

## How to establish a company in Spain

### How to establish a company in Spain

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## POWER OF ATTORNEY

The principals should grant sufficient powers of attorney to the person who is to incorporate the new company (hereinafter, “Newco”) on their behalf in Spain. If the power is granted in Spain, the principals must appear before a Spanish notary public. If the power of attorney is granted outside Spain, the principals must appear before a notary public of the country where the power of attorney is going to be granted. The power will be legalized with the Apostille of the Hague Convention of 1961 provided that the country where the power is going to be granted is a member country. If not, the applicable procedures for the legalization of documents should be carried out. Furthermore, if not executed in Spanish, a sworn translation of the power shall be required.

### Model Power of Attorney

#### Is it possible for a foreigner to incorporate a company in Spain?

Yes, this may be done both by individuals who are resident and who are not resident in Spain. So can be done by foreign legal persons by granting someone a power of attorney.

In the case of individuals, they must have a foreigner identification number (N.I.E.). In the case of legal persons, they must have a Tax Identification Number (N.I.F.).

The representative, if he / she is not a resident in Spain, should request a foreigner identification number (N.I.E.).

## TAX IDENTIFICATION NUMBER (N.I.F.)

### Formal requirements applicable to non-resident shareholders and directors of Spanish companies

Non-resident shareholders and directors (whether individuals or bodies corporate) of Spanish companies should have a Tax Identification Number. The following paragraphs provide a general overview of the Tax Identification Number and its requirements.

### DATA NECESSARY TO REQUEST THE N.I.F. / N.I.E. BY MEANS OF AN AUTHORIZED REPRESENTATIVE IN SPAIN

#### If the shareholders or directors are individuals:

- i. Completion of **Form 790** for the payment of the corresponding fee.
- ii. Corresponding form (**Model EX-15**)
- iii. Updated and certified copy of all the pages of the passport, duly notarized before a notary public and apostilled or legalized.
- iv. Proof of valid power of attorney granted to the designated representative by a foreign notary public, with a validity period no longer than three months.
- v. A Spanish notary communication of the reasons for the request.

## TAX IDENTIFICATION NUMBER (N.I.F)

### If the shareholders or directors are legal persons:

- i. Corresponding form (**Model 036**).
- ii. Appointment of an individual to act as a tax representative to obtain a N.I.F. before the Tax Administration Agency.
- iii. Proof of representation, that is, power of attorney executed by the authorized representative of the non-resident company, duly notarized before a notary public and bearing the Hague Apostille or any other applicable legalization, which designates a person with a N.I.F. as the representative of the non-resident company for the purpose of obtaining the N.I.F.
- iv. Copy of the representative's Spanish identity card, or of his/her passport and N.I.E.
- v. Copy of the deed or any authentic document of incorporation of the applicant company and a copy of the bylaws or equivalent document. (1)

Although the procedure for obtaining the N.I.E. and the N.I.F. is not very complex, it involves certain formalities (such as the granting of powers of attorney to a Spanish resident or the appearance before the corresponding authorities) that may take time.

(1) On occasion, the Tax Administration Agency also requests a document that accredits the existence of the foreign company (with a sworn translation into Spanish, where appropriate). However, the tax administration has been admitting that if the notarial power of attorney executed abroad indicates that the company is validly established and in force according to the laws of its country, this is sufficient and does not require the presentation of additional documentation to accredit the existence of the foreign company.

## NEGATIVE NAME CERTIFICATE

A negative name certificate should be requested from the Central Companies Register to confirm the desired name and which indicates that this is available and may be utilized.

Once the certificate has been issued, the corporate name will be registered in favor of its beneficiary during a period of six (6) months counting from the date of its issuance.

To the effects of granting the incorporation deed, the negative name certificate will be in force for a period of three (3) months, counting from the issuance date of the Central Companies Register. Once this period has expired, the interested party may ask for its renewal. Such application shall be accompanied with the expired certificate.

Once the six (6) months have elapsed without making the registration in the corresponding Companies Register, the corporate name will be erased from the Denomination Section of the Central Companies Register and a new certification shall be requested.

## NEGATIVE NAME CERTIFICATE

### COMPANY NAME REQUESTS.

**A- Directly in the offices of the Central Commercial Registry**, with a Certification application form.

**B- By mail:** sending a request or a letter to the offices of the Central Commercial Registry. The Registry will answer sending the certification to be paid on delivery to the address stated in the request.

**C- By telematic means:**

The application for a **company name by telematic means** is via the web site of the Central Register of Companies (R.M.C.) [http://www.rmc.es/Deno\\_certif.aspx?lang=en](http://www.rmc.es/Deno_certif.aspx?lang=en) and subsequent delivery of the certificate may be as follows:

- A - Delivery by post.
- B - Delivery by ordinary messenger (peninsula only).
- c - Collection in the offices of the R.M.C.
- d - Delivery by messenger, cash on delivery.
- e - Telematic delivery of the electronically signed certification

### SOME PRACTICAL ADVICE FOR REQUESTING THE NAME.

[http://www.rmc.es/denominacionesSocialesInfo/Deno\\_informacion.aspx?lang=en](http://www.rmc.es/denominacionesSocialesInfo/Deno_informacion.aspx?lang=en)

## BANK CERTIFICATION

### Contributions / bank certification

The amount to be paid in cash at the time of incorporation shall be deposited in a bank account open in Spain in the name of “Newco pending incorporation” (for the opening of the account, the bank normally requests a copy of the negative name certificate for Newco). The quantity deposited or transferred by the shareholder/shareholders should correspond to the amount of the initial contribution. Upon the execution of the deed of incorporation, the deposit receipt issued by the bank for the monetary contribution should be presented.

