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INVEST IN **GRAN CANARIA**,
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COMPLEMENTARY INFORMATION

4. REGULATION CONCERNING CORPORATIONS



4. LEGISLATION REGARDING CORPORATIONS

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4. LEGISLATION REGARDING CORPORATIONS

4.1 Corporations and their regulation

The corporation is an association of individuals, according to the Spanish legal system. This comes to the legal world as a result of a contract under which, in principle, two or more persons combine their resources and efforts to achieve a common goal, predominantly economic and legal.

In the Spanish Corporate Law there are many types of corporations, such as the Business Corporation (Sociedad Anónima), the Limited Liability Company (Sociedad de Responsabilidad Limitada), the General Partnership (Sociedad Colectiva), the Cooperative (Sociedad Cooperativa) and the Partnership (Sociedad Comanditaria). Among them, the most used are:

- The Business Corporation (SA): which is the prototype of a capitalist company, has its capital stock represented by shares and its shareholders are not personally liable for corporate debts and
- Limited Liability Company (SL): it is also a capitalist company, but it is private, has its capital divided into shares and its shareholders are not personally liable for the corporate debts.

The basic rules for these two types of corporations are established by:

- The Consolidated Text of the Business Corporations Law, approved by Royal Decree 1564/1989 of 22nd December (Ley de Sociedades Anónimas, hereinafter, the LSA),
- Law 2 / 1995 on Limited Liability Companies 23rd March (Ley de Sociedades de Responsabilidad Limitada, hereinafter the "LSRL"); and,
- The Commercial Registry Regulations approved by Royal Decree 1784/1996 of October 2004 (Reglamento del Registro Mercantil, hereinafter, the "RRM"). It contains provisions not only relating to the registration of companies and related acts but also to certain aspects of corporate life.

Apart from this legislation, there are other specific rules and standards that will be analyzed throughout this Guide.

4.2 The Limited Stock Company (SA)

The Limited Stock Company (Sociedad Anónima, hereinafter, the "SA") is a commercial corporation, whose capital stock consist of contributions made by its shareholders, which are not legally liable for the debts of the company.

4.2.1 Applicable Law

The legal regime of the Business Corporation is provided in the above-mentioned Consolidated Text of the Business Corporations Law approved by Royal Decree 1564/1989 of 22nd December.

4.2.2 Capital Stock

The minimum capital required for the incorporation of an SA is 60,102 Euros, which must be fully subscribed for and at least 25% of the nominal value of shares must be paid in.

In those cases where the share capital is fully paid up, the bylaws must indicate the procedure and deadline for the payment of calls on capital, which may not exceed 5 years.

The capital is divided into shares that may be nominative or to the bearer, and will always be nominative in the following cases:

- If the shares are not fully paid up.
- If their transfer is subject to restrictions
- If the shares are subject to ancillary services.
- Or where so required by special regulations (shares of banks and insurance companies).

Shareholders may be, in general, both legal and natural persons of any nationality or place of residence.

Also, applicable legislation does not set a minimum number of shareholders to establish a Corporation, without prejudice to the existence of sole-shareholder companies discussed further below.

Shareholders have the following rights:

- Right to participate in corporate earnings and in the assets that results from the liquidation
- Preferential subscription right to new shares or convertible bonds
- Right to attend and vote at shareholders meetings and to challenge social arrangements
- Right to obtain information concerning company issues

The liability for the actions of shareholders is limited to the amount contributed by each one of them, so that the general rule is that the liability of each shareholder is limited to the capital contributed by that shareholder.

4.2.3 Bylaws

The basic rules governing any company, apart from the Special Law, are its bylaws.

The Bylaws shall always conform to the Law and contain, at least:

- *Name of the company*, always accompanied by the words "S.A."
- *Purpose*, the framework of the activities of the company should be recorded specifically and precisely. Non compliance may result in dissolution and amendment might entail the shareholders' right of separation.
- *Term of the Company*: the term which the shareholders have decided to allocate their capital to the corporate purpose.
- *Start up date*, which may not be earlier than the date of execution of the deed of incorporation.
- *Registered office*, which should be in Spain, stating also the possibility of setting up offices and the competent body for such purpose.
- *Capital stock*, and the number of shares into which the capital is divided, and the par value of each share.
- *Managing body*, the bylaws must determine whether the management of the company is entrusted to a Board of Directors or to some other body or individual. In the case of collective managing bodies, the procedure for the discussion and adoption of resolutions must be specified in the bylaws, together with the system for the remuneration of directors and the number of individuals which make up the body.
- *Transferability of shares*.
- *Ancillary obligations*, if any. If ancillary obligations are created, the bylaws must state the content of such obligations, whether or not they are remunerated, and the penalties, if any, for their breach.

