Investing and Doing Business in Spain:
A Legal Perspective
Agenda

New and Old Legal Issues US Companies Face When Doing Business in Spain
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Managing Distribution Channels
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Foreign Direct Investment in Spain
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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

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Webinar
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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
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

- 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
  o Extended deadlines
  o Virtual corporate meetings
  o Virtual filings