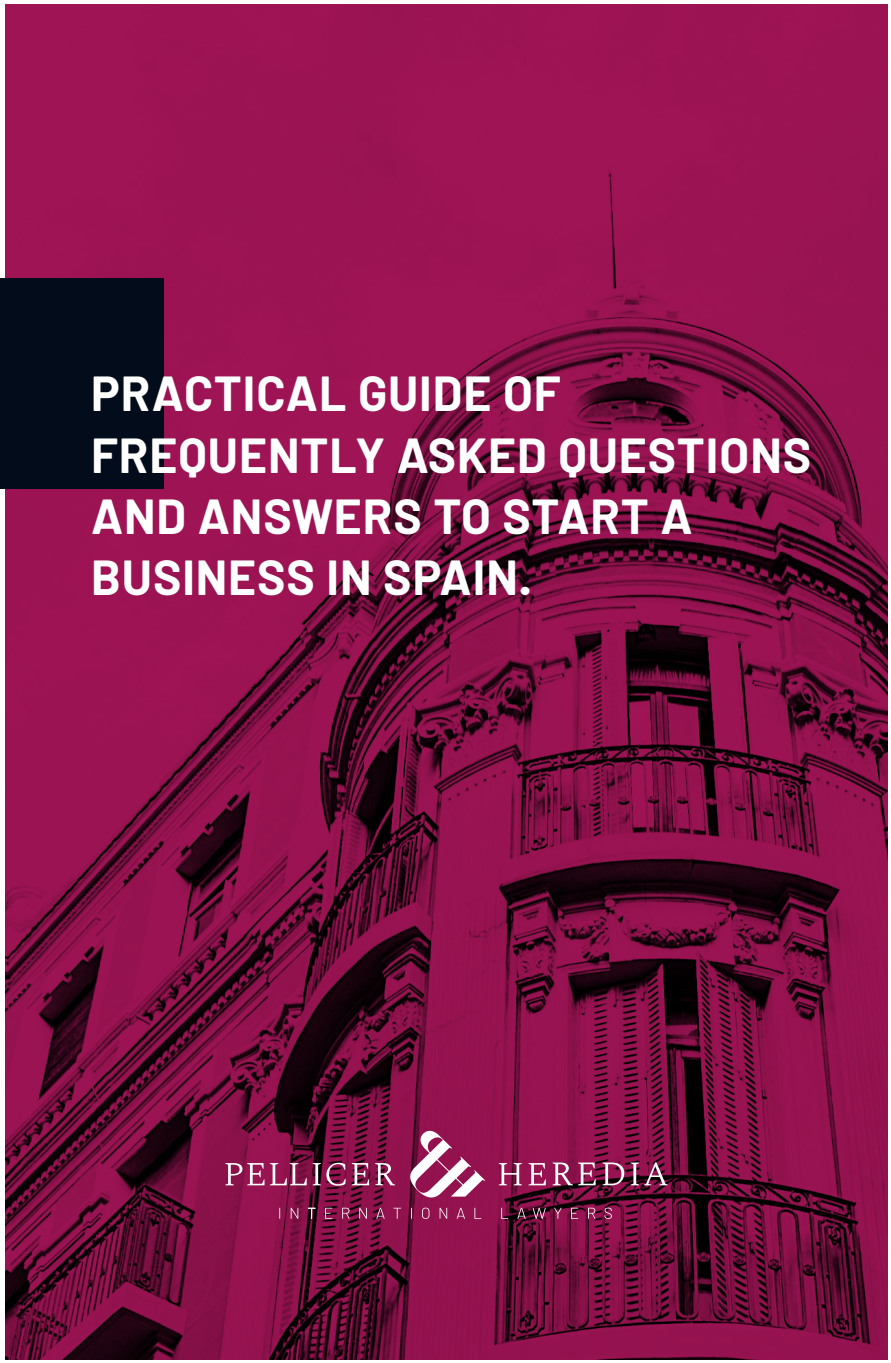
PRACTICAL GUIDE OF FREQUENTLY ASKED QUESTIONS AND ANSWERS TO START A BUSINESS IN SPAIN.



