

## The main steps for incorporating an LLC (SL) in Spain



*Some suggestions and recurring issues*

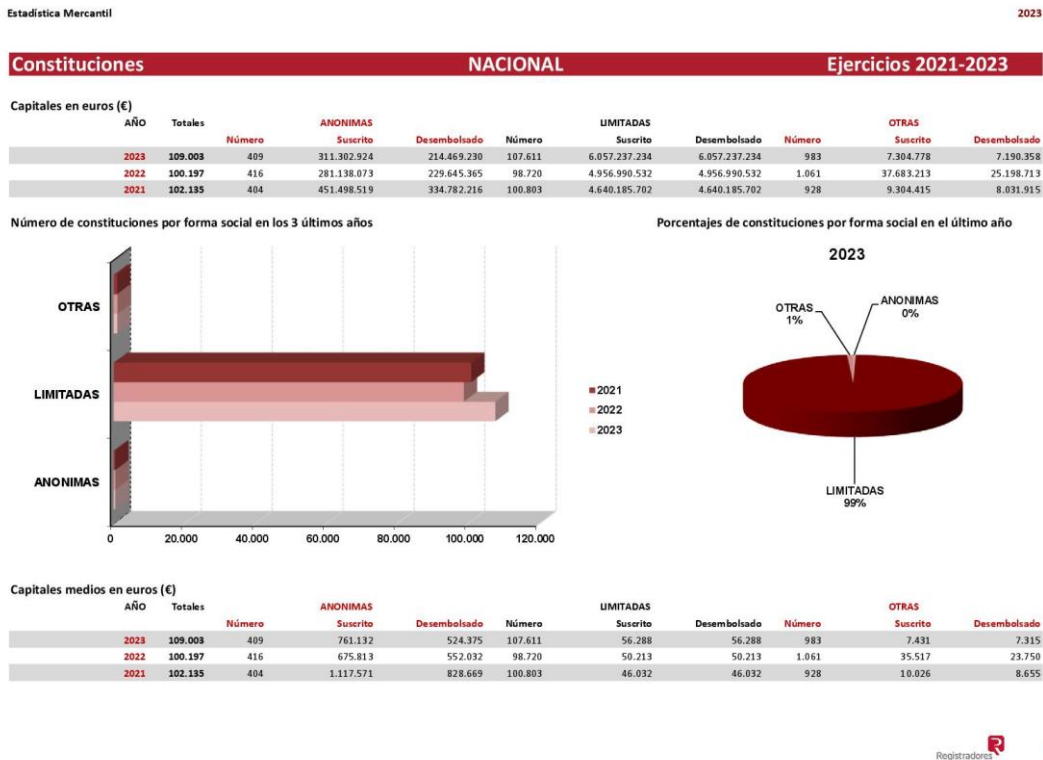
### I. Introduction.

Incorporating a company in Spain is not particularly complicated. However, if one of the partners is a foreign person (individual or legal entity), the process can be a bit longer and, above all, there are a few additional bureaucratic steps to take into account.

In this paper, we will outline the main steps to follow in order to establish a company with a foreign partner, from the initial idea to its effective operation. We will also address the main questions that are commonly asked by our clients.

We will focus on the limited liability company (*Sociedad Limitada - SL*), which, according to official statistics from the Commercial Registry (*Registro Mercantil*), continues to be by far the most commonly used corporate form by investors due to its flexibility. A few numbers will suffice to understand the scale of this phenomenon: during 2023, 109,003 companies were established in Spain, of which 107,611, or 98.72%, were limited liability companies, compared to only 409 public limited companies (*Sociedad Anónima*). That said, much of the following discussion can apply to both corporate forms.

1



Source: Registradores de España.

As its name suggests, the limited liability company in Spain has perfect asset autonomy, meaning that only the company itself is liable for its debts with its assets, while the risk for the partners is limited to the share capital subscribed by each of them, as they are not personally liable for the company's debts. Let's look at the main steps for establishing an LLC (*SL* in Spanish).

