PRACTICE OF THE PROFESSION OF LAWYER IN SPAIN BY FOREIGNERS:

1. In possession of the professional qualifications required to gain access to the profession of lawyer in their home-country

A. Permanent Practice

1. EU and EEA Nationals

B. Occasional Practice (RD 607/1986)

2. Holders of a law degree earned in their home-country

Recognition of the qualification (RD 1837/2008)

Harmonisation of the degree (RD 285/2004)

3rd country nationals


A) Permanent practice with the professional qualification earned in their home-country (RD 936/2001)
PRACTICE OF THE PROFESSION OF LAWYER IN SPAIN BY FOREIGNERS

There are different regulations governing the practice of the profession of lawyer in Spanish territory by foreigners, depending on their nationality. There are two distinct cases: that of nationals of a Member State of the European Union (EU) or the European Economic Area (EEA) and that of third-country nationals.

1) NATIONALS OF A MEMBER STATE OF THE EUROPEAN UNION (EU) OR THE EUROPEAN ECONOMIC AREA (EEA)

The Member States of the European Union (EU) are: Germany, Austria, Belgium, Bulgaria, Cyprus, Denmark, Slovakia, Slovenia, Spain, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, The United Kingdom, The Czech Republic, Romania and Sweden. The Member States of the European Economic Area (EEA) are, in addition to those indicated above, Iceland, Liechtenstein and Norway.

There are two forms of practicing and gaining admission to the profession of lawyer in Spain for EU and EEA nationals: practice on a permanent basis or practice on an occasional basis.

A) PRACTICE ON A PERMANENT BASIS

At the present time, the rules governing the profession of lawyer in Spain on a permanent basis by EU and EEA nationals are different depending on the circumstance of those interested:

1. When they have earned the title that attests that they are in possession of the professional qualifications required to gain admission to the profession of lawyer in their home-countries.

   a) Permanent practice with the professional qualification from the home-country.
   b) Admission to the profession by virtue of the recognition of the qualification.

2. When in their home-country they only hold a university degree in law.

1.- The circumstance of EU and EEA nationals who have already obtained a title in their home-country attesting that they have the professional qualifications required to gain admission to the profession of lawyer in said country. In other words, that they attest to the post-university training that the Community countries require to gain admission to the profession of lawyer:
In this case, there are two options:

a) Permanent practice with the professional qualification from the home-country.

b) Admission to the profession by virtue of recognition of the qualification.

**a) Permanent practice with the professional qualification from the home-country:**

This option may be chosen by EU and EEA nationals who have the qualification of lawyer in their home-country. In other words, they practice the profession of lawyer and are registered as lawyers by the competent authority in the home-country.

**Regulations:**

Directive 98/5/EC, issued on 16th February 1998, designed to facilitate practice on a permanent basis of the profession of lawyer in a Member State other than that in which the qualification was obtained, transposed to Spanish domestic law by virtue of Royal decree RD 936/2001, passed on 3rd August 2001, which permits said practice in Spain under the home-country professional qualification.

**Registration:**

EU and EEA nationals who wish to practice the profession of lawyer on a permanent basis in Spain by virtue of this option shall, of necessity, be registered in a Spanish Bar Association that corresponds to the area in which they establish their only or principal professional domicile. They shall be registered prior to pursuing their activity as a lawyer.

The registration shall be done by filling out an application form, provided by the pertinent Bar Association, which shall contain at least the following data:

- Name and surname/s of the applicant
- Nationality
- Country in which the professional qualification of lawyer was earned
- Competent authority of the home-country
- Professional domicile
- In the event of belonging to a grouping in the home-country, the name and legal form of said grouping

The application shall be submitted accompanied by the documentation listed below, which shall be certified and translated into Castillian Spanish:

