

Establishing a business in Spain



Setting up a business in Spain is simple.

The type of business entities available are in keeping with those existing in other OECD countries and there is also a wide range of possibilities capable of meeting the needs of the different types of investor who wish to invest in or from Spain. Additionally, the concept of limited liability entrepreneur is analyzed in this chapter.

It is also worth noting that foreign investment restrictions and exchange controls have been virtually eliminated in line with the EU legislation on deregulation in this area.

This chapter describes the basic requirements of the different business structures for investing in Spain, as well as the key formalities that a foreign investor must fulfill in order to set up or start up each of them.

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1. Introduction

1. INTRODUCTION

This chapter takes a practical look at the main alternatives open to a foreign investor interested in establishing a business in Spain, as well as the main steps, costs and legal requirements involved.

Several alternatives are analyzed in this chapter, from the establishment of business by the investor itself, either through the formation of a company or a branch or the pursuit of the activity directly by an individual entrepreneur under the form of the “limited liability entrepreneur”, or through a joint venture with other enterprises already established in Spain. Other channels for conducting business without a physical presence, such as distribution, agency, commission and franchising agreements are also considered.

The steps required to make the following types of investment are explained in this chapter:

- Setting-up of a Spanish corporation or limited liability company and formation of a Spanish branch (sections 4 and 6).
- Pursuit of the activity directly by an individual entrepreneur under the form of the “limited liability entrepreneur” (section 5).
- Acquisition of shares in an existing Spanish company (section 8.1).
- Acquisition of real estate located in Spain (section 8.2).

Finally, this Chapter contains a final section on dispute resolution in Spain, whether through court or arbitration proceedings, the latter being considered a real and effective alternative for the settlement of disputes.

2. Different ways of doing business in Spain

2. DIFFERENT WAYS OF DOING BUSINESS IN SPAIN

Various alternatives are open to the foreign investor once the decision to invest in Spain has been taken:

Table 1

WAYS OF DOING BUSINESS IN SPAIN

Creation of a Spanish company with its own legal personality	Spanish law provides for a variety of vehicles that can be used by foreign companies or individuals for investing in Spain. The most common forms used are the corporation (S.A.) and, principally, the limited liability company (S.L.).
Limited Liability Entrepreneur	Pursuit of the activity directly by the individual where certain requirements are met.
Branch or permanent establishment	Neither alternative has its own legal personality, meaning that their activity and legal liability will at all times be directly related to the parent company of the foreign investor.
Joint venture	Association with other businesses already established in Spain. It allows the parties to share risks and combine resources and expertise. A joint venture can be set up under Spanish law in a number of ways: <ul style="list-style-type: none">• An Economic Interest Grouping (E.I.G.) and a European E.I.G. (E.E.I.G.).• A Temporary Business Association ("<i>Unión Temporal de Empresas</i>" or U.T.E.).• Under a type of silent partnership arrangement peculiar to Spanish law ("<i>cuenta en participación</i>") with one or more Spanish entrepreneurs.• Joint ventures through Spanish corporations or limited liability companies.
Without setting up a business or entering into an association with existing business or establishing a physical center of operations in Spain	The alternatives include: <ul style="list-style-type: none">• Signing a distribution agreement.• Operating through an agent.• Operating through commission agents.• Franchising.

Each of these forms of doing business in Spain offer different advantages that must be balanced against the potential setbacks from a tax and legal standpoint.

3. Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.)

3. TAX IDENTIFICATION NUMBER (N.I.F.) AND FOREIGNER IDENTITY NUMBER (N.I.E.)

The applicable Spanish legislation currently requires that any individual or legal entity with economic or professional interests in Spain, or involved in a relevant way for tax purposes, must hold a tax identification number (in the case of legal entities) or a foreigner identity number (for individuals). In particular, and among other cases, a N.I.F./N.I.E. must be applied for when a foreign investor makes a direct investment in Spain or in the case of a shareholder or director of an entity resident in Spain or of a foreign entity's permanent establishment located in Spain.

The following tables summarize the documentation and steps required to obtain (i) a N.I.E. for individuals who are to be shareholders or directors of companies resident in Spain or limited liability entrepreneurs; (ii) a N.I.F. for legal entities that are to be shareholders or directors of companies resident in Spain; and (iii) the provisional and definitive N.I.F. of the company resident in Spain that is to be set up.

3.1. N.I.E. for individuals who are to be shareholders or directors of companies resident in Spain

Table 2

N.I.E. (FOR INDIVIDUALS)

Country of application	Where to submit application	Documentation	Cost	Decision period
Spain	Directorate-General of Police or at Immigration Offices or Police Stations.	<ol style="list-style-type: none">1. Original and copy of Official Form (EX15)¹.2. Original and copy of the full passport of the applicant, travel document or registration certificate or identity document if an EU citizen.3. If application made through a representative: (i) authenticated copy of the applicant's passport; (ii) evidence that the representative has sufficient powers, duly translated and authenticated or certified by apostille, as the case may be.	€9.45 (Form 790 ²).	5 days.
Abroad	At the Spanish consulate office or diplomatic mission.	<ol style="list-style-type: none">4. Document setting out the economic, professional or social grounds supporting the application.		

¹ www.exteriores.gob.es

² www.mjusticia.gob.es

3. Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.)

3.2. N.I.F. for legal entities that are to be shareholders or directors of companies resident in Spain

Table 3

N.I.F. (FOREIGN COMPANY THAT IS TO BE SHAREHOLDER/DIRECTOR OF SPANISH COMPANY)

Where to submit application	Documentation	Decision period
State Tax Agency	<ul style="list-style-type: none">• Form 036³ (declaration of registration on, amendment to, or deregistration from the census of parties subject to tax obligations, box 120), which must be signed by a representative of the company holding a N.I.E or Spanish national identity card.• Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036. The power of attorney must evidence the valid existence and continuity of the foreign company in accordance with the relevant foreign legislation.• Copy of the N.I.E. or Spanish national identity card of the signatory.	Immediate assignment of the N.I.F and sending of card within 10 business days.

Note: Documents from other countries (such as powers of representation in order to appear before the authorities and apply for a N.I.F/N.I.E) must be translated into Spanish or the co-official language of the Autonomous Community⁴ in which the application is submitted. Any foreign public document must be legalized beforehand by the Spanish consulate office with jurisdiction in the country the document was issued and by the Ministry of Foreign Affairs and Cooperation, unless the document has been certified by apostille by a competent authority in the country of issue pursuant to the Hague Convention of October 5, 1961.

³ www.agenciatributaria.es

⁴ Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

3. Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.)

3.3. Provisional and definitive N.I.F. of the company resident in Spain that is to be set up

Table 4

PROVISIONAL N.I.F. (BEFORE SETTING UP COMPANY)

Procedure	Where to submit application	Documentation	Decision period
Ordinary procedure	State Tax Agency.	<ul style="list-style-type: none">Form 036⁵ (declaration of registration on, amendment to, or deregistration from the census of parties subject to tax obligations, box 110), signed by a representative of the company holding a N.I.E or Spanish national identity card⁶.Copy of the N.I.E. or Spanish national identity card of the signatory.Clear name search certificate from the Central Commercial Registry.Agreement of intent to form a company⁷.	Same day.
Telematic procedure	The notary authorizing the deed of formation will request the assignment of a provisional N.I.F by the State Tax Agency by telematic means. The shareholders and directors must have a N.I.E or a Spanish national identity card.		

⁵ Form 036 can be acquired at offices of the tax authorities or downloaded directly from the tax authority website: www.aeat.es (Templates and Forms/Tax returns/All Tax Returns).

⁶ If the signatory of form 036 is not registered as a shareholder or member of the managing body in the agreement of intent, authorization of the signatory must be provided.

⁷ With the following content: a) type of company, (b) corporate purpose, (c) initial capital stock, (d) registered office, (e) shareholders, and (f) the members of the managing body. A copy of the N.I.F./N.I.E./national identity document of the shareholders and members of the managing body must also be provided.

