside in Spain for 10 years legally, continuously and immediately preceding the request.

There are, however, cases in which the length of time could be reduced as follows:

- Five years if the applicant holds refugee status.
- Two years if the applicant is a national of Andorra, Philippines, Equatorial Guinea, Portugal, Sephardic people or a Latin American country.
- One year if the applicant: (i) was born on Spanish territory; (ii) did not properly exercise the right to acquire Spanish nationality by option; (iii) has been subject to guardianship (under the supervision of a guardian), guardian or foster care of a Spanish citizen or institution for two consecutive years, even if the applicant continues to be in this situation at the time of application; (iv) at the time of the request, has been married to a Spanish citizen and not separated legally or *de facto*; (v) is the widow(er) of a Spanish national, if at the time of the spouse's death they were not separated, formally or legally; (vi) was born outside of Spain and his father or mother (also born outside Spain), or

grandparents were originally Spanish.

In addition, the applicant must demonstrate good citizenship, and a sufficient degree of integration into Spanish society.

Nationality by naturalisation

This form of acquisition of nationality is granted *ex gratia* and is not subject to the general rules of administrative procedure. It will be conveyed at the discretion of the Government by Royal Decree after assessing the specific circumstances.

Nationality for possession of state

Those citizens who would have held and used this nationality for a period of 10 years continuously in good faith (without having knowledge of the actual situation, ie that he does not actually consider himself Spanish), based on a title registered at the Civil Registry, will be entitled to Spanish nationality by possession of state. The Spanish nationality will not be lost even if the title registered at the Civil Registry is annulled. The applicant must have maintained an active attitude in the possession and use of Spanish nationality, meaning that he should have behaved as Spanish, both in the enjoyment of his rights and in the performance of his duties in relation to the Spanish authorities.

Nationality by choice

Spanish nationality by choice is a benefit that the Spanish legislation provides to foreigners under certain conditions.

- those who are or have been subject to the parental authority of a Spanish citizen;
- those whose father or mother was Spanish and was born in Spain;
- those whose determination of affiliation or birth in Spain occurs after 18 years of age. In this case, the deadline for requesting nationality is two years from determination of the parentage or birth;
- those of age adopted by a Spanish citizen so long the right to choose is exercised within two years from the adoption.

The Law of Historical Memory allows optional acquisition of Spanish nationality to persons whose father or mother was originally Spanish and to grandchildren of those who lost or had to give up Spanish nationality as a result of exile, due to the civil war and dictatorship.

Nationality by origin

The following will be considered as Spanish by origin:

- Those born to a Spanish mother or father.
- Those born in Spain as children of foreign parents if at least one of the parents was born in Spain (with the exception of children of diplomats).
- Those born in Spain to foreign stateless parents, or if the national law of any one parent does not provide nationality to the child.
- A child born in Spain whose parents' identity is unknown. It will be presumed that the child was born in Spain when his/her first known

- place of habitation is Spanish territory.
- Anyone under 18 who is adopted by a Spanish citizen.

6. PRESENT CLIMATE AND FUTURE LEGISLATION

6.1 Present climate and trends

The ongoing economic downturn in Spain has prompted the current government to look for ways to improve the situation generally and in particular to reduce the unemployment rate, facilitate foreign private investment and support Spanish entrepreneurial-based businesses to create wealth. To this end has been passed Royal Decree-law 4/2013, of 22 of February, in Support of Entrepreneurs and Stimulation of Employment and most recently Law in support of Entrepreneurs and their Internationalisation, which among other measures, establishes a new path for foreign citizens to obtain long-term residency via investing in public debt and/or private equity and/or real estate.

6.2 Future legislation

The Law in support of Entrepreneurs and their Internationalisation provides foreigners outside the EU the chance to gain entrance and residency for the purposes of making a significant investment in Spain as follows:

- (i) initial investment in excess of EUR 2 million in public debt; or
- (ii) in excess of EUR 1 million in shares or participations in private Spanish entities or bank deposits in Spanish banks or financial entities; or
- (iii) real estate located in Spain in excess of EUR 500,000 (where the minimum amount is free from charges or in other words, not borrowed); or
- (iv) a business project of general interest is developed in Spain, which provides: (i) the creation of employment; (ii) investment with socioeconomic impact within the area where is deemed to be developed; (iii) makes an important impact on scientific or technological innovation.

A significant investment made by a foreigner applying for a residency visa will also be considered where such investment is carried out through a company located outside of Spain as long as such company is not incorporated in a tax haven jurisdiction according to Spanish law and the foreigner holds directly or indirectly the majority of the voting rights and has the capacity to nominate or remove the majority of the board of directors.

Characteristics

The visa will provide the successful applicant with a right to reside in Spain for at least one year which could then be extended for two years as long as the following conditions are met:

- any extension is applied for within or after 90 days of the expiration of the initial visa.
- The applicant must travel to Spain at least once.
- If the investment falls within (i) or (ii) above it requires the foreign investor to prove that the investment has been maintained within the

initial period of the visa.

- If the investment falls within (iii) above, it requires the foreign investor to prove that he is the owner of either the property or the minimum equity required.
- If the investment falls within (iv) above, the foreign investor must provide a favourable report from the authorities confirming that the investment is of general interest.
- Where applicable, the foreigner investor must comply with the Social Security and tax obligations.

The investor residency visa can then be extended for a further two year period.

7. RESOURCES

7.1 Useful government and non-governmental agencies, departments, and organisations

There is good general information at the websites of the following ministries:

- Interior – www.interior.gob.es;
- Exterior – www.exteriores.gob.es;
- Justice – www.mjusticia.gob.es;
- Labour – www.empleo.gob.es;
- Social Security – www.seg-social.es.
- If an enquiry is related to a specific area or region within the Spanish territory, it is useful to contact the Spanish Immigration Authorities located in each province of Spain: www.seap.minhap.gob.es/servicios/extranjeria/extranjeria_ddgg.html.
- Finally, there are several processes that are carried out before the Police Authorities; www.policia.es.

7.2 Additional helpful websites or resources (for example, visa processing times, visa fee charts, etc)

The following site provides a list of all Spanish Embassies and Consulates: www.060.es/060/GetFile?url=053414.

Some of them will have appointed external agencies to deal with their visa applications. One agency is VFS Global which services up to 45 countries.

Finally, visa fees range from EUR 60 to EUR 400 depending on the visa and most applications will be granted within 90 days.