

# **UNIT 3**

## **CREATION AND START-UP OF THE COMPANY**

One of the first decisions to be taken by the promoter or promoters of a new company is the choice between the different Types of Companies or Legal Forms of Constitution that the Company can adopt (sole proprietor, limited liability...). Choosing the appropriate legal form is important to limit our financial liability for debts that we may incur in our business. In addition, the taxes we pay vary from one legal form of company to another. Once a legal form has been chosen for our company, we must carry out a series of procedures to establish it and to start it up, as we will see at the end of the Unit.

## 1. CRITERIA FOR CHOOSING A SUITABLE LEGAL FORM FOR THE COMPANY

Here are some aspects to take into account when choosing between the different types of company:

- **Type of Activity to be carried out.** The general rule is freedom of choice. However, in some cases it is necessary a specific form (i.e., Public limited companies for entities operating in the financial and insurance sectors). In addition, some Administrations exclude certain legal forms to request certain aid and public subsidies.
- **Number of promoters.** The number of people involved in the activity may condition the choice. Thus, when there are several promoters, it is advisable to establish a company. However, it is possible to form a limited liability company with a single partner (sole proprietorship).
- **Economic needs of the project.** In principle, general partnership (sociedades civiles) companies are cheaper in their incorporation, because their registration in the Public Registry of Commerce is not necessary and, therefore, they do not have to go through the Public Notary either. Also, no minimum initial capital is required. However, the Limited Liability Company, the Labor Companies and the Cooperatives societies require public deed (escritura notarial) and a minimum capital to start. However, that initial outlay can compensate if the intention is to limit future liability to that capital and therefore protect our personal assets.
- **Responsibility of the promoters.** This is an important aspect. Liability for debts may be limited (i.e., limited liability companies) or unlimited (sole proprietor, general partnership and joint ownership (comunidad de bienes)). In case of unlimited liability, personal assets must be applied to pay debts if business assets are not enough to cover the obligations assumed.
- **Tax matters.** The fundamental difference between some companies and others is due to taxation: Personal Income Tax (PIT or IRPF) in the case of sole proprietor (self-employed), general partnership and joint ownership; or through

Corporation Tax (Impuesto de Sociedades) in the rest of companies. In Personal Income Tax, a progressive tax rate is applied. It means that as profits increase, the sole proprietor must pay a higher amount of money for tax. In Corporation Tax, a fixed rate is applied, which is generally 30% and 25% for small companies (with a turnover of less than 10 million euros). As income rises, the taxation for Corporation Tax is usually more interesting.

- **Image before customers.** Finally, it must be taken into account that many clients and suppliers will look at the legal form of the company to determine its greater or lesser permanence, and, therefore, the greater or less reliability. Commercial companies (limited liability or public limited companies) give a greater sense of permanence.

## 2. TYPES OF LEGAL FORMS OF ENTERPRISES

A legal form is the identity that a company assumes at the legal level when it is established. Depending on who their owners are and their responsibilities, there are four main types of legal forms: natural person (individuals), commercial companies, companies without legal personality, and social economy companies.

Each of these four groups is made up of several company subtypes. The complete list is as follows:

- Individual:
  - o Sole Proprietor (Empresario individual)
  - o Limited Liability Sole Entrepreneur (Emprendedor de Responsabilidad Limitada).
- Commercial companies:
  - o Capitalist-based companies, in which the economic contribution is essential:
    - **Limited liability company** (Sociedad Limitada)
      - Limited liability company with successive formation
      - Limited liability company New company
    - **Public limited company** (Sociedad Anónima)
  - o Personal-features-based companies in which personal characteristics of the partners stand out over the capital:
    - **Partnership** (Sociedad Colectiva)
    - **Limited partnership** (Sociedad Comanditaria o en comandita)
- Companies without legal personality:
  - o **General Partnership** (Sociedad Civil)
  - o **Joint ownership** (Comunidad de Bienes)
- Social economy societies:
  - o **Labor Company**

- Cooperative Society.

### 3. INDIVIDUAL ENTREPRISE

#### 3.1. Sole proprietor (Empresario individual)

It is the natural person who performs on his own name and through a company, a commercial, industrial or professional activity.

This legal form does not have a specific legal regulation. The sole proprietor is subject in its business activity to the general provisions of the Commercial Code in commercial matters and to the provisions of the Civil Code regarding rights and obligations.

There is a total control of the company by the owner, who directs its management. The legal personality of the company is the same as that of its owner (employer), who is personally responsible for all the obligations contracted by the company.

There is no differentiation between commercial assets and civil assets.

This legal form does not require a prior incorporation process (proceso de constitución). The procedures begin at the beginning of the business activity.

The contribution of capital to the company, both in its quality and in its quantity, has no limit other than the will of the employer. There is not a minimum contribution.

##### Advantages:

- It is an ideal business form for the operation of very small companies.
- It is the form that requires the least amount of paperwork. It is no need to carry out any formalities to acquire legal personality.
- It can be more economical, since it does not create a legal person other than the employer himself.