3. Tax Identification Number (N.I.F.) and Foreigner Identity Number (N.I.E.)

Table 5

DEFINITIVE N.I.F. (AFTER SETTING UP THE COMPANY)

Procedure	Where to submit application	Documentation	Decision period
Ordinary Procedure	State Tax Agency.	<ul style="list-style-type: none"> Form 036 (declaration of registration on, amendment to, or deregistration from the census of parties subject to tax obligations, box 120), signed by a representative of the company holding a N.I.E. or Spanish national identity card. Original and photocopy of the power of attorney evidencing the representative authority of the person signing form 036. Copy of the N.I.E. or Spanish national identity card of the signatory. Original and copy of the deed of formation bearing the registration stamp. 	10 business days.
Telematic procedure	Once the company has been registered, the Commercial Registry officer will send the company's registration details to the State Tax Agency by telematic means and the State Tax Agency will notify the notary and the registrar of the definitive nature of the N.I.F.		

Note: Documents from other countries (such as powers of representation in order to appear before the authorities and apply for a N.I.F./N.I.E.) must be translated into Spanish or the co-official language of the Autonomous Community⁸ in which the application is submitted. Any foreign public document must be legalized beforehand by the Spanish consulate office with jurisdiction in the country the document was issued and by the Ministry of Foreign Affairs and Cooperation, unless the document has been certified by apostille by a competent authority in the country of issue pursuant to the Hague Convention of October 5, 1961.

⁸ Bear in mind that a sworn translation must be made, both of the document and of its authentication and the apostille.

The provisional and definitive N.I.F. may only be applied for in Spain and are free of charge.

4. Formation of a corporation

4. FORMATION OF A CORPORATION

The most common forms of legal entity under Spanish corporate law are the corporation (“*Sociedad Anónima*” - S.A.), and the limited liability company (“S.L.”) (other corporate forms are described in Appendix I, section 2 of this Guide).

The main differences between S.A.s and S.L.s are as follows:

Table 6

MAIN DIFFERENCES BETWEEN S.A. AND S.L.

	S.A.	S.L.
Minimum capital stock	€60,000	€3,000 ⁹
Payment upon formation	At least 25% and any share premium.	Payment in full.
Contributions	A report from an independent expert on any non-monetary contributions is required.	No report from an independent expert on non-monetary contributions is required, although the founders and shareholders are jointly and severally liable for the authenticity of any non-monetary contributions made.
Shares	They are marketable securities. Debentures and other securities can be issued.	They are not marketable securities. Debentures and other securities cannot be issued.
Transfer of shares	Depends on how they are represented (share certificates, book entries, etc.) and on their nature (registered or bearer shares). In principle, they may be freely transferred, unless the bylaws provide otherwise.	Must be recorded in a public document. S.L. shares are generally not freely transferable (unless acquired by other shareholders, ascendants, descendants or companies within the same group). In fact, unless otherwise provided in the bylaws, the law establishes a pre-emptive acquisition right in favor of the other shareholders or the company itself in the event of a transfer of the shares to persons other than those referred to above.
Amendments to the bylaws	The directors or shareholders, as the case may be, making the proposal must make a report.	No report is required.
Venue for shareholders' meetings	As indicated in the bylaws (in any event, the meeting must be held in Spain). Otherwise, in the municipality where the company has its registered office.	

⁹ Except in the case of the entrepreneurial limited liability company, the rules for which are described in section 4.2 of Annex I.

4. Formation of a corporation

Table 6 (Cont.)

MAIN DIFFERENCES BETWEEN S.A. AND S.L.

	S.A.	S.L.
Attendance and majorities at shareholders' meetings	Different quorums and majorities are established for meetings on first and second call and depending on the content of the resolutions. These can be increased by the bylaws.	Different majorities are established depending on the content of the resolutions. These can be increased by the bylaws.
Right to attend shareholders' meetings	A minimum number of shares may be required to attend the shareholders' meeting.	These rights cannot be restricted.
Number of members of the board of directors	Minimum: 3. No maximum limit.	Minimum: 3. A maximum of 12 members
Term of the office of director	Maximum 6 years. They may be reelected for periods of the same maximum duration.	May be indefinite.
Issue of bonds	Bond issues may be used as a means to raise funds.	Limited liability companies cannot issue bonds.

4. Formation of a corporation

4.1. Legal formalities

4.1.1. General regime

- The ordinary steps and expenses involved are similar for both legal forms and are detailed in the following tables:

Table 7

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

Requirements	Applicable to any kind of limited liability company or corporation
1. Clear name search certificate	Application to the Central Commercial Registry by the interested party or anyone authorized by it (may contain up to five alternative corporate names) ¹⁰ . The Central Commercial Registry will issue a name reservation certificate for the new company. Names are reserved for a period of six months as from the date of issue of the certificate.
2. Application for provisional N.I.F.	See section 3.3 above.
3. Opening of a bank account	Opening of a bank account in the entity's name for payment of the capital stock. Once the founding shareholders have paid in the capital, the bank must issue payment certificates.
4. Document containing representations by the beneficial owner	The founding shareholders must execute a document containing representations by the beneficial owner in accordance with Law 10/2010, of April 28 ¹¹ .

¹⁰ Applications for clear name search certificates may be made:

- Directly at the offices of the Central Commercial Registry with a printed application form.
- By mail, by sending an application or letter to the offices of the Central Commercial Registry. The Registry will issue the certificate in return for payment on delivery to the address indicated in the application.
- By telematic means, by filling the application form on the website: www.rmc.es.

¹¹ 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.

4. Formation of a corporation

Table 7 (Cont.)

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

Requirements	Applicable to any kind of limited liability company or corporation
5. Execution of deed before a notary	<p>The founding shareholders must execute a public deed before a notary, containing:</p> <ul style="list-style-type: none">(i) Evidence of the identity of the founding shareholders.<ul style="list-style-type: none">a. If any of the shareholders is represented at the act of formation, a notarized power of attorney to represent the shareholder must be produced to the notary. If the power of attorney is issued abroad, it must be duly legalized¹².(ii) Representations by the beneficial owner (see requirement 4 above).(iii) Evidence of contributions and whether they are to be made in cash or in kind (if applicable) using the corresponding bank documentation, as well as details of the capital stock subscribed by the shareholders (see requirement 3 above)¹³.(iv) Clear name search certificate issued by the Commercial Registry (see requirement 1 above).(v) Company bylaws.(vi) Identification of and acceptance by the company directors.(vii) Subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for Trade and Investment (“D.G.C.I.”) of the Ministry of Economy and Competitiveness (see Chapter 1, section 8 for further information). In some cases, limited mainly to foreign investments from countries or territories deemed to be tax havens, a prior declaration must be made (see Chapter 1, section 8 for further information).(viii) Identification of the economic activity code describing the activity in accordance with the National Classification of Economic Activities (CNAE).
6. Application for registration of the registered office at the Commercial Registry	<p>The deed of formation will be submitted (i) telematically by the notary; or (ii) in person by the interested party.</p>

¹² There are two main procedures for such legalization:

- Execution of the powers of attorney in the presence of the Spanish Consul in the foreign investor’s home country. The foreign investor appears before the Spanish Consul, provides evidence of his identity and grants the related powers of attorney. If a company, rather than an individual, is the foreign shareholder, apart from his identity, the person appearing before the Spanish Consul must provide evidence of his capacity to grant the powers of attorney to the designated person in the name and on behalf of the shareholder.

The Spanish Consul may demand any documentation he considers necessary and will proceed to grant a deed of power of attorney, in Spanish, to the designated person. This power of attorney may be used directly in Spain.

- Execution of the power of attorney in the presence of a foreign public authenticating officer. The foreign investor appears before the authenticating officer, provides evidence of his identity and grants the related power of attorney. If the foreign investor is a company, its representative shall execute the power of attorney in the presence of the public authenticating officer, who will certify the document as well as the identity and capacity of the representative of the foreign investor to grant the power of attorney. The signature of the foreign authenticating officer would also require subsequent legalization (either by the “apostille” procedure approved by The Hague Convention of October 5, 1961, or by a Spanish Consul abroad). Under this second procedure, the power of attorney would normally be issued in the language of the authenticating officer who attests to the act, meaning a sworn translation into Spanish would also have to be provided.

¹³ It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Annex 1, section 4.2).

4. Formation of a corporation

Table 7 (Cont.)

