

## Spain

### Legal Provisions

Compiled by:

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### **GENERAL REMARKS**

Spain's appeal for foreign investors lies not only in its domestic market, with 47.33 million potential consumers and a further injection from around 83.7 million tourists who visited the country in 2019, but also in the possibility of operating in third-country markets using Spain as a base.

This is thanks to Spain's privileged geostrategic position: it is a member of the European Union and serves as a gateway to the North of Africa and Latin America, due to the country's strong economic, historic and cultural ties with the latter.

In 2019, Spain was in a remarkable position worldwide in terms of the importance of its economy: the 13th largest economy in the world by GDP, the 15th country most attractive for foreign direct investment (FDI), the 13th largest issuer of FDI and the 11th largest exporter of commercial services.

Spain has a modern economy in which services represent 73.3 % of the business activity. It benefits from a young and highly qualified population and it is a costs-competitive country in the context of Western Europe, especially regarding the labour costs of graduate and post-graduate employees.

Companies that set up a business in Spain gain access to the Spanish national market, an attractively large market (more than 47.33 million consumers) with high purchasing power figures (Spain's GDP per capita PPP in 2019 was 42'214 USD; 70'989 USD in Switzerland<sup>1</sup>). In addition, they also access to the markets of the EMEA region (Europe, Middle East and North Africa) and Latin America, given its geostrategic and cultural position and the strong presence of Spanish companies in these regions.

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<sup>1</sup> Source: WorldBank

Geographically, Spain is divided into 17 regional autonomies (“*Autonomías*”), similar to cantons in Switzerland, and two autonomous cities (Ceuta and Melilla). Aside from Spanish, regional languages are considerably maintained, especially Catalan, Basque and Galician.

In Spain, you should be aware that you will move to another economic culture, which in many cases differs from the customs of one’s own country and often varies considerably. You will find more details and helpful indications in the [Business Guide](#).

## CUSTOMS

Spanish (EU) custom duties encompass VAT, tariff and import and export regulations.

Spanish **VAT** regulations are subject to EU Directive 2006/112/EC and Spanish national law. According to the aforementioned laws, there are three cases subject to VAT: supplies of goods and services, intra-community acquisition of goods and the importation of goods. Depending on the circumstances and specifics of the import activity to the EU, the product will include VAT or an import tax.

In general, **tariff duties** between Spain (EU member state) and Switzerland are 0%, but there are exceptions in some areas such as food products.

In order to determine the duties payable when goods pass through Spanish (EU) customs, each good has a **TARIC (Integrated Tariff of the European Community) code** of ten digits. This code and the country of origin (or destination) will provide the tariff, VAT, and the procedures and special requirements on the importation of a particular good.

The Taxation and Customs Union Database [website](#) may be used to determine the payable duties to export to Spain or other EU countries.

## IMPORT AND EXPORT REGULATIONS

Spain belongs to the [EU Customs Territory and the European Union’s Common Commercial Policy](#) determines its import and export regulations. In general, this system could be described as an import and export free regime with three exceptions:

- a) **Authorization regime:** Under this regime, release or customs clearance of goods is subject to an Import/Export license that must be granted by the appropriate authorities of the member states. In Spain, this would be the Spanish General Secretariat of Foreign Trade (*Secretaría General de Comercio Exterior*).
- b) **Vigilance regime:** Under this regime, release or customs clearance of goods is subject to a Vigilance Document. The appropriate authorities of the member states must previously

verify this document. The Spanish General Secretariat of Foreign Trade will carry out this task.

- c) Certification regime: Under this regime, release or customs clearance of goods is subject to an Import or Export Certificate. In this case, the appropriate authority (the Spanish General Secretariat of Foreign Trade) must verify the fulfilment of some requirement that must be met previously.

## CURRENCY REGULATIONS

Spain belongs to the Economic and Monetary Union of the European Union. In 1999, the euro became real currency and the member states adopted a single monetary policy under the authority of the European Central Bank.

## REGISTRATION PROCEDURE FOR PRODUCTS

### 1. General

The registration of a brand covers the entire territory of Spain which includes: continental Spain, the Balearic, the Canary Islands and the municipalities of Ceuta and Melilla, located at the northern coast of Africa.

The protection of a brand in Spain may be obtained not only by national registration of the brand in Spain, but also by the registration of the brand as a Community Trade Mark, which extends to all countries of the European Union.

The Royal Decree-Law implementing the European Trade Marks Directive 2015/2436 which amends the Spanish Trade Mark Law came into force on January 14, 2019. Some of the most relevant amendments are the following:

1. SPTO competence in invalidity and revocation-related proceedings. However, this provision will not be applicable until January 14, 2023.
2. Elimination of the graphic representation requirement from the concept of trademark, which entails opening the Register to “non-conventional” signs, such as smell marks.
3. Possibility to request proof of use of the earlier trademark in opposition, invalidity or revocation proceedings vis-à-vis the SPTO.
4. Registration of a trademark no longer confers immunity.
5. Licensee standing to bring infringement proceedings.

## 2. Duration

The duration is 10 years from the date of filing the application; indefinitely renewable every 10 years.

## 3. Legal effects

- a) The right to use the trademark exclusively in commerce.
- b) Assign or licence the trademark.
- c) Prevent unauthorised third parties from using a trademark or an identical or similar sign for similar products or services.
- d) Oppose the registration of signs that can be confused with yours at the Spanish Patent and Trademark Office (*Oficina española de Patentes y Marcas* or OEPM).
- e) Request from the Tribunals the invalidity of other subsequent trademarks that can be confused with yours.

Only the registration confers exclusive rights, alongside the effect of the registration. However, the user of an older unregistered brand that is well-known to the interested networks in Spain may file an opposition to the registration, or request the competent Court to nullify the registration of a brand, which has been registered for the same or similar goods and purpose which may cause some confusion with the established brand.

