

# SPAIN

## EMPLOYMENT GUIDE



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# INTRODUCTION

Spain, like many other western countries, has a complex legal and bureaucratic system in place for the establishing of business structures. Efforts are being made to reduce the level of complexity of these procedures. Our experience over the last 30 years however has shown that bureaucracy is deeply in bedded in officialdom.

The aim of this guide is therefore to try to make life easier for the foreign business investor, as he goes about setting up a presence in Spain.

This guide is divided into three basic areas:

1. Business structures.
2. Employment regulations and payroll.
3. Tax and benefit implications.

This guide is not meant to provide detailed answers to all your questions, and indeed given the speed at which regulations and rules are changed, we strongly advise that you check with us before taking any decisions based on the information provide. The data provided is accurate at the date of going to press.

ASEC GROUP

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# SETTING UP AN ENTITY

## a) Types of company structures

### i) New Spanish Company

Similar to the LTD in UK, must have a minimum paid up capital of 3.000 Euros

#### Preliminary Steps

Decide on the company name.

Opening of bank account and deposit of the initial share capital.

Decide on the method of administration, management and percentage participation of shareholders.

Obtain a NIE number (Spanish Tax number for individuals) for all individual shareholders and directors, and a tax identification number for corporate shareholders

Decide on where the registered office will be.

Decide on the company objects/activities.

All shareholders and directors have to be present at the setting up meeting with the Notary, or represented by way of a power of attorney.

Approve the standard draft of Articles of Association produced by the Notary and execution of the public deed of incorporation before the said Spanish Notary Public.

#### Details/ Legal Docs

Certificate of clearance of the corporate name issued by the Central Mercantil Register in Madrid.

Original bank certificate for the initial capital deposited.

Personal details of all shareholders and directors (full name, address, marital status, nationality) and copies of their passports legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

NIE number application form must be filed with the competent Authorities and must be applied for either: In Spain appearing in person, or in a Spanish Consulate overseas.

Address in Spain.

Complete description of the company objects-activities.

Power of attorney for the incorporation if required.

Draft Deed of incorporation.

#### Other requirements

Apply for the CIF number (Tax identification number), of the new company, to the Tax Office.

Payment of stamp duty within a maximum of 30 days from the act of incorporation. **This is essential for the registration of the company. (This is currently abolished).**

Registration in the Mercantile Registry.

Must appoint resident manager/fiscal representative.

Must keep books of account under Spanish regulations & IFRS.

Must file for value added and corporate taxes.



## ii. Subsidiary

A new Spanish entity formed to be a direct subsidiary of the parent overseas company with trading/business activities in Spain: must have a minimum paid up capital of 3.000 Euros

### Preliminary Steps

Decide on the company name.

Opening of bank account and deposit of the initial share capital (Minimum 3.000 Euros).

Decide on the method of administration, management and percentage of participation of shareholders.

Obtain a CIF number (Spanish Tax number for non-resident companies) for the parent company, and NIE numbers for directors. (See notes on previous page)

Decide on where the registered office will be.

Decide on the company objects/activities.

All directors have to be present at the meeting with the Notary, or represented by granting a notarial deed of power of attorney.

Approve the standard draft of Articles of Association produced by the Notary and execution of the public deed of incorporation before Spanish Notary Public.

### Details/ Legal Docs

Certificate of clearance of the corporate name issued by the Central Mercantil Register in Madrid.

Original bank certificate for the initial capital deposited.

Personal details of all directors (full name, address, marital status, nationality) and copies of their passports legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Power of attorney to represent the parent company in dealings with the Spanish Tax Office.

Copy of the parent company Administrator-President's passport legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Notarized copy of the Incorporation Deed (Memorandum and Articles) and Companies' Register Certificate of the relative incorporation of the parent company legalized by Notary Public and duly sealed with the Apostille of the Hague Convention. (Note: both documents are requested in English and also translated into Spanish by a sworn translator).

Address in Spain.

Complete description of the company objects/activities.

Power of attorney for the incorporation (Draft will be provided).

### Other requirements

Apply for the CIF number (Tax identification number) of the new company to the Tax Office.

Registration in the Mercantile Registry.

Local director/s need not be residents in Spain in which case: Must appoint resident manager/fiscal representative.

Must keep books of account under Spanish regulations & IFRS.