- Passport, identity card or other document attesting to the applicant’s possession of nationality of an EU or EEA Member State
• Certificate of registration with the competent authority of the home Member State attesting that the applicant is a lawyer by profession.
• Certificate attesting to the territorial and quantitative scope of the coverage of the professional civil liability insurance policy, should the applicant have concerted one in his home-country
• Certificates of criminal records issued both in Spain and in the home Member State
• Two identity card size photographs
• Statement of the professional domicile the applicant proposes to establish in Spain
• Receipt of payment of the same registration fees to the pertinent Spanish Bar Association and to the General Council of Spanish Bar Associations as those required for the admission thereto of practicing resident lawyers with a Spanish professional qualification.
• Photocopy of the payment of the Spanish Economic Activity Tax, processed directly by the applicant with the Spanish Treasury or a certificate from the company if he is going to practice exclusively as a salaried lawyer.
• Certificate attesting to the payment of the applicant’s professional social security in his home Member State to an amount that is comparable with that of Spanish lawyers or, in the absence thereof, to formalise his subscription to the Lawyers’ General Mutual Fund, the fixed premium social security Mutual Fund or with the Spanish Social Security system that corresponds to the form of exercising as a lawyer in Spain.
• Standing order at a bank for the payment of periodical fees, whether variable of extraordinary, that registered lawyers have to pay.
• Sworn statement or promise that during his activity in Spain the applicant will observe the Spanish Constitution and all other Spanish laws and regulations and to faithfully comply with the ethical rules and obligations governing the profession of lawyer, as required by section 16 of the Spanish Lawyers’ General Statute while undertaking to publicly ratify same before the Governing Body of the pertinent Spanish Bar Association.
• Any other document required by the pertinent Spanish Bar Association.

The maximum timeframe that the Governing Body of the pertinent Bar Association has to decide whether or not to proceed with the registration is two months, after which the registration shall be considered to be admitted (section 7 of Royal Decree RD 936/2001).

Once registered, the lawyer shall be included in a special list of “registered lawyers” under the number that is designated to him by the Bar Association. This is a special list that has to be created by the pertinent Bar Association for the purpose of having Community lawyers registered. The name of these lawyers is “registered lawyers” while the name of practicing or non-practicing lawyers shall not be correct. A registered
lawyer may never be registered as non-practicing, in which case he will not be registered.

It is very important that, as required by section 8.2 of Royal Decree RD 936/2001, passed in Spain on 3rd August 2001, within no more than fifteen days of the registration, the Bar Association should notify said registration to the General Council of Spanish Bar Associations while specifying the competent authority of the applicant’s home Member State. In those Autonomous Regions where an Autonomous Regional Council of Bar Associations is incorporated, the Bar Association in question shall send the notification of a registration to its Autonomous Regional Council, which shall then send said notification to the General Council of Spanish Bar Associations (Single Additional Provision).

With respect to the possibility of being registered as resident or non-resident “registered lawyer”, such possibility is accepted on the analogy of Spanish laws governing Spanish lawyers. In the event that a lawyer applies for his inclusion in the special list of registered lawyers as non-resident, the Bar Association shall verify whether in fact he is registered with another Spanish Bar Association as resident, which Association shall have jurisdiction over the area in which his principal professional domicile is established. This particular shall be attested by a certificate issued by the Bar Association in which he is registered as resident “registered lawyer”.

Practice:

“Registered lawyers” who practice in Spain under their home-country professional qualification are obliged to do so with express mention of this circumstance while using their professional qualification expressed in the language of their home-country (for example: advogado, solicitor, Rechtsanwalt, and so forth) and, as the case may be, adding their home-country.

“Registered lawyers” may practice in Spain as self-employed or employed by other natural persons or legal entities insofar as such is permitted by the laws governing practicing lawyers with a Spanish professional qualification.

Scope of activity:

Section 11 of Spanish Royal Decree RD 936/2001 and Article 5 of Directive 98/5/EC

Lawyers practicing under their home-country professional qualification shall pursue the same activities as lawyers practicing under the relevant qualification used in Spain and may, in particular, give advice on the law of their home Member State, on Community law, on international law and on Spanish law.
With respect to the pursuit of activities relating to the defence of a client when Spanish law requires the presence of a lawyer to act before courts and tribunals or before public institutions with jurisdictional functions or to assist, communicate with and see persons in custody or prisoners, the “registered lawyer” shall act in conjunction with a lawyer who is a member of a Spanish Bar Association.

This collaboration shall also be required when, although the presence of a lawyer is not required, Spanish law requires that if the client does not appear himself before the judicial body, only a lawyer may do so.

Whichever the case, the pertinent Spanish rules of procedure shall be observed and the lawyer in conjunction with whom the “registered lawyer” is acting shall be answerable to the jurisdictional bodies and public institutions (this idea of collaboration is indicated in Article 5 of Directive 77/249/EEC, issued on 22nd March 1977, designed to facilitate the effective freedom to provide services by lawyers).

Registered lawyers may not be included on lists of duty lawyers of the legal aid scheme kept by the Bar Associations nor may they exercise activities that in Spain are reserved for other professionals even though they might be authorised to pursue such activities in their home-country.

