Specific Issues Regarding the Recognition and Enforcement of Foreign Arbitral Awards in Spain: Can arbitrators still use registered letters with acknowledgment of receipt?

Werner Jahnel/Eva Vázquez Pozón

I. Introduction

Over the past few decades, Spain has transformed itself from an importer to an exporter of capital. Spanish companies are not shy about investing abroad, particularly in the oil and gas sector, as well as in the electricity, construction, and engineering sectors. Favorite targets for investment are Latin America, Asia, and Central and Eastern Europe. This development has led to an increase in the number of contracts calling for arbitration as a means of dispute resolution. ¹ Furthermore, foreign companies investing in Spain often prefer to submit a dispute to arbitration rather than to the Spanish courts. ²

Many of the contracts involving a Spanish party provide for an arbitration forum outside Spain. Currently, a large majority of foreign arbitral awards are complied with in Spain, making enforcement proceedings unnecessary. However, such proceedings may become unavoidable.

This article explores selected problems that a party and their counsel may be confronted when seeking enforcement of foreign arbitral awards in Spain, and the concerns for arbitrators when confronted with a dispute involving a Spanish party.

The article is not meant to give a global overview of all aspects of exequatur and enforcement proceedings of foreign awards. Rather, we will focus on the issue of which courts are competent, on possible implications of recent Spanish court decisions dealing with the form of notification of arbitral awards, and on the issue of whether an award can be enforced if it is still appealable, non-final, or can oth-

¹ Spanish multinational companies frequently chose to include an arbitration clause in their international contracts as a matter of internal policy.
² See generally "Spain opens up", 3 GLOBAL ARBITRATION REVIEW (2008).
erwise be set aside in the arbitral forum. Before dealing with these issues, some background regarding the Spanish Arbitration Law and the characteristics of *exequatur* and enforcement proceedings are necessary.

II. The Monistic Approach of the Spanish Arbitration Law (Law 60/2003 of 23 December 2003) (*Ley de arbitraje, LA*) and its scope of application

The Spanish Arbitration Law 60/2003 (the “LA”), which is based on the UNCITRAL Model Law, was conceived as an independent statute not incorporated in a civil procedure law or any other law. The LA follows the monist system whereby, save for a few exceptions, the same rules apply to domestic and international arbitration.

The scope of application of the LA is strictly territorial. Article 1.1. LA provides that it “shall apply to all arbitration proceedings, whether domestic or international, with their place of arbitration within Spanish territory”, and recognizes the priority of rules of international conventions.

Article 1.2. LA provides an exception to the territoriality rule; some provisions relating to certain types of judicial intervention shall also apply to foreign arbitration proceedings. As will be shown below, these provisions deal in particular with the competence of Spanish courts, the form and content of the arbitration...
agreement\(^7\)) and how the State courts should deal with arbitration agreements\(^8\), interim measures\(^9\), and finally, the enforcement of arbitral awards\(^10\) and exequatur proceedings.\(^11\)

### III. Exequatur and enforcement: separated or “one and unique” proceedings?

#### A. The Foreign Award under the Spanish Arbitration Law

Under the regime of the Spanish Arbitration Law, an award is to be qualified as “foreign” if it has been rendered outside Spain.\(^12\) This is a logical consequence of the territorial approach of the LA.\(^13\)

#### B. Consequences of the qualification as “foreign award”: exequatur in Spain

According to Article 46.2. LA, a “foreign award” is subject to “exequatur” in Spain, whereas the exequatur proceedings “shall be governed by the [...] New York Convention [...] without prejudice to the provisions of other international conventions more favorable to granting exequatur” and shall be “carried out according to the procedure established by the civil procedure law for exequatur of foreign judgments”.

The provisions of the New York Convention have been applicable in Spain since August 10, 1977.\(^14\) The new arbitral law therefore merely reinforces an existing obligation. The same is true for the 1961 European Convention on International Commercial Arbitration, and various bilateral conventions.\(^15\)

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\(^7\) Article 9 LA.

\(^8\) Article 11 LA.

\(^9\) Article 23 LA.

\(^10\) Article 45 LA.

\(^11\) Article 46.1 LA.

\(^12\) Id.

\(^13\) This definition of “foreign award” had already been included in Article 56.2 of the previous arbitration law of 1988. Therefore, the comment made by MANTILLA-SERRANO, supra note 4, at Article 46 LA, 254 whereas the present definition of “foreign award” applying the territorial approach was made “for the first time” in the LA 2003 cannot be followed.


\(^15\) The European Convention on International Commercial Arbitration (Geneva 21 April 1961) was ratified by Spain on 5 March 1975. In addition, Spain has signed various bilateral treaties which might be applicable for the enforcement of foreign arbitral awards. For an overview of the most important bilateral treaties on the subject, see ARNZAUD, CÓDIGO DE ARBITRAJE (2005).
Spain has not formulated any reservations with regard to the applicability of the New York Convention. The rules contained in the Convention are therefore applicable regardless of whether the subject matter of the dispute is a commercial conflict or if the State in which the award is rendered is a contracting State of the New York Convention.

Thus, the legal framework for _exequatur_ of foreign awards is contained in the rules of the applicable international conventions, in the Spanish Arbitration Law and, as will be demonstrated below, other rules of the Spanish Law of Civil Procedure.

C. Uncertainties with regard to the interrelation of _exequatur_ and enforcement

Article 46 LA does not include any reference to enforcement proceedings _stricto sensu_, i.e., the applicable proceedings for the enforcement of the homologated foreign award.

Basic rules on the enforcement can be found in Articles 44–45 LA.\(^{16}\) Article 44 LA contains a rule which is well known in many other European jurisdictions.

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\(^{16}\) Article 44–45 LA: “Enforcement of the arbitral award”:

Article 44 Applicable rules
The enforcement of arbitral awards shall be governed by the provisions of the Law on Civil Procedure and the provisions of this Chapter.

Article 45 Suspension, stay and resumption of enforcement in the event of an action to set aside.

1. An award is enforceable even if an application to set aside the award has been made. Nevertheless, in that case, the party against whom enforcement is sought may request the competent court to suspend the enforcement proceedings, provided that it posts security in the amount of the award plus any damages that could result from the delay in enforcing the award. The security may be provided in any of the forms authorized in the second paragraph of article 529.3 of the Law on Civil Procedure. Once the application for suspension is filed, the court, after hearing the party seeking enforcement, shall decide on the security. No appeal may be taken from this decision.

