

Differences between a Sociedad Limitada (SL) and a Sociedad Anonima (SA)

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Introduction

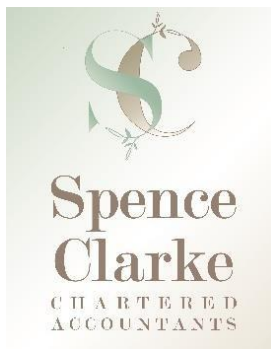
When thinking about setting up a company in Spain to carry out a business activity or to trade from Spain with your existing business outside Spain, the two main types of company structures, which represent 99,99% of the total companies in Spain, are the Sociedad Limitada (SL) and the Sociedad Anónima (SA).

The Sociedad Limitada (SL) or Sociedad de Responsabilidad Limitada (SRL) is a commercial company with a legal personality whose capital is divided into equal, cumulative, and indivisible participations (a kind of share).

The Sociedad Anónima (SA) is also a commercial company with a legal personality, but its capital is divided into shares. These shares may have different par values or have different privileges attached to them and may be freely transferable between shareholders or third parties.

In both cases, the number of partners or shareholders to create the company can be one or more.

There are many aspects to be taken into account when having a company in Spain, the incorporation process, the different obligations, modifications once a company is registered and, finally, when liquidating the company.



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Incorporation

The first step to setting up a company in Spain is to ensure that the name chosen for the company is valid for the Spanish company registry. For this purpose, an application to the company registry is required so that a "certificado de denominación" (a certificate confirming that the name is valid for incorporating the company) is received, this applies to both the SL and the SA. It is also necessary to draw up the statutes of the company (rules governing the company), pay up the company's capital, and finally, sign a notarial public deed before a notary in Spain incorporating all these documents so that the company can be finally inscribed in the company registry.

For the SA, when the company's share capital is made up of assets or rights instead of cash, the incorporation process may be more complex than the SL. In this scenario, the company registry needs to appoint an independent expert to value the contributions made.

Furthermore, in the incorporation of an SA, when the capital is paid in cash, it is necessary to provide a bank certificate issued by the bank confirming that the capital has already been paid. With the incorporation of an SL, this is no longer required, and it is sufficient to indicate in the deed that the shareholders will be liable for the company's debts up to their capital contributions.

The notary will obtain the company's tax identification number, which will be used to register the company at the tax office.

One important step is to obtain the company's digital certificate (DC), from the Spanish FNMT (Fabrica nacional de moneda y Timbre) site, which will enable any online filings and communications with the tax office and other public offices. To obtain the company's DC, it is necessary to previously have obtained the director's DC, this process is done physically in Spain, so if the director is not in Spain it will need to be carried out with a power of attorney. Some Spanish Embassies/Consulates provide this service as well.

The last step is to register the company at the Spanish tax office by submitting a form called M036. In this form you will state the company's activity, tax obligations, etc.

Initial capital

To incorporate both companies an initial capital contribution is required.

In the case of the SL, the required minimum share capital is 1 €, until it reaches the amount of 3.000€. Once the company starts trading, each year 20% of the profit needs to be transferred to the legal reserves until together with the share capital it reaches the amount of 3.000€.

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For the SA, the required minimum share capital is 60,000€, however, only 25% of the capital needs to be paid. When the share capital is not fully paid, the statutes of the company must state the payment plan and the time limit for the share capital to be fully paid.

The law does not provide for a maximum period for the payment of the remaining amounts to be paid in cash, whilst the maximum period established for payment using non-cash contributions is five years.

There are some specific regulations for companies that carry out certain activities (banking, insurance, etc.) which will require the company to be set up as an SA and with a higher share capital than explained above.

Finally, the shareholders of an SL company must always be identified in the company registry, even if the shareholder of the Spanish SL is a foreign company, a deed to register the beneficial owners of that foreign company is required.

Transfer of shares

There is a substantial difference in the transfer of shares of an SL from those of an SA. For the SL the transfer of shares needs to be ruled out in the company's statutes. Except for the transfer of shares to the spouse or descendants, it is always necessary to communicate the intention to sell the shares, the number of shares to be sold, and their price to the other shareholders, so that the existing shareholders have preferential rights of purchase. If the shareholders are not interested in buying these shares, then these can be sold to a third party. Any transfer of shares must be stated in a public notarial document.

On the other hand, the transfer of the shares of an SA Company has no restrictions, once the company has been registered in the company registry, a simple contract between the parties will suffice (normally a sale and purchase agreement).

Type of activity

A SL can carry out practically any activity, except those that are reserved by Law for SA companies, such as banking companies, pension fund management companies, insurance companies, etc. Any company that plans to be listed on the stock exchange market, must also be in the form of an SA.

The SL is designed for small and medium-sized companies with a few shareholders, family businesses, or professional companies that do not require a large capital outlay. The SA is better suited for activities in which a greater number of shareholders is required to achieve a greater share capital funding and a greater mobility of shares. Apart from this, it is seen more favorably to attract external investors.

