JAVIER ÍSCAR DE HOYOS

Managing partner - Íscar Arbitraje

TÍTULOS ACADÉMICOS / FORMACIÓN PROFESIONAL

1986-1991	Licenciado en Derecho por la Universidad C.E.U. San Pablo de Madrid.
1989-1991	MBA Know How Business College de Madrid.
1992-1993	Master de Práctica Jurídica en la Escuela de Práctica Jurídica de Madrid
1994-1995	Master en Asesoría de Empresas en el Centro de Estudios Financieros de Madrid.
2006	Curso Superior de Arbitraje Instituto de Empresa de Madrid.

ACTIVIDAD PROFESIONAL ACTUAL

1992-actualidad	Abogado ejerciente desde 1993. Colegiado por el Ilustre Colegio de Abogados de Madrid. Socio fundador de ÍSCAR ABOGADOS SLP.
2000-actualidad	Secretario General de la Asociación Europea de Arbitraje
2006-actualidad	Miembro del Club Español del Arbitraje.
2007-actualidad	Presidente de la Corte Internacional Hispano Marroquí de Arbitraje.
2013 - 2017	Diputado 3° en la Junta de Gobierno del Ilustre Colegio de Abogados de Madrid.
2013-actualidad	Presidente del Centro de Mediación y Solución de Conflictos, CEMED
2015-actualidad	Secretario General del Centro Iberoamericano de Arbitraje, CIAR.
2016 Febrero	Georgetown International Arbitration Society. 4th ANNUAL INTERNATIONAL ARBITRATION MONTH February 2nd - March 1st, 2016 Tuesday, February 2: "Recent Developments in National Policies Toward Arbitration" 6:30 – 8:30PM location TBD. Speakers include Crenguta Leaua, Javier Iscar de Hoyos, and Gonzalo Stampa Casas.

2016 Noviembre — Harvard Law School. HIALSA. Spanish and European International Arbitration: Institutional and Practitioner Perspectives. "Viewpoint from the practitioner's side, while Javier Iscar de Hoyos, as head of the European Center of Arbitration, will offer an institutional perspective".

EXPERIENCIA PROFESIONAL Y ÁREAS DE ESPECIALIZACIÓN

Socio Director de Iscar Arbitraje.

Árbitro con experiencia en arbitrajes administrados bajo reglamento CCI, Corte de Arbitraje de la Cámara de Comercio de Madrid, Corte de Arbitraje del Ilustre Colegio de Abogados de Madrid, además de árbitro en arbitrajes ad hoc.

Miembro de la lista de árbitros del Conselho Arbitral do Estado de São Paulo de la Corte de la Cámara de Comercio de Valencia, entre otros.

Es Académico correspondiente extranjero de la Academia Colombiana de Jurisprudencia.

Visitante distinguido del Centro de Arbitraje del Ilustre Colegio de Abogados de Lima.

Jurista Emérito del Ilustre Colegio de Juristas de Colombia.

Miembro del Comité Argentino de Arbitraje Nacional y Transaccional CARAT.

Experiencia en arbitrajes en materia de Construcción, Contratos EPC, y EPCM, Productos Bancarios y financieros, Derecho Mercantil y especialidad también Derecho del Seguro.

Abogado desde 1993. MBA en Know How Business College, Master en Práctica Jurídica y Master en Asesorías de Empresas en la Escuela de Práctica Jurídica de la Universidad Complutense de Madrid; y Curso Superior de Arbitraje del Instituto de Empresa de Madrid.

Experto en arbitraje y autor de numerosos artículos y publicaciones; fundador de la Asociación Europea de Arbitraje; presidente de la Corte Hispano Marroquí de Arbitraje; y fundador del Centro de Mediación y Solución de Conflictos, Cemed.

Co-Director del Curso Superior de Arbitraje comercial y Mediación Civil y Mercantil de la UNED. Profesor del Master de Acceso a la Abogacía de la Universidad Camilo José Cela de Madrid (Módulo "Resolución Extrajudicial de Conflictos"). Profesor de la Universidad Pablo de Olavide de Sevilla. Diploma de Extensión Universitaria. "Derecho Extrajudicial y Notarial".

Profesor del módulo "Mecanismos de resolución de conflictos jurídicos" enmarcado dentro del Programa 'Executive' en Arbitraje Comercial Internacional de ICC Spain.

EXPERIENCIA PROFESIONAL Y ÁREAS DE ESPECIALIZACIÓN

1. Experiencia Institucional y como secretario

Desde el año 2000 dedicado a constituir y lanzar la Asociación Europea de Arbitraje. Es secretario general de la misma y ha supervisado y realizado el escrutinio en más de 150 arbitrajes del sector transportes, construcción, ingeniería, franquicia, seguros, servicios y sector inmobiliario principalmente.

Desde el año 2006, fecha de la constitución de la Corte Hispano Marroquí de Arbitraje, en sus funciones de secretario general ha realizado la labor de secretario y escrutinio de 16 arbitrajes internacionales.

2. Experiencia actual en Arbitrajes

Como abogado: (nota. Desde 2018 sólo actúo como árbitro y no como counsel)

• Arbitraje ad hoc, UNCITRAL, sede Montreal. Representación de una entidad pública de América Latina en la petición de los daños y perjuicios derivados del incumplimiento de Contrato en materia aeroportuaria (idioma: inglés y español. Cuantía: US$ 3.600.000).

• Representación en arbitraje ad hoc UNCITRAL, sede Montreal, idioma inglés, de una entidad española en la reclamación de cumplimiento de contrato de construcción de incineradora en un aeropuerto en un país de Iberoamérica. Cuantía aproximada US$ 3.300.000).

Como árbitro:

- (Actualmente) Co-árbitro en un procedimiento de la Corte de Arbitraje de Madrid en relación a ingeniería y construcción. (idioma del arbitraje: Castellano. Cuantía en litigio: 10.000.000€ aprox.).