2. The suspension shall be lifted and enforcement resumed when the court is satisfied that the application to set aside the award has been denied, without prejudice to the right of the party seeking enforcement to request, if applicable, payment for damages caused by the delay in enforcement, pursuant to the procedure set forth in articles 712 et seq. of the Law on Civil Procedure.

3. Enforcement shall be stayed, with the effects set forth in articles 533 and 534 of the Law on Civil Procedure, when the court is satisfied that the application to set aside the award has been granted.

If a decision to set aside the award only affects the matters referred to in Article 41.3 [LA] and other decisions of the award stand, the award shall be deemed only partially set aside, for the purposes of article 533.2 of the Law on Civil Procedure.”

Article 1.2. LA expressly provides that the rules set forth in Titles VIII (i.e. the rules applicable for enforcement contained in Article 44–45 LA) “apply even when the place of arbitration is outside Spain”. 
According to this provision, the enforcement of awards shall be governed by the provisions of the Law on Civil Procedure and "the specific provisions contained in Article 45 [LA]."\(^{17}\)

It is not uncommon for Spanish practitioners, when seeking to enforce a foreign award, to be unclear as to how the rules of "exequatur" (Article 46 LA) and "enforcement" (Articles 44–45 LA) interact, and to hesitate as to whether these—ostensibly separate—procedural steps are to be handled by the same court in the same proceeding.

A recent practice development in the Spanish courts is that these two proceedings may be handled as a singular "unique" proceeding. However, as will be demonstrated below, the legislative situation is not clear and supports the opposite conclusion.\(^{18}\) A very experienced arbitration lawyer, in his commentary on the Spanish Arbitration Law, has the same doubts when he "assumes" and "recommends" that "the Court of First Instance" should be competent to decide in a "unique proceeding" on the exequatur and the enforcement of foreign arbitral awards.\(^{19}\) Another author, however, notes that the exequatur and the enforcement are to be separated and considered as "two separate actions."\(^{20}\)

These doubts are—in large part—based on the unclear rules of competence with regard to exequatur and enforcement. An in-depth study of the rules of competence is therefore necessary in order to evaluate if exequatur and enforcement are one, rather than separate, proceedings.

### IV. Competent Courts

#### A. The rule of competence for enforcement proceedings of arbitral awards

1. **Basic rules of competence: Article 8 LA**

   The basic rule of competence contained in Article 8.4. LA provides:

   "8.4. For enforcement of the award, the Court of First Instance of the place where the award was rendered shall have jurisdiction, pursuant to Arti-

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\(^{17}\) For the relevance of Article III of the New York Convention in the enforcement proceedings *stricto sensu*, see section V.A. of this article.

\(^{18}\) Several paragraphs in the Spanish Arbitration Law and the Spanish Code of Civil Procedure conclude that the *exequatur* proceedings and the enforcement proceedings are separated: Title VIII and IX LA deal separately with "exequatur" and "enforcement." Furthermore, Article 8 LA provides for separate rules of competence with regard to these proceedings.

\(^{19}\) **Mantilla-Serrano, supra note 4**, at Article 8 LA 74: "[…] se supone que el juez de primera instancia será competente, en un mismo y único procedimiento, para otorgar el exequátur al laudo extranjero y proceder a su ejecución."

Article 545.2 of the Law on Civil Procedure and, where appropriate, to Article 958 of the 1881 Law on Civil Procedure."

As will be demonstrated below, this provision of the LA includes outdated references, which has led some authors to conclude that the provision should not be applied as a rule of competence for enforcement of foreign awards.21) However, the authors and the courts22) are not unanimous in this respect.23) An in-depth exploration of the relevant legal provisions is necessary.24)


In order to be able to understand the references in Article 8.4 LA to the Code of Civil Procedure, an introductory comment with regard to this law has to be made: in 2000, the Spanish Code of Civil Procedure (Ley de enjuiciamiento civil – LEC 2000) was totally revised. The revised law25) supplants most of the provisions of the previous Code of Civil Procedure of 1881 (Ley de enjuiciamiento civil – LEC 1881).26) However some provisions of the 1881 law remain in force.

Among the still-good provisions are those covering enforcement of “judgments dictated by foreign tribunals” included in Articles 951–958 of LEC 1881. The new statutes supplanting the 1881 law27) provide that the 1881 enforcement provisions "shall stay in force until the entering into force of the Law on international legal cooperation in civil matters". As of this publishing, i.e., eight years after the Code of Civil Procedure 1/2000 was entered into force, no draft of such a law has been promulgated.28)
3. Competence for the enforcement of domestic awards vs. competence for enforcement of foreign awards

Under the LA, a court's competence to enforce an award is determined by the nature of the award and depends upon whether the award is foreign or domestic.

a) Article 8.4. LA and Article 545.2 Code of Civil Procedure (2000): enforcement of domestic awards

Article 545.2 LEC 2000 reads as follows:

“In the event that the title is an arbitral award, the Court where the arbitral award has been rendered will be the competent Court for the enforcement of the award.”

Since the rule assumes that the same court that rendered the award can enforce the award, it is evident that this rule cannot apply to foreign awards. Therefore, the reference in Article 8.4. LA to Article 545.2. LEC 2000 is meant only to determine the competent Court for the enforcement of domestic awards.

b) Article 8.4. LA and Article 958 Code of Civil Procedure 1881: an outdated reference for the enforcement of foreign awards

Article 951–958 LEC 1881 regulates the “enforcement of foreign judgments.” In particular, Article 958 – to which Article 8.4 refers – provides:

“In the event that [the exequatur] is dismissed, the enforceable title will be returned to the petitioner.”

This reference does not contain any rule of competence. When the arbitration law was drafted, Article 958 of LEC 1881 had a second sentence – that is no longer in force – that read:

“In the event that [the exequatur] is granted, the order will be communicated for certification to the Audiencia, which will give the order to the Court of First Instance of the domicile of the defendant of the proceedings or where it has to be executed in order that [the decision] can have its effects, applying the means of enforcement as indicated in the previous section.”

The details of this now-defunct rule are beyond the scope of this article. For our purposes, it is sufficient to mention that when the Arbitration Law 2003 was drafted, the competent Court for granting the exequatur of a foreign award was

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29) See section V.A.1. of this article.

30) The original Spanish Text reads as follows: "Denegándose el cumplimiento, se devolverá la ejecutoria al que la haya presentado."