STEPS FOR THE INCORPORATION OF A SPANISH LIMITED LIABILITY COMPANY

Requirements	Applicable to any kind of limited liability company or corporation
7. Period for assessment and registration in the Commercial Registry	Fifteen (15) days as from the date of the entry recording the filing of the deed, unless there is just cause, in which case the period will be thirty (30) days.
8. Obtainment of definitive N.I.F.	See section 3.3 above.
9. Opening formalities for tax and labor purposes	<p><i>Registration for the purposes of the Tax on Economic Activities:</i> submission of Form 036. Companies being set up must describe the activities they are going to pursue and the reason why they are exempt from this tax.</p> <p>The following, among others, are exempt from this tax:</p> <ul style="list-style-type: none">• Individuals are exempt in any case.• Legal entities during the first two years they pursue their activities.• Legal entities whose net turnover is less than one million euros. <p>This step must be completed before the company commences operations.</p> <p><i>Registration for the purposes of Value Added Tax (V.A.T.).</i></p> <p><i>Obtainment of an opening license from the relevant municipal council¹⁴.</i></p> <p><i>Registration of the company for Spanish social security and occupational accident insurance purposes, and registration of the hiring of employees for social security purposes.</i></p> <p><i>Procedural formalities at the provincial office of the Ministry of Employment and Social Security.</i></p>

¹⁴ In this connection, establishments of up to 750 m² will not require opening and activity licenses in accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services.

As a general rule, setting up a corporation or limited liability company using the ordinary procedure takes between 6 and 8 weeks.

Without prejudice to the foregoing, in accordance with article 5 of Royal Decree-Law 13/2010, of December 3, on Tax, Employment and Deregulation Measures to Promote Investment and the Creation of Employment, the incorporation of limited liability companies by telematic means the notarial fees shall amount to 150 euros and the registration fees shall amount to 100 euros, and in case of the incorporation, by telematics means, of limited liability companies with a share capital no higher than 3,100 euros and with bylaws in line with any of those approved by the Ministry of Justice, the notarial fees shall amount to 60 euros and the registration fees shall amount to 40 euros.

For aspects relating to labor formalities and authorizations, see Chapter 5.

For additional information please visit www.investinspain.org.

4. Formation of a corporation

4.1.2. Special regime

Law 14/2013, of September 27, 2013, on support to entrepreneurs and their internationalization (the “Entrepreneurs Law”) provides an express regime for the formation of limited liability companies, with and without standard bylaws, the content of which will be implemented by secondary legislation. This notwithstanding, according to the provisions of the law, the regime will consist of the following steps:

1. Formation of a limited liability company with standard bylaws:

Table 8

LIMITED LIABILITY COMPANY WITH STANDARD BYLAWS

Nº.	STEP
1	<p>At the Entrepreneur Service Point (“PAE”):</p> <ol style="list-style-type: none">1.1. Completion of single electronic document (“DUE”) and commencement of electronic processing.1.2. Filing of request to reserve the name of the company (up to 5 different names) with the Central Commercial Registry, which will issue a certificate within the following 6 business hours.1.3. A date will immediately be set for the execution of the deed of formation by means of real-time communication with the electronic notarial agenda, obtaining information on the notary’s office, date and time of execution of the deed, which will be within the 12 business hours following the filing of the application.
2	<p>The notary will:</p> <ol style="list-style-type: none">2.1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock¹⁵.2.2. Immediately send a copy of the deed to the tax authorities, requesting the assignment of a provisional NIF via the Business Information Center and Creation Network (“CIRCE”) remote processing system.2.3. Send an authorized copy of the deed of formation to the Commercial Registry corresponding to the registered office via the CIRCE remote processing system.2.4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost.
3	<p>The Commercial Registrar, on receiving via CIRCE (a) an electronic copy of the deed of formation together with the provisional NIF assigned, and (b) evidence of the exemption from transfer and stamp tax, will:</p> <ol style="list-style-type: none">3.1. Assess the deed and register it within 6 business hours.3.2. Send a certification of registration to the CIRCE on the same date of registration.3.3. Request the definitive NIF from the founding shareholders.
4	<p>The tax authorities will:</p> <ol style="list-style-type: none">4.1. Notify the definitive status of the NIF via the CIRCE.4.2. Notify the N.I.F. via the CIRCE.
5	<p>The formalities for commencement of the activity will be performed at the PAE, which will send the information contained in the DUE to:</p> <ol style="list-style-type: none">5.1. The State Tax Agency.5.2. The Social Security General Treasury.5.3. The local and autonomous community authorities, as the case may be.

¹⁵ It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Chapter 2, section 4.2).

4. Formation of a corporation

2. Formation of a limited liability company without standard bylaws:

Table 9

LIMITED LIABILITY COMPANY WITHOUT STANDARD BYLAWS

N.º	STEP
1	At the Entrepreneur Service Point (“PAE”), the founding shareholders may: <ul style="list-style-type: none">• File a request to reserve the name of the company.• Set the date for the execution of the deed of formation.
2	The notary will: <ul style="list-style-type: none">2.1. Authorize the deed of formation, attaching the document evidencing payment of the capital stock¹⁶.2.2. Immediately send a copy of the deed to the tax authorities, requesting the assignment of a provisional NIF via the Business Information Center and Creation Network (“CIRCE”) remote processing system.2.3. Send an authorized copy of the deed of formation to the Commercial Registry corresponding to the registered office via the CIRCE remote processing system.2.4. Deliver an electronic uncertified copy of the deed of formation to the executing parties at no additional cost.
3	The Commercial Registrar, on receiving the electronic copy of the deed of formation, shall initially register the company at the Commercial Registry within a period of 6 business hours, solely indicating the data relating to: (i) name, (ii) registered office; (iii) corporate purpose, (iv) capital stock; and (v) managing body. Definitive registration will take place within the ordinary assessment period. Once registered, the Commercial Registrar will notify the competent tax authorities of the registration of the company, requesting the definitive NIF.
4	The tax authorities will: <ul style="list-style-type: none">4.1. Notify the definitive status of the NIF via the CIRCE.4.2. Notify the N.I.F. via the CIRCE.
5	The formalities for commencement of the activity will be performed at the PAE, which will send the information contained in the DUE to: <ul style="list-style-type: none">5.1. The State Tax Agency.5.2. The Social Security General Treasury.5.3. The local and autonomous community authorities, as the case may be.

Note: where the founding shareholders choose to form an SL without standard bylaws, the formalities for formation may be performed using the DUE and the CIRCE remote processing system.

¹⁶ It will not be necessary to evidence the reality of the monetary contributions in the case of entrepreneurial limited liability companies (see Chapter 2, section 4.2).

It should be noted that according to the Entrepreneurs Law:

- Entrepreneur Service Points (“PAE”) are: offices belonging to public and private organizations, including notary offices, which will be tasked with facilitating the creation of new businesses, the

4. Formation of a corporation

effective commencement of their operations and their development, by providing information, processing, documentation and advisory services.

- The Single Electronic Document (“*DUE*”) is the document containing the data that must be sent to the legal registries and to the competent public authorities for:
 - The formation of limited liability companies.
 - The registration at the Commercial Registry of the Individual Entrepreneur.
 - Fulfillment of the tax and social security obligations on commencement of the activity.
 - The performance of any other formality on commencement of the activity with the state, autonomous community and local authorities.

4.2. Fees and Costs

- Fees of the notary handling the formation, which are charged on a sliding scale based on the capital stock. For guidance purposes, the official rates amount to approximately €90 for the first €6,010, after which rates of between 0.03% and 0.45% are applied to amounts of between €6,010,121 and €601,012.10. For any amount in excess of €6,010,121.10, the notary will receive the amount that is freely agreed upon by the executing parties.
- Fees for registering the company at the local Commercial Registry. There are official rates that amount to €6.01 for the first €3,005, after which there is a sliding scale ranging from 0.005% and 0.10% for capital in excess of €6,010,121. The total fee is capped and may not exceed €2,181.
- Transfer tax under the “corporate transactions” heading, exempt in accordance with Royal Decree-Law 3/2010 (see Chapter 3)¹⁷.
- Opening license. A one-off municipal tax, ordinarily a relatively small amount¹⁸.
- Other expenses (e.g. professional fees) which are not readily quantifiable.