##### Disadvantages:

- Sole proprietor must respond with his/her personal assets for the debts generated in his/her activity.
- If the businessman or businesswoman is married, the business activities can affect the other spouse, depending on the class of assets:
  - Assets that belong to sole proprietor are bound by the results of the business activity
  - Joint assets (bienes gananciales) may be bound by express consent.
  - Assets of the employer's spouse may be bound by express consent in a public deed.
- If your profit volume is important, it may be subject to very high tax rates (a company pays a fixed rate of 25% or less on profits, while sole proprietor pays higher rates, depending on the income volume).

# Sole Proprietorship

<ul style="list-style-type: none"> <li>▪ A business that is owned (and usually operated) by one person</li> <li>▪ The simplest form of business ownership and the easiest to start</li> <li>▪ Many large businesses began as small, struggling sole proprietorships</li> <li>▪ The most popular form of business ownership</li> </ul>	Preliminary Paperwork	• No special forms required
	Period of Existence	• Ends when proprietor dies or leaves business
	Liability	• Unlimited liability
	Operational Requirements	• Minimal legal requirements
	Management	• Full control of management and operations
	Taxation	• Not a separate taxable entity; taxes paid through owner's personal tax return
	Raising Capital	• Funding mostly derived from owner; outside funding difficult to obtain

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## Advantages and disadvantages of sole proprietorship (US)

<https://www.youtube.com/watch?v=QxdR2sSPD88>

## 3.2. Limited Liability Sole Entrepreneur (Emprendedor de Responsabilidad Limitada)

A Limited Liability Sole Entrepreneur (also known by the Spanish acronym ERL) is very similar to a Sole Proprietor. The main difference is that the ERL legally protects his/her home from possible debts that his/her professional activity may generate.

Thus, a person who becomes a limited liability sole entrepreneur will have to respond to the debts with all his/her assets, except for his/her home if its value does not exceed 300,000 euros (or 450,000 in the case of properties located in towns with more than one million inhabitants).

### Legal Forms of Business Organization

<https://www.youtube.com/watch?v=v3m35D2lcgs>

<https://www.youtube.com/watch?v=LGPTO0vr4gk>

## 4. COMMERCIAL COMPANIES

Commercial companies are legal forms of companies whose objective is to carry out some type of commercial or economic activity. This type of companies have legal personality, different from those of its members.

Using their own assets, these types of companies try to generate a profit by offering some type of product or service. All of them, in addition, are taxed under the corporate regime (corporate taxes).

We can distinguish two types:

- **Capital-based companies**, in which the capital contributed by the partners is essential.
- **Personal-features-based companies or partnership companies**, in which the personal characteristics of the partners are more important than the capital contributed.

### 4.1. Capital-based companies

#### ▪ **Limited Liability Company (Sociedad Limitada, S.L.)**

A limited liability company, or simply limited company (SL), is one of the most widespread legal forms of business in our country. It is a good option for all those self-employed who want to minimize their responsibility for their business, in such a way that they do not have to pay the debts generated by their commercial activity with their own assets.

It is a **commercial and predominantly capitalist company** whose capital is divided into equal, accumulative and indivisible shares (participaciones).

The minimum **number of partners** is 1 (Sociedad Limitada Unipersonal), and the **minimum initial capital (shareholder equity)** is 3,000 Euros. It can be contributed either in cash or in kind (for example, by providing computer equipment). This capital must be fully paid up. Work or services cannot be contributed.

The **name of the company** must include "Limited Liability Company", "Limited Company", or their abbreviations "S.R.L" or "S.L". If a limited company is incorporated with a single partner (Sociedad Limitada Unipersonal), it must be stated in all the documentation, correspondence, invoices and in the legal notices (S.L.U).

The **partner's liability for the debts** is limited to the contributions there are carried out. In case the social assets were exhausted, partners would not be responsible for debts in a subsidiary way.

The **capital of a limited liability company is divided into shares (participaciones)**. The voluntary transfer of shares between partners, between spouses, ascendants or

descendants or companies of the same group is free, unless the Statutes establish otherwise. If the transmission is directed to a third party, it requires the prior consent of the Company.

To incorporate a limited company, it is necessary a **public deed of incorporation (Articles of incorporation)** before a **Public Notary** and **register** it in the **Public Registry of Commerce**. The public deed includes the **Company's Bylaws** (in LLC are named as Operating agreement), which are a set of rules that regulate its internal functioning.

**Governing bodies** of this enterprise:

- General assembly of partners: Deliberative body that expresses the corporate will (appointment and removal of administrators, modification of the bylaws, increase or reduction of the capital stock...)
- Administrators: executive and representative body at the same time, which carries out the daily administrative management of the social enterprise and the representation of the entity in its relations with third parties. It can be carried out by a Sole Administrator, two or more joint or several Directors, or by a Board of Directors composed of a minimum of three and a maximum of twelve directors

These companies are taxed for **Corporation tax**

#### **Advantages:**

- Smart for small and medium-sized companies with few partners and initial capital (3,000 euros).
- The liability of the partners is limited. You will thus protect your personal assets.
- Corporation tax allows multiple deductions.
- A single partner can incorporate it (Sociedad Limitada Unipersonal).

