

Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements

The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person and arrangement in **Spain**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

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I. Definitions and Company Formation Process

1. What is the definition of legal ownership in Spain?

Spanish law does not define legal ownership, but is understood as designating any person, either natural or legal, who is the legitimate owner of a company's shares.

2. What does "beneficial ownership" mean in Spain?

Article 4 paragraph 2 of the Act 10/2010 of 28 April, on the prevention of money laundering and terrorist financing defines beneficial ownership as follows:

- a) Natural person or persons on whose behalf it is intended to establish a business relationship or intervene in any transaction.
- b) Natural person or persons who ultimately own or control, directly or indirectly, a percentage of more than 25 percent of the capital or voting rights of a legal person, or who by other means exercise control, directly or indirectly, over the management of a legal person. Companies listed on a regulated market of the European Union or equivalent third countries are excepted.
- c) Natural person or persons who ultimately own or control over 25 percent or more of the property of a legal arrangement or entity that administers or distributes funds, or, where the beneficiaries of the legal arrangement or entity have yet to be determined, the class of persons in whose main interest is set up or operates.

Article 8 of the Royal Decree 304/2014, of 5 May, which approves the Regulation implementing Act 10/2010 further specifies:

"The following are considered beneficial owners:

- a) The natural person(s) on whose behalf a business relationship is to be established or a transaction conducted.
- b) The natural person(s) who ultimately owns or controls, directly or indirectly, more than 25 percent of the share capital or voting rights of a legal person, or who through agreements or statutory provisions or other means exercises direct or indirect control in the management of a legal person.

Obligated persons shall document the actions carried out to determine the natural person who ultimately owns or controls, directly or indirectly, more than 25 percent of the share capital or voting rights of the legal person, or who by other means exercises direct or indirect control in the legal person and, where appropriate, the unsuccessful results thereof.

When there is no natural person who owns or controls, directly or indirectly, more than 25 percent of the share capital or voting rights of the legal person, or who by other means exercises direct or indirect control in the legal person, the senior manager official(s) shall be deemed the one exercising such control.

- c) The natural person(s) who holds or exercises control over 25 percent or more of the assets of a legal arrangement or person administering or distributing funds, or when the beneficiaries are yet to be determined, the category of persons for whose benefit the legal person or arrangement was created or mainly acts. Where there is not a natural person who directly or indirectly owns or controls 25% or more of the aforementioned assets, the natural person(s) ultimately responsible for the direction and management of the legal arrangement or person, even through a chain of control or ownership, shall be considered the beneficial owner(s).

Those natural persons who own or control 25% or more of the voting rights of the Board of Trustee, in the case of a foundation, or of the representative body, in an association, shall be deemed beneficial owners, taking into account the agreements or statutory provisions that may affect the determination of beneficial ownership.

Where there is no a natural person or persons who meet the criteria set out in the preceding paragraph, the Board of Trustees and, in the case of associations, the members of the representative body or Board of Directors shall be deemed the beneficial owners”.

3. How are legal entities (companies, partnerships, foundations, etc.) formed in Spain?

The formation of legal entities in Spain requires the intervention of a notary public. His role is to verify that the information and documents prepared with a view to establish a company are satisfactory and in line with the Spanish legislation. Once satisfied, the notary public issues a deed, which is then registered in the Company Registry (*Registro Mercantil*). Only after this registration legal personality is legally acquired.

4. What is the role of Company Registries in Spain?

The role of the *Registro Mercantil* is to register companies, record and maintain related information and documents, including on legal ownership, as well as information and documents pertaining to the companies’ activities (i.e., annual accounts, capital increases/reductions, structural modifications such as transformations, mergers or splits up, changes in the address, appointments, modification of the by-laws, dissolution, liquidation...). A large amount of the information held in the Company Registry is publicly available and can be accessed on-line through the web-sites of the Central Company Registry and of the Association of Registrars¹.

5. How is basic information on legal entities obtained and recorded in Spain?

Basic information on a legal persons are publicly available in the respective registries (company registry, foundations registries, and association’s registries).

As mentioned above, the Company Registry is publicly available and can be accessed on-line through the web-sites of the Central Company Registry and of the Association of Registrars.

¹ The website of the Association of Registrars provides access to two databases: FLEI reflects data from the company registry and FLOTI, which contains information from the land registry. Information from the registry of vehicles can also be accessed on-line.

Where information on a company incorporated in the EU (*e.g.*, because it is a shareholder of a Spanish company or because it is involved in an investigation) is sought, the European Business Registry website, which incorporates information from the 28 Company Registries in the EU Member States can be consulted online at <http://www.ebr.org>.

