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Doing business in Spain

A comparative guide

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A guide to doing business in Spain

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.

No.	Question
A. Legal system and landscape	
1	**Is the system of law in your jurisdiction based on civil law, common law or something else?**
	The legal system of Spain is a civil law legal system based on legal codes and laws rooted in Roman and Germanic law. The law understood in the sense of any written law is its primary source, including, of course, international treaties, which become internal law once they have been signed, ratified and published in the Official State Journal, and EU law. Civil law is applied throughout the entire territory of Spain, but there are autonomous communities that have their own civil law system, which prevails in relation to certain legal issues.
B. Entity establishment	
2	**What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?**
	The two most common types of legal entities in Spain are corporations (*sociedad anónima* - S.A.) and limited liability companies (*sociedad de responsabilidad limitada* - S.L.). Both a S.A. and a S.L have independent legal personality, so they have the authority under law to act as a single person distinct from their shareholders. A S.A. has more stringent requirements but can offer its shares to the public.
3	**Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?**
	An overseas company may carry out business directly in Spain but it must register with the Commercial Registry if it has some degree of physical presence in Spain, such as a place of business or branch where it carries out business.
4	**Are there are any capital requirements to consider when establishing different entity types?**
	The minimum capital for a S.A. is €60,000. At least 25% of the share capital (and share premium) must be paid up upon formation. A S.A.´s capital is divided into shares (*acciones*). Shares are marketable securities that can listed on the stock exchange market. Shares can be represented by means book entries or share certificates. The minimum capital for a S.L. is €3,000. All share capital (and share premium) must be fully paid in upon formation. A S.L.´s capital is divided into participations (*participaciones sociales*). Participations are not marketable securities and cannot be represented by means book entries or share certificates. The minimum capital rule requires that those incorporating a business must place assets of at least the above-referenced minimum values into the corporate asset pool. In-kind contributions by the shareholders for the formation of a S.A. or a capital increase of the S.A. require a report from an independent expert appointed by the Commercial Registry.
5	**How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilize?**
	Both a S.A. and a S.L. must be established by means of a public deed executed by the founders before a notary public, which must be registered with the Commercial Registry. The public deed must include, inter alia, the by-laws of the entity, the contributions made by the founders and a certificate with the name to be used by the company issued by the Central Commercial Registry. In the past, S.L.s were chosen by small and medium businesses. However, nowadays S.L.s are also being used by large multinational corporations that want to benefit from the advantages of S.L.'s regulation under Spanish law. For regulatory purposes, there are certain business activities for which Spanish law requires the S.A. legal form.
6	**How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?**
	Both a S.A. and a S.L. can be managed by a sole director, several directors acting individually or jointly, or a board of directors. If the S.A. if managed by a board of directors, the minimum number is three and there is no maximum limit, whereas for a S.L. the

	maximum number is 12 directors. The board must designate a president or chairperson and a secretary (who can serve as non-executive secretary, with no voting rights). The board may also appoint a managing director or CEO (*consejero delegado*) among its members (although this is an optional appointment). Directors are not authorized to act individually on behalf of the company. Only the appointment as a managing director or CEO bestows all or virtually all of the powers of the board of directors upon such director. Directors of a S.L. can be appointment for an indefinite term (unless otherwise provided in the by-laws), whereas for a S.A. directors cannot be appointed for a term exceeding six years (although they may be re-elected for after the initial six-year term). Private companies and public companies are managed by directors who make decisions at board meetings or by written resolutions. However, certain decisions must be made by shareholders at a general meeting or by a written resolution. Shareholder decisions may pass by ordinary resolution (being approved by over 50% of the shareholders) or by special resolution (being approved by over 75% of the shareholders) depending on the type of decision, the company's articles of association and the Companies Act 2006. It is important to note that public companies may not make decisions by way of written resolution and a resolution of the members must be passed at a meeting of the members.
7	**Are there general requirements or restrictions relating to the appointment of (a) authorized representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?**
	Unless instructed otherwise by the courts, an individual may become a company director unless they are: • Under the age of 18; • Disqualified from being a company director by the court; • Disqualified from being a company director by bankruptcy laws; or • Public servants with offices related to the activity of the company, judges and any other persons affected by a legal incompatibility. There are no requirements concerning the nationality or residence of the directors. However, directors who are not Spanish need to obtain a Spanish identification number for foreigners (*Número de Identificación de Extranjeros*) from the Spanish authorities. There are no specific qualifications to be appointed as a company director, unless the company operates in a regulated business. At least one shareholder must incorporate a S.A. or a S.L. There is no maximum number of shareholders a S.A. or S.L. can have. There is no statutory limit to the number of new members who can join a company after incorporation. New shareholders can be added by transferring existing shares from a current shareholder, or by issuing and allotting new shares to new members. Companies with a sole shareholder are subject to certain obligations in Spain (e.g., need to add "Sole Shareholder" to their corporate name and declare the identification details of the sole shareholder at the Commercial Registry). There are no local residency or nationality requirements placed on shareholders from a Spanish company law perspective. However, shareholders who are not Spanish individuals need to obtain a Spanish identification number for foreigners (*Número de Identificación de Extranjeros*) and shareholders who are not Spanish entities need to obtain a Spanish tax identification from the Spanish authorities.
8	**Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**
	From a corporate law perspective, there are no restrictions on expanding business operations in Spain. Unless specifically noted in the by-laws, an entity or establishment is free to work with trade/commercial agents and resellers.

