

IMMIGRATION TO SPAIN - GOLDEN VISA PROGRAM AND COMPANY SETUP - ANSWERS & QUESTIONS

De Micco & Friends Immigration Lawyers

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THE SPANISH RESIDENCE FOR INVSTORS

Which are the general conditions to be eligible for the visa?

The law has considered three conditions which can render an investor eligible for the visa (meeting one of them is enough to qualify the applicant):

1. Buy real estate with a minimum value of € 500,000 (the first € 500,000 must be free of liens)
2. Invest € 2 million in Spanish bonds; € 1 million in shares of Spanish companies; or deposit € 1 million in a bank account
3. Undertake a business project of general interest to be executed in Spain

Are there any limitations as to the buying of real estate?

The only limitation is that each applicant must invest at least **€ 500,000** and the property must be free of liens and encumbrances. All types of property are eligible and may be used or leased freely.

For how long is the investor's visa valid? Can the investor apply for a residence permit?

The investor's visa is valid, initially, for one year. The investor can apply thereafter for a residence permit which is valid for **2 years** and renewable for 2-year periods.

Does the applicant need to physically stay in Spain?

Applicants that want to keep their residence after the initial term **must travel at least once to Spain**. This is one of the conditions in order to apply for a residence permit.

Are there any requirements when applying for a residence permit?

In order to renew the permit, the applicant must fulfil the initial conditions when the visa was issued: ie, maintain an investment of € 1 or € 2 million; be the owner of real estate valued at € 500,000; maintain the investment project free of debts before the Internal Revenue Service and Social Security and obtain a favourable report from the Directorate General of Trade and Investment.

Can residents apply for citizenship?

As a general rule, after a **ten-year residence** period residents can apply for Spanish citizenship. Citizens from Latin-American countries, Andorra, Equatorial Guinea, Philippines, Portugal and of Sephardi origin just need a **two-year residence** period.

Are there language requirements in order to apply for citizenship?

Not yet, but there is a draft law in the works that will render a minimum knowledge of Spanish compulsory.

Which countries do not need visa to enter Spain?

All EU countries and Andorra just need their ID cards.

The following countries just need a passport **valid for minimum 3 months** after the end of the traveller's stay (maximum stay is 90 days):

Albania, Antigua and Barbuda, Algeria, Argentina, Australia, Azerbaijan

- Bahamas, Barbados, Bermudas, Bolivia, Bosnia-Herzegovina, Brazil, Brunei
- Canada, Chile, Colombia, Costa Rica, Croatia
- Egypt, El Salvador, Ecuador
- Georgia, Guatemala
- Honduras, Hong Kong
- Israel
- Japan
- Kazakhstan, Kuwait
- Macao, Macedonia, Malaysia, Mauritania, Mauritius, Mexico, Moldova, Monaco, Montenegro, Morocco
- New Zealand, Nicaragua,
- Panama, Paraguay, Peru, Philippines
- Russia

- Saint Christopher and Nevis, Senegal, Serbia , Seychelles, Singapore , South Africa , South Korea
- Taiwan , Thailand , Tunisia , Turkey
- Ukraine , United Arab Emirates, United States Uruguay
- Vatican, Venezuela, Vietnam

(A biometric passport is required for some countries)

Is reunification possible?

The following family members are eligible for reunification:

- spouse or de facto partner
- children under legal age (18)
- sponsor's parents (if they are over 65 years old)
- spouse's parents (if they depend economically on the sponsor)
- minors and disabled under the sponsor's custody.

As regards the reunification of the spouse's parents, evidence must be produced to prove that the parents do not have the financial resources to support themselves.

SET UP A COMPANY IN SPAIN

What steps are necessary for setting up a company in Spain?

The basic requirements for setting up a company in Spain are its incorporation before a Notary Public and its filing with the "Registro Mercantil" ("Mercantile Register").

Nonetheless, in order to meet these requirements, the following steps must be carried out:

- a) In case of doing it by means of a representative, granting of representative powers by the founder/s to the person who will be responsible for incorporating the company.
- b) Application for a Tax Identification Number ("NIF") in the case of a legal entity, or a NIE (Foreigners Identity Number) in case of a natural person, of the partners and foreign directors of the company that is to be incorporated.
- c) Application for a certificate to prove that no other company is operating under the same name.
- d) Opening of a bank account for transactions and to obtain a bank certificate.
- e) Incorporation of the company before a Notary Public by means of a deed of incorporation.
- f) Application for provisional Tax Identification Number for the company.

- g) Settlement of the “Impuesto sobre Transmisiones Patrimoniales” –“Capital Transfer Tax”.
- h) Filing with the “Registro Mercantil” (“Mercantile Register”).
- i) Obtaining the final Tax Identification Number of the Company.
- j) Legalization of Official Trade Books.
- k) Tax procedures.
- l) Employment procedures.

