GARRIGUES ICEX INVEST IN SPAIN

This guide was researched and written by Garrigues, on behalf of ICEX, on February 2023.

This guide is correct to the best of our knowledge. It is, however, written as a general guide so it is necessary that specific professional advice be sought before any action is taken.

Madrid, June 2023

Pº de la Castellana, 278
28046 Madrid
Tel: 902 34 90 00
Fax: 914 31 61 28

icex@icex.es
desarrollo@investinspain.org

www.icex.es
www.investinspain.org

Administración General del Estado (AGE)
http://administracion.gob.es

Catálogo de publicaciones de la AGE
http://cpage.mpr.gob.es

NIPO (PDF): 114230304

Design & Layout
Intelligenia, S.A.

2.

Establishing a business in Spain

2.

Establishing a business in Spain

This Chapter describes the basic aspects of the main structures for investing in Spain, as well as the key formalities that a foreign investor must fulfill in order to set up or start up each of them.

Setting up a business in Spain is simple. The type of business entities available are in keeping with those existing in other OECD countries and there is also a wide range of alternatives capable of meeting the needs of the different types of investors who wish to invest in or from Spain.

This Chapter also examines how to open a branch; the pursuit of the activity directly by an individual entrepreneur as a "limited liability entrepreneur"; the formation of a joint venture with one or more enterprises already established in Spain; the acquisition of real estate; the sale and purchase of businesses; investment in venture capital firms; and distribution, agency, commission and franchising agreements.

Further, it should be noted that, ordinarily, there is also almost total liberalization of foreign investment and exchange control in Spain, in line with EU legislation, notwithstanding the extraordinary measure consisting of the suspension of the regime for the liberalization of foreign investment in Spain, introduced by Royal Decree Law 8/2020 of March 17, 2020, on urgent extraordinary measures to deal with the economic and social impact of COVID-19, which has been extended until December 31, 2024 by means of Royal Decree 20/2022, of December 27, 2022, on measures to respond to the economic and social consequences of the war in Ukraine and measures to support the reconstruction of the island of La Palma and other situations of vulnerability.

2.

Establishing a business in Spain

1

Introduction

This Chapter takes a practical look at the main alternatives open to a foreign investor interested in establishing a business in Spain, as well as the main steps, costs and legal requirements involved.

Several alternatives are analyzed in this Chapter, namely: the setting-up of a company; the opening of a branch; the pursuit of the activity directly by an individual entrepreneur and among the possible alternatives, this Guide highlights in particular the form of the "limited liability entrepreneur"; the formation of a joint venture with another or other enterprises already established in Spain; the acquisition of real estate; the sale and purchase of businesses; investment in venture capital firms; or distribution, agency, commission or franchising agreements.

The steps required to make the following types of investment are explained in this Chapter:

- Setting-up of a Spanish corporation or limited liability company and formation of a Spanish branch (sections 4 and 6).
- Pursuit of the activity directly by an individual entrepreneur under the form of the "limited liability entrepreneur" (section 5).
- Acquisition of shares in an existing Spanish company (section 8.1).
- Acquisition of real estate located in Spain (section 8.2).
- Acquisition of a business through sale/purchase or global transfer of assets and liabilities (section 8.3).
- Investment in venture capital firms (section 8.4).

Finally, this Chapter contains a final section on dispute resolution in Spain, whether through court or arbitration proceedings, a real and effective alternative for the settlement of disputes.

2.

Establishing a business in Spain

2

Different ways of doing business in Spain

Various alternatives are open to the foreign investor once the decision to invest in Spain has been taken:

WAYS OF DOING BUSINESS IN SPAIN	
Creation of a Spanish company with its own legal personality	Spanish law provides for a variety of vehicles that can be used by foreign companies or individuals for investing in Spain. The most common forms used are the corporation (*S.A.*) and, principally, the limited liability company (*S.L.*).
Limited Liability Entrepreneur	Pursuit of the activity directly by the individual where certain requirements are met.
Branch or permanent establishment	Neither alternative has its own legal personality, meaning that their activity and legal liability will at all times be directly related to the parent company of the foreign investor.
Joint venture	Association with other businesses already established in Spain. it allows the parties to share risks and combine resources and expertise. A joint venture can be set up under Spanish law in a number of ways: • A Temporary Business Association (*Unión Temporal de Empresas* or *UTE*). • An Economic Interest Grouping (EIG) and a European EIG (EEIG). • Under a type of silent partnership arrangement peculiar to Spanish law (*cuenta en participación*) with one or more Spanish entrepreneurs. • Participating loans. • Joint ventures through Spanish corporations or limited liability companies.
Without setting up a business or entering into an association with existing business or establishing a physical center of operations in Spain	The alternatives include: • Signing a distribution agreement. • Operating through an agent. • Operating through commission agents. • Franchising.
Acquisitions	Acquisition of shares, real estate located in Spain or businesses.
Venture capital	Investment in venture capital entities.

Each of these forms of doing business in Spain offer different advantages that must be balanced against the potential setbacks from a tax and legal standpoint.

2.

Establishing a business in Spain

3

Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.)

The applicable Spanish legislation currently requires that any individual or legal entity with economic or professional interests in Spain, or involved in a relevant way for tax purposes, must hold a tax identification number (in the case of legal entities) or a foreigner identity number (for individuals). In particular, and among other cases, a *N.I.F./N.I.E.* must be applied for when a foreign investor makes a direct investment in Spain or in the case of a shareholder or director of an entity resident in Spain or of a foreign entity's branch or permanent establishment located in Spain.

The following tables summarize the documentation and steps required to obtain (i) a *N.I.E.* for individuals who are to be shareholders or directors of companies resident in Spain, tax and legal representatives of branches located in Spain, permanent establishments or limited liability entrepreneurs; (ii) a *N.I.F.* for legal entities that are to be shareholders or directors of companies resident in Spain or owners of a branch in Spain or permanent establishments; and (iii) the provisional and definitive *N.I.F.* of the company resident in Spain that is to be set up.

3.1. *N.I.E.* FOR INDIVIDUALS WHO ARE TO BE SHAREHOLDERS OR DIRECTORS OF COMPANIES RESIDENT IN SPAIN, TAX AND LEGAL REPRESENTATIVES OF A BRANCH IN SPAIN, PERMANENT ESTABLISHMENTS OR LIMITED LIABILITY ENTREPRENEURS

N.I.E. **(FOR INDIVIDUALS)**				
COUNTRY OF APPLICATION	**WHERE TO SUBMIT APPLICATION**	**DOCUMENTATION**	**COST**	**DECISION PERIOD**
Spain	Directorate-General of Police or at Immigration Offices or Police Stations.	1. Original and copy of Official Form (EX15). 2. Fee Form (790 Code 12) with proof of payment at the relevant bank. 3. Authenticated and apostilled copy of passport (EU citizens may submit an identity document). If the applicant is not an EU citizen, a copy must be made of all of the pages of the passport. If the applicant is an EU citizen, the identification page of the passport will suffice. The notary's stamp and signature must be on all of the pages of the copies of the passport that is attached and not on a separate sheet. 4. If application made through a representative: (i) a copy of the applicant's passport authenticated before a notary and legalized and, where appropriate, certified by apostille[1]; (ii) evidence that the representative has sufficient powers, duly translated (sworn translation) and authenticated and/or certified by apostille.	€9.84/10 (Form 790 [2]).	1 week.
Abroad	Office of the Commissioner-General for Foreigners and Borders, through Spanish Consulates abroad.			

1 If a citizen of the European Union, a copy of the first page of the passport will suffice.

2 https://sede.policia.gob.es/Tasa790_012/ImpresoRellenar

3.2. *N.I.F.* FOR LEGAL ENTITIES THAT ARE TO BE SHAREHOLDERS OR DIRECTORS OF COMPANIES RESIDENT IN SPAIN OR OWNERS OF BRANCHES IN SPAIN OR PERMANENT ESTABLISHMENTS

N.I.F. (FOREIGN COMPANY THAT IS TO BE SHAREHOLDER/DIRECTOR OF SPANISH COMPANY)			
COUNTRY OF APPLICATION	**WHERE TO SUBMIT APPLICATION**	**DOCUMENTATION**	**DECISION PERIOD**
Spain	State Tax Agency or telematically	1. Form 030[3] to obtain the instrumental N.I.E. of each and every one of the representatives in order to register them with the census, if applicable, at the Tax Agency (declaration of registration on the census of parties subject to tax obligations, change of address and/or change of personal particulars, box 109). In cases where the representatives already have the *N.I.E.* referred to in point 3.1 above, the representative may be entered on the census by telematic means with the relevant authorization through the "Registration on the census of individuals with *DNIE* or *N.I.E.* by approved tax agents", on the Tax Agency's website and provided that the representative has an electronic certificate with such status. Prior documents required: • Certificate or original extract from the Commercial Registry of the company's domicile of residence, certified by apostille and a sworn translation thereof, which must state the name, registered office, date of incorporation, capital stock and representative(s) (in any event, the party appearing as representative must be the signatory of form 036 to be filed subsequently). The certificate must be recent and the apostille not over 3 months old. • Photocopy of each representative's passport, national identity card or *N.I.E.* 2. Form 036[4] to obtain the foreign entity's *N.I.F.* (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 120), which must be signed by the legal representative who appears in the above-mentioned certificate or an attorney-in-fact of the company. Documentation required: • Photocopy of the Spanish national identity card or *N.I.E.* and passport (copy of the first page where the signature appears) of the signatory of form 036 and/or of the legal representative. • The original certificate of incorporation or extract from the Commercial Registry indicated in section 1 above. • To complete form 036, it will be necessary to indicate an address in Spain for notification purposes. • If applied for through a representative who is an attorney-in-fact: (i) photocopy of the Spanish national identity card or N.I.E. of the attorney-in-fact; (ii) proof that he/she has sufficient power and, where applicable, duly translated (sworn translation), with notarial certificate and legalized and/or certified by apostille.	First step: Assignment of the representative's instrumental *N.I.E.* by means of form 030 on the same day. Second step: One or two days later, the foreign entity's *N.I.F.* can be obtained by means of form 036.
Abroad	Spanish Consulates abroad or telematically		

Note: Documents from other countries (such as powers of representation in order to appear before the authorities and apply for a N.I.F./N.I.E) must be translated into Spanish or the co-official language of the Autonomous Community[5] in which the application is submitted. Any foreign public document must be legalized beforehand by the Spanish consulate office with jurisdiction in the country the document was issued and by the Ministry of Foreign Affairs, European Union and Cooperation, unless the document has been certified by apostille by a competent authority in the country of issue pursuant to the Hague Convention of October 5, 1961.

3 https://www.agenciatributaria.gob.es/AEAT.sede/procedimientoini/G321.shtml

4 https://www.agenciatributaria.gob.es/AEAT.sede/tramitacion/G322.shtml.

5 Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

3.3. PROVISIONAL AND DEFINITIVE *N.I.F.* OF THE COMPANY RESIDENT IN SPAIN THAT IS TO BE SET UP

PROVISIONAL *N.I.F.* (BEFORE SETTING UP COMPANY)

PROCEDURE	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Ordinary procedure	State Tax Agency	• Form 036[6] (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 110), signed by a representative of the company holding a *N.I.E.* or Spanish national identity card[7]. • Copy of the *N.I.E.* or Spanish national identity card of the signatory. • Original clear name search certificate from the Central Commercial Registry. • Agreement of intent to form a company signed by the managing body and shareholders or copy of the deed of formation[8].	Same day.
Telematic procedure	The notary authorizing the deed of formation will request the assignment of a provisional *N.I.F.* by the State Tax Agency by telematic means. The shareholders and directors must have a *N.I.E.* or a Spanish national identity card and must appear as previously registered on the census.		