C. Entity operation

C1. Governance

9	**Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**
	The main corporate governance rules for privately owned companies are set out in the Spanish Companies Act.

C2. Capital

10 **What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

The shareholders of the company may provide working capital by (i) subscribing for shares in the company or (ii) making a direct contribution to the company's equity without shares being issued.

A company may also consider a loan or other financing instruments to finance working capital loans. This could be from the shareholders, another entity within the same company group or from a third party. The Spanish Central Bank must be informed about financing from foreign entities if certain conditions apply.

C3. Return of proceeds

11 **What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.**

Private companies can return value to their shareholders in several ways, as set out below. As a general rule, companies are bound by strict maintenance of capital rules and only subject to certain exceptions, can return value to their shareholders.

Dividends

The general shareholders' meeting may approve the distribution of the dividends out of the year's profits (once the statutory financial statements have been approved) or freely available reserves (i) if the requirements set out in the law and the company's by-laws are met, and (ii) if the net equity of the company is not, or as a result of the dividend distribution will not be, less than the company's share capital. Profit distribution shall likewise be prohibited if the amount of the distributable reserves comes to less than the sum of the research and development expenses shown as assets on the balance sheet.

The distribution of dividends to the company's shareholders must be carried out in proportion to their participation in the company's share capital in the case of a S.L. and in proportion to the paid-up capital in the case of a S.A., unless otherwise stated in the by-laws.

Dividends are usually paid in cash but can also be satisfied by the transfer of non-cash assets (dividends in specie, also known as dividends in kind).

Interim dividends (*dividendos a cuenta*) are the amounts distributed to shareholders on the basis of the expected profit to be obtained in the financial year still in progress. The distribution of interim dividends can be approved by either the general shareholders' meeting or the management body. Spanish law establishes certain requirements for the valid distribution of interim dividends: (i) the management body must prepare a liquidity statement evidencing that there is sufficient cash for the interim dividend distribution; and (ii) the amount to be distributed shall not exceed the results obtained since the end of the last financial year, after deducting any losses carried over from previous fiscal years, and after setting aside reserves established by law and by the company's by-laws and the estimated tax to be paid on such income.

Share buybacks

Spanish legislation only allows S.A. and S.L. companies to acquire their own shares under certain circumstances and subject to specific requirements. It is recommended to analyze in detail share buybacks on a case-by-case basis since Spanish rules are quite complex in this respect.

Capital reductions

The shareholders can approve a share capital reduction in order to be reimbursed for their contributions made to the company's share capital, either through the redemption of shares or a reduction in the nominal value of the shares (provided the S.L. or S.A. has the minimum amount of share capital required by law).

The implementation of a share capital reduction requires the following key formalities: (i) corporate resolutions to be approved by the general shareholders' meeting, including the amendment of the company's by-laws; (ii) execution of public deed of a share capital reduction before a Spanish notary public; (iii) recording of the share capital reduction in the company's shareholders' registry book (for a S.L. and S.A. with registered shares); (iv) registration of the share capital decrease with the Commercial Registry; and (iv) declaration of the foreign disinvestment resulting from the capital reduction to the Spanish foreign investment authorities, if any of the shareholders is a foreign individual or entity.

Additionally, for S.A. companies, the resolution to reduce the share capital to reimburse the shareholders' contributions must be published in the Official Gazette of the Commercial Registry and on the company's website (or if the company does not have a website, in one newspaper). Furthermore, the S.A.'s creditors have one month to object to the capital reduction unless the share capital reduction is made of profits or freely disposable reserves and a reserve is allocated for an amount equal to the nominal value of the share capital decrease.

The above-mentioned publications and one-month opposition period do not apply for S.L. companies (unless otherwise expressly established in the company's by-laws). However, shareholders are personally liable for the S.L.'s debts for an amount equal to the amount repaid to the shareholders, unless an allocation is made to reserves out of profits or freely disposable reserves by the same amount.

Bonds

A S.A. can issue bonds in order to raise funds. Bonds convertible into shares may be issued or guaranteed.

A S.L. can also issue bonds in order to raise funds, but the total amount of the issues may not be higher than twice the company's equity, unless the issue is secured by (i) a mortgage, (ii) a pledge of securities, (iii) a government guarantee or (iv) joint and several guarantees from a credit institution.

