



# GUIDE TO BUSINESS IN SPAIN 2022





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This guide was researched and written by Garrigues, on behalf of ICEX, on February 2022.

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.

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# GUIDE TO BUSINESS IN SPAIN 2022

The **2022 Guide to Business in Spain** is a document that summarizes the main regulatory aspects governing investments in Spain. This publication is useful not only for investors who are dealing with the Spanish regulatory system for the first time, but also for those who already have some prior knowledge and wish to learn more about the most important aspects of setting up and growing a company in Spain.

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Spain is in an outstanding position worldwide in terms of the importance of its economy: the 14<sup>th</sup> largest economy in the world by GDP, the 11<sup>th</sup> country most attractive for foreign direct investment (FDI), the 15<sup>th</sup> largest issuer of FDI, among the sovereign countries, and the 14<sup>th</sup> largest exporter of commercial services.

Spain has a modern economy based on knowledge, in which services represent over 74% of business activity. It is an international center for innovation that benefits from a young and highly qualified population of a proactive nature, and competitive costs in the context of Western Europe, especially as regards graduate and post-graduate employees.

The country has worked hard to equip itself with state-of-the-art infrastructures capable of fostering the future growth of the economy. And this has been done alongside a major commitment to R&D.

There are interesting business opportunities for foreign investors in Spain in high value-added and strategic fields such as the ICT, renewable energy, biotechnology, environment, aerospace and automotive sectors, because of the attractive competitive environment.

In addition, companies that set up business in Spain can gain access not only to the Spanish national market, an attractively large market (over 47 million consumers) with a high purchasing power, but also to the markets of the EMEA region (Europe, Middle East and North Africa), and Latin America, given its privileged geostrategic position, prestige and the strong presence of Spanish companies in these regions.

The main characteristics of our country are described in this Chapter: demographics, political and territorial structure, economy and the foreign trade sector.

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## / 1 Introduction

Spain is one of the most important economies in the world, ranking 14<sup>th</sup> in size and has an immense capacity to attract foreign investment (currently ranked 9<sup>th</sup> in terms of foreign direct investment)<sup>1</sup>. Spain's appeal for investment lies not only in its domestic market, but also in the possibility of operating with third markets from Spain. This is because Spain has a privileged geo-strategic position within the European Union giving access to more than 2,300 million potential clients in the EMEA Region (Europe, Middle East and Africa). Its strong economic, historic and cultural ties also make Spain the perfect business gateway to Latin America.

Furthermore, Spain is a modern knowledge-based economy with services accounting for over 74%<sup>2</sup> of economic activity. The country has become a center of innovation supported by a young, highly-qualified work force and competitive costs in the context of Western Europe.

This Chapter gives a brief description of Spain's vital statistics: its population, its political and territorial structure and its economy.

<sup>1</sup> According to the 2021 A. T. K Kearney FDI Confidence Index.

<sup>2</sup> National Statistics Institute. Data from 2021.

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## / 2 The country, its people and quality of life

### 2.1 GEOGRAPHY, CLIMATE AND LIVING CONDITIONS

The Kingdom of Spain occupies an area of 506,030 square kilometers in the southwest of Europe, and is the second largest country in the EU. The territory of Spain covers most of the Iberian Peninsula, which it shares with Portugal, and also includes the Balearic Islands in the Mediterranean Sea, the Canary Islands in the Atlantic Ocean, the North African cities of Ceuta and Melilla and several small islands.

Despite differences among the various regions of Spain, the country can be said to have a typical Mediterranean climate. The weather in the northern coastal region (looking onto the Atlantic and the Bay of Biscay) is mild and generally rainy throughout the year, with temperatures neither very low in the winter nor very high in the summer. The climate on the Mediterranean coastline, including the Balearic Islands, Ceuta and Melilla, is mild in the winter and hot and dry in the summer. The most extreme differences occur in the interior of the Peninsula, where the climate is dry, with cold winters and hot summers. The Canary Islands have a climate of their own, with temperatures constantly around 20 degrees Celsius and only minor variations in temperature between seasons or between day and night.

Spain has an excellent quality of life and is very open to foreigners. Almost 8,000 kilometers of coastline, abundant sporting facilities and events and social opportunities are

crowned by the diversity of the country's cultural heritage as a crossroads of civilizations (Celts, Romans, Visigoths, Arabs, Jews, etc.).

### 2.2 POPULATION AND HUMAN RESOURCES

The population of Spain in 2021 was over 47 million people, with a population density of almost 94 inhabitants per square kilometer.

Spain is a markedly urban society (see Table 1), as evidenced by the fact that almost 32% of the population lives in provincial capitals.

Table 1

| THE BIGGEST CITIES IN SPAIN* |            |
|------------------------------|------------|
|                              | POPULATION |
| Madrid                       | 3,305,408  |
| Barcelona                    | 1,636,732  |
| Valencia                     | 789,744    |
| Sevilla                      | 684,234    |
| Zaragoza                     | 675,301    |
| Málaga                       | 577,405    |
| Murcia                       | 460,349    |
| Palma                        | 419,366    |
| Las Palmas de Gran Canaria   | 378,675    |
| Bilbao                       | 346,405    |

\* Figures refer only to the municipal districts of each city.

Source: Report on registered population of Spanish provincial capital cities at January 1, 2021. National Statistics Institute/Official State Gazette.

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Spanish is the official language of the country. There are other Spanish languages that are also official in the corresponding Autonomous Communities (regions), according to their “Statutes of Autonomy”. Education is compulsory until the age of 16 and English is the main foreign language studied at school.

Spain has a labor force of more than 23 million people according to the Labor Force Survey (released in the fourth quarter of 2021). Spain’s population is relatively young: 15% is under 16 years old, 65% is between 16 and 64 years old, and only 20% is 65 and over, according to 2021 figures. As highlighted in Table 2, Spain has a highly diverse and multicultural population.

**Table 2**

| FOREIGNERS RESIDENT IN SPAIN BY CONTINENT OF ORIGIN |                  |                  |                  |
|---|------------------|------------------|------------------|
|   | 2019             | 2020             | 2021*            |
| Europe  | 3,116,554        | 3,200,498        | 3,265,732        |
| America   | 987,837          | 1,032,621        | 1,060,226        |
| Asia  | 466,834          | 471,539          | 481,999          |
| Africa  | 1,087,706        | 1,091,449        | 1,109,864        |
| Oceania   | 2,906            | 2,827            | 2,888            |
| Unknown   | 1,511            | 1,531            | 1,487            |
| <b>TOTAL</b>  | <b>5,663,348</b> | <b>5,800,465</b> | <b>5,922,196</b> |

**Source:** Ministry of Inclusion, Social Security and Migrations<sup>3</sup>. \*Data as of June 30, 2021.

Spain is particularly noted for the contribution from, and the integration of, these groups, as well as for the absence of cultural conflict.

Spain’s labor force structure by economic sector underwent significant changes some time ago, with an increase in the

active population in the services sector and a decrease in the number of workers employed in farming and industry. Today, the services sector is by far Spain’s main employer (Chart 1 and Table 3).

The labor force is highly qualified and capable of adapting to technological changes.

Lastly, in keeping with the commitment entered into with the European Union to promote job creation, the Spanish government has implemented significant reforms to the job market in recent years, introducing a greater degree of flexibility in employment.

Like our neighboring countries, and as a result of the recent global crisis and the effects of the COVID-19 pandemic on the economy, Spain has launched an ambitious program of structural reform with a view to boosting economic growth and creating jobs.

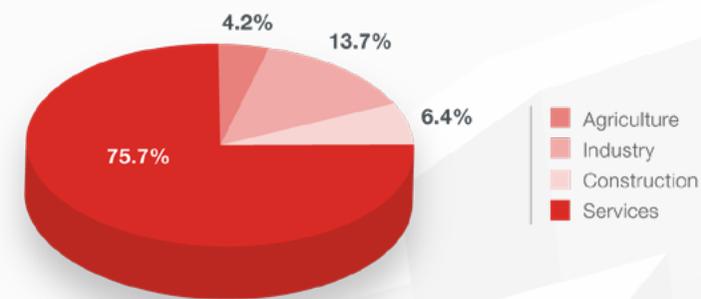
The Spanish government, in keeping with the commitments entered into by the European Union to promote employment, implemented major labor market reforms in line with the trends observed in neighboring countries and the proposals made by various economic agents and institutions and international economic advisers. The reforms aimed to introduce greater flexibility, reduced the dual nature of the job market and improve the employability of workers. A new labor reform was passed in 2022 with the main objective of ensuring availability of skills in the Spanish labor market and tackling the mismatch between labor supply and demand.

This, among other factors, has led to the creation of 2.5 million jobs since 2014. This positive evolution, which was interrupted due to the negative impact of the COVID-19 public health crisis in 2020, resumed its upwards trend in 2021.

A number of procedures have also been introduced to facilitate the entry, residence and permanence in Spain, for reasons of general interest, of foreigners who plan to invest and create jobs in Spain or who are highly qualified professionals.



**Chart 1**  
**LABOR FORCE STRUCTURE BY ECONOMIC SECTOR IN 2021**



**Source:** National Statistics Institute.

**Table 3**

| EVOLUTION OF LABOR FORCE STRUCTURE BY ECONOMIC SECTOR (%) |      |      |      |
|---|------|------|------|
|   | 2019 | 2020 | 2021 |
| Agriculture   | 4.0  | 4.1  | 4.2  |
| Industry  | 13.8 | 13.9 | 13.7 |
| Construction  | 6.4  | 6.6  | 6.4  |
| Services  | 75.8 | 75.4 | 75.7 |

**Source:** National Statistics Institute. 2021. Labor Force Survey.

<sup>3</sup> [https://extranjeroinclusion.gob.es/ficheros/estadisticas/operaciones/con-certificado/202106/nota\\_analisis\\_3006\\_2021.pdf](https://extranjeroinclusion.gob.es/ficheros/estadisticas/operaciones/con-certificado/202106/nota_analisis_3006_2021.pdf)

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### 2.3 POLITICAL INSTITUTIONS

Spain is a parliamentary monarchy. The King is the Head of State<sup>4</sup> and his primary mission is to arbitrate and moderate the correct functioning of the country's institutions in accordance with the Constitution. He also formally ratifies the appointment or designation of the highest holders of public office in the legislative, executive and judicial branches<sup>5</sup>.

The Constitution of 1978 enshrined the fundamental civil rights and public freedoms as well as assigning legislative power to the *Cortes Generales* (Parliament)<sup>6</sup>, executive power to the Government of the nation, and judicial powers to independent judges and magistrates.

The responsibility for enacting laws is entrusted to the *Cortes Generales*, comprising the *Congreso de los Diputados* (Lower House of Parliament) and the *Senado* (Senate), the members of which are elected by universal suffrage every four years.

The *Cortes Generales* exercise the legislative power of the nation, approve the annual State budgets, control the actions of the Government and ratify international treaties.

The Government<sup>7</sup> is headed by the *Presidente del Gobierno* (President of the Government) who is elected by the *Cortes Generales* and is, in turn, in charge of electing the members of the *Consejo de Ministros* (Council of Ministers).

The members of the Council of Ministers are appointed and removed by the President of the Government at his or her discretion.

For administrative purposes, Spain is organized into 17 Autonomous Communities (Regions) each of which generally comprises one or more provinces, plus the Autonomous Cities of Ceuta and Melilla in Northern Africa and the total number of provinces is 50.

