

Practical guide for companies' formation



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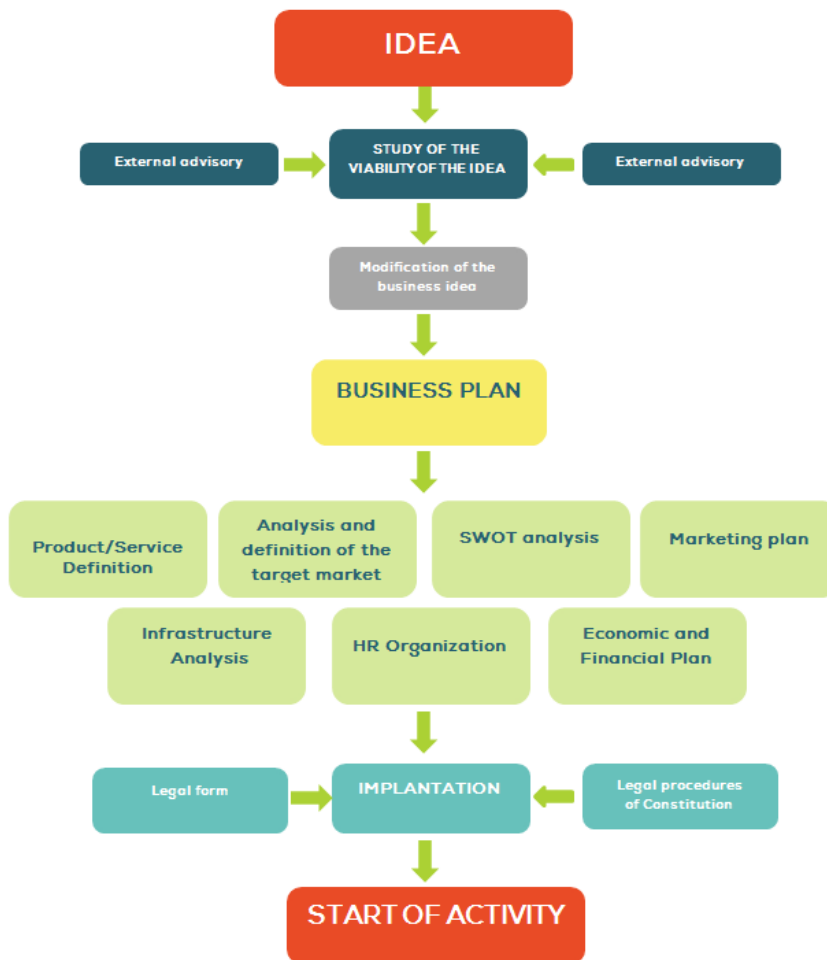
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1 OBJECTIVE

The objective of the Practical Guide for companies' formation is to present a quick guide to provide information about the steps to follow to create a company in the SUDOE region. The guide will analyse in a general way the most common types of companies that can be created in said region and in particular the Start-up and Spin-off formats.

2 BUSINESS PROJECT STAGES

Every business project starts with an idea and after its analysis and feasibility study comes its implementation. This document aims to respond to the concerns and doubts that an entrepreneur may have in the implementation phase.



3 SELECTION OF LEGAL FORM

The legal form of an entity marks the way of relating to the rest of the entities, both in the commercial and judicial spheres. Therefore, the chosen legal form is a keystone in the future development of any entity.

The existing legal system establishes two large groups of legal form: natural person and legal or moral person. A natural person is an individual of real and material existence, endowed with a set of rights obtained at the time of his birth and with the capacity to contract obligations. The legal or moral person, on the other hand, is any independent entity, of merely legal existence, that is constituted by groups or organizations of persons and established by means of a public deed where the norms that define it and its rights and obligations are established. Are legal persons, for example, associations, corporations, societies and foundations.