In the field of identification and registration of companies, managers, shareholders or empowered people, the Tax Agency also plays an important role as it provides information to newly created companies and receives information on companies from a number of sources:

- The Tax Agency issues a Tax ID number for newly created companies as a requirement prior to company registration in the Company Registry. The Tax Agency is therefore the first institution aware of the creation of a new company. To get the Tax ID number it is necessary to return a specific tax form, which contains detailed information on the ownership, management, activities, VAT regime, etc. A Tax ID is required before the incorporation of a company and in case a change of its principal activity.
- Notaries communicate any constitution of a company in which they intervene. They shall also inform on a yearly basis about managers, stockholders (and any change in it), changes in the legal form of the company, etc.
- Financial institutions provide on a yearly basis the Tax Agency with the full name and ID number of all account holders including companies. In the case of legal persons, they also provide information on the person authorized to manage these bank accounts (normally with empowerment).
- Through the informative returns made by notaries, financial institutions, as well as other intermediaries involved in the securities markets, the Tax Agency annually received updated information on all transmissions of shares/stakes (including bearer shares).
- Upon presentation of the annual Company Income Return, the company shall report the name of the directors and senior management and any meaningful shareholding (5% or 1% if it is a listed company).

6. How is beneficial ownership information on legal entities obtained and recorded in Spain?

Information on beneficial ownership is available from different sources:

- Companies' directors are required to provide a declaration on the company's beneficial owners to the obliged parties with which their company has established a business relationship or performs occasional transactions (article 8 of the Regulation of the Act 10/2010). This information is available for judicial investigations and to SEPBLAC, the financial intelligence unit, upon request, directly if the legal person is an obliged person, or indirectly through the application of CDD measures by the obliged persons (article 4 of the Act 10/2010).
- Listed companies are required to prepare an annual corporate governance report and submit it to the Securities Supervisor, the CNMV. This report is publicly available on the company's website and contains information relevant to beneficial ownership, in particular the ownership structure of the company, information on direct/indirect meaningful shareholders, the management structure of the company, linked transactions.
- Companies are required to keep a registry of shareholders or members, which is available for judicial investigations.
- As part of the CDD measures, obliged persons are required, prior to establishing a business relationship or conducting a transaction, to (i) determine the structure of ownership and control of legal persons and (ii) to identify and take reasonable measures to verify the identity of the beneficial owner. To do so, obliged parties can rely on a sworn declaration by the customer (see

above). However in case of higher risk, when there are doubts about the adequacy and veracity of the information declared by the customer and when there are circumstances advising the special review under article 17², obliged persons must obtain additional beneficial owner documentation from reliable independent third parties. This information is timely available for judicial investigations, SEPBLAC, and more generally the Commission for the Prevention of Money Laundering.

- Notaries public play a central role in the formation of companies. In this context, information held by notaries is centralized in the Notarial Database (Single Computerized Index), set up by the Spanish General Council of Notaries and to which competent authorities have online access. The Notarial Database records all relevant information in every operation authorized by a notary since 2004. It allows establishing connections between companies, natural persons, documents and transactions which imply a notarial activity.
- In April 2012, and with the agreement of the Spanish Data Protection Agency, a separate centralized beneficial ownership database was created in order to structure beneficial ownership information: (i) information obtained through declaration of the representative of the legal person and (ii) verified information. Level (i) information is obtained and updated whenever a legal person has to document an act before a notary. Level (ii) information is produced by the notaries when aggregating the information on property changes of stakes of Private limited liability companies.
- The ML/TF act also provides for the creation of a 'Financial ownership file' fed with the information declared by credit institutions on the holders, authorised persons and other data concerning the bank and securities accounts of their customers. The financial ownership file will be available to AML/TF competent authorities and will allow them to immediately determine whether a company has an account with a financial institution in Spain. The ML/TF regulation further provides that beneficial owner(s) information is among the information to be declared by credit institutions. This database will be operational in May 2016.
- According the General Tax Code information held by the Tax Agency is available to SEPBLAC. Moreover, there is a Collaboration Agreement establishing the reciprocal obligation of collaboration and information exchange between the Tax Agency and SEPBLAC. Tax Agency information is also timely available for judicial investigations. Information held by the Tax Agency includes:
 - Tax returns of every taxpayer
 - Crossed information tax models (in Spain there are more than 30 information tax returns of many kinds)
 - Third parties information not included in models but in files exchanged from real estate tax register, chassis and plate numbers of cars, ships and airplanes, and many others
 - Self-generated information including assessments, recovery procedures, tax crime files, international requests and answers, and many others.

7. How are legal arrangements (express trusts and trust-like agreements) formed in Spain?

Trusts are not allowed by Spanish law.

8. How is information on legal arrangements obtained and recorded in Spain?

² Article 17 requires obliged parties to pay special attention to complex or unusual transactions, transactions with no apparent economic or lawful purpose, or transactions which by their nature could be related to ML/TF.

