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Introduction: Asturias as an investment paradise

investinasturias

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This document summarises the main regulatory aspects which affect investments in Asturias. It is especially useful not only for those investors who are approaching the Asturian regulatory environment for the first time, but also for those who want to delve deeper into the most relevant aspects related with the establishment and development of a company in our region.

1 Introduction: Ssturias as an investment paradise | invest in asturias

1.1. Introduction: Ssturias as an investment paradise[1]

The Principality of Asturias, often referred to as the "Principado," "Asturias," or the "Region," with its capital in the city of Oviedo (with around 220,000 inhabitants), is one of the seventeen autonomous communities of Spain, a country that is a part of the European Union (EU) and the Eurozone.

Asturias has approximately one million inhabitants within an area of 10,604 square kilometers, featuring an Atlantic climate and a coastline spanning 354 kilometers. The region is known for its extraordinary natural beauty, including stunning beaches and extensive forests, with one-third of its territory designated as protected natural areas.

These attributes make the Principality an ideal destination for living, investing, and conducting international business. In essence, it is a genuine "Natural Paradise." Asturias also offers an excellent quality of life, with a vibrant cultural scene, a rich artistic heritage, and optimal conditions for engaging in various sports.

Beyond Spain's international standing as an attractive destination for investments – ranking 11th in foreign direct investment attractiveness, 14th in export of commercial services, and 15th in foreign direct investment outflows – a significant portion of Spain's economic success originates from the Principality of Asturias.

The GDP of the Principality of Asturias amounts to 23,924 million euros (with a per capita GDP of 23,299 €), and the distribution of the regional gross value added is as follows: primary sector: 1.41%; industrial sector: 13.80%; construction: 7.43%; services sector: 71.47%.

Price levels are reflected in an annual variation rate of the Consumer Price Index (CPI) in Asturias (December 2022) at 5.8%, a figure that aligns with the CPI variation rate in January 2023 at the national level.

In terms of foreign trade, Asturias records annual exports of approximately 4,000 million euros and imports of approximately 3,000 million euros, with a coverage rate of 126.95%.

Asturian exports have traditionally been characterized by a strong focus on metallic products (iron, steel, and zinc), in line with the significance of the metallurgical sector in the regional economy. For example, in 2017, the export of zinc and its manufactures, along with iron and steel casting and their manufactures, accounted for 44% of the total products exported from Asturias.

Three branches of activity account for nearly 85% of the turnover and 81% of industrial employment in Asturias: metal, extractive industries, energy and water, and agri-food.

The six main reasons to invest in Asturias are as follows:

1.1.1. Institutional Support and Incentives for Companies:

The strong support from institutions is evident in the numerous economic promotion programs activated annually in the Region, particularly in the industrial sector. In addition to direct investment incentives, Asturias offers support programs in the fields of R&D&I, training, business transformation, and internationalization. Moreover, the Principality has access to European aid programs designed for "competitive" regions. You can verify the transparency portal of the SEKUENS Agency to review the records approved for Asturian companies since 2015.

[1] Fuente: https://www.investinasturias.es/ (página web que se actualiza periódicamente).

1.1.2. Education, Talent, and Creativity:

Asturias boasts a highly qualified workforce and a deep-rooted industrial tradition. Undoubtedly, the human capital is one of its most valuable intangible assets.

The University of Oviedo, with three campuses in the Region, and the network of Vocational Training Centers offer extensive collaboration opportunities for businesses in designing and developing projects.

Additionally, the Promotion of Entrepreneurial Culture program and the Network of Technological Centers in Asturias promote the transformation of ideas into companies, fostering talent, innovation, and creativity.

1.1.3. Innovative Ecosystem:

Asturias benefits from a shared culture of innovation and strong connections among the University of Oviedo, Technological Centers, companies, public and private funding sources, and the venture capital industry.

1.1.4. Competitive Business Environment:

Asturias offers:

- Competitive labor costs at the national and European levels.
- Low employee turnover, with high employee involvement, enabling a high degree of staff loyalty.
- Availability of industrial land in business parks located in key economic areas.
- The Zone of Logistics and Industrial Activities of Asturias (ZALIA), located near the Port of Gijón and major transportation hubs.
- Technological Park of Asturias (Llanera), Scientific and Technological Park of Gijón, and Technological Park of Avilés, Island of Innovation.
- Competitive office and industrial space rental costs.
- Public promotion spaces tailored for advanced service companies.
- Access to high-quality broadband Internet throughout the entire region.
- A net exporter of electrical energy.

1.1.5. Strategically Located for Business:

Asturias is located less than two hours by flight from major economic and financial centers in Europe, with two ports, the Port of Gijón and the Port of Avilés, benefiting from their excellent geographical location in the heart of the European coastline, especially advantageous for international traffic between the American continent, northern Europe, and Africa.

Regarding the road network, Asturias has 5,044 kilometers of roads, including 400 kilometers of highways and expressways, as well as two railway networks that cover the main geographical axes of Asturias, connecting the region with the Plateau and the Cantabrian coast.

Thus, Asturias has: (i) 5,044 kilometers of roads (400 kilometers are highways and expressways); (ii) an international airport with 1,454,763 passengers in 2022 and 29 regularly available air routes, including international destinations (Lisbon, Paris, Munich, Frankfurt, Düsseldorf, Milan, Rome, Venice, Amsterdam, Brussels, London, and Dublin) and domestic routes (daily flights to Madrid and Barcelona, as well as flights to Alicante, Valencia, Malaga, Seville, Granada, Mallorca, Lanzarote, Tenerife, Gran Canaria, Fuerteventura, Murcia, Menorca, and Ibiza); (iii) two industrial ports in Gijón (with around 270,000 inhabitants) and Avilés (with around 77,000 inhabitants); and (iv) two railway networks that cover the main geographical axes of Asturias, connecting the region with the plateau and the Cantabrian coast (which will soon benefit from high-speed connections to Madrid).

1.1.6. Extraordinary Quality of Life:

Its privileged climate, respect for the environment, cultural traditions, high-quality services, and the overall well-being enjoyed by the residents of its cities and towns make Asturias a true paradise for living and working.

The region offers countless leisure options that combine sea and mountains, a rich cultural and artistic heritage, and internationally recognized gastronomy (with 10 Michelin stars in 2023).

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How to set up your business in Asturias?

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2 How to set up your business in Asturias?

2.1. Introduction

The Principality of Asturias has various forms and instruments that allow, from a legal perspective, the initiation of economic activities within its territory and from it to operate in Spain and the European Union (as a first step). All these forms are included in the common Spanish legislation without the coexistence of others, so the legal entities that will be discussed below are applicable throughout the Spanish territory.

There are several ways to establish a presence (physically or digitally) to conduct business in Asturias, both as an individual and through associative contracts, business institutions, or by establishing corporate entities. The practical approach revolves around the consideration of the temporality of the intended business, categorizing: (i) temporary establishments – generally a means of collaboration with other entrepreneurs – such as unincorporated joint ventures, consortium agreements, Temporary Business Alliances (UTE), etc., and (ii) branches, business entities, and the figure of individual entrepreneurs as Limited Liability Entrepreneurs (ERL)

This section also addresses the opening of branches, the acquisition of real estate or asset deals, business acquisitions (share deals), participation in venture capital investment funds, and other commercial agreements such as distribution, agency, commission, and franchise contracts.