Non-monetary contributions are possible. For more information, see [Differences between S.A. and S.L.](#)

## INCORPORATION BEFORE A SPANISH NOTARY PUBLIC

The authorized representative should appear before a Spanish notary public to execute the deed of incorporation, submitting all necessary documents, including:

- i. The bylaws, with the minimum content required by Spanish Law.

### Model Corporation Bylaws

### Model Limited Liability Company Bylaws

- ii. The **negative name certificate** issued by the Central Companies Register.
- iii. In the event of monetary contributions, the receipt of deposit issued by the bank which accredits the payment of the initial contributions.
- iv. The **original power of attorney** granted by the shareholders to their representatives, apostilled, and its sworn translation.
- v. The original identification documents (national identity document or passport or foreign identification number) of the persons incorporating the new company.
- vi. The duly-completed declaration of foreign investment. While solely informative, this is an obligatory document that should be submitted to the Register of Foreign Investments of the Ministry of Industry, Commerce and Tourism, within one month of the incorporation of Newco. The notary public may be entrusted with this, if so requested of him. (Model D-1A, available by downloading Aforix on the following link: [Aforix](#))



## INCORPORATION BEFORE A SPANISH NOTARY PUBLIC

### “Real owner” declaration

Law 10/2010 of April, 28, for the prevention of money laundering and terrorist financing imposes on Notaries Public (among others) the obligation to identify the individuals or legal persons involved in operations.

Regarding legal persons, the Act requires the identification of the “real owner”, defined as the individual/s who ultimately own or control, directly or indirectly, a percentage higher than 25% of the capital or of the rights of vote of a legal person, or who control, by different means, directly or indirectly, its management. Companies listed on a regulated market of the European Union or any equivalent markets in third countries do not have to meet this requirement, as well as other cases legally established. Under section 8 of Royal Decree 304/2014 (enacting the Regulation that develops Act 10/2010), if an individual/s directly or indirectly owns or controls more than 25% of the capital or of the voting rights of a legal person, or has direct or indirect control through different means, it is presumed, until proven otherwise, that the director/s of the legal person exercises control. If any of the directors is a legal person, the individual representing that legal person must be identified.

For this reason, the representative of the legal person must identify the real owner (in the public deed where the operation is reflected or in a separate public document -acta de manifestaciones-).

## PROVISIONAL N.I.F.

### Request for the provisional N.I.F.

Once the company is established, we may request the provisional N.I.F. in the Tax Administration Agency (company “pending incorporation”), submitting **Model 036** together with the deed. This provisional identification number is necessary for all subsequent procedures related to the incorporation of the company (liquidation of Patrimonial Transfer Tax and registration in the Commercial Registry).

Notaries may submit, by electronic means the provisional NIF on behalf of the company.

The N.I.F. will be provisional until the company provides a copy of the deed as well as a certificate of its registration in a public registry.

## TRANSFER TAX

### Payment of the Transfer Tax and Stamp Duty

The I.T.P/A.J.D. is a tax to which given activities are subject, such as contributions to share capital or notarial proceedings.

The following **corporate events** are tax **exempt** from the **Corporate Operation** type of this tax: a) Incorporation of all kinds of companies or entities and associations, b) increases of capital and contributions made by the shareholders or partners to compensate losses, and c) transfer to Spain of the effective place of management or the statutory seat of a EU corporation.

Notwithstanding the aforementioned tax exemption, **Model 600 del ITP-AJD** -together with the company deed, a copy of it and the N.I.F.- must be filed before the corresponding tax administration of the Autonomous Community, declaring the corporate event as **tax-exempt** according to that established in the article 45.I.B.11 of the consolidated text of the Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados, passed by the Real Decreto Legislativo 1/1993, of September, 24th. This model must be filed **within the next 30 working days after granting the deed.**

## REGISTRATION IN THE COMPANIES REGISTER

This will be requested in the register that corresponds to the registered office, attaching: **deed of incorporation, receipt for declaration-settlement of ITP/AJD, provisional N.I.F. and the corresponding taxes.**

This is a means of providing information to third parties, and by means of its existence seeks to protect the company, those who have any type of relationship with it and the financial order in general. Registration grants legal personality, whereby as of that moment the company legally exists. **Registration should be made within a period of two months of the execution of the deed and the assessment period of the Commercial Registry is 15 working days.**

The notary public authorizing the incorporation of the company may submit, by electronic means, the deed of incorporation to the Companies Register.