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This guide is exclusively for information and dissemination with the sole purpose of providing quick and easy answers to questions that everyone who wants to start a business in Spain. For this reason, the information and comments reflected are merely informative and general in scope, and therefore should not be confused with detailed and personalized legal advice.

This guide was drawn up on 25th May 2020 and PELLICER&HEREDIA does not undertake to update or revise its content.

Alicante 25th May 2020

RECOMMENDATIONS ON WHICH COMPANY TO CREATE IN *SPAIN*

1 / WHAT KIND OF COMPANIES CAN BE SET UP IN *SPAIN?*

Normally, to start an economic activity in *Spain*, the most common way is by creating a company on which all the commercial activity will be developed.

There are different legal forms, we are going to focus on the most common, in particular in the corporation and especially in the *Limited Liability Company.*

2 / WHAT PROCEDURES MUST BE FOLLOWED TO SET UP A COMPANY?

The creation of a company begins with the granting of a public deed before a *Notary Public* and the registration in the *Mercantile Registry.*

3 / WHAT IS THE MINIMUM CONTENT REQUIRED IN THE DEED OF INCORPORATION?

Apart from the specialties that each company form may have, the minimum content of the deed of incorporation is as follows:

- The identity of the partners.
- The type of company chosen. We will focus on the *Limited Liability Company (S.L.)* in this guide.
- The contributions made by the partners. They can be monetary or non-monetary.
- The shares/stocks that go with this contribution.
- The articles of association of the company.
- The identity of the initial directors and representatives of the company.

4 / WHAT IS THE ROLE OF THE PARTNER'S LIABILITY IN A *LIMITED LIABILITY COMPANY (S.L.)*?

The creation of a company begins with the granting of a public deed before a *Notary Public* and the registration in the *Mercantile Registry.*

5 / WHAT MINIMUM CAPITAL MUST THE COMPANY HAVE?

The share capital of a *Limited Liability Company (S.L.)* must be at least 3,000 euros. This capital may consist of cash, goods or rights.

In relation to the S.A., the minimum share capital for incorporation is 60,000 euros.

6 / WHAT ARE THE MAIN DIFFERENCES BETWEEN A CORPORATION (S.A.) AND A *LIMITED COMPANY (S.L.)*?

The limited company is a company suitable for companies with a small number of partners (it can have only one partner and is therefore a single-member limited company). The share capital is divided into shares, which are equal, accumulative and indivisible parts of the capital and cannot be incorporated into negotiable securities. The transfer of company shares is restricted, i.e. it is not fully free, and the guidelines set out in the applicable regulations and the articles of association must be followed.

The public limited company is the type of company best suited to the needs of large companies. The number of partners for incorporation can be one (single-member corporation) or more, whether natural or legal persons. The transfer of shares is free.

7 / WHAT ARE THE DECISION-MAKING BODIES?

Broadly speaking, there are two main bodies responsible for making decisions in the company: the *General Meeting of Shareholders* and the company's administration.

The *General Meeting* takes the most important decisions, such as approving the accounts, appointing auditors, dissolving the company, etc., and decides by majority vote.

The company's administrative bodies are responsible for its management and representation.

There are multiple ways of setting up the company's administration: essentially there can be a single administrator or several administrators. In the latter case, they can be organized around a *Board of Directors* or as joint or several directors.

8 / WHAT ARE THE EMPLOYER'S ACCOUNTING OBLIGATIONS?

The *Commercial Code* establishes the general obligation for entrepreneurs to keep orderly and appropriate accounts for their activity. This is specified in the obligation to keep accounts:

. The inventory book
. Annual accounts
. The day book

The annual accounts, which must be filed with the *Commercial Registry* (except for individual entrepreneurs, who are not required to file their annual accounts), consist of the balance sheet, the income statement, the notes to the accounts, the statement of changes in equity and, possibly, the cash flow statement.

9 / MUST THE COMPANY DIRECTOR BE RESIDENT IN SPAIN?

No. Any individual or legal entity can be a company director as long as they are not incapacitated or incompatible (Articles 212 to 213 of the *Law on Corporations).* Therefore, there is no limitation on residence for the exercise of the position of administrator, and therefore the person can be a non-resident in *Spain.*

As regards whether you have to register with the *Social Security*, Article 7 of the *General Social Security Law* states the following:

1. For the purposes of contributory benefits, *Spaniards* who reside in *Spain* and foreign nationals who reside or are legally present in *Spain* shall be included in the *Social Security* system, regardless of their sex, marital status or profession.