31) Here was meant the Audiencia Provincial, which is court of the second instance in every of the 17 Spanish Provinces.
the Spanish Supreme Court. When the Supreme Court granted the *exequatur*, it sent the decision to the local Court of First Instance for enforcement via the *Audiencia Provincial*.\(^{32}\)

This explains the reference included in Article 8.4 LA to Article 958 LEC 1881. However, as the second sentence of Article 958 LEC 1881 is no longer in force, this reference is outdated.\(^{33}\)

c) Article 955 Code of Civil Procedure 1881: the true rule of competence for the enforcement of foreign awards

On the same day that the Arbitration Law was adopted, the second sentence of Article 958 was supplanted by another law\(^{34}\) and was replaced by Article 955 LEC 1881, which, in its revised version of 2003\(^{35}\), reads as follows:

"Without prejudice to the provisions of Treaties and other International norms, the competent Court to decide on the request for recognition and enforcement of judgments [...], and foreign arbitral awards [...] is the competent Court of First Instance of the domicile or the residence of the party against which the recognition or enforcement is requested, or the domicile or residence of the person to which the decision has its effects; subsidiarily, the territorial competence will be determined by the place of execution or where these judgments [...] shall produce their effects."\(^{36}\)

Thus when enforcing foreign awards in Spain, the Courts of First Instance mentioned in Article 955 LEC 1881 are competent. In many cases these will be the Mercantile Courts.\(^{37}\) However, these courts would not be territorially competent had the award been rendered in Spain.\(^{38}\)

\(^{32}\) And thus at the time the LA was drafted, the "*exequatur*" and the "*enforcement*" were necessarily separate proceedings.


\(^{34}\) Disposición única de la LO 19/2003, de 23 diciembre.

\(^{35}\) Article 955 LEC 1881 was revised by Ley 62/2003, de 30 diciembre 2003.

\(^{36}\) Emphasis added.

\(^{37}\) Commercial matters fall in the competence of the Mercantile Courts (*Juzgado Mercantil*). In Spain, the powers of these Courts have most recently been defined by the Spanish Insolvency Law (Ley 22/2003 Ley Concursal of 9 July 2003) and by the rules competence of Ley Orgánica 8/2003, 9 July 2003, modified by Ley Orgánica 20/2003, 23 December 2003). The articles that regulate the distribution of competence between the ordinary Courts of First Instance and the Mercantile Courts have been criticized because these rules of Article 86 ter LOPJ (Ley Orgánica 6/1985, 1 July 1985, Poder Judicial – Jurisdictional Competence) are to some extent too vague and allow significant latitude in interpretation.

\(^{38}\) Pursuant to Article 545.2 LEC 2000, this is the Court of First instance where the award was rendered.
d) Decision by the Audiencia Provincial of Oviedo dated 31 March 2005

The above-mentioned rules of competence have not been interpreted uniformly by Spanish courts. A decision rendered by the Audiencia Provincial of Oviedo on March 31, 2005 makes this clear.\(^{39}\)

In that case, the Tribunal decided that the competent court for the enforcement of a "recognized" foreign award\(^{40}\) is to be determined "by application of Article 545.3 of the [LEC 2000]". However, that article is the relevant provision for determining the competent Court for enforcement proceedings of any titles other than judgments, national arbitral awards or titles mentioned in Article 545.1 and 545.2 LEC 2000. By applying this provision of LEC 2000, the Court ignored the application of the lex specialis included in Article 8.4. LA and the provision-specific references.

Despite the fact that both rules – Article 955 LEC 1881 and Article 545.3. LEC 2000 – refer to the Court of First Instance, the rules for determining territorial competence are not identical and may lead to different solutions.\(^{41}\) This can be illustrated by a simple hypothetical example.

It is easy to imagine a case in which a Spanish company with registered offices in Madrid loses an arbitration the seat of which is outside Spain. The foreign (winning) party seeks to enforce the award in Spain and is aware of substantial assets of the (losing) Spanish party in Andalusia. According to the rules of Article 955 LEC 1881, the request for exequatur\(^{42}\) and enforcement must be filed with the Tribunal of First Instance of Madrid. Only in the event that the Respondent lacked a residence in Spain could the request for enforcement be filed at the location where the assets are located, i.e., Andalusia.\(^{43}\)

In contrast, under the Rules of Article 545.3. LEC 2000, the party seeking enforcement would have the choice of filing the request at the losing party's domicile or at the location where the losing party's assets are located.\(^{44}\)

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\(^{40}\) The original text in Spanish mentions a "laudo homologado". This has to be understood as a foreign award which has received the exequatur.

\(^{41}\) Article 545.3 LEC 1881 refers to Articles 50 and 51 of LEC 2000 which contain general rules for territorial competence.

\(^{42}\) See section IV.B. of this article.

\(^{43}\) Article 955 reads: "la competencia para conocer de las solicitudes de reconocimiento y ejecución corresponde a los Juzgados de Primera Instancia del domicilio [...] de la parte frente a la que se solicita el reconocimiento o ejecución [...] y subsidiariamente la competencia territorial se determinará por el lugar de ejecución o donde aquellas sentencias y resoluciones deban producir efectos." Translated in English, this means: "The competence for hearing the request for recognition and enforcement will be of the Court of First instance of the residence [...] of the party against which the recognition or enforcement is sought [...] and subsidiarily, the territorial competence is determined by the place of enforcement or where these judgments and decisions should produce their effects."

\(^{44}\) Article 545.3 LEC 1881 reads: "La ejecución podrá [...] a elección del ejecutante,
This Audiencia Provincial decision demonstrates the uncertainties facing a party seeking efficient enforcement—and provides an example of the need to clarify the rules of competence.

B. The legal rule of competence for *exequatur* proceedings: Article 8.6 Spanish Arbitration Law and Article 955 of Code of Civil Procedure 1881

Article 8.6 LA refers “for *exequatur* of foreign arbitral awards” to the competence of “the court authorized by the rules of civil procedure to enforce foreign judgments”. As explained above\(^{45}\), for the time being, the rules of civil procedure to enforce foreign judgments are included in Article 955 LEC 1881, and refer to the competence of the Court of First Instance at the venue where the party against which enforcement is sought has his domicile or where the relevant assets are located.

In the decision cited above\(^{46}\), the Audiencia Provincial of Oviedo based the competence of the Tribunal of First Instance for *exequatur* on Article 85 of the Spanish Law on Judicial Competence (*Ley Orgánica de Poder Judicial*—LOPJ),\(^{47}\) which simply states that the Tribunal of First Instance is “competent for the requests for recognition and enforcement of foreign arbitral awards […].”

However, this provision does not indicate the territorial competence of the Courts. The Court thereby ignored that the second sentence of Article 958 LEC 1881 had been supplanted by the revised Article 955 LEC 1881, which contains a rule of *lex specialis* in relation to Article 85 LOPJ.