With respect to the meaning of “acting in conjunction”, there are no regulations to implement the term: neither Directive 98/5/EC nor Royal Decree RD 936/2001 defines its meaning. It is understood, however, that it is a measure to protect the client from any lack of a thorough knowledge of Spanish law on the part of the registered lawyer. In consequence, regarding representation before courts and tribunals “acting in conjunction” is considered to be in the company of, including visits to persons in custody or prisoners. In these cases acting in conjunction requires the physical presence of a fellow lawyer who is a member of a Spanish Bar Association and can assist and help the registered lawyer at the time.

In each case either the Bar Association with which the “registered lawyer” is listed or the Bar Association to whose dean the visiting registered lawyer reported shall be notified of this collaboration by virtue of a letter signed by both lawyers, and said collaboration shall be put on record in all the professional activities affected.

Consequent on said collaboration, the lawyer who is a member of a Spanish Bar Association undertakes to accompany and assist said “registered lawyer” in professional activities and shall assume in solidum any civil or ethical liabilities that might be incurred by said “registered lawyer”.

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Admission to the profession:

At any time subsequent to the three years running from the formalisation of the registration in the pertinent Spanish Bar Association, the registered Community lawyer who attests to his effective and regular practice of the activity of lawyer may apply for the incorporation into said Bar Association and gain admission to the profession of lawyer in Spain without being required to have the recognition of his professional qualification processed.

To do this he shall complete the application forms for membership which shall be provided to him by the Bar Association and he shall submit a report on the number and nature of the matters that he has dealt with during the period of exercise on a permanent basis in Spain as a “registered lawyer” under his home-country professional qualification.

Content of the report on effective and regular activity: This shall include the number and nature of the matters that he has dealt with during the period of exercise on a permanent basis in Spain as a “registered lawyer” under his home-country professional qualification. It shall report on all of the matters in which he acted, without being necessary to indicate the personal details of his clients (in cases of individuals, the initials shall suffice and in cases of companies and legal entities, the full name of same is required since the laws governing the protection of personal data are not applicable thereto). In addition, the date and the subject matter of the issues shall be included in the report even though specific details thereof shall not be required.

Having examined and evaluated the information and documentation submitted, the Bar Association may require the “registered lawyer” to provide clarification or further details thereon either orally or in writing.

Prior to deciding, the Bar Association shall request a report from the General Council of Spanish Bar Associations through the pertinent Autonomous Regional Council of Bar Associations, as the case may be.

The decision – which shall be reasoned – by the pertinent Bar Association, shall be taken within three months, by virtue of which it shall deny membership, integrate the applicant into the Spanish profession of lawyer or require him to attend an interview due to considering the effective and regular activity in matters relating to Spanish law to be insufficient.

Should there be an interview, the purpose thereof shall be to verify the effective and regular nature of the activity pursued while taking into consideration all of the information and documentation provided relating to the applicant’s knowledge of and professional experience in Spanish law and his attendance at lectures and seminars relating to said law.
The decision taken by the pertinent Bar Association may be appealed before the pertinent Autonomous Regional Council of Bar Associations, should there be one, or if not, before the General Council of Spanish Bar Associations.

Should membership be denied, for example because regular and effective professional practice in Spain over three years is not considered to be attested, the applicant may continue to practice in Spain in his capacity as “registered lawyer” and may also have the recognition of his home-country professional qualification processed.

Should he gain admission to the Spanish profession of lawyer, the applicant shall proceed to formalise his Bar membership and shall be considered as a lawyer for all purposes while ranking equally with the lawyers practicing under a Spanish professional qualification.

b) Admission to the profession by virtue of recognition of the professional qualification of lawyer: In the case of the profession of lawyer, EU and EEA nationals who have the professional qualification of lawyer from their home-country, that is, who exercise the profession of lawyer and are registered with the competent authority of the home-country as lawyers, may choose this option.

Regulations:


1 Article 21 of Spanish Royal Decree RD 1837/2008 sets forth two other circumstances:

- EU and EEE nationals who attest to having the university and post-university training required by their home Member State to gain admission to a profession regulated in their territory or exercise it in said territory. In these cases the profession must also be regulated in Spain.

- EU and EEE nationals who have practised the profession full-time for two years, over the ten preceding years, in an EU Member State or country belonging to the EEE in which said profession is not regulated provided that they have one or several certificates of competence or one or several training qualifications. An exception to the requirement of two years of experience is regulated in section 21 of Spanish Royal Decree RD 1837/2008.

