



## The Spanish Limited Liability Company

By 4|5|3 Law Firm

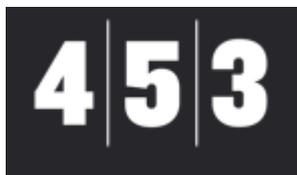
Establishing a company in a foreign country can be challenging in terms of designing the legal structure and organising a streamlined and efficient incorporation process. Alliuris member firms provide corporate legal services, in particular for the formation of companies in their home country.

This article provides a brief overview of the legal form of a limited company in Spain.

### Overview of the Spanish Limited Liability Company

Spanish Limited Liability Companies (hereinafter also referred as “SL”) are economic entities structured as capitalist organizations with a fundamentally closed nature. They are governed by the Spanish Capital Companies Act (hereinafter also referred as “SCA”).

SLs were originally designed for smaller businesses with a limited number of shareholders, typically connected by family ties or personal trust. This structure gave them a more closed and flexible nature, with restrictions on share transfers and fewer formalities compared to public limited companies (*Sociedades de Responsabilidad Anónimas*). Over time, legislative changes have narrowed these differences, streamlining regulations and reducing operational complexities. However, under current legislation, SLs still retain their distinctive flexibility, particularly in restricting share transfers and offering advantages in asset protection and independent valuations for specific transactions, such as non-cash capital increases or structural modifications.



SL is definitely the most popular corporate form in Spain. This is the form adopted by most companies –including big international groups- willing to invest in Spain.

## Formation and registration

The first thing to be done is to submit possible names for the company to the Central Companies Registry (*Registro Mercantil Central*) to check that no other company is registered under the same name. Provided there is not, you will receive a Negative Name Certificate (*Certificado Negativo de Nombre*). This process may take between 3 and 5 days. The said certificate allows the new shareholders to open a bank account in the company's name and deposit the share capital (see below).<sup>1</sup>The Bank will provide shareholders with a certificate<sup>2</sup> to prove they have deposited the required capital. The two above referred certificates together with the company's by-laws are enough to prepare and execute the deed of incorporation, to be authorised by a Public Notary.

This deed of incorporation must include the essential characteristics of the new company, explicitly stating the intention to establish it. These include the company name, share capital, registered office, individualized contributions of the shareholders, and the initial management body. Additionally, the deed of incorporation must incorporate the company's bylaws, which will govern its operations. The whole process usually takes 12-15 working days in total. In addition you may allow two more weeks for the registration of the deed of incorporation in the Commercial Registry (*Registro Mercantil*).

## Shareholders and management

SL can be incorporated by a single or several shareholders. The shareholder/s may be legal persons or natural persons. Foreign persons are also entitled to be shareholders.

When all shares are held by one sole shareholder a communication has to be filled within the Commercial Registry informing about the identity of the said sole shareholder; in addition the word "*unipersonal*" will be added to the corporate name (SL becomes SLU).

The management and representation of a SL can lie with either one or multiple directors (being a legal person or a natural person). A minimum of three directors are required to compose a Board of Directors (*Consejo de Administración*). A non-shareholder may become a director, unless otherwise stated in the by-Laws. Non-EU persons may become directors in a SL. However, foreign (even EU citizens) persons becoming a shareholder and/or director must first obtain a Foreign national identity number (*NIE: Número de Identificación de Extranjeros*). The above also applies to legal persons.

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<sup>1</sup> You will not be allowed to withdraw the money you have deposited until the company has been formally incorporated

<sup>2</sup> Please note that it will not be necessary to prove the actual contribution of funds (by providing a bank certificate) in the incorporation of an SL if the founders declare in the deed that they will be jointly and severally liable to the company and its creditors for the actual existence of such contributions. Despite it is not compulsory, the opening of a bank account in the name of the future company is recommendable.

In addition to the above referred NIE, the following documents may be required for both shareholders and directors.

- Individuals: Passport + NIE shall be enough. Should a proxy be required, said proxy must be drafted in Spanish or, if drafted in another language, it must be accompanied with sworn translation into Spanish and the Hague Apostille.
- Legal entities (companies): We need to provide the Notary with an excerpt of the commercial register stating the company is dully registered and existing under the laws of the relevant country, including the name and faculties of the director who will act on behalf of the company for the formation of the Spanish SL. Said excerpt must be accompanied with a sworn translation into Spanish and the Hague Apostille.

If the name and faculties of the director are not mentioned in the excerpt (or the person who will act on behalf of the company is not a director) a specific Board Resolution appointing said representative and granting the relevant faculties will be required. Finally, information as for the identity of the ultimate beneficial owner/s<sup>3</sup> will be required by both the Notary and the lawyer engaged with the formation of the company.