C. Summary of the competence issue

When the Spanish arbitration law was drafted, the *exequatur* proceedings and the enforcement proceedings did not fall in the competence of the same Courts. For this reason, Article 8 LA distinguishes between the competence for enforcement *stricto sensu* and the *exequatur*.

This differentiation no longer has any relevance. Today, the *exequatur* and enforcement proceedings fall in the competence of the Spanish Courts of First Instance el de cualquier lugar en que se encuentren bienes del ejecutado que puedan ser embargados.” Translated in English, this means: “The enforcement could be initiated […] at the choice of the enforcing party, at any location where the party against which enforcement is sought has enforceable assets.”

\(^{45}\) See section IV.A.3.c) of this article.

\(^{46}\) See section IV.A.3.d) of this article.

\(^{47}\) Spanish Law on judicial competence (*Ley Orgánica 6/198, de 1 julio de Poder Judicial*—LOPJ). This law contains the basic rules of competence of the different Spanish Courts. These basic rules are further specified in various other laws.
stance, primarily at the place where the party against which enforcement is sought has his registered offices.

Through the reference to Article 955 LEC 1881 for both enforcement and *exequatur* proceedings, the legislative intent was to provide for a single procedure. We therefore conclude that a separation of the *exequatur* and enforcement proceedings is apparently no longer required. Such separation would neither be efficient nor appropriate, and would contradict the spirit of the New York Convention – which seeks to facilitate both the execution and the enforcement of foreign awards.  

The unification of competence should be explicitly mandated in the future Law on international legal cooperation in civil matters, which will supplant the provisions of the LEC 1881. For the ease of the practitioner, it would be convenient to unify Articles 8.4 and 8.6 LA into a single rule of competence for *exequatur* and enforcement of foreign decisions, and to separate from these provisions the rules of competence for the enforcement of domestic awards.

These conclusions are consistent with the practice and rhetoric of the Spanish Courts. Although different procedural rules are applicable for the *exequatur* and the enforcement steps, given their substantive similarities, we now discuss them jointly.

### V. Specific requirements to be fulfilled for the granting of *exequatur* and enforcement

#### A. Legal Framework of the *exequatur* and enforcement proceedings: Articles 951–958 LEC 1881 and Article 517 et seq. LEC 2000

The presentation of all aspects of *exequatur* and enforcement proceedings falls outside the scope of the present contribution. In essence, the party seeking recognition and enforcement of a foreign award does so by filing a claim. Once the Court of First Instance has determined that the award does not fall within the grounds for refusal, recognition will be granted.

According to the rules included in Article 46 LA, the provisions of Art 951–958 LEC 1881 (which are applicable for the *exequatur* of foreign judgments) apply to *exequatur* of arbitral awards to the extent that the provisions of the New York Convention or any other Conventions do not prevail.

Upon *exequatur*, the interested party may seek enforcement of the award. The enforcement proceedings themselves – which are adversarial in nature – are similar to the proceedings for enforcing Spanish Court decisions and are not of any particular interest for the non-Spanish practitioner. The general provisions on enforcement of the Law on Civil Procedure 2000 and the specific provisions on

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enforcement in Article 45 LA govern these proceedings. It is obvious that in the scope of applying the New York Convention, the provisions of enforcement stricto sensu can only apply to the extent they do not contradict the provisions of the Convention.

Some particularities of these proceedings are nevertheless worth mentioning.

The request for enforcement must be filed within 5 years once the award has become final. Grounds for refusing exequatur and enforcement are those known to the international practitioner under the New York Convention. The only way to object to a court decision ordering enforcement is to file a so called “oposición”. The only grounds for such an opposition are that the claim has already been paid, that the above mentioned 5-year statute of limitation has expired, or that the parties have agreed to circumvent enforcement of the award. The final decision on exequatur and enforcement cannot be appealed.

We will now focus on some formal particularities linked to filing the request for exequatur and enforcement which are of interest for all comparative international arbitration practitioners.

B. Content of the claim

A claim for enforcement must be accompanied by a request for exequatur. Nothing in the law precludes a party from filing the claim for enforcement to-

49) See in this context the in-depth research made by Matthias Scherer & Samuel Moss, Resisting enforcement of a foreign arbitral award under the New York Convention, IPBA JOURNAL 17 (Sept. 2008).

50) Article 556 LEC 2000. This has been confirmed by Court of First Instance (Juzgado de Primera Instancia) n12 of Madrid in a decision dated September 23, 2004.

51) See last paragraph of Article 956 LEC 1881. This provision was understandable under the old law, when the Supreme Court decided on the exequatur. Taking into account that today the Courts of First Instance decide on the exequatur, this provision should be revised; in this respect see also Mantilla-Serrano, supra note 4, at 257. Apparently the Audiencia Provincial of Barcelona (section 15) November 15, 2006 was of the same opinion as the Court granted an appeal against a decision which denied the exequatur.

52) An interesting topic has recently been highlighted by Félix J. Montero, practicing lawyer with Perez-Llorca in Madrid, on an arbitration internet platform (international law office, issue 16 October, 2008, www.internationallawoffice.com): Montero notes that there is no remedy under Spanish law for a losing party who seeks non-recognition of a foreign arbitral award by an express declaration of violation of public policy. The claim can only refer to the recognition of the award. In the event the winning party adopts a passive attitude towards recognizing the award, but the losing party is interested in an express declaration of violation of public policy, such claim of non-recognition cannot be filed under Spanish procedural rules. If an award is not set aside in the country of origin, there is a legal presumption that the award is binding upon the parties (see section VI. of this article). According to Montero in cases where there are reasonable grounds to deny recognition and enforcement, this violates the principles of equal treatment of the parties.


gethether with the request for *exequatur*. In most cases, parties file the request and the claim at the same time.

The claim for enforcement itself must indicate: (1) the title, the execution of which is sought; (2) the value of the claim to be executed; (3) whether the claimant has knowledge of the respondent’s assets, and the assets of the respondent which could be attached in the event that the claimant considers these assets sufficient to satisfy his claim; (4) if necessary, a request for measures to be taken by the authorities to locate the assets; (5) the persons against whom the enforcement should be initiated.53)54)

C. Documents to be submitted

With respect to foreign arbitral awards, Article IV of the New York Convention must be read together with the provisions of the Spanish LEC 2000 and LEC 1881. A party must file the following documents with the claim for enforcement under the LEC 200055):

1. the arbitral award to be enforced, the arbitration agreement56) and the necessary documents which certify the notification of the award to the parties.57)
2. the power of attorney of the “procurador”58)

1. The duly authenticated original award

Article IV of the New York Convention only states that the party applying for the recognition and enforcement of the award shall, at the time of application, supply “the duly authenticated original award” or “a duly certified copy thereof” without indicating which law should apply to the issue of whether the award is “duly authenticated” or “duly certified”.59) Therefore, national laws help interpret the Convention in this respect.

