# Navigating (Re)Insurance Regulations in Spain

## Key Insights

**The Spanish insurance and reinsurance sector is governed by a robust regulatory framework, ensuring financial stability and consumer protection. Our Chapter of the 2025 edition of the ICLG Insurance & Reinsurance Spain provides an in-depth guide to insurance regulations in Spain, covering everything from regulatory bodies, litigation procedures. arbitration and emerging trends.**

### Regulatory

**Which government bodies/agencies regulate insurance (and reinsurance) companies?**

The General Directorate of Insurance and Pension Funds ("Dirección General de Seguros y Fondos de Pensiones", or DGSFP or DGS) is the main body that regulates and supervises insurance activity in Spain. Its authority is derived from the Secretary of State for the Economy and Business Support, which is attached to the Ministry of Economic Affairs and Digital Transformation.

**What are the key requirements/procedures for setting up a new insurance (or reinsurance) company?**

There are two main pieces of legislation that regulate the setting up of a new (re)insurance business:

1. Law 20/2015 of July 2015 on the regulation, supervision and solvency of insurance and reinsurance companies.
2. Royal Decree 1060/2015 of 20 November on the regulation, supervision and solvency of insurance and reinsurance.

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To set up a new (re)insurance company in Spain, administrative authorisation from the Ministry of Economy must be obtained. This authorisation is issued for specific lines of business. If the insurance company wants to underwrite new lines of business for which it has no authorisation, a new authorisation must be requested for that specific area.

The main requirements to obtain the authorisation are as follows:

1. For the company to adopt one of the legal forms admitted in Spain and have a registered office in Spain.
2. To include insurance and/or reinsurance activity in the company's purpose.
3. To have sufficient solvency. Depending on the line of business, the minimum capital required is as follows:
   - 3.1 For life, credit, surety, civil liability and reinsurance, the minimum capital required is EUR 9,015,000.
   - 3.2 For accident, illness, legal defence, assistance and death insurance, the minimum capital required is EUR 2,103,000.
   - 3.3 For other lines of business, the minimum capital required is EUR 3,005,000.
   - 3.4 If the insurance company has several lines of business, the minimum capital required would be the highest amount applicable.
4. To identify contributions and participations in the share capital.
5. To report to the DGS on the existence of close links with other people or entities.
6. To prove the honourability, qualifications and experience of the effective managers.
7. To create an effective system of governance.

**Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?**

Foreign insurers are able to write business directly if the (re)insurance company has an authorisation from any other supervisory agency of any other European Union Member State.

For insurers outside of the European Union, they must meet the general requirements for setting up an insurance company in Spain to be able to write business directly in Spain.

**Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?**

Spanish law protects the parties' freedom of contract when dealing with "large risks".

For risks that are not classified as "large risks", the Insurance Contract Act (Law 50/1980) provides for some minimum standards that must be incorporated into contracts, for example:

- The insurer must provide pre-contractual information to the policyholder.
- Under Spanish law, actions committed intentionally cannot be covered.
- Any limitation to the rights of the insured should be highlighted in bold text and should be signed by the policyholder to be enforceable.

**Are companies permitted to indemnify directors and officers under local company law?**

There is no express prohibition regarding companies indemnifying directors and officers (D&O). Indeed, using general provisions of Spanish law, companies are liable for the acts or omissions of D&O, employees, etc. when acting on behalf of the company for losses caused to third parties.

However, the Spanish Corporations Act states that D&O will always be liable for their breach of duties that involve wilful misconduct; hence, in specific actions against D&O involving such conduct, the cases will not be indemnified by the company, without prejudice to the subsidiary liability that can be demanded from the company in criminal proceedings.

D&O insurance is common to provide coverage for the possible liabilities that could arise for D&O.

**Are there any forms of compulsory insurance?**

Some activities, risks and liabilities require compulsory insurance, for example:

| The carrying of passengers (by transport companies) | Environmental liability |
|---|---|
| Latent defects in construction | Liability for road traffic accidents |
| Nuclear risks | |

## (Re)insurance Claims

**In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?**

The Spanish Insurance Act is designed to protect the insureds and is therefore compulsory, except for large risks. Spanish courts also tend to rule in favour of the insured as they are perceived as the weaker contracting party in the insurer-insured relationship.

**Can a third party bring a direct action against an insurer?**

Yes. Furthermore, in order to protect third parties, insurers cannot raise personal exceptions that are available under the insurance contract with respect to the insured to the detriment of the third party. For example, if the insured has acted with intent, the insurer must indemnify the third party and recover from the insured. Objective limits of the insurance contract, for example the temporal limits of the policy, can be raised against the third party.

**Can an insured bring a direct action against a reinsurer?**

No, except in cases where a cut-through clause has been agreed.

**What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?**

If the insurer has submitted a proposal form or questionnaire to the insured, and the insured failed to disclose any relevant circumstances, the insurer can terminate the contract within one month of becoming aware of the misrepresentation.