The content of said circumstances would suggest that it would be difficult to apply them to the profession of lawyer therefore we only cite them to leave a record of their existence.
Directive issued on 4th June 2009 by the Directorate-General of Relations with the Spanish Ministry of Justice, by virtue of which the aptitude tests to gain admission to the practice of the professions of lawyer and solicitor in Spain by citizens of the European Union and other States signatory to the Agreement on the European Economic Area were announced.

**Rules governing the Recognition of the Qualification:**

In Spain the Ministry of Justice is the authority that is competent to grant recognition of the professional qualification of lawyer. Community citizens who wish to practice law in Spain through this channel have to apply to the Spanish Ministry of Justice for recognition of their professional qualification.

The timeframe for taking and notifying the pertinent decision is four months from the entry date indicated on the application.

The Ministry of Justice may require the applicant to undergo an internship period of three years at most or to pass an aptitude test. In order to practice the profession of lawyer, the applicant shall in all cases have to pass an aptitude test beforehand. The Directive issued on 4th June 2009 by the Directorate-General of Relations with the Spanish Ministry of Justice regulates the prior aptitude test and establishes, inter alia, the requirements that have to be complied with by the candidates, the presentation of the application and documentation, the phases of the test and the qualifications.

**Effects of the recognition:**

Recognition shall enable the beneficiary to gain admission to the profession of lawyer in Spain and to practice law with the same rights and obligations as Spanish nationals.

**Bar Membership:**

Community citizens who wish to exercise the profession of lawyer on a permanent basis in Spain by virtue of the Recognition of their qualification shall, of necessity, become members of the Spanish Bar Association that has jurisdiction over the area in which they establish their only or principal professional domicile. Membership of a Bar Association is mandatory prior to pursuing the activity of lawyer.

In order to join a Spanish Bar Association, the certificate issued by the Spanish Ministry of Justice attesting to the recognition of the qualification shall be presented to said Bar Association.

The other paper-work and documentation to be submitted is the same as that to be provided by Spanish graduates who have earned their degree in law and wish to join a Bar Association.
Said Community citizens may join a Spanish Bar Association as practicing or non-practicing lawyers, and residents or non-residents.

**Practice:**

Those who gain admission to the profession of lawyer in Spain by virtue of the recognition of their home-country qualification and subsequent membership of a Spanish Bar Association shall use the Spanish professional title of “abogado” (lawyer) and shall be bound by the same professional, administrative, ethical and legal regulations and standards that define and govern the profession of lawyer in Spain. They shall be considered as lawyers for all purposes while ranking equally with lawyers practicing under a Spanish qualification.

They shall be entitled to practice in Spain as self-employed lawyers or salaried lawyers hired by natural persons or legal entities insofar as this is permitted by the regulations governing lawyers practicing under a Spanish professional qualification of lawyer.

**Scope of activity:**

Lawyers who practice in Spain by virtue of the recognition of their home-country professional qualification shall pursue the same professional activities as lawyers who practice under a Spanish professional qualification, without any restrictions of any kind.

**Taking of effect of Act 34/2006, passed in Spain on 30th October 2006, governing admission to the professions of lawyer and court solicitor:**

The Act governing admission to the profession of lawyer shall take effect on 31st October 2011. When said Act takes effect, the steps that have to be followed to gain admission to the profession of lawyer by virtue of recognition of the professional qualification will not change: 1) Apply to the Spanish Ministry of Justice for recognition of the home-country professional qualification and subsequently, having complied with all of the Spanish requirements and obtained recognition prior to practicing the profession, 2) join the pertinent Spanish Bar Association.

When the so-called Admission Law takes effect the recognition process shall embrace all of the pre-requisites required to obtain the certification of professional aptitude. In other words, the recognition shall involve accepting the completion of the law degree, or the equivalent name given to the law qualification under the Bologna Plan, the completion of specialised training and the assessment of the specialised training. Supposedly then, the Spanish Ministry of Justice will raise the conditions and pre-requisites required to obtain recognition of the professional qualification.
With respect to this question, it should be borne in mind that the Admission Law dedicates its sole transitory provision to regulating the situation of subjects who already have the law degree or the law qualification under the Bologna plan prior to said Law taking effect on 31st October 2011. In particular sub-section three thereof sets forth the following:

“3. Those who have the university qualification of a law degree or the law qualification under the Bologna Plan when this Law takes effect, and are not included in the foregoing sub-clause, shall have a maximum timeframe of two years from the entry into force thereof to join a Spanish Bar Association as practicing or non-practicing lawyers without being required to obtain the professional qualifications regulated thereunder”.

