Doing business in Spain

Contents

1. Country profile

1.1 General information

The Kingdom of Spain has been a member of the European Economic Community since 1986 and consequently EU legislation is fully applicable. According to figures published by the European Commission, Spain fully complies with the objectives established by the European Council and has implemented 2,836 Directives into national law.

Spain occupies an area of more than 500,000m² in the southwest of Europe, and is the second largest country in the EU. Spanish territory covers most of the Iberian Peninsula, which it shares with Portugal, and also includes the Balearic Islands in the Mediterranean, the Canary Islands in the Atlantic Ocean and the North African cities of Ceuta and Melilla.

The Spanish climate is temperate with hot summers but more moderate and cloudy along the coast; and cold winters in the interior, and partly cloudy and cool along the coast.

1.2 Languages

The official language in Spain is Spanish, coexisting with other official languages recognized in some Autonomous Communities (*Comunidades Atonómas*) which are: Catalan, Basque, Valencian and Galician. Education is compulsory until the age of 16 and English is the main foreign language studied at school.

1.3 Business Culture

Standard Spanish office hours vary from region to region and between different types of businesses, but standard hours usually begin at 9am in the morning and may finish at 7pm or 8pm in the evening. There is often a two hour lunch break in between.

Spain has 14 public holidays per year and these days vary between the different autonomous regions. Often these public holidays fall during the week and business often therefore close for additional days to make a longer weekend. In many areas of Spain, there is little activity in Spain during the month of August, where many businesses are simply closed.

The Spanish are often particularly outgoing and friendly during business meetings. Relationships built on a face to face environment remain highly important and many people make use of the extended lunch hours to do business.

Business meetings may be more focused on the relationship rather than business and starting times and agendas are often not given a priority. Several people may also try to speak at once and interruptions are not uncommon.

1.4 Political system

The Spanish Government is a constitutional monarchy, with the current Head of State being King Juan Carlos. The King's duties are expressly assigned by the Constitution and his role is largely ceremonial. He moderates the action of the state, and the proper functioning of the country's institutions and he is also the representative the state in the area of international relations.

The legislative body (*Cortes Generales*) is composed of two houses: the (Lower) House of Representatives (*Congreso de los Diputados*) and the Senate (*Senado*). The Government consists of The Prime Minister (*Presidente del Gobierno*) and Ministers. The Government has executive and law making power, and is responsible for internal and external affairs, defence of the state and administration (civil and military).

Spain is divided into 17 autonomos regions: Andalusia, Aragón, Asturias, Balearic Islands, Canary Islands, Cantabria, Castile and León, Castile-La-Mancha, Catalonia, Extremadura, Galicia, La Rioja, Community of Madrid, Region of Murcia, Basque Country, Community of Valencia, Navarra and two autonomous cities – Ceuta and Meillla. These autonomous communities have varying powers, but each has its own parliament, government and administrative apparatus. The autonomous communities are financially autonomous and also receive allocations from the general state budgets.

2. Investing in Spain

2.1 Investment incentives

The Spanish government and other public authorities have created a wide and comprehensive range of incentives and aid instruments with the goal of fostering business, investment and employment. The major aims, on which the strongest emphasis is put, are promoting research, development and technical innovation and indefinite-term employment. Investors in Spain can also benefit from the relevant European Union (EU) sponsored programs.

Financial aid and tax benefits are available at both a national and regional level for activities carried out in certain priority industries which are considered to be in the strategic interest of Spain to develop. Areas where specific incentives are available include:

- Agrofood industry
- Energy
- Renewable energies
- Mining
- Technological development
- Audiovisual industry

The Government has prepared a wide range of grants to start a business, with state and regional incentives for training and employment, state incentives for certain industries and regions, state incentives for SMEs and incentives for internationalization. The information about current aid programs can be found at the www.investinspain.org website.

2.2 Investors

On a geographical basis, inbound investors can be divided into three groups: non-resident individuals (Spanish citizens or foreigners domiciled or having principal place of residence outside of Spain), overseas legal entities and public agencies of foreign states. A Spanish company in which the majority of shares are held by foreign shareholders are not perceived as an investor in this context.

2.3 Notification of foreign investments

The Spanish legislation on foreign investments has been liberalised making investing in Spain more straight forward. Royal Decree 664/1999 eliminated the requirement for “prior verification” and adapted Spanish domestic law to the rules on the freedom of movement of capital contained in Articles 56 et seq. of the Treaty of the European Union. The general rule establishes the duty of notification *post facto*.

Prior notification is still required for investments coming from tax havens, and investments in activities directly related with national security. Investments for

diplomatic missions of countries which are not members of the European Union are also required to be notified beforehand, and verified by the Council of Ministers.

Certain businesses are subject to industry-specific legislation. These include investments in: the air transportation and radio industries, in industries relating to minerals and raw mineral materials of strategic interest and mining rights, media in general, gaming, and private security industries. Investments in manufacturing, marketing or distributing of arms and explosives for civilian use, and in national security-related activities are subject to the clearance rules outlined in the Royal Decree.

2.4 Investments subject to prior notification

There are types of investments which are subject to prior notification. Such businesses are:

- Participation in Spanish companies, including their incorporation and subscription and acquisition of shares in corporations or the subscription of shares in limited liability companies, and any legal transaction under which voting and other non financial rights are acquired.

- Establishment of capital allocated to branches and increase of the capital.

- Subscription and acquisition of marketable debt securities issued by residents (debentures, bonds, promissory notes).

- Participation in mutual funds recorded in the Registers of the Spanish National Securities Market Commission.

- The acquisition by non-residents of real estate located in Spain whose value exceeds €3,005,060, (if the investment originates from a tax haven there is no minimum amount).

- The establishment, formalization or participation in joint ventures, foundations, economic interest groupings, cooperatives and joint-property entities, regarding the value of the investment.

The abovementioned investments may be subject to industry-specific regulations and the rules on exchange control and notification of monetary flows to or from other countries.

2.5 The person required to report foreign investments

The duty of reporting lies with the investor himself and if a Spanish public notary participates in the transaction, he is also obliged to report the investment to the authorities.

2.6 Rules of reporting

In general the investments and liquidation thereof have to be reported *post facto* to the Investment Register at the Ministry of Industry, Tourism and Trade. Investments from tax havens have to be reported before and after the investment has been performed, except in cases where the foreign interest does not exceed 50% of the capital share of the Spanish company in which the investment is made, and for investments in marketable debt securities issued or offered publicly and units in mutual funds, recorded in the Registers of the Spanish National Securities Market Commission.

2.7 Monitoring of foreign investments

Spanish companies which have foreign shareholders and Spanish branches of non-resident persons may be asked by the General Directorate for Trade and Investments ("DGCI") of the Ministry of Industry, Tourism and Trade to file an annual report on the status of their foreign investments.

The General Directorate may require parties involved in foreign investments to provide it with necessary information according to the investment. Persons who may be asked to inform include Spanish companies with non-resident shareholders, public authenticating officials, companies providing services, or investment companies and credit entities and other finance entities that have taken part in investment transactions may also.

If investments concerned are required to obtain administrative clearance from the Council of Ministers, the Spanish Council of Ministers can suspend the application of the deregulation rules. Until now, the Council of Ministers has suspended the applications only in cases of investments directly related with national security, such as the production or marketing of arms, munitions, explosives and other armaments.

3. Purchasing real estate property

3.1 Formal requisites

All real estate transactions have to be formalized before a public notary. If the contract is being signed abroad, it is better to be formalized before the Spanish consul abroad. There are several documents to be presented, such as: identity documents of the parties, the selling party's title deed, powers of attorney (if applicable), form to be filed with the Foreign Investments Registry of the Directorate General for Trade and Investments (DGCI) (for signature), and evidence of the payment.

3.2 Taxes

VAT is charged on the sale of new buildings, offices and commercial buildings.

The seller of a property will either be charged a transfer tax of 7% (depending on the autonomous region, for example 6.5% in the Canary Islands), or VAT if the property is a new building.

If the seller is a company or an individual working as real estate developer the VAT payment of 16% (7% if the building is for housing) for transfer of development land and first deliveries of buildings, 16% of VAT for transfers and the stamp duty at the rate of 1%.

According to transfers of rural, unbuildable land and second or subsequent deliveries of buildings the capital-transfer tax or VAT has to be paid. The VAT is applicable if the buyer is an entrepreneur or professional who has the right to deduct the full input VAT amount and the selling party waives its exemption to charge this tax (provided certain requirements are fulfilled).

