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SPANISH LAWYERS- ABOGADOS | Registered with the Solicitors Regulation Authority | Registered with the Madrid Bar

FAMILY LAW DEPARTMENT

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"As a result of our personal and family relations, we sometimes may face situations that require legal assistance due to their incidence on the family and its members.

Our Firm counts with a department of experts in the subject of Family Law and all the related fields. Furthermore, our staff approaches the said matters with the required understanding attitude and rigour, providing efficient, continuous and comprehensive professional service to the client. At the same time, our lawyers are up to date with the current legal rules and with permanent attention to legislative changes that may come into force and affect the family and personal relations."



Fernando Scornik Gerstein

SEPARATION AND DIVORCE

With the introduction of Law 15/2005 of 8th July, it is possible in Spain to automatically divorce after three months from the date when the marriage took place without the necessity to firstly undergo a separation procedure, as it was required by the previous legislation. Nevertheless, the possibility of undergoing the above mentioned separation procedure as a previous step to the divorce is still available and it can be accessed within the same above mentioned term.

Both separation and divorce processes can be carried out either amicably by the parties or through a legal procedure. In the first scenario, a mutual regulatory agreement is drafted covering the pacts reached between the parties in relation to the patrimonial and personal measures which will rule the relationship after the separation or the divorce (domicile allocation, visits, pensions, etc). Such voluntary agreement is signed before the Judge for its approval. On the second scenario, a legal proceeding will be followed in which it would be the Judge who decides about the measures to be adopted in accordance to the evidence submitted by the parties.

MODIFICATION OF MEASURES

Throughout the years, the measures originally adopted on the separation or divorce procedure might become inadequate due to substantial changes in the family environment (i.e.: the progenitor who is paying for food becomes unemployed, the regime of visits turns problematic, etc). In such cases, the legal system allows to enact a procedure where the provisions adopted measures could be re-adapted to the new reality.

MATRIMONIAL ECONOMIC REGIME

In the field of matrimonial relations or civil partnerships, the election of the economic regime applicable and the existence of assets in common has great economic importance. Our laws recognize the possibility to regulate both the administration of common assets until the final dissolution of the marital community (as well as the division of the assets in common) or until the separation of unmarried couples.

PATERNAL AUTHORITY, URGENT MEASURES AND RELATIONS WITH THE MEMBERS OF THE FAMILY

Apart from cases of guardianship and custody, in which the progenitor is entitled to live with the children, the paternal authority, exception made for extraordinary cases, is shared between both parents and subsequently both are entitled and have the right to decide over transcendental issues for the children.

The problems that may arise are not few (i.e.: choice of schools, medical treatments that the child should follow, religious celebrations, etc) and our legal system foresees the possibility for the Judge to decide upon the said issues in case an agreement is not reached between the parties.

Likewise, our legal system foresees the possibility of enacting legal proceedings in order for the Judge to adopt urgent measures to protect the child when he/she is faced with situations that may affect his/her rights.

It is also important to take into account that our legal system regulates the family relationships between the grandchildren and grandparents through Law 42/2003 dated 23rd November, in which the grandparents' right to access their minor grandchildren is protected.

UNMARRIED COUPLES AND SAME SEX COUPLES

There have been plenty of amendments and legislative initiatives that have taken place in this field in the past few years. The most relevant one being Law 13/2005 of 1st July by which the Civil Code is amended in relation to the right to get married - besides also the numerous Laws of the Autonomic Spanish Regions related to unmarried couples - the right of adoption of minors for same sex couples and Resolution A-28/04 of 8th February on equal rights for Gays and Lesbians. It is also important to quote the bill on international adoption pending for approval by the Spanish Parliament.

The Spanish Parliament (Cortes) has provided an answer to a social reality, increasing the spectrum of the marital institution in favour of same sex couple respecting the constitutional guarantee for matrimony and granting to these communities the rights that had previously been denied to them.

With regards to unmarried couples, the regulations pending for approval would finally validate this type of family relationship.

Our Firm has already been supplying legal advice to same sex married couples and in matters that affect not only these couples but unmarried ones as well, such as adoption, inheritance scenarios, Social Security pensions, economic matrimonial regimes, etc.

ENFORCEMENT OF JUDGEMENTS AND JUDICIAL ORDERS

In practice, it is usual that having passed a judgement or judicial order in any jurisdiction, the same is not followed by one of the parties (i.e.: the alimony is not paid, the regime of visits is not respected, etc.). In these cases, our legislation facilitates the possibility of demanding the compulsory fulfilment of the said judgement or judicial order through a procedure for its enforcement.

DOMESTIC VIOLENCE AND GENERAL CRIMINAL ISSUES

Our legislator has provided a legal response to one of the worst problems of our society, the gender-based violence, as it is shown in the Organic Law 27/2003 of 31st July that regulates the Order of Protection to Victims of Domestic Violence, and the Organic Law 1/2004 of 28th December on Measures of Full Protection against Gender-based Violence.

It is advisable for the victims of gender-based violence to receive comprehensive assistance with the aim to overcome and put an end to such a traumatic situation; as well as for all those issues of criminal nature originated within the family relationships and family legal procedures (alimony non-payment offence, mistreats on children, restraining orders, unfulfilment of visits regime, etc.).

INTERNATIONAL LAW: CHILD ABDUCTION AND OTHER CASES

It is becoming increasingly frequent to find families formed of members from different nationalities. As an answer to potential disputes (i.e.: international child abductions, separations or divorces with the intervention of different jurisdictions, etc) that may arise within these families, international regulations have been incorporated to Spanish Law. In this type of cases it is fundamental to act without delays and with solid knowledge of the legal implications that may arise.

Our Firm has been acting globally in matters with international repercussions and not only at European level. In this regard, our Law Firm is in a position to provide personalised advice, benefiting from the knowledge and information obtained as member of several renowned international associations and organisations into which the Firm participates actively: IBA (International Bar Association), IPBA (Inter-Pacific Bar Association), IAG (International Advisory Group), IURISPAN (Network of Spanish Law Firms), etc. This allows us to be part of an international network of lawyers and legal specialists not only in the field of Family Law but also in other legal subjects.

FILIATION, ADOPTION, EMANCIPATION AND INCAPACITY

Matters related to filiation and paternity, due to their highly personal nature and importance for the children and for its parents, require personalised legal assistance. National or international adoption, emancipation and declaration of incapacity require also careful consideration. Our Firm has lawyers who are familiar with the legal procedures referring to said subjects, and therefore, they are in a position to offer a solid and comprehensive advice.

OUR LONDON OFFICE

The London office of Fernando Scornik Gerstein was established in 1985, and we have always been advising British clients about family related matters.

We have a team of experienced family lawyers in London and also the permanent support of our Spanish branches in Madrid, Barcelona, Las Palmas, Playa del Inglés (Gran Canaria) and Los Cristianos (Tenerife), which count with some of the leading family lawyers in Spain.

Our firm also forms part of the Spanish network of Law Firms IURISPAN –which covers most of the major Spanish cities – and with the local know-how that is essential when facing litigation in Spain.

Should you require further information or should you like to make an appointment, please contact london@scornik-gerstein.co.uk or visit our website www.scornik-gerstein.com

DISCLAIMER

We do not intend to render advice on any particular matter but to bring a general description of certain Family Law matters currently in force.

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