DEFINITIVE *N.I.F.* (AFTER SETTING UP THE COMPANY)

PROCEDURE	WHERE TO SUBMIT APPLICATION	DOCUMENTATION	DECISION PERIOD
Ordinary Procedure [Telematic procedure]	State Tax Agency	• Form 036 (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 120, application for final *N.I.F.*, box 111, registration on the Census of Traders, Professional and Withholding Agents), signed by a representative of the company holding a *N.I.E* or Spanish national identity card. In this act, registering on the form the obligation to file a corporate income tax return is a mandatory minimum requirement. The other obligations regarding those related with the tax on economic activities, the personal income tax or *VAT* can be registered on the same form or at a later time. • Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036. • Copy of the *N.I.E.* or Spanish national identity card of the signatory. • Original and copy of the deed of formation bearing the registration stamp.	10 business days.

Note: Documents from other countries (such as powers of representation in order to appear before the authorities and apply for a N.I.F./N.I.E.) must be translated into Spanish or the co-official language of the Autonomous Community[9] in which the application is submitted. Any foreign public document must be legalized beforehand by the Spanish consulate office with jurisdiction in the country the document was issued and by the Ministry of Foreign Affairs, European Union and Cooperation, unless the document has been certified by apostille by a competent authority in the country of issue pursuant to the Hague Convention of October 5, 1961.

The provisional and definitive *N.I.F.* for companies resident in Spain, unlike the *N.I.F.* for foreign individuals or legal entities who are going to be shareholders or directors of companies resident in Spain, may only be applied for in Spain, directly by the applicant or through a representative, and are free of charge.

6 Form 036 can be obtained at offices of the tax authorities or downloaded directly from the tax authority website: www.aeat.es (Templates and Forms/Tax returns/All Tax Returns).

7 If the signatory of form 036 is not registered as a shareholder or member of the managing body in the agreement of intent, a power of attorney with a specific clause in favor of the signatory must be provided.

8 With the following content: a) type of company, (b) corporate purpose, (c) initial capital stock, (d) registered office, (e) shareholders, and (f) the members of the managing body. A copy of the *N.I.F./N.I.E.*/national identity document of the shareholders and members of the managing body must also be provided.

9 Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

2.

Establishing a business in Spain

4

Formation of a company

The most common forms of legal entity under Spanish corporate law are the corporation (*Sociedad Anónima* - S.A.), and the limited liability company (*Sociedad Limitada* -S.L.) (other corporate forms are described in Appendix I, section 2 of this Guide). The main differences between S.A.s and S.L.s are as follows:

	S.A.	S.L.
Minimum capital stock	€60,000	€1[10]
Payment upon formation	At least 25% and any share premium.	Payment in full.
Contributions	A report from an independent expert on any non-monetary contributions is required[11].	No report from an independent expert on non-monetary contributions is required, although the founders and shareholders are jointly and severally liable for the authenticity of any non-monetary contributions made. In any case, a substitute report from the directors is required.

CONTINUE ON THE NEXT PAGE >

10 Law 18/2022, of September 28, 2022, on the creation and growth of companies (the "**Create and Grow Law**") was approved in 2022 and reduced the minimum capital stock required to form a limited liability company to €1. However, where the capital stock of limited liability companies is less than €3,000: (i) a legal reserve must be recorded of at least 20% of income until the sum of the legal reserve and the capital stock amounts to €3,000; and (ii) the shareholders must be jointly and severally liable with the company, up to the amount of the difference between the subscribed capital stock figure and €3,000 if, in the event of liquidation, the net worth of the company is insufficient to cover the company's payment obligations.

11 The expert report is not required, but the substitute report from the directors is required in the following cases:

a. Contribution of transferable securities that are listed on an official secondary market or on another regulated market or in money market instruments, in which case they will be valued at the weighted average price on one or more regulated markets in the last quarter preceding the date on which the contribution was actually made, with the certificate issued by the relevant governing company.

b. Contribution of assets other than those indicated in letter a) above the fair value of which has been determined, within the 6 months preceding the date on which the contribution was actually made, by an independent expert not appointed by the parties.

c. Where in the formation of a new company by merger or spin-off a report has been prepared by an independent expert on the merger or spin-off plan.

d. Where the increase in share capital is carried out to deliver the new *S.A.* or *S.L.* shares to the shareholders of the absorbed or spun-off company and a report has been prepared by an independent expert on the merger or spin-off plan.

e. Where the increase in share capital is carried out to deliver the new *S.A.* shares to the shareholders of the company that is the target of a tender offer.

2.

Establishing a business in Spain

< CONTINUED FROM THE PREVIOUS PAGE

	S.A.	S.L.
Shares	They are marketable securities. Debentures and other securities that recognize or create a debt, even bonds convertible into shares, can be issued.	They are not marketable securities. Debentures and other securities that recognize or create a debt can be issued.
Transfer of shares	Depends on how they are represented (share certificates, book entries, etc.) and on their nature (registered or bearer shares). In principle, they may be freely transferred, unless the bylaws provide otherwise.	Must be recorded in a public document. S.L. shares are generally not freely transferable (unless acquired by other shareholders, ascendants, descendants or companies within the same group). In fact, unless otherwise provided in the bylaws, the law establishes a pre-emptive acquisition right in favor of the other shareholders or the company itself in the event of a transfer of the shares to persons other than those referred to above.
Amendments to the bylaws	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
Venue for shareholders' meetings	As indicated in the bylaws. Otherwise, in the municipality where the company has its registered office. The bylaws may (i) provide for the possibility of attending shareholders' meetings virtually by electronic means that duly guarantee the identity of the attendee; and (ii) the holding of virtual-only shareholders' meetings (without the physical presence of the shareholders or their proxy-holders).	
Attendance and majorities at shareholders' meetings	Different quorums and majorities are established for meetings on first and second call and depending on the content of the resolutions. These can be increased by the bylaws.	Different majorities are established depending on the content of the resolutions. These can be increased by the bylaws.
Right to attend shareholders' meetings	A minimum number of shares may be required to attend the shareholders' meeting.	This right cannot be restricted.
Number of members of the board of directors	Minimum: 3. No maximum limit.	Minimum: 3. A maximum of 12 members.
Term of the office of director	Maximum 6 years (4 years at listed companies). They may be reelected for periods of the same maximum duration.	May be indefinite.
Issue of bonds	Bond issues may be used as a means to raise funds. Bonds convertible into shares may be issued or guaranteed.	Bond issues may be used as a means to raise funds, although the total amount of the issues may not be higher than twice the company's equity, unless the issue is secured by a mortgage, by a pledge of securities, by a government guarantee or by a joint and several guarantee from a credit institution. If the issue is secured by a joint and several guarantee from a mutual guarantee society, the limit and other conditions of the guarantee will be determined by the guarantee capacity of the society at the time of providing it, in accordance with its specific legislation. Bonds convertible into shares cannot be issued or guaranteed.

Any foreign citizen or legal entity may freely be a shareholder of a Spanish company provided that he/she/it applies for a *N.I.E.* or *N.I.F.* as described in this Chapter.

In addition, any foreign citizen or legal entity may also be a director of a Spanish company, with the same requirement to apply for a *N.I.E.* or *N.I.F.*[12] and, where shares are held in the company and/or compensation is received for services as a director, it will be necessary to register for social security purposes[13] and therefore be a legal resident in Spain.

12 Directorate-General of Registries and the Notarial Profession of January 18, 2012.

13 Articles 136 and 305 of Legislative Royal Decree 8/2015, of October 30, 2015, approving the revised General Social Security Law. See Chapter 5, section 13.3 for further information.

2.

Establishing a business in Spain

4.1. LEGAL FORMALITIES

The ordinary steps and expenses involved are similar for both legal forms and are detailed in the following tables.

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY	
REQUIREMENTS	**APPLICABLE TO ANY KIND OF LIMITED LIABILITY COMPANY OR CORPORATION.**
1. Clear name search certificate	Application to the Central Commercial Registry by the interested party or anyone authorized by it (may contain up to 3 alternative corporate names, in order of preference)[14]. The Central Commercial Registry will issue a name reservation certificate for the new company. Names are reserved for a period of six months as from the date of issue of the certificate. However, the clear name search certificate will be valid for three months for the purposes of executing the deed, reckoned from the date of its issue by the Central Commercial Registry. Once the certificate has expired, an application may be submitted for its renewal with the same name. The expired certificate must be attached to the application.
2. Application for provisional N.I.F.	See section 3.3 above.
3. Opening of a bank account	Opening of a bank account in the entity's name for payment of the capital stock. Once the founding shareholders have paid in the capital, the bank must issue payment certificates.
4. Document containing representations by the beneficial owner	The founding shareholders must execute a document containing representations by the beneficial owner in accordance with Law 10/2010, of April 28[15].
5. Execution of deed before a notary	The founding shareholders must execute a public deed before a notary, containing: 1. Evidence of the identity of the founding shareholders. If any of the shareholders is represented at the act of formation, a notarized power of attorney to represent the shareholder must be produced to the notary. If the power of attorney is issued abroad, it must be duly legalized[16]. 2. Representations by the beneficial owner (see requirement 4 above). 3. Evidence of contributions and whether they are to be made in cash or in kind (if applicable) using the corresponding bank documentation, as well as details of the capital stock subscribed by the shareholders (see requirement 3 above)[17]. 4. Clear name search certificate issued by the Commercial Registry (see requirement 1 above). 5. Company bylaws. 6. If the company is a limited liability company, the deed of formation must specify the initial form of the managing body, if the bylaws provide for different alternatives. 7. Identification of and acceptance by the company directors. 8. Subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for International Trade and Investments ("*DGCI*") of the Ministry of Industry, Trade and Tourism (see Chapter 1, section 8 for further information). In some cases, limited mainly to foreign investments from countries or territories deemed to be tax havens, a prior declaration must be made (see Chapter 1, section 8 for further information). 9. Identification of the economic activity code describing the activity in accordance with the National Classification of Economic Activities (*CNAE*). 10. If the company is a corporation, the deed of formation must also state, at least approximately, the total amount of the formation expenses, both of those already paid and those merely envisaged until registration. The deed must be executed within the three months following the issue of the clear name search certificate by the Central Commercial Registry.

CONTINUE ON THE NEXT PAGE >

14 Applications for clear name search certificates may be made:
- Directly at the offices of the Central Commercial Registry with a printed application form.
- By mail, by sending an application or letter to the offices of the Central Commercial Registry. The Registry will issue the certificate in return for payment on delivery to the address indicated in the application.
- By telematic means, by filling the application form on the website: www.rmc.es. (http://www.rmc.es/Deno_solicitud.aspx?lang=es).