Must file for value added and corporate taxes.





### iii. Branch

Overseas company registers a branch with the same legal identity as its parent company at the Mercantile Registry

#### Preliminary Steps

Parent company name.

Opening of bank account and deposit of the initial capital share.

Obtain a CIF number (Spanish Tax number for non-resident companies) for the parent company.

Decide on where the registered office will be.

Company objects-activities.

The parent company must be represented by a notarial deed of power of attorney.

Approve the standard draft of Articles of Association produced by the Notary and execution of the public deed of incorporation before Spanish Notary Public.



#### Details/ Legal Docs

Certificate of clearance of the corporate name issued by the Central Mercantile Registry in Madrid.

Original bank certificate for the initial capital deposited.

Power of attorney to represent the parent company in dealings with the Spanish Tax Office.

Copy of the parent company Administrator-President's passport legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Notarized copy of the Incorporation Deed (Memorandum and Articles) and Companies' Register Certificate of the relative incorporation of the parent company legalized by Notary Public and duly sealed with the Apostille of the Hague Convention. (Note: Two versions of both documents are required in English and also translated into Spanish by a sworn translator).

Address in Spain.

Complete description of the company objects-activities.

Power of attorney for the incorporation

Draft of Deed of incorporation.

#### Other requirements

Apply for the CIF number (Tax identification number) of the new company to the Tax Office.

Registration in the Mercantile Registry.

Local director/s need not be residents in Spain in which case: Must appoint resident manager/fiscal representative.

Must appoint resident manager/fiscal representative.

Must keep books of account under Spanish regulations & IFRS.

Must file for value added and corporate taxes.

## iv. International Payroll

Overseas company with only marketing activities in Spain, (no operating or trading activities)

### Docs for European Union members

Confirmation of Appointment Directors from the Companies' Register in country of origin legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Power of attorney in favour of a resident person to represent the parent company in dealings with the Spanish Tax Office and Social Security Office legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Copy of the parent company Administrator-President's passport legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Notarized copy of the Incorporation Deed (Memorandum and Articles) and Companies' Register Certificate of the relative incorporation of the parent company legalized by Notary Public and duly sealed with the Apostille of the Hague Convention. (Note: Two versions of both documents are requested in English and also translated into Spanish by a sworn translator).

### Docs for Non European Union members

Confirmation of Appointment Directors from the Companies' Register in country of origin legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Good Standing Certificate issued by the Department of Taxation of the relevant US State.

Certificate of Status (so called "Capacidad de obrar") issued by the relevant Spanish Consulate.

Power of attorney in favour of a resident person to represent the parent company in dealings with the Spanish Tax Office and Social Security Office legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Copy of the parent company Administrator-President's passport legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Notarized copy of the Incorporation Deed (Memorandum and Articles) and Companies' Register Certificate of the relative incorporation of the parent company legalized by Notary Public and duly sealed with the Apostille of the Hague Convention. (Note: Two versions of both documents are requested in English and also translated into Spanish by a sworn translator).

### Other requirements

Apply for the CIF number (Tax identification number) of the new company to the Tax Office.

Must appoint resident manager/fiscal representative.

Registration of the company with the Spanish Tax Office under the relevant tax commercial code (so called "IAE").

Registration with the Social Security Office.





## v. Permanent Establishment (P.E)

Overseas company with activities  
in Spain, (operating or trading activities)

### Docs for European Union members

Confirmation of Appointment Directors from the Companies' Register in country of origin legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Power of attorney in favour of a resident person to represent the parent company in dealings with the Spanish Tax Office and Social Security Office legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Copy of the parent company Administrator-President's passport legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

Notarized copy of the Incorporation Deed (Memorandum and Articles) and Companies' Register Certificate of the relative incorporation of the parent company legalized by Notary Public and duly sealed with the Apostille of the Hague Convention. (Note: Two versions of both documents are requested in English and also translated into Spanish by a sworn translator).

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Power of attorney in favour of a resident person to represent the parent company in dealings with the Spanish Tax Office and Social Security Office legalized by Notary Public and duly sealed with the Apostille of the Hague Convention.

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### Other requirements

Apply for the CIF number (Tax identification number) of the new company to the Tax Office.

Must appoint resident manager/fiscal representative.