What are the most common types of companies in Spain?

The most common types of companies are:

- “Sociedad Limitada” –“Limited Company”-;
- “Sociedad Anónima” –“Public Company”-;
- “Sociedad Anónima europea” –“European Public Company”-;
- “Sociedad Civil” –“Civil Company”-;
- “Sociedad Colectiva” –“Collective Company”-;
- “Sociedad Comanditaria” –“Limited Partnership”-;
- “Sociedad Comanditaria por Acciones” –“Limited Partnership by shares”-;
- “Cooperativa” –“Co-operative”-.

Nonetheless, in practice, most companies in Spain are either “sociedades anónimas” –“public companies (S.A.)”- or “sociedades limitadas” –“limited companies (S.L.)”-, since both limit the liability of the shareholders to the amount that they have invested.

Thus, according to statistics from the “Registro Mercantil Central” -“Central Mercantile Register”-, approximately 98% of Spanish companies are “sociedades limitadas” –“limited companies (S.L.)”- and the remaining 2% are “sociedades anónimas” –“public companies (S.A.)”.

The presence of other types of company is negligible. For more information and for a comparison between public companies and limited companies, see the following worksheet.

What documents are necessary for the establishment of a company in Spain?

The following documents are necessary when incorporating a company in Spain:

1. Power of attorney. The founders should grant a sufficient power of attorney to the person responsible for incorporating a new company in their name in Spain.
2. NIF or NIE of the foreign partners and directors. If the founders wish to appoint a non-resident person as their representative, then this person may give a power of attorney to

- someone who can apply for the NIE or NIF (depending on whether the new director is a natural person or a legal entity) on their behalf.
3. Certificate of availability of the company name for registration. The chosen name of the new company must be requested to the “Registro Mercantil Central” –“Central Mercantile Register”- which will, in turn, confirm the reservation of the same and check to ensure that it is available and may be used by the new company. The certificate of availability of the company name can be requested by the Notary Public through the use of Web-based technology. In principle, this certification is valid for 3 months and should be renewed if the new company is not incorporated within that period. Nonetheless, no one else may reserve the same name within the following 3 months so, in practice, the reservation remains valid for 6 months.
 4. Bank certificate proving that the relevant payment has been made. When the new company is incorporated, the relevant sum is usually paid in cash or transferred to a Spanish bank account in the name of the new company with the words “sociedad en formación” –“-in process of incorporation-” added at the end. For the opening of this account, the bank will require a document that proves that all the steps to create a company are being taken, normally a copy of a certificate stating that the name that the new company intends to use is not being used by any other company. The deed of incorporation shall include the receipt of the bank certificate.
 5. Documents required by the Spanish Notary Public.

In addition to the documents mentioned in the preceding paragraphs, the following will also be necessary:

- By-laws of the new company including, at least, the minimum requirements stipulated by Spanish law.
 - Original identification documents and powers of attorney of the founders that incorporate the company.
 - Foreign investment declaration duly filed (Form D-1A). This document is compulsory although its purpose is only informative, and it must be delivered to the “Secretaría de Estado de Comercio” –“Secretary of State for Trade”- within the first month of the new company’s existence. The Notary Public may take charge of this task, if so wished.
6. Deed of actual ownership. Notaries Public shall identify the natural persons (name, surnames, nationality and identification number) that own or control, directly or indirectly, a stake over 25% of the share capital or of the voting rights of a Spanish company or the natural persons that by other means have control, either directly or indirectly, of the management of the aforementioned company. The companies that quote in a regulated market of the European Union or other assimilated countries are exempt of this.
 7. NIF (Provisional Tax Identification Number) before the Spanish Tax Agency (“Agencia Tributaria”). Notaries Public may request the provisional NIF by electronic means on behalf of the company.
 8. Settlement of the Tax on Capital Transfer and Stamp Duty at the relevant payment offices according to the address of the company.

9. Documents needed in the “Registro Mercantil” –“Companies Register”-. The public deed of incorporation of the company must be submitted. It can be submitted by the Notary Public by electronic means.
10. Obtaining of the final NIF before the Tax Agency.
11. Official accounting books authenticated before the Companies Register.
12. Fiscal registration of commencement of activity before the Tax Agency, if appropriate.
13. Registration of the company with the Social Security, if appropriate.

The fees and costs

The cost of incorporating a company depends, amongst other things, on the share capital of the new company. The average cost of incorporating a “sociedad limitada” –“limited company (S. L.)” in Spain is 550 Euros (taking into account a capital of 3,000 Euros) plus the contribution of the aforementioned capital, while the cost of incorporating a “sociedad anónima” –“public company (S. A.)”- is 750 Euros (taking into account a capital of **60,000 Euros**) plus the contribution of the aforementioned capital.