## 4. Applicant

Those entitled to obtain a registration of a brand are:

- a) Natural persons or legal entities that have Spanish nationality.
- b) Foreign natural persons or legal entities habitually residing in Spain or having a real and effective industrial or commercial establishment on Spanish territory.
- c) Nationals of world trade organization members.
- d) Foreign natural persons or legal entities not belonging to any categories mentioned under a), b) or c) who are nationals of a State granting reciprocity to Spanish nationals and legal entities.

Applicants not residing in Spain or in another European Union member country must appoint an industrial property agent registered with the Patent and Trademark Office.

## 5. Registrable brands

A brand is a sign capable of being represented graphically and serves to distinguish the goods or services of a company from identical or similar products of competing companies in a given market.

The following may be a brand:

- a) Words or combinations of words, including those serving to identify persons.
- b) Images, figures, symbols and devices.
- c) Letters, numbers and combinations.
- d) Three-dimensional forms, including wrappers, containers, the shape of a product or its presentation.
- e) Sounds.
- f) Any combination of the signs or means mentioned under a), b) and c).

Services brands may be registered. Collective brands and certification brands may be registered.

## **6. Non-registrable brands**

There is an absolute prohibition on the registration of the following brands:

- a) Generic Names: brands that lack distinctive character.
- b) Brands consisting exclusively of signs or indications, which have become the customary or usual designation of the goods or services concerned in current language or bona fide and established trade practices.
- c) Indicators of the geographic origin.
- d) Signs contrary to public order.
- e) Misleading Signs.
- f) Brands reproducing or imitating the coat of arms, flag, decorations or other emblems of Spain, its autonomous Communities, municipalities, provinces or other local entities of Spain, except where the proper authorization is given.
- g) Signs which include badges, emblems or special escutcheons indicated in the previous subsection which may be of public interest except if there is an explicit authorization.
- h) Three-dimensional shapes imposed by nature of the product itself or which produce a technical result or give substantial value to the goods

The enumeration is merely illustrative, not closing.

There is a relative prohibition on the registration of:

- a) Signs that are identical or similar to those already registered for similar products or services.
- b) Signs that take advantage of other signs already registered.
- c) Images or names of third parties without their authorization.

The enumeration is merely illustrative, not closing.

## **7. How to file the application**

The application must be filed with an official form that would include the following documents:

- a) A petition, addressed to the Director of the Spanish Trademark Office, applying for the registration of the trademark, indicating the name and products and services for which it is applied for.
- b) A reproduction of the trademark. If the name is a combined, graphic, sonorous or tri-dimensional trademark, four reproductions of the name, with a maximum width and height of 8x12 cm, is required.
- c) Proof of payment of the official fee.
- d) Attach other documents when they are necessary, for example: the power of attorney, certificate of priority, constitution of the company, etc.

## **8. The procedure**

After the filing, an application will first be examined as to its form. If defects are found, the applicant will be notified and have a term of one month to remedy them.

If the application is formally in order, it is published in the Official Bulletin. A period of two months from the date of the publication is open to any person. After the period for filing the opposition has expired, the Spanish Patent and Trademark Office undertake an examination of the application in respect to registrability per se and oppositions. If an opposition is filed or objections are raised, a notice will be published in the Official Bulletin, and the applicant may then reply to the opposition or objections within one month from that publication. After expiration of the one-month period for the applicant's reply, the Office will decide about the application, and the decision will be published in the Official Bulletin.

An appeal may be lodged against the decision of the Spanish Patent and Trademark Office within one month after the publication of the decision. If no decision is given on appeal within three months, it will be deemed rejected tacitly. A Contentious Administrative Appeal may be filed

before the Courts of the relative jurisdiction against the decision through an appeal.

The procedure should be completed:

- a) Within 12 months if no opposition is filed and there is no suspension of the application or
- b) Within 20 months if an opposition is filed and/or there is suspension of the application.

## **9. Registration of Patents of invention and utility models**

In Spain, products are protected as patents of invention or as utility models. Both are rights granted by the state that bestow the applicant with an exclusive right of use. The exclusive right of use of a patent of invention lasts for a period of 20 years, while the exclusive right of use of a utility model lasts for 10 years.

The procedure to obtain this right requires submitting an application to the Director of the Intellectual Property Register with a description of the product (or invention) to be inscribed, claims that define the matter for which protection is sought, schemes of the product (or invention) and a summary of the product (or invention).

From April 2017 the law in force has changed (*Ley 24/2015, de 24 de julio, de Patentes*). The aim of this new regulation is to put the Spanish law on the same level as international legislation and strengthen the national patent system. This new law simplifies and facilitates obtaining a patent and clarifies some concepts.

# **STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS**

## **1. Labelling and Packaging**

There are EU, Spanish and regional labelling regulations. Some of these regulations are mandatory and others are voluntary. The main aspects of those regulations are, among others, the minimum amount of information provided, the units that must be employed and the languages.

Imports that do not comply with Spanish rules regarding labelling regulations are prohibited.

The country of origin must be shown on all imports and goods bearing trademarks or trade names and all imports and goods must show the name of the manufacturer and the place of production. Specimen labels must be sent to the importer before the consigning of the goods for approval by the relevant Spanish authorities.

Labels on food products must indicate the following information:

- a) The country of origin;
- b) A description of the contents and a list of the principal ingredients, including additives and colorants;
- c) The net weight or volume in metric units;
- d) Instructions for preparation and any special storage instructions;
- e) The date of manufacture or freezing (month and year);
- f) The name of the brand of the producer and the commercial name of the product.