### **Governing bodies of a SL**

The governing bodies of an SL are the Shareholders General Meeting (or the decisions of the sole shareholder, in the case of a single-shareholder company) and the management body, which is entrusted with the management and representation of the company. The members of the management body do not necessarily have to be shareholders.

The Shareholders General Meeting is the gathering of shareholders that decides, by the legally or statutorily established majority, on matters within its competence. The decisions made by this majority are considered the collective will. Under the legal framework, certain decisions must necessarily be made by the Shareholders General Meeting due to their significant implications for the company's existence. These include amendments to the company's bylaws, structural modifications such as mergers, and the dissolution of the company.

On the other hand, the management body, in turn, is responsible for the management and representation of the company. It is composed of directors, who may or may not be shareholders and may even be legal entities. As a general rule, the Shareholders General Meeting is responsible for appointing the directors. The law establishes a set of rules that define the legal framework of the directors, covering aspects such as eligibility and

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<sup>3</sup> In accordance with Spanish Act of Money Laundering and Terrorism Financing Prevention (Ley 10/2010 de 28 de abril, de prevención del blanqueo de capitales y de la financiación del terrorismo).

appointment, term of office, remuneration, duties, liability, and removal. The functioning of the management body and the formation of the will of its directors depend on the structure chosen for the company's management body. The shareholders may provide for various alternative management bodies in the company's bylaws, allowing the Shareholders General Meeting to select the most suitable management body. However, this is without prejudice to the choice made at the time of executing the incorporation deed of the company.

Accordingly, the management body may take one of the following forms:

- A sole director;
- Two or more joint and several directors, each with individual decision-making authority;
- Two or more jointly acting directors, requiring collective decision-making; or
- A Board of Directors composed of at least three members and a maximum of twelve members.

### **Share capital**

The share capital is divided into indivisible, non-negotiable equity shares (*participaciones sociales*) and according to the Spanish Companies' Law, the amount of the share capital may not be less than 1 €. However, as long as the capital of an SL does not reach the amount of 3,000.00 €, the following rules shall apply:

- At least twenty percent of the company's profits shall be allocated to the legal reserve until such reserve, together with the share capital, reaches the amount of 3,000.00 €.
- In the event of liquidation, whether voluntary or compulsory, if the company's assets are insufficient to cover its social obligations, the shareholders shall be jointly and severally liable for the shortfall between the amount of 3,000.00 € and the subscribed share capital.

### **Tax registration**

New companies have to apply for a tax identification number (NIF) from Tax Authorities. In addition, newly founded companies willing to start its business activity in Spain must also file a formal statement (*Declaración Censal de Inicio de Actividad*) with the local Tax Office (*Delegación de Hacienda*).

### **Bank account**

Although not legally binding, it is strongly recommended that the shareholders open a bank account in the name of the future company (*en constitución*) and deposit the share capital prior to the execution of the deed of incorporation. This is the most common procedure followed when founding an SL<sup>4</sup>. Nevertheless, contributions in kind are permitted in a SL with no need of a third party's valuation.

A director of the company may also open a bank account once the new company is registered at the Companies Registry.

### **Accounts and records**

At the end of each accounting year, a SL is obliged to draft year-end reports, profit and loss accounts, balance sheet and a list of assets as at the date of reference and also draft a report on the status for the company (*Cuentas Anuales*). The accounting and year end report has to be drafted in accordance to the Spanish accounting rules (*Plan General Contable* or *PGC*) and filed with the Companies Registry. The above obligations have to be fulfilled even if the company has no business activity. However, smaller companies are only obliged to publish abbreviate annual accounts (*Cuentas Anuales Abreviadas*).

### **Costs of incorporation**

Incorporation costs consist of the notary's fees, Companies Registry fees and publication costs and, of course, legal fees involved in the drafting of incorporation documentation, assistance on the granting of the constitution deed, applying for Company's Tax Identification Number, and taking care of all steps necessary for the registration of the new company under the Companies Registry among other interventions.

Said costs may vary depending on the share capital, the number of shareholders, the number of directors, whether they are individuals or legal entities, among other factors.

### **Corporate Income Tax**

The Corporate Income Tax (*Impuesto Sobre Sociedades*) is a direct tax levied on the income of companies (included the SLs) and other legal entities. The general tax rate applicable to taxpayers residing in Spanish territory is 25%. However, for entities whose

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<sup>4</sup> As mentioned in the foot note number 2, it will not be necessary to prove the actual contribution of funds (by providing a bank certificate) in the incorporation of an SL if the founders declare in the deed that they will be jointly and severally liable to the company and its creditors for the actual existence of such contributions.

net turnover in the immediately preceding tax period is less than € 1,000,000.00, the applicable rate is 23% for tax periods beginning on or after January 1, 2023.

Likewise, newly established companies are temporarily subject to a reduced tax rate of 15%. This reduced rate applies to the first tax period in which the tax base is positive, as well as the following tax period.

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