



KINSTELLAR

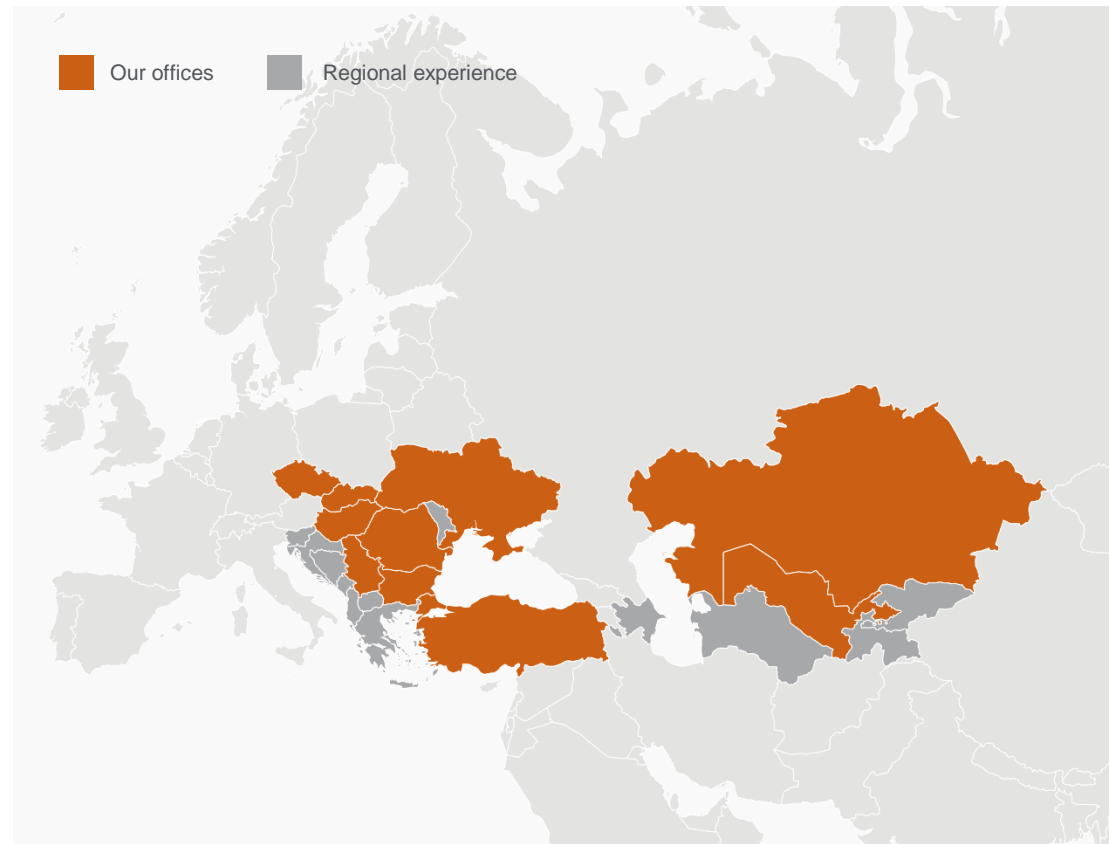
Spain: Bilateral legal relationships – legal risks of business in Spain, how to deal with them?


November 2019


Kinstellar: Legal advice in Emerging Europe and Central Asia

Kinstellar is an international law firm. We focus on emerging economies in Central and South Eastern Europe and Central Asia. Our offices are in **Almaty** and **Nur-Sultan** (Kazakhstan), **Belgrade** (Serbia), **Bratislava** (Slovakia), **Bucharest** (Romania), **Budapest** (Hungary), **Istanbul** (Turkey), **Kyiv** (Ukraine), **Prague** (the Czech Republic), **Sofia** (Bulgaria) and **Tashkent** (Uzbekistan).

We have strong experience in providing legal advice to clients in jurisdictions where we do not have a local presence working in joint teams with leading local law firms.




11
offices


250+
lawyers

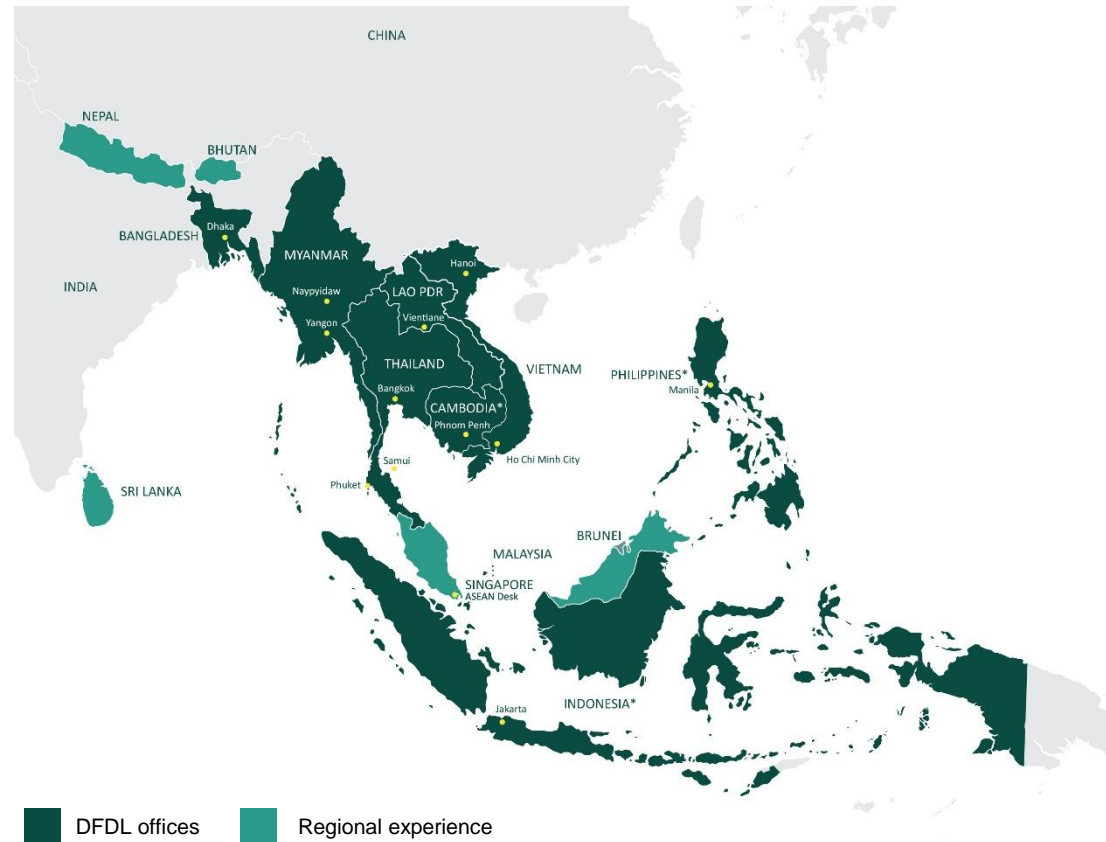

7.000+
matters




DFDL: Legal advice in Southeast Asia

DFDL is an international law firm. We focus on emerging economies in Southeast Asia.

DFDL practices in **Bangladesh, Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, Vietnam** and **Singapore** (ASEAN Desk).

As a leading international law firm serving the Southeast Asian region, DFDL has also developed 'desks' to serve those clients from Singapore, China and India and which operate or have business in the DFDL Southeast Asian countries.



 13 offices	 9 countries	 150+ advisers
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What We Do

The range and breadth of our specialist practices and sectors set us apart in Emerging Europe and Central Asia.

Sectors

- Asset Solutions
- Aviation
- Automotive & Industrials
- Banks & Financial Institutions
- Energy & Natural Resources
- Industrials
- Infrastructure
- Life Sciences & Healthcare
- Private Equity
- Real Estate
- Technology, Media & Telecommunications

Practices

- Banking, Finance & Capital Markets
- Competition & State Aid
- Compliance, Risk & Sensitive Investigations
- Dispute Resolution
- Employment & Labour Law
- Energy & Natural Resources
- Infrastructure & Projects
- Intellectual Property
- M&A & Corporate
- NPLs & Distressed Assets
- Real Estate, Construction & Planning
- Restructuring & Insolvency
- Tax
- Technology, Media & Telecommunications
- White Collar Crime



Out of Area

But certainly not out of our depth. Quite the contrary.

We have experience in **close teamwork with legal counsel in jurisdictions where we do not have our own office**. Kinstellar Prague would be your **single point of contact** in order to ensure the unified approach.



In **Spain** we work closely with **Uría Menéndez**, one of the leading firms across the Iberian and Latin American markets.

Uría Menéndez have almost 600 lawyers working in 14 different offices located in the most important financial centres in Europe, the Americas and Asia. Their team is known for their capacity for innovation, profound analysis of the law and unwavering respect for ethics.

Uría Menéndez makes up a part of the first ever major Ibero-American law firm, *Philippi, Prietocarrizosa, Ferrero DU & Uría* and is a member of Lex Mundi, a renowned international network of premier legal firms.

- Investment
- Most Common Types of Entities
- Establishing a company
- International Treaties
- Enforcement of Decisions / Judicial Cooperation / Arbitration
- IP protection
- Finance documentation



- Spain is a diversified economy that welcomes international companies
- Foreign investors can operate **any type of business under the same conditions** as local investors
- Spain is the **13th largest economy** in the world by GDP and was ranked 30th in the 2019 Doing Business report published by the World Bank
- Spain has a modern economy, that benefits from a young and highly qualified population
- **Services** represent almost 73% of business activity



Most Common Types of Entities

- **Public Limited Liability Company / Sociedad Anónima (S.A.)**
- **Limited Liability Company / Sociedad Limitada (S.L.)**
- **Branch of a foreign company**



Public Limited Liability Company / Sociedad Anónima (S.A.)

- Minimum share capital of € 60,000
- One or more directors

Limited Liability Company / Sociedad de Responsabilidad Limitada (S.L.)

- Minimum share capital of € 3,000
- One or more directors

Branch of foreign limited company

- To establish a branch, a public deed and other documents must be registered at the Commercial Registry (registro Mercantil)
- No minimum capital requirement
- No formal management structure

Off-the-shelf company

SHARES

- There are no restrictions on foreigners owning shares
- Shareholders need to register for tax purposes and obtain N.I.F. or N.I.E.

REAL ESTATE

- There are no specific restrictions on the acquisition of real estate by a foreign national or foreign entity



Business and trade

- Convention on the OECD
- Marrakesh Agreement establishing the World Trade Organization
- Convention establishing Multilateral Investment Guarantee Agency
- **UN Convention on Contracts for the International Sale of Goods (Vienna Convention)**

Dispute resolution

- **ICSID Convention (Washington Convention)** - Convention on the Settlement of Investment Disputes between States and Nationals of other States

Transport and logistic

- Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention)
- Convention concerning International Carriage by Rail
- Convention on International Transport of Goods Under Cover of TIR Carnets (TIR Convention)

Energy

- **Energy Charter Treaty (ECT)**

ECT provides for protections very similar to those of BITs. ECT survives the doubts regarding the Intra-EU BITs as the EU itself is a Party to the ECT.

Spain is involved in many arbitration claims due to the cuts it introduced to renewable energies (premiums payable for renewables), similar issues as those in the Czech solar arbitrations

Finance

- Agreement of the International Monetary Fund (IMF)
- Member state of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD) (recipient of funds)

Terrorism and Corruption

- UN International Convention for the Suppression of the Financing of Terrorism
- UN Convention against Corruption

- Agreement Concerning the **Protection and Reciprocal Encouragement of Investments** between the Kingdom of Spain and the Czech and Slovak Federal Republic (1993)
 - broad definition of investment and investor
 - principle of full protection and non-discrimination, fair and equitable treatment
 - most favoured nation treatment clause (MFN) and national treatment clause
 - due compensation in the event of any expropriation (only in public interest and non-discriminatory)
 - free transfer of profits
 - dispute resolution mechanism – **BIT arbitration**
- **However: EU approach to BITs** – all intra EU BITs are being challenged by the EU and EU requests their termination.
- Difficult enforcement of arbitration awards issued under Intra-EU BITs

- Bilateral treaty between the Czechoslovak Socialist Republic and the Kingdom of Spain on **Legal Aid, Recognition and Enforcement of Court Decisions in Civil Matters**
 - ✓ sets out cooperation of courts, including commercial disputes, such as delivery of documents and evidence taking
 - ✓ **Documents** issued or verified in the required form and bearing the stamp of the competent authority or official as prescribed by the law of one party **do not require further verification** in the territory of the other party.
 - ✓ This applies **also to signatures on documents** and signatures, which were verified pursuant to the law of one of the parties.
 - ✓ Public documents issued in the territory of one party will, before the state authorities of the other party, have the evidential value prescribed by the law of the party, in the territory of which the instrument was issued.
 - ✓ Mutual **recognition and enforcement of judgments** and **arbitral awards**, including preliminary orders
- Convention between the Czechoslovak Socialist Republic and Spain for **the Avoidance of Double Taxation** and the Prevention of Fiscal Evasion with respect to Taxes on Income and Property (1993)

Enforcement of Decisions / Judicial Cooperation / Arbitration

Enforcement of Decisions

- **Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters** (Brussels I Regulation)
- Bilateral treaty between the Czechoslovak Socialist Republic and the Kingdom of Spain on Legal Aid, Recognition and Enforcement of Court Decisions in Civil Matters
- Convention on Choice of Court Agreements (Hague, 2005)

Enforcement of Arbitral Awards

- **Convention on the Recognition and Enforcement of Foreign Arbitral Awards** (New York, 1958)
- Problematic enforcement of awards based on Intra-EU BITs (ECJ Achmea Ruling) – EU informed Spain that it must not pay out on any awards regarding its renewable energy schemes as this would constitute illegal state aid. Spain argues by the Achmea ruling to avoid enforcement of awards before any EU national court.

- Spanish Intellectual Property (“**IP**”) legislation is consistent with other EU Member States’ IP laws.
- Spain has ratified the most relevant **international treaties** in this field, which entails that non-Spanish nationals may obtain protection of their IP rights in Spain

- The main categories of intellectual property protected in Spain are:
 - Patents
 - Utility models
 - Trademarks, trade names
 - Copyright

- LMA standards are used by financial institutions as a non binding guide

Most common securities

- Real estate mortgage
- Pledge of shares
- Pledge of credit rights (i.e. accounts, insurance policies)



Questions?





Thank you!

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