For practical reasons, this guide focuses on the two main corporate forms in Spain, S.L. (Limited Liability Company) and S.A. (Public Limited Company), without excluding other modalities, which will be mentioned with less detail.

2.2. Need for a Foreigner Identification Number and/or a Tax Identification Number

Any individual or legal entity wishing to operate in Asturias – either due to economic or professional interests in the region or significant fiscal implications – must obtain a Foreigner Identification Number (NIE) or a Tax Identification Number (NIF), respectively.

The applicable regulations require obtaining NIE or NIF, as the case may be, in the following scenarios: for direct investments in the Principality and to be appointed as an administrator or shareholder of an entity residing in Spain (similarly, to be a representative of a branch or Permanent Establishment (EP), as indicated later).

All foreign documents forming part of the corresponding applications (e.g., powers of representation to appear before public authorities and request NIE or NIF) must be translated into Spanish or the co-official language of the autonomous community where the application is submitted through sworn translation of both the document and its legalization and apostille. Likewise, foreign public documents must be previously legalized by the Spanish consular office with jurisdiction in the country where the document was issued and by the Ministry of Foreign Affairs, European Union, and Cooperation unless the document has been apostilled by the competent authority of the issuing country according to the Hague Convention of October 5, 1961.

Thus, obtaining NIE and NIF can be processed from abroad or directly in the Principality of Asturias, following the following scheme:

Foreigner Identification Number:

- Applications from abroad: must be addressed to the Spanish consular offices abroad (specifically to the general immigration and border police commissioner's offices).

- Applications in Spain: at the Foreigners' Offices, National Police Commissioner's Offices, and the General Police and Civil Guard Directorate. In Asturias, specifically:

    - Government Delegation – Oviedo (Police Unit): Plaza de España 3 (infoextranjeria.asturias@correo.gob.es, oviedotarjetas.asturias@correo.gob.es).
    - Gijón Police Station: Plaza Padre Máximo González s/n (tel. 985179208, fax 985179201).
    - Avilés Police Station: Calle Río San Martín 2 (tel. 985129242, fax 985129290).
    - Luarca Police Station: Calle Olavarrieta 25 (tel. 985642810, fax 985642811).

In both cases, the resolution period will be one week, with a cost of €9.84/€10 associated with model 790, and the documentation to be provided with the application will be:

- Official form (EX15) in duplicate.

- Payment of the model 790 fee with proof of payment to the corresponding bank.

- Certified and apostilled copy of the passport (EU citizens can simply present their identity document). If the applicant is not an EU citizen, copies of all passport pages must be made, and in the case of an EU citizen, the passport's identifying page is sufficient. The notary's seal and signature must be on all pages of the passport copies attached and not on a separate sheet.

- If applied through a representative: (i) copy of the applicant's passport certified by a notary and legalized and, if applicable, apostilled (EU citizens can simply provide a copy of the first page of the passport); and (ii) proof that they have sufficient power of attorney, if applicable, duly translated (sworn translation) and legalized and/or apostilled.

- In any case, it is recommended to go to the physical offices with photocopies of the indicated documents to submit to the public authorities for inclusion in the specific file.

NIF (distinguishing between provisional and definitive NIF):

- Applications from abroad: must be addressed to the Spanish consular offices abroad (specifically to the general immigration and border police commissioner's offices) or electronically.

- Applications in Spain: at the State Tax Administration Agency (AEAT), in Asturias, in any of the twelve available offices, or electronically.

- Provisional NIF (preliminary step before the constitution of a company):

    - Ordinary procedure before the AEAT: the procedure will be resolved on the same day, and the following documentation must be provided:

        - Form 036 (census declaration of registration, modification, and deregistration in the Registry of Entrepreneurs, Professionals, and Withholders, box 110), signed by a representative of the company with NIE or Spanish DNI (for the purposes of Form 036 (accessible electronically (models and forms/declarations/all declarations)), if the signer is not listed as a partner or administrator in the agreement of wills, it will be necessary to present sufficient power of attorney (with a specific clause in favor of the signer).
        - Copy of the NIE or Spanish DNI of the signer.
        - Original negative certification of the company name from the Central Mercantile Registry.
        - Agreement of wills for the constitution of the company signed by the management body and the partners or a copy of the constitution deed. The agreement of wills or the constitution deed must contain, at least: the type of commercial company,

business purpose, initial share capital, registered office, identification of partners, and composition and identification of the management body.

- Telematic procedure: before the public deed of incorporation of the company, the authorizing notary obtains the provisional NIF from the AEAT, requiring both partners and administrators to have NIE or Spanish DNI and be previously registered.

- Definitive NIF (posterior step to the constitution of a company):

  - The presentation procedure will be exclusively electronic (on the AEAT website), and the Administration will have a period of ten business days to resolve the application, and the following documentation must be provided:

    - Model 036 (census declaration for registration, modification, and deregistration in the Registry of Entrepreneurs, Professionals, and Withholders, box 120), request for the definitive Tax Identification Number (NIF), box 111, registration in the census of entrepreneurs, professionals, and withholders, which must be signed by a representative of the company with a Spanish NIE or DNI. It will be mandatory to register the obligation to file an Income Tax (IS) return at that time, as determined by the applicable regulation: obligations related to the Tax on Economic Activities (IAE), Personal Income Tax (IRPF), or Value Added Tax (IVA) can be registered using the same form or deferred to a later form.
    - Original and photocopy of the document proving the representative's capacity who signs the form.
    - Copy of the constitution deed in which the seal of the registration entry is printed.

2.3. Incorporation of commercial companies

As anticipated when introducing this section, the most common commercial companies in Spain are SLs and SAs, endowed with common features and issues specific to each specific type.

Hence, the main common features, nuanced with the differentiating elements of each corporate type, of SLs and SAs, have been listed below:

- They have their own legal personality different from that of their members and the possibility of establishing a single-member capital company is allowed, in other words, one with only one member.

- The liability for the company's debts is limited, except in very specific, exceptional cases, to the share capital.

- They must have corporate articles of incorporation (with certain mandatory mentions):

  - The articles of incorporation of the S.A. cannot prohibit the sale of shares to outside third parties (as they are open companies), although they may regulate a certain procedure to be followed before the sale to a third party (non-member).
  - SLs, on the contrary, cannot have corporate articles of incorporation that allow the free sale of shares to third parties (non-members).

- Our legal system recognises the validity and legal effectiveness of agreements between members which regulate matters not provided for in the articles of incorporation or strengthen majorities to reach specific resolutions (shareholder agreements).

- They must have a minimum share capital (€60,000 in the S.A. and €3,000 in the S.L.). Upon incorporation:

- The disbursement of the subscribed share capital, upon incorporation or in the event of an increase, may not be complete and the minimum may be 25% of the subscribed share capital, with the rest being disbursed within a period of five years.
- In SLs, it must be fully disbursed when the deed of incorporation is granted (except in cases where the regulations allow incorporation with lower share capital, as a result of Law 18 enacted on 28 September 2022 on the creation and growth of companies) or the carrying out of an increase in share capital.

