



Startup Weekend Barcelona

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BASIC LEGAL EMPLOYER'S GUIDE DRAFTED BY

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1. PRESENTATION

TREPAT, GARCÍA I GALLOSTRA ADVOCATS, S.L.P. (**TGG LEGAL**) is a multidisciplinary professional law firm with offices in Barcelona and Madrid. Its main activity is the provision of legal advisory services (mercantile, civil and labour) and tax and economic-accounting services. For that purpose, our staff includes lawyers, economists, labour science graduates and qualified administrative staff for carrying out its functions.

TGG LEGAL is also a member of an important international alliance of legal firms which operates in Europe, North America, South America and the Middle East. This allows us to co-operate with prestigious companies in different jurisdictions and provide comprehensive, global advice counselling in all manner of international operations.

TGG LEGAL is once again taking an active part in the Barcelona Startup Weekend with a view to offering a first response in all issues of a juridical, tax and accounting nature which participants may encounter during the event, and fervently hopes that the projects set up at the Barcelona Startup Weekend will enjoy continuity and that we can accompany them in their development and establishment.

For this reason, **TGG LEGAL** has prepared this Basic Legal Employer's Guide with which it intends to provide a global vision from the legal, accounting and labour standpoint of how to organise an entrepreneurial project and the obligations that this entails.

If you have any doubts or comments, or if you wish to arrange a personal visit to discuss any other issues which interest you, please contact joaquim.capdevila@tgglegal.es, or call us on +34 93 241 39 70 and we will be glad to attend to you and offer you the best advice in accordance with your interests.

2. INTRODUCTION TO CORPORATE ENTERPRISES

Corporate Enterprises are characterised as trading companies in which the shareholders respond for the company debts only up to the limit of their capital contributions.

The majority of the different types of Corporate Enterprises take the form of Private Limited Companies or Public Limited Companies.

Both types of company are regulated by the provisions of the Commercial Code of 1885 and by Royal Legislative Decree 1/2010 (2 July 2010), approving the revised text of the Corporate Enterprises Act (LSC).

The main differences between Private Limited Companies and Public Limited Companies are the following:

PRIVATE LIMITED COMPANIES	PUBLIC LIMITED COMPANIES
Share capital divided into equity participations	Share capital divided into shares (nominative or bearer shares)
Minimum share capital: €3,000, which must be fully paid up.	Minimum capital: €60,000 of which at least 25% must be fully paid up and subscribed.
There may be privileged participations (with respect to economic and political rights – with the option of plural votes)	There may be privileged shares (only with respect to economic rights; political rights are not affected - there is no plural vote)
They cannot issue debentures	They can issue debentures
They cannot be listed in secondary markets	They can be listed in secondary markets
Greater agility and lower management costs than Public Limited Companies	Less agility and higher management costs than Private Limited Companies

3. INCORPORATING A CORPORATE ENTERPRISE

To incorporate a Private Limited Company or a Public Limited Company, the following processes must be carried out:

1.- RESERVING A NAME	A name is requested from the Central Companies Registry which issues a certificate that will be attached to the deed of incorporation.
2.- CAPITAL CONTRIBUTION	It may be monetary or non-monetary. In the case of being non-monetary in a Public Limited Company, a report from an independent expert designated by the Registrar of the Companies Registry will be necessary.
3.- GRANTING OF THE PUBLIC DEED OF INCORPORATION	The deed of incorporation is signed in the presence of a Notary Public. This document accredits the identity of the shareholders and includes a bank certificate confirming payment of the capital or as applicable, a report from an independent expert, a certificate of the reservation of the name and the company articles.
4.- APPLICATION FOR THE PROVISIONAL TAX IDENTIFICATION NUMBER AND INCLUSION IN THE BUSINESS CLASSIFICATION INDEX	This must be requested from the Tax Agency for the company to initiate its activity.
5.- PAYMENT OF THE TRANSFER TAX	At the present time, company incorporations and capital increases are exempt from payment of this tax.
6.- REGISTRATION IN THE COMPANIES REGISTRY	It is compulsory to register the public deed of incorporation in the Companies Registry in the area where the company's registered office is based
7.- OBTAINING OF THE TAX IDENTIFICATION NUMBER AND PROCESSING OF THE DIGITAL CERTIFICATE	This is requested from the Spanish Tax Agency.

4. SHAREHOLDER AGREEMENTS

Shareholder agreements (also known as extra-statutory agreements) are public or private agreements made for the purpose of (i) regulating the relations between several founder shareholders, or (ii) regulating the relations between founder shareholders and potential new financial shareholders who may hold a stake in the company after entering into talks regarding finance, in which the founder shareholders are asked to sign shareholder agreements that include a waiver of some of their rights.

A shareholder agreement is intended to prevent situations of conflict or propose a solution to them by establishing the company's operating rules, the decision-taking processes, the commitments assumed by all or some of the shareholders and the legal consequences of breaching those obligations, above and beyond the general regulations established in the company articles.

The reason for these agreements is due to the content of the LSC which establishes that they can have articles of incorporation which are insufficient or too inflexible to regulate the commented issues.

Some of the habitual clauses in Shareholder Agreements are:

- System applicable to shareholders working in the business and the possible retention of shareholders who are of key importance in developing the company's business activity.
- Regulation of matters reserved exclusively for the General Shareholders' Meeting (reinforced majorities): approval of business lines, strategy, etc.
- Management and administration: indication of the management bodies, remuneration of posts, appointment of the Administrator or CEO, etc.
- Dividends policy: establishment of a minimum obligatory dividend after covering the legal obligatory reserves and repaying loans, if any.
- System for transferring equity participations / shares and blocking or the possibility of new shareholders entering, whether entrepreneurs or financiers.
- Vote syndication agreements.
- Anti-dilution protection.
- Agreements for unblocking the company (purchase and sales options, drag along or tag along rights, Andorra agreements, etc.).

5. ACCOUNTING AND TAX OBLIGATIONS

5.1. ACCOUNTING OBLIGATIONS.

All companies must keep orderly accounting records that are appropriate for their business activity, to permit the chronological monitoring of all its transactions and the regular preparation of balance sheets and inventories.

The books will be kept directly by the entrepreneur or by other duly authorised people, without prejudice to the liability of the former.

5.1.1. Official Books:

a) Inventory book and Annual Accounts, which should include:

- An detailed opening entry with the initial balance (for the year) of the company.
- A quarterly transcript of the trial balances, including sum totals and balances.
- A transcript of the inventory and the annual accounts at the close of the year.

b) Daily ledger: this consists of the different accounting entries, depending on the events taking place, such as accounting entries of invoices issued and received, payroll accruals, depreciation and prepayments and accruals, bank reconciliation, etc., in accordance with the General Accounting Plan which has been a compulsory requirement since 1 January 2008.

5.1.2 Annual Accounts:

The annual accounts should be clearly formulated and give an accurate picture of the company's financial situation and results.

5. ACCOUNTING AND TAX OBLIGATIONS

The annual accounts are made up of the:

- Balance sheet
- Profit and loss account
- Statement of changes in net worth for the year
- Cash flow statement
- Management report

The annual accounts should be formulated by the company Administrators within 3 months from the close of the financial year and they should be approved by the Ordinary Shareholders Meeting during the first six months of the financial year that follows the year for which they were approved.

5.2 TAX OBLIGATIONS

Without detriment to the fact that the tax obligations vary, depending on the type of company, its turnover, etc., by way of example, a Private Limited Company is obliged to formulate and present the official forms in order to comply with the following tax obligations:

- Form 115, withholding and payments on account stemming from leasing operations, every quarter.
- Form 180, summary of withholdings and payments on account stemming from leasing operations, every year.
- Form 111, withholdings and payments on account corresponding to salaried and professional staff, every quarter.
- Form 190, summary of withholdings and payments on account corresponding to salaried and professional staff, every year.
- Form 347, declaration of operations with third parties, every year.
- Form 303, quarterly VAT returns.
- Form 390, VAT summary, every year.
- Form 200, Corporate Income Tax, every year.
- Form 202, payment on account of Corporate Income Tax, three times a year.

6. LABOUR AND SOCIAL SECURITY OBLIGATIONS

After registering the business activity as the business owner (natural person) or its administrator or a member of the board of directors of a company, the company must be registered in the respective social security system. This depends on the different circumstances existing in each case.

Registration with the Treasury Department as the business owner (natural person).		Self-employed Workers Scheme		
50% of the share capital is distributed among the shareholders living with them up to the 2nd degree of kinship		Self-employed Workers Scheme		
Provides remunerated services to the company, either due to being the administrator or through an employment contract		0% to < 25% of the share capital	25% to < 33% of the share capital	>= to 33% of the share capital
Holds the post of company administrator or director	Exercises management and administration functions	General Assimilated Scheme	Self-employed Workers Scheme	Self-employed Workers Scheme
	Does not exercise management and administration functions	General System	General System	Self-employed Workers Scheme
Does not hold the post of company administrator or director	Exercises management and administration functions	General Assimilated Scheme / Senior Management*	Self-employed Workers Scheme	Self-employed Workers Scheme
	Does not exercise management and administration functions	General Scheme	General Scheme	Self-employed Workers Scheme

The registration entails paying the respective social security contribution quotas every month. Self-employed workers may opt for the contribution base they wish to contribute to, based on a series of minimum and maximum limits established every year. The respective monthly payments will be calculated based on the chosen contribution base. It is worth mentioning that the decision regarding the contribution base will determine the future social security benefits each person is entitled to receive, since the calculation of these is based on the years of contribution and the chosen contribution bases.