The rules are different if the property is located on Canary Islands, because the VAT is not applicable there. If the selling party is a real estate developer, an individual or a company, the payments are: for transfers of development land and first deliveries of buildings, the 5% Canary Islands general indirect tax (IGIC) plus stamp duty at the standard rate of 0.75% (or 0.5% for buildings to be used as the owner's usual residence). When it comes to transfers of rural, unbuildable land and second or subsequent deliveries of buildings the capital-transfer tax at the rate of 6.5% or IGIC need to be paid. The latter one is applicable if the acquiring party is an entrepreneur or professional and the selling party waives its exemption to charge this tax, provided certain requisites are fulfilled. If the selling party is an individual and not a real estate developer, capital-transfer tax is applicable. The transfer has to be recorded in the Land Register.

If the total amount of the transaction exceeds 3,005,060€, it has to be declared with the DGCI.

A separate guide to taxes on property transactions can be found in Appendix [**From our website**].

3.3 Other expenses

Apart from taxes there are also other expenses, such as notary public´s fees, fees for recording the transfer in the Land Register, capital gains tax (municipal tax on the increase of the value of urban land) and the property tax (IBI) which is calculated due to the cadastral value of the property.

4. Business entities

4.1 Ways of doing business in Spain

A foreign investor in Spain is provided with a wide range of options on how to organize his business activity. It is possible to carry out a business by incorporating a Spanish company, forming a branch, or through a permanent establishment. Historically, the most popular business structure used by foreigners was the public limited liability company (*Sociedad Anónima*), but the limited liability company (*Sociedad de Responsabilidad Limitada*) has now gained popularity.

Another option is to associate with an existing business, already established in Spain, through a joint venture. It should be noted that the term joint venture when used in English usually refers to one or more companies sharing ownership of another independent company. In Spain, the same may apply, although the English term "joint venture" usually refers to one of the following legal structures:

- an Economic Interest Grouping (*Agrupación de Interés Económico*, EIG) or a European EIG (EEIG),
- a Temporary Business Association (*Unión Temporal de Empresas* or UTE),or
- as a silent partnership (*contrato de cuenta en participación*) with a Spanish company.

Setting up a registered business is not the only way to operate for those who wish to enter the Spanish market. Various forms of distribution agreements are available, and no registered office is necessary to profit from these options. The most significant of the alternatives open are signing a distribution agreement, operating through an agent, operating through commission agents and franchising.

Each of the forms outlined above present different advantages and costs which need to be considered form the organizational, tax and legal point of view. They will be discussed in the following chapters.

4.2 Incorporation of companies

4.2.1 First steps

Before formally establishing a company it is necessary to obtain a certificate issued by the Central Commercial Register, as a confirmation that there is no other company using the same brand name, that the applicant is intending to use. Execution of a notarised public deed is also required.

It is required to register with the relevant tax office, in order to get a tax identification number (NIF). If the company has non-resident shareholders or

representatives, each of them has to obtain a foreigners´ identification number (NIE). If the person seeking to obtain the NIF (or NIE) is physically in Spain, he can obtain these tax numbers from the Directorate General of Police. If any of the directors does not appear in person, appropriate powers of attorney, duly notarized and apostilled, are needed for each of them. These tax numbers can also be obtained from Spanish embassies and consular offices abroad.

As for tax matters, on establishing a company a capital duty must be paid of 1% of the share capital. Inscription in the Commercial Register and payment of municipal taxes is also required.

4.2.2 Inscription

It is compulsory for all companies to be registered with the Commercial Register. For individual sole traders the inscription is optional (except ship owners to whom the obligation still applies). Entities inscribed in the register are obliged to put the inscription data on every document they issue.

The Commercial Register keeps and publishes the accounting documents, and also authenticates the statutory books.

The Commercial Register is a public institution. All the data held at the Register on registered companies is publicly available for interested parties via copies of the documents filed, certificates issued by the Register, or informative memoranda.

4.3 Types of business entities

4.3.1 Main division

The main types of legal entities are companies with a share capital, partnerships and mixed companies.

Share capital companies are Public Limited Company (*Sociedad Anónima*, abbreviated to *S.A.*), Private Limited Liability Company (*Sociedad de Responsabilidad Limitada*, in abbreviation *S.L.*) and companies owned by employees.

4.3.2 *Sociedad Anónima*

The formal act of incorporation takes place before the notary public, who executes the public deed of incorporation (including the articles of incorporation). The deed then has to be recorded in the Commercial Register. The notary public will require the persons who appear before him for this purpose to present an identity document, power of attorney (if applicable), evidence of payment and whether it is to be made in cash or in kind (if applicable), the name clearance certificate obtained at the Commercial Register and the form (to be signed by the notary, if applicable) for subsequent

declaration of the foreign investment to the DGCI's Foreign Investment Register. It is also necessary to provide the notary with the by-laws of the company.

The *Sociedad Anónima* in governed by Board of Directors (*Consejo de Administración*) and the Shareholders General Meeting (*Junta General de Accionistas*). The Board of Directors is a representative body, which may consist of one or more directors. Members of the board may be held liable for breaching one of the duties, such as not acting with due diligence, loyalty, fidelity and confidentiality.

Ultimate control lies with the Shareholders and decisions in the General Meeting are taken by the majority. The meeting must be held within the six months of the financial year, to approve the financial statements of the previous financial year, and to review the management of the company's business activity. Also the Board of Directors may call a General Meeting, when they decide so, or when requested by shareholders who represent not less than 5% of the share capital.

The capital of *Sociedad Anónima* is divided into shares, which can be registered in the name of the holder, or in the name of the bearer. It is possible to establish an S.A. even with only one shareholder, but this has to be expressly stated in the Articles of Association. If not state, the sole shareholder bears unlimited liability for the corporate debts.

The minimum share capital for an *S.A.* is €60,102 and must be fully subscribed and at least 25% paid in at the time of incorporation. The remaining 75% must be paid in within the period stipulated in the by-laws, or within other period stipulated by the Board of Directors decision. The maximum period to pay up the share capital for non cash investments is five years.

A shareholder has the right to participate in profits, the right to vote, the right to vote on contracts entered into by the company, the right to information, and also priority subscriptions rights. It is however possible to issue non-voting shares, which receive annual minimum dividends. Terms of payment are specified in the Company's Articles of Association.

4.3.3 *Sociedad de Responsabilidad Limitada*

The *S.L.* is generally used for small and medium-sized business activity, which requires for incorporation only one shareholder. The minimum share capital is lower than the capital required for the *S.A.*, only €3.005,06, and it has to be fully subscribed and paid up in the moment of setting-up the company

4.3.4 Employee owned companies

Companies owned by employees established by Spanish law are *Cooperativas* and *Sociedades Laborales*.

4.3.5 Partnerships

In a partnership all partners bear personal unlimited liability for the partnership's debts. The partnership may not be offered to third parties, unless agreed by all of the partners.

4.3.6 Mixed companies – *Sociedad en Comandita* (Limited Liability Company)

This business form blends features typical for share capital companies and of partnerships. The partners' responsibility varies – some of them are personally responsible, and others bear liability which is limited to their shares.

4.4 Formation of branches

A branch is an overseas legal entity operating in Spain. Notwithstanding the fact that a branch is actually operating in Spain, its relations with third parties are subject to legislation of the country of origin. In terms of requirements, formalities and expenses, opening a branch is very similar to setting up a company or incorporating a subsidiary.

There is a requisite to establish a branch through a public deed and enter in the Commercial Register. It is required that a branch has a fixed seat in Spain and a fiscal representative resident in Spain. A branch is set up for specified purpose, called ¨declared objects¨, which defines the investment planned to be taken on. The progress of the investment has to be described by an annual report, submitted to the General Directoriate of Trade and Investment.

As for tax matters, regulations considering Spanish companies, also apply to branches, with a few differences. If the parent company invoices a branch for costs derived from management support or administration, these costs are deductible from the branch's income. Spanish law provides a Branch Profit Tax, by which the income earned by the branch and then transferred abroad is taxed at a rate of 18%. This tax however does not apply to the countries which have signed with Spain Double Tax Treaties on Income and Wealth.

4.5 Other forms of business activity

4.5.1 Joint venture (JV) and Temporary Business Alliances (UTEs)

The UTEs are set up for a specified or unspecified period of time, as temporary business alliances for the directly specified purpose of a certain project or providing services. A UTE has no legal personality and is not a corporation. UTEs are governed by Law 18/1982, concerning the Tax Regime of Temporary Business Groupings and Associations and Regional Industrial Development Companies, amended, by Law 12/1991, Act 43/1995 and Act 63/2003.