Therefore, an administrator who is not resident in *Spain* is not required to register with the SS. If the company has workers, it should appoint a proxy/ manager to register with the *Social Security.*

COMPANY TAXATION

1 / BUSINESS-RELATED TAXES

_*Direct taxes*

- Corporate tax (tax on the profits of legal entities)
  - General tax of 25%
  - Reduced by 15%
  - Credit institutions 30%
- Non-Resident Income Tax in Spain:
  - General rate of 24%
  - Dividends, interest and capital gains: 19%.
  - EU or EEA residents 19%.

_Indirect taxes

- VAT: *Value Added Tax*

  - General rate: 21%
  - Reduced rate: 10% (purchase of housing, hotel services, pharmacy, etc).
  - Super-reduced rate: 4%
  - Exempt: housing rentals, education, insurance, health services, financial operations, etc.

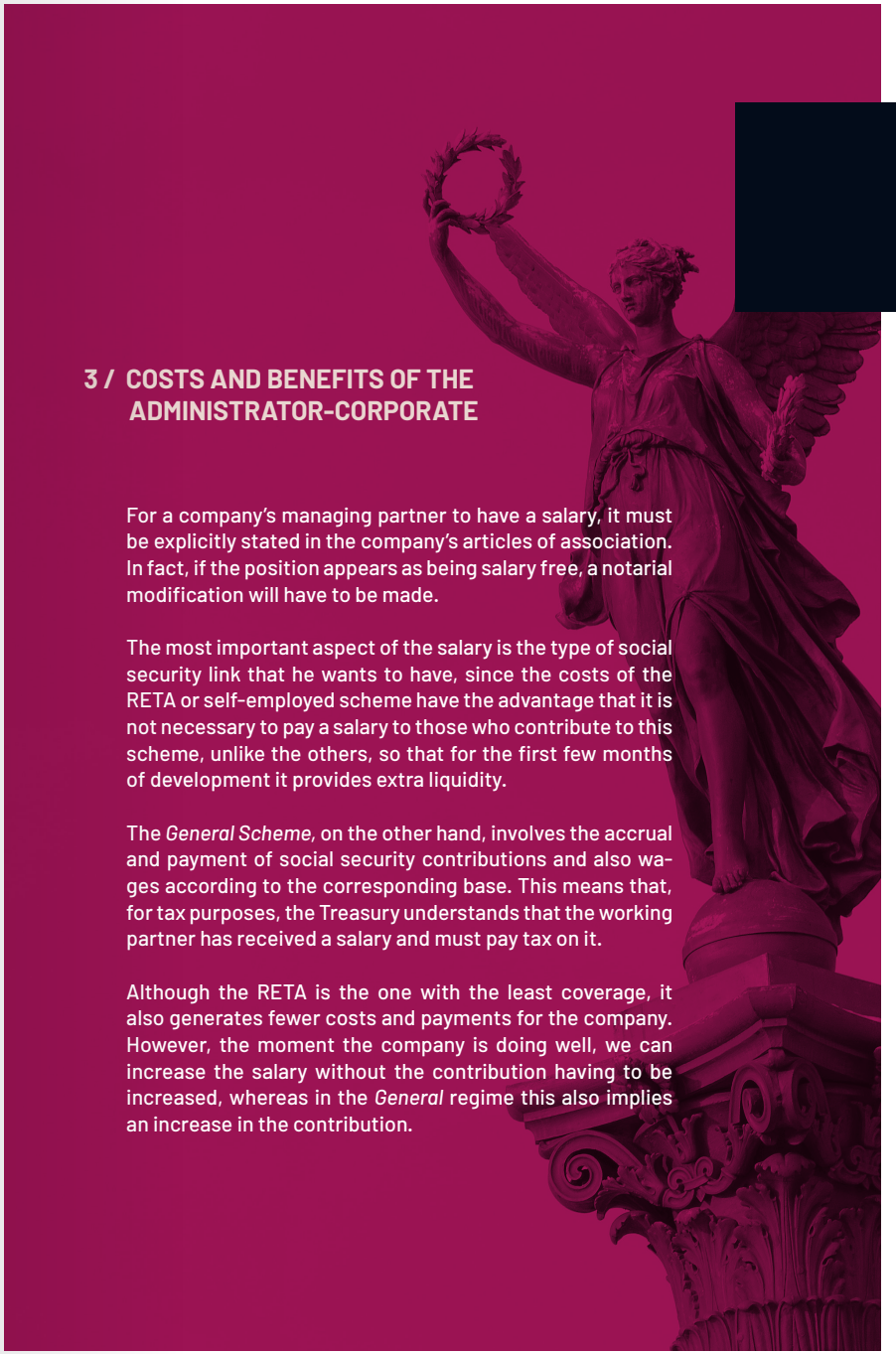
- ITP and AJD: *Tax on Onerous Transfer* and *Documented Legal Acts*

