



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Spain



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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SPAIN



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FORM OF ENTITY

Branch (*Sucursal*)

Secondary establishment, subordinated to a headquarters, with permanent representation and certain degree of autonomy, through which the principal company's business is totally or partially carried out. The board of directors of the mother company will be competent to determine the creation of a branch as well as its cancelation or change of location.

Limited liability company (*Sociedad Limitada*)

Separate and distinct legal entity. Managed by a board of directors, a sole director, joint directors or joint and several directors. Board of directors (or the relevant directors if there is no board) is responsible for making business decisions and overseeing the affairs of a company. Directors are appointed by shareholders of a company. Executive committee and managing directors are only appointed if there is a board of directors and board powers are delegated.

Joint-stock company (*Sociedad Anónima*)

Separate and distinct legal entity. Managed by a board of directors, a sole director, joint directors or joint and several directors. Board of directors (or relevant directors if there is no board) is responsible for making business decisions and overseeing the affairs of a company. Directors are elected by shareholders of a company. Executive committee and managing directors are only appointed if there is a board of directors and board powers are delegated.

ENTITY SET UP

Branch (*Sucursal*)

- Secondary establishment that is subordinated to the principal, economically and legally
- Autonomy to operate with its own organization different from the principal establishment Without legal personality (ie, branches are not a separate legal entity)

- Permanent activity
- Total or partial conduction of the principal establishment's activity
- Branches are taxed under the general provisions of the Corporate Income Tax. Moreover, if the branch is also a permanent establishment for VAT purposes, quarterly VAT tax returns will need to be filed (as a general rule)
- The organizational documents are the principal company's bylaws (*estatutos sociales*)

Limited liability company (*Sociedad Limitada*)

- Unlimited number of members is allowed
- Generally no personal liability of members
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply
- The organizational documents are the company's own bylaws (*estatutos sociales*)
- Management body has management responsibility. Sole directors, joint directors (if they all sign, *administradores mancomunados*) and joint and several directors (if any one of them signs, *administradores solidarios*) have authority to bind the company. If the company has a board, directors do not have authority to bind the company unless powers are delegated to them. Powers can be delegated to attorneys
- Ordinary shares and preferred shares are possible. Shares are transferable but typically have some restrictions (i.e., preferential acquisition rights)
- Annual accounts are registered at the Commercial Registry, reporting the economic status of the company

Joint-stock company (*Sociedad Anónima*)

- Unlimited number of shareholders
- Generally no personal liability of the shareholders
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply
- The organizational documents are the company's own bylaws (*estatutos sociales*)
- Management body has management responsibility. Sole directors, several directors (if they all sign, *administradores mancomunados*) and joint and several directors (if any one of them signs, *administradores solidarios*) have authority to bind the company. If the company has a board, directors do not have authority to bind the company unless powers are delegated to them. Powers can be delegated to attorneys.

- Ordinary shares and preferred shares are possible. Shares are generally freely transferable. Can be listed in a stock market and
- Annual accounts are registered at the Commercial Registry, reporting the economic status of the company.

MINIMUM CAPITAL REQUIREMENT

Branch (*Sucursal*)

There are no minimum capital (fund allocation) requirements.

Limited liability company (*Sociedad Limitada*)

Minimum of EUR1. However, until the share capital reaches a minimum of 3EUR3,000, special rules apply regarding company reserves and shareholder / director liabilities.

Joint-stock company (*Sociedad Anónima*)

Minimum of EUR60,000.

LEGAL LIABILITY

Branch (*Sucursal*)

The liability derived from the branch is part of the headquarters' (principal entity's) legal liability.

Limited liability company (*Sociedad Limitada*)

Shareholders of a limited liability company are generally not liable for the debts of a company aside from their financial contribution to the company.

Joint-stock company (*Sociedad Anónima*)

Shareholders of a joint-stock company are generally not liable for the debts of a company aside from their financial contribution to the company.

TAX PRESENCE

Branch (*Sucursal*)

Branches are taxed on the profits allocated to the permanent establishment.

Limited liability company (*Sociedad Limitada*)

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply.

Joint-stock company (*Sociedad Anónima*)

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends, although double taxation relief may apply.

INCORPORATION PROCESS

Branch (*Sucursal*)

The opening of a branch must be resolved by the principal company, notarized and registered in the Commercial Registry. Finally, the registration will be published in the Official Gazette of the Commercial Registry.

Limited liability company (*Sociedad Limitada*)

Company name clearance. Tax ID. Incorporation deed and bylaws. Notarization and registration of the notarial deed in the Commercial Registry.

Joint-stock company (*Sociedad Anónima*)

Company name clearance. Tax ID. Incorporation deed and bylaws. Notarization and registration of the notarial deed in the Commercial Registry.

