

Pérez-Llorca

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# A general legal guide to starting a business **in Spain**

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# Scope of the legal guide

## 1. Scope of the legal guide

In recent years, Spain has emerged as around the world's 15th largest economy by GDP. It is considered one of the most attractive countries for foreign direct investment and is one of the largest exporters of commercial services.

Spain has a modern, knowledge-based economy and a unique geostrategic position that offers access to EMEA (Europe, the Middle East and Africa) and Latin America, due to its strong historic and cultural ties.

In terms of its legal system, Spain is a democratic state with a parliamentary monarchy and is governed by the rule of law. Spain is a civil law jurisdiction in which codified principles serve as the primary source of law. It is also a Member State of the European Union (the “EU”).

Together, these elements have contributed to the development of highly competitive commercial and investing standards, which make Spain an attractive country in which to do business.

This legal guide seeks to provide a general overview of corporate, tax, employment, intellectual property, data protection and IT matters for investors seeking to do business in Spain. It is not in any way intended to provide a comprehensive or exhaustive analysis of Spanish law and cannot be considered specific legal advice from Pérez-Llorca under any circumstances.







# Corporate matters

## 2. Corporate matters

### 2.1. Setting up a business

#### a) Incorporation of a subsidiary company

Under Spanish corporate law, the most common legal entities are (i) the public limited company (“**Sociedad Anónima**” or “**SA**”) and (ii) the private limited company (“**Sociedad de Responsabilidad Limitada**” or “**SL**”).

Both types of entities have their own legal personality, which is separate and distinct from that of their shareholders. Moreover, shareholders are not personally liable for the relevant company’s debts or other liabilities, because their liability is limited to the amount of their equity investment.

Spanish corporate law does not provide for a minimum number of shareholders. Accordingly, SAs and SLs may be owned by a sole shareholder<sup>1</sup>.

The main procedural requirements to incorporate a company in Spain are as follows:

- 1. Request for a corporate name:** An application must be filed with the Central Commercial Registry to obtain a clear name search certificate. The corporate name will be granted for a term of six months, if it is not identical, too similar to or capable of being confused with another existing name.
- 2. Bank account:** If the contributions are in cash, the minimum share capital to incorporate a company must be transferred to a bank account to be opened specifically for this purpose.

<sup>1</sup> Such circumstance will need to be filed with the Commercial Registry, including the identity of the sole shareholder.



The **main differences** between public limited companies and private limited companies in Spain are as follows:

	SA	SL
<b>Minimum share capital</b>	EUR 60,000.	EUR 1 <sup>2</sup> . EUR 3,000 for full limited liability.
<b>Disbursement</b>	At least 25% of par value and 100% of share premium, if any.	100% (par value and share premium, if any).
<b>In-kind contributions</b>	A report from an independent expert is required <sup>3</sup> .	A report from an independent expert is not required.
<b>Shares are tradeable securities</b>	Yes.	No.
<b>Restrictions on the transfer of shares</b>	Generally, shares may be freely transferred, unless the articles of association expressly establish such restrictions.	Generally, shares may not be freely transferred (under applicable laws, there is a pre-emption right in favour of existing shareholders, but the articles of association can establish different types of restrictions).
<b>Shareholders’ meetings</b>	Meetings must be convened with at least 15 calendar days’ notice <sup>4</sup> .	Meetings must be convened with at least 1 month notice.

<sup>2</sup> Under Law 18/2022 of September 28 on the Creation and Growth of Companies, the minimum share capital can be reduced from EUR 3,000 to EUR 1 as long as (i) 20% of income is allocated to a legal reserve until its sum and the share capital amounts to EUR 3,000; and (ii) the shareholders are jointly and severally liable for the difference between the amount of EUR 3,000 and the share capital effectively disbursed if, in the event of liquidation, the net worth of the company is not enough to cover its payment obligations.

<sup>3</sup> With very limited exceptions, i.e. mainly listed securities and/or assets that have been valued by an expert in preceding six months.

<sup>4</sup> Although, both for SAs and SLs, shareholders can hold universal shareholders meeting without prior call if 100% of the share capital is in attendance (personally or by proxy). In addition, if the articles of association contain an express provision in this respect, shareholders’ resolutions can be passed in writing and without a session or by means of a virtual meeting only.

From a corporate perspective, there are different options to **set up a business in Spain:**

- a** Incorporation of a subsidiary company
- b** Acquisition of a subsidiary company
- c** Operating through a branch
- d** Other options

## 2. Corporate matters

- 3. Power of attorney (“PoA”):** Unless the founding shareholders can appear personally (or by video conference) before the Spanish notary, individuals based in Spain must be granted a PoA to carry out the necessary steps to incorporate and register a company. The PoA must be notarised, apostilled (if granted abroad), and officially translated into Spanish (if not granted in Spanish).
- 4. Tax Identification Number (“NIF” or “NIE”):** All natural or legal persons with economic or professional interests in Spain or with significant involvement for tax purposes must apply for a NIF or a NIE. This includes in particular foreign entities or individuals incorporating or acquiring a company, and foreign directors to be appointed upon incorporation<sup>5</sup>.
- 5. Identification of the beneficial owner (the “Beneficial Owner”):** The founding shareholders must include in the deed of incorporation a declaration of beneficial ownership under the regulations on the prevention of money laundering and the financing of terrorism. Under Spanish legislation, Beneficial Owners are the individuals on whose behalf shareholders intend to incorporate a company and/or who (i) own or control, directly or indirectly, more than 25% of a company’s share capital or voting rights; or (ii) exercise direct or indirect control of a company.
- 6. Deed of incorporation:** Incorporation must be formalised before a notary public in Spain. A clear name search certificate, a bank certificate for the transfer of the share capital contributed in cash, a provisional NIF and the articles of association of the company must be attached to the deed of incorporation. In addition, if the company

is incorporated by a sole shareholder, such circumstance and the identity of the sole shareholder shall be included in the notarial deed and filed with the Commercial Registry.

- 7. Registration:** Once the company’s definitive NIF has been issued (this procedure is carried out electronically by the notary public), the deed of incorporation must be filed with the Commercial Registry.

### b) Acquisition of a subsidiary company

It is also possible to acquire an already-incorporated Spanish company. Companies offered for sale by reputable services providers are recently incorporated and have not commenced trading prior to their acquisition. Upon acquisition, such a company will already have a NIF, a bank account with a certain amount of cash and the necessary corporate and accounting records.

The main procedural requirements for acquiring an incorporated company in Spain are as follows:

- 1. Selection of a corporate service provider:** A company that specialises in the sale of incorporated companies should be contacted and engaged.
- 2. PoA:** If the buyers are not able to appear personally in Spain to acquire the company, they must grant a PoA in favour of individuals based in Spain in order to carry out the necessary steps to acquire the company. The PoA must be notarised, apostilled (if granted abroad), and officially translated into Spanish (if not granted in Spanish).
- 3. Sale and purchase deed:** The acquisition must be formalised before a notary public in Spain. It will also be necessary in this case to make the Beneficial Owner’s declaration as outlined above.

