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Company and Commercial Law

This Exhibit explains the basic legislative aspects that govern the various vehicles, corporate or otherwise, that can be used by foreign investors in order to operate in Spain. Specifically, the legal requirements that must be observed for both formation (minimum capital and the time at which it must be paid, minimum number of members, requirement to be met by the bylaws, etc.), and the subsequent pursuit of its business (rules governing the adoption of business resolutions, powers of the managing body, the rules on liability of partners and shareholders, etc.).

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Company and Commercial Law

1. Applicable Legislation

Legislative Royal Decree 1/2010, of July 2, 2010, approving the Revised Capital Companies Law (hereinafter, the "**Capital Companies Law**"), constitutes the basic legal text that regulates the various legal forms of capital companies envisaged in Spanish law, *i.e.*, the corporation (*S.A.*), the limited liability company (*S.L.*), the partnership limited by shares, the new limited liability company (*S.L.N.E.*) and the European company (*S.E.*), as well as the main special features of listed corporations.

The Capital Companies Law is supplemented by (i) Royal Decree 1784/1996, of July 19, 1996, approving the Commercial Registry Regulations; (ii) Law 3/2009, of April 3, on Structural Modifications to Commercial Companies, which regulates business restructuring processes under current commercial law practices, including changes in corporate form, mergers, spinoffs, global transfers of assets and liabilities and international transfers of registered offices; (iii) the Royal Decree of August 22, 1885, approving the Commercial Code; and (iv) Law 2/2007 on Professional Services Firms, which regulates the formation of commercial undertakings by members of professional associations (see section 9 of this Annex). These texts constitute the core legislation in the area of Spanish company and commercial law.

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Company and Commercial Law

2. Forms of Business Enterprise

Spanish law envisages various different kinds of business enterprises, all of which can be used by foreign investors.

The most significant are:

- Corporation (*Sociedad Anónima*, abbreviated as "*S.A.*").
- European Public Limited-Liability Company (*Sociedad Anónima Europea*, abbreviated as "*S.E.*"). Possibility offered by EU legislation to companies that operate in various Member States to create a single company capable of operating in the EU in accordance with a single set of rules and a unified management system.
- Limited Liability Company (*Sociedad de Responsabilidad Limitada*, abbreviated as "*S.L.*" or "*S.R.L.*").
- New Limited Liability Company ("*Sociedad Limitada Nueva Empresa*" abbreviated as "*S.L.N.E.*"), a variation on the *S.L.* specially intended for small and medium-sized companies that simplifies the requirements for its formation.
- General Partnership (*Sociedad Regular Colectiva*, abbreviated as "*S.R.C.*" or "*S.C.*").
- Limited Partnership (*Sociedad en Comandita*, abbreviated as "*S. en Com.*" Or "*S. Com.*") or Limited Partnership by Shares (*Sociedad en Comandita por Acciones*, abbreviated as "*S. Com. p. A.*").
- Professional Services Firm ("*Sociedad Profesional*", abbreviated as "*S.P.*")[1], the purpose of which is the common pursuit of an activity regulated by professional association, and which may be formed in accordance with any of the corporate forms legally established under their specific legislative provisions.

The corporation (*S.A.*), which is the archetypal trading company and has traditionally been the most commonly used form, has become less popular and today the limited liability company (*S.L.*) is the most common form of trading company. The reasons for this include the fact that a limited liability company requires less capital than an *S.A.* However, the limited partnership and the general partnership forms are hardly used at all.

Some of the salient features of each of the above corporate forms are summarized below. It should be noted that in many instances the Law provides only minimum standards or general rules. The founders of a company have a great deal of flexibility when it comes to tailoring the structure of the company to their specific needs through the inclusion of certain clauses in the bylaws, for which they should seek the appropriate legal advice.

1 The corporate name of this kind of firm should include, together with the corporate form in question, the expression "Professional" or the abbreviation "P", (for example, *Sociedad anónima profesional* [Professional corporation] or "*S.A.P.*").

3. The Treatment of Liability at the types of Business Enterprises

The following table summarizes the liability regime governing shareholders and partners at the various business enterprises:

CORPORATE FORM	LIABILITY
Corporation (*S.A.*) / Limited Liability Company (*S.L.*)	The liability of the shareholders is generally limited to the amount of the capital stock contributed by each of them. However, in exceptional circumstances, liability may be sought from shareholders in order to protect the interests of third parties. In these exceptional cases, the courts have followed the doctrine of "piercing the corporate veil" (*levantamiento del velo*) as a reaction to misconduct by the shareholders while fraudulently sheltering behind the company's legal personality; in such event, the courts may look behind it and not differentiate between the company's assets and those of each of the shareholders when establishing liability.
General partnership (*S.R.C.*)	Liability is not limited. General partners are personally and jointly and severally liable with the whole of their net worth for the debts of the partnership.
Limited partnership (*S. Com*)	There is at least one general partner and one or more limited partners. General partners are personally and jointly and severally liable with the whole of their net worth for the debts of the partnership. Limited partners are only liable for the amount of capital they contribute or promise to contribute to the partnership. The capital of limited partnerships may be divided into shares.
Professional services firm (*S.P.*)	The professional members will be jointly and severally liable with the firm for its professional acts, and they will be subject to such general rules on contractual and noncontractual liability as may apply.

Notwithstanding the above, Organic Law 5/2010, of June 22, 2010, amending Organic Law 10/1995, of November 23, 1995, on the Criminal Code, introduced into Spanish law the criminal liability of legal entities in certain activities and cases (among others, for example, trafficking in human beings, discovery and disclosure of secrets, fraud, criminal insolvency, damage to others' property, offenses against intellectual and industrial property, the market and consumers, concealment of criminal property and money laundering, money laundering offenses against the tax and social security authorities, foreign citizens' rights, offenses against zoning and urban planning, offenses against natural resources and the environment, bribery, influence peddling or corruption in international commercial transactions).

4. Main Characteristics of Corporations and Limited Liability Companies

This section summarizes some of the major substantive aspects that commonly interest foreign investors with respect to the most widely used forms of business entity in Spain, the *S.A.* and the *S.L.*

4.1 MAIN DIFFERENCES BETWEEN CORPORATIONS AND LIMITED LIABILITY COMPANIES

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

	S.A.	*S.L.*
Minimum capital stock	€60,000.	€3,000[2].
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[3]. The value stated in the deed recording the contribution may in no case be higher than the valuation performed by the expert. In the case of monetary contributions, their actual existence must be evidenced to the authorizing notary by means of a certificate of deposit at the credit institution of the corresponding amounts in the name of the company or entity.	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.

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2 Except in the case of the entrepreneurial limited liability company, the rules for which are described in section 4.2 below.