Through a UTE several companies engage in one common project. A UTE is commonly used in engineering and construction projects but can be used in other sectors as well.

It is possible that a UTE qualifies for the flow-through taxation regime. In order to achieve that, the formation has to be presented by notarial deed and registered with the Finance's Special Register of UTEs at the Spanish Ministry of Economy and Finance. The registration at the Commercial Register is required as well.

UTEs must comply with bookkeeping and accounting requirements similar to those of corporations.

4.5.2 Economic Interest Groupings (EIGs)

The difference between UTEs and EIGs is that the Economic Interest groupings do have the legal personality, and are entities of pure commercial nature.

The foundation of an EIG has to be done by a non-profit entity, only for the purpose of helping the members achieve their goals. The EIG is not authorized to act on behalf of their members and may not substitute them in their actions. The form of notarial deed is required in order to form an EIG. EIGs are regulated in Law 12/1991, of April 29, on Economic Interest Groupings.

The European EIG (EEIG) has separate legal personality and EEIGs incorporated in Spain share the characteristics outlined in EU Regulation 2137/85, which establishes the basic rules governing EEIGs.

An EIG is most frequently used to provide centralized services within a broad association or group of companies, which could be purchasing, sales, information management or administrative services.

The EIGs may not interfere with their partners' decisions on internal administrative issues, finance or investment, and are not allowed to manage or control their activities.

If it is not necessary to acquire shares or holdings in order to fulfil the EIG's purpose, the EIG is not allowed to hold a portfolio of investments in other companies. In the case of acquisition, the shares have to be immediately transferred to its partners.

The members are personally and severally liable for the entity's debts, and secondarily to the EIG and they are obliged to contribute to the EIG's capital and to share in its expenses. The governing bodies are the members meeting and managers. The tax and damage liability is shared by the managers and the EIG, they are jointly liable, unless they prove acting with due diligence.

4.5.3 Participation Account Agreement Silent partnership

The silent partnership is a Participation Account Agreement, which is very similar to unincorporated partnership agreement. The non-managing investor participants bring contributions to gain profit in the results of the managing

participant, to whom the contributions were made. The interest embraces income as well as losses. The contribution which could be either monetary or in kind gives the right to share in the profits but do not create a shareholder status.

No legal formalities are required in order to set up a silent partnership. The parties however often choose to give the agreement the form of public deed, for evidence purposes.

The remuneration of the non-managing partners has to be recorded as an expense in the accounts of the managing participant. The remuneration expenses are deductible from corporate income tax.

4.5.4 Purchasing shares in an existing company

If the shares are purchased in *S.L.s* they have to be certified by a public broker. In cases of transfers of shares in *S.A.s*, the intervention of a public broker is necessary if the Spanish relevant regulations provide so. The expenses relating to those transactions are fees of the public broker who certifies the operation.

4.5.5 Distribution agreement

Distribution agreement is a good alternative for setting up a branch or entering commercial agreement with lower costs and flexible means for effectively entering a foreign market. As long as the distribution agreements are not regulated, the parties are given a high level of discretion when deciding on form and content of the contract.

The basic sense of the distribution agreement is that one party agrees to purchase and resell goods produced or belonging to the other party. The distributors form a part of the commercial network of the venture, not fully integrated, but focused on the goal to increase sales.

The Spanish distribution networks mainly consist of few types of agreements in order to organize the distribution. The distribution may engage the form of a commercial concession or exclusive distribution agreement, in which the supplier stipulates the exclusiveness for the distributor to supply the goods within a certain territory. The sole distribution agreement reserves the supplier the right to supply the agreed products to users in the territory of the concession. The authorized distribution agreement, under the selective distribution system, presents a more complex way of passing the products which require special attitude of the distributors and sellers. The selective distribution provides cautious choice of distributors choosing as the criteria their capacity to handle technically complex products and to maintain the value of the brand.

4.5.6 Agency agreement

The agency agreement is similar to the above discussed distribution agreement. It is governed by Law 12/1992 on Agency Agreements, which implements Directive 86/653/EEC.

The parties of an agency agreement are the agent (either an individual or a company) which undertakes to negotiate and in some cases as well to conclude commercial acts or operations on behalf of another, as an intermediary. The agent is independent, but in fact is not acting independently, but on behalf of the principal. The parties agree on the remuneration of the agent. In general the agent bears no risk and hazard for those his actions, the parties however can stipulate otherwise.

The agent negotiates himself or through his employees contracts that he is instructed to manage. Unless expressly authorized, the agent cannot subcontract his duties. The agent may finally conclude contracts only if he is authorized to do so. The agent may act on behalf on various different principals, provided that the goods or services are not similar in a way which could create a conflict in his actions, and either way the consent of the existing principals is required.

The remuneration of the agent can be set as a fixed sum, a commission or a combination of the two. No other means of remunerating the agent is permitted.

The maximum period of restraint of trade clause cannot exceed two years after the termination of agency agreement. The principal is obliged to be loyal and act in good faith with the agent, to provide the agent with all necessary documentation and information concerning the products or services, to pay the stipulated remuneration, and to accept or reject transactions proposed by the agent.

In determining whether a commercial agent can be considered as a permanent establishment in Spain, the key issue is whether there is a relationship of dependence between the agent and the principal.

There are also commission agency agreements which are similar to agency agreements, but instead of acting on a regular basis, the agent acts only on an occasional basis.

4.5.7 Franchising

Franchising is a way of developing business activity in an international scale using the knowledge and experience of those who have already established business of a certain kind with sufficient success. Through the franchising agreement two independent entities undertake a close cooperation. The franchisor grants on his individual franchisees the right to pursue the business activity previously carried out by the franchisor, for a specific market. After France and the UK, Spain is one the EU countries with the largest number of franchise establishments.

There are various types of franchising agreements, which could take the form of: industrial franchising (for production), distribution franchising (sales) and service franchising (provision of services).

The legal background of franchising is expressed in the Royal Decree 378/2003, which refers to Regulation (EC) No. 2790/1999, of December 22, 1999, relating to the application of Article 81.2 of the Treaty to certain categories of vertical agreements and concerted practices and Regulation (EC) no. 1400/2002, of July 31, 2002, for the motor vehicles sector. Also the Royal Decree 2485/1998, of April 13, implementing Article 62 of Law 7/1996, of January 15, 1996, regulating retail trade, which set the conditions for franchising activity and created the Register of Franchisors, in accordance with the amendments introduced by Royal Decree 419/2006, of April 7, 2006.

The franchisee obtains the right and obligation to use the brand name and/or trade or service mark for the goods or services, the know-how and the technical and business methods, which have to be specific for the business, material and unique, the procedures and other intellectual property rights of the franchisor, accompanied by the ongoing provision of commercial and technical assistance which is expressly set out in the relevant written franchising agreement between the parties. It is not necessary that the commercial concession or distribution agreements be considered franchises where an entrepreneur acquires products (usually branded products) from another entrepreneur who grants him a catalogue of exclusive rights in the area, to resell them, again under certain conditions, as well as to offer purchasers of the products after-sale services.

Neither the grant of manufacturing licence, the licensing of a registered trademark, transfers of technology, or a license to use a commercial emblem or logo are considered to be franchising.

Before starting the franchising activity in more than one Autonomous Community the franchisor needs to register with the Register of Franchisors which is subordinate to the General Directorate for Internal Trade of the Ministry of Industry, Tourism and Trade. The Register takes charge of registering franchisors, regularly updates the list of franchisors, provides information and issue franchisors with the relevant supporting certificates.

A franchising agreement is a form of product and/or service distribution which facilitates to uniform the distribution network with limited investment. One of the greatest advantages of the franchising is that it enables individual entrepreneurs, even with no experience, to start a business whose success is the majority of cases could be guaranteed, and it definitely would not be that simple without the know-how and assistance of the franchisor The brands that develop through franchising are already known and it easy to foresee the success.

It is essential to always examine the franchising agreements content in the light of antitrust law.

4.6 Obligation of keeping statutory books by the companies

The Register of Partners is obligatory for limited liability partnerships and for public limited companies where shares are registered in the name of the holder. In the register names of the first shareholders must be kept, and every subsequent share transfers must be booked, also with detailed information on any rights of third parties over the shares, and on charges secured on them.

The Register of Registered Shares has to be kept by public limited companies with registered shares.