Each Autonomous Community (Region) exercises the powers assigned to it by the Constitution as specified in its "Statute

of Autonomy". These Statutes also stipulate the institutional organization of the Community concerned, consisting generally of: a legislative assembly elected by universal suffrage, which enacts legislation applicable in the Community; a Government with executive and administrative functions, headed by a President elected by the Assembly, who is the Community's highest representative; and a Superior Court of Justice, in which judicial power in the Community's territory is vested. A Delegate appointed by the Central Government directs the Administration of the State in the Autonomous Community (Region), and co-ordinates it with the Community's administration.

The Autonomous Communities (Regions) are financially autonomous and also receive allocations from the general State budgets.

As a result of the structure described above Spain has become one of the most decentralized countries in Europe.

<sup>4</sup> <https://www.casareal.es/EN/Paginas/home.aspx>

<sup>5</sup> [https://www.poderjudicial.es/portal/site/cgpi/?Template=default&vgnnextlocale=en&lang\\_chosen=en](https://www.poderjudicial.es/portal/site/cgpi/?Template=default&vgnnextlocale=en&lang_chosen=en)

<sup>6</sup> <https://www.congreso.es/web/guest>

<sup>7</sup> <http://www.lamoncloa.gob.es/lang/en/Paginas/index.aspx>

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## / 3 Spain and the European Union

Spain became a full member of the European Economic Community in 1986. In this connection and according to figures published by the European Commission, Spain fully complies with the objectives established by the European Council.

A major impact of European Union membership for Spain, and for the other Member States, came in the mid-nineties with the advent of the European Single Market and the European Economic Area, which created a genuine barrier-free trading space.

Since then, the EU has advanced significantly in the process of unification by strengthening the political and social ties among its citizens. Spain, throughout this process, has always stood out as one of the leaders in the implementation of liberalization measures.

On July 1, 2013, with the addition of Croatia, the number of countries in the European Union was increased to 28 Member States<sup>8</sup>. Nonetheless, the referendum on whether the United Kingdom and Gibraltar should remain in the European Union was held on June 23, 2016, the result being in favor of their exiting the Union. Thus, on January 31, 2020 the United Kingdom left the European Union upon the entry into force of the Withdrawal Agreement, thus reducing the number of Member States to 27.

With the aim of strengthening democracy, efficiency and transparency within the EU and, in turn, its ability to meet global challenges such as climate change, security, and sustainable development, on December 13, 2007, the then

27 EU Member States signed the Treaty of Lisbon, which entered into force – subject to prior ratification by each of the 27 Member States – on December 1, 2009. The European Parliament elections took place between June 4 and 7 of that year<sup>9</sup>.

Spain holds significant responsibilities within the EU, evidenced by the fact that it is, along with Poland, the fifth country in terms of voting power on the Council of Ministers. In 2010, Spain assumed the Council Presidency of the European Union for the fourth time, for the period from January to June.

The introduction of the Euro (on January 1, 2002) heralded the start of the third Spanish presidency of the European Council and represented the culmination of a long process and the creation of a veritable array of opportunities for growth for Spanish and European markets. Since January 1, 2015, with the addition of Lithuania, Eurozone membership now stands at nineteen.

The euro has led to the creation of a single currency area within the EU that makes up the world's largest business area, bringing about the integration of the financial markets and economic policies of the area's member states, strengthening ties between the member states' tax systems and bolstering the stability of the European Union.

Furthermore, the adoption of a single European currency has had a clear impact at an international level, raising the profile of the Eurozone at both international and financial gatherings (G-7 meetings) and within multilateral organizations. The economic and business stability offered by the euro have contributed to the growth of the Spanish economy, as well as its international political standing. In addition, measures are being implemented to strengthen the European economy;

<sup>8</sup> [https://europa.eu/european-union/about-eu/countries/member-countries\\_en](https://europa.eu/european-union/about-eu/countries/member-countries_en)

<sup>9</sup> [http://europa.eu/european-union/law/treaties\\_en](http://europa.eu/european-union/law/treaties_en)

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for example, the Euro-Plus Pact designed to consolidate the coordination of the economic policy in the Economic and Monetary Union.

In May 2020 the European Commission presented a proposal for reviewing the Multiannual Financial Framework with a view to increasing investments in 2020 in order to confront the COVID-19 public health crisis.

Subsequently, on December 17, 2020 the Council of the European Union approved the Regulation laying down the multiannual financial framework of the European Union for the years 2021 to 2027, which will be a financing instrument aimed at supporting all areas of action of the European Union, with a particular focus on ecological and digital transitions, and will also help EU Member States to deal with the consequences of the COVID-19 public health crisis, stimulating their modernization and resilience. Spain thus remains committed to structural reforms, boosting economic growth, investment and employment, based on a more competitive European Union.

Spain has traditionally benefitted from EU funding from the Structural Funds and the Cohesion Fund and is the third largest recipient of such Funds. During the 2020-2027 period, European financing under the Multiannual Financial Framework, together with the temporary recovery instrument “Next Generation EU”, is expected to entail a positive contribution of over €2 trillion to help repair the damage brought about by the COVID-19 pandemic and to support the long-term priorities of the European Union in various areas of action.

European institutions are tasked with encouraging and supporting technological research and development. On December 11, 2020 the Council of the European Union reached a provisional political agreement with the European Parliament’s negotiators on the proposed Regulation establishing Horizon

Europe for the years 2021 to 2027.

Horizon Europe will be supported on three pillars:

1. Excellent Science.
2. Global Challenges and European Industrial Competitiveness.
3. Innovative Europe.

In this way it will help to boost industrial leadership in Europe and strengthen the excellence of its science base, which is essential to the sustainability, prosperity and wellbeing of Europe in the long term.

On February 18, 2022, the Council of Ministers passed the bill for reform of the 2011 Science Law, which aims to provide resources, rights and stability for R&D&I personnel, as well as ensure stable and growing public funding, with a target of 1.25% of GDP which, coupled with private investment, would meet the European Union R&D funding target of 3%.

In late 2015, the Government approved the creation of the State Research Agency in order to provide the Spanish science, technology and innovation model with a swifter, more flexible and independent management system. This body, which is responsible for financing, assessing and allocating R&D funds, acts in conjunction with the Center for Industrial and Technological Development (*CDTI*), the other major R&D&I funding body focusing specifically on business, and which approved a €77 million R&D&I funding package in 2021. Both entities steadily promote transnational and bilateral research and cooperation projects.

From the outset of the pandemic in 2020, the Ministry of Science and Innovation established special employment

measures to support COVID-19 research, in addition to budgetary measures, launching various lines of subsidies and special loans in the budget, targeted at R&D projects related to COVID-19. At the end of 2021 the Ministry of Science and Innovation presented the general outline of the General State Budget for 2022, which includes a large direct investment in R&D&I. Specifically, the budget has been increased by 19% with respect to 2021, i.e., up to €3,843 million.

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/ 4 **Infrastructure**

The Government intends to continue with its program of heavy investment in this area in the future.

In this connection, the Infrastructure, Transport and Housing Plan (*PITVI*) was approved which, based on an analysis of the current situation and a rigorous assessment of Spanish needs, establishes the priorities and action plans up to 2024. Additionally, the Spanish government will allocate 12% of the Next Generation program to resilient ecosystems and infrastructure policies, to be implemented through projects such as the Transport, Energy and Urban Infrastructure Preservation Plan.

The objectives of the PITVI notably include: (i) enhancing the efficiency and competitiveness of the global transport system, optimizing the existing capacity; (ii) contributing to balanced economic development; (iii) promoting sustainable mobility, combining its economic and social effects with respect for the environment; (iv) reinforcing territorial cohesion and accessibility to all State territories through the transport system; and (v) improving the functional integration of the transport system as a whole by taking an intermodal approach.

The motorway and dual carriageway network, of nearly 17,377 kilometers, has undergone constant renovation with a view to enhancing its efficiency. Today it is the leading European motorway and dual carriageway network. The improvement of the motorway and dual carriageway network and an increase in high-capacity roads, with investment of €36,439 million, is among the objectives of the plan.

As far as railway transport is concerned (where Spain has a network of almost 18,000 kilometers), high-speed networks have become a priority.

Madrid currently has high-speed train connections to 33 Spanish cities, meaning that approximately two-thirds of the Spanish population live within reach of a high-speed train station.

The Spanish high-speed network is constantly being expanded. The new Madrid-Orense section was inaugurated in December 2021 and is expected to be followed by the inauguration of the sections to Burgos and Murcia in 2022, while the Badajoz section will be connected to Madrid in 2023. The Spanish government estimates that construction of the entire rail corridor from Almeria to the French border will be completed by 2025-2026.

In fact, in recent years, Spain has become a global high-speed rail pioneer, having multiplied the kilometers of high-speed lines in service more than eight-fold, from just over 450 kilometers to more than 3,700 kilometers.

Since its inception, approximately €51,775 million has been invested in the high-speed rail network, making a commitment to ensuring that 9 out of every 10 citizens live less than 30 kilometers away from a high-speed rail station.

Spain has thus become the leading country in Europe and the second worldwide, after China, in terms of the number of kilometers of high-speed lines in operation, outperforming countries such as France and Japan. Looking toward to 2022, the General State Budget contemplates an increase in high-speed expenditure over preceding years, financed in part with European funding.

Also noteworthy is the important network of relations with managers of railroad infrastructure in other countries, established as a result of signing cooperation protocols. In the context of these agreements representatives from a range of countries, such as the US and Brazil, have visited Spain to learn about its high-speed model. By way of example, since 2020, administrative licenses and concessions have been granted to Spanish companies for their participation in the construction of railway infrastructure and equipment in countries such as Australia, the

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United Kingdom, the United States (Dallas and Houston) and Mexico, among others. Additionally, Renfe operates the high-speed line connecting Medina and Mecca in Saudi Arabia.

Regarding the deregulation of rail passenger transport services, approval was recently given to Royal Decree-law 23/2018 of December 21, 2018, which transposes the Directive developing the single European railway area, allowing access to the railway infrastructures of all Member States and reinforcing the independence and impartiality of the administrators of such infrastructures. As a consequence of the deregulation, it was announced in 2020 that the high-speed “low cost” [railway infrastructure] known as “Avlo” would begin to operate, although its inauguration was postponed until June 2021, due to the COVID-19 public health crisis.

In addition to the entry into operation of “Avlo” trains, other high-speed “low cost” operators are also entering the market, such as “Ouigo” in March 2021 and the envisaged entry of “Iryo” at the end of 2022, fostering competition in the sector.

Finally, the ongoing liberalization of the freight sector since 2005 has led to the creation of private enterprises that transport goods by railroad. Following approval of the European Recovery Plan, the European Commission has authorized a €120 million support package designed by the Spanish government, with a time frame until June 2026, channeled through subsidies aimed at companies that substitute road transport for rail transport, compensating the difference in costs between the two modes of transport. This plan aims to incentivize rail transport over road transport, as well as improve the competitiveness.

Air transport links the main Spanish cities via Spain’s 46 airports, which also connect Spain to the world’s leading cities. Spain is a major hub for routes linking the Americas and Africa to Europe. The most significant investments in the pipeline are aimed at the two principal international airports in Madrid and Barcelona. AENA plans to invest €1,571 million up to 2026, the main objective being to increase capacity up

to 80 million passengers. In 2020, as a consequence of the COVID-19 global health crisis, Spanish airports, like those in the rest of the world, saw a temporary drop in passenger numbers with respect to the positive evolution recorded in preceding years. However, the upward trend rebounded in 2021 with a 57.7% increase in passenger numbers compared to the previous year.

Despite the global paralysis suffered by the industry, which is still in the recovery phase, Spain has been chosen by many airlines as one of the top places for parking their fleet of aircraft, given the excellence of existing infrastructure.