## LEGALIZATION OF THE OFFICIAL BOOKS

The Spanish Companies Act establishes the obligation to maintain certain official books conceived for the recording of given decisive aspects of corporate life. Such corporate books, whose maintenance and custody correspond to the management body of the company, are:

- **Minutes book.** This should contain all resolutions passed by the Ordinary and Extraordinary Shareholders Meetings and by any other company boards such as, for example, the Board of Directors. Each body may have its own minutes book.
- **Book of Registered Shares.** In Corporations and limited partnerships by shares, with registered shares. This should record the holders of the shares, successive transfers thereof, indicating the given name, surnames, business or trade name, where appropriate, nationality and address of successive shareholders, as well as the establishment of real rights and other encumbrances on these, and should always be at the disposal of any shareholder who wishes to examine it. The company shall deem as shareholders only those who are registered in such, and for the number of shares recorded therein.
- **Book of Registered Shareholders.** In Limited Liability Companies. This should record the holders of corporate units, successive transfers thereof, indicating the given name, surnames, business or trade name, where appropriate, nationality and address of successive holders, as well as the establishment of real rights and other encumbrances on these, and should always be at the disposal of any shareholder who wishes to examine it.

## LEGALIZATION OF THE OFFICIAL BOOKS

▪ **Book of Agreements executed between the Sole Shareholder and Single-Member Company.** This book should contain the transcription in their entirety of all agreements executed between the Sole Shareholder and the Company, and making note of the existence thereof shall not suffice. Such obligation affects those agreement in which the shareholder acts vis-à-vis the company as a third party and those executed solely during the period of time in which the contracting partner is its sole shareholder. The failure to make this transcription could lead to these being considered nonexistent with respect to the creditors of the insolvent sole shareholder or single-member company.

Generally, company books must be kept in electronic format and be submitted online for legalization within four months from the close of the corporate exercise. Specifically, for the first corporate exercise, once the company has been registered, a book must be submitted identifying the initial shareholders. Once this book has been legalized, it will only be necessary to legalize a new book of registered shares or registered shareholders within four months from the close of the year in which there has been any change in the initial (or successive) ownership of the shares or units or in which encumbrances on the shares or units have been established.

## TAX PROCEDURES

### VAT deduction on goods and services acquired before the commencement of activities

The business activity is considered to begin from the time the goods and services are acquired and intended to be used (confirmed by objective data) to develop the activity. In this sense, section 111 of the Spanish Value Added Tax Act states that the company may deduct any input VAT borne before the effective commencement of activities provided tax payer proves his/her intention to assign such goods and services to the development of business activities. Specific facts are considered to be sufficient proof, such as the nature of goods and services acquired or imported; the time elapsed between goods and services acquired and the date of commencement of activities, the file in of the census declaration of initiation of activities, ([Model 036](#)) and the accountancy and legal VAT books, the application for permissions linked to the commencement of activities and the file in of other tax returns different from VAT concerning the development of the same activities by tax payer.

### Tax on Commercial and Professional Activities

Registration for this tax qualifies the company to undertake the specific activity/activities or headings in which it is registered. If several activities are to be undertaken, it should register under the heading that corresponds to each one of them. This is formalized in the Tax Administration Agency with the same [Model 036](#), and does not require the payment of any fee for starting the activity. The deadline is thirty days following commencement of the activity.

### Obtaining of the final N.I.F.

Via [Model 036](#), we shall again apply for the N.I.F. in the Tax Administration Agency, but this time it is the final one, which shall contain the name of the company.

## OCCUPATIONAL PROCEDURES

<http://www.seg-social.es/wps/portal/wss/internet/InformacionUtil/44539/44200>

### Registration of the Company in Social Security and coverage of Occupational Accidents and Professional Illnesses:

If the company is going to hire one or more employees, it must be registered in Social Security.

In the course of the same registration, the company may opt to provide its employees with coverage in the event of Occupational Accidents or Professional Illnesses with Social Security (National Institute for Social Security) or by a specialized employer's mutual insurance company.

This registration is performed in person or online in the General Treasury Office of Social Security prior to the commencement of activities.

Upon the presentation of **Model TA.6**, with the original and one copy of the deed of incorporation, the document that verifies registration with the Tax on Commercial and Professional Activities (**Model 036**) and the contract with the Mutual Insurance Company, the company is given a Social Security Membership or Social Security Account Number.



## OCCUPATIONAL PROCEDURES

### Documentation to be submitted:

- Application for registration in Social Security and the opening of a main account number: **Model TA.6**
- Deed of incorporation of the Company and any modification of it.
- Stamp (registry box) or receipt verifying presentation of such Deed in the Companies Register.
- Tax on Commercial and Professional Activities (IAE) **Model 036**.
- Tax identification number (N.I.F.).
- Proof of the representation or authorization granted to the person submitting the registration application, as well as identification document of that person.
- Employee Registration (**TA.2**). The requirement for membership of companies in Social Security is the registration of at least one employee online.

## OCCUPATIONAL PROCEDURES

The company should obtain an employer number for each province where it has a work center and an employer number for each assigned activity. The labor sector of the company shall be indicated.

In the course of the presentation of the documents, the civil servant in charge of their review, according to the deed of incorporation of the company, shall determine whether there are individual shareholders or directors of the company who are legally obligated to register in the Special Social Security System for Self-Employed Workers (RETA) and in the General Social Security System as eligible employees. If so, a **period of 10 days** as of the date of the presentation of the application for registration of the company in which to process their affiliation in the corresponding system, which can be made by sworn statement or summons.

