

How to set up in Spain

MIFID Firm

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.

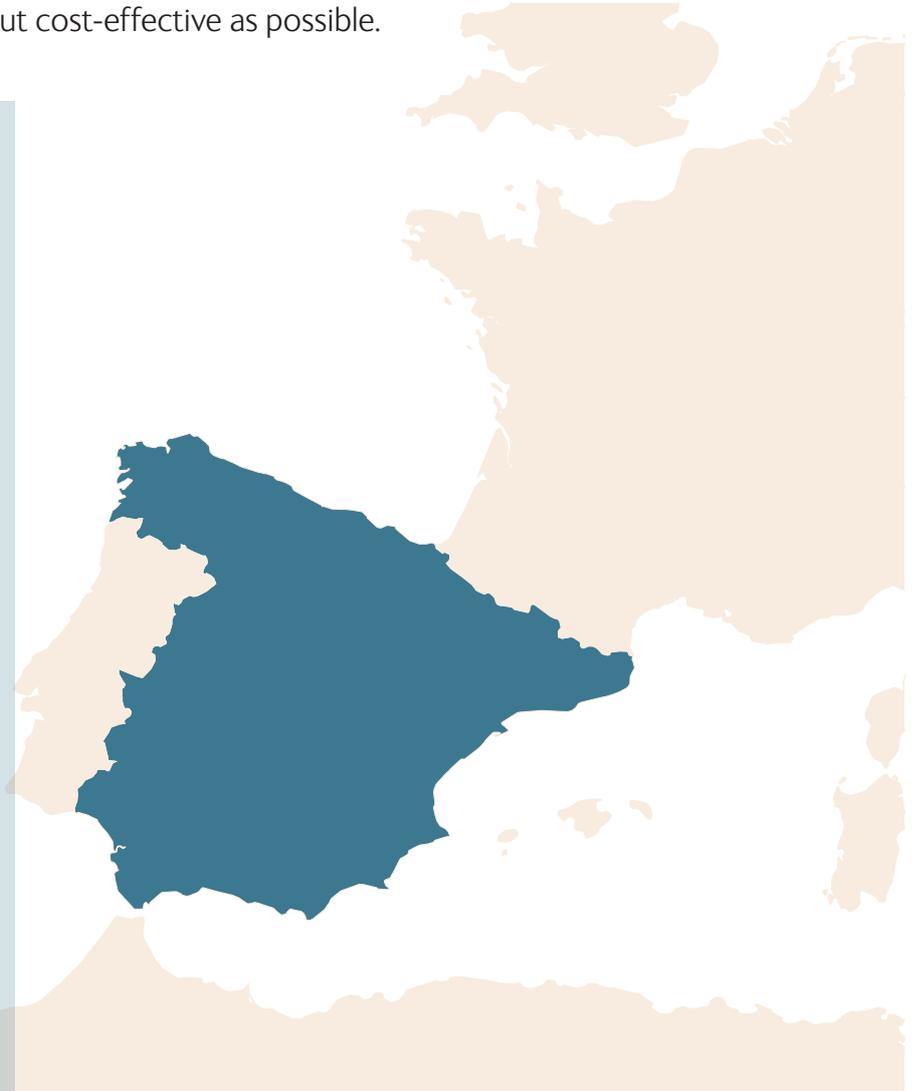
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- Dedicated “Welcome” procedure in Spanish for UK entities
- Dedicated “2WeekTicket” preauthorisation procedure in English
- No material super-equivalent requirements
- Data protection legislation similar to UK
- Perfect business gateway to Latin America

What are the cons?

- Critical/significant outsourcings to non-EU intermediaries will require CNMV pre-approval
- Application fee of €10,000



Subsidiary (MiFID Investment Firm)

Licence/Passport Process

- Information on the application process is available from the [Comisión Nacional del Mercado de Valores \(CNMV\)](http://www.cnmv.es/docPortal/Legislacion/ModelosNormalizados/ESI/ManualESIS.doc) here: <http://www.cnmv.es/docPortal/Legislacion/ModelosNormalizados/ESI/ManualESIS.doc>
- Investment firms domiciled in a non EU Member State may provide investment services in Spain by means of a subsidiary, branch or on a cross-border basis (principle of freedom to provide services)
- Information on the “Welcome programme” is available here: <https://www.cnmv.es/portal/Welcome/Program.aspx>
- There is a pre-authorisation process of two weeks where a dedicated English-speaking coach from the CNMV will guide the authorisation process and answer queries with a view to facilitating moving to Spain
- The CNMV will follow a friendly and flexible approach in relation to the documentation that needs to be filed
- Filing fees (€10,000) and ongoing contribution fees apply (depending on business case)

Conduct of business Prudential rules

- Spanish requirements will apply – based on MiFID (copy-out)
- CRR/CRD IV requirements will apply
- No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States)

Corporate governance

- Systems and controls requirements are based on CRD IV/MiFID requirements
- Shareholders, board members, management positions and internal control staff, amongst others, need to be tested on their fitness and probity, and professional experience
- There are requirements of central administration, internal governance and risk management
- Internal regulations governing conduct shall be in place
- There must be a minimum of three members of the Board of Directors
- The registered office and the administrative direction must be in Spain

Regulatory environment

- CNMV is relatively open to discussion on key issues (albeit cautious/conservative) – regulatory approach is “risk based” such that the most intensive/intrusive regulation is focused on high-risk firms
- Strict compliance with notification requirements is needed

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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
- Standard Spanish dividend WHT rate on outbound dividends is 19%, however profit 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
- Wide domestic WHT exemptions on interests to EU residents and full exemptions available free of WHT under UK and US (incoming) tax treaties with Spain. Also Interest and Royalties Directive fully implemented in Spain
- Extended tax treaty network covering more than 90 countries
- Income from employment is subject to progressive rates up to 45%. However, there is a special tax regime for non-residents coming to work in Spain, with 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 a financial services business

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

- Spanish Legislation is based on EU directives and regime is very similar to the UK in terms of practical application. EU General Data Protection Regulation will apply from 25 May 2018

Outsourcing

- The CNMV does not allow any outsourcing that would involve the total delegation of functions in order to avoid a “letter box entity”
- Firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing
- Information on critical/significant outsourcings should be made available to CNMV
- Appropriate oversight will be required per MiFID requirements (including regular audits/reviews and information on the outsourced activities, plus detailed outsourcing agreement)

Corporate

- Registration in the Mercantile Registry and CNMV
- Investment firms should be incorporated as a corporation in most part of the cases
- External auditors must be appointed
- Capital minimum requirements depending on the type of service
- Adherence to an Investment Guarantee Fund

Key contacts



Charlotte Stalin
Partner
London
T +44 20 7825 4180
E charlotte.stalin
@simmons-simmons.com



María Tomillo
Managing Associate
Spain
T +3491 426 2583
E maria.tomillo
@simmons-simmons.com



Ian Rogers
Partner
France
T +331 53 29 16 22
E ian.rogers
@simmons-simmons.com



Fionán Breathnach
Partner
Ireland
T +3531 266 2111
E fionan.breathnach
@simmons-simmons.com



Louis-Maël Cogis
Partner
Luxembourg
T +352 26 21 16 14
E louis-mael.cogis
@simmons-simmons.com



Jochen Kindermann
Partner
Germany
T +49 69 907454 43
E jochen.kindermann
@simmons-simmons.com



Romeo Battigaglia
Partner
Italy
T +3902 72505 471
E romeo.battigaglia
@simmons-simmons.com



Rezah Stegeman
Partner
The Netherlands
T +3120 722 2333
E rezah.stegeman
@simmons-simmons.com

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