3 The expert report is not required, but the substitute report from the directors is required in the following cases:
a) Contribution of transferable securities that are listed on an official secondary market or on another regulated market or in money market instruments, in which case they will be valued at the weighted average price on one or more regulated markets in the last quarter preceding the date on which the contribution was actually made, with the certificate issued by the relevant governing company.
b) Contribution of assets other than those indicated in letter a) above the fair value of which has been determined, within the 6 months preceding the date on which the contribution was actually made, by an independent expert not appointed by the parties.
c) Where in the formation of a new company by merger or spin-off a report has been prepared by an independent expert on the merger or spin-off plan.
d) Where the increase in share capital is carried out to deliver the new *S.A.* or *S.L.* shares to the shareholders of the absorbed or spun-off company and a report has been prepared by an independent expert on the merger or spin-off plan.
e) Where the increase in share capital is carried out to deliver the new *S.A.* shares to the shareholders of the company that is the target of a tender offer.

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	S.A.	*S.L.*
Shares	They are marketable securities. Debentures and other securities can be issued.	They are not marketable securities. Debentures and other securities can 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, spouse, 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, it must be in Spain). Otherwise, in the municipality where the company has its registered office.	
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 by laws.	Different majorities are established depending on the content of the resolutions. These can be increased by the by laws.
Right to attend shareholders' meetings	A minimum number of shares may be required to attend the shareholders' meeting.	This right 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 (4 years at listed companies). 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. Bonds convertible into shares can be issued and guaranteed.	Bond issues can be used as a way of raising funds, although such issues cannot, in total, amount to more than twice the company's equity, unless the issue is secured by a mortgage, a pledge of securities, a government guarantee or a joint and several guarantee provided by a credit institution. If the issue is secured by a joint and several guarantee provided by a mutual guarantee society, the limit and other terms of the guarantee will depend on the guarantee capacity of such society at the time of providing it, in accordance with the specific rules applicable to it. Bonds convertible into *S.L.* shares can be neither issued nor guaranteed.

4.2 FORMATION AND CAPITAL STOCK

	S.A.	*S.L.*
Minimum capital stock	€60,000, fully subscribed and at least 25% of the par value of the shares paid in[4].	€3,000, fully subscribed and paid in (except in the case of the entrepreneurial limited liability company for which the law permits lower capital stock).
Debt ratios	There are currently no mandatory minimum debt-equity ratios under Spanish law for any type of business enterprise. **However, there is a limitation on the deductibility of finance costs for tax purposes** (see Chapter 3, section 2.). Moreover, certain legal requirements may be applicable to companies operating in regulated sectors.	
Special rules on mandatory winding up or capital reduction	There must be a certain balance between the capital stock and the net worth of a company, meaning that if losses incurred reduce the net worth to less than one-half of the capital stock figure, the company will be subject to mandatory grounds for dissolution (article 363.1 of the Capital Companies Law), unless the capital stock is sufficiently increased (or reduced) and, as from September 1, 2004, provided that it is not necessary to petition for insolvency pursuant to Insolvency Law 22/2003, of July 9, 2003.	
	Capital must be reduced at a corporation where losses have reduced the net worth of the corporation to less than two-thirds of its capital stock figure and one fiscal year has elapsed without its net worth having been restored (article 327 of the Capital Companies Law).	
Number of shareholders	• No minimum number of shareholders is required by Spanish law to incorporate a company, although sole shareholder companies are subject to a special system of disclosure. • Shareholders can be individuals or companies of any nationality and residence.	

As an exception to the general rule of minimum capital of €3,000 that applies to limited liability companies, Law 14/2013, of September 27, 2013, on support to entrepreneurs and their internationalization (the "**Entrepreneurs Law**") amended the Capital Companies Law to regulate the concept of the "Entrepreneurial Limited Liability Company", which can have capital lower than €3,000 subject to the following requirements:

NO.	REQUIREMENTS
1	**Continued submission to the entrepreneurial limited liability company regime** • In the bylaws. • The Commercial Registrar will automatically state this circumstance in the clearance notes for any registrable documents and any certificates that are issued.
2	**Legal reserve:** At least 20% of the income for the year must be allocated to the reserve without any limit on the amount.
3	**Distribution of dividends:** Once the legal and bylaw reserves have been covered, dividends may be distributed to the shareholders only if the net worth is not or, as a result of the distribution, does not become, lower than 60% of the minimum legal capital.
4	**Compensation to shareholders and directors:** The sum of the compensation paid to the shareholders and directors for discharging such offices may not exceed 20% of the net worth for the year in question, notwithstanding the compensation to which they may be entitled as self-employed workers or for the provision of professional services.
5	**Liquidation:** In the case of voluntary or mandatory liquidation, if the net worth of the company is insufficient to pay its obligations, the shareholders and directors of the company will be jointly and severally liable for the payment of the minimum capital figure stipulated in the Capital Companies Law.
6	**Substantiation of monetary contributions:** It will not be necessary to substantiate the existence of the monetary contributions from the shareholders when forming entrepreneurial limited liability companies, as the founders and those who acquire the shares subscribed in the formation will be jointly and severally liable to the company and its creditors for the existence of such contributions.

4 Nonetheless, bear in mind that:

- When the capital stock is not fully paid in, the bylaws must state the manner and time period for the payment of the remaining portion of subscribed capital. No maximum time period for payment of outstanding capital by contributions in cash is stated in the Law but five years is the maximum term for full payment of contributions in kind.
- The specific regulations governing certain activities (banking, insurance, etc.) may require that the minimum amount under the Capital Companies Law be exceeded.

4.2.1 Formalities for formation

The shareholders (or their representatives) must appear before a notary in order to execute the public deed of formation of a corporation or limited liability company. Subsequently, the deed of formation must be registered at the Commercial Registry. Upon registration, the company acquires legal personality and legal capacity[5].

4.2.2 Contracts made in the corporation's name prior to registration

The formation of an *S.A.* is a two-step process involving, as noted, execution of a public deed before a notary and registration at the Commercial Registry. It is only after registration of the public deed of formation that the corporation acquires legal personality and legal capacity. Persons who enter into contracts for and on behalf of the corporation prior to its registration are jointly and severally liable for their performance, unless such performance was made conditional on the corporation's registration and, if applicable, on later assumption by the corporation of compliance with their terms. Contracts made in the corporation's name and on its behalf may generally be ratified by the corporation prior to its registration at the Commercial Registry or within three months of registration.

However, a corporation in the process of formation and its shareholders (but not its directors or representatives) are liable, up to the limit of the amount they have undertaken to contribute, for the following types of contract prior to registration:

- Contracts that are essential for registration of the company.
- Contracts entered into by the directors within the scope of the powers granted to them in the pre-registration stage.
- Contracts entered into by virtue of a specific mandate granted by all the shareholders.

Upon registration, the corporation becomes bound by the foregoing acts and contracts.

In these cases, and if the corporation ratifies acts performed prior to its registration within three months of the date of registration, the joint and several liability of the shareholders, directors or representatives lapses.

Moreover, it should be noted that directors will be deemed to have authority to fully pursue the corporate purpose and to perform and make all kinds of acts and contracts if the date of commencement of the company's operations coincides with the date of execution of the deed of formation.