It is understood, therefore, that those who upon the coming into force of the Admission Law had the university law degree or the law qualification under the Bologna Plan and were not included in sub-section two of the single transitional provision of the Law, have a timeframe of two years – 31st October 2013 – to join a Spanish Bar Association while the new rules governing access to the profession of lawyer regulated by this Act shall not be applicable to them over said period of time.

2.- Circumstance of EU and EEA nationals who in their home-country only have the university degree for the time being.

In this case, the only option available is admission to the profession of lawyer by harmonising said degree.

Regulations:


- Mandate ECI/1519/2006, issued on 11th May 2006, by virtue of which the general criteria are set forth to determine and comply with the complementary training requirements prior to the harmonisation of higher education foreign degrees.

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1 “those, who are not members of a Spanish Bar Association or Law Society when this Law comes into force, but had been members prior to the coming into force thereof as practicing lawyers and solicitors or non-practicing lawyers and solicitors over a continuous or discontinuous term of at least one year”.
Rules governing the harmonisation of qualifications:

Community citizens or those from an EEA Member State who wish to practice the profession of lawyer in Spain while only having the university qualification of a law degree from their home-country shall address the Qualifications Division of the Spanish Ministry of Education (Subdirección de Títulos – Paseo del Prado nº 28, 28071 Madrid; telephone numbers: 902 21 85 00 / 91 506 56 00) and apply for the harmonisation of their qualification pursuant to the procedure set forth in Royal Decree RD 285/2004, passed in Spain on 20th February 2004, by virtue of which the conditions for harmonisation and validation of foreign higher education qualifications and studies were passed, amended by Royal Decree 309/2005, passed on 18th March 2005.

The application for harmonisation shall be submitted in the form published for the purpose thereof to the Spanish Ministry of Education, accompanied by the following documentation:

1. A certified copy of the document attesting to the identity and nationality of the applicant.
2. A certified copy of the qualification the harmonisation of which is requested or the certification attesting to the issue thereof.
3. A certified copy of the academic transcript of the studies completed by the applicant in order to obtain the qualification, in which shall be recorded, inter alia, the official duration in academic years of the study plan followed, the subjects taken and the workload in hours of each.

The Validation and Harmonisation Service of the Spanish Ministry of Education shall decide within a timeframe of 6 months. Should there be no administrative reply, denial of the harmonisation of the qualification shall be understood.

A favourable decision may be dependent on the prior completion of certain complementary training requirements. The Ministry of Education establishes by mandate the provisions required for the planning and completion of said complementary training (Mandate ECI/1519/2006).

The complementary training requirements may consist of the successful completion of an aptitude test, of either a general or specific nature, on the basic knowledge of the Spanish training required to obtain the qualification, an internment period, a project or attendance at lectures.

These requirements shall be complied with at a Spanish university or higher Education Centre, which may be freely chosen by the applicant, comprising the studies leading to the Spanish qualification, to which the harmonisation refers.
Effects of harmonisation:

The harmonisation of foreign qualifications involves the recognition in Spain of the official qualifications obtained abroad.

Community citizens who wish to exercise the profession of lawyer on a permanent basis in Spain by virtue of the harmonisation of their qualification shall, of necessity, become members of the Spanish Bar Association that has jurisdiction over the area in which they establish their only or principal professional domicile. Membership of a Bar Association is mandatory prior to pursuing the activity of lawyer.

In order to join a Spanish Bar Association, the harmonisation certificate issued by the Spanish Ministry of Education attesting to the harmonisation of the law degree with the professional qualification shall be presented to said Bar Association. Said harmonisation certificate shall make express mention of the law degree. Any other type of harmonisation shall not be valid.

The other paper-work and documentation to be submitted is the same as that to be provided by Spanish graduates who have earned their law degree and wish to join a Bar Association.

Said Community citizens may join a Spanish Bar Association as practicing or non-practicing lawyers, and residents or non-residents.

Practice:

Those who gain admission to the profession of lawyer in Spain by virtue of the harmonisation of their home-country qualification and subsequent membership of a Spanish Bar Association shall use the Spanish professional title of “abogado” (Spanish for lawyer) and shall be bound by the same professional, administrative, ethical and legal regulations and standards that define and govern the profession of lawyer in Spain. They shall be considered as lawyers for all purposes while ranking equally with lawyers practicing under a Spanish qualification.

Citizens of an EU or EEA Member State who have had their home-country law degree harmonised with the Spanish law degree and have joined a Bar Association may practice in Spain as self-employed lawyers or salaried lawyers hired by natural persons or legal entities insofar as this is permitted by the regulations governing lawyers practicing under a Spanish qualification of lawyer.
Scope of activity:

Lawyers who practice in Spain by virtue of the harmonisation of their home-country professional qualification shall pursue the same professional activities as lawyers who practice under a Spanish professional qualification, without any restrictions of any kind.

