# SPAIN

# INVESTMENT CLIMATE STATEMENT

# 2015

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**Executive Summary**

Spain is open and seeking to attract additional foreign investment, particularly to help spur recovery from its recent economic crisis. Spain's well-educated work force, excellent infrastructure, large domestic market, and export possibilities have attracted foreign companies in large numbers over the past three decades. Spanish law permits foreign ownership in investments up to 100 percent, and capital movements are completely liberalized. In 2014, gross new foreign direct investment reached EUR 17.626 billion, with the six main investors in Spain being the United States, Luxembourg, the United Kingdom, France, Mexico, and the Netherlands. This investment focused particularly on activities related to real estate, finance and insurance, manufacturing and sales.

Spain emerged from its recession in the third quarter of 2013. Even with a high unemployment rate – 23.7 percent as of the first quarter of 2015 – and significant household and public indebtedness, the economy continued to recover in 2014 and has benefited from a resurgence in domestic consumption. The government attributes this turn-around in part to the economic reforms it implemented beginning in 2012, the largest in the country's democratic history, which streamlined budgets and loosened labor laws to make hiring and firing easier. As part of this effort, the government sharply curbed public spending, which helped stabilize the fiscal situation. Major economic imbalances have been corrected, and competitiveness and flexibility are being restored.

The government also implemented a series of labor market reforms and the restructuring of the banking system, all measures aimed at improving the efficiency in the allocation of resources, the full effects of which were visible by the end of 2014. To avoid the fragmentation of the domestic market emerging from differences of central, regional and local regulation, the 2013 Market Unity Guarantee Act was adopted. The law aims to rationalize the regulatory framework for economic activities, eliminating duplicative administrative controls by implementing a single license system that facilitates the free flow of goods and services throughout Spain. Spain has regained access to affordable financing from international financial markets, which has improved Spain's credibility and solvency, in turn generating more investor confidence. However, the Spanish government has yet to improve access to financing for small and medium-sized enterprises (SMEs), which still suffer from an important credit crunch.

In implementing its fiscal consolidation program, the government has taken actions which negatively affect U.S. and other investors in the renewable energy sector on a retroactive basis. As a result, Spain is facing several international arbitration claims. Spain is a member of both the International Centre for Settlement of Investment Disputes (ICSID Convention) and the 1958 Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Spanish law protects property rights and those of intellectual property. The government has amended the Intellectual Property Act, the Civil Procedure Law, and the Penal Code to strengthen online protection. Still, internet piracy has continued to increase over the past several years.

Spain and the United States have a Friendship, Navigation and Commerce (FCN) Treaty, and a Bilateral Taxation Treaty (1990), which was subsequently amended in 2013 and went into force in December of 2014.

## 1. Openness To, and Restrictions Upon, Foreign Investment

### Attitude toward Foreign Direct Investment

Foreign direct investment (FDI) has played a significant role in modernizing the Spanish economy over the past 35 years. Attracted by Spain's large domestic market, export possibilities, and growth potential, foreign companies set up operations in large numbers. Spain's automotive industry is almost entirely foreign-owned. Multinationals control half of the food production companies, a third of chemical firms, and two-thirds of the cement sector. Several foreign investment funds acquired networks from Spanish banks, and foreign firms control close to one third of the insurance market.

The Government of Spain recognizes the value of foreign investment and the economic importance of attracting more of it, particularly to help spur recovery from the economic crisis. Prime Minister Mariano Rajoy repeatedly comments that it is the government's goal to make Spain increasingly attractive to foreign investors. Spain offers investment opportunities in sectors and activities with significant added value. There have not been any major changes in Spain's regulations for investment and foreign exchange under the Popular Party (PP) administration, which took office in December 2011. Spanish law permits 100 percent foreign ownership in investments, and capital movements are completely liberalized. Due to its degree of openness and the favorable legal framework for foreign investment, Spain has received significant foreign investments in knowledge-intensive activities in the past few years. Foreign investment in Spain, excluding foreign stockholders, grew 9.8 percent in 2014 by EUR 17.6 billion, according to Finance Ministry data. EUR 14.2 billion, or 80.4 percent of foreign investments, were in greenfield projects - a project that lacks any constraints imposed by prior work, suggesting significant foreign investor interest in new operations in Spain. This was an increase of 11 percent compared to the previous year. The United States was the lead foreign investor in Spain with a gross investment of EUR 3.5 billion, accounting for 19.9 percent of total investment and representing an increase of 108.2 percent compared to 2013.

The United States continues to be a primary destination for foreign outbound investment. Spain is one of the fastest growing investors in the United States, with much of the investment going to strategic sectors. Companies are attracted not only by the opportunities the largest single economy of the developed world offers but also by the access to a market of more than 1.4 billion when all free trade agreements are taken into consideration. Spanish investment increased from USD 14 billion in 2006 to more than USD 52 billion in 2013, making Spain the 9th overall source of Foreign Direct Investment (FDI) into the United States

### Other Investment Policy Reviews

Spain is a signatory to the convention on the Organization for Economic Co-operation and Development (OECD). Spain is also a member to the World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD). In the past three years, the government has not conducted an investment policy review through any of these three organizations.

**Laws/Regulations of Foreign Direct Investment**

On August 1, 2014, the Spanish Council of Ministers approved three Tax Reform bills relating to Personal Income Tax, Corporate Income Tax, and Value Added Tax (VAT) that went into effect on January 1, 2015. Although the reforms generally reduced personal and corporate taxes in most categories, one of the new measures is an exit tax that applies to taxpayers that have had tax residency in Spain for at least ten of the last fifteen years and who own more than EUR 4 million in relevant assets or more than 25 percent of a company worth over EUR 1 million. Although the measure seeks to combat offshore tax evasion, the provision has caused concern among Spanish entrepreneurs and foreign investors who say that the reform will make it difficult for Spanish start-ups to relocate outside the EU, which can be essential for the growth of a new business.

In April 1999, the adoption of royal decree 664/1999 eliminated requirements for government authorization in investments save those in activities directly related to national defense, such as arms production. The decree abolished previous authorization requirements on investments in other sectors deemed of strategic interest, such as telecommunications and transportation. It also removed all forms of portfolio investment authorization and established free movement of capital into Spain as well as Spanish capital out of the country. As a result, Spanish law conforms to multi-disciplinary European Union (EU) Directive 88/361, part of which prohibits all restrictions of capital movements between member states as well as between such states and other countries, and which classifies investors according to residence rather than nationality.

Registration requirements are straightforward and apply to foreign and domestic investments equally. They aim to verify the purpose of the investment, and do not block any investment.

**Industrial Promotion**

Among the financial instruments approved by the Spanish Government to provide official support for the internationalization of Spanish enterprise are the Foreign Investment Fund (FIEX), the Fund for Foreign Investment by Small and Medium-sized Enterprises (FONPYME), and the Enterprise Internationalization Fund (FIEM), as well as financing lines for investment in the electronics, information technology and communications, energy (renewables), and infrastructure concessions sectors.

**Limits on Foreign Control**

Spain has a favorable legal framework for foreign investors. Spanish law has adapted its foreign investment rules to a system of general liberalization, without distinguishing between European Union (EU) residents and non-EU residents. Law 18/1992 of 1 July, establishing rules on foreign investments in Spain, provides a specific regime for non EU persons investing in certain sectors: national defense-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 defense- related activities. For non-EU companies, the Spanish government restricts ownership of audio-visual broadcasting licenses to 25 percent.

## Privatization Program

A process of privatization of state-owned firms began in the mid-1980s and was carried out by both Socialist and Popular Party governments in several stages. Spain's privatization process was especially intense between 1996 and 2000, when large utilities and industrial groups, such as Telefonica, Tabacalera, Repsol, and Endesa, among others, were completely privatized. However, several of these companies maintain a de facto monopoly position under private ownership, and a high degree of sector concentration persists years after the main privatizations, reflecting the slow progress of competition in those sectors. U.S. companies have reported difficulty competing particularly in regulated sectors. The Public Works Ministry partially privatized Spanish Airports and Air Navigation (AENA) in early 2015 with the government retaining control of 51 percent and the remaining 49 percent divided between three private consortia (21 percent) and institutional and private shareholders and employees (28 percent).