- (Actualmente) Co-árbitro en un procedimiento de la Corte de Arbitraje de Madrid relativo a un contrato de colaboración. (idioma del arbitraje: Castellano. Cuantía en litigio: 20.000.000€ aprox.).

• (Actualmente) Co-árbitro en un procedimiento de la Corte Internacional de Arbitraje de la Cámara de Comercio Internacional (CCI) relativo a los daños y perjuicios derivados de un Contrato suscrito entre empresa Brasileña con sucursal en Uruguay, y empresa Uruguaya. Intervienen por reconvención empresa Japonesa y Francesa (idioma del arbitraje: español; cuantía en litigio: US$ 680.000.000 aprox.).

• (Actualmente) Presidente de Tribunal Arbitral de la Corte Internacional de Arbitraje de la Cámara de Comercio Internacional (CCI) relativo al "diseño, fabricación y suministro de las estructuras portantes de módulos fotovoltaicos" suscrito entre empresas mexicanas. Idioma español, cuantía US$ 1.500.000 , aprox.)

• Co-árbitro en un procedimiento de la Corte Internacional de Arbitraje de la Cámara de Comercio Internacional (CCI) relativo en demanda principal a la reclamación de facturas devengadas por Contrato de Prestación de Servicios, y en demanda reconvencional la Nulidad del Contrato, con reintegro de la cantidad abonada por mediar competencia desleal (idioma del arbitraje: Castellano; cuantía en litigio: US$ 900.000.).

• (Actualmente) Co-árbitro en un procedimiento nacional de la Corte de Arbitraje de Madrid en relación con una reclamación en demanda principal de daños y perjuicios derivados de Contrato por incumplimiento del Arrendador, y en demanda reconvencional Resolución del Contrato por incumplimiento del abono de la renta así como los daños y perjuicios derivados del incumplimiento (idioma del arbitraje: español; cuantía en litigio: € 10.000.000 aprox). de Arrendamiento de Negocio por incumplimiento del Arrendador, y en demanda reconvencional Resolución del Contrato por incumplimiento del abono de la renta así como los daños y perjuicios derivados del incumplimiento (idioma del arbitraje: español; cuantía en litigio: € 10.000.000 aprox).

• (Actualmente, aunque suspendido) Arbitraje "Ad hoc" en materia de incumplimiento contractual entre dos empresas nacionales, donde la demandante reclama un importe de € 17.337.669,30 y la demandada/reconveniente € 3.751.772,27 (idioma del arbitraje: Castellano).

• Co-árbitro en un procedimiento nacional de la Corte de Arbitraje de Madrid en relación con una reclamación de Nulidad de Contrato bancario (idioma del arbitraje: español; cuantía en litigio: € 150.000,00 aprox.).

• Presidente en un procedimiento nacional de la Corte de Arbitraje de Madrid en relación con una reclamación de Nulidad o Anulabilidad de Contrato bancario (idioma del arbitraje: español; cuantía en litigio: INDETERMINADA).

• Árbitro Único en un procedimiento nacional de la Corte de Arbitraje de Madrid en relación con una reclamación de Nulidad o Anulabilidad de Contrato bancario (idioma del arbitraje: español; cuantía en litigio: € 45.000,00 aprox).

3.- Artículos, publicaciones en materia de arbitraje. ***Autor de numerosos artículos y publicaciones en materia de Arbitraje tales como:***

Octubre 2019	ARBITRAJE DE INVERSIÓN. Coautor de la guía ""*Investor-State Arbitration Laws and Regulations 2020*" publicada en la revista ICLG - International Comparative Legal Guides por Global Legal Group, analizando la situación y actualidad de España ante el arbitraje de inversión. (Consultar anexo 1)
Junio 2018	La denegación del reconocimiento de un laudo extranjero con fundamento en la causa del art. V.1 e) de la CNY: comentario del Auto 3/2017, de 14 de febrero, dictado por el TSJM. Revista del Club Español del Arbitraje 32/2018.
Marzo 2015	El arbitraje acerca la relación asegurado-asegurador. Mediadores en Red.
Diciembre 2014	El arbitraje acerca la relación asegurado-asegurador. Mediadores en Red.
Febrero 2014	El arbitraje en la relación asegurado-asegurador. Fecor, Federación Española de Corredores de Seguros.
Enero 2014	Abogacía e información, la necesidad de adaptarse a la realidad global. Revista de Derecho Práctico.
Octubre 2013	Caso de éxito de la Corte Hispano Marroquí de Arbitraje en el I Foro Económico del Mediterráneo Occidental, en Barcelona.
Enero 2013	Revista Foro Jurídico Iberoamericano. Hacia una profesionalización del arbitraje.
Diciembre 2012	Introducción al desarrollo de la mediación en el espacio mediterráneo. Autor junto a Fernando Oliván para la VIII Conferencia Internacional del Foro Mundial de Mediación, España 2012
Octubre 2012	El arbitraje institucional: Las cortes de arbitraje en España. Arbitraje y mediación. Problemas actuales, retos y oportunidades. Número monográfico especial de la Revista juridica de Castilla y León. Editorial Lex Nova – Thomson Reuters.
Mayo 2012	Pinceladas de la situación actual del arbitraje y la mediación en España. Mediario, Revista Oficial del Colegio de Mediadores de Seguros.
Junio 2011	Les tours d'arbitrage comme moyen pour gérér les arbitrages. Revue marocaine de médiation et d'arbitrage, número 5. Revista editada por el Centro Internacional de Mediación y de Arbitraje de Rabat (CIMAR).

