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CONCEPT AND ESSENTIAL PRINCIPLES OF SPANISH BUSINESS LAW

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Abstract

In the realm of global commerce, understanding the intricacies of business legal law in Spain is crucial for both domestic and international enterprises. Spain, as a member of the European Union (EU), operates within a framework of civil law with certain common law influences. This article provides an exhaustive analysis of the legal landscape governing business operations in Spain, covering corporate law, contract law, labour regulations, taxation, intellectual property, and dispute resolution mechanisms. By delving into these aspects, this article aims to equip businesses and legal professionals with the knowledge needed to navigate the complex legal terrain in Spain. The European Union adds another dimension to Spain's legal landscape. As a member state, EU regulations take precedence over national laws in specific areas like competition, trade, and environmental protection. This necessitates an understanding of both national and supranational legal frameworks within Spain. In summary, Spain continues to improve its business laws to adapt to changing economic conditions and international standards. For companies to thrive in today's changing environment, it is necessary to keep up with legal changes and maintain proactive compliance measures. In conclusion, while dealing with the legal aspects of doing business in Spain can be challenging, it also offers great opportunities for growth and development.

Key words: Legal Law, Regulations, business

Introduction

Relevance of the topic. Unveiling the Spanish Business Landscape. Spain, a nation synonymous with vibrant culture, captivating history, and a burgeoning economy, beckons foreign businesses seeking to expand their operations. However, venturing into a new legal terrain can be a daunting task. This in-depth guide delves into the intricacies of Spanish business legal law, equipping enterprises with the necessary knowledge to navigate this complex yet rewarding landscape. Spanish business law operates within the framework of a civil law system. Unlike common law countries (e.g., the United States) that heavily rely on judicial precedent, Spain prioritizes codified statutes (Kokott, 2023). These comprehensive laws establish the legal foundation for business operations, offering a degree of predictability and clarity. Courts primarily interpret these statutes, providing guidance within the established framework. Civil Law vs. Common Law: This distinction

lies in the primary sources of law. Civil law systems rely on codified statutes, while common law systems prioritize judicial precedent established through court decisions.

The introduction is divided on two parts. First, Historical Development of Spanish Business Law. A brief historical overview of how Spain's legal system evolved into its present form, touching upon Roman law influences, the development of civil law principles, and modern legal reforms that have shaped contemporary business legislation. This development has been shaped by a blend of Roman law, Visigothic law, Islamic law (García Cantero, Gabriel. Spanish Business Law. Thomson Reuters, 2020), during the Moorish period, and subsequent influences from European legal traditions. Understanding this historical context is essential for comprehending the foundations of modern Spanish business law. Then, Roman Law Influence. The roots of Spanish law can be traced back to Roman law, which significantly influenced legal development in the Iberian Peninsula during the Roman Empire. Roman legal principles such as property rights, contracts, and civil procedures laid the groundwork for legal systems in Spain and other European countries.

The degree of elaboration of the problem. The principles of Roman law continued to resonate through subsequent legal developments in medie-

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val Spain. Visigothic Code. Following the collapse of the Roman Empire, the Visigoths established their kingdom in Spain and introduced their legal system known as the Visigothic Code (Forum Indicum). This code, compiled in the early 7th century, combined elements of Roman law with Germanic customary law. The Visigothic Code influenced legal practices in Spain until the Muslim conquest in the 8th century.

The purpose of the article. The aim of this study is to examine essential principles of business law in Spain.