- The share capital can come from monetary contributions (cash or bank transfer) or non-monetary (for example, real estate), although:

  - In the S.A., a report from an independent expert must be provided on the appropriate valuation of non-monetary contributions, although the cases included in article 69 of Royal Legislative Decree 1/2010 of 2 July which approves the consolidated text of the Corporations' Act (LSC) may be replaced by a report from the directors.
  - In SLs, an independent expert report is not required (but, in any case, the substitute report of the directors is required) on non-monetary contributions, although the founders and members are jointly and severally liable for the authenticity of the non-monetary contributions made. In other words, the obligation is replaced by a liability regime for whosoever made the contribution, who will be responsible for the amount granted to it.

- They must have a shareholder registration book and the S.A. too in the case of so-called registered shares. Likewise, their books of minutes (of the bodies) and of members must be legalised annually before the Registrar of Companies and Land Registry of Asturias.

- They have governing bodies: the general meeting and the administrative body (which must be elected by the general meeting and, except as provided in the articles of incorporation, may be made up of natural or legal persons who are not members).

- The general meeting must be held in the place designated in the articles of incorporation (or, failing that, in the municipal area of the registered office) and, in addition:

  - The minimum period that must elapse between the convening and the holding of the general meeting is one month in the case of SAs and fifteen calendar days in the case of SLs.

- The administration of companies can be entrusted to a sole director, to several directors acting jointly or severally or to a board of directors (which must have a minimum of three members, with no maximum limit in the S.A. and with a maximum of 12 in the S.L.):

  - In the S.A., the term during which they will hold office will be common to all and indicated in the corporate articles of incorporation, but it may not exceed six years and four in listed companies (although re-election for equivalent periods is permitted) and when joint administration is entrusted to two directors, they will act jointly, whilst when more than two directors are entrusted, they will form a board of directors.
  - In the S.L., the appointed directors hold office for an indefinite period and the corporate articles of incorporation may establish different ways of organising the administration, attributing to the shareholders' meeting the power to alternatively opt for any of them without the need for any statutory amendment).

- The members (they must have a NIE *(foreigner identification number)* or NIF *(Tax ID number)*) and the directors (if they have control of the company and/or if they receive remuneration for the position, must be registered with Social Security and be residents in Spain) may be legal entities, but they must designate a natural person representative.

- The administrative body has the obligation to prepare the annual accounts (balance sheet, profit and loss account, report, director's report and statement of non-financial

information, where applicable) within three months following the close of the financial year and submit them to the approval of the general meeting together with the management of the directors and the distribution of the earnings within six months following the close of the financial year (31 December, unless otherwise provided for in the corporate articles of incorporation). Once submitted to the general meeting, they will be registered with the Registrar of Companies of Asturias.

- General meetings must meet (physically or electronically) on a mandatory basis within the first six months of the financial year (and at any other time at the request of the directors or members who have the capacity to request it), to approve the accounts for the closed financial year and the management of the administrative body. If this is provided for in the corporate articles of incorporation, general meetings may be held in person, electronically or by combining both options.

- The grounds for dissolution are common and share the grounds for the removal and exclusion of members.

2.4. Branches and other ways of operating

2.4.1. Branches

Spanish substantive law does not include the concept of branch and so the absence of a specific definition regarding the main establishment has led to it being above all the mercantilist doctrine, case law and the Directorate-General for Legal Certainty and Attestations, which have been outlining the notion of branch, developing a concept that serves to understand all possible types of branches and also allows them to be differentiated from other related figures, based on the provisions of article 295 of Royal Decree 1784/1996 of 19 July, which approves the Registrar of Companies' Regulations (**RRM**). Hence, a branch will be taken to mean any secondary establishment provided with permanent representation and a certain management autonomy, through which the company's activities are carried out, in whole or in part.

The branch should not be confused with other related figures, such as subsidiaries, material operational centres, agencies, representative offices and permanent establishments. Hence, the branch can be defined as a secondary establishment, lacking any legal personality of its own, since it shares the legal personality of any other branches that may exist and is none other than that of the parent company, of a permanent nature, with the same purpose than that of the parent company, but with a different material installation and its own clientele, which enjoys operational autonomy through management, with sufficient powers to carry out its function, although to do so it is subject to the guidelines of the parent company, and without any of this affecting the business unit of the company.

As it lacks its own legal personality, the branch does not have true share capital nor its own corporate purpose, although it does have the company's own funds to carry out the activities entrusted to it. To carry out its activity, the governing body of the main establishment usually appoints a director of the branch, who acts as the parent company's proxy in the branch, never as its representative, as it lacks legal personality.

The creation of a branch by foreign companies requires the granting of a public deed and its registration with the Registrar of Companies. It is not the foreign company which accesses the registrar, but rather its branch and hence the foreign company must be incorporated in accordance with the law of its nationality, even if it is a type of company not provided for in Spain.

To open and register the branch, it must submit a duly legalised sworn translation into Spanish

by a sworn translator of documents which prove: (i) the existence of the company; (ii) its current articles of incorporation / memorandum of incorporation / bylaws; (iii) its directors; (iv) the branch opening agreement; (v) the address of the branch; (vi) the activities to be carried out; (vii) the identity of the representatives appointed to the branch and the powers granted to them.

The branch must deposit annually with the Registrar of Companies the accounts of the foreign company or prove they have been deposited at the place where it is a national in accordance with its legislation, and the accounts of the branch.

Branches of foreign companies may require prior administrative authorisation to carry out certain activities.

The branch will be extinguished when the parent company so agrees and so the branch may be closed in two ways: by way of a decision by the parent company of its own free will or owing its own extinction.

2.4.2. Subsidiary

The subsidiary forms a legal entity independent of the parent company and it is endowed with full personality, in other words, it enjoys true legal autonomy, with capital, articles of incorporation and its own bodies and it may even have a corporate purpose different from that of the parent company. The creditors of the subsidiary will not be able to appeal to the parent company as the obligations of the former do not affect (in principle and directly, except for very limited exceptions) the parent company, which is not directly responsible for them.

2.4.3. Permanent Establishment

PEs are identified not by any legal feature, but by their physical characteristics (which involve direct tax impact): facility or place where operations are usually carried out in a territory where the entity does not reside. In any case, the PE must be an establishment, office or bureau where commercial operations are carried out. Hence, and linking this to the figure of the branch, the latter, by combining the legal note of autonomy with the physical note of independent installation, includes that of the PE; but not the opposite, in other words, not every PE can be identified with a branch, but rather to this end, autonomous internal management from the main company will be required.

2.4.4. Representative Office

They generally exist in banking circles and are establishments that carry out only some of the banking operations, being limited exclusively to carrying out bill collection functions, without being able to carry out deposit operations, nor handle cheques, savings books or credits. Hence, they cannot generate clientele or carry out operations contained in the corporate purpose of the credit institutions, but are merely auxiliary establishments of the entrepreneur and without autonomy.

The Representative Offices (**RO**) are a good alternative as a measure prior to the final decision to invest in Asturias since the legal procedures are simpler and in this way you can sound out the market or verify any possible competition.

2.4.5. Temporary Joint Ventures (UTE)

It is a system of collaboration between entrepreneurs for a certain, determined or indeterminate period of time, for the carrying out or implementation of works, services or supplies. Under this associative contract, the UTE lacks legal personality, but it constitutes an autonomous company which acts under single management, endowed with a specific legal regime. Since it lacks any legal personality, the liability regime is assigned jointly and severally to its participants.