Loans

Loans to a direct or indirect shareholder are permitted under Spanish law (provided the transaction does not involve any prohibited financial assistance as per Spanish law).

It is recommended to document the loan in writing, in order to clearly set out the terms and conditions agreed by the parties.

There are no specific concerns as to the repayment of loans granted to shareholders, for Spanish legal purposes. However, the early repayment of profit-participating debt is subject to certain requirements.

Depending on the nature and the amount of the loan, the transactionmust be reported to the Spanish Central Bank.

C4. Shareholder rights

12 **Are specific voting requirements / percentages required for specific decisions?**

S.L. companies

Shareholders' resolutions must be adopted by a majority of the votes validly casted, provided that they represent at least one-third of the votes corresponding to the shares into which the company's share capital is divided, unless a special majority is required by law:

a) The increase or reduction of the capital and any other modification of the corporate by-laws will require the favorable vote of more than half of the votes corresponding to the shares into which the share capital is divided.

b) The authorization for directors to engage, on their own account or through third parties, in the same, similar or supplementary type of activity that constitutes the company's corporate purpose; the suppression or limitation of the preemptive assumption right in share capital increases; the conversion, merger, spin-off, global transfer of assets and liabilities and cross-border transfer of the registered office and exclusion of shareholders will require, at least the affirmative vote of at least two-thirds of the votes corresponding to the shares into which the company's share capital is divided.

S.A. companies

General meetings shall be deemed to reach a quorum in the first call when the shareholders present or represented at least 25% of the subscribed capital with voting rights (although the by-laws may establish a higher quorum). In second call, a quorum shall be deemed to be reached regardless of the amount of share capital present or represented, unless the by-laws establish a quorum, which must be less than the quorum established or required by law for the first call.

However, for some resolutions (e.g., increase and decrease of share capital; amendment of by-laws; and transformation, merger and spin-off) is required a reinforced quorum (a quorum shall be deemed to be reached when the shareholders present or represented at least 50% of the subscribed capital with voting rights). In a second call will be sufficient a quorum of 25% of such subscribed capital. The by-laws can increase the attendance quorum and voting majorities in these situations.

13 **Are shareholders authorized to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?**

Shareholders are authorized to issue binding instructions to the management in the following cases:

- Shareholders can require the company to circulate a resolution to be voted on at the company's shareholders' meeting where such a request is made by shareholders representing at least 5% of the company's share capital with voting rights.
- Shareholders in S.L. can require in writing prior to the general meeting, or verbally during the meeting, any reports or clarification that they deem necessary in connection with items on the agenda. Information may not be withheld by the management if requested by shareholders representing at least 25% of the capital.
- Shareholders in S.A. may ask the directors to provide any information or clarification that they deem necessary about the items on the agenda, or raise any questions they deem appropriate, in writing up until the seventh day before the date on which the general meeting is scheduled to be held. The directors shall be bound to furnish the information in writing by the date of the general meeting. During the general meeting, the shareholders may verbally request any information with respect to the items on the agenda, and if the queries cannot be immediately answered, the directors shall be obliged to provide the information in writing no more than seven days after the general meeting. The directors shall be bound to furnish the information requested unless it could jeopardize the company. However, if the information is requested by shareholders representing at least 25% of the share capital such request may not be withheld. The by-laws may establish a lower percentage provided it is always above 5%.
- Shareholders in S.A. representing at least 5% of the share capital may request the publication of a supplementary notice of a general meeting which shall include one or more additional agenda items.

C5. Employment

14 **What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?**

Right/Protection	Details
National minimum wage	Each year, following consultation with the most representative trade unions and business associations, the government regulates the "Interprofessional Minimum Wage", for both permanent workers and temporary workers, as well as for the personnel serving family households, bearing in mind the Consumer Price Index, the average national productivity achieved, the increase in job participation in national income, and the general current economic status. The Interprofessional Minimum Wage 2022 is set at €1,000 per month for 14 payments (€33.33 per day or €14,000 per year) with effect from 1 January 2022).
Holiday	Workers are entitled to a minimum of 30 days of paid vacation per calendar year. The duration of the holidays is set legally with reference to the year, then, if a worker has not worked during the whole year, they will only be entitled to the proportional part corresponding to the period worked. This is fully applicable to fixed-term contracts in which, and unless the collective agreement of application establishes a different regulation, the holiday period will be proportional to the period of time worked. The period of paid annual holidays, not substitutable by economic compensation, will be the one agreed in collective agreement or individual contract. The exception is the termination of the employment contract before the holiday. In this case, an economic compensation equivalent to the vacation period not enjoyed by the worker must be included in the corresponding settlement. The period or periods of its enjoyment shall be fixed by mutual agreement between the employer and the worker, in accordance, where appropriate, with what is established in the collective agreements on annual holiday planning.
Working hours	The duration of the working day will be agreed in collective agreements or work contracts. The maximum duration of the ordinary workday will be 40 hours per week of effective work on average in annual computation.
Rest periods	Employees are entitled to the following rest periods: • Rest period between one working day and the next: 12 hours. • Weekly rest: one day and a half, which may be accumulated over a period of 14 days. • A rest break of 15 minutes when working more than six hours per day.

