

Investing and Doing Business in Spain: A Legal Perspective

Agenda

New and Old Legal Issues US Companies Face When Doing Business in Spain

Ms. Nadja Vietz

Partner, Monereo Meyer Abogados

Managing Distribution Channels

Mr. Andrés Monereo

Partner, Monereo Meyer Abogados

Foreign Direct Investment in Spain

Ms. Nadja Vietz

Partner, Monereo Meyer Abogados

Ms. Consuelo Álvarez

Abogada, Monereo Meyer Abogados

Q&A Session

Monereo Meyer Abogados



The story of a 30-year cross-border adventure

- **Founded in 1989**
- **30 lawyers in 3 offices**
- **Most lawyers fluent in several languages and licensed in at least two countries**
- **One attorney licensed in Germany, Spain and WA state**
- **Alliance with Harris Bricken in 2018**
- **Full-service law firm focused on cross-border business**



Brief Overview of New and Old Legal Issues US Companies Face When Doing Business in and with Spain

Nadja Vietz
Partner, Monereo Meyer Abogados

Webinar
November 19, 2020
The International Trade Association of Greater Chicago
(ITA/GC)

Post-COVID-19



- **McKinsey report (9/2020) - Impact will vary by sector:**

- Drop of more than 20% in revenue (accommodation, food services, entertainment, transport, car, real estate) – 27% of gross value added (GVA) and employment
- Drop of between 10 and 20% (construction, logistics, agriculture, forestry and fisheries, professional activities, financial institutions, energy and utilities, and other industries) – 34% of GVA and 36% of labor market
- Drop of 10% or less (telecommunications, pharma and medical products, public services, the consumer goods industry and retail groceries) - 26% GVA and 31% of the labor market

- **Sectors suffering stronger shocks likely to recover more slowly**

- **Digitalization, contact-free economy, just-in-time and zero-stock approaches**



Post-COVID-19 (II)



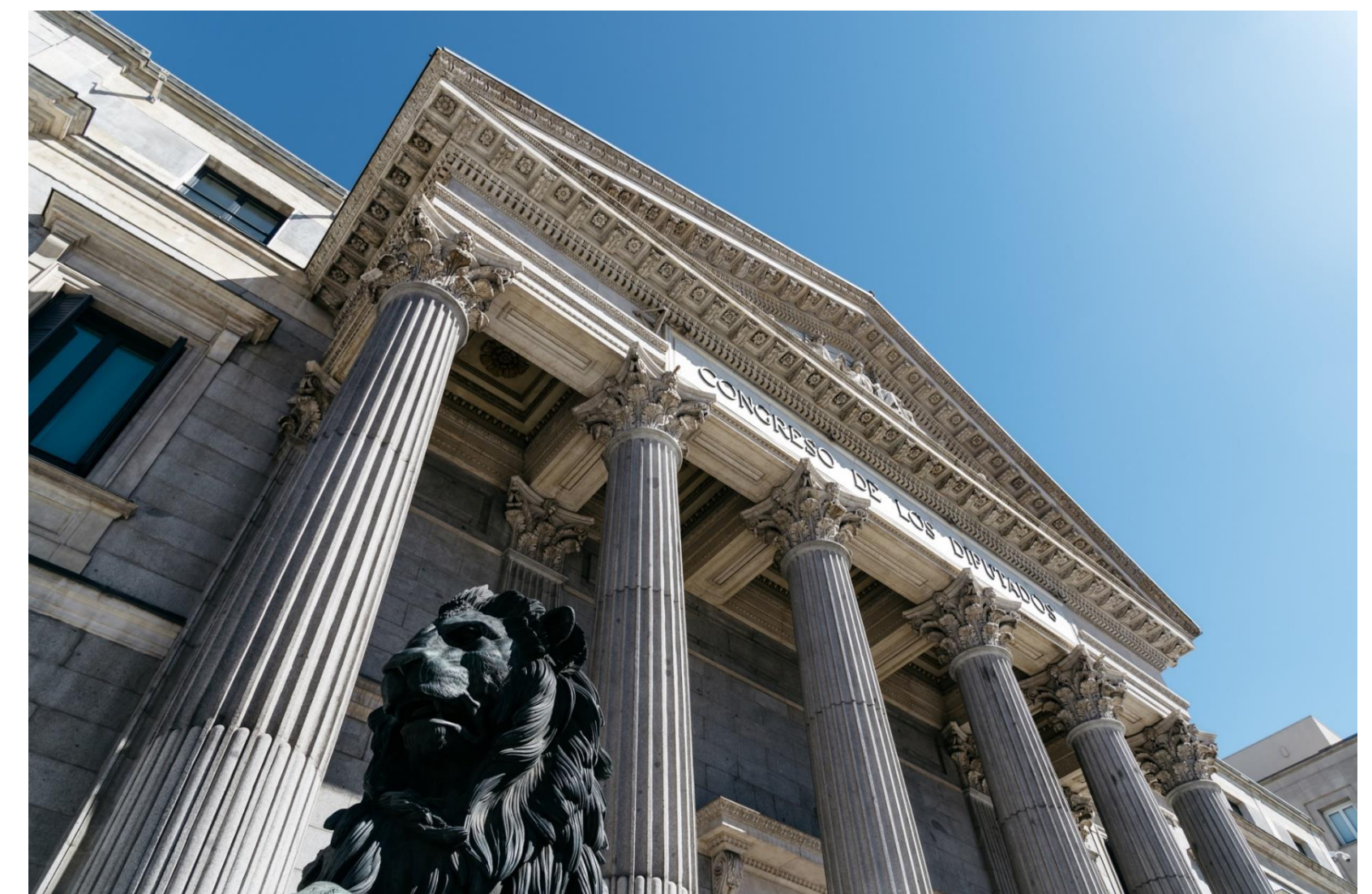
Spain remains at the forefront of foreign investment:

- **Legislature's intentions are foreseeable**
- **Tax incentives**
 - **Foreign securities holding companies**
 - **Tax incentives for Spanish companies investing in South America**
 - **Tax treaties with 94 countries to avoid double taxation**
- **Competitive labor costs and labor laws attractive for entrepreneurs**
- **Excellent infrastructure and transport**
- **EU framework: competitiveness, services and product markets liberalization**
- **14% of the GDP fiscal packages to minimize long-term impact of the pandemic**
- **Political situation stabilized**

Spanish Law: Main Differences



- **Distribution channels & commercial agency law**
- **Good contracts**
- **Forming a company:**
 - **Anti money-laundering laws**
 - **Employment matters**
- **IP: first-to-register not first-to-use rule**
- **Regulatory law: GDPR, consumer, environmental, food and energy**



Distribution Channels & Commercial Agents



Distribution Channels

- Direct sales
- Sales representative
- Distributor/agency
- Subsidiary/branch
(permanent establishment)

Commercial Agents under Spanish Law

- Very different from US law
- Distributor agreement might be interpreted as agency
- Good contracts:
 - to avoid remuneration claims
 - to prevent classification as labor contracts
 - COVID-19

Forming a Company



- **Most common: *Sociedad Limitada* vs. *Sociedad Anónima***
- **Cost and time factor: minimum capital and bank account**
- **Staff on the ground or personal visit to Spain**
- **Tax IDs for all directors**
- **Bureaucracy and formalism**
- **New: prior authorization of FDI**



Anti-Money Laundering

mm
mm

- **EU Directive 2005/60/EC of October 26, 2005 and Commission Directive 2006/70/EC of August 1, 2006**
- **Spain: Law 10/2020, of April 28, on the prevention of money laundering and financing of terrorism and recommendations issued by the Financial Action Task Force (“FATF”)**
- **Be prepared for full disclosure:**
 - **Ultimate beneficial owners revealed to all advisors and banks involved**
- **Draft bill to implement last EU Directive**



Employment Matters



- **Employment contracts presumed to be indefinite**
- **Workers' Statute and applicable collective bargaining agreement**
- **FDI: transfer of a “business as a going concern” or of an active economic unit:**
 - Automatic transfer of employment contracts to purchaser of business (all employees' rights and obligations)
 - Joint liability for all employment law obligations (social security, immigration, occupational hazard prevention matters, etc.)
- **Termination possible on objective grounds: severance packages**
- **Expat employment: totalization agreement**
- **COVID-19: ERTes, workplace security, remote working**

What Else?



- **Protect your IP: Spain follows the first-to-register not first-to-use rule**
- **GDPR: how to avoid data breach notifications and penalties**
- **Custom and import compliance (EORI-TAX ID)**
- **COVID-19 – State of alarm legislation**
 - **Extended deadlines**
 - **Virtual corporate meetings**
 - **Virtual filings**

Nadja Vietz

nvietz@mmmm.es
+34 93 487 58 94



Madrid

Alfonso XII, 30
E-28014 Madrid
T +34 91 319 96 86
F +34 91 308 53 68
mad@mmmm.es

Barcelona

Av. Diagonal, 463 bis
E-08036 Barcelona
T +34 93 487 58 94
F +34 93 487 38 44
bcn@mmmm.es

Palma de Mallorca

Av. Jaume III, 29
E-07012 Palma de Mallorca
T +34 971 71 70 34
F +34 971 71 97 35
pm@mmmm.es