15 Law 10/2010, of April 28, on the Prevention of Money Laundering and Terrorist Financing ("**Law 10/2012**") requires the founders of a company to provide a declaration by the "beneficial owner", that is, by the individual(s):
- On whose behalf it is intended to establish a business relationship or take part in transactions.
- Who ultimately owns or controls, directly or indirectly, more than 25% of the capital or voting rights of a legal entity, or who otherwise exercises control, directly or indirectly, over the management of a legal entity. An exception is made for companies listed on a regulated market in the European Union and subject to disclosure requirements consistent with EU law or with equivalent international standards that ensure that the information on ownership is suitably transparent. It is interesting to note that in the case of fideicomisos or fiduciary arrangements, such as common law/Anglo-Saxon trusts, all the following persons will be considered beneficial owners: 1. settlor, 2. trustee or trustees, 3. the protector, if any, 4. the beneficiaries or, where they have yet to be designated, the category of persons for whose benefit the legal structure has been created or acts; and 5. any other individual who exercises ultimate control over the trust by means of direct or indirect ownership or by other means. In the case of legal instruments similar to a trust, such as fiduciary arrangements or the "Treuhand" under German legislation, the obliged entities must identify and adopt the appropriate measures to verify the identity of the persons who hold positions equivalent or similar to those listed in numbers 1 to 5 above.
- Individuals who are considered beneficial owners must provide the following identifying particulars: first and last names, birth date, type and number of identity document, country that issued the identity document, country of residence, nationality, criteria by which he/she is classified as a beneficial owner, and in the case of beneficial ownership by direct or indirect ownership of shares or voting rights, percentage holding, including, in the case of indirect ownership, information on the interposed legal entities and their interest in each of them. Obliged entities that belong to the same category according to the provisions of Law 10/2010 may create shared systems for reporting, storing and, as applicable, accessing the information and documentation gathered for the purposes of compliance with due diligence obligations, provided they notify the Anti-Money Laundering and Monetary Infringements Commission at least 60 days in advance of its entry into operation.
- Information relating to beneficial ownership must be kept for 10 years after beneficial owner status ends.

16 There are two main procedures for such legalization:
- Execution of the powers of attorney in the presence of the Spanish Consul in the foreign investor's home country. The foreign investor appears before the Spanish Consul, provides evidence of his identity and grants the related powers of attorney. If a company, rather than an individual, is the foreign shareholder, apart from his identity, the person appearing before the Spanish Consul must provide evidence of his capacity to grant the powers of attorney to the designated person in the name and on behalf of the shareholder. The Spanish Consul may demand any documentation he considers necessary and will proceed to grant a deed of power of attorney, in Spanish, to the designated person. This power of attorney may be used directly in Spain.
- Execution of the power of attorney in the presence of a foreign public authenticating officer. The foreign investor appears before the authenticating officer, provides evidence of his identity and grants the related power of attorney. If the foreign investor is a company, its representative shall execute the power of attorney in the presence of the public authenticating officer, who will certify the document as well as the identity and capacity of the representative of the foreign investor to grant the power of attorney. The signature of the foreign authenticating officer would also require subsequent legalization (either by the "apostille" procedure approved by The Hague Convention of October 5, 1961, or by a Spanish Consul abroad). Under this second procedure, the power of attorney would normally be issued in the language of the authenticating officer who attests to the act, meaning a sworn translation into Spanish would also have to be provided.

17 It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Annex 1, section 4.2).

2.

Establishing a business in Spain

< CONTINUED FROM THE PREVIOUS PAGE

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY	
REQUIREMENTS	**APPLICABLE TO ANY KIND OF LIMITED LIABILITY COMPANY OR CORPORATION.**
6. Application for registration of the registered office at the Commercial Registry	The deed of formation will be submitted (i) telematically by the notary; or (ii) in person by the interested party.
7. Period for assessment and registration in the Commercial Registry	Fifteen (15) days as from the date of the entry recording the filing of the deed, unless there is just cause, in which case the period will be thirty (30) days.
8. Obtainment of definitive N.I.F.	See section 3.3 above.
9. Opening formalities for tax and labor purposes	Registration for the purposes of the Tax on Economic Activities: submission of Form 036. Companies being set up must describe the activities they are going to pursue and the reason why they are exempt from this tax. The following, among others, are exempt from this tax: • Individuals are exempt in any case. • Legal entities during the first two years they pursue their activities. • Legal entities whose net turnover is less than one million euros. • Nonprofit associations and foundations for people with physical, mental or sensory disabilities, for teaching, scientific or welfare activities. • Taxpayers that qualify for the exemption under international treaties. This step must be completed before the company commences operations. Registration for the purposes of Value Added Tax (VAT). Obtainment of an opening/operating license, or sufficient enabling instrument for pursuit of the activity, from the relevant municipal council[18]. For labor purposes, please see Chapter 5, section 10.

As a general rule, setting up a corporation or limited liability company using the ordinary procedure takes between 6 and 8 weeks (for aspects relating to labor formalities and authorizations, see Chapter 5).

For additional information please visit www.investinspain.org.

In addition, Law 14/2013, of September 27, on support to entrepreneurs and their internationalization (the "**Entrepreneurs Law**") provides an express regime for the telematic formation of limited liability companies, with and without standard bylaws, the content of which is implemented by Royal Decree 421/2015, of May 29 (regulating the standard bylaws and standard public deed forms for limited liability companies, approving the standard bylaws form, regulating the Notarial Electronic Agenda and the Exchange of reserved business names) and by Order *JUS*/1840/2015, of September 9 (approving the public deed form in standard format and codified fields of limited liability companies, as well as the list of activities that can be included in the corporate purpose[19]). This notwithstanding, according to the provisions of the Entrepreneurs Law, the regime will consist of the following steps:

18 In this connection, in accordance with the provisions of Law 12/2012, of December26, 2012, on Urgent Measures to Deregulate Trade and Certain Services, permanent establishments used for commercial retail purposes and the provision of certain services provided for in the Schedule to the Law with a useful sales and display area not to exceed 750 m^2 will not generally be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication. However, when the planned commercial activity implies the establishment of a large retail outlet, it will be necessary to hold industry authorization or an equivalent instrument granted by the competent body of the regional government.

19 For these purposes, it is established that the standard form of public deed will be used to form a limited liability company with and without standard bylaws (art. 6 Royal Decree 421/2015, of May 29).

2.

Establishing a business in Spain

A. FORMATION OF A LIMITED LIABILITY COMPANY WITH STANDARD BYLAWS USING A STANDARD-FORM PUBLIC DEED.

Nº	STEPS
1	At the Entrepreneur Service Point (*PAE*): 1. Completion of single electronic document (*DUE*) and commencement of electronic processing. Documents that are drafted in a foreign language must be accompanied by a translation into Spanish or any other official language in the province of the registered office by a sworn translator. Foreign public documents must have the corresponding apostille or diplomatic legalization, except where exempt (by law or pursuant to international treaties in force in Spain). In any case, documents attested by a Consul in the exercise of notarial functions or notarial documents executed abroad and legalized by the Spanish authorities will be subject to Spanish tax obligations. 2. Filing of request to reserve the name of the company (up to 5 different names) with the Central Commercial Registry, which will issue a certificate within the following 6 business hours. 3. A date will immediately be set for the execution of the deed of formation by means of real-time communication with the electronic notarial agenda, obtaining information on the notary's office, date and time of execution of the deed, which will be within the 12 business hours following the filing of the application.
2	The notary will: 1. Authorize the electronic deed of formation, attaching the document evidencing payment of the capital stock. A standard-form deed of formation will be used, with coded fields. 2. Immediately send a copy of the deed to the tax authorities, requesting the assignment of a provisional *N.I.F.* via the Business Information Center and Creation Network *(CIRCE)* remote processing system. 3. Send an authorized copy of the deed of formation to the Commercial Registry corresponding to the registered office via the *(CIRCE)* remote processing system. 4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost, which will be available at the *PAE* section of the Ministry of Industry, Trade and Tourism website.
3	The Commercial Registrar, on receiving via *(CIRCE)* (a) an electronic copy of the deed of formation together with the provisional *N.I.F.* assigned, and (b) evidence of the exemption from transfer and stamp tax, will: 1. Assess the deed and register it within 6 business hours (business hours meaning those included within the opening hours established for the registries). 2. Send a certification of registration to the *(CIRCE)* on the same date of registration. 3. Request the definitive *N.I.F.* 4. Where the Commercial Registrar finds defects or impediments that prevent its registration, a negative assessment will be issued and notified to the CIRCE, which will immediately notify such circumstance to the founding shareholders and to the notary. 5. The publication of the registration of the company in the Official Commercial Registry Gazette is exempt from payment of charges.
4	The tax authorities will: 1. Notify the definitive status of the *N.I.F.* via the *(CIRCE)*. 2. Notify the *N.I.F.* via the *(CIRCE)*.
5	The formalities for commencement of the activity will be performed at the *PAE*, which will send the information contained in the *DUE* to: 1. The State Tax Agency. 2. The Social Security General Treasury. 3. The local and autonomous community authorities, as the case may be.

B. FORMATION OF A LIMITED LIABILITY COMPANY WITHOUT STANDARD BYLAWS USING A STANDARD-FORM PUBLIC DEED.

Nº	STEPS
1	When the founding shareholders choose to form a limited liability company without standard bylaws, the provisions for formation of a limited liability with standard bylaws will apply, with the specific characteristics indicated in this table. At the Entrepreneur Service Point (*PAE*), the founding shareholders may: • File a request to reserve the name of the company. • Set the date for the execution of the deed of formation.
2	The notary, once they have the background information necessary to draw up the deed, will: Authorize the electronic deed of formation, attaching the document evidencing payment of the capital stock. A standard-form deed of formation will be used, with coded fields. 1. Both the notaries and the intermediaries must notify the founding shareholders of the benefits of using PAEs and CIRCE for formation of the company and for the performance of other formalities linked to the commencement of the company's activity. 2. Immediately send a copy of the deed to the tax authorities, requesting the assignment of a provisional *N.I.F.* via the *CIRCE*. 3. Send an authorized copy of the deed of formation to the Commercial Registry corresponding to the registered office via the *CIRCE*. 4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost, which will be available at the PAE section of the Ministry of Industry, Trade and Tourism website.
3	1. The Commercial Registrar, on receiving the electronic copy of the deed of formation, shall initially register the company at the Commercial Registry within a period of 6 business hours, solely indicating the data relating to: (i) name, (ii) registered office; (iii) corporate purpose, (iv) capital stock; and (v) managing body. 2. Definitive registration will take place within five days as from the day after the date of the filing entry or, as the case may be, the date of return of the withdrawn document. For such purposes, each Commercial Registry must set up a remote customer service desk during business hours so that, at the request of the interested parties or their representatives, subject to their identification, they can handle queries, including via video conference, regarding the registrability of lawful bylaw clauses or provisions. If definitive registration takes place while the filing entry is valid, the effects will be backdated to that date. Where it is not possible to complete the procedure within the indicated time periods, the commercial registrar will notify the applicant of the reasons for the delay. 3. Once registered, the Commercial Registrar will notify the competent tax authorities of the registration of the company, requesting the definitive *N.I.F.*. 4. In order to evidence the correct registration of companies at the registry, and the registration of the appointment of the directors appointed in the deed, the electronic certification issued at no additional cost by the commercial registrar on the date of registration, at the request of the interested party, will be sufficient. On the same date, a notification will be sent to the notary that authorized the deed of formation informing them that the company has been registered with the corresponding registry data, which will be attached to the notarial protocol. 5. The founding shareholders may grant the authorizing notary the authority to electronically rectify any defects found by the registrar in his or her assessment, provided that the notary abides by the assessment and the stated intention of the parties. 6. Any incident arising during the registration process between the relevant public authorities that is not attributable to the entrepreneur, will not give rise to any additional obligation or expense for the entrepreneur, and the relevant public authorities will be responsible for resolving such incident.
4	The tax authorities will: 1. Notify the definitive status of the *N.I.F.* via the *CIRCE*. 2. Notify the *N.I.F.* via the *CIRCE*.
5	The formalities for commencement of the activity will be performed at the *PAE*, which will send the information contained in the *DUE* to: 1. The State Tax Agency. 2. The Social Security General Treasury. 3. The local and autonomous community authorities, as the case may be.

2.