Mayo 2011	El acuerdo arbitral. Apuntes teóricos y prácticos. Coautor del primer tomo, que forma parte de la obra Tratado de Derecho Arbitral. Publicado por el Instituto Peruano de Arbitraje y Editorial Ibáñez, con el apoyo de la Pontificia Universidad Javeriana en Colombia.
Enero 2011	La elaboración de un calendario procesal. Revista "Cuadernos de Arbitraje", número 6. Editada por Wolters Kluwer, Iberdrola y el colegio de ingenieros ICAI.
Noviembre 2010	El arbitraje internacional: una aplicación práctica, como coautor con Jorge Campos Moral para Estrategia Financiera, publicación de Wolters Kluwer (número 277).
Julio-agosto 2010	Los ingenieros y los abogados, parte esencial en los arbitrajes, como coautor con Higinio García Pi para Anales de Mecánica y Electricidad, revista de la Asociación de Ingenieros del ICAI (volumen LXXXVII, fascículo IV).
Julio 2010	Demandar a un incobrable vía arbitraje es rentable, diario Expansión 09/07/2010
Junio 2010	Reforma de la Ley de Arbitraje, diario Legal Today 11/06/2010 Reforma de la Ley de Arbitraje Juris Madrid 1/06/2010
Marzo 2010	Reflexiones sobre las últimas reformas en materia de arbitraje y mediación, Diario Jurídico 17/03/2010 Entrevista para la revista Foro Esine, n° 100
Febrero 2010	Entrevista para la Newsletter del Instituto, n° 30
Enero-marzo 2010:	¿Qué papel cumple el arbitraje en los procesos de inversión extranjera?, Invest in Spain
Diciembre 2005	Notificaciones y comunicaciones en la vigente ley de arbitraje Validez del artículo 5.a) Revista "Actualidad Jurídica Aranzadi" n° 692 Editorial Aranzadi.
Abril 2005	El arbitraje privado en los arrendamientos urbanos. Aspectos prácticos Revista de Derecho Procesal Civil y Mercantil Práctica de Tribunales. Editorial la Ley Actualidad. Año II – Número 15 – Abril 2005.
Marzo 2005	El arbitraje privado y los consumidores y usuarios. Revista de Derecho Procesal Civil y Mercantil "Práctica de Tribunales" Editorial la Ley Actualidad. Año II – Número 14 – Marzo 2005.
Junio 2004	Adecuación de la cláusula de sumisión a arbitraje privado a la legislación protectora de los derechos del consumidor. Revista de Actualización Jurídica de la Editorial Aranzadi.

Publicaciones:

2019	Coautor del Libro "Las Medidas Alternativas de Resolución de Conflictos (ADR) en las distintas esferas del ordenamiento jurídico.
2015	Coautor del Libro "La Franquicia (Duo)" de la Editorial Aranzadi. En particular del capítulo sobre Arbitraje y Mediación en el sector franquicia.

Coautor en el Diccionario Terminológico del Arbitraje Nacional e Internacional (Comercial y de Inversiones). Volumen 18. Biblioteca de Arbitraje del Estudio Mario Castillo Freyre. Editorial Palestra.

2008 Como coautor: MANUAL DE DERECHO PARA INGENIEROS" Editado por LA LEY Grupo Wolters Kluwer, IBERDROLA S.A. y el Colegio Ingenieros ICAI.

2004 Como coautor. "VADEMÉCUM DE PRINCIPIOS INSPIRADORES DEL ARBITRAJE Y DE PRACTICA ARBITRAL DE TRIBUNALES ARBITRALES SEGÚN LA NUEVA LEY DE ARBITRAJE 60/2003" editado por el Instituto Vasco de Derecho Procesal.

4. Ponencias

2020 Profesor en el Programa Executive en Arbitraje Comercial Internacional organizado conjuntamente por el Consejo General de la Abogacía Española e ICC Spain del 28 de enero al 19 de marzo de 2020.
Ponencia: "Mecanismos de resolución de conflictos jurídicos".

2019 Ponente en el seminario internacional "Comercio internacional, inversión y arbitraje", los días 11 y 12 de marzo en Montevideo, Uruguay organizado por el Centro de Mediación y Arbitraje Comercial (CEMARC) de la Cámara Argentina de Comercio y Servicios (CAC).

2016 Georgetown International Arbitration Society. 4th ANNUAL INTERNATIONAL ARBITRATION MONTH February 2nd - March 1st, 2016 Tuesday, February 2: "Recent Developments in National Policies Toward Arbitration" 6:30 – 8:30 PM, location TBD. Speakers include Crenguta Leaua, Javier Íscar de Hoyos, and Gonzalo Stampa Casas.

2016 Harvard Law School. HIALSA. Spanish and European International Arbitration: Institutional and Practitioner Perspectives. "Viewpoint from the practitioner's side, while Javier Íscar de Hoyos, as head of the European Center of Arbitration, will offer an institutional perspective".

2015 Valencia. La Segunda Instancia Arbitral.

2014 Marruecos como mercado de oportunidad, Consejo de Cámaras de Comercio de Valencia (septiembre).

Coloquio del Mediterráneo de Túnez, en busca de una ley de arbitraje mediterránea para todos los países que conforman la Unión por el Mediterráneo (abril).

Programa Avanzado de Compliance. IE Law School (febrero-mayo).

2013 Assises del Mediterráneo de Casablanca (octubre).

Ponente en la 2ª edición del curso Compliance del IE Law School (febrero-abril). La mediación y el arbitraje en conflictos de cumplimiento y tecnologías de la información. ¿Una alternativa real y eficaz a los Tribunales?

Salón MiEmpresa (febrero). Aspectos jurídicos prácticos para la internacionalización de la empresa.

2012 Ponente en la Jornada sobre Arbitraje y Mediación celebrada en el Ilustre Colegio de Abogados de Alicante (ICALI). Análisis práctico de la Ley 11/2011 de reforma de la Ley de arbitraje. La empresa ante el arbitraje.