This registration is also compulsory in the case that a self-employed worker is contributing under the general scheme due to being a salaried worker in another company. In the event of exercising different activities that lead to their inclusion in the special self-employed workers system, the contribution to this system will be single (only one amount must be paid for all the activities exercised), but it is obligatory to inform the social security authorities of all the activities that are being carried out.

6. LABOUR AND SOCIAL SECURITY OBLIGATIONS

In the event of hiring salaried workers, employers must honour several obligations with respect to those workers:

1. Opening of a payments account with the social security: this step is essential in order to hire personnel.
2. The corresponding Labour Authority will be informed of the opening of the workplace.
3. Acquisition and legalisation of the Labour Inspection and Social Security Inspections Record Book. This book must be kept in the workplace and made available to the inspection authorities, who may visit the workplace at any time.
4. Providing occupational risk prevention organisation: it is compulsory to implement an occupational risk prevention area in the company. There are several legal alternatives for organising this area, and the most habitual is to arrange this with an External Prevention Company.

Every month, the employees' pay slips must be prepared and their social security contributions must be made. In this respect, several aspects must be complied with in relation to the pay slips and to the provisions of the collective bargaining agreement that applies to the company. This establishes a minimum framework regarding the rights of the workers in terms of wages and labour and assistance affairs and the obligations with respect to the tax administration, since the employer is the liable party who must calculate, withhold, retain and pay in the legally-established Personal Income Tax amounts.

7. FINANCING METHODS

INTERNAL FINANCE	Profits earned during the financial year	
	Voluntary reserves which have been constituted with the profits obtained in different financial years	
EXTERNAL FINANCE	Not constituting debt	<p>Through shareholder contributions which may or many not mean a capital increase, charged to:</p> <ul style="list-style-type: none"> - Monetary contributions - Non-monetary contributions - Offsetting loans - Charged to profits or voluntary reserves of the company <p>Through Crowdfunding in the donation, capital or royalties models.</p>
	Constituting debt	<p>a) In the mid and short term.</p> <ul style="list-style-type: none"> - Loans and credits maturing within more than one year - Redemption of debentures (only Public Limited Companies) - Lease agreements with purchase or leasing options - Crowdfunding in the reward-based or debt model
		<p>b) Short term</p> <ul style="list-style-type: none"> - Loans and credits maturing within one year - Trade discounts - Supplier loans – payment deferrals

8. CONTRACTS / E-COMMERCE

This section provides information to employers about the legal obligations to which they are subject due to the mere fact of exchanging information with potential customers or consumers, and the warranties they should provide to them.

7.1.- ACT 34/2002 (11 JULY 2002) CONCERNING INFORMATION SOCIETY AND E-COMMERCE SERVICES (LSSI)

The reason for the existence of this Act was to establish a legal framework that would generate trust among all the parties intervening in e-commerce as a consequence of the expansion of telecommunications and the Internet as a method for exchanging information. In this respect, the LSSI applies to all information society service providers established in Spain and to the services provided by them.

First of all, it is important to note that the LSSI establishes that the provision of information services will not be subject to previous authorisation, without prejudice to the obligations that must be honoured by the service providers.

One of the obligations imposed on information society service providers in Spain is to provide the respective Companies Registry with a domain name and an Internet address used to identify them on the Internet.

Likewise, information society service providers are obliged to have resources which provide the recipients of those services and the competent authorities with free, easy, permanent and direct online access to the data which allow those service providers to be identified (the legal notice that is posted in the website).

8. CONTRACTS / E-COMMERCE

All commercial communications and promotional offers to be made by the service provider must be clearly identified as such and the natural person or body corporate making them must also be identified. This means that the start of the message must contain the word “publicity” or “publi”. These commercial communications cannot be made by e-mail or any other equivalent online communication method unless the recipient has first expressly requested or authorised them.

