

## SPANISH LEGISLATION FOR BUSINESS START-UP

### COMPANY FORMATION

If you are going to set up your own business it is important to know the type of company you can set up, it is called choosing the legal form of the company.

The law allows a company to organise itself in different ways from a range of possibilities and it will be necessary to decide with which of them our business will work best or which is the one that best suits our needs or circumstances.

Each form has its advantages and disadvantages, and they need to be carefully considered in the light of a number of factors.

The main factors determining the choice of legal form are:

- Type of activity
- Number of owners
- Share capital
- Responsibility
- Social security system
- Requirements for incorporation
- Prospects for growth
- Grants and Aid

Depending on what interests us most about these factors, we will choose one or the other legal form that is permitted by law.

The most common legal forms permitted under Spanish law are summarised in the following table:

## Legal Forms of Constitution

	INDIVIDUAL ENTREPRENEUR	PARTENERSHIP	PUBLIC LIMITED COMPANY (PLC)	LIMITED LIABILITY COMPANY (Ltd)	LABOUR COMPANY (SLL/SAL)	WORKER COOPERATIVE
<b>Nº OF MEMBERS</b>	1	2 or more	1 or more	1 or more	Minimum 3	Minimum 3
<b>CAPITAL</b>	There is no minimum	There is no minimum	Minimum 60,101.21 EUR	Minimum 3,005.06 EUR	SLL: Min. 3.005 EUR SA: Min. 60.101 EUR	2.000 EUR
<b>RESPONSABILITY</b>	Responds with all its present and future assets	Responds with all its present and future assets	Limited to the contribution to society	Limited to the contribution to society	Limited to the contribution to society	Limited to the contribution to the company, unless otherwise provided in the Articles of Association Tax Liabilities
<b>TAX LIABILITIES</b>	Income Tax: <ul style="list-style-type: none"> <li>▪ Normal or simplified direct estimation</li> <li>▪ Objective estimation</li> </ul>	Income Tax: <ul style="list-style-type: none"> <li>▪ Normal or simplified direct estimation</li> <li>▪ Objective estimation</li> </ul>	Corporate Income Tax: <ul style="list-style-type: none"> <li>▪ 25% general</li> <li>▪ 15% for the first two years of profit</li> </ul>	Corporate Income Tax: <ul style="list-style-type: none"> <li>▪ 25% general</li> <li>▪ 15% for the first two years of profit</li> </ul>	Corporate Income Tax: <ul style="list-style-type: none"> <li>▪ 25% general</li> <li>▪ 15% for the first two years of profit</li> </ul>	Corporate Income Tax: <ul style="list-style-type: none"> <li>▪ 20% of profits</li> </ul>
<b>SOCIAL SECURITY SYSTEM</b>	Self-employed	Self-employed	General Regime or Self-employed if they have effective control of the company	General Regime or Self-employed if they have effective control of the company	General Regime or Self-employed if they have effective control of the company	General Regime or Self-employed at the option of the members
<b>GOVERNING AND MANAGEMENT BODIES</b>			<ul style="list-style-type: none"> <li>▪ General Shareholders' Meeting</li> <li>▪ Administrator</li> <li>▪ Board of Directors if more than 2</li> </ul>	<ul style="list-style-type: none"> <li>▪ General Shareholders' Meeting</li> <li>▪ Administrator</li> </ul>	Same as PLC and Ltd	<ul style="list-style-type: none"> <li>▪ General Assembly</li> <li>▪ Governing Council</li> <li>▪ Financial Controllers</li> </ul>

The legal form of LABOUR COMPANIES requires that:

- \* The majority of the share capital must belong to worker shareholders
- \* No partner may hold more than one third of the share capital

In the case of starting an activity such as a POP UP restaurant or a catering service, the legal forms that may be more appropriate are that of individual entrepreneur or partnership (when there are several investors) and the limited liability company.

In these cases, the procedures to follow to start the activity are:

#### REGISTRATION OR REGISTRATION OF THE COMPANY

It is mandatory when carrying out any type of business or professional activity and in order to issue invoices.

- For **individuals** or **individual entrepreneurs**, only the registration in the Census Declaration (form 037) must be made at the Tax Office and when doing this procedure, the code or heading corresponding to the activity to be carried out is chosen.  
In León. Provincial Delegation of the Tax Agency: Gran Vía de San Marcos, 18.
- For individuals who are members of a **partnership**, a public deed of incorporation of the partnership must be carried out in a notary's office prior to their registration with the tax office, although it is not compulsory and can only be done through a private contract between the parties.

Subsequently, the partnership and members are also registered in the Census Declaration (form 037) with the choice of the code or epigraph of the corresponding activity.