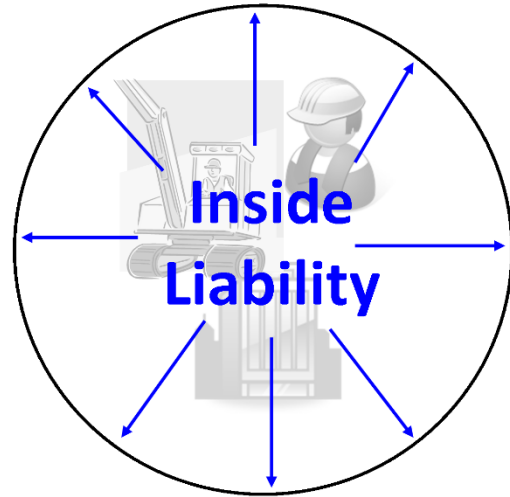
#### **Disadvantages**

- More complex procedures in its incorporation.
- Public deed must be prepared before a Public Notary and registered in the Public Registry of Commerce.
- Participation in the company will depend on the number of shares available. If the number of participations is low, they will have to accept the decisions of the majority.
- The future transfer of shares is limited in favor of certain persons and following certain rules.

## Personal Assets & Property



## Corporation or Limited Liability Company



### Limited Liability Companies

<https://www.youtube.com/watch?v=oLcHSBjt1L4>

[https://www.youtube.com/watch?v=b\\_wAHBNDmI4&feature=emb\\_logo](https://www.youtube.com/watch?v=b_wAHBNDmI4&feature=emb_logo)

- **Other types of Limited liability corporations:**
  - **Limited liability company of successive formation (Sociedad Limitada de Formación Sucesiva):**

It is one of the lesser-known legal forms of business. Its characteristics are very similar to those of a ordinary S.L, with the difference that the partners do not have to contribute a minimum amount of money to establish it. On the contrary, its founders must follow a series of rules that ensure the growth of the company until it has covered the 3,000 euros necessary to set up a limited liability company.

- **Limited liability company new company (SOCIEDAD LIMITADA NUEVA EMPRESA, SLNE)**

It is a new option for entrepreneurs that allows solving several problems that most entrepreneurs encounter when trying to open their own business and promote the development of SMEs. SLNE are designed for small business projects, so that they can start their economic activities quickly and easily. Due to this, however, it has a number of characteristics that make it different from other types of limited companies:



- The **maximum number of partners** that can be part of an SLNE is five. All of them, in addition, have to appear as natural persons. This is different from what happens in an ordinary SL, in which there can be an unlimited number of partners (who can also be legal persons).
- All administrators must be partners of the company, unlike what happens in a normal SL.
- The corporate purpose of a new company limited company is more generic and allows its members to carry out their activities in a more flexible way, in such a way that they can change their role without having to modify their statutes.
- There is a minimum capital that must be contributed to set up an SLNE. In this case, the amount must be at least 3012 euros (maximum 120.000 euros), which also cannot be contributed in the form of assets (only in cash).

### ○ **Public Limited Company (Sociedad Anónima, S.A.)**

It is a type of company where the capital stock is divided into shares (acciones), which belong to the partners. They do not have to respond with their personal assets in the event that the company generates some type of debt.

The shares of a corporation have a certain value depending on the value of the company. The people who acquire part of this capital stock are known as shareholders.

The shareholders have different rights (earn a dividend per share in case that the enterprise shares profits, or to vote at a shareholders' assembly, which is the one that makes the company's decisions).

The minimum share capital to establish a public limited company is 60,000 euros. This capital will be divided among all the shares of the company. Likewise, although the minimum number of partners is 1, an SA can be made up of as many people as desired.

This legal form of company is designed for companies that plan to grow a lot. The requirements to be met to establish and maintain them are much more complex than those of other types of companies, but their potential benefits are generally also greater.