The Register of Contracts for companies which have only one shareholder, to register contracts between the company and its shareholder.

The Minutes Book to keep minutes of general meetings.

There is a requisite of legalising every statutory book with the Commercial Register.

5. E-business legal framework

The different aspects of e-business are now subject to specific regulations in Spain. Consequently, any e-business transactions also involve legislation on distance sales and advertising, as well as regulations governing the general terms and conditions of contracts, electronic signatures, personal-data protection, intellectual and industrial property rights, and the information society and e-business.

A fundamental aspect to be borne in mind with respect to electronic transactions is that the applicable regulations vary depending on who the recipient is. Thus, a transaction carried out between companies ("business to business" or B2B) is not the same as a transaction where the end customer is an individual ("business to consumer" or B2C), because in the latter case legislation on the protection of personal data and consumer regulations, among others, must also be taken into account.

5.1 Civil and commercial regulations

5.1.1 Civil Code and Commercial Code

Both codes have recently been modified by the Act on Information-Society Services and e-Business, which stipulates that consent to a contract entered into by automatic means is understood to exist from the moment acceptance is given.

5.1.2 Distance sales

All operators who carry out distance sales, such as those made on telematic systems, should obtain the corresponding authorization and register on the Register of Distance-Sales Enterprises.

5.2 Consumer protection

Whenever e-commerce activities are targeted at consumers, it is also necessary to comply with consumer protection legislation, regulated in Legislative Royal Decree 1/2007, of November 16, 2007, approving the Revised General Consumer and User Protection Law and other supplementary laws.

5.3 Act on Information-Society Services and e-Commerce (LSSI)

The LSSI defines an information-society service as being any distance service rendered for payment by electronic means at the recipient's individual request. This also includes services not paid for by recipients, given that such services still constitute economic activities for the rendering party.

5.4. Protection of personal data

Personal Data Protection Organic Law 15/1999 regulates the processing of an individual's personal data obtained by public and private entities in the course of their duties. Under the Law, personal data cannot be used indiscriminately and there are penalties in the event of a breach of the statutory obligations.

The Organic Law applies to "personal data," meaning any information concerning identified or unidentified individuals. Accordingly, it does not apply to data concerning legal entities. Personal data protection legislation revolves around the following principles: the data subject must give prior consent to the processing of his or her personal data, except for the exceptions envisaged by the Law.

5.5. Intellectual and industrial property rights and domain names

5.5.1 Intellectual property

The Intellectual Property Act establishes that intellectual property is any original literary, artistic or scientific creation expressed in any tangible or intangible means or media, whether currently known or which may be invented in the future. Consequently, all creations that meet the originality requirement may be protected as intellectual property, including the content, source codes and graphic design of websites.

The legal protection of intellectual property is hugely important when engaging in e-commerce in the "information society." For this reason, it is essential to determine as clearly as possible the ownership of the rights which can flow from content and information based on new technologies, the main hallmark of which is to facilitate the transmission and broad dissemination of such content and information. The key Spanish legislation in this area is Legislative Royal Decree 1/1996, approving the Revised Intellectual Property Law. Article 10 of the Revised Law establishes that all original literary, artistic or scientific creations expressed by any means or on any medium, whether tangible or intangible, currently known or invented in the future, are intellectual property.

5.5.2 Industrial property

Inventions are patentable and, in the area of e-business, patents can be taken out on compression and coding algorithms. However, drawings, rules and methods for doing business and computer programs cannot be patented.

When engaging in e-commerce, regard should also be had to industrial property matters. Inventions can be patented and, with respect to e-commerce, patents on encryption and compression algorithms may be established. However, Article 4.c of Patents and Utility Models Law 11/1986 provides that plans, rules, and methods for conducting a business, as well as software, cannot be patented.

5.5.3 Domain names

Another essential issue for Internet operators to take into account is the registration and use of domain names. In this respect, regard must be had to Order ITC/1542/2005 approving the National Plan for Internet Domain Names under the country code for Spain (".es"), which repeals the previous Order CTE/662/2003. Under this new order, Red.es, a public for-profit entity, continues to perform the function of the public authority assigning domain names under the ".es" code.

5.6 Telematic invoicing

Electronic invoicing is based on the use of advanced electronic signatures or any other system of electronic-data interchange that provides for guaranteeing the authenticity of invoices sent by e-mail and the reliability of their content. The Value Added Tax Law 37/1992 states in Article 88.2 the possibility of issuing invoices or analogous documents through telematic means with the same effects as it has been accomplished with paper based invoices.

In this respect, Royal Decree Law 1496/2003 states that the obligation to issue invoices or analogous documents could be performed through any resource and, particularly, through electronic means, provided that the addressee has given its express consent and that the used electronic resources guarantee the authenticity of its origin and the integrity of its contents.

5.7 Electronic signatures

An "electronic signature" is a set of data in electronic form that is consigned or associated with other data and can be used as a means of identifying the signing party.

In order to ensure the technical security and legal certainty of business activities using new technologies, Electronic Signature Law 59/2003 was enacted. This Law aims to promote more widespread use of the electronic signatures as an instrument that generates trust and security in telematic communications, thereby contributing to the development of e-commerce and of the "e-government."

"Electronic signature" is defined by the Law as a set of data, in electronic form, attached to or associated with other electronic data, which can be used as a method for identifying the signatory.

5.8 E-money

Electronic money is a monetary value represented by a credit payable by its issuer that is stored on electronic media and accepted as a means of payment by other companies. Before issuing electronic money, a number of specific management procedures and controls are required to ensure operations are carried out properly and to guarantee the stability of the financial system.

5.9. Law 34/2002 on E-Commerce and Information Society Services

Law 34/2002 on E-Commerce and Information Society Services (ECISSA), in force since October 12, 2002, transposes Directive 2000/31/EC of the European Parliament and of the Council, relating to certain legal aspects of the services of the information society, particularly e-commerce on the domestic market.

The ECISSA defines as information society services any service provided for a valuable consideration, long-distance, through electronic channels and upon individual request by the recipient, including also those not paid by the recipient, to the extent that they constitute an economic activity for the provider.

6. Tax [1]

6.1 Summary

The central government taxation structure in Spain outlines a general division to direct and indirect taxes.

Direct taxes are tax on the income of residents (which could be either on corporations´ income or on personal income), non-residents and corporate income tax. Apart from income tax there is also tax on assets (affects only individuals) which can be either on net wealth or on inheritance and gift. Notwithstanding the above local taxes are also being collected.

The indirect taxes are value added tax (the VAT, in Spain ¨IVA¨), tax on capital transfer and legal documents, customs duties – tax on international trade, taxes on specific consumable goods (hydrocarbon, alcohol etc.)

6.2 Companies

6.2.1 Liability to tax

All Spanish entities with separate legal status (i.e. corporations, limited liability companies, and partnerships) are liable to Spanish corporate income tax. The Corporate Income Tax, applies to the entire Spanish territory regardless of special territorial regimes, or International Treaties. Subject to the Corporate Income Tax are companies that are resident in Spain (i.e. companies that either have been established, their registered seat is located in Spain, or its head office and effective management are located in Spain). Spanish resident companies are subject to the corporate income tax on worldwide profits, and capital gains.

Tax Administration may presume that a company registered in a tax haven or in nil tax territories is resident in Spain if its main assets consist in property located in Spain or rights exercised within the Spanish territory, or when the company´s main activity is carried on in Spain.

The tax liability derives from total income amount and capital gain, whatever their source would be, and irrespective of the place where the profit was gained and of the taxpayer´s residence.

6.2.2 Taxable income

[1] [1] In October 2009, the Spanish Government has announced its intention to rise standard VAT to 18%, and reduced VAT to 8% on July 1, 2010. Tax income from savings will also increase, to 19% on the first 6,000 euro and 21% for the rest. Finally, a 400 euro annual rebate for all taxpayers will be scraped. The reform has to be passed by the Parliament at the end of 2009.

Taxable income in Spain comprises total revenue less deductible expenses and is based on the income disclosed in the company´s financial statements, adjusted in accordance with tax principles.

According to the Corporate Income Tax Law there are three methods of determining the taxable income, which are: the direct assessment method, the indirect assessment method and the objective assessment method. The first one is applicable in majority of cases, and it defines the taxable income as the difference between period revenues and period expenses. Taxable income is based on the income disclosed in the financial statements adjusted in accordance with tax principles. Business expenses are deductible if they are properly recorded and supported.

