A LEGAL FRAMEWORK BEFORE CAPITAL MOVES

12

Legal Questions Before Investing in a Spanish Development Project

A working checklist for private investors, family offices, developers and financing parties.

LEGAL STRATEGY FOR REAL ESTATE CAPITAL.
FROM LAND TO EXIT.

Vladimir Martsev
Attorney-at-Law · International Lawyer
Managing Partner, MARTSEV DUQUE GARCÍA PARTNERS
Legal Counsel for Real Estate Developers & Investors in Spain

October 2026 · English edition
Use this checklist to identify missing evidence and frame your legal review. It is general information, not an assessment of any particular investment.

Asset, planning & authority

01 What exactly am I investing in?

Identify the asset, the contracting entity and the route into the project: land purchase, SPV shares, equity subscription or a loan. Check who owns each right and what is outside the transaction perimeter.

Evidence to request Group chart, title deed, current land registry information, cap table and draft transaction documents.

Watch for The presentation names a project, but the contract funds a different entity.

02 Can the intended project legally be built?

Review planning status, permitted use and buildability with local planning and technical advisers. Identify required permissions, conditions, urbanisation obligations and practical dependencies. A pending application is a different risk from an effective permission. [S2]

Evidence to request Planning report, licence and conditions, approved project, municipal correspondence and technical review.

Watch for The business plan assumes more units or an earlier start than the permissions support.

03 Who can bind the company and approve the deal?

Check signing powers, directors, shareholder approvals and existing commitments. Assess essential-asset approvals under article 160(f) of the Companies Act where relevant. The transaction value and the latest approved balance sheet matter. [S1]

Evidence to request Mercantile registry information, articles, powers, resolutions, accounts and existing finance covenants.

Watch for A signature is available, but required corporate or lender consent is missing.

Capital, security & control

04 What rights come with my capital?

Define the instrument, return mechanics, information rights and consent rights. Review how the investment agreement, shareholders agreement and articles operate together. Check how the intended rights bind the company and future shareholders. [S1]

Evidence to request Investment terms, shareholders agreement, articles, loan terms and reporting schedule.

Watch for Commercial promises appear only in a slide deck or a private side letter.

05 What supports repayment, and who ranks ahead?

Map existing debt, security, payment priorities and permitted new borrowing. Check creation, registration, ranking and enforcement of the proposed security. Analyse insolvency treatment with specialist advice. Security needs a realistic value and recovery assessment.

Evidence to request Debt schedule, security documents, registry evidence, valuations and intercreditor arrangements.

Watch for A promised first-ranking position conflicts with existing security or future senior debt.

06 Who controls cash and future funding?

Agree the approved budget, permitted payments, drawdown evidence and reporting. Define who funds overruns, who can call further capital and what happens if a participant cannot contribute. Model the effect of additional debt or equity on the original investor.

Evidence to request Sources-and-uses model, cash waterfall, bank mandates, drawdown rules and overrun plan.

Watch for Capital enters an unrestricted account and can leave the project without meaningful oversight.

Delivery, timing & sales

07 Do legal milestones match the payment schedule?

Align land instalments, licence conditions, investor funding and lender drawdowns. Identify long-stop dates, extension rights and the cost of delay. Test the contracts against the same downside timetable before accepting fixed payment dates.

Evidence to request Integrated milestone schedule, land contract, funding conditions and licence timetable.

Watch for A land payment becomes due before financing can satisfy its drawdown conditions.

08 Who carries construction and completion risk?

Review scope, pricing, changes, time extensions, payment certification, insurance and termination. Coordinate legal review with independent technical and cost review. Check whether replacement, assignment or direct-agreement rights are needed for the funding structure.

Evidence to request Construction contract, scope, programme, insurance, guarantees and technical cost review.

Watch for Cost and completion assumptions in the finance model have no equivalent contractual support.

09 How do sales obligations affect project cash?

Check reservations, sale contracts, cancellation rights, release mechanics and completion requirements. For residential advances, review the applicable guarantee and special-account regime and its timing under the Building Act. [S3]

Evidence to request Sales templates, advance-payment guarantees, account arrangements and mortgage release terms.

Watch for The model treats every purchaser deposit as unrestricted cash available for construction.

Downside, exit & closing

10 What happens when a key assumption fails?

Define default events, notice, cure periods, suspension and termination across the relevant contracts. Examine whether enforcement or replacement rights need third-party consent. A licence delay, budget overrun and shareholder breach may require different responses.

Evidence to request Default matrix, cure timetable, termination provisions and relevant consent requirements.

Watch for The investor has a contractual remedy that cannot operate alongside the senior lender documents.

11 Can I exit, and who must cooperate?

Compare share sale, asset sale, refinancing and repayment routes. Review transfer limits, drag and tag provisions, valuation, consents, security release and distribution conditions. Test exit if no buyer or refinance is available. A target date does not itself create liquidity.

Evidence to request Exit clauses, consent matrix, waterfall, sale assumptions and sensitivity model.

Watch for The projected return depends on a future lender or buyer with no committed obligation.

12 What must be true before the first transfer?

Turn findings into conditions precedent, completion deliverables and post-closing actions with named owners. Confirm the agreed risk allocation, document versions and funds flow. Coordinate legal, tax, financial and technical advice before authorising capital movement.

Evidence to request Final DD findings, signed documents, approvals, completion checklist and agreed funds flow.

Watch for The deal closes on an assurance that essential evidence will arrive afterwards.

Turn questions into a closing plan

For each unanswered question, record the missing evidence, responsible person, deadline and consequence for funding. Resolve critical conditions before capital moves.

01 Define the decision
Identify the next commitment: a deposit, acquisition, investor entry, facility signing or drawdown.

02 Build the evidence file
Assemble the ownership structure, land and licence records, capital terms, key contracts and project timetable.

03 Commission the right review
A Development Legal Audit can map an existing project. Investor Legal DD can focus on the proposed capital entry and protections.

Discuss a project

Vladimir Martsev · Attorney-at-Law · International Lawyer
Managing Partner, MARTSEV DUQUE GARCÍA PARTNERS
Send a short outline of the asset, location, investment route and next milestone.
vmartsev.abogado.es@gmail.com
+34 722 33 83 80 · mdglex.com

SOURCE NOTES / REVIEWED 28 OCTOBER 2026

S1 Companies Act (RDL 1/2010), arts. 29, 93 and 160(f). Corporate rights and approvals depend on the structure and documents.
https://www.boe.es/buscar/act.php?id=BOE-A-2010-10544

S2 Land and Urban Rehabilitation Act (RDL 7/2015), art. 11. Regional and local planning rules require project-specific review.
https://www.boe.es/buscar/act.php?id=BOE-A-2015-11723

S3 Building Act (Ley 38/1999), additional provision 1. Check the scope and timing of residential advance-payment obligations.
https://www.boe.es/buscar/act.php?id=BOE-A-1999-21567

This checklist is not exhaustive. Legal DD does not replace tax, financial, technical, valuation or commercial analysis. An engagement requires conflict checks and agreed terms.