BUSINESS RECOGNITION

Branch (*Sucursal*)

Well regarded and widely used.

Limited liability company (*Sociedad Limitada*)

Well regarded and widely used.

Joint-stock company (*Sociedad Anónima*)

Well regarded and widely used.

SHAREHOLDER MEETING REQUIREMENTS

Branch (*Sucursal*)

There are no shareholder meetings in branches.

Limited liability company (*Sociedad Limitada*)

Required to hold annual meeting of shareholders within the 1st 6 months of the financial year to vote on certain items, such as approval of the annual accounts and allocation of results / distribution of earnings.

Joint-stock company (*Sociedad Anónima*)

Required to hold annual meeting of shareholders within the 1st 6 months of the financial year to vote on certain items, such as approval of the annual accounts and allocation of results / distribution of earnings.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Branch (*Sucursal*)

There are no board meetings in branches.

Limited liability company (*Sociedad Limitada*)

If there is a board, its meetings must be held at least quarterly and otherwise when necessary and duly called.

Joint-stock company (*Sociedad Anónima*)

If there is a board, its meetings must be held at least quarterly and otherwise when necessary and duly called.

ANNUAL COMPANY TAX RETURNS

Branch (*Sucursal*)

Branches are taxed under the general provisions of the corporate income tax and therefore, must file an annual income tax return with the tax authorities. Moreover, if the branch is also a permanent establishment for VAT purposes, the relevant VAT tax returns will need to be filed.

Limited liability company (*Sociedad Limitada*)

Companies must annually file a company income tax return with tax authorities. Other periodic returns may be of mandatory filing, including VAT and payroll withholding, among others.

Joint-stock company (*Sociedad Anónima*)

Companies must annually file a company income tax return with tax authorities. Other periodic returns may be of mandatory filing, including VAT and payroll withholding, among others.

BUSINESS REGISTRATION FILING REQUIREMENTS

Branch (*Sucursal*)

Branches in Spain need to be registered in the Commercial Registry and with the Spanish Tax Authorities. A branch will also need a tax identification number (NIF) to be identified as a taxpayer and for VAT purposes. In addition, certain activities or businesses may require specific licenses or registrations in special public registers.

Limited liability company (*Sociedad Limitada*)

- Needs to be registered in the Commercial Registry and with the Spanish Tax Authorities
- Will need to obtain a tax identification number (NIF) to be identified as a taxpayer and for VAT purposes
- May require specific licenses or registrations in special public registers, if it performs certain activities or businesses

Joint-stock company (*Sociedad Anónima*)

- Needs to be registered in the Commercial Registry and with the Spanish Tax Authorities
- Will need to obtain a tax identification number (NIF) to be identified as a taxpayer and for VAT purposes
- May require specific licenses or registrations in special public registers, if it performs certain activities or businesses

BUSINESS EXPANSION

Branch (*Sucursal*)

No need to change as business expands, except for certain special cases such as listing on a stock market.

Limited liability company (*Sociedad Limitada*)

No need to change as business expands, except for certain special cases, such as listing on a stock market or banking activities.

Joint-stock company (*Sociedad Anónima*)

No need to change as business expands.

EXIT STRATEGY

Branch (*Sucursal*)

File liquidation documents in the Commercial Registry.

Limited liability company (*Sociedad Limitada*)

Carry out liquidation activities. File liquidation documents in the Commercial Registry.

Joint-stock company (*Sociedad Anónima*)

Carry out liquidation activities. File liquidation documents in the Commercial Registry.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Branch (*Sucursal*)

The branch must either file its own accounts in the Commercial Registry (if its accounting is separate from the principal company) or file documents evidencing that the principal company has filed its annual accounts in the relevant jurisdiction (in case of a foreign company).

Limited liability company (*Sociedad Limitada*)

Annual shareholders' general meeting and quarterly board meetings (if a board exists).

Joint-stock company (*Sociedad Anónima*)

Annual shareholders' general meeting and quarterly board meetings (if a board exists).

DIRECTOR / OFFICER REQUIREMENTS

Branch (*Sucursal*)

A representative for the branch must be appointed from incorporation with a specific delegation of powers.

Limited liability company (*Sociedad Limitada*)

Directors of limited liability companies (*sociedad limitada*) may be individuals or corporate bodies and are required. If there is a board, the board must appoint a chairman and a secretary.

Joint-stock company (*Sociedad Anónima*)

Directors of joint-stock companies may be individuals or corporate bodies and are required. If there is a board, the board must appoint a chairman and a secretary.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

LOCAL CORPORATE SECRETARY REQUIREMENT

Branch (*Sucursal*)

Not required for branches.

