

# Guide to setting up a company and main corporate obligations in Spain and Portugal

# How to incorporate a company



## Main steps to incorporate a limited liability company (SL) and a corporation (SA) in Spain

- 1 Application for the corporate name to be issued by the Central Commercial Registry. Once the certification is issued, the name will remain reserved for six (6) months.
- 2 Application for Tax Identification Number (NIF) -legal entity- and Foreigner's Identity Number (NIE) -individual- of the foreign shareholders and directors (in person/in the consulate/through a PoA)
- 3 Application for a provisional Tax Identification Number (NIF) to the Tax Administration Agency (Agencia de la Administración Tributaria) for the Company (form 036)
- 4 Opening a bank account for disbursement of share capital:
  - SL Companies: the minimum share capital is 1 € and must be fully paid up at the time of incorporation. It is still customary to set up an SL company with a share capital of 3,000 €.
  - SA Companies: the minimum share capital is 60,000 € and at least 25% must be paid up at the time of incorporation.
- 5 Execution of the incorporation deed before a notary public, including bylaws and corporate details of the company, founding shareholders and directors. Appointment and acceptance of directors.
- 6 Public deed of disclosure of beneficial ownership granted before a notary.
- 7 Application for registration in the relevant Commercial Registry.
- 8 Nominative share certificates may be issued individually or through the representation of multiple shares in a single certificate.
- 9 Registration with the Commercial Registry. Completion may take up to 30 business days.
- 10 Obtaining the definitive Taxpayer Identification Number (N.I.F.) for the Company (form 036).
- 11 Once the company is incorporated and registered in the Commercial Registry, the bank will proceed to register internally the deed of incorporation so that the directors can operate with the bank account in the name of the company.
- 12 Filing of the foreign investment information form (D1A).
- 13 Legalization of the corporate books (minutes books, shareholder register).
- 14 Registration with the Tax and Social Security authorities to carry out certain activities, as required.



## Main steps to incorporate private limited companies in Portugal (SQ/SA)

- 1 Application for the corporate name certificate of approval (certificado de admissibilidade de firma) to be issued by the Portuguese National Register of Legal Entities. Once the certification is issued, the name will remain reserved for three (3) months.
- 2 Application for Tax Identification Number (NIF) for the non-resident shareholders and directors of the Company. Entities or individuals who are not resident in the European Union will need to appoint a Portuguese tax representative.
- 3 Opening a bank account for disbursement of share capital:
  - Private limited companies by quotas (sociedades por quotas): the minimum share capital is 1 € if there is only one shareholder, or 2 € or more, if there are two or more shareholders.
  - Private limited companies by shares (sociedades anónimas): the minimum share capital is 50,000 €.
- 4 Execution of incorporation deed before a notary or lawyers. Details of the ultimate beneficial owner of the NewCo will need to be provided at this stage.
- 5 Application for registration in the Portuguese Commercial Registry.
- 6 Registration with the Portuguese Commercial Registry Office. Completion of the registration may take from 1 business day (if urgency fee is paid) up to 10 business days (without urgency fee).
- 7 Registration with the Tax and Social Security authorities.
- 8 Opening of minutes books, to be signed by the directors of the NewCo or by the Chairman of the General Meeting (to the extent applicable).
- 9 Issuance of share certificates and share register (only applicable to private limited liability companies by shares (sociedades anónimas)).
- 10 Filing with the Central Register of Beneficial Owners (Registo Central do Beneficiário Efetivo), within 30 days following registration of the incorporation.

# On-going maintenance obligations over the financial year



## Month No. 3

Preparation, after the close of the financial year, of the company's annual accounts, which must include: (i) the balance sheet; (ii) the profit and loss statement; (iii) a statement of changes in equity for the year; (iv) a cash flow statement; and (v) the notes to the financial statements. If certain circumstances related to the size of the company are met, abbreviated annual accounts/SMEs may be prepared, which must include only: (i) the balance sheet; (ii) the profit and loss account; and (iii) the notes to the financial statements. Non-financial information report to be prepared as needed.

The annual accounts must be prepared by the directors within a maximum period of three months from the end of the fiscal year and audited if needed.

Holding of the first quarterly meeting of the Board of Directors. Not applicable to forms of management bodies.

## Month No. 4

Legalization of the Company's commercial books at the Commercial Registry. See FAQs for more information on mandatory commercial books.

## Month No. 6

The sole shareholder/the general meeting of shareholders decides on: (i) the approval of the annual accounts; (ii) the approval of the management of the directors; and (iii) the allocation of the results for the year.

Holding of the second meeting of the Board of Directors. Not applicable to forms of management bodies.

## Month No. 7

Filing of the annual accounts for deposit with the relevant Commercial Registry

The company that prepares the individual annual accounts must identify the real owner of the company in the Commercial Registry, by means of the declaration of the real owner.