Taking of effect of Act 34/2006, passed in Spain on 30th October 2006, governing admission to the professions of lawyer and court solicitor:

The Act governing admission to the profession of lawyer shall take effect on 31st October 2011. The taking of effect of said Act shall not modify the steps that have to be followed by EU and EEA nationals who in their home-country only have the university qualification of law degree: (1.- Apply to the Spanish Ministry of Education for the harmonisation of their qualification, and 2.- having complied with all of the Spanish requirements and obtained the harmonisation prior to practicing the profession, join the pertinent Spanish Bar Association).

As in the case of the recognition of a qualification, when the so-called Admission Law takes effect the harmonisation process shall embrace all of the pre-requisites required to obtain the certification of professional aptitude. In other words, the harmonisation shall involve accepting the completion of the law degree, or the equivalent name given to a law qualification under the Bologna Plan, the completion of specialised training and the assessment of the specialised training. Supposedly then, the Spanish Ministry of Education will raise the conditions and pre-requisites required to obtain the harmonisation of the professional qualification.

In relation to this question, sub-section three of the single transitory provision of the Act, to which you are referred (vide supra) also applies here.

B) OCCASIONAL PRACTICE

This is the case of those who practice the profession of lawyer on a permanent basis in another EU or EEA Member State and travel occasionally to Spain to pursue one of the following activities: consultation, legal advice or representation in court (hereinafter, referred to as "visiting lawyers").

Regulations:

Directive 77/249/EEC issued by the Council of the European Communities on 22nd March 1977, designed to facilitate the freedom of lawyers to provide services, transposed to Spanish law by virtue of Royal Decree 607/1986, passed in Spain on 21st March 1986, directed at facilitating the effective exercise of the freedom of lawyers to provide services, amended by Royal Decree 1062/1988, passed on 16th September 1988.
Notification to the Bar Association

Visiting lawyers shall report to the dean of the Governing Body of the Bar Association corresponding to the area in which they are to provide their services and provide the following data: (section 5 of Spanish Royal Decree RD 607/1986).

1. Name and surname/s
2. Professional qualification held.
3. Postal address of their permanent office.
4. Professional organisation to which they belong.
5. Postal address during their stay in Spain
6. Where necessary, the name, surnames and domicile of the Spanish lawyer with whom they will act in conjunction.
7. Statement to the effect that they are not involved in any conflict of interest nor have they been the subject of any sanction affecting their professional practice.

No kind of Bar membership or registration is required therefore there is no requirement to pay any bar membership fees.

Pursuant to Royal Decree RD 607/1986, passed in Spain on 21st March 1986, the Bar Association is required to inform the General Council of Spanish Bar Associations when a Community lawyer reports to the Bar Association corresponding to the area in which he is to provide his services so that the occasional services provided by said lawyer in Spain may be followed.

As the case may be, the Bar Association shall also send a communiquè to the judge or chief justice presiding over the court in which the lawyer intends to pursue activities relating to the representation of a client, informing him thereof.

Practice:

Visiting lawyers shall be free to pursue activities of the profession of lawyer in Spain according to the rules governing the occasional provision of services while using for the purpose thereof their professional qualification expressed in the language of their home Member State.

Visiting lawyers are subject to the disciplinary rules governing Spanish lawyers and shall pursue the activities relating to the representation and defence of a client before jurisdictional bodies and public institutions under the same conditions as Spanish lawyers while observing Spanish rules of professional conduct without prejudice to the obligations incumbent on them from their home Member State.

In the practice of their other activities, visiting lawyers shall remain subject to the conditions and rules of professional conduct governing them in their home Member State without prejudice to their observance of the rules governing the profession in
Spain, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in Spain, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests and publicity. These rules shall be applicable only if they can be observed by a lawyer who is not established in Spain and only insofar as their observance is objectively justified to ensure the appropriate practice of a lawyer’s activities, the standing of the profession, respect for the rules governing incompatibility and their tax obligations.

Visiting lawyers may not open an office in Spain.

Scope of activity:

The occasional provision of services comprises consultation, legal advice and representation of a client in court. Visiting lawyers may not perform any tasks that might involve the exercise of a public function or that might be incompatible with the intermittent nature of their services.