  - Modality of onerous patrimonial transmissions: (transmissions of goods between individuals or legal entities that are not subject to VAT). Type 2%-11%.
  - Corporate Operations Mode: Rate: 1% of the value of the goods and rights returned to the partners.
  - Documented legal acts: (on the *Documentation* of certain acts in a public document). Type: between 0.5% and 2.5%.

2 / CORPORATE TAX IN NEWLY CREATED ENTITIES

Aware of the difficulties involved in setting up new small and medium-sized companies, many governments have established a series of incentives, the most significant of which is the reduced tax rate which, unlike the general 25%, is limited to 15% in the first tax period in which a positive result is obtained and in the following period, provided that the company carries out an economic activity.

In addition, small entities (those with a business volume of less than 10 million euros) can also benefit from another added incentive such as the freedom to depreciate tangible fixed assets.



3 / COSTS AND BENEFITS OF THE ADMINISTRATOR-CORPORATE

For a company's managing partner to have a salary, it must be explicitly stated in the company's articles of association. In fact, if the position appears as being salary free, a notarial modification will have to be made.

The most important aspect of the salary is the type of social security link that he wants to have, since the costs of the RETA or self-employed scheme have the advantage that it is not necessary to pay a salary to those who contribute to this scheme, unlike the others, so that for the first few months of development it provides extra liquidity.

The *General Scheme*, on the other hand, involves the accrual and payment of social security contributions and also wages according to the corresponding base. This means that, for tax purposes, the Treasury understands that the working partner has received a salary and must pay tax on it.

Although the RETA is the one with the least coverage, it also generates fewer costs and payments for the company. However, the moment the company is doing well, we can increase the salary without the contribution having to be increased, whereas in the *General* regime this also implies an increase in the contribution.

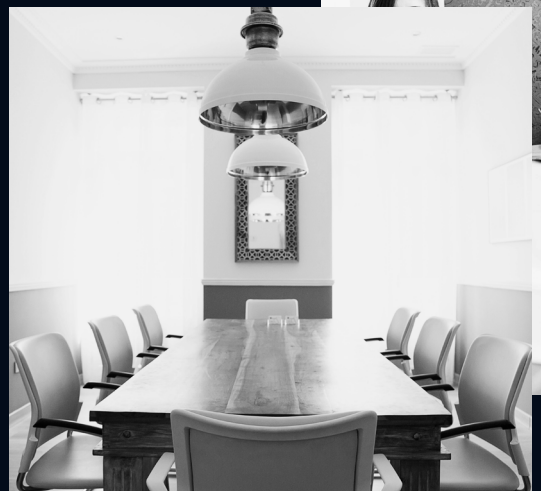
4 / TAXATION OF DIVIDENDS

Although dividends are the main means of remunerating shareholders, their amount must be approved by the *Company's General Shareholders' Meeting,* on the proposal of its *Board of Directors.* For tax purposes, these dividends are subject to taxation.

The collection of dividends by individuals is subject to a 19% withholding rate on account of the future income tax return. In addition, the administration and deposit expenses of these negotiable securities are a tax-deductible expense.

The collection of dividends by legal entities constitutes an additional positive income to be included in the tax base for corporate income tax, which will generally be taxed at the rate of 25%.

Dividends received by non-residents without a permanent establishment in *Spain* are taxed at the rate of 19%. However, those who reside in a country with which *Spain* has signed an agreement to avoid international double taxation may request a refund of the difference up to the agreement rate.



