

[Home](#) > ... > [Taking Legal Action](#) > [Where and How](#) > [Costs](#) > Case study 4 - commercial law - contract - Spain

Case study 4 - commercial law - contract - Spain

Costs in Spain

Costs for court, appeals and alternative dispute resolution

Case study	Court			Appeals			Alternative dispute resolution	
	Initial costs	General costs	Other costs	Initial costs	General costs	Other costs	Is this option open for this type of case?	Costs
	<p>In principle, in the order for payment procedure laid down in Articles 812 <i>et seq.</i> of the Code of Civil Procedure (LEC) a lawyer would not be needed to file the first statement of claim, whatever the amount of the claim.</p> <p>In proceedings for a full judgment, a lawyer and a legal representative are required for claims exceeding €2 000.</p> <p>If the debtor contests the claim in an order for payment procedure, a lawyer and legal representative are required if the amount of the claim exceeds that laid down in the Code of Civil Procedure (currently €2 000).</p> <p>A fee is also payable which varies according to the type of procedure and the amount of the claim, provided the claim exceeds €2 000, unless the applicant is entitled to legal aid under Law 1/1996 on legal aid.</p>	<p>These are the general costs of proceedings. They are payable by a party which has had all its claims dismissed (Article 394(1) of the Code of Civil Procedure).</p>	<p>Offers of evidence. Witness compensation. Expert opinions.</p>	<p>If the debtor does not contest the claim, there are practically no costs involved in the proceeding. If the debtor contests the claim the general rules apply, i.e. the party lodging an appeal must pay a fee and make a prior deposit, unless entitled to legal aid.</p>	<p>The same rule applies as at first instance.</p>	<p>The same rule applies as at first instance.</p>	<p>Is this option open for this type of case? The parties may reach agreement on the amount owed without the intervention of a third party, in which case the agreement must be approved by the court, and they may reach a settlement through mediation services even if the proceeding has begun. Law 5/2012 of 6 July 2012 on mediation in civil and commercial matters incorporates into Spanish law Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008. This Law lays down a minimum framework for mediation without prejudice to the provisions approved by the Autonomous Communities. Under this Law, during the preliminary hearing the parties may be informed of the possibility of using mediation services to try and resolve the dispute. Depending on the nature of the case, the court may ask the parties to try and reach an agreement to end the proceeding. The parties may also ask for the proceeding to be stayed under Article 19(4) so that they can avail themselves of mediation or arbitration.</p>	<p>Costs</p> <p>If an agreement is reached, 60% of the court fee is reimbursed. Mediation provided by the court is usually free of charge. Where mediation is not provided by the court, the parties are free to avail themselves of a mediator and to pay whatever fees are agreed upon. Under Law 5/2012, whether or not the mediation leads to an agreement, the mediation costs are shared equally between the parties unless otherwise agreed.</p>
Case A	The same as for the previous case	Idem	Idem	Idem	Idem	Idem	Idem	Idem
Case B								

## Costs for lawyers, bailiffs and experts

Case study	Lawyers	Bailiffs	Experts
	<p>Is representation compulsory? Costs</p> <p>The order for payment procedure is not used unless the debtor contests the claim. For claims exceeding €2 000, representation is compulsory in proceedings for a full judgment, or in the order for payment procedure if the debtor contests the claim. In these cases the parties must be assisted by a lawyer and represented by a legal representative (Article 31 of the Code of Civil Procedure).</p>	<p>Is representation compulsory? Pre-judgment costs Post-judgment costs</p> <p>There is no representation.</p>	<p>Is use compulsory? Costs</p> <p>No, but the use of experts is recommended in certain cases and is paid for by the party requesting it. They vary according to the scope and subject of the expert opinion to be issued.</p>
Case A	The same as for the previous case	Idem	Idem
Case B	The same as for the previous case	Idem	Idem

## Costs for witness compensation, deposit or guarantee and other relevant costs.

Case study	Witness compensation	Pledges or security
	<p>Are witnesses compensated? Costs</p> <p>Witnesses are entitled to claim for losses incurred in attending hearings from the party that has called them (Article 375(1) of the Code of Civil Procedure).</p>	<p>Does this exist? When and how is it used? Costs</p> <p>No prior pledge or security has to be lodged. Security is required only for appeals against certain decisions.</p>
Case A	The same as for the previous case	Idem
Case B	The same as for the previous case	Idem

## Costs for legal aid and other reimbursement

Case study	Legal aid	Reimbursements
	<p>When and under what conditions is it applicable?</p> <p>When is the support total?</p> <p>Conditions:</p> <p>Lack of financial means is said to exist where the individual can demonstrate that his or her resources and income, calculated annually, from all sources and per family unit, do not exceed double the Public Index of Income (IPREM) in effect at the time of the application.</p> <p>The Legal Aid Commission determines the services for which legal aid can be granted. Aid may be requested for just one of the services provided for in the Law (e.g. to cover the court fee).</p>	<p>Can the winning party obtain reimbursement of litigation costs?</p> <p>When and under what conditions is it applicable?</p> <p>When is the support total?</p> <p>Conditions:</p> <p>Generally all or most of the lawyer's fees, provided they do not exceed one third of the amount of the claim, legal representative's fees and advances on these fees, and experts' fees, as the case may be, can be reimbursed after assessment of the costs.</p> <p>When there is an order to pay costs to the applicant (Article 394 of the Code of Civil Procedure), following assessment of the costs by the Court Clerk.</p> <p>Order to pay costs to the other party.</p>
Case A	<p>It applies to persons who can prove that they have insufficient finances to institute legal proceedings (including fees of lawyer, legal representative and expert).</p> <p>The same as for Case B</p>	<p>Idem</p> <p>Idem</p>
Case B	Idem	Idem

## Costs of interpretation and translation

Case study	Translation	Interpretation
	<p>When and under what conditions is it necessary?</p> <p>Documents submitted in a language other than Spanish (or, where applicable, the language of the Autonomous Community where the case is being heard) must be accompanied by a translation. The document can be translated privately. If one of the parties challenges that translation on the grounds that it is not accurate, giving reasons for this claim, the Court Clerk will order an official translation to be made of the disputed part of the document at the expense of the party which submitted it. If the official translation is substantially identical to the private translation, the costs must be paid by the party who challenged the translation.</p>	<p>When and under what conditions is it necessary?</p> <p>When a person who does not speak Spanish or, as the case may be, the other official language of the Autonomous Community in which the proceeding is held, has to be questioned, to make a statement or to be notified of a court decision, any person who speaks the language in question and who has sworn or promised to translate accurately may be appointed as interpreter.</p> <p>The costs depend on whether or not a professional interpreter is used.</p>
Case A	Idem	Idem
Case B	Idem	Idem

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