- 4. Sole shareholder deed:** If the company is acquired by a sole shareholder, this circumstance and the identity of the shareholder must be declared in a notarial deed and filed with the Commercial Registry.

- 5. NIF and NIE:** As explained before, foreign direct shareholders and directors must obtain a NIF or a NIE, respectively.
- 6. Registration:** The new shareholder must be registered as such in the company’s shareholder book.

- 7. Amendment of the articles of association:** The management body of the company, its name, the registered office, or any other relevant information must be changed, where appropriate. These amendments must be formalised before a notary public and filed with the Commercial Registry.

The process of acquiring a subsidiary company is usually faster and more practical than the incorporation of a new company.

### c) Operating through a branch

A branch is a secondary establishment with permanent representative powers and some management autonomy, through which all or some of the activities of a foreign company are carried out in Spain. Branches have some autonomy but generally no independent legal personality (for the purposes of liability, a branch is considered an extension of its parent company).

In terms of management autonomy, branches must keep separate accounts for the activities they carry out (even though they must file these annual accounts with the Commercial Registry in Spain together with the consolidated accounts of the parent company in accordance with its local legislation). Moreover, branches may have their own organisation and management bodies with sufficient powers to carry out the economic

<sup>5</sup> Unless the relevant individual is able to appear personally before the Spanish Police Directorate, obtaining a NIE for foreign directors requires granting a PoA in favour of persons located in Spain, which shall be notarized, apostilled (if granted abroad), and officially translated into Spanish (unless granted in Spanish).



## 2. Corporate matters

purpose of the branch and serve their own clients (even though, formally, these managers would be employees of the parent company). Finally, branches must comply with tax, employment, accounting and corporate obligations as dependent entities with similar formal requirements to those of regular companies.

The main procedural requirements for setting up a branch of a foreign company in Spain are as follows:

- 1. Public deed:** Generally, branches are established through a public deed which is granted before a Spanish notary public.
- 2. PoA:** In the event that a representative of the parent company is not able to appear before the notary public in Spain for the establishment of the branch, a PoA shall be granted by such company. The PoA must be notarised, apostilled (if granted abroad), and officially translated into Spanish (if not granted in Spanish).
- 3. NIF:** The branch and the parent company must obtain a NIF. Please note that in order for the parent company to obtain a NIF, its legal representative must have/obtain a NIE in Spain as well (if not a Spanish citizen).
- 4. Good standing:** A certificate of good standing of the foreign company setting up the branch, as well as a copy of its articles of association and the resolutions of the relevant body of the company (usually the management body), resolving to open the branch in Spain, must be provided. All the documents must be duly apostilled, and officially translated into Spanish or granted in a dual-column format (including a Spanish column).
- 5. Deed of incorporation:** Upon receipt of the PoA and the rest of the documents and information described above, a representative of the parent company must appear

before a Spanish notary public to grant the deed of establishment of the branch which will include:

- the name of the branch, which will be the corporate name of the parent company followed by “*Sucursal en España*” (i.e. “Spanish branch”);
- the corporate purpose (i.e. activities to be developed) and address;
- the appointment of the legal representative of the branch;
- the granting of powers and management duties to the legal representative; and
- the funds assigned (if any).



**The differences between a branch and a subsidiary are noteworthy:**

	Branch	Subsidiary
<b>Minimum share capital</b>	Not required.	EUR 60,000 (SA) / EUR 1 / 3,000 (SL).
<b>Legal personality</b>	No.	Yes.
<b>Management body</b>	Representative resident in Spain.	Management body.
<b>Shareholders' liability</b>	Unlimited.	Limited to contributions.

### d) Other options

Notwithstanding the above, there are other ways to do business in Spain. The main alternatives to the incorporation or acquisition of a company, or the establishment of a branch are:

#### 1. Temporary Business Association (“UTE”)

UTES (*Unión Temporal de Empresas*) are systems of collaboration between companies for a certain period of time for the development or execution of a project, service or supply. The purpose of a UTE is a business collaboration to achieve a result that, due to its significance or size, would be difficult to achieve with just one of the companies on its own. In practice, UTEs are frequently used for the execution of public works (construction of roads and recycling, among others) in which each company in the UTE specialises in the use of a specific piece of machinery or special technology.

A UTE has no legal personality, but, rather, is an autonomous company acting under single management and is subject to a specific legal regime. It must be established by a public deed and entered in a special UTEs registry. In addition, it may benefit from a special tax regime, provided that it meets the legally established requirements.

#### 2. Economic Interest Grouping (“AIE”)

AIEs (*Agrupación de Interés Económico*) are legal entities created to enable companies to join forces in cases where they have common interests, while retaining their full independence. They are commercial companies whose sole purpose is to carry out an economic activity ancillary to that carried out by their members, who may be natural or legal persons engaged in business, agricultural or



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craft activities, non-profit entities engaged in research or individuals who work in liberal professions.

AIEs have their own legal personality and commercial status but may not hold shares in the share capital of their members, nor may they, directly or indirectly, direct or control the activities of their members or of third parties. An AIE must be incorporated by means of a public deed and filed with the Commercial Registry.

The members of an AIE are personally, as well as jointly and severally, liable for the debts of the AIE. The liability of the members is secondary to that of the AIE. The main obligation of the members is to contribute to the capital of the AIE in the agreed form (if applicable) and to share its expenses.

### 3. Silent Participation Agreement (“CEP”)

A CEP (*Cuentas en Participación*) is a contract in which one of the parties (the participant) undertakes to deliver money, goods or economic rights to a market operator (the manager), who acquires them, to be used for a specific economic activity under agreed conditions, with both parties being bound by the success or failure of the latter. The contract may be established either for the performance of a single act or for the performance of long-term activities; for a specific period, subject to a condition or term, or for an indefinite period.

It is one of the oldest forms of association or commercial cooperation known to business law, which keeps the participating investor hidden from third parties, irrespective of whether he is a trader or not, which is consistent with the manager’s or entrepreneur’s interest in increasing his liquidity, without the obligation to pay interest or to repay the sums received.

A CEP differs from a commercial company in that no common assets are created or acquired by the participants and the contributions are received exclusively by the manager. Therefore, it has no legal personality of its own.

### 4. Participating Loan

Participating loans are loans granted to companies in which the lender receives variable interest depending on the borrower company’s activity (and can also receive a fixed interest, if expressly agreed). The lender does not hold a stake in the share capital and, therefore, does not acquire the status of a shareholder. The distinctive feature of these loans is that they are treated as equity for the purposes of determining whether the company is subject to a mandatory capital reduction or a mandatory dissolution cause under Spanish corporate law<sup>6</sup>. Therefore, the borrower may only repay the shareholder loan early if this repayment is offset by an increase in equity of the same amount and provided that this does not arise from the revaluation of assets. In addition, participating loans rank after ordinary creditors in the ranking of claims.