53) The persons must be identical to the persons identified in the award.

54) Article 549 LEC 2000.


56) For the *exequatur* itself, according to Article 954 LEC 1881, the arbitration agreement is not mentioned as a document which must be submitted.

57) Article 550 1.2 LEC 2000, in the original Spanish version, reads as follows: “Cuando el título sea un laudo, se acompañarán, además, el convenio arbitral y los documentos acreditativos de la notificación de aquél a las partes.” Translation: “If the title is an arbitral award, have to be joined, in addition, the arbitration agreement and the documents which certify the notification of the award to the parties.”

58) A *procurador* is a legal professional who, without being attorney, serves as the contact between the Court and the attorneys. Only a “*procurador*” can present notifications to Spanish State Courts.

59) With regard to this issue when executing a Swiss Award in Austria, see Christian Aschauer, *Zur Anerkennung und Vollstreckung schweizerischer Schiedsprüche in Österreich*, 2 ASA Bull 287, 300 (2003).
According to the Spanish LA, the award shall be made in writing and shall be signed by the arbitrators. Pursuant to Article 37 LA, the award shall be deemed made in writing when its content and signatures are recorded and accessible for consultation in an electronic, optical, or other type of format. The award must also contain the arbitrators' reasoning, its date and the place of arbitration, and the award on the costs of the arbitration. Notarizing the award is no longer required, unless one of the parties, at its own expense, expressly requests the arbitrators to notarize the award before serving it.

2. The arbitration agreement

The Spanish courts usually require the party seeking enforcement to submit the arbitration agreement. In 2005, the Spanish Supreme Court confirmed a decision for refusing to enforce an award which had been rendered in London on the basis that the party seeking enforcement failed to supply a valid arbitration agreement as required under the New York Convention.

3. Translation of the award

Article IV.2 of the New York Convention requires the party seeking enforcement to supply a translation of the award if it is not made in an official language of the country in which the award is relied upon. Such a translation must be certified by an official, a sworn translator, or a diplomatic or consular agent.

Article 956 LEC 1881 provides that the enforceable title must be translated into Spanish in accordance with the law. Article 956 is silent as to whether the translation has to be certified. According to the general Rules of Civil procedure, it suffices to file a private translation, although the opposing party may challenge the translation within five days from service if the party deems the translation inaccurate and supplies the reasons for the alleged inaccuracy. If such a challenge occurs, a certified translation must be filed. If the official translation is substantially identical to the former, the challenging party must bear the expense of the official translation.

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60) Except for those cases where the parties have agreed that no reasons are to be given or the award is an award on agreed terms.

61) Subject to the agreement of the parties.

62) This was a legal requirement under the former Spanish arbitration law of 1988 (Article 33.2).

63) Spanish Supreme Court (Tribunal Supremo), January 14, 2003, Glencore Grain Ltd. V. Sociedad Ibérica de Molturación, 64 Cuaderno Civitas de Jurisprudencia Civil (January–April 2004), 71, no. 1715, XXX YBCA 2005, 605.

64) Article 144 LEC 2000.
4. Necessary documents which certify the notification of the award to the parties or the end of the arbitrators' ability to use a simple registered letter for the purposes of notification?

a) Introductory Comment

A significant number of diverging Spanish Court decisions have led to some uncertainty with regard to the interpreting “the necessary documents which certify the notification of the award to the parties” in Article 550 (1.2) LEC 2000.\(^{65}\)

The Audiencia Provincial of Madrid has on several occasions confirmed the refusal of the Court of First Instance to enforce an award because the “necessary documents which certify the notification of the award to the parties” had not been provided.\(^{66}\) The Courts reasoned that under Article 550 (1.2) LEC 2000, it would not suffice to prove the mere notification of the award, but that it must be shown that the content sent to the parties was indeed the same as the award. In one case, enforcement was denied because in the opinion of the Court, a party did not comply with the “notification” of the award requirement when such notification is done by “by registered letter sent by mail with acknowledgment of receipt, since it does not prove the content of what has been sent to the addressee”. In other decisions, a notification by mail with acknowledgement of receipt sufficed.\(^{67}\)

Based on these conflicting Court decisions, the judges of the different sections of the Audiencia Provincial of Madrid, which is the common upper instance for all Courts of First Instance in Madrid, attempted to bring some uniformity to the standards of necessary notification of arbitral awards. As will be shown below, the Magistrates agreed that “arbitral awards” can be notified by any means of communication which establish receipt of the award at the parties' residence or seat, and cite as possible means of communication “intervention of the notary public, buro-fax against receipt, or any other means of communication that provides a record of the content of the communication and its receipt”.

In a very detailed and well reasoned article, the eminent Professor Fernando Gascón Inchausti comes to the same conclusion and states that “there must be a judicial control over the way in which arbitral awards are served” and concludes that “arbitrators will no longer be entitled to use the postal service by registered letter with acknowledgement of receipt, since it does not prove the content of what has been sent to the addressee”.\(^{68}\) Prof. Gascón Inchausti, however,

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\(^{65}\) Article 550 1.2 LEC 2000.


\(^{67}\) Audiencia Provincial of Madrid (Sección 11), AC 2005/1247 September 16, 2005; Audiencia Provincial of Madrid (Sección 11), AC 2005/2137 October 27, 2005.