The access to the high-speed rail network takes only 25 minutes from the Adolfo Suárez Madrid-Barajas International Airport; this means that travelers can easily combine both types of transport, placing Spain at the forefront of passenger transport.

The 2025 Flight Plan approved by ENAIRE provides for investment in excess of €100 million a year, with €168.7 million earmarked for 2022. By the end of the Plan in 2025, total investment will have reached €737 million, with the aim of adapting to the liberalization of services, as well as globalization and the consolidation of air navigation managers. The 2025 Flight Plan also seeks to enhance flight path efficiency as part of a commitment to sustainable aviation.

Furthermore, with over 46 international ports on the Atlantic and Mediterranean coasts, Spain boasts excellent maritime transport links, becoming a port and harbor powerhouse, only behind the Asian giants, the US, Germany and the Netherlands. The reinforcement of short-distance maritime transport, both domestic and European, and the development of seaside motorways are some other key initiatives. Moreover, the Motorway of the Sea between Spain and France is now in operation, linking Vigo with the French port of Nantes-Saint Nazaire. At the same time, work is underway to recover the connection between Gijón and Nantes-Saint Nazaire, which would reintroduce what was one of the first Spanish motorways of the sea and which operated until its

closure in 2014. Furthermore, Spain plans to promote this type of link in the Mediterranean, through agreements with Italy and other countries, with a view to increasing the number of links already on offer and operating with good results between the port of Barcelona and several Italian ports. The ferry line between Santander and the Irish port of Cork has also been reopened.

This will allow a more sustainable alternative in some of the main flows within the EU. In addition, with a view to improving the competitiveness of ports, the Ports Law was revised in 2021 to increase competitiveness, address the exceptional circumstances deriving from the COVID-19 pandemic and introduce the regulation of autonomous or unmanned ships.

In the same vein, the 2021-2025 Investment Plans for the port system were approved in 2021 to enhance port system connections, with an investment of more than €4,556 million. The 2022 budget for the port system in Spain was presented at the end of 2021, with an investment up to €925 million for port terminals, enhancements in land connectivity, environmental sustainability and digitalization.

As part of its plans for internationalization, the State Port Authority is promoting alliances with the major Chinese operators, with the Barcelona Europe South Terminal (BEST) at the port of Barcelona being operated by Chinese group Hutchinson Port Holdings (HPH), the leading port terminal operator in the world. Three major Spanish ports (Bahía de Algeciras, Valencia and Barcelona) are listed among top 100 ports worldwide in terms of container traffic<sup>10</sup>, thereby confirming Spain’s strategic position in the global maritime transport industry.

Spain is well equipped in terms of technological and industrial infrastructure, having seen a boom in recent years in technological parks in the leading industrial areas, as well as around

<sup>10</sup> <https://loydslist.maritimeintelligence.informa.com/-/media/loyds-list/images/top-100-ports-2021/top-100-ports-2021-digital-edition.pdf>.

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universities and R&D centers. There are currently 62 technological parks<sup>11</sup> housing 7,967 companies, mainly engaged in the telecommunications and IT industries, in which a large number of workers are employed in R&D activities.

Spain also boasts a solid telecommunications network, with an extensive conventional fiber optic cable network covering the country almost in its entirety, in addition to an extensive undersea cable network, aided by its privileged geographical position. The Spanish government plans to facilitate investment in this data transmission medium by eliminating administrative barriers.

Particularly noteworthy is the significant deregulation set in place some years ago in the majority of industries, including the telecommunications industry, meeting the deadlines set for such purpose by the EU with ease. Among other advantages, this deregulation has meant a more competitive range of products on offer as reflected in costs, essential for economic development.

Also notable is Government backing for integral management of water resources, based on environmental management and recovery, more efficient use of water and planned management of risks such as droughts and flooding. As part of these initiatives, the Spanish government is in the process of drawing up the 2022-2027 Water Plans for the Spanish River basins, following completion of the public consultation process in late 2021. The main objective of the new plans is to readjust water management to the effects of climate change, reducing allocations to adapt them to climatic conditions and improve the treatment of urban waste.

<sup>11</sup> Members of the Association of Science and Technology Parks in Spain. <http://www.apte.org/es>

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## / 5 Economic structure

The structure of the Spanish economy is that of a developed country, with the services sector being the main contributor to GDP, followed by industry. In 2021, these two sectors represented more than 91% of Spain's GDP, with agriculture's share today representing 2.96% of the total GDP, having declined sharply (see Table 4).

**Table 4**

| STRUCTURE OF GDP (% OF TOTAL, CURRENT PRICES) |        |        |        |
|---|--------|--------|--------|
| SECTOR  | 2019   | 2020   | 2021   |
| <b>Agriculture and fishery</b>                | 2.86%  | 3.45%  | 2.96%  |
| <b>Industry</b>                               | 15.95% | 16.09% | 17.00% |
| <b>Construction</b>                           | 6.27%  | 6.22%  | 5.76%  |
| <b>Services</b>                               | 74.92% | 74.24% | 74.28% |

Source: National Statistics Institute.

Throughout 2020 the impact of the COVID-19 public health crisis was felt by the Spanish economy due, principally, to the implementation of measures to contain the pandemic. This entailed a major change with respect to the growth trend which began in the second half of 2013. Nonetheless, during 2021, the GDP growth rate substantially improved, recording a variation of 2%<sup>12</sup> in the quarter-on-quarter rate in the fourth quarter of 2021 in terms of volume. Year-on-year growth in GDP amounted to 5.2%<sup>13</sup>, reflecting a recovery of the Spanish economy and corresponding to the highest growth figure in the last 21 years. The GDP growth rate is expected to remain high in 2022.

Inflation in Spain had been gradually falling since the end of the 1980s. Average inflation between 1987 and 1992 was 5.8%; it dropped below 5% for the first time in 1993, and it has been shrinking gradually since then. For reference, the year-on-year inflation rate at December 2020 was -0.5%. However, 2021 saw a change in the inflation trend, due mainly to an upsurge in demand following the restrictions introduced as a result of the pandemic, leading to mismatches between supply and demand as a result of shortages of raw materials, particularly energy products.

This generalized increase in prices was reflected in a year-on-year inflation rate of 6.7% at the end of 2021, driven mainly by the rise in energy prices. Despite the sharp change in trend, inflation growth is expected to slow throughout 2022, bolstered by favorable financial conditions and the inflow of funds from the European Recovery Plan, although the impact of the Russian invasion of Ukraine has increased uncertainty as regards its evolution, due to the price of energy products.

<sup>12</sup> National Institute of Statistics, Quarterly National Accounts of Spain. Principal Aggregates, Fourth Quarter of 2021.

<sup>13</sup> National Institute of Statistics, Quarterly National Accounts of Spain. Principal Aggregates, Fourth Quarter of 2021.

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Table 5

| GROWTH FOR OECD COUNTRIES (%) |      |       |      |
|-------------------------------|------|-------|------|
| REAL GDP GROWTH               |      |       |      |
|                               | 2019 | 2020  | 2021 |
| <b>EU countries</b>           |      |       |      |
| Germany                       | 1.1  | -5.0  | 3.1  |
| France                        | 1.8  | -8.0  | 7.4  |
| Italy                         | 0.5  | -9.1  | 7.0  |
| United Kingdom                | 1.7  | -9.4  | 8.3  |
| Spain                         | 2.1  | -10.8 | 5.5  |
| <b>Other countries</b>        |      |       |      |
| United States                 | 2.3  | -3.4  | 5.8  |
| Japan                         | 0.2  | -4.5  | 1.8  |
| <b>Total Euro Zone</b>        | 1.8  | -6.1  | 5.6  |
| <b>Total OECD</b>             | 1.7  | -4.7  | 5.7  |

Source: OECD Quarterly National Accounts.

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## / 6 Domestic Market

Growth in the Spanish economy in recent times has been driven by a sharp increase in demand and a substantial expansion of production in the current context of globalization of the economy.

Today Spain has a domestic market of over 47 million people with a per capita income in 2020 of €23,693 according to data from the National Statistics Institute, with additional demand coming from the 31.1 million tourists who visited Spain in 2021<sup>14</sup>. This marked a 64.4% increase in tourist numbers with respect to 2020, in which an exceptional drop was recorded with respect to the positive trend of previous years, due to the COVID-19 public health crisis. The progressive lifting of restrictions on international travel has fueled a global upturn in tourism.

Table 6 reflects the growth of production and demand components in the last year. The consolidated growth rate of the Spanish economy is mainly due to the contribution of national demand, as well as to foreign demand, given the increase in exports.

Table 6

| GROWTH OF PRODUCTION AND DEMAND COMPONENTS (%) |       |      |
|--|-------|------|
| PRODUCTION COMPONENTS                          | 2020  | 2021 |
| Agriculture and fishery                        | 4.3   | -5.5 |
| Industry                                       | -10.2 | 6.2  |
| Construction                                   | -11.2 | -3.3 |
| Services                                       | -11.5 | 6.5  |
| DEMAND COMPONENTS                              |       |      |
|  | 2020  | 2021 |
| Private consumption                            | -13.6 | 6.9  |
| Public consumption                             | 3.3   | 3.0  |
| Gross fixed capital formation                  | -11.4 | 7.2  |
| National Demand                                | -8.7  | 5.1  |
| Exports of goods and services                  | -20.1 | 15.7 |
| Imports of goods and services                  | -15.2 | 14.6 |

Source: National Institute of Statistics.

<sup>14</sup> Tourism Border Movements (*FRONTUR*) statistics. Data at December 2021. National Statistics Institute.

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## / 7 Foreign trade and investment

Rapid growth in international trade and foreign investments in recent years has made Spain one of the most internationally-oriented countries in the world.

With regard to the trading of goods, in 2020 Spain was ranked 18<sup>th</sup> in the world as an exporter and 16<sup>th</sup> as an importer; while in the trading of services it occupies 14<sup>th</sup> place as an exporter and 20<sup>th</sup> place as an importer<sup>15</sup>.

Spanish exports and imports of goods account for 1.7% and 1.8%, respectively, of the worldwide total, while Spanish exports and imports of services represent 1.8% and 1.3% respectively.

The breakdown by industry of foreign trade is relatively diversified, as can be seen in the following table:

Table 7

| DISTRIBUTION OF EXPORTS AND IMPORTS 2021 (AS A % OF TOTAL) |       |   |       |
|--|-------|---|-------|
| EXPORTS  |       | IMPORTS                                 |       |
| Capital goods  | 18.6% | Capital goods                           | 20.7% |
| Food   | 18.0% | Chemical products                       | 18.5% |
| Chemical products  | 17.0% | Energy products                         | 13.6% |
| Automobile industry  | 12.8% | Food                                    | 11.5% |
| Semi-manufactured non-chemical products                    | 11.2% | Consumer goods                          | 11.3% |
| Consumer goods   | 9.6%  | Automobile industry                     | 9.5%  |
| Energy products  | 6.7%  | Semi-manufactured non-chemical products | 7.7%  |
| Raw materials  | 2.6%  | Raw materials                           | 3.6%  |
| Other goods  | 1.8%  | Durable consumer goods                  | 2.9%  |
| Durable consumer goods                                     | 1.7%  | Other goods                             | 0.6%  |

Source: Ministry of Industry, Trade and Tourism. January – December 2021 data.

As would be expected, the countries of the EU are Spain's main trading partners. Accordingly, during 2021<sup>16</sup>, Spanish exports to the European Union accounted for 61.8% of total exports and sales to the Eurozone represented 54.5%. Imports from the European Union accounted for 49.9% of the total and those from the Eurozone represented 42.4%.