6.2.3. Tax rates

The basic 30% tax rate applies to worldwide profits of resident corporations. Small entities, with annual net turnover lower than 8 million euros can apply a reduced 25% tax rate for profit between 0 and 120.202,41 euros. There are also special tax rates which apply to certain companies, such as listed collective investment institutions, including real estate investment funds (1%), co-operatives (20%) and entities which involve in hydrocarbon research and exploitation (35%). Special tax regimes embrace also Spanish and European economic interest groups, ¨temporary business associations¨, venture-capital companies and funds, and industrial and regional development companies.

The tax period is the accounting year of the company. The tax base is the revenue obtained in the accounting year reduced by losses in previous years. The tax base is set by the accounting result corrected by applying the taxation provisions.

In case of losses, there is a possibility of carrying them forward for the 15 years subsequent to the year when the losses occurred. It is up to the company how much of the losses to use in each period. For entities newly established the 15 years period starts from the first period in which the company made profit.

To prevent instrumental use of non resident companies to defer the corporation tax payment, in cases provided by law, if the taxpayer (Spanish company) holds 50% or more of the capital stock, equity, voting rights or results of the non-resident company, it would be obliged to include in their tax base profit gained from these companies. (The International Fiscal Transparency Regime). This regime however will not be applicable when the non-resident entity is tax resident of another EU Member State which is not considered as a tax haven due to Spanish law. The regime is applicable also when the tax paid by the non-resident on the income is less than 75% of which would have been payable in Spain.

6.2.4 Non-resident companies tax on property in Spain.

Non-resident companies that own real estate in Spain are obliged to pay an annual tax in the amount of 3% of the property´s cadastral value, every year on the December 31. The tax does not apply to international bodies and foreign states, and public institutions, companies that are resident in countries who signed the treaty with the exchange of information clause, the owners however need to be either Spanish residents or residents of a country who signed a treaty mentioned above.

For the exception to come in force, the non-resident companies are obliged to report required information to the authorities, such as the list of real properties that they own in Spain, and personal data (names) of the company´s owners. The report has to be prepared on the annual basis.

6.2.5 Capital gains taxation

Capital gains are treated as ordinary business income, and are taxable at the normal corporate income tax rate of 30% reduced for small enterprises.

6.2.6 Dividends

The dividends that were paid to non-residents are taxed with the 18% tax rate, unless reduced by a tax treaty. Due to implementation of the EC Parent-Subsidiary Directive The internal company dividend payments to residents of all EU states are exempt from Spanish withholding tax, provided that before dividends are declared the foreign parent has held at least 15% of the share capital of the Spanish company continuously for one year, or if the one year holding period is subsequently completed. The exemption does not apply if the parent company is located in a tax haven.

6.2.7 Interest

Interest paid to non-residents is subject to an18% withholding tax, unless reduced by a tax treaty, or the payment qualifies under the EC Interest and Royalties Directive. Interest paid to EU resident companies, however, is exempt, as is interest on bank deposits and interest on government bonds.

6.2.8 Royalties

The 24% withholding tax rate applies to royalties paid to non-residents, unless reduced by a tax treaty or the royalties qualify for exemption under the EC Interest and Royalties Directive. The Directive is however not fully applicable for royalties until 2011 – until the directive is not entirely in force, the withholding rate is 10% for qualifying EU entities.

6.2.9 Foreign income and tax treaties

Relief from double taxation takes the form of a credit in the residence country for tax in the source country, exemption in the source country or exemption in the residence country, depending on the type of income and the treaty. Most

tax treaties use the credit method to avoid double taxation of dividends, interest and capital gains.

In the absence of a treaty, Spanish domestic law provides for a credit to resident taxpayers for direct taxes incurred that are similar to Spanish income taxes. Generally, credit will be provided in the amount equal to the lesser of the tax payable in Spain on such income or the actual tax incurred by the taxpayer. Unused credits may be carried forward 10 years. Spain has concluded tax credits with most of its main trade and investment partners. The treaties generally follow the OECD model treaty.

6.2.10 Transfer pricing

Spanish transfer pricing legislation requires that taxpayers prepare transfer pricing documentation. Spain has implemented the OECD transfer pricing guidelines, with respect to valuation methods.

There are various methods of determining the market prices - the comparable uncontrolled-price, the cost-plus and the resale price methods. If the above mentioned methods are not applicable, the profit-split and the transactional net margin methods can also be applied. If a party fails to maintain documentation of the related transaction must be maintained, penalties may be imposed.

6.2.11 Controlled foreign companies

The rules governing CFC require that some income derived from non-resident entities which are controlled by the entity, be included in the corporate income tax base.
Relevant income for these purposes includes non-business income from providing credit, financial, insurance and other services to Spanish resident entities, when these services generate tax-deductible expenses for those resident entities.

6.2.12 Consolidated returns

There is a possibility that a group of companies be taxed within the basis of consolidated balance sheet, first approved by the Ministry of Economy and Finance. To have this opportunity applicable, Spanish company must own at least 75% of its Spanish subsidiaries, directly or indirectly.

Controlling companies must file the consolidated accounts in the Commercial Register of the autonomous community in the autonomous community of their seat. Subsidiaries also present their own accounts to the register in their particular localities.

6.3 Individuals

6.3.1 Liability to tax

The personal income tax applies to the entire Spanish territory regardless of the local legislation and international treaties. The liability arises with obtaining income by persons habitually resident in Spain, which is to be understood as staying on the territory of Spain for more than 183 days. Occasional departures are also counted, unless fiscal residence in other country is proved.

If an individual has his main business centre, his economic interests are established in Spain or his spouse and minor children are habitually resident in Spain, he would also be presumed habitually resident, unless he proves contrary.

Employees who as a result of transferring to Spain obtain tax residence in Spain may calculate with the Non-Resident Income Tax, for the period in which they move and for the following five periods. A taxpayer who solicits this regime will be liable of Wealth Tax, as a non-resident. There are however conditions to be met in order to benefit this regulation – the taxpayer may not have been resident in Spain within the ten years prior to the transfer, the transfer has to be set in the job contract, the work has to be actually done in Spain and for a company which is resident in Spain. Also the employment income may not be exempt from Non-Resident Income Tax.

Spanish citizens, who transfer their tax residence to a tax haven will not be released from the duty of the Income Tax payment, for the period in which they transferred, and for the four following periods.

6.3.2 Taxable income

Whole net income and capital gain is being taxed, regardless of the payer´s residence and the origin of the profit. Law provides minimal amounts which have to be taken into account when counting the tax liability. Personal and familiar minimum has to be precised, since families may calculate jointly or each member separately.

6.4 Other taxes

6.4.1 Wealth tax

The Spanish 'Wealth Tax' has been abolished with effect from 1 January 2008.

6.4.2 Inheritance and gift tax

The inheritance and gift tax is charged on all assets received irrespective whether located in Spain or abroad and applies to Spanish resident heirs, beneficiaries and donees. The non-resident beneficiaries are taxed as well, like non-resident taxpayers, and must pay the Spanish tax only if they acquire assets and rights which are located or exercised in Spain.

The inheritance and gift tax is possible to be reduced up to 95% of the rate if the transmission takes place in relation to spouses, children (adopted as well),

or, in their absence, ascendants, foster parents or collateral relatives up to the third degree of a professional
business, an individual enterprise, or interests in entities or usufructs on them of the donor or deceased which are exempt from wealth tax. The requisites for the reduction to apply are that the beneficiary has to keep the goods for at least 10 years, he cannot enter transaction which would result in a substantial diminution in the value of the assets.

It is also possible to the ¨inter vivos¨ transfers of interests in an individual enterprise, provided that the donor is at least 65 years old, or permanently disabled. The transfers must include professional business or in entities belonging to the donor which are exempt from wealth tax to spouses, descendants or adopted children

If the donor was managing the enterprise, he has to discontinue them and stop receiving remuneration from this title.

Another 95% reduction in the value of the habitual abode of the deceased in case of “mortis causa” transfer to spouses, ascendants, descendants or collateral relatives of over 65 years if they had lived with the deceased during the two previous years. The tax amount is being calculated by applying the tax scale of progressive rates (which varies depending on the value of the assets) with a coefficient that takes into account the previous net worth and the degree of kinship with the donor.

The Autonomous Community Governments may modify reductions in the tax base and rates and in the coefficients for adjusting the tax payable, based on the taxpayer’s previous net worth.

It is required that in the case of transmissions “mortis causa”, the tax must always be paid in the Autonomous Community in which the deceased was habitually resident (except in the case of non-resident testators, jurisdiction for whom rests with the State tax authorities).

