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Generational succession without the tax burden: what's new under the family business support act

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The **Family Business Support Act** entered into force on 1 July, following its publication in the Official Gazette of the Community of Madrid on 30 June 2026. The legislation has a clear objective: to facilitate generational succession in family businesses by removing the tax obstacles that, until now, could hinder their transfer. To this end, it introduces a series of specific reliefs under Inheritance and Gift Tax that substantially improve the previous regime.

The first notable development is the increase in the percentage reduction applicable to the value of a family business, from **95% to 99%**, both in the case of inheritances and lifetime gifts. Although the increase may appear modest, its practical impact is significant, as the value effectively subject to taxation is reduced to one-fifth of that under the previous regime.

In addition to this quantitative improvement, the Act considerably expands the range of family members who may benefit from the reduction. Until now, the relief was essentially limited to spouses, descendants and adopted children, while collateral relatives – siblings, uncles and aunts, and nephews and nieces – could benefit only in the case of inheritances and only where there were no descendants.

Under the new rules, the reduction is extended to collateral relatives up to the **fourth degree of kinship** – including cousins, great-uncles and great-aunts, and great-nephews and great-nieces – whether related by blood or affinity, such as brothers- and sisters-in-law, parents-in-law and other relatives by marriage. The relief may apply even where the deceased has descendants. The Act also extends eligibility to individuals outside the family who can demonstrate at least **ten years' service with the company** and **four years performing management functions.**

This expansion of the range of eligible persons is reflected consistently in the other requirements for the reduction. Thus, the **20% combined shareholding threshold,** which until now could be calculated only by reference to the spouse, ascendants, descendants and second-degree collateral relatives, is extended to include relatives up to the fourth degree. This will be particularly useful in companies whose share capital is dispersed among several branches of the family.

Similarly, the group of relatives capable of satisfying the requirement concerning the performance of remunerated management functions is also extended to the fourth degree. In this respect, the Act also resolves two issues that had generated legal uncertainty: it clarifies that the person performing the management role does not need to hold an ownership interest in the company, and that the requirement for the remuneration received to constitute the individual's principal source of income may be satisfied either in the year of death or gift or in the preceding calendar year. This removes the uncertainty that arose when the taxable event occurred during the first months of the financial year.

Another particularly important development for those wishing to plan succession during their lifetime is the removal of restrictions previously imposed on the donor. It is no longer necessary for the donor to be **65 years of age or older**, nor are they required to cease performing management functions. This makes it possible to plan the transfer gradually and flexibly, without making the gift conditional upon a transfer of management responsibilities.

It should be borne in mind, however, that these requirements continue to apply for the purposes of **Spanish Personal Income Tax (IRPF)** at the national level. If they are not met, the donor may therefore be liable to tax on the capital gain arising from the gift.

Perhaps the development with the greatest practical significance is the extension of the rule concerning **subsequently acquired non-business assets** to the calculation of the applicable reduction percentage. Until now, financial assets accumulated on a company's balance sheet – such as cash reserves, investment funds, bank deposits and listed shares – could be regarded as assets not used in the business activity. This could reduce the percentage reduction available and generate significant litigation.

Under the new Act, these assets will be regarded as **business assets**, provided that their value does not exceed the profits accumulated by the company over the previous ten financial years. This provides considerably greater legal certainty and significantly reduces the risk of disputes with the tax authorities.

In short, the measures adopted strengthen Madrid's position as a region with a tax regime favourable to generational succession. However, the possible introduction at national level of a **Tax on Large Inheritances and Gifts** could offset these benefits, as occurred with the **Temporary Solidarity Tax on Large Fortunes.**

In light of this scenario, it is advisable to review the circumstances of each family business individually in order to assess the available options and ensure an orderly succession while the current legislative framework remains in force.

