

HOW TO INCORPORATE A COMPANY IN SPAIN

There are different types of corporate structures in Spain but for the purposes of this article we will focus on the process and requirements to incorporate a limited liability company, also called “Sociedad Limitada” or “S.L.”.

This is definitely the most popular corporate form used in Spain and it has been the most widely used form adopted by foreign corporations –including large international groups– to invest in Spain.

In this article we will focus on the main aspects to be considered when setting up a business in Spain through a limited liability company.

The company name

The first step will be applying for a company name to the Central Mercantile Registry to verify that no other company is registered in Spain under the same name. Provided that there is none, the applicant will receive a “Certificado Negativo de Nombre” (Negative Name Certificate).

To ensure the success of the application, it is advisable to verify in advance which names are likely to be accepted and which may be rejected.

This is an indispensable document, as without it the applicant will never be able to complete any of the other necessary steps to incorporate the company (e.g.: opening a bank account in the name of the company, executing the notarial deed, etc.).

Once granted, the name will be booked for the applicant for a period of 6 months. After this period, the name will become available again to other applicants if the company has not been finally incorporated. However, it is always possible to reapply for the same name if it is still available.

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Obtaining a Tax Identification Number for foreign individuals and corporations

Foreigners (including EU citizens) who become shareholders and/or directors of a Spanish company must first obtain a Spanish Tax Identification Number in the form of a “Número de Identificación de Extranjeros” (NIE) for foreign individuals and a “Número de Identificación Fiscal” (NIF) for foreign corporations.

Both documents (NIE and NIF) are issued by the Spanish Ministry of the Interior and by the Spanish Tax Agency (AEAT) respectively.

The requirements necessary to apply for the Tax Identification Number for foreign individuals (NIE) are the following: (i) submit a copy of a valid passport or other identity document equivalent to the Spanish ID; (ii) provide some proof of residence within the Spanish consular jurisdiction; (iii) provide a power of attorney (accompanied by a sworn translation into Spanish and the Apostille of the Hague) if the applicant is acting through a representative; and (iv) pay the corresponding fee for its issuance.

In cases involving foreign companies, additional requirements must be met, such as providing a Certificate of Good Standing from the companies’ registry or the tax/revenue authority of the country of origin. This certificate should contain information on whether the company is legally a corporation, its name, legal address, nationality, date of formation and registration, legal representatives, etc.

Opening a bank account

Once the Negative Name Certificate and the Tax Identification Number have been obtained, the next step will be opening a bank account in any Spanish bank institution.

The minimum share capital required by law to be deposited for a “Sociedad Limitada” is €3,000. The bank will issue a certificate stating the disbursement of the share capital, specifying the amounts paid by each of the intervening future shareholders.

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Drafting of the articles of association

Another necessary requirement for the incorporation of the company will be the drafting of its bylaws.

This document will set the rules that will govern the company. Therefore, its drafting requires the fulfillment of several requirements and rules in accordance with Spanish law.

The bylaws will necessarily include information regarding: (i) the corporate name of the company, (ii) its business purpose, (iii) the fiscal year of the company, (iv) the composition and organization of the management body, (v) whether the management body will be remunerated or not, and (vi) the share capital.

A “Sociedad Limitada” may also be incorporated as a sole proprietorship, regardless of whether the shareholder is an individual or a legal entity.

If the company has a sole shareholder, it will be necessary to inform the Mercantile Registry about the identity of the sole shareholder. In these cases, the new company will trade with the mention that the company has a sole shareholder (“Sociedad Unipersonal”).

As for the governing body of the company, it can be composed by only one person, by two directors (acting jointly or not), or by a board of directors. In the latter case, a minimum of three directors will be required. You can read more about directors in a “Sociedad Limitada” in this [article](#).

Deed of incorporation

The next step will be executing a public deed of incorporation of the company before a notary.

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To execute the deed, it will be necessary the presence of the founding shareholders and/or their duly authorized representatives. At this point, it is important to remember that shareholders and directors will need to provide the notary with the documentation that we have anticipated in previous sections (Spanish NIE or NIF, and a Certificate of Good Standing from the companies' registry or the tax/revenue authority of the country of origin in case of being a company, among others).

Upon execution of the deed, the company will be able to start its business transactions, except if the deed of incorporation states otherwise. For that, it will be necessary to apply for the company's provisional Tax Identification Number.

Obtaining a provisional tax identification number for the company that has been incorporated

There is no limitation (unless otherwise agreed in the articles of association) for the new company to start its commercial activity prior to its registration in the Mercantile Registry.

For this purpose, the new company will need a provisional Tax Identification Number to be able to identify itself in front of third parties when carrying out commercial transactions. The provisional tax identification number must be requested to the Spanish Tax Agency

Registration in the Mercantile Registry

The Mercantile Registry is an administrative body whose function is to officially publicize the legal status of companies in Spain.

The registration determines the acquisition of the legal personality of the new company, being the registration an indicator that the new company complies with all the regulations in force and has its legality verified.

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The usual period that the Mercantile Registry takes to analyze the documentation and to register the company is between 2 and 4 weeks from the submission of the application. Once the company has been registered, the Mercantile Registry will publish an announcement in the Official Gazette of the Mercantile Registry (B.O.R.M.E.).

Definitive Tax Identification Number and reporting of the foreign investment

Once the company has been registered in the Mercantile Registry, it is time to apply for the definitive Tax Identification Number of the company.

Additionally, the incorporation of a Spanish company by a foreign legal entity or natural person is considered a foreign investment. For that reason, the incorporation must be declared in front of the Spanish Investments Register of the Economy Ministry. For that, it will be necessary to submit the Form D-1A duly filled. Its purpose is only informative, however compulsory and it must be submitted within the first month of the new company's existence.

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