## Month No. 9

Holding of the third meeting of the Board of Directors. Not applicable to forms of management bodies.

## Month No. 12

Holding of the fourth meeting of the Board of Directors. Not applicable to forms of management bodies.

Deadline for the sole shareholder/the general meeting of shareholders to agree on the appointment of auditors to audit the fiscal year of the current fiscal year.

# On-going maintenance obligations over the financial year



## Month No. 1

Within the first 3 months after the end of the fiscal year, the company's annual accounts and the management report must be prepared.

The annual accounts must include: (i) the balance sheet; (ii) the profit and loss account; (iii) a statement of changes in equity for the year; (iv) a cash flow statement; and (v) the notes to the financial statements. If certain circumstances related to the size of the company are met, abbreviated annual accounts/SMEs may be prepared, which must include: (i) the balance sheet; (ii) the profit and loss account.

The management report to be drafted by the directors must describe, with reference to the annual accounts, the evolution of the company's management in the different sectors in which it operates, making special mention of investment costs and market conditions, so as to enable an easy and clear understanding of the company's economic situation and profitability.

## Month No. 3

The sole shareholder/the general meeting of shareholders decides on: (i) the approval of the annual accounts; (ii) the approval of the management of the managing body; and (iii) the allocation of the results.

Holding of the first quarterly board of directors meeting, only for *sociedades anónimas*

## Month No. 4

Deposit of the annual accounts with the Portuguese Commercial Registry and Tax Authorities.

## Month No. 6

Holding of the second quarterly board of directors meeting, only for *sociedades anónimas*

## Month No. 9

Holding of the third quarterly board of directors meeting, only for *sociedades anónimas*

## Month No. 12

Holding of the fourth quarterly board of directors meeting, only for *sociedades anónimas*.

Annual confirmation of the Ultimate Beneficial Owner must be made by December 31st of each year. Annual confirmation is waived whenever the entity has updated the information at a previous point in the same calendar year.



# FAQs

Concept	SPAIN	PORTUGAL
What is the financial year for companies?	January 1 to December 31. Can be modified in bylaws.	January 1 to December 31. Can be modified in bylaws.
What options are there to organize the management body?	<ul style="list-style-type: none"> <li>• Sole director</li> <li>• 2 or more joint and several directors</li> <li>• 2 joint directors</li> <li>• Board of directors (minimum 3 members)</li> </ul> <p>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.</p>	<p>Options:</p> <ul style="list-style-type: none"> <li>• If it is a limited liability company by quotas (SQ): one or more managers (gerentes).</li> <li>• If it is a limited liability company by shares (SA): one sole director or a board of directors acting severally or jointly (depending on what the bylaws establish). The Board of Directors may also appoint an Executive Committee or managing directors.</li> </ul>
What are the mandatory books to be kept by companies?	<p>In addition to accounting books, the following books must be kept by companies, and legalized at the Commercial Registry:</p> <ul style="list-style-type: none"> <li>• Minutes book</li> <li>• Shareholders' registry book (SL) or share register (SA)</li> <li>• Book of contracts with the sole shareholder (if applicable)</li> </ul>	<p>In addition to accounting books, the following books must be kept by companies:</p> <ul style="list-style-type: none"> <li>• Minutes book</li> <li>• Shares register book (SA);</li> <li>• Managers' or Board of Directors' meetings book</li> </ul>
What is the required majority for adopting resolutions in meetings of board of directors?	Generally, by a majority of the directors attending (in person or by proxy).	It depends on what is laid down in the bylaws. If not established, the subsidiary rule is by a majority of the members.
What is the required majority for adopting resolutions in general shareholder meetings?	<p><b>SL:</b> 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 share capital is divided (blank votes do not count). Qualified majorities for certain amendments to capital structure and other relevant decisions.</p> <p><b>SA:</b> 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 for certain amendments to capital structure and other relevant decisions.</p>	<p><b>SQ:</b> General rule: Resolutions shall be deemed to have been passed if they obtain a majority of the votes cast (blank votes do not count). Qualified majorities for certain amendments to capital structure and other relevant decisions.</p> <p><b>SA:</b> General rule: Resolutions shall be deemed to have been passed if they obtain a majority of the votes cast (blank votes do not count). Qualified majorities for certain amendments to capital structure and other relevant decisions.</p>
What is a tax ID number? Who needs it?	<p>Any individual or legal entity with economic or professional interests in Spain, or involved in a relevant way for tax purposes, must hold a tax identification number (N.I.F., in the case of legal entities) or a foreigner identity number (N.I.E. for individuals). In particular, and among other cases, a N.I.F./N.I.E. must be applied for when a foreign investor makes a direct investment in Spain or in the case of a shareholder or director of an entity resident in Spain or of a foreign entity's branch or permanent establishment located in Spain.</p> <p>Holding a N.I.F. or N.I.E. does not make the person a resident for tax purposes.</p>	<p>Any individual or legal entity with economic or professional interests in Portugal, or involved in a relevant way for tax purposes, must hold a tax identification number (N.I.F.). In particular, and among other cases, a N.I.F. must be applied for when a foreign investor makes a direct investment in Portugal or in the case of a shareholder or manager / director of an entity resident in Portugal or of a foreign entity's branch or permanent establishment located in Portugal.</p> <p>Holding a N.I.F. does not make the person a resident for tax purposes.</p>