- *The accounting year-end*, if it is not stated expressly, the company will be deemed to end its accounting year on 31st December. The business year cannot exceed twelve months.
- *Special rights* reserved to founders or promoters, if any.

Moreover, the public deed of incorporation, which includes the bylaws, may contain whatever agreements and covenants the founders deem fit, provided that they do not contravene any law or the fundamental principles that govern the Company.

4.2.4 Incorporation Formalities

Shareholders', or their representatives, must appear before a notary public in order to execute the relevant Public Deed of Incorporation.

If the shareholders are foreigners, they shall be provided with a Tax Identification Number if they are legal persons and with a Foreign Identification Number if they are individuals.

Once the incorporation of a Company has been executed in a public deed, the relevant Tax Identification Number must be obtained from the Tax Agency. This number is provisional, until the Stamp Duty Tax at a rate of 1% of its capital stock has been settled.

Finally, the Public Deed of Incorporation has to be registered at the Commercial Registry of Las Palmas de Gran Canaria, after which the Business Corporation acquires its legal personality.

4.2.5 European Company

The European Company or *Societas Europaea* (hereafter, SE) is a new form of company that is added to the list of companies recognized in the legal system of various countries that are part of the European Union.

Also, the European Company is a Community Law company, which has its own legal framework and operates as a sole trader in the entire European Union.

This corporate form allows companies to reduce their administrative costs, while providing a legal structure adapted to the internal market preventing in this way the legal and practical obstacles resulting from each of the legal systems of the Member States of the European Union.

The legal regime is a mixed regime where national legislation and EU rules co-exist and complement each other.

In Spain, the regulation of this type of corporations was established by Law 19/2005 of 14th November on European Companies established in Spain.

The SE shall establish its registered office in Spain, when its head office is in Spanish territory. The SE residing in Spain must be registered, like other forms of company, at the Commercial Registry of its business address.

4.3 The Limited Liability Company (SL)

4.3.1 Applicable Law

The regulation of this type of company is contained in Law 2/1995 of 23rd March on Limited Liability Companies, which defines this kind of Company as one in which the capital, also divided into shares, comprises the contributions made by shareholders who are not personally liable for the corporate debts.

Its status is essentially flexible, so that the autonomy of its shareholders prevails in order to adapt the company to its specific needs.

4.3.2 Characteristics

The aforementioned flexibility of this type of company and its less stringent demands compared to other companies, such as the Limited Stock Company has made Limited Liability Companies (*Sociedad Limitada*, hereinafter SL) the corporate form most often chosen for the conduct of business activities.

Additionally, its scope of its action must be determined, because the SL is able to conduct many different economic activities, provided these are well defined in its corporate purpose.

The minimum capital required for Limited Liability Companies is 3,006.06 Euros, which will be fully subscribed for and paid up upon its incorporation, so that in these companies there is no possibility of calls on capital.

The capital is divided in shares, which are cumulative and indivisible, so that one shareholder may hold many shares.

Also, the shares will not be securities or be represented by share certificates or book entries, or referred to as "acciones" (name given to shares of Spanish Limited Stock Companies).

The content of its Bylaws shall be the same as that of the Limited Stock Company (SA).

The transfer of the shares must be recorded in a public document. Shareholder status is essentially restricted, unlike the case of Limited Stock Company.

4.3.3 Incorporation Formalities

Regarding the formation of a Limited Liability Company, it will follow the same procedure as in the aforementioned case of a Limited Stock Company.

4.3.4 New Limited Liability Company

In addition, Law 7/2003 on New Enterprise Limited Liability Companies, which came into force on 2nd June, 2003, amended Law 2/1995, created a specific type of limited liability Company, which is the New Enterprise Limited Liability Company (Sociedad Limitada Nueva Empresa, hereinafter, "S.L.N.E.").

The incorporation of a New Enterprise Limited Liability Company has a number of advantages, including agility and speed in relation to the procedure for incorporation, as well as in relation to the management of the day-to-day affairs of the company.

Thus, the deed of incorporation of the New Enterprise Limited Liability Company may be executed and entered at the Commercial Registry electronically.

In order to simplify the accounting requirements, a single record is also established that enables compliance with accounting and tax obligations and is results practical for small and medium enterprises.

As in the case of the types of company analyzed above, for its valid incorporation, a public deed that may establish the covenants and conditions that the shareholders deem appropriate must be executed and entered at the responsible Commercial Registry.

As regards its name, it will consist of both surnames and the name of one of the founding partners, followed by a single and unambiguous alphanumeric code that identifies the New Enterprise Limited Liability Company. The resulting name must necessarily include the words "Sociedad Limitada Nueva Empresa" (New Enterprise Limited Liability Company) or its acronym (SLNE).

