DOING BUSINESS IN Spain

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### Business Structures:
**What types of business structures are permitted?**

- Corporation (SA)
- Limited Liability Company (SL)
- Branch
- Representative office
- Joint venture

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### Taxation:
**Briefly explain the country’s tax regime including rates and how rates differ based on business structures.**

Taxes are collected by the Central Tax Authorities, together with the Tax Authorities of the Regional Governments and there are divided into direct taxes and indirect taxes.

Taxation by personal obligation: the Spanish Administration levies worldwide income obtained by Spanish residents regardless of the place of generation. Taxation by real obligation: the Spanish Administration likewise levies income obtained by non-residents generated in Spain.

Without prejudice to the preceding rules, in the case of persons residing in Spain that obtain income in other jurisdictions, the rules for the avoidance of double taxation may be applied.

The tax rate for Corporate Income tax are as follows:
- General rate: 25%
- Recently-created entities: 15% for the first year in which profits are generated and the following year.

Corporate Income Tax legislation contains a series of special regimes.

The VAT tax rates are:
- General rate of 21%
- Reduced rate of 10% applicable, among others, to hotel and catering services.
- A super-reduced rate of 4% applicable to a restricted list of goods and services, such as basic foodstuffs.

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### Immigration:
**Summarize immigration laws, including visas available for foreign employees.**

Under Spanish labour legislation, non-EU nationals over 16 years intending to work in Spain must obtain a special work visa and work and residence permit. Foreigners legally working in Spain generally have the same rights and obligations as Spanish citizens under the labour laws.

Foreigners who intend to reside in Spain but who will not work in this country, as either employees or self-employed, must obtain a residence visa before establishing their residence in Spain and a residence permit, which can be temporary or permanent. A non-EU resident company may temporarily relocate employees into Spain as far as the said foreign company has a duly established working centre in Spain.

Nationals of EU member states are not subject to the requirements applicable to other foreigners to obtain a work permit as an employee or self-employed person, because the EU rules on the free movement of workers are fully in force.
Royal Decree Number 664/1999 establishing procedures for reporting foreign investments and divestments, as well as the procedures for submitting annual reports and applications for authorization, constitutes the legal regime of foreign investments in Spain, as well as Spanish investments in foreign countries, liberalising both investments and divestments, regardless of the act of disposition whereby they are made, notwithstanding special regimes that affect foreign investments in Spain.

No issues should be expected when dealing with central and federal governments.

Judiciary Organic Law 6/1985 of July 1 regulates the constitution, operation and governance of courts and tribunals in Spain. Although the Spanish litigation system should be considered as a continental law system, certain features of the Civil Procedure Law have their roots in the common law system.

Spain have signed numerous bilateral and multilateral treaties on the recognition and enforcement of foreign judicial reasons.

Arbitration is increasingly viewed as a genuine alternative for the settlement of commercial disputes.

Spain’s anti-corruption landscape has undergone significant changes since corporate criminal liability was introduced in 2010.

The most important part of the new legislation is that it introduced, for the first time, grounds for exemption from criminal liability for legal entities that can show that they possess and effectively implement a crime-prevention or compliance programme.

The most common types of business combinations are:
- Purchase of shares or assets;
- Mergers, spin-offs, contributions of shares or assets;
- Purchase of business units within insolvency proceedings;
- Cooperation agreements such as joint ventures;
- Takeover bids in listed companies to acquire control;
- EU cross-border transactions;

Competition prohibitions are admitted in Spanish Company Law. It forbids managers and partners in limited companies to participate in activities which are in competition with the company. Managers in Public Limited Companies shall inform about their stakes in the capital of any company which has a similar or complementary activity to the one in which he works.
In addition, Spanish Companies by-laws often include stricter rules. Many commercial agreements also include competition limitations, in particular regarding companies’ acquisitions. This is permitted, if the limits are necessary and accessory (included, as means to guarantee the main agreement).