BUSINESS PREMISES RENTAL ISSUES

In *Spain,* leases entered into after January 1, 1995, are governed by Law 29/1994, of November 24, 1994, on *Urban Leases* (the "ULA"). In its regulations, the LAU distinguishes between two major types of urban leases: housing leases and leases for purposes other than housing. The lease of business premises is currently considered as urban property lease for use other than housing. It is regulated by the *Urban Leasing Law,* which offers much greater freedom to contractors than in the leasing of dwellings.

The purpose of the current regulation is the leasing of urban property for housing or uses other than housing. With regard to housing leases, it is worth mentioning:

- They are governed by almost total legal control by the legislator.

- Very little capacity of the parties to decide the agreements or conditions they want.

And, as for the regime of rentals for use other than as a dwelling:

The freedom of the contracting parties is much wider, and is similar to the principles of freedom of contract established in the *Civil Code* (except for the deposit and the formalization of the contract, for which the LAU regime is obligatory). In the case of rentals for use other than as a dwelling, the order of regulation will be as follows

1) Firstly, by the will of the parties (in relation to Article 1255 of the *Civil Code).*

2) Secondly, by the provisions of *Title III* (relating specifically to these leases) and, in addition, by the provisions of the *Civil Code* (Article 4.3 of the 1994 *Urban Leases Act*). As a result, the parties must comply, in the first place, with existing regulations, bearing in mind that leases for use other than what they have agreed in the contract.

With regard to these leases for use other than as a dwelling, Article 3 LAU 94 establishes that *"a lease for use other than as a dwelling is considered to be that which, falling on a building, has as its primary purpose one other than that established in the previous article".*

1 / WHAT IS THE MINIMUM TERM OR MANDATORY PERIOD FOR A BUSINESS PREMISE LEASE? WHAT HAPPENS IF IT IS BREACHED?

The LAU does not establish a minimum term for leases for use other than as a home, so the parties may agree on the duration they deem appropriate.

Nor does the LAU establish a mandatory period during which the tenant cannot withdraw from the contract, although it is usual for the lessor to demand that this mandatory period be included in the contract.

When such a mandatory period is agreed, compensation is also usually agreed which, in the event of non-compliance, the tenant must pay to the lessor, and which is normally equivalent to the amount of the rent that would have accrued over the entire mandatory period that remains to be complied with. However, depending on the circumstances of each case (proportion of the remaining period to the period already fulfilled, possibility of the lessor to lease the premises during this remaining period, etc.), the courts may moderate this compensation downwards.

2 / IS THE TENANT OBLIGED TO GIVE A DEPOSIT OR GUARANTEE TO THE LANDLORD?

Yes, when the contract is concluded, the tenant must provide the *Landlord* with a cash deposit in the amount of two monthly rent payments. In turn, the lessor must deposit this amount with the competent body according to the autonomous community in question. The balance of the deposit at the end of the lease must be returned to the lessee. Likewise, from the third year of the lease, the lessor may require that the deposit be increased (or the lessee, that it be decreased), until it becomes equal to two monthly payments of the current rent.

Notwithstanding the above, the lessor may require the lessee to provide some additional guarantee (for example, an additional amount to the legal deposit or a bank guarantee).

3 / WHAT IS THE MINIMUM TERM OR MANDATORY PERIOD FOR A BUSINESS PREMISE LEASE? WHAT HAPPENS IF IT IS BREACHED?

The parties can agree on the updating of the rent as they see fit. In the absence of an express agreement, no rent revision will be applied to contracts.

However, it is more common for the *Landlord* to demand that the rent be revised each year by reference to the annual variation of the *Consumer Price Index* (CPI), and sometimes the Landlord even asks that this variation only be applied to the rent in the event that an increase is obtained (in other words, that the rent is only updated when the CPI rises).

Sometimes (especially in the case of more or less long term contracts), the Landlord also asks that at certain times (e.g. after 5 or 10 years from the signing of the contract) the rent be updated to match the market rent at that time. In such a case, it is important that the value of that market rent is set by an impartial third party, so as not to leave the calculation of any rent increase to one of the parties. Also in such cases, the Landlord sometimes requests that this variation be applied only when the market rent is higher and therefore the rent to be paid by the Tenant can be increased.

