

# Governing body of a Spanish company

In Spain, the management, administration and representation of a company must take place by choosing one of three possible forms of management, some of which are not legal actors in Scandinavia.

## The three possible forms of governing body

The general meeting of shareholders must elect one of the following forms of management for the company:

1. One administrator
2. Two administrators (together / separately).
3. A board (minimum three people). One or more board members may be executive (*consejero delegado*) or non-executive.

Administrators or members of the board of directors do not have to be shareholders in the company, but other may be determined in the articles of association.

## Administrator

The company can be managed, administered and represented by one administrator or by two administrators who can either act jointly or individually.

The administrator has general powers to act on behalf of the company and can oblige the company by making decisions, signing agreements, giving power of attorney to third parties, etc. in the name of the company.

Administrator powers cannot be restricted.

The administrator also has the power to certify the contents of a general meeting and thus the admini-

strator can issue and sign the necessary declaration of decisions made by the shareholders in front of a Spanish notary.

The administrator can give power of attorney to a lawyer, who can then appear before a notary and sign the decisions of the administrator and the shareholders.

It is necessary for such a power of attorney to be signed by the administrator in person in front of a Spanish notary, and it is therefore practically important that the chosen administrator speaks and understands Spanish.

It is very difficult for shareholders to control all the actions of the administrator. It is the administrator who prepares the annual accounts, and in Spain it is not obligatory to audit it.

*“Some control over companies' governing bodies exists as shareholders have been required to participate in transactions involving an essential asset for the company, understood as an asset, with a value of more than 25 % of the company's balance sheet. ”*

The administrator can (easily) assume personal responsibility for the company's obligations to third parties.

This is particularly relevant to be aware of if the company's management consists of 2 administrators who can act separately, as they both risk taking personal responsibility for actions taken solely on behalf of the company by one administrator.

## Board of Directors

A board of directors of a Spanish company must consist of a minimum of 3 people.

The decisions of the Board of Directors must be notarized and registered in the Spanish Commercial Register in order to be valid.

All members of the Board of Directors must attend the general meeting in order to provide the necessary information to the shareholders.

*"At the time of registration of the company's activity with the Spanish tax authorities, it is necessary that at least one administrator / board member is registered with seguridad social (social security), unless a director or person in charge is hired on the same day. In practice, this means that one person must be resident in Spain. "*

The board must distribute the board positions among itself, and a chairman and secretary must be elected.

**Chairman:** The chairman of the board must convene meetings with an agenda (shareholder and board of directors) and chair the meetings. The chairman must convene a board meeting at least once every quarter.

**Secretary:** The secretary of the board of directors must prepare meetings (shareholder and board of directors) and formalize decisions by issuing minutes of meetings and appearing before a Spanish notary. The secretary must also keep the obligatory company books.

**Consejero Delegado:** Between the members of the Board of Directors, it is possible to appoint a *Consejero Delegado*, who may delegate most of the powers of the Board of Directors.

*"The administrator / board members can (easily) assume personal responsibility for the company's obligations to third parties responding with their personal assets"*

*"Signing a liability insurance (D&O) should be considered, although it will not be comprehensive in all situations"*

Thus, a *Consejero Delegado* can act on behalf of the Board of Directors and the company and will thus be able to sign employment agreements and other contracts as well as act in relation to the company's bank account etc.

## Non-board member secretary

A secretary of the board of directors (*secretario no miembro*) can be appointed, typically the company's lawyer, who can sign and certify notarial documents on behalf of the board of directors and the general meeting, such as approval of annual accounts and amendments to the articles of association.

Thus, the board members do not have to appear in person in front of a notary in Spain, but can sign the minutes in a country outside of Spain.

## Advisory lawyer

According to Act No. 39/1975 of 31 October, companies with a share capital of more than 300,000 euros or a turnover of more than 600,000 euros or with more than 50 employees are required to appoint an advisory lawyer (*Letrado asesor*) who must be present and advise at board meetings.

The main purpose is to prevent the board of directors from entering into agreements that are contrary to the law or may lead to liability.