Pension rights	Through social security contributions, the state guarantees due protection in the circumstances and situations defined by law to persons who are eligible, by virtue of carrying out an occupational activity, and the family members or dependents in their care. In the case of contributory benefits, the social security system covers Spanish nationals resident in Spain and foreign nationals resident or living legally in Spain, regardless of their gender, civil status or occupation, as long as, in both cases, they work within national territory. In the context of social security, financial benefits, largely contributory, constitute a monetary entitlement which, once granted when certain conditions are met (which depend on each pension), is awarded to the beneficiary under the protected situations or contingencies provided for by law. Different types of pensions, among others: • Retirement: this benefit covers the loss of income that occurs when, on reaching the established retirement age, persons cease to work as an employee or as self-employed, by ending their working life, or they reduce their working hours and wages according to the terms established by law. • Permanent disability: this benefit covers the loss of salary or professional income when persons are affected by a condition or trauma following an illness or accident and suffer a reduction or loss of their capacity to work, presumed to be definitive. • Survivor's: these benefits are intended to compensate for the situation of financial hardship caused to somebody by the death of another. • Unemployment benefit: this benefit is payable to those employees dismissed for a maximum period of two years.
Discrimination	Employees have the right to not be discriminated against for employment, either directly or indirectly, or once employed, on the basis of their gender, civil status, age, racial or ethnic origin, social situation, religion, convictions, political ideas, sexual orientation, affiliation or not with a trade union, or their language, in Spain in accordance with Article 4(2)(c) of the Workers' Statute (ET).
Maternity leave/pay **Paternity leave**	As of 1 April 2019, maternity and paternity benefits have been unified into a single benefit known as birth and childcare. Employees are entitled to take up to 16 weeks' birth and childcare leave, of which six weeks are compulsorily after the birth. Childbirth and childcare benefits will consist of a subsidy equivalent to 100% of a regulatory base that is equivalent to the 100% of the wage of the mother or father. This allowance is paid by the SSS (Spanish Social Security). The company is only obligated to pay its contribution to the Social Security.
Shared parental leave	N/A
Statutory sick pay	In case of a temporary incapacity, the employee has the right to a daily subsidy that covers the employee's loss of income due to common diseases or non-work-related injuries, occupational diseases or work-related injuries, and during the periods of observation due to occupational diseases. Usually, collective bargaining agreements state a complement to the temporary incapacity benefit to be paid by the companies, so that the employees does not "lose" their monthly salary or monthly Social Security contribution base.
Statutory notice periods	In case of an objective dismissal, employees are entitled to receive a period of notice of 15 days, computed from the delivery of the personal communication to the employee until the termination of the work contract. No other statutory notice periods are stated by law, but the company and the employees can agree that statutory notice period on an individual basis.
Unfair dismissal	As provided in Article 56 of the Workers' Statute, the current compensation required for an unfair dismissal is 33 days per year worked for contracts entered into after 12 February 2012. The cap on this compensation is a total of 24 months. According to the Transitional Provision Five of the Act 3/2012 of July 6, on Urgent Measures for Labor Market Reform, for those contracts concluded before the above date, the compensation is calculated from the employee's start date until 12 February 2012 where the compensation payable is equivalent to 45 days per year worked. However, as of 12 February 2012 until the date of dismissal, the calculation rate of the compensation is 33 days per year worked.

		If an employer conducts a dismissal for objective reasons or for disciplinary dismissal, the employee can take the dismissal to court and the judge may consider the dismissal unfair. In such cases, Article 56 of the Workers' Statute provides for two options that the employer must adopt within a maximum period of five days from the date of notification of the judicial resolution declaring the unfair dismissal. These two options are: • To reinstate the employee: the employee has the right in this case to the employer's paying the salaries that the employee has not received during the procedure (except for special cases). These salaries shall be computed from the date of dismissal until the date of notification of the judicial resolution. • Not to reinstate the employee: in this case, the employer must pay the employee the compensation corresponding to 33 days per year (if the hiring occurred after 12February 2012)
	Statutory redundancy payment	N/A
	Statement of particulars	The contracts will contain the following information: • The names of the parties to the employment contract. • The starting date of the employment relationship, and in the case of a temporary relationship, its foreseen duration. • The registered office of the company or, as the case may be, the address of the employer and the workplace where the worker will normally provide their services. When the worker normally provides their services in different workplaces or in mobile or itinerant workplaces, it is necessary to record such circumstances. • The professional category or group for the job carried out by the worker or the characterization or a brief description of the same, in terms that make it possible to know in sufficient detail the specific content of the work. • The amount of the initial basic salary and wage benefits, and their payment frequency. • The duration and distribution of the normal working hours. • The duration of the holiday leave and, as applicable, the methods used to allocate and determine such holiday leave. • The notice periods that the employer and worker are obliged to comply with in the event of the contract termination, or if it is not possible to provide this information at the time of delivering the information, the manner in which such notice periods are determined. • The collective agreement applicable to the employment relationship, describing the specific data that enables its identification. This matter is regulated by Royal Decree 1659/1998 of 24 July 1998 implementing Article 8(5) of the Workers' Statute Act on informing workers about the basic elements in their employment contracts.