- In the case of the special system for self-employed workers, the procedure involves the presentation of the application for RETA affiliation for company employees ([TA.0521-5](#)) and [Model TA.1](#) (only if such employee has no previous affiliation with Social Security).
- In the case of the General Social Security System, the procedure is identical to the one explained below for any employee.

## OCCUPATIONAL PROCEDURES

### Registration and, where appropriate, Affiliation of contracted Employees in Social Security

As we have indicated, for the registration of the company it is necessary to register at least one employee contracted by the company ([TA.2](#)).

Prior (while during the same act) to registering an employee, the company shall apply for the affiliation thereof in Social Security (presenting the Official Membership Form: [TA.1](#)) only if the worker has no previous affiliation number because he has never worked before in Spain.

This step should be performed online at least one day prior to the start of activities by the worker, following the execution of the contract of employment.

## OCCUPATIONAL PROCEDURES

### Electronic Visit Book

After [Law 14/2013 on Support of the Entrepreneurship and its Internationalization](#) the companies are no longer obliged to maintain an inspection log in each one of their work centers at the disposal of Labor and Social Security inspectors.

Instead, since 2016 the Labor Inspectorate (at its own initiative, without request) makes available to companies an electronic visit book for each work center.

### Notice of Opening of a work center

Each time a work center is opened, we shall proceed to provide [notice](#) notice of the opening of the work center in the Regional Commission of Labor (by means of the official form for notice of an opening) and always 30 days prior to the commencement of the activity.

### Notice of contracts of employment

The Company has 10 days following the commencement of the rendering of services by the employee to communicate the contract content and its extensions to the National Public Service of Employment using the platform [Contrat@](#).

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## SHELF COMPANIES

### What are shelf companies?

Companies already incorporated (the so called “shelf companies”) are companies (normally S.L.s) on file in the Companies Register and with a Tax Identification Number (N.I.F.). They are usually incorporated with the minimum share capital required by law, have standard bylaws and no activity. The purchase of a company of this type is faster than the incorporation of a company ex novo, although the costs are slightly higher.

## EXECUTION BEFORE A NOTARY PUBLIC

The authorized representatives of the buyer and seller should appear before a Spanish notary public to execute the sale of the company, presenting all necessary documents, including:

- i. The original **powers of attorney** of the buyer and seller (in case of acting by means of representatives);
- ii. The original identification documents (national identity document or passport and Foreign Identification Number) of the representatives of the buyer and the seller;
- iii. The duly-completed declaration of foreign investment (Model D-1A, available by downloading Aforix on the following link: **Aforix**). As we previously saw for the incorporation of a company, this is a solely informative document, however it must be necessarily submitted.

The authorized representative of the buyer should pay for the purchase of the units by check at the time of signature, unless the payment shall have been performed by bank transfer prior to the execution of the purchase deed.

The acquisition of company units by purchase does not generate any tax obligations in Spain for the purposes of Value Added Tax (VAT) and the Transfer Tax and Stamp Duty (I.T.P./A.J.D.).

## EXECUTION BEFORE A SPANISH NOTARY PUBLIC

### “Real owner” declaration

Law 10/2010 of April, 28, for the prevention of money laundering and terrorist financing imposes on Notaries Public (among others) the obligation to identify the individuals who ultimately own or control, directly or indirectly, a percentage higher than 25% of the capital or of the rights of vote of a legal person, or who control, by different means, directly or indirectly, its management. Companies listed on a regulated market of the European Union or any equivalent markets in third countries do not have to meet this requirement, as well as other cases legally established. Under section 8 of Royal Decree 304/2014 (enacting the Regulation that develops Act 10/2010), if an individual/s directly or indirectly owns or controls more than 25% of the capital or of the voting rights of a legal person, or has direct or indirect control through different means, it is presumed, until proven otherwise, that the director/s of the legal person exercises control. If any of the directors is a legal person, the individual representing that legal person must be identified.

For this reason, the representative of the legal person must identify the real owner (in the public deed where the operation is reflected or in a separate public document -acta de manifestaciones-).



## DECLARATION OF SOLE PROPIETORSHIP STATUS. OTHER NECESSARY CHANGES

### Declaration of sole proprietorship status or loss of sole proprietorship

Following the purchase of 100% of the company units, it is necessary to execute a deed for the declaration of sole proprietorship status or loss of sole proprietorship.

### Other necessary changes

Immediately following the purchase of the company, certain statutory amendments should be made (such as the change of name, corporate purpose, registered office and management board) to adapt the company to the needs of the purchaser.

The amendment of the bylaws shall normally require a resolution of the sole proprietor. Once adopted, the resolution shall be formalized before a notary public and registered in the Companies Register.

In the event of a change in company name, the corresponding negative name certificate should be obtained from the Central Companies Register.

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## BASIC CHARACTERISTICS

### What are the basic characteristics?

By means of the office of representation, a company carries out a series of activities that are merely auxiliary, accessorial and instrument in nature (i.e. collection of information, market prospecting and local support). Contrary to the branch, they do not perform, whether totally or partially, any transactions that comprise the basic purpose of such company.