## 1. Certificate for the Company Name.

In Spain, it is not possible to establish a company with the same name as an existing one, regardless of whether the new company's activity may or may not be in competition with another. Therefore, the first step in establishing a company is to obtain a certificate from the Commercial Registry that confirms the non-existence of a company with the same or a similar name to the one you want to establish.

The request must be addressed to the Central Registry in the name of one of the future partners. Once issued, the certificate will be valid for three months, renewable for another three months. After this period, if the company has not been established, it will be necessary to request a new certificate.

REGISTRO MERCANTIL CENTRAL  
SECCION DE DENOMINACIONES

PRINCIPE DE VERGARA, 84  
TELEF. 902 984 442  
28009 MADRID

CERTIFICACION NO. 790

DON José Miguel Masa Burgos, Registrador Mercantil Central,  
en base a lo ingresado por:  
D/Da. Tizio [REDACTED]  
en solicitud presentada al Diario con fecha 02/02/2016, asiento [REDACTED]

CERTIFICO: Que NO FIGURA registrada la denominación  
### VITA SOCIEDAD LIMITADA ###

En consecuencia, QUEDA RESERVADA DICHA DENOMINACION a favor del citado interesado, por el plazo de SEIS MESES desde la fecha que a continuación se indica, conforme a lo establecido en el artículo 412.1 del Reglamento del Registro Mercantil.

Madrid, a Tres de Febrero de Dos Mil Dieciséis.

EL REGISTRADOR,  
[Signature]

NOTA.- Esta certificación tendrá una vigencia, a efectos de otorgamiento de escritura, de TRES MESES contados desde la fecha de su expedición, de conformidad a lo establecido en el art. 414.1 del Reglamento del Registro Mercantil.

2

## 2. Tax identification number (*NIE/NIF*).

The establishment of a company involves carrying out an economic activity in Spain, even if limited to this act. Consequently, foreign partners must obtain a Spanish tax identification number in advance.

a) If the partner is an individual, they must apply for the so-called *NIE* (*Número de Identificación de Extranjeros*), which will also serve as a tax identification number once registered with the tax administration. The application must be submitted to a national police station within Spanish territory. In addition to paying a fee, the public administration recently also requires proof of the activity to be carried out and, therefore, the reason for requesting the *NIE*.

b) If the partner is a foreign legal entity, they must apply for the *NIF* (*Número de Identificación Fiscal*) directly at the competent office of the Spanish Tax Agency.

Before granting the tax identification number, the Spanish Tax Agency will require documentation proving the existence of the company abroad, and they will also request the appointment of a tax representative in Spain. This representative must be an individual or legal entity residing in Spain.

Alternatively, for both individuals and legal entities, the request can be made at the Spanish Consulate in the country where the foreign partner resides. Additionally, it is always possible to appoint a professional with a notarized power of attorney to handle the application for the *NIE/NIF*.

The Law for Emerging Enterprises (startups) number 28/2022, dated December 21, applies to specific types of companies, mainly in the technology sector has sought to simplify this process by not requiring the *NIE* for non-resident foreign partners.

### **3. Open a bank account for the company being formed and certification.**

The contributions of the partners can consist of money or assets capable of economic valuation.

Currently, the minimum share capital of a limited liability company in Spain is €3,000. The actual payment of the share capital contribution must be certified by the bank where the current account in the name of the new "in formation" company has been previously opened.

3

To open a current account in the name of an "in formation" company, the bank will require the negative social denomination certificate (see step number 1).

Once the payments have been made, the bank will issue a certificate attesting to the total payment of the share capital.

### **4. Public deed of incorporation.**

The establishment of a limited liability company must be carried out by a notarial deed in which all partners participate either in person or through appointed representatives.

Regarding its contents, the notarial deed must include, among other things: the articles of association drafted according to the partners' requirements, the declaration of foreign investment, the negative social denomination certificate, and the bank certificate regarding monetary deposits.