Some items have special requirements:

- a) Coffee, chocolate, wine, milk products and others may have more technical labelling.
- b) Textiles and ready-made clothing must have labels showing the composition of the material. Textiles and clothing imported with foreign labels must also have labels in Spanish, with lettering the same size or larger than that of the foreign language, and in any case, no less than 3mm in height.
- c) Drugs, pharmaceutical and cosmetic products are subject to technical inspection and registration prior to entry. There are other requirements (for example to provide details of the chemical composition).
- d) All imported tires and tubes, except solid tires mounted in metallic rims, must bear a serial number. Serial numbers must be engraved into the metal of motor car engines and chassis.
- e) All manufactures of precious metals must be hallmarked with the government stamp.

## **2. Standards and Technical Rules**

The manufacture, import and selling of food in Spain is highly regulated. EU regulations form the platform of food regulations in Spain. However each industry and in fact, each autonomous region, may apply their own standards, as long as those standards comply with the regulations set by the EU or the World Trade Organization.

The EU has adopted standards from international standard bodies and has also developed its own standards through three organizations: the European Committee for Electrotechnical Standardization, the European Telecommunications Standards Institute and the European Committee for Standardization.



The Spanish Ministry of Industry, Trade and Tourism (*Ministerio de Industria, Comercio y Turismo*) processes homologation applications. It also actively promotes certification and standardization of industrial products, processes and quality control procedures.

### **3. Technical rules**

National technical regulations are published in the Spanish Official State Bulletin (*Boletín Oficial del Estado* or “BOE”) and must contain all new technical regulations approved. There are also organizations, like AENOR or ENAC that compile all regulations and can provide a broader view of them.

As previously mentioned, it should be noted that there is a limit to Spain’s regulating capacity. According to the Agreement on Technical Barriers to Trade, Spain must report any proposed technical regulation that could hinder or affect trade with other member states.

## **TAXES**

### **1. Company Tax**

This tax is levied on income obtained by companies and other legal persons who are residents of Spain, without prejudice to special schemes that may be applied in accordance with the territory, or with International Treaties and Conventions. Resident entities in Spain are those incorporated in accordance with Spanish legislation, or those having their address or their de facto management offices in this territory.

This tax is levied on the income obtained worldwide by these entities, irrespective of where it is obtained and the residence of the payer.

The taxable amount is the income obtained during the company’s financial year, decreased by the offset of any negative taxable amounts of previous years.

The regulation of corporate income tax, for fiscal years starting on or after January 1, 2015, is contained in Corporate Income Tax Law 27/2014, of November 27, 2014, and in Royal Decree 634/2015, of July 10, 2015, approving the Corporate Income Tax Regulations. These legislative texts have introduced important changes in the regulation of this tax.

As of 1st January 2015, the general rate of company tax in Spain was reduced from 30% to 28% and to 25% in 2016. In 2018, this general rate remained the same but taking into account that some deductions were limited or eliminated, corporate tax payments increased because of the restriction of those deductions.

There are also special rates that are applicable to certain entities, such as listed collective investment institutions including real estate investment funds (1%), certain cooperatives (20%) or entities engaging in oil and gas research and exploitation activities (30%).

## 2. Income Tax for non-Residents

Income obtained in Spanish territory by non-resident natural persons or entities is subject to tax. Income can be obtained by such entities:

a) By way of a permanent establishment:

In accordance with the Double Taxation Treaty between Switzerland and Spain, a permanent establishment is considered to be a fixed place of business in which a company carries out all or part of its activity (e.g. including, among others, branches, workshops, factories, installation and assembly works for a duration of more than 12 months).

In addition, an “agent” or natural person acting in Spain on behalf of the non-resident entity is considered a permanent establishment. This would be the case, provided that person holds and usually exercises powers in Spain to sign contracts in the name of the non-resident company, unless those activities are limited to the purchase of goods or merchandise for that company.

Permanent establishments are subject to the same formal, registration and accounting obligations as resident entities in Spain.

Income obtained by a permanent establishment is taxed at the rate of 24%. There is an additional 19% tax on amounts transferred abroad out of income obtained by permanent establishments of non-resident entities, although there are relevant exceptions. It is obligatory to appoint a natural or legal person in Spain to act as a representative vis-à-vis the Tax Administration. This person shall be jointly and severally liable for the payment of tax debts.

b) Without a permanent establishment:

The income obtained by a non-resident natural person will be taxed separately for each income obtained in Spain.

## 3. Value Added Tax

Value-added Tax (VAT) is required on any supply of goods or services made in Spain. The supply should be carried out in the course or furtherance of a business. Supply includes all forms of supply. It is not restricted to the provision of goods and services by way of sale but can apply equally to other forms of transaction. VAT is applied to the end user and not to businesses or professionals who, in general, apply VAT to customers in their invoices, and deduce any VAT paid to their suppliers.

VAT is applied to three types of operations:

- a) Internal operations,
- b) Intra-Community acquisitions and

c) Imports.

The taxable items within internal operations include deliveries of goods and service provisions made in Spanish territory. Intra-Community acquisitions consist of chattels shipped or transported to Spanish territory from another Member State. The import of goods, regardless of their purpose and the status of the importer, and operations similar to the import of goods, are also subject to this tax.

The general rate is 21%. A reduced rate of 10% is applied to certain deliveries of goods and service provisions, for example, houses, and certain food items. The reduced rate of 4% is applied for items of first necessity, books, magazines, medicines and other pharmaceutical products.

For VAT purposes, the Spanish territory is the peninsula plus the Balearic Islands, but it does not include the Canary Islands, Ceuta and Melilla.

#### **4. Transfer Tax**

This is applied to transfers of property and rights located or to be exercised in Spanish territory. The tax is also applied to transfers of property and rights located or to be exercised abroad when at least one party is a tax payer in Spain. The rate of taxation applicable is 6%, unless the competent Regional Government establishes otherwise. The taxation of movable assets and administrative concession it at a rate of 4%.