<sup>15</sup> WTO "World Trade Statistical Review 2021".

<sup>16</sup> Annual data published by the Spanish Ministry of Industry, Trade and Tourism. January – December 2021 data.

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Specifically, Spain's leading trade partners are France and Germany. Outside the EU, Asia and Africa have displaced Latin America and North America from their traditional role as Spain's main non EU trading partners.

The positive adaptation of Spanish companies to the new worldwide economic scenario, reflected mainly in the progressive diversification of the markets to which Spanish products and services are directed should also be underscored. Indeed, Spanish exports are to some extent being redirected from the EU to the rest of the world. In this regard, Spain's share of exports to the EU dropped from 70.1% in 2007 to 61.8% of total exports in 2021.

As regards investment, Spain is one of the main recipients of investment worldwide.

Specifically, Spain is the 11<sup>th</sup> largest sovereign country recipient of foreign investment worldwide in terms of stock (and 5<sup>th</sup> in the EU) with USD 853,291 million. Spain is the 15<sup>th</sup> largest source of FDI in terms of stock, with a volume equal to USD 624,839 million in 2020<sup>17</sup>.

With a view to making the Spanish economy more competitive and boosting the contribution made by foreign trade to growth and job creation, the Spanish government has adopted a series of measures aimed at enabling Spanish businesses to access the financing required for their internationalization. Noteworthy among the financial instruments approved by the Spanish government to provide official support for the internationalization of Spanish enterprise are the Foreign Investment Fund (*FIEX*), the Fund for Foreign Investment by Small and Medium-sized Enterprises (*FONPYME*) and the Enterprise Internationalization Fund (*FIEM*), which were allocated a total of €282 million in 2022 to channel the internationalization support and mentoring programs managed by the Spanish Chamber of Commerce. Also notable are the credit facilities for business owners and independent contractors offered by the Official Credit Institute (*ICO*) and approved in 2022: the 2022 *ICO* International Facility and the 2022 *ICO*-Exporters Facility.

In order to foster internationalization and the inflow of funds from the European Recovery Plan, a new €50 million non-refundable FIEM financing line has also been approved, allocated to the performance of sectoral and institutional modernization and feasibility studies on projects of interest for internationalization, for the period 2021-2023.

The *ICO* has also managed various funds for enterprises and independent contractors, aimed at palliating the economic impact of the crisis through the approval of *ICO*-COVID-19 lines of security to be used as liquidity and investment instruments, with a budget of up to 100 and 40 billion euros, respectively. Lastly, the Ministry of Industry, Trade and Tourism has submitted a "crash" program to combat COVID-19 with measures whose objectives are focused on mitigating the impact of COVID-19 on foreign trade, promoting an image of Spain associated with competitiveness and excellence in production and keeping the markets open, influencing the EU and multilateral forums such as the OMC, inter alia, against the risks of protectionism and preference for national consumption.

Along these lines, the Spanish Economy Internationalization Strategy 2017-2027, together with the biennial Action Plans (for 2017-2018, 2019-2020 and 2021-2022) was approved. The "Internationalization Support Action Plan 2021-2022" forms part of the Spanish Economy Internationalization Strategy 2017-2027, and its priority objectives are focused on the following three lines of action: (i) to configure the foreign sector as a pillar of growth and employment; (ii) to achieve greater resilience in the production and export fabric; and (iii) to promote a structural change in internationalized enterprises toward digitalization and sustainable development.

By way of a summary of Spanish foreign trade, the balance of payments is set out below.



Table 8

| SPAIN'S BALANCE OF PAYMENTS (MILLIONS OF EUROS) |               |               |
|---|---------------|---------------|
|   | 2020          | 2021          |
| <b>I. Current account</b>                       | <b>9,251</b>  | <b>8,429</b>  |
| Goods and services                              | 16,528        | 17,057        |
| Primary and secondary income                    | -7,277        | -8,628        |
| <b>II. Capital Account</b>                      | <b>4,469</b>  | <b>9,918</b>  |
| <b>III. Financial Account</b>                   | <b>17,252</b> | <b>28,043</b> |
| Total (excluding Bank of Spain)                 | 98,228        | 11,557        |
| Direct investment                               | 19,598        | -2,144        |
| Portfolio investment                            | 53,675        | -14,590       |
| Other investment                                | 32,044        | 20,709        |
| Financial derivatives                           | -7,090        | 7,582         |
| Bank of Spain                                   | -80,975       | 16,486        |
| Reserves  | -346          | 10,315        |
| Claims with the Eurosystem                      | -102,273      | 869           |
| Other net assets                                | 21,644        | 5,302         |

**N.B.:** A positive sign in the current and capital accounts means a surplus (receipts greater than payments) and represents a net loan from Spain to the rest of the world (increase in assets or decrease in liabilities), whereas in the financial account a positive sign means a net inflow of capital and represents a net loan from the rest of the world to Spain. A negative sign in reserves means an increase.

**Source:** Bank of Spain. Data from January to December 2020 and 2021.

<sup>17</sup> According to the UNCTAD "World Investment Report 2021".

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## / 8 Legislation on foreign investment and exchange control

Deregulation is the dominant feature in exchange control and foreign investment matters.

As a general rule, a foreign investor can invest freely in Spain without having to obtain any type of authorization or prior notification. The investor only needs to report the investment, once it has been made, within a maximum term of one month, to the Directorate-General for International Trade and Investments of the Secretary of State for Trade purely for administrative, statistical or economic purposes.

Exchange control and capital movements are fully deregulated in Spain, there being complete freedom of action in this field in all areas.

### 8.1 LEGISLATION ON FOREIGN INVESTMENT

Royal Decree 664/1999 deregulated practically all transactions of this kind (with the conditions and exceptions set forth below), adapting Spanish domestic law to the rules on the freedom of movement of capital contained in Articles 56 *et seq.* of the Treaty of the European Union.

The most noteworthy aspects of the regulations applicable to foreign investments are as follows:

- As a general rule, and for purely administrative, statistical or economic purposes, foreign investments must

be reported afterwards to the Directorate-General for International Trade and Investments, once the investment has been made<sup>18</sup>. The only exceptions are: (i) investments from tax havens, which in general are subject to a prior administrative notification; and (ii) foreign investments in activities directly related to national security, and real estate investments for diplomatic missions by non-EU Member States, which require prior authorization by the Spanish Council of Ministers. There is no obligation for foreign investments to be formalized in the presence of a Spanish public certifying officer (unless an express provision provides otherwise).

- The parties subject to the obligation to report investments or divestments in transferable securities are not generally the investors, but rather the investment firms, credit institutions or other resident entities engaging, as the case may be, in any of the activities specific to the first two and acting at the risk and expense of the investor, as the interposed holder of such securities. Investors must report the investment only when the securities account or deposit is held at an institution domiciled abroad, where the securities are being kept by the holder of the investment; or where they acquire a holding of 3% or more in listed companies (the last case must be reported to the National Securities Market Commission).

<sup>18</sup> The contents and instructions to complete each declaration can be found at the following link: [https://comercio.gob.es/InversionesExteriores/Declaraciones\\_Inversion/procedimientos/Paginas/declaracion-inversiones.aspx](https://comercio.gob.es/InversionesExteriores/Declaraciones_Inversion/procedimientos/Paginas/declaracion-inversiones.aspx).

The forms are obtained, completed and presented electronically using a help program called *AFORIX*, which can be downloaded from the electronic sub-office of the Secretary of State for Trade (at <https://sede.comercio.gob.es>), by accessing the option: *Procedimientos y servicios electrónicos->Descarga de programas de ayuda->AFORIX Programa para la cumplimentación de Formularios de Inversiones Exteriores*). It is necessary for the declarant to have an electronic signature in order to submit the declaration electronically. As an exception, in the event that the holder of the investment is an individual, he/she may also use, in addition to the forms obtained via *AFORIX*, the preprinted forms available at the General Register of the Ministry of Industry, Trade and Tourism and may choose whether to file the declaration electronically or on paper.

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- Foreign investments in the air transportation and radio industries, in industries relating to raw materials, minerals of strategic interest and mining rights, in the television, gaming, telecommunications and private security industries, in industries concerned with the manufacturing, marketing or distributing of arms and explosives and in national security-related activities (these latter activities are subject to the clearance rules), will be subject to the requirements imposed by the relevant bodies established by industry-specific legislation, although the general provisions may apply to them once those requirements are met.

### 8.1.1 FOREIGN INVESTMENTS - CHARACTERISTIC

Table 9

| FOREIGN INVESTMENTS   |  |
|---|--|
| <b>Investors<sup>19</sup></b>                                       | <p>Non-resident individuals (that is, Spanish or foreign nationals domiciled abroad, or who have their principal place of residence abroad).</p> <p>Legal entities domiciled abroad.</p> <p>Public entities of foreign States.</p>   |
| <b>Regulated investments<sup>20</sup><br/>Reporting obligations</b> | <p>Participation in Spanish companies, including their incorporation and subscription and acquisition of shares in joint-stock companies or in limited liability companies, and any legal transaction whereby voting rights are acquired.</p> <p>Establishment of, and increase of capital allocated to branches.</p> <p>Subscription and acquisition of marketable debt securities issued by residents (debentures, bonds, promissory notes).</p> <p>Participation in mutual funds recorded on the Registers of the Spanish National Securities Market Commission<sup>21</sup>.</p> <p>Acquisition by non-residents of real estate located in Spain, valued at more than €3,005,060, or where the investment originates from a tax haven, whatever its amount is.</p> <p>Incorporation, formalization or participation in joint ventures, foundations, economic interest groupings, cooperatives and joint-property entities, with the same characteristics as in the previous paragraph.</p> |

### FOREIGN INVESTMENTS

|                                      |   |
|--------------------------------------|---|
| <b>Parties subject to obligation</b> | <p>The investor.</p> <p>The Spanish public certifying officer who may have intervened in the transaction.</p> <p>However, investments in certain assets (securities, mutual funds, registered shares) may require that other individuals involved in the transaction report the investment (credit or financial institutions, deposit-taking or management companies of such assets, the Spanish company receiving the investment).</p>   |
| <b>Reporting rules</b>               | <p>As a general rule, all foreign investments subject to disclosure, and the liquidation thereof, must be reported after the event to the Investments Register of the Ministry of Industry, Trade and Tourism.</p> <p>Investments from tax havens must be reported before and after the event. However, the following cases shall be excluded from the prior declaration:</p> <ul style="list-style-type: none"> <li>Investments in marketable debt securities issued or offered publicly, whether or not they are traded on an official secondary market, and units in mutual funds recorded on the Registers of the Spanish National Securities Market Commission.</li> <li>Where the foreign interest does not exceed 50% of the capital stock of the Spanish company in which the investment is made.</li> <li>Acquisitions of foreign investments in Spain as a result of <i>inter vivos</i> transfers for no consideration or <i>mortis causa</i> transmissions.</li> </ul> <p>This prior disclosure obligation is not equivalent to a prior verification or authorization requirement and, once the investment has been disclosed, the investor may make its investment without having to wait for any reply from the authorities. In all cases, the declaration is valid for six months, so once notified, the investment must be made within that time period.</p> |

<sup>19</sup> A Spanish company in which foreign shareholders have a majority holding is not deemed to be an investor. A change of registered office of legal entities or a change of residence of individuals will be sufficient to change the classification of an investment as a Spanish investment abroad or a foreign investment in Spain.

<sup>20</sup> Foreign investments not included in the above list (such as equity loans) are totally deregulated, and no communication is required in relation to them. The foregoing, notwithstanding any industry-specific regulations that may apply to such investments, and the rules on exchange control, with respect to such investments.