### 5. Joint Venture (“JV”)

JVs are commercial collaboration agreements concluded between two or more companies, which otherwise remain independent, and which usually involve investments for the joint development of a business which forms part of - but does not exhaust - their respective corporate purposes, for a specified period of time. It does not require the incorporation of a company with a legal personality, although companies are often incorporated as a vehicle for JVs.

The purposes of a JV can vary and may include (i) the pooling of different production capacities for the manufacture of new products; (ii) the development of an

R&D&I project; (iii) the search for an alliance to enter new markets; or (iv) mutual support in different stages of the production or marketing chain.

## 2.2. Corporate management of the company

### a) Management body

Spanish limited companies may choose any of the following systems of management:

- » A sole director (*administrador único*).
- » Two or more directors operating on a joint and several basis (*administradores solidarios*).
- » Two or more directors operating on a joint basis<sup>7</sup> (*administradores mancomunados*).
- » A board of directors (*consejo de administración*), comprised of, at least, three directors (and a maximum of twelve in the case of SLs).

In SLs and non-listed SAs, directors can either be individuals or legal entities (in the latter case, an individual must be appointed as permanent representative to discharge the office).

Regarding the term of the appointment, SLs can appoint directors for an indefinite term, but SAs can appoint directors for a maximum of six years, although they can be re-elected.

<sup>6</sup> A mandatory capital reduction cause concurs in SAs when accumulated losses reduce its net worth (*patrimonio neto*) below two thirds of its share capital. A mandatory dissolution cause concurs, both in SAs and SLS, when losses reduce its net worth below half of its share capital.

<sup>7</sup> In SA there are not allowed more than two directors, if there are more than two the management body must be a board of directors.



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The management body is responsible for the management and representation of the company and manages its day-to-day business, enters contracts on its behalf, and may grant powers of attorney, among other duties.

### b) On-going corporate obligations

The Spanish Capital Companies Law (*Ley de Sociedades de Capital*) and supplementary regulations, establish certain on-going obligations which Spanish companies must comply with.

Under Spanish law, Spanish companies must file certain submissions with the Commercial Registry. These include, among others:

- » certain corporate resolutions such as the amendment of the articles of association, share capital modifications, and the appointment and resignation of directors (which generally need prior notarization also);
- » annual accounts<sup>8</sup>; and
- » corporate books.

Companies do not file information or changes in shareholdings with the Commercial Registry, except where necessary to identify the sole shareholder of the company, as the case may be.

Moreover, the Spanish Capital Companies Law establishes the basic organisation of the company, assigning specific functions to each corporate body.

As a general rule, those matters which are not reserved by law or the articles of association to the general shareholders' meeting are assigned to the management body. The main authorities of the shareholders' meeting under law<sup>9</sup> are:

- » the approval of the annual accounts (drafted by the management body), the application of results and the approval of corporate management;
- » the appointment and removal of directors, liquidators and auditors;
- » the amendment of the articles of association;
- » the increase and reduction of the share capital;
- » the limitation of pre-emptive rights;
- » the acquisition, disposal of or transfer of essential assets;
- » the carrying out of structural modifications (e.g. merger, spin-off, transformation, among others); and
- » the approval of the dissolution of the company and the liquidation of the company.

An important point to note in practice is that corporate resolutions that need notarization require one of the directors to appear personally (or by video conference) before a Spanish notary in Spain. This director would be generally, and depending on the structure of the management body, either the sole director, all joint directors, one of the joint and several directors, or the secretary of the board (or vice-secretary, if applicable). Only in the case of a board of directors, the secretary (or vice-secretary, if applicable) may also be a non-director. For practical purposes, if none of these persons are Spanish residents, it is advisable to grant a general PoA to a Spanish resident in order to carry out these formalities.

<sup>8</sup> The annual accounts (or financial statements) need to be: (i) drawn-up (*formuladas*) by the management body within three months from close of the relevant financial year; (ii) approved by the shareholders within six months from close of the relevant financial year; and (iii) deposited with the Commercial Registry within one month after approval.

<sup>9</sup> The set of matters reserved to the authority of the shareholders can be increased (not reduced) by means of the articles of association.



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### 2.3. Funding of a company by its shareholders and upstreaming proceeds

In order to provide a company with working capital and funds, its shareholders may:

- » Carry out a share capital increase which will involve issuing new shares in the company (or increasing their nominal value). Contributions may be in cash or in-kind, but all contributions must be susceptible of economic valuation, as neither work nor services can form part of the share capital.
- » Make a direct contribution to the company's equity, which does not involve the issuance of new shares (*aportación a la cuenta 118*). The contribution to account 118 is non-repayable as the contributing shareholder does not acquire any rights or claims against the company.
- » Enter into a shareholder loan with the company. These loans may, for example, be participating loans, if the variable interest rate is calculated on the basis of the company's performance and all other requirements are met.

These may have different accounting and tax implications which must be analysed on a case-by-case basis.

To upstream proceeds to its shareholders, a company may:

- » distribute dividends from existing reserves or against future profits (subject to certain legal limitations);
- » reduce its share capital (reducing the number of shares or reducing their nominal value); or
- » repay shareholder loans.

### 2.4. Foreign investments

#### a) General regime

As a general rule, foreign investors may invest freely in Spain without the need to seek any type of authorisation or carry out any prior notification. Only after the investment has been made must the investor report it, within a maximum period of one month, to the Directorate General for International Trade and Investment of the Secretary of State for Trade (form D1-A).

Notwithstanding the above, certain foreign direct investments will require prior administrative authorisation in cases where they are considered to affect Spain's public order, public safety or public health in accordance with the regime established in Article 7 *bis* of Law 19/2003 of 4 July, on the legal regime governing the movement of capital and foreign economic transactions and on certain measures to prevent money laundering ("**Law 19/2003**").

To this effect, an investment is considered a foreign direct investment ("**FDI**") when:

1. as a result of an investment, the investor will gain ownership of 10% or more of the Spanish company's share capital; or as a consequence of a corporate, act or legal transaction, the investor will take control of the Spanish company; and
2. the investor does not reside in a EU or European Free Trade Association ("**EFTA**") member state, or its beneficial ownership corresponds to residents of countries outside the EU/EFTA. Such beneficial ownership will 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 when they otherwise exercise direct or indirect control over the investor.