Discussant en el I Congreso de Arbitraje Internacional de Barcelona, organizado por el Ilustre Colegio de Abogados de Barcelona (18-19 y 20 de octubre). Mesa "Propuestas y soluciones planteadas por las Cortes e Instituciones arbitrales en España".

Ponente en el VI Seminario Permanente Cubano – Hispano: Derecho del Comercio y de la Integración, "La Evolución del Arbitraje Comercial Internacional en Latinoamérica" (La Ha bana, Cuba, 7, 8 y 9 de mayo).

Profesor de la segunda edición del Curso de arbitraje comercial", organizado por la Asociación Europea de Arbitraje (Aeade) (Madrid, 19 de abril).

Ponente en el VIII Seminario de Experto Documental en Notarías y Registros organizado por la Federación Estatal de Asociaciones Profesionales de Empleados de Notarías (FE APEN): "El arbitraje societario y en la sociedad horizontal" (Sevilla, 24 de marzo).

2011 Profesor de la segunda edición del Curso de arbitraje comercial", organizado por la Asociación Europea de Arbitraje (Aeade) (Madrid, 17 de octubre).

Ponente en la Confederación de Asociaciones Empresariales de Baleares (CAEB) (Mallorca, 9 de octubre).

Profesor del "Curso de arbitraje comercial", organizado por la Asociación Europea de Arbitraje (Aeade), el Centro Capacitación Europeo (CEC) e ICADE. Encargado de im partir la sesión "Fases del procedimiento. El calendario procesal. La designación del árbitro único o del presidente del tribunal (Madrid, 25 de mayo).

Presidente moderador en el VII Foro Hispano – Marroquí de Juristas. Mesa: "El arbitraje de inversiones. Perspectiva hispano marroquí", "Análisis de la problemática del arbitraje de inversiones en la cuenca mediterránea. Análisis del Tratado hispano marroquí. Posibilidades de arbitraje institucionalizado y ad hoc." (Madrid, 11 de marzo).

Ponente en el VII Seminario de Experto Documental en Notarías y Registros organizado por la Federación Estatal de Asociaciones Profesionales de Empleados de Notarías (FEAPEN): "Cláusulas arbitrales en los documentos notariales" (Madrid, 5 de marzo).

Ponencia: "La propuesta de reforma de la Ley de Arbitraje desde la perspectiva de las instituciones arbitrales". Sesión organizada por el grupo investigador de Excelencia Prometeo GVA sobre Mediación y Arbitraje. Salón de Grados de Derecho Procesal de la Facultad de Derecho de la Universidad de Valencia (Valencia, 10 de febrero).

2010 Moderador de "Aspectos prácticos del arbitraje" en el "VI Seminario de derecho arbitral: apuntes prácticos del arbitraje".

Ponente en el II Congreso de Instituciones Arbitrales de "Situación del arbitraje institucional en España" (Sevilla, octubre).

Ponente en el seminario "Las microempresas hacemos Europa", organizado por la Asociación Española Multisectorial de Microempresas, Aemme, en la Sede de las Instituciones Europeas en España (Madrid, junio).

Ponente en el seminario "La evolución de los métodos de resolución de litigios: puntos y novedades sobre el arbitraje y la mediación" (Biarritz, Francia, 7 y 8 de mayo).

Ponente en el seminario de arbitraje internacional comercial y de inversión en el Mediterráneo (Barcelona, 13 y 14 de mayo).

Ponente en el seminario "Fortaleciendo la gobernabilidad, combatiendo el riesgo y aumentando el rendimiento empresarial", con la exposición "El arbitraje como herramienta en la empresa para la solución de conflictos" (mayo).

Ponente en el "VI Curso de Especialización sobre Arbitraje", con la exposición "Arbitraje en arrendamientos urbanos" (Madrid, 29 de abril).

2007 Ponente en Curso de Verano Universidad CEU SAN PABLO: "TEMAS PRÁCTICOS DEL ARBITRAJE" Ponencia Las Instituciones arbitrales. (julio 2007)

Ponente en Jornada para empresarios catalanes en Foment del Treball Nacional MARRUECOS, DESTINO DE LA INVERSIÓN ESPAÑOLA/CATALANA.
Ponencia "El Arbitraje y su aplicación práctica a las relaciones hispano marroquíes" (25 abril 2007).

Ponente en 1er. Seminario Europeo de Arbitraje en Ilustre Colegio de Abogados de Valencia. Ponencia: Las formalidades del arbitraje. (20-21 abril 2007).

Ponente en 3er. Curso de Especialización de Arbitraje de la Universidad Rey Juan Carlos de Madrid.

Ponencia: El arbitraje administrado por las Cortes arbitrales. (enero-julio 2007).

2006 Ponente en las Jornadas sobre Arbitraje en Casablanca (Marruecos) dentro del Proyecto ADL de Fortalecimiento y Modernización de su Administración de Justicia Marroquí.

Ponente en Centro Asociado de la Universidad Nacional de Educación a Distancia en Pontevedra. Cursos de Verano de la UNED Ponencia: " El arbitraje como solución de conflictos en el sector inmobiliario en España" (10 de julio 2006).

Ponente en 2do. Curso de Especialización de Arbitraje de la Universidad rey Juan Carlos de Madrid. Ponencia: El convenio arbitral. La declinatoria. (enero-julio 2006).

Participación como ponente en el Salón Inmobiliario de Alicante, organizado por ERES MEDITERRÁNEO bajo el título "El arbitraje en España y la seguridad jurídica en el tráfico inmobiliario internacional. (10 de febrero de 2006).

2005 Participación en la mesa redonda del Seminario Arbitraje "Descubra las Ventajas del Arbitraje en la Resolución de Conflictos en el I Congreso sobre el Arbitraje.(19 y 20 de Diciembre de 2005, Gran Canaria).