When the share capital of the “sociedad limitada” –“limited company (S. L.)”- is not higher than 3,100 Euros and some requirements are met, the fixed amount of 60 and 40 Euros respectively will be applied as Notary’s fees and Registry’s fees, respectively.

The share capital is not a cost but a payment that remains available to the company for the pursuit of its business.

Incorporate a branch

A branch is a permanent establishment with no legal identity on its own. It is completely dependent upon and subordinate to its ‘parent’ company and may undertake any activity that features among the stated objectives of its head office. Branches, unlike parent companies, do not have share capital, so they do not require a minimum contribution in terms of capital.

Notary, administrative and registry average fees amount to approximately 600 Euros. The optional financial investment wished to be made should be added to this 600 Euro.

Incorporate a representative office?

A representative office has **no legal identity on its own** and depends upon its parent company. Representative offices do not have formal management bodies, so the official representative must act on behalf of the representative office in accordance with the power of attorney granted to him/her. Representative offices have limited areas of activity. They may never become involved in financial transactions. As a rule, they limit their activities to co-ordination, co-operation or promotion of the parent company business. Representative offices are not required to set aside share capital. Start-up costs amount to around **450 Euros**.

The time to incorporate companies

Incorporating a **company or a branch** in Spain takes approximately between three weeks and a month, which could take longer given the process to obtain a Tax Identification Number and a Foreigner's Identity Number, granting powers of attorney, gathering other needed documentation and internal decisions of the founders.

Incorporating a **representative office** in Spain takes approximately one day, which could take longer given the process to obtain a Tax Identification Number and a Foreigner's Identity Number, granting powers of attorney, gathering other needed documentation and internal decisions of the founders.

Which is the most appropriate manner for setting up a company according to my business needs?

As a general rule, setting up a business requires the creation of a "sociedad anónima" –"public company (S.A.)"- or a "sociedad limitada" –"limited company (S.L.)"- choosing which type of company depends, among other factors, on the strategy for each business and the activities to be carried out in each specific case. A branch could be more convenient given the fewer legal obligations. A representative office will only be used in the event that the activities carried out are merely those of coordination, collaboration or promotion of the head office's activity.

What is a branch or subsidiary?

A **branch office** is not a separate legal entity. It is dependent on the head office and does not require a minimum allocation. This option may be of interest if the head office wishes to have greater control over the branch's activity.

Keep in mind that the parent company will be held accountable with its own capital for the activities of its branch. A subsidiary, because it is an independent legal entity, generally has greater flexibility of action and shares the risk with its head office.

What is a representative office?

The **representative office** will only be useful when no economic activity is to take place in Spain and only if it is engaged in coordination, collaboration or promotion of the parent company's office.

What is a S.A. or S.L.?

In general terms, a "sociedad limitada" –"limited company (S.L.)"- is used because:

- 1- It requires contributing less capital.
- 2- It requires less administrative formalities to operate.
- 3- It offers more flexibility for resolutions adopted by the partners.

A "sociedad anónima" –"public company (S.A.)"- is used in the following circumstances:

1. If an activity reserved by the Company Act will be carried out (banking companies, pharmaceutical companies, pension funds management companies, insurance companies, among others).
2. If significant movement of capital is expected.
3. If, as a shareholder, who will not take part in the management of the company, the intention is to be especially formal in the performance of the company's acts, which may have greater impact on the investment (for instance: merger, transformation, dissolution, convening an annual general meeting, capital reduction, non-monetary contributions, etc.)

In either case, before making a decision, consulting a legal and finance advisor ad De Micco & Friends is recommended.

THE NIE

What is a NIE?

The applicable regulations require in certain cases that foreign natural or legal persons in Spain obtain a Foreigner Identification Number. In the case of natural persons, "NIE", and, in the case of legal entities, a Tax Identification Number, "NIF".

Who needs a NIE or a NIF?

Foreigners, who due to their financial, professional and social interests have any interests in Spain, will be given, for identification purposes, a sequential number that is personal, unique and exclusive.

This number will be the identification number and must appear on all the documents that are issued or processed to such person.

Foreign natural persons or legal entities in Spain must have a Spanish NIE or NIF, among others, in the following cases of mercantile practice: when they are partners or directors of Spanish companies, to grant deeds of sale of real property and deeds related to rights over properties, to carry out any sort of financial transaction within Spain (for example, opening a bank account) or completing any government form from the Spanish "Oficina de Extranjeros" ("Provincial Immigration Office") or "Agencia Tributaria" ("Tax Agency").

When can I apply for a NIE?

A NIE may be previously applied for in the consulate of the country of origin, or after arrival in Spain, at the relevant Provincial Immigration Office ("Oficina de Extranjería").

However, it is advisable to begin application proceedings before initiating any formalities in connection with incorporating a company, to avoid delays in the process.