On this basis, it should be noted that not all FDIs are subject to a prior administrative authorization but only:

1. those that are carried out in the strategic sectors (for example, investments in critical infrastructure such as energy, transport, water supply, investments in critical and dual-use technologies or the supply of fundamental inputs) which are listed in paragraph 2 of Article 7 *bis* of Law 19/2003 (objective criteria); or
2. when the foreign investor meets certain criteria (e.g. the foreign investor controlled, directly or indirectly, by a third-country government), as provided for in paragraph 3 of the same Article (subjective criteria).

#### b) Transitory regime

In addition to the general regime outlined above, a transitory FDI regime is currently in force until 31 December 2024 which applies to investments made by residents of EU or EFTA member states in certain cases. It should be noted that this transitory regime could be extended before 2024 ends.

In this regard, prior authorisation will also be required for investments by foreigners in Spain that fulfil all the following criteria:

1. investments by residents of EU or EFTA countries other than Spain, or by residents in Spain with a beneficial owner in an EU or EFTA country;
2. investments where the investor becomes the holder of a shareholding equal to or greater than 10% of the share capital of a Spanish company or acquires control of the company;

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- investments made in companies listed in Spain or unlisted companies, if the value of the investment exceeds EUR 500 million; and
- investments that affect the strategic sectors set forth in paragraph 2 of Article 7 *bis* of Law 19/2003.

### c) Authorisation proceeding

The resolution of the authorisation corresponds to the Spanish Council of Ministers, following a prior favourable report from the Foreign Investment Board (*Junta de Inversiones Exteriores*) (the “JINVEX”).

The Council of Ministers shall have up to three months since the filing of the application to issue its resolution. Such resolution may either (i) authorise the investment; (ii) reject the investment; or (iii) authorise the investment subject to compliance with certain conditions (which eventually may be previously negotiated with the relevant authorities).

Nevertheless, please note that the abovementioned three-month period can be extended in case the Administration requests additional information to the foreign investor and during the JINVEX phase (i.e. the maximum time for issuing the Council of Ministers’ resolution is suspended between the request to the JINVEX for their report and they effectively issuing it).

<sup>10</sup> Pre-notification phase is customary. In our experience it lasts 4-6 weeks in non-complex cases. In complex cases pre-notification can last for months.

<sup>11</sup> The CNMC has the power to “stop the clock” on all proceedings. Therefore, complex merger control proceedings in practice last longer than the above statutory deadlines.

## 2.5. Merger control

Transactions shall be notified to and authorized by the Spanish Competition Authority (the “CNMC”) if any of the below thresholds is met:

### a) Turnover threshold

It is met if at least two of the parties involved in the transaction (acquirer(s) group(s) and target) achieve an individual turnover in Spain above EUR 60 million and the combined turnover of all the parties in Spain is above EUR 240 million.

This threshold can be met by the acquirers alone if more than one (i.e., no need that the target meet the individual threshold).

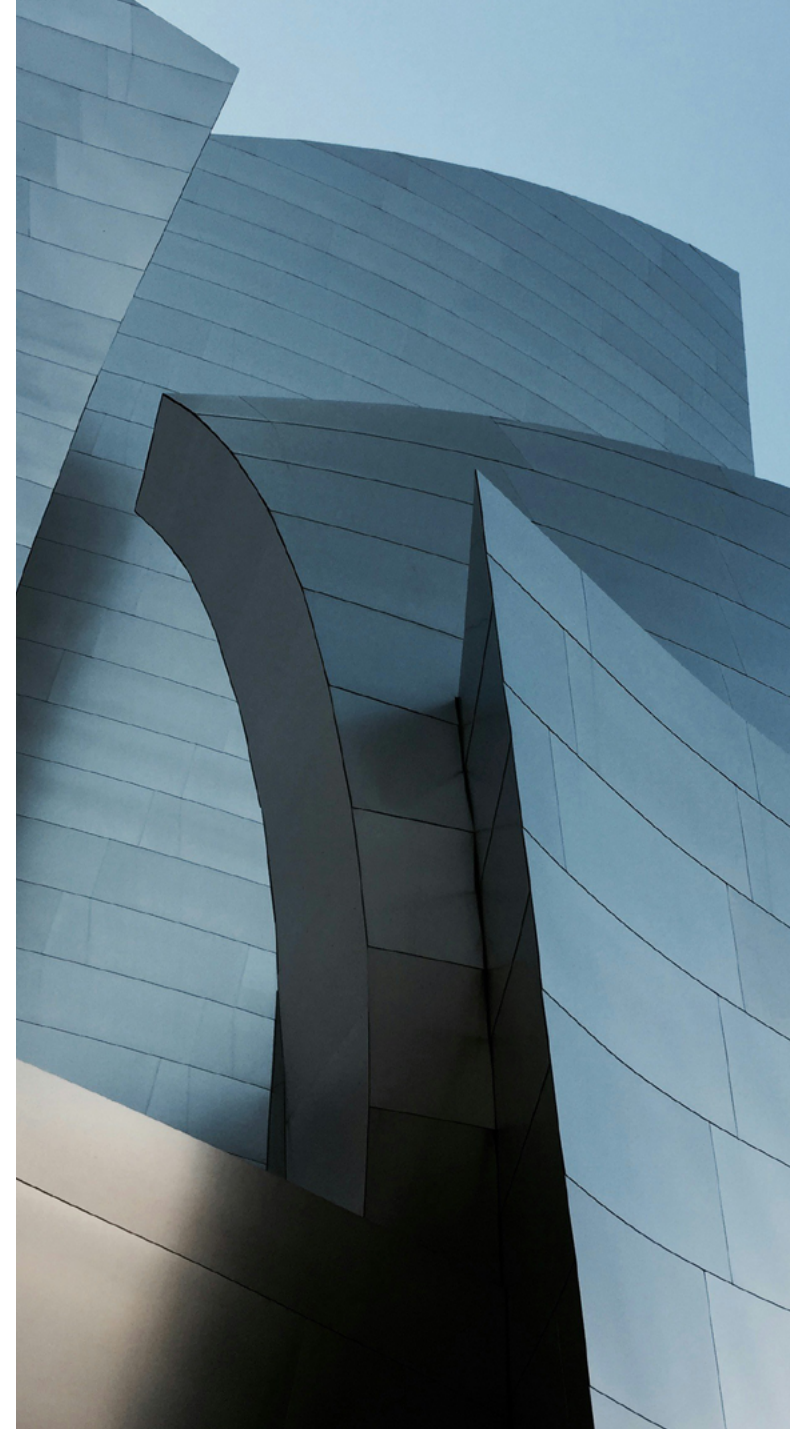
### b) Market share threshold

It is met if a market share equal or above 30% is acquired or increased in a market within the Spanish territory.

Exception: if the target’s turnover in Spain does not exceed EUR 10 million and the parties do not reach a 50% individual or combined market share in any of the affected markets within the Spanish territory.