Organización del "curso de arbitraje del Colegio de Abogados de Valencia (1ª edición) impartido en el salón de actos del ICAV. (30 noviembre y 1 de diciembre)

Ponente en el seminario "Evolución del arbitraje en el contexto del reinado de D. Juan Carlos I", organizado por la Universidad Rey Juan Carlos en el Palacio del Nuncio de Aranjuez. Ponencia: "El Procedimiento Arbitral. Principios y Garantías. El Laudo y su Control. (24 y 25 de noviembre).

Ponente en Curso de Verano Universidad CEU SAN PABLO: "CURSO DE ARBITRAJE PRIVADO INTERNO E INTERNACIONAL: BALANCE DEL PRIMER AÑO DE LA LEY DE ARBITRAJE" Ponencia Las Instituciones arbitrales. El procedimiento arbitral. Nombramiento y responsabilidad de los árbitros. El laudo y su impugnación. (julio 2005)

Ponente en 1er Curso de Especialización de Arbitraje de la Universidad rey Juan Carlos de Madrid. Ponencia: Arbitrajes especiales. (enero-julio 2005).

Ponente en el I CONGRESO DE EDITORES DE PUBLICACIONES PERIÓDICAS organizado por la Asociación Española de Editoriales de Publicaciones Periódicas. (24-25 febrero 2005).

2002 Ponente en Curso de Arbitraje a Directivos de la Operadora de Telefonía Móvil RETEVISION MOVIL S.A.

Ponente en Curso de Arbitraje a los asociados de la "Asociación de Distribuidores de Ofimática".

Ponente en Curso de Arbitraje en CLUB DE MARKETING DE NAVARRA titulado "Arbitraje Empresarial, Sistema Eficaz Para La Solución De Conflictos Económicos".

Asistente a Conferencia Arbitraje 2002 impartida por RECOLETOS Grupo de Comunicación, S.A.

EXPERIENCIA PROFESIONAL Y ÁREAS DE ESPECIALIZACIÓN

Secretario General en Funciones del Centro Iberoamericano de Arbitraje CIAR de la que son socios 63 instituciones (Colegios de Abogados, Cámaras de Comercio, patronales) de 21 países iberoamericanos.

Presidente y fundador del Centro de Mediación y Solución de Conflictos, Cemed.

Co-Director del Curso Superior de Arbitraje comercial y Mediación Civil y Mercantil de la UNED. Profesor del Master de Acceso a la Abogacía de la Universidad Camilo José Cela de Madrid (Módulo "Resolución Extrajudicial de Conflictos"). Profesor de la Universidad Pablo de Olavide de Sevilla. Diploma de Extensión Universitaria. "Derecho Extrajudicial y Notarial"

Es Árbitro de la Competencia Internacional organizada por la Bolsa de Comercio de Buenos Aires en las ediciones 2013, 2014 y 2015 y 2019.

Es miembro del Club Español del Arbitraje.

IDIOMAS

ES EN

ÁREAS DE ESPECIALIZACIÓN

- *CONSTRUCCIÓN*
- *INGENIERÍA*
- *DERECHO SOCIETARIO*
- *BANCARIO*
- *SEGUROS*
- *COMPRAVENTA DE EMPRESAS*
- *UTES, JOINT VENTURES Y COOPERACIÓN SOCIETARIA*
- *ARRENDAMIENTOS*

INTERVENCIÓN EN ACTUACIONES ARBITRALES

		Presidente del tribunal	Árbitro Único	Co-árbitro	Abogado de Parte	Secretario u otro	Total
Arbitraje nacional	institucional	2	3	7	0	156	175
	ad-hoc	1	2	0	4	0	
Arbitraje internacional	institucional	1	0	3	0	6	13
	ad-hoc	0	1	0	2	0	
	TOTAL	4	6	10	6	162	188

ANEXO 1

SPAIN: INVESTOR-STATE ARBITRATION 2020

The ICLG to: Investor-State Arbitration Laws and Regulations - Spain covers common issues in investor-state arbitration laws and regulations - including treaties, legal frameworks, case trends, funding, international tribunals, domestic courts, recognition and enforcement - in 24 jurisdictions. (ARTICLE)

Published: 30/10/2019

Autors: JAVIER ÍSCAR DE HOYOS - GONZALO STAMPA

Chapter Content

1. Treaties: Current Status and Future Developments

1.1 What bilateral and multilateral treaties and trade agreements has your jurisdiction ratified?

As of 15th February 2019, Spain has ratified 72 bilateral investment treaties with different countries. Moreover, Spain is a party to the multilateral Energy Chapter Treaty and additionally, as an EU Member State, Spain is party to the trade agreements and treaties with investment provisions which have been ratified by the EU.

1.2 What bilateral and multilateral treaties and trade agreements has your jurisdiction signed and not yet ratified? Why have they not yet been ratified?

The only BITs which are not in force are those with: Haiti; Ethiopia; Congo; Gambia; Yemen; Angola; and Ghana, according to the United Nations Conference on Trade and Development. All of them have yet to be ratified by Spain, except for the BIT with Ghana which was ratified by Spain in 2008; the Parliament of Ghana has not ratified it, thus it is not in force.

1.3 Are your BITs based on a model BIT? What are the key provisions of that model BIT?

Yes, the BITs ratified by Spain do follow a pattern. They are based on two BIT models prepared by an independent group of experts and the OECD back in 1959 and 1967. Ever since, these models have been used and, consequently, its usage and application have originated a basic sort of BIT scheme.

As a practical example, one may look at the BITs between Spain and Latin American countries, which do have a very analogous skeleton. In those BITs, the general key provisions to be found are:

- promotion and admission of investments;
- fair treatment (absolute perspective);
- MFN principle (relative perspective);
- prohibition of expropriation;
- free movement/transfer of benefits;
- protection of the concession contract; and
- dispute resolution mechanism between the host State and the investor.

1.4 Does your juridiction publish diplomatic notes exchanged with other states concerining its treaties, including new or succeeding states?

The verbal notes exchanged between the States are not published. Only when the negotiations come to an end and a treaty is enacted, then it will be duly published under the Boletín Oficial del Estado.

1.5 Are there offcial commentaries published by the Government concerning the intended meaning of treaty or trade agreement clauses?

No, there are no oficial commentaries that have been published by the Government of Spain.

2. Legal Frameworks

2.1 Is your jurisdiction a party to (1) the New York Convention, (2) the Washington Convention, and/or (3) the Mauritius Convention?

Spain is party to the New York Convention and the Washington Convention. However, Spain has not signed the Mauritius Convention.

2.2 Does your jurisdiction also have an investment law? If so, what are its key substantive and dispute resolution provisions?

Yes, the Law 18/1992 of 1st July 1992 regulates the general investment scheme in Spain. This law emanates from the CEE Council Directive 88/361/CEE from 1988, which deals with the free movement of capital between the residents of member States. The Royal Decree 664/1999 of 23rd April 1999 further establishes a system for foreign investment in
Spain.

With regards to the dispute resolution provisions, those will be found in the BITs ratified by Spain. The Parties have the opportunity to bring any dispute to international tribunals or arbitration after a "cooling-off" period. ICSID and ad hoc tribunals under UNCITRAL are the most common options. However, there are also referrals to ICC International Court of Arbitration in addition to the possibility of bringing the dispute to the SCC, under the Energy Charter Treaty.

2.3 Does your jurisdiction require formal admission of a foreign investment? If so, what are the relevant equirements and where are they contained?

Spain has a favourable legal framework for foreign investors. Spanish law has adapted its foreign investment rules to a system of general liberalisation, without distinguishing between European Union (EU) residents and non-EU residents, except for certain sectors: Law 18/1992 of 1st July 1992, which establishes rules on foreign investment in Spain, provides restrictions for non-EU residents in the following sectors: national defence-related activities; gambling; television; radio; and air transportation. For EU residents, the only sectors with a specific regime are the manufacture and trade of weapons, or national defence-related activities.

Likewise, the types of corporations which may be constituted in Spain are aligned with those at the OECD, which Spain is party to. The flexibility of the legal and corporate framework does allow for any kind of solution, since there are plenty of options to cater to the needs of the potential investments arriving in Spain.

Furthermore, and in order to analyse how investments are catalysed in Spain, it shall be noted that according to the 2019 World Investment Report published by UNCTAD, Spain was the 9th largest host for FDI inflows in the world in 2018, meaning that Spain received 43,591 million USD. Additionally, and looking at the 2019 Doing Business report by the World Bank, Spain holds the 30th position out of 190 on the ease of doing business.

3. Recent Significant Changes and Discussions

3.1 What have been the key cases in recent years relating to treaty interpretation within your jurisdiction?

There have been plenty of disputes related to renewable energy issues which lately come up in Spain. There have been only two awards in which Spain was found in favour, meanwhile the other disputes have been lost by Spain (11 as of 11th September 2019), amounting to EUR800 million of losses. As of relevance, the Nextera case itself equals to EUR290 million, there are 30 additional investment arbitrator disputes on the same grounds to be settled. The issue of the cuts related to renewable energy in Spain had its roots in 2008 and in 2013 and ever since, claims have arisen.

Apart from that, another relevant case is Urbaser, in which a Spanish company is involved. In terms of the development of international law, it is interesting to analyse that this was the first case in which the investor (the Spanosh company) was requested to comply with international human rights, such as the right of access to water.

3.2 Has your jurisdiction indicated its policy with regard to investor-state arbitration?

Spain is one of the States with the largest number of ongoing claims related to investment disputes. Only at ICSID, there are 38 registered files in which Spain appears as the Respondent. Considering the above, it is fair to say that Spain does comply with the international investment treaties in which Spain is party to, as Spain does appear as a party in those procedures.

Moreover, in the last years, due to the large number of investment disputes related to the cutbacks on renewable energy, the activity of the Spanish Supreme Court and the Constitutional Court has increased in relation to investor State arbitration. There have been several judgements in such matter and the general position of the Spanish courts is to allow investment arbitration.

However, because of the Achmea case (see question 3.4), there will be changes in the BITs amongst Member States, since the intra-EU BITs will be terminated, as stated by Spain in the declaration.

3.3 How are issues such as corruption, transparency, MFN, indirect investment, climate change, etc. addressed, or intended to be addressed in your jurisdiction's treaties?

Spain is party to international treaties which condemn issues related to corruption. As a member of the OECD, Spain fights against corruption in the context of cross border business activities and has ratified the Convention on Combating Bribery of Foreign Public Oficials in International Business Transactions. Besides, Spain has also ratified the United Nations Convention against Corruption.

With reference to the MFN principle, Spain, as a member of the WTO, agrees to accord such status to the other members because the intention is to avoid discrimination and to treat each member on equal terms. Further, the MFN principle is recurrent in the BITs ratified by Spain with other States.

As per climate change, Spain is a signatory, inter alia, of the Paris Agreement and the Kyoto Protocol. Furthermore, Spain's energy sector leads innovation in the area of renewable energies in the world and even spreads its know-how to countries like the Unites States with green and pioneering projects.

On the other hand, Spain has yet to sign treaties on transparency, such as the Mauritius Convention, which actually has been ratified only by five countries.

With regards to the indirect investment that may arrive in Spain, in general terms, the legislation imposes the same requirements as for direct investments. For instance, the stock market Spanish authority Comisión Nacional de Mercado de Valores, CNMV, must authorise the acquisition of a direct or indirect holding which represent a 1, 5, 10, etc, per cent of the voting rights.

In line with the above-mentioned topics, Spain has established some requirements to be met in order to comply with anti-money laundering regulation. The main obligations applicable in Spain are established in Law 10/2010, of 28th April 2010, which is the result of the transposition of Directive 2005/60/EC. The legislation applies to the situation when a party seeks to carry out in Spain procedures such as opening a current account, executing a public deed or acquiring real estate. The relevant persons dealing with the transaction must perform certain formalities to identify their customers and the origin of their funds.