4 / CAN THE TENANT CARRY OUT WORKS? WHAT WORKS MUST THE TENANT NECESSARILY DO AT HIS OWN EXPENSE?

In the case of works, too, it is necessary to comply with what the parties have agreed in the contract. Unless otherwise agreed, the regime provided for in the LAU will apply, which distinguishes between the following three types of works:

Conservation work

The lessor is obliged to carry out, without the right to raise the rent, all the repairs necessary to keep the premises in condition to serve the agreed use, except when the deterioration is attributable to the lessee. The lessee must inform the lessor as soon as possible of the need for such repairs. He may at any time, and after notifying the lessor, carry out the repairs that are urgent in order to avoid imminent damage or serious inconvenience, and immediately demand their amount from the lessor.

When the execution of maintenance work cannot reasonably be postponed until the end of the lease, the lessee is obliged to bear the cost.

Minor repairs required by wear and tear for ordinary use shall be borne by the lessee.

Improvement works.

The lessee is obliged to bear the cost of any improvement work carried out by the lessor that cannot reasonably be deferred until the end of the lease. The lessor must give at least three months' notice to the lessee, who may withdraw from the contract, unless the work does not affect or does not affect the leased premises in a material way.

If the lessee has to undertake such work, he shall be entitled to a reduction in rent in proportion to the part of the premises he has taken away and to compensation for any expenses incurred as a result of the work.

Tenant's works

The tenant needs the written consent of the landlord to carry out work that changes the configuration of the premises or its accessories. If he carries out such work without obtaining consent, the lessor may terminate the contract and demand, at its conclusion, that the lessee restore the premises to their previous state or keep the modification made without compensating the lessee.

Furthermore, the lessee may not under any circumstances carry out work that would impair the stability or security of the premises or building of which he is a member. If he does so, the lessor may immediately require the lessee to restore the goods to their previous state.

5 / DOES THE TENANT HAVE A RIGHT OF FIRST REFUSAL IN CASE THE LEASED PREMISES ARE SOLD?

This question depends on what the parties have agreed in the contract. If nothing has been agreed, the tenant would have a right of first refusal in the event of the sale of the leased premises. However, the usual practice is for the Landlord to require the tenant to expressly waive this right in the contract.