<sup>21</sup> <http://www.cnmv.es/portal/home.aspx?lang=en>

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### 8.1.2 MONITORING OF FOREIGN INVESTMENTS

The Directorate-General for International Trade and Investments (*DGCI*)<sup>22</sup> can generally or specifically require Spanish companies which have foreign shareholders, and Spanish branches of non-resident persons, to file an annual report with it on the status of their foreign investments. The *DGCI* may also require the holders of investments to provide the information necessary in each particular case.

### 8.1.3 SUSPENSION OF THE DEREGULATION RULES

The Spanish Council of Ministers can suspend the application of the deregulation rules in certain cases, which will require the investments concerned to undergo a prior procedure to obtain administrative clearance from the Council of Ministers.

At present, the Council of Ministers has only suspended the deregulation rules in respect of foreign investments in Spain in activities directly related to national security, such as the production or sale of arms, munitions, explosives and other armaments (except in the case of listed companies engaged in those activities, in which case clearance will only be required for acquisitions by non-residents that reach, exceed or fall below certain ownership thresholds, starting from 3% of the capital stock, or those acquisitions that without reaching such thresholds enable such investors to directly or indirectly form part of their managing bodies).

## 8.2 EXCHANGE CONTROL REGULATIONS

Exchange control and capital movements are fully deregulated and in all areas there is complete freedom of action.

The basic regulation on exchange control is contained in Law 19/2003 on the legal arrangements governing the movement of capital and economic transactions abroad and in Royal Decree 1816/1991 on Economic Transactions Abroad, which uphold the principle of deregulation of capital movements.

### 8.2.1 THE MAIN FEATURES OF THE SPANISH EXCHANGE CONTROL PROVISIONS CURRENTLY IN FORCE CAN BE SUMMARIZED AS FOLLOWS:

#### i. Freedom of action

As a general rule, all acts, businesses, transactions and operations between residents and non-residents which involve or may involve payments abroad or receipts from abroad are completely deregulated. This includes payments or receipts (made either directly or by offset), transfers to or from abroad and changes in accounts or financial debit or credit positions abroad. It also covers the import and export of means of payment.

#### ii. Safeguard clauses and exceptional measures

EU rules may prohibit or restrict the performance of certain transactions, and the respective collections, payments, bank transfers or changes in accounts or financial positions, in respect of third countries.

The Spanish government may also impose prohibitions or restrictions in respect of one state or of a group of states, a certain territory or an extra-territorial center, or suspend the deregulation system for certain acts, businesses, transactions or operations. However, the application of these prohibitions and limitations is only envisaged in especially serious scenarios.

#### iii. Types of bank accounts

Non-resident individuals and legal entities can hold bank accounts on the same conditions as resident individuals and legal entities. The only requirement, on opening the bank account, is that they provide documentary evidence of the non-resident status of the account holder. Additionally, such status must be confirmed to the bank every two years. Other minor formalities are also stipulated.

In the case of bank accounts to be opened by non-resi-

dent legal entities, and without prejudice to the fact that each credit institution may request more or less information, the following is the basic information to be requested at the time the account is opened:

1. Identification document of the sole administrator or of the persons with powers of attorney to open the current account.
2. Document accrediting the nature and address of the company. For example:
  - Public deed of incorporation.
  - Bylaws (in the event that they are not included in the deed of incorporation).
  - Certificate issued by the commercial register or equivalent body in the country of residence, certifying the nature and domicile. The content of this certificate must be at least the following:
    - Date of issue (which must be less than two months old to be valid).
    - Company name.
    - Address.
3. Document accrediting the powers of attorney of the authorized person to operate the account (in the event that the powers of attorney do not appear in the above certificate).
4. Details of the shareholding structure of the company.

<sup>22</sup> [www.comercio.gob.es/](http://www.comercio.gob.es/)

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5. Document verifying the nature of the business activity. For example:

- Annual report.
- Annual accounts.

It is necessary to bear in mind that all documents issued outside Spain must be duly legalised and apostilled (Hague Convention), as well as duly translated into Spanish (sworn translation). Moreover, residents may, subject to certain reporting requirements, freely open and hold bank accounts abroad either in euros or in foreign currency (when opened, they must be declared to the Bank of Spain), and foreign currency bank accounts in Spain at registered institutions (without being subject to any reporting requirement).

iv. Residence for exchange control purposes

For exchange control purposes, individuals are deemed to be resident in Spain if they reside habitually in Spain. Legal entities with registered offices in Spain, and the establishments and branches in Spain of individuals or legal entities resident abroad, are likewise deemed resident in Spain for exchange control purposes.

Individuals whose habitual residence is abroad, legal entities with registered offices abroad, and permanent establishments and branches abroad of Spanish resident individuals or entities are deemed non-residents for exchange control purposes.

Habitual residence is defined in accordance with tax legislation, albeit with the adaptations established by regulations (which regulations are currently pending implementation).

### 8.3 FOREIGN TRANSACTIONS DECLARATIONS WITH THE BANK OF SPAIN

For purely statistical and informative purposes the Circular 4/2012 of Bank of Spain, establishes that individuals or enti-

ties (public or private) resident in Spain, other than payment service providers registered on the official registers of the Bank of Spain, that carry out transactions with non-residents or hold assets or liabilities abroad, must report them to the Bank of Spain<sup>23</sup>.

The frequency of the notifications will depend on the volume of transactions carried out by the subjects obliged to submit them in the immediately preceding year, and on the balance of assets and liabilities of these subjects at December 31 of the previous year, as follows:

- If the amount of the transactions during the immediately preceding year, or the balance of assets and liabilities at December 31 of the preceding year, is €300 million or more, the information shall be provided monthly, within the 20 days following the end of each calendar month.
- If the amount of the transactions during the immediately preceding year, or the balance of assets and liabilities at December 31 of the preceding year, is €100 million or more but less than €300 million, the information shall be provided quarterly, within the 20 days following the end of each calendar quarter.
- If the amount of the transactions during the immediately preceding year, or the balance of assets and liabilities at December 31 of the preceding year, is less than €100 million, the information shall be provided annually, within the first 20 days of January of the following year.
- When the aforementioned amounts do not exceed €1 million, the return will only be submitted to the Bank of Spain at the express request thereof, and in a maximum period of two months following the date of that request.

However, residents that have not reached the reporting thresholds mentioned above, but that will cross them in the current year, will be required to file the corresponding declarations within the timeframe previously established from the moment at which the limits are exceeded.

Notwithstanding, when neither the amount of the balances nor the transactions exceed €50 million, the declarations can be filed on a summarized basis, only indicating the opening and closing balances of assets and liabilities held abroad, the total sum of receipts and the total sum of payments in the period reported.

### 8.4 IMPORT AND EXPORT OF CERTAIN MEANS OF PAYMENT AND MOVEMENTS IN SPAIN

Incoming or outgoing cross-border movements of means of payment for an amount of €10,000 or more or its equivalent in foreign currency is subject to prior administrative disclosure. If the disclosure is not made, Spanish customs officials may confiscate these means of payment.

Likewise, movements in Spain of means of payment for amounts of €100,000 or more, or its equivalent in foreign currency must also be disclosed previously.

For the purposes of the above, “movement” shall be deemed to mean any change of place or position verified outside the domicile of the holder of the means of payment.

“Means of payment” shall mean paper money and coins (domestic or foreign); negotiable instruments or bearer means of payment (those instruments which, on presentation, give their holders the right to claim a financial amount without the need to prove their identity or their entitlement to that amount. Included here are travellers’ cheques, cheques, promissory notes or money orders, whether made out to

<sup>23</sup> Without prejudice to the fact that the parties subject to the obligation to report to Bank of Spain detailed here are individuals and entities resident in Spain, we considered it of interest to include this section, since what gives rise to these reporting obligations are precisely transactions with non-residents and/or assets and liabilities held abroad or which the nonresident entity holds in Spain (in other words, both the real estate held abroad by a Spanish company and the real estate held in Spain by a nonresident entity must be declared).

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bearer, signed but omitting the name of the payee, endorsed without restriction, made out to the order of a fictitious payee or otherwise by virtue of which title passes on delivery, and incomplete instruments); prepaid cards; commodities used as highly liquid stores of value, such as gold. Solely for the purposes of entering or leaving Spain, “payment means” shall also be deemed to be bearer negotiable instruments, including monetary instruments such as travelers cheques, negotiable instruments, including cheques, promissory notes and payment orders, whether in bearer form, endorsed without restriction, made out to a fictitious payee or any other form in which ownership thereof is transferred on delivery, and incomplete instruments, including cheques, promissory notes and payment orders that are signed but omit the name of the payee.

### 8.5 EXCEPTIONAL MEASURES IN RESPONSE TO COVID-19

As a result of the appearance of the so-called “coronavirus” (COVID-19) in the international arena and the extraordinary effects it has had in all aspects, the Spanish government has approved a series of measures that aim to respond to the pandemic.

Among the various measures adopted, stand out the ones adopted to control foreign investment established through successive Royal Decree-Laws, the latest being Royal Decree-Law 27/2021 of 23 November extending certain economic measures to support the recovery, which amended the sole transitory provision of Royal Decree-Law 34/2020 of 17 November on urgent measures to support business solvency and the energy sector, and on tax matters.

Thus, Royal Decree-Law 27/2021 has extended until 31 December 2022 the application of the mechanism for the control of foreign direct investment in Spain (i.e., investments made by residents of countries outside of the European Union and of the European Free Trade Association where the investor comes to hold a stake equal to or greater than 10% of the

share capital of the Spanish company, or where, as a result of the corporate transaction, act or legal transaction, they effectively participate in the management or control of that company), if:

- The investment is made in certain sectors affecting public policy, public security and public health.
- The foreign investor is directly or indirectly controlled by the government, including the public agencies or armed forces, of a third country; has made investments or participated in activities in sectors affecting security, public policy and public health in another member state; or if an administrative or judicial proceeding has been brought against the foreign investor in another member state or in the state of origin or in a third state due for carrying on criminal or illegal activities.

Foreign direct investment shall also be deemed to be foreign direct investment made by residents of European Union or European Free Trade Association countries whose beneficial ownership is held by residents of countries outside the European Union and the European Free Trade Association. Such beneficial ownership shall be deemed to exist when the latter ultimately own or control, directly or indirectly, more than 25% of the capital or voting rights of the investor, or otherwise exercise control, directly or indirectly, over the investor.

Foreign direct investment in the following sectors will be subject to the monitoring mechanism:

- a. Critical infrastructure, whether physical or virtual (including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities), as well as land and real estate that are key to the use of such infrastructure, understood as those referred to in Law 8/2011, of 28 April, which establishes measures for the protection of critical infrastructure.

- b. Critical and dual-use technologies, key technologies for industrial leadership and capacity building, and technologies developed under programmes and projects of particular interest to Spain, including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, nanotechnologies, biotechnologies, advanced materials and advanced manufacturing systems.
- c. Supply of fundamental inputs, in particular energy, understood as those regulated in Law 24/2013, of 26 December, on the Electricity Sector, and in Law 34/1998, of 7 October, on the Hydrocarbons Sector, or those referring to strategic connectivity services or raw materials, as well as food security.
- d. Sectors with access to sensitive information, in particular personal data, or with the capacity to control such information, in accordance with Organic Law 3/2018 of 5 December on the Protection of Personal Data and Guarantee of Digital Rights.
- e. Media, without prejudice to the fact that audiovisual communication services in the terms defined in Law 7/2010 of 31 March, General Law on Audiovisual Communication, shall be governed by the provisions of the aforementioned Law.

