

THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY (*Sociedad Limitada* - S.L.)

Foreign investors interested in starting a business in Spain must choose the most appropriate legal form amongst those foreseen in the Spanish legislation. Thus, one can establish a business in Spain by:

- Setting up a new Spanish company, being the most widely used legal forms the stock corporation (S.A.) and, mainly, the limited liability company named *Sociedad Limitada* (S.L.).
- Registering as a self-employed person.
- Opening a branch or representative office.
- Associating with other businesses already established in Spain through a joint venture.

S.L.s are currently the most popular type of business entity in Spain for both local and foreign investors. Its key characteristics can be highlighted as it follows.

1. Main features of a *Sociedad Limitada*

- The primary advantage of a S.L. is the flexibility given to the shareholders so as to widely define the internal rules of the company in the bylaws.
- The minimum capital required is €3,000 and must be disbursed at the time of its incorporation. The capital is divided into shares.
- The S.L. has two managing bodies:
 - The **shareholders' meeting** is the sovereign managing body of the company and has the authority to adopt its most important binding agreements (i.e. to appoint and to cease the directors, to approve the annual statements or to liquidate the company, amongst others).
 - The **management body** consists of one or more directors (sole director, joint directors, joint and several directors or even a board of directors). Its members do not need to be neither shareholders nor Spanish nationals.
- The S.L. can be wholly owned by foreign shareholders.

- It is not necessary for the shareholders and directors to be present in Spain and execute the steps for the incorporation in person. All of them can be performed by an empowered person who would act on their behalf.

2. Steps to be taken for the incorporation of a *Sociedad Limitada*

2.1. Application for an identification number for foreign shareholders and directors

Spanish legislation in force requires that any foreign individual or legal entity with economic or professional interests in Spain, or obliged to communicate with the tax agency (e.g. because it is involved in transactions with tax effects in Spain), holds an identification number.

The tax identification number for legal entities is called *Número de Identificación Fiscal - N.I.F.*, whereas *Número de Identificación de Extranjero - N.I.E.* is the legal name for the number assigned to individuals.

In particular, a N.I.F. / N.I.E. must be requested by the non-resident shareholder/s and director/s of a Spanish company.

2.2. Clear name search certificate

Any of the Newco's shareholders must apply and obtain the certificate of uniqueness of the proposed corporate name issued by the Central Commercial Registry. It is possible to apply for up to a maximum of five alternative corporate names.

2.3. Opening of a bank account

Once the certificate of uniqueness is obtained, a bank account in Spain must be opened on behalf of the S.L. in formation by the shareholders in order to deposit the share capital.

2.4. Execution of the public deed of incorporation before a Spanish Notary

The shareholders must execute the deed of incorporation before a Notary Public. The deed will contain:

- Evidence of the identity of the shareholders.

- Declaration of ultimate beneficial ownership in accordance with anti-money laundering legislation¹.
- Evidence of the contributions made to the share capital in the S.L.'s bank account (step 2.c).
- Clear name search certificate issued by the Commercial Registry (step 2.b).
- The company bylaws.
 - The bylaws are the internal rules of the company. They must include, at least, the following references:
 - a. The corporate name.
 - b. The corporate purpose.
 - c. The registered office.
 - d. The share capital.
 - e. The managing body elected and its functioning including meetings, internal rules and the procedure for adopting resolutions in case of collective management bodies, such as the board of directors.
 - Additionally, the bylaws may regulate, inter alia, the following aspects:
 - a. Duration of the company.
 - b. Restrictions, if any, on share transfers and the grounds for removal of any of the shareholders.
 - c. Ancillary obligations, if any. Should any ancillary obligations be set forth; the bylaws must state their content, whether or not they are remunerated, and the penalties, if any, for a breach thereof.

¹ Law 10/2010, of April 28, on the Prevention of Money Laundering and Terrorist Financing requires the founders of a company to provide a declaration by the "beneficial owner", that is, by the individual(s):

- On whose behalf it is intended to establish a business relationship or take part in transactions; and/or.
- Who, in the last instance, directly or indirectly own(s) or control(s) more than 25% of the capital stock or voting rights of a legal entity, or who by any other means exercise(s) direct or indirect control over the management of a legal entity. Companies listed on a regulated market of the European Union or other equivalent third country are excepted; and/or.
- Who hold or exercise control over 25% or more of the assets of a vehicle or legal entity that manages or distributes funds, or, where the beneficiaries are still to be designated, the category of persons for whose benefit the legal entity or vehicle is created or mainly acts.

- Appointment of the company directors and acceptance by the appointees.
- Request of the company's provisional Tax Identification Number (N.I.F., for its Spanish name). The Notary usually requests the provisional N.I.F. from the tax office at the moment of incorporation of the S.L.
- Declaration of foreign investment - form "D1-A" to be filed before the Spanish Ministry of Economy (in case that the S.L. shareholders are not resident in Spain).

2.5. Filing of the stamp duty form (*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados - Modelo 600*)

This tax form must be filed within 30 business days from the execution of the deed, declaring the company incorporation as a tax-exempt transaction.

2.6. Company registration before the Commercial Registry

The incorporation public deed, along with the aforementioned tax form filed, shall be registered with the Commercial Registry. As a general rule, the company must be registered within 15 business days from the date of the entry.

2.7. Registering the company as a business person for tax purposes

Form 036 registering the company as an entrepreneur must be submitted online before the tax authorities within one month from the date of the execution of the deed of incorporation. Upon such registration, the provisional N.I.F. assigned in the act of incorporation will be confirmed as the definitive tax number.