### c) Timings of the CNMC <sup>10 11</sup>

- Phase 1:** one-month statutory deadline to issue a decision, reduced to 15 working days in cases eligible for simplified procedure that have been pre-notified.
- Phase 2:** three-month statutory deadline to issue a decision.
- Phase 3:** The Ministry of Economy can refer conditional clearance or prohibition Phase II decisions to the Council of Ministers within 15 working days for reasons of general interest. The Council of Ministers has then one month to issue a decision.







# Taxes

## 3. Taxes

### 3.1. Operating in Spain through a Spanish subsidiary company

The incorporation of a new Spanish company or the share capital increase of an already incorporated Spanish company is tax-exempt under capital duty provisions.

When conducting business activities in Spain, the following taxes are broadly applicable:

#### a) Corporate Income Tax (“CIT”)

Companies that are resident in Spain are subject to CIT on their worldwide income, regardless of the source or origin of that income. The **CIT taxable** base is calculated based on the company’s accounting result determined in accordance with Spanish GAAP and corrected, where appropriate, for tax adjustments due to differences between tax and accounting criteria for calculating income and expenses.

1. **Deductibility of financial expenses:** As a general rule, the tax deductibility of the net financial expenses (financial expenses less financial income) is restricted to 30% of EBITDA, with a minimum EUR 1 million threshold per year. The excess of net financial expenses can be carried forward with no limitation period. Interest on profit-participating loans granted by companies of the same corporate group is not tax deductible.

<sup>12</sup> The approval of a bill regulating further limitations on the application of tax loss carryforwards is currently in progress. According to the bill, for tax periods beginning on or after January 1, 2024, the loss carryforward limits for offsetting tax bases will be 50% for companies with a net turnover between EUR 20 million and EUR 60 million during the 12 months preceding the start of the tax period, and 25% for companies with a net turnover of at least EUR 60 million during the same period. This measure was declared null and void by the Constitutional Court in January 2024, but the government has proposed to re-establish it through this bill.

It is expected that the final text of the bill will be approved and published in the Spanish Official Gazette before 31 December 2024.

2. **Net Operating Losses (“NOLs”):** Tax losses can be carried forward with no limitation period and can be offset against the higher of 70% of the positive taxable base of the period or EUR 1 million<sup>12</sup>.
3. **Shareholding exemption:** A 95% exemption is granted in respect of dividends and profit distributions arising from qualifying resident or non-resident companies, as well as capital gains arising from the transfer of such shareholdings, provided that (a) the taxpayer holds a stake of at least 5% in the company; (b) the taxpayer has been a shareholder for at least one year before the date on which the dividends or capital gains are accrued; and (c) in the case of non-resident companies, the profit distribution or the capital gain arising from the transfer of the shares accrues to a foreign company subject to an income tax that is identical or analogous to Spanish CIT, and where the tax rate is at least 10%.
4. **Transfer pricing:** Related parties’ transactions must be at arm’s length. Transfer pricing documentation is mandatory if the transactions with the same entity exceed EUR 250,000 per year.
5. **Impairments:** Impairments are generally not deductible except for stock impairments if companies can prove that the equity value has been reduced accordingly.
6. **Depreciation:** Depreciation is permitted in respect of all tangible fixed assets (except land) and intangible fixed assets, based on their useful life. The Law on Corporate Income Tax (“**LCIT**”) establishes different methods to calculate the tax depreciation, with the straight-line depreciation method being the most commonly applied. Under this method, the assets are depreciated on a straight-line basis by applying a certain percentage which is established in the LCIT. Off-book adjustments must be

included in tax assessments if accounting depreciation exceeds tax depreciation.

The CIT **general tax rate** of 25% applies to the resulting taxable base, except for companies whose net turnover in the previous tax year was less than EUR 1 million, in which case, a 23% tax rate applies<sup>13</sup>.

However, a 15% **reduced tax rate** applies to:

- » newly incorporated companies for the first tax period with a positive taxable base and for the subsequent tax period, and
- » companies that qualify as start-ups (under the Law on the Promotion of the Start-up Ecosystem) for the first tax period in which the company obtains a positive taxable base and the following three periods, provided that the company still maintains the conditions to qualify as a start-up.

Other tax rates may apply, depending on the type of company and its type of business (e.g. 1% for investment funds, 0% for Spanish REITs or 30% for banking institutions and companies that belong to the hydrocarbon industry).

A minimum tax of 15% applies to CIT taxpayers with a net turnover of at least EUR 20 million in the previous year and to taxpayers who are taxed under the special tax consolidation regime, regardless of the amount of their net turnover.

**CIT accrues** on the last day of the tax period. Taxpayers must file a tax return and pay any CIT due within 25 calendar days

<sup>13</sup> The aforementioned bill proposes that, for periods beginning on or after January 1, 2025, companies whose net turnover for the immediately preceding tax period is less than 1 million euros will apply a rate lower than the general rate: for the taxable base between 0 and 50,000 euros, the rate will be 17%, and for the remaining taxable base up to 1 million euros, the rate will be 20%. However, this reduction in the tax rate will be applied on a progressive way and, therefore, the rates will be 21% and 22% for 2025, 19% and 21% for 2026, and finally 17% and 20% starting from 1 January 2027



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after six months have elapsed since the last day of the company's tax period. However, during the tax year, companies must make CIT payments on account, in three instalments, with due dates of 20 April, 20 October and 20 December.

#### b) Value Added Tax ("VAT")

VAT is an indirect tax levied on supplies of goods and services, intra-EU acquisitions, and imports. In this sense, VAT is normally paid, in the last stage, by consumers and is generally neutral for professionals and entrepreneurs, as they can generally deduct the VAT (Input VAT) borne on the acquisition of goods and services, which will be later used for the supplies of goods and services on which VAT will be charged (Output VAT).

Companies should be, as a general rule, entitled to full Input VAT recovery, provided that they only carry out transactions in the Spanish VAT territory<sup>14</sup> subject to and not exempt from VAT and that Input VAT is business related. Therefore, if a company carries out activities in the Spanish VAT territory exempt from VAT (e.g., financial services, the lease of residential properties or healthcare services), Input VAT may not be fully creditable and, therefore, the non-deductible Input VAT is treated as a deductible expense for the purposes of CIT.

The general VAT tax rate is 21%. However, certain activities are subject to different reduced rates.

#### c) Main Withholding Tax ("WHT") on non-residents

Spanish resident companies must, in general terms, apply withholding tax to payments to individuals and companies not resident in Spain for tax purposes when the income is considered to be obtained in Spain under the Non-Resident Income Tax Law.

The withholding tax rate is 19% if:

- » the recipient is a tax resident in the EU or EEA, regardless of the nature of the income; or
- » the income is a dividend, an interest payment or a capital gain arising from the transfer of assets and rights, regardless of the tax residency of the recipient. For the remaining payments, the applicable withholding tax rate is 24%.

