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The Conveyancing Process In Spain[1]

1. Searches & Investigations

If you are looking to purchase a second-hand property in Spain it is important to ensure that it has no liens, charges or encumbrances and that it is in good condition generally to ensure that you will end up with a good marketable title. If the property is 10 or more years old, it is highly advisable to instruct a local architect to conduct an inspection on the property to check its estate and produce an accurate valuation.

If the property is to be bought off plan, along the search at the local land registry to confirm title and to ensure that the property has no liens, charges or encumbrances, it is also important to contact the local town hall to find out whether the property was granted building license and if so, that it was granted in accordance to the local development plan.

2. The Private Agreement (*Contrato Privado*)

In order for your acquisition of property gaining access to the Spanish land registry, it is required to grant a deed of transfer (Deed of Transfer) to be granted before a notary public. In order to secure the purchase of a property it is however advisable to previously enter into a private agreement (Private Agreement) by which, in exchange of payment of a deposit (normally between 5 and 10% of the consideration agreed) you ensure that the property is off the market for a certain period of time, normally between 2 and 3 months, until completion takes place via the execution of the above mentioned Deed of Transfer (*Escritura de Compraventa*). It is important to pay attention as to the way the Private Contract is drafted in order to allow withdrawing from completion in the event that we find out that the property is not fit either legally or physically for occupation or you are not - for example - allowed to carry on major buildings works or have not managed to get the lending you were expecting.

During the interval period from the date the Private Contract is signed, and the date stipulated to grant the Deed of Transfer, we will carry out several works in order to find out and / or collect from the seller evidence that the property is transferred in good standing and with no debts. For example, the seller is required to produce an energy efficiency certificate, predeceased by having the property in place the certificate of habitation or *Cedula de Habitabilidad* (for second hand properties) or first occupation license or *Licencia de 1ª ocupación,* which might take several weeks should this not be

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present. Note that this is an example of the documentation the seller needs to produce to his own cost before completion takes place.

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[1] All references to VAT except at Section 6 are set at 20%

3. NIE Certificates

You would require having in place a NIE certificate and, ideally, a Spanish bank account open and operational before completion. The NIE operates as an identification number for non-Spanish residents, and must appear on all tax returns, and quoted in all communications with the tax authorities. It can be obtained from any Police (in Spain) or from the Spanish Consulate and then duly activated before the Spanish Tax Authorities. Must clients manage to complete this process themselves whilst others prefer to instruct us, as it can be a daunting process. If the latter, we would charge £500 per 1 NIE, £750 per 2 NIEs, £900 per 3 NIEs or £1000 per 4 NIEs. Our fees for assisting you with opening a bank account would amount to £350. No VAT will be triggered if instructed under the conveyancing instructions.

4. Power of Attorney (PoA) & Completion

Once we are satisfied that the property you wish to purchase is completely in order, we will organize a meeting at the Notary Public's office where the property's transfer deed is to be granted. If both parties are UK residents, it might be possible to do so in front of a local notary public albeit before exploring that possibility the Spanish local land registry should first be contacted to confirm they are happy to accept registration of the transfer deed being granted before a non-Spanish notary public. Otherwise, you will require traveling to Spain in order to attend completion or alternatively grant a PoA in our favour so that we can act on your behalf locally.

We will draft and / or peruse the transfer title deed thoroughly to ensure it keeps all the provisions contained in the private agreement. At that time you will provide the seller with a bankers' draft in payment of the balance and you will get the keys and certified copy of the transfer deed of the property. Both parties require to be present simultaneously so if you envisage that travelling to Spain might cause you trouble or you prefer us to execute on your behalf to ensure a swift transaction, we can act on your behalf and sign the deed by proxy by way of a Power of Attorney (POA) for you to be granted before hand as above indicated.

Our costs for the drafting a PoA and signing the transfer deed on your behalf are £1,300 plus the costs of granting the PoA (between £25 and £136 depending this is granted before the Spanish Consulate or in front of a local notary public). No VAT will be triggered if instructed under the conveyancing instructions in respect of our fees nor in respect of the Spanish Consulate fees but will trigger in respect of the fees of a notary public.