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<th>Statutes and regulations: What are the main laws and regulations governing business combinations?</th>
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<tr>
<td>Although conditions are left to the free autonomy of the parties, purchase of shares and assets transactions have general rules set in the Commercial Code and in the Civil Code; - Corporate reorganisations are ruled by the Act 3/2009 on Structural Modifications of Corporations, - Acquisition of business units is ruled under Act 22/2003, on Insolvency Proceeding; - Takeover bids and acquisition of controlling stakes of listed companies are ruled by the Stock Market Securities Act and the Royal Decree 1066/2007 on Takeover Bid rules; - Antitrust and competition are ruled under the Defence of Competition Act 15/2007.</td>
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<th>Governing Law: What law typically governs the transaction agreements?</th>
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<td>Share purchase agreements can be governed by the law chosen discre¬tionally by the parties, most often the law applicable to the target com¬pany, but it also can be the one applicable under the purchaser or the seller’s jurisdiction. However, even if the transaction agreements are governed under a foreign law, the transfer of shares of a Spanish company must comply with certain formalities under Spanish law. Transactions consisting in corporate reorganisations such as contrib¬utions of assets, mergers, spin-offs will need to comply with Spanish applicable laws for the valid transfer of assets or shares involved in the transaction. Transactions involving securities of listed companies at the Spanish Stock exchange will need to follow the requirements set by the Spanish applicable stock market laws. Acquisition of business units or assets at insolvency proceed¬ings will need to be transferred following the procedures set by Spanish applicable laws.</td>
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<tr>
<th>Filings &amp; Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?</th>
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<td>Mergers, spin-offs and contributions need formalisation before public Notary and are to be recorded at the Mercantile registry. Communication of the corporate reorganisation to the tax authorities has to be made subsequent to its recording to confirm the application of the special tax neutrality regime. Business combinations involving a public company listed at the Spanish Stock Exchange will require certain disclosures. Takeover bids of public companies listed at the Spanish Stock Exchange must be filed and authorised by the National Securities Market Commission (CNMV).</td>
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<th>Information to be Disclosed:</th>
<th>Economic concentrations resulting from mergers, acquisition of control, joint ventures, subject to reaching certain thresholds need to be previously notified and approved by the National Market and Competition Commission.</th>
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<tr>
<td><strong>What information must be made public in a business combination?</strong></td>
<td>Share and asset deals of privately held companies do not generally require public disclosure. When the business combination is structured through a merger, certain publicity has to be made in the interest of employees and creditors.</td>
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<td><strong>Does this depend on the structure used?</strong></td>
<td>Listed companies must disclose immediately any information that is likely to have an impact on the stock price of the shares or on the decision of an investor to buy or sell shares.</td>
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<td>Voluntary bids must be made public as soon as a formal resolution to launch the offer has been passed by the bidder management body provided that financing of the bid has already been committed.</td>
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<tr>
<th>Disclosure of substantial shareholdings:</th>
<th>Shareholders of listed companies, must report to the board of the company and to the CNMV for public release, the acquisition or loss of a significant stake either individually or acting in concert with third parties when it meets, exceeds or falls below 3 per cent and multiples of 5 up to 50 per cent and thereof multiples of 10 per cent up to 90 per cent of the company’s voting rights.</th>
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<tr>
<td><strong>What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?</strong></td>
<td>When a shareholder individually or acting in concert with others acquires a 30 per cent of a listed company’s voting rights or if with a stake under 30 per cent it appoints within 24 months the majority of the board members, a takeover bid for 100 per cent of the company will need to be launched.</td>
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<th>Duties of directors and controlling shareholders:</th>
<th>Directors’ duties include diligent administration, faithful defence of corporate interests, loyalty and confidentiality. The general duty includes specific provisions regarding the misuse of an influential position and insider trading information, to prevent conflicts of interests and maintain the secrecy of all confidential information.</th>
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<td><strong>What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?</strong></td>
<td>A director can only be released from liability if he or she proves that he or she did not participate in the adoption or execution of the harmful resolution and was unaware of it, or, being aware did everything reasonably possible to mitigate it or expressly opposed the resolution resulting in harm.</td>
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<td>Controlling shareholders have no duties under Spanish law in connection with a business combination other than not abusing their majority position when approving resolutions detrimental to the interest of the minority shareholders and for the benefit of the majority shareholders.</td>
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<td>Approval and appraisal rights:</td>
<td>In share deals the by-laws or existing shareholders’ agreements may foresee pre-emption or tag along rights between shareholders in the event of a transfer to a third party.</td>
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<td>Hostile transactions: What are the special considerations for unsolicited transactions?</td>
<td>In asset deals approval from the shareholders will be required when the assets acquired, contributed or transferred exceed 25 per cent of the value of the total assets of the company stated in the latest balance sheet.</td>
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<td>In corporate reorganisations such as contributions, mergers and spin-offs, approval by reinforced majority of the shareholders of the involved companies will be required.</td>
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| Break-up fees – frustration of additional bidders: Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders? | Spanish corporate law prohibits with limited exceptions a company giving financial assistance for the acquisition of its shares or of its holding company. |
| Hostile transactions: What are the special considerations for unsolicited transactions? | Prior mandatory approval from the shareholders meeting is required for directors and managers to take actions designed to prevent the success of an unsolicited offer, except for searching competing bids ('white knights'). |
| In addition, the target company’s board of directors must issue a report on the takeover bid, stating whether or not they support it, which will certainly influence the target’s shareholders. |

| Government influence: Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security? | Break-up fees have been increasingly demanded in M&A private trans-actions; however, they are rarely accepted and tend to end up in the payment of reasonable costs only in restricted events. |
| Hostile transactions: What are the special considerations for unsolicited transactions? | In takeover bids the law allows the first offeror to agree a break-up fee to cover the expenses to prepare the tender bid in an amount not to exceed 1 per cent of the effective offer, only payable when the offer does not succeed as a result of a competing offer. |
| Spanish corporate law prohibits with limited exceptions a company giving financial assistance for the acquisition of its shares or of its holding company. |
## Conditional offers: What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

In private company acquisitions and business combinations the parties are free to insert any conditions they deem suitable including financing. Approval by the competition authorities will be a condition for completion when applicable. Mandatory tender offers involving listed companies, cannot be subject to conditions except from clearance by the antitrust authorities or any other regulatory approval.