\(^{68}\) Fernando Gascón Inchausti, La notificación del laudo arbitral como requisito para su ejecución forzosa, 1 ARBITRAJE 87–114 (2008), criticizes the reasoning in the Court decisions of the Audiencia Provincial of Madrid but does not contest the outcome.
stresses that these cases were based on very specific and exceptional circumstances.\(^{69}\)

The court decisions mentioned above, the unified criteria of the Judges of the Audiencia Provincial of Madrid, and Professor Gascón Inchausti’s article do not reference enforcement of foreign awards. Generally speaking, when enforcing foreign awards, Spanish courts strictly apply the text of the New York Convention and do not require additional formal requirements other than those mentioned in Article IV of the New York Convention.\(^{70}\) Nevertheless, in the future, it cannot be ruled out that the standards applicable to domestic awards in this respect also apply to foreign awards.

b) The required standard of notification of the (domestic) award

In the court decisions mentioned above\(^{71}\), the Audiencia Provincial of Madrid ruled that an arbitral award cannot be enforced if the award has not been correctly notified to the parties. The legal basis was, inter alia, directly found in Article 37.7 LA, which provides that “the arbitrators shall notify the parties of the award [...]” and Article 5.1.a LA, which provides as follows:

“unless otherwise agreed by the parties [...] any notification or communication shall be deemed received on the day it is personally delivered to the addressee or delivered to its legal residence [...] Notifications are [...] valid by telex, fax or other means of electronic, telematic or similar means of telecommunication that allow delivery and receipt of texts and documents and that leave a record of such delivery and receipt [...]”\(^{72}\)

According to the court decisions, these provisions, as well as Article 550 LEC 2000, which require that the party seeking enforcement supply proof that the notification took place, give the enforcement Judge the power to verify whether the notification of the award took place. Such an assessment does not only require verification of the notification, but also that the Court be convinced that the content of what was notified was the arbitral award itself. Therefore, according to these decisions, the postal service by registered letter with acknowledgment of receipt is not sufficient to comply with the “requirements of Article 5.1(a) LA”.

\(^{69}\) According to Gascón Inchausti, La notificación del laudo arbitral, id., at 99, in all examined cases biased arbitration institutions were implied. The Courts apparently tried by all means to find reasons for refusing enforcements.

\(^{70}\) See Spanish Supreme Court (Tribunal Supremo), January 14, 2003, Glencore Grain Ltd. V. Sociedad Ibérica de Molturación, 64 Cuaderno Civitas de Jurisprudencia Civil (January–April 2004), 71, no. 1715, XXX YBCA 605 (2005).

\(^{71}\) See note 69.

\(^{72}\) Emphasis added.
Finally, in these decisions, direct reference was made to Article 24 of the Spanish Constitution\(^73\), in that it implied that the lack of appropriate notification in the narrow sense of Article 5.1.a. LA would violate due process.

The Assembly of Judges of the Audiencia Provincial of Madrid confirmed this interpretation and, as set forth in “Agreement for unification of the practice of the Judges of the Audiencia Provincial of Madrid”, explained that for the notification of an arbitral award in Spain, postal notification by registered letter with acknowledgment of receipt is not sufficient because the content of the notification cannot be proved.\(^74\) In particular the Agreement states that the notification of awards can be made by: “intervention of the notary public, buro-fax with acknowledgement of receipt or any other means of communication which provides a record of the content of the communication and its receipt”.

In this regard it has to be clarified that a “buro-fax with acknowledgement of receipt” is a means of notification used frequently in Spain. A “buro-fax” is sent by a Spanish post office to the addressee. When sending the “buro-fax”, the post officer certifies the content of the communication within a “sending report”.

Therefore, unless the parties have agreed on the means of notification of the award\(^75\), it seems that in Spain, or at least in the jurisdiction of the Audiencia Provincial of Madrid, the notification of a (domestic) award by registered letter with acknowledgement of receipt (a classification which must include courier services) is not a sufficient means of notification to enforce the award.

c) The required standard of notification of an award under the New York Convention vs. the rule included in Article 550.1 LEC

It is recognized that pursuant to Article IV of the New York Convention, the party seeking enforcement only has to supply the original award or a duly authenticated copy thereof, and the original arbitration agreement, or a duly authenticated copy thereof.\(^76\) In addition, the party must supply an official translation if

\(^73\) Article 24 of the Spanish Constitution guarantees the principle of due process and the parties’ right to be heard.

\(^74\) Point 10 of this Agreement of the Audiencia Provincial of Madrid of September 28, 2006, is titled in its original text: “Notificación del laudo por correo certificado y exigencias de la indagación razonable” (Notification of the arbitral award by registered post and of the reasonable “search” [of parties]. This document is available at www.coseju.com/actajudicial under the following title dated 17 February 2007 “Luces y sombras en la unificación de criterios sobre la aplicación de la LEC”.

\(^75\) The Audiencia Provincial of Madrid in the above mentioned decisions seemingly implied that pursuant to Article 5.1.a LA the parties’ agreement with regard to the means of notification, as e.g. by a reference to Institutional Rules, overrule any legal requirements in this respect.

\(^76\) Van den Berg, supra note 48, at 248; Jean François Poudret & Sébastien Besson, Droit comparé de l’arbitrage international 920 mm 950 (2002); Domenico di Pietro & Martin Platte, Enforcement of International Arbitration Awards 124 (2001). While the New York Convention imposes no other requirements, certain jurisdictions impose additional practical requirements on the party seeking enforcement; see the examples cited by Scherer & Moss,
the agreement and/or the award are not in an official language of the country
where enforcement is sought.77) The conditions mentioned in Article IV are
the only conditions that the party seeking enforcement must fulfill.78)

The New York Convention does not therefore require the “necessary docu-
mments which certify the notification of the award to the parties”.79) As Spain is
obliged to comply with the text of the Convention, one could argue that a Spanish
enforcement Judge cannot require such additional documentation to grant en-
forcement.

On the other hand, one could argue that the proceeding for enforcing a for-
eign award is, according to the text of the New York Convention, regulated by the
“rules of procedure of the territory where the award is relied upon”. In Spain, these
are the Rules of Article 517 et seq. LEC 2000, one of which is Article 550.1 LEC
2000, discussed above.

However, the reference to the national procedural rules in the New York
Convention relates to the form of the request, but does not extend to the condi-
tions for enforcement. Enforcement is to be granted “under the conditions laid
down in [the New York Convention]”. Therefore a procedural law governing
the enforcement may not derogate from the principles embodied by Articles
IV–VI.80) The New York Convention exhaustively enumerates the documents to
be supplied by a party seeking recognition and enforcement. A requirement to
supply “the necessary documents which certify the notification of the award to
the parties” would constitute an additional condition for the enforcement and not
a mere formal requirement of the request. Therefore the conditions mentioned in
Article IV cannot be altered by the provisions of Article 550.1 LEC 2000, and
cannot be applied when the enforcement of a foreign award is requested.

The only doubt which remains in the eyes of the authors is whether the re-
quirement of the notification by a means of communication that proves the con-
tent of the notification is part of domestic public policy in the meaning of Article
V.2 of the New York Convention. In a decision under the previous LA, the Spanish
Supreme Court directly linked the correct notification of the award to the require-
ments of Spanish public policy.81) Furthermore, the decisions of the Audiencia
Resisting enforcement of a foreign arbitral award under the New York Convention, supra note 49,
at note 19.