¹⁷ The decision by the Directorate-General of Registries and the Notarial Profession of January 26, 2012, establishes that in forming companies domiciled in territories where rules or instructions have been handed down regarding the settlement of transfer tax (including under the corporate transactions heading), the relevant tax return must be submitted together with the deed of formation at the relevant Commercial Registry.

¹⁸ In this connection, establishments of up to 750 m² will not require opening and activity licenses in accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services.

5. Limited liability entrepreneur

5. LIMITED LIABILITY ENTREPRENEUR

The Entrepreneurs Law created the concept of the “Limited Liability Entrepreneur” (*ERL*), the main characteristics of which are as follows:

Table 10

MAIN CHARACTERISTICS OF THE ERL

Concept Limited Liability Entrepreneur status can be taken on by an individual entrepreneur, regardless of their business or professional activity, to limit their liability for the debt deriving from the conduct of their business which will prevent any such debt from affecting their principal residence under certain conditions. It makes an exception to the limited liability regime for any public law debts acquired by the Limited Liability Entrepreneur the collection of which is subject to the provisions of General Taxation Law 58/2003, of December 17, 2003, General Budget Law 47/2003, of November 26, 2003, and Legislative Royal Decree 1/1994, of June 20, 1994, approving the revised General Social Security Law.

- Requirements**
- 1. Registration of ERL status at the Commercial Registry corresponding to the registered office:**
The notarial certificate that must be submitted by the notary to the Commercial Registry on the same day or on the business day following its authorization, or the application signed with the digital signature of the entrepreneur and sent by telematic means to the Commercial Registry, will be sufficient to apply for first registration of a Limited Liability Entrepreneur.
 - 2. Value of the principal residence:**
 - a. May not exceed €300,000 (valued according to the taxable amount for transfer and stamp tax purposes at the time of registration at the Commercial Registry).
 - b. In the case of residences located in towns with more than 1,000,000 inhabitants, a multiplier of 1.5 will be applied to the value under (a) above.
 - 3. Disclosure of ERL status**
It must be mentioned on all documentation, stating the registry particulars.
 - 4. Registration at the Property Registry**
The fact that the principal residence is not tied to the professional activity must be registered at the Property Registry. The Commercial Registrar will issue a certificate and send it to the Property Registrar by telematic means on the same business day as registration of ERL status at the relevant Commercial Registry.

5. Limited liability entrepreneur

The Entrepreneurs Law provides that the necessary formalities for registration of ERL status may be performed using the CIRCE system and the DUE. In this case, the procedure would be as follows:

Table 11

LIMITED LIABILITY ENTREPRENEUR WITH STANDARD BYLAWS

N.º	STEP
1	At the Entrepreneur Service Point ("PAE"): 1.1. Completion of the single electronic document ("DUE") and submission of the necessary documentation for registration at the Commercial Registry and at the Property Registry.
2	2.1. Sending of the DUE along with the relevant documentation to the Commercial Registry by the PAE, requesting the registration of the limited liability entrepreneur. 2.2. The Commercial Registry has 6 business hours in which to register the entry and send the certification of registration to the CIRCE system by telematic means. 2.3. The CIRCE system will send the Commercial Registry certificate to the tax authorities.
3	The Commercial Registrar will send the certificate of registration to the Property Registry, requesting registration of the prohibition on attachment of the ERL's principal residence in respect of professional and business debts.
4	The Property Registrar will register the prohibition within 6 business hours of receipt of the request, and shall immediately notify the registration to the CIRCE system, which will forward it to the tax authorities.

Entrepreneurs can ascertain the status of the procedure at any time from the corresponding PAE.

6. Opening of a branch

6. OPENING OF A BRANCH

In general terms, the requirements, procedural formalities and costs of opening a branch in Spain of a foreign company are very similar to those for the formation of a subsidiary (as a company). The main legal steps and costs are summarized below, highlighting the main differences with respect to the formation of a subsidiary.

6. Opening of a branch

6.1. Legal steps and costs

Table 12

LEGAL STEPS AND COSTS

1. Clear name search certificate	Same procedure followed as for a company.
2. Obtainment of the N.I.F and appointment of the representative of the parent company in dealings with the Spanish tax authorities	Same procedure followed as for a company. Appointment of an individual or legal entity residing in Spain to represent the parent company in dealings with the Spanish tax authorities regarding its tax obligations.
3. Document containing representations by the beneficial owner	Same procedure followed as for a company.
4. Execution of the deed recording the opening of a branch before a Spanish notary	This step consists of the public formalization before a notary of the resolution to open a branch previously adopted by the competent body of the foreign parent company. The notary will request (i) documentation similar to that required for a subsidiary (that is, evidence of the identity of the person who appears before him, his power of attorney to represent the parent company, declaration of the beneficial owner, evidence of payment and whether it is to be made in cash or in kind (if applicable); (ii) sufficient proof (translated, legalized and/or certified by apostille, as appropriate) of the existence of the parent company, its bylaws and the names and personal details of its directors; and (ii) the resolution to form the branch adopted by the competent body of the parent company. The deed may also contain the subsequent declaration of foreign investment to the Register of Foreign Investment of the Directorate-General for Trade and Investment ("D.G.C.I.") of the Ministry of Economy and Competitiveness. In some cases, as with subsidiaries, prior declaration is required (see Chapter 1, section 8 for further information).
5. Application for registration at the Commercial Registry	Same procedure followed as for a company.
6. Opening formalities	Registration for the purposes of the Tax on Economic Activities: same procedure followed as for a company. Registration for the purposes of Value Added Tax (V.A.T.): same procedure followed as for a company. Payment of opening license tax: same procedure followed as for a company ¹⁹ . Registration of the company for Spanish social security purposes: (see Chapter 5, section 13 for further information).

¹⁹ In this connection, establishments of up to 750 m² will not require opening and activity licenses in accordance with the provisions of Law 12/2012 on Urgent Measures to Deregulate Trade and Certain Services.

6. Opening of a branch

As a general rule, setting up a branch takes between 6 and 8 weeks.

6.2. Branch versus subsidiary

The main differences between a branch and a subsidiary to be taken into consideration from a tax and legal standpoint are summarized below.

Table 13

DIFFERENCES INTO CONSIDERATION Y TAX AND LEGAL

	Branch	Subsidiary
Minimum capital stock:	No minimum required.	S.A.: €60,000. S.L.: €3,000 ²⁰ .
Legal personality:	No (no separate legal personality but rather the same legal identity as its parent company).	Yes.
Managing and government body	Representative (who acts as attorney of the branch in the name and on behalf of the parent company).	Shareholders' meeting and the managing body.
Shareholder liability:	No limit to the parent company's liability.	The liability of the shareholders of a subsidiary formed as an S.A. or S.L. for the debts of the subsidiary is limited to the amount of their capital contributions (with the exceptions analyzed in Appendix I, section 3).

²⁰ Except in the case of an entrepreneurial limited liability company. For these purposes, please see section 4.2.4 of Annex I.

From a tax standpoint, both the branch and the subsidiary are, in general terms, liable for Spanish corporate income tax (subsidiary) or non resident income tax (branch) at *28% for 2015 and 25% for 2016 onwards (for 2014 it was 30%)* on their net income, although the following considerations should be taken into account:

- The remittance of branch profits and the payment of a subsidiary's dividend to a non-EU parent company resident in a non-treaty country are taxable in Spain at the rate of 20% for 2015 and 19% for 2016 onwards (for fiscal years 2012, 2013 and 2014, the tax rate has been increased to 21%); if the parent company is EU-resident, the remittance or dividend is usually tax-exempt. If the parent company is resident in a non-EU country with which Spain does have a tax treaty, the dividends would be taxable at the reduced treaty rate and the remittance of branch profits would, under most of the treaties, be exempt from tax in Spain.