15	**On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?**
	In Spain can be distinguished: - Objective dismissal, which can be individual or collective. - Disciplinary dismissal. <u>Objective worker's dismissal of the worker based on objective reasons legally pertinent.</u> The adoption of the termination agreement requires compliance with the following requirements: - Written communication to the worker expressing the cause. - Make available to the worker, simultaneously to the delivery of the written communication, the compensation of 20 days per year of service, prorating for months the periods of time less than one year and with a maximum of 12 months. - Granting a period of notice of 15 days, computed from the delivery of the personal communication to the worker until the termination of the work contract. In the event of termination due to economic reasons, the notice document will be given a copy to the legal representation of the workers. Collective objective dismissal: The termination of employment contracts based on economic, technical, organizational or production causes when, within a period of 90 days, the termination affects at least: - Ten workers, in companies that employ less than 100 workers. - Ten percent of the number of workers of the company in those that occupy between 100 and 300 workers. - Thirty workers in companies that employ more than 300 workers. The collective dismissal must be preceded by a period of consultations with the legal representatives of the workers of a duration not exceeding 30 calendar days, or 15 in the case of companies with fewer than 50 workers.

	Disciplinary dismissal Based on a serious and liable breach of the worker, such as repeated and unjustified absences of attendance or punctuality to work, indiscipline or disobedience, verbal or physical offenses to the employer or people who work in the company, continuous decline in work performance, habitual drunkenness or drug addiction if they negatively impact work and harassment because of racial or ethnic origin, religion or belief, disability, age or sexual orientation. The dismissal must be notified in writing to the employee, stating the facts that motivate it and the date on which it will take effect. In both scenarios, the dismissal can be classified as fair (no severance compensation in case of disciplinary dismissal, and for the case on fair objective dismissal the severance compensation is equal to 20 days of salary per year of services provided), unfair (please see answer to the section "unfair dismissal", even though please bear in mind that in this case, generally speaking, the company has the option to pay the referred severance compensation or reinstate the employee in her/his job position paying the corresponding salaries accrued as from the date of her/his dismissal) and the Social Security contributions) or null and void (the employee must reinstate and, hence, the company must pay the corresponding salaries and Social Security contributions on the same terms referred before).
16	**Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**
	In accordance with Article 4(1)(c,f,g) of the Workers' Statute (ET), employees have the right to participate in the company through different organs of representation: - In companies or work centers between 10 and 50 employees, the representation corresponds to employees 'delegates. - If there are 50 or more employees, then the representatives are elected as members of a works council (comité de empresa). There is no difference in terms of rights and duties between the employee delegates and the works council. The tasks and rights cover information and consultation, the monitoring of the application of certain labor regulations, and, in some cases, the control of social facilities at the workplace. However, it has no powers to prevent management acting as it wishes in the final instance. In addition, works councils are directly involved in collective bargaining, if it takes place at company level. Employee delegates, acting jointly, have the same rights as the works council. Spanish trade unions also have separate legally recognized structures within the workplace with a range of legal rights. These trade union sections (*secciones sindicales*) bring together all the members of a particular union in the workplace. Their internal procedures and activities are governed by the rules of the trade unions.

C6. Anti-corruption / bribery / money laundering / supply chain

17	**Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**
	Yes, there is criminal liability or anti-bribery legislation in Spain in the form of the Spanish Criminal Code 2010. There is also legislation proscribing the money laundering or facilitation of tax evasion and other corporate offence as well. A corporate entity can be criminal or administrative liable for failure to prevent several offences regulated in the Spanish Criminal Code and other laws. In addition, there are a number of laws (both common law and statutory) that regulate fraudulent conduct that are likely to be relevant in the context of corporate offence. Spanish law concerning bribery and corruption or money laundering does, in certain circumstances, have extraterritorial application. Moreover, pursuant to the Spanish Penal Code, legal entities may be criminally liable for crimes committed by their representatives, directors or employees (even if they are abroad) when acting in the name and for the benefit of the legal entity. However, according to the Spanish Penal Code, under Organic Law 1/2015, if the company has a crime prevention system in place that works properly, it could be exonerated from criminal liability.
18	**What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?**
	See responses to question 17, above. In certain circumstances, there may be an obligation to report money laundering to the relevant Spanish law enforcement agency. In general terms, the obligation applies to individuals and organizations operating in certain regulated sectors, such as banks, law firms, accountancy practices, casinos and real estate agents.
19	**How is money laundering and terrorist financing regulated in your jurisdiction?**
	Money laundering and terrorist financing are regulated by The Money Laundering, Terrorist Financing of Funds Regulations 2010 and development rules. Broadly, the legislation: (i) requires obliged entities to undertake appropriate customer due diligence; (ii) requires obliged entities to establish an internal money laundering reporting function; (iii) criminalizes the handling of or dealing in criminal

	property (which is very broadly defined).
20	**Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?**
	Yes, pursuant to several directives under the EU legislation.

