



How to set up in Spain

Alternative Investment Fund Manager (AIFM)

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in Spain.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- Dedicated “Welcome” procedure in Spanish for UK entities
- Dedicated “2WeekTicket” preauthorisation procedure in English
- English-speaking coach (from the CNMV) assigned from the start
- Authorisation procedure with standardised English forms
- Data protection legislation very similar to the UK approach
- Perfect business gateway to Latin America

What are the cons?

- Critical/significant outsourcings will require CNMV pre-approval
- Application fee €10,000



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Licence/Passport Process

- Information on the application process is available here: AIFM Application Guidance <http://www.cnmv.es/Portal/Gpage.aspx?id=MOD&idPerfil=4>
- Information on the “Welcome programme” is available here: <https://www.cnmv.es/portal/Welcome/Program.aspx>
- The process is iterative and involves submission of an application form and supporting documents to the [Comisión Nacional del Mercado de Valores \(CNMV\)](#) for review. As part of the application process, shareholders and members of the Board will need to demonstrate their fitness and probity, and professional experience. In addition, there are requirements of central administration, internal governance and risk management
- Some additional supporting documents are required, among others the programme of activities, information on the AIFs the AIFM intends to manage, details of minimum capital, financial projections, ownership and organisational structure, individual questionnaires for staff performing pre-approval controlled functions, etc.
- A pre-submission courtesy meeting with CNMV is recommended
- Application fee €10,000
- There is a pre-authorisation process of two weeks where a dedicated English-speaking coach assigned by the CNMV will guide the authorisation process and answer queries with a view to facilitating moving to Spain
- Formal authorisation will be granted within two months, provided that the applicant meets the mandatory requirements and the required documentation has been substantially presented

Conduct of business Prudential rules

- Initial capital of €300,000 and if the AIFM is self-managed the initial capital required is €125,000
- Plus additional own funds equal to 0.02% of the amount by which the AIFM’s AUM exceeds €250 million
- These additional own funds cannot be less than the “fixed overheads requirement” (one quarter of audited annual expenditure)
- Further own funds to cover professional indemnity risks equal to 0.01% of AUM (or appropriate professional indemnity insurance)

Corporate governance

- The CNMV has a “fitness and probity” regime, which applies to certain controlled functions, with persons in “pre-approval controlled functions” (eg directors, designated persons, CEO, CFO, CRO, head of compliance, etc.) requiring CNMV approval before role can be commenced
- The CNMV needs to be satisfied that the applicant firm has staff of adequate quality, skills and experience at all levels and it will consider whether the applicant firm can demonstrate that its staff has appropriate experience
- The CNMV will verify the suitability of the shareholders
- The CNMV will verify that the members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties
- The CNMV requires that the AIFM has a minimum of three directors, but not necessarily Spanish residents
- “Mind and management” will have to be located in Spain, such that day-to-day decision making and key risk functions are located in Spain

Regulatory environment

- The CNMV may allow an authorised AIFM to provide “top-up” services such as investment advice, safekeeping, reception and transmission of orders
- CNMV is very experienced in dealing with setting up AIFM
- The CNMV has a flexible approach in relation to the documentation that needs to be filed

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Tax

- The standard corporate tax rate is 25%, with a lower rate of 15% for the first two years of taxable profits
- No specific exemption, though in most scenarios no material PE risk is expected to be present. It should be possible to obtain a 'negative PE ruling' from the Spanish tax authorities if necessary
- Standard Spanish dividend WHT rate on outbound dividends is 19%, however tax repatriation to the US, the UK and a wide range of other jurisdictions is generally available under the Parent Subsidiary Directive or the relevant tax treaties, eg the UK and US (incoming) tax treaties provide for full dividend WHT exemption for participations of respectively 10% and 80%
- Wide domestic WHT exemptions on interests to EU residents and full exemptions available under UK and US (incoming) tax treaties with Spain. Also Interest and Royalties Directive fully implemented in Spain
- Transfer pricing legislation is based on the OECD arm's length principles
- Extended tax treaty network covering more than 90 countries
- Income from employment is subject to progressive rates up to 43.5% in Madrid (higher maximum rates may apply in other regions). However, there is a special tax regime (the so called "Beckham Law") for non-residents coming to work in Spain. Under certain conditions, employees that move to Spain may be able to benefit from a reduced rate of 24% for the first €600,000 of annual remuneration during the first six tax years
- Social Security contributions are capped for both employee and employer at annual ceiling of approx. €43,000
- VAT rate in Spain is generally 21%
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up an AIFM

Employment law

- CRD IV remuneration requirements apply
- Notice in case of dismissal – from 15 days to 12 months depending on level and length of service
- Unfair dismissals risk – progressive employment protection depending on length of service. There must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the correct process must be followed. If an employee is unfairly dismissed he/she may seek compensation, reinstatement or reengagement. The maximum award of compensation is two years total remuneration package

Data protection

- Legislation is based on EU directives and regime is very similar to the UK in terms of practical application

Outsourcing

- Information on critical/significant outsourcings should be made available to the CNMV upon request. CNMV pre-approval and cooperation agreements between supervisory authorities are required for outsourcings of portfolio management services to non-EU intermediaries
- The AIFM must be able to demonstrate that the outsourcing service provider is: sufficiently qualified in view of the tasks delegated to it; able to perform the assigned tasks in an orderly manner; and was selected with due care
- The AIFM remains responsible for any outsourced activity and will be expected to maintain in-house expertise to supervise/manage the outsourced activities
- The AIFM shall be liable for the fault of an outsourced service provider as if it was its own fault

Corporate

- Capital minimum requirements will apply
- The AIFM must be incorporated in the form of a public limited company (*sociedad anónima*)
- The AIFM will need to be registered with the Spanish Mercantile Registry as well as with the CNMV

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