Furthermore, if a foreign legal entity participates as a partner in the establishment, the entity, through its representative, must declare before the notary public, in the same deed of establishment or preferably in a declaration issued immediately prior, the ultimate beneficial owner of the company under Article 4 of Law 10/2010 on anti-money laundering.

## 5. Grant other deeds.

Once the deed of incorporation has been notarized and if the person appointed as administrator of the new company (hereinafter Newco) is present and has accepted the appointment, they may proceed with the simultaneous issuance of other acts on behalf of the company.

For instance, it is advisable to take advantage of this opportunity to notarize the public deed with the declaration of the ultimate beneficial owner of the Newco in accordance with Article 4 of Law 10/2010 on anti-money laundering.

Furthermore, if the administration of the Newco is entrusted to a person residing abroad, it is advisable to grant power of attorney to a trusted professional who, under Article 108.3 of the Commercial Registry Regulation, can subsequently request the notary to incorporate subsequent corporate acts (e.g., shareholders' agreements) to be registered in the Commercial Registry, or request the digital signature certificate on behalf of the administrator.

## 6. Tax identification number (NIF) of the Newco.

The Newco must also obtain a tax identification number from the Spanish Tax Agency (AEAT). The tax identification number issued by the Spanish Tax Agency (AEAT) after the company's establishment will be considered provisional until the deed of incorporation is registered in the Commercial Registry.

## 7. Payment of the Property Transfer Tax (ITP).

Once the provisional tax identification number is obtained, it is possible to proceed with the settlement of taxes on behalf of the Newco.

It is mandatory to settle (and if due, pay) taxes before being able to request the registration of the deed of incorporation in the Commercial Registry.

Currently in Spain, the establishment of a company is fiscally exempt, however, it is still obligatory to submit the tax settlement document within 30 days from the date of the deed of incorporation.

The settlement of the Property Transfer Tax (*Impuesto sobre Transmisiones Patrimoniales, ITP*) must be carried out at the tax agency of the autonomous community where the company's registered office will be located, as it is a tax transferred from the Spanish state to the individual autonomous communities.

The image shows a digital form for the 'Impost sobre transmissions patrimonials' (Property Transfer Tax) from the 'Agència Tributària de Catalunya'. The form is titled 'Exemplar per a la persona interessada/Administració/Carta de pagament'. It contains the following information:

- Header:** Agència Tributària de Catalunya, Departament d'Oficines Liquidadores (1), Olotina, Vil·lafranca del Segura.
- Subject:** (2) NIF / CIF: 6660651082631. Total de persones subjectes: 1. (3) Data de la matèria: 27 Jul 2020. No subjecte: 0. (4) Data de presentació: 1 2 0.
- Company Data:** Cognoms i nom o nom social: [blank]. D/NIF: [blank]. Número: [blank]. País: [blank]. Codi postal: [blank]. Municipi: BARCELONA. Província: BARCELONA. País: ESPANYA.
- Transmissió:** (1) Data de realització: 15/07/2020. Percentatge: 100,0000. Adscripció: [blank]. Total de persones transmissibles: 2.
- Tipus de document:** (1) Naturales: [checked]. (2) Jurídica: [unchecked]. (3) Administrativa: [unchecked]. (4) Descripció de l'operació: TRANSMISSIÓ DE SOCIETAT. (5) Tipus d'actament: [blank].
- Declaració complementària:** (1) Nom, cognoms i tipus de societat: [blank]. (2) Data de presentació: 1 1. (3) Codi de la taxa: 0 2 0. (4) Quota ingressada: 45,0000. (5) Total a ingressar: 45,0000.
- Representant/Presentador:** (1) NIF / CIF: [blank]. (2) Cognoms i nom o nom social: [blank]. (3) Número: [blank]. (4) País: [blank]. (5) Codi postal: [blank]. (6) Municipi: [blank]. (7) Província: [blank]. (8) País: [blank]. (9) Adscripció: [blank].
- Signatura:** (1) Curs en curs: [unchecked]. (2) Codi correu electrònic: [blank]. (3) E-mail: [blank]. (4) Número de còpies: [blank]. (5) Impost: [blank].