77) VAN DEN BERG, supra note 48, at 248; POUDRET & BESON, supra note 76, at 920, nn 950;
DI PIETRO & PLATTE, supra note 76, at 124.

78) Id.

79) The New York Convention does not regulate the means of notification of the final
award.

80) VAN DEN BERG, supra note 48, at 239.

81) Spanish Supreme Court (Tribunal Supremo, Sala de lo Civil), Order (“Auto”) May
español (artículo V.2), habiéndose notificado la misma [...] a la parte contra la cual se dirije
el presente procedimiento” (“the arbitral award is not against the Spanish public order (Arti-
cle V.2), as the award was notified to the party against whom the present proceeding is
directed”).
Provincial mentioned above directly link appropriate notification\(^{82}\) to a requirement under the Spanish Constitution and the fundamental principles of Spanish Law.

Therefore, a Spanish Court of First Instance, when examining a request for enforcement, might conclude that the notification of an award in a way that does not prove the content of what had been notified violates public policy, and refuse enforcement pursuant to Article V 2 b of the New York Convention.

However such application of the New York Convention is incorrect. The “public policy” requirement of Article V refers to “international public policy” and not every breach of a mandatory rule of the country where enforcement is sought could justify refusing recognition or enforcement of a foreign award.\(^{83}\) This must certainly be true for a formal requirement of notification that the parties can waive by agreement. In international arbitration, notification by registered mail with acknowledgement of receipt (or by courier service) is the standard means of notification used by most arbitral institutions. It can therefore be considered as international standard and should not be considered to violate the Spanish conception of international public policy. The failure to notify an award by the means set out by the Audiencia Provincial of Madrid is therefore certainly not an “extraordinary circumstance” which could prevent enforcement under the rules of the New York Convention.\(^{84}\)

d) Conclusions with regard to the standard of notification

In the majority of international arbitration proceedings involving Spanish parties, arbitrators can continue to notify awards by registered mail with acknowledgment of receipt, as well as by courier service. This certainly applies to arbitrations conducted under the auspices of major institutions, as by agreeing to their rules, the parties agree on the rules governing notification of the award.\(^{85}\) In ad hoc proceedings, arbitrators should, in the Terms of Reference signed by the parties, set out how the award will be notified\(^{86}\). If this is not done, it is advisable to be

\(^{82}\) This is to say the notification by which the content of the sending could be proved. One could argue that Article 37.7 LA and Article 5 LA are not applicable in proceedings in which the place of arbitration is abroad. However, the articles assist interpret the “public policy standard”.


\(^{84}\) For an overview of recent case law on the subject see Scherer & Moss, Resisting enforcement of a foreign arbitral award under the New York Convention, supra note 49, at 17 et seq.

\(^{85}\) Such as e.g., Article 3.2 and Article 28.3 ICC Rules. This also applies for Article 8 of the Rules of the Court of Arbitration of the Chamber of Commerce and Industry of Madrid (Corte de Arbitraje de Madrid de la Cámera Oficial de Comercio e Industria de Madrid).

\(^{86}\) This applies to domestic arbitration and arbitration proceedings with the place of arbitration outside Spain.
cautious and to comply with the formalistic requisites of (some) Spanish Courts by notifying the award through a (Spanish) Notary Public. 87)

VI. Recognition and Enforcement of Foreign Awards subject to setting aside proceedings

A. Recognition and Enforcement of Foreign Awards which have been set aside in their country of origin

In the light of the well known Hilmarton 88) and Chromalloy 89) decisions, and the more recent Termorio 90) and Putrabali 91) decisions, whether a foreign award which has been set aside in its country of origin can be recognized and enforced in Spain is of particular interest for arbitration practitioners.

As we have suggested above, **exequatur** and enforcement proceedings are to be handled by a single judge applying the provisions of the New York Convention, other pertinent International Conventions, and the procedural rules provided for in the LEC 1881 and LEC 2000, as well as the Spanish Arbitration Law.

Article 45 LA contains specific provisions for the "**suspension, stay and resumption of enforcement in the event of an action to set aside**", Pursuant to Article 1 LA, Article 45 also applies if the place of arbitration is located outside Spain.

Pursuant to these rules, a pending enforcement proceeding will be terminated as soon as the award has been set aside. 92) The Spanish legislator is silent with regard to the question of what should happen if the award had been set aside before the request for recognition and enforcement was filed. As the Spanish legislator requires that pending enforcement proceedings shall be terminated as soon as the award has been annulled, it would be logical to assume that recognition should be refused if the award has already been annulled before the request is filed. Nevertheless, as the Spanish Arbitration Law is silent, and by virtue of a strict reading of the text of the New York Convention, which states that "**recognition and enforcement may be refused**" 93) a certain degree of discretion should be given, in

87) The notification by "buro-fax" will not be practicable as such document can only be sent from a Spanish post office.


91) **Cour de Cassation** [French Supreme Court] 29 June 2007, Société PT Putrabali Adyamulia vs. Société Rena Holding anciennement dénommée Est Epices SA.

92) Article 45.3. LA., for the entire text, see note 16.

93) See Article V.1. and Article V.1.e of the New York Convention. It was stated that an award which is set aside in the country of origin loses the benefit of the New York Convention
appropriate circumstances, to a Spanish Judge to enforce an award which had been set aside.\textsuperscript{94}"

Such an approach is in line with the European Convention on International Commercial Arbitration. In cases in which the European Convention applies, the enforcement Judge can refuse recognition or enforcement if the award has been set aside only pursuant to the limited grounds listed in its Article IX.\textsuperscript{95}

Therefore, unlike in the case of domestic awards, setting aside foreign awards in the country of origin does not automatically lead to the refusal of the enforcement in Spain.\textsuperscript{96}

An action for setting aside the award in the country of origin is rarely successful.\textsuperscript{97} Therefore this point is of minor importance. More interesting is the status of enforcement proceedings where setting aside proceedings are pending. This question will be discussed below.

**B. Recognition and Enforcement of Foreign Awards pending annulment proceedings at the place of arbitration**

To determine the legal provisions applicable to the issue of whether a foreign award can be recognized and enforced in Spain despite the filing of setting aside proceedings in the place of arbitration, it must be determined, in light of Article\textsuperscript{\textsuperscript{95}} (see \textit{Van den Berg}, supra note 48, at 331-58); however, this award can nevertheless be recognized by a more favorable legal system (see \textit{Fouchard, Gaillard & Goldman}, supra note 83, at 978 nn 1687).