These companies are taxed for corporation tax

### **What are shares in a company?**

<https://www.youtube.com/watch?v=9nw8BxBnMxM>

<https://www.youtube.com/watch?v=oHwISaOUSk0>

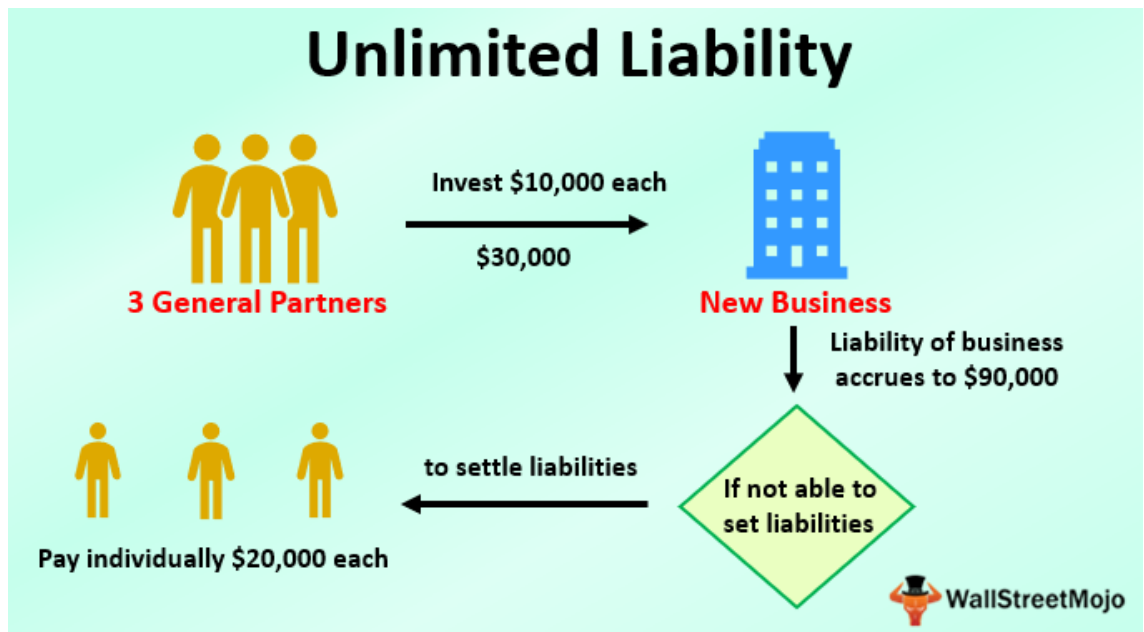


## 4.2. Partnership companies

In this type of legal form, **personal characteristics of the partners are the most important aspect to take into account in its creation.** The success or not of these partnerships, therefore, usually depend on the **skills of their partners.**

This brings us to 3 common characteristics in these companies:

- **The partners are the ones who manage the company.**
- **The partners cannot transfer their membership status to another person without the consent of the others.**
- **The liability is unlimited and joint. That is, in case of debt, it will first be paid with the assets of the company, but if it is not enough, the partners respond with their present and future assets (unlimited liability). Furthermore, if one of the partners cannot pay, the others must do so for him (joint liability).**



## ○ Partnership (Sociedad Colectiva)

- It is the simplest legal form within commercial companies. In it, the partners commit to work in the company and they are the ones who contribute the money and manage it, so they share the rights and obligations. In addition, there is the possibility that some partners only contribute work (industrial partners).
- It is a very suitable company for a small number of partners who want to do the same activity (such as a law firm).
- This company has the following characteristics:
  - The minimum number of partners is two.
  - The liability is unlimited and joint.
  - There is no minimum capital for its constitution.
  - The transfer of the status of partners is restricted. Therefore, the consent of the other partners is necessary.
  - The tax to pay is Corporation tax.

## ○ Limited partnership (Sociedad en comandita)

This company is similar to partnership, but it has two types of partners:

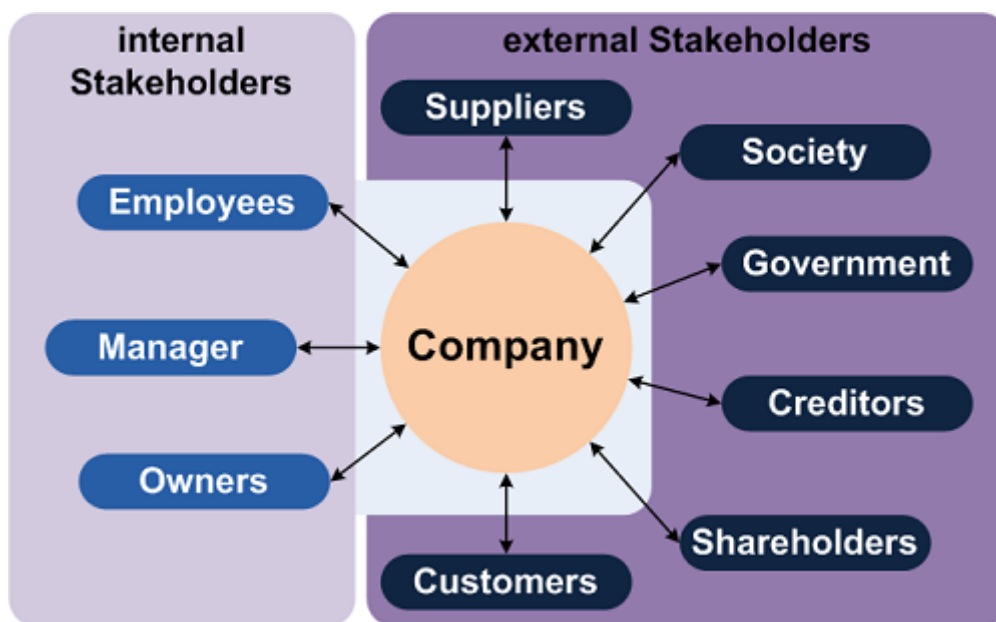
- Collective partners, who contribute capital and work in the company. Therefore, they are in charge of managing it.
- Limited partners, who only contribute capital. Therefore, they are entitled to the benefits of the company, but do not carry out the management.