The filing of the NIE application shall be made in person or by a legal representative. Representatives must have a power of attorney authorizing them to act on behalf of the foreigner to obtain his NIE.

A NIF must be requested as a requirement prior to incorporating a company in Spain or before making any delivery, providing or acquiring goods or services, collecting sums or making payments, or for the performance of any corporate or professional activity.

What documents are necessary when applying for a NIE?

For requesting a NIE you need:

1. A completed version of Form 790 for payment of the corresponding fee.
2. A standard form (Form EX15).
3. Complete passport or travel identification or, when necessary, a valid identity card.
4. Statement of the reasons for the application.
5. Applications submitted by the representative appointed by the person concerned are accepted, if the following documents are attached:
 - A completed version of Form 790 for payment of the corresponding fee.
 - Standard application form (Form EX15).
 - Updated copy of all the pages of the passport, certified by a Notary Public, legalized or apostilled when necessary.
 - Certification regarding the validity of the powers granted to the appointed representative.
 - Statement of the reasons for the application

When requesting a NIF, the following documents are necessary:

- Standard application form (Form 036).
- A photocopy of the identity card of the applicant, passport and NIE.
- Document certifying the existence of the foreign legal entity or “certificate of good standing” apostilled or authenticated and with a sworn translation into Spanish. This document may be the deed of incorporation in its country and the company by-laws filed with an official registry in its country or a certificate issued by a Notary Public or tax authorities certifying the company’s existence.
- Applications filed in Spain by the representative appointed by the company are allowed, provided these enclose representation documents, in other words, a power of attorney granted by the authorized representative of the non-resident company, duly formalized before a Notary Public and apostilled or authenticated and its sworn translation, if appropriate, which empowers a person to obtain a NIF.

Where can I apply for a NIE or a NIF?**NIE**

In Spain: at the Government Delegations and Sub-delegations via their services and the Provincial Immigration Office (“Oficina de Extranjería”) corresponding to the place in which the procedure began (i.e. where the services are provided, where the company is resident or domiciled...).

Abroad: at the diplomatic mission or consular section of Spain located in the foreigner’s country of residence, where the reasons for the application must be communicated.

NIF

At the Spanish Tax Agency (“Agencia Tributaria”) in Spain.

What is needed in order to formalize a valid power of attorney in Spain?

A power of attorney may only be granted by someone with legal authority: either the grantor himself, in case of a natural person, or a legal representative or director with sufficient powers, if the grantor is a legal entity.

1. In case of a Spanish legal entity, the power of attorney is granted in Spain. The person granting the power of attorney must appear before a Notary Public. Neither the presence nor the acquiescence of the attorney is necessary.
2. In case of a foreign legal entity, the power of attorney is granted in the country of origin. The person granting the power of attorney must appear before a Notary Public of the country where it is granted.
3. The power of attorney must then be legalized via the Hague Apostille of 1961 if the country where it is being granted is a country member of the 1961 Hague Apostille.
4. If the country where the power is being granted is not a member, all the steps of document legalization applicable to each case must be followed.
5. If the power is not granted in Spanish, then it must be translated by a sworn translator. In both cases, the grantor should present the document which proves her/his capacity and standing to grant the power.

What documents are required for the granting of a power of attorney?

The only document that is required in order to grant a power of attorney is proof that the grantor is an authorized representative:

- If the grantor is a natural person, a document that proves his/her identity
- If the grantor is the representative of a company, the public document which proves his authority
- If the grantor is the Secretary of a company, the public document which proves his office

THE SPANISH GOLDEN VISA PROGRAM

On September 28th. 2013 the law in support of entrepreneurs and their internationalisation came into effect, which introduces a new framework (Title V Section 2 International Mobility) for qualified immigration, promoting the international mobility of professionals and executives and attracting foreign investment.

The programme is based on the establishment of a flexible system that is specific to the concession of visas and residency authorizations while safeguarding those guarantees that are essential for our society's security and the sustainability of our public services. The objectives of the programme are as follows:

- To promote the enterprise culture and create an environment that is conducive to economic activity
- To facilitate the entry of investment and talent for the purpose of fostering economic growth and creating jobs

To obtain these objectives, entrance into Spain and residency permits are facilitated in the interest of the economy, for the following categories:

- Investor Residence
- Entrepreneur Residence
- Highly Skilled Professional Residence
- Research & Development & Training Residence
- Intra-Corporate Transferee Residence

THE INVESTOR RESIDENCE

What type of permit or visa is applicable to this category?

A Residence visa for a one-year residence.

Two-year residence permit that can be renewed:

- If the investment is maintained, and
- If you have made at least one visit to Spain during the residence period

To request the initial residence permit you must already hold an investor visa.

Who can apply?

Investors who make a significant investment in Spain:

- Real estate assets (€500,000)
- Shares or bank deposits (€1 million)
- Public debