

# Mandatory company books in a Spanish company

In Spain, the rules governing the compulsory company books of a Spanish company are found in various sets of rules, including the business law collection, *Código de Comercio*, the Capital Companies Act and rules of the Spanish commercial registry, *Registro Mercantil*.

## Types of books for companies

Basically, there are 2 types of mandatory books in a Spanish company:

1. Company books, *libros societarios* (this Fact Sheet).
2. Accounting / bookkeeping books, *libros contables*.

## The company books

The company books of a Spanish company consist of:

- a) Shareholder register, *libro registro de socios*.
- b) Book of minutes, *libro de actas*.
- c) Book of contracts with the sole shareholder, *libro de contratos con el socio único*.

## Shareholder register

The register of shareholders must state the nationality, identification and address of all shareholders, indicating the number of shares owned by each shareholder.

If a shareholder transfers one or more of his shares to a new shareholder (can only be done by signing a notarial document in front of a Spanish notary), this transfer must be noted in the company's shareholder register.

The same applies to any liability that may be on the shares, for example a lien, a right of use, etc.

## Book of minutes

The book of minutes of the company must contain all the decisions passed by the general meeting of shareholders, both the ordinary (eg approval of annual accounts) and the extraordinary (eg capital increase, change of financial year, approval of purchase / sale of significant assets..)as well as decisions made by the board of directors / administrator (eg preparation and proposal for annual accounts, issuance of power of attorney..).

## Book of contracts with the sole shareholder

All contracts entered into between the sole shareholder and the company must appear in the company's book of contracts and be legalized in the Spanish company register.

It could, for example, be agreements entered into between a Danish parent company and a Spanish subsidiary on the provision of services, agency or distribution contracts, commission contracts, etc.

## Legalization and keeping of the company books

Until October 2013, it was required that the empty company books with numbered pages be legalized in a commercial registry before they were taken into use,

after which information on the transfer of shares in the company, decisions made by the general meeting of shareholders or the board of directors, had to be stated in each company book in a correlative manner.

When all the pages in a company book had been used, one had to pass the commercial registry again with this book in order to subsequently have a new book legalized, stating that it was book number 2.

With the entry into force of Act no. 14/2013 in force from 29 September 2013, empty company books could no longer be legalized manually, and instead it is required to carry out the legalization digitally for each year.

The first digital submission of company books was then to contain a certificate from the board of directors / administrator, in which it was stated that the company books in the paper format were completed.

At present, at the end of each financial year, electronic information must be submitted for the company books in which there have been changes, which will generally be the book of minutes in which the annual accounts are approved.

If no shares have been transferred in the company, it is not necessary to submit the shareholder register.

## Confidentiality

The Spanish courts have ruled that digital submission adequately protects companies' confidential information, as the commercial registries do not keep the contents of the company books being legalized, but only record that they have been legalized.

It is further established that companies, for the sake of confidentiality, may choose to encrypt the contents of the file submitted digitally.

## Original documentation

The company is required to keep identical original documentation, which must have the same content and format as the company books that have been digitally legalized.

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

*Legalization of the company books is a task to be taken care of by the administrator / board of directors.*

If the company books submitted for legalization are encrypted, the encryption code must also be retained by the company.

## Deadline

The deadline for digital submission of company books is **four months** after the end of the financial year.

## What happens to the companies that have neither legalized company books in paper format nor digitally?

There are many companies that have never legalized their company books and in order to regulate this situation, it has been possible for these companies, together with the first digital submission of company books, to submit the company books that should have been submitted at an earlier time.

For this purpose, the company books that should have been submitted earlier can be included in the minutes of the general meeting of shareholders, whereby they are ratified and at the same time applied for their legalization when submitted.

From a company law point of view, there is thus no sanction associated with not legalizing the company books, but in relation to Spanish tax, the situation is different, where it can be considered a violation of the requirement for correct registration of company documents.