Below, the basic differences between both legal forms are presented:

	Natural persona	Legal person
Rights and obligations	Can exercise all the rights and obligations of a company on its behalf	The company assumes all the rights and obligations
Liability	Is responsible for the debts and obligations of a company	Debts and obligations are limited to the assets of the company
Formation	Formed by a person	It can be formed by one or more people, both natural and legal

3.1 Criteria for choosing the most appropriate legal form

The choice of type of legal form is of great importance for the future of the company. Each type of legal form implies certain advantages and limitations that must be taken into account when developing a project. Some of the most important criteria to take into account when making this decision are:

- The activity to develop
- The number of developers/promoters that participates in the project
- The degree of involvement and experience of the developers/promoters
- The complexity of constitution and management
- The entrepreneur's freedom of action
- The economic needs of the project



- The patrimonial responsibility that entails the development of the activity
- The fiscal and social security aspects
- The velocity and simplicity of the constitution process
- The access to public aids or subsidies

3.2 Characteristics of the different legal forms

The following tables summarise the main characteristics of the most common legal forms available in Spain, France and Portugal.

Table 1. Summary table: characteristics of the most common legal forms in Spain

LEGAL FORM	MEMBERS	SHARE CAPITAL	LIABILITY
Individual entrepreneur	1	There is no minimum	Unlimited
Community of goods	2 or more	There is no minimum	Unlimited
Anonymous society	1 or more	Minimum 60,101.21 € (disbursed at least 25% when set up)	Limited to what is contributed
Limited society	1 or more	Minimum 30,005.06 € (disbursed at least 100% when set up)	Limited to what is contributed
Limited Company New Company	Maximum 5 (only at the time of constitution)	Minimum 30,005.06 € (disbursed at least 100% when set up)	Limited to what is contributed
Labor Limited Company	At least 2	Minimum 60,101.21 € (disbursed at least 25% when set up)	Limited to what is contributed
Limited Labor Company	At least 3	Minimum 60,101.21 € (disbursed at least 25% when set up)	Limited to what is contributed

In France, enterprises can choose between a great variety of legal statuses, both as single party or as part of a group of companies, either applying for a limited liability or not. A report comparing the main differences between each type of structure can be found in the following link:

www.apce.com/pid1627/comparaison-rapide.html?espace=1&tp=2;



Table 2. Most common legal forms available in France

LEGAL FORM	MEMBERS	SHARE CAPITAL	LIABILITY
LLE: Limited liability entrepreneur	1	Share Capital is not available because the entity and the entrepreneur are, at the same time, the same and only legal person	Limited
OPC: One Person Company with limited liability	One single person	The total amount of Share capital is defined by the person, depending on the size, the activities and the needs of the entity. The 20% of the contributions are mandatory at the time of the member incorporation, The account balance shall be released in 5 years.	Limited to what is contributed
LLC: Limited liability company	At least 2 members are required, The maximum number of members allowed is up to 100	The total amount of Share capital is defined by the person, depending on the size, the activities and the needs of the entity. The 20% of the in cash contributions are mandatory at the time of the member incorporation, The account balance shall be released in 5 years.	Limited to what is contributed
LC: Limited Company	At least 2 members are required for unlisted companies while this number increases to 7 for listed companies. The maximum number of members is not restricted.	The minimum amount of Share capital is €37.000. The 50% of the in cash contributions are mandatory at the time of the member incorporation, The account balance shall be released in 5 years.	Limited to what is contributed
SPLC: Simplified public limited company	At least 1 member is required, The maximum number of members is not restricted.	The total amount of Share capital is defined by the shareholders, depending on the size, the activities and the needs of the entity. The 50% of the in cash contributions are mandatory at the time of the member incorporation, The account balance shall be released in 5 years.	Limited to what is contributed
SNC: Association	At least 2 members are required, The maximum	The total amount of Share capital is defined by the	All the members are responsible for the



	number of members is not restricted.	members, depending on the size, the activities and the needs of the entity. In cash contributions can be paid both totally or partially when the association is funded. The balance of the association can be later paid when necessary In case that the payment was partially paid,.	assets of the association.
Scop: Production Cooperatives	At least 2 members are required, The maximum number of members allowed is up to 100 for Scop Sarl)	€18.500 for Scop LC and €30.000 for Scop Sarl or SPLC	Limited to what is contributed
Association	At least 2 members are. The maximum number of members is not restricted.	Share Capital is not available. The association collects contributions from its members when necessary. The members of the association can provide with in-kind contributions to the association or in cash with the possibility of recovering the in-kind contributions in case the association is dissolved.	Without responsibility for non-executive members



The main legal forms available in Portugal are:

Table 3. Most common legal forms available in Portugal

LEGAL FORM	MEMBERS	SHARE CAPITAL	LIABILITY
Sole Proprietorship	1	There is no minimum	Limited
Sole-Shareholder Company with shares	1	At least €5.000	Limited
One Person Company with limited liability	1	At least €5.000	Limited
Partnership with shares	2 or more	5.000 € with the obligation of freeing up at least a 50%	Limited to what is contributed
Limited Company	5 or more	50.000 € with the obligation of freeing up at least a 30%	Limited to what is contributed
Association	2 or more	There is no minimum	Unlimited and subsidiary for the company and between the members, and the creditors
Limited partnership	2 or more	There is no minimum	Unlimited for the active members and limited for the passive members
Production Cooperatives	2 or more	At least €2.500	Members can acquire different capabilities inside of the Production Cooperatives, leading to either limited or unlimited liabilities. As a general case, the liability of every member corresponds to the amount of invested capital

3.3 Start-Up

A start-up is an emerging company that has a strong relationship with technology. They are businesses based on innovative ideas that rely heavily on the use of digital technologies and are based on three premises:

1. **Temporality:** as its own name indicates, the term Start-Up only applies when the project is in its early stages. Once it has been scaled and increased in size, it will no longer be considered Start-Up. Examples of entities that can no longer be considered start-up are some of the leading technology companies such as Facebook, Google, Airbnb or Uber.



2. *Scalability*: thanks to the use of digital technologies, these types of companies are quickly and easily scalable.
3. *Exponential growth*: the business model must allow the ability to acquire users / customers exponentially, relying on distribution that allow access to a large number of customers / users and that favours a sale whose income and expenses are not linear, thus allowing a great profitability.

This business model, associated with the technological world, generally has lower development costs compared to other legal forms and therefore, it usually needs a lower financing that facilitates its implementation. Usually, the capital comes from partners who receive a percentage of the company. In this sense, it is common for the first partners to be family, friends or early phase enthusiastic (phase also known by its acronym FFF - Friends, Family and Fools) and then, in more advanced stages receive funding from Venture Capital or Private Equity entities.

Start-ups are also characterized by their high risk, together with the expectations of great rewards thanks to the aforementioned scalability and exponentiability of their business. This has also favoured the support of corporate sponsors, or business angels, specialized in making small investments in several Start-Up, aiming to that greater probability that one of them will achieve rapid growth.

As a summary, some of the differentiating elements of the start-up that explain its nature are:

- Temporary character
- Novelty
- Reduced implementation costs
- Attraction of external investors
- Risks raise to high levels of profitability and rate of disappearance



3.4 Spin off

A spin-off is a company created within another company or existing organization (including public institutions) that acts as an incubator and under which ends up acquiring its own commercial and legal independence. One of the main characteristics of this type of initiatives is that the parent company can also be a potential market or beneficiary of the services provided by the spin-off.

There are two types of spin-off. On the one hand, the business or industrial spin-off, which arises from a previous company; and, on the other hand, the academic spin-off, which arises in universities or research centres and usually have a technological nature.

There are several reasons for creating a spin-off, but generally have as a common reason to support skilled workers who are developing a new line of business. Thereby, companies retain talent in new business projects while exploiting new business niches and creating new opportunities for the parent company. Other reasons for the creation of a spin-off are related to tax, commercial or labour planning or financial strategies that try to raise funds to develop a specific business unit. In summary, the following reasons can be considered for the creation of a spin-off:

- To retain talent within the Company structure
- To open new business niches
- To improve the management
- To develop new ideas
- Business survival
- Tax, commercial or labour planning



4 PROCEDURES FOR THE CONSTITUTION PROCESS

The registration of a company in the Mercantile/Commercial Registry, produces its full legal capacity. As mentioned, we must distinguish between natural and legal persons. Natural persons have legal personality from the moment of birth, while legal entities must carry out the appropriate procedures to acquire it.

4.1 SPAIN

The Ministry of Economy, Industry and Competitiveness has facilitated two web portals in which it is possible to carry out in a telematic way the procedures of constitution and launching of a Society.

The Information Center and Business Creation Network (www.portal.circe.es), is a system that allows to carry out the procedures for setting up and launching certain mercantile companies in Spain. It is also possible to carry out the termination of individual business (self-employed) as well as the legal forms of: Limited Company, Limited Company of successive formation and Limited Company of New Business.