If, however, a loss has occurred before the insurer was aware of the misrepresentation or non-disclosure, the insurer can reduce the indemnity proportionally to the difference between the

premium charged and what the premium would have been without the misrepresentation. Only in case of wilful misconduct or gross negligence is the insurer completely exonerated from the obligation to pay. The burden of proof lies with the insurer in such cases.

**Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?**

No. Prospective insureds are only obliged to answer the questions presented by the insurer in a proposal form or questionnaire without any general duty of disclosure that goes beyond the content of the questions posed.

This is different when the insurance contract is already in place. In this case, the insured or policyholder has the obligation to communicate any relevant circumstances that aggravate the risk as soon as possible without the need for insurers to ask for it.

**Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?**

Yes, the insurers are automatically subrogated into the rights of the insured upon payment of the indemnity under Section 43 of the Spanish Insurance Act. This means that, for a subrogated recovery, the insurer must prove its title to sue by disclosing evidence of the payment and of the legal grounds of the payment (i.e., coverage under the policy).

## Litigation - overview

**Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?**

For commercial insurance disputes, the first instance courts are competent, regardless of the value at stake. There are no jury trials in commercial insurance disputes.

**What, if any, court fees are payable in order to commence a commercial insurance dispute?**

Legal entities are obliged to pay a court fee to initiate legal proceedings. The amount of the fee is the sum of a fixed fee, which varies depending on the type of procedure, and a variable fee, which changes depending on the value at stake. Natural persons are exempt from the fee.

**How long does a commercial case commonly take to bring to court once it has been initiated?**

This depends very much on the backlog of the specific court in question, but an average period would be 12–18 months from proceedings being issued to judgment being issued at first instance.

## Litigation - Procedure

**What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?**

There is no legal duty of disclosure between parties. However, in civil proceedings the parties can request the disclosure of documents, but the request must be related to a specific document and cannot be a general fishing expedition. This request must be admitted by court and then it would be compulsory to disclose the document, but only at the request of the other party and upon admission

of the court. Third parties to the proceedings will only be required to provide documents if the court considers that the document is vital for the resolution of the matter. In criminal proceedings, the court can request the disclosure of any document without the party's prior request.

**Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?**

The only documents protected by legal privilege are the communications between lawyers and between lawyers and clients. All other documents can be disclosed to court proceedings upon a court's order.

**Do the courts have powers to require witnesses to give evidence either before or at the final hearing?**

Cross-examination of witnesses takes place at the final hearing and courts can compel witnesses to attend, with fines being possible for non-attendance.

**Is evidence from witnesses allowed even if they are not present?**

Witness evidence is possible and produced by way of cross-examination at the final hearing. The general rule is that the witness must be present at trial, although since COVID-19 there has been more discretion for video-conference declarations.

**Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?**

There is a difference between experts and witnesses with technical knowledge (called "expert witnesses") – both can be called for cross-examination at the final hearing, but the evidential value of the experts is higher than that of the witnesses. Also, experts can be required to ratify their expert report at the final hearing.

It is possible to have a court-appointed expert. Usually, parties prefer to rely on their own expert witness, with court-appointed experts being often restricted to beneficiaries of legal aid. However, a request can be made for a court-appointed expert in addition to the party's own expert report, and the court will decide if such a course of action is admitted or not.

**What sort of interim remedies are available from the courts?**

Interim remedies, such as freezing orders, liens, deposits and injunctions are available, if there is a risk that the final judgment cannot be enforced ("periculum in mora") and that there are reasonable grounds for the claim to succeed ("fumus boni iuris"). The latter requires a preliminary analysis of the claim but without entering into the merits of the claim. Interim remedies have to be requested by the interested party.

**Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?**

There is a right to appeal the judgment of first instance to the court of appeal (which varies depending on the jurisdiction and type of claim) when a party wants a review of the ruling, based on the evidence presented at the first instance. There are some exemptions to this right based on the amount involved.

There is also a right to appeal against the second-instance judgment to the Supreme Court ("Tribunal Supremo"). Two types of appeal are possible:

1. An extraordinary appeal on the grounds of breach of law ("Casación"), for disputes where there is a minimum amount of EUR 600,000 at stake, or if the amount is less, when there is a special

interest in resolving the breach of law, which is the case when the appealed judgment contradicts case law of the Supreme Court, or when it resolves issues on which there are contradictory case law from the second instance courts, or when the appealed judgment is applying acts/laws that have only been in force for up to five years.

2. An extraordinary appeal of procedural breach ("Infracción procesal") can be brought on the following grounds:
    - Breach of the jurisdictional rules.
    - Breach of the procedural rules.
    - Breach of the right to defence.

**Is interest generally recoverable in respect of claims? If so, what is the current rate?**

Interest is generally recoverable in court proceedings. There are two main types of recoverable interest: the legal interest from the date of the judicial claim up until the judgment; and the default interest (legal interest increased by two points) accruing from the date of judgment up until payment. Out-of-court settlements, however, are only negotiated over the principal amount, without interest or costs.