## Screening of FDI

Companies planning to enter the Spanish market should consider the fact that the acquisition of, or merger with companies active in Spain may be subject to a mandatory merger control review by the competition authorities. This mandatory review regime implies an obligation on the acquiring company or on the merging parties to notify the deal and to suspend its execution until approval by the authorities. Transactions that may be subject to merger control review are mergers of two independent companies or joint control over undertakings, and the creation of a joint venture. A notification and suspension obligation will apply provided that certain thresholds are met. Two different sets of rules apply to transactions affecting the Spanish market: European Union merger control rules and Spanish legislation. For transactions that do not reach the European Union thresholds, the smaller scaled, Spanish merger control legislation may apply. According to this legislation, transactions must be notified to the national competition authority if one of the following alternative thresholds is triggered: if the transaction results in the acquisition or increase of a market share of 30 percent or more in the relevant market in Spain, or if the combined turnover of the relevant undertakings in Spain amounts to EUR 240 million, provided that at least two of the undertakings concerned have a turnover of EUR 60 million in Spain. However, transactions are exempt from the notification obligation where the turnover or assets in Spain of the acquired company do not exceed EUR 10 million, as long as the parties do not have an individual or joint market share of 50 percent or more in any of the markets concerned.

Public takeover bids will not be subject to the suspension obligation provided in the Spanish merger control legislation provided the following conditions are met: the transaction must be notified to the national competition authority within five days of the submission of the bid to the National Stock Market Commission (CNMV); and the acquirer must not exercise the voting rights attached to the shares acquired, or must do so only to maintain the full value of those investments and on the basis of a derogation granted by the competition authority.

## Competition Law

Quasi-independent regulatory bodies exist in several sectors; however, they are for the most part still finding their role and fighting to assert their independence. Making the transition from state-owned monopolies to promoting full and open competition has been a slow, but steady, process. The parliament passed Act 3/2013 on June 4, 2013, by which the entities that regulated energy (CNE), telecoms (CMT), and competition (CNC) merged into a new entity, the National Securities Market and Competition Commission (CNMC). The law attributes practically all of the functions entrusted to the National Competition Commission under the Competition Act 15/2007, of July 3, 2007 (LDC) to the new CNMC.

**Investment Trends**

In the first half of 2014, Spain experienced a decline in foreign investment due to perceived risks of investing in the European Union (EU). Ninety three percent of total foreign direct investment went to companies not listed on the stock market. However, by the end of 2014, productive foreign investment, which excludes Entities Holding Foreign Securities –ETVE, reached EUR 17.6 billion, 9.8 percent more than in 2013 (EUR 16.047 billion), according to data from the Foreign Investment Register of the Ministry of Economy and Competitiveness. In net terms, the increase in productive investment was 18.8 percent higher and reached EUR 13.805 billion (EUR 11.624 billion in 2013). The growth was the result of increased influx of foreign capital and less disinvestment, which decreased in comparison with 2013: productive divestment totaled EUR 3.82 billion, 13.6 percent lower than in 2013 at EUR 4.423 billion. The total gross foreign investment in equity stakes in companies resident in Spain in 2014, including holding companies, amounted to EUR 18.92 billion (-5.3 percent year-on-year), up from EUR 19.982 billion in 2013. The six main investors in Spain, defined as the countries of ultimate origin of the investment, are the United States (19.9 percent, EUR 3.516 billion), Luxembourg (14.1 percent, EUR 2489 billion), the United Kingdom (9.5 percent, EUR 1.667 billion), France (9 percent, EUR 1.58 billion), Mexico (6.7 percent, EUR 1.177 billion), and the Netherlands (6.2 percent, EUR 1.098 billion), which represented 65.4 percent of total gross investment in Spain in 2014. By regions, foreign investment in Spain was highly concentrated in the autonomous communities of Madrid and Catalonia, which received 49 percent and 17 percent of the total, an increase of 0.6 percent in Madrid and a decrease of 15.8 percent in Catalonia. Companies invested especially in activities related to finance and insurance, manufacturing, real estate activities, whole and retail sale, and construction. These sectors received 62 percent of total gross investment (EUR 17.626 billion).

Although Spain continues to face 23.7 percent unemployment rate and significant household and public indebtedness, in the third quarter of 2013, the country emerged from recession. In 2014, the country saw a resurgence in domestic consumption. The government attributes this turn-around in part to the reform program it implemented during the past two years, the largest in the country’s democratic history. As part of this effort, the government undertook sharp public budget cuts that have helped to stabilize the fiscal situation. Major economic imbalances have been corrected, and competitiveness and flexibility are being restored. The government also implemented a series of structural reforms such as a labor market reform and the restructuring of the banking system, all measures aimed at improving the efficiency in the allocation of resources, whose full effects were visible by the end of 2014. Spain has regained access to affordable financing from international financial markets, which has improved Spain’s credibility and solvency, generating investor confidence. However, the Spanish government has yet to improve access to financing for small and medium enterprises (SMEs), which still suffer from an important credit crunch. The government took additional steps in 2014 to provide a clear, stable and fair legal, regulatory and policy framework to attract more foreign investment.

*Table 1*

| Measure | Year | Index or Rank | Website Address |
|---|---|---|---|
| **TI Corruption Perceptions index** | 2014 | 37 of 174 | transparency.org/cpi2014/results |
| **World Bank's Doing Business Report "Ease of Doing Business"** | 2015 | 33 of 189 | doingbusiness.org/rankings |
| **Global Innovation Index** | 2014 | 27 of 143 | globalinnovationindex.org/content.aspx?page=data-analysis |
| **World Bank GNI per capita** | 2013 | 29,920 USD | data.worldbank.org/indicator/NY.GNP.PCAP.CD |

## 2. Conversion and Transfer Policies

### Foreign Exchange

There are no controls on capital flows. In February 1992, Royal Decree 1816/1991 provided complete freedom of action in financial transactions between residents and non-residents of Spain. Previous requirements for prior clearance of technology transfer and technical assistance agreements were eliminated. The liberal provisions of this law apply to payments, receipts and transfers generated by foreign investments in Spain.

*Remittance Policies*

Capital controls on the transfer of funds outside the country were abolished in 1991. Remittances of profits, debt service, capital gains, and royalties from intellectual property can all be affected at market rates using commercial banks

## 3. Expropriation and Compensation

Spanish legislation has set up a series of safeguards to prevent the nationalization or expropriation of foreign investment. Since of the beginning of the economic crisis, Spain has altered its renewables policy six times, creating a high degree of regulatory uncertainty, and resulting in losses to U.S. companies' earnings and investments. In December 2012, the government enacted a comprehensive energy sector reform plan in an effort to address a EUR 30 billion energy tariff deficit caused by user rates that were insufficient to cover system costs. Spain's government announced on February 3, 2014 the details of its plan to cut subsidies for renewable-energy producers, a move that producers say could cause defaults across their industry. Additional reforms in 2014 negatively affected U.S. investors in the solar power sector, with some companies arguing that the changes to the legal regime are tantamount to indirect expropriation. As a result of Spain's energy reforms the country has accumulated more than a dozen lawsuits, totaling EUR 1 billion in claims. Spain now faces several international claims, all of which come from the photovoltaic energy sector. As such, Spain has become the country with the largest number of open cases in the International Center for the Settlement of Investment Disputes (ICSID).