A special tax regime is attributed to the UTE when it meets the following requirements. (i) The companies participating in the UTE may be natural or legal persons, national or foreign; (ii) it must be formalised in a public deed that contains identification of the grantors, the articles of incorporation which record the name of the UTE, the purpose of the UTE, fiscal address, term, name of the manager, address and powers of attorney granted by the participants in the UTE, the percentage stake of the participants and other lawful agreements; (iii) registration with a special registry of the Spanish Tax Agency.

The UTE also has the capacity to hire staff in order to implement the purpose for which it has been established.

2.4.6. Joint Ventures through a Limited-Liability Company or Public Limited Company

On numerous occasions, foreign investments are channelled through incorporated joint ventures used as a vehicle by the S.A. and the S.L., thus being subject to the indications contained in this document relating to incorporation, basic characteristics and specific aspects of the corporate bodies of these commercial companies.

2.4.7. Silent Participation Agreements

Silent Participation Agreements (**CEP**) are a form of commercial cooperation whereby a natural or legal person (participant) contributes assets, rights or capital with the objective of participating in the business or company of another (manager), with both being subject to the success or failure thereof. It is one of the oldest associative modalities, whereby no common asset is created nor any new legal personality.

2.4.8. Commercial procurement

This is an alternative to setting up a company or branch or entering into commercial partnership agreements with existing entrepreneurs. These contracts, although endowed with similar features, maintain differentiating aspects between them.

- **Distribution agreements:** they lack specific regulation, allowing the parties great freedom regarding their content.

  Under this agreement, one of the parties undertakes to acquire products from the other contracting party for subsequent resale.

  We can talk about several types of distribution agreements:

(i) Commercial concession or exclusive distribution:

The supplier undertakes to deliver its products exclusively to a single distributor in a given territory, and not to sell those products itself in the territory of the exclusive distributor.

(ii) Sole distribution agreement:

It has an exclusive distributor in the territory, as in exclusive distribution, but unlike the latter, the supplier reserves the right to supply the products which are the object of the agreement to the end users.

(iii) Authorised distribution agreement:

This is a selective distribution agreement as the distributors are carefully selected based on their ability to market technically complex products or to maintain an image or brand, but it does not imply exclusivity for the seller in the territory.

- **Agency agreement:** the Council Directive of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (**Directive 86/653/EEC**) was transposed into Spanish legislation by Law 12/1992 27 May on the Agency Agreement, defining it as that whereby "a natural or legal person, called an agent, undertakes vis-à-vis another in a continuous or stable manner, in exchange for remuneration, to promote commercial acts or operations for third parties, or to promote and conclude them for third parties, as an independent intermediary, without assuming, unless otherwise agreed, the risk of said operations."

  The agent does not act in his own name and on his own behalf, but in the name and on behalf of one or more entrepreneurs in a certain territory. It is the agent's obligation, either personally or through his employees, to negotiate and, if so stated in the agreement, to conclude any commercial operations or agreements which he is responsible for on behalf of the entrepreneur. The following obligations are established, inter alia:

  The agent is authorised to negotiate the resolutions or operations contained in his agreement, but not to conclude them on behalf of the entrepreneur unless he has been specifically authorised to do so.

  Any agent can act on behalf of several entrepreneurs as long as it is with respect to goods or services that are not identical or similar and concurrent or competitive as, that being the case, specific consent is required.

  The agency agreement may be exclusive, taken to mean the agent's commitment not to promote commercial operations of the same nature sought by other entrepreneurs and within their territory. In this case, any commercial operation carried out by the entrepreneur in the agent's territory and which falls within the exclusivity agreed with the agent, the success-based commission agreed upon will accrue in favour of the latter.

  One of the essential aspects of the agency agreement is that the agent's work must always be remunerated. Remuneration may consist of a fixed amount, a commission or a combination of the two previous systems.

- **Commission agreement:** this is an agreement whereunder the proxy (the commission agent) undertakes to carry out or take part in a commercial agreement or act on behalf of someone else (the principal).

  The commission agent can act in his own name or on behalf of the principal, in other words, he is the one who acquires the rights vis-à-vis the third parties with whom he contracts and is personally bound, or on behalf of the principal, who is the one who acquires the rights vis-à-vis third parties and the latter over him.

In general, he is not liable vis-à-vis the principal for the fulfilment of the agreement by a third party that has been concluded with him, although this risk can be insured by way of the guarantee commission.

In turn, the principal is obliged to pay a commission and to respect the retention and preference rights of the commission agent. The commission agent's credits vis-à-vis the principal are protected through a lien on the goods.

- **Franchise agreement:** franchising is a type of agreement whereby one company (the franchisor) transfers to another (the franchisee) the right to market certain products or services within a certain geographical area and under certain conditions. With this being in return for financial compensation.

  This right empowers and obliges the franchisee, in return for a direct or indirect economic consideration or both, to use the commercial name and/or brand of products and/or services, the know-how and the technical and business methods, which must be the franchisor's own, substantial and unique procedures, and other industrial and/or intellectual property rights, supported by the continuous provision of commercial and technical assistance, within the framework and for the term of a franchise agreement agreed upon between the parties for this purpose, and all this without prejudice to the supervisory powers of the franchisor which may be established contractually.

  The applicable Spanish legislation is: (i) Law 7/1996 of 15 January on the Regulation of Retail Trade, relating to the regulation of the franchise regime and creating the registry of franchisors (amended by Law 1/2010 of 1st March, reforming Law 7/1996 of 15 January on the Regulation of Retail Trade), a registry which was eliminated by Royal Decree-Law 20/2018 of 7 December on urgent measures to promote economic competitiveness in the industrial and commerce sector in Spain; (ii) Royal Decree 201/2010 of 26 February, which regulates the carrying out of commercial activity under a franchise regime and the communication of data to the registry of franchisors; and (iii) Royal Decree 378/2003 of 28 March, which implements Law 16/1989 of 17 July on Antitrust, in terms of category exemptions, unique authorisation and antitrust registration, which refers to Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of section 3, article 81 of the EC Treaty to certain categories of vertical agreements and concerted practices and to Regulation (EC) No 1400/2002 of 31 July 2002 on the application of section 3, article 81 of the EC Treaty to certain categories of vertical agreements and concerted practices in the motor vehicle sector.

  Notwithstanding the above, by dint of Royal Decree 553/2019 of 27 September on the liquidation and extinction of the Financial Fund to Aid Domestic Trade (F.C.P.J.) at present it is only required that, giving minimum notice of 20 business days prior to the signing of any franchise agreement or pre-agreement or handing over by the future franchisee to the franchisor of any payment, the franchisor should submit to the future franchisee, in writing, the information necessary so that it can decide freely and with full knowledge of the facts to join the franchising network and, in particular, (i) the main identification data of the franchisor; (ii) description of the sector of activity of the franchised business; (iii) experience of the franchising company; (iv) content and characteristics of the franchise and its operation; (v) structure and extent of the network and (vi) essential elements of the franchise agreement.

  The commercial concession or exclusive distribution agreement whereunder an entrepreneur undertakes to acquire, under specific conditions of certain exclusivity in an area, normally branded products, and also resell them under certain conditions, will not necessarily be considered a franchise, as well as to provide the buyers of these products with assistance once the sale has been made, will not necessarily be regarded as a franchise.