This limited partnership is ideal when the general partners want to carry out the same activity, but also need contributions from other people who do not work in the company (limited partners)

We highlight the following characteristics.

- The minimum number of partners is two. One must be collective and the other limited.
- The liability is unlimited and joint. For limited partners, who do not manage and only put money, the liability will be limited to the capital contributed.
- There is no minimum capital for its set up.
- The transfer of the status of partners is restricted. Therefore, the consent of the other partners is necessary.
- The tax is Corporation Tax.

In Spain, it is allowed to set up a limited partnership by shares.



## 5. COMPANIES WITHOUT LEGAL PERSONALITY

Some legal forms of business do not require the creation of a new entity to carry out economic activity. On the contrary, people who set up them pool their resources, skills and knowledge in order to achieve a common goal. This type of company is known as a “company without legal entity”.

Within this group, there are two main forms of business: General Partnership (Sociedad Civil) and Joint ownership (Comunidad de Bienes). Let's see each one of them.

### 5.1. General Partnership (Sociedad Civil)

It is a legal form of company by which people, through a contract, pool a series of resources (such as goods, money or skills) with the aim of generating a greater profit than they could achieve separately, and share it out. Some of its most important characteristics are the following:

- Individuals who are part of a general partnership have unlimited liability.
- It is not necessary a minimum capital, that is, economic activity can begin as soon as all parties have contributed the assets they had agreed to.
- The decisions are taken democratically, accepting the opinions of the majority of the members.
- All members receive financial compensation in proportion to the contribution they initially made.

General partnerships belong to the legal forms of companies that are taxed through Personal Income Tax (PIT). It is a type of organization that allows its components to have a lot of freedom when it comes to managing and disposing of all their assets, so it may be a good choice for some groups of entrepreneurs.

## 5.2. Joint Ownership (Comunidad de Bienes)

The second type of company without a legal entity is the Joint Ownership. It is a union of two or more people who have decided to pool their assets with the intention of carrying out some type of economic activity. The partners are called “comuneros” and conduct the company.

There is not necessary to have a minimum capital for their constitution: each partner will contribute what they think is necessary to carry out the activity for which it has been created. However, all of them have unlimited liability. In other words, in case of incurring debts, they will have to pay them out of their own pocket, using the assets they owned before the incorporation of the company if necessary.

Partners make all their decisions in a democratic way. Each one of the accepted proposals must obtain more than half of the votes. The benefits are distributed among the members based on the initial amount that they have contributed.

No registration is required to set up a joint ownership. Its members will only have to pay personal income tax, and they have no need to pay corporate tax.

## 6. SOCIAL ECONOMY COMPANIES

The last type of corporate legal forms that exist are the so-called “social economy companies”. They differ from the rest because, although they also carry out some type of economic activity and are structured, they have a strong social component that other companies do not contemplate.

Within this category, we find two forms of business: labor companies and cooperative societies.

### 6.1. Labor company

Labor companies are companies (whether limited liability or public limited) in which the workers themselves are part of the business. They have some characteristics that

differentiate them from other types of companies; the most important are the following:

- Most of the capital of the company belongs to the working partners. They have to be working on it with a permanent (open-ended) contract.
- None of the partners can own more than a third of the total capital of the company. This is done to avoid having a single person making the decisions regarding how the company will operate.
- Types of members: There are partners workers (those who besides being owners provide services to society through a full time open-ended contract), non-worker partners (that own shares or participations but not have an employment relationship) and, finally, salaried workers (those who do not are partners but have been hired by the company). In total there will be at least four partners and at least three of them workers.
- Non-partner workers can only work a limited number of hours in these types of companies. In general, the number of hours worked by non-partner workers cannot be greater than 15% of those worked by those who are. This number can be increased to 25% in the event that the company has less than 25 employees.
- Labor companies receive a series of tax benefits that make them a very good option for freelancers who want to collaborate in the creation of a company. In addition, the initial capital required to form them is only 3,000 euros.

## 6.2. Co-operatives

It is a type of company formed by a group of people united by common interests, who voluntarily associate themselves to carry out some type of economic activity in order to satisfy one of their needs.

Co-operatives have a series of characteristics that make them different from other legal forms of business. Among other ways, registering and deleting them is voluntary, and can be done relatively easily. Also, the goal is not to make money, but to achieve some kind of personal satisfaction.