C7. Compliance

21	**Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**
	Spanish companies are required to draw-up, approve and deposit the annual accounts according to the timeline below. The annual accounts must be drawn-up by the management body within three months following the end of the financial year. Once they have been drawn-up, the general meeting of shareholders must approve them within six months following the end of the financial year and they must then be filed with the Commercial Registry of the company's registered office, where they will be available to interested third parties, within a term of one month after their approval.
22	**Please detail any corporate / company secretarial annual compliance requirements?**
	Every company must have at least a minute book and a register of shareholders. Thus, the resolutions of the general meeting of shareholders and of the board of directors (as well as the decisions of the sole shareholders) must be recorded in the minutes. All annual minutes must be recorded in the company's minute book. These minutes, which are kept and updated by the management body, must be legalized before the Commercial Registry within a maximum of four months after the end of the financial year. The register of shareholders must record the original ownership and successive voluntary or compulsory transfers of shares, as well as the creation of rights in rem and other encumbrances on them. It is important that this book is recorded and kept up to date, since the company will only consider the shareholder to be the one who is registered in it. The shareholders' registry book (if there are any updates to it), must be legalized before the Commercial Registry within a maximum of four months after the end of the financial year. Finally, sole shareholder companies must have a register of contracts with the sole shareholder in which the contracts concluded between the sole shareholder and the company are transcribed. The register of shareholders and the register of contracts with the sole partner must be authenticated only if there has been a change during the financial year. In such a case, the legalization shall be carried out within four months of the end of the financial year in which the change occurred. Additionally, Spanish companies with capital or own funds of more than €3,005,060.52 will present Annual Report D4 when the total participation of non-residents is equal to or greater than 50% of the capital or if a single non-resident investor has a participation equal to or greater than 10% of the capital or of the total voting rights. Moreover, Spanish holding companies or companies holding shares in Spanish or foreign companies (ETVEs) will also file the Annual Report D4, regardless of their share capital or equity, if the total non-resident holding is equal to or greater than 50% of the capital or if a single non-resident investor holds a holding equal to or greater than 10% of the capital or of the total voting rights.
23	**Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?**
	The general meeting of shareholders must necessarily meet once a year. Thus, the law requires that the general meeting must necessarily meet within the first six months of each financial year to approve the management of the company and the accounts of the previous year, if applicable, and to decide on the distribution of profits. This meeting is called ordinary general shareholders' meeting. In addition, the meeting may meet at other times, in which case it is called an extraordinary meeting. Such a meeting shall be called by the management body whenever it deems it necessary or advisable for the company's interests or when requested by one or more shareholders representing at least 5% of the share capital, stating in the request the matters to be discussed. Similarly, a general meeting may be held whenever shareholders representing the entire share capital meet, either in person or by proxy, and unanimously resolve to hold a general meeting. The meeting may be held in person or, if the articles of association so provide, by electronic means, provided that the means used duly

	guarantee the identity of the person concerned. Telematic meetings may be of a hybrid nature (with the presence of part of the shareholders at the registered office) or exclusively telematic. As regards the management body, the Spanish Capital Companies Act only requires minimum meetings in cases where the form of the management body is that of a board of directors. In these cases, the law requires a minimum quarterly meeting in order to assess the monitoring of the company. Meetings may also be held in person or by telematic means. In addition, the Spanish Capital Companies Act allows the articles of association to provide for the adoption of written resolutions without a meeting, if no director objects.
24	**Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") of entities? If yes, please briefly describe these requirements.**
	All annual accounts of Spanish companies must be accompanied by the duly completed official form of the ultimate beneficial owner. If this form is missing, the accounts will be suspended for the corresponding rectifiable defect ("incomplete accounts"). Moreover, the minutes of beneficial ownership came into force due to the application of Law 10/2010, of 28 April, on the Prevention of Money Laundering and the Financing of Terrorism (complemented by Royal Decree 304/2014, of 5 May, approving the Regulations of the aforementioned Law 10/2010) and in view of the need to identify the beneficial owners involved in the public deed when formalizing any transaction or business relationship involving Spanish companies. This document accredits that the parties to the operation are the owners of the assets or rights of the company involved and operations in the name of third parties or the use of front men are avoided.