## 4. Dispute Settlement

### Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Local legislation establishes mechanisms to solve disputes if they arise. The judicial system is open and transparent, although sometimes slow-moving. Judges are in charge of prosecution and criminal investigation, which permits greater independence. The Spanish prosecution system allows for successive appeals to a higher Court of Justice. The European Court of Justice can hear the final appeal. In addition, the Government of Spain abides by rulings of the International Court of Justice at The Hague.

### Bankruptcy

Spain has a fair and transparent bankruptcy regime. Bankruptcy proceedings are governed by the Bankruptcy Law of 2003 that entered into force on September 1, 2004. It applies to individuals and companies. The main aim of the law is to ensure the collection of debts by creditors, to promote consensus between the parties and, if possible, to enable the survival and continuity of the company. On March and September 2014, the government approved a reform of the bankruptcy law in two steps to promote Spain's economic recovery. The reforms aim to avoid the bankruptcy of viable companies and preserve jobs by providing for refinancing agreements to be reached through debt write-off, capitalization, and rescheduling

### Investment Disputes

Contractual disputes between U.S persons and Spanish entities are handled accordingly. U.S. citizens seeking to execute American court judgments within Spain must follow the Exequator procedure established in Spanish law.

### International Arbitration

Law 11/2011, of May 20, amending Law 60/2003 of December 23 on Arbitration applies to national and international arbitration conducted on Spanish territory, and aims to contribute to the promotion of methods of alternative dispute resolution (ADR), particularly arbitration. The Arbitration Act includes that the Civil Court and Criminal Court of Justice are competent to recognize of foreign arbitral awards. The Spanish Arbitration Act is based on the UNCITRAL Model law.

There are two main arbitration institutions in Spain, the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid (CAM), and the Civil and Commercial Arbitration Court of Madrid (CIMA), both of which have modern and flexible rules, leading to successful support of arbitration. The number of cases –both domestic and international– handled by both institutions, has been rapidly increasing over the past years and the trend continues. In particular, proceedings in the CAM are resolved swiftly, allowing the parties to obtain an award in as little as six months.

*ICSID Convention and New York Convention*

Spain is a member state to the International Centre for the Settlement of Investment Disputes (ICSID) and a signatory to the 1958 Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

**Duration of Dispute Resolution**

The current economic difficulties in Spain have led to an increase in litigation, putting the judiciary system under severe pressure. The number of civil claims grew significantly over the past decade, resulting in an increase towards alternative dispute resolution mechanisms. Although ordinary proceedings are relatively straightforward, due to the significant number of cases within each court, getting to trial could take up to years. Domestic court decisions are subject to appeal, and the average time taken for a final judgment to be issued by the Court of Appeal can be anywhere between months up to years. After this, the decision may still be subject to appeal to the Supreme Court (although the grounds for this appeal are very limited) and this court generally takes between two to three years to issue a decision. Due to the uncertainty surrounding the duration of appeals, disputes involving large companies or significant amounts of money tend to be resolved through arbitration.

The Spanish judiciary has a well-established tradition of supporting and facilitating the enforcement of both foreign judgments and awards. In fact, the recognition and enforcement of foreign judgments is so well entrenched in the judicial system, that it has not been subject to any relevant modifications (save those imposed by international conventions) since the late nineteenth century, implying the strength of the system. For a foreign judgment to be enforced in Spain, an order declaring it is enforceable or exequatur is necessary. Once the exequatur is granted, enforcement itself is quite fast, provided that the assets are identified. Attachment of the assets will be immediate and time for realization will depend on the type of asset. First instance courts are competent for the enforcement of foreign rulings.

As to awards, Spain is a signatory to the New York Convention and has made no reservations. Therefore, the recognition and enforcement of awards is straightforward and implies the same guarantees and practicalities sought by the New York Convention and arbitration practitioners worldwide, with the additional advantage of the existence of a court specialized only in arbitration issues.

## 5. Performance Requirements and Investment Incentives

**WTO/TRIMS**

Spain is in compliance with its World Trade Organization/Trade-Related Investment Measures obligations.

**Investment Incentives**

A range of investment incentives exist in Spain, and they are provided according to the authorities granting incentives and the type and purpose of the incentives.

The European Union:

Since Spain is a European Union Member State, potential investors are able to access European aid programs, which provide further incentives for investing in Spain:

a. The European Union provides incentives primarily to projects that focus on economically depressed regions or that benefit the European Union as a whole.
b. The European Investment Bank provides guarantees, microfinance, equity investment, and global loans for small and medium enterprises as well as individual loans focusing on innovation and skills, energy, and strategic infrastructure.
c. The European Investment Fund (EIF) provides venture capital to small and medium-sized enterprises, particularly new firms and technology-oriented businesses, via financial intermediaries. It also provides guarantees to financial institutions (such as banks) to cover their loans to small and medium-sized enterprises. The EIF does not grant loans or subsidies to businesses, nor does it invest directly in any firms. Instead, it works through banks and other financial intermediaries. It uses either its own funds or those entrusted to it by the European Investment Bank (EIB) or the European Union.
d. There are various structural and investment funds designed to fund initiatives which reduce the wealth disparity between member states. Most autonomous regions of Spain qualify for structural funds under the EU's 2014-2020 budget. Investments under the European Regional Development Fund (ERDF) will be concentrated in 4 key priorities: innovation and research, the digital agenda, support for small and medium-sized enterprises (SMEs) and the low-carbon economy, depending on the category of region. Through the European Social Fund (ESF), Cohesion Policy will provide a significant contribution to EU priorities in the field of employment, as through training and life-long learning, education and social inclusion. The ESF allocation will be established according to the needs of each Member State. The new Youth Employment Initiative linked to the ESF will support the implementation of the Youth Guarantee.
e. Financial incentives are routed through major Spanish banks, such as the Instituto de Credito Oficial (ICO) and Banco Bilbao-Vizcaya Argentaria (BBVA), and must be applied for through the financial intermediary.

The Central Government:

a. Spain's central government provides numerous financial incentives for foreign investment, generally designed to complement European Union financing. The Ministry of Economy and Competitiveness (MINECO) runs the Directorate General for Trade and Investments and Directorate General for Innovation and Competitiveness to assist businesses seeking investment opportunities. They provide support to foreign investors in both the pre- and post-investment phases. Most grants are aimed at encouraging the development of certain economic sectors, but often for a given subsidy, there may be sectors that are not exclusive but are preferential. A comprehensive list of incentive programs is available at the website, www.investinspain.org. Using this tool, companies can gain access to updated information regarding the grants available for investment projects. Users can sign up to the automatic alert system which prompts a tailor-made newsflash as suitable grants or subsidies are published. Applications for these incentives should be made directly to the relevant government agency.

b. Spain provides certain subsidies for job training and job creation, although they have been recently reduced due to budget constraints. Projects designated as Investment and Employment may be eligible for further subsidies from the Government Public Employment Service (formerly the National Employment Institute). Labor law reforms adopted in June 2012 increased hiring bonuses for youth and long-term unemployed. On February 28, 2014 the Council of Ministers approved a royal decree-law to promote employment and permanent contracts with a new “flat rate” for Social Security contributions. The measure applies to contracts signed after February 25, 2014. For the benefit to apply, the hiring must create net employment, although the benefit also can be applied for temporary contracts that are converted into permanent ones. On March 2015, the government approved an extraordinary credit of €850 million to fund the Activation Program for Employment during 2015, which is aimed at long-term unemployed with family responsibilities.
c. Spain is emphasizing support for small and medium-sized enterprises (SMEs) with a national program for innovative cluster networks to strengthen innovative business groups and competitiveness.
d. The central government provides financial aid and tax benefits for activities carried out in certain industries which are considered to be priority sectors in view of their growth potential and their impact on the nation’s overall economy (e.g., activities in new industrial plants, as well as increases in production capacity or relocations that industries decide to undertake to gain competitiveness, new infrastructure projects, and though more selectively, for the extension of projects which are already mature, preferably in the transport, energy and environment, and social infrastructure and services sectors; creation/growth of Research &Development (R&D) and innovation; the acquisition, upgrading and maintenance of scientific-technological equipment for R&D activities made by companies, private technology centers and private centers of innovation support that are located in science and technology parks, etc.). In addition, the regional governments provide similar incentives for most of these industries. Financial aid includes both nonrefundable subsidies and interest relief on the loans obtained by the beneficiaries, or combinations of the two. Companies are classified according to the size of business, which is a limiting factor in accessing certain types of public aid. According to the current usage, the term micro company refers to those employing fewer than 10 employees, with a turnover of less than EUR 2 million and with the same limit for its total assets. A small company has fewer than 50 employees, a turnover below EUR 10 million and total assets also below EUR 10 million. Medium-sized enterprises are those with fewer than 250 employees, annual turnover not exceeding EUR 50 million and total assets lower than EUR 43 million.
e. The state-owned corporate entity (Instituto de Crédito Oficial, ICO) attached to the Ministry of Economy and Competitiveness, has the status of State Financial Agency. Its activity seeks to boost small and medium companies and to encourage technological innovation and renewable energy projects as well as help to alleviate critical situations. ICO direct financing programs are aimed at financing large-scale investment projects in strategic sectors in Spain, backing large-scale investments by Spanish companies abroad, and