The applicable rate of taxation of 1% on corporate operations such as the incorporation of companies, increases in capital, contributions by shareholders to reinstate corporate losses, winding-up of companies, has been suspended.

Finally, this tax is levied on notarial, commercial and administrative documents.

#### **5. Foreign trade (Customs duties)**

These are standard duties payable when goods pass through Customs. Usually, duties are based on the CIF value or on a similar invoice value. Since 1993, no Customs duties are applied to goods coming from EU Member States and Switzerland with the exemption of some goods that are subject to tariff duties.

#### **6. Tax on Economic Activities**

The mere existence of any business, professional or artistic operations performed by legal persons in Spain is subject to this tax. This tax is not applied during the first two tax years in which the activity is performed, nor when the net figure of turnover is lower than EUR 1,000,000.

#### **7. Obtaining a Spanish Business Identification Number**

Both natural persons and entities with tax burdens in Spain must be identified for tax purposes. Accordingly, natural persons must obtain a Foreigners' Identification Number (known by its Spanish acronym, N.I.E.) and legal persons a Business Identification Number (known by its Spanish acronym, N.I.F.).

Non-resident persons or entities that incorporate companies in Spain must be identified for tax purposes and must therefore apply for their corresponding N.I.E. or N.I.F., as the case may be.

## **8. Business registration (census)**

In addition, natural persons and entities operating in Spain must apply for the registration of their business in the census, by submitting form 036, so that the Administration can control their tax burdens.

# **COMMERCIAL LAW**

## **1. General notes on commercial contracting**

According to Spanish law, the principle of the autonomy of wills governs commercial contracting.

The principle of the autonomy of wills grants parties the freedom to submit themselves to clauses and agreements, which they negotiate and agree on. Nevertheless, one must bear in mind that specific imperative norms figure in the Spanish legal system, which implies that they prevail over the parties' will. These norms affect specific hiring such as the agency or the franchise contract to which we will refer to next.

Generally, it is not necessary for commercial contracting to be written since the principle of freedom of form grants the same validity to a verbal agreement as to a written contract. In spite of this, a number of exceptions are established by the Spanish rules, such as payments in instalments, consumer loans and other cases. Nevertheless, it is advisable for any contract or commercial agreement to be written and duly signed by the parties in order to facilitate the proof of its existence if necessary.

In a similar manner, it is advisable that the written agreement considers the parties' fundamental rights and obligations as well as specific issues, within which we note the following ones:

- a) Length of the contract, specifying whether an extension is possible and, if so, for how long.
- b) Grounds for terminating the contract, in which it is advisable to include the serious fault of one of the parties.
- c) The jurisdiction, in other words, the tribunals competent in case of a dispute linked to the contract. The parties may submit to ordinary tribunals or arbitration. In relation to the arbitration process, it is common in Spain for the submission to arbitration tribunals to depend on various Spanish commercial chambers or on the Spanish arbitration court.
- d) Applicable legislation: This issue, as well as the jurisdiction one referred to in the above paragraph, is especially relevant when at least one of the contracting parties is not Spanish.

Finally, the applicable laws, notably the Commercial Code norms, the general law and specific norms that affect particular contracts, will govern any question not contemplated in the contract.

## **2. Contract of sale**

Spanish law differentiates between civil and commercial contracts of sale. A commercial contract of sale is governed by commercial norms and supplemented by civil norms. A civil contract is governed only by civil norms. The application of a norm or the other is especially relevant since specific aspects, such as the handing over, the risk transfer, or complaints about faulty products and the prescription, offer a different regulation. We understand by commercial contract of sale the sale contract of movable things in order to resell them, with the intention of obtaining a profit, the rest of the sale contracts having a civil nature.

In the commercial as well as the civil contract, we recognize the seller's obligation to deliver the goods of the sale and guarantee against the goods' defects. Concerning the buyer's obligations, one must emphasize the obligation to receive the goods as well as to pay the price.

It is advisable to prepare a written contract including the terms and procedures to claim defects and eviction, where and when the delivery must take place, all the issues related to the price and its payment, the guarantee of the latter, late interests and who will assume the expenses and risks of the goods during its transport.

## **3. Agency contract**

By the use of the agency contract, an agent, as an independent intermediary, undertakes the obligation towards another person to promote commercial acts or operations on his behalf, or to promote and reach these objectives on his behalf. The Spanish law is based on the EC Directive that refers to independent commercial agents.

One of the objectives of the law is to protect the vulnerable party in a contractual relationship. In favour of this objective, the law dictates a list of imperative rights, rights that an agent cannot give up, in order to protect the agent. These rights include:

- a) The agent's right to be awarded a wage or commission for his work.
- b) The agent's right to be awarded a specific compensation at the termination or end of the contract, including the compensation for the clientele, which will occur when the agent has brought the firm new clients or notably increased the operations with the pre-existing clientele, as well as the compensation for damages caused by the early extinction of an agency contract of indefinite duration by the firm.
- c) Were the parties to agree on a competition limitation after the end of the contract, it could not be for more than two years, it should be in written form, and, for it to be valid, it could only extend to the geographical zone in which the agent had worked, or to the group of people in his hands and could only affect the goods or services objects of the contract.
- d) The competent tribunals will be those of the agent's residency.

#### **4. Distribution contract**

Using the distribution contract, a physical or legal person undertakes the obligation to buy specific goods and to resell them using another person's brand, normally in a specific zone, or to specific clients.

This contract is not regulated by a specific norm. One must note that the Spanish case law is gradually recognising specific compensation rights for distributors at the end of the contract, similarly to those contemplated for the agency contract.

#### **5. Franchise contract**

In Spain, small and medium sized firms frequently use a franchise system to do business.