Registration of the company with the Spanish Tax Office under the relevant tax commercial code (so called "IAE").

Registration with the Social Security Office.

Has a commercial office.

Directors have enough powers to sign and conclude contracts.

A PE is not required to register under company Law legislation; however it could be obliged to file for value added and corporate taxes.

## zii. Common for all company structures

### RESPONSABILITIES OF THE: ADMINISTRATORS/DIRECTORS OF SPANISH COMPANIES (including branches)

#### Rights

- manage the company.
- operate bank accounts.
- enter into contracts binding the company.
- acquire and sell assets.
- acquire liabilities, including borrowing funds.
- hire and fire staff.

#### Obligations

- manage company affairs.
- comply legal requirements.
- not enter into conflicts of interests.

### FISCAL REPRESENTATIVE

- ensure that the entity he is representing complies with all tax and social security obligations in Spain.
- meet all applicable statutory deadlines.
- personal responsibility for the payment of taxes and social security not met by the company.

### MAIN DIFFERENCES

#### Branch

No legal minimum capital share.

Same legal entity as its parent company.

No limit to the parent company's liability.

#### Subsidiary

Minimum capital share of € 3,000.00.

Separate legal entity.

Shareholders liability is limited to the amount of the capital contributions.

### 3. EMPLOYMENT

#### 2) Legal Requirements

Type of employee	Type of authorization	Scenario	Duration	Requested documentation
Spanish National				<ul style="list-style-type: none"> <li>-Valid identification (ID or Passport).</li> <li>- Social Security number.</li> </ul>
EU Citizen				<ul style="list-style-type: none"> <li>- Valid Identification (ID or passport).</li> <li>- NIE or residence certificate</li> <li>Social Security number.</li> </ul>
Non EU Citizen	Work and residence permit.	<p><b>Worker requirement:</b>            He must be in his country.            To have a job offer from a Spanish employer.            To obtain a Visa from the Spanish Consulate.</p> <p><b>Employer requirement:</b>            Present application form for the authorization and documentation. Contract must be formalized before coming to Spain.            Once authorization approved, the worker will have one month to obtain the Visa in his country Consulate and sign the contract.            After obtaining the Visa, travel to Spain within its validity period (3months) and he will be allowed to work and to apply for Social Security number and registration.            As from that moment he will have one month to apply for Residence certificate before the Foreigner office or Police Station.</p>	One year, renewable for two year periods.	<ul style="list-style-type: none"> <li>- Valid Identification (ID or passport).</li> <li>- NIE or Residence certificate passport.</li> <li>- Social Security number.</li> <li>- Work and residence permit.</li> </ul> <p><b>Documentation requested:</b></p> <ul style="list-style-type: none"> <li>. Passport.</li> <li>. Valid Visa.</li> <li>. Certificate of non criminal records (issued by authorities of origin country).</li> <li>. Official Medical Certificate.</li> <li>. 3 passport photos.</li> <li>. Employer CIF (fiscal identification number), company Incorporation deeds of the non established company in Spain and Power of Attorney on behalf of the employer.</li> <li>. Social Security Registration Certificate or exemption Certificate.</li> <li>. Job offer (official form) and official application form for initial residence certificate and working permit.</li> </ul>

## b) Types of Employment Contracts

### INDEFINITE CONTRACTS

In general, contracts are made on an indefinite term, and their unfair termination entitles the employee to receive the severance established by law.

Temporary contracts	Cause	Terms	Comments
- Contract for a specific project or service.	Performance of a specific service or project within the company's business.	It will depend on the time of performance of the specific service or project.	<p>_1-It should mention the work project precisely.</p> <p>_2-Its termination entitles the employee to receive a severance of 9 days salary per year of employment.</p> <p>_3-Employees hired for longer than 24 months within a 30 month period on a continuous basis for the same position and company by means of two or more temporary contracts, under the same or different forms of contracts, will become permanent employees.</p>
- Casual contract due to production overload or backlog.	To meet market needs, production overload or backlog.	Minimum of 6 months within a period of 12 months (this period may be extended by the industry wide collective agreement for a maximum term of 12 months).	Currently cancelled until 31/12/2012.
- Work experience contract.	Contracts with persons with a university degree, qualifications or an officially recognized equivalent degree qualifying them to perform their profession.	<p>Maximum of 6 months and max 2 years. It may be extended twice, but always subjected to the 2 year limit.</p> <p>Once the term has expired, the same person may not be hired again under the same type of contract by the same or another company.</p>	<p>1-As a general rule, not more than 4 years may elapse from the completion of the respective studies.</p> <p>2-Minimum salary will be between 60% and 75% of the salary established in the collective agreement for an employee holding the same or an equivalent post (first and second year of the contract).</p>