For activities relating to the defence of a client before courts, tribunals or public institutions, the assistance given to persons held in custody or prisoners, and communication with prisoners and convicted persons, the visiting lawyer shall act in conjunction with a lawyer who is registered with the Spanish Bar Association of the area in which such activities are to be pursued (section 6 of Royal Decree RD 607/1986).

There are no regulations to implement the meaning of the term “acting in conjunction”. It is understood, however, that it is a measure to protect the client from any lack of a thorough knowledge of Spanish law on the part of the visiting lawyer. In consequence, “acting in conjunction” is considered to be in the company of. Therefore, acting in conjunction requires the physical presence of a fellow lawyer who is a member of a Spanish Bar Association and can assist and help the visiting lawyer at the time.

In each case the Bar Association to whose dean the visiting lawyer reported shall be notified of this collaboration by virtue of a letter signed by both lawyers, and said collaboration shall be put on record in all the professional activities affected.

Consequent on said collaboration, the lawyer who is a member of a Spanish Bar Association undertakes to accompany and assist said visiting lawyer in the pertinent professional activities and shall assume in solidum any civil or ethical liabilities that might be incurred by said visiting lawyer.
2) NATIONALS OF THIRD COUNTRIES THAT ARE NOT MEMBERS OF THE EUROPEAN UNION (EU) OR THE EUROPEAN ECONOMIC AREA (EEA)

In cases of citizens from a third country that is not a member of the European Union (EU) or the European Economic Area (EEA), there is no distinction between permanent or occasional practice. Neither is account taken of whether they hold the title that attests that they have the required professional qualifications to gain admission to the profession of lawyer in their home-country or whether they only hold the university qualification of law degree.

In Spain, the practice of and admittance to the profession of lawyer by third-country nationals is dependent on their prior compliance with three requirements:

1) Harmonisation of university qualification

This pre-requisite shall be required in all cases unless the third-country citizen has earned the law degree in a Spanish university.

Regulations:


- Mandate ECI/1519/2006, issued on 11th May 2006, by virtue of which the general criteria are set forth to determine and comply with the complementary training requirements prior to the harmonisation of higher education foreign degrees.

Rules governing the harmonisation of qualifications:

Foreign citizens shall address the Qualifications Division of the Spanish Ministry of Education (Subdirección de Títulos – Paseo del Prado nº 28, 28071 Madrid; telephone numbers: 902 21 85 00 / 91 506 56 00) and apply for the harmonisation of their qualification pursuant to the procedure set forth in Royal Decree RD 285/2004, passed in Spain on 20th February 2004, by virtue of which the conditions for harmonisation and validation of foreign higher education qualifications and studies were passed, amended by Royal Decree 309/2005, passed on 18th March 2005.

The application for harmonisation shall be submitted in the form published for the purpose thereof to the Spanish Ministry of Education, accompanied by the following documentation:
4. A certified copy of the document attesting to the identity and nationality of the applicant.

5. A certified copy of the qualification the harmonisation of which is requested or the certification attesting to the issue thereof.

6. A certified copy of the academic transcript of the studies completed by the applicant in order to obtain the qualification, in which shall be recorded, inter alia, the official duration in academic years of the study plan followed, the subjects taken and the workload in hours of each.

The Validation and Harmonisation Service of the Spanish Ministry of Education shall decide within a timeframe of 6 months. Should there be no administrative reply, denial of the harmonisation of the qualification shall be understood.

A favourable decision may be dependent on the prior completion of certain complementary training requirements. The Ministry of Education establishes by mandate the provisions required for the planning and completion of said complementary training (Mandate ECI/1519/2006).

The complementary training requirements may consist of the successful completion of an aptitude test, of either a general or specific nature, on the basic knowledge of the Spanish training required to obtain the qualification, an internment period, a project or attendance at lectures.

These requirements shall be complied with at a Spanish university or higher Education Centre, which may be freely chosen by the applicant, comprising the studies leading to the Spanish qualification, the subject of the harmonisation.

In synthesis, the same rules governing the harmonisation of qualifications of EU and EEA nationals are applied.

**Effects of harmonisation:**

The harmonisation of foreign qualifications involves the recognition in Spain of the official qualifications obtained abroad.

*Taking of effect of Act 34/2006, passed in Spain on 30th October 2006 governing access to the professions of lawyer and court solicitor:*

The same rules set forth for cases of EU and EEA nationals are applied (vide supra).
2) Dispensation from Spanish nationality requirement

Regulations:

- Royal Decree RD 658/2001, passed in Spain on 22nd June 2001, by virtue of which the Spanish Lawyers General Statute was passed (section 31.1.a)).