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LABOUR
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What happens when a public holiday coincides with a weekly rest day? The national court consolidates an increasingly broad doctrine

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The coincidence of a public holiday with an employee's weekly rest day has, for many years, been one of the most controversial issues in relation to working time. While many employers took the view that a public holiday was deemed to have been taken where it coincided with the employee's weekly rest day, case law has progressively developed a doctrine that distinguishes between these two rights and rejects the idea that one may replace the other.

The recent **Judgment No. 88/2026 of the National Court** (Audiencia Nacional), **dated 19 May**, represents a further step in this development. It declares unlawful the practice, in the **Contact Centre sector**, of considering a public holiday to have been "taken" simply because it coincides with the employee's weekly rest day. The judgment does not create an entirely new right; rather, it applies and develops the doctrine that the Spanish Supreme Court has been progressively shaping in recent years.

The issue is based on a simple idea: **weekly rest and public holidays serve different purposes.** Weekly rest is intended to guarantee the employee's physical and mental recovery following the performance of work, whereas public holidays are intended to ensure the effective enjoyment of certain celebrations recognised by law or collective agreement. For that very reason, the fact that the two coincide on the same day does not necessarily mean that both rights have been satisfied.

This interpretation began to become established through several **Supreme Court decisions, particularly Supreme Court Judgment No. 570/2022 of 22 June**, concerning the Contact Centre sector, and was subsequently reinforced by **Supreme Court Judgment No. 372/2025 of 30 April,** in the Zara case. These decisions progressively established that an employee should not lose a public holiday simply because it coincides with a previously allocated rest day. However, the practical application of this doctrine continued to give rise to significant disagreement where the weekly rest day was fixed, particularly in companies operating Monday-to-Friday or Monday-to-Saturday working schedules.

It is precisely in this respect that the National Court makes its principal contribution, by extending this reasoning to employees working Monday to Friday or Monday to Saturday whose weekly rest day coincides with a public holiday.

The judgment holds that, in such cases, it cannot be considered that the employee has already enjoyed the public holiday simply because it coincides with their weekly rest day. The National Court emphasises that the two rights are independent and that taking the opposite view would deprive the right to the effective enjoyment of public holidays, recognised in Article 37.2 of the **Workers' Statute**, of its substance.

The Court also rejects the employer's argument that it is sufficient to comply with the annual calculation of working hours. In other words, the fact that the total number of hours worked during the year is correct is not, in itself, sufficient to establish that the employee's right to enjoy public holidays has been respected.

The National Court considers that, where a public holiday coincides with the weekly rest day, **compensation must be provided to ensure that the public holiday can be effectively enjoyed.** In the case examined, that compensation must take the form of an additional day of rest to be granted within the following fourteen days.

Although the judgment was issued in the context of the interpretation of the **National Collective Agreement for the Contact Centre sector,** its reasoning is clearly of interest to other sectors, since it is based on general principles concerning the distinct nature of weekly rest and public holidays. For this reason, many companies are currently reviewing their working calendars and working-time arrangements in anticipation of the possible consolidation of this line of case law.

Nevertheless, caution is advisable. The National Court's judgment does not automatically mean that all collective agreements must apply an identical solution, since collective bargaining provisions governing working time may contain significant particularities. It will most likely be the Supreme Court that ultimately defines the general scope of this doctrine and determines the extent to which it can be extended to other sectors of activity.

In any event, the trend in the case law appears clear. The courts are increasingly reinforcing a more protective interpretation of the right to rest, giving priority to the **effective enjoyment of rest periods.**

In conclusion, the National Court's judgment represents a further step in the development of case law concerning the coincidence of public holidays and weekly rest days. Rather than creating a new right, it consolidates a trend initiated by the Supreme Court: **weekly rest and public holidays are autonomous rights with different purposes, and their coincidence should not, in the absence of an express legal or regulatory provision, result in the loss of the right to enjoy the public holiday.**

From an employer's perspective, this judgment makes it advisable to review the applicable collective bargaining provisions and the criteria used when preparing working calendars, particularly in organisations where employees have fixed rest days under Monday-to-Friday or Monday-to-Saturday working patterns. Although the doctrine may still evolve, taking this criterion into account may help prevent future collective disputes and individual claims.

Procedural tools for avoiding or mitigating imprisonment for tax offences

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Tax offences are among the criminal offences that generate the greatest uncertainty and concern for taxpayers under investigation, not only because of the social stigma they entail, but also because of the genuine risk of imprisonment. The penalties provided for in Article 305 of the Spanish Criminal Code can reach up to six years' imprisonment in aggravated cases, and the common accumulation of several tax years in respect of which fraud has allegedly been committed significantly increases that risk. However, the criminal legal system itself provides, at different stages of the proceedings, mechanisms for avoiding or mitigating imprisonment. This article reviews these procedural avenues and the conditions applicable to each of them.

The first issue to consider is the range of custodial sentences associated with tax offences, as defined in Articles 305 et seq. of the Criminal Code: from one to five years' imprisonment in the basic form of the offence and from two to six years in aggravated cases – including, among other circumstances, cases involving fraud exceeding €600,000. These are therefore serious penalties and, combined with the fact that proceedings commonly involve several tax years in respect of which fraud has allegedly been committed, they increase the risk of actual imprisonment. Without going into greater technical detail and, by way of simplification, it can generally be said that convictions resulting in a prison sentence exceeding two years – whether for one or several cumulative offences – may lead to actual imprisonment.

However, the first mechanism provided by the Criminal Code for granting what might be described as a "legal pardon" to a taxpayer who has committed tax fraud is the regularisation of their tax position, systematically regulated in paragraphs 1 and 4 of Article 305. This mechanism involves the full acknowledgment and payment of the tax debt before the Tax Administration has notified the taxpayer of the commencement of verification or investigation proceedings aimed at determining that debt, or before a criminal complaint has been filed on those grounds.

In such cases, the Criminal Code rewards the taxpayer's voluntary action, taken before they become aware that a complaint has been filed, by providing that the exemption from criminal liability also extends to any accounting irregularities or instrumental acts of falsification that may have been used to facilitate or conceal the fraud. In other words, from the perspective of the criminal legal system, the offence is treated as never having existed if the taxpayer has regularised their position.

Where regularisation is no longer possible – because, for example, a tax inspection is already under way – criminal law provides a further mechanism for mitigating the punitive consequences. Article 305.6 of the Criminal Code allows for a sentence to be reduced by one or two degrees, provided that, within two months of being summoned before the court as a suspect, the taxpayer pays the tax debt and formally acknowledges the facts before the court.

A reduction in the sentence by one or two degrees can take the offender outside the range in which an immediate custodial sentence becomes likely. The resulting sentencing ranges may therefore be reduced to six months to one year in the basic form of the offence, or from one to two years in aggravated cases.

If, for reasons of financial inability or legal strategy, neither of the above options is pursued, the remaining avenues for mitigating the consequences are those generally available in relation to all criminal offences: seeking mitigating circumstances that reduce the sentence or obtaining a suspension of a custodial sentence imposed by the court.

As regards mitigating circumstances, particular reference should be made to "reparation of the damage", provided for in Article 21.5 of the Criminal Code. In order for this mitigating circumstance to apply, the taxpayer must pay at least a substantial part of the tax debt, taking into account their financial means. Such payment must be made before the trial takes place, rather than afterwards, since the benefit arising from reparation is a circumstance affecting criminal liability and must therefore be reflected in the judgment.

As regards its effect on sentencing, the court should impose the penalty in the lower half of the applicable range and may even reduce it by one degree if, in the particular circumstances of the case, the mitigating circumstance is considered to be particularly significant.

Finally, as mentioned above, following a conviction it may be possible to obtain a suspension of the custodial sentence, provided that the sentence, or the aggregate of the sentences imposed, does not exceed two years' imprisonment. Even where the aggregate exceeds two years, however, if none of the individual sentences imposed for each separate offence exceeds two years, there may be an exceptional possibility of suspension, taking into account, among other factors, the convicted person's efforts to repair the damage caused.