# FAQs

Concept	SPAIN	PORTUGAL
Are companies subject to mandatory audit of their annual accounts?	<p>Companies are only subject to mandatory audit of their accounts if at least two of the following thresholds are exceeded for at least two years:</p> <ul style="list-style-type: none"> <li>• Total assets of €2,850,000</li> <li>• Annual turnover of €5,700,000</li> <li>• Average number of employees during the year of 50</li> </ul>	<p><b>SQ:</b> limited liability company by quotas that do not have a supervisory board (this is not mandatory, it is optional) must appoint a statutory auditor to carry out the statutory audit if two of the following thresholds are exceeded for at least two years:</p> <ul style="list-style-type: none"> <li>• Balance sheet total: €1,500,000;</li> <li>• Total net sales and other income: 3,000,000 euros;</li> <li>• Average number of employees during that period of 50.</li> </ul> <p><b>SA:</b> limited liability company by shares shall always appoint a statutory auditor when incorporated. These companies shall have a supervisory board in replacement of a statutory auditor audit if two of the following thresholds are exceeded for at least two years:</p> <ul style="list-style-type: none"> <li>• Balance sheet total: €20,000,000;</li> <li>• Total net sales and other income: 40,000,000 euros;</li> <li>• Average number of employees during that period of 250.</li> </ul>
Can shareholders be represented by proxies in the shareholder meetings?	<p><b>SL:</b> 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. Authority must be conferred in writing.</p> <p><b>SA:</b> 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. Authority must be conferred in writing.</p>	<p>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. Authority must be conferred in writing and addressed to either the company itself or the Chairman of the General Meeting (to the extent applicable).</p>
Do I need to have a local shareholder or a local director?	<p>There is no need to have a Spanish national or resident shareholder or director in the company, but a representative is useful to notarize corporate minutes when needed.</p>	<p>There is no need to have a Portuguese national or resident shareholder or director in the company.</p>
Is the identity of the shareholders publicly available?	<p>No. However, sole shareholder companies need to declare the sole shareholder and its name will be available in the Commercial Registry to the general public.</p>	<p><b>SQ:</b> yes, the identity of the shareholders is public as they are detailed in the commercial registry certificate.</p> <p><b>SA:</b> No.</p>
Is there an obligation to declare the UBO of a company?	<p>Yes. Companies will need to issue a public deed declaring the company's UBO. This will be available to public administrations and notaries, but not to the general public.</p>	<p>Yes. Companies will need to fill in an online declaration declaring the company's UBO. This will be available to public administrations and notaries, but not to the general public.</p>

## FAQs

Concept	SPAIN	PORTUGAL
<p><b>When do I need to draft and file the company's annual accounts?</b></p>	<p>The BOD will need to draft the annual accounts within the first three months of the financial year (March 31 if it follows the natural year). The shareholders will need to approve the annual accounts within the first six months of the financial year (June 30 if it follows the natural year).</p> <p>The annual accounts will need to be filed with the Commercial Registry for their deposit in the month after their approval by the shareholders.</p>	<p>The BOD will need to draft the annual accounts and shareholders will need to approve them within the first three months of the financial year (March 31 if it follows the natural year).</p> <p>The annual accounts will need to be filed with the Commercial Registry for their deposit in the month after their approval by the shareholders.</p>
<p><b>Is it mandatory to have a bank account with a local bank?</b></p>	<p>It is not mandatory to have a bank account with a local Spanish bank, but it is recommended for practical purposes.</p>	<p>It is not mandatory to have a bank account with a local Portuguese bank, but it is recommended for practical purposes.</p>
<p><b>How do I interact with public administrations?</b></p>	<p>Most public administrations will send notices through electronic systems, DEHú. A few notices will arrive through regular post to the company's registered address in Spain.</p>	<p>Most public administrations will send notices through electronic systems. A few notices will arrive through regular post to the company's registered address in Portugal.</p>
<p><b>Can the company's registered address be abroad?</b></p>	<p>No. All companies must have a registered address in Spain.</p>	<p>No. All companies must have a registered address in Portugal.</p>



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Seegman refers to the company Seegman Servicios Jurídicos, S.L.P., with tax identification number B88144852.

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