C8. Tax

25	**What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**
	Resident companies are subject to corporate income tax on worldwide income. Non-resident companies are taxed only on Spanish source income, subject to the provisions of an applicable tax treaty. Branches are generally taxed in a manner similar to subsidiaries. The general tax rate is 25%.
26	**Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)**
	Available incentives include R&D and technological innovation, tax credits for investments in Spanish film or audiovisual productions, and a patent box regime (which allows for the reduction of up to 60% of qualifying intangible income).
27	**Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?**
	Inflow of capital: Dividends and capital gains for shareholdings in Spain and foreign subsidiaries may be exempt from taxation (up to 95% of the income), if, among other requirements, a share of at least 5% in the subsidiary (or whose acquisition cost exceeds €20 million) is held for a one-year period. For shareholdings in foreign subsidiaries, it is additionally required that the foreign subsidiary is subject to an income tax similar to the Spanish corporate income tax at a nominal tax rate of at least 10% and that the subsidiary does not reside in a tax haven (except in certain cases for EU tax residents). The minimum level of taxation is deemed to be met in the case that the foreign subsidiary resides in a country that has a tax treaty with Spain and is eligible for treaty benefits. **Outflow of capital:** Dividends paid to non-residents are subject to a 19% withholding tax, unless a lower rate applies under a tax treaty, or the dividends qualify for an exemption under the EU parent-subsidiary directive.
28	**Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?**
	Companies pay a 6% transfer tax (which may be increased or decreased – normally increased – depending on the region) on acquisitions from taxpayers that are not VAT payers and on Spanish real estate that is not subject to or is exempt from VAT, including indirect acquisitions in certain cases. However, transfers of shares are generally exempt from transfer tax, except under certain circumstances where the target company is considered "property rich" and it can be concluded that the share deal had a main purpose of avoiding the transfer tax that otherwise would have been triggered upon a direct transfer of the underlying real estate assets.

C9. M&A

29	**Are there any public takeover rules?**
	Yes. The framework governing public takeovers in Spain comprises:

	• Royal Legislative decree 4/2015, of 23 October, approving the consolidated text of the Spanish Securities Market Act; • Royal Decree 1066/2007, of 27 July, on public takeovers for the acquisition of securities; • The Spanish Companies Act, which provides the statutory underpinning of much of the Spanish's public takeover framework; and • A number of ancillary regimes depending on the specific situation, such as the listing regime, the prospectus regime, the disclosure regime, the market abuse and insider dealing regime, financial services legislation. The supervisory faculties correspond to the National Securities Market Commission. Given the complexity and wide-ranging nature of the Spanish public takeover rules, any person intending to acquire or dispose of a public company in Spain should obtain professional advice.
30	**Is there a merger control regime and is it mandatory / how does it broadly work?**
	Yes. Any transaction leading to a concentration shall be subject to prior approval from the Spanish antitrust authority (CNMC) if any of the following alternative thresholds are met: a) As a consequence of a transaction, the undertakings obtain a market share of at least 30% in a national market or a substantial part of it regarding a certain product or service. The market share threshold increases to 50% if the target's aggregate turnover in Spain was less than €10 million in the previous financial year; or b) The combined turnover of the undertakings concerned in Spain in the previous financial year was at least €240 million, provided that at least two of the undertakings achieved an individual turnover of at least €60 million in Spain during the same period. Filing is mandatory for those transactions exceeding either of the two aforesaid thresholds. Foreign-to-foreign transactions are also caught. No exceptions apply, although straightforward cases may be reviewed under a "simplified procedure". Following the so-called "one-stop-shop principle", prior antitrust approval from the Spanish antitrust authority is not necessary if the concentration falls under the scope of the applicable EU regulations (i.e., it has a "community dimension") and is thus notifiable to the European Commission. The CNMC must reach a Phase I decision within one calendar month after formal filing of the transaction (extendible by 10 additional working days if the parties submit commitments). By the end of this period, the CNMC may decide whether to unconditionally clear the transaction, to clear it subject to the commitments presented by the parties or to open an in-depth investigation (Phase II) in case the transaction could hinder effective competition. The statutory period for Phase II investigations is two months (extendible by 15 working days when the parties submit commitments), although it usually extends for several months in practice. In those cases where the CNMC decides either to prohibit the transaction or to clear it subject to commitments or conditions following a Phase II investigation, the Ministry of the Economy may ask the government to decide whether to confirm the CNMC's decision or clear it, subject or not to commitments or conditions under a so-called Phase III. However, these cases are truly exceptional, as the government tends not to interfere in merger control proceedings. Until antitrust clearance is granted, a stand-still obligation to suspend the execution of the transaction applies. Penalties for not complying with this obligation and premature implementation (gun jumping) are foreseen and imposed regularly.
31	**Is there an obligation to negotiate in good faith?**
	Under Spanish Civil Code it is established in Article 7.1. that all rights must be exercised according to the good faith principle. However, under Spanish law there is no express obligation on parties which have entered into negotiations (whether in respect of a M&A transaction or otherwise) to conduct such negotiations in good faith.
32	**What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?**
	According to the Article 44 of the Workers' Statute, in case of a business succession, the new employer is required to respect all rights and obligations that the employees may have had with the former employer.