The parties are free to regulate the agreements and conditions that they judge convenient within the franchise contract, however specific norms that one must bear in mind exist, especially those relating to the protection of competition. Within those norms, we note the limits established for the post-contractual competition clauses to be borne by the franchisee, according to which this obligation is subject to a temporal limit, needing to remain only during a reasonable time frame and in the territorial zone where the franchise was run.

On the other hand, it is important that all those who are going to develop the franchise activity in Spain bear in mind the following issues:

- a) Obligation to register in the Franchisors Register.
- b) The franchisor remains obliged to send the franchisee information in written form, true and not misleading, on the details of his firm and terms of the contract. This information will have to be provided at least twenty days before the signature of any contract or franchise agreement to be bound or before the franchisee makes any payment.

In addition to the above-mentioned contracts, we can find contracts linked to industrial and intellectual property, banking contracts, advertising contracts, leasing contracts, financing contracts, warranty contracts, transport contracts and others.

#### **6. General conditions to contract**

Due to the proliferation of commercial contracting and mass contracting, the Spanish norm has introduced mechanisms tending to protect the vulnerable party in the contractual field, the consumer. Within these mechanisms we emphasize, because of its importance, the regulation of the general conditions of the contracting.

Pre-established clauses, when their incorporation is imposed by one of the parties, are general conditions of commercial contracting created in order to be incorporated into various contracts.

In order for the general conditions to form part of the contract and to remain incorporated therein, the norm requires:

- a) That the adherent accepts their incorporation and that all contracting parties sign them.
- b) That the pre-establisher informs the adherent expressly on their existence and delivers an example of them.
- c) That the adherent be given the opportunity to know them entirely before the contract celebration.
- d) That they be readable, clear, comprehensible and written with transparency, clarity, concretion and simplicity.

Those general conditions that contradict, to the detriment of the adherent, the established norm applicable to the general conditions will be null, in other words, they will not have any validity at all.

The Spanish norm introduces two ways of controlling the general conditions:

- a) The administrative control: through the creation of the Register on the Contracting General Conditions. In this Register, the general conditions on contracting may be entered, as well as the judicial resolutions or demands that affect the potential validity of specific general conditions. This Register is public; any person is able to access it.
- b) The existing judicial controls against the general conditions that contravene the applicable norm. Spanish law establishes different actions to protect the consumers' interests.

## SETTING UP COMPANIES

### 1. General remarks

The most common forms of legal entity under Spanish corporate law are the corporation ("*Sociedad Anónima*" - hereafter referred to as S.A.), and the limited liability company ("*Sociedad de responsabilidad limitada*", hereafter referred to as S.L.). Unlike a S.A., an S.L. - this is nowadays the most commonly used business entity in Spain - serves as the vehicle of choice for enterprises having a limited number of shareholders. The shares of a S.L. must be subject to transfer restrictions and cannot trade on a public stock exchange, while no such limitations apply to an S.A.

The convenience of protecting the small shareholders means that in the case of an S.A. there are more publication-related and formal requisites than in the case of an S.L.

The ordinary steps and expenses involved are similar for both legal forms, along with the simplified steps for formation of limited liability companies established under Royal Decree-Law 13/2010, of December 3, on Tax, Employment and Deregulation Measures to Promote Investment and the Creation of Employment.

The incorporation of the Spanish company has to be done through a public notary deed, which

must be registered in the corresponding Commercial Register.

## **2. Name of the company**

In the first place, a name must be applied for in the Central Commercial Register of Madrid. The application, which has to be done in the name of one of the shareholders of the future company, can include up to five different names in their order of preference. The name of the company must in all cases to be followed by the abbreviation "S.L." or "S.A.".

Once the Central Commercial Register of Madrid has granted the name (between 4 and 7 days from the date of application), the company should be incorporated within two months. Otherwise, the application has to be renewed.

## **3. Capital/Domicile/Account for the Incorporation**

The minimum capital of an S.L. is required to be EUR 3'000 and the minimum capital of an S.A. is required to be EUR 60'000. Unlike an S.L., for which the minimum capital has to be totally deposited before the foundation, in the case of S.A. incorporation, only 25% of its capital has to be deposited at the time of the incorporation.

The company must be domiciled within the national territory of Spain.

Prior to the execution of the public deed of incorporation, an account must be opened in a Spanish bank. The share capital has to be wired to this bank account by the shareholder/s. Once this requirement is fulfilled, the bank will issue a certificate of deposit, which is also required for the incorporation.

## **4. System of Administration of the Company**

The administrators ("*administradores*") are the management body of the company. They may be persons who do not reside in Spain. Furthermore, there are no special legal requirements with regard to administrators. The administrative body may consist of a sole administrator, by two or more administrators who are jointly or severally liable, or by a Board of Directors.

The Board of Directors should make its decisions as a collective body. With the aim of guaranteeing the efficient management of the company in Spain, the Board of Directors may grant an Executive or Managing Director with all the necessary powers in order to carry out the activities of the company. The Executive or Managing Director should be, for practical reasons, a person domiciled in Spain.

The Secretary of the Board is not considered a member of the Board of Directors. This position is usually filled by an attorney. The performance of this position by an attorney who is established in the place where the company is domiciled has the advantage that the certification of the decisions of the Board of Directors and the General Assembly and their registration at the Commercial Register are done more easily. According to the rules of the Commercial Register, the Secretary is empowered to sign the certifications of the company's decisions and formalise



them in a public deed so that they can be registered at the Commercial Register.

## 5. By-laws

The by-laws of the company must indicate the domicile of the company and its capital in the corresponding shares, as well as its social purpose. Furthermore, the by-laws may include the rules of transmission of shares or the establishment of special majorities to take determined decisions different from those foreseen by the law.