In order to carry out these investments, authorization must be obtained on the terms provided for in the applicable legislation (Law 19/2003, of July 4th, 2003).

Provisionally and until the minimum amount is established by regulations, investment operations the amount of which is less than 1 million euros will be deemed to be exempt from the prior authorization obligation.

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**9 Obligations in relation to anti-money laundering and counter-terrorism financing**

## / 9 Obligations in relation to anti-money laundering and counter-terrorism financing

In order to perform certain transactions in Spain, the parties thereto, before performing them, must provide specific documents relating to their identity and their business or professional activity, pursuant to the legislation applicable in relation to anti-money laundering and counter-terrorist financing (“**AML/CTF**”).

The main obligations applicable in Spain in relation to AML/CTF are established in Law 10/2010, of April 28, 2010, on the prevention of money laundering and of the financing of terrorism (“**Law 10/2010**”)<sup>24</sup> and in Royal Decree 304/2014, of May 5, approving the Regulations of Law 10/2010 (“**Royal Decree 304/2014**”).

Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries, entered into force on September 3, 2019.

Spanish AML/CTF legislation is the result of the transposition of EU legislation on the subject, in particular, the latest

transposition being Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU (the “Fifth Directive”). Current Spanish AML/CTF legislation also includes the recommendations issued by the Financial Action Task Force (“**FATF**”) on money laundering and terrorist financing.

The legislation enacted in relation to AML/CTF applies to the transactions carried out by the parties bound by it (“**relevant persons**”), such as financial institutions, notaries, lawyers or real estate developers, among others, with their customers and potential customers, regardless of whether those customers are persons resident in Spain or nonresidents. Thus, where a party seeks to carry out in Spain procedures such as opening a current account, executing a public deed or acquiring real estate, the relevant persons must perform certain formalities to identify their customers and the origin of their funds.

In particular, the relevant persons must have procedures in place for identifying and accepting customers, and classifying them according to risk. In this regard, although each relevant person has specific AML/CTF procedures tailored to the characteristics of their activity, the information generally required pursuant to AML/CTF legislation can be summarized as follows:

- i. *Legally valid documents for formal identification purposes*<sup>25</sup>. Admissible identifying documents are the following:

<sup>24</sup> Amended by Royal Decree-Law 7/2021, of 27 April, on the transposition of European Union directives in the areas of competition, prevention of money laundering, credit institutions, telecommunications, tax measures, prevention and repair of environmental damage, posting of workers in the provision of transnational services and consumer protection.

<sup>25</sup> The relevant persons shall identify and verify, through legally valid documents, the identity of all the individuals or legal entities that seek to establish business relationships or carry out occasional transactions the amount of which is €1,000 or more. The identity shall be verified in all cases of transactions for sending money and managing transfers.

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### a. Individuals:

- Spanish nationals: National identity card.
- Foreign national: Residence permit, foreign identity card, passport or, in the case of citizens from the European Union or the European Economic Area, official letter or personal identity card issued by the authorities of origin.

Exceptionally, other personal identity documents issued by a governmental authority could be accepted, provided they have appropriate guarantees of authenticity and include a photograph of the holder.

- b. For legal entities: The public documents proving their existence and containing their corporate name, legal form, address, the identity of their directors, their by-laws and tax identification number.
- c. Authorized representatives: A copy of the legally valid document relating to the representative and to the represented person or entity, and the public document evidencing the powers conferred.

The identification documents must be in force when business relationships are established or occasional transactions are executed.

- ii. *Identification of the beneficial owner*<sup>26</sup>. The identification and verification of the identity of the beneficial owner may generally be carried out through a solemn declaration by the customer or the authorized representative of the legal entity.
- iii. *Information on the purpose and nature of the business relationship*. Such information shall be gathered in order to know the nature of the customer's professional or business activity. In this regard, in order to evidence the activity, it will suffice to provide, among others, some of these valid documents:

- a. Salaried employees or pensioners: Last pay slip, pension or subsidy, certificate of labor history or employment contract in force.
- b. Customers with liberal professions or self-employed persons: Proof of payment of social security contributions, professional association membership card or receipt of membership dues.
- c. Legal entities: Last corporate income tax return, financial statements, annual business report or annual external auditors' report.

### iv. *Information and, as appropriate, evidence of the origin of the funds to be contributed.*

The relevant persons shall carry out enhanced verifications of the information provided to them in those situations in which, given the nature and characteristics of the transaction and in view of the criteria established in legislation, they consider that there is, in principle, a higher risk of money laundering or terrorist financing.

<sup>26</sup> The relevant persons shall identify the beneficial owner and adopt the appropriate measures in view of the risk in order to verify its identity before establishing business relationships, executing electronic transfers for amounts over €1,000 or executing other occasional transactions for amounts above €15,000.

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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, Royal Decree Law 11/2020 of March 31, 2020, adopting additional urgent measures in the social and economic field to deal with COVID-19, and Royal Decree-Law 34/2020, of November 17, 2020, on urgent measures to support the solvency of businesses and support the energy sector and in the tax field, which were approved by the Spanish Government on the occasion of the global COVID-19 pandemic.

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## / 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.

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## / 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  |   |
|--|---|
| <b>Creation of a Spanish company with its own legal personality</b>  | 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.).   |
| <b>Limited Liability Entrepreneur</b>  | Pursuit of the activity directly by the individual where certain requirements are met.  |
| <b>Branch or permanent establishment</b>   | 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.   |
| <b>Joint venture</b>   | 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: <ul style="list-style-type: none"> <li>• A Temporary Business Association (<i>Unión Temporal de Empresas</i> or UTE).</li> <li>• An Economic Interest Grouping (EIG) and a European EIG (EEIG).</li> <li>• Under a type of silent partnership arrangement peculiar to Spanish law (<i>cuenta en participación</i>) with one or more Spanish entrepreneurs.</li> <li>• Participating loans.</li> <li>• Joint ventures through Spanish corporations or limited liability companies.</li> </ul> |
| <b>Without setting up a business or entering into an association with existing business or establishing a physical center of operations in Spain</b> | The alternatives include: <ul style="list-style-type: none"> <li>• Signing a distribution agreement.</li> <li>• Operating through an agent.</li> <li>• Operating through commission agents.</li> <li>• Franchising.</li> </ul>  |
| <b>Acquisitions</b>  | Acquisition of shares, real estate located in Spain or businesses.  |
| <b>Venture capital</b>   | 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.

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| 9   | Dispute resolution   | — |
| <b>Appendix I</b> Table summarizing the tax treatment given to the various ways of investing 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.                       | <ol style="list-style-type: none"> <li>Original and copy of Official Form (EX15).</li> <li>Fee Form (790 Code 12) with proof of payment at the relevant bank.</li> <li>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.</li> </ol> | €9.84/10 (Form 790 <sup>2</sup> ). | 1 week.         |
| Abroad                   | Office of the Commissioner-General for Foreigners and Borders, through Spanish Consulates abroad. | <ol style="list-style-type: none"> <li>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<sup>1</sup>; (ii) evidence that the representative has sufficient powers, duly translated (sworn translation) and authenticated and/or certified by apostille.</li> </ol>   |                                    |                 |

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

<sup>2</sup> [https://sede.policia.gob.es/Tasa790\\_012/ImpresoRellenar](https://sede.policia.gob.es/Tasa790_012/ImpresoRellenar)

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### 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 <sup>3</sup> 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 DNI/E 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.<br>Prior documents required: <ul style="list-style-type: none"> <li>• 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.</li> <li>• Photocopy of each representative's passport, national identity card or N.I.E.</li> </ul> | First step: Assignment of the representative's instrumental N.I.E. by means of form 030 on the same day.<br>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 | 2. Form 036 <sup>4</sup> 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: <ul style="list-style-type: none"> <li>• 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.</li> <li>• The original certificate of incorporation or extract from the Commercial Registry indicated in section 1 above.</li> <li>• To complete form 036, it will be necessary to indicate an address in Spain for notification purposes.</li> <li>• 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.</li> </ul>   |   |

**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<sup>5</sup> 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.

<sup>3</sup> <https://www.agenciatributaria.gob.es/AFAT.sede/procedimientoini/G321.shtml>

<sup>4</sup> <https://www.agenciatributaria.gob.es/AFAT.sede/tramitacion/G322.shtml>

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

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

| PROVISIONAL <i>N.I.F.</i> (BEFORE SETTING UP COMPANY) |  |   |                 |
|---|--|---|-----------------|
| PROCEDURE   | WHERE TO SUBMIT APPLICATION  | DOCUMENTATION   | DECISION PERIOD |
| Ordinary procedure                                    | State Tax Agency   | <ul style="list-style-type: none"> <li>Form 036<sup>6</sup> (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 <i>N.I.E.</i> or Spanish national identity card<sup>7</sup>.</li> <li>Copy of the <i>N.I.E.</i> or Spanish national identity card of the signatory.</li> <li>Original clear name search certificate from the Central Commercial Registry.</li> <li>Agreement of intent to form a company signed by the managing body and shareholders or copy of the deed of formation<sup>8</sup>.</li> </ul> | Same day.       |
| Telematic procedure                                   | The notary authorizing the deed of formation will request the assignment of a provisional <i>N.I.F.</i> by the State Tax Agency by telematic means. The shareholders and directors must have a <i>N.I.E.</i> or a Spanish national identity card and must appear as previously registered on the census. |   |                 |

| DEFINITIVE <i>N.I.F.</i> (AFTER SETTING UP THE COMPANY) |                             |   |                   |
|---|-----------------------------|---|-------------------|
| PROCEDURE   | WHERE TO SUBMIT APPLICATION | DOCUMENTATION   | DECISION PERIOD   |
| Ordinary Procedure [Telematic procedure]                | State Tax Agency            | <ul style="list-style-type: none"> <li>Form 036 (declaration of registration on, amendment to, or deregistration from the Census of Traders, Professionals and Withholding Agents, box 120, application for final <i>N.I.F.</i>, box 111, registration on the Census of Traders, Professional and Withholding Agents), signed by a representative of the company holding a <i>N.I.E.</i> 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.</li> <li>Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036.</li> <li>Copy of the <i>N.I.E.</i> or Spanish national identity card of the signatory.</li> <li>Original and copy of the deed of formation bearing the registration stamp.</li> </ul> | 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<sup>9</sup> 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.

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

<sup>7</sup> 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.

<sup>8</sup> 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.

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

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## / 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.  |
|-------------------------------|---|---|
| <b>Minimum capital stock</b>  | €60,000   | €3,000 <sup>10 11</sup>   |
| <b>Payment upon formation</b> | At least 25% and any share premium.   | Payment in full.  |
| <b>Contributions</b>          | A report from an independent expert on any non-monetary contributions is required <sup>12</sup> .   | 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. |
| <b>Shares</b>                 | 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.  |

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<sup>10</sup> Except in the case of the entrepreneurial limited liability company, the rules for which are described in [section 4.2 of Annex I](#).

<sup>11</sup> In December 2021, the Council of Ministers approved the Enterprise Creation and Growth Bill, which is currently passing through parliament. This bill forms part of the reforms introduced by the Recovery, Transformation and Resilience Plan and will make it possible to form an S.L. (limited liability company) with share capital of 1 euro, eliminating the current requirement of 3,000 euros. This measure, according to the Spanish government, will enable Spain to come into line with its neighboring countries in terms of business creation.

<sup>12</sup> The expert report is not required, but the substitute report from the directors is required in the following cases:

- 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.
- 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.
- 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.
- 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.
- 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.