If assets or rights are being acquired by gift, as an inter-vivos transfer, the tax must be paid in the Autonomous Community in which the beneficiary is habitually resident (except in the case of transfers of real estate – the Autonomous Community´s jurisdiction of the property´s location will be applicable)

The Law 21/2001 also establishes the reductions, rates and coefficients to be applied if the Autonomous Community has not assumed the powers or has not established any regulations yet. There is a tendency of progressively reducing this tax at the State level, for the reason that it is collected by the Autonomous Communities. It is however being eliminated in some Communities, such as Cantabria, the Basque Country, Madrid, etc.

6.4.3 Value added tax (scope)

Value added tax (IVA) is chargeable on most supplies of goods and services, but also acquisition and imports of goods from other EU countries. There are three IVA rates: 16% (the standard rate), reduced 7% rate and a super-reduced rate of 4 %. The 7% reduced rate applies to certain food products, water, medical and dental care, housing, prescription lenses and medical goods. The lowest, 4% VAT applies to pharmaceutical products (medicines in particular), bread, cereals, milk, cheese and eggs, and to books, newspapers and magazines.

Professionals to whom the Spanish VAT tax does not apply, may solicit the return of the VAT, provided that they are established in other EU country, or in a country that is subject to reciprocity.

6.4.4. Place of supply

Spanish VAT is charged on the transactions referred to above which are to be supplied in Spanish VAT territory.

There are certain rules, provided by law, for determining the place where the various transactions are deemed to take place. In the case of supplies of goods, the general rule is that the goods are deemed to be supplied in Spanish VAT territory if they are received by a recipient in Spain.

As an exception, if the goods are transported to be delivered to the recipient, the supply is deemed to be done in the place where the transport begins.

With regard to the place of supply of services, there are several distinctions to be outlined. Services are deemed to be supplied in Spain if the supplier´s place of business or a permanent establishment are in Spanish territory.

However, if the service is related with the real estate, it is deemed to be supplied in the place where the property is located. According to transport, the services are deemed to be supplied in Spanish VAT territory with respect to the part of the journey that was excercised in Spain. Special rules govern the internal Communities´ transport.

The cultural, artistic, sports, scientific, educational, recreational and similar activities are deemed to be exercised in Spain if they were physically performed there. Other services are deemed to be supplied in the place where the recipient carries on his business (this rule applies to transfers and grants of copyright, patents, licenses, trademarks and other intellectual property rights; advertising services, professional services, supplied by advisors, auditors, engineers, analysts, lawyers, etc.

Media (telecommunications, broadcasting) services are also deemed to be supplied in the territory where the recipient has its place of business, provided that it is a trader or professional. If the recipient is not a trader or professional, the service is deemed to be supplied in Spanish VAT territory if it is physically used there.

There are also special rules for defining the place of supply according to intermediation services or work on tangible fixed assets and of services transmitted electronically.

6.4.5 Excise taxes

Common excise taxes are generally levied at lump-sum rates (with ad valorem rates for cigarettes) levied on the phases of production, manufacture or import into the EU of alcohol and alcoholic beverages, hydrocarbons and tobacco products. The Canary Islands, Ceuta and Melilla are generally exempt from these taxes, although they do apply to alcohol in the Canary Islands.

A vehicle registration tax applies to at ad valorem rates on the final registration in Spain of most new and used vehicles , including most types of passenger cares, most pleasure or sporting boats and motorised aircraft. Certain exemptions are available. The rate of the registration tax ranges from 0% to 12%, depending on the vehicle and the particular carbon dioxide emissions.

6.4.6 Real property tax

Owners of real estate pay the real property tax to the local authorities. The maximum amount for the urban property is 1.1% of its cadastral value, and 0.9% for rural property. Additional taxes are imposed on the increase in urban land values when land is transferred

3% special tax is imposed on non-resident entities that that own or control Spanish real property, on the officially estimated value of the property. This tax does not apply to foreign states, public institutions, international bodies, entities covered by a tax treaty (with an exchange of information clause), entities engaged in business activities in Spain, companies listed on the secondary stock market or non-profit entities.

6.5.7 Transfer tax and stamp duty

Various transactions made by companies are taxed, provided that they are not part of their normal activities. The principal rates are 7% for transfers of real property, 4% on transfers of movable assets and administrative concessions, 1% on newly issued shares, 0.5% on certain mercantile law public deeds, and 1% on certain real property rights. Autonomous Communities are allowed to apply a different rate in certain areas, and most of them to applied a 7% rate to real property transfers.

6.5.8 Tax on construction and installation projects

If one undertakes construction project requiring prior municipal permission pays a construction tax to the city government at a top rate of 4%; rates are set by city governments.

6.5.9 Tax on insurance premiums

Insurance companies carrying out taxable transactions pay a tax of 6% of paid premiums, the insurer subsequently passes the cost to the insured.

6.5.10 Local taxes

The most important local taxes, worth mentioning are:

-Council Tax (Impuesto sobre Bienes Inmuebles or IBI) establishes tax liability from owning a real estate, life interest, or right of use of property and from the holding of an administrative concession. The tax payable is based on the council tax value of the property and is payable annually.

-Tax on economic activities (IAE) derives from carrying out business, professional or artistic activity. It is also being collected annually. It is not applicable during the first two years of the trade or if the turnover of the individuals or companies does not exceed 1,000,000.00 euros.

-Tax on the increase in value of land applies to urban land and arises as a consequence of its transfer or the constitution of any legal rights of using it.

6.5.11 Non-resident income tax

Non-resident income tax is chargeable on income acquired either by individuals or by companies that are not resident in Spain. The income may be obtained either by means of permanent establishment or without a permanent establishment. The formal registration and accounting duties of resident companies also apply to the foreign entities permanent establishments.

When the income is gained by permanent establishment it is calculated due to the Corporation Tax rules, with two distinctions. The payments of royalties, interest, commission, technical assistance or any other use of rights or assets which are made to the parent company or its any other permanent establishments are not deductible. Reasonable management and administration costs are deductible, as long as the application is permanent and indicated in the Annual Report and Accounts. The tax rate which applies is the general Corporate Income Tax Rate of 30%for tax periods commencing in or after January 2008 and 32.5% for tax periods that commenced in 2007.

When the permanent establishments are used to transfer the profits abroad, on the transferred income the additional 18% tax is being paid (except when a Double Taxation Treaty applies, but not the treaty with United States, or when the company is resident in one of the EU countries). It is not necessary to prove payment of Corporation Tax before the income is transferred.

There are special ways of calculating the taxable income of permanent residents:

1. Lower tax rate of 24% applies when establishments carry on intermittent business activities in Spain (such as seasonal business, construction or installation) or perform contracts that last longer than 6 months. Rules

which govern profits earned in Spain without permanent establishment apply. These profits are not calculated within the normal accounting and registration requirements. But all the documents for the financial issues, such as income and expenses must be kept, including tax paid.

2. If these entities choose so, they can be taxed at the general Corporate Income Tax rate, provided that the company keeps separate accounting records for the income obtained in Spain.

3. For companies which establish their seats in Spain, but the products or services performed are destined for the company´s own purposes – defined as establishments with incomplete business cycle there is no clear income amount given. Allocating goods and services for internal affairs does not generate income, but only reimbursement of costs incurred. The taxed amount is counted by applying a percentage set by Ministry of Economy and Finance to costs incurred within a financial year and income. Result is taxed with the Corporation Tax rate, with no reliefs and allowances that apply under standard rules.

When income is obtained without permanent establishment expenses and costs are not deducted from the taxable income – gross income amount is being taxed. Deduction of costs is possible when the company´s scope of activity is services provision, technical assistance, installation or assembly and economic activity in general. Such deduction comprises costs of materials and supplies as well as personnel expenses.

Each income or capital gain is taxed separately, depending on its source. The standard tax rate is 24%, for dividends, interest and capital gains the rate is 18%, payments to non-residents who work for Spanish Embassies and Consulates abroad is subject to 8% taxation, sea and air transport entities whose ships and planes enter the Spanish territory are taxed with the 4% rate, income generated by seasonal work of foreign workers is taxed with 2% rate, reinsurance operations at the rate of 1.5%. Royalties are taxed at the rate of 10%, when the recipients are EU citizens and meet other requisites prescribed by law. The level of pensions tax rate depends on the income level.

For the capital gains the taxable amount is counted as the difference between the updated acquisition cost and the transfer value of the asset, which applies exclusively to real estate, by application of the coefficients annually established by the Finance Act.

