

DIRECTORS IN A SPANISH LIMITED LIABILITY COMPANY

There are several aspects that must be considered when incorporating a limited liability company in Spain (“Sociedad Limitada”), and one of them is how the company will be managed; how many Directors are needed, who can be a Director, which are the requirements to be a Director, and what liabilities a Director may have. In this article we clarify some of these questions.

A limited liability company in Spain (“Sociedad Limitada”) can be represented by one or more Directors, adopting a variety of forms:

1. Sole Director: the company is represented by one Director only, who has full representation authority.
2. Two or more joint and several Directors: the company has two or more Directors who can sign individually, which means that each one of them individually has full representation authority.
3. Two or more joint Directors: the Directors will represent the company jointly, which means that at least two of them must sign together to represent the company.
4. Board of Directors: the Board of Directors must be made up of a minimum of three Directors and a maximum of twelve. In this case, the representation of the company does not fall individually on each of the members of the board, but rather on the Board as a whole, which adopts decisions by majority agreement of its members. However, one or more Managing Directors can be appointed within the Board, delegating to them all or part of the authority of the Board, except those powers that cannot be delegated by law.

Which is the best form?

Adopting one form or another will very much depend on the circumstances of each company:

1. A Sole Director gives full control of the day to day matters of the company to such director and can be a good option for small companies owned by the same individual who acts as a director.
2. Two or more joint and several Directors provides more flexibility in terms of processing signatures (if one Director is not available, the other Director can still sign and represent the company individually) but, on the other hand, requires more trust and coordination between the directors.

BARCELONA

Balmes, 209, planta 2
08006 - Barcelona
+34 93 218 40 00

MADRID

Álvarez de Baena, 3
28006 - Madrid
+34 91 037 84 81

www.gimenez-salinas.es
info@gimenez-salinas.es

3. The option of two or more joint Directors provides much more control over the acts of the directors, as always two signatures are required to represent the company, but in occasions it can slow down the signature process.
4. A Board of Directors is highly recommended in cases where there are different interests among the shareholders of the company, since it allows each of them to be represented in the Board.

The Board of Directors

In case of a Board of Directors, a quorum of attendance and a majority of votes will be necessary for the adoption of the resolutions.

The Board will distribute the various functions among its members:

- **President:** The President of the Board is responsible for calling and preparing the agenda, as well as presiding and coordinating the meetings.
- **Secretary:** The role of the Secretary is to guarantee the correctness of the procedures and compliance with the established regulations (advisory and formalities tasks, certifying the resolutions, executing the notarial deeds). For this reason, the role of the Secretary, although it can be performed by a member of the Board, it is often carried out by a lawyer expert in corporate matters. In this case, the lawyer will be a Secretary non-member of the Board (with no right to vote).
- **Members:** The rest of the members of the Board, together with the President (and the Secretary, if a member) will vote and pass any resolutions.
- **Managing Director:** The Board can also grant one or more members executive powers of attorney.

Who can be a Director?

Either individuals or legal entities can be directors of a company. If a legal entity is appointed Director, it will name an individual to represent it.

Until the Directors accept their position, the appointment is not effective. At the time of acceptance, Directors must declare that are not involved in any incompatibility cause. Directors cannot have direct or indirect participation in companies with the same or similar activity. If they do, they must inform the company, and the approval of the shareholders is required.

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Certain people cannot be a Director of a company: non-emancipated minors; those legally incapacitated; people disqualified under the Law while the period of disqualification has not concluded; those convicted of certain crimes. Limitations for civil servants also apply.

Foreign Directors must register with the Spanish tax authorities by obtaining a "NIE" (Foreigner Identification Number).

Remuneration

The remuneration of the Directors must be established in the Bylaws of the company, otherwise the role will be non-remunerated.

Many foreign companies establishing subsidiaries in Spain and appointing foreign executives as Directors of the Spanish entity take the non-remunerated option, as those executives are already paid by the mother company in their countries.

For Spanish companies having local Directors working in the company, establishing a remuneration should be considered. In this case, remuneration shall be approved by the shareholders and can be based on a fixed allowance, attendance fees, profit sharing or variable remuneration with key indicators.

Term

Directors can be appointed for an indefinite period of time unless the Bylaws of the company specify otherwise. From a practical standpoint, it is better to appoint them for an indefinite period of time so that there is no need to track the renewals. In any event, Directors (whether appointed for a specific period of time or for an indefinite period) can be removed at any time by the shareholders.

Liability

Directors will respond to the shareholders, to the company and to the creditors for any damages caused by them if they acted against the Law or the Bylaws of the company, or if they acted against their duties, when negligence or fraud existed.

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In the case of joint and several Directors, or of a Board of Directors, all the Directors will be jointly liable for any agreement adopted or harmful act carried out, except for those who prove that, having not intervened in its adoption and execution, they were unaware of its existence or, knowing it, they did everything possible to avoid the damage or, at least, they expressly opposed it. Directors, therefore, must act diligently and, when needed, they must be able to prove it.

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