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5. Mortgage (Hipoteca) / Method of payment

If you are not a cash buyer and you need funding by way of mortgage, a further deed of incorporation of mortgage will be required to be granted. If so, our fees for dealing with this would amount to £900. No VAT will be triggered if instructed under the conveyancing instructions. This will also trigger a further notary public and land registry fee (see disbursements section below).

6. Payment of taxes

6.1 On Completion

If the property is a second hand property, there would be 2 taxes to be paid:

i. ITP (*Impuesto de Transmisiones Patrimoniales*) or transfer tax (called IGIC in the Canary Islands) which ranges from 6 to 10 % depending on the Autonomous Community where the property is located.
ii. IAJD (*Impuesto Actos Juridicos Documentados*) or Stamp Duty, which ranges from 0/5% to 1.5% depending, again, on the Autonomous Community where the property is located.

If the property is an off plan property, there would be 2 taxes to be paid:

i. IVA (equivalent to VAT) of 10% of the consideration agreed.
ii. IAJD as above.

On a second hand sale, if the seller is non-resident, a 3% of the consideration agreed should be withhold in order for you to pay the seller's CGT (Capital Tax Gain).

Please note that payment must be made within 30 days from the date of completion as otherwise a penalty for late payment will be imposed in addition to interest for late payment. It is therefore to ensure sufficient funds are in place on completion.

6.2 After Completion

6.2.1. IBI tax (refuse, sewage & water supply)

Once the property is bought, the owner will pay IBI tax (*Impuesto sobre Bienes Inmuebles*), which would be the equivalent to the UK council tax. Payment is made around June so we always try to agree it to be paid by each party in proportion to the months outstanding. In any case it is important to ensure that evidence as to that it has been paid for the last 4 years before completion if acting on behalf of the buyer is obtained. Some Town Halls will not include sewage, water supply or rubbish collection charges and would invoice that separately so it always advisable to check this again before completion if acting on behalf of the buyer. Most of Town Halls however will include all municipal services in the yearly IBI tax. This is not however very expensive, normally between one to two hundred Euros per year. The amount to be paid depends on the type and size of the property regardless the amount of people living on it as in the UK.

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6.2.2. Wealth tax

Another property related tax payable by the owner of a Spanish property is the wealth tax, which applies to individuals, whether they are Spanish residents or non-residents, owning assets over a certain threshold. Please note that companies are not liable for this tax. However, note that if a company obtains profits from real estate, these will be taxed by the Spanish Corporate Tax or *Impuesto de Sociedades*.

According to article 21 of the Double Taxation treaty between the UK/Spain, non-Spanish residents who are UK residents owning real estate located in Spain will be taxed by the country where the property is located. Accordingly, if the property is located in Spain it might be subject to Spanish wealth tax.

Broadly, the owner of real estate located in Spain will have to submit Spanish wealth tax returns, provided that by 31st December either:

- ✓ The combined valuation of the real estate located in Spain exceeds 2,000,000 Euros (regardless whether tax liability has to be paid), OR
- ✓ Regardless the value of the real estate located in Spain, there is tax liability to be paid after the tax calculations.

The tax liability will be determined by applying a sliding scale on the taxable base for those immovable assets with a combined total value in excess of 700,000 Euros (general allowance). Although further allowances may apply depending on the circumstances.

To calculate the liability, the higher value of the following three criteria will be taken into account:

- ✓ Cadastral value
- ✓ Price of purchase
- ✓ Valuation determined by the Spanish Tax Authorities (if any)

Wealth tax is payable on an annual basis.

6.2.3. Non-resident tax

According to the current international Double Treaty Agreement signed by UK and Spain, any income obtained in Spain (i.e. working for a UK company from Spain or receiving income from a Spanish property) might be subject to tax in Spain regardless the fact that your client is a Spanish non-tax resident.

Accordingly and if the property is rented out, depending on whether you make profit or not, different liabilities (including the preparation and submission of returns) will arise. If the property is rented out, it is essential to maintain accurate records of both the expenses (as some of them are deductible) and income derived from the property because the Spanish Tax Authorities (Hacienda) can review any returns within 4 years of having been submitted or ought to be submitted. In the event that the Spanish Tax Authorities find out that payment has not been made or was wrongly made, a penalty is likely to be imposed and would normally be notified at your Spanish property

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address. If your fail to appeal or settle the claim, the Spanish tax authorities can embargo the property and sell it by way of public auction in order to get paid.