6. Opening of a branch

- Generally, all branches are permanent establishments. Nonetheless, a branch is not the only form of permanent establishment. In order to identify whether or not a permanent establishment exists, consideration must first be given to whether or not a tax treaty has been signed between Spain and the country of residence of the interested party.
 - a) If a tax treaty has been signed between Spain and the taxpayer's country of residence, regard must be had to the definition of permanent establishment set forth therein. Barring particular features, the tax treaties currently in force are generally in line with the definition set forth under Article 5 of the OECD Model Convention, which distinguishes between two forms of permanent establishment.

The first form of permanent establishment is the fixed place of business. This is a place through which the business of an enterprise is wholly or partly carried on. In general, a fixed place of business will therefore exist where the following requirements are met:

- The facility, center or site must be used to carry on the business.
- The facility must be fixed or related to a specific place or space, with a certain degree of permanence over time.
- The activity must be productive and must contribute to the enterprise's global income.

This definition of permanent establishment excludes a fixed place of business from which certain auxiliary or preparatory activities, listed in the tax treaties, are carried on.

The second form of permanent establishment is the dependent agent. This is an agent who acts on behalf of the nonresident entity, who has and exercises powers to bind such entity, and who does not have independent agent status.

- b) If there is no applicable tax treaty, regard must be had to the definition of permanent establishment set forth in Spanish domestic law. Article 13.1.a of Legislative Royal Decree 5/2004, approving the revised Nonresident Income Tax Law has, to a great extent, been brought into line with the aforesaid definition of permanent establishment according to the OECD Model Convention.
- The Directorate General of Taxes has ruled on a number of occasions that the Special Rules regulated under Title VII of the Corporate Income Tax Law 27/2014, of November 27, 2014 are applicable to permanent establishments located in Spain and belonging to nonresident entities, inter alia, the special rules applicable to small entities (For further information on the special rules, see Chapter 3).
 - Share of parent company overheads: In practice, it is usually easier for these expenses (if any are imputed) to qualify as deductible in the case of a branch than in the case of a subsidiary.

6. Opening of a branch

- Interest on loans from a foreign parent company to its Spanish branch is not tax-deductible for the branch. By contrast, the interest on loans from the shareholders of a subsidiary is normally tax-deductible for the subsidiary, provided that the transaction is valued on an arm's-length basis and subject to certain requirements.

6.3. Calculation of Spanish corporate income tax

Below is a very simple example of the calculation of Spanish corporate income tax on the profit obtained by a Spanish subsidiary or by the branch in Spain of a foreign company. (For further information, see section 2.1. of Chapter 3).

Table 14

PARENT COMPANY IN

	EU COUNTRY ¹	TREATY COUNTRY	NON-TREATY COUNTRY
Subsidiary:			
Profit of Spanish subsidiary	100	100	100
Spanish income tax (30%) ²	28	28	28
Dividends	72	72	72
Withholding tax on dividends	— ⁴	7 ⁵	14.4 ³
Total tax in Spain	28	35	42.4
Branch:			
Profit of Spanish branch	100	100	100
Spanish income tax (30%) ²	28	28	28
Profit remitted to the parent company	72	72	72
Withholding tax	— ⁴	— ⁶	14.4 ³
Total tax in Spain	28	28	42.4

¹ Spain has tax treaties in force with all EU countries except Cyprus.

² The general corporate income tax rate is 28%. Nonetheless, there are reduced tax rates, e.g., for small companies (25%-28%). For further information, see Chapter 3.

³ Withholding tax rate = 20%.

⁴ Exempt, provided certain conditions are met.

⁵ The withholding tax rate on dividends used in this example is 10% (the most common rate in the tax treaties entered into by Spain).

⁶ The branch profit tax will apply if provided for in the corresponding tax treaty (e.g. the U.S., Canada and Brazil).

6. Opening of a branch

6.4. Representative Offices

Apart from through a corporation or a branch, a foreign investor in Spain may operate, among other options, through a representative office.

In light of the lack of specific regulations in this respect, a definition may be found in the tax treaties signed by Spain with third countries: a representative office is understood to be a fixed place of business, established by a nonresident company, that pursues purely marketing or informational activities relating to commercial, financial and economic matters but does not conduct any actual business.

This form of establishment in Spain is considered very useful for potential investors, as it allows them to obtain all kinds of information on which they can base their investment decision, without having to comply with too many legal formalities. A representative office is, therefore, the ideal vehicle for conducting market research, studying the level of competition existing in the industry in which it intends to invest, compiling financial projections and profit estimates for the investment or negotiating the acquisition of companies via purchase of shares or of assets and liabilities.

Representative offices have, inter alia, the following key characteristics:

- Representative offices do not have separate legal personality from their parent.
- The nonresident company is liable for all debts assumed by the representative office.
- Representative offices cannot themselves conduct commercial transactions.
- In general, no commercial requirements need to be met for a representative office to be opened, although mainly for tax, employment and social security purposes a public deed (or document executed before a foreign notary public, duly legalized with the Hague Apostille or any other applicable form of legalization) may have to be executed, recording the opening of the representative office, the allocation of funds, the identity of the tax representative (an individual or legal entity resident in Spain) and its powers. Representative offices need not be recorded at the Commercial Registry.
- Representative offices have no formal managing bodies; the representative of each office performs the activities of the representative office by virtue of the powers granted to that representative.

As regards the main employment and tax aspects of representative offices, please see the corresponding sections in chapters 3 and 5.

7. Other alternatives for operating in Spain

7. OTHER ALTERNATIVES FOR OPERATING IN SPAIN

7.1. Forms of business cooperation

One of the most common forms of business cooperation between companies is the joint venture (J.V.). Spanish law provides for different forms of joint venture, allowing transactions to be performed between one or more parties:

7.2. Temporary Business Associations (U.T.E.s)

- *Concept/purpose:* Under Spanish law, U.T.E.s are temporary business alliances set up for a specified or unspecified period of time, for the purpose of carrying out a specific project or service. U.T.E.s allow several companies to operate together on one common project. This form of association is very common for engineering and construction projects but can be used in other sectors as well.
- *Legal personality:* U.T.E.s are not companies in the strict sense and have no legal personality.
- *Fiscal transparency regime:* While they have no legal personality, in order to qualify for the special fiscal transparency regime provided for U.T.E.s, they must be formed by notarial deed and registered on the Special Register of U.T.E.s at the Spanish Ministry of Finance and Public Administration and must comply with bookkeeping and accounting requirements similar to those of Spanish companies. They may be also registered at the Commercial Registry. Formalities for formalization of a U.T.E are similar to those for a company or branch, adjusted to reflect the special characteristics of this type of arrangement.
- *Regulation:* U.T.E.s are governed by Law 18/1982, concerning the Tax Regime of Temporary Business Groupings and Associations and Regional Industrial Development Companies, amended, among others, by Law 12/1991, Law 43/1995 and Law 62/2003.

7.3. Economic Interest Groupings (E.I.G.s)

- *Concept/purpose:* E.I.G.s are created with a view to facilitating the pursuit or enhancing the profitability of the activities of their members. E.I.G.s may not act on behalf of their members nor may they substitute them in their operations. Consequently, the E.I.G. is most commonly used to provide secondary services, such as centralized purchasing, sales, information management or administrative services, within the context of a broader association or group of companies.
- *Legal personality:* One of the key differences between U.T.E.s and E.I.G.s is that E.I.G.s are commercial entities with a separate legal personality.

7. Other alternatives for operating in Spain

- *Formation requirements:* Spanish law sets out certain requirements for the formation of E.I.G.s:
 - They may not interfere with their members' decisions on personnel, finance or investment matters, nor are they allowed to manage or control the activities of their members.
 - They may not directly or indirectly hold stakes in their member companies, unless it is necessary to acquire shares or holdings in order to fulfill the E.I.G.'s purpose, in which case the shares or holdings must be transferred immediately to its members.
 - They must be formed by notarial deed and registered at the competent Commercial Registry.
- *Member liability:* E.I.G. members are considered personally and jointly and severally liable for the entity's debts, albeit secondarily to the E.I.G.'s liability. Their main obligation is to contribute to the E.I.G.'s capital on the agreed terms and to share in its expenses.
- *Governing bodies:*
 - The members' meeting and
 - The managers, who are jointly and severally liable with the E.I.G. for all tax obligations accrued and for any damage caused, unless they are able to prove that they acted with due diligence.
- *Regulation:* E.I.G.s are mainly governed by Economic Interest Groupings Law 12/1991, of April 29.
- *European Economic Interest Grouping (E.E.I.G.):* this has a separate legal identity, with the characteristics regulated by EU Council Regulation (EEC) 2137/85, which establishes the basic rules governing E.E.I.G.s.

7.4. Silent Participation Agreement (C.E.P.)

- *Concept:* This form of business association, which is not subject to any legal formality at all, consists of a financial collaboration whereby one or more entrepreneurs (silent partners) take an interest in the operations of another (the active partner), contributing an agreed portion of capital to the active partner and sharing in the profits or losses in the proportion determined by them.
- *Contributions:* The contributions, whether cash or in kind, do not qualify as capital contributions as such, but rather simply represent the right of the silent partner(s) to share in the results of the business concerned. Silent partners are therefore not shareholders of the active partner.

7. Other alternatives for operating in Spain

- *Formal requirements:* As provided in the Commercial Code, this type of agreement does not require any legal formality to be fulfilled (public deed or registration at the Commercial Registry). However, in practice, the parties tend to record the agreement in a public deed in order to provide proof to third parties.
- *Regulation:* Articles 239 through 243 of the Commercial Code, contained in Title II “Silent Participation Agreements” (Book II of the Commercial Code).

7.5. Joint ventures through Spanish corporations or limited liability companies

A significant number of joint ventures use corporations and limited liability companies as vehicles. Therefore, we recommend reading the comments made in other sections of this Guide on the formation, basic characteristics and features of the corporate bodies of corporations and limited liability companies. (See this Chapter and Annex I).

7.6. Distribution, agency, commission agency and franchising agreements

1. Distribution agreements

Distribution agreements are an interesting alternative to forming a company or branch or entering into commercial cooperation agreements with previously existing businesses given the low initial investment required. There are several types of distribution agreement. Given the current lack of specific legislation on this area, many such agreements allow the parties broad discretion to decide on their contents.

In practice, distribution agreements are often confused with agency agreements. Nevertheless, they are different and have distinct regulations and characteristics.

- *Concept:* Under a distribution agreement, one of the parties (the distributor) undertakes to purchase goods belonging to the other party for resale.

Distributors are legal entities that form an intrinsic, albeit not truly integrated, part of the commercial network of the supplier, united by a business relationship and a shared desire to increase sales.

- *Classification:* there are three main categories according to the types of distribution networks or system:

- Commercial concession or exclusive distribution agreements

The supplier not only undertakes not to provide his products to more than one distributor within a specified territory, but also not to sell those products himself within the territory of the exclusive distributor.

7. Other alternatives for operating in Spain

— Sole distribution agreements:

The only difference between sole and exclusive distribution agreements is that under a sole distribution agreement, the supplier reserves the right to supply the agreed products to users in the territory in question.

— Authorized distribution agreements under the selective distribution system:

Owing to their nature, certain products require special treatment by distributors and sellers. The form of distribution used in both cases is called “selective distribution”, so-called because distributors are carefully selected on the basis of their capacity to handle technically complex products or to maintain a particular image or brand name.

2. Agency agreements

- Concept: Article 1 of Agency Agreements Law 12/1992 transposed Directive 86/653/EEC into Spanish law and provides the following definition of agency agreements:

“Under an agency agreement, an individual or legal entity, known as an agent, agrees with another on a continuous or regular basis, in exchange for remuneration, to promote commercial acts or transactions for the account of another or to promote and conclude them for the account and in the name of others, as an independent intermediary and without assuming the risk and hazard of such transactions, unless otherwise agreed.”

Agents are independent intermediaries who do not act in their own name and behalf, but rather for and on behalf of one or more principals.

An agent must, of his own accord or through his employees, negotiate and, if required by contract, conclude on behalf of the principal, the commercial acts or operations he is instructed to handle. Agents are subject to a number of obligations, including the following:

- An agent cannot outsource his activities unless expressly authorized to do so.
 - An agent is authorized to negotiate the agreements or transactions detailed in the agency agreement, but can only conclude them on behalf of its principal when expressly authorized to do so.
 - An agent may act on behalf of several principals, unless the related goods or services are similar or identical, in which case express consent is required.
- Restraint-of-trade provisions: restraint-of-trade provisions (i.e., provisions restricting or limiting the activities that can be carried out by the agent once the agency agreement has been terminated) have a maximum duration of two years as from termination of the agency agreement.

7. Other alternatives for operating in Spain

- *Obligations of the principal:*
 - To act loyally and in good faith in its relations with the agent.
 - To provide the agent with all the documentation he needs to engage in his activity.
 - To provide the agent with all the information required to perform the agreement.
 - To pay the agreed compensation.
 - To accept or reject transactions proposed by the agent.
- *Compensation:* One of the essential elements of the agency agreement is that the agent's work must always be compensated. The compensation may consist of a fixed amount, a commission or a combination of both.

3. Commission agency agreements

- *Concept:* This is the mandate under which the authorized agent (commission agent) undertakes to perform or to participate in a commercial act or agreement on behalf of another (the principal). Commission agents may act:
 - In their own name, acquiring rights against the contracting third parties and vice versa and
 - On behalf of their principal, who acquires rights against third parties and vice versa.
- *Main obligations of commission agents:*
 - To protect the interests of their principals as if they were their own and to perform their engagement personally. Commission agents may delegate their duties if authorized to do so and may use employees at their own liability.
 - To account for amounts that they have received as commission, to reimburse any excess amount and to return any unsold merchandise.
 - In general, commission agents are not liable to their principal for the performance of the related agreements by third parties, although this risk can be secured by a commission del credere.
 - Commission agents are barred from buying for their own account or for the account of others, without the consent of their principal, the goods that they have been instructed to sell, and from selling the goods that they have been instructed to buy.
- *Commission:* The principal undertakes to pay a commission and to respect the retention and preference rights of the commission agent. The claims of the commission agent against the principal are protected by the right to retain the goods.

7. Other alternatives for operating in Spain

4. Differences and similarities between agency agreements and commission agency agreements

- *Main similarity:* In both cases, an individual or legal entity undertakes to pay another compensation for arranging a business opportunity for the former to conclude a legal transaction with a third party, or for acting as the former's intermediary in concluding the transaction.
- *Main difference:* Agency agreements involve an engagement on a continuous or regular basis, whereas commission agency agreements involve occasional engagements.

5. Franchising

- *Concept:* Franchising is a system for marketing goods and/or services and/or technology. It is based on close, ongoing cooperation between independent undertakings (the franchisor and its individual franchisees). Under this system, the franchisor grants a right to, and imposes an obligation on, its individual franchisees, for a specific market, to pursue the business or commercial activity previously carried out by the former with sufficient experience and success, using the concept and system defined by the franchisor.

In return for a direct and/or indirect consideration, this right entitles and obliges individual franchisees to use the brand name and/or trade or service mark for the goods and/or services, the know-how and the technical and business methods, which must be specific to the business, material and unique, the procedures and other intellectual property rights of the franchisor, backed by the ongoing provision of commercial and technical assistance under, and during the term of, the relevant franchising agreement between the parties, all of the above regardless of any supervisory powers conferred on the franchisor by contract.

Commercial concession or exclusive distribution agreements will not necessarily be considered franchises where an entrepreneur undertakes to acquire products (usually brand products) under certain exclusive rights in an area in order to resell them, again under certain conditions, as well as to offer after-sale services to purchasers of the products.

In addition, the following are not considered to be franchises: (i) the grant of a manufacturing license, (ii) the licensing of a registered trademark to be used in a particular area, (iii) transfers of technology or (iv) a license to use a commercial emblem or logo.