Nor will the following be regarded as a franchise (i) the granting of a manufacturing license; (ii) the transfer of a registered trademark for use in a certain area; (iii) the transfer of technology, or (iv) the assignment of the use of a commercial banner or label.

2.5. Procedures – ordinary incorporation process

a. **Company name clearance certificate:** The interested party or a person authorised for this purpose must submit an application to the Central Registrar of Companies **(RMC**) directly at the office with a certification application form, by e-mail, sending a request or letter to the offices of the Central Registrar of Companies or electronically.

   Once the application has been filed, the RMC will issue the so-called name reservation certificate (with a validity of six months, although for the granting of a public deed it is limited to three months) for the company that is going to be incorporated. If the certification expires, renewal may be requested with the same name by accompanying the application with the expired certification.

b. **Provisional NIF application** (as indicated in section 2.2. above).

c. **Opening a bank account in Spain:** The new company must have a bank account opened in its name in which the disbursement of the share capital will be carried out so that, once disbursed, the credit institution issues the attendant certificates of deposit.

d. **Granting of certificate of disclosure of beneficial ownership:** the notary public before whom the company is to be incorporated must record in a certificate the disclosure about the actual beneficial ownership of the new company, in compliance with article 4 of Law 10/2010 of 28 April on the prevention of money laundering and the financing of terrorism and Royal Decree 304/2014 of 5 May, which approves the Regulation of Law 10/2010 of 28 April on the prevention of money laundering and the financing of terrorism.

e. **Granting of a public deed before a notary public,** which will include:

   - The identification of the founding member or members (if it is a legal entity, also of the natural person representative). The members may be represented in this act, although sufficient power of attorney must be provided for this purpose (and those powers of attorney granted abroad must be duly legalised, including a Hague apostille where applicable).
   - Certificate of the beneficial owner (under the terms of section (d) above).
   - The wish of the grantors to establish the type of company in question.
   - The identification of the contributions that each member makes and the identification number of each share or stake attributed to them.
   - The identifying data of the people who will carry out the administration of the company and their acceptance of the position.
   - The National Activity Code (**CNAE**).
   - Provisional NIF
   - The corporate articles of incorporation, which will include at least: the corporate name, which will include the type of company at the end; description of the corporate purpose; registered office; the amount of share capital and the number of shares or stakes into which it is divided as well as the nominal value of each share or stake; the structure of the administrative body; form of taking decisions and adopting resolutions by its collegiate bodies; the term of the company, which may be indefinite; the starting date of operations and the closing date of each financial year.
   - In the case of the S.A., if the total share capital has not been disbursed, the percentage disbursed and the maximum term established for its disbursement and, furthermore, the total amount, at least approximate, of the incorporation expenses, both those already paid and those merely planned until registration.
   - Subsequent declaration of the foreign investment with the Registry of Foreign Investments of the Directorate-General of International Trade and Investments of the Ministry of Trade, Industry and Tourism. In the case of foreign investments from territories or countries regarded as tax havens, a prior declaration must be made.
   - The following will be attached to the deed: the RMC certificate proving the non-existence of the company name chosen by another company; the bank certificate

of the disbursement of the share capital; the description of the non-monetary contributions and the value attributed to them and, in the case of an S.A., the independent expert's report on the value of the non-monetary contributions; the acceptance letters of the position of the directors appointed.

f. **Application for registration with the Registrar of Companies of Asturias of the registered office:** with this in mind, the Registrar of Companies must be able to access the deed of incorporation which will be sent electronically by the notary public or, failing that, submitted by the interested party in person.

g. **Classification and registration with the Registrar of Companies of Asturias:** the Registrar of Companies will classify and, if it finds no defects, will register the new company within a period of 15 days as from the date of filing of the deed of incorporation, unless there is a just cause which entails a need to extend this period to 30 days.

h. **Permanent NIF** (as indicated in section 2.2. above).

i. **Tax and labour issues:** without prejudice to that which is indicated in the relevant sections of this document, the company must:

- Register for the Economic Activities Tax (submitting Form 036) before the start of the commercial activity, indicating the activity to be carried out and the reason for the tax exemption where applicable (in addition to natural persons in any case, legal entities will be exempt during the first two years of carrying out activities, legal entities whose net turnover is less than €1,000,000, associations and foundations of people with physical, mental and/or sensory disabilities, non-profit making for those activities of a pedagogical, healthcare and scientific nature.
- Register for Value-added Tax.
- Obtain the relevant opening or operating license or, where applicable, authorisation from the competent authority for the carrying out of the activity in question (issued by the City Council and/or the regional or state Administration). However, Law 12/2012 of 26 December on urgent measures for the liberalisation of trade and certain services, permanent establishments intended for retail commercial activities and the provision of certain services provided for in the law itself with a working display and sales area not exceeding 750 square metres will not, in general, need to obtain a prior opening and activity license, but rather they must submit an affidavit of liability or prior communication. However, when the planned commercial activity involves the creation of a large commercial area, there must be sectoral authorisation or an equivalent title granted by the autonomous Administration.

2.6. Procedures – ordinary incorporation process (only for Limited Companies)

Law 14/2013 of 27 September on support for entrepreneurs and their internationalisation, Law 18/2022 of 28 September on the creation and growth of companies and Law 28/2022 of 21 December to promote the ecosystem of emerging companies envisage, depending on the type of company and business to be undertaken, an express regime for the electronic formation of an S.L., with and without standard articles of incorporation in standardised format, whose content is developed by the regulations. The incorporation of an S.L. with and without standard articles of incorporation is supported by the so-called Entrepreneur Service Point (**PAE)** and the Business Creation and Information Centre Network (**CIRCE**), which significantly reduce deadlines and limit the associated economic costs through the Single Electronic Document (**DUE**).

To this end: (i) PAEs are offices belonging to public and private organisations, including notaries' offices, which will be responsible for facilitating the creation of new companies, the effective

start of their activity and their development, through the provision of information, processing and documentation and advice; (ii) the DUE is the document which includes the data which must be sent to the legal registries and the Public Administrations (**PA**) competent for: the formation of SLs, registration with the Registrar of Companies of the ERL, the fulfilment of the obligations in tax and social security matters at the start of the activity and the completion of any other procedure at the start of the activity before state, regional and local authorities.

2.7. Other Entities Regulated by the Capital Companies Act

2.7.1. Limited Partnership by Shares

This type of company has its share capital divided into shares, and at least one of the partners will be personally liable for the company's debts as a general partner.

They are expressly regulated in the Royal Decree of August 22, which publishes the Commercial Code (Article 149 and following), and in cases not covered there, by what is established in the Capital Companies Act for public limited companies.

2.7.2. European Company (Societas Europaea or SE)

It is governed by the provisions of Regulation (EC) No 2157/2001 of the Council of October 8, 2001, approving the Statute for a European Company (Regulation EC) 2157/2001); by the Capital Companies Act, and by the law that regulates the involvement of employees in European public limited liability companies.

When establishing an SE that is to be domiciled in Spain, in addition to the companies indicated in Regulation EC 2157/2001, companies may also participate even if they do not have their central administration in the European Union, are established under the legislation of a member state, have their domicile there, and have an effective and continuous connection with the economy of a member state.