Does this require full reparation of the damage?
The Criminal Code does not go that far. It should be remembered that this possibility applies to all types of criminal offences and therefore covers a wide variety of offenders and circumstances. The Code merely refers to "effective reparation of the damage or compensation for the harm caused, according to the offender's physical and financial means."

Nevertheless, experience shows that, in cases involving tax offences, the convicted person must make a substantial effort to repair the damage. This also requires complete transparency before the court regarding their financial situation, so as to provide sufficient reassurance as to the seriousness of their commitment to make reparation and to enable the court to assess the extent of the effort made.
In any event, although several options are available depending on the stage of the proceedings at which action is taken, all of them ultimately require the financial capacity to make reparation for the damage caused.

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PUBLIC LAW DIVISION

The Single Register of Rentals after the Supreme Court: the limits of adaption to european law

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The creation of the Single Register of Rentals was intended to become one of the principal regulatory developments affecting the short-term rental market for properties marketed through digital platforms. The objective was clear: to provide greater transparency in the market, facilitate the identification of properties and bring Spanish legislation into line with Regulation (EU) 2024/1028, concerning the collection and sharing of data relating to short-term accommodation rental services.

However, the recent Judgment of the Spanish Supreme Court of 19 May 2026 introduces an important correction by declaring several provisions of Royal Decree 1312/2024 of 23 December null and void. Far from calling into question the European model for the exchange of information, the Supreme Court focuses its analysis on the manner in which the State chose to implement it and on compliance with the constitutional division of powers.

Regulation (EU) 2024/1028 requires Member States to establish registration procedures enabling the identification of units intended for short-term rental and to put in place a system for the exchange of information through a single digital entry point. However, the Regulation itself leaves each State free to organise that system in accordance with its internal structure and allows for the existence of one or more registration procedures, provided that the same unit is not subject to more than one such procedure.

When the European Regulation was adopted, Spain already had regional registers for tourist-use properties, established pursuant to the powers held by the Autonomous Communities in the field of tourism. Royal Decree 1312/2024 nevertheless opted to establish a single nationwide registration procedure linked to the Land Registry, extending it to all forms of short-term rental offered through digital platforms.

It is precisely this issue that lies at the heart of the Supreme Court's judgment. The Court considers that the procedure established cannot be justified under the State's power to regulate public registers, as provided for in Article 149.1.8 of the Spanish Constitution. This is because the register in question is not a legal register intended to provide public notice of rights in rem or acts having civil-law significance, but rather a register of an administrative nature directly connected with the regulation of housing and, in certain cases, tourism activities. Consequently, the Court finds that the constitutional power relied upon is insufficient to justify the registration system established by the Royal Decree.

The judgment also recalls that the European Regulation did not require the creation of a single national register, nor did it require the replacement of the existing regional registers. On the contrary, it allowed previously established procedures to be adapted, provided that the essential rule was respected that the same accommodation unit should not be subject to more than one registration procedure. From this perspective, the Court considers that the model established by the Royal Decree creates an overlap with the existing regional registers that is difficult to reconcile with the objective pursued by the European legislation.

The importance of this ruling extends beyond the Single Register of Rentals itself. The judgment serves as a reminder that adapting domestic law to European Union legislation does not permit the constitutional division of powers to be altered or organisational solutions to be introduced that go beyond the powers attributed to the State. Legitimate objectives, such as improving market transparency or strengthening administrative control mechanisms, must be pursued in a manner that respects both the domestic division of powers and the framework established by the European legislature.

From a practical perspective, the ruling does not abolish the European system for the exchange of information concerning short-term rentals, nor does it call into question the need for effective mechanisms to identify properties advertised on digital platforms. What it does require is a reconsideration of the legal instrument used to achieve those objectives and a review of the relationship between the State system and the existing regional registers.