supporting projects that are economically, financially, technologically and commercially sound and involve a Spanish interest.

f. Other official bodies that grant aid and incentives:
   - MINHAP - Ministry of Finance and Public Administration
   - MINETUR - Ministry of Industry, Energy and Tourism
   - ENISA - National Innovation Company S.A. (under MINECO)
   - AXIS ICO Group (under MINECO)
   - INVEST IN SPAIN (under MINECO)
   - RED.ES (under MINETUR)
   - IDAE - Institute for Energy Diversification and Saving (under MINETUR)
   - CERSA - Spanish Guarantee Company S.A. (under MINETUR)
   - CDTI - Centre for Industrial Technological Development (under MINECO)
   - Tripartite Foundation for training in employment (under Ministry of Employment and Social Security)
   - CESGAR - Spanish Confederation of Mutual Guarantee Companies

The Regional Governments:

Spain’s 17 regional governments, known as autonomous communities, provide additional incentives for investments in their region. Many are similar to the incentives offered by the central government and the European Union (EU), but they are not all compatible. Additionally, some autonomous community governments grant investment incentives in areas not covered by state legislation but which are included in EU regional financial aid maps. Royal Decree 899/2007, of 6 July, sets out the different types of areas which are entitled to receive aid, and their maximum ceilings. Each area’s specific aspects and requirements (economic sectors, investments which can be subsidized and conditions) are set out in the Royal Decrees determining the different areas. Most are granted on an annual basis.

Generally, the regional governments are responsible for the management of each type of investment. This provides a benefit to investors as each autonomous community has a specific interest in attracting investment that enhances its economy. No investment project can receive other financial aid if the amount of the aid granted exceeds the maximum limits on aid stipulated for each approved investment in the legislation defining the eligible areas. Therefore, the subsidy received is compatible with other aid, provided that the sum of all the aid obtained does not exceed the limit established by the legislation of demarcation and EU rules do not preclude it (incompatibilities between Structural Funds).

Types of incentives available:
- Financial loans and subsidies
- Exemption from certain taxes
- Preferential access to official credit
- Reduction of burdens, with social security discounts to companies
- Bonuses for acquisition of certain material
- Customs exemption for certain imported goods
- Real estate grants, and gratuitous or favorable land grants
- Guarantees granted in credit operations

- Loans with low interest, long maturities, and grace periods
- Guarantee of dividends
- Professional training and qualification
- Indirect aid by means of supplying infrastructure facilities (access, services, communications, etc.)

Incentives from national, regional or municipal governments and the European Union are granted to Spanish and foreign companies alike without discrimination.

Municipalities:

a. Municipal corporations offer incentives to direct investment by facilitating infrastructure needs, granting licenses, and allowing for the operation and transaction of permits, although they have been reduced significantly due to budget constraints. Municipalities such as Madrid offer numerous support services for potential foreign investors. Local economic development agencies often provide free advice on the local business environment and relevant laws, administrative support, and connections to human capital in order to facilitate the establishment of new businesses. Spain recently made starting a business easier by eliminating the requirement to obtain a municipal license before starting operations and by improving the efficiency of the commercial registry.

Some U.S. and other foreign companies operating in Spain say they are disadvantaged by the Tax Administration's (AEAT) interpretation of Spanish legislation designed to attract foreign investment. For the past several years, AEAT has investigated and disallowed deductions based on operational restructuring at the European level involving a number of U.S.-owned Spanish holding companies for foreign assets (Empresas de Tenencia de Valores Extranjeros or ETVEs), claiming the companies are committing "an abuse of law." This situation disadvantages foreign direct investment in Spain; many U.S. companies now channel their Spanish investments and operations through third countries.

*Research and Development*

Incentives from national, regional or municipal governments and the European Union are granted to Spanish and foreign companies alike without discrimination.

**Performance Requirements**

Performance requirements are not used to determine the eligibility or level of incentives granted to investors.

**Data Storage**

The Spanish Data Protection Agency and the Spanish Police request data from companies, although the companies may refuse unless required by court order.

## 6. Right to Private Ownership and Establishment

The Spanish Constitution and Spanish law establishes clear rights to private ownership, and foreign firms receive the same legal treatment as Spanish companies. There is no discrimination against public or private firms with respect to local access to markets, credit, licenses and supplies. American construction companies note that they have not been able to win public sector construction contracts. They have, however, won private sector construction contracts.

## 7. Protection of Property Rights

### Real Property

The improvement in the Spanish economy has been reflected in the Spanish real estate market. Prices in the real estate and foreign investment markets have stabilized generally, and are beginning to firm up in some markets such as Barcelona and Madrid. This new trend has been particularly evident in the market for foreign investment in second homes on the Spanish coast and in office space in Madrid. New financing to acquire shares and assets of Spanish banks and financial institutions has helped support prices. Spain is a market of opportunities in real estate and business in which investors are starting to compete. Investment in real estate is made directly through a permanent establishment or a Spanish company. Special vehicles may also be used to invest in real estate. Access to bank finance for the acquisition of real estate has been limited in Spain since 2007 due to the situation in the financial sector. Only those investors with their own finance were able to take advantage of opportunities in the real estate market. Individual investors were almost absent from the market. Funding came mostly from foreign funds and individuals.

There are generally no restrictions on foreign ownership of real estate. The buyer must fill out a Declaration to the Foreign Investment Register form before buying the property if the funds for the purchase come from a country or territory considered to be a tax haven. The declaration lasts six months. Foreign individuals require an identification card for foreigners (NIE for individuals). Other foreign legal persons require an identification card known as a CIF. Apart from money laundering regulations, no special restrictions or limitations apply to foreign mortgage guarantees and loans.

The Land Register provides evidence of title. The registration system is rigid, formalistic and functions efficiently. It provides legal certainty to all parties involved in a transaction. Public or private acts that affect the property are included in the land register. The Property Registry is responsible for managing the Land Register. A right or title recorded in the registry prevails over any other right or title. Certain administrative concessions (licenses for individuals to use or develop publicly-owned property for a particular purpose) may also be registered. Anyone who can prove a legitimate interest in the information contained in the register may access the register. It is not possible to make changes to the ownership of the real estate by electronic means. The transfer of real estate or the grant of rights over property should be executed by public deed in front of a notary before being registered with the Land Registry. A registered title includes the plot of land and the buildings attached to the land. Each plot constitutes a registered property. Each registered property is a legal object and has its own separate entry in the registry in which all data affecting it is registered. There are rules that determine whether a parcel of land, a building, farm, spring or other type of property has a separate entry in the registry system.