Establishing a business in Spain

It should be noted that according to the Entrepreneurs Law:

- Entrepreneur Service Points **(*"PAEs"*)** are: Offices belonging to public and private organizations, including notary offices and commercial registries, which will be tasked with facilitating the creation of new businesses, the effective commencement of their activity and their development, by providing information, processing, documentation and advisory services.

- Both notaries and intermediaries must inform founders of the benefits of using *PAEs* and the *CIRCE* for the formation process and completing other formalities linked to the commencement of the company's activity. Specifically, they must inform them of the following points: (i) formation costs and time periods; (ii) provision of information and advisory services; (iii) automatic fulfillment of tax and social security obligations associated with the commencement of the activity; (iv) possibility of completing formalities associated with the commencement of activity vis-à-vis the state, autonomous community and local authorities, by submitting notices and solemn declarations, and (v) monitoring of the status of the procedures vis-à-vis the competent bodies.

- All the formalities required for company formation, the actual commencement of an economic activity and its pursuit by entrepreneurs can be completed via the PAE section of the Ministry of Industry, Trade and Tourism website. The PAE section of the Ministry of Industry, Trade and Tourism website will be accessible by computer, cell phone and tablet and will include in all cases:

  - All the information and forms required to take up and pursue the activity.

  - The possibility of submitting all the necessary documentation and applications.

  - The possibility of knowing the status of the procedures in which the entrepreneur is an interested party and, where appropriate, receiving the relevant notification of the mandatory procedural acts and the decisions on them by the competent administrative body.

  - All the information on the aid, subsidies and other types of financial support available for the economic activity in question from the state, autonomous community and local authorities.

- Any other functions entrusted to it by law.

- The Single Electronic Document **(*"DUE"*)** is the document containing the data that must be sent to the legal registries and to the competent public authorities for:

  - The formation of limited liability companies.

  - The registration at the Commercial Registry of the Individual Entrepreneur.

  - Fulfillment of the tax and social security obligations on commencement of the activity.

  - The performance of any other formality on commencement of the activity with the state, autonomous community and local authorities.

4.2. TELEMATIC LEGALIZATION OF BOOKS

In accordance with article 18 of the Entrepreneurs Law and with the Instruction of February 12, 2015 and of July 1, 2015, of the Directorate-General of Registries and the Notarial Profession, on the legalization of traders' books in accordance with article 18 of Law 14/2013, of September 27, on support to entrepreneurs and their internationalization, all of the books that traders must keep in accordance with the applicable legal provisions will be legalized telematically at the Commercial Registry after they have been completed in electronic format and before four months elapse after the year-end date.

Regarding the books that are mandatory, their key features are as follows:

- Minutes book:

  - All of the minutes of the meetings of the collective bodies of commercial companies, including decisions adopted by the sole shareholder, must be reflected in electronic format and be submitted telematically for legalization within four (4) months after the fiscal year-end.

  - The company may keep just one book for all of the minutes of all of the collective bodies of the company, or a different book for each one of the collective bodies.

  - Each book must state the date of the start and the end of the fiscal year.

  - At any time of the fiscal year, the company may legalize books of details of minutes with minutes from the current fiscal year for purposes of an evidentiary or any other nature, and notwithstanding that all minutes must be included in the minutes book for the entire fiscal year.

- Register of shareholders (*S.L.*) or register of registered shares (*S.A.* with registered shares):

  - Once the company has been registered at the Commercial Registry, it will be necessary to legalize a book which records the initial ownership of the founders and, once this initial book has been legalized, it will only be necessary to legalize a new book within the four months following the end of the fiscal year in which there has been any change in the initial or successive ownership of the shares or encumbrances have been created over them.

- These books must record the full identity of the owners, their nationality and domiciles. The omission of the recording of the nationality or domicile will not preclude the book in question from being legalized, but this omission will be recorded in the legalization note.

- Book of contracts with the sole shareholder: This book is subject to the same rules as those applicable to the register of shareholders / register of registered shareholders.

It is possible to legalize any of the above books from a given year without those from the immediately preceding years having been legalized.

The signatures of the persons who authorize the request and the list of digital signatures generated by the books whose legalization is requested must meet the requirements laid down in the current legislation on qualified electronic signatures and with the mandatory certification of the certification services provider.

4.3. FEES AND COSTS

- Fees of the notary handling the formation:

  a. As a general rule, for corporations and limited liability companies formed under the ordinary regime, the fees are charged on a sliding scale based on the capital stock. For guidance purposes, the official rates amount to approximately €90 for the first €6,010.12, after which rates of between 0.03% and 0.45% are applied to amounts of between €6,010,121 and €601,012.10. For any amount in excess of €6,010,121.10, the notary will receive the amount that is freely agreed upon by the executing parties.

  b. For limited liability companies formed telematically whose capital exceeds €3,100 or whose bylaws are not adapted to any of the forms approved by the Ministry of Justice, the fee will be €150.

  c. For limited liability companies formed telematically whose capital does not exceed €3,100 and whose bylaws are adapted to one of the forms approved by the Ministry of Justice, the fee will be €60.

- Fees for registering the company at the local Commercial Registry:

  a. As a general rule, for corporations and limited liability companies formed under the ordinary regime, there are official rates that amount to €6.01 for the first €3,005, after which there is a sliding scale ranging from 0.005% and 0.10% for capital in excess of €6,010,121. The total fee is capped and may not exceed €2,181.

  b. For limited liability companies formed telematically whose capital exceeds €3,100 or whose bylaws are not adapted to any of the forms approved by the Ministry of Justice, the fee will be €100.

  c. For limited liability companies formed telematically whose capital does not exceed €3,100 and whose bylaws are adapted to any of the forms approved by the Ministry of Justice, the fee will be €40.

  d. The fee for registering at the Commercial Registry for Limited Liability Entrepreneurs (see section 5 of this Chapter 2 for more information) will be €40. The publication of the Limited Liability Entrepreneur's registration in the Commercial Registry Official Gazette will be exempt from fees. In addition, in accordance with the Decision of April 5, 2019 of the Directorate-General of the State Tax Agency, which is temporarily suspended,[20] invoices that include any fee for the performance of any transaction before the Property, Commercial and Personal Property Registries, including that of formal disclosure, which arise from documents filed at the relevant registry after March 5, 2017, will not be certified or paid. The only exception will be the fees issued by registries located in the territory of the Cataluña Autonomous Community, until the Cabinet of the Cataluña Autonomous Community Government issues the relevant decree supplementing the central government decree that gives rise to the registry demarcation.

- Transfer tax under the "corporate transactions" heading, exempt in accordance with Royal Decree-Law 3/2010 (see Chapter 3)[21].

- Charge for processing of the opening/operating license or solemn declaration by the municipal authority. A one-off municipal tax, ordinarily a relatively small amount[22]. Other expenses (*e.g.* professional fees) which are not readily quantifiable.

20 This decision is temporarily suspended by the Decision of June 3, 2019, of the Directorate-General of the State Tax Agency.

21 The decision by the Directorate-General of Registries and the Notarial Profession of January 26, 2012, establishes that in forming companies domiciled in territories where rules or instructions have been handed down regarding the settlement of transfer tax (including under the corporate transactions heading), the relevant tax return must be submitted together with the deed of formation at the relevant Commercial Registry.

22 In accordance with the provisions of Law 12/2012 of 26 December, on Urgent Measures to Deregulate Trade and Certain Services, permanent establishments used for commercial retail purposes and the provision of certain services provided for in the Schedule to the Law with a useful sales and display area of less than 750 m^2 will not generally be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication. However, the start-up of certain large retail outlets may require the obtainment of authorization or an equivalent instrument granted by the competent body of the regional government.

5
Limited liability entrepreneur

The Entrepreneurs Law created the concept of the "Limited Liability Entrepreneur" ***(ERL)***, the main characteristics of which are as follows:

Concept	Limited Liability Entrepreneur status can be taken on by an individual entrepreneur, regardless of their business or professional activity, to limit their liability for the debt deriving from the conduct of their business which will prevent any such debt from affecting certain exempt assets(principal residence and productive capital goods, provided that certain conditions are fulfilled).[23] It makes an exception to the limited liability regime for any public law debts acquired by the Limited Liability Entrepreneur the collection of which is subject to the provisions of General Taxation Law 58/2003, of December 17, General Budget Law 47/2003, of November 26, and Legislative Royal Decree 8/2015, of October 30, 2015, approving the revised General Social Security Law.
Requirements	**1. Registration of *ERL* status at the Commercial Registry corresponding to the registered office:** The notarial certificate that must be submitted by the notary to the Commercial Registry on the same day or on the business day following its authorization, or the application signed with the digital signature of the entrepreneur and sent by telematic means to the Commercial Registry, will be sufficient to apply for first registration of a Limited Liability Entrepreneur.
	2. Value of the principal residence for which liability for business or professional debts does not extend to such asset: a. May not exceed €300,000 (valued according to the taxable amount for transfer and stamp tax purposes at the time of registration at the Commercial Registry). b. In the case of residences located in towns with more than 1,000,000 inhabitants, a multiplier of 1.5 will be applied to the value under (a) above.
	3. Conditions that productive capital goods used in the operation must fulfill so that liability for business or professional debts does not to extend to such asset: a. They must be used in the activity. b. They must be duly identified at the Movable Property Registry. c. The value of all of them must not exceed the sum of the combined revenues from the past two years.
	4. Disclosure of *ERL* status It must be mentioned on all documentation, stating the registry particulars.
	5. Registration at the Property Registry Once the ERL has been registered, the Commercial Registrar issues a certificate and sends it by telematic means to the Property Registry, for subsequent registration of the fact that the principal residence is not tied to the professional activity.

23 A Limited Liability Entrepreneur can limit his/her liability stemming from business or professional debts, as an exception to what is provided for in article 1911 of the Civil Code and article 6 of the Commercial Code, in accordance with article 8.2 of the Entrepreneurs Law and provided that this absence of connection is disclosed in the manner established in that Law.

2.

Establishing a business in Spain

The Entrepreneurs Law provides that the necessary formalities for registration of *ERL* status may be performed using the *CIRCE* system and the *DUE*. In this case, the procedure would be as follows:

Nº	STEP
1	Completion of the single electronic document ("**DUE**") at the Entrepreneur Service Point ("**PAE**") and submission of the necessary documentation for registration at the Commercial Registry and at the Property Registry.
2	1. The PAE sends the DUE along with the relevant documentation to the Commercial Registry, requesting the registration of the limited liability entrepreneur. 2. The Commercial Registry has 6 business hours in which to register the entry and send the certification of registration to the CIRCE system by telematic means.
3	The Commercial Registrar will send the certificate of registration to the Property Registry, requesting registration of the prohibition on attachment of the ERL's principal residence in respect of professional and business debts.
4	The Property Registrar will register the prohibition within 6 business hours of receipt of the request, and shall immediately notify the registration to the CIRCE system, which will forward it to the tax authorities.

Entrepreneurs can ascertain the status of the procedure at any time from the corresponding *PAE*.

When it comes to this form of investment, of note is Royal Decree-Law 1/2015, of February 27, on the second chance mechanism, reduction of the financial burden and other measures of a social nature, whereby, among other reforms, a regime is established for the discharge of debts for natural person debtors in the context of an insolvency proceeding. Specifically, their debts will be discharged where:

i. The debtor is a bona fide debtor.

ii. His/her assets are previously liquidated (or the insolvency proceeding is declared concluded due to an insufficiency of assets).

iii. The debtor has paid in their entirety the post-insolvency order claims, the preferred pre-insolvency order claims and, if an out-of-court payment agreement has not been tried, 25% of the ordinary claims.

iv. Where the claims indicated in point (iii) have not been paid, if the debtor agrees to submit to a 5-year payment plan (in this case, the debtor will be released from all of his/her claims except for public claims, alimony claims, post-insolvency order claims and preferred claims).