On the other hand, just like the branch, the office of representation lacks independent legal personality, which corresponds to the company that opens the office. Therefore, the creditors of the office of representation may take action against the company.

It is not necessary to register the office of representation in the Companies Register that corresponds to the place where it is opened.

## DIRECT TAXATION

In general, offices of representation do not constitute permanent establishments for the purposes of Non-Resident Income Tax (IRNR) given their ancillary nature, although the circumstances of each specific case should be addressed to determine classification for tax purposes. For example, if information is offered on the products of the company and its representatives have powers to enter into contracts; the establishment could be classified as permanent.

## ACCOUNTING OBLIGATIONS

Representative offices without permanent establishments do not have to keep accounts. They pay the non-resident income tax (IRNR) when they do not have a permanent establishment, so they pay taxes separately when rent is due.

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## RESOLUTION FOR THE ESTABLISHMENT

### Resolution for the establishment of a branch in Spain

The competent board of the parent company should adopt a resolution for the establishment of a branch in Spain which shall specify, among others, the following circumstances at minimum: the name, registered office, corporate purpose and the designation of one or more permanent representatives of the branch, who must be legal residents in Spain.

### Power of representation

The parent company should grant sufficient powers of representation to the person who establishes the branch in Spain in its name. The power should be formalized before a foreign notary public and legalized with an apostille. If it is not executed in Spain, a sworn translation shall be required.

### Model Power of Attorney

## FOREIGN REPRESENTATIVE: CREATE A BRANCH

### Can a foreign representative create a branch in Spain?

Yes, this may be done by those in Spain (with or without legal residence) as well as those residing abroad. However, they have to designate a legal representative who must be legal resident in Spain.

**Representatives who are residents in Spain:** may establish a branch by following the customary steps for Spaniards, using their foreigner identification number (N.I.E.) for identification purposes instead of the national identification number.

**Representatives who are non-Spanish residents:** whether individuals or bodies corporate, should have a foreigner identification number (N.I.E.) / tax identification number (N.I.F.). The following paragraphs provide a general overview of the that identification number and its requirements.



## FOREIGN REPRESENTATIVE: CREATE A BRANCH

### Data necessary for requesting the N.I.F./N.I.E. by means of an authorized representative in Spain

#### If the shareholders or directors are individuals:

- i. Completion of **Form 790** for the payment of the corresponding fee.
- ii. Corresponding form (**Model EX-15**)
- iii. Updated and certified copy of all passport pages, duly notarized before a notary public and bearing the Hague Apostille (or any other applicable procedures).
- iv. Proof of valid power of attorney granted to the designated representative, with a validity period of maximum three months.
- v. A Spanish notary communication of the reasons for the request.

## FOREIGN REPRESENTATIVE: CREATE A BRANCH

### If the shareholders or directors are bodies corporate:

- i. Corresponding form (**Model 036**).
- ii. Appointment of an individual to act as a tax representative.
- iii. Proof of representation, that is, power of attorney executed by the authorized representative of the non-resident company, duly notarized before a notary public and bearing the Hague Apostille or any other applicable legalization, which designates a person with a N.I.F. as the representative of the non-resident company for the purpose of obtaining the N.I.F.
- iv. Copy of the representative's Spanish identity card, or of his/her passport and N.I.E.
- v. Copy of the deed or any authentic document of incorporation of the applicant company and a copy of the bylaws or equivalent document. <sup>(1)</sup>

Although the procedure for obtaining the N.I.E. and the N.I.F. is not very complex, it involves certain formalities (such as the granting of powers of attorney to a resident in Spain or the appearance before the corresponding authorities) that may take time.

(1) On occasion, the Tax Administration Agency also requests a document that accredits the existence of the foreign company (with a sworn translation into Spanish, where appropriate). However, the tax administration has been admitting that if the notarial power of attorney executed abroad indicates that the company is validly established and in force according to the laws of its country, this is sufficient and does not require the presentation of additional documentation to accredit the existence of the foreign company.

## CONTRIBUTIONS

While there is no legal requirement regarding the minimum amount to be paid in cash upon the creation of the branch, funds may be deposited in any bank account open in Spain.

## INCORPORATION BEFORE A SPANISH NOTARY PUBLIC

The authorized representative should appear before a Spanish notary public to execute the deed of establishment of the Spanish branch, submitting all necessary documents, including:

- i. The **original powers of attorney** deed executed by the parent company, bearing The Hague Apostille (or other equivalent) and accompanied by a sworn translation into Spanish.
- ii. **Resolutions of the parent company regarding the establishment of the Spanish branch** (in other words, a certificate of the minutes of the Board of Directors or General Shareholders' Meeting, as appropriate), duly notarized by a foreign notary public and bearing The Hague Apostille or equivalent procedures.
- iii. The **documents accrediting** (i) the existence of the parent company, (2) the integral text of its current bylaws, and (3) the name and position of all active directors. Doing so shall require a certificate or other similar document issued by the person in charge of the Companies Registrar or other equivalent institution in which the parent company is registered. These documents should be notarized by a foreign notary public and bear The Hague Apostille (or equivalent procedures).
- iv. The **original identification document** (national identification number, passport or foreigner identification number) of the person establishing the branch.
- v. The duly-completed declaration of foreign investment (Model D-1A, available by downloading Aforix on the following link: [Aforix](#)). While solely informative, this is an obligatory document that should be submitted to the Register of Foreign Investments of the Ministry of Industry, Commerce and Tourism, within one month of the establishment of the branch. The notary public may be entrusted with this, if so requested of him.