The Law provides a standard corporate purpose but the shareholders are able to reduce or extend its content.

Only natural persons in a maximum number of five may be shareholders at the time of its incorporation.

Furthermore, its capital stock must be at least 3,012 Euros and no more than 120,202 Euros.

4.4 The Sole-Shareholder Company

Both, Limited Stock Companies (SA) and Limited Liability Companies (SL), may be established with a sole shareholder, or acquire sole-shareholder status at a later date.

If sole-shareholder status is acquired at a later date (not at the time of incorporation), this must be stated in a public deed and entered at the Commercial Register.

The peculiarity of having a sole shareholder implies that such companies are subject to special rules with special requirements, such as in the cases of information and registration.

It is also necessary to record such sole-shareholder status in the correspondence and business records of the corporation, as well as in the registration book, which must be certified, which will record the agreements made between the company and its sole shareholder.

4.5 Governing Bodies

Commercial companies need certain governing bodies for their operation.

- *The Shareholders' Meeting*, which develops and expresses the corporate will.
- *The Managing Body*, which is responsible for the management and the representation of the company.

In the Business Corporation, Annual Shareholders' Meetings are differentiated from Special Shareholders' Meetings.

The Annual Shareholders' Meeting must be held within the first six months of the financial year in order to review the corporate management and approve the financial statements and allocation of profit/loss of the previous year.

The Special Meeting is not held regularly and may be convened:

- By the directors if it is in the interests of the company
- By the directors when this is requested by shareholders holding at least 5% of the capital
- By the courts if the directors fail to fulfil their obligation to call the Meeting when this has been requested by at least 5% of its shareholders

In contrast, in the Limited Liability Company, no difference is established between annual and special meetings, the Law providing a list of the matters that fall exclusively within the competence of the Shareholders' Meeting. The Meeting must be convened by the directors of the company.

It will not be necessary to meet all the requirements needed to call a Meeting, if members representing 100% of the share capital are present and agree unanimously to hold Meeting (Meeting held on consent).

The place of the Meeting will be in the municipality of the registered office of the company. In contrast, Meetings may be held on consent anywhere.

Regarding the Managing Body, it should be emphasized that it is a necessary and permanent body of any company and is responsible for its management and administration.

It may have any of the following structures:

- *Sole Director*, all management and representation duties are entrusted to a single person.
- *Joint and Several Directors*, two or more acting individually, but internally they may share powers.
- *Joint Directors*, acting jointly.
- *Board of Directors*, a body in which the management of the company is entrusted jointly to a minimum of three persons, who may delegate their powers to a CEO or executive committee. In the SL, the managing body may not have more than twelve members.

The appointment of the directors is within the sole competence of the Shareholders' Meeting.

The Shareholders' Meeting has unlimited powers to modify the board as well as to appoint and remove its members at any time.

Directors do not need to be shareholders other than in the case of the New Enterprise Limited Liability Company, unless the bylaws provide otherwise.

In the event of a Board of Directors, it shall consist of the number of members that is established in the bylaws, or within the minimum and maximum number recorded in the bylaws. In the latter case, the Shareholders' Meeting will establish the exact number.

Also in the S.A., the term of the appointment of a Director may not exceed six years and directors may be re-elected to the same period, once or more often for periods of an equal duration.

On the other hand, in the S.L. directors may be appointed for an indefinite period, unless the bylaws provide a certain period, in which case they may be reappointed once or more often for periods of an equal duration.

The Directors of any company will hold office with the *diligence* of a good merchant, *acting in the legal interest* of the company, with the *loyalty* that is required.

Directors are liable to the shareholders themselves, to the company and to its creditors for damages caused by their illegal actions and/or contravening the bylaws or performed in violation of the duties pertaining to their office. To hold the directors liable it will be necessary to evidence:

- the actual damage, i.e., that financial damage was caused to the company, the members or a third party;
- the unlawful act or omission, i.e., that the form of conduct contravenes the Law or the bylaws or was performed without the due diligence;
- the existence of fault, negligence or infringement; and
- the necessary causal link between the malicious conduct and the ensuing damage.

Finally it should be noted that as a multi-member body, the liability of its directors is always joint, but the director who did not participate in the adoption or implementation of the agreement, was unaware of the action undertaken, or even knowing it, tried to prevent it, may be released from liability.