## 6. Costs/Professional Fees

All of the costs of the incorporation (attorney, notary, Commercial Register, etc.) are related to the amount of the share capital. For the minimum share capital of EUR 3'000, the incorporation costs are the following:

Professional fees:	EUR 1'900 to 4'000 (depending on the complexity of the incorporation procedures)
Public notary:	approx. EUR 350
Commercial Register:	approx. EUR 350
Name reservation:	EUR 15-20

## 7. Steps to be taken after the incorporation

After the incorporation, the application for a tax identification number and the carrying out of the registration in the Commercial Register must be completed. Incorporations are exempt from the transfer tax in accordance with the above-mentioned Royal Decree-Law 3/2010.

In addition, the foreign partners have to be registered at the Foreign Investment Register and apply for a tax identification number.

## 8. Other legal Forms

A business may also be set up in Spain under different legal forms. The other less commonly, but equally valid legal forms adopted by foreign investors are:

- a) *The European Company (known by the Latin term "Societas Europaea" or SE)* is a multinational European Public Limited type of Company.
- b) *Sociedad Limitada Nueva Empresa (Private Limited Company - New Enterprise)*: an alternative company form for fast incorporations.
- c) *Sucursal (Branch)*: a division of a foreign company with separate accounting.
- d) *Sociedad Colectiva (General Partnership)*: an independent legal entity which is owned by two or more general partners, all assuming unlimited responsibility.

- e) *Sociedad Comanditaria* (Limited Partnership): an independent legal entity which is owned by one or more general partners assuming unlimited responsibility and by one or more limited partners whose liability is limited to the amount of capital contributed. You can also do business in Spain through Spanish companies already set up.
- f) *Empresario individual* (Proprietorship): an individual manages the business, providing the capital and with personal liability.

## JOINT VENTURE OPPORTUNITIES

Joint ventures are welcomed strategic alliances that provide Spanish companies with increased access to a much-needed capital to obtain liquidity and to gain access to foreign markets.

There are three main types of joint ventures in Spain:

- a) The first possibility is to set up a Spanish company or investing in an already existing one. Ideally, the company should be jointly controlled.
- b) Another alternative is to establish a Temporary Business Association (“*Unión Temporal de Empresas*” or “*UTE*”). This option does not set up a different company and does not provide a separate legal profile. Thus, companies will keep their own legal status and their liability will not be limited. This option is suited for specific goals or projects with a limited duration.
- c) The last possibility is to set up an Economic Interest Group. This association has its own separate legal profile and fulfill certain requirements (articles of association, public deed and registration in the Commercial register), but its shareholder are subsidiary liable for the debt of the Economic Interest Group.

## PROMOTION OF INVESTMENT

All levels of the Spanish administration are encouraging foreign investment in Spain. There are several aid programs that range from tax exemptions or social security bonuses to direct financing of private projects.

Some of the most important sources of investment promotion are:

- a) **The EU incentives** channeled through the European Investment Bank, the European Investment Fund, the Structural Funds, Research and Development Programs and Community initiatives for financing businesses. These incentives supplement the Spanish programs.

- b) **Training and employment incentives** established by the Spanish government. These incentives are one of the main pillars of the job creation policy, and are currently delivering major savings in labor costs to employers.
- c) **Financial and tax incentives**, especially those created to foster innovation, technological improvement and research and development projects.
- d) Preferred financing from the **Official Credit Institute** (*Instituto de Crédito Oficial* or *ICO*).
- e) **Regional incentives** are financial subsidies granted by the Spanish State to productive investment projects carried out in certain regions of Spain to promote the pursuit of business activity in previously-determined areas of Spain.

## **ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW**

### **1. Work & residence permit**

Today, Swiss citizens enjoy the right to freedom of movement in Spain in identical conditions to those that apply to other citizens of the European Union. This is provided by the agreement on the freedom of movement between the Swiss Confederation and the European Community and its Member States.

According to the above-mentioned agreement, an identity card or Swiss passport will be sufficient to enter Spain without a visa. This identity card or passport will be enough to remain in Spain for a length of time not lasting longer than three months.

Swiss citizens have the right to reside in Spanish territory for a superior period than three months. However this requires them to solicit personally their registration to the Central Register for foreigners within the first three months of the entrance in Spain.

Moreover, Spanish firms will be able to hire Swiss citizens without any need for an administrative authorisation process. They will thus have the right to access any professional activity in identical conditions to those applicable to Spanish nationals.

Similarly, Swiss citizens working in Spain will have the right to live in this country without the need for a residency card, bringing along their family.

### **2. Labour Law**

In Spain, the basic law in the labour field is the so-called “Workers’ Statute”, which regulates the elementary rights and obligations of the employer as well as those of the employee. Nevertheless, specific laws exist in order to identify working categories such as high executives, sportsmen,

commission agents, etc. The main notes within labour relationships in Spain can be summarised in the following manner:

a) Length of work contracts:

Only in specific cases, it is possible to hire a worker on a temporary basis. Therefore, working contracts in Spain are usually set for an indefinite length of time.

On July 7th 2012 the Royal Decree-law 3/2012 of 10 February, on urgent measures to reform the labour market entered into force. In order to encourage part-time contracts, the labour market reform has amended this type of contract to allow the inclusion of extra-hours.

Generally, the employer will only be able to end the working contract in the event of a serious and culpable fault on the part of the worker (that would entitle the worker to a compensation of 20 wage days per year worked, up to 12 months salary). But if the dismissal is found to be unjustified, the firm will have to pay the worker severance compensation. This severance compensation has been reduced with the labour market reform from 45 to 33 wage days per year worked (with a limitation of 24 months). However, workers' rights are protected: workers will be entitled to a severance payment equivalent to 45 wage days per year worked in the firm until the 11 February 2012. From the 12 February 2012 workers will receive a severance payment equivalent to 33 wage days per year worked (with a limitation of 720 days of salary).