## 8. Register the deed in the Commercial Registry.

For the company to acquire full legal personality and liability towards third parties, it is necessary to register the deed of incorporation at the Commercial Registry of the place where the company has established its registered office.

## 9. Register the company with the Tax Authorities.

Once the Newco is registered in the Commercial Registry, it must also be registered with the competent Tax Agency by submitting the appropriate forms containing the data of the partners as well as their percentage of participation in the share capital.

This submission must include the deed of incorporation with the registration details of the company in the Commercial Registry.

Once the company is registered, the Tax Agency will issue the definitive tax identification number (*NIF*).

The image shows two Spanish tax forms. The top form is a 'Declaración de Terceros' (Third Parties Declaration) from the Agencia Tributaria, with a barcode and a QR code. The bottom form is a 'Tarjeta de Identificación Fiscal' (Tax Identification Card) for a company, showing the company name 'AGENCIAS DE SERVICIOS', the NIF number 'B-123456789', and the company address.

5

## 10. Unblock the bank account.

Once the company is registered in the Commercial Registry and the definitive tax identification number (*NIF*) is obtained, the company's "in formation" bank account can be unlocked to make it fully operational. This allows the funds already deposited for the establishment of the company to be used.

Once the bank account is unlocked, the Newco will finally be fully operational.

\* \* \*

## The establishment of a limited liability company in Spain - FAQ

Now let's address the main issues that arise when establishing a limited liability company (*SL*).

### a) What is the applicable Law for an *SL* in Spain?

The establishment and operation of an *SL* in Spain, as well as more generally all capital companies, are governed by Royal Legislative Decree 1/2010, of July 2, which approves the consolidated text of the Capital Companies Act (hereinafter *LSC*).



**b) Is it possible to establish an SL with a sole shareholder?**

Yes, the Law allows for it. In this case, however, the name of the shareholder will also be included in the public information about the company that can be obtained from the Commercial Registry. This differs from other cases where, currently, it is not possible to know who the shareholders of an *SL* are in Spain.

Additionally, in the case of a company with just one shareholder, certain regulatory requirements must be met, such as declaring the existence of a single shareholder in all documents and correspondence of the company (e.g., invoices, letterhead, etc.). Failure to comply could result in the sole shareholder being held liable with their personal assets for the company's debts.

**c) Are there cases where the shareholders of an SL can be liable beyond the subscribed capital?**

Yes, although these cases are extremely exceptional as the system aims to respect the corporate autonomy and limited liability of the shareholders.

For instance, consider a scenario where a shareholder excessively involves themselves in the management of the company to the extent that they could be seen as a *de facto* director. In such a case, their liability could be extended similar to that of a director. Another example could involve a shareholder who receives assets during the liquidation of the company, only for it to later emerge that there were additional debts not accounted for during the liquidation process.

6

**d) Is it always mandatory to immediately pay the entire minimum share capital?**

No, the Capital Companies Act (*LSC*) also allows for the possibility of establishing a company without demonstrating the payment of the share capital, provided that the founding shareholders assume joint and several liability through a specific declaration for making the payments.

That being said, we always advise our clients against both not paying the minimum share capital and establishing a company with the minimum share capital. This is because the company will need funds to operate initially, and these funds will need to come from the shareholders. Therefore, it is better to provide the company with sufficient funds from the beginning, at least for the first few months of operation, by constituting it with a more substantial share capital. This approach also presents the company more favorably to banks when seeking external financing, and avoids the need for a capital increase in the short term, which would entail additional costs.