Lenders generally use mortgages as security. Mortgages are made by public deed and registered at the land registry. Once registered, the mortgage takes priority over the interest of any third party. Anyone with a legitimate interest in a property can find out whether it is mortgaged by consulting the register. Sale and leaseback is another form of real estate financing that has been used by some Spanish financial institutions. These institutions raised finance through the sale of their offices to their clients and subsequently leased them back. The institution raised funds and their clients received a stream of rental income.

**Intellectual Property Rights**

Spanish law protects property rights, with enforcement carried out at the administrative and judicial levels. Any administrative decision pertaining to property rights can be appealed first at the administrative and then at the judicial level, which has three levels of court appeals. Property protection is effective in Spain, although the system is slow. Spanish patent, copyright, and trademark laws all approximate or exceed European Union levels of intellectual property protection. Spain is a party to the Paris Convention, Bern Convention, the Madrid Accord on Trademarks and the Universal Copyright Conventions.

Copyrights

Spanish law extends copyright protection to all literary, artistic or scientific creations, including computer software. Spain has ratified the World Intellectual Property Organization's (WIPO) Copyright Treaty (WCT) and the WIPO Phonograms and Performances Treaty (WPPT), the so-called Internet treaties. In 2006, Spain passed legislation implementing the EU Copyright Directive, thereby also making the Internet treaties part of Spanish law. However, the Internet presents the most problematic area in terms of respect for intellectual property rights in Spain. While law enforcement agencies are combating street piracy, Internet piracy has increased sharply over the past several years. U.S. copyright-dependent industries - music, movies, and entertainment software - continue to report a steady decline in sales attributable to digital piracy and cite Spain as having one of the worst problems in the world in this regard.

Spanish cultural industries have also been hit hard by piracy. A "Circular" issued in 2006 by the Prosecutor General's Office to guide prosecutors stated that peer-to-peer (P2P) downloading of protected content should not be prosecuted as a criminal offense unless a commercial profit motive can be established. While the Circular defines such activity as a civil wrong, it contributes to a widespread public perception that P2P activity is legal. A number of legal obstacles also impede copyright holders from obtaining redress via civil litigation. A new Circular clarifying that P2P file sharing is illegal is expected to be released in 2015.

In February 2011, parliament passed the Sustainable Economy Law (LES), which contains provisions giving the government authority to shut down or block websites found to host or link to infringing content. The law provides for an administrative process with two separate judicial interventions before action can be taken against a site. The government approved implementing regulations on December 30, 2011 and established in March 2012 the Intellectual Property

Commission (IPC), the administrative body that accepts complaints from right holders. After a two-year process, the government completed reforms to Spain’s Intellectual Property Rights legal framework, amending the intellectual property law, civil procedure law, and the penal code. The new legal framework now criminalizes online piracy and the facilitation of online piracy and allows the IPC to take action against copyright infringers by going after their funding sources, blocking access to websites, and applying fines up to 600,000 euros.

Public and private sector enforcement actions (especially private sector initiatives) using Spain's patent, copyright and trademark legal framework have increased, though less so in cases involving alleged Internet piracy. Industry groups praise police enforcement actions; their concerns have to do more with the judiciary than with Spain's police forces. Despite enforcement efforts, piracy remains a significant problem. Industry sources estimate that in 2014 nearly 88 percent of all content consumed in Spain was illegal, representing over 4.45 billion digital works estimated at 23 billion euros. Access to pirated content is broken down by category as follows: music (41 percent), TV series (23 percent), movies (20 percent), books (7.5 percent), video games (5.38 percent), and soccer (3.12 percent). In 2014, Spanish law enforcement confiscated more than three million counterfeit items valued at 151.9 million euros.

Patents

A non-renewable 20-year period for working patents is available if the patent is used within the first three years. Spain permits both product and process patents. The European Parliament approved regulations to establish a single patent for the European Union (EU) in December 2012. Spain and Italy decided to opt out, however, due to discrepancies with the patent’s linguistic regime (English, French, and German). A special court will be created to resolve disputes arising from the 25 country signatories. Companies or individuals who want to protect their innovations throughout the EU will have to request a patent in three places – in Munich, the headquarters of the European patent, in Spain, and in Italy (compared to the need to do so in 27 different countries currently) – and will be exposed to litigation in many other jurisdictions. Patents will be issued in English, French, or German, although applications may be presented in any official EU language, along with a summary in one of the three aforementioned languages. Although the regulations entered into force on January 20, 2013, the Patent Package will not enter into force until Germany, France, the United Kingdom and 10 other Member States have ratified the Agreement on a Unified Patent Court. As of June 2015, seven countries have ratified the agreement: Austria, Belgium, Denmark, France, Luxembourg, Malta, and Sweden.

Pharmaceutical companies have reported that Spain’s lack of patent harmonization with the majority of European Union member states has left holders of pharmaceutical process patents with weaker patent protection than required by the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. The Spanish government has amended the penal code to stipulate that patent infringers will receive one to three years imprisonment for infringing on protected plant varieties for commercial or agricultural purposes.

Trademarks

Spanish authorities published a new Trademark law in 2001 (Law 17/2001), which came into effect in July 2002. The Spanish Office of Patents and Trademarks oversees protection for national trademarks. Trademarks registered in the Industrial Property Registry receive protection for a 10-year period from the date of application, which may be renewed. Protection is not granted for generic names, geographic names, those that violate Spanish customs or other inappropriate trademarks. In June 2010, the Spanish parliament passed a reform of the penal code that downgraded certain intellectual property rights crimes to misdemeanors if the perpetrator is a person of modest economic means and if the revenue from the sale of infringing merchandise is less than EUR 400. This reform, which entered into force in December 2010, was designed to lower the criminal penalties for the practice of top manta – sales of infringing goods on a blanket in informal street markets – when practiced by impoverished, often illegal immigrants. The new standard places an additional burden on right-holders and law enforcement to establish, early in any investigation, that they are pursuing an offense that merits prosecution. In order to reverse these developments, the Spanish government has amended Article 274 of the penal code to criminalize the peddling, retailing, and wholesaling of trademark-infringing material. The trademark association ANDEMA believes authorities will now have better tools to effectively crack down on pervasive infringement of merchandise trademarks in Spain.

Businesses may seek a trademark valid throughout the European Union. The Office for Harmonization in the Internal Market (OHIM) for the registration of community trademarks in the European Union started its operations in 1996. Its headquarters are located in Alicante:

Office for Harmonization in the Internal Market (Trade Marks and Designs)
Avenida de Europa, 4
E-03008 Alicante
Tel: (34) 96-513-9100
http://oami.europa.eu/ows/rw/pages/OHIM/contact.en.do

The World International Property Organization (WIPO, headquartered in Geneva) oversees an international system of registration. Applicants must designate the countries where they wish to obtain protection. However, this system only applies to U.S. firms with an establishment in a country that is a party of the Agreement or the Protocol.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

*Resources for Rights Holders*

Embassy POC: Madrid_ECON@state.gov

A list of local lawyers can be found at: http://madrid.usembassy.gov/citizen-services/professional-services/attorneys2.html

## 8. Transparency of the Regulatory System

Spain modernized its commercial laws and regulations following its 1986 entry into the EU. Its local regulatory framework compares favorably with other major European countries. Bureaucratic procedures have been streamlined and much red tape has been eliminated, though permitting and licensing processes can still suffer delays. Efficacy of regulation at the regional level is uneven. To avoid the fragmentation of the domestic market emerging from differences and overlapping of central, regional and local regulation, the Market Unity Guarantee Act 20/2013 was adopted in December 2013. The law aims to rationalize the regulatory framework for economic activities, eliminating duplicities in administrative control over one and the same activity or product through a "single license" system that will facilitate the free flow of goods and services throughout Spain. It also reinforces coordination among competent authorities and introduces a mechanism to rapidly solve operators' problems. With a license from only one of Spain's 17 regional governments, companies will be able to operate throughout the Spanish territory, rather than having to requests licenses from each region. The measures are expected to reduce business operating costs, improve competitiveness and attract foreign investment.