## INCORPORATION BEFORE A SPANISH NOTARY PUBLIC

### “Real owner” declaration

Law 10/2010 of April, 28, for the prevention of money laundering and terrorist financing imposes on Notaries Public (among others) the obligation to identify the individuals or legal persons involved in operations.

Regarding legal persons, the Act requires the identification of the “real owner”, defined as the individual/s who ultimately own or control, directly or indirectly, a percentage higher than 25% of the capital or of the rights of vote of a legal person, or who control, by different means, directly or indirectly, its management. Companies listed on a regulated market of the European Union or any equivalent markets in third countries do not have to meet this requirement, as well as other cases legally established. Under section 8 of Royal Decree 304/2014 (enacting the Regulation that develops Act 10/2010), if an individual/s directly or indirectly owns or controls more than 25% of the capital or of the voting rights of a legal person, or has direct or indirect control through different means, it is presumed, until proven otherwise, that the director/s of the legal person exercises control. If any of the directors is a legal person, the individual representing that legal person must be identified.

For this reason, the representative of the legal person must identify the real owner (in the public deed where the operation is reflected or in a separate public document -acta de manifestaciones-).

## PROVISIONAL N.I.F.

### Request for the provisional N.I.F.

Once we have a public deed, we may request the provisional N.I.F. in the Tax Administration Agency, submitting **Model 036** together with the Resolution from the competent board of the parent company that seeks to establish a branch in Spain.

Notaries may submit, by electronic means and in certain cases, the **Model 036** as well as the necessary documentation in order to apply for a provisional N.I.F.

The provisional N.I.F. is necessary for all subsequent procedures.

## TRANSFER TAX AND STAMP DUTY

Regarding the establishment of a branch and its submission to ITP and AJD tax (corporate operation type), we should take into account the social and effective commercial address:

- Entities whose social and effective commercial address is located in non-EU countries must pay taxes for the same concepts and under the same conditions as Spanish entities for the part of the share capital assigned to those operations. The document that includes the corporate resolution aimed to perform these operations must expressly state the patrimonial contribution it intends to use to implement the operations in Spain; if this is not done, or if the figure is lower, to determine the base of the capital contributed, use the amount corresponding to the business figure comparing the activities with Spain and without it. **Model 600 del ITP-AJD** must be filed within 30 business days of executing the public deed with the directorate general of taxes in the autonomous community where the branch office has its registered office.
- Entities whose social and effective commercial address is located in EU countries (other than Spain) are not subject to ITP and AJD tax (corporate operation type).
- Entities whose effective commercial address is located in non-EU countries if its social and effective commercial address is located in EU countries (other than Spain) are not subject to ITP or AJD tax (corporate operation type).

## REGISTRATION IN THE COMPANIES REGISTER

The deed of incorporation of the branch should be presented before the Companies Register, together with the documents necessary for registration, including those relative to the settlement of the transfer tax and stamp duty.

Registration takes place approximately 15 business days after filing the deed of incorporation with the Commercial Registry



## ACCOUNTING OBLIGATIONS

Permanent establishments should keep their accounts in accordance with the Spanish Code of Commerce.

## TAX PROCEDURES

### VAT deduction on goods and services acquired before the development of activities

The business activity is considered to begin from the time the goods and services are acquired and intended to be used (confirmed by objective data) to develop the activity. In this sense, section 111 of the Spanish Value Added Tax Act states that the company may deduct any input VAT borne before the effective commencement of activities provided tax payer proves his/her intention to assign such goods and services to the development of business activities. Specific facts are considered to be sufficient proof, such as the nature of goods and services acquired or imported; the time elapsed between goods and services acquired and the date of commencement of activities, the file in of the census declaration of initiation of activities, ([Model 036](#)) and the accountancy and legal VAT books, the application for permissions linked to the commencement of activities and the file in of other tax returns different from VAT concerning the development of the same activities by tax payer.

### Tax on Commercial and Professional Activities

Registration for this tax qualifies the company to undertake the specific activity/activities or headings in which it is registered. If several activities are to be undertaken, it should register under the heading that corresponds to each one of them. This is formalized in the Tax Administration Agency with the same form 036, and does not require the payment of any fee. The deadline is thirty days following commencement of the activity.

### Attaining of the final N.I.F.

Via [Model 036](#), we shall again apply for the N.I.F. in the Tax Administration Agency, but this time it is the final one, which shall contain the name of the branch without the note “pending incorporation”.

## OCCUPATIONAL PROCEDURES

<http://www.seg-social.es/wps/portal/wss/internet/InformacionUtil/44539/44200>

### Registration of the Company in Social Security and coverage of Occupational Accidents and Professional Illnesses:

If the company is going to hire one or more employees, it must be registered in Social Security.