No withholding tax applies if:

- » the payment is exempt under domestic regulations (e.g. interest, dividends or royalties paid to EU-resident entities); or
- » the payment is not subject to taxation in Spain or is exempt in Spain under a double tax treaty entered into between Spain and the jurisdiction in which the recipient has its tax residence.

#### d) WHT on payroll

Spanish companies must withhold a percentage of their employees' salaries as a payment on account towards their personal income tax. Non-residents may also be obliged to apply withholdings in certain circumstances (such as, for example, when operating through a permanent establishment -as defined below in Section 3.2- in Spain). As established in the Personal Income Tax Law, a progressive withholding tax rate applies based on an employee's personal circumstances and income.



<sup>14</sup> Spanish mainland and the Balearic Islands.



## 3. Taxes

### e) Main Local Taxes

The following municipal taxation considerations should be taken into account:

1. **Property Tax:** Owners of real estate assets are subject to an annual property tax. The taxable base is equivalent to the cadastral value of the land and the building.
2. **Business Activities Tax (“BAT”):** BAT is a municipal tax levied annually on any business activity conducted in Spain. The tax payable depends on several factors, such as the type of activity carried out and the location and size of the premises where the activity is carried out. Companies are exempt if they have been incorporated during the last two years or if their turnover is less than EUR 1 million. Tax quotas are tax deductible for CIT purposes.

### 3.2 Operating in Spain through a branch or any other Permanent Establishment (“PE”) as a legal foreign entity with a “substantial presence” in Spain

The performance of economic activities in Spain may give rise to certain tax obligations for foreign legal entities. However, if under the Non-Resident Income Tax Law or the applicable double tax treaty, a foreign legal entity is deemed to be operating in Spain through a PE, the tax obligations will be similar to those for Spanish legal entities (e.g. WHT on payroll obligations, the

same VAT treatment, and local taxes). In general terms, a person or entity will be considered to be operating through a PE in Spain if:

- » it has, on a continuous and regular basis, premises or a workspace of any kind, in which it performs all or part of its activity (a “fixed place of business”), such as a headquarters, a branch, an office or a building site; or
- » it acts through an agent, other than an independent agent, authorised to conclude contracts in its name and on its behalf, and the agent regularly exercises this power<sup>15</sup>.

PEs are taxed at a 25% tax rate on all the income attributable to them, irrespective of the place where it is earned. The taxable base will be determined according to the CIT’s general guidelines, with the possibility of compensating the NOLs from prior financial years. However, there are differences regarding the deductibility of certain expenses including:

- » Payments that a PE may make to its head office for fees, interest, commissions, technical assistance services and for the use or assignment of rights over assets.
- » Generally, management and general administrative expenses when certain requirements are not met.

Finally, the financial year must coincide with the declared financial year and may not exceed twelve months.

<sup>15</sup> There are other situations and factors to be taken into consideration, on a case-by-case basis, that can cause a business or person to operate through a PE. For example, remote employees cannot be forced to work remotely at home and must have the option to work at the company headquarters. Likewise, remote employees cannot receive additional compensation to work remotely.





# Employment

## 4. Employment

### a) Spanish employment regulations

The legal framework governing the employment relationship between employers and employees includes (i) the Workers' Statute; (ii) the applicable collective bargaining agreement; and (iii) the employment contract. Moreover, Spanish law provides for a variety of specific regulations that affect the employment relationship (Social Security, health and safety, employment, and administrative sanctioning legislation).

### b) Types of employment contracts

Employment contracts are concluded either on an indefinite or a fixed-term basis. Additionally, they can be full or part-time.

Indefinite-term contracts are the rule. However, an employer can choose a fixed-term contract:

- » in response to an extraordinary increase in the company's production levels, including occasional and unforeseeable needs or normal fluctuations if they do not recur cyclically (for seasonal work that recurs cyclically a permanent-discontinuous contract of indefinite duration is permitted), with a duration of up to six months per year, extendable up to twelve months by collective agreement; occasional and foreseeable situations are also included if they do not exceed 90 days per year;
- » in order to temporarily replace an employee on leave, where the duration of the employee's leave coincides with the reason for the absence covered, or until a position in the selection process is definitively filled, which may not exceed three months.

Employment contracts in Spain also include training and work experience contracts, which seek to provide first-hand work experience or supplement an education programme. They are aimed at young people and offer more favourable salary

conditions for companies and incentives for hiring if they meet the training or work experience requirements that define them.

It is also possible to hire through temporary employment agencies in order to have workers available to cover temporary demands, in the same cases in which the company could enter into temporary contracts directly. Any other transfer of workers may be considered illegal.

Notwithstanding the above, employees may be subject to a probation period, which allows for termination without cause during its term.

In addition, contractual or post-contractual non-compete, exclusivity and permanence agreements are also permitted.

### c) Foreign workers

An initial work authorisation is required for employees who are not residents of the EEA, depending on the type of employment contract and irrespective of the type and duration of the services provided.

Once this initial work authorisation has been granted, the employee must apply for a visa, register at the corresponding municipality and obtain a NIE.

### d) Non-employment relationships

Self-employed workers, including economically dependent self-employed workers (whose income from a single company exceeds 75% of their total income) are not subject to employment legislation. Nor are students on non-work placements that form part of a training curriculum or that are covered by an agreement signed with the public employment services, because of the essentially training nature of such placements.

### e) Salary

Salaries are defined either in a collective bargaining agreement or in an employment contract and are usually paid in 12 monthly instalments with 2 additional annual bonus payments. Collective bargaining agreements usually provide for higher salaries than the statutory minimums.

Royal Decree 145/2024 of 6 February provides for a minimum salary of EUR 1,134 per month. Since this salary is paid through fourteen payments -twelve monthly payments and two extra payments-, the annual minimum salary is EUR 15,876.

Salaries are subject to tax and Social Security-specific provisions, with employers being responsible for withholding the corresponding sums, after deduction from the employee's salary before payment. This is carried out electronically and in a way that is cost-effective.

### f) Working time

Working time is defined in either an applicable collective bargaining agreement or in an employment contract. Collective bargaining agreements usually provide more generous terms to employees than the statutory minimums.

The maximum number of working hours per week is 40, calculated on an annualised average basis. Without exceeding that maximum number of hours, companies may unilaterally distribute the working day irregularly throughout the year up to a maximum of 10% of the annual hours, or more if agreed in the relevant collective bargaining agreement. Overtime must be compensated by the employer as a salary payment not greater than the ordinary hourly rate and with a limit of 80 hours per year, or in equivalent time off in the following four months, with no limit on the number of hours.



## 4. Employment

The daily working day may not exceed 9 ordinary hours, with the following hours being of an extraordinary nature, and when the working day exceeds six hours of continuous work, a break of at least 15 minutes must be granted, which is unpaid and recoverable, unless otherwise provided for in the collective bargaining agreement. Similarly, there must be 12 hours between each working day and a minimum weekly rest period of one and a half continuous days. There are specific regulations for special working days.