Trusts are not allowed under the Spanish law, however foreign trusts may operate in Spain. In that respect, information and documents held by the obliged parties pursuant to the provisions of the AML/CFT act may provide information on foreign trusts and their beneficial ownership.

With respect to foreign trust, obliged parties are required to “identify and take appropriate measures to verify the identity of the settlor, the trustees, the protector, the beneficiaries or types of beneficiaries and of any other natural person who exercises ultimate effective control over the trust, even through a chain of control or ownership. When beneficiaries are designated based on features or classes, information must be obtained allowing the beneficiary’s identification at the time of payment or when the beneficiary intends to exercise rights conferred. In the event of legal arrangements which are similar to Anglo-Saxon trusts, obliged persons shall identify and take appropriate measures to verify the identity of persons holding equivalent or similar positions to those specified in the preceding paragraph.”

II. Types of Legal Entities

There are many types of legal entities able to be formed in **Spain**. This Guide will provide information on Private Limited Liability Companies, which represent 92.3% of the total number of companies in Spain, as well as on Public Limited Companies and Partnership Limited by Shares:

Private Limited Liability Company (Sociedad de Responsabilidad Limitada)

| Type of legal entity | Limited Liability Company | |
|---|---------------------------|-----------|
| What is the minimum number of natural persons required for formation? | 1 | |
| | Yes | No |
| Is there a requirement to register with the company registry? | X | |
| Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners) | X | |
| Is there a residency requirement for directors? | | X |
| Are bearer shares/share warrants permitted? | | X |
| Is a Trust and Company Service Provider required to form?* | X | |
| Is a registered agent in the jurisdiction of formation required? | | X |
| Is the entity required to hold financial account(s) in jurisdiction of formation? | | X |
| Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)? | X | |
| Does the jurisdiction allow for nominee directors? | | X |
| If so, are they required to disclose their status as nominee directors? | | |
| If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |
| Does the jurisdiction allow for nominee shareholders? | | X |
| If so, are they required to disclose their status as nominee shareholders? | | |
| If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |

* TCSPs are subject to AML/CFT obligations.

Public Limited Company (Sociedad Anónima)

| Type of legal entity | Public Limited Company | |
|--|------------------------|-----------|
| What is the minimum number of natural persons required for formation? | 1 | |
| | Yes | No |
| Is there a requirement to register with the company registry? | X | |
| Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners) | X | |
| Is there a residency requirement for directors? | | X |
| Are bearer shares/share warrants permitted? | X | |
| Is a Trust and Company Service Provider required to form?* | X | |
| Is a registered agent in the jurisdiction of formation required? | | X |
| Is the entity required to hold financial account(s) in jurisdiction of formation? | | X |
| Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)? | X | |
| Does the jurisdiction allow for nominee directors? | | X |
| If so, are they required to disclose their status as nominee directors? | | |
| If so, are the nominee directors required to obtain information on and/ or | | |

| | | |
|---|--|---|
| disclose the identity of natural person(s) on whose behalf they are acting? | | |
| Does the jurisdiction allow for nominee shareholders? | | X |
| If so, are they required to disclose their status as nominee shareholders? | | |
| If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |

* TCSPs are subject to AML/CFT obligations.

Partnership Limited by Shares (Sociedad Comanditaria por Acciones)

| Type of legal entity | Partnership Limited by Shares | |
|---|-------------------------------|-----------|
| What is the minimum number of natural persons required for formation? | 2 | |
| | Yes | No |
| Is there a requirement to register with the company registry? | X | |
| Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners) | X | |
| Is there a residency requirement for directors? | | X |
| Are bearer shares/share warrants permitted? | X | |
| Is a Trust and Company Service Provider required to form?* | X | |
| Is a registered agent in the jurisdiction of formation required? | | X |
| Is the entity required to hold financial account(s) in jurisdiction of formation? | | X |
| Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)? | X | |
| Does the jurisdiction allow for nominee directors? | | X |
| If so, are they required to disclose their status as nominee directors? | | |
| If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |
| Does the jurisdiction allow for nominee shareholders? | | X |
| If so, are they required to disclose their status as nominee shareholders? | | |
| If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting? | | |

* TCSPs are subject to AML/CFT obligations.

III. How to Access Information

This guide will address the ability to access information on entities formed in **Spain** available in 1) registries and 2) other channels.

Registries

The company registry in **Spain** is called the Registro Mercantil Central.

Contact information for the registry is provided here:

Agency: Central Company Registry
Address: Principe de Vergara, 94
28006 Madrid
Phone: +34 902 884 442 / 917 454 131

The Registro Mercantil Central is available online at www.rmc.es.

Information held in the company registry can also be accessed through the Colegio de Registradores³.