Furthermore, the labour market reform introduces that in case of three consecutive quarters of reduction of sales in comparison with the same quarters of the year before; the company can end working contracts with the payment of a severance compensation of 20 days of salary per worked year.

The employee's dismissal based on discriminatory grounds prohibited by the Constitution (sex, race, political opinion, religion, etc.) or pregnancy will be annulled and the firm will be obliged to reinstate the dismissed employee in his/her former function.

b) The probationary period:

The probationary period will not exceed two months or three months in relation to firms employing less than 25 workers. If the employee is a certified technician, the probationary period could extend to six months.

Nevertheless, the labour market reform defines a new type of contract for the promotion of enterprising which introduces a probationary period of one year.

c) Salary:

The salary is freely decided on by the firm and the worker. However, the law fixes an irreducible minimum salary, which at the moment corresponds to EUR 950 per month (13'300 € per year), including 12 monthly and 2 extra payroll payment.

The General Agreements, which regulate the professional relationships in particular commercial fields, can improve the amount previously mentioned, and they usually do, establishing higher minimum salaries according to each employee's professional group.

In Spain, the salary is paid monthly and usually two extra wages exist: one in July (summer extra wage) and the other in December (Christmas extra wage).

d) Working hours:

In general, the maximum amount of working hours legally permitted in Spain is 40 hours per week, calculated on an annualized average basis. The company may distribute 10% of the working hours on an uneven basis.

The company must guarantee the daily registration of the working day, which must include the specific start and end time of each employee's working day, and these records must be kept for four years.

In addition, employees have the right to digital disconnection to guarantee the respect of their rest time, permits and vacations, as well as their personal and family privacy outside of the legal or conventionally established work time.

The company and the worker can agree on extra working hours, but these cannot exceed 80 per year.

The annual holiday's length cannot be under 30 calendar days per year.

e) Social Security:

The contributions to the Social Security are for the most part made by the firm, even though the employee also contributes a small part of his salary.

Since 22 December 2013 employees also have to contribute for the Social Security (and not only pay taxes for the IRPF (Personal Income Tax) and Social Security Regimen) on the basis of the remuneration in kind that they receive from the company.

## **PROCEDURES FOR COLLECTING PAYMENT**

### **1. Out-of-court settlement**

To collect outstanding debts, it is always advisable to reach an out-of-court settlement because lawsuits in Spain can be very lengthy, arduous and costly.

### **2. Monitory proceedings**

The Spanish Civil Procedure Act establishes that judicial monitory proceedings may be held before commencing ordinary proceedings, to claim the payment of debts —whose existence can be evidenced by a document.

Monitory proceedings can only be initiated, when a monetary debt in arrears, claimable and explicit, is concerned. The monitory lawsuit must be filed at the relevant court according to the address of the debtor, and it is also necessary to submit any documents signed by the debtor, invoices, evidence of delivery or other documents that substantiate the existence of the debt.

In the event that the court accepts the claim in question, it will issue a court payment order, against

which the debtor may appeal within 20 days, and then ordinary proceedings will commence. The creditor should then file the claim at the court within one month.

The main advantage of this kind of proceeding is that, in the event that the debtor does not appeal against the court order, the court will automatically execute an enforcement order. Practice has shown that monitory proceedings lead to a positive outcome in the case of indisputable debts, and leads to an enforcement order in a relatively short space of time.

### **3. Ordinary proceedings**

Given the expenses incurred in ordinary proceedings, we only recommend this course of action for debts over EUR 10'000.

Whenever judicial action becomes necessary to collect a debt, the above-mentioned monitory proceedings or an ordinary claim is called for. Originals of all relevant documents (order, order confirmation, evidence of delivery, invoices, receipts, etc.) must be submitted. In addition, the solicitor will need a detailed power of attorney signed by the client before a public notary. International law firms can usually provide model powers of attorney.

In Spain, court proceedings are entrusted not only to a solicitor, but also to a so-called "*procuradores*" (similar to a barrister), who files the claim and signs it along with the solicitor. A barrister is not appointed by the lawyer, but by the claimant. In practice, when a law firm is engaged, it is allowed to choose on behalf of the claimant a barrister authorised to act in court. Generally the mediation of a barrister is compulsory.

In the event of a total victory, the convicted party will have to bear the fees of solicitors and barristers; exceptionally, the judge may waive the award of costs but, based on experience, this regulation is very rarely applied. For a total success, it is advisable to word the application for costs and interests moderately.

Given that courts in Spain are usually overwhelmed with their workload, we must estimate that the proceedings will take between 9 and 18 months. The length of time of proceedings varies greatly between different courts, even amongst those in the same provincial region.

## **SOURCES OF INFORMATION AND LINKS**

### **1. Advisory bureau for entrepreneurs**

#### **Spanish Chamber of commerce**

C.Ribera de Loira, 12

28042 Madrid

Tel.: +34 91 590 69 00

[info@camara.es](mailto:info@camara.es)

[www.camara.es/en](http://www.camara.es/en)

## 2. Swiss Institutions

### **Swiss Embassy in Madrid**

Calle Nuñez de Balboa 35A, 7° Piso

E - 28001 Madrid

Tel. +34 91 436 39 60

Fax +34 91 436 39 80

E-mail: [madrid@eda.admin.ch](mailto:madrid@eda.admin.ch)

### **Swiss General Consulate in Barcelona**

Edificio Trade

Gran Vía de Carlos III, 94,7°

E - 08028 Barcelona

Tel. +34 93 409 06 50

Fax +34 93 490 65 98

E-mail: [madrid.cc@eda.admin.ch](mailto:madrid.cc@eda.admin.ch)