It now remains to be seen how the legislature will respond. The alternatives include adapting the Royal Decree to the criteria established by the Supreme Court or promoting legislative reform that provides a sufficient constitutional basis and makes it possible to design a system fully compatible with both the Spanish legal system and Regulation (EU) 2024/1028.

From error to fradud: the limits of covergae for intentional misconduct under professional indemnity insurance for lawyers

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For some time, the scope and extent of a lawyer's civil liability for acts or omissions committed in the course of professional practice and capable of causing harm to a client – or, more exceptionally, to third parties with whom the lawyer interacts in the context of that professional activity – has been the subject of debate.

The discussion has focused primarily on breaches of duties of diligence, competence, information and proper management of the retainer, particularly the failure to comply with procedural deadlines, the omission of acts essential to the protection of the rights and interests entrusted to the lawyer, and the extensively debated issue of **loss of a procedural opportunity**. These are generally situations in which the lawyer, without intending to cause the harmful outcome, breaches or improperly performs obligations inherent in the professional engagement.

At the same time, the scope of lawyers' professional indemnity insurance has been widely discussed, particularly the collective insurance policy taken out by the Portuguese Bar Association (Ordem dos Advogados). Among other issues, debate has focused on its classification as compulsory insurance, the validity and enforceability of **claims-made clauses**, the temporal scope of cover, and exclusions relating to facts or circumstances previously known to the insured.

More recently, however, the courts have been confronted with a significant increase in a different type of situation from those that have traditionally given rise to professional liability. These cases no longer concern simply a lawyer who allows a deadline to expire, fails to commence proceedings or provides incorrect or inaccurate information. Rather, they involve situations in which the professional, taking advantage of the trust inherent in their position and the asymmetry of knowledge that exists in the relationship with the client, deliberately engages in conduct that may amount to criminal offences: forging documents, fabricating judicial or administrative proceedings, claiming non-existent fees, costs or charges, providing false information about proceedings that were never commenced, or misappropriating sums entrusted to them by the client.

This raises a question at the intersection of **civil liability, criminal law and insurance law: can compulsory professional indemnity insurance cover the financial consequences of intentional and criminally relevant conduct by a lawyer?**

The answer is far from straightforward or undisputed.

First and foremost, the fact that someone is a lawyer does not mean that every act they perform constitutes a professional act. Professional indemnity insurance is not a general insurance policy covering the lawyer as a person; it covers only risks that are functionally connected with the exercise of the insured professional activity.

It is true that the core activities of legal practice include legal representation and legal advice. However, professional practice also encompasses ancillary or instrumental activities, including the receipt of funds on account, the management of sums entrusted by clients, the payment of taxes, court fees, costs or other charges, and the provision of information regarding the progress of matters entrusted to the lawyer.

It is precisely this broader functional dimension that makes cases involving fraud particularly difficult to classify.

A lawyer who receives funds on account for the purpose of commencing legal proceedings is clearly acting within the scope of their professional activity. But can the same be said where the lawyer fraudulently fabricates the existence of such proceedings, claims fictitious legal costs or creates non-existent procedural steps for the purpose of enriching themselves at the client's expense?

At first sight, it could be argued that the practice of law has merely served as a pretext and that the lawyer's professional status has been used as an instrument for committing an independent financial fraud. From this perspective, the case would not involve the defective performance of a professional engagement, but rather criminal conduct unrelated to the insured professional risk.

The opposing argument, however, is undoubtedly significant. The funds are handed over precisely because a lawyer-client relationship exists. It is the trust placed in the professional, the technical authority associated with their role and the natural asymmetry of knowledge that make the financial disposition possible. Although the acts invoked are false, they are presented as legal or instrumental acts carried out in connection with the professional engagement. The fraud does not arise independently of the professional relationship; it makes use of that relationship, is structured around it and produces its effects within it.