4.2.3 Acquisitions following the registration of a corporation at the Commercial Registry

In the case of corporations, in the two years following its formation, the shareholders' meeting must grant its prior approval for acquisitions of assets for consideration involving amounts in excess of 10% of the capital stock, unless such acquisitions are within the ordinary scope of business of the corporation or the purchase is made on a stock exchange or by public auction. Where prior approval of the shareholders' meeting is required, the following are basically necessary:

- Issuance of a report prepared by the directors.
- An independent valuation by the expert appointed by the Commercial Registry.

5 Moreover, there is an alternative little-used procedure for formation called "successive formation", consisting of a public offering to subscribe shares prior to execution of the deed of formation. To this end, means such as advertising or financial intermediaries may be used.

4.3 COMPANY BYLAWS

An *S.L.* and an *S.A.* are governed by the Capital Companies Law and by their bylaws. The bylaws should therefore be drafted in accordance with the requirements of the above law and must at least include reference to:

MANDATORY REFERENCES	
Corporate name	The corporate name must be included.
Corporate purpose	This should be stated in a concrete and precise manner, since: • It serves to establish the general framework for the activities of the company. • The completion of the stated purpose automatically leads to the dissolution of the company, unless the bylaws provide for an indefinite duration. If the corporate purpose is modified in such a way as to be entirely different, any dissenting shareholders and non-voting shareholders can withdraw from the company and are entitled to be reimbursed for their shares.
Registered office	Must be located in Spain.
Capital stock	Must indicate the capital stock, the shares into which it is divided, their par value and their sequential numbering. In the case of a limited liability company, the bylaws must state, if they are unequal, the rights that each share confers on the shareholders, and the amount or scope of such rights. In the case of a corporation, the bylaws must state the classes of shares and the series, if any; the portion of the par value not yet paid in and the method and deadline for paying it in; and if the shares are represented by certificates or book entries. If they are represented by certificates, it will be necessary to state if they are registered or bearer shares and if the issuance of certificates representing more than one share is envisaged. In the case of the entrepreneurial limited liability company, the bylaws must state this circumstance (see section 4.2 above).
Managing body	The management of the company can be entrusted to a sole director, a number of directors acting severally or jointly or a board of directors. The bylaws may establish different means of organizing the management, giving the shareholders' meeting authority to choose between any of them without the need to amend the bylaws. The bylaws must also indicate the number of directors or, at least, the maximum and minimum number, the term of office and the compensation system, if any. In the case of collective management bodies, the procedures for debating matters and adopting resolution must be specified.

Additionally, the public deed of formation, which includes the bylaws, may contain such agreements and covenants as the founders may deem fit, provided that they do not contravene any law or the fundamental principles that govern companies. Thus, the bylaws may include, inter alia, the following aspects:

- Duration of the company. The bylaws will ordinarily stipulate that the duration is indefinite in order to avoid triggering automatic dissolution.
- The date on which activities commence, which cannot be earlier than the date of execution of the public deed of formation (except in cases of re-registration).
- Restrictions, if any, on share transfers and the grounds for removal of any of the shareholders.
- Ancillary obligations, if any. If ancillary obligations are created, the bylaws must state the content of such obligations, whether or not they are remunerated, and the penalties, if any, for a breach thereof.
- The fiscal year-end. Where not expressly indicated, the company's fiscal year will be understood to end on December 31. The fiscal year may not exceed twelve months.
- Special rights reserved to founders or promoters, if any.

The power to amend the bylaws lies with the shareholders' meeting. As an exception and a new option introduced by Royal Decree-Law 15/2017, of October, 2017, on urgent measures for the mobility of economic operators within the national territory, the managing body will have the power to relocate the registered office within the national territory, unless stated otherwise in the bylaws (art. 285 *LSC*).

4.4 TYPES OF SHARES

4.4.1 Types of shares at a corporation

A distinction can be made between the following share categories:

Registered vs. bearer shares	The shares of an *S.A.* can be registered shares (the holder is the person designated in the certificate) or bearer shares (the holder is the bearer of the certificate). However, the shares must be registered in the following cases: • If they are not fully paid in. • If their transferability is subject to restrictions. • If they are subject to ancillary obligations (see below). • When so required by special regulations (*e.g.* shares of banks and insurance companies).
Common vs. preferred stock	Preferred stock may be created as a separate class or classes pursuant to the same procedural formalities applicable to bylaw amendments (*i.e. quorum* and voting requirements and method of calling the shareholders' meeting), and may include shares entitled to a preferential dividend. In any event, issues of shares will not be valid in the following cases: • Shares remunerated in the form of interest. • Shares which directly or indirectly alter the proportionality between their par value and voting rights or the existing shareholders' preferential right to subscribe new shares in capital increases. Specific regulations on the issuance of preferred stock differ according to whether or not a company is listed on a stock exchange. In the case of *listed companies*, the following obligations are established: • Where the privilege consists of the right to obtain a preferential dividend, when distributable profits exist the company is obliged to distribute such preferential dividend. • The company bylaws must establish the consequences of any failure to pay some or all of the preferential dividend, whether or not it is cumulative as regards unpaid dividends, and the possible rights of holders of privileged shares in connection with any dividends to which the ordinary shares may be entitled. • Higher ranking is provided for shareholders owning privileged shares, since collection of dividends by ordinary shares against the profits of one fiscal year is strictly prohibited until the preferential dividend for the same fiscal year has been paid. In the case of *non-listed companies*, a more flexible system is in place, since there are no mandatory statutory rules making specific regulations in the bylaws obligatory. Nevertheless, the company is obliged to declare a dividend whenever distributable profits exist, unless otherwise provided for in its bylaws.

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Shares issued with a premium	Shares may be issued with a premium payable to the company above their par value. In such cases the premium must be fully paid in upon subscription of the shares.
Non-voting stock	Non-voting stock may be issued for a total par value that does not exceed one-half of the total paid-in capital. The special rights attached to non-voting stock are as follows: • **Minimum annual dividend**. The minimum annual dividend shall be set by the bylaws as a percentage of the paid-in capital corresponding to each non-voting share. The minimum annual dividend and ordinary dividends are cumulative for a period of five years in the case of non-listed companies. In the case of listed companies this period will be indefinite. Accordingly, non-voting shares also participate in company profits proportionately with the other shares if an ordinary dividend is distributed. • **Preferential rights in liquidation.** In the event of liquidation of the company, non-voting shareholders rank above common shareholders with respect to their right to obtain reimbursement of the paid-in portion of their shares. • **Capital reduction**. If capital is reduced to offset losses, the reduction must first be applied against all other classes of stock before it can affect non-voting stock. • **Shareholder rights**. Non-voting stock has the same basic rights as common stock except for the right to vote at shareholders' meetings (see description of basic shareholder rights below). However, under certain exceptional circumstances, holders of non-voting shares may acquire a transitional right to vote at shareholders' meetings. Two examples follow: • Non-voting shareholders acquire the right to vote if the minimum annual dividend is not distributed. • If, due to a capital reduction, all common shares are redeemed, then non-voting stock becomes voting stock until such time as equilibrium is restored between voting and non-voting stock (*i.e.* new common shares are issued in sufficient number so that the total par value of non-voting stock does not exceed one-half of the total paid-in capital). If equilibrium is not restored within two years, the company is subject to mandatory dissolution.
Redeemable shares	Redeemable shares are a type of preferred shares at listed companies, subject at all times to various terms and conditions. Redeemable shares are those whose redemption or full or partial purchase by the issuer or by third parties is fixed in time or released at the discretion of the shareholder, according to the conditions of the issue; or those whose redemption or full or partial purchase by the issuer or by third parties is undertaken in any other manner, excluding that detailed above.
Shares with ancillary obligations	An ancillary obligation is an obligation to perform or refrain from performing certain acts. Ancillary obligations do not form part of the capital stock of the company. The shares of an *S.A.* can only be paid for with money or assets and not with work or services. The ancillary obligation is a device whereby the work, services or other obligations of individual shareholders can be tied to the corporation.