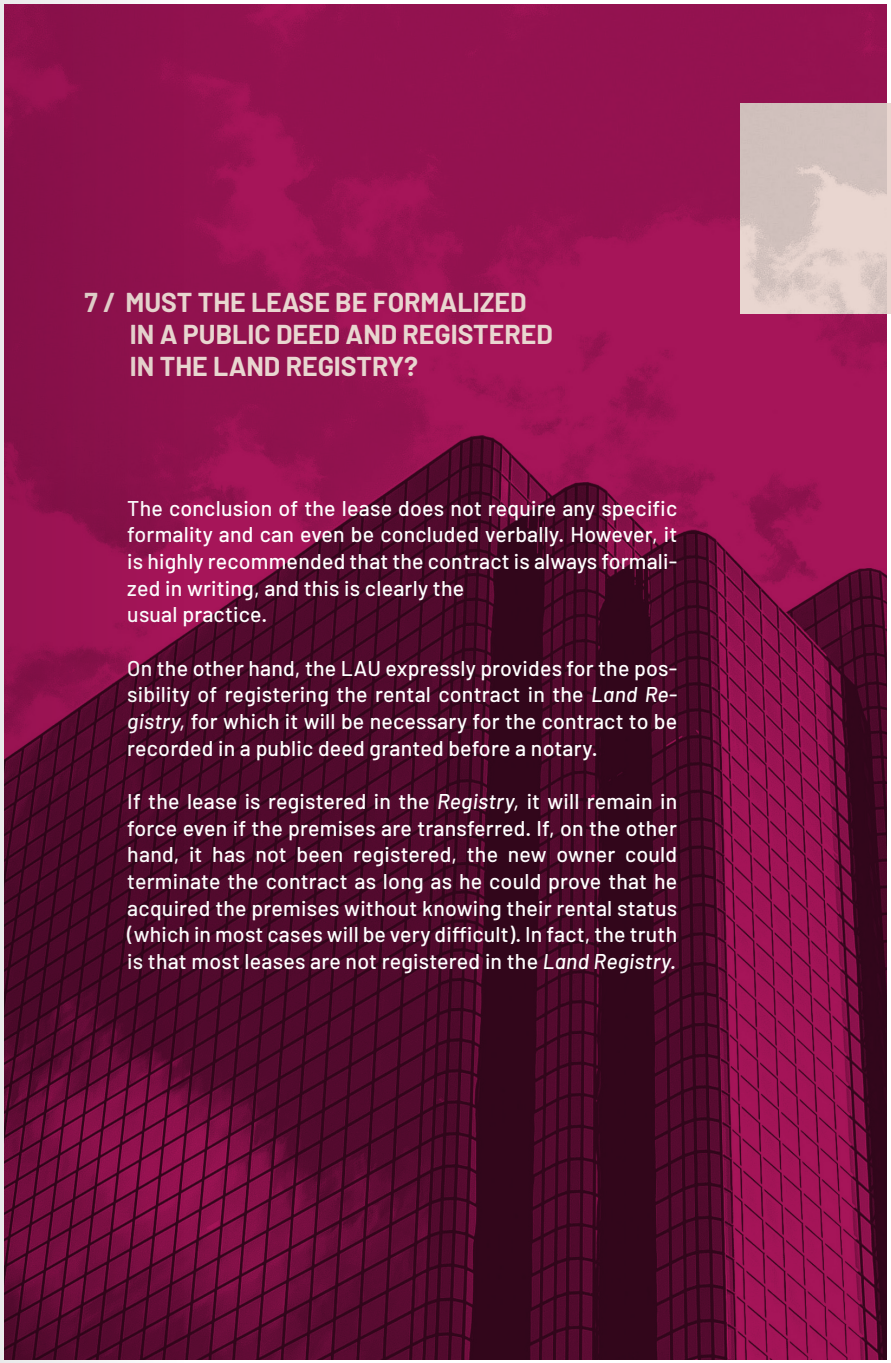
6 / CAN THE TENANT ASSIGN THE LEASE? CAN THE TENANT SUBLEASE THE PREMISES?

Here too, the parties are free to make any agreements they wish.

In the absence of an agreement, and provided the rented premises are used for business or professional purposes, the tenant may assign the contract to a third party without the Landlord's consent. This implies that the third party will be subrogated to the lessee's contractual position, acquiring all his rights and obligations, while the relationship between the lessor and the lessee will be terminated. This is what in the terminology of the old 1964 *Urban Leases Act* was called a transfer. The "transfer" may be made free of charge or in exchange for a consideration.

Likewise, even in the absence of an agreement and provided the rented premises are used for business or professional purposes, the lessee may sublet all or part of the rented premises to a third party. This implies that the lessee, without terminating his relationship with the lessor (to whom he will continue to be liable for compliance with the contract), will in turn become a sub-lessor to the third party, who will become a sub-lessee, and all this without any direct legal relationship being created between the lessor and the sub-lessee.

In any event, both the assignment and the sublease must be notified in writing to the lessor, who is entitled to increase the rent by 10 % in the case of a partial sublease and by 20 % in the case of assignment of the contract or total sublease of the leased premises.



7 / MUST THE LEASE BE FORMALIZED IN A PUBLIC DEED AND REGISTERED IN THE LAND REGISTRY?

The conclusion of the lease does not require any specific formality and can even be concluded verbally. However, it is highly recommended that the contract is always formalized in writing, and this is clearly the usual practice.

On the other hand, the LAU expressly provides for the possibility of registering the rental contract in the *Land Registry*, for which it will be necessary for the contract to be recorded in a public deed granted before a notary.

If the lease is registered in the *Registry*, it will remain in force even if the premises are transferred. If, on the other hand, it has not been registered, the new owner could terminate the contract as long as he could prove that he acquired the premises without knowing their rental status (which in most cases will be very difficult). In fact, the truth is that most leases are not registered in the *Land Registry*.

LICENSES AND PERMITS TO BE CONSIDERED

1 / WHAT DO I NEED TO DO TO IMPLEMENT AN ACTIVITY?

