



Legal Issues in Establishing a Business in Spain

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WHO WE ARE

- Following the launch of AEQUO ADVOCATS in 2004, our office has now become a benchmark company in the provision of legal services of a multidisciplinary nature, being able to assume the processing and management of matters of any kind. Formed to date by a human capital that teams up over 20 professionals including Lawyers, Economists, Social-Relations Graduates and Administrative and Managerial Staff, our structure can adapt to any need our clients may have.



WHO WE ARE

- This specialization has resulted in sufficient capacity to adapt for many years to the needs of large entities that require an efficient and permanent service for judicial proceedings (TELEFONICA / FECSA - ENDESA / RACC SEGUROS / FREMAP / PAGINAS AMARILLAS). Being aware of their needs and of the collaboration that any legal services platform has to offer them, it is our priority objective – together with the legal work entrusted to us – to establish working methods in collaboration with the corresponding departments responsible for the best defense of every matter. It is also our goal to establish constant information channels, being able to adapt without any problems to the protocols of control and communication that any large entity requires.



AEQUO START-UPS

The Decalogue to Start-ups

- AEQUO ADVOCATS supports entrepreneurship and, therefore, offers young entrepreneurs legal advice taking into account their economic limitations through a new service, ***The Decalogue to Start-Ups***, specially aimed at start-ups. The objective is to adapt to the needs of entrepreneurs, to grow together and to accompany them throughout the process of creating their business. Contact us!

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- A. Objectives of this Presentation
- B. Ways to establish a business in Spain.
- C. Final recommendations

A. Objectives of this presentation

1. Have a general idea of the Spanish legal framework
2. Be able to decide the best way of setting up a business in Spain
3. Be aware of the legal obligations of the Directors of a Spanish company
4. Be prepared at the time of setting up business in Spain.

B. Ways to establish a business in Spain

- 1.** By creating a Spanish company with its own legal personality.
- 2.** To pursue the activity directly by an individual
- 3.** Joint Venture-Association of Businesses
- 4.** Other alternatives for investing in Spain

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

- i. Applicable legislation
- ii. Forms of business enterprises
- iii. The most common forms of legal entity: **Corporation vs LLC**
- iv. Branch vs Subsidiary vs Representative Office
- v. Governing body and liability
- vi. Legal formalities

B. Ways to establish a business in Spain.

1. By creating a Spanish company with its own legal personality

i. Applicable legislation:

- ✓ Basic Legal Text: Legislative Royal Decree 1/2010, of July 2, approving the Capital Companies Law (the “**Capital Companies Law**”).
- ✓ Supplementary legislation:
 - RD 1784/1996, of July 19 approving the Commercial Registry Regulations
 - Law 3/2009, of April 3, on Structural Modifications to Commercial Companies
 - RD of August, 22, 1185 approving the Commercial Code.
 - Law 2/2007 on Professional Services Firms

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

ii. Forms of business Enterprise

- ✓ Corporation – *Sociedad Anónima* - "SA"
- ✓ Limited Liability Company- *Sociedad de Responsabilidad Limitada*- "SL"
- ✓ European Public Limited-Liability Company- *SA Europea* -"SE" Apart from the Capital Companies Law, the SE will be governed by the **Council Regulation 2157/2001, of 8 October**.
- ✓ New Limited Liability Company- *Sociedad Limitada Nueva Empresa*- "SLNE". A variation of the SL specially intended for small and medium-sized companies that simplifies the requirements for its formation. Some particularities.

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

ii. Forms of business Enterprise

✓ Professional Services Firm- *Sociedad Profesional*- "SP"

Regulated by the Law 2/2007, of Professional Corporations and the Capital Law Companies.

Special regulation applies while the legal minimum required capital share is not disbursed (Company under successive formation- "Sociedad en régimen de formación sucesiva**").*

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

III. The most common forms of legal entities:

Corporation

vs

Limited Liability Company

B. Ways to establish a business in Spain

	Corporation ("SA")	Limited Liability Company ("SL")
Minimum capital stock	€60,000	€3,000
Payment upon formation	At least 25% *Bylaws	Payment in full
Min. Nr. Of partners	ONE	
Transfer of shares	In principle, freely transferable, unless the bylaws provide otherwise ("UBO").	<u>Not</u> generally freely transferable. <u>EXCEPTION\UBO</u> : acquired by other shareholders, ascendants, descendants or companies within the same group.
Venue for shareholders' meetings	As indicated in the bylaws. Otherwise, in the municipality where the company has its registered office.	
Amendments to the bylaws	A report is required	No report is required.