4.4.2 Share certificates

In general, shares of an *S.A.* may either be issued physically as certificates or recorded by a book-entry system. The conditions for recording shares under a book-entry system and the regulations governing this system are set out in the Revised Securities Market Law (Legislative Royal Decree 4/2015, of October 23, approving the Revised Securities Market Law), and its various legislative amendments.

4.5 BASIC RIGHTS OF CORPORATION AND LIMITED LIABILITY COMPANY SHAREHOLDERS

The basic rights of shareholders are as follows:

- Right to share in corporate earnings and assets upon liquidation.
- Preferential right to subscribe new shares or convertible bond issues.
- Right to attend shareholders' meetings. At limited liability companies, the bylaws cannot require a minimum number of shares in order to attend meetings. Nonetheless, in the case of corporations, the bylaws may require that a minimum number of shares (regardless of their class or series) be held with respect to all of the shares in order to attend shareholders' meetings, however the number required may not exceed one thousandth of the capital stock under any circumstances.
- Right to attend and vote at shareholders' meetings (except non-voting stock) and to challenge corporate resolutions.
- Right to obtain information about the company's affairs.
- Right of withdrawal: apart from in the cases established by the bylaws and in the cases of change of corporate form of the company or of relocation of the registered office, shareholders who have not voted for the relevant resolu-

tion, including shareholders without a vote, will be entitled to withdraw from the company in the following cases:

- Replacement or material modification of the corporate purpose.
- Extension or reactivation of the company.
- Creation, modification or early termination of the requirement to perform ancillary obligations, unless provided otherwise in the bylaws.
- Amendment of the rules on transferring shares in the case of limited liability companies.
- In the event of a failure to distribute dividends, unless provided otherwise in the bylaws. Following the amendment introduced on December 30, 2018, article 348 bis of the Capital Companies Law establishes a right of withdrawal for shareholders of limited liability companies or corporations (except for (i) listed companies, companies whose shares are admitted to trading on a multilateral trading facility, (ii) companies in situations of insolvency or pre-insolvency, and (iii) sports corporations) in the event of a failure to distribute dividends once the fifth fiscal year since the company was registered at the Commercial Registry has elapsed.

The requirements for shareholders to be able to exercise this right of withdrawal (within one month after the shareholders' meeting was held) are as follows:

- The shareholder's protest due to the insufficiency of dividends recognized must be recorded in the certificate of distribution of income.
- The shareholders' meeting must not approve the distribution as a dividend of a least twenty-five percent of the income obtained in the preceding year where such income is legally distributable, provided that the company has not obtained income in the past three fiscal years.
- The total amount of dividends distributed in the past five years must be less than twenty-five percent of the legally distributable income recorded in that period.

Also, even if the above requirements are not met, this right of withdrawal is granted to the shareholder of the parent company of the group where the company in question is required to prepare consolidated financial statements, where: (i) the shareholders of the company do not approve the distribution as a dividend of at least twenty-five percent of the consolidated income attributed to the parent company in the prior year, provided that it is legally distributable; and (ii) consolidated income attributed to the parent company has been obtained in the past three fiscal years.

4.6 GOVERNING BODIES

The governing bodies of a company (a limited liability company or a corporation) are the shareholders' meeting and the directors (who may or may not be organized as a board of directors, as explained below).

4.6.1 Shareholders' meetings

The shareholders' meeting is the supreme governing body of an *S.A.* or *S.L.*

The following table sets out the main aspects and characteristics of shareholders' meetings:

SHAREHOLDERS' MEETING	
Types	**Ordinary**: An ordinary shareholders' meeting may be held as and when stipulated by the bylaws, provided it takes place within the first six months of the financial year, in order to review the management's conduct of the business and to approve, if appropriate, the financial statements of the prior year and the proposed distribution of profit. If the ordinary shareholders' meeting is not held within the legal term, it may be called, at the request of any shareholder and subject to a prior meeting with the directors, by the Court Clerk or the Commercial Registrar pertaining to the registered office.
	Special: Any meeting of the shareholders other than an ordinary meeting is a special shareholders' meeting. A special shareholders' meeting may be called: • By the company's directors if and when they consider it in the company's interests to do so. • By the company's directors when requested to do so by shareholders representing at least 5% of capital stock. In this case, the directors must call the meeting so requested to be held within two months of the date of the notarial notification in such connection. • By a court if the directors disregard the notification referred to above.
Venue	Unless established otherwise in the bylaws, both ordinary and special shareholders' meetings must be held in the municipality in which the company has its registered office (Spanish corporations must be domiciled in Spain).
Meeting call	• The formal requirements for calling a meeting, which relate to publicity and advance notice, are the same for ordinary and special meetings. • Shareholders' meetings must be called by way of an announcement published on the website of the company where it has been created, registered and published on the terms provided for in the Capital Companies Law. Where the company has not resolved on the creation of its website or the website is not yet duly registered and live, the call must be published in the Official Commercial Registry Gazette and one of the large circulation newspapers of the province in which its registered office is located. • As an alternative to the call methods detailed in the preceding paragraph, the bylaws of corporations and limited liability companies with registered shares may provide for calls to be made by any form of individual, written notice ensuring the receipt of the notice by all of the shareholders at the address designated for such purpose or that recorded in the company documentation. In the case of shareholders residing abroad, the bylaws may provide that they will only be individually called if they have designated an address for notifications in Spain.
Universal shareholders' meetings	Regardless of the type of shareholders' meeting (ordinary or special), the formal call requirements need not be followed if shareholders representing one hundred percent of the capital stock are present and unanimously agree to hold a shareholders' meeting. Such meetings are called universal shareholders' meetings.
***Quorum* for meetings to be deemed to have been validly convened**	***S.L.***: One third of the votes corresponding to the shares into which the capital stock is divided.

