



How to set up in Spain

CRD/CRR Bank

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 a credit institution in Spain.

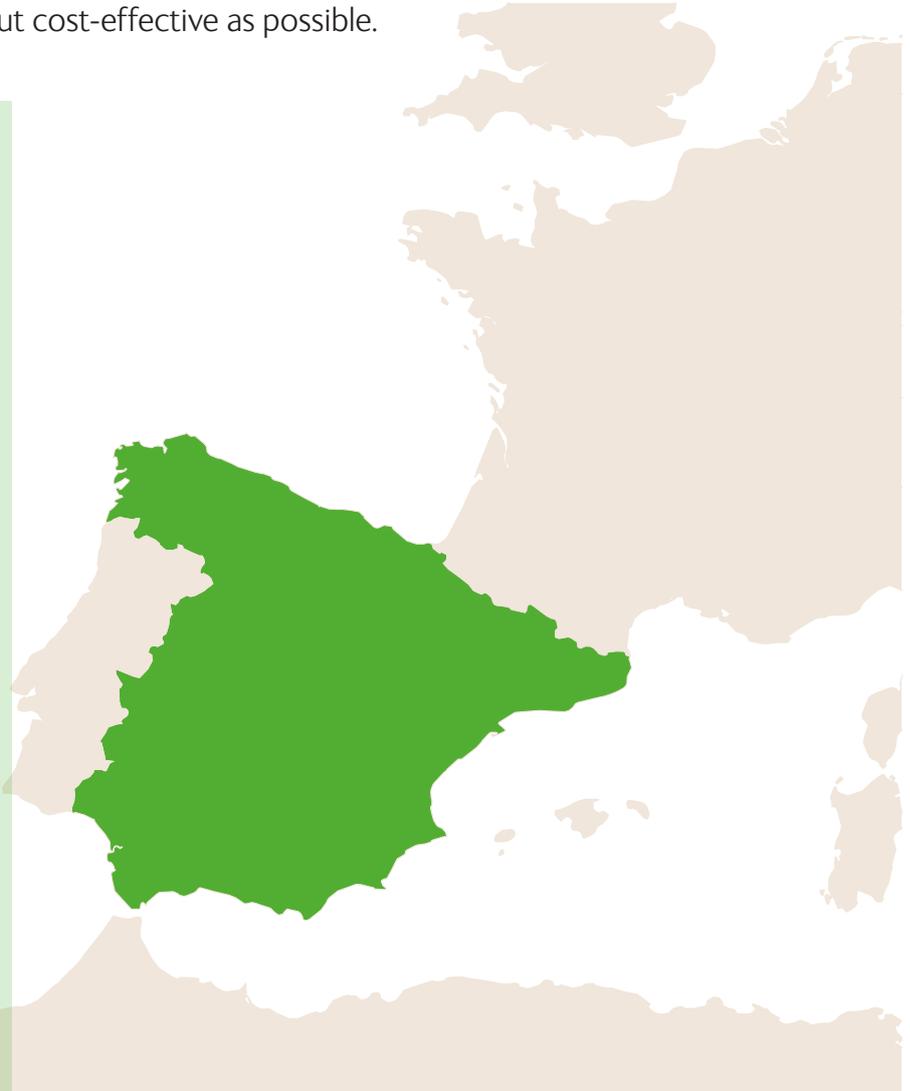
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- Perfect business gateway to Latin America
- No material super-equivalent requirements
- Data protection legislation is very similar to the UK in terms of practical application

What are the cons?

- Some documentation for the Bank of Spain will need to be submitted in Spanish
- A cash deposit for the equivalent to 20% of the minimum capital required by the Bank of Spain
- Critical/significant outsourcings will require Bank of Spain pre-approval