### g) Vacations

Each employee is entitled to 30 calendar days of vacation, although this figure may be increased under collective bargaining agreements.

### h) Modification of working conditions agreed in a contract or collective bargaining agreement

Companies may unilaterally modify, without the employee's consent, the original contractual conditions if they are not essential conditions of the employment contract. Otherwise (such as in the case of a transfer with a change of residence, working hours, salary, non-equivalent functions and other factors), the company must provide grounds and, if it affects a certain number of workers, open a consultation period with the workers' representatives in the company. In the event of changes to the conditions set out in the collective agreement, an agreement must be reached with the workers' representatives.

A collective bargaining agreement may also be agreed with the workers' representatives in order to derogate from a higher agreement in force in the company regarding the most relevant working conditions.

### i) Business succession: transfer of the company

An employment relationship cannot be terminated if a company is transferred.

If a company is transferred, employees are automatically transferred as well, and the acquiring or new entrant must subrogate to their employment contracts, preserving all their employment rights. Changes to working conditions cannot be justified by the transfer. An acquirer must assume the position of the former employer and the obligations arising from the employment relation must be preserved.

### j) Termination of the contract

An employment contract can be terminated by the agreement of both parties, for reasons beyond the control of either party, by a decision of the employee, with or without cause, with the right to compensation in this case due to breach of contract by the employer, or by a decision of the employer. In the latter case (dismissal), the employer must prove the existence of a subjective cause (breach by the employee) or an objective cause (collective dismissal and causes beyond the employee's control). If no cause is established, the dismissal will be unfair and the employee will be entitled to compensation. Reinstatement is only obligatory when the dismissal is null and void due to a breach of an employee's fundamental rights or a breach of an employee's rights relating to pregnancy or the reconciliation of work and family life.

### k) Remote work

Remote work in Spain is regulated by Law 10/2021 of July 9, which establishes that:

- » For this legislation to apply, an employee must spend at least 30% of the working day working remotely in a reference period of three months.

- » Remote work is voluntary for both companies and employees, as well as reversible, subject to the corresponding notice period.
- » A written remote work agreement must be entered into before the start date.
- » Companies must compensate expenses incurred by employees when working remotely, as well as provide them with all necessary resources and tools.
- » Companies must address the risks arising from remote work and design the corresponding preventive measures accordingly.
- » Companies must have an IT equipment control policy.
- » Companies must register the working hours of employees who work remotely and respect their right to disconnect in view of the time that the employees spend working. A specific policy regarding the exercise of this right is required.

### l) Workers' representation and collective bargaining

Workers are represented by workers' bodies elected by the workers according to the size of the company (staff delegates and company committees, whether unionised or not) and trade union bodies (trade union sections and delegates). They perform information, consultation and participation functions in collective procedures (substantial modifications, temporary employment regulations and dismissals), the agreement of which is not binding. Company-level representatives can negotiate collective agreements to regulate working conditions in that unit, which are binding on both parties.

Trade unions and employers' organisations can also negotiate at the sectoral level in order to regulate working conditions that apply at a higher level than the company (provincial, autonomous, national).



# Intellectual property



## 5. Intellectual property

In terms of intellectual property rights, Spain is fully aligned with EU standards, due to the implementation of all applicable EU Directives. This provides multifaceted protection for intangible assets, including:

### 5.1. Copyright

In Spain, copyright protection comprises a set of rights that protect original literary, artistic, or scientific creations expressed through any means or format, whether tangible or intangible, currently known or invented in the future. These rights are divided into moral rights, which are non-renounceable and inalienable, and economic rights, which allow the author to receive compensation for the use or exploitation of their work. Spanish copyright laws are primarily governed by Royal Legislative Decree 1/1996 of April 12 approving the consolidated text of the Law on Copyright. This legislation has undergone several amendments over the years to adapt to technological changes and comply with EU Directives on intellectual property.

#### a) Copyright Commission

The Spanish Copyright Commission is a national collegiate body attached to the Ministry of Culture and is responsible for mediation, arbitration, tariff determination, tariff control, and the safeguarding of intellectual property rights, as well as advisory functions on any matters within its competence.

#### b) Performing Rights Organisations in Spain

Spain has a long tradition of rights managed directly by performing rights organisations. Their main functions include (i) negotiating and granting licences to users of copyrighted works in exchange for financial compensation; (ii) collecting fees or royalties from users who have obtained licences to use copyrighted works; (iii) distributing the income collected among the rights holders according to the actual use of their works; and

(iv) defending the rights of its members against infringements and unauthorised uses of their works, including taking legal action when necessary.

#### c) Authorship of employee creations

In Spain, the protection of works created by the employees of a company is primarily governed by Article 51 of Royal Legislative Decree 1/1996. Under this legislation, when an employee creates an original work in the performance of his or her duties or following the instructions of their employer, the exploitation rights of the work belong, unless otherwise agreed, to the employer, although with some limitations. However, the ownership of rights can be subject to negotiation and agreement between the parties.

### 5.2. Industrial Property Rights

The main regulations governing these intangible assets include Law 24/2015 of 24 July on Patents; Law 17/2001 of 7 December on Trademarks; Law 20/2003 of 7 July on the Legal Protection of Industrial Designs, and Law 1/2019 of 20 February on Trade Secrets, among others. In addition to these laws, Spain is a party to several international treaties aimed at harmonising and facilitating the protection of industrial property globally. These treaties include the Paris Convention for the Protection of Industrial Property, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Madrid System for the International Registration of Marks.

The Spanish Patent and Trademark Office (“SPTO”) is the entity responsible for the administration of industrial property rights in Spain, including the receipt of applications, examination thereof, and the registration and publication of granted rights. The SPTO also provides information and advice on these rights and their associated procedures.





## 5. Intellectual property

### a) Patents

Patents are exclusive rights granted to inventions that are novel, involve an inventive step, and have an industrial application. In Spain, the right to the patent belongs to the inventor or their successors and is transferable. However, if an invention is made in the course of an employment contract where the employee's specific tasks include inventive activity, the right to the patent belongs to the employer unless otherwise agreed.

To obtain patent protection in Spain, the invention must be registered with the SPTO via a national patent application or with the European Patent Office through a European patent application with a designation in Spain, which grants patent rights in Spain. The duration of patent rights in Spain is twenty years from the date of filing or from the priority date if claimed.

### b) Trademarks

To obtain trademark rights over a distinctive sign in Spain, it is necessary to register the sign as a national trademark with the SPTO or as a European trademark with the European Union Intellectual Property Office, specifying the products and services for which protection is sought. The duration of trademark rights in Spain is ten years from the date of filing and can be indefinitely renewed for successive ten-year periods. Additionally, trademark rights can also be established in Spain through use when a trademark becomes well-known among consumers due to its extensive use in the market. This non-registered trademark protection is an exception and requires a high degree of recognition by the general public.