Contact information for the registry is provided here:

Agency: Spanish Association of Registrars
Address: Diego de León, 21
28006 Madrid
Phone: +34 91 270 16 99 / 902 181 44
Email: contacto@registradores.org

The Colegio de Registradores is available online at www.registradores.org.

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Current Status (active, etc.)
6. Principal Address of Business
7. Principal Purpose of Business
8. Registered Capital
9. Officer / Director information (including power of representation)
10. Articles of Incorporation

In general, the following information is not available online, but may be available through another form of public access (i.e. in person only or via a pre-registration requirement) or to law enforcement, through specific procedures listed in further detail below:

1. Bank Account Information

³ See also question 4 above.

2. Payment Records

Registry update

The Company Registry does not have per se enforcement and/or sanction power to ensure that information recorded in the registry is accurate. However, companies are liable for the closure of the Company's Registry Sheet and a penalty between €3,000 and 300,000 in case of failure to submit their annual accounts.

| | Online Access (free or for nominal fee, no log-in requirements) | Other Public Access (available in person only or via pre-registration requirement) | Law Enforcement Access only | For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information |
|--|---|--|-----------------------------|---|
| Name of Legal Entity | X | | | |
| Entity Number (if any) | X | | | |
| Type of Legal Entity | X | | | |
| Date of Incorporation | X | | | |
| Current Status (active, etc.) | X | | | |
| Principal Address of Business | X | | | |
| Principal Purpose of Business | X | | | |
| Registered Capital | X | | | |
| Registered Agent Information | | | | |
| Officer/ Director Information (incl. power of representation) | X | | | |
| Shareholder/ Member Information | | | | |
| Memorandum | | | | |
| Articles of Incorporation | X | | | |
| Application/ Certificate of Formation | | | | |
| Annual/ Biennial Reports | | | | |
| Shareholder Register | | | | |
| Register of Charges | | | | |
| Bank Account Information | | | X | After a judicial warrant has been issued, and communicated through the proper channels. |
| Payment Records | | | X | After a judicial warrant has been issued, and communicated through the proper channels. |
| Historical Documents (example: past annual filings) | | | | |

Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in **Spain**.

Channels through which foreign authorities may obtain information

Legal entities/ Relevant Individuals (directors, shareholders, managers, associates, family members, etc.)

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------------|---|----|-------------|---------------------------------------|----|-------------|
| | Yes | No | | Yes | No | |
| Interviews with relevant Individuals | X | | | X | | |
| Records/ documents | X | | | X | | |

Legal arrangements/ relevant individuals (trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------------|---|----|---|---------------------------------------|----|-------------|
| | Yes | No | | Yes | No | |
| Interviews with relevant Individuals | | | Trusts are not allowed under Spanish law. | | | |
| Records/document s | | | | | | |

Financial Institutions

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------|---|----|-------------|---------------------------------------|----|-------------|
| | Yes | No | | Yes | No | |
| Interviews with personnel | X | | | X | | |
| Accounts records/ documents | X | | | X | | |

Trust and Company Service Providers

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------|---|----|-------------|---------------------------------------|----|-------------|
| | Yes | No | | Yes | No | |
| Interviews with personnel | X | | | X | | |
| Accounts records/ documents | X | | | X | | |

Other Designated Non-Financial Businesses and Professions

| | Information/ Intelligence Sharing Inquiry | | Explanation | Mutual Legal Assistance Request | | Explanation |
|--------------------------------|---|----|-------------|---------------------------------------|----|-------------|
| | Yes | No | | Yes | No | |
| Interviews with personnel | X | | | X | | |
| Accounts records/ documents | X | | | X | | |

IV. Other Useful Sources of Information

| Resource Name | Web Link |
|---|---|
| G20 Asset Recovery Guide - Spain | https://star.worldbank.org/star/sites/star/files/g20-asset-recovery-guide-2013-spain.pdf |
| This guide explains how foreign jurisdictions can obtain assistance from Spain recover assets that are the proceeds of crime. | |
| Requesting Mutual Legal Assistance in Criminal Matters from G-20 Countries. A Step by Step Guide. | https://star.worldbank.org/star/sites/star/files/los_cabos_2012_mla_guide.pdf |
| This guide presents the mutual legal assistance regime in force in each of the G20 countries and describes the specific procedure to be followed while requesting mutual legal assistance to G20 countries. | |
| Other guides on international cooperation | http://www.prontuario.org/portal/site/prontuario |
| This website provides a comprehensive overview of the international cooperation mechanisms of Spain. | |
| Step by Step Guide for Asset Recovery from G-20 Countries Spain | http://www.g20australia.org/official_resources/step_by_step_guide_asset_recovery_spain |
| This guide describes the different steps foreign jurisdictions will follow to can obtain assistance from Spain to recover assets that are the proceeds of crime. | |