4.6 Comparative table of Business Corporations and Limited Liability Companies

	Business Corporation	Limited Liability Company
Minimum capital stock	60,102€	3,006.06€
Payment upon incorporation	At least 25%	Fully paid in
Shares	They are securities. Debentures and other securities can be issued securities cannot be issued	They are not securities. Debentures and other
Transfer of shares	Depends on their representation and on their nature.	Shall be made under Public document
Amendments to the by-laws	The directors or the shareholders making the proposal will prepare a written report to justify the amendment	No report is required
Contributions in kind	A report from an independent expert is required	No report is required
Call for general meetings	Announcement Published in the Official Gazette of the Commercial Registry and in one of the daily newspapers with widest circulation in the province where it has its registered office	As indicated in the by-laws. If not, announcement published in the Official Gazette of the MR and in one of the newspapers with widest circulation in the municipality where it has its registered office

Place of general meetings	In the town where the company has its registered office	Where indicated in the by-laws If not, in the municipality where the company has its registered office
Attendance to and majorities at Shareholders' meetings	Different attendance requirements and majorities are established for first and second call and depending on the content of the decisions. These can be increased by the By-laws	Different majorities are established depending on the content of the decisions. These can be increased by the by-laws
Attendance and voting rights in general meetings	There might be restrictions	these rights cannot be restricted
Managing body	The by-laws must indicate a specific managing body	The by-laws may set forth different types of managing bodies among those legally provided for and the Shareholders' meeting will select one of them
Number of members of the Board of Directors	Minimum: 3 There is no maximum number	Minimum: 3 A maximum of 12 members
Term of the office of Director	Maximum 6 years. They may be re-elected for periods of the same Maximum duration	Might be indefinite

4.7 Professional Companies (Legislative Innovation)

Law 2/2007, on Professional Societies, 15th March (*Ley de Sociedades Profesionales*, hereinafter, the LSP) establishes the possibility of establishing professional companies (Sociedad Profesional).

In fact, Professional Companies will be those whose corporate purposes are common and are based on the conduct of a professional activity, i.e., an activity that to be performed requires formal university qualification and registration with a Professional Association.

The "LSP" also defines the content of the term "joint exercise". It will exist when the work is carried under a common name and the rights and obligations inherent in the exercise of professional activity are attributed to the company, as a holder of the legal relationship established with the client. Therefore, companies that share infrastructure and distribute costs, are excluded from the scope of the "LSP".

A Professional Corporation may be incorporated through any of the procedures for incorporate a company contemplated by Spanish legislation.

Therefore, in addition to complying with the requirements of the corporate form chosen, it will have to comply with the requirements of the "LSP".

Professional Companies and the professionals who operate within it will conduct their activity in accordance with the rules of professional conduct and discipline of their own work.

Despite the personal liability of its professionals, the Professional Company may also be penalized on the terms established in the disciplinary system applicable to its activity.

At least 75% of its capital must belong to professional shareholders.

Similarly, at least 75% of the members of the governing bodies must be professional shareholders. If the management of the company has been entrusted to a sole director or if a CEO has been appointed, these functions must be performed by a professional shareholder.

4.8 Legal forms of action without incorporation of a company: the branch

We will now analyze the branch as an alternative to operate in Gran Canaria without having to incorporate a company.

To organize a Branch, it will be necessary to execute a public deed of opening before a Notary Public. The Notary Public will request the necessary documentation that proves the existence of the parent company, its bylaws, the personal data of its Directors and the resolution to organize the branch, adopted by the responsible body.

The branch must obtain the relevant Tax Identification Number and designate either a legal or a natural person, whose residence is in Spain, and is capable of representing the parent company before the Spanish Tax Authority. It has no legal personality.

Like any other commercial company, the Branch will have to be registered at the Commercial Registry, but it will previously be necessary to settle the Stamp Duty Tax, other than in a few specific exceptional cases. Finally, the Branch must be registered for Tax on Economic Activities, fees will have to be paid for the opening license, it will have to be registered with Social Security and the rest of the legally required labour formalities will have to be carried out.

From the tax point of view, it is important for investors to know that in terms of profit sharing or dividends, as appropriate, it must be taken into account that if it does not belong to the EU and there is no double taxation agreement with the country in question, it will have to pay up to 18% for taxes in Spain. However, in the case of a country subject to a double taxation agreement, dividends will be taxed at the reduced rate established by the agreement, and the repatriation of profits of the branch will not be taxed in Spain.

4.9 Representative Office

In addition to the above corporate forms, the foreign investor may operate in Gran Canaria through a Representative Office.

The most remarkable features of the Representative Office are the following:

- The office has the legal personality of its parent, so that it is not an independent entity.
- There are no formalities required, although, for its opening, it is necessary to execute a public deed of opening of the office for tax and labour purposes, as well as for social security.
- For its opening, there is no need to register the representative office at the responsible Commercial Registry.
- There are no formal managing bodies; there is a representative of the office, which carries out these actions.
- The office activities are limited and related only to coordination and collaboration.
- The non-resident company is liable for debts incurred by the office.