Therefore, in the event that there is any type of economic surplus, it must be distributed among the members according to how much they have worked and not according to the initial capital they contributed. All the participants of the cooperative, in addition, have the right to vote on the decisions that are made, which must be reached democratically.

This form of company has some legal and administrative advantages that make it a very interesting option for those entrepreneurs who value their personal satisfaction more than the fact of earning very large amounts of money.



**What is a co-operative?**

[https://www.youtube.com/watch?v=90FL\\_bBE4mw](https://www.youtube.com/watch?v=90FL_bBE4mw)

## 7. PROCESS OF INCORPORATION OF A COMPANY

A Sole Proprietor needs to carry out the administrative procedures corresponding to the exercise of the activity (start-up). However, a legal person, like a company (i.e. limited liability company) requires to adopt incorporation procedures previously to its start-up.

Incorporation procedures are the legal requirements necessary for a company to have its own legal personality, independent of the individuals that comprise it.

We are going to analyze one by one and the order in which they must be carried out. This means that to carry out a procedure, you must bring the justification of having carried out the previous ones.

### 1. Negative certification of company name.

How is it possible that the company name of a company does not coincide with that of other companies already incorporated? Requesting a document called negative certification of company name that certifies the non-existence of another company with the same name as the one to be established.

It is requested at the Public Central Registry of Commerce. It is necessary to fulfill an application form, in which three names are proposed in order of preference.

The name must include the legal form adopted or its abbreviation (S.A., S.L., ...). It is forbidden to propose names contrary to the law, public order or good customs.



Company name and brand or trade name may not coincide. The denomination or company name is used in the legal operations of the company (registration in the Public Registration of Commerce, payment of taxes ...); the commercial name is used by the company in the market (advertising, signs, customer relations ...). For example, the company INDITEX S.A., is the corporate name of the company that uses well-known trade names such as Zara, Bershka, Massimo Dutti, Oysho, etc.

## **2. Deposit of an amount of money in the financial institution.**

We know that companies have social capital and that in many legal forms a minimum social capital is required, but how is the contribution of capital to the company by the founding partners justified? By means of a certificate from the bank that certifies that the capital with which it is set up has been deposited in a bank account in the name of the company being incorporated. Subsequently, the money entered can be used.

In limited liability companies it is necessary to pay at least the totality of the minimum share capital required by law: 3,000 euros. In the case of public limited companies, the law requires a minimum payment of 25% of the capital stock. As the minimum share capital is 60,000 euros, it is enough to pay 15,001 euros into the account. In the case of non-monetary contributions, for example premises, computers, etc., they must be stated in the company's standards of incorporation.

## **3. Preparation of the Company's Bylaws and granting of the public deed of incorporation (articles of incorporation).**

Where are the agreements that the founding partners of a company adopt on record? How are these agreements given a formal and public character?

In the so-called **Company's Bylaws** (Operating agreement in a LLC). These are the rules, agreed by the founding partners, that will govern the company. They must contain data such as the following:

- name of the company
- identity of the partner or partners
- the contributions that each partner makes to the share capital
- corporate purpose (activity to which it is dedicated)
- duration and start date of the activity,
- share capital and form of division,
- domicile,
- participation regime of each partner,
- administrative bodies ...

The Company's Bylaws must take into account the characteristics that the law requires for the chosen legal form and in addition, all agreements can be included lawful that the founding partners want to agree.



The Company's are part of the public deed of incorporation (**Articles of Incorporation**) of the company issued by the Public Notary and which is the agreement of incorporation of the company signed by the founding partners in the presence of the Public Notary.

The Notary is a public official whose function is to act as a public notary, attesting that the acts carried out in his presence are in accordance with the law. He is obliged to control and preserve the law and maintain neutrality in his actions.

In Spain there is freedom to choose a public notary. Nowadays these processes can be made through telematics procedures. The bill that he must collect will be between a maximum and a minimum set by the College of Notaries. Its amount depends on the capital stock of the company that is set up and the extent of the deed. The grantors of the Public Deed are all partners.

### **What are articles of incorporation?**

<https://www.youtube.com/watch?v=2b48wwG2DXM>

### **Corporate Bylaws – Definition**

<https://thebusinessprofessor.com/lesson/corporate-bylaws/>

"Corporate Bylaws – Definition," in The Business Professor, updated October 17, 2014, last accessed November 2, 2020, <https://thebusinessprofessor.com/lesson/corporate-bylaws/>.

### **Operating agreement in a LLC**

[https://www.youtube.com/watch?v=6pkN1d5pG8c&feature=emb\\_logo](https://www.youtube.com/watch?v=6pkN1d5pG8c&feature=emb_logo)

## **4. Request for the Tax Identification Number (NIF).**

The Tax Identification Number (NIF) allows the company to be identified and whose use is mandatory to carry out financial, commercial or fiscal activities.