It is then necessary to file the declaration of the Tax on Property Transfers and Documented Legal Acts at the Ministry of Finance of the Regional Government of Castilla y León in the event that it is constituted by means of a public deed.

In León. Government of Castilla y León. Edificio de Usos Múltiples. Av. Peregrinos, s/n.

- For **companies** it is compulsory to incorporate the company in public deed before a notary. For this purpose, a negative certification of the name of the company in the Mercantile Registry must be requested beforehand, that is to say, a certification that no other company with the same name exists.  
In León. Provincial Mercantile Register: Cl. El Carmen, 7- 1º  
The company will then be registered and the books will also be legalised in the Commercial Register.

Subsequently, the company is also registered in a Census Declaration (form 036) with the choice of code or epigraph and the corresponding IAE.

It is obligatory to file a tax return on capital transfers and documented legal acts at the Ministry of Finance of the Regional Government of Castile and Leon for the incorporation of the Company in a public deed.

In León. Government of Castilla y León. Edificio de Usos Múltiples. Av. Peregrinos, s/n.

## **SOCIAL SECURITY AND WORKERS**

- When carrying out an activity as a self-employed person on a regular and continuous basis, it is compulsory to register with the Special Regime for Self-Employed Workers (RETA), both self-employed employers and members of a partnership or persons who are members of the companies.

This procedure is free of charge, but after paying the corresponding monthly contribution fee, the amount of which depends on the regulations in force at any given time, there are bonuses for certain groups.

In León. Territorial Social Security Treasury: Cl. Cinco de Octubre, 20.

If the activity is not carried out on a regular and continuous basis, this procedure is not compulsory.

- In any of the above cases, individual employers, members of a partnership or companies, if they hire salaried personnel, must also register the company with the Social Security and will be assigned a contribution account number.

This procedure is also carried out at the Territorial Social Security Treasury: Cl. Cinco de Octubre, 20.

- Likewise, they must register and affiliate (if they are not already registered) the workers hired, also in the Territorial Treasury of Social Security.

- When there are personnel hired by the company, both for individual entrepreneurs and for partnerships or companies, it is mandatory to communicate the Opening of the Work Center and request and stamp the Visit and Inspection Book.

In León, Provincial Directorate of Labour and Labour Inspection. Gran Vía de San Marcos, 27.

- Also in the case of personnel in charge of the company or employee, it is compulsory to register employment contracts with the Employment Offices.

In León. Public Employment Service (ECYL): Av. Ramón y Cajal, 14-16 and Av. José M<sup>a</sup> Fernández, 51.

## **PAYMENT OF TAXES**

If you have chosen the form of individual entrepreneur or partnership you will have to pay **Personal Income Tax (IRPF)** on the income obtained from your activity.

There are different ways to determine the amount to be paid, depending on the activity you carry out:

- Normal or simplified direct estimation regime (model 130)
- Objective estimation regime by signs, indices or modules (model 131)

You will also have to declare the **Value Added Tax (VAT)**, and you must invoice with VAT for the services provided.

Income tax and VAT declarations are made per quarter, in the first 20 days of the month following the end of the quarter (between 1 and 20 April, July and October, and for the last quarter, between 1 and 30 January of the following year).

In the case of companies, corporation tax is paid (25% of profits or 15% for newly created companies during the first 2 years of profits).

Corporate income tax returns are filed from 1 to 25 July of the year following the year in which the activity is carried on.

## **MUNICIPAL OPENING AND ACTIVITY LICENSES**

These licences are compulsory when a premises is opened to the public, and also when refurbishment work is carried out. In both cases, the corresponding fees for:

- Building Permit, if applicable.
- Environmental Licence and Start-up Authorisation (Opening Licence).

The Licenses related to the opening of a premises to the public are made in the Town Planning area of the Town Hall where the premises are located. In any case, the legislation to be considered will be the municipal ordinances of the City Council in which it is located.

If we do not have any premises, this procedure is not necessary. However, if we are going to develop an activity in another space that is not our property, we must ensure that it has the appropriate permits and licenses.

## **SPECIFIC LEGISLATION APPLICABLE TO THIS ACTIVITY**

In the case of an innovative business idea such as a POP UP Restaurant or an external catering firm there is no specific legislation applicable to this type of service.

Only as it is a food handling service, it will be necessary to have a food handler's card. This card can be obtained in training centres approved by the Junta de Castilla y León, by taking the training course and the corresponding exam.

Nor does the legislation require any training and qualifications beyond that required by the client for persons carrying out the activity.

## **INSURANCE**

It is important that when any event is held, the possible risks arising from the activity are covered.

For this reason, although it is not compulsory, a civil liability insurance policy must be arranged at the address or place where the event is held to cover all attendees and the space where it is held in the event of any loss that may occur. It will be convenient to request a quote from different insurance companies and choose the one that is most suitable for us.