2.

Establishing a business in Spain

6

Opening of a branch

In general terms, the requirements, procedural formalities and costs of opening a branch in Spain of a foreign company are very similar to those for the formation of a subsidiary (as a company). The main legal steps and costs are summarized below, highlighting the main differences with respect to the formation of a subsidiary.

6.1. LEGAL STEPS AND COSTS

1. Clear name search certificate	Same procedure followed as for a company. However, according to the decision of the Directorate-General of Registries and the Notarial Profession (*DGRN*) of May 24, 2007, foreign companies do not have to obtain a clear name search certificate from the Central Commercial Registry in order to set up a branch in Spain.
2. Obtainment of the N.I.F. and appointment of the representative of the parent company in dealings with the Spanish tax authorities	Same procedure followed as for a company. Appointment of an individual or legal entity residing in Spain to represent the parent company in dealings with the Spanish tax authorities regarding its tax obligations.
3. Document containing representations by the beneficial owner	Same procedure followed as for a company.
4. Execution of the deed recording the opening of a branch before a Spanish notary	This step consists of the public formalization before a notary of the resolution to open a branch previously adopted by the competent body of the foreign parent company. The notary will request (i) documentation similar to that required for a subsidiary (that is, evidence of the identity of the person who appears before him, his power of attorney to represent the parent company, declaration of the beneficial owner, evidence of payment and whether it is to be made in cash or in kind (if applicable); (ii) sufficient proof (translated, legalized and/or certified by apostille, as appropriate) of the existence of the parent company, its bylaws and the names and personal details of its directors; and (ii) the resolution to form the branch adopted by the competent body of the parent company. The deed may also contain the subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for International Trade and Investments (*DGCI*) of the Ministry of Industry, Trade and Tourism. In some cases, as with subsidiaries, prior declaration is required (see Chapter 1, section 8 for further information).
5. Application for registration at the Commercial Registry	Same procedure followed as for a company.
6. Opening formalities	**Registration for the purposes of the Tax on Economic Activities:** Same procedure followed as for a company.. **Registration for the purposes of Value Added Tax (VAT):** Same procedure followed as for a company. Payment of the charge for processing of the opening/operating license or solemn declaration: same procedure followed as for a company[24].. **Registration for Spanish social security purposes:** (See Chapter 5, section 13 for further information).

As a general rule, setting up a branch takes between 6 and 8 weeks.

24 In accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services, permanent establishments used for commercial retail purposes and the provision of certain services provided for in the Schedule to the Law with a useful sales and display area not to exceed 750 m^2 will not generally be required to obtain an opening and operating license beforehand, but rather to submit a solemn declaration or prior communication. However, the establishment of a large retail outlet requires the prior obtainment of authorization from the competent body of the regional government.

2.

Establishing a business in Spain

6.2. BRANCH VERSUS SUBSIDIARY

The main differences between a branch and a subsidiary to be taken into consideration from a tax and legal standpoint are summarized below.

	BRANCH	SUBSIDIARY
Minimum capital stock	Minimum capital stock No capital is required to set up a branch, although providing the branch with capital is recommended for practical reasons.	S.A.: €60,000. S.L.: €1[25]
Legal personality	No (no separate legal personality but rather the same legal identity as its parent company).	Yes.
Managing and government body	Representative resident in Spain (who acts as attorney of the branch in the name and on behalf of the parent company for all purposes, particularly tax purposes[26]).	Shareholders' meeting and the managing body.
Shareholder liability	No limit to the parent company's liability.	The liability of the shareholders of a subsidiary formed as an S.A. or S.L. for the debts of the subsidiary is limited to the amount of their capital contributions (with the exceptions analyzed in Appendix I, section 3).

From a tax standpoint, both the branch and the subsidiary are, in general terms, liable for Spanish corporate income tax (subsidiary) or nonresident income tax (branch) at 25% on their net income (rate applicable from 2016 onwards).

The following aspects in relation to the tax treatment of branches and subsidiaries and of the income paid or remitted by them should be noted:

- The remittance of a branch's profits to its head office or the payment of a subsidiary's dividend to its parent will be taxed in Spain depending on the country of residence of the parent company or head office:
  - If it is not resident in an EU country and is also not resident in a country with which Spain has a tax treaty, remittances or dividends will be taxed in Spain at a rate of 19% from 2016 onwards.
  - If it is EU-resident, remittances or dividends are usually tax-exempt. If the exemption cannot be applied to dividends, the reduced rate under the relevant tax treaty with Spain will apply. If there is no tax treaty with Spain and the exemption will not be applied, the applicable rate will be 19%.
  - If it is resident in a non-EU country with which Spain does have a tax treaty, the dividends will be taxable at the reduced treaty rate and the remittance of branch profits will, under most treaties, be exempt from tax in Spain.
- A branch is a permanent establishment for the purposes of nonresident income tax. Nonetheless, a branch is not the only form of permanent establishment. In order to identify whether or not a permanent establishment exists, consideration must first be given to whether or not a tax treaty has been signed between Spain and the country of residence of the interested party:

  a. If a tax treaty has been signed between Spain and the taxpayer's country of residence, regard must be taken to the definition of permanent establishment in that treaty. In general, the tax treaties currently in force are in line with the definition set forth under Article 5 of the OECD Model Convention, which distinguishes between two forms of permanent establishment.

  The first form of permanent establishment is the fixed place of business. This is a place through which the business of an enterprise is wholly or partly carried on. In general, a fixed place of business will therefore exist where the following requirements are met:

  - The facility, center or site must be used to carry on the business.
  - The facility must be fixed or related to a specific place or space, with a certain degree of permanence over time.
  - The activity must be productive and must contribute to the enterprise's global income.

  This definition of permanent establishment excludes a fixed place of business from which certain ancillary or preparatory activities, listed in the tax treaties, are carried on.

  The second form of permanent establishment is the dependent agent. This is an agent who acts on behalf of the nonresident entity, who has and exercises powers to bind such entity, and who does not have independent agent status.

  b. If there is no applicable tax treaty, regard must be had to the definition of permanent establishment set forth in Spanish domestic law. Article 13.1.a of Leg-

25 Please see section 4 of this document for more information.

26 Article 10.1 of Legislative Royal Decree 5/2004, of March 5, approving the revised Nonresident Income Tax Law.

islative Royal Decree 5/2004, approving the revised Nonresident Income Tax Law has, to a great extent, been brought into line with the aforesaid definition of permanent establishment according to the OECD Model Convention.

- The Directorate General of Taxes has ruled on a number of occasions that the Special Rules regulated under Title VII of the Corporate Income Tax Law are applicable to permanent establishments located in Spain and belonging to nonresident entities, inter alia, the special rules applicable to small entities (For further information on the special rules, see Chapter 3).

- Share of parent company overheads: In practice, it is usually easier for these expenses (if any are imputed) to qualify as deductible in the case of a branch than in the case of a subsidiary.

- Interest on loans from a foreign parent company to its Spanish branch is not tax-deductible for the branch. By contrast, the interest on loans from the shareholders of a subsidiary is normally tax-deductible for the subsidiary, provided that the transaction is valued on an arm's-length basis and subject to certain requirements, subject to the limits on deductibility established in corporate income tax legislation. The general limit is 30% of the subsidiary's *EBITDA*, although deductibility is prohibited in some cases, for example, where the debt is used to acquire holdings in entities from other group entities (unless they are acquired on valid economic grounds) or where the finance costs do not generate any income, or generate tax-exempt income or income taxed at less than 10% at the recipient, due to such income not being classed as a financial return.

6.3. CALCULATION OF SPANISH CORPORATE INCOME TAX

Below is a simple example of how Spanish corporate income tax and nonresident income tax is calculated on the profit obtained by a Spanish subsidiary or by the branch in Spain of a foreign company, respectively. (For further information, on these taxes, see section 2.1. of Chapter 3).

	UE COUNTRY (1)	TREATY COUNTRY	NON-TREATY COUNTRY
SUBSIDIARY:			
Profit of Spanish subsidiary	100	100	100
Spanish income tax (25%) (2)	25	25	25
Dividends	75	75	75
Withholding tax on dividends	_(4)	7.5(5)	14.25(3)
Total tax in Spain	25	32.5	39.25
BRANCH:			
Profit of Spanish branch	100	100	100
Spanish income tax (25%) (2)	25	25	25
Profit remitted to the parent company	75	75	75
Withholding tax	_(4)	_(6)	14.25(3)
Total tax in Spain	25	25	39.25

(1) Spain has tax treaties in force with all EU countries except Denmark.
(2) The general corporate income tax rate is 25%.
(3) Withholding tax rate = 19%.
(4) Exempt, provided certain conditions are met.
(5) The withholding tax rate on dividends used.
(6) The branch profit tax will apply if provided for in the corresponding tax treaty (e.g. Canada and Brazil).

6.4. REPRESENTATIVE OFFICES

Apart from through a corporation or a branch, a foreign investor in Spain may operate, among other options, through a representative office.

In light of the lack of specific regulations in this respect, a definition may be found in the tax treaties signed by Spain with third countries: a representative office is understood to be a fixed place of business, established by a nonresident company, that pursues purely marketing or informational activities relating to commercial, financial and economic matters but does not conduct any actual business. They are governed by treaties signed with Spain or, where there are no treaties, by Spanish legislation and representative offices are considered permanent establishments.

This form of establishment in Spain allows investors to obtain all kinds of information on which they can base their investment decision, without having to comply with too many legal formalities. A representative office is, therefore, the ideal vehicle for conducting market research, studying the level of competition existing in the industry in which it intends to invest, compiling financial projections and profit estimates for the investment or negotiating the acquisition of companies via purchase of shares or of assets and liabilities.

Representative offices have, inter alia, the following key characteristics:

- Representative offices do not have separate legal personality from their parent.

- The nonresident company is liable for all debts assumed by the representative office.

- Representative offices cannot themselves conduct commercial transactions.

2.

Establishing a business in Spain

- In general, no commercial requirements need to be met for a representative office to be opened, although mainly for tax, employment and social security purposes a public deed (or document executed before a foreign notary public, duly legalized with the Hague Apostille or any other applicable form of legalization) may have to be executed, recording the opening of the representative office, the allocation of funds, the identity of the tax representative (an individual or legal entity resident in Spain) and its powers. Representative offices need not be recorded at the Commercial Registry.

- Representative offices have no formal managing bodies; the representative of each office performs the activities of the representative office by virtue of the powers granted to that representative.

As regards the main employment and tax aspects of representative offices, please see the corresponding sections in chapters 3 and 5.

2.

Establishing a business in Spain

7

Other alternatives for operating in Spain

7.1. FORMS OF BUSINESS COOPERATION

One of the most common forms of business cooperation between companies is the joint venture (J.V.). Spanish law does not expressly regulate this mechanism, as it is an atypical contract that finds its basis in the principle of freedom of contract provided for in article 1255 of the Civil Code.

Under the current legislation, the main forms through which a joint venture may be set up between one or more parties are as follows:

a. Through a temporary business association (see section 7.2 below).
b. As an economic interest grouping (see section 7.3 below).
c. Through a silent participation agreement (see section 7.4 below).
d. By setting up a company (see section 7.5 below).

7.2. TEMPORARY BUSINESS ASSOCIATIONS (*UTES*)

- **Concept/purpose**: Under Spanish law, *UTEs* are temporary business alliances set up for a specified or unspecified period of time, for the purpose of carrying out a specific project or service. *UTEs* allow several companies to operate together on one common project. This form of association is very common for engineering and construction projects but can be used in other sectors as well.