	The grantor may also respect some other obligations such as communication to the employees of the succession's planned date, the cession motives, and the succession's legal, economic and social consequences for the employees. These steps must be achieved through the employees' representatives or by direct contact with employees if there are no representatives in the company. The ceding company must look to the collective agreement to determine if there was an agreement on the deadline to communicate this information. It will have to set up a consultation period if the grantor or the buyer intends to realize modifications on labor conditions. Furthermore, the applicable collective agreement will remain the same, except if there was a contrary agreement, because of a social agreement between the new business manager and the employee's representatives. These representatives must also continue their activities in the company in the same conditions as the ones existing before the succession. Also, in accordance with Article 44.3 of the Workers' Statute, and without prejudice to the Social Security Law, with transmissions made *inter vivos*, the grantor and the buyer will be severally liable for three years for the remuneration obligations originating before the succession and which have not been satisfied.

C10. Foreign direct investment

33	**Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**
	Investments and divestitures carried out (i) by non-Spanish entities in a Spanish company or a branch, and (ii) by a Spanish company in foreign entities must be declared to the **General Directorate for Commerce and Investments – Ministry of Economics and Competitiveness** if certain thresholds apply. Further, Spanish residents must declare the following transactions carried out with non-residents to the Spanish Central Bank: 1. Transactions carried out with non-Spanish, of any kind of nature, by wire transfer, intercompany or bank accounting bookings, compensations or in cash. 2. Asset and liability balances vis-à-vis non-Spanish residents and variations to such balances in whatever form they arise (bank or financial accounts, intercompany accounts, cash or securities deposits, company holdings, debt instruments, derivative financial instruments, real estate, etc.). These declarations must be submitted with the following periodicity: a) Monthly: The declaration must be made within 20 days after the end of each month, if the amount of the transactions carried out in the prior year, or the assets and liabilities balances on 31 December of the prior year, are equal to or higher than €300 million. b) Quarterly: The declaration must be made within 20 days after the end of each quarter if the amount of the transactions carried out in the prior year, or the assets and liabilities balances on 31 December of the prior year, are between 100 million and €300 million. c) Annually: The declaration must be made before 20 January of the following year, if the amount of the transactions carried out in the prior year, or the assets and liabilities balances on 31 December of the prior year are lower than €100 million. However, when the amount involved is less than €1 million, the declaration only has to be made if the Bank of Spain has expressly required it, in which case it should be filed within two months of the notice date. The annual declaration can be in summarized format and simply include the opening and closing balances of foreign assets and liabilities, unless the amount of the transactions or balances is greater than €50 million. The Spanish Central Bank could also require more frequent or detailed declaration should it deem this to be necessary.
34	**Does your jurisdiction have any exchange control requirements?**
	No.

D. Entity closure

35	**What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**
	The Spanish Companies Act regulates the voluntary and the mandatory liquidation of S.A. and S.L. companies. The voluntary liquidation of a company can be implemented in two steps, i.e., the company formally decides to dissolve, terminates its relationships, and pays all debts (or assigns them with the consent of the creditor or obtains the creditors' forgiveness) before going

	into liquidation, or in one step, i.e., simultaneous dissolution and liquidation. The simultaneous dissolution and liquidation option is only possible if the company does not have any liabilities (other than with the company's shareholder/s). Therefore, all debts must be paid, set-off or waived before the simultaneous dissolution and liquidation of the company. The main steps for the simultaneous dissolution and liquidation of a company are as follows: a) Preparation of the final balance sheet; b) Corporate resolutions to be approved by the general shareholders' meeting concerning: (i) the dissolution and liquidation of the company; (ii) the resignation of the company's directors and appointment of one or more liquidators; (iii) the approval of the final liquidation balance sheet, a report regarding the liquidation transactions and the proposed distribution of liquidation proceeds; (iv) the allocation of the liquidation proceeds; and (v) the revocation of all powers of attorney; c) Execution of a dissolution and liquidation public deed before a Spanish notary public; d) Registration of the public deed of dissolution and liquidation with the Commercial Registry; and e) Declaration of the foreign disinvestment in the dissolved and liquidated company to the Spanish foreign investment authorities, if any of the shareholders is a foreign individual or entity.

Contacts

Xavier Pallarés
Partner
xpallares@deloitte.es
+34 666381233

Cloe Barnils
Partner
cbarnils@deloitte.es
+34 650319127

Jorge Juan Bueno Santaló
Partner
jbueno@deloitte.es
+34 659477132

Deloitte.
Legal