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SHAREHOLDERS' MEETING

Quorum for meetings to be deemed to have been validly convened	*S.A.*	**On 1st call:** • **General rule**: Where the attendees represent at least 25% of the voting capital stock (the bylaws may provide for a higher percentage). • **Special resolutions**: In order to validly resolve on a capital increase or reduction or any other amendment to the company bylaws, the issue of debentures, the elimination or limitation of preemptive acquisition rights over new shares, as well as re-registrations, mergers, spin-offs and the global transfer of assets and liabilities or the relocation of the registered office abroad, the shareholders present in person or by proxy must represent at least 50% of the subscribed voting capital stock. **On 2nd call (due to the absence of sufficient _quorum_ on 1st call)**: • **General rule**: The meeting will be deemed to have been validly convened regardless of the percentage of the capital stock present or represented. • **Special resolutions**: In order to validly resolve on a capital increase or reduction or any other amendment to the company bylaws, the issue of debentures, the elimination or limitation of preemptive acquisition rights over new shares, as well as re-registrations, mergers, spin-offs and the global transfer of assets and liabilities or the relocation of the registered office abroad, the shareholders present in person or by proxy must represent at least 25% of the subscribed voting capital stock. • The company bylaws may provide for special requirements for meeting calls and _quorums_ that may not be less than those required by the Capital Companies Law (those described above) under any circumstances.
Majorities for the adoption of resolutions	*S.L.*	• **General rule**: a majority of the votes validly cast where they represent at least one-third of the votes under the shares into which the capital stock is divided (blank votes do not count). • **Qualified majorities**: • A capital increase or reduction and any other amendment to the company bylaws will require the affirmative vote of at least one half of the votes corresponding to the shares into which the capital stock is divided. • Authorization so that directors may pursue, for their own account or the account of others, the same, similar or supplementary types of activities as those under the corporate purpose; the elimination or limitation of preemptive rights under capital increases; re-registrations, mergers, spin-offs, global transfers of assets and liabilities and relocations of the registered office abroad and the removal of shareholders will require the affirmative vote of at least two-thirds of the votes corresponding to the shares into which the capital stock is divided. • In addition to the proportion of votes established by the law and the bylaws, the bylaws may require the affirmative vote of a certain number of shareholders, higher than the number established by the law, without reaching unanimity.
	S.A.	• **General rule**: a simple majority (more votes in favor than against) of the votes of the shareholders present in person or by proxy. • **Qualified majorities**: a capital increase or reduction and any other amendment to the company bylaws, the issue of debentures; the elimination or limitation of the right to acquire new shares; re-registrations, mergers, spin-offs, global transfers of assets and liabilities and relocations of the registered office abroad, and the removal of shareholders: where the capital stock present in person or by proxy exceeds 5%, it will be sufficient for the resolution to be adopted by an absolute majority. However, the affirmative vote of at least two-thirds of the capital stock present in person or by proxy at the shareholders' meeting will be required where, on second call, shareholders are present that represent twenty-five percent or more of the subscribed voting capital stock but less than fifty percent. • The company bylaws may increase the above majorities.
Proxies	*S.L.*	• Shareholders may only be represented at shareholders' meetings by their spouse, ascendants or descendants, by another shareholder or by a person with general powers conferred in a public document with authority to manage all of the assets owned by the principal in the country. • The bylaws may authorize representation by other persons. • Representative authority must be conferred in writing. Where not recorded in a public document, it must be specially conferred for each shareholders' meeting. • The representative authority will relate to all of the shares held by the represented shareholder.
	S.A.	• All shareholders entitled to attend may be represented at the shareholders' meeting by another person, even where such person is not a shareholder, unless otherwise provided for in the bylaws. • Representative authority must be conferred in writing or by a means of distance communication that meets the requirements established by the law for the exercise of distance voting rights and on a special basis for each shareholders' meeting.

4.6.2 Managing body

An *S.A.'s* executive managing body is its director or directors, who need not be Spanish citizens. However, the directors (individuals or legal entities) will need to obtain a taxpayer identification number (*N.I.F.*) or foreigner identity number (*N.I.E.*) (for more information, see section 3 of Chapter 2).

The board of directors represents the company in dealings with third parties in all acts within the scope of its corporate purpose. The company is bound to any third parties who have acted in good faith and without serious negligence, even with respect to acts outside the scope of its corporate purpose as registered at the Commercial Registry. Any limitation on the representative powers of the managing body, even if registered at the Commercial Registry, is not binding on third parties.

The management may be entrusted to:

- A sole director.
- Several directors acting on a several or joint basis.
- A board of directors. Resolutions may be validly adopted in writing and without holding a meeting, provided certain requirements are met.

The bylaws may establish different means of organizing the management, granting the shareholders' meeting authority to choose between any of them without the need to amend the bylaws.

Where there is a board of directors, it must comprise (i) in the case of limited liability companies, a minimum of three and a maximum of twelve members; and (ii) in the case of corporations, a minimum of three members, with no maximum statutory limit whatsoever.

A director is normally not required to be a shareholder unless the bylaws expressly provide otherwise.

Directors are appointed by the shareholders' meeting.

Appointment as a director becomes legally effective when accepted by the appointee and must be registered at the Commercial Registry within a stipulated period of time.

The term of office of directors is expressed in the bylaws. In the case of limited liability companies, the term may be indefinite, while in the case of corporations it may not exceed six years (four years in the case of listed companies), and directors may be reelected for one or more additional periods of not more than six years (or four years, in the case of listed companies). The term of office must be the same for the board members.

The shareholders' meeting can freely dismiss the directors at any time.

The following paragraphs refer to some special features of a board of directors:

BOARD OF DIRECTORS	
Powers	The board may delegate its functions to one or more managing directors or to an executive committee of board members, except for the following powers which may not be delegated in any circumstances: a. The power to supervise the effective functioning of any committees which it may have formed and the actions of delegated bodies and of any senior management personnel it has appointed. b. To determine the company's general policies and strategies. c. To authorize or discharge obligations deriving from the duty of loyalty incumbent upon directors. d. Its own organization and functioning. e. To prepare the financial statements and present them to the general meeting. f. To prepare any kind of report which the managing body is required to issued by law, whenever the transaction to which the report refers is one which cannot be delegated. g. To appoint and remove the company's managing directors and establish the terms and conditions of their contracts. h. To appoint and remove senior management personnel who report directly to the board or to any of its members, and establish the basic terms and conditions of their contracts, including compensation. i. To reach decisions with respect to directors' compensation, within the framework of the bylaws and, where appropriate, of the compensation policy approved by the general meeting. j. To call the general meeting and draw up the agenda and resolution proposals. k. To determine the policy with respect to treasury stock shares. l. Any powers delegated to the board of directors by the general meeting, unless the board has been expressly authorized to sub-delegate them.
Adoption of resolutions by the board	The *quorum* for a board meeting is the presence, either in person or by proxy, of one-half plus one of the board members.
Majorities for the adoption for resolutions	• Generally, by an absolute majority of the directors attending (in person or by proxy). • Exceptionally, for permanent delegation of board powers, by the affirmative vote of two-thirds of the board's members; such delegation is not legally valid until it has been registered at the Commercial Registry.
Liability of directors	Directors are must comply with the duty of diligent administration, faithful defense of the corporate interests, loyalty and secrecy. Directors are liable to the company, its shareholders and its creditors for damage caused by acts that are illegal, contrary to the bylaws or carried out in breach of the duties specific to the office. In such cases, all directors are jointly and severally liable. A director can only be released from liability if he/she proves that he/she did not participate in the adoption or execution of the resolution and that he/she was unaware of the existence of the harmful act or, if he/she was aware of it, did everything reasonably possible to mitigate it or at least expressly opposed the resolution giving rise to the harm.
Powers of attorney	In addition to the powers vested in the board of directors, general powers of attorney may be conferred upon any person, whether or not a director, in which case they must be documented in a public deed of power of attorney registered at the Commercial Registry.
Meetings	The board must meet at least once a quarter; that is, four times a year.