In the course of the same registration, the company may opt to provide its employees with coverage in the event of Occupational Accidents or Professional Illnesses with Social Security (National Institute for Social Security) or by a specialized employer's mutual insurance company.

This registration is performed in person or online in the General Treasury Office of Social Security prior to the commencement of activities.

Upon the presentation of **Model TA.6**, with , with the original and one copy of the deed of incorporation, the document that verifies registration with the Tax on Commercial and Professional Activities and the contract with the Mutual Insurance Company, the company is given a Social Security Membership or Social Security Account Number.

## OCCUPATIONAL PROCEDURES

### Documentation to be submitted:

- Application for registration in Social Security and the opening of a main account number: **Model TA.6**.
- Deed of incorporation of the Company.
- Stamp (inscription box) or receipt verifying presentation of such Deed in the Companies Register.
- Tax on Commercial and Professional Activities (IAE) (**Model 036**)
- Tax identification number (N.I.F.).
- Proof of the representation or authorization granted to the person submitting the registration application, as well as identification document of that person.
- Employee Registration (**TA.2**). The requirement for membership of companies in Social Security is the registration of at least one employee online.

## OCCUPATIONAL PROCEDURES

The company should obtain an employer number for each province where it has a work center and an employer number for each assigned activity. The labor sector of the company shall be indicated.

In the course of the presentation of the documents, the civil servant in charge of their review, according to the deed of incorporation of the company, shall determine whether there are individual shareholders or directors of the company who are legally obligated to register in the Special Social Security System for Self-Employed Workers (RETA) and or and/or in the General Social Security System as eligible employees. If so, a **period of 10 days** as of the date of the presentation of the application for registration of the company in which to process their affiliation in the corresponding system, which can be made by means of a sworn statement or summons.

In the case of the special system for self-employed workers, the procedure involves the presentation of the application for RETA affiliation for company employees ([TA.0521-5](#)) and [Model TA.1](#) (only if such employee has no previous affiliation with Social Security).

In the case of the General Social Security System, the procedure is identical to the one explained below for any employee.

## OCCUPATIONAL PROCEDURES

### Registration and, where appropriate, Affiliation of contracted Employees in Social Security

As we have indicated, for the registration of the company it is necessary to register at least one employee contracted by the company ([TA.2](#)).

Prior (while during the same act) to registering an employee, the company shall apply for the affiliation thereof in Social Security (presenting the Official Membership Form: [TA.1](#)) only if the worker has no previous affiliation number because he has never worked before in Spain.

This step should be performed online at least one day prior to the start of activities by the worker, following the execution of the contract of employment.

## OCCUPATIONAL PROCEDURES

### Electronic Visit Book

After [Law 14/2013 on Support of the Entrepreneurship and its Internationalization](#) the companies are no longer obliged to maintain an inspection log in each one of their work centers at the disposal of Labor and Social Security inspectors.

Instead, since 2016 the Labor Inspectorate (at its own initiative, without request) makes available to companies an electronic visit book for each work center.

### Notice of Opening of a work center

Each time a work center is opened, we shall proceed to provide [notice](#) notice of the opening of the work center in the Regional Commission of Labor (by means of the official form for notice of an opening) and always 30 days prior to the commencement of the activity.

### Notice of contracts of employment

The Company has 10 days following the commencement of the rendering of services by the employee to communicate the contract content and its extensions to the National Public Service of Employment using the platform [Contrat@](#).

## S.A. and S.L. Comparison

How to establish  
a company in Spain

Purchase of an  
existing company

Establishment of a  
representation office

Establishment of a  
branch

**S.A. and S.L.  
Comparison**

Differences between S.A. and  
S.L.

Similarities between  
S.A. and S.L.



CORPORATION (S.A.)	LIMITED LIABILITY COMPANY (S.L. or S.R.L.)
<b>1. Share capital</b>	
<ul style="list-style-type: none"> <li>The share capital cannot be less than 60,000 Euros and at least 25% must be paid up when the company is incorporated.</li> </ul>	<ul style="list-style-type: none"> <li>The share capital cannot be less than 3,000 Euros, which must be totally paid up on the date the company is incorporated.</li> </ul>
<b>2. Shares / Units</b>	
<ul style="list-style-type: none"> <li>Shares of a S.A. (acciones) may be issued as bearer or registered shares.</li> <li>Shares may be negotiated on stock markets.</li> <li>Privileges regarding voting rights are not allowed. Nevertheless, shares without voting rights are allowed.</li> </ul>	<ul style="list-style-type: none"> <li>Units of an S.L. (participaciones sociales) must be created as registered units and are subject to restrictions on transfer.</li> <li>Units cannot be negotiated on stock markets.</li> <li>The S.L. may have units with different voting rights. Additionally, units without voting rights are allowed.</li> </ul>
<b>3. Financing sources</b>	
<ul style="list-style-type: none"> <li>The S.A. can raise funds through capital markets by issuing/selling shares or issuing bonds and other securities that acknowledge or create a debt, including bonds convertible into shares.</li> </ul>	<ul style="list-style-type: none"> <li>The S.L. cannot be quoted. With some restrictions, the S.L. can issue or guarantee bonds and other securities that acknowledge or create a debt, but S.L.s are banned from issuing/guaranteeing bonds convertible into units.</li> </ul>

