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## ***BRIEF GUIDE TO ROAD TRAFFIC ACCIDENTS IN SPAIN***

Our personal injury department is pleased to present this brief guide to Road Traffic Accidents in Spain. We operate throughout the Spanish territory including the Balearic and Canary Islands. We are based in Lincoln's Inn, London, and provide expert advice in every aspect of Spanish personal injury including fatal accidents, professional negligence, brain injuries and other severe disabilities, claims against local and central authorities, medical negligence, poisoning and pollution and tripping and slipping. Please do not hesitate to contact us for any queries regarding personal injury in connection with Spanish law.

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## **DIRECT ACTION AGAINST THE INSURANCE COMPANY**

The claimant can bring proceedings directly against the insurance company rather than the motorist defendant.

## **STATUTORY PERIOD FOR ROAD TRAFFIC ACCIDENTS**

1 YEAR running from whichever is the latest: 1- Date of the accident 2- Date of termination of criminal proceedings (if any) 3- Date on which it is possible to obtain a final medical prognosis detailing the extent of the injuries. These general limitation rules will apply to minors regardless of their age.

## **INTERRUPTION OF THE STATUTORY PERIOD**

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The claimant can extend the limitation period for a further year by: 1- Bringing an action before the courts 2- Submitting an out-of- court claim to the proposed defendant, which claim will have to comply with formal requirements established by Spanish law for the interruption to be valid. 3- Obtaining acknowledgement of the claim from the proposed defendant.

Once the statutory period has been interrupted each subsequent communication will extend the statutory period for an extra year. The statutory period can therefore be interrupted year after year. As a consequence of the direct action against the Insurance Company, obtaining acknowledgement of the claim from the insurance company of the defendant will be considered valid for the purposes of interrupting the statutory period.

## **OBTAINING COMPENSATION WITHIN CRIMINAL PROCEEDINGS**

Under Spanish law criminal jurisdiction takes precedent over civil jurisdiction and is competent to award compensation for the personal injury suffered. Seeking compensation within criminal proceedings is often faster and more cost effective and therefore it is a usual practice for personal injury claimants in Spain to lodge a complaint with the criminal court to obtain compensation. The statutory period to enter an appearance at the criminal court for misdemeanors is 6 months from the date of the accident. If the statutory period to file criminal proceedings has elapsed, the claimant will always have the option of seeking compensation within the civil proceedings. Using criminal or civil proceedings makes no difference as to the total amount of compensation to be obtained.

## **HOW COMPENSATION IS CALCULATED**

Compensation is calculated according to set scales contained in Law 30/1995. The amounts established by the scales are updated every year by the Spanish Ministry of Finance.

## GENERAL DAMAGES

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The award for the pain and suffering arising from the injury will be differentiated in a “Temporary” and a “Permanent” damage:

**1-Temporary General Damage** will cover the number of days the claimant has been unable to either work or perform his daily normal activities, distinguishing between the days at hospital and days out of hospital.

**2-Permanent General Damage** will compensate for the conditions that are considered permanent, this is, those injuries that will not heal. Calculation is carried out by identifying the injury as listed in the set scales. Every injury has a minimum and maximum “value” in terms of damages. The scales will take into account the age of the claimant, the pain suffered, recovery rate and prognosis, the extent of the treatment required, whether the symptoms have accelerated the onset of any other condition and whether the injuries have reduced the life expectancy.

An increase of up to 75% may be applied in those cases where the claimant has been left with serious injuries such as quadriplegia, paraplegia, total blindness, certain limb amputations or serious cerebral syndromes.

Where the claimant has a pre-existing condition, the court will only grant compensation to the extent to which the claimant was further injured. Similarly, where before the trial or settlement the claimant suffers a separate incident, accident or disease, the court will avoid making the defendant compensate for the aggravation or exacerbation of the claimant’s conditions, or the increase of any loss caused by the second event.

**2.1. Loss of future earnings** will be recoverable by applying set increasing percentages contained in the scales to the final award for “Permanent Damages”. The percentages will vary according to the net annual income of the victim at the time of the accident. For example, in 2006 for an annual net income of 23.291 Euros, 10% will be added; for an annual net income ranging from 23.292 Euros to 46.583 Euros, a percentage between 11% to 25% will be applicable.

**2.2. Loss of earning capacity**, where the injuries have handicapped the claimant and/or damaged his position on the labour market, this will be recoverable by applying set increasing percentages contained in the scales to the final award for “Permanent Damages”. The percentages to be applicable will vary depending on the degree of incapacity of the claimant as follows:

- a- **Permanent partial**: the claimant’s usual occupation is partially restricted. It does not however prevent him from carrying out ‘fundamental’ tasks. .

- b- Permanent total: complete inability to carry out ‘fundamental’ tasks of the claimant’s usual occupation.
- c- Permanent absolute: complete inability to carry out any task or any occupation or activity.
- d- Complete disability: this will be cases such as total blindness, quadriplegia and paraplegia, coma, serious psychiatric injuries etc.

**2.3. Future costs** will be recoverable by applying set increasing percentages contained in the scales to the final award for “Permanent Damages”. This will include future medical expenses, the future costs of nursing care, the cost of adapting a home or car to meet the claimant’s particular needs, the higher costs of living occasioned by the claimant’s continuing condition.

**2.4. Loss of amenity** is not recoverable under Spanish law as such. It might be considered by the judge when calculating the award for Permanent General Damages.

## SPECIAL DAMAGES

**Loss of Earnings (pre-trial)** will be recoverable by also applying set increasing percentages to the final award for “Temporary Damages”. The scales only take into account the specific earnings of the victim at the time of the accident and not the level of financial loss incurred by the victim, as under English law.

**Medical Expenses pre-trial**, including medical, hospital and pharmaceutical expenses, shall be recoverable by law. Other expenses, such as services rendered by third parties (the value of the unpaid care provided by a member of the family or friend to the claimant and the cost incurred by such carers visiting hospital, or taking unpaid time off work), the cost of repairing property damage in the accident (clothing or spectacles) or travel expenses are not included in the scales and therefore are left to the judge’s discretion.

## INTEREST ON DAMAGES & PUNITIVE INTEREST

The Spanish courts will have the discretion to award interest on damages as compensation for the lapse of time between the date of the accident and the date in which the award is granted by the court. The same rate of interest is applicable to both Special and General Damages. The rate is set annually by the Bank of Spain.

A punitive interest consisting of a 50% increased of the legal interest set up by the Bank of Spain shall be applicable if either an initial payment into court is not effected within 40 days from the date in which the insurer was made aware of the accident or within 3 months from the date of the accident. Should such initial payment be delayed by the insurer for more than 2 years from the date of the accident, the minimum interest applicable will be 20%.