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### Establishing a business in Spain



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|  | S.A.  | S.L.   |
|--|---|--|
| <b>Transfer of shares</b>                                  | Depends on how they are represented (share certificates, book entries, etc.) and on their nature (registered or bearer shares).<br>In principle, they may be freely transferred, unless the bylaws provide otherwise. | Must be recorded in a public document.<br>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.  |
| <b>Amendments to the bylaws</b>                            | The directors or shareholders, as the case may be, making the proposal must make a report.  | No report is required.   |
| <b>Venue for shareholders' meetings</b>                    | As indicated in the bylaws. Otherwise, in the municipality where the company has its registered office.   |  |
| <b>Attendance and majorities at shareholders' meetings</b> | 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.  |
| <b>Right to attend shareholders' meetings</b>              | A minimum number of shares may be required to attend the shareholders' meeting.   | This right cannot be restricted.   |
| <b>Number of members of the board of directors</b>         | Minimum: 3.<br>No maximum limit.  | Minimum: 3.<br>A maximum of 12 members.  |
| <b>Term of the office of director</b>                      | Maximum 6 years (4 years at listed companies). They may be reelected for periods of the same maximum duration.  | May be indefinite.   |
| <b>Issue of bonds</b>                                      | 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.<br><br>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.<br><br>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.*<sup>13</sup> 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<sup>14</sup> and therefore be a legal resident 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.

<sup>13</sup> Directorate-General of Registries and the Notarial Profession of January 18, 2012.

<sup>14</sup> 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.](#)

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| STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY    |  |
|---|--|
| REQUIREMENTS  | APPLICABLE TO ANY KIND OF LIMITED LIABILITY COMPANY OR CORPORATION.  |
| <b>1. Clear name search certificate</b>                               | 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) <sup>15</sup> . 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.  |
| <b>2. Application for provisional N.I.F.</b>                          | <a href="#">See section 3.3 above.</a>   |
| <b>3. Opening of a bank account</b>                                   | 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.  |
| <b>4. Document containing representations by the beneficial owner</b> | The founding shareholders must execute a document containing representations by the beneficial owner in accordance with Law 10/2010, of April 28 <sup>16</sup> .   |
| <b>5. Execution of deed before a notary</b>                           | <p>The founding shareholders must execute a public deed before a notary, containing:</p> <ol style="list-style-type: none"> <li>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<sup>17</sup>.</li> <li>Representations by the beneficial owner (see requirement 4 above).</li> <li>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)<sup>18</sup>.</li> <li>Clear name search certificate issued by the Commercial Registry (see requirement 1 above).</li> <li>Company bylaws.</li> <li>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.</li> <li>Identification of and acceptance by the company directors.</li> <li>Subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for International Trade and Investments ("DGC/I") of the Ministry of Industry, Trade and Tourism (<a href="#">see Chapter 1, section 8 for further information</a>). In some cases, limited mainly to foreign investments from countries or territories deemed to be tax havens, a prior declaration must be made (<a href="#">see Chapter 1, section 8 for further information</a>).</li> <li>Identification of the economic activity code describing the activity in accordance with the National Classification of Economic Activities (CNAE).</li> <li>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.</li> </ol> <p>The deed must be executed within the three months following the issue of the clear name search certificate by the Central Commercial Registry.</p> |

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- 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). ([http://www.rmc.es/Deno\\_solicitud.aspx?lang=es](http://www.rmc.es/Deno_solicitud.aspx?lang=es)).
- Law 10/2010, of April 28, on the Prevention of Money Laundering and Terrorist Financing 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.
  - Information relating to beneficial ownership must be kept for 10 years after beneficial owner status ends.
- 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.
- 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](#)).

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### STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

#### REQUIREMENTS APPLICABLE TO ANY KIND OF LIMITED LIABILITY COMPANY OR CORPORATION.

|  |  |
|--|--|
| <b>6. Application for registration of the registered office at the Commercial Registry</b> | The deed of formation will be submitted (i) telematically by the notary; or (ii) in person by the interested party.  |
| <b>7. Period for assessment and registration in the Commercial Registry</b>                | 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.   |
| <b>8. Obtainment of definitive N.I.F.</b>  | <a href="#">See section 3.3 above.</a>   |
| <b>9. Opening formalities for tax and labor purposes</b>                                   | <p>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:</p> <ul style="list-style-type: none"> <li>• Individuals are exempt in any case.</li> <li>• Legal entities during the first two years they pursue their activities.</li> <li>• Legal entities whose net turnover is less than one million euros.</li> <li>• Nonprofit associations and foundations for people with physical, mental or sensory disabilities, for teaching, scientific or welfare activities.</li> <li>• Taxpayers that qualify for the exemption under international treaties.</li> </ul> <p>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<sup>19</sup>. For labor purposes, please see <a href="#">Chapter 5, section 10</a>.</p> |

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](http://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<sup>20</sup>). This notwithstanding, according to the provisions of the Entrepreneurs Law, the regime will consist of the following steps:

<sup>19</sup> In this connection, in accordance with the provisions of Law 12/2012, of December 26, 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<sup>2</sup> 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.

<sup>20</sup> 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).

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## Establishing a business in Spain



### A. Formation of a limited liability company with standard bylaws:

| Nº | STEPS  |
|----|--|
| 1  | <p>At the Entrepreneur Service Point (PAE):</p> <ol style="list-style-type: none"> <li>1. Completion of single electronic document (DUE) and commencement of electronic processing.</li> <li>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.</li> <li>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.</li> </ol>           |
| 2  | <p>The notary will:</p> <ol style="list-style-type: none"> <li>1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock<sup>21</sup>.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol> |
| 3  | <p>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:</p> <ol style="list-style-type: none"> <li>1. Assess the deed and register it within 6 business hours (business hours meaning those included within the opening hours established for the registries).</li> <li>2. Send a certification of registration to the (CIRCE) on the same date of registration.</li> <li>3. Request the definitive N.I.F.</li> </ol>  |
| 4  | <p>The tax authorities will:</p> <ol style="list-style-type: none"> <li>1. Notify the definitive status of the N.I.F. via the (CIRCE).</li> <li>2. Notify the N.I.F. via the (CIRCE).</li> </ol>   |
| 5  | <p>The formalities for commencement of the activity will be performed at the PAE, which will send the information contained in the DUE to:</p> <ol style="list-style-type: none"> <li>1. The State Tax Agency.</li> <li>2. The Social Security General Treasury.</li> <li>3. The local and autonomous community authorities, as the case may be.</li> </ol>  |

### B. Formation of a limited liability company without standard bylaws:

| Nº | STEPS  |
|----|--|
| 1  | <p>At the Entrepreneur Service Point (PAE), the founding shareholders may:</p> <ol style="list-style-type: none"> <li>1. File a request to reserve the name of the company.</li> <li>2. Set the date for the execution of the deed of formation.</li> </ol>  |
| 2  | <p>The notary will:</p> <ol style="list-style-type: none"> <li>1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock<sup>22</sup>.</li> <li>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.</li> <li>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.</li> <li>4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost.</li> </ol> |
| 3  | <p>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.</p> <p>Definitive registration will take place within the ordinary assessment period. Once registered, the Commercial Registrar will notify the competent tax authorities of the registration of the company, requesting the definitive N.I.F.</p>  |
| 4  | <p>The tax authorities will:</p> <ol style="list-style-type: none"> <li>1. Notify the definitive status of the N.I.F. via the CIRCE.</li> <li>2. Notify the N.I.F. via the CIRCE.</li> </ol>   |
| 5  | <p>The formalities for commencement of the activity will be performed at the PAE, which will send the information contained in the DUE to:</p> <ol style="list-style-type: none"> <li>1. The State Tax Agency.</li> <li>2. The Social Security General Treasury.</li> <li>3. The local and autonomous community authorities, as the case may be.</li> </ol>  |

<sup>21</sup> It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Chapter 2, section 4.2).

<sup>22</sup> It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Chapter 2, section 4.2).

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It should be noted that according to the Entrepreneurs Law:

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

As a general rule, the telematic formation of limited liability companies takes approximately 15 business days.

#### 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.

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- 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,<sup>23</sup> 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](#))<sup>24</sup>.
- 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<sup>25</sup>. Other expenses (e.g. professional fees) which are not readily quantifiable.

<sup>23</sup> This decision is temporarily suspended by the Decision of June 3, 2019, of the Directorate-General of the State Tax Agency.

<sup>24</sup> 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.

<sup>25</sup> 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<sup>2</sup> 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 obtaining of authorization or an equivalent instrument granted by the competent body of the regional government.

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## Establishing a business in Spain



- 1 Introduction —
  - 2 Different ways of doing business in Spain —
  - 3 Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.) —
  - 4 Formation of a company —
  - 5 Limited liability entrepreneur —**
  - 6 Opening of a branch —
  - 7 Other alternatives for operating in Spain —
  - 8 Other alternatives for investing in Spain —
  - 9 Dispute resolution —
- Appendix I** Table summarizing the tax treatment given to the various ways of investing in Spain —

## / 5 Limited liability entrepreneur

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

|                     |  |
|---------------------|--|
| <b>Concept</b>      | 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 their principal residence under certain conditions. 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.   |
| <b>Requirements</b> | <p><b>1.Registration of <i>ERL</i> status at the Commercial Registry corresponding to the registered office:</b><br/>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.</p> <p><b>2.Value of the principal residence for which liability for business or professional debts does not extend to such asset<sup>26</sup>:</b></p> <ul style="list-style-type: none"> <li>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).</li> <li>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.</li> </ul> <p><b>3.Disclosure of <i>ERL</i> status</b><br/>It must be mentioned on all documentation, stating the registry particulars.</p> <p><b>4.Registration at the Property Registry</b><br/>Once the <i>ERL</i> 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.</p> |

<sup>26</sup> 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.

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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  | <ol style="list-style-type: none"> <li>1. The PAE sends the DUE along with the relevant documentation to the Commercial Registry, requesting the registration of the limited liability entrepreneur.</li> <li>2. The Commercial Registry has 6 business hours in which to register the entry and send the certification of registration to the <i>CIRCE</i> system by telematic means.</li> </ol> |
| 3  | The Commercial Registrar will send the certificate of registration to the Property Registry, requesting registration of the prohibition on attachment of the <i>ERL</i> '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 <i>CIRCE</i> 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:

- The debtor is a bona fide debtor.
- His/her assets are previously liquidated (or the insolvency proceeding is declared concluded due to an insufficiency of assets).

- 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.

- 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).

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## / 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

|   |  |
|---|--|
| <b>1. Clear name search certificate</b>   | Same procedure followed as for a company. However, according to the decision of the Directorate-General of Registries and the Notarial Profession ( <i>DGRN</i> ) 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.  |
| <b>2. Obtainment of the N.I.F. and appointment of the representative of the parent company in dealings with the Spanish tax authorities</b> | Same procedure followed as for a company.<br><br>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.  |
| <b>3. Document containing representations by the beneficial owner</b>   | Same procedure followed as for a company.  |
| <b>4. Execution of the deed recording the opening of a branch before a Spanish notary</b>   | 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.<br><br>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.<br><br>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 ( <i>DGCI</i> ) of the Ministry of Industry, Trade and Tourism. In some cases, as with subsidiaries, prior declaration is required ( <a href="#">see Chapter 1, section 8 for further information</a> ). |
| <b>5. Application for registration at the Commercial Registry</b>   | Same procedure followed as for a company.  |

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### 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<sup>27</sup>.

