

## QUESTIONS & ANSWERS ON SPANISH CONTRACTS

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*Readers question:*

*It seems to me that business in Spain is driven by a signed copy of everything which has to be in Spanish.*

*Are there any pitfalls in not signing documents? If a contract for transfer of business for instance is unsigned can it be legally binding. Why does a person's NIE number need to be given. Should one sign a document if there is no lawyer or notary present? Are there specific laws in place in property and business matters that dictate the signing and witnessing of papers?*

In Spain as in the UK, it is possible to agree a verbal contract with nothing in writing and this is legally binding. However the problem for both parties with this situation is one of evidence. How can either party prove what was said and what the terms of the agreement were. For that reason it is not advisable to rely simply on a verbal contract as enforcing this in court would be difficult. Independent witness evidence could help but a contract with the agreed terms clearly stated, signed by both sides is much better. As we are in Spain, it is hardly surprising that the contracts are written in the Spanish language. If the matter were to be disputed and result in court action it would be heard by a Spanish

judge who is entitled to expect that the document is written in the language of this country. If the contract is in two languages, it is the Spanish version which will prevail.

A contract written in the English language will be perfectly valid and enforceable if both parties understand English. However, if there is a dispute and the matter proceeds to trial, the contract would have to be translated into Spanish in order to be used as evidence in a Spanish court. It is advisable that such a contract is translated and signed in both languages from the start because otherwise at trial, both parties could produce different translations of the same document with variations in the interpretation which suits their respective cases. This can lead to problems.

If you do not understand the contract then you should not sign it until someone independent (i.e. not the other party to the contract or someone acting for them) has translated it for you and if necessary explained it to you. Obviously throughout the course of our daily lives we have to sign a large number of documents from receipt of goods forms to contracts to purchase a property. It would be expensive and impractical to use a lawyer each and every time you sign anything and it is generally a matter of commonsense. However, it is better to err on the side of caution and the more important the document, the more advisable it is to obtain clarification.

An NIE number is normally requested when a transaction has fiscal or tax implications and it identifies the parties with certainty, for residents this is usually the same as the Residency Card number. A passport number could also suffice (although this

changes each time you change your passport).

There are no laws which specify the method of signing a private contract. However, there are many important transactions which are often ratified by signing a deed (or escritura) in front of a notary. Such documents do have to follow a prescribed format which the notary is responsible for enforcing. For example, the notary checks the identity and capacity of the parties before they sign and the deed is printed on special notarial paper. If one of the signatories does not speak fluent Spanish, they are required to have an interpreter who must explain the document to them and who themselves must be named in the document and must sign it. Examples of contracts which are formalised by way of notarial deeds are, the purchase of a property, taking out a mortgage and forming a company.

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If you have a legal question, please forward it to us and we will endeavour to get it answered in a future issue.