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BOARD OF DIRECTORS	
Contract with managing director or director assigned executive functions	Where a member of the board of directors is appointed as managing director or assigned executive functions by virtue of any other title, a contract must be entered into between the board member concerned and the company, with such contract having been approved beforehand by the board of directors with the affirmative vote of two thirds of its members. The board member in question must refrain from attending the deliberations and participating in the voting. The contract approved must be attached as an exhibit to the minutes of the meeting. The contract must indicate all items for which compensation may be received for the performance of executive functions, including, where appropriate, potential severance for early removal from such functions and amounts payable by the company in the form of insurance premiums or contributions to savings plans. The board member may not receive any other compensation for the performance of executive functions which is not envisaged in his/her contract.
Compensation	As a general rule, the office of director is not compensated, unless the bylaws establish otherwise, in which case the bylaws must stipulate the compensation system to be applied, determining the compensation item or items payable. These may consist, among others, of the following: a fixed allocation; per diems; a share in profits; variable compensation based on reference parameters or indicators of a general nature; compensation in shares or linked to share performance; severance for removal, provided that the removal is not due to a breach of directorial duties; or contributions to such saving or welfare plans as may be deemed appropriate. The maximum annual compensation payable to the directors overall must be approved by the general meeting, with such limit remaining in force until its amendment is approved. Unless otherwise determined by the general meeting, the distribution of such compensation among the directors is to be established by agreement among them. The compensation paid is nevertheless required to be reasonable and proportionate taking into consideration the company's importance, its economic situation at any given time, and market standards among comparable companies. It should be geared towards promoting the company's longterm profitability and sustainability, while incorporating such safeguards as may be necessary to avoid excessive risk-taking and poor results.

4.6.3 Requirements for the adoption of resolutions at shareholders' and board meetings

The legal or bylaw requirements for the exercise of certain rights and the adoption of resolutions at both shareholders' and board meetings of *S.A.s* and *S.L.s* are as follows:

CORPORATIONS		CAPITAL COMPANIES LAW	LIMITED LIABILITY COMPANIES	
ARTICLE OF THE CAPITAL COMPANIES LAW	**MINIMUM STAKE REQUIRED**	**MINORITY SHAREHOLDERS' RIGHTS AT AN *S.A.* OR *S.L.***	**MINIMUM STAKE REQUIRED**	**ARTICLE OF THE CAPITAL COMPANIES LAW**
A) COMMON GENERAL ASPECTS:				
Art. 203	1%	Right to request the presence of a notary to record the minutes of the shareholders' meeting.	5%	Art. 203
Art. 168	5%	Right to request the calling of a shareholders' meeting.	5%	Art. 168

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CORPORATIONS		CAPITAL COMPANIES LAW	LIMITED LIABILITY COMPANIES	
ARTICLE OF THE CAPITAL COMPANIES LAW	**MINIMUM STAKE REQUIRED**	**MINORITY SHAREHOLDERS' RIGHTS AT AN *S.A.* OR *S.L.***	**MINIMUM STAKE REQUIRED**	**ARTICLE OF THE CAPITAL COMPANIES LAW**
Art. 238.2	5%	Right to oppose a waiver of an action for liability against directors.	5%	Art. 238.2
Art. 239	5%	Right to file an action for liability of directors if such claim has not been filed by the company itself.	5%	Art. 239
Art. 251	1%	Right to contest any resolution adopted by the board of directors.	1%	Art. 251
Art. 265.2	5%	Right to request that the Commercial Registry appoint an auditor.	5%	Art. 265.2
Art. 381	5%	Right to request that the Commercial Court appoint a receiver to monitor the liquidation process.	Not Regulated	
Art. 266	5%	Right to request that the Commercial Court revoke the appointment of an auditor.	5%	Art. 266
Art. 197	25%	Right to request the information deemed appropriate for the holding of shareholders' meetings (which cannot be refused by the directors).	25%	Art. 197
Art. 172	5%	Right to request an addition to the notice calling a shareholders' meeting in order to include one or more items on the agenda.	Not Regulated	
B) THE *QUORUMS* OF ATTENDANCE AND MAJORITIES REQUIRED TO ADOPT RESOLUTIONS AT SHAREHOLDERS' AND BOARD MEETINGS OF CORPORATIONS ARE AS FOLLOWS:				
Art. 193.1	25%	*Quorum* on first call for shareholders' meetings. No *quorum* is required on second call. In any event, a simple majority is required for the adoption of resolutions.		
Art. 194.1	50%	*Quorum* on first call for meetings in special circumstances, such as issuance of debentures, increase or reduction of capital, re-registration, merger, spin-off or any other amendment of the bylaws.		
Art. 194.2	25%	*Quorum* on second call for meetings in special circumstances, such as issuance of debentures, increase or reduction of capital, re-registration, merger, spin-off or any other amendment of the bylaws. If shareholders representing less than 50% of the subscribed voting capital are present at such meetings, a 2/3 majority of the capital present or represented is required for the adoption of resolutions.		

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CORPORATIONS		CAPITAL COMPANIES LAW	LIMITED LIABILITY COMPANIES	
ARTICLE OF THE CAPITAL COMPANIES LAW	**MINIMUM STAKE REQUIRED**	**MINORITY SHAREHOLDERS' RIGHTS AT AN *S.A.* OR *S.L.***	**MINIMUM STAKE REQUIRED**	**ARTICLE OF THE CAPITAL COMPANIES LAW**
Art. 248	≥ 50%	Required majority of votes cast by members present or represented for the adoption of resolutions by the board of directors.		
Art. 249.3	66%	Required majority of votes cast by members of the board of directors present or represented for the permanent delegation of authority to the Executive Committee or in the managing director.		
C) THE *QUORUMS* AND VOTING MAJORITIES REQUIRED FOR THE ADOPTION OF RESOLUTIONS AT SHAREHOLDERS' AND BOARD MEETINGS OF LIMITED LIABILITY COMPANIES ARE AS FOLLOWS:				
Art. 198	33%	*Quorum* for meetings the agenda of which includes resolutions not listed in Article 199.a) or 199.b). In any event, a simple majority of the votes cast is required, provided that it represents least one-third of the votes under the shares into which the capital is divided.		
Art. 199.a)	≥ 50%	Required majority of votes for resolutions to increase or reduce capital or to amend the bylaws in any way.		
Art. 199.b)	≥ 66%	Required majority of votes for resolutions such as re-registration, merger, spin-off, removal of members, etc.		
Art. 245.1		Majority of votes required in the bylaws.		
Art. 249.3	≥ 66%	Required majority of votes cast by members of the board of directors present or represented for the delegation of authority to the Executive Committee or the managing director.		