- **Legal personality**: *UTEs* are not companies in the strict sense and have no legal personality.

- **Fiscal transparency regime**: While they have no legal personality, in order to qualify for the special fiscal transparency regime provided for *UTEs*, their formation must be recorded in a public deed and they must be registered on the Special Register of *UTEs* at the Spanish Ministry of Finance. Furthermore, they must comply with bookkeeping and accounting requirements similar to those of Spanish companies. They may be also registered at the Commercial Registry. Formalities for formalization of a *UTE* are similar to those for a company or branch, adjusted to reflect the special characteristics of this type of arrangement.

- **Regulation**: *UTEs* are governed by Law 18/1982 on the Tax Regime of Temporary Business Groupings and Associations and Regional (Industrial) Development Companies, amended, among others, by Law 12/1991, Law 43/1995 and Law 62/2003.

7.3. ECONOMIC INTEREST GROUPINGS (EIGS)

- **Concept/purpose**: EIGs are created with a view to facilitating the pursuit or enhancing the profitability of the activities of their members. EIGs may not act on behalf of their members nor may they substitute them in their operations. Consequently, the EIG is most commonly used to provide secondary services, such as centralized purchasing, sales, information management or administrative services, within the context of a broader association or group of companies.

2.

Establishing a business in Spain

- **Legal personality**: One of the key differences between *UTEs* and EIGs is that EIGs are commercial entities with a separate legal personality.
- **Formation requirements**: Spanish law sets out certain requirements for the formation of EIGs:
  - They may not interfere with their members' decisions on personnel, finance or investment matters, nor are they allowed to manage or control the activities of their members.
  - They may not directly or indirectly hold stakes in their member companies, unless it is necessary to acquire shares or holdings in order to fulfill the EIG's purpose, in which case the shares or holdings must be transferred immediately to its members.
  - They must be formed by notarial deed and registered at the competent Commercial Registry.
- **Member liability**: EIG members are considered personally and jointly and severally liable for the entity's debts, albeit secondarily to the EIG's liability. Their main obligation is to contribute to the EIG's capital on the agreed terms and to share in its expenses.
- **Governing bodies**:
  - The members' meeting.
  - The managers, who are jointly and severally liable with the EIG for all tax obligations accrued and for any damage caused, unless they are able to prove that they acted with due diligence.
- **Regulation**: EIGs are mainly governed by Economic Interest Groupings Law 12/1991, of April 29.
- **European Economic Interest Grouping (EEIG)**: This has a separate legal identity, with the characteristics regulated by EU Council Regulation (EEC) 2137/85, which establishes the basic rules governing EEIGs.

7.4. SILENT PARTICIPATION AGREEMENT (C.E.P.)

- **Concept**: This form of business association, which is not subject to any legal formality at all, consists of a financial collaboration whereby one or more entrepreneurs (silent partners) take an interest in the operations of another (the active partner), contributing an agreed portion of capital to the active partner and sharing in the profits or losses in the proportion determined by them.
- **Contributions**: The contributions, whether cash or in kind, do not qualify as capital contributions as such, but rather simply represent the right of the silent partner(s) to share in the results of the business concerned. Silent partners are therefore not shareholders of the active partner.
- **Formal requirements**: As provided in the Commercial Code, this type of agreement does not require any legal formality to be fulfilled (public deed or registration at the Commercial Registry). However, in practice, the parties tend to record the agreement in a public deed in order to provide proof to third parties.
- **Regulation**: Articles 239 through 243 of the Commercial Code, contained in Title II "Silent Participation Agreements" (Book II of the Commercial Code).

7.5. PARTICIPATING LOANS

- **Concept**: It is a form of financing for companies subject to the terms and conditions described below.
- **Contributions**: As with a Silent Partnership Agreement, the funds corresponding to the principal of the participating loan are not considered share capital and therefore the lender is not considered a shareholder. However, participating loans will be considered equity for the purposes of determining whether the company is subject to a ground of mandatory capital reduction[27] or of mandatory winding-up[28]. In addition, in the order of payment of debts, participating loans rank below ordinary creditors.
- **Interest**: The lender will receive variable interest which will be determined on the basis of the business performance of the borrower. The indicator for determining said performance will be: net income, business volume, total equity or such other indicator as may be freely agreed upon by the parties. The parties may also agree on a fixed interest rate not related to the performance of the business.
- **Repayment**: The parties may agree to a penalty clause in the case of early repayment. In any event, the borrower may repay the participating loan early only if the repayment is offset by an increase in equity of an equal amount and if it does not arise from the revaluation of assets.

27 In accordance with article 327 of the Capital Companies Law, "*in a public limited company, a capital reduction shall be mandatory where losses have reduced its equity to below two-thirds of its share capital and a fiscal year has elapsed without equity have been restored*".

28 In accordance with article 363.1e) of the Capital Companies Law, a capital company must be wound up "as a result of losses that reduce its equity to an amount below half of its share capital, unless the share capital is sufficiently increased or reduced, and provided that it is not appropriate to petition for an insolvency order". However, Royal Decree-Law 20/2022, of December 27, 2022, has extended the exceptional measures established by article 13 of Law 3/2020, of September 18, 2020, on procedural and organizational measures to confront Covid-19 in the sphere of the justice system, relating to grounds for winding up due to losses in the case set out in article 363.1e). Accordingly, losses from fiscal years 2020 and 2021 will not be taken into consideration until the 2024 year-end when determining whether the company is subject to ground of mandatory winding-up.
In addition, by virtue of article 13 of Law 28/2022, promoting the start-up ecosystem (known as the "**Start-ups Law**"), the ground of winding-up due to losses will not apply to start-ups (meaning companies that meet the requirements set out in article 3 of the same law) whose net worth has been reduced to less than one-half of the capital stock, provided that it does not arise from petitioning for an insolvency order, until three years have elapsed since the start-up was formed.

- **Tax implications**: Any fixed and variable interest that accrues on or after January 1, 2015 as a result of the arrangement of participating loans[29] will be deductible for corporate income tax purposes, unless the interest arises from participating loans in which the lender and borrower are companies in the same group within the meaning of article 42 of the Commercial Code. Such deduction is subject, however, to the restrictions on the deductibility of finance costs laid down in article 16 of the Corporate Income Tax Law (For more information, see section 2.1.2.4 of Chapter 3).

- **Regulation**: Article 20 of Royal Decree-Law 7/1996, on urgent measures of a tax nature and for the promotion and deregulation of economic activity.

7.6. JOINT VENTURES THROUGH SPANISH CORPORATIONS OR LIMITED LIABILITY COMPANIES

A significant number of joint ventures use corporations and limited liability companies as vehicles. Therefore, we recommend reading the comments made in other sections of this Guide on the formation, basic characteristics and features of the corporate bodies of corporations and limited liability companies. (See this Chapter and Annex I).

7.7. DISTRIBUTION, AGENCY, COMMISSION AGENCY AND FRANCHISING AGREEMENTS

There are various ways to operate in Spain without having to set up a company or enter into an association with other existing entities or establish a physical center of operations in Spain, including most notably the following.

7.7.1. DISTRIBUTION AGREEMENTS

Distribution agreements are an interesting alternative to forming a company or branch or entering into commercial cooperation agreements with previously existing businesses given the low initial investment required. There are several types of distribution agreement. Given the current lack of specific legislation on this area, many such agreements allow the parties broad discretion to decide on their contents.

In practice, distribution agreements are often confused with agency agreements. Nevertheless, they are different and have distinct regulations and characteristics.

- **Concept**: Under a distribution agreement, one of the parties (the distributor) undertakes to purchase goods belonging to the other party for resale.Distributors are legal entities that form an intrinsic, albeit not truly integrated, part of the commercial network of the supplier, united by a business relationship and a shared desire to increase sales.

- **Classification**: There are three main categories according to the types of distribution networks or system:

  - Commercial concession or exclusive distribution agreements: The supplier not only undertakes not to provide his products to more than one distributor within a specified territory, but also not to sell those products himself within the territory of the exclusive distributor.

  - Sole distribution agreements: The only difference between sole and exclusive distribution agreements is that under a sole distribution agreement, the supplier reserves the right to supply the agreed products to users in the territory in question.

  - Authorized distribution agreements under the selective distribution system: Owing to their nature, certain products require special treatment by distributors and sellers. The form of distribution used in both cases is called "selective distribution", so-called because distributors are carefully selected on the basis of their capacity to handle technically complex products or to maintain a particular image or brand name.

7.7.2. AGENCY AGREEMENTS

- **Concept**: Article 1 of Agency Agreements Law 12/1992 transposed Directive 86/653/EEC into Spanish law and provides the following definition of agency agreements:

  "Under an agency agreement, an individual or legal entity, known as an agent, agrees with another on a continuous or regular basis, in exchange for remuneration, to promote commercial acts or transactions for the account of another or to promote and conclude them for the account and in the name of others, as an independent intermediary and without assuming the risk and hazard of such transactions, unless otherwise agreed."

  Agents are independent intermediaries who do not act in their own name and behalf, but rather for and on behalf of one or more principals.

  An agent must, of his own accord or through his employees, negotiate and, if required by contract, conclude on behalf of the principal, the commercial acts or operations he is instructed to handle. Agents are subject to a number of obligations, including the following:

  - An agent cannot outsource his activities unless expressly authorized to do so.

29 Only applicable to participating loans between group companies granted after June 20, 2014 (Transitional Provision Seventeen of the Corporate Income Tax Law).

- An agent is authorized to negotiate the agreements or transactions detailed in the agency agreement but can only conclude them on behalf of its principal when expressly authorized to do so.
- An agent may act on behalf of several principals, unless the related goods or services are similar or identical and competing, in which case express consent is required.

- **Restraint-of-trade provisions**: Restraint-of-trade provisions (i.e., provisions restricting or limiting the activities that can be carried out by the agent once the agency agreement has been terminated) have a maximum duration of two years as from termination of the agency agreement. However, if the agency agreement has been agreed to for a shorter period of time, the restraint-of-trade provision may not last longer than one year.
- **Obligations of the principal**:
  - To act loyally and in good faith in its relations with the agent.
  - To provide the agent with all the documentation he needs to engage in his activity.
  - To provide the agent with all the information required to perform the agreement.
  - To pay the agreed compensation.
  - To accept or reject transactions proposed by the agent.
- **Compensation**: One of the essential elements of the agency agreement is that the agent's work must always be compensated. The compensation may consist of a fixed amount, a commission or a combination of both systems.

7.7.3. COMMISSION AGENCY AGREEMENTS

- **Concept**: This is the mandate under which the authorized agent (commission agent) undertakes to perform or to participate in a commercial act or agreement on behalf of another (the principal). Commission agents may act:
  - In their own name, acquiring rights against the contracting third parties and vice versa.
  - On behalf of their principal, who acquires rights against third parties and vice versa.
- **Main obligations of commission agents:**
  - To protect the interests of their principals as if they were their own and to perform their engagement personally. Commission agents may delegate their duties if authorized to do so and may use employees at their own liability.
  - To account for amounts that they have received as commission, to reimburse any excess amount and to return any unsold merchandise.
  - In general, commission agents are not liable to their principal for the performance of the related agreements by third parties, although this risk can be secured by a commission del credere.
  - Commission agents are barred from buying for their own account or for the account of others, without the consent of their principal, the goods that they have been instructed to sell, and from selling the goods that they have been instructed to buy.
- **Commission**: The principal undertakes to pay a commission and to respect the retention and preference rights of the commission agent. The claims of the commission agent against the principal are protected by the right to retain the goods.