3.4 Has your jurisdiction given notice to terminate any BITs or similar agreements? Which? Why?

The Achmea case is of relevance for this question, since it may change the way investment arbitration works in Europe, and thus, in Spain. In the judgement, the ECJ declared that an investment arbitration clause in a BIT between Member States is incompatible with the EU law. Because of the Achmea case, all investor-State arbitration clauses contained in bilateral investment treaties concluded between Member States are contrary to Union law and thus inapplicable. As such, Spain became a party to a declaration of the legal consequences of the Achmea judgement with other Member States and agreed to terminate its intra-EU BITs without undue delay.

4. Case Trends

4.1 What investor-state cases, if any, has your jurisdiction been involved in?

Spain has been involved in a total of 51 investor-State arbitrations to date. Thirty-eight of these cases have been administered by ICSID, 10 by SCC Rules, and three by ad hoc Tribunals under UNCITRAL Rules. Most of these cases are currently pending.

4.2 What attitude has your jurisdiction taken towards enforcement of awards made against it?

The very first ICSID-award made against Spain was Maffezini v. Kingdom of Spain (ICSID Case No. ARB/97/7), rendered on 13th November 2000. Spain did not challenge the award and honoured it. However, the trend has varied with awards issued after 2017, involving disputes related to the renewable energy sector, under the Energy Charter Treaty.
To date, Spain has lost 11 of these disputes. Spain has decided not to comply voluntarily with these awards and will seek their annulment, according to the ICSID Convention or Swedish Law.

4.3 In relation to ICSID cases, has your jurisdiction sought annulment proceedings? If so, on what grounds?

To date, Spain has sought the annulment of four ICSID awards: Eiser Infrastructure Limited (UK) & Energia Solar Luxembourg S.À.R.l. v. Kingdom of Spain (ICSID Case No. ARB/13/36); Masdar Solar & Wind Cooperatief U.A. (Dutch) v. Kingdom of Spain (ICSID Case ARB/14/1); Antin Infrastructure Services Luxembourg S.à.r.l. (Luxemburg) & Antin Energía Termosolar B.V. (Dutch) v. Kingdom of Spain (ICSID Case No. ARB/13/31); and NextEra Energy Global Holdings
B.V. (Dutch) & Nextera Energy Spain Holdings B.V. v. Kingdom of Spain (ICSID Case No. ARB/14/11). Spain's main reasons for annulment are based on the Tribunal's failure to comply with the applicable EU Law, the hierarchical supremacy of EU law and the illegality of the intra-EU BIT. All these cases are currently pending.

4.4 Has there been any satellite litigation arising whether in relation to the substantive claims or upon enforcement?

There has not been any satellite litigation related specifically to the arbitration proceedings against Spain. Notwithstanding, the Achmea decision has had an important influence on Spanish strategy, not only in arbitration but also in the enforcement proceedings of several awards.

4.5 Are there any common trends or themes identifiable from the cases that have been brought, whether in terms of underlying claims, enforcement or annulment?

Forty-nine of the 51 investor-State arbitrations against Spain are related to the subsidy cutbacks for renewables, undertaken by the Spanish Government between 2010 and 2014. Apart from the challenge of four ICSID awards, Spain also has sought to set aside two SCC awards in the Svea Court of Appeals. The trend is for challenging the next awards rendered in these disputes raised under the Energy Charter Treaty. In all these cases, the former investors are seeking to enforce the awards in the United States and the Spanish defence is founded on European Law and supported by the European Commission.

5. Funding

5.1 Does your jurisdiction allow for the funding of investor-state claims?

This area has yet to be specifically regulated under Spanish law. However, in the absence of specific laws dealing with such aspect, article 1,255 of the Spanish Civil Code shall apply. This article refers to the principle of freedom of contract and states that, should the agreement between the parties not be against the law, moral or public order, the agreement would be valid. Therefore, and in conjunction with the Supreme Court sentence dated 4th November 2008 (see question 5.2), TPF agreements shall be based on this position.

Additionally, there is no regulation under European Union law, only a few references to certain issues related to TPF, such as the duty to disclose the existence of financing agreements in bilateral treaties, as requested under Article 8.26 of CETA.

Considering the above, in the event the requirements laid down by article 1,255 of the SCC are met, the parties will be able to agree on the funding of the respective dispute.

5.2 What recent case law, if any, has there been on this issue in your jurisdiction?

IIn recent years, there have not been remarkable judgments referring to TPF. However, looking back some years ago, we shall point out the landmark decision of 4th November 2008, issued by the Supreme Court, which is very relevant in our jurisprudence. In such judgement, the Tribunal allowed the usage of the no win, no fee agreement, which had been prohibited from the time of Roman Law. This interpretation triggered an eye-opening reaction in the Spanish legal fraternity, since the sentence left an open door for the financing of disputes by third parties.

5.3 Is there much litigation/arbitration funding within your jurisdiction?

In terms of arbitration, TPF has become much trendier in Spain, as it is in constant development. The advent of TPF in Spain is a reality which may be a consequence of the sharp increase of TPF in the UK from 2009 to 2015. However, TPF has yet to become as popular in Spain as in common law jurisdictions.

As it is an option in the Spanish legal market, the parties have started to consider this alternative more frequently, studying the advantages of bringing an external funder before proceeding with their disputes. Thus, in recent disputes and due to the high initial arbitration costs, the parties have been more receptive to bring a TPF to the dispute.

