



## Introductory Business Guide: Spain's Legal Overview

### Legal Overview

#### Executive Summary

Spain is relatively lightly regulated when it comes to corporate formalities. Many documents can be completed in an electronic format and company registrations are cheap, simple and many filings can be completed over the internet.

#### Registered Companies and partnerships

The two most common ways for a non-Spanish company to establish a Spanish presence are through either a Spanish resident subsidiary company or a Spanish permanent establishment (such as a branch office).

A company that is incorporated in Spain is automatically a Spanish resident unless an applicable double tax treaty provides otherwise.

A non-Spanish incorporated company is a Spanish tax resident if it has its "central management control" in Spain (subject to any applicable double tax treaty). However, in determining the status a number of factors must be considered and no single factor is necessarily conclusive.

#### Classification of registered companies

In Spain, there are two principal types of company:

Public Limited Company ("Sociedad Anónima")

These may have the following features:

Minimum capital of EUR 60,000 with an initial paid-up capital of at least 25%.

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## Capital divided into shares

Transfer of shares and freedom to transfer the shares.

Shareholders have limited liability according to their own contribution.

Types of contributions include money and assets, although assets require an expert valuation to confirm the value.

Corporate bodies may have a General Meeting and Administrative Board.

An Administrative Board is formed of either a sole director, two directors (individual or joint), or a Board of Directors (usually lead by a Chief Executive Officer).

Term of office is six years maximum. This is renewable and may be revoked at any time.

Limited Liability Companies ("Sociedad Limitada")

These may have the following features:

- Minimum capital of EUR 3,000 all of which must be paid up on incorporation.
- Capital divided into shares;
- Free transfer of shares to spouse, ascendants and descendants' relatives, partners and companies of the Group except statutory provision;
- Shareholders have limited liability according to their own contribution;
- Types of contributions include money and assets but an expert valuation report on the value of assets is optional. The contribution is the Sole responsibility of the person providing the contribution and his/her own successors;
- Corporate bodies may have a General Meeting and Administrative Board;
- An Administrative Board is formed of either a sole director, two or more directors (individual or joint), or a Board of Directors (usually lead by a Chief Executive Officer);
- Term of office is indefinite excepting by-law provisions and may be revoked at any time.

## Constitutional documents and formalities

The main constitutional document for a company is its articles of association. All registered companies must have articles of association and a company must register its articles of association at a public registry unless it adopts the statutory template model articles. In addition to its articles of association, a company has a memorandum of association. In Spain, this is a very simple document and provides basic information about, for example, the initial shareholders.

Other formalities that a required for the setting up of a company include:

- Certification of the corporate name;
- Bank deposit for the social capital amount;
- Obtaining individual NIE by the partner or by the director of the company;
- Public deed before a Notary.

Obtaining provisional VAT number and communication of the Company tax base and the Spanish VAT number to the Tax Office:

- Liquidation of the Constitution tax in the Region's Tax Office: 1% (currently exempt);
- Registration of the public deed in the Commercial Registry;
- Statement of Investment in the Foreign Investments General Directorate: one month from the public deed; and
- Obtaining a definitive VAT number.

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## Share Capital

Share capital only applies to a company limited by shares.

In the Limited Liability Societies, the share capital must be fully paid up at the time of incorporation. Otherwise, in Public Limited Companies, at least 25% of the share capital must be fully paid up at the time of incorporation.

In Limited Liability Companies, the liability of the shareholders is limited to their contribution to the issued shares.

## General Meetings

The General Meetings of the Capital Companies can be ordinary or extraordinary.

The ordinary General Meeting must be held within the first six months of each year in order to approve the corporate management of the company and the accounts of the previous fiscal year.

If no prior notice has been given, any meeting shall be considered as an extraordinary General Meeting.

The General Meeting will be able to deal with any matter, without the need for prior notice, provided that the holders of the entire share capital are present or represented and all the participants accept the holding of the meeting without prior notice.

Some of the decisions of a company, particularly on certain constitutional issues, must be decided by the shareholder(s) of the company.

## Directors

A private limited company requires at least one director. The director or directors usually have the general day-to-day management of the business and take all decisions except for those reserved for the shareholders.

The management of the company will become a sole administrator, several administrators or a board of directors

The administrators of private limited companies may be natural or legal persons.

The directors owe fiduciary duties to the company which are codified in company legislation. This means they are under an obligation, as an example, to act in the best interest of the company and not just follow the shareholders' instructions.

## Financing of a company

Companies are financed in a number of ways:

Capital contribution from shareholders in the form of shares;

Loan, debt and bank finance;

Equity investment from private equity funds;

From the directors'/shareholders' point of view, the advantage of limited liability in practice might be negated to the extent that any personal guarantees are required to be given to third party funders.

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## Commencement of business

There are various requirements that need to be filed before a company may commence business. A simple company formation will generally take about fifteen days to register the public deed of the constitution. A company will need to register with the tax authority and will need to open a bank

account. For an overseas company, it can take between three and four weeks to be ready to trade.

## Mergers and acquisitions

Private limited companies are normally sold via private negotiations. Where one entity acquires the shares of another it is referred to as a "share-sale". Sometimes, it can be preferable to purchase the business of another entity, leaving liabilities with the target corporate entity, referred to as an "asset-sale".

Takeovers of public limited companies in Spain are strictly governed under the relevant codes of practice. There are restrictions on offering shares in private companies for sale to the public and such negotiations are usually conducted with a small number of interested parties on a confidential basis.

## Corporate insolvency

If a company becomes insolvent, the procedures that apply include a liquidation of the business, administration or some form of rescue package.

Where a company goes into administration or is wound up on grounds of insolvency, the directors' conduct is reviewed. If directors have acted contrary to insolvency laws, they can face disqualification proceedings or, in a serious situation, proceedings to recover monies from them personally.

Rescue mechanisms include what is known as a "company voluntary arrangement". This is when the company and its creditors come to an agreement which is implemented and supervised by a qualified insolvency practitioner and may involve the creditors being paid a proportion of the monies they are owed in full and final settlement.

Under an administration, the company is given breathing space under which there is a moratorium to allow it to be rescued or reorganized, or have its assets realized, following which the company is wound-up.

## Winding up of companies

Winding up or liquidation is a last resort, although it may be the simplest and most effective way of applying pressure to the company. This involves the appointment of a liquidator who must be a qualified insolvency practitioner who collects in and sells the company's assets and distributes the cash received in accordance with legal obligations. There are two types of liquidation; either a compulsory liquidation by order of the Court (obligatory), or a voluntary liquidation by resolution of the company (voluntary).



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