Differences and similarities between agency agreements and commission agency agreements

- **Main similarity**: In both cases, an individual or legal entity undertakes to pay another compensation for arranging a business opportunity for the former to conclude a legal transaction with a third party, or for acting as the former's intermediary in concluding the transaction.
- **Main difference**: Agency agreements involve an engagement on a continuous or regular basis, whereas commission agency agreements involve occasional engagements.

7.7.4. FRANCHISING

- **Concept**: Franchising is a system for marketing goods and/or services and/or technology. It is based on close, ongoing cooperation between independent undertakings (the franchisor and its individual franchisees). Under this system, the franchisor grants a right to, and imposes an obligation on, its individual franchisees, for a specific market, to pursue the business or commercial activity previously carried out by the former with sufficient experience and success, using the concept and system defined by the franchisor.

  In return for a direct and/or indirect consideration, this right entitles and obliges individual franchisees to use the brand name and/or trade or service mark for the goods and/or services, the know-how and the technical and business methods, which must be specific to the business, material and unique, the procedures and other intellectual property rights of the franchisor, backed by the ongoing provision of commercial and technical assistance under, and during the term of, the relevant franchising agreement between the parties, all of the above regardless of any supervisory powers conferred on the franchisor by contract.

2.

Establishing a business in Spain

Commercial concession or exclusive distribution agreements will not necessarily be considered franchises where an entrepreneur undertakes to acquire products (usually brand products) under certain exclusive rights in an area in order to resell them, again under certain conditions, as well as to offer after-sale services to purchasers of the products. In addition, the following are not considered to be franchises: (i) the grant of a manufacturing license; (ii) the licensing of a registered trademark to be used in a particular area; (iii) transfers of technology or; (iv) a license to use a commercial emblem or logo.

- **Legislation**: The applicable Spanish legislation is (i) Law 7/1996, of January 15, regulating retail trade, regarding the basic conditions for carrying on franchise activity and creating the Register of Franchisors (as amended by Law 1/2010, of March 1); (ii) Royal Decree 201/2010, of February 26, regulating the exercise of the commercial activity under a franchise arrangement and the communication of information to the Register of Franchisors; and (iii) Royal Decree 378/2003, which refers to Regulation (EC) No. 2790/1999, of December 22, 1999, relating to the application of Article 81(3) of the Treaty to certain categories of vertical agreements and concerted practices and Regulation (EC) no. 1400/2002, of July 31, 2002, for the motor vehicles sector.

- **Registration**: Royal Decree-Law 20/2018 of December 8, 2018, eliminates the Register of Franchisors. In accordance with Royal Decree 553/2019, of September 27, 2019, the only current requirement is for the franchisor – at least 20 business days prior to the signature of any franchise agreement or preliminary agreement or the delivery by the future franchisee to the franchisor of any payment – to deliver to the future franchisee in writing the information it needs to be able to decide in a free and informed manner whether it will join the franchise network and, in particular, (i) the main identifying particulars of the franchisor; (ii) a description of the sector of the business being franchised; (iii) the experience of the franchise company; (iv) the contents and characteristics of the franchise and its operation; (v) the structure and scope of the network, and (vi) the essential elements of the franchise agreement.

- **Types of franchising agreement**: Industrial franchising agreements (for the manufacture of goods), distribution franchising agreements (for the sale of goods) and service franchising agreements (relating to the provision of services).

  The advantages offered by a franchising agreement include the fact that a franchising agreement is a form of product and/or service distribution that enables a uniform distribution network to be swiftly created with limited investment. Franchising also enables independent traders to set up installations more rapidly and with greater chances of success than if they did so themselves without the know-how and assistance of the franchisor.

  Antitrust law requirements must be thoroughly considered when defining the content of franchising agreements.

According to the experts, franchising has seen spectacular growth in Spain in recent years, giving rise to what is now a well-established franchising system.

8
Other alternatives for investing in Spain

8.1. ACQUISITION OF SHARES OF AN EXISTING CORPORATION OR OF A LIMITED LIABILITY COMPANY

The following table summarizes the fundamental legal steps involved in the acquisition of shares of an existing corporation or limited liability company:

FORMALITY	S.A.	S.L.
Attestation by public authenticating officer	Necessary where required by Spanish law or by the bylaws or where so agreed by the parties.	Always required.
Documentation to be provided to the notary	• Title to the shares being transferred. • Powers of attorney, as the case may be, to appear in the name of the buyer or seller, as appropriate. If the powers of attorney were granted abroad, they must be duly legalized (See requirement 5 under section 4 above). • *N.I.E./N.I.F.* or Spanish national identity card of the buyer and the seller (see section 3 above). • Declaration regarding the beneficial owner, from both the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the deed itself (see requirement 4 under section 4 above). • Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).	
Subsequent declaration of the investment to the D.G.C.I.	Filing of form D-1A at the Ministry of Industry, Trade and Tourism. This form must include the protocol number and date of the public document formalizing the investment, must be signed by telematic means by the individual or legal entity making the investment and countersigned by the public authenticating officer, and filed by telematic means via the website of the Directorate-General for International Trade and Investments (*D.G.C.I.*). In some cases, a prior declaration is required (see Chapter 1, section 8 for further information).	

CONTINUE ON THE NEXT PAGE >

2.

Establishing a business in Spain

< CONTINUED FROM THE PREVIOUS PAGE

FORMALITY	S.A.	S.L.
Payment of transfer tax and stamp tax under the "transfers for consideration" heading	See Chapter 3.	
Costs	Depending on the Spanish public authority before which the acquisition is made: • Notary fee: The scale applicable for the formation of a branch is also applicable here. • Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees.	
Financial transactions tax (Tobin Tax)	The financial transactions tax (Tobin Tax) is intended to levy 0.2% on transactions for acquiring the shares of listed Spanish companies with market capitalizations above €1,000 million, regardless of the places of residence of the agents acting in those transactions; and will not affect the primary market, transactions necessary for the functioning of market infrastructure, company restructuring transactions, transactions taking place between companies in the same group, or temporary transfers. The taxable person will be the acquirer of the shares. The taxable person that must pay over the tax to the State Tax Agency (regardless of where it is established) would be one the following ones, depending on the different cases envisaged in the law: the member of the market that executes the acquisition on behalf of others, the investment services company or credit institution that makes the acquisition on its own behalf, the financial intermediary, the systematic internationaliser or, lastly, the depositary. The assessment of the tax will be monthly.	

In relation to this form of investment, it should be noted that shareholders of limited liability companies or corporations (except for (i) listed companies, companies whose shares are admitted to trading on a multilateral trading facility; (ii) companies in situations of insolvency or pre-insolvency; and (iii) sports corporations) are recognized a right of withdrawal in the event of a failure to distribute dividends once the fifth fiscal year since the company was registered at the Commercial Registry has elapsed.[30]

Following the latest amendment of article 348 bis of the Capital Companies Law, the requirements for shareholders to be able to exercise the right of withdrawal (within one month after the shareholders' meeting was held) are as follows:

a. The shareholder's protest due to the insufficiency of dividends recognized must be recorded in the certificate of distribution of income.

b. The shareholders' meeting must not approve the distribution as a dividend of a least twenty-five percent of the income obtained in the preceding year where such income is legally distributable, provided that the company has not obtained income in the past three fiscal years.

c. The total amount of dividends distributed in the past five years must be less than twenty-five percent of the legally distributable income recorded in that period.

Also, even if the above requirements are not met, this right of withdrawal is granted to the shareholder of the parent company of the group where the company in question is required to prepare consolidated financial statements, where: (i) the shareholders of the company do not approve the distribution as a dividend of at least twenty-five percent of the consolidated income attributed to the parent company in the prior year, provided that it is legally distributable; and (ii) consolidated income attributed to the parent company has been obtained in the past three fiscal years.

30 Following the entry into force of Royal Decree 7/2021, the shareholder's right to withdraw in the event of a failure to distribute dividends has been eliminated for credit institutions, credit financial establishments, investment services firms, payment institutions, electronic money institutions, and financial holding companies and mixed financial holding companies.

2.

Establishing a business in Spain

8.2. ACQUISITION OF REAL ESTATE LOCATED IN SPAIN

Set out below are the main legal formalities to be performed for the acquisition of real estate located in Spain:

FORMALITY	ACQUISITION OF REAL ESTATE LOCATED IN SPAIN
Attestation by public authenticating officer	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.
Documentation to be provided to the notary	• Title to the property. • Powers of attorney, as the case may be, to appear in the name of the buyer or seller, as appropriate. If the powers of attorney were granted abroad, they must be duly legalized (See requirement 5 under section 4 above). • *N.I.E./N.I.F.* or Spanish national identity card of the buyer and the seller. • Declaration regarding the beneficial owner, both for the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the sale and purchase deed itself (see requirement 4 under section 4 above). • Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).
Subsequent declaration of the investment to the D.G.C.I.	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).
Taxes	See Chapter 3.
Registration at the relevant Property Registry	The acquisition must be registered at the relevant Property Registry as soon as the sale and purchase deed has been formalized and the related taxes have been paid in order to ensure that acquirer's property rights are duly protected.
Costs	• Notary fee: The scale applicable for the formation of a subsidiary is also applicable here. • Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees. • Property Register fees: For guidance purposes, the official rates amount to €24 if the value of the property does not exceed €6,010, plus a variable rate of between 0.175% and 0.02%. The total fee is capped and may not exceed €2,181.

8.3. ACQUISITION OF A BUSINESS

As an alternative to the sale and purchase of shares in Spanish companies, the investment in Spain could be made by acquiring a business, either through an agreement for the sale and purchase of the assets and liabilities of a Spanish company, or through a global transfer of the assets and liabilities of a company.

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
Requirements	If the seller or buyer is a legal entity and the sale or purchase, respectively, are of an essential asset (i.e. the amount of the transaction exceeds 25% of the value of the assets that appear in the last approved balance sheet), the transaction must be approved by the shareholders' meeting of the selling company or of the buying company, as appropriate.	Under the Structural Modifications Law: • Global transfer plan, drawn up by the directors of the transferring company. • Report applying and justifying the global transfer plan drawn up by the directors of the transferring company. • Approval of the global transfer by the shareholders of the transferring company. • Publication of the resolution on the global transfer approved by the shareholders of the transferring company in the Official Gazette of the Commercial Registry and in a large circulation newspaper in the province where the transferring company has its registered office[31]. • Expiration of the statutory period for objection by creditors: one month from the date of publication of the last notice of the global transfer resolution[32]. • Execution of a public deed before a notary (see formality below "Documentation to be provided to the notary"). • Registration at the Commercial Registry of the transferring company (effectiveness of the transfer) (see formality below "Registration at the appropriate Registry").

CONTINUE ON THE NEXT PAGE >

31 The resolution approving the global transfer need not be published where the resolution is notified individually in writing to all of the shareholders and creditors. In addition, the global transfer plan and the directors' report must be made available to the workers' representatives.

32 In the case of notification in writing to all of the shareholders and creditors, one month from the sending of the notification to the last one.