- *Legislation:* The applicable Spanish legislation is (i) *Law 7/1996, of January 15, regulating retail trade, regarding the basic conditions for carrying on franchise activity and creating the Register of Franchisors*; (ii) *Royal Decree 201/2010, of February 26, regulating the exercise of the commercial activity under a franchise arrangement and the communication of information to the Register of Franchisors*; and (iii) *Royal Decree 378/2003, which refers to Regulation (EC) No. 2790/1999, of December 22, 1999, relating to the application of Article 81(3) of the Treaty to certain categories of vertical agreements and concerted practices and Regulation (EC) no. 1400/2002, of July 31, 2002, for the motor vehicles sector.*

7. Other alternatives for operating in Spain

- **Registration:** In Spain, prior to commencing franchising activities in the territory of more than one Autonomous Community, franchisors must register with a public administrative Register of Franchisors, which is hierarchically subordinate to the Directorate-General for Internal Trade of the Ministry of Economy and Competitiveness. This Register will take charge of registering franchisors at the instance of the Autonomous Community in which they are domiciled, or directly at the request of the party concerned, whether or not it is domiciled in Spain. They must also regularly update the list of franchisors, provide information and issue franchisors with the relevant supporting certificates.
- **Types of franchising agreement:** Industrial franchising agreements (for the manufacture of goods), distribution franchising agreements (for the sale of goods) and service franchising agreements (relating to the provision of services).

The advantages offered by a franchising agreement include the fact that a franchising agreement is a form of product and/or service distribution that enables a uniform distribution network to be swiftly created with limited investment. Franchising also enables independent traders to set up installations more rapidly and with greater chances of success than if they did so themselves without the know-how and assistance of the franchisor.

Antitrust law requirements must be thoroughly considered when defining the content of franchising agreements.

According to the experts, franchising has seen spectacular growth in Spain in recent years, giving rise to what is now a well-established franchising system.

8. Other alternatives for investing in Spain

8. OTHER ALTERNATIVES FOR INVESTING IN SPAIN

8.1. Acquisition of shares of an existing corporation or of a limited liability company with a sale and purchase

The following table summarizes the fundamental legal steps involved in the acquisition of shares of an existing corporation or limited liability company:

Table 15

FUNDAMENTAL LEGAL STEPS INVOLVED IN THE ACQUISITION OF SHARES OF AN EXISTING CORPORATION OR LIMITED LIABILITY COMPANY

Formality	S.A.	S.L.
Attestation by public authenticating officer	Necessary where required by the bylaws or where so agreed by the parties. On the other hand, the granting of a public document shall grant effectiveness before third parties.	Always required.
Documentation to be provided to the notary	<p>Title to the shares being transferred.</p> <p>Powers of attorney, as the case may be, to appear in the name of the buyer or seller, as appropriate.</p> <p>If the powers of attorney were granted abroad, they must be duly legalized (See requirement 5 under section 4 above).</p> <p>N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller (see section 3 above).</p> <p>Declaration by the beneficial owner, from both the buyer and the seller, if legal entities: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the deed itself (see requirement 4 under section 4 above).</p> <p>Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).</p>	
Subsequent declaration of the investment to the D.G.C.I.	File of the form D-1A before the Ministry of Economy and Competitiveness. In some cases, prior declaration is required (see Chapter 1, section 8 for further information).	
Payment of transfer tax and stamp tax under the “transfers for consideration” heading	See Chapter 3.	
Costs	<p>Depending on the Spanish public authority before which the acquisition is made:</p> <ul style="list-style-type: none"> • Notary fee: the scale applicable for the formation of a branch is also applicable here. • Fee of Spanish Consul abroad: the fee will be determined in the legislation in force on notarial fees. 	

8. Other alternatives for investing in Spain

8.2. Acquisition of the shares of a corporation or of a limited liability company via a capital increase

The following table provides a summary of the main legal formalities to acquire the shares of a corporation ("S.A.") or of a limited liability company ("S.L.") via a capital increase at the company in which the investment is made.

The new shares can be issued at par value or at a higher value (never at below their par value). The difference between the par value and the issue value is the share premium. The share premium must be paid up in full when subscribing to the new shares. In relation to the par value of the shares, at corporations at least 25% of the par value must be paid up and at limited liability companies, the par value must be paid up in full.

8. Other alternatives for investing in Spain

Table 16

FORMALITIES TO BE PERFORMED FOR THE ACQUISITION OF REAL ESTATE

Formality	S.A.	S.L.
Certification by a public authenticating official	Necessary.	Necessary.
Formalización	<ul style="list-style-type: none"> The new shareholder/s must hold a foreigners//taxpayer identification number, Spanish ID card (see section 3 above). Execution before a notary of a public deed notarizing the corporate resolutions of the shareholders' meeting of the company in which the investment is made, resolving to increase capital²¹ The minutes, the book of minutes, notarial testimony of the foregoing or a certificate of the resolutions of the capital increase must be delivered to the Notary. Pursuant to 108 of the Commercial Registry Regulations, the following individuals may have the corporate resolutions notarized: <ol style="list-style-type: none"> The individual with authority to certify the corporate resolutions.²² The sole shareholder or the company's directors in relation to decisions of the sole shareholder recorded in minutes. Any member of the managing body whose appointment is in force and registered at the Commercial Registry, where they have been expressly authorized to do so in the resolutions to be notarized. Any person who has been authorized for this purpose pursuant to the power of attorney public deed registered at the Commercial Registry.²³ The deed evidencing the appearing person's power to have the corporate resolutions notarized on behalf of the company in which the investment is made must be provided to the notary. Any powers of attorney executed abroad must be duly legalized (see requirement 5 of section 4.1 above). The beneficial owner of the company in which the investment is made must be specified in the deed and a document evidencing the payment made must be attached to it. Filing the deed at the Commercial Registry for the place where the company in which the investment is made has its registered office. 	

²¹ The capital increase must have been resolved by the shareholders' meeting of the company in which the investment is made, and that resolution must be recorded in the minutes of the shareholders' meeting of that company.

If there are any preemptive subscription rights, the holders of those rights must first waive those rights.

²² This will depend on the company's managing body:

- If it is a board of directors: the secretary or deputy secretary of the board of directors, with the countersignature of the board chairman or deputy chairman.
- If it is a sole director: the sole director.
- If it consists of more than one director acting severally: any of the directors acting severally.
- If it consists of joint directors: the directors that have the power to represent the company jointly.

²³ This procedure is not applicable to have the resolutions notarized where it is based on the minutes or notarial certification of the minutes.

8. Other alternatives for investing in Spain

Table 16 (Cont.)

FORMALITIES TO BE PERFORMED FOR THE ACQUISITION OF REAL ESTATE

Formality	S.A.	S.L.
Subsequent declaration of the investment at the Directorate-General for Trade and Investments (DGCI)	Filing of form D-1A at the Ministry of Economy and Competitiveness. In some cases, it will also be necessary to submit a prior declaration (see section 8 of Chapter 1 for more information).	
Transfer and stamp tax under the “Corporate transactions” heading	<ul style="list-style-type: none"> At present, business restructuring transactions, company formations, capital increases, shareholder contributions in general and certain transfers of the place of effective management or registered office are not taxed. 	
Costs	Depending on the public authenticating official that certifies the transfer: <ul style="list-style-type: none"> Notarial fees: the scale envisaged for the formation of a subsidiary is also applicable. Fee scale for the Spanish consul abroad: the fee amount is established in legislation in force on notaries’ fee scales. Registration fees: see section 4.2. 	

8. Other alternatives for investing in Spain

8.3. Acquisition of real estate located in Spain

Set out below are the main legal formalities to be performed for the acquisition of real estate located in Spain:

Table 17

FORMALITIES TO BE PERFORMED FOR THE ACQUISITION OF REAL ESTATE

Formality	Acquisition of real estate located in Spain
Attestation by public authenticating officer	The acquisition must be formalized before a Spanish notary or Spanish Consul abroad.
Documentation to be provided to the notary	<ul style="list-style-type: none">• Title to the property.• Powers of attorney, as the case may be, to appear in the name of the buyer or seller, as appropriate. If the powers of attorney were granted abroad, they must be duly legalized (See requirement 5 under section 4 above).• N.I.E./N.I.F. or Spanish national identity card of the buyer and the seller.• Declaration by the beneficial owner: a notarial document containing representations by the beneficial owner may be provided or a declaration made in the deed itself (see requirement 4 under section 4 above).• Documentary evidence of payment and how the payment was made (specifically, if the price was received before execution of the deed, the amount and whether it was paid by check or any other money transfer document, or by bank transfer).
Subsequent declaration of the investment to the D.G.C.I.	In some cases, prior declaration is required (see Chapter 1, section 8 for further information).
Taxes	See Chapter 3.
Registration at the relevant Property Registry	The acquisition must be registered at the relevant Property Registry as soon as the deed of acquisition has been formalized and the related taxes have been paid in order to ensure that acquirer's property rights are duly protected.
Costes	<ul style="list-style-type: none">• Notary fee: the scale applicable for the formation of a subsidiary is also applicable here.• Fee of Spanish Consul abroad: the fee will be determined in the legislation in force on notarial fees.• Property Register fees: For guidance purposes, the official rates amount to €24 if the value of the property does not exceed €6,010, thereafter rates of between 0.175% and 0.02% are applied. The total fee is capped and may not exceed €2,181.