Under Spanish courts, its practice is not as common as in arbitration. Besides, there are few reasons which may explain why the TPF is not that developed to litigate:

- Length of national courts to deliver a judgment. Proceedings may last long enough to try the funder's patience.
- Costs related to access to justice are more affordable than in other jurisdictions. It is possible for a party to submit its claim for a "reasonable cost" or even get free access to justice, whilst in other jurisdictions fees are so high that the parties may not proceed or shall gather to proceed under class actions. It is indeed under class actions, widely famous in common law jurisdictions, where TPF has an important role.

6. The Relationship Between International Tribunals and Domestic Courts

6.1 Can tribunals review criminal investigations and judgments of the domestic courts?

It depends on the international instrument from which the tribunal derives its jurisdiction. Most of the Spanish bilateral investment treaties provide jurisdiction to international tribunals to decide claims of treaty protection, such as MFN, national treatment or fair and equitable treatment. Therefore, criminal investigations and local judgments could be subject to review under these standards of protection, in limited cases and only for pecuniary compensation purposes. According to the Spanish law, tribunals can't vary their decisions once they are issued as a general rule and final judgments are parts of iure imperii. Finally, as Spain is a Member State of the Council of Europe, the European Court of Human Rights has the jurisdiction to overturn final judgments in Spain.

6.2 Do the national courts have the jurisdiction to deal with procedural issues arising out of an arbitration?

According to the Spanish Arbitration Act, domestic courts shall not intervene in the arbitration, except in those cases where it is expressly foreseen (article 7). Intervention is foreseen for the appointment or challenge of arbitrators, the taking of evidence, application for interim measures, challenge of the validity of the award or its enforcement.

6.3 What legislation governs the enforcement of arbitration proceedings?

In Spain, the Arbitration Act (Ley 60/2003) entered into force on 23rd December and is based on UNCITRAL Model Law on International Commercial Arbitration. Nevertheless, according to the principle of the party autonomy, arbitration proceedings seated in Spain are first governed by the law set up in the arbitration agreement.

6.4 To what extent are there laws providing for arbitrator immunity?

In Spain, arbitrators are not immune from liability. Pursuant to article 21 of the Spanish Arbitration Act, arbitrators may incur liability in cases of bad faith, gross recklessness or wilful default. Consequently, the Spanish Supreme Court has established that arbitrators will only incur liability in those cases where damages are intentionally caused or when they have acted with gross negligence (STS 5722/2009).

6.5 Are there any limits to the parties' autonomy to select arbitrators?

Any person in full possession of their civil rights may be an arbitrator, unless prevented therefrom by his or her professional rules (article 13 SAA). Nationality shall not be an impediment, unless otherwise agreed by the parties. Notwithstanding, for arbitration proceedings in which only one arbitrator is appointed, the arbitrator shall be a jurist (except parties that have agreed otherwise or in ex aequo et bono), and when arbitration is to be conducted by three or more arbitrators, at least one of them shall be a jurist (article 15 SAA).

6.6 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If arbitrators cannot be appointed under the procedure agreed to by the parties, any party may apply to the competente Commercial and Criminal Branch of the High Court of Justice to appoint the arbitrator or to adopt the necessary measures therefor (articles 8 and 15,3 SAA).

6.7. Can a domestic court intervene in the selection of arbitrators?

The competent Civil and Penal Branch of the High Court of Justice will draw up a list of three names for each arbitrator to be appointed. When drawing up the list, the court will give due regard to the requirements established by the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. The arbitrators will be appointed by lot.

7. Recognition and Enforcement

7.1 What are the legal requirements of an award for enforcement purposes?

According to the SAA (article 46), the exequatur of foreign awards is governed by the New York Convention, save any other more favourable international convention. The ICSID awards and domestic awards are directly executable by Courts of First Instance. In all cases, the Civil Procedure Rules govern the execution procedure and provides very limited grounds for opposition.

7.2 On what bases may a party resist recognition and enforcement of an award?

In general, Spanish courts have a favourable attitude towards recognition and enforcement of foreign awards. The grounds for refusing the recognition and enforcement of non-ICSID awards are the same as those foreseen in article V of the New York Convention, which Spain signed without reservations. The High Courts of the Autonomous Communities generally grant the exequatur in a short period of time, according to the requirements of the New York Convention; after that, the parties must seek the enforcement of the award before the Courts of First Instance (articles 8 and 46 SAA).

Regarding ICSID awards, it has been established through the practice (Pey Casado v. Republic of Chile) that are directly executable by Court of First Instance. However, according to article 54 (2) of the Convention, the Kingdom of Spain should formally notify the ICSID Secretary of this designation. Spain is the only Contracting State in its environment that has not complied with this obligation.

7.3 What position have your domestic courts adopted in respect of sovereign immunity and recovery against state assets?

Spain is a Member State of The United Nations Convention on Jurisdictional Immunities of States and Their Property since 21st September 2011. Based on this Convention and the case law, in 2015 Spain introduced two new Acts, one on Sovereign Immunity (Organic Law 16/2015) and another on International Legal Cooperation (Law 29/2015). As a general rule, assets that are part of the State's commercial activities are lacking sovereign immunity, while those intended for acta iure imperii are immune. Notwithstanding, the new legislation in matters of international legal cooperation and sovereign immunity establish the intervention of the Ministry of Foreign Affairs and Cooperation when a foreign State is sued in Spanish Courts.

The practice has shown that the content of the Ministry's reports often reveals a position close to the doctrine of absolute immunity, leading to a greater review of the award by the court, in order to refute the Ministry's positions or may imply a shift of jurisprudence towards positions closer to absolute immunity.

7.4 What case law has considered the corporate veil issue in relation to sovereign assets?

Over these issues, there are no publically Spanish Court decisions in the context of sovereign assets. Nonetheless, enforcing an OHADA award against Equatorial Guinea in Spain, the petitioner obtained the exequatur of the award and achieved the attachment of the plane owned by Ceiba Intercontinental S.A, the flagship airline company in Equatorial Guinea (Commercial Bank Guinea Ecuatorial v. Guinea Ecuatorial).