## 9. Efficient Capital Markets and Portfolio Investment

The convergence of monetary policy following the adoption of the euro led to a significant lowering of interest rates; however, the eurozone crisis and the downgrade of Spanish sovereign debt had a negative impact on public financing costs. Foreign investors do not face discrimination when seeking local financing for projects. There is a large range of credit instruments available through Spanish and international financial institutions. Many large Spanish companies rely on cross-holding arrangements and ownership stakes by banks rather than pure loans. However, these arrangements do not act to restrict foreign ownership. Several of the largest Spanish companies that engage in this practice are also traded publicly in the U.S. There is a significant amount of portfolio investment in Spain, including by American entities. During 2013, foreign investment flows in negotiable securities increased 4.84 percent over 2012, and accumulated foreign investment amounted to 579.1 billion euros. 99.8 percent of this amount was in equity securities, and 0.2 percent in shares of investment funds. Investors were mainly from the Organization for Economic Co-operation and Development (OECD) countries, especially from EU countries (90.1 percent) and the United States (7.4 percent).

### Money and Banking System, Hostile Takeovers

A domestic housing slump that began in 2007 had a great impact on savings banks (cajas de ahorros), many of which were heavily exposed to troubled construction and real estate companies. The government created a Fund for Orderly Bank Restructuring (FROB) through Royal Decree-law 9/2009 of June 26, which restructures credit institutions with an eye toward bolstering capital and provisioning levels. The number of Spanish financial entities has shrunk significantly since 2009 with 50 entities consolidated into 14 as of early 2014 (Santander, BBVA, Banco Popular, Bankinter, Banco Sabadell, CaixaBank, Bankia, Banco Ibercaja, Catalunya Banc, Kuxtabank, NGC Banco, Banco Mare Nostrum, Liberbank, and Unicaja Banco). Between 2008 and 2013, 12,352 Spanish bank branches closed, with 4,451 closures in 2013 alone, representing 26.7 percent of the pre-crisis total. The sector has also shed 62,000 workers, representing 22.3 percent of the pre-crisis workforce. The downsizing runs in parallel with a 32 percent drop in credit to households and businesses in Spain from 2008 to 2013. Total bank deposits have remained roughly stable at 1.16 trillion euros. Industry analysts foresee a continued downsizing of bank branches until the total drops to about 30,000 offices, suggesting an additional reduction of 3,500 branches.

Financial sector reforms announced in February and May of 2012 sought to increase bank transparency with regard to exposure to toxic assets, reduce oversupply of financial services by encouraging further consolidation, and alleviate the credit crunch by stabilizing bank balance sheets to increase lending. Two phases of Spanish government-mandated provisioning in February and May added 84 billion euros in additional coverage to risky construction sector loans held by banks. At the end of May 2012, the government partially nationalized Spain's fourth largest financial institution, Bankia, which announced it needed 23.5 billion euros in public assistance. That costly nationalization and unexpectedly high bailout costs contributed to a deepening of the confidence crisis that had been dogging Spain for more than two years, forcing the government to seek support from its EU partners on June 10, 2012. The European Union (EU) committed to provide up to 100 billion euros in financing, of which Spain eventually borrowed 41.3 billion from the European Stability Mechanism (ESM) to recapitalize the nation's overextended banking sector in return for enhanced oversight and reform conditionality. Drawing on EU funds, the Governing Committee of the Fund for Orderly Bank Restructuring (FROB) approved capital injections of 37 billion euros for four nationalized banks, including Bankia, in December 2012. Sareb, the Spanish bad bank, received the brunt of the weakest banks' degraded real estate holdings at a cost of 50.65 billion euros (about 20 percent foreclosures and 80 percent loans) from Group 1 (nationalized banks: BFA-Bankia, Catalunya Caixa, Banco Gallego-NCG Banco, and Banco de Valencia) and Group 2 entities (banks that remained independent but received additional public capital: BMN, Liberbank, Caja3, and CEISS). In January 2014, Spain cleanly exited its EU aid program and has made several prepayments of its ESM obligations, steps that have earned praise for Spanish restructuring efforts from EU officials.

Total assets for the six biggest banks in Spain as of late 2014 were 2.832 trillion euros:

Banco Santander: 1.266 trillion euros
Banco Bilbao Vizcaya Argentaria (BBVA): 651.5 billion euros
CaixaBank: 338.6 billion euros
Bankia: 233.6 billion euros
Banco Popular: 179.2 billion euros
Banco Sabadell: 163.4 billion euros

## 10. Competition from State-Owned Enterprises

The size of the public enterprise sector in Spain is relatively small. Over the last two decades, the role and importance of state-owned enterprises (SOE) in Spain decreased notably due to the privatization process that started in the early 1980s. The reform of SOE oversight in the 1990s led the government to create the State Holding for Industrial Participations, (Sociedad Estatal de Participaciones Industriales, SEPI). SEPI was created as a public-law entity by decree in 1995; its status was then protected by law in 1996. SEPI has direct majority participation in 18 SOEs, and also is a direct minority shareholder in seven SOEs (five of them listed on stock exchanges), and participates indirectly in ownership of more than a hundred companies. Both legislative chambers and any parliamentary group may request the presence of SEPI and SOE representatives to discuss issues related to their performance. SEPI and the SOEs are required to submit economic and financial information to the legislature on a regular basis. The European Union, through specialized committees, also controls SOEs' performance on issues concerning sector-specific policies and anti-competitive practices.

**OECD Guidelines on Corporate Governance of SOEs**

Corporate Governance of Spain's SOEs uses criteria based on principles and guidelines from the Organization for Economic Co-operation and Development (OECD). These include the state ownership function and accountability, as well as issues related to performance monitoring, information disclosure, auditing mechanisms and the role of the board in the companies.

**Sovereign Wealth Funds**

Spain and its companies are at the center of attention of sovereign wealth funds, not only in these funds' traditional sectors of operation, such as energy and finance, but also in real estate, technology and infrastructure. The growth of sovereign wealth funds offers both a financial and industrial opportunity for Spain. In the period 2012-2013 numerous transactions were carried out by funds involving foreign subsidiaries of Spanish multinationals or Spanish companies.

Sovereign wealth funds injected approximately €13billion of investment into Spain between 2011 and 2014, 10 percent of total foreign investment in real assets. The biggest investor is Norway's Government Pension Fund Global (GPFG), which holds investments on the Spanish stock exchange worth more than EUR 7.2 billion in 2014, 15 percent more than the year before, spread over 73 listed companies. (Spain ranks eighth on the list of the countries in which the Norwegian sovereign wealth fund has the most investments.) The Qatar Investment Authority alone, through its Qatar Holdings and Qatari Diar subsidiaries, bought into Iberdrola, Santander Brazil (a Brazilian arm of a Spanish company), Ferrovial, SFL-Clonial, Barcelona's Hotel W and several others. Abu Dhabi's sovereign funds were almost as active, withthe International Petroleum Investment Company (IPIC) investing twice into Cepsa and once into Bankia, and Mubadala buying into Sener. Singapore was there too: Temasek in Repsol, GIC into GMP and Applus+. Other big investments came from China, Kuwait and – the only developed world name bar Norway – Alaska.

**11. Corporate Social Responsibility**

Spanish companies consider corporate reputation, competitive advantage, and industry trends to be the major driving forces of corporate social responsibility (CSR). Initiatives undertaken by the EU and international organizations have influenced companies' decision to implement CSR, and companies continue to increasingly adhere to its principles. Associations and fora that bring together the heads of leading corporations, business schools and other academic institutions, NGOs and the media are actively contributing to implementation of CSR in Spain. Although the visibility of CSR efforts is still moderate by international standards, in the last two decades there has been a growing interest in it. Today, almost all of Spain's largest energy, telecommunications, infrastructure, transport, financial services and insurance companies, among many others, have undertaken CSR projects, and such practices are spreading throughout the economy. The Spanish government has taken some measures to promote CSR since 2002.