Bank

Licence/Passport Process

- Information on the application process is available here: <http://www.bde.es/bde/es/areas/supervision/normativa/regulacion/Regimen/>
- As a result of the creation of the EU Banking Union, the European Central Bank (ECB) together with the different National Competent Authorities (NCAs) grants and withdraws any credit institution authorisation
- The ECB also takes “fit and proper” decisions – it assesses the suitability of new members of the significant banks’ management bodies
- The Bank of Spain serves as the entry point for applications and notifications related to the authorisation process. A credit institution must use Bank of Spain’s standardised forms for application or notification when available
- A pre-submission meeting with the Bank of Spain is highly recommended
- The process is iterative and involves submission of a template application form and supporting documents to the Bank of Spain for review
- Feedback from the ECB is that it has a backlog of authorisation applications, so delays can be expected (we understand that the ECB is not outsourcing as much as it could to the NCAs)
- The authorisation request to set up a credit institution in Spain must be resolved by the Bank of Spain within the course of the 6 months following the receipt by the Bank of Spain of the application or when the required documentation is completed, with a maximum of 12 months. In case that the authorisation request is not resolved within said period, it will be understood as denied
- The Spanish Executive Service of the Commission for Monitoring Exchange Control Offences (SEPBLAC) must issue a favourable report prior to the communication of the authorisation proposal from the Bank of Spain to the ECB
- The decisions are made following the ECB and Bank of Spain applying the Common Procedures – which include information on expectations as to substance and people, including:
 - programme of operations
 - governance (fit and proper members of management bodies, suitable shareholders)
 - capital, liquidity and solvency
 - internal organisation (risk management, compliance, audit)

Conduct of business Prudential rules

- CRR/CRD IV requirements will apply
- The minimum capital resources requirement for a credit institution is €18 million
- No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States)
- There is also an ongoing risk-weighted capital requirement which refers to the firm’s credit, market and operational risks, as applicable

Corporate governance

- Systems and controls requirements are based on CRD IV requirements
- “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 (for subsidiaries of international groups, the Bank of Spain appreciates that direction can be set at group level and that employees/management can have dotted line reporting lines outside the legal entity).
- The Bank of Spain’s suitability regime will apply to the main controlled functions, with persons in “pre-approval controlled functions” (eg directors, CEO, CFO, CRO, head of compliance) requiring the Bank of Spain’s approval before role can be commenced (the regime is similar to the UK approved persons regime)
- The Board of directors must be formed at least by five members
- There are no nationality requirements applicable
- The Bank of Spain 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 in the financial services sector to perform their duties
- Directors must be able to devote sufficient time to the role in order to ensure sound and prudent management
- Sound administrative and accounting procedures and adequate internal control mechanisms must exist
- The Bank of Spain needs to be satisfied that the applicant has staff of adequate quality, skills and experience at all levels and it will consider whether the applicant can demonstrate that its staff has appropriate experience
- The number of staff required will very much depend upon the services offered by the credit institution

Bank

Regulatory environment

- Licensing restrictions into other jurisdictions for marketing will need to be considered
- Although delegation is generally possible, this is likely to be required that any representative of the entity would need to be dual hatted (secondment arrangement would probably suffice) to do the marketing into jurisdictions where a licence is required
- Dual hatting will need to be considered from a corporate perspective

Tax

- The corporate tax rate for banks is 30%
- 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
- 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 a banking business.

Employment law

- CRD IV remuneration requirements apply (if firm is a CRD IV investment firm)
- Employment law is broadly similar to UK
- Notice – the greater of statutory (max eight weeks based on service) or contractual
- Unfair dismissals risk – there must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the process used must be fair. If an employee is unfairly dismissed, he may seek compensation, reinstatement or reengagement. The maximum award of compensation is of two years total remuneration package
- Redundancy – two weeks' pay per year of service plus a bonus week. A week's pay is capped at €600. An employee must have two years' service before a redundancy payment becomes payable

Data protection

- 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

- There are restrictions on outsourcing
- The credit institution remains responsible for any outsourced activity and will be expected to maintain in-house expertise to supervise/manage the outsourced activities
- Critical/significant outsourcings will require pre-approval from the Bank of Spain
- For outsourced activities, the Bank of Spain must be able to supervise and monitor the entity to which the activity has been outsourced

Corporate

- The credit institution must be incorporated in the form of a public limited company (*sociedad anónima*)
- The credit institution will need to be registered with the Spanish Mercantile Registry as well as the Bank of Spain
- Corporate considerations shall be taken into account depending on the actual structure of the credit institution
- New entity needs to be established

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