Limited liability company (*Sociedad Limitada*)

A secretary is mandatory in case of a board of directors but does not need to be a Spanish resident.

Joint-stock company (*Sociedad Anónima*)

A secretary is mandatory in case of a board of directors but does not need to be a Spanish resident.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable except for a branch, which requires a tax representative in Spain if the entity is not resident in the European Union or in a European Economic Area country with which mutual assistance regulations exist. Said representative will be joint and severally liable for the branch's tax obligations.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

None. Tax efficiency considerations to be borne in mind.

SUFFICIENCY OF VIRTUAL OFFICE

Registered offices are needed for incorporation.

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Allowed.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Allowed except for branches (which do not have directors). Provision of local director is possible but uncommon. Provision of local secretary is standard and widely used.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

None. Tax efficiency considerations to be borne in mind for directors and officers.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Branch (*Sucursal*)

Not applicable for this jurisdiction.

Limited liability company (*Sociedad Limitada*)

There are some restrictions for a person to be appointed as director (eg, minors, insolvent persons or entities and persons with a criminal record).

Joint-stock company (*Sociedad Anónima*)

There are some restrictions for a person to be appointed as director (eg, minors, insolvent persons or entities and persons with a criminal record).

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Branch (*Sucursal*)

A branch does not have directors or shareholders. However, a natural person must be designated as a branch representative (equivalent to a proxy of the principal company) and needs to have a specific delegation of power.

Limited liability company (*Sociedad Limitada*)

Directors are elected by shareholders, are the highest authority in the management of the company, and manage and run the company. In contrast, empowered attorneys are appointed by the directors, who delegate powers to them.

Joint-stock company (*Sociedad Anónima*)

Directors are elected by shareholders, are the highest authority in the management of the company, and manage and run the company. In contrast, empowered attorneys are appointed by the directors, who delegate powers to them.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Branch (*Sucursal*)

A branch does not have directors or shareholders. However, its representative must be registered in the Commercial Registry.

Limited liability company (*Sociedad Limitada*)

Identity of directors and empowered attorneys with general powers is publicly disclosed.

Joint-stock company (*Sociedad Anónima*)

Identity of directors and empowered attorneys with general powers is publicly disclosed.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Branch (*Sucursal*)

The branch does not have directors or shareholders.

Limited liability company (*Sociedad Limitada*)

There must be a minimum of 1 shareholder, and no maximum number. The board of directors shall not have less than 3 and no more than 12 members. The bylaws may establish the extract or a minimum and maximum number of members for the board of directors. In the latter case the general meeting shall determine the exact number.

Joint-stock company (*Sociedad Anónima*)

There must be a minimum of 1 shareholder, and no maximum number. The board of directors shall have no less than 3 members. The bylaws may establish the extract or a minimum and maximum number of members for the board of directors. In the latter case the general meeting shall determine the exact number.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Branch (*Sucursal*)

A branch does not have shareholders.

Limited liability company (*Sociedad Limitada*)

1 shareholder is sufficient.

Joint-stock company (*Sociedad Anónima*)

1 shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Branch (*Sucursal*)

Removal of branch representatives is allowed at the principal company's will.

Limited liability company (*Sociedad Limitada*)

Removal of directors is allowed by a vote of shareholders at a shareholder general meeting.

Joint-stock company (*Sociedad Anónima*)

Removal of directors is allowed by a vote of shareholders at a shareholder general meeting.

REQUIRED AND OPTIONAL OFFICERS

Branch (*Sucursal*)

A branch does not have officers.

Limited liability company (*Sociedad Limitada*)

Spanish companies do not have an equivalent of officers, though powers may be delegated to attorneys. Chairman and secretary are required if there is a board; vice-chairman and vice-secretary are allowed and typically used.

Joint-stock company (*Sociedad Anónima*)

Spanish companies do not have an equivalent of officers, though powers may be delegated to attorneys. Chairman and secretary are required if there is a board; vice-chairman and vice-secretary are allowed and typically used.

BOARD MEETING REQUIREMENTS

Branch (*Sucursal*)

A branch does not have board meetings.

Limited liability company (*Sociedad Limitada*)

Bylaws usually govern most of this. Meetings can be in physical attendance, via written resolutions or others (eg, conference call) if legal requirements are met.

Joint-stock company (*Sociedad Anónima*)

Bylaws usually govern most of this. Meetings can be in physical attendance, via written resolutions or others (eg, conference call) if legal requirements are met.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Branch

A branch does not have shareholder or board meetings.

Limited liability company

There is no minimum quorum for shareholders meetings, although it can be modified in bylaws of the company and there is a minimum quorum to pass resolutions. For directors, typically a majority of directors must be present during a board meeting; alternatively, all of directors can execute written resolutions.