**OECD Guidelines for Multinational Enterprises**

The Spanish government has taken some measures to promote CSR since 2002. The government endorsed the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, and the national point of contact is the Ministry of Industry, Energy, and Tourism.

## 12. Political Violence

Austerity measures and the resulting budgetary cuts have led to frequent, mostly peaceful demonstration in Madrid and other parts of Spain throughout 2014. Public sector employees and union members have organized demonstrations in response to service cuts, privatization, and other government measures. Large demonstrations resulting from the anti-austerity March 15 (15-M), or “Indignados” movement, have generally been directed at Parliamentary and other government facilities. An Indignados demonstration on March 22, 2014 saw clashes that left 69 police and 40 demonstrators injured with EUR 600,000 in damages to public property. Subsequent 15-M demonstrations have seen increased police presence and diminishing participation.

## 13. Corruption

Giving or accepting a bribe is a criminal act. Under Section 1255 of the Spanish civil code, corporations and individuals are prohibited from deducting bribes from domestic tax computations.

Spain has a wide variety of laws, regulations, and penalties dealing with corruption. The legal regime has both civil and criminal sanctions for corruption, bribery, financial malfeasance, etc. The Spanish Criminal Code was amended in March 2015 to include jail sentences and hefty fines for corporations’ (legal persons) administrators who receive financing in violation of the current legislation, as per Article 304 bis. In March 2015, Congress approved the Law for the Control of Political Parties Economic and Financial Activities, by which Parties cannot accept donations from companies, while donations from private citizens cannot be higher than 100,000 euros a year. Other measures to fight corruption were also included in the Law, such as the publishing in the web of the Parties accounting as well as the financial credits they have pending.

On November 29, 2006, the parliament passed a tough law against tax evasion designed, in part, to combat corruption. The government also issued two regulations imposing new requirements on banks and financial institutions to fight money laundering. In April 2010 Spain’s parliament passed Law 10/2010 aimed at protecting the integrity of the financial and other economic sectors through the establishment of obligations to prevent money laundering and terrorist financing. With this law, Spain has successfully transposed the third European Union money laundering Directive (Directive 2005&60/CE) of the European Parliament and the Council of October 26, 2005. Banks and other financial institutions, investment services firms, collective investment institutions, management companies of private equity and venture capital firms are all obliged to comply with the law. Some portions of the new law entered into force immediately, but others are still awaiting implementing regulations. Law 7/2012, passed October 29, 2012, restricts cash transactions in an attempt to reduce the size of Spain's large underground economy. The law prohibits cash payments equal to or above 2,500 euros involving business deals by entrepreneurs and freelancers. The limit is up to 15,000 euros for non-resident payers. In December 2013, the Parliament approved the Law of Transparency aimed at reducing corruption among public officials. Central and regional administrations have one and two years, respectively, to implement the articles of the law that deal with corruption and transparency. In an additional attempt to fight corruption, in February 2014, the Government presented in Parliament its plan for democratic regeneration that includes two bills that were finally approved in Congress in March 26, 2015: the Law of Control of Political Parties' Economic and Financial Activities, and the Law for the regulation of public office of officials in the General Administration.

The General State Prosecutor is authorized to investigate and prosecute corruption cases involving funds in excess of roughly USD 500,000. The Office of the Anti-Corruption Prosecutor, a subordinate unit of the General State Prosecutor, has 15-20 prosecutors in Madrid, Barcelona, and Valencia who are tasked with investigating and prosecuting domestic and international bribery allegations. There is also the Audiencia Nacional, a corps of magistrates with broad discretion to investigate and prosecute alleged instances of Spanish businesspeople bribing foreign officials.

Spain enforces anti-corruption laws on a generally uniform basis. Public officials are probably subjected to more scrutiny than private individuals, but several wealthy and well-connected business executives have been successfully prosecuted for corruption. There is no obvious bias for or against foreign investors. U.S. firms have not identified corruption as an obstacle to investment in Spain. Although no formal corruption complaints have been lodged, U.S. companies have indicated that they have been disqualified at times from public tenders based on reasons that these companies' legal counsels did not consider justifiable.

Spain's rank in Transparency International's annual Corruption Perceptions Index improved in 2014, going from position 40 to position 37. According to Transparency International, one of the reasons for this improvement is increased public perception of the efficacy of the judicial system and the role of the media which continues to investigate and report corruption cases and bring them to the public's attention.

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

Spain is a signatory of the Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery. The government amended domestic law to make the Convention a more useful investigative and prosecutorial tool in 2010. Following a December 2012 review of Spanish implementation of the OECD Convention, the OECD noted that Spain's enforcement of its foreign bribery laws has been extremely low, with not a single prosecution out of seven investigations in 13 years. The OECD report concluded that Spain must vigorously pursue foreign bribery allegations and strengthen its legal framework for fighting bribery by addressing gaps in its Penal Code.

*Resources to Report Corruption*

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28071 Madrid, Spain
34 91 595 8000
sugerencias.portal@meh.es
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## 14. Bilateral Investment Agreements

Spain has concluded bilateral investment agreements with Hungary (1989), the Czech Republic (1990), Russia (1990), Azerbaijan (1990), Belarus (1990), Georgia (1990), Tajikistan (1990), Turkmenistan (1990), Kirgizstan (1990), Armenia (1990), Slovakia (1990), Argentina (1991), Chile (1991), Tunisia (1991), Egypt (1992), Poland (1992), Uruguay (1992), Paraguay (1993), Philippines (1993), Algeria (1994), Honduras (1994), Pakistan (1994), Kazakhstan (1994), Peru (1994), Cuba (1994), Nicaragua (1994), Lithuania (1994), South Korea (1994), Bulgaria (1995), Dominican Republic (1995), El Salvador (1995), Gabon (1995), Latvia (1995), Malaysia (1995), Romania (1995), Indonesia (1995), Venezuela (1995), Turkey (1995), Lebanon (1996), Ecuador (1996), Costa Rica (1997), Croatia (1997), Estonia (1997), India (1997), Panama (1997), Slovenia (1998), South Africa 1998), Ukraine (1998), the Kingdom of Jordan (1999), Trinidad and Tobago (1999), Bolivia (2001), Jamaica (2002), Iran (2002), the Federal Republic of Yugoslavia (2002), Bosnia and Herzegovina (2002), Serbia (2002), Nigeria (2002), Guatemala (2002), Namibia (2003), Albania (2003), Uzbekistan (2003), Syria (2003), Equatorial Guinea (2003), Colombia (2005), Macedonia (2005), Morocco (2005), Kuwait (2005), China (2005), the Republic of Moldova (2006), Mexico (2006), Vietnam (2006), Libya (2007), Bahrain (2008), and Senegal (2008).

## Bilateral Taxation Treaties

Spain and the United States have a Friendship, Navigation and Commerce (FCN) Treaty, and a Bilateral Taxation Treaty (1990), which was amended on January 14, 2013, approved by the United States Senate Foreign Relations Committee on July 16, 2014, authorized by the Spanish Parliament on December 10, 2014, but awaits approval of the United States Senate.

Some United States and other foreign companies operating in Spain say they are disadvantaged by the Tax Administration’s (AEAT) interpretation of Spanish legislation designed to attract foreign investment. For the past several years, AEAT has investigated and disallowed deductions based on operational restructuring at the European level involving a number of U.S.-owned Spanish holding companies for foreign assets (Empresas de Tenencia de Valores Extranjeros or ETVEs), claiming the companies are committing “an abuse of law.” This situation disadvantages foreign direct investment in Spain; many U.S. companies now channel their Spanish investments and operations through third countries.