Results

Islamic Influence

The arrival of Islamic rule in Spain (Al-Andalus) from the 8th century onwards brought significant legal changes. Islamic law (Sharia) coexisted with pre-existing legal systems, and Islamic jurists made important contributions to Spanish legal thought. During this period, Islamic legal principles influenced various areas of law, including contracts, property, and commercial transactions. Reconquista and Christian Legal Reforms. The gradual reconquest of Spain by Christian kingdoms from the 11th century led to the imposition of Christian legal norms in the territories reclaimed from Muslim rule (Borrero, 2023). The compilation of local legal customs and royal decrees formed the basis of medieval Spanish law. The *Siete Partidas*, a legal code promulgated by King Alfonso X in the 13th century, synthesized Roman, Visigothic, and Islamic legal traditions and became a fundamental source of law in Spain. Golden Age and Early Modern Period was during the Spanish Golden Age (16th and 17th centuries), Spain's legal system continued to evolve. The expansion of trade and exploration led to the development of maritime law and commercial regulations. The creation of merchant guilds and trading companies reflected the growing sophistication of Spanish commercial law. Spain's overseas empire also necessitated legal frameworks for colonial administration and trade. Codification and Modernization, the 19th century witnessed significant legal reforms in Spain, including the codification of civil law under the Civil Code of 1889 (*Código Civil*). This codification consolidated private law principles and provided a unified legal framework for civil matters, including contracts, property, and obligations. Subsequent legal reforms in the 20th century, including labour laws and corporate regulations, adapted Spain's legal system to modern societal and economic needs. (de Dios Marcer & Cañabate Pérez, 2023). Cham: Springer

International Publishing) For the Corporate law in Spain, an extensive analysis of corporate structures in Spain, including the formation and governance of various entities such as Sociedad Anónima (SA), Sociedad de Responsabilidad Limitada (SRL), and the legal requirements for establishing and operating a company in Spain. The regulatory framework for corporate entities in Spain is comprehensive, encompassing various forms of business organizations and ensuring compliance with European Union (EU) directives. This overview explores key aspects of corporate law in Spain, including company types, formation procedures, corporate governance, and regulatory requirements. Research purpose to analyse the law regulations and business law (including themes like taxation for example). The Analyse of Types of Corporate Entities, Formation and Regulatory Compliance begins with the different types of corporate entities. First, Sociedad Anónima (SA) which is the equivalent of a public limited company (plc) in other jurisdictions. An SA requires a minimum share capital, and shares are freely transferable. Shareholders' liability is limited to their contributions. Also, Sociedad de Responsabilidad Limitada (SRL): This is akin to a private limited company (Ltd) and is the most common corporate form in Spain. An SRL has lower minimum capital requirements compared to an SA and offers limited liability to shareholders (Real Academia de Jurisprudencia y Legislación. Anuario de Derecho Civil. Marcial Pons, 2023). Sociedad Colectiva: A general partnership where all partners are jointly and severally liable for the company's debts. Sociedad Comanditaria: A limited partnership consisting of general partners (with unlimited liability) and limited partners (with limited liability). Sociedad Laboral: A special type of company where a significant portion of the share capital is owned by employees. For the Formation of Corporate Entities The formation of a Spanish corporate entity involves several steps (Instituto Nacional de la Seguridad Social INSS, 2024) including: Drafting the company's articles of association (*estatutos sociales*), Depositing the minimum share capital in a Spanish bank. Obtaining a tax identification number (CIF) and registering with the Commercial Registry (*Registro Mercantil*), Executing a public deed of incorporation before a notary public. And finally, Filing relevant documents with the Commercial Registry for registration. With the figure No. 1, we can see some often errors that clients do and are also tips to avoid.



Figure No. 1 Tips to avoid before creating a company in Spain (compiled by authors based on Rosado-Cubero, et. al. 2023; Gunther, et. al. 2023).

For the Corporate Governance. In Spain is primarily governed by the Companies Act (Ley de Sociedades de Capital), which regulates the internal organization and functioning of companies. Key aspects of corporate governance include Shareholder rights and meetings: Shareholders have the right to participate and vote in general meetings. Board of directors: Responsible for managing the company's affairs and representing its interests. Auditing: Companies are required to appoint external auditors to review financial statements. Regulatory Compliance. Spanish corporate entities must comply with various legal and regulatory requirements, including Annual accounts: Companies must prepare and file annual financial statements Tax obligations: Compliance with corporate tax, VAT, and other tax regulations. Labour and employment laws: Compliance with labour regulations regarding employment contracts, wages, and social security contributions. Competition law: Compliance with EU and national competition regulations. The Commercial Code, on the other hand, sets forth the general legal provisions for commercial activities within the country. Specific compliance laws also play a critical role, such as the Anti-Money Laundering Act, which mandates stringent checks to prevent financial crimes and Data Protection laws that govern the handling of personal data in alignment with European Union standards. A crucial element of Spain's compliance landscape is the Esquema Nacional de Seguridad (ENS), a framework designed to establish cybersecurity policies and ensure the protection of data within digital environments. Given the dynamic nature of legal regulations, it is imperative for companies to stay informed about ongoing changes to maintain