<https://www.eda.admin.ch/madrid>

### **Swiss Spanish Economic Association**

#### ***Asociación Económica Hispano Suiza***

Embajada de Suiza

C/ Núñez de Balboa, 35 – 7°

E - 28001 Madrid

Tel.: +34 91 436 39 60

[aehs@aehs.info](mailto:aehs@aehs.info)

[www.aehs.info](http://www.aehs.info)

## 3. EU advisory service

### **Enterprise Europe Network**

Spain <http://een.ec.europa.eu/about/branches/spain>

Switzerland <http://een.ec.europa.eu/about/branches/switzerland>

### **SOLVIT board**

Ministry of Foreign Affairs and Cooperation

*Ministerio de Asuntos Exteriores y de Cooperación*

C/ Serrano Galvache, 26

E - 28033 Madrid

Tel.: +34 91 379 99 99

Fax: +34 91 394 86 84

[solvit@maec.es](mailto:solvit@maec.es)

[http://ec.europa.eu/solvit/index\\_en.htm](http://ec.europa.eu/solvit/index_en.htm)

#### 4. The address of the Spanish Patent and Trademark Office

**Spanish Patent and Trademark Office**  
***Oficina Española de Patentes y Marcas - OEPM***  
Paseo de la Castellana, 75  
E - 28046 Madrid  
Tel.: 902 15 75 30  
[www.oepm.es](http://www.oepm.es)

#### 5. The official institutions in Spain in matters of labelling and packaging

**Ministry of Health, Consumption and Social Welfare**  
***Ministerio de Sanidad, Consumo y Bienestar Social***  
Pº del Prado 18-20 (planta baja)  
E - 28014 Madrid  
Tel.: +34 91 596 10 00  
Fax: +34 91 596 44 80  
<http://www.mscbs.gob.es/>

**National Health Management System**  
***Instituto Nacional de Gestión Sanitaria***  
Information office  
C/ Alcalá, 56  
E - 28014 Madrid  
Tel.: +34 91 338 03 65  
Fax: +34 91 338 08 53  
[informacioningesa@ingesa.msssi.es](mailto:informacioningesa@ingesa.msssi.es)  
<http://www.ingesa.mscbs.gob.es/>

**Carlos III Health Institute**  
***Instituto de Salud Carlos III***  
Information Office  
Avda. Monforte de Lemos, 5  
E - 28029 Madrid.  
Tel.: +34 91 822 20 10 / 02 / 81  
Fax: +34 91 387 77 89  
[registro.general@isciii.es](mailto:registro.general@isciii.es)  
[www.isciii.es](http://www.isciii.es)

**Spanish Agency for Consumer Affairs, Food Safety and Nutrition**  
***AECOSAN Agencia Española de Consumo, Seguridad Alimentaria y Nutrición***  
Information Office  
C/ Príncipe de Vergara, 54  
E - 28006 Madrid  
Tel.: +34 91 822 44 40 / 44 63



Fax: +34 91 578 03 69  
[inc@consumo.inc.es](mailto:inc@consumo.inc.es)  
<http://www.aecosan.msssi.gob.es/>

**Spanish Agency for Medicines and Medical Devices**  
**Agencia española de Medicamentos y Productos Sanitarios**  
C/ Campezo nº 1, Edificio 8  
E - 28022 Madrid  
Tel.: +34 91 822 59 97  
<http://www.aemps.gob.es/informa/info-atencion-ciudadano/home.htm>

#### 6. The Spanish standard organization is:

**AENOR**  
C/ Génova, 6  
E - 28004 Madrid  
Tel.: +34 91 432 60 00  
Fax: +34 91 432 40 32  
[info@aenor.es](mailto:info@aenor.es)  
[www.aenor.es](http://www.aenor.es)

#### 7. Spanish investment bureau

**INVEST IN SPAIN**  
Paseo de la Castellana, 278  
E - 28046 Madrid  
Tel.: +34 91 503 58 00  
Fax: +34 91 503 58 03  
[investinspain@investinspain.org](mailto:investinspain@investinspain.org)  
[www.investinspain.org](http://www.investinspain.org)

#### 8. Important Web pages

##### International:

EU	<a href="http://www.europa.eu">www.europa.eu</a>
Eur-Lex - (EU-Law)	<a href="http://www.eur-lex.europa.eu/en/index.htm">www.eur-lex.europa.eu/en/index.htm</a>
EU Taxation and Customs Union	<a href="http://www.ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en&amp;SimDate=20140331">www.ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en&amp;SimDate=20140331</a>
EU Citizens - (Database)	<a href="http://www.eudo-citizenship.eu">www.eudo-citizenship.eu</a>
Eurochambers	<a href="http://www.eurochambres.be">www.eurochambres.be</a>

**Spain:**

Notary Chamber	<a href="http://www.notariado.org">www.notariado.org</a>
Mercantile Register	<a href="http://www.rmc.es">www.rmc.es</a>
Patent and Trademark Office	<a href="http://www.oepm.es">www.oepm.es</a>
Ministry for Finance	<a href="http://www.hacienda.gob.es/">www.hacienda.gob.es/</a>
Ministry for Economy and Digital Transformation	<a href="http://www.mineco.gob.es">www.mineco.gob.es</a>
Ministry for Development	<a href="https://www.fomento.gob.es/">https://www.fomento.gob.es/</a>
Ministry for Justice	<a href="http://www.mjusticia.gob.es">www.mjusticia.gob.es</a>
Ministry for Labour and Social Economy	<a href="http://www.mites.gob.es">www.mites.gob.es</a>
Ministry for Home Affairs	<a href="http://www.interior.gob.es">www.interior.gob.es</a>
BOE	<a href="http://www.boe.es">www.boe.es</a>
Employment office (SEPE)	<a href="http://www.sepe.es">www.sepe.es</a>
Tax office ( <i>Agencia Tributaria</i> )	<a href="http://www.agenciatributaria.es">www.agenciatributaria.es</a>

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