In order to carry out an activity, in most cases, it is necessary to obtain some kind of permit, license or administrative authorization beforehand.

This previous act will validate that the activity to be carried out complies with the applicable administrative regulation. The authorization regime will depend on the specific activity to be carried out and its location. It must be in accordance with the regional and local regulations regarding the specific procedure to be followed.

In this regard, Law 12/2012 of 26 December on urgent measures for the liberalization of trade and certain services (hereinafter "Law 12/2012") establishes that any person interested in starting or implementing certain commercial activities and services in an establishment of less than 750 m2 need only present a prior communication or responsible declaration to the competent authority, declaring that the legal requirements for carrying out the activity have been met.

This makes sense if we take into account that Law 12/2012 was intended to speed up the implementation of retail trade activities and of certain services regulated therein, through the elimination of bureaucratic barriers.

In addition to the provisions of Law 12/2012, the autonomous communities have enacted other laws in relation to the intervention of activities in environmental matters. In these laws, the enabling title (authorization, license, responsible statement or prior communication) to be able to carry out the activities to which they are applicable depends on the impact that this activity will have on the environment.

Without prejudice to the above, it should be pointed out, that depending on the activity, the competent administrations may require licences or permits in addition to those mentioned here, in accordance with the regulations applicable to each specific sector.

2 / WHAT ARE OPENING LICENCES?

The opening licence is one of the designations received by the title granted when it is verified that the establishments in which the activity is to be carried out comply with the conditions laid down in the regulations on activities applicable in each case.

These opening licences authorize, in short, the start of the economic activities and would be equivalent to the operating licences or the initial control.

What are the differences between opening licences and licences for first use or occupation?

Opening licences should not be confused with first use or occupation licences.

First occupation licences are an a posteriori control to verify that a certain work has been carried out correctly, that is, in accordance with the provisions of the building licence and the applicable town planning regulations, and that it complies with the technical and health conditions required for the construction to be used as intended. Some of the main differences between first occupation licences and opening licences are:

- The purpose of the first occupation licence is to verify that a property can be used for a certain purpose in accordance with town planning regulations.
- The purpose of the opening licence is to legitimise a certain activity in that property in accordance with environmental regulations.
- Unlike the licence of first use or occupation, the opening licence has continuous effects over time, which means that the holder must comply at all times with the requirements of the regulatory developments to guarantee the limits to which the activity being carried out must be subject.

RESIDENCE IN SPAIN WITH THE INITIATION OF A BUSINESS.

1 / IS IT POSSIBLE TO OBTAIN A RESIDENCE PERMIT IN SPAIN WHILE WORKING AS A SELF-EMPLOYED PERSON?

Yes, in order to begin the process, the foreigner must present the application for a residence and self-employment permit at the *Spanish* diplomatic mission or consular office in his/her area of residence.

2 / WHAT REQUIREMENTS MUST BE MET TO APPLY FOR THIS AUTHORIZATION?

The most relevant are:

- Fulfill the requirements that the current legislation demands for the opening and functioning of the projected activity.
- Possess the required professional qualification or accredited experience, sufficient in the exercise of the professional activity, as well as membership when required.
- Be able to demonstrate that the **planned investment is sufficient** and that it will have an impact on job creation.
- To be able to prove that they have **sufficient economic resources** for their board and lodging, after deducting those necessary for the maintenance of the activity.

3 / WHAT IS THE DEADLINE FOR THE DECISION OF THE APPLICATION?

Three months from the day following the date on which the application was entered in the register of the body responsible for processing it.

If the visa is granted, the worker has **one month** from the notification to apply in person at the diplomatic mission or consular office in whose area he resides and to provide the relevant documentation.

The diplomatic mission shall take a **decision** on the application **within one month.**

Once notification has been given that a visa has been granted, the worker must collect it personally within one month of the date of notification.

Once the visa has been collected, when must one enter *Spain* and what procedure must one follow?

The worker **must enter *Spanish* territory within the period of validity of the visa,** which will be **three months.**

From the time of entry into *Spain,* the worker has three months to register and pay contributions.

Within one month of registering with *Social Security,* the worker must apply in person for an *Foreigners' Identity Card at the Foreigners' Office* or *Police Station* in the province where the authorization has been processed, providing the appropriate documentation.

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