Before registering a trademark in Spain, it is important to consider pre-existing rights. Owners of pre-existing rights, such as registered trademarks, may oppose new trademark applications if they possess an identical or similar trademark to the one being applied for, which could lead to a likelihood of confusion among consumers.

### c) Industrial design

An industrial design refers to the appearance of a product or a part of it, deriving from the colour, shape, texture, or the materials of the product itself or its ornamentation. To be eligible for registration, the design must be new and have a unique character. Registering an industrial design grants the holder an exclusive right to use it and the ability to prevent others from using it without the holder's consent. The duration of trademark rights in Spain is five years from the date of filing and can be renewed for successive five-year periods up to a maximum of 25 years. Additionally, in Spain, industrial design rights are automatically granted for a period of three years from the date on which the design was first made available to the public within the European Union.

### d) Trade secrets

In Spain, trade secrets are defined as information of any nature that is confidential (meaning that it is not generally known or readily accessible to the circles that normally deal with that kind of information), which holds business value because it is secret, and which has been the subject of reasonable efforts by its owner to keep it secret. Trade secrets can include formulas, business practices, designs, processes, computer programs, customer lists, and other data that gives a company a competitive edge. The protection of trade secrets does not require any registration and remains in place as long as the conditions of secrecy, value, and protective measures are met.





# Data protection

## 6. Data protection

Under Spain's Organic Law on Data Protection and the EU's General Data Protection Regulation ("GDPR"), companies must comply with a number of general obligations and security measures applicable to both data controllers and processors:

- 1. Compliance with the guiding principles of the GDPR:** These principles refer mainly to the processing of personal data lawfully throughout the entire life cycle of the data (i.e. from its collection until its deletion). Companies must not only comply with the GDPR but also possess the necessary documentation to prove such compliance.
- 2. Lawful basis for processing data:** Personal data can only be processed under specific circumstances established in Article 6(1) of the GDPR. These lawful bases include consent, a contractual obligation, legal compliance, the protection of vital interests, public interest, and justified legitimate interests.
- 3. Privacy by design and default:** Companies must integrate data protection measures into their products and services from the outset. This includes implementing security and organisational measures sufficient to protect the data processed by a company.
- 4. Essential documentation and protocols:** Companies must keep records of processing activities, security breach management, protocols for handling the rights of data subjects, data processing agreements, information clauses for data subjects, data retention protocols, video surveillance signage, privacy impact assessments for high-risk data processing, and a series of legal texts available on their website.
- 5. Data subjects' rights:** Companies must implement mechanisms to handle data subjects' requests and respond within specified timeframes. These rights include the right of access, the right to rectification, the right to erasure, the right to restrict processing, the right to data portability, the right to object to processing, and the right not to be subject to automated decision-making.
- 6. Security breach notifications:** Companies must promptly notify the Spanish Data Protection Agency (*Agencia Española de Protección de Datos*) ("AEPD") and affected individuals in the event of a data breach that risks individuals' rights and freedoms, within 72 hours of becoming aware of the breach.
- 7. International data transfers:** For data transfers outside the EEA, the GDPR requires safeguards such as EU-approved adequacy decisions, standard contractual clauses, or approved binding corporate rules for large corporations.
- 8. Data Protection Officer ("DPO"):** Depending on the scale and nature of data processing, a company may need to appoint an independent DPO to oversee data protection compliance and act as a point of contact for the AEPD.
- 9. Supervisory authority:** The AEPD is responsible for enforcing data protection laws, conducting audits, handling complaints, and imposing fines.
- 10. Administrative fines for non-compliance:** The fines can vary, with penalties ranging from EUR 40,000 to EUR 300,000 under the Spanish Organic Law on Data Protection, and from EUR 10,000,000 to EUR 20,000,000 under the GDPR, although, currently, the AEPD typically imposes lower fines. Sanctions are assessed according to the severity of the violation and various criteria (e.g. negligence, duration of the breach, and mitigation efforts, among others).







# Information technology



## 7. Information technology

IT in Spain, as in the rest of the European Union, is subject to a wide range of regulations aimed at protecting personal data, ensuring cybersecurity, and promoting fair competition in the digital market. The impact of these regulations on companies operating in the IT sector cannot be understated, as they establish the legal framework within which these companies must operate. This legislation includes:

1. **GDPR:** Implemented in 2018, the GDPR is a pioneering global regulation that seeks to protect personal data. It establishes rights for European citizens regarding their personal data and obligations for companies in terms of managing that data.
2. **The Directive on measures for a high common level of cybersecurity across the Union (“NIS2”):** NIS2 seeks to improve the cybersecurity of networks and information systems in the EU. IT companies, especially those considered essential service operators and digital service providers, must comply with specific security and incident notification requirements. NIS2 entered into force on 27 December 2022, following its publication in the Official Journal of the EU, although Member States have until 17 October 2024 to transpose and publish the measures necessary to comply with NIS2.
3. **Digital Services Act and Digital Markets Act:** These legislative proposals aim to regulate digital platforms to ensure the protection of online users and the protection of competition. Although they are still in the process of adoption, their impact on the IT sector will be significant, especially in terms of platform liability and transparency.

### a) Spanish Agency for the Supervision of Artificial Intelligence (“AESIA”)

The Spanish Agency for the Supervision of Artificial Intelligence (AESIA), based in La Coruña, operates under the Ministry of Digital Transformation, through the Secretary of State for Digitalisation and Artificial Intelligence.

With the establishment of AESIA, Spain has positioned itself as the first European country to have such a body, a proactive response to the upcoming entry into force of the AI Act. This legislation requires Member States to designate a national supervisory authority responsible for overseeing the implementation of AI-related legislation.





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Pérez-Llorca is an international law firm that operates in Spain, Portugal and Mexico and provides high-end advice on major market transactions and disputes.

The firm carries out multi-jurisdictional work in Europe, the Americas and Asia and offers comprehensive advice on Spanish, Portuguese, Mexican and European law with offices in Barcelona, Brussels, Lisbon, London, Madrid, Mexico City, Monterrey, New York and Singapore, where almost 500 lawyers and more than 800 professionals work together.

For over 40 years, the firm's highly motivated lawyers and staff have been working towards a common goal: to contribute to the business success of our clients by providing the results they need in the most efficient way. To this end, we offer first-rate legal services whilst always adhering to ethical and professional codes of practice.

Since the firm was founded, we have experienced continued growth in terms of both lawyers and practice areas. This is down to our commitment to innovation, our constant adaptation to the needs of our clients and the close attention we pay to market trends.

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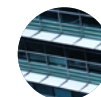
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