The SE can choose between a one-tier or two-tier management system. In the case of the one-tier system, the administrators are subject to the provisions of Regulation EC 2157/2001 and the law that regulates the involvement of employees in European public limited liability companies, as well as the Capital Companies Act to the extent that it does not contradict the above rules. In the two-tier system, there will be a management board and a supervisory board.

2.7.3. Economic Interest Groupings (Agrupaciones de Interés Económico or AIE)

These are business groupings whose purpose is to engage in auxiliary activities for their partners, who must be a minimum of two, without directing the activities of their partners or directly or indirectly owning shares in the companies that are members of the AIE.

The partners are jointly and severally liable for the debts of the AIE on a personal basis, and its governing bodies consist of the general assembly of partners and the administrators (who are jointly liable for tax obligations and damages caused to the AIE unless they can demonstrate diligent action).

The formation is carried out through a public deed, and it must include at least: (i) the identity of the partners; (ii) the share capital, if any, specifying each partner's participation; (iii) the name; (iv) the purpose; (v) the duration; (vi) the registered office; (vii) the identity of the administrators.

The European Economic Interest Grouping (EEIG) also possesses legal personality, and its characteristics are regulated by Regulation (EEC) No 2137/85.

2.8. The Entrepreneur with Limited Liability (ERL)

The ERL is a figure regulated by Law 14/2013, of September 27, on support for entrepreneurs and their internationalization, which allows, in the case of self-employed entrepreneurs, a natural person to act as an entrepreneur without having to be personally liable for all their professional or business debts under certain conditions.

To acquire the status of an entrepreneur with limited liability, the entrepreneur must register or record as such in the Mercantile Registry of Asturias, indicating the real estate, whether owned or common, that they intend to be exempt from their business or professional liability. If this includes their primary residence, it should not be used for the specific activity, and its value should not exceed €300,000, as provided in the taxable base of the Transfer Tax and Documented Legal Acts Tax (ITPAJD) at the time of registration.

In the case of residences in municipalities with more than 1,000,000 inhabitants, a coefficient of 1.5 will be applied (raising the amount to €450,000).

The application must be made through a notarial deed that must be submitted electronically by the notary on the same day or the following business day after its authorization to the Mercantile Registry or through an application signed with the entrepreneur's recognized electronic signature and sent electronically to the Mercantile Registry. In the latter case, the electronic processing system of the CIRCE and the DUE can be used.

This possibility is excluded for debtors who have acted with fraud or gross negligence in fulfilling their obligations with third parties, provided that it is proven by a final judgment or in a contest declared guilty.

The registered status of ERL must be made known to third parties through various means:

- By registering it in the corresponding section of the Mercantile Registry.
- It must be stated in all their documentation, with the mention of the registration details, as an "Entrepreneur with Limited Liability" or by adding the acronym "ERL" to their name, last name, and tax identification data.
- Additionally, the College of Registrars, under the supervision of the Ministry of Justice, will maintain a publicly accessible portal where the data of registered entrepreneurs with limited liability will be disclosed at no cost to the user.
- The non-subjection of the primary residence to the results of business or professional activity must be registered in the Property Registry, in the section corresponding to the property. To this end, the Mercantile Registrar will issue a certificate and send it electronically to the Property Registrar immediately, always within the same business day, for registration in the primary residence of the entrepreneur.

Regarding its effects, unless creditors expressly consent, the universal liability of the debtor for debts incurred prior to their registration in the Mercantile Registry as an individual entrepreneur with limited liability will remain.

On the other hand, subsequent debts cannot be enforced against the assets excluded from such liability. If an attempt is made to levy an attachment on the primary residence, the Property Registrar (naturally, when the condition in question is recorded in the corresponding entry) will deny the precautionary annotation of the attachment on non-subject property unless the order indicates that non-business or non-professional debts are being secured, or it concerns business or professional debts contracted before the registration of the limitation of liability, or tax or Social Security obligations.

Finally, the ERL will have additional accounting obligations, equating their situation to that of single-member limited liability companies, with the same duties to prepare, audit, and deposit accounts in the Mercantile Registry. If they fail to do so within seven months from the close of the fiscal year, they will lose the benefit of limited liability, which they will only regain upon presentation. Finally, the establishment of a dual-purpose tax and accounting regime is envisaged, subject to regulatory development, in both fiscal and corporate terms.

2.9. Other ways of investing

2.9.1. Acquisition of shares

The main difference between acquiring a part of the share capital of an S.A. or that of an S.L. is the need for notarial intervention, mandatory in the case of an S.L. (although not invalidating the legal transaction in event of a lack of form) and in S.A. necessary only when the corporate articles of incorporation or regulations provide for this (or the parties have agreed to it).

To complete the acquisition, the notary public must be able to access:

- Sufficient power of attorney (and legalised where applicable) of the person appearing if they do so representing the buyer or the seller.
- Spanish DNI or NIE of the buyer and the seller.
- Certificate of disclosure of beneficial ownership of the parties if they are legal entities.
- Ownership title of the shares or stakes that are transferred.
- Justification of the payment of the price, where applicable (specifically, if the price was received prior to granting, the amount, and depending on how it was made, the cheque or bank transfer).

In addition, the form D-1A must be submitted electronically – signed electronically by the natural or legal person making the investment, their representative or person authorised for this purpose, counter-signed by the notary public – before the Ministry of Trade, Industry and Tourism (through the electronic office of the Directorate-General of International Trade and Investment), indicating the protocol number and date of the public document whereby the investment is formalised.

Investment in already established companies grants investors (members) certain rights such as the distribution of dividends which, if not carried out after the fifth year has elapsed since registration with the Registrar of Companies of the company, will entitle the member to withdraw from the company, taking into account the requirements set forth in article 348 bis of the LSC.

2.9.2. Acquisition of business

- Through the purchase and sale of assets and liabilities: this entails the direct acquisition of individualised assets and/or liabilities owned by the company under a sale and purchase agreement entered into directly between the purchaser and the company.

  When the object of the sale is a business unit or branch of activity, the parties may agree which assets or liabilities are included in the agreement and which remain in the original company, so that the buyer will only bear those charges and contingencies associated with said specific activity.

- Through global transfer of assets and liabilities: this is a legal operation whereby a company (assignor) transfers all of its assets en bloc to a third party (assignee).

  Hence, the assets are transferred by universal succession to one or more assignees in exchange for a consideration, although the consideration may not consist of shares, participations or stakes of the assignee.

  The global transfer of assets and liabilities is regulated in Royal Decree-Law 5/2023 of 28 June, whereby certain measures are adopted and extended in response to the economic and social consequences of the War in Ukraine, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposition of European Union Directives on structural modifications to commercial companies and the work-life balance of parents and caregivers; and the implementation of and compliance with European Union Law (**RDL 5/2023**). As regards everything not included in RDL 5/2023, the stipulations for the merger procedure included in the LSC will apply.

In both cases it will be necessary to provide the documentation required by the regulations.

2.9.3. Acquisition of real estate

This requires the intervention of a notary public or a Spanish consul located abroad, having to provide the documentation that the regulations require and complying with the requirement of registration with the relevant Land Registry by territory.