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

IV. Branch vs Subsidiary vs Representative Office.

✓ Definition

✓ Differences

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

V. Governing body and liability

- ✓ **Single Director**- *"Administrador Único"*
- ✓ **Joint Directors** (mínimum of 2)- *"Administradores Mancomunados"*
- ✓ **Joint and severally Directors** (minimum of 2)- *"Administradores Solidarios"*
- ✓ **Board of Directors** (mínimum of 3)- *"Consejo de Administración"*: President, Secretary, Executive Officer

B. Ways to establish a business in Spain.

1. By creating a Spanish company with its own legal personality

IV. Governing body and liability

Possible Derivation Of Liability Against Directors for Companies debts

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

IV. Legal Formalities (*Corporate / LLC*)

- ✓ Name reservation certificate – Central Company House.
- ✓ Application for a NIF/NIE: *foreigner* investor, shareholder or director.
- ✓ Opening of a bank account- Payment certificate.
- ✓ Execution of a deed before a notary- Compulsory content.

B. Ways to establish a business in Spain

1. By creating a Spanish company with its own legal personality

IV. Legal Formalities (*Corporate / LLC*)

✓ Execution of a deed before a notary- **Compulsory content.**

B. Ways to establish a business in Spain

2. To pursue the activity directly by an individual

- i.** Limited Liability Entrepreneur- Concept.
- ii.** Applicable legislation
- iii.** Requirements
- iv.** Registration

B. Ways to establish a business in Spain

2. To pursue the activity directly by an individual

i. Limited Liability Entrepreneur- Emprendedor de Resp. Limitada - "ERL")- Concept

- Purpose.

ii. Applicable legislation: *Law 14/2013, of September 23, to support to entrepreneurs and their internationalization.*

B. Ways to establish a business in Spain

2. To pursue the activity directly by an individual

iii. Requirements

- ✓ Registration of ERL status at the Company House.
- ✓ Value of the principal residence for which liability for business or professional debts does not extend to such asset:

B. Ways to establish a business in Spain

2. To pursue the activity directly by an individual

iv. Registration

- ✓ Completion of the single electronic document (*Documento Único Electrónico-"DUE"*).
 - **WHERE?** At the Entrepreneur Service Point (*Punto de Ayuda al Emprendedor-PAE*)

B. Ways to establish a business in Spain

3. Joint Venture- Association of Businesses

I. Forms of Business Cooperation

II. Definition

B. Ways to establish a business in Spain

DEFINITION		OTHER INFORMATION OF INTEREST
TEMPORARY BUSINESS ASSOCIATION "UTES"	UTES are <u>temporary business alliances</u> set up for a specific or unspecified period of time. <u>PURPOSE</u>	No legal personality. Their registration must be recorded in a public deed and must be <u>registered</u> <u>Regulation:</u> Law 18/1862 on the Tax Regime of Temporary Business Groupings and Associations.
ECONOMIC INTEREST GROUPINGS "EIGs"	EIGs are created with the aim <u>to facilitate the pursuit or enhance the profitability of the activities of their members.</u>	Legal entity with a separate legal personality. <u>Regulation:</u> Economic Interest Groupings Law 12/1991, of April 29.

B. Ways to establish a business in Spain

	DEFINITION	OTHER INFORMATION OF INTEREST
DISTRIBUTION AGREEMENTS	The distributor undertakes to purchase goods belonging to the other party for RESALE.	There are different categories of distribution No specific regulation.
AGENCY AGREEMENTS	<p>The agent agrees with another:</p> <ul style="list-style-type: none">- To promote commercial transactions <u>for and on behalf of one or more principals</u>- Without assuming the risk & venture of the transactions.	<p>Law 12/1992, of May 27.</p> <p>They can include restraint-of-trade provisions after the termination of the agreement.</p>
FRANCHISING	It is a system for marketing goods and/or services and/or technology.	<p><u>Regulation:</u> there are several laws regulating the Franchising.</p> <p><u>Registration</u> at the Register of franchisors</p>

B. Ways to establish a business in Spain

4. Other alternatives for investing in Spain

- ✓ Acquisition of shares of an existing corporation or LLC.
- ✓ Acquisition of a business through sale/purchase or global transfer of assets and liabilities.
- ✓ Acquisition of real estate located in Spain.

C. Final Recommendations

- 1) Hire a lawyer specialized in international business law.
- 2) Assess carefully to decide the best way to do business considering the activity.
- 3) Understand the decisions to be made in the course of setting up the business.
- 4) Communication and transparency with the tax lawyer.

Questions & Doubts

For further information...

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Thank You Very Much