When a real estate situated on Spanish territory is subject to transfer between non-residents without permanent establishment, the purchaser is obliged to withhold and pay 3% of the agreed price as the advance to the tax payment. If the payment is not made, the said transferred real estate will be subject to the payment of the tax.

The managers, depositories, and payers of the income acquired with no permanent establishment are jointly and severally liable for the tax debts, rights they were entrusted and income they paid.

6.5.11 Income exempted from tax:

1. Income derived from securities that have been issued in Spain by non-residents with no permanent establishment, regardless of the country in which the financial institutions would be (either paying agents, or just involved in the issue or transfer of the securities).
2. Income derived from transfer of securities or the repayment of units in investment funds which are operated by officially recognized secondary markets for Spanish securities, by non-residents who are resident in a country which signed with Spain a Treaty with an exchange of information clause.
3. Income and capital gains received by non-residents without a permanent establishment, from Spanish Government Debt.
4. Income obtained by a subsidiary company resident in Spain, and then distributed to their parent entities that are resident in an EU country, when complying with the requisites of law in force.
5. Income and capital gains derived by non-residents with no permanent establishment, resident in an EU country from their investments in Spain. This allowance does not apply if the profit comes from selling shares or other contributions, if the company´s assets mainly consist of real estate within the Spanish territory or if the entity had shares of at least 25% in the capital share or assets of the company, in the year previous to the date of sale.

7. Employment issues

7.1 Structure of the labor market in Spain

7.1.1 Workers' rights

Rules governing the labor market in Spain are in major part established by the Workers' Statute (*Estatuto de Trabajadores*). Next to that exists collective agreements between companies and the workers´ representatives.

The Constitution and the above mentioned Workers' Statute provide workers the right to belong to and set up trade unions, as well as the right to go on strike and to defend their interests.

7.1.2 Non-discrimination

Discrimination in hiring or in the workplace based on sex, marital status, age, race, social status, religion or political ideology, joining a labour union or otherwise or on the basis of the different official languages in Spain is prohibited by the Spanish Workers' Statute. This protection is also extended to foreigners (i.e., not the EU citizens) under Organic Law 4/2000, amended by Organic Law 8/2000 and also by Organic Law 14/2003 on the Rights and Freedoms of Foreigners in Spain and their Social Integration. Discrimination on the basis of physical or mental handicap if the candidate is otherwise suitable for the job in question is also prohibited.

7.1.3 Minimum age

It is forbidden to hire persons under the age of 16. There are also certain protective measures for persons under the age of 18, such as the prohibition against such persons working overtime or at night, or in certain hazardous or unhealthy activities or jobs.

7.1.4 Wages

Wages and salaries are regulated by the corresponding collective agreements and are agreed upon between the parties. The minimum wage is however established annually by Government. At the present time the minimum monthly wage in Spain amounts to 624 euros per month.

7.1.5 Working hours

The maximum legal working week is 40 hours.

The duration of a working day cannot exceed 9 hours, if not agreed so by the employee and the employer, or by the employer with the employees' representative. The above expressed scope of contractual liberty is however

not unlimited – by virtue of law the rest between working time cannot be shorter than 12 hours. It is obligatory to allow workers at least one and a half rest days per week.

Overtime cannot be higher than 80 hours per year. Every worker has the right for 4 weeks and 2 days of holiday, for each year worked. There are also 14 local, autonomous and national public holidays every year.

7.2 Contract of employment

7.2.1 The period of time for which the contract is signed

A contract of employment can be signed for definite or indefinite period of time.

It is also possible to establish a part-time contract *(el contrato a tiempo parcial)*, which means that the employee renders services during specified hours which sum to the amount that is smaller than the full time.

For certain services it is possible to establish a fixed duration contract (*el contrato de duración determinada*).

7.3 Different types of contracts

There are practice *(el contrato de trabajo en prácticas)* and apprenticeship contracts *(el contrato de formación)*. The first refers to students and those attending courses which completion will enable them to start their professional activity within the following four years and apprenticeship contracts are certain kind of training required by the company's standards, which precedes ordinary employment contract.

Any of the foregoing contracts may establish a trial period, during which either party may terminate the contract without being required to justify the decision. This subject is regulated by collective agreements.

7.4 Terminating contracts of employment

7.4.1 Basic formal requisites

Proper job termination of employment has to be preceded by a written notice to the employee with explanation of the motives to terminate the contract. The dismissed employee has to be compensated with the equivalent of 20 days pay, for a year of service, as the maximum sum of 12 months salary. The employer is also required to give a thirty days notice of termination starting from the day when the worker was officially informed about the termination, until the day of finalization of the contract.

7.4.2 Terminating the contract for indefinite period of time

The contract for an indefinite period of time cannot be terminated by the employer, unless for one of the disciplinary grounds (such as serious and

negligent breach of a duty by an employee, as stated in the Workers' Statute). If the dismissal was not caused by one of the expressly specified reasons, the dismissed worker has the right to compensation, in the amount of 45 days salary per year of service up to a maximum 42 months salary.

If the contract termination was discriminating in a way prohibited by law or if it caused infringement of the employee's basic rights or liberties, such a dismissal shall be considered null and void. The same rule applies to dismissal of workers' benefits.

Legal termination of a contract of employment can occur only for reasons expressly stated in the Workers' Statute, and in compliance with several requirements.

7.4.3 Disciplinary action

When a worker is dismissed for any objective or disciplinary cause, he or she may challenge the employer's action by lodging an appeal with the Employment Appeal Court. The court may rule on the dismissal that it was either justified (no compensation will be granted), unjustified (compensation shall be granted, amounting to 45 days' salary per year worked, with a maximum of 42 months' salary), null and void (the worker shall be readmitted to the company and full salary is paid from the dismissal date to the date of readmission).

7.4.4 Duties of foreign companies

A foreign company that hires personnel to provide services on the Spanish market is not obliged to set up a permanent establishment in Spain, with all the expenses that entails. However, in this case, companies are required to register at the Spanish Ministry of Economy and Finance and the Social Security. They must also grant power of attorney to someone in Spain to represent them in their dealings with the public administrations, present any required documents, etc.

7.5 Social security

7.5.1 General duty

As a general rule, all employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel, civil servants who reside and/or perform their duties in Spain are required to be registered with, and pay contributions to, the Spanish Social Security System. Even unemployed persons (subject to certain conditions) must pay contributions to the Social Security System.

There are Bilateral Agreements on Social Security between Spain and other countries, which regulate the effects on Spanish public benefits of periods of contribution to the Social Security Systems of other States. The Agreements

determine the State in which Social Security contributions shall be paid, when relocations occur, and temporary or permanent assignments abroad.

7.5.2 Sharing of costs

The social security contributions payment is divided between the employer and the employees. Professionals are classified in several groups and the amount of security contribution varies depending on affiliation to a certain group.

7.5.3 Benefits provided

The main assistances provided by the social security are medical and pharmaceutical services, financial assistance in case of temporal disability, risk during the pregnancy period, permanent disability, maternity, bereavement, retirement, unemployment, widowhood.

7.5.4 Special reliefs in social security contributions.

Spain creates a system of reliefs in social security contributions for entities which employ persons who comply with certain criteria. The criteria are specified in work creation programs, the program for year 2009 states that the privileges come from employing:

1. Women who are re victims of sexual violence, were unemployed for five years preceding the job contract, and before that were professionally active for at least three years, or became employed within twenty four months after childbirth.
2. People aged over 45
3. Youths between the age of 16 and 30
4. People who were unemployed for at least six months, and these who happen to be socially excluded
5. Disabled people

7.5.5 Safety at work

The issue of safety at work is being regulated by the Law 31/1995. The law provides pecuniary fines, up to €600,000 if the company fails to provide the employers with required accident prevention scheme. This includes the obligation to perform risk assessments, adopt measures in emergency cases, provide protective equipment and to ensure the health of employees, which includes ensuring that pregnant or breastfeeding women do not perform tasks which may put them or their unborn children/babies at risk.

All employers must have a prevention service to provide advice and assistance in prevention tasks, for which the employer should nominate one or more workers. In companies with fewer than six workers, this service may be provided directly by the employer, provided that it customarily conducts its business at the workplace and has the necessary capacity to do so.

It is also possible for a prevention service to be organized externally or outsourced. Prevention services are fully governed by Royal Decree 392/1997, amended by Royal Decree 604/2006, of May 19, 2006, which implements Law 31/1995.