Joint-stock company

For shareholders meetings, 25 percent of shareholders must attend or be represented on 1st call. Bylaws can establish different quorums. For directors, typically a majority of directors must be present during a board meeting; alternatively, all of directors can execute written resolutions.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Branch (Sucursal)

According to common practice a Spanish bank account is opened, albeit not strictly necessary. Dealing with foreign bank accounts is difficult and often delays things.

Limited liability company (Sociedad Limitada)

According to common practice, a Spanish bank account should be opened, but there are no strict requirements. Dealing with foreign bank accounts is difficult and often delays business operations.

Joint-stock company (Sociedad Anónima)

According to common practice, a Spanish bank account should be opened, but there are no strict requirements. Dealing with foreign bank accounts is difficult and often delays business operations.

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Branch (Sucursal)

The accountancy of the branch is not different from its principal company, but a branch may have its separate accounting and file separate accounts.

Limited liability company (Sociedad Limitada)

Financial statements and, if appropriate, management reports must be reviewed by an auditor qualified to practice in Spain unless the company may issue an abridged balance sheet. The books do not need to be kept locally.

Joint-stock company (Sociedad Anónima)

Financial statements and, if appropriate, management reports must be reviewed by an auditor qualified to practice in Spain unless the company may issue an abridged balance sheet. The books do not need to be kept locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Branch (Sucursal)

Not applicable (branches do not have stock).

Limited liability company (Sociedad Limitada)

There is no statutory minimum par value.

Joint-stock company (*Sociedad Anónima*)

There is no statutory minimum par value.

INCREASING OF CAPITALIZATION IF NEEDED

Branch (*Sucursal*)

Not applicable (branches do not have capital, albeit funds can be allocated to a branch). Further funds may, however, be allocated to a branch.

Limited liability company (*Sociedad Limitada*)

Requires a resolution from shareholders general meeting.

Joint-stock company (*Sociedad Anónima*)

Requires a resolution from shareholders general meeting.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Branch (*Sucursal*)

Not applicable. Branch funds are funds of a principal company.

Limited liability company (*Sociedad Limitada*)

Funds can be repatriated abroad from Spain via dividends or redemption.

Joint-stock company (*Sociedad Anónima*)

Funds can be repatriated abroad from Spain via dividends or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Branch (*Sucursal*)

There are no shares/stock in a branch.

Limited liability company (*Sociedad Limitada*)

Typically have share transfer restrictions. Clauses in bylaws that render shares freely transferable are void in practice.

Joint-stock company (*Sociedad Anónima*)

Generally have no share transfer restrictions aside from those set out, for example, in the bylaws or shareholder agreements. Clauses in the bylaws that render shares non-transferable are null and void in practice.

OBTAINING A NAME AND NAMING REQUIREMENTS

Branch (*Sucursal*)

There are no name requirements for a branch in Spain (the name will be the name of the principal company).

Limited liability company (*Sociedad Limitada*)

A certificate declaring that nobody has used the name chosen for a company is required.

Joint-stock company (*Sociedad Anónima*)

A certificate declaring that nobody has used the name chosen for a company is required.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Branch (*Sucursal*)

An ultimate beneficial ownership declaration, in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified, is required.

Limited liability company (*Sociedad Limitada*)

An ultimate beneficial ownership declaration, in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified, is required.

Joint-stock company (*Sociedad Anónima*)

An ultimate beneficial ownership declaration, in which any ultimate beneficiary owning (directly or indirectly) more than 25 percent of the company must be identified, is required.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Branch (*Sucursal*)

Generally shareholders of a principal company must formally approve any amendment to bylaws. A branch does not have separate bylaws.

Limited liability company (*Sociedad Limitada*)

Generally the shareholders must formally approve any amendment to bylaws.

Joint-stock company (*Sociedad Anónima*)

Generally the shareholders must formally approve any amendment to bylaws.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

This will depend on the type of business carried out. Typically, there will be an activity license in addition to regional and local licenses.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Branch (*Sucursal*)

Not applicable for this jurisdiction.

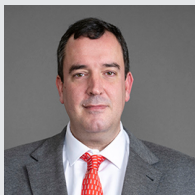
Limited liability company (*Sociedad Limitada*)

Shelf companies can be purchased from 3rd-party service providers.

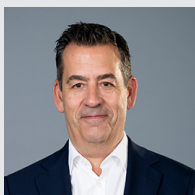
Joint-stock company (*Sociedad Anónima*)

Shelf companies can be purchased from 3rd-party service providers.

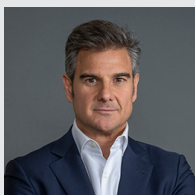
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