As a general rule financing cannot be conditional on a tender offer since it needs to contain guarantees of the fulfilment of the obligations derived from the offer.

## Financing: If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?

In tender bids the offeror shall prove the CNMV the constitution of collaterals that ensure the offer obligations.

In acquisitions involving private companies the financing is dealt by the purchaser, in parallel to the transaction negotiation and documents, usually it is completed simultaneously to the transaction but in independent documents. There are no typical obligations of the seller to assist in the buyer’s financing.

## Minority squeeze-out: May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

In Spain squeeze-out and sell-out rights are provided for listed companies, when following a takeover bid the bidder holds at least 90 per cent of the target company’s voting rights and the takeover bid has been accepted by shareholders representing at least 90 per cent of the voting rights to whom the offer was addressed.

The squeeze-out right must be exercised within the three months following to the expiry of the acceptance period of the offer at the same price.

## Cross-border transactions: How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Directive 2005/56/EC on cross-border mergers was implemented in Spain by Law 3/2009, resulting in intra-community mergers becoming a common reality in Spanish market practice. On the other hand, the absence of specific regulation for non-European cross-border mergers presents legal uncertainties that can result in a costly and time-consuming process, making them unlikely.

## Waiting or notification periods: Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?

In share or asset deals of private companies there are no notification periods unless by-laws or shareholder agreements provide for pre-emption rights. In corporate restructurings notice to creditors and employees is to be made through public announcements and they will have one month to oppose the operation unless their credits are guaranteed.

For tender bids, the CNMV will have 20 days to approve the takeover prospectus and the acceptance period upon publication of the bid. Publication of the offer results and settlement will take approximately six days from the end of the acceptance period.
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<tr>
<th><strong>Employment Relations:</strong> Briefly summarize major laws impacting employment and employee relations.</th>
<th>The basic law is the Workers’ Statute (Royal Legislative Decree Number 2/2015), which defines the respective rights of employees and employers, general terms of labour contracts, procedures for dismissal, and collective bargaining rules. Another important source of labour law is collective bargaining agreements, which may be negotiated at state, industry, regional, or company level.</th>
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<tr>
<td><strong>Sector-specific rules:</strong> Are companies in specific industries subject to additional regulations and statutes?</td>
<td>Foreign investment in regulated sectors (see above) will be subject to the requirements imposed by the relevant bodies established by industry-specific legislation. Banking activities and insurance activities has to be authorised by the Ministry of Economy. Investment advisory companies need authorisation from the CNMV.</td>
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<td><strong>Tax issues:</strong> What basic tax issues are involved in business combinations?</td>
<td>Business combinations consisting of mergers, split-offs, contributions in kind, exchange of shares and other corporate reorganisations are covered by the special Corporate Tax regime aiming to achieve tax neutrality by deferring taxation until the acquiring company transfers the assets acquired.</td>
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<td><strong>Labour and employee benefits:</strong> What is the basic regulatory framework governing labour and employee benefits in a business combination?</td>
<td>The main regulatory framework governing labour relationships in a business combination is the Workers Statute and the relevant collective bargaining agreement applicable to each company. On a business transfer, the contracts of employment in the business transferred are transferred to the acquirer, who is deemed to be subrogated in the seller’s position as employer of the transferred employees, so that the employees’ rights are not adversely affected or altered as a result of the transfer. The transferor and acquirer are jointly liable for 3 years after the transfer regarding payment of wages and social security obligations originated prior to the transfer.</td>
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<td><strong>Restructuring, bankruptcy or receivership:</strong> What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?</td>
<td>The main advantage when the target company is involved in an insolvency or bankruptcy proceeding is the possibility of not having to buy the company itself but its productive units, which has become common practice as an alternative to the sale of companies’ assets individually, what permits the transfer the main assets, commercial relationships and workforce but not, with some exceptions, the company’s liabilities. In general, the sale of a productive unit is made by auction, but in some exceptional cases a specialised entity can be appointed to carry out the sale process.</td>
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**Anti-corruption and sanctions:**
What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

In 2015 Spain amended its criminal code to introduce criminal liability for corporations. Corporations can now be held liable for crimes committed by their legal representatives or persons entitled to take decisions or act on behalf of the corporation if the actions directly or indirectly benefitted the corporation.

Companies may be protected if they have an adequate compliance program in place including:
- Risk assessment;
- Standards and controls to mitigate criminal risks detected;
- Financial controls to prevent crimes;
- The obligation to report any violations of standards and controls through a whistle-blowing channel;
- A disciplinary system to sanction violations of the compliance programme; and
- Periodic review of the compliance programme to make the necessary adjustments after serious violations or organisational, structural or economic changes.