**4. Financial assistance**

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| <ul style="list-style-type: none"> <li>Financial assistance for the acquisition of shares of the company itself or that of its parent company is prohibited, with the exception of assistance to personnel of the company and the ordinary transactions performed by banks or other credit institutions.</li> </ul> | <ul style="list-style-type: none"> <li>Financial assistance is prohibited without exception, for the acquisition of units of the company itself or units or shares of another company belonging to the same group.</li> </ul> |
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**5. General Meeting**

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| <ul style="list-style-type: none"> <li>The Companies Act fixes the minimum (i) attendance quorum and (ii) voting majorities to validly pass a resolution at a Shareholders' Meeting. Pursuant to the Companies Act, resolutions are passed by simple majority of votes of attending shareholders, except in particular cases where reinforced quorum or majorities are required. The by-laws may increase the statutory quorum and voting majorities.</li> </ul> | <ul style="list-style-type: none"> <li>The Companies Act fixes the minimum voting majorities to validly pass a resolution at Shareholders' Meetings. Pursuant to the Companies Act, resolutions by the shareholders are passed by (i) majority of valid votes provided they represent at least 1/3 of the voting rights; (ii) more than 1/2 the voting rights in case of increase or decrease of the share capital or any other amendment of the by-laws; and (iii) at least 2/3 of the voting rights in case of, inter alia, transformation, merger and spin off. The by-laws may increase the statutory voting majorities.</li> </ul> |
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## 6. Management body

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| <ul style="list-style-type: none"> <li>▪ A director can act for a maximum of six years, although they may be indefinitely reappointed.</li> <li>▪ Minority shareholders have the right to be represented on the Board of Directors in proportion to their interest in the S.A.'s share capital.</li> </ul> | <ul style="list-style-type: none"> <li>▪ A director may be appointed for an indefinite term, unless provided otherwise in the S.L.'s by-laws.</li> <li>▪ Minority shareholders do not hold a right of proportional representation on the Board of Directors, unless the S.L.'s by-law state a similar right.</li> </ul> |
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### 8. Capital increase

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| <ul style="list-style-type: none"> <li>As with non-cash contributions at incorporation, capital increases through non-cash contributions require, in the majority of cases, a report issued by one or more independent experts.</li> </ul> | <ul style="list-style-type: none"> <li>An independent experts' report is not required for capital increases through non-cash contributions. The Companies Act provides, instead, for the joint and several liability of shareholders and directors, among others.</li> </ul> |
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### 9. Capital decrease

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| <ul style="list-style-type: none"> <li>It is compulsory to decrease the share capital of the S.A. for losses bringing the net worth of the company below 2/3 of its share capital.</li> <li>Shareholders' Meeting resolutions to reduce the share capital to reimburse contributions to the shareholders must be published in the Official Gazette of the Commercial Registry and in the company's website (or if it does not have a website in one newspaper). Additionally, the S.A.'s creditors have one month to object to the capital reduction unless the decrease of share capital is charged to profits or freely disposable reserves and a reserve is allocated for an amount equal to the nominal value of the share capital decrease.</li> </ul> | <ul style="list-style-type: none"> <li>There is no compulsory capital decrease for losses bringing the net worth of the company below 2/3 of its share capital.</li> <li>Such publications and a one-month opposition term are not required in the S.L. (unless otherwise established in the by-laws). However, the shareholders are personally liable for the S.L.'s debts for an amount equal to that received by them as a refund of equity contributions, unless an allocation is made to a reserve charged to profits or freely disposable reserves for said amount.</li> </ul> |
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## SIMILARITIES BETWEEN S.A. AND S.L.

Despite the significant differences between the S.A. and the S.L., both corporate figures share certain, basic characteristics set forth below.

### 1. Obligations and responsibilities of the directors

- Directors have a diligence and loyalty duty.
- Directors are liable to the company, the shareholders/partners and any creditors of the company for damage caused by acts contrary to law or the company's by-laws, as well as acts carried out breaching their duties in case of fraud of fault.

### 2. Publicity and annual accounts

- Certain relevant data and corporate resolutions (on the S.A. or S.L. itself, its directors and annual accounts) must be filed in the corresponding Companies Register. Such information is public.
- Within a maximum of three months of the closing of the fiscal year, directors shall prepare the annual accounts, management report and proposal for the application of results. If certain limits are exceeded, the annual accounts should be audited. The general meeting shall necessarily meet within the first six months of each year to: (i) evaluate corporate management, (ii) approve the annual accounts and (iii) resolve upon the application of results. The annual accounts should be filed in the Companies Register within one month of their approval.
- Those S.A. and S.L. that do not exceed a certain size may present abbreviated accounts and are exempt from the obligation to audit their accounts.

### 3. Dissolution for losses

- S.A. and S.L. should dissolve in the event of losses that have reduced the net worth to a quantity less than one half of the share capital, unless this is sufficiently increased or decreased. Directors may be personally liable for any debts of the company subsequent to when the grounds for dissolution occurs, if they do not perform the actions required by law to call a general meeting or seek legal dissolution or, where appropriate, the bankruptcy of the company.