7. Registration

Once payment of the taxes has been made, all paperwork is to be lodged at the corresponding local land registry to ensure you end up with the purchase of the property duly registered under your name. Registration at the land registry can take anything from 1 to 3 months.

8. Spanish Will

If you own a property in Spain, have money in a Spanish bank account, or possess any other assets in Spain it would be wise to consider making a Spanish Will. This can save a great deal of time and money and you can relax in the knowledge that when the time comes your estate will be administered by professionals who have the necessary knowledge and experience with the law in both jurisdictions to avoid uncertainty and unnecessary delays. Even if you already have an English Will it is prudent to consider obtaining a Spanish Will to deal with your Spanish assets exclusively.

A Spanish Will must be signed before a Notary Public in order to be valid. This can be done in the UK, but must then be recorded at the public registry in Spain. Scornik Gerstein LLP has extensive experience in drafting both English and Spanish Wills and is well equipped to advise you on any tax liabilities or other issues which may arise on the execution of your Will.

8.1 The Advantages of Making a Spanish Will

Obtaining probate in Spain without a Spanish Will means incurring in considerable costs and time which can be avoided if there is a Spanish will in place. Saving time will ensure that the beneficiaries will be able to file Spanish IHT within the required 6-month period without attracting penalties, interests and further legal fees.

All Spanish Wills must be registered with the National Spanish Last Wills' Registry. Before obtaining probate in Spain you must obtain a certificate from the National Spanish Last Wills' Registry, to confirm whether the deceased left a Spanish Will and if so, where and when. Obtaining a certificate from the National Spanish Wills Registry is compulsory to apply for probate in Spain. This means that no one will be able to apply for probate in Spain without having first obtained a certificate from the registry confirming the position.

We have great expertise in the drafting and granting of Spanish Wills. These can be drafted taking into account any other Will which may be in place in order to ensure that there is no overlapping between them. You can grant the Will with our in-house Notary Public or we can find one nearby your domicile. We will then legalise it and

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submit it to the Spanish Last Wills' Registry for registration purposes. Then it can be returned to you or we can store it safely in our archive at no extra charge.

8.2 Is it essential for an owner of assets in Spain to make a Will?

It is not essential for an owner of assets to make a Will. Foreign Wills are valid and enforceable, so long they have been validly granted according to the law of the country where it was granted and duly legalised. However, as above indicated, it is advisable to grant a Spanish Will dealing exclusively with the testator's Spanish assets to avoid incurring in unnecessary legal costs and delays derived from the need to translate and legalise the foreign will & probate or letters of administration where appropriate and even some times produce and Affidavit of foreign law in order to explain to the Spanish authorities how foreign law would apply to that will. As explained, foreign wills must be translated into Spanish and legalised before a Spanish Consul (or affixed with an apostille in countries signatory to the Apostille Hague Convention) in order to be executable before the Spanish Authorities.

8.3 Spanish Forced Heirship (legitimas), Regulation (EU) 650/2012

If you are worried about forced heirship under the Spanish succession rules and wish to make a Spanish Will dealing with your Spanish assets exclusively, we will include in your will a clause specifying that English or law applies to your worldwide estate under Article 22.1 of Regulation (EU) 650/2012, which came into force on 17 August 2015.

8.4 Our fees and disbursements for making a Spanish Will

Our fees for drafting your Spanish will amounts to £650 plus VAT per will unless these are mirror wills, in which case the cost would be reduced to £400 plus VAT per will.

In addition to our fees above, you will incur (per will) in the notary public's fee before whom you are to grant the will (normally around £100 plus VAT), in a legalization fee of £36 (No VAT) and courier to Spain to register your will before the Last Will's registry in Madrid. Note that there is no cost in registering the will.

If you wish us to assist you with the legalisation and registration of your Spanish will, we will incur in further fees in the amount of £150 plus VAT.