The decisive criterion should therefore not be limited either to the professional status of the person responsible or to the fact that they came into contact with the injured party in the context of a professional engagement. What is truly relevant is whether the harmful conduct is **functionally connected with the practice of law**, or whether the professional relationship merely constitutes an artificially constructed setting for the misappropriation of assets with no genuine connection to the provision of legal services.

Furthermore, the criminal nature of the conduct is not, in itself, sufficient to exclude insurance coverage. Article 14(1)(a) of the Portuguese **Legal Framework for Insurance Contracts** (*Regime Jurídico do Contrato de Seguro*), approved by Decree-Law No. 72/2008 of 16 April (the **RJCS**), prohibits insurance contracts covering criminal, administrative punitive or disciplinary liability. The reason is clear: the sanction must retain its personal nature and preventive function. A lawyer cannot transfer to the insurer a criminal penalty, fine, administrative sanction or disciplinary penalty imposed upon them.

However, paragraph 2 of the same provision expressly excludes from this prohibition any **civil liability that may arise from the offence.** The distinction is fundamental: what is insured is not the offence itself or the sanction resulting from it, but rather the potential civil obligation to compensate the victim for the damage caused.

This distinction is particularly important in the context of compulsory insurance. Under Article 148(2) of the RJCS, unless otherwise provided by law or regulation, compulsory insurance covers intentional acts or omissions by the insured. The protection of the injured party may therefore justify the intervention of the insurer, without prejudice to the insurer's right of recourse against the insured who intentionally caused the damage, under the terms provided for in Article 144 of the same legal regime.

The system seeks to reconcile two competing interests: preventing the injured party from being left without protection precisely where the professional's conduct is most blameworthy, while ensuring that insurance does not become a mechanism allowing the perpetrator to neutralise the financial consequences of their wrongdoing.

In practice, however, this balance is fragile. The insurer's right of recourse is legally coherent but may prove economically ineffective where the lawyer has dissipated the funds received, concealed their assets, ceased practising or become insolvent. In such cases, the insurer compensates the injured party but may find it difficult to recover the amounts paid from the insured.

This highlights the need to classify precisely the nature of the payment sought from the insurer. Under Article 137 of the RJCS, liability insurance covers the risk that an obligation to compensate third parties may arise in the insured's estate. However, an obligation to **compensate** is not necessarily the same as an obligation to **make restitution.**

If a lawyer allows a right to lapse and, as a result, the client suffers loss, the payment due is compensatory in nature: it is intended to repair the damage caused by the lawyer's professional conduct. If, on the other hand, the lawyer receives a sum of money for a specific purpose, fails to carry out the assignment and retains the amount received without lawful justification, the resulting obligation may be restitutory in nature: its purpose is to deprive the lawyer of a financial benefit that they should never have retained.

The distinction is subtle but decisive. From the client's economic perspective, both situations result in a financial loss. Legally, however, the function of the payment is different: in one case, it compensates for damage; in the other, it restores an improperly obtained benefit.