In addition, from the same Ministry, another web portal has been provided in which it is indicated all the necessary steps for the formalization of any type of existing legal form. The companies, except for the exception of individual entrepreneur (autonomous), acquire legal personality when they register in the Commercial Registry. Thus, in the mentioned portal you can find three direct links to: Adopt legal personality¹; start a business²; and register the company in the Commercial Registry³.

4.2 FRANCE

In France, companies can choose between a variety of legal status, both for single and multiple members and Unlimited or Limited liability. The management and steps needed to fund a company, independently of its type, are carried out by the "Contribution Fonciere des Entreprises" (CFE). Depending on the type of entity which is interested to be funded, the CFE office to go to can be found at the following link: <https://www.insee.fr/fr/information/1972060>

Nevertheless, the "guichet unique" is an online one-stop shop for the foundation of new companies. In this one-stop shop⁴, the creation of new entities can be followed

¹ www.ipyme.org/es-ES/creaciondelaempresa/ProcesoConstitucion/Paginas/Proceso.aspx

² www.ipyme.org/es-ES/creaciondelaempresa/Paginas/Tramites.aspx

³ www.ipyme.org/es-ES/DecisionEmprender/FormasJuridicas/Paginas/ProcesoConstitucionA.aspx?cod=11&nombre=Inscripci%C3%B3n+de+la+empresa+en+el+Registro

⁴ www.guichet-entreprises.fr/mgun_accueil/comment_creeer_entreprise.jsf?cid=2351



step by step, from the election of the legal status to the first months of the company's business operation, including potential support mechanisms and the needed paperwork to be completed.

4.3 PORTUGAL

Following the Spanish and French cases, an online tool is also available for the constitution of a company in Portugal. It only takes 8 steps with a total time of 36 minutes to fund a company through the "Empresa na hora" webpage. The process has been simplified and from now on, it is no longer necessary to obtain a certificate of company admissibility from the National Registry of Companies (RNPC), nor to sign a public deed.

This simple process has made Portugal one of the leading European countries in terms of reduced costs and less bureaucratic procedures when creating a new company.



5 LINKS OF INTEREST / SOURCES

Doing Business – Country file: Spain

<http://espanol.doingbusiness.org/data/exploreconomies/spain>

Doing Business 2018 report - Spain

<http://espanol.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/ESP.pdf>

Information Centre and Business Creation Network (Centro de información y Red de Creación de Empresas –CIRCE)

<http://portal.circe.es>

Process of incorporation and adoption of legal personality - Spain

<http://www.ipyme.org/es-ES/creaciondelaempresa/ProcesoConstitucion/Paginas/Proceso.aspx1>

Procedures for setting up - Spain

<http://www.ipyme.org/es-ES/creaciondelaempresa/Paginas/Tramites.aspx>

Procedures for the creation of an entity - Spain

<http://www.ipyme.org/es-ES/DecisionEmprender/FormasJuridicas/Paginas/ProcesoConstitucionA.aspx?cod=11&nombre=Inscripci%C3%B3n+de+la+empresa+en+el+Registro>

Practical guide for the creation of University "Spin Off" companies

http://www.juntadeandalucia.es/export/drupaljda/133172302205142__creacion_spin_off.pdf

Doing Business – Country file: France

<http://www.doingbusiness.org/data/exploreconomies/france>

Doing Business 2018 report- France

<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/FRA.pdf>

Online one-stop shop for the foundation of new companies - France

www.guichet-entreprises.fr/mgun_accueil/comment_creeer_entreprise.jsf?cid=2351

Quick comparison of different legal structures - France

<https://www.afecreation.fr/pid1627/comparaison-rapide.html?espace=1&tp=2>



Doing Business – Country file: Portugal

<http://espanol.doingbusiness.org/data/exploreeconomies/portugal>

Doing Business 2018 report - Portugal

<http://espanol.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/PRT.pdf>

Empresa en Hora - Portugal

http://www.empresanahora.mj.pt/ENH/sections/PT_inicio.html

Quick comparison of different legal structures - Portugal

<https://www.portugalespanha.org/index.php/servicos/assessoria-comercial/oportunidades-de-negocio-espanha/portugal?task=download&id=6>



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<https://www.transener.eu/en/overview-en/partnership>



<https://twitter.com/transener?lang=en>

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