compliance. Also, The CNMV (National Securities Market Commission) oversees the securities markets, ensuring transparency and protecting investors. The AEPD (Spanish Data Protection Agency) is tasked with enforcing data protection laws, a role that has become increasingly significant with the advent of GDPR and The Bank of Spain regulates financial institutions and ensures stability in the banking sector. Corporate Restructuring and Insolvency. Spanish corporate law also addresses corporate restructuring, mergers, acquisitions, and insolvency proceedings (López-Medina, Carlos, 2023). Companies facing financial distress can seek protection under bankruptcy laws, which aim to facilitate restructuring or liquidation while protecting creditors' interests. Recent Developments and EU Harmonization. Recent developments in Spanish corporate law reflect efforts to harmonize with EU directives, particularly in areas such as corporate governance, shareholder rights, and transparency. The aim is to enhance investor confidence, promote competitiveness, and align Spanish corporate law with international best practices. Also, the recent "Crea y Crece Law" (Create and Grow Law) streamlines business formation in Spain. This initiative reduces the minimum share capital requirement, a significant financial barrier for new businesses (Government of Spain, 2022). Additionally, it simplifies administrative procedures, expediting the incorporation process. This reflects the government's commitment to fostering a more business-friendly environment.

Annotation. Crea y Crece Law: This recent legislation simplifies business formation in Spain by reducing capital requirements and streamlining administrative procedures. Spanish law generally welcomes foreign investment with minimal restrictions across most sectors. This open approach fosters economic growth and fosters innovation. However, certain strategically sensitive industries (e.g., defence, telecommunications) may require specific authorizations before foreign investment can proceed. Consulting with legal counsel experienced in foreign investment regulations is crucial to navigate these scenarios. In summary, corporate law in Spain provides a robust legal framework for establishing and operating businesses, offering flexibility in choosing suitable corporate structures while emphasizing transparency, accountability, and compliance with regulatory requirements. Understanding these legal principles is essential for entrepreneurs, investors, and business professionals seeking to engage in corporate activities in Spain.

Talking about Taxation and Fiscal Policies & Intellectual Property Rights. For Taxation and fiscal policies play a crucial role in Spain's economic landscape, shaping business decisions, investment strategies, and government revenue. Spain's tax system is complex, comprising various taxes levied at national, regional, and local levels (Instituto Nacional de la Seguridad Social INSS, 2024). This article provides an overview of taxation in Spain, highlighting key taxes, fiscal policies, and recent developments impacting businesses and individuals. Spain imposes a range of taxes, including Corporate Income Tax (Impuesto sobre Sociedades): Levied on the worldwide income of Spanish companies and non-resident entities operating in Spain. The standard corporate tax rate is applied to profits, with special rates for small and medium-sized enterprises (SMEs). Value Added Tax (VAT) (Impuesto sobre el Valor Añadido): A consumption tax applied to most goods and services. Spain's standard VAT rate is 21%, with reduced rates for certain items such as food, books, and cultural events. Personal Income Tax (Impuesto sobre la Renta de las Personas Físicas, IRPF): Levied on the income earned by individuals residing in Spain. Tax rates are progressive, with different brackets and deductions available. Wealth Tax (Impuesto sobre el Patrimonio): Imposed annually on the net wealth of individuals and entities exceeding a certain threshold. Transfer Tax and Stamp Duty (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados): Applicable to transactions such as property transfers, company acquisitions, and certain legal documents.

Tax incentives for businesses: Various tax deductions and incentives are available to encourage investment in research and development (R&D), innovation, and job creation (Spanish Patent and Trademark Office (OEPM) – Official website for intellectual property rights registration and information in Spain). Regional tax disparities: Spain's autonomous regions have some fiscal autonomy, leading to variations in tax rates and incentives across different regions. Anti-avoidance measures: Spain has implemented measures to combat tax evasion and aggressive tax planning, aligning with international standards on tax transparency and information exchange. Intellectual property (IP) rights are fundamental for protecting innovations, creations, and intangible assets in Spain's knowledge-based economy (European Commission). Spain has established robust legal frameworks to safeguard IP rights, promoting innovation, creativity, and economic development (Kumar et., al. 2024). This article provides an overview of intellectual property rights in Spain, covering key areas such as patents, trademarks, copyrights, and enforcement mechanisms. There are various forms of intellectual property right, as, Patents: Protection for inventions, granting exclusive rights to exploit and commercialize the invention for a limited period. Trademarks: Protection for distinctive signs (e.g., logos, brand names) used to distinguish goods and services in the market. Copyrights: Protection for original literary, artistic, and scientific works, including books, music, films, and software. Finally, Trade Secrets: Protection for confidential business information, formulas, and processes that provide a competitive advantage.