7.5.6 Personal liability issue

Boards of Directors and managers can be held personally liable (either administratively, civilly or criminally) for actions taken by the company, such as not paying the social security contributions, failing to accomplish work safety requisites, fraudulent subcontracting.

7.6 Rules of hiring certain kinds of employees

7.6.1 Hiring members of top management

Members of top management are employees who exercise authority with full independence and responsibility have broad powers to administer and manage issues relating to the company's overall goals, and is answerable only to the company's governing body. These employment relations are regulated by Royal Decree 1382 of 1 August 1985.

7.6.2 Hiring senior executives

Most notably senior executives and their special labor relationships, are governed by Royal Decree 1382/1985, of August 1, 1985. A senior executive, as long as they exercise the most responsible powers in the enterprise are reporting only to the company's supreme governing and managing body. The terms of employment for such executives are subject to fewer constraints than those for ordinary employees. The parties (employer and senior executive) are given . Senior executives' contracts can be terminated without cause (i.e. contractual withdrawal by employer), serving notice at least 3 months in advance, in which case they are entitled to severance pay of seven days' pay per year worked, up to a maximum of six months' pay, or such other severance as may have been agreed on.

The senior executive may freely cancel his contract by serving at least three months' advance notice. In addition, the Law establishes certain grounds on which the senior executive can terminate his or her contract and receive the agreed-upon severance pay and, in the absence thereof, the severance pay established for cases where the employer withdraws from the contract. Alternatively, a senior executive can be dismissed on any of the grounds stipulated in general labor legislation (objective causes, disciplinary reasons). If the dismissal is adjudged to be unjustified, the senior executive is entitled to 20 days' pay per year worked, up to a maximum of 12 months' pay, unless different terms of severance have been agreed on. It should be noted that the statutory severance for senior executives is lower than that for ordinary employees. However, in practice senior executive contracts usually provide for severance payments that are higher than the statutory minimum.

7.6.3 Hiring personnel from temporary-employment agencies

The Workers' Statute expressly prohibits the temporary assignment of workers unless it is through temporary-employment agencies, which provide their corporate clients with workers to meet their temporary requirements.

7.7 Acquisition of a Spanish business

Certain labor law provisions are particularly relevant when acquiring or selling a going concern in Spain. For example, if a business is transferred, both the seller and the buyer are jointly and severally liable for a period of three years after the transfer, for any labor claims which arose prior to the transfer.

When a business is transferred, the new employer subrogates to the former employer's labor and social security rights and obligations, including pension commitments, as provided in the legislation specific thereto and, in general, to as many employee welfare and supplementary obligations as the former employer may have entered into.

7.8 Labor migration & work permits

7.8.1 Defining the ¨foreigner¨

According to Spanish regulations on foreigners, anyone who does not have Spanish nationality is deemed to be a foreigner. Foreigners' fundamental rights and freedoms in Spain are regulated in Organic Law 4 of 11 January 2000 and Royal Decree 2393 of 30 December 2004, which approved the regulation of the Organic Law. While the rights of nationals of EU Member States to work in Spain are not limited in any way, nationals of non-EU countries have to apply to the Spanish authorities for a permit.

7.8.2 The EU regulations

Foreign workers' status varies depending on whether they are EU citizens, or come from outside the European Union. The regime concerning the first mentioned group is set by the EU regulations. From 1 January 1992, every EU citizen when working in one of the Union's countries is guaranteed to be treated as this country's citizen. The rule applies to EU citizens working in Spain. No specific work permit is required. Any EU citizen who intends to stay in Spain for a period of time longer than three months is however obliged to obtain a residence card.

7.8.3 Spanish rules on foreigners´ stay

As for foreigners from outside the EU, they are allowed to stay in Spain for ninety days without formalities, but after that an extension or residence permit is required.

For longer periods of time temporary residence permits are given, for 5 years period of time. The permits are given when the applicant presents sufficient financial resources, or was offered employment.

For persons who have had temporary residence for five years, a permanent residence can be granted, which allows the individual to work on the same basis as Spanish citizens. The Spanish legislation on the rights and civil liberties of foreigners in Spain provides them access to health care, education, Social Security, right to vote in local elections, access to government services and the right to family reunion.

8. Exchange control regulations

8.1 General information

Spanish exchange control legislation has been progressively liberalised and today exchange control is not an obstacle to do business in Spain.

Indeed, the basic principle on which the exchange control regime is established is the total freedom of capital movements and financial transactions with foreign countries so that any activity, business, transactions and operations between residents and non-residents involving, or which may involve, overseas receipts and payments as well as transfers from and to a foreign country and changes in debtor or creditor accounts or financial positions as a result of overseas trade are unrestricted by any special limitations imposed by law.

8.2 Fundamental laws

Law 19/2003, on Movement of Capital and Foreign Transactions and for the Prevention of Money Laundering, repealed Law 40/1979, on Exchange Control Legal System (with the exception of chapter II), and modified Law 19/1993, on Certain Measures for the Prevention of Money Laundering, but maintained the principle of liberalization of movements of capital.

In conclusion, Spain has no restrictions o foreign currency operations. The government though requires prior notification of certain capital movements for statistical purposes and to limit money-laundering and tax fraud. Payments between residents and non-residents should be made through registered entities (Banks).

9. Financial reporting and audit

9.1 Accounting

Spain follows the international standards on requisites in accounting. The International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS) along with the model rules from the Fourth and Seventh Directive of the EU form a base on which the Spanish commercial accounting rules has been set.

All business entities, whether companies or individuals are obliged to keep the accounting records, so that the transactions can be followed chronologically, as well as periodical register and valuation of inventories and balance sheets.

Obligation of keeping the accounting records is well defined – the entrepreneurs have to keep two books – a book recording annual inventories and balances, and a journal.

The accounting books have to be legalized within four months from the end of financial year. The legalization can be completed either prior to the utilization of bound books, or after the utilization. For the second case it is possible to legalize the accounting at the Commercial Register, in a printed form, digital or on-line.

The accounting records and the documents that accompany them must be stored within the period of six years, counting from the date of the last entry.

Annual memory or record, along with the profit and loss account and the balance sheet, and other financial report, collectively known as annual accounts, are to be prepared not later than three months after the end of financial year.

Annual accounts along with the management report must be filed with the Commercial Register within five months from the day of their approval by the General Meeting.

As per a reform that came into effect in January 2008, the accounting scheme has been adapted to EU rules and International Accounting Standards / International Financial Reporting Standards.

9.2 Audit

Certain types of business are required to have their accounts audited annually with the aim to check the company's accounting documents (annual accounts and annual report) in order to ascertain whether such documents present a true reflection of the equity and financial situation of the company concerned.

The audit applies to corporations, except to companies which are allowed to present an abbreviated balance sheet (i.e. those whose accounts comply with at least two of the following requisites, for two consecutive years: the total assets were not exceeding €2,373,997.81 at the balance sheet date, the annual turnover is less than €4,747,995.62, or the average number of employees was not higher than 50.)

The supervision of the auditing is performed by the Institute of Accountancy and Audit, which also controls The Auditors Official Register (*Registro Oficial de Auditores de Cuenta*).

There are number of enterprises which are subject to compulsory audit, regardless of their legal form:

1. Companies listed on an official stock exchange.
2. Companies that issue bonds or loan stock to the public.
3. Companies that act as financial brokers.
4. Companies whose subject of activity is insurance of any kind.
5. Companies that receive subsidies, assistance, or which provide services, supply goods or realize works for the public entities, or for the State.

The auditors are liable to the companies audited, and to third parties for damages caused by breaching their duties. The auditor is bound with the duty of confidentiality, which applies to all the confidential information received during the auditing process. Disclosing the information for any purpose not related to audit is prohibited.

The auditors shall be appointed for an initial period of time not shorter than three years and not longer than nine years, counted from the beginning of the first audited accounting period. After that, a re-election for indefinite period of time is possible.

10. The law and money laundering

The Spanish legal system covering money laundering has been recently modified to adjust the Spanish legislation to the European requisites.

Among other innovations, the new law extends the number of professionals under an obligation to collaborate with the authorities, when there is a suspicion of money laundering, from casinos, estate agencies and finance companies, to include auditors, advisers, consultants and in some cases notaries, lawyers (although rules on lawyers' professional secret prevail over laws on money laundering) and solicitors. It is an offence to provide assistance to a money launderer to conceal, retain or invest funds. It is also an offence not to report the knowledge or suspicion that another is engaged in money laundering. Due to this legislation, financial institutions and professionals will be required to verify the identity and background of investors.