## c) Working Conditions

<b>Working hours</b>	<b>40 hours per week</b>
<b>Frequency of payments</b>	<b>12 or 14 annual payments</b>
<b>Vacation leave</b>	<b>30 natural days or 22 working days for each full year worked</b>
<b>Bank holidays</b>	<b>14 days plus local holidays per year</b>
<b>Sick leave</b>	<b>Maximum 18 months</b>
<b>Other benefits:</b>	
• <b>Marriage</b>	<b>15 natural days</b>
• <b>Maternity leave</b>	<b>16 weeks</b>
• <b>Paternity leave</b>	<b>13 natural days</b>
• <b>Home relocation</b>	<b>1day</b>
• <b>Personal matters</b>	<b>2 days</b>

## d) Tax & Social Security Implications

### 1. TAX IMPLICATIONS

For employees: Income tax maximum rate 52% - 56% depending on the region. from gross salary.

### 2. SOCIAL SECURITY IMPLICATIONS

For employees: Social security contribution, approx 6.35% or 6.40% of gross salary (max monthly contribution € 207.17 for general contracts).

For employers: Social security contribution, approx rate (30% - 32%) of gross salary (max monthly contribution € 1,030.96).

If the employer contracts employees on an indefinite basis some deductions are applicable from the Social Security contributions.



## e) Compensation & Benefits Package

- **Medical & Dental benefits:**
  - Coverage to employees and their families.
  - Employer contribution covering the cost of the insurance up to € 500 per year and per insured person there is not tax applicable.
- **Life & Accident Insurance:**
  - Via Group life insurance.
  - Direct relation with business collective agreement or wages.
- **Business Traveler Accident Insurance.**
- **Flexible working.**
- **Retirement Benefits –Pension funds:**
  - Occupational pension plans.
  - Employer's contribution in Group Pension Fund is considered as a benefit in kind, with fiscal advantages.
  - Contributions by employees aged 50 or younger, must not exceed € 10.000 a year.
- **Meal vouchers:**
  - Vouchers of € 9.00 per day are exempt from taxation.
- **Stock options.**
- **Car facilities:**
  - Leasing/Renting/Company car.
- **Property facility:**
  - Rental.
  - Purchase.
- **Ongoing professional training:**
  - Non taxable.



Each benefit is taxed differently in Spain, and in many instances, it is more cost effective to take benefits instead of cash, as a higher-rate taxpayer is liable for 52-56% tax on their income depending on the region.

## 4. EMPLOYEE EXPENSES AND TAX-FREE ALLOWANCES

### SUMMARY CHART FOR TRAVEL EXPENSES AND TAX-FREE ALLOWANCES IN FORCE FROM 1st JANUARY, 2008

			Figures	
<b>Travel expenses</b> (Business trips to areas different to the workplace manufacture, workshop, warehouse, office)	If the employee uses public transport (Train, plane, bus, taxi, boat, etc)		The total expense provided that it is supported with the corresponding invoice or equivalent document.	
	If the employee uses any other transport (i.e. private car)	Toll and parking	The total expense provided that it is supported with the corresponding invoice or equivalent document.	
		Kilometer	0,19 € per Km	
<b>Food allowance and accommodation expenses</b> (Expenses in an area different from the workplace and place of residence of the Employee. Limit period: nine months In any case, the employer must prove: date, place and reason for the trip.	Food allowance	With overnight stay in a different area	In Spain	53,34 per day
			Other countries	91,35 per day
		Without overnight stay in a different area	In Spain	26,67 € per day
			Other countries	48,08 € per day
	Accommodation		The total expense provided that it is supported with the corresponding invoice or equivalent document.	



# EX-PAT WORKERS UNDER THE SPANISH SOCIAL SECURITY LAW

Every day more and more companies, for economic, financial and market reasons opt to send their employees abroad, in this case Spain; which produces a displacement of the employee from the work centre.