2.9.4. Operations with and through venture capital entities

Another form of investment: private equity operations (Venture Capital and Private Equity, amongst the various nomenclatures accepted in the industry). It is an activity carried out by specialised entities, which consists of the contribution of financial resources on a temporary basis (3-10 years) in exchange for a stake (it may be either majority or minority) to unlisted companies with high growth potential. This injection of capital is complemented by added value: advice on specific problems, credibility with third parties, professionalisation of management teams, openness to new business approaches, experience in other sectors or markets etc. The purpose of private capital is to contribute to the birth, expansion and development of the company, so that its value increases.

Private capital provides the company, in addition to financial resources, with professionalism, credibility and experience in the design of new value creation strategies. It is capable of aligning the interests of shareholders and managers, developing attractive remuneration and motivation schemes for the latter. When a few years pass by and the company has generated the expected value and is ready to be divested, it organises a sale process which maximises the value of its investment and also that of the other members/shareholders and managers accompanying this type of project.

2.9.5. Participatory loans

Through a participatory loan, the lending entity will receive variable interest, which will be determined based on the evolution of the activity of the borrowing company and the criterion to determine said evolution may be: net profit, turnover, total equity or any other freely agreed upon by the contracting parties. Furthermore, fixed interest may be agreed upon regardless of the evolution of the activity, and this instrument will be regarded as net equity for the purposes of the dissolution and liquidation of the company, making it a very useful financing tool which is close to the share capital.

Furthermore, a penalty clause may be agreed in the case of early repayment and, in any case, the borrower may only repay the participatory loan early if said repayment is offset by an increase for the same amount of its own funds and provided that this does not derive from the updating of assets on its balance sheet.

2.10. Other Types of Business Entities

In addition to limited and anonymous companies, which make up the majority, there are other legal forms such as:

- European Company (Societas Europaea, S.E.)
- Regular Partnership (Sociedad Regular Colectiva, S.R.C. or S.C.)
- Limited Partnership (Sociedad en Comandita, S. en Com. or S. Com.) or Public Limited Partnership (Sociedad en Comandita por Acciones, S. Com. por A.)
- Professional Company (Sociedad Profesional, S.P.)

2.11. Regulatory Compliance, Money Laundering, and Director Liability

2.11.1. Considerations on Regulatory Compliance and Money Laundering

In October 2019, the European Union adopted Directive (EU) 2019/1937 of the European Parliament and of the Council, dated October 23, 2019, regarding the protection of individuals reporting breaches of EU law, commonly known as the "Whistleblowing Directive." Member states were mandated to incorporate this Directive into their national legislation before December 17, 2021.

The law governing the protection of individuals reporting regulatory breaches and corruption details how reporting channels should be established (see Law 2/2023, dated February 20, 2023, regulating the protection of individuals reporting regulatory breaches and combating corruption).

Several aspects concerning reporting channels stand out:

- For private entities, the obligation to have a reporting channel is imposed on those with a workforce of at least 50 employees, though in the case of group companies, the parent company can have the channel and a "Information System Policy."

- It describes the characteristics, including the requirement for the channel to be prominently and separately displayed on the company's website, as well as the management procedures to follow when a report is received through the channel.

- The law establishes the Independent Authority for Whistleblower Protection (A.A.I.) with the following functions: (i) managing the external communication channel as regulated in Title III.2; (ii) implementing protective measures for whistleblowers within its scope of competence; (iii) providing mandatory information on draft legislation affecting its jurisdiction and functions; (iv) handling sanction proceedings and imposing penalties for the specified violations; and (v) promoting and fostering a culture of information sharing.

- The company's management or governing body is responsible for appointing the individual responsible for managing the system, or the "System Manager," and for their dismissal or removal. Both the appointment and removal of the designated individual, as well as members of the collective body, must be reported to the A.A.I.

- Once the law comes into effect, its current transitional provision establishes two deadlines for implementing the reporting channel: (i) three (3) months for private entities with over 249 employees and (ii) until December 21, 2023, for entities with at least 50 but no more than 249 employees.

- The current wording of the law stipulates significant fines for not having a reporting channel or for failing to meet the guarantees outlined in the law. For private legal entities, the fine ranges from €600,000 to €1,000,000.

- The law explicitly allows for the internal communication systems that companies have in place at the time the law enters into force to be used to meet the law's requirements, provided they adhere to its specified criteria.

The primary obligations related to anti-money laundering and counter-terrorism financing in Spain are outlined in Law 10/2010 of April 28, 2010, on the prevention of money laundering and the financing of terrorism, in Royal Decree 304/2014 of May 5, 2014, which approves the implementing regulations, and in Royal Decree-Law 7/2021 of April 27, 2021, transposing EU Directives in areas such as competition, money laundering prevention, credit institutions, telecommunications, tax measures, environmental damage prevention and remediation, cross-border provision of services by workers, and consumer protection.

This legislation applies to transactions conducted by entities obligated to comply with it, including credit institutions, insurers, investment and financial services providers, real estate developers, and professionals such as notaries, lawyers, and tax advisors, among others whose activities, due to their nature, could be used for illegal purposes. The aim of this regulation is to prevent: a) the conversion or transfer of assets, knowing that they are the proceeds of criminal activity or participation in criminal activity, to conceal or disguise the illicit origin of the assets or to help individuals involved avoid legal consequences; b) the concealment or disguise of the nature, origin, location, disposal, movement, or ownership of assets or property rights, knowing that they are the proceeds of criminal activity or participation in criminal activity; c) the acquisition, possession, or use of assets, knowing at the time of receiving them that they are the proceeds of criminal activity or participation in criminal activity; and d) involvement in any of the mentioned activities, association to commit such acts, attempts to commit them, and aiding, abetting, or advising someone to carry them out or facilitate their execution.

As per the law, entities subject to it are required to undertake certain actions to ascertain information about their customers and the origin of their funds. They must implement "Due

Diligence Measures," the extent of which depends on the specific risk of each operation, with the following being the main requirements: a) identifying all natural or legal persons who seek to establish business relationships or engage in any transactions; b) identifying the ultimate beneficial owner and taking appropriate measures to verify their identity before establishing business relationships or carrying out any transactions; c) obtaining information on the intended nature and purpose of the business relationship, gathering information to understand the nature of the customer's professional or business activity; d) continuously monitoring business relationships and updating available information; e) applying due diligence measures appropriate to the customer, business relationship, product, or transaction; f) scrutinizing any fact or transaction, regardless of its amount, which, due to its nature, may be related to money laundering or terrorist financing, and reporting such findings to the Money Laundering and Monetary Offenses Prevention Commission, refraining from executing such transactions; g) retaining documentation proving compliance with these obligations for ten years; h) adopting written policies and procedures covering due diligence, information, document retention, internal control, risk assessment, compliance with relevant obligations, and communication, as well as having a specific client admission policy and an adequate anti-money laundering and counter-terrorism financing manual, which must be kept up to date; i) taking appropriate measures to ensure that employees are aware of these obligations and establishing internal procedures to enable them to report, even anonymously, relevant information about potential non-compliance with this regulation.

Additionally, Law 12/2003 of May 21, 2003, on the prevention and blocking of terrorism financing, establishes similar measures to those discussed above in order to prevent terrorism financing activities, with the Surveillance Commission for Terrorism Financing Activities being the body responsible for ensuring compliance with this law.

Non-compliance with the obligations imposed by the aforementioned regulations may result in the imposition of severe penalties, which could amount to the higher of the following figures: 10 percent of the total annual turnover of the obligated entity, double the economic value of the transaction, five times the amount of benefits derived from the violation, when such benefits can be determined, or €10,000,000. Additionally, penalties may be imposed on those holding management or directorial positions within the obligated entity when the penalty is attributable to their intentional or negligent conduct.