AI Company and Commercial Law

5. European Public Limited-Liability Company (*S.E.*)

Regulation (EC) no. 2157/2001, of October 8, 2001, approving the bylaws for a European Company (*S.E.*), regulates the legal framework currently in force within the EU for this new type of European corporate entity. Law 19/2005, of November 14, 2005, which regulates *S.E.s* domiciled in Spain, adopted the necessary measures to guarantee the effectiveness of the directly applicable rules included in the Regulation, amending the repealed Corporations Law and including a new chapter. Moreover, this Regulation has been supplemented in Spain by Law 31/2006, of October 18, 2006 regulating the involvement of employees of European corporations and cooperatives, transposing Council Directive 2001/86/EC, of October 8, 2001.

- **Concept**: an *S.E.* offers companies carrying on business in various Member States the possibility of setting up as a single company under EU regulations and operating in the EU under a single legislation and a unified administrative and declaration system. For companies acting in different Member Estates, an *S.E.* offers the possibility of reducing administrative costs with a legal framework adapted to EU regulations.

- **Main characteristics**:

  - An *S.E.* will always be considered a derivative company since it can only be founded by other pre-existing companies. In other words, individuals are not allowed to create this type of company.

  - Need for the existence of a European multinational nature in the process of association giving rise to the formation of an *S.E.* In this regard, although there are different procedures for forming an *S.E.*, there are two unavoidable requirements common to all with a view to preserving this European multinational nature:

    - That only entities formed pursuant to the legislation of a specific member state be involved in the formation of an *S.E.*, and their registered office and central management must also be located in the EU.

    - At least two of the entities involved must be subject to the legislation of *different* member states.

  - The subscribed capital may not be less than €120,000, although the minimum required capital can be higher in specific cases contemplated under Spanish legislation for companies pursuing certain activities (*i.e.* lending institutions). The Spanish legislation governing corporations will also apply to share subscription, payment, ownership and transfers.

  - *S.E.s* can only be formed as follows:

    - Merger: The merged companies must be subject to the legislation of different member states.

    - Formation of a holding *S.E.*: Provided that at least two of the companies are governed by the law of a different Member State, or for at least two years have had a subsidiary company governed by the law of another Member State or a branch located in another Member State.

    - Formation of a subsidiary *S.E.*: Provided that at least two of the companies are governed by the law of a different Member State, or for at least two years have had a subsidiary company governed by the law of another Member State or a branch located in another Member State.

  - Re-registration of an existing *S.A.*: Provided that for at least two years it has had a subsidiary company governed by the law of another Member State.

- *S.E.s* must be registered at the Commercial Registry of their registered office. Their registered office is situated in the place where their central management is established.

- The governing bodies are:

  - A shareholders' meeting.

  - A managing body (one-tier system) or a managing body and an over-sight body (dual system), per the option adopted in the bylaws.

- Shareholder's liability is, in principle, limited to the subscribed capital.

- The name of an *S.E.* must be preceded or followed by the abbreviation *S.E.*

- From a labor standpoint, Law 31/2006 regulates the application of certain rights of information, consultation and participation of the workers in the corporate bodies of an *S.E.* where such participation already existed within the founding companies at the time of the formation of the *S.E.* (as is currently the case in Germany, Austria and the Nordic countries). This is to ensure the participation of the workers in the *S.E.* for the purposes of allowing them to have an influence on any decisions adopted at the company which directly affect them.

  Furthermore, Law 10/2011 attempts to reinforce the influence employees have on a company's intentions, emphasizing the need for employees to exercise their rights of information and consultation before decisions are effectively made.

In general terms, an *S.E.* is an effective investment vehicle for companies that already have a business presence in the EU and wish to invest in Spain.

While an *S.E.* has the disadvantage of being a new legal vehicle which, in certain cases, may allow greater employee participation in the management decisions of the company, it has the advantage that its legal framework is known in all EU countries.

AI Company and Commercial Law

6. New Limited Liability Company

The intention of the lawmakers is to encourage the creation of small and medium-sized companies, simplifying the requirements for their formation and the pursuit of their activity, as can be inferred from the main features that distinguish an *S.L.N.E.* from a limited liability company, as detailed below:

Registration	An *S.L.N.E.* can be registered, using a single electronic document together with the public deed of formation, within 48 hours of the execution of the deed.
Name	When forming the company, the corporate name must include the name and two surnames of one of the shareholders followed by an alphanumeric code, and the reference *Sociedad Limitada Nueva Empresa* or the abbreviation "*S.L.N.E.*". This must be modified where the shareholder ceases to hold such status. The corporate name must include the name of one of the shareholders only on formation of the company. Subsequently, under an amendment to the company's bylaws and subject to prior clearance from the Central Commercial Registry, any name may be adopted.
Capital stock	The capital stock may not be less than €3,000 or more than €120,000, and may only be paid in with monetary contributions. If the capital stock exceeds €120,000, the company must be reregistered.
Shareholders	Only individuals can be shareholders of a New Limited Liability Company. On the date of formation, an *S.L.N.E.* may not have more than 5 shareholders, although this number can be increased later. A shareholder may only be a sole shareholder of one *S.L.N.E.*
Members of the managing body	Must have shareholder status. This body may never take the form of a board of directors.
Corporate purpose	It will be any or all of the following activities: agriculture, livestock, forestry, fishing, industrial, construction, commercial, tourism, transportation, communications, brokerage, professional services or services in general. In addition, other different individual activities may be included.
Tax and legal obligations	An *S.L.N.E.* may fulfill its accounting and tax duties by means of a single record.
Deferral of tax payments	Additional Provision Six of the Capital Companies Law indicates that an *S.L.N.E.* may defer the payment of certain taxes and/or withholdings and prepayments by between one and two years, without having to grant any security albeit paying late-payment interest.

7. Professional Services Firm (*S.P.*)

Pursuant to Professional Services Firms Law 2/2007, of March 15, 2007 (partially amended by Law 25/2009, of December 22, 2009, amending various laws to bring them into line with the Law on Free Access to, and Pursuit of, Service Activities), the regulations governing a type of company known as a Professional Services Firm (*S.P.*) entered into force. The purpose of the above Law is to set in place a regulatory framework governing the common pursuit by several members of a professional activity under a specific corporate form.