Conclusions

In conclusion, navigating the legal landscape of business law in Spain requires a nuanced understanding of the regulatory framework and compliance obligations. Throughout this article, we have explored essential aspects such as company formation, business law, tax considerations, and contractual obligations. Spain offers a favourable environment for business, with streamlined procedures for company registration and a supportive infrastructure for foreign investment. However, it is crucial for entrepreneurs and businesses operating in Spain to remain vigilant about legal compliance to avoid potential pitfalls. Key takeaways include the importance of seeking professional legal advice when establishing or expanding a business in Spain. Local expertise can provide invaluable insights into specific regulations and requirements, ensuring smooth operations and legal compliance. Looking ahead, Spain continues to evolve its business laws to adapt to changing

SALARY	RETENTION (%)
0 € - 12.450 €	19%
12.450 € - 20.200 €	24%
20.200 € - 35.200 €	30%
35.200 € - 60.000 €	37%
Más de 60.000 €	45%

Figure No. 2: Percentage of taxes to pay in respect of the salary (compiled by authors based on López-Laborda, et., al, 2023; Gamarra Rondinel, et., al, 2023).

As we can see in the picture No. 2, the more we gain the more we pay. Spain's Fiscal Policies aim to promote economic growth, attract investment, and ensure fiscal sustainability. Key aspects of fiscal policy include:

economic conditions and international standards. Staying informed about legal updates and maintaining proactive compliance measures will be essential for businesses to thrive in this dynamic environment. In conclusion, while navigating the legal aspects of business in Spain may present challenges, it also offers significant opportunities for growth and expansion. By leveraging legal expertise and maintaining a proactive approach to compliance, businesses

can position themselves for success in the vibrant Spanish market. This article serves as a comprehensive guide to business legal law in Spain, synthesizing key legal principles and regulatory frameworks essential for businesses and legal practitioners. By gaining a deeper understanding of Spain's legal landscape, stakeholders can navigate the complexities of conducting business in Spain with confidence and compliance.

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ПОНЯТТЯ ТА ОСНОВНІ ПРИНЦИПИ ІСПАНСЬКОГО ПІДПРИЄМНИЦЬКОГО ПРАВА

Анотація

У сфері глобальної торгівлі розуміння тонкощів юридичного права бізнесу в Іспанії має вирішальне значення як для вітчизняних, так і для міжнародних підприємств. Іспанія як член Європейського Союзу (ЄС) діє в рамках цивільного права з певними загальноправовими впливами. Ця стаття містить вичерпний аналіз правового поля, що регулює бізнес-діяльність в Іспанії, охоплюючи корпоративне право, договірне право, трудове законодавство, оподаткування, інтелектуальну власність та механізми вирішення спорів. Заглиблюючись у ці аспекти, ця стаття має на меті озброїти бізнес і юристів знаннями, необхідними для навігації в складному правовому просторі Іспанії. Європейський Союз додає ще один вимір до правового поля Іспанії. As a member state, EU regulations take precedence over national laws in specific areas like competition, trade, and environmental protection. Це вимагає розуміння як національної, так і наднаціональної правової бази в Іспанії. Таким чином, Іспанія продовжує вдосконалювати своє бізнес-законодавство, щоб адаптуватися до мінливих економічних умов і міжнародних стандартів. Щоб компанії процвітали в сучасному мінливому середовищі, необхідно йти в ногу з законодавчими змінами та підтримувати проактивні заходи щодо комплаєнсу. Підсумовуючи, хоча вирішення юридичних аспектів ведення бізнесу в Іспанії може бути складним завданням, воно також пропонує великі можливості для зростання та розвитку.

Ключові слова: правове право, нормативно-правові акти, бізнес,

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