

Company set up in Spain

Before setting up a company in Spain it is necessary to consider some aspects, for the one side to streamline the legal process and to the other side because they will influence the activity of the company.

Bylaws: Name, address, object and capital

The bylaws are the laws of the company. In Spain it is not possible to include free provisions in the bylaws that must follow the guidelines of the law.

It is necessary to determinate the following in the bylaws:

The company's name: It is possible to request for three names, neither too generic nor to similar to occupied names.

Registered office: The company must have a registered office, where the receipt of notifications during labour hours is ensured and treated.

Activity's adress: The company can develop its activity in another adress than the one of the registered office. It is necessary to inform the tax office about the catastrophe reference and m2.

Corporate object: A detailed description of the corporate object including all activities performed by the company.

Share capital: Minimum capital for a S.L., limited company is 3.000 euro and 60.000 euro for a S.A. The share capital shall be sufficient to carry out the activity of the company covering salaries, rent, car leasing, taxes etc. in order to avoid to being under winding-up causes.

Shareholders

Questions you need to ask (and answer!) are:

- Who shall create the company and own the shares?
- If more than one shareholder which percentage ownership shall each shareholder own?

Shareholder(s) is a foreign private person:

It is necessary to obtain a Spanish NIE-number and to sign a power of attorney to create the company.

Shareholder(s) is a foreign legal person:

A certification, issued by the competent national authority with an official translation into Spanish and legalized, is necessary, as well as a stamped copy of the passports of the persons authorized to sign on behalf of the foreign company.

They must as well sign a power of attorney to create the Spanish company and to have the foreign company registered with a CIF number at the Spanish Tax Authorities.

True shareholders / owners

For the Spanish company - and any other national or foreign legal person acting as a shareholder in it - a stamped notary document shall be signed containing information of the private person(s) considered the true owner(s) of the company listing the number of their shares as well as the total number of shares in the company.

Also a copy of the passport of the true owners shall be stamped by notary and legalized.

Transfer of shares

It has to be drawn up in the Bylaws whether transfer of shares shall be restricted to only shareholders and relatives of shareholders or not.

Shareholders' agreement

All the matters that cannot be included into the bylaws can be agreed into a shareholders' agreement. This agreement cannot be contrary to the Law and to the bylaws of the company.

As an example it could be matters such as:

- Decisions requiring qualified majority
- Minimum period of ownership of shares
- Required solvency ratio / margin prior to any dividend payments

Governing body

It is necessary to decide how the Company will be administrated. There are three possibilities:

- A sole administrator/manager
- Two administrators/managers (jointly or individually)
- A Board of Directors (at least 3 members). Members can be executive (consejero delegado) or non-executive.

It must be decided if members of the governing body of the company must be shareholders or not as well as if the function is remunerated or not.

If the members of the governing body are foreigners they must apply for a NIE-number and give power of attorney to accept their posts.

Non-board member secretary

The Board of Directors can also appoint a "non-board member secretary" (a lawyer), who has the faculties to

"The administrator / board members must carefully consider their acceptance of this position, as under Spanish law they easily assume personal responsibility for the company's obligations"

"When registering with the Spanish tax authorities, at least one administrator / board member must be registered with Spanish social security"

certify and sign before the Public Notary the decisions of the shareholders and of the Board of Directors, to keep the company books, to draft the minutes of the meetings, etc.

Electronically communication

The Spanish public authorities (tax office, social security..), shall communicate electronically with Spanish companies requiring a Spanish mailbox. It is very important to have it checked on a daily basis, and it can be a good solution letting the Spanish lawyer of the company handle this.

Company registrations

Bank: It is necessary to open a provisional bank account in order to deposit the share capital.

Mercantile Registry: Once signed the Title deed of constitution it is necessary to register it within the Mercantile Registry for the acquisition of the company legal personality.

Tax office: Registration of the activity within the Tax Authorities.

Social Security: Before engaging workers it is necessary to register the company within the social security.