- Royal Decree 1879/1994, passed in Spain on 16th September 1994, by virtue of which certain procedural rules in the field of Justice and Home Affairs were passed (section 4).

- Directive 2004/38/EC, issued by the European Parliament and the Council of Europe on 29th April 2004, governing the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, transposed to Spanish law by virtue of Royal Decree 240/2007, passed in Spain on 16th February 2007, governing the entrance and the freedom to move within and reside in Spain of citizens of Member States of the European Union and of other States that are signatories to the European Economic Area Agreement.

Rules governing the dispensation of nationality:

Once the harmonisation has been obtained, applicants shall, by a letter addressed to Spanish Minister of Justice, apply for dispensation from the requirement of having Spanish nationality set forth in the Spanish Lawyers General Statute in section 13.1.a) thereof, while indicating the Bar Association to which they wish to gain admission.

Legal dispensation from the Spanish nationality requirement may be requested while enclosing the following documentation:

- Passport or document attesting to identity.
- Spanish Residence Permit (certified copy).
- Certificate of harmonisation of the law degree (certified copy).
- Certificate attesting to not having a criminal record in the home-country, issued by the competent authority (original).
- Certificate attesting to not having a criminal record in Spain, issued by the competent authority (original).
- Certificate attesting to professional conduct, issued by the governing body of the Bar Association from the home-country (original). The presentation of this certificate shall not be required in cases of holders of law degrees who have not previously practised the profession of lawyer.

Both the application and the documentation indicated above shall be presented at any of the following places:
- At the Register of the Spanish Ministry of Justice (Help Desk).
- At any of the territorial management agencies of the Spanish Ministry of Justice, excepting the Central Body Management Agency.
- At any administrative body of the State General Administration Service or the Autonomous Regional Administration Service as well as at any Local Corporations that have subscribed the Single Window Agreement.

The application may also be presented together with the documentation indicated above by registered post. In this case, the application shall be sent to the address of the General Register of the Spanish Ministry of Justice – the Help Desk (it is recommended to present the envelope open at the Post Office so that both the letter to be sent and the copy that is kept by the applicant are stamped).

The maximum timeframe for taking a decision on the application is three months, and it can be understood to be granted when an express decision thereon has not been notified within said timeframe.

**Exemptions:**

It must be remembered that certain people are exempt from this step: family members of an EU or EEA citizen who are accompanying or meeting up with him. In particular section 2 of Royal Decree RD 240/2007, passed in Spain on 16th February 2007, refers to the following:

- Spouse
- Civil partner
- Direct descendents and those of his spouse or civil partner, who are over 21 and depend on them
- Direct ascendants and those of his spouse or civil partner who depend on them

**3) Registration in the Bar Association**

Once a national of a third state that is not a member of the EU or the EEA has had his professional qualification harmonised and acquired the dispensation from the Spanish nationality requirement, he shall, of necessity, apply for membership of the Bar Association with jurisdiction over the area in which he intends to establish his only or principal professional domicile. He must be a member of a Bar Association prior to pursuing his activity as a lawyer.
Bar Membership:

To be entitled to join a Spanish Bar Association, the applicant is required to present at the offices of the pertinent Bar Association, a letter addressed to the dean thereof applying for admission as a lawyer. He shall also present:

- Certificate of harmonisation of his university qualification issued by the Spanish Ministry of Education which attests to the harmonisation of the professional qualification with the Law Degree qualification. Express mention shall be made in the harmonisation certificate of the Law Degree qualification. Any other type of harmonisation is invalid.

- Certificate attesting to the dispensation from the Spanish nationality requirement.

The other paper-work and documentation to be provided is the same as that to be presented by a Spanish graduate who has earned his Law Degree and wishes to join a Bar Association.

Applicants may join a Bar Association as practicing or non-practicing lawyers and resident or non-resident lawyers (the latter provided that they are previously members of another Spanish Bar Association).

Practice:

They shall use the Spanish professional title of “abogado” (Spanish for lawyer) and shall be bound by the same professional, administrative, ethical and legal regulations and standards that define and govern the profession of lawyer in Spain. They shall be considered as lawyers for all purposes while ranking equally with lawyers practicing under a Spanish qualification.

They shall be entitled to practice in Spain as self-employed lawyers or salaried lawyers hired by natural persons or legal entities insofar as this is permitted by the regulations governing lawyers practicing under a Spanish qualification of lawyer.

Scope of activity:

They shall pursue the same professional activities as lawyers who practice under a Spanish qualification, without any restrictions of any kind.