**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.

### 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  |
|-------------------------------------|---|---|
| <b>Minimum capital stock</b>        | Minimum capital stock<br>No capital is required to set up a branch, although providing the branch with capital is recommended for practical reasons.                              | S.A.: €60,000.<br>S.L.: €3,000 <sup>28</sup>  |
| <b>Legal personality</b>            | No (no separate legal personality but rather the same legal identity as its parent company).  | Yes.  |
| <b>Managing and government body</b> | 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 <sup>29</sup> ). | Shareholders' meeting and the managing body.  |
| <b>Shareholder liability</b>        | 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 <a href="#">Appendix I, section 3</a> ). |

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

<sup>27</sup> 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<sup>2</sup> 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 obtaining of authorization from the competent body of the regional government.

<sup>28</sup> Except in the case of an entrepreneurial limited liability company. For these purposes, please see section [4.2 of Annex I](#).

<sup>29</sup> Article 10.1 of Legislative Royal Decree 5/2004, of March 5, approving the revised Nonresident Income Tax Law.

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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 Legislative 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.

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#### 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](#)).

| PARENT COMPANY IN  |                |                |                    |
|--|----------------|----------------|--------------------|
|  | UE COUNTRY (1) | TREATY COUNTRY | NON-TREATY COUNTRY |
| <b>SUBSIDIARY:</b>   |                |                |                    |
| 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)           |
| <b>Total tax in Spain</b>  | <b>25</b>      | <b>32.5</b>    | <b>39.25</b>       |
| <b>BRANCH:</b>   |                |                |                    |
| 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)           |
| <b>Total tax in Spain</b>  | <b>25</b>      | <b>25</b>      | <b>39.25</b>       |
| (1) Spain has tax treaties in force with all EU countries except Denmark.<br>(2) The general corporate income tax rate is 25%.<br>(3) Withholding tax rate = 19%.<br>(4) Exempt, provided certain conditions are met.<br>(5) The withholding tax rate on dividends used.<br>(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 ac-

tivities 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.
- 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](#).

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## / / 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:

- Through a temporary business association ([see section 7.2 below](#)).
- As an economic interest grouping ([see section 7.3 below](#)).
- Through a silent participation agreement ([see section 7.4 below](#)).
- 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.
  - **Legal personality:** One of the key differences between *UTES* and EIGs is that EIGs are commercial entities with a separate legal personality.

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- **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<sup>30</sup> or of mandatory

winding-up<sup>31</sup>. 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.
- **Tax implications:** Any fixed and variable interest that accrues on or after January 1, 2015 as a result of the arrangement of participating loans<sup>32</sup> 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](#)).

<sup>30</sup> 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".

<sup>31</sup> In accordance with article 362.1e) 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 27/2021 has extended the exceptional measures relating to grounds for winding up due to losses and the obligation to petition for an insolvency order in the case set out in article 363.1e). Accordingly, losses from fiscal years 2020 and 2021 will not be taken into consideration when determining whether the company is subject to ground of mandatory winding-up.

<sup>32</sup> Only applicable to participating loans between group companies granted after June 20, 2014 (Transitional Provision Seventeen of the Corporate Income Tax Law).

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- **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 be-

longing 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 ano-*

*ther 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.
- 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.

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- 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.

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.

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- **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.

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

## / 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.             |
|--|---|------------------|
| <b>Attestation by public authenticating officer</b>  | Necessary where required by Spanish law or by the bylaws or where so agreed by the parties.   | Always required. |
| <b>Documentation to be provided to the notary</b>  | <ul style="list-style-type: none"> <li>• Title to the shares being transferred.</li> <li>• 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).</li> <li>• N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller (<a href="#">see section 3 above</a>).</li> <li>• 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 (<a href="#">see requirement 4 under section 4 above</a>).</li> <li>• 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).</li> </ul> |                  |
| <b>Subsequent declaration of the investment to the D.G.C.I.</b>                              | <p>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.).</p> <p>In some cases, a prior declaration is required (<a href="#">see Chapter 1, section 8 for further information</a>).</p>   |                  |
| <b>Payment of transfer tax and stamp tax under the “transfers for consideration” heading</b> | <a href="#">See Chapter 3.</a>  |                  |

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| FORMALITY                                     | S.A.  | S.L. |
|---|---|------|
| <b>Costs</b>                                  | Depending on the Spanish public authority before which the acquisition is made: <ul style="list-style-type: none"> <li>• Notary fee: The scale applicable for the formation of a branch is also applicable here.</li> <li>• Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees.</li> </ul>   |      |
| <b>Financial transactions tax (Tobin Tax)</b> | 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 of 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 internalizer or, lastly, the depositary. The assessment of the tax will be monthly. |      |

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.

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.<sup>33</sup>

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.

<sup>33</sup> 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.

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### 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  |
|---|--|
| <b>Attestation by public authenticating officer</b>             | The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.   |
| <b>Documentation to be provided to the notary</b>               | <ul style="list-style-type: none"> <li>Title to the property.</li> <li>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 (<a href="#">See requirement 5 under section 4 above</a>).</li> <li>N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller.</li> <li>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 (<a href="#">see requirement 4 under section 4 above</a>).</li> <li>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).</li> </ul> |
| <b>Subsequent declaration of the investment to the D.G.C.I.</b> | In some cases, prior declaration is required ( <a href="#">see Chapter 1, section 8 for further information</a> ).   |
| <b>Taxes</b>  | <a href="#">See Chapter 3.</a>   |
| <b>Registration at the relevant Property Registry</b>           | 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.   |
| <b>Costs</b>  | <ul style="list-style-type: none"> <li>Notary fee: The scale applicable for the formation of a subsidiary is also applicable here.</li> <li>Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees.</li> <li>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.</li> </ul>   |

### 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  |
|---------------------|---|--|
| <b>Requirements</b> | 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. | <p>Under the Structural Modifications Law:</p> <ul style="list-style-type: none"> <li>Global transfer plan, drawn up by the directors of the transferring company.</li> <li>Report applying and justifying the global transfer plan drawn up by the directors of the transferring company.</li> <li>Approval of the global transfer by the shareholders of the transferring company.</li> <li>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<sup>34</sup>.</li> <li>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<sup>35</sup>.</li> <li>Execution of a public deed before a notary (see formality below "Documentation to be provided to the notary").</li> <li>Registration at the Commercial Registry of the transferring company (effectiveness of the transfer) (see formality below "Registration at the appropriate Registry").</li> </ul> |

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<sup>34</sup> 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.

<sup>35</sup> 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.

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| FORMALITY   | SALE/PURCHASE OF ASSETS AND LIABILITIES   | GLOBAL TRANSFER  |
|---|---|--|
| <b>Attestation by public authenticating officer</b> | The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.  |  |
| <b>Documentation to be provided to the notary</b>   | <ul style="list-style-type: none"> <li>Title of ownership of the assets.</li> <li>Powers of attorney, if applicable, to appear on behalf of the seller and buyer, as appropriate. If granted abroad, it must be duly legalize (<a href="#">see requirement 5 of section 4 above</a>).</li> <li>Spanish <i>N.I.E./N.I.F./D.N.I.</i> of the seller and buyer.</li> <li>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 (<a href="#">see requirement 4 under section 4 above</a>).</li> <li>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).</li> </ul> | <ul style="list-style-type: none"> <li>Title of ownership of the assets.</li> <li>Powers of attorney, if applicable, to appear on behalf of the transferor and transferee. If granted abroad, it must be duly legalize (<a href="#">see requirement 5 of section 4 above</a>).</li> <li>Spanish <i>N.I.E./N.I.F.</i> of the transferor and transferee.</li> <li>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 (<a href="#">see requirement 4 under section 4 above</a>).</li> <li>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).</li> <li>Certificate of the resolution of the shareholders' meeting or the decision of the sole shareholder of the transferring company approving the global transfer.</li> <li>Notice of the transfer in the BORME and in a large circulation newspaper in the province where the registered office is located, if applicable.</li> </ul> |

| FORMALITY   | SALE/PURCHASE OF ASSETS AND LIABILITIES   | GLOBAL TRANSFER   |
|---|---|---|
| <b>Subsequent declaration of the investment to the D.G.C.I.</b> | In some cases, prior declaration is required ( <a href="#">see Chapter 1, section 8 for further information</a> ).  |   |
| <b>Taxes</b>  | <a href="#">See Chapter 3.</a>  |   |
| <b>Registration at the appropriate Registry</b>                 | 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. |
| <b>Costs</b>  | <ul style="list-style-type: none"> <li>Notary fee: The scale applicable for the formation of a subsidiary is also applicable here.</li> <li>Fee of Spanish Consul abroad: The fee will be determined in the legislation in force on notarial fees.</li> <li>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.</li> <li>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.</li> </ul> | <ul style="list-style-type: none"> <li>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.</li> </ul>   |

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### 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.

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## / 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 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

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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.

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

## / Appendix I Table summarizing the tax treatment given to the various ways of investing in Spain

| WAYS OF INVESTING IN SPAIN   | TAX TREATMENT   |
|--|---|
| <b>Incorporation of a subsidiary (Corporation (S.A.) / Limited liability company (S.L.))</b> | General corporate income tax rules pursuant to the Corporate Income Tax Law. <a href="#">(See Chapter 3, section 2.1 for more detailed information).</a>  |
| <b>Formation of a branch</b>   | Nonresident income tax, with permanent establishment. <a href="#">(See Chapter 3, section 2.3.1 for more detailed information).</a>   |
| <b>Economic Interest Grouping (EIG), Temporary Business Alliance (UTE) and joint venture</b> | <p>Special rules for economic interest groupings, both Spanish and European, and temporary business alliances. In particular:</p> <ul style="list-style-type: none"> <li>• The part of the tax base attributable to members resident in Spain is not subject to corporate income tax.</li> <li>• The tax bases, tax credits and tax relief and the withholdings and prepayments of EIGs or UTEs are attributed to the resident members.</li> <li>• 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.</li> </ul> <p><a href="#">(See Chapter 3, sections 2.1.13 for more detailed information).</a></p>   |
| <b>Distribution agreement</b>  | <p>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:</p> <ul style="list-style-type: none"> <li>• 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. <a href="#">(See Chapter 3, section 2.3.1 for more detailed information).</a></li> <li>• 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. <a href="#">(See Chapter 3, section 2.3.2 for more detailed information).</a></li> </ul> <p>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.</p> |

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| WAYS OF INVESTING IN SPAIN   | TAX TREATMENT   |
|--|---|
| <b>Agency agreement</b>  | <p>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.</p> <ul style="list-style-type: none"> <li>• Where a permanent establishment exists. <a href="#">(See Chapter 3, 2.3.1 for more detailed information).</a></li> <li>• Where a permanent establishment does not exist. <a href="#">(See Chapter 3, section 2.3.2 for more detailed information).</a></li> </ul>   |
| <b>Commission agency agreement</b>   | <p>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.</p> <ul style="list-style-type: none"> <li>• Where a permanent establishment exists. <a href="#">(See Chapter 3, section 2.3.1 for more detailed information).</a></li> <li>• Where a permanent establishment does not exist. <a href="#">(See Chapter 3, section 2.3.2 for more detailed information).</a></li> </ul>   |
| <b>Franchising agreement</b>   | <p>The payment made by the franchiser to the franchisee may be given the following treatments, depending on the services provided and rights granted:</p> <ul style="list-style-type: none"> <li>• It may be treated in part as a royalty and in part as business profits.</li> <li>• It may be treated only as a royalty</li> </ul> <p><a href="#">(See Chapter 2, section 7.7.4 for more detailed information).</a></p>   |
| <b>Sale and purchase of business (assets and liabilities or global transfer of assets and liabilities)</b> | <p>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:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul> |