With respect to contracts established via electronic methods, it is important to say that the LSSI establishes that contracts made via electronic methods will produce all the effects foreseen by the law provided that they are consented to and that all other requirements necessary to make them valid have been fulfilled and the service provider complies with the obligations set forth in the LSSI. These obligations include the following:

- Information related to the processes used to formalise the contract.
- Information related to whether the service provider will file the electronic document used to formalise the contract and whether it will be accessible.
- Information related to the technical resources made available for identifying and correct errors in entering the data.
- Information regarding the language or languages in which the contract may be drafted.
- After formalising the contract, an acknowledgement of receipt will be sent to the user by e-mail within 24 hours of receiving the acceptance or the respective confirmation.

Lastly, article 22.2 of the LSSI regulates the use of “Cookies”, and in particular, it establishes that service providers may use devices for storing and retrieving data in the terminal equipment of the recipients as long as they have given their consent after being provided with clear, complete information about their use.

8. CONTRACTS / E-COMMERCE

The LSSI does not regulate the use of cookies in detail, and so the Spanish Data Protection Agency has implemented their regulation by establishing the following obligations, among others:

- The provision of information about the type of cookies used in the website.
- The user must give their express consent to the installation and use of cookies (except those authorised).
- Information will be furnished that is sufficient to enable users of the website to understand the concept and purpose of the cookies, including the necessary information about revoking consent and eliminating those cookies.
- The information related to cookies must be presented as a specific document or information and it will not be included in other contents of the website, such as the legal notice.

7.2.- ROYAL LEGISLATIVE DECREE 1/2007 (16 NOVEMBER 2007) APROVING THE REVISED TEXT OF THE GENERAL CONSUMERS AND USERS DEFENCE ACT OR OTHER ADDITIONAL LEGISLATION (Users and Consumers Act).

The Users and Consumers Act applies to all relations between consumers and companies. For the purposes of the Act, consumer or user is held to be a natural person or body corporate acting within an area other than a business activity, i.e., one who intervenes in consumer relations for private reasons as a final recipient, without incorporating goods and services into production processes.

This Act is intended to protect users and consumers, who are the weakest parties in negotiating contracts with companies.

It is important to bear in mind that the Act establishes the annulment of the prior waiver of rights acknowledged by the act in favour of users and consumers.

8. CONTRACTS / E-COMMERCE

Acceptance of the contract will in all cases be express and a lack of response will not be considered an acceptance.

Likewise, the Users and Consumers Act also regulates the general contractual conditions or clauses not negotiated individually, and clauses which are considered abusive.

Clauses not negotiated individually must comply with the following requirements:

a) They must be specific, clear, simply written and able to be understood directly without the need to refer to texts or documents not previously furnished or furnished simultaneously to the conclusion of the contract.

b) They must be accessible and legible, such that consumers and users can obtain information about their existence and content prior to signing the contract.

Abusive clauses are clauses whose stipulations are not negotiated individually and which are contrary to the requirements of good faith and cause harm to consumers and users, through a relevant imbalance in the rights and obligations of the parties stemming from the contract. Such clauses will be considered void with full rights, and held as not included.

In relation to online contracts regulated by Heading III of the Users and Consumers Act, considerable importance is attached to pre-contractual information, i.e., the subject considered to be the consumer or user must have all the contractual information, payment methods, etc., available before signing the contract. In this sense, it will in all cases be necessary to obtain the express consent of the subject, and no unsolicited correspondence may be sent.

8. CONTRACTS / E-COMMERCE

Furthermore, article 101 of the Users and Consumers Act regulates the right to desist which will be at least seven days.

7.3.- ORGANIC ACT 15/1999 (13 DECEMBER 1999) CONCERNING PERSONAL DATA PROTECTION (LOPD)

The mission of the LOPD is to guarantee and protect public liberties and the fundamental rights of individuals, and in particular their honour and personal and family privacy with respect to the processing of personal data.

The LOPD obliges all people or companies who, during the course of carrying out their business activity, obtain and use personal data, to create files containing those data, respecting the provisions of the LOPD.

Firstly, the LOPD establishes that all people or companies creating data files of a personal nature must first notify the Spanish Data Protection Agency (AEPD). Likewise, they must notify the AEPD of all changes made regarding the purpose of the file, the file manager and the address where the file is located.

The LOPD determines that different safety measures will be implemented depending on the information in the files. The file manager should prepare a security document containing the technical and organisational measures in keeping with the current security legislation which must be known by the personnel accessing the personal data files and must be complied with.

In addition, consent allowing the party responsible for processing the personal data to inform a third party of those data will be annulled if the information provided to the interested party makes it impossible for that party to know the purpose for which the data whose communication is authorised data will be used, or the type of activity carried out by the third party to whom they are to be communicated. That consent will be considered revocable.