Thus, professional services firms are characterized by three specific general features:

Corporate purpose	Their corporate purpose can only be the common pursuit by various members of a professional activity (meaning an activity the pursuit of which requires an official university or professional qualification and registration with a professional association). This feature also implies that all firms that have such purpose must necessarily be formed as professional services firms.
Professional members	The professional members must have a stake in the company's capital ("professional members" meaning individuals or other professional services firms that meet the requirements necessary to engage in the professional activity).
Corporate forms	Professional services firms may be formed in accordance with any of the forms provided for in the law, provided that they meet the specific requirements included in the Professional Services Firms Law.
Specific requirements	• Three quarters of the capital and of the voting rights, or three quarters of the firm's assets and of the number of members at non-corporate enterprises, must belong to professional members. • Three quarters of the members of the managing body must be professional members. Where the managing body has a single member or there are managing directors, such duties must necessarily be performed by a professional member. In any event, the resolutions of collective managing bodies will require the affirmative vote of the majority of the professional members, regardless of the number of the members present. • The professional activity will be pursued in accordance with the code of ethics and disciplinary rules specific to the professional activity in question, with the grounds for incompatibility or disqualification of the members affecting the company itself. A professional services firm may also be fined on the terms established in the disciplinary rules that apply under its professional code. • Broadly speaking, to transfer the status of professional member, it is necessary to have the consent of all of the professional members, unless the firm's bylaws permit transfers by an agreement of the majority of the members. • Must be registered at the Commercial Registry and the Registry of Professional Services Firms of the relevant professional association. • The distribution of income or allocation of loss may be based on or modified according to the contribution made by each member to the sound running of the firm. • Professional services firms must arrange for an insurance policy that covers the liability they may incur in the course of the activity or activities that make up their corporate purpose.

8. Sole-Shareholder Companies

Under the Law, which applies in this respect to both *S.A.s* and *S.L.s*, either of these corporate forms can be set up as, or can subsequently become, a sole-shareholder company.

Such companies are subject to a specific regime entailing special reporting and registration requirements. For example, the fact that a company has a single owner has to be registered at the relevant Commercial Registry and acknowledged on all company correspondence and commercial documentation. Likewise, contracts between the company and its sole owner need to be recorded in a special company register (the book of contracts with the sole shareholder).

In general, such requirements may be deemed for the purpose of providing information, although compliance is of the utmost importance since, if six months elapse from the date on which the company acquires sole shareholder status without such circumstance having been registered at the Commercial Registry, the sole shareholder will bear personal, unlimited and joint and several liability for any company debts assumed during the period of sole-shareholder status.

9. Branches

9.1 CREATION OF A BRANCH

In addition to the forms of business enterprise created under Spanish law with separate legal personality, a foreign investor may operate in Spain through a branch.

The opening of a branch requires the execution of a public deed, which must be registered at the Commercial Registry, together with the formalities indicated in section 5.1 of Chapter 2.

From a foreign investment legislation viewpoint, it is not necessary to provide the branch with capital, although certain branches of entities with financial activities, due to the special nature of their activity, must be allocated capital.

The decision of the Directorate-General of Registries and the Notarial Profession (DGRN) of May 24, 2007, establishes that foreign companies do not have to obtain a clear name search certificate from the Central Commercial Registry in order to set up a branch in Spain. Given they are not forming a new legal entity, they do not have to meet the requirements for setting up a company (*i.e.* a certificate from the Central Commercial Registry evidencing that the name of the company to be formed is not registered).

The branch must have a legal representative who is empowered by the head office to administer the affairs of the branch. Apart from this requirement, there are no formal governing or management bodies.

Aside from the obvious differences in terms of internal structure and organization, a branch operates much like a company in its dealings with third parties.

The choice between forming a branch or a legal entity in Spain may be affected by commercial reasons; for example, a company may be deemed to provide a more "solid" presence than a branch.

There are also other differences which are addressed in different chapters of this publication.

9.2 BRANCH VS. SUBSIDIARY (WHETHER *S.A.* OR *S.L.*)

From a legal standpoint, the main differences between a branch and a subsidiary are as follows:

	S.A.	*S.L.*	BRANCH
Concept	Company of a commercial nature engaging in the pursuit of an economic activity, with a capital stock divided into shares and consisting of contributions by the shareholders, who, as a general rule, will be personally liable for company debts only up to the limit of the contribution made or promised.		Secondary establishment with a permanent representation and certain management independence, through which the activities of the head office are totally or partially pursued, and with no legal personality independent of that of the head office.
Capital stock	€60,000.	€3,000[6].	No capital is required for the establishment of a branch, although for practical reasons it is advisable.
Monetary and non-monetary contributions	Monetary contributions must be made in the national currency, while non-monetary contributions, in the case of corporations, will require a report by an independent expert appointed by the Commercial Registrar.		
Registration	The company must be formed under a public deed to be filed with the Commercial Registry, acquiring legal personality upon registration.		Together with the public deed creating the branch, the documents evidencing the existence of the head office, the current bylaws, its directors and the decision to open the branch, duly legalized, must be registered with the Commercial Registry.
Shareholders' meeting calls	See section 4.6.1 above.		A branch does not have decision-making body in the form of a board or meeting, since its legal personality is that of the parent company.
Directors	The bylaws may establish various types of managing bodies, granting the shareholders' meeting authority to choose between them, without any need to amend the bylaws. The position of director will be not remunerated, unless the bylaws otherwise provide and establish the method of remuneration. See section 4.3 above.		The managing body of the head office will appoint a branch director to act as an attorney-in-fact of the head office at the branch. The director (as a general rule and subject to the limitations provided for in the powers of attorney) may pursue all the activities entrusted to the branch and registered at the Commercial Registry.
Share transfers	Depends on how they are represented (book entries, detachable certificate books, etc.) and on their nature (registered or bearer). In principle, they are free transferable, unless the bylaws establish otherwise.	Transfers must be recorded in a public document executed before a Spanish notary. Any bylaw provisions enabling practically unrestricted share transfers are prohibited.	A branch cannot be transferred since it does not have any legal personality.
Financial statements	The directors of the company must, within not more than three months of the fiscal year-end, prepare the financial statements, the management report and the proposal for the distribution of profit, to be approved by the shareholders' meeting within six months of the fiscal year-end.		As permanent establishments in Spain for tax purposes, branches must keep their own accounts with respect to the transactions they perform and their assets. Moreover, branches must deposit their parent company's financial statements at the Commercial Registry or, in certain cases, the statements prepared in relation to the branch's activity.
Dividend distribution	Should the profit be distributed as dividends, such distribution shall be made to the shareholders in proportion to the capital they have contributed. Payment of interim dividends is also possible.		Dividends do not exist, since profits pertain strictly to the parent company.

6 Except in the case of the entrepreneurial limited liability company, for which the rules are described in section 4.2 above.

10. Representative Office

In addition to commercial entities and branches, foreign investors may operate in Spain via a representative office. Noteworthy key features include:

Legal personality	It does not have its own legal personality independent from the parent company.
Formalities for opening	No commercial formalities are required to open a representative office, although for tax, a labor and social security reasons it might be necessary to execute a public deed (or document executed before a foreign public notary, duly certified by apostille or any other applicable legalization system), which must indicate the opening of the representative office, the funds allocated to the office, the identity of its tax representative, which must be a legal entity or individual resident in Spain, and its powers. The opening of a representative office need not be registered at the Commercial Registry.
Managing body	There are no formal managing bodies, but rather the representative of the office acts under the powers granted to him/her.
Activities	In principle, the activities of a representative office are limited, essentially comprising coordination, collaboration, etc.

The non-resident company is liable for all debts incurred by the representative office.

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