It must be requested at the Delegation of the State Tax Administration Agency (AEAT) of the province in which the company has its domicile within a period not exceeding 30 days from the execution of the public deed. Initially, a provisional CIF is granted to start operating, having to exchange it for the definitive one within a period of 6 months.

The form to be completed is the following model 036 (or simplified 037).

## **5. Regional Ministry of Finance: Tax on property transfers and documented legal acts**

The Tax falls on corporate incorporation operations. The deadline for settlement is 30 business days from the granting of the public deed before the Public Notary.

As a general rule, model 601 will be used, however, the CCAA may require the use of their own models.

Business creation is exempt from paying this tax. However, self-assessments must be submitted, even if business creation is exempt from payment.

## **6. Registration in the Public Registry of Commerce of the province.**

With the registration of the company in the Public Registry of Commerce of the province, the procedures for the company to have legal personality conclude. It must be done within the month following the date of granting of the public deed, except for Limited Companies and Cooperatives that have two months.

The Public Registry of Commerce aims to publicize the legal situations in which a company finds itself. In this way we can go to the Public Registry of Commerce to request information on any company in the province (for example, who are the partners and what is their responsibility, the registered office, if it is bankrupt or suspended, its annual balance ...).

There are companies that must be registered in Special Registries such as the General Registry of Cooperatives or the Registry of Labor Companies. Labor companies are subsequently registered in the Public Registry of Commerce. Cooperatives are not registered in the Public Registry of Commerce, only in their specific one.

Sole proprietors can voluntarily register in the Public Registry of Commerce. If they register, their data is made public and thus improves their transparency in front of interested third parties.

The Registrar registers the company in a certain volume, folio and sheet, and the incorporation of that company will appear reflected in the Official Bulletin of the Registry of Commerce, an official magazine in which the incorporation of the company and its essential data are made public (Name, capital stock, social object...).

## **8. START-UP PROCEDURES**

Once the legal personality has been acquired, a series of procedures are necessary and will allow the company to start operating: they are the so-called start-up procedures.

These procedures must be carried out by all companies, whatever their legal form; therefore they are also compulsory for the sole proprietor.

We have seen that the incorporation procedures must follow a chronological order; in this sense, each new procedure requires proof of having carried out the previous one. The start-up procedures, however, are carried out according to the needs and circumstances of the company; even more, they can be carried out simultaneously.

We are going to classify these procedures according to the public institution before which they are processed:

## **8.1. In the tax office. Tax procedures.**

The State Tax Office (AEAT) is an autonomous body dependent on the Ministry of Economy. Its function is the management, collection and organization of the state tax system. This body manages many taxes that apply to the activity of the company.

- Census declaration: Report on the start of activity, local characteristics and tax modality. 30 days before the start of the activity. It is possible to do in a telematics way. It is necessary to fulfill the 036 Model.
- Registration with IAE: Register for an activity (heading / s). 10 business days before the start. It is possible to do in a telematics way. It is necessary to fulfill the 036 Model.

## **8.2. In Social Security**

The procedures that are carried out in the General Treasury of the Social Security will depend on the labor needs of each company.

### **1. Registration of the company in Social Security**

If the company intends to hire workers, it must notify Social Security of this intention before starting the activity. The Social Security System then assigns the company a number, a contribution account as an employer. This number will be valid for the entire life of the company, although, if there are work centers in different provinces. In this case the company must register in each of them, and therefore have different contribution accounts.

The documentation provided is as follows: model TA-6, photocopy of the ID of the business person or, if it is a company, certification from the Commercial Registry.

### **2. Employee affiliation**

Once the company is registered as an employer, the next step is to enroll the workers who enter its service and who have not worked previously. Employee affiliation is done only once, through the TA1 model, and the affiliation number will be unique for life.

### **3 Registration of workers**

If the worker was already affiliated or has been affiliated by the company, the next step in Social Security is to register it, that is, to include him/her into the corresponding Social Security regime, depending on the activity that go to perform. Form TA2 must be completed.

The model signed by the company and the worker is presented before starting to work.

Once registered, there is the obligation of the company to contribute, that is, to pay Social Security monthly. The models used to settle the quotas in the General Regime are RLC (Contribution Bulletin) and RNL (Nominal List of Workers)

#### **4. Registration of the employer in the Special Regime for Self-Employed Workers (RETA)**

The obligation to join, register and contribute also falls on the person who works for himself, the self-employed. This obligation is also held by the partners of the Joint Ownership, certain members of public and limited companies (if they do not work in the company and only receive part of the benefits or carry out administrative tasks) and optionally the members of the cooperatives.

It must be done within 30 calendar days following the start date of the activity. The Social Security fee is paid monthly.

### **8.3.- Labor procedures**

#### **1. In Labor Administration**

Labor procedures are carried out in the Provincial Labor Office or in the Labor Delegation in the event that the Autonomous Community has transferred those competences and they are the following:

##### **1.1 Communication of the opening of the work center or resumption of activity**

It is necessary to fulfill an application form within 30 days after the start of the activity, for the purposes of controlling the Occupational Health and Safety conditions. You must indicate the data of the company or work center, the activity to be carried out and the number of workers.

