

FERNANDO SCORNIK GERSTEIN

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LITIGATION & ARBITRATION DEPARTMENT

- Arbitration in Spain -

- I. The new Law 11/2011, of 20th May, introducing changes to Arbitration Law 60/2003.
- II. Arbitration; a more efficient alternative way of dispute resolution to ordinary jurisdiction within disputes of property co-owners.

JULY 2011

Our Firm counts with a department of experts in the subject of Litigation & Arbitration and all related fields. Our staff approaches the said matters with the required understanding attitude and rigour, providing efficient, continuous and comprehensive professional service to the client.

I. Law 11/2011, of 20th May, introducing changes to Arbitration Law 60/2003

Law 11/2011 has been passed clearly with the aim of promoting arbitration. The most significant changes affects areas regarding the reallocation of competence in arbitration matters such as the appointment of arbitrators and competence of exequatur and annulment proceedings.

In this regard is noticeable that High Courts of each autonomous community (*Tribunales Superiores de Justicia, Salas de lo Civil y Penal, de las Comunidades Autónomas*) shall be now competent for exequatur and annulment of proceedings and appointment of arbitrators. It should be noted that no appeal is allowed against the judgment of the High Court resolving the exequatur or annulment of proceedings. As a consequence the Spanish Supreme Court has no longer competence to deal with these arbitration matters, which as a consequence should shorten such sort of decisions becoming more attractive.

The possibility of arbitration in relation to company disputes has been expressly affirmed. It should be however noted that two special requirements have been introduced. First, the introduction of the arbitration agreement in the by-laws of the company requires the vote of at least two thirds of the total shares or participations. Second, arbitration in company disputes must be submitted to institutional arbitration. Ad-hoc arbitrations are not allowed in these matters.

The role of the arbitral institutions is been reinforced; a mediator, unless otherwise agreed, shall not be able to become the arbitrator in the same dispute between the parties; the expiration of the period for the arbitrators to render and award should not affect the validity of the arbitral award.

It should be noted that the Spanish Bankruptcy Act has also been amended so an arbitral agreement remains valid in cases of declaration of bankruptcy.

II. Arbitration; a more efficient alternative of dealing with dispute resolution within disputes of property co-owners.

A property owner in Spain often also acquires the common areas (common entrance to the property, alleys, elevators, garage common areas, swimming pool, gardens, etc.) of the building or development where the property is located. As a consequence the owner of a property becomes co-owner of the said common areas and member of the community of owners of the building.

Community of owners are regulated under the Law of *Propiedad Horizontal of 1960* and may also have statutes containing the necessary provisions for the running of the community of owners (meetings, decision voting system, fees, etc.).

It is not uncommon for real estate co-owners to find themselves into dispute on a variety of issues relating to their joint ownership on communal areas of their Spanish property.

Recourse of litigation in Spain is quite formalistic and as a consequence extremely slow, becoming in such cases clearly inefficient. It becomes therefore sensible to procure arbitration for such cases and to this end, include an arbitration clause into the co-ownership agreement.

The fast and less expensive method of resolution of disputes may result essential for a proper running of a community of owners since obtaining an arbitral award could take from sixty days to four months whereas litigation can easily take from one to two years.

It is also remarkable the efficiency in which arbitration has been proved to resolve disputes about co-owners' debts towards the community of owners. In 30% of the cases debts are settled before the obtaining of the arbitral award.

Including an arbitration clause only requires the approval of the said clause by the board of the community of owners.

=== For more information about this subject please contact our London office ===

OUR LONDON OFFICE

The London office of Fernando Scornik Gerstein - established in 1985 - has continuously provided advice on litigation, arbitration and property related matters in Spain.

Should you require further information or should you like to make an appointment, please contact london@scornik-gerstein.co.uk. or contact our managing partner Antonio E. Arenas López on 02074048400.

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