In general the employees who are sent to member countries of the European Union will be subjected to the Social security legislation currently in force in the country where the employee carries out his duties. However in the case of temporary assignments, the employee will maintain the Spanish Social security legislation.

The initial procedure will be executed if the displacement is foreseen for a period of time no longer than one year. In this case the company will be obliged to complete the relevant form TA – 200 from the Spanish Treasury.

The relevant department will issue form E-101. This form certifies that the employee will be subject to the Spanish Social Security law during his displacement to a member country of the European Union or with a bilateral agreement, and subsequently the employee will be exempted from contributions to the Social Security in this other country.

Besides this form the employee must have a valid European medical card (TSE) for his medical coverage in the country where he will carry out his duties.

The validity of this card will be for one year and it will be applied for at the Spanish Social security offices.

If the initial period of displacement which is one year has expired and the employee who works for the company should have to remain in the displaced country for business reasons, the company will have to apply for an extension of time for a maximum of 12 extra months. This total period of 24 month may be extended as per an agreement between the authorities of both countries involved for a maximum period of 5 years.

Upon the expiry of the maximum period of time, the company will have to opt for returning the employee to Spain or for registering the employee in the Social security system of the country where he has been sent, and subsequently in this case the employee will be subject to the Social Security legislation currently in force in the said country.

It is important to point out that the company must apply for the relevant forms and also to deal with the information required for the assignment before it takes place, because otherwise the Spanish authorities will not be responsible for the employee's medical coverage, and also the company will commit an illegality for not having the relevant authorization from the Spanish authorities.

## 6. DISMISSALS

TYPES	LEGAL CAUSES	REDUNDANCY
Disciplinary dismissal	<ul style="list-style-type: none"> <li>- Repeated and unjustified absenteeism.</li> <li>- Insubordination or disobedience.</li> <li>- Physical or verbal abuse towards the employer.</li> <li>- Breach of contractual good faith or abuse of trust.</li> <li>- Reduction in job productivity.</li> <li>- Habitual drug or alcohol abuse.</li> <li>- Harassment by reason of race or ethnic origin, Religion or beliefs, disability, age or sexual orientation and sexual or gender harassment towards the employer or the persons working at the company.</li> </ul>	<p><b>Fair:</b> No redundancy is payable</p> <p><b>Unfair:</b> Until 10/02/2012: 45 days salary per year worked. As from 11/02/2012: 33 days salary per year worked with a max of 42 months.</p>
Objective dismissal	<ul style="list-style-type: none"> <li>- Ineptitude of the worker</li> <li>- Inability of the worker to adapt to the changes of his job</li> <li>- Objectively evidenced need to cancel posts of work due to economic, technical, organization or production reasons</li> <li>- Justified by intermittent absences from work, reaching certain percentages of working days.</li> </ul>	<p><b>Fair:</b> 20 days salary per year worked for a max. period of 12 months</p> <p><b>Unfair:</b> a) Until 10/02/2012: 45 days salary per year worked for a max. period of 42 months b) As from 11/02/2012: 33 days salary per year worked for a max. period of 42 months.</p>

For both types of dismissals and always before reaching a complete disagreement between the employer and the employee and rather than before to go to Court to resolve it, there is an option which is to arrange a conciliation or negotiation meeting, avoiding the waste of time in resolutions, additional cost and salary proceedings, in order to reach an understanding between the parties.

In case of disagreement and a rejection of the redundancy from the employee, the amount corresponding to the redundancy compensation must be deposited in Court within 48 hours from the dismissal date.

If the employee leaves the company voluntarily he/she will not be entitled to redundancy payment.

## 7. SAFETY AT WORK

Under Law 31/1995 amended by Law 54/2003, on the Prevention of Labor Risk and subsequent legislation, employers must ensure the health and safety of their employees is looked after, which does not only means complying with the legislation and remedying situations of risk, but also planning preventive action from the outset, of their business activities and planning ongoing action to perfect the existing protection levels.

All employees must have a prevention service to provide advice and assistance in prevention tasks, for which the employer should appoint one or more workers.

- Companies with fewer than six workers: this service may be provided directly by the employer or to contract this service externally or outsourced.
- Companies with more than six employees: this service must be contracted externally or outsourced.

Failure to comply with these obligations may give rise to substantial fines and penalties.





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