**e) Are the shareholders owners of only a portion of the share capital?**

In Spain, the share capital of a company is divided into shares (*participaciones*). The greater a shareholder's stake in the share capital, the greater their influence in major decisions.

Unlike in some other countries, shareholders in Spain own specific, designated shares. For example, if the share capital consists of 3,000 shares with a nominal value of one Euro each, and shareholder "John" owns 50% of the share capital, simply knowing this percentage is not sufficient to define his ownership. It is necessary to specify, for instance, that shareholder "John" owns shares numbered from 1 to 1,500, inclusive.

In the event of a transfer of shares, it is therefore important to specify which shares are being transferred.

#### **f) Can the administrator of an *SL* in Spain be a non-resident?**

Spanish Law is quite flexible on this point. The administrator of an *SL* can be either a natural person or a legal entity. In the latter case, a natural person must be appointed as the permanent representative of the legal entity.

The structure of the administration body is also highly flexible. It can range from a sole director to multiple directors with joint or separate signing authority, or even a board of directors, with specific functions possibly delegated to one or more directors. Each of these structures entails different levels of responsibility and operational implications, so it is advisable to carefully analyze the needs of the shareholders before making any decision.

In principle, the administrator can indeed be a non-resident. However, there are precautions to take to avoid issues with the tax authorities. For instance, if you are considering establishing a company with non-resident shareholders and a non-resident administrator, this could lead to complications. For example, the tax authorities may deny registration in the register of EU operators for the company, unless it is demonstrated that there are sufficient material and human resources (employees) to run the business activities.

7

#### **g) What are the main accounting and tax obligations of an *SL*?**

Once the company obtains the definitive Tax Identification Number (*NIF*), it must declare its activity and based on the activity category, register to pay the Tax on Economic Activities (*IAE*), which starts when annual turnover exceeds one million euros.

Subsequently, it will be necessary to complete and submit periodic VAT self-assessments. The Form 303 must be submitted quarterly and Form 390 annually. Additionally, if the company operates within the European Union, Form 349 must be submitted. If the company provides services or sells goods to non-business individuals residing in the European Union, Form 369 may be required. This form allows the VAT payable to be transferred to Spain instead of paying it individually to the European countries where the customers reside.

Quarterly and then annually, the corporation tax (models 202 and 200) must be settled, which currently stands at 25% on profits but is reduced to 15% for new companies.

If there are employees, relationships with professionals, lease contracts, there will be additional obligations and forms to submit, in addition to the obligation to keep orderly accounts and to deposit financial statements annually in the Commercial Register.

Failure to comply with accounting and tax obligations can result in possible penalties for the company and, in some cases, expose the administrator to liability, both towards the public administration and towards shareholders and third parties.

#### **h) How much does it cost to establish an SL?**

The notarial and Commercial Register costs amount to approximately 1,000 Euros. In addition to this, there are expenses for consulting services, especially important for foreign partners to understand the main requirements. This includes considerations such as enabling virtual shareholder meetings in the bylaws, addressing administrator compensation, or potentially establishing a shareholder agreement alongside the bylaws to prevent future social deadlock in disputes.

#### **i) How long does it take to establish and make operational an SL?**

From the initial idea to making the company operational, if there are foreign partners involved, it typically takes one to two months.

\* \* \*

Our law firm has extensive experience in establishing companies with foreign partners, as well as managing the accounting and tax affairs of Spanish companies with foreign partners. If you are interested in obtaining more information, we would be happy to provide it.

Contact us for a free estimate!

**The above does not constitute legal advice, but rather general information.**

**It is always advisable to consult with a professional to examine your specific case.**

For further information: Email: [apieralli@maluquerabogados.com](mailto:apieralli@maluquerabogados.com); [alessandro@icab.es](mailto:alessandro@icab.es)

Tel. +34.93.23.88.910.

Alessandro Pieralli

*Lawyer registered with the Barcelona Bar association with number 33243. Lawyer registered with the Florence Bar Association since 1999*