The legal interest rate for 2024 was 3.25%.

For insurance companies a penalty interest can be applied with an enhanced interest rate (legal interest increased by 50%) for the first two years and a flat rate of 20% per annum two years after the date of loss.

**What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?**

There are no costs incentives to settle prior to trial. If a settlement is reached, it is standard that each party bears their own costs.

In court proceedings, costs are imposed on the party whose claims have been totally dismissed, unless the court finds serious doubts on the facts or points of law discussed, in which case they would not be imposed. For example, a claimant may be successful but have the quantum of their claim reduced and, in such cases, costs would not be imposed on the losing party. Also, if the claim has been partially upheld, costs could be imposed if the other party has acted recklessly.

**Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?**

There are no compulsory methods of alternative dispute resolution in commercial claims, even though mediation and conciliation options are available, so parties cannot be compelled to mediate.

**If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?**

There are no consequences foreseen in the Spanish procedural rules if alternative dispute resolution is not applied.

*With effect from April 2025, parties that wish to initiate court proceedings have to show that they have attempted to engage with the counterparty to attempt to resolve the dispute prior to issuing court proceedings. Different methods include mediation or negotiations between lawyers, amongst others. The consequences of not accrediting any engagement with the counterparty will be the non-admission of the lawsuit. In effect, parties are compelled to engage in Alternative Dispute Resolution but are not compelled to resolve the dispute via ADR with legal proceedings being available when it is apparent that ADR will not be successful.*

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## Arbitration

**What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?**

Case law has ruled that preference should be given to the autonomy of the parties to resolve a dispute by arbitration. However, the will of the parties must be clear in that respect, by way of a clear and unequivocal arbitration clause. There are certain circumstances where obtaining assistance from the court in relation to an arbitration is possible, i.e., with the evidence proposed or if there is no agreement on the appointment of arbitrators. Also, if a claim is brought before a court where there is an arbitration clause, courts will have to resolve any jurisdictional questions related to the arbitration clause and its validity.

**Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?**

There is no standard form. As long as the will of the parties is clear, the arbitration clause is enforceable.

**Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?**

With an express arbitration clause this is difficult, unless one of the parties is able to prove that this clause has never been accepted or if, for example, there are conflicting clauses regarding arbitration and jurisdiction of the courts in the same contract.

**What interim forms of relief can be obtained in support of arbitration from the courts?**

The Spanish Arbitration Act of 2003 (currently in force) includes provisions to request interim measures from the courts or even from the arbitrators themselves if they deem such measures necessary, which can include general interim measures such as injunctions, liens, deposit of goods, etc.

**Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?**

The Spanish Arbitration Act establishes that the award must be reasoned. However, the lack of reasoning is not a valid ground to obtain the avoidance of the award. The parties can request to correct, clarify, complement or rectify the award.

**Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?**

It is not exactly an appeal, but there is a right to request the avoidance of the award (to be declared null and void) on the following grounds:

- No valid arbitration clause.
- A defect in service or notification that undermined the rights of defence.
- The arbitral tribunal has resolved issues that were not submitted to them.

  The designation of the arbitrators or the procedural rules to be applied do not correspond to what the parties had agreed or are in breach of the Spanish Arbitration Act.
- The arbitral tribunal has resolved issues that should not have been resolved in the arbitration.
- The award is against public order.

## Emerging trends

**Are there any current hot topics which relate to insurance and reinsurance issues in your jurisdiction?**

- The implementation of Artificial Intelligence in the insurance sector has been frequently discussed. Whilst the sector recognises the implementation of Artificial Intelligence could increase efficiency in risk management and claims handling, there are associated difficulties related to data protection that also must be taken into account and are likely to be subject to increased regulatory supervision.
- Climate change is impacting the sector with the increasing occurrence of extraordinary weather events.
- In recent years, Spain has experienced a significant increase in the number of companies affected by cyber attacks, a trend that is likely to continue in the coming years. Cyber insurers,

therefore, need to provide effective incident response to mitigate losses resulting from a cyber attack and ensure that insureds fulfil their regulatory requirements correctly to reduce the impact of possible sanctions.

- Embedded insurance – where product or service suppliers offer the possibility to contract insurance as a complementary item to the main product or service being offered – is becoming an ever-increasing distribution channel in Spain.
- Another issue to be wary of this year is the transposing of European Union Directive 2020/1828 on representative actions for the collective protection of consumers ("class actions") into national law, which is likely to increase litigation claims and insurers' exposure with regard to issues involving product liability, data protection, financial institution-consumer contracts, amongst others.

## Useful links

Access to the full guide on the ICLG website

Find out more about Kennedys' services in Spain

Check out our full article on the changes taking place as of April 2025 here

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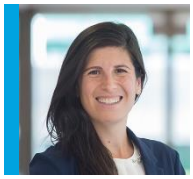

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