< CONTINUED FROM THE PREVIOUS PAGE

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
Attestation by public authenticating officer	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.	
Documentation to be provided to the notary	• Title of ownership of the assets. • Powers of attorney, if applicable, to appear on behalf of the seller and buyer, as appropriate. If granted abroad, it must be duly legalize (see requirement 5 of section 4 above). • Spanish *N.I.E./N.I.F./D.N.I.* of the seller and buyer. • Declaration regarding the beneficial owner, both for the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the sale and purchase deed itself (see requirement 4 under section 4 above.). • Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).	• Title of ownership of the assets. • Powers of attorney, if applicable, to appear on behalf of the transferor and transferee. If granted abroad, it must be duly legalize (see requirement 5 of section 4 above). • Spanish *N.I.E./N.I.F.* of the transferor and transferee. • Declaration regarding the beneficial owner, both for the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the global transfer deed itself (see requirement 4 under section 4 above). • Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer). • Certificate of the resolution of the shareholders' meeting or the decision of the sole shareholder of the transferring company approving the global transfer. • Notice of the transfer in the BORME and in a large circulation newspaper in the province where the registered office is located, if applicable.
Subsequent declaration of the investment to the D.G.C.I.	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).	
Taxes	See Chapter 3.	
Registration at the appropriate Registry	As soon as the purchase deed has been formalized before a notary and the related taxes have been paid, it will be necessary to register the immovable property at the appropriate Property Registry, as well as the movable property at the Movable Property Registry, in order to ensure that the acquirer's property rights are duly protected.	The transfer will take effect upon registration at the Commercial Registry pertaining to the registered office of the transferring company. If the company is extinguished as a result of the transfer, its registry entries will be cancelled. In addition, the directors of the participating companies must submit a copy of the global transfer plan for filing at the Commercial Registry.

FORMALITY	SALE/PURCHASE OF ASSETS AND LIABILITIES	GLOBAL TRANSFER
Costs	• Notary fee: The scale applicable for the formation of a subsidiary is also applicable here. • Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees.	
	• Property Register fees: For guidance purposes, the official rates amount to €24 if the value of the property does not exceed €6,010; thereafter rates of between 0.175% and 0.02% are applied. The total fee is capped and may not exceed €2,181. • Movable Property Registry fee: For guidance purposes, the fee amounts to €2.40 if the value of the property does not exceed €60; thereafter rates of between €6 and €13 apply up to a property value of €18,000. For any excess over €18,000, a fee of €1.20 will apply to each €3,000 of excess.	• Commercial Registry fee: For guidance purposes, the fee amounts to €6.010121 if the value of the assets does not exceed €3,005.06; thereafter rates of between 0.1% and 0.005% apply. In any event, the overall fee may not exceed €2,181.673939.

8.4. VENTURE CAPITAL ENTITIES

Another way to invest in Spain is to take up temporary stakes in the capital of companies established in Spain (*i.e.* non-real estate, non-financial and unlisted companies) by forming venture capital entities. Venture capital is defined as those investment strategies that channel financing directly and indirectly to companies, maximize the value of the company through management and professional advice, and divest from the company with a view to earning high gains for the investors. Through this channel, it is possible to invest both in start-up business projects (venture capital), and in already mature companies with a proven track record of profitability (private equity).

The current regulation of venture capital in Spain, contained in Law 22/2014 of November 12, regulating venture capital entities, other closed-end collective investment undertakings and the management companies of closed-end collective investment undertakings (the "**Venture Capital Law**"), relaxes the legislative framework for these entities with, among others, the aim of helping them to raise more funds to be able to finance a larger number of companies.

2.

Establishing a business in Spain

9 Dispute resolution

9.1. COURT PROCEEDINGS

Judiciary Organic Law 6/1985, of July 1, regulates the constitution, operation and governance of courts and tribunals in Spain. For judicial purposes, the State is organized on a territorial basis into municipalities, judicial districts, provinces and Autonomous Communities, in which the Justices of the Peace, the Courts of First Instance, Examining Courts, Commercial Courts, Criminal Courts, Judicial Review Courts, Labor Courts, Provincial Appellate Courts and High Courts have jurisdiction. The Supreme Court and the National Appellate Court (*Audiencia Nacional*) (the latter only for certain specific matters) have jurisdiction over the entire national territory. The Supreme Court is the highest judicial authority with the sole exception of the guarantee of constitutional rights, which are safeguarded by the Constitutional Court.

Law 1/2000, the Spanish Civil Procedure Law, came into force on January 8, 2001. Criminal, labor and administrative proceedings are governed, respectively, by the Criminal Procedure Law approved by the Royal Decree dated September 14, 1882, Law 36/2011, of October 10, 2011, regulating the labor and social security jurisdiction, and Judicial Review Procedure Law 29/1998.

Although the Spanish litigation system should be considered as a continental law system, certain features of the Civil Procedure Law have their roots in the common law system. An example of this is the predominance of the oral proceeding. The Civil Procedure Law reduces formalities and promotes more expeditious proceedings and a quicker and more efficient response from the courts.

Spain has signed numerous bilateral and multilateral treaties on the recognition and enforcement of foreign judicial decisions.

9.2. ARBITRATION

Arbitration is increasingly viewed as a genuine alternative for the settlement of commercial disputes. Companies, aware of the greater speed, efficiency and flexibility of arbitration compared to action before the courts, are increasingly keen to turn to arbitration. Furthermore, Spanish courts increasingly support arbitration, both in terms of arbitration agreements and the enforcement of arbitral awards.

Arbitration Law 60/2003 of December 23, 2003 (the "**Arbitration Law**") enables both individuals and companies to enter into agreements to submit to one or more arbitrators any disputes that have arisen or may arise on matters the regulation of which is not subject to any legal restrictions. The Arbitration Law is almost entirely inspired by the *UNCITRAL* Model Law on International Commercial Arbitration. Royal Decree 231/2008, of February 15, regulates the Consumer Arbitration System for disputes arising between consumers or users and companies in relation to the legal or contractual rights granted to consumers.

The Arbitration Law allows for the granting of interim measures by the arbitrators. This power does not oust the jurisdiction of the courts under the Civil Procedure Law to grant interim measures while a decision is pending in an arbitration proceeding. The jurisdiction of courts and arbitrators to grant interim measures is concurrent, meaning that parties can request interim measures from the arbitral tribunal or from the court, without distinction.

Under the Arbitration Law it is possible to enforce an arbitral award handed down in Spain even where proceedings to set aside the award have already been brought. In this case, a court may only stay the enforcement of the award if the party against whom the award is being enforced posts

2.

Establishing a business in Spain

security for an amount equal to the amount set out in the award, plus any potential damages arising from the delay in enforcement of the award.

The grounds for refusal to recognize or enforce arbitral awards contained in the Arbitration Law are based on the contents of the *UNCITRAL* Model Law, which in turn is based almost in its entirety on the New York Convention of 1958. Spain has ratified the New York Convention of 1958 and the European Convention on International Commercial Arbitration signed in Geneva on April 21, 1961.

Spain's adherence to a Model Law-inspired arbitration regime makes international arbitration in Spain more accessible for cross-border practitioners and their clients. The Arbitration Law brings Spain ever closer to becoming an ideal venue for international arbitration, particularly where Latin American interests are involved, given Spain's convenient geographical location in southern Europe, its competitive cost structure compared to other European jurisdictions and its linguistic and cultural ties to Latin America.

The Madrid International Arbitration Center ("CIAM" by its Spanish abbreviation) began to operate in 2020 following the merger of the international activity of the Madrid Arbitration Court, the Civil and Commercial Arbitration Court and the Spanish Arbitration Court. The CIAM has the jurisdiction to administer two types of international arbitration proceedings: (i) arbitration proceedings arising from agreements in which the parties stipulate the Madrid International Arbitration Center as the administering court, and (ii) arbitration proceedings originating from agreements in which the parties consented to arbitration administered by any of the four propelling entities as administering institutions and which are signed on or after January 1, 2020.

In addition, since June 2019, a Code of Good Arbitration Practices has existed which seeks to ensure that participants in arbitration proceedings abide by increasingly demanding standards for independence, impartiality, transparency and professional conduct.

Appendix I

Table summarizing the tax treatment given to the various ways of investing in Spain

WAYS OF INVESTING IN SPAIN	TAX TREATMENT
Incorporation of a subsidiary (Corporation (*S.A.*) / Limited liability company (*S.L.*))	General corporate income tax rules pursuant to the Corporate Income Tax Law. (See Chapter 3, section 2.1 for more detailed information).
Formation of a branch	Nonresident income tax, with permanent establishment. (See Chapter 3, section 2.3.1 for more detailed information).
Economic Interest Grouping (EIG), Temporary Business Alliance (*UTE*) and joint venture	Special rules for economic interest groupings, both Spanish and European, and temporary business alliances. In particular: • The part of the tax base attributable to members resident in Spain is not subject to corporate income tax. • The tax bases, tax credits and tax relief and the withholdings and prepayments of EIGs or *UTEs* are attributed to the resident members. • Dividends distributed to nonresident members of Spanish EIGs or *UTEs* will be taxed pursuant to the Nonresident Income Tax Law and to the tax treaties signed by Spain. (See Chapter 3, sections 2.1.13 for more detailed information).
Distribution agreement	The tax treatment of nonresidents in Spain who contract with Spanish distributors will depend on whether or not said contracting gives rise to the existence of permanent establishment in Spain for the nonresidents: • If a permanent establishment exists, it will be taxed according to the rules on permanent establishments stipulated under the Nonresident Income Tax Law or in the applicable tax treaties. (See Chapter 3, section 2.3.1 for more detailed information). • If a permanent establishment does not exist, it will be taxed pursuant to the rules set in Nonresident Income Tax Law for taxpayers without a permanent establishment. In general, the income will be characterized as business profits, which are usually exempt where a tax treaty can be applied. (See Chapter 3, section 2.3.2 for more detailed information) Whether or not a permanent establishment exists will depend, in general, on whether the nonresident is deemed to be distributing in Spain through a fixed place of business or an independent agent.
Agency agreement	The tax treatment is similar to that stipulated for distribution agreements. Whether or not a permanent establishment exists will depend, in general, on whether or not the agent has powers to bind the nonresident. • Where a permanent establishment exists. (See Chapter 3, 2.3.1 for more detailed information). • Where a permanent establishment does not exist. (See Chapter 3, section 2.3.2 for more detailed information).

CONTINUE ON THE NEXT PAGE >

< CONTINUED FROM THE PREVIOUS PAGE

WAYS OF INVESTING IN SPAIN	TAX TREATMENT
Commission agency agreement	The tax treatment is similar to that stipulated for distribution and agency agreements. Whether or not a permanent establishment exists will depend, in general, on whether or not the commission agent has powers to bind the nonresident principal. • Where a permanent establishment exists. (See Chapter 3, section 2.3.1 for more detailed information). • Where a permanent establishment does not exist. (See Chapter 3, section 2.3.2 for more detailed information).
Franchising agreement	The payment made by the franchiser to the franchisee may be given the following treatments, depending on the services provided and rights granted: • It may be treated in part as a royalty and in part as business profits. • It may be treated only as a royalty (See Chapter 2, section 7.7.4 for more detailed information).
Sale and purchase of business (assets and liabilities or global transfer of assets and liabilities)	The main tax implications in a sale and purchase of a business relate to VAT, transfer tax under the "transfers for consideration" heading and stamp tax. Accordingly: • If all of the transferred assets and liabilities can be considered an independent economic unit, the sale and purchase will not be subject to VAT. In this case, if the transferred assets include real estate, the transfer of these assets will be subject to transfer tax under the "transfers for consideration" heading. • If all of the transferred assets and liabilities cannot be considered an independent economic unit, the sale and purchase will be subject to VAT. In this case, an analysis will have to be performed as to whether the transferred assets qualify for any exemption. If any of the transferred assets can be registered and the transaction is recorded in a public deed, stamp tax will also be triggered.

GUIDE TO BUSINESS IN SPAIN /2023

June 2023 / **NIPO (PDF)**: NIPO: 114230304

GOBIERNO DE ESPAÑA · MINISTERIO DE INDUSTRIA, COMERCIO Y TURISMO · ICEX · INVEST IN SPAIN · GARRIGUES