2.11.2. Directors' Liability

The criminal liability of company directors and executives, and the potential criminal liability of the company itself. Regardless of the criminal (and civil) liability that individuals serving as directors (both de facto and de jure) or executives of a company may incur for actions committed in the course of their duties, which are specified in Organic Law 10/1995 of November 23, 1995, of the Penal Code, legal entities operating in Spain can also be criminally liable for offenses committed by their directors, representatives, or individuals under their authority when there was insufficient control, provided that the offense was committed for the direct or indirect benefit of the legal entity. However, this potential liability does not extend to all types of offenses but only to those specific types for which it is legally provided.

Nevertheless, Article 31 bis 2 of the Penal Code provides an exemption from such criminal liability for the legal entity if the criminal act was committed by an employee, provided that, before the commission of the offense, the legal entity had effectively adopted and implemented an appropriate organizational and management model to prevent such offenses or significantly reduce the risk of their commission. In cases of offenses committed by the company's representatives, this exemption will apply only if the management body had effectively adopted and implemented organizational and management models before the commission of the offense, including suitable surveillance and control measures to prevent or reduce the risk of similar offenses. The supervision of this prevention model should be entrusted to a body within the legal entity with autonomous initiative and control powers. For this exemption to apply, the authors of the offense must have fraudulently circumvented the prevention model, and the

supervisory body must not have failed to adequately perform its monitoring, surveillance, and control functions. If not all these requirements are met, this could be considered not as a cause for exemption but rather as a basis for mitigating the penalty.

To be considered, these systems must, as stipulated in Article 31.5 of the Penal Code: (i) identify the activities in which the offenses to be prevented could be committed; (ii) establish protocols or procedures specifying how the will of the legal entity would be formed, how decisions would be made, and how they would be carried out; (iii) have adequate financial resources to prevent the commission of such offenses; (iv) impose the obligation to report potential risks and non-compliance to the body responsible for monitoring the model's operation and compliance; (v) establish a disciplinary system that appropriately sanctions violations of the measures it establishes; and (vi) periodically review the model and modify it when significant violations of its provisions are revealed or when changes in the organization, control structure, or activities undertaken make such changes necessary.

Therefore, a single criminal act could lead to the imposition of criminal liability and potential penalties for both the individual perpetrator and the company on whose behalf and for whose benefit the offense was committed. However, according to Article 31 ter of the Penal Code, this liability will be exclusively attributed to the legal entity when the criminal act was committed by one of its directors, representatives, or employees, but the specific individual cannot be identified or when it is not possible to initiate proceedings against them.

This is why it is of vital importance for companies operating in Spain to have an organizational and management model that is suitable for preventing the commission of offenses within the company and to have a body responsible for monitoring the operation and compliance of the prevention model adopted.

2.12. Applicable Legislation

The leading regulation in corporate law is the Companies Act, accompanied by other regulations such as:

- Royal Decree of July 24, 1889, publishing the Civil Code (CC).
- Organic Law 1/2002, of March 22, regulating the Right of Association (LODA).
- Royal Decree 1776/1981, of August 3, approving the Statute regulating Agricultural Transformation Societies (ESAT).
- Order of September 14, 1982, which develops Royal Decree 1776/1981, of August 3, approving the Statute regulating Agricultural Transformation Societies.
- Royal Decree-Law 5/2023, of June 28, adopting and extending certain measures in response to the economic and social consequences of the Ukraine War, supporting the reconstruction of La Palma Island and other situations of vulnerability; transposing European Union Directives on structural changes in commercial companies and the reconciliation of family and professional life for parents and caregivers; and implementing and complying with European Union law.
- Royal Decree of August 22, publishing the Commercial Code.
- Law 12/1991, of April 29, on Economic Interest Groupings (LAIA).
- Royal Decree-Law 13/2010, of December 3, on actions in the fiscal, labor, and liberalizing field to promote investment and job creation (RD-L FICE).

- Law 28/2022, of December 21, on promoting the startup ecosystem (Startup Law).
- Law 18/2022, of September 28, on the creation and growth of companies (Create and Grow Law).
- Law 2/2023, of February 20, regulating the protection of individuals reporting regulatory violations and fighting corruption.
- Law 1/1994, of March 11, on the Legal Regime of Reciprocal Guarantee Societies (LRJSGR).
- Law 22/2014, of November 12, regulating venture capital entities, other closed-end collective investment entities, and the management companies of closed-end collective investment entities, and amending Law 35/2003, of November 4, on Collective Investment Institutions (LECR).
- Royal Decree 1251/1999, of July 16, on Sports Public Limited Companies (SAD).
- Law 11/2009, of October 26, regulating Listed Real Estate Investment Companies (LSACIMI).
- Law 35/2003, of November 4, on Collective Investment Institutions (LIIC).
- Royal Decree 1082/2012, of July 13, approving the Regulation for the Development of Law 35/2003, of November 4, on Collective Investment Institutions.
- Law 19/1992, of July 7, on the Regime of Real Estate Investment Companies and Mortgage Securitization (LSFIITH).
- Royal Decree 217/2008, of February 15, on the legal framework for investment services firms and other entities providing investment services and partially amending the Regulation of Law 35/2003, of November 4, on Collective Investment Institutions, approved by Royal Decree 1309/2005, of November 4.
- Consolidated Text of the Law on Regulation of Pension Plans and Funds, approved by Royal Legislative Decree 1/2002, of November 29.
- Royal Decree 1588/1999, of October 15, approving the Regulation on the Implementation of Commitments for Pensions by Companies to Workers and Beneficiaries.
- Royal Decree 304/2004, of February 20, approving the Regulation for Pension Plans and Funds.
- Law 27/1999, of July 16, on Cooperatives.
- Law 20/1990, of December 19, on the Fiscal Regime of Cooperatives.
- Law 13/1989, of May 26, on Credit Cooperatives.
- Royal Decree 136/2002, of February 1, approving the Regulation of the Cooperative Societies Registry.
- Order EHA/3360/2020, of December 21, approving the accounting aspects of cooperative societies.
- Royal Decree 84/1993, of January 22, approving the Regulation for the Development of Law 13/1989, of May 26, on Credit Cooperatives.
- Royal Decree 1345/1992, of November 6, establishing rules for the adaptation of provisions governing consolidated profit taxation for cooperative societies.

- Consolidated Text of the Law on Regulation and Supervision of Private Insurance, approved by Royal Legislative Decree 6/2004, of October 29.
- Royal Decree 1486/1998, of November 20, approving the Regulation on the Organization and Supervision of Private Insurance.
- Law 44/2015, of October 14, on Labor-Owned and Participatory Companies.
- Law 2/2007, of March 15, on Professional Companies (LSP).
- Law 18/1982, of May 26, on the Tax Regime of Business Associations and Temporary Business Unions and Regional Industrial Development Companies (LUTE).
- Law 3/2011, of March 4, regulating European Cooperative Societies with their registered office in Spain.
- Law 31/2006, of October 18, on Employee Involvement in Public Limited Companies and Cooperatives.
- Royal Decree 1784/1996, of January 19, approving the Regulation of the Commercial

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