\textsuperscript{94} This would be in-line with the prevalent position in France (see in this regard e.g.: \textit{W. Laurence Craig, William W. Park & Jan Paulsson, International Chamber of Commerce Arbitration} 504 at para 28.04 (d) (1998); see also in this respect: \textit{William W. Park, Arbitration of International Business Disputes} 185 (2006); Jose Maria Abascal, \textit{Effects of Annulment}, 2 Dispute Resolution International 166, 173 (2008).

\textsuperscript{95} See also \textit{Julian D.M. Lew, Loukas Mistelis & Stefan Kroll, Comparative International Commercial Arbitration} 718 nn 26-105 (2003) where the authors underline with reference to Article IX European Convention that an annulment because the award contravenes the public policy under the country of origin does not hinder the enforcement in another contracting State.

In this context it is regrettable that the European Convention has only a limited scope of application as the number of ratifying States barely amounts to thirty countries. The application of the 1961 European Convention would best solve the problem as the Convention implies a high degree of certainty in relation to the enforcement of a foreign award, as the foreseen grounds for staying the enforcement in the event that the award is subject to setting aside proceedings coincide with the international standardized grounds for opposition to the enforcement of the award contained in Article V of the New York Convention.

\textsuperscript{96} In the event that only parts of the Awards have been set aside, the eventual suspension or refusal of the enforcement will not apply to the parts of the Award which have not been set aside which can be enforced independently (see the last sentence of Article 45.3 LA, \textit{supra} note 16).

VII of the New York Convention, whether Article 45.1 LA contains any rules that might be considered more favorable to enforcement than those of the Convention.

The first sentence of Article 45.1 LA (98) is clearly "more favorable". Under the New York Convention, enforcement may be refused in the event that an application to set aside proceedings has been filed in the country of origin. In Spain, however, courts cannot in principle refuse enforcement on that ground.

With regard to the exceptions to this rule, i.e. the possibility to suspend the enforcement pending annulment proceedings (99), we compare Article VI of the New York Convention and Article 45.1.

Under Article VI of the New York Convention, the enforcement Judge decides whether to suspend enforcement proceedings. The courts of the host country have full discretion to decide this question. (100) Apparently, no request from the party resisting enforcement is necessary (i.e., the judge can take the decision ex officio). The Judge, on the application of the party claiming enforcement, may order the opposing party to provide suitable security.

Under Article 45.1 LA, the party resisting enforcement may request that the competent court suspend the enforcement proceedings. However, the requesting party must post security in the amount of the award plus any damages that could result from the delay in enforcing the award. According to the law, the Judge, after hearing the party seeking enforcement, decides only the question of security and not the (admission of the) enforcement itself. This means — based on a strictly literal interpretation of the wording of this article — that if the party against which the enforcement is sought pays the amount the judge considers appropriate, the judge must automatically suspend the enforcement. It appears that the Judge has no discretion to reject the request for suspension. Therefore, in accordance with a literal interpretation, there would be an automatic stay of the proceedings once the resisting party submits the security payment. (101)

According to a literal interpretation of Article 45.2. LA, as soon as the payment has been made, the enforcement can only resume once the setting aside proceedings have been terminated. Such an approach is certainly not more favorable to enforcement than the New York Convention. Several authors have already contested this interpretation; they conclude that the enforcement Judge has a measure of discretion to decide on the stay of the proceedings. (102)

98) See Article 45.1 LA: "An award is enforceable even if an application to set aside the award has been made." Therefore the general rule under the Spanish Arbitration Law is that the award is enforced, despite the fact that annulment proceedings are pending abroad.

99) See the text of Article 45.1 LA supra note 16.

100) See, e.g., FOUCHARD & GAILLARD & GOLDMAN, supra note 83, 982 at nn 1687.


102) See RICARDO YANEZ VELASCO, in COMENTARIOS A LA NUEVA LEY DE ARBITRAJE 988–989
One should not forget that outside Spain, the decision of whether to suspend enforcement proceedings or (resume the enforcement) often depends on the strength of the claim and length of the enforcement proceedings abroad and lies in the discretion of the judge. In our opinion, this, and not the mere payment of security, should be the Spanish standard.

Therefore, based on a literal interpretation of Article 45, the provision of the New York Convention is more favorable to the extent that the Court may suspend the proceedings at its discretion, which is not the case under Spanish law if it is interpreted to provide for an automatic stay of the proceedings. Even if the party resisting enforcement could pay or is willing to pay a substantial sum as security, this would not hinder enforcement of an award under the New York Convention if the Court believes that the setting aside proceedings abroad are ill-founded or lasted too long. However, if the LA is interpreted as providing the Judge with a degree of discretion, it could be suggested that the LA is more favorable to enforcement, given that it would further impede possible frivolous requests for suspension.

Finally, in the event that it is admitted that the Spanish Courts should have the discretion to consider whether it is appropriate to suspend the proceedings pursuant to the mere application of the New York Convention, we believe that the party seeking enforcement should nevertheless be able to invoke the more favorable provision included in the LA, pursuant to which the security is to be “in the amount of the award plus any damages that could result from the delay in enforcing the award” and not “only” a “suitable guarantee” as required under the regime of the New Convention.

VII. Conclusion

The following conclusions can be drawn from the three separate issues discussed in the present contribution:

In drafting the future Spanish Law on international legal cooperation in civil matters, the Spanish legislator should clarify that exequatur and enforcement of foreign arbitral awards should be brought together in a single proceeding falling under the jurisdiction of the Courts of First Instance, primarily at the place where the party against which enforcement is sought has its registered offices. Articles 8.4 and 8.6 of the Spanish Arbitration Law should be merged into a single rule of jurisdiction for exequatur and enforcement proceedings, which should be separated from any rules of jurisdiction for the enforcement of domestic awards.


Arbitrators in ad-hoc proceedings involving Spanish parties must be aware of Spanish case law according to which postal notification of an arbitral award by registered letter with acknowledgment of receipt is insufficient as it does not prove the content of the notification. Despite the fact that the authors do not believe that such case law on domestic arbitration (which was rendered under very specific circumstances) would apply to international arbitration proceedings, there is a risk that the courts would conclude otherwise. Accordingly, notification by a Spanish notary public is the only way to ensure a smooth enforcement of the award.

Finally, the setting aside of foreign awards at the place of arbitration does not necessarily lead to a refusal to enforce the award in Spain. The enforcement Judge has a degree of discretion in this respect. With regard to the issue of recognizing and enforcing foreign awards pending annulment proceedings at the place of arbitration, whether a party seeking enforcement can invoke Article 45 of the Spanish Arbitration law, which contains more favorable rules compared to those of the New York Convention, has to be determined on a case-by-case basis.