

# NOTARY NOTES

**Alberto Perez Cedillo** explains the role of notary publics in Spain and highlights the impact on them of recent legislative changes

Spanish notaries are legal professionals and public servants. In their latter role, they authorise public documents, acts, wills, etc. Only documents executed before a notary public can be accepted by a registry in Spain. Wills, deeds of charge, conveyancing, acceptance of inheritance and other documents are drawn up by the notary public in a specific format in which they declare what is happening before them.

Their role in the execution of wills is essential, as they witness the date of signature, the content, the testator's signature, their capacity, etc. Notaries, as representatives of the state, have a duty to uphold public trust. Their role is to record what they see, hear and perceive, as a public record, and to submit this to the public archives. The validity and veracity of the acts recorded by a notary public are extremely difficult to challenge before a Spanish court of law. It is, thus, vital that the document is drawn up by the notary public declaring that he or she knows: the particulars of the appearers from their personal documentation, which they give to the notary; that they are acting in

their own name and right; that they have in the notary's opinion the necessary capacity to execute the will; and that they are fully aware of the consequences of the will.

## VOLUNTARY JURISDICTION ACT

The *Voluntary Jurisdiction Act* took force in July 2015. It aims to consolidate current regulation in Spain in connection with civil and commercial matters, and to bring it in line with that of other European countries. The Act also aims to simplify and update procedures in matters where there is no dispute, but the intervention of a member of the judiciary is required.

The Act distinguishes between matters of voluntary jurisdiction and other matters. Matters of voluntary jurisdiction will be processed by the judiciary; other matters will be addressed by notaries and registrars (the *Notarial Act* and the *Mortgage Act* will need to be amended accordingly).

Under the Act, court clerks, notaries and registrars are entrusted with matters requiring their preparation and technical experience. Notaries will deal with solemnisation of marriages, separations and divorces in cases of mutual consent, no children and non-contested monetary claims. Court clerks will deal with the appointment of the Spanish equivalent of the executor, mutual-consent divorces and segregation of unregistered land, among other matters.

Land registrars will also deal with conciliation meetings regarding property disputes, and appointment and revocation of commercial auditors. Companies House registrars will deal with auditing of accounts and conciliation meetings regarding commercial disputes.

## BRUSSELS IV

*Regulation (EU) No.650/2012* (also known as Brussels IV) will have a great impact in Spain and other jurisdictions. It came into force on

17 August 2015; up until that date all matters regarding succession in Spain were governed exclusively by the laws of the nationality of the deceased at the time of their death, regardless of the nature of their property and the country where it was located. This was based on one of the fundamental elements of Spanish law: the principle of unity of succession, meaning only one law would apply to the succession.

Notaries in Spain will have an important role to play under Brussels IV, as it appears they will be a recognised authority for the purposes of issuing the European certificate of succession. The certificate will 'enable a person to prove his or her status and rights as heir or his or her powers as administrator of the estate or executor of the will without further formalities'.<sup>1</sup> The certificate is to be recognised in member states and aims to simplify the procedures for beneficiaries and executors of cross-border estates.

## CONCLUSION

It is hoped the *Voluntary Jurisdiction Act* will help reduce the backlog of work facing the Spanish courts. The new law increases the powers of notary publics, land registrars and court clerks, with the aim of swiftly resolving non-contentious matters. With regard to Brussels IV, there are still technical challenges that must be overcome relating to matrimonial property, succession agreements and certificates of succession. How will notaries in Spain know if another jurisdiction has already issued a certificate of succession? What happens if various jurisdictions issue different certificates? Some of these questions will be raised before member states' courts and tribunals, and may in turn be referred to the European Court of Justice. Only then will we have certainty.

1 [bit.ly/eu\\_succession\\_wills](http://bit.ly/eu_succession_wills)



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