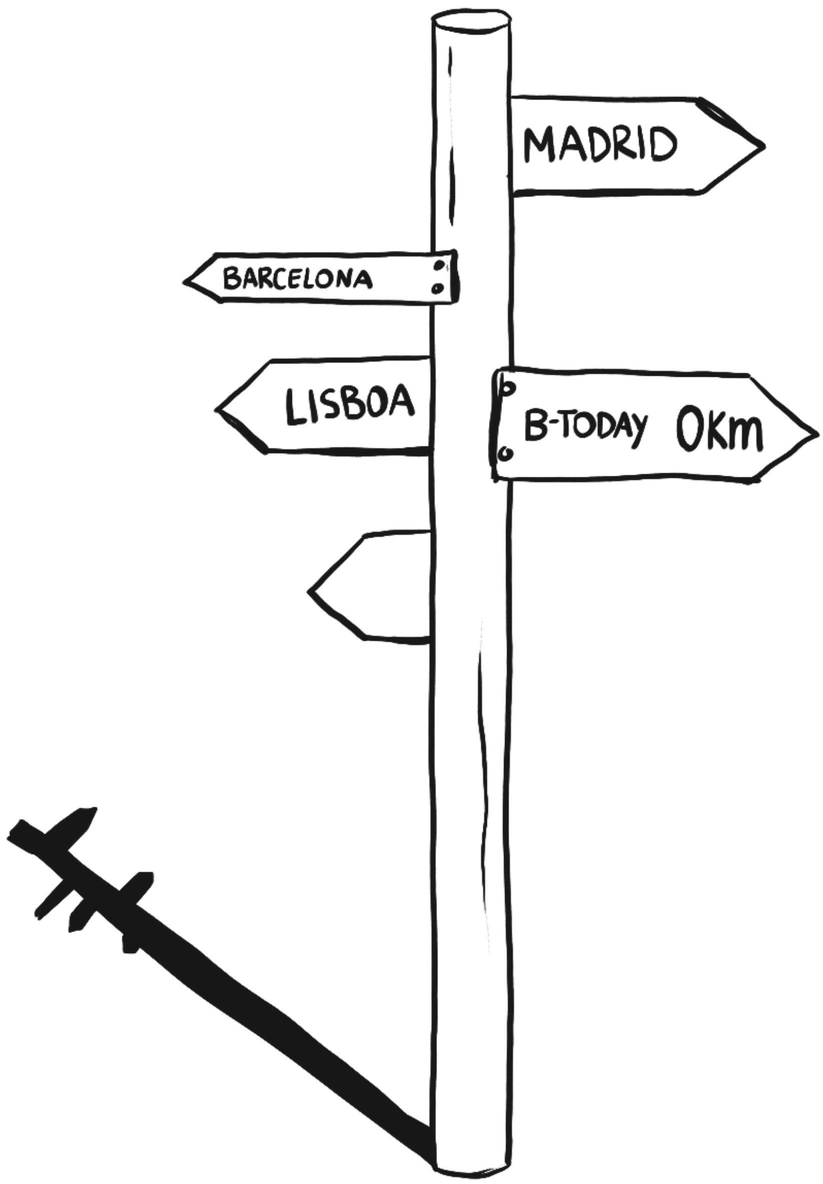
It is true that case law has increasingly emphasised the protective function of compulsory insurance and the need to avoid leaving an injured party without redress in the face of particularly blameworthy professional conduct. Nevertheless, some decisions have recognised the significance of this distinction, particularly where, alongside claims for compensation based on loss of opportunity or breach of the professional engagement, the claimant also seeks the repayment of legal fees, funds paid on account or sums provided for actions that were never carried out.

In such cases, the solution rests on a simple, though legally significant, principle: **liability insurance should not serve to restore to the client money that was paid directly into the insured's estate and from which the insured obtained a personal benefit.** Civil liability cover should not be confused with a guarantee for the restitution of the benefit obtained by the perpetrator of the wrongful act.

The appropriate approach requires a substantive analysis of the function of the payment claimed. It is necessary to determine whether the claimant seeks to have the insurer compensate for independent losses resulting from the intentional conduct – such as additional expenses, loss of rights, financial charges, loss of opportunities or non-material damage – or whether the insurer is instead being asked to take the lawyer's place in returning the financial benefit that the lawyer obtained directly and incorporated into their own assets.

The intentional or criminal nature of the conduct should not automatically exclude coverage, as this would undermine the protective purpose of compulsory insurance. At the same time, however, it does not appear acceptable simply to transfer to the insurer the obligation to return what constitutes the direct financial proceeds of the wrongful act.

The real challenge, therefore, lies in finding an appropriate balance: **ensuring that a client who has suffered harm is not left unprotected in the face of intentional misconduct by a legal professional, while preventing the lawyer from transferring to the insurer the obligation to restore assets that the lawyer has unlawfully appropriated.**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