9. OUR CONVEYANCING FEES

Our fees for handling your Spanish property purchase is set out in accordance to the value of the property as per the scale indicated below. No VAT is to be added to our professional fees. However note that these are not fixed fees and albeit unusual, this can vary due to several factors such as; a. there is a mortgage to be cancelled, incorporated or assigned, b. there are several parties on any side to be acting for, c. the client wishes to use a corporate vehicle, d. if we need to act on behalf of the client locally – either personally or instructing a local agent (see point 4 above), you wish to instruct us to obtain your NIE certificates (see point 3 above) – etc.

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Consideration agreed				Payable Fee
Up to	€100.000,00			£1.000,00
Greater than	€100.000,00	but no more than	€200.000,00	£1.250,00
Greater than	€200.000,00	but no more than	€350.000,00	£1.500,00
Greater than	€350.000,00	but no more than	€500.000,00	£1.900,00
Greater than	€500.000,00	but no more than	€750.000,00	£3.500,00
Greater than	€750.000,00	but no more than	€1.000.000,00	£5.000,00
Greater than	€1.000.000,00	but no more than	€1.500.000,00	£9.000,00
Greater than	€1.500.000,00	but no more than	€3.000.000,00	£15.000,00
Greater than	€3.000.000,00	but no more than	€5.000.000,00	0.75%
In excess of	€5.000.000,00			the greater of £25.000,00 or 5%

10. Disbursements

The minimum costs a buyer faces when buying a property in Spain are the notary and land registrar fees, depending on the value of the property and amount of paperwork or copies of the deeds in the case of the notary. Below you can find indicative scales:

Value of property	Notary fees	Land Registry fees
25.000 €	600 €	395 €
50.000 €	625 €	420 €
100.000 €	675 €	445 €
150.000 €	710 €	470 €
200.000 €	750 €	510 €
250.000 €	790 €	550 €
300.000 €	830 €	590 €
400.000 €	850 €	630 €
975.000 €	875 €	650 €

The above scales do not include VAT at 21%.

Depending on the registrar we would require to instruct a local agent (gestor) to submit the paperwork personally in which case we would incur in a fee in the region of £300 plus VAT at 21%.

A valuer is always advisable when the property is second hand. Depending on the architect to be instructed, his fees should be between 450 Euros plus VAT at 21% to 900 Euros plus VAT at 21%.

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11. Questions you should make & preliminary advice

You must ask whether there is any charge or disbursement outstanding and if so why. The seller must produce an energy certificate and building license. In any event as part of our job we will make all the enquiries to ensure the property is free of charges and encumbrances and that was built in accordance to the local buildings regulations which sometimes is not the case, particularly in coastal or interior areas. It is important that no agreement in principle and absolutely no monies to secure the purchase are handed to the seller before all checks upon the property have been carried out since the seller may try to enforce the agreement even if there was a verbal one.

Once all the checks are made and if necessary and depending on your needs, we would advise to put together a private contract to secure the purchase as above indicated.

Once you own a Spanish property in Spain, it would be very prudent to secure the transfer of that property and other assets they may hold upon their demise by way of granting a Spanish will dealing only with those assets. Spanish inheritance law has sometimes frustrating requirements, and should something unthinkable happen, unnecessary delays and incorrect tax liabilities can be imposed if a valid will is not in place.

Likewise, once you become the owner of a Spanish property it is important that you appoint someone to deal with your tax liabilities and ensure these are met properly on time as otherwise the Spanish tax authorities may inadvertently to you instigate proceedings against your property and ultimately sell it via public auction in order to get paid any tax you might owe them. At Scornik Gerstein LLP we can act as your tax agents ensuring all communications are made to us electronically and calculate and file your taxes on your behalf.

INSTRUCTING SCORNIK GERSTEIN LLP

We are the largest & most experienced Spanish law specialist in the UK. We have been dealing with Spanish conveyancing since we were authorised to practice with the Law Society & Solicitors Regulation Authority in 1977.

We have a professional insurance cover of 3 million GBP to protect your investment. If the value of the property you wish to purchase exceeds our cover please let us know and we will happily request our insurer to grant sufficient cover specifically for you.

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