

WAYS TO SET UP IN THE BASQUE COUNTRY

WWW.SPRI.EUSWWW.SAYMA.COM



Sayma.

DIFFERENT WAYS OF SETTING UP

At the time of investment/starting an activity in the Basque Country, there are various alternatives:

01.

Purely contractual link (Agency, Distribution, Dealership, Franchise, Engineering, Licence, etc.)

02.

Opening a **branch office** has no legal personality of its own and it is dependent on its parent company, although its registration is required in the Mercantile Register, being considered a permanent establishment for tax purposes.

03.

Taking a shareholding in a company or acquiring it (subsidiarisation).

04.

Joint venture agreement: Establishment of a joint venture (JV. - for specific work with no legal personality of its own), economic interest grouping (EIG. - for an ancillary activity with its own legal personality); equity loan / joint venture agreements (involves a share in the profits from a contribution to the capital of a mercantile company).

05.

Establishment of a **trading company**. The most common forms are the limited liability company and public limited company.

LIMITED LIABILITY COMPANY



Requirements

- The **minimum number of shareholders** is 1 and there is no maximum limit.
- The **liability** of the shareholders is limited to the **capital contributed to the company** and they are not liable for the company's debts with personal assets.
- The **minimum capital is €3,000** fully paid up and divided into shares.
- The shareholders' contributions can be monetary (money) or in kind.
- Non-monetary contributions do not have to be valued by an independent expert.
- The position of administrator / director may be **indefinite**.
- It may not be listed on the stock market or issue shares or bonds.



Advantages

- The **procedures** for creating and maintaining the company **are relatively simple**, as are the costs of setting it up.
- The **liability of the shareholders** is limited to the capital and assets held by the company and does not relate to their private assets.
- The **minimum share capital** is very low in comparison to other trading companies.
- The number of shareholders may be **one** and the company may be a **sole proprietorship**.



Potential disadvantages

- The **shares** into which a limited company is divided **are not easily transferable**.
- Risk of “under-capitalisation” when requesting funding, with the possible requirement of personal guarantees from shareholders.

PUBLIC LIMITED COMPANY



Requirements

- The minimum number of shareholders is 1.
- The liability is joint and several between the shareholders and is limited to the capital contributed.
- The **minimum capital is €60,000** and 25% must be paid up.
- Non-monetary contributions must be valued by an independent expert, with the exception of specific assets (transferable securities subject to quotation or a recent report).
- The position of administrator / director is for a maximum of **6 years**.
- They can be listed on the stock market and are supervised by the Spanish National Securities Commission (CNMV).



Advantages

- The **shares** into which a company is divided **are easily transferable**.
- As many investment partners as the company wishes can be incorporated.
- The **liability of the shareholders** is limited to the capital and assets held by the company and does not relate to their personal assets.



Potential disadvantages

- The **procedures for establishing and maintaining** a company are more complex and costly than those for a limited liability company.
- The **minimum share capital** is higher than for a limited liability company, as **€60,000** is required instead of only **€15,000** when a company is created.



06.

Individual Entrepreneur / Self-employed person or a stakeholder in a civil society organisation or joint ownership arrangement. Their liability for debts is not limited and they handle debts with personal assets.

Limited Liability Entrepreneur: A new individual entrepreneur figure included in the law on entrepreneurs that is registered in the commercial register can limit their liability.

07.

Other types of entities such as the social economy (Cooperative Societies and Employee-Owned Companies), or non-profit entities such as Associations and Foundations.

GENERAL PROCEDURES FOR SETTING UP A TRADING COMPANY

In general, the ordinary procedure for setting up and registering a trading company can be carried out within a **period of between one and two months**.

01.

Certificate of availability of a company name for registration: This is requested from the Central Mercantile Register in Madrid, being able to request up to 5 names.

The Mercantile Register will issue a name certificate within a period of between 1/3 days and the reservation of these denominations will be valid for 6 months.

02.

Application for Provisional Tax Identification Number: An application is made to the Regional Treasury of the corresponding Regional Territory by means of Form 036, to which must be attached:

- A copy of the foreigners' ID or national ID card (representative of the company)
- Certificate of availability of a company name for registration:
- Agreement to set up the company

03.

Opening a bank account: The founding partners will have to transfer the amount of the share capital to this account, with the financial institution issuing the corresponding certificate of disbursement that will be provided in the articles of association.

04.

Issuance of Public Deed: Partners must appear before a Notary Public, providing:

- Identification of founding partners
- Statement of real ownership
- Certificate of availability of a company name for registration
- Articles of Association of the Company
- Bank certificate accrediting the deposit of the share capital
- Foreign investment declaration form if any of the partners is non-resident.

05.

Registration of the registered office at the Madrid Mercantile Register: Once the deed has been presented to the corresponding Provincial Treasury, it will be sent to the Mercantile Register. The Register must register the establishment of the company within a period of 15-30 days

06.

Obtaining a permanent tax ID number: By means of Form 036 before the corresponding Regional Treasury to which, among other documents, a copy of the public deed of incorporation registered in the Mercantile Register will be attached.

07.

Registration with the tax authorities and employment authority: By means of Form 036 (registration for the corresponding tax obligations: VAT, Corporation Tax, Withholding Tax, etc.) a Form 840 (registration for Tax on Business Activities) at the corresponding tax authority.

For labour-related purposes, the company must register with the Social Security, Social Security General Treasury, to obtain a corresponding contribution number, register workers and notify of the opening of a work centre.

Likewise, the regulations (Law 14/2013 of September 27, on support for entrepreneurs and their internationalisation) establish a faster **telematic procedure** for incorporation and registration than the normal process. It applies to limited liability companies in which standardised articles of association forms are used. For this type of express procedure, the incorporation time is considerably reduced to a period of approximately **15 working days**.

The establishment of companies by **non-resident natural persons or legal entities** may extend the aforementioned periods, as these partners must first be identified before the corresponding Regional Treasuries, by obtaining their foreigners' ID number (natural persons) or tax ID number (legal entities). For this purpose, different documentation must be provided from the countries of origin/residence, which in all cases must be **legalised, apostilled and translated into Spanish**.