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Liability of shareholders

In both cases, the liability of the shareholders will be joint, distributed among themselves and limited to the amount of the capital contributed by each shareholder. This means that the shareholders are not liable for the company's debts with their personal assets.

Taxation and main ongoing obligations

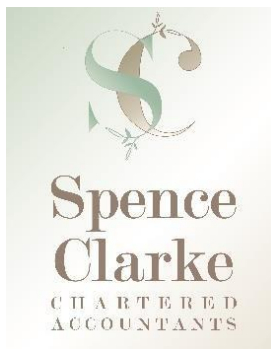
Annually, both companies are subject to corporation tax, and, depending on the activities carried out, they may be subject to other taxes. The corporation tax is the annual declaration that taxes the company's profits, the tax rate varies depending on different factors:

General corporation tax rate	25%
Reduced corporation tax rate for trading companies with turnover below 1.000.000 € in the previous tax year	23%
Newly created trading companies' corporation tax rate applicable to 1st year taxable profit and the following year (3 following years for emerging companies)	15%
Tax rate reduction on a special reserve created, where a company allocates part of its profits to a special reserve locked up for 5 years	10%
SOCIMI (under certain rules)	NIL
SICAVS	1%
Pension Funds	NIL
Banks	30%
Petrol companies	30%

Apart from the annual corporation tax, which only applies to companies, a company, depending on its particularities may be subject to some of the different declarations available in the tax office, which you can check here:

<https://www.spenceclarke.com/articles/spanish-tax-forms-guide/>

Furthermore, any company, regardless if it is active or dormant, is required to submit annual accounts to the company registry every year, otherwise, it could be at risk of being registered as inactive. Reactivating a company, due to the Spanish bureaucracy, can be a real pain.



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Modifications

Any modification in an SL or an SA requires that the shareholders meet (meetings of the shareholders), decide, and vote on any modification they want to do for the company (change of address, activity, changes of directors, etc.), the agreements are written in an official shareholders certificate, signed by the director of the company, which needs to be published in the company registry by signing the corresponding public deed before a Spanish notary.

The SA has some modifications that require more formalities, this is the case of the restructuring operations (mergers, corporate splits, exchanges of company shares, etc.) that require the directors of the companies involved in the restructuring operation to notify the company of the appointment of an independent expert to issue a report that must be submitted together with the public deed to be signed at the notary to register any change at the company registry.

Liquidation

The liquidation of the company may take place because of the existence of any of the conditions legally required by Spanish tax legislation or because the shareholders voluntarily decide to liquidate the company.

When the liquidation is voluntary, the shareholders must meet to adopt the liquidation resolution, same as for any other modifications, and appoint the person or persons in charge of the full completion of the liquidation process (liquidator), who will sign the dissolution certificate and will be in charge of the signing of a public deed of liquidation to be registered in the company registry. Furthermore, any existing directors must sign a document before a notary confirming that they are aware of the liquidation process and that they are no longer directors of the company.

According to the Spanish law, companies must be liquidated when any of the following conditions apply:

- a) By the cessation of the exercise of the activity or activities constituting the objects of the company.
- b) By the termination of the activity or activities constituting the objects of the company.
- c) By the impossibility of achieving the company's object.
- d) By the lack of administration of the company in such a way as to make it impossible for them to function.
- e) By losses that reduce the net assets to less than half of the share capital.
- f) By reduction of the share capital below the legal minimum.
- g) For any other cause established in the statutes.

The liquidation process is identical for both the SA and the SL.

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Comparative and conclusion

From the analysis of the most relevant aspects of a company, we can conclude that the main difference between an SA and an SL is that in the case of the SA, the financial costs for carrying out any type of action (disbursement of share capital, business restructuring, etc.) and the number of formalities required to carry them out are higher than in the case of the SL.

These can be summarized as follows:

	SL	SA
Incorporation	Simple formalities	More complex formalities if it is set up by contributing assets and rights.
Initial capital	1 euro (fully subscribed and paid up)	60,000 euros (25% of the capital needs to be subscribed and paid up)
Transfer of shares	More restrictions	Almost no restrictions
Type of activity	Almost all the activities (except some activities which require SA form). Habitually designed for small and family business.	All the activities. Habitually designed for big companies.
Liability of shareholders	limited to the amount of the capital contributed	limited to the amount of the capital contributed
Taxation	Same taxes	Same taxes
Modifications	Require a vote of the shareholders and certification of the director.	Require a vote of the shareholders and certification of the director. Some modifications require additional formalities, such as a report from an independent expert.
Liquidation	Legal: comply with causes recognized in law. Voluntary: Require a vote of the shareholders and certification of the director.	Legal: comply with causes recognized in law. Voluntary: Require a vote of the shareholders and certification of the director.