



Revision of the price of public contracts for the supply and digitisation of notarial and registry proceedings

Law 11/2023 amends various relevant regulations, including the Public Sector Contracts Law, the Notaries Law, the Commercial Code and the Spanish Companies Act

Background

On 9 May, Law 11/2023 was published in the Official State Gazette (BOE), amending more than 20 laws, regulations and royal decrees, impacting issues as diverse as public procurement, mortgage legislation and other civil and commercial laws. Among them are the Notaries Law, the Commercial Code and the Spanish Companies Act, with significant implications in practice.

The amendments that seem most interesting to us, and which we will comment on below, are those relating to the possibility of reviewing the price of public procurement contracts and to the digitalisation of certain notarial and registry procedures, allowing certain transactions to be carried out online.

Review of the price of supplies

Final Provision 7 of Law 11/2023 modifies two articles of the Public Sector Contracts Law (LCSP), but we will focus on the reform of sections 2 and 5 of Article 103 regarding price revision. This modification is in force since the publication of Law 11/2023 in the BOE.

The novelty is that, at last and as a general rule, it is now possible to review the prices for public service, supply or service concession contracts. Previously, this was reserved for works contracts, supply contracts for the manu-

facture of armaments and equipment for public administrations, or energy supply contracts.

The price revision mechanism proposed by the reform allows indexing part of the contract price to the variations in the costs of raw materials, energy and intermediate goods used in the performance of the contract during its term. To this end, tender specifications must indicate the respective reference indices with which to measure the variations in the mentioned costs.

For the tender specifications to include this revision mechanism, the reform requires that the sum of the costs of raw materials, intermediate goods, and energy to be used for the contract execution exceed 20 percent of the base tender budget.

The news is positive, as this small reform of the LCSP represents a solution to the serious problems that suppliers of goods to the public sector have been suffering since 2021. They have generally faced tight supply prices and have been unable to revise contract prices at the same time, despite the progressive and disproportionate escalation of prices of raw materials, energy and intermediate goods used to meet supplies.

In any case, indexation remains an option allowed by law, but it must necessarily be provided for in tender specifications. Thus, there is still work to be done, both to convince of the





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need to include indexation of these costs into the specifications and to devise systems that make their application easy.

Online notarial procedures

Law 11/2023 also amends various civil and commercial laws to digitise notarial and registry proceedings and to allow certain procedures to be carried out online. This transposes into Spanish law Directive (EU) 2019/1151 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in the field of company law.

Interested parties will be able to carry out numerous acts or contracts before a notary online, without having to travel to a notary's office. This process will ensure the same security and guarantees as these were carried out as in-person. Consequently, any European Union citizen will be able to carry out all these procedures from any location, without the need to be physically present in Spain.

The following actions can be carried out online:

- (i) Company actions: incorporation of companies (only with cash contributions), appointment and dismissal of directors, granting of powers of attorney (only with cash contributions), capital increases and reductions, amendment of bylaws, changes of registered office, liquidation of companies.
- (ii) Powers of attorney, whether general or special, and their revocation, as well as powers for legal proceedings and powers of representation before public authorities.
- (iii) Commercial policies.

- (iv) Notarial minutes of general meetings.
- (v) Letters of payment and mortgage cancellations.
- (vi) Signatures authentications.
- (vii) Declarations of new construction and division of horizontal property.
- (viii) Wills, in case of confinement due to pandemic.

To carry out these actions, access must be gained to the "Portal Notarial del Ciudadano" (<https://www.portalnotarial.es/>), which is the electronic headquarters of the General Council of Notaries. The execution and authorisation of notarial documents will be carried out, depending on the case, by electronic appearance or video conference. The identification and signature, both of the notary and of the parties involved, will be done by means of their recognised or qualified electronic signature. For example, the one issued by the Spanish "Fabrica Nacional de Moneda y Timbre" (FNMT). This type of signature allows the signature to be reliably identified and protects the signed documents against any manipulation or forgery, giving the same legal validity as a handwritten signature.

The deeds and other documents issued by the notaries may also be in electronic format. These "authorised electronic copies" shall have the same legal validity as paper copies.

Commercial Register and Land Registry

Although much progress has already been made in recent years to digitise the Commercial Register and the Land Registry, Law 11/2023 introduces new features that will make these registers fully electronic. This means that documents requiring registration can now be filed



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electronically, although the option of doing so in-person will still be available. If the option of electronic filing is chosen, it must be done through the designated single electronic platform.

To ensure proper record-keeping, the document to be submitted for registration must be digitised with a “time stamp”. This is a mechanism to prove that the document was created at a certain point in time and has not been modified since then. This time stamp is usually generated by applying the qualified or qualified electronic signature on the document.

Every document issued by the Registry will come with a secure verification code (CSV), that will allow verification of the authenticity and integrity of the document at any time. The information will only have to be requested once and can be provided as many times as necessary.

These new developments in the notarial sphere are expected to come into force no later than November 2023, while in the land registry sector no later than May 2024.

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