##### **1.2. Obtain the working calendar**

Companies must display the work calendar in each workplace, which must be visible. It must be done in Provincial Labor Inspection.

#### **2. In employment offices. State Public Employment Service (SEPE).**

If the company needs workers, it can request them at the Employment Offices (or at the Private Employment Agencies). The offer must include, among other information: the characteristics of the position, the requirements of the candidates, the type of contract and the form of selection.

Notification and Registration of the work contracts formalized with the workers. The company has the obligation to deliver to the SEPE, within a period not exceeding 10 days from the formalization, a copy of all contracts that must be entered into in writing.

Communicate the contracts made that are not required to be made in a written form.

### **8.4. At the Town Hall (Local Administration).**

If our company requires a location, it is highly recommended to consult the current regulations regarding the creation of companies and the type of activity to which you are going to dedicate in the town hall.

The local procedures are the following:

### **1. Opening license.**

All companies that have a physical headquarters, a local, have to apply to the City Council for a municipal opening license that certifies the adequacy of the projected facilities to current urban, environmental and safety regulations and to the technical regulations that may be applicable. The activity must begin within six months of the granting of the license.

### **2. Work license.**

If the premises need renovations, the building permit will be necessary, which implies that the City Council (Department of Urbanism) recognizes that the works to be carried out are in accordance with the urban regulations of the municipality. It takes between one and three months and costs a percentage of the budget of the work determined in the municipal ordinances. Once the work is finished, the real and effective cost can be verified and a final settlement can be made, with a deduction of the amount entered in the provisional settlement. It can be: new plant works (of greater importance) or reforms of existing buildings (minor works), for example: repairs, decoration, etc.

### **3. Local taxes.**

The company must register in municipal rates or taxes such as Garbage or the Water service.

## **8.5.- Procedures related to the purchase or rent of business premises.**

### **1. Purchase of premises:**

The procedures to buy a premises or any real estate are the following:

- In the first place, it must be verified that the property does not have charges that could harm us (mortgages, usufructs, easements, etc.) through a simple note in the Property Registry corresponding to the area in which it is located.
- It must be verified at the City Council that the urban qualification of premises or land allows us to develop our activity.
- The purchase is formalized in a public deed before a public notary and will subsequently be registered in the Property Registry. It is in this act when the property is acquired.
- If the purchase is from an individual, the Tax on Patrimonial Transmissions and Documented Legal Acts or VAT is settled in the case of the first transmission.

- Finally, the declaration of registration in the Real Estate Tax must be submitted, within the two months following its acquisition.

## **2. Rent of premises**

The lease or rental contract can be verbal or written (this one is advisable); it can be private or notarized. The leases of business premises carry with them the deposit by the tenant of two months as a guarantee. The landlord will practice a tax withholding of 15% that will be paid monthly to the Treasury.

## **8.6. Other procedures.**

### **1. In the Industrial Property Registry**

In the corresponding Spanish Patent and Trademark Office, industrial property rights can be registered that give the owner an exclusive right to use it in the market.

The following are industrial property rights: trademarks, trade names, patents...

### **2. In the Public Registry of Commerce**

All companies are obliged to keep an orderly and adequate accounting for their activity. For this reason, they must complete a series of books that are mandatory. These books must be legalized in the Public Registry of Commerce.

### **3. Claim Book Request.**

Before starting the activity, all companies that have customer service must request the Complaints Book from the competent body in consumer affairs in their Autonomous Community. These companies must have the book at the disposal of their clients so that they can formulate the complaints or claims that they deem appropriate.

The company may have to carry out other types of procedures no less important than those mentioned in this topic, such as requesting a grant or subsidy or a bank loan, reserving a domain on the Internet, including data files with personal information in the Data Protection Agency , etc.

## **How to become a sole trader (UK)**

[https://www.youtube.com/watch?v=oDGfs\\_PVhYU&feature=emb\\_logo](https://www.youtube.com/watch?v=oDGfs_PVhYU&feature=emb_logo)

## **9. Online creation of a Limited Liability Company New Company**

The procedures to create this type of company are basically the same as for any other type of company with some peculiarities:

- They can be done online.

- They are formalized in a single document, the DUE (Unique Electronic Document) that collects all the information of the company avoiding going to the Registry of Commerce and the Treasury and the Social Security.

It is done through the Entrepreneur Service Point (PAE).

The CIRCE (Information Center and Business Creation Network)

Telematics Processing system is a computerized system for processing electronic files that, through the DUE, carries out the exchange of the necessary documentation for the creation of companies.

The PAE has a double mission:

- Provide face-to-face information and advice services to entrepreneurs in the definition and telematics processing of their business initiatives, as well as during the first years of activity of the Limited Liability Company.
- Start the administrative process of incorporation of the company through the Single Electronic Document (DUE).