9. Dispute resolution

9. DISPUTE RESOLUTION

9.1. Court proceedings

Organic Law 6/1985, of July 1, regulates the constitution, operation and governance of courts and tribunals in Spain. For judicial purposes, the State is organized on a territorial basis into municipalities, judicial districts, provinces and Autonomous Communities, in which the Justices of the Peace, the Courts of First Instance, Examining Courts, Commercial Courts, Criminal Courts, Judicial Review Courts, Labor Courts, Provincial Appellate Courts and High Courts have jurisdiction. The Supreme Court and the National Appellate Court (*Audiencia Nacional*) (the latter only for certain specific matters) have jurisdiction over the entire national territory. The Supreme Court is the highest judicial authority with the sole exception of the guarantee of constitutional rights, which are safeguarded by the Constitutional Court.

Law 1/2000, the Spanish Civil Procedure Law, came into force on January 8, 2001. Criminal, labor and administrative proceedings are governed, respectively, by the Criminal Procedure Law approved by the Royal Decree dated September 14, 1882, the Revised Labor Procedure Law approved by Legislative Royal Decree 2/1995 and Judicial Review Procedure Law 29/1998.

Although the Spanish litigation system should be considered as a continental law system, certain features of the Civil Procedure Law have their roots in the common law system. An example of this is the predominance of the oral proceeding. The Civil Procedure Law reduces formalities and promotes more expeditious proceedings and a quicker and more efficient response from the courts.

Spain has signed numerous bilateral and multilateral treaties on the recognition and enforcement of foreign judicial decisions.

9.2. Arbitration

Arbitration is increasingly viewed as a genuine alternative for the settlement of commercial disputes. Companies, aware of the greater speed, efficiency and flexibility of arbitration compared to action before the courts, are increasingly keen to turn to arbitration. Furthermore, Spanish courts increasingly support arbitration, both in terms of arbitration agreements and the enforcement of arbitral awards.

Arbitration Law 60/2003 of December 23, 2003 (the "*Arbitration Law*") enables both individuals and companies to enter into agreements to submit to one or more arbitrators any disputes that have arisen or may arise on matters the regulation of which is not subject to any legal restrictions. The Arbitration Law is almost entirely inspired by the UNCITRAL Model Law on International Commercial Arbitration. Royal Decree 231/2008, of February 15, regulates the Consumer Arbitration System for disputes arising between consumers or users and companies in relation to the legal or contractual rights granted to consumers.

The Arbitration Law allows for the granting of interim measures by the arbitrators. This power does not oust the jurisdiction of the courts under the Civil Procedure Law to grant interim measures while

9. Dispute resolution

a decision is pending in an arbitration proceeding. The jurisdiction of courts and arbitrators to grant interim measures is concurrent, meaning that parties can request interim measures from the arbitral tribunal or from the court, without distinction.

Under the Arbitration Law it is possible to enforce an arbitral award handed down in Spain even where proceedings to set aside the award have already been brought. In this case, a court may only stay the enforcement of the award if the party against whom the award is being enforced posts security for an amount equal to the amount set out in the award, plus any potential damages arising from the delay in enforcement of the award.

The grounds for refusal to recognize or enforce arbitral awards contained in the Arbitration Law are based on the contents of the UNCITRAL Model Law, which in turn is based almost in its entirety on the New York Convention of 1958. Spain has ratified the New York Convention of 1958 and the European Convention on International Commercial Arbitration signed in Geneva on April 21, 1961.

Spain's adherence to a Model Law-inspired arbitration regime makes international arbitration in Spain more accessible for cross-border practitioners and their clients. The Arbitration Law brings Spain ever closer to becoming an ideal venue for international arbitration, particularly where Latin American interests are involved, given Spain's convenient geographical location in southern Europe, its competitive cost structure compared to other European jurisdictions and its linguistic and cultural ties to Latin America.

APPENDIX I

Table 18

TABLE SUMMARIZING THE TAX TREATMENT GIVEN TO THE VARIOUS WAYS OF INVESTING IN SPAIN

Ways of investing in Spain	Tax treatment
Incorporation of a subsidiary Corporation S.A. / Limited liability company S.L.	General corporate income tax rules pursuant to the Corporate Income Tax Law (See Chapter 3, section 2.1 for more detailed information).
Formation of a branch	Nonresident income tax, with permanent establishment (See Chapter 3, section 2.3.1 for more detailed information).
Economic Interest Grouping (E.I.G.), Temporary Business Alliance (U.T.E.) and joint venture	<p>Special rules for economic interest groupings, both Spanish and European, and temporary business alliances. In particular:</p> <ul style="list-style-type: none"> • The part of the tax base attributable to members resident in Spain is not subject to corporate income tax. • The tax bases, tax credits and tax relief and the withholdings and prepayments of E.I.G.s or U.T.E.s are attributed to the resident members. • Dividends distributed to nonresident members of Spanish EIGs or UTEs will be taxed pursuant to the Nonresident Income Tax Law and to the tax treaties signed by Spain. <p>(See Chapter 3, sections 2.1.10 for more detailed information).</p>
Distribution agreement	<p>The tax treatment of nonresidents in Spain who contract with Spanish distributors will depend on whether or not said contracting gives rise to the existence of permanent establishment in Spain for the nonresidents:</p> <ul style="list-style-type: none"> • If a permanent establishment exists, it will be taxed according to the rules on permanent establishments stipulated under the Nonresident Income Tax Law or in the applicable tax treaties (See Chapter 3, section 2.3.1 for more detailed information). • If a permanent establishment does not exist, it will be taxed pursuant to the same legislation, but in connection with taxpayers without a permanent establishment; in general, the income will be characterized as business profits, which are usually exempt where a tax treaty can be applied. (See Chapter 3, section 2.3.2 for more detailed information) <p>Whether or not a permanent establishment exists will depend, in general, on whether the nonresident is deemed to be distributing in Spain through a fixed place of business.</p>

Table 18 (Cont.)

TABLE SUMMARIZING THE TAX TREATMENT GIVEN TO THE VARIOUS WAYS OF INVESTING IN SPAIN

Ways of investing in Spain	Tax treatment
Agency agreement	<p>The tax treatment is similar to that stipulated for distribution agreements. Whether or not a permanent establishment exists will depend, in general, on whether or not the agent has powers to bind the nonresident.</p> <ul style="list-style-type: none"> • Where a permanent establishment exists (See Chapter 3, 2.3.1 for more detailed information). • Where a permanent establishment does not exist, (See Chapter 3, section 2.3.2 for more detailed information).
Commission agency agreement	<p>The tax treatment is similar to that stipulated for distribution and agency agreements. Whether or not a permanent establishment exists will depend, in general, on whether or not the commission agent has powers to bind the nonresident principal.</p> <ul style="list-style-type: none"> • Where a permanent establishment exists (See Chapter 3, section 2.3.1 for more detailed information). • Where a permanent establishment does not exist (See Chapter 3, section 2.3.2 for more detailed information).
Franchising agreement	<p>The payment made by the franchiser to the franchisee may be given the following treatments, depending on the services provided and rights granted:</p> <ul style="list-style-type: none"> • It may be treated in part as a royalty and in part as business profits or • It may be treated only as a royalty. <p>(See Chapter 2, section 7.6 for more detailed information).</p>

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This guide is correct to the best of our knowledge and belief at the date indicated below.
It is, however, written as a general guide, so it is necessary that specific professional advice
be sought before any action is taken.

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