**15. OPIC and Other Investment Insurance Programs**

As Spain is a member of the European Union, Overseas Private Investment Corporation (OPIC) insurance is not offered. Various EU directives, as adopted into Spanish law, adequately protect the rights of foreign investors. Spain is a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA).

**16. Labor**

The economic crisis has had an adverse impact on employment in Spain. After substantially reducing unemployment between 2000 and 2007, Spain has been suffering one of the highest unemployment rates recorded in the last 20 years. The unemployment rate climbed from 8 percent in third quarter of 2007 to 23.7 percent at the end of 2014, (the unemployment rate was at its highest at 26 percent at the end of 2013.) According to the National Statistics Institute, 5.5 million people were jobless at the end of 2014, while there were 17.7 million people employed in the work force. Unemployment among youth (ages 18-25) is exceptionally high at around 50 percent. The latest data released by the Ministry of Employment and Social Security show that, as of March 2015, employment was increasing in all of Spain's 17 regions with a focus on the hospitality, manufacturing, and construction sectors, and that unemployment decreased across all sectors and most regions, with Andalusia and the Catalan region seeing the greatest drops.

Immigration has slowed significantly as a result of the severe employment crisis, which disproportionately affects the immigrant community. Spain experienced net emigration in 2012, as it lost more residents than it gained. A number of immigrant workers, especially from Latin America, have returned home. The government introduced an initiative in September 2008 to pay jobless immigrants their unemployment benefits in a lump sum if they returned to their home countries and promised not to return to Spain for three years. A very small number of immigrants are reported to have taken advantage of this program.

With the highest unemployment rate in the European Union, the Spanish government has declared job creation the most important mid-to-long-term priority. Labor market reforms in 1994 and 1997 eased impediments to hiring and firing but did not fundamentally change the labor regime. The labor market is divided into permanent workers with full benefits and temporary workers with few benefits. Labor market reform legislation enacted by the parliament in September 2010 aimed to encourage the use of indefinite labor contracts by reducing the number of days of severance pay under these contracts. In January 2011, government, business and labor agreed to a pension reform that increases the legal retirement age from 65 to 67 over a 15-year period beginning in January 1, 2013, and gradually increases the number of years of contributions on which pensions are calculated. After consultations between business and labor organizations, the government introduced a labor reform decree in February 2012 that included new provisions related to collective bargaining, hiring, and job placement. On June 28, 2012, the parliament definitively approved the labor reform bill presented by the government. The new law makes dismissal quicker and cheaper and gives more power to businesses to change working conditions and wages. On November 25, 2013, Minister of Employment Fátima Báñez announced that the Government would make some adjustments to the 2012 labor reform to promote hiring. Minister Bañez added that all the incentives that are scattered throughout Spanish legislation will be compiled in a single chapter of the Law of Employment in order to facilitate hiring. In December 2013, the Parliament approved a further reform of the pension system, in order to guarantee the sustainability of Social Security, introducing a sustainability factor, a new indicator for the revalorization of pensions, and the creation of an independent fiscal authority that will be responsible for producing reports about the effects of the law on the adequacy of pensions. In December 2014, the government approved a Royal Decree on a special program for the activation of employment. According to the Minister, this would be the government's response to the Eurogroup's demands for a second round of labor reform. In March 2015, the government approved today an extraordinary credit of EUR 850 million to fund during 2015 the Activation Program for Employment, which is aimed at long-term unemployed with family responsibilities. It is estimated that the program will have a total cost of over EUR 1 billion during its term, between January 15, 2015 and April 15, 2016. Over 400,000 unemployed people will benefit, (about 350,000 of them in the first year). Andalusia, Valencia, Catalonia and the Canary Islands will have the highest number of beneficiaries.

Collective bargaining is widespread in both the private and public sectors. A high percentage of the working population is covered by collective bargaining agreements, although only a minority (generally estimated to be about 10 percent) of those covered are actually union members. Under the Spanish system, workers elect delegates to represent them before management every four years. If a certain proportion of those delegates are union-affiliated, those unions form part of the workers' committees. Large employers generally have individual collective agreements. In industries characterized by smaller companies, collective agreements are often industry-wide or regional. The reforms enacted in 2012 gave business-level agreements primacy over sectoral and regional agreements and made it easier for businesses to opt out of higher-level agreements. They also required collective labor agreements to be renegotiated within one year of expiration.

The Constitution guarantees the right to strike, and this right has been interpreted to include the right to call general strikes to protest government policy.

**17. Foreign Trade Zones/Free Ports/Trade Facilitation**

Both on the mainland and islands (and in most Spanish airports and seaports) there are numerous free trade zones where manufacturing, processing, sorting, packaging, exhibiting, sampling and other commercial operations may be undertaken free of any Spanish duties or taxes. The largest free trade zones are in Barcelona, Cadiz, and Vigo, and the entire province of the Canary Islands is a Special Economic Zone. Others vary in size from a simple warehouse to several square kilometers. Spanish customs legislation allows companies to have their own free trade areas. Duties and taxes are payable only on those items imported for use in Spain. These companies have to abide by Spanish labor laws.

**18. Foreign Direct Investment and Foreign Portfolio Investment Statistics**

*Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy*

| | Host Country Statistical source* | | USG or international statistical source | | USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other |
|---|---|---|---|---|---|
| **Economic Data** | **Year** | **Amount** | **Year** | **Amount** | |
| **Host Country Gross Domestic Product (GDP) ($T USD)** | 2013 | 1.4 | 2013 | 1.4 | www.worldbank.org/en/country |

| **Foreign Direct Investment** | Host Country Statistical source* | | USG or international statistical source | | USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other |
|---|---|---|---|---|---|
| **U.S. FDI in partner country ($M USD, stock positions)** | 2012 | 20,052 | 2013 | 31,380 | http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm |
| **Host country's FDI in the United States ($M USD, stock positions)** | 2012 | 63,027 | 2013 | 48,528 | http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm |
| **Total inbound stock of FDI as % host GDP** | 2012 | 4.65% | 2012 | 3.48% | |

*Ministry of Economy and Competitiveness

*Table 3: Sources and Destination of FDI*

| Direct Investment from/in Counterpart Economy Data | | | | | |
|---|---|---|---|---|---|
| **From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*** | | | | | |
| **Inward Direct Investment** | | | **Outward Direct Investment** | | |
| Total Inward | 652,606 | 100% | Total Outward | 566,792 | 100% |
| Netherlands | 164,644 | 25% | United Kingdom | 97,426 | 17% |
| United Kingdom | 82,210 | 13% | United States | 61,340 | 11% |
| Luxembourg | 81,518 | 12% | Brazil | 52,697 | 9% |
| Germany | 48,739 | 7% | Mexico | 39,240 | 7% |
| France | 48,648 | 7% | Portugal | 33,719 | 6% |
| "0" reflects amounts rounded to +/- USD 500,000. | | | | | |

Source: IMF Coordinated Direct Investment Survey, 2013

*Table 4: Sources of Portfolio Investment*

| Portfolio Investment Assets | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Top Five Partners (Millions, US Dollars)** | | | | | | | | |
| **Total** | | | **Equity Securities** | | | **Total Debt Securities** | | |
| All Countries | 473,665 | 100% | All Countries | 189,897 | 100% | All Countries | 283,768 | 100% |
| Italy | 55,276 | 12% | Luxembourg | 80,050 | 42% | Italy | 52,057 | 18% |
| France | 50,514 | 11% | France | 20,679 | 11% | France | 29,835 | 11% |
| Netherlands | 33,596 | 7% | Ireland | 15,612 | 8% | Netherlands | 29,786 | 10% |
| Germany | 29,050 | 6% | United Kingdom | 14,586 | 8% | Germany | 19,304 | 7% |
| United States | 26,685 | 6% | United States | 12,930 | 7% | Portugal | 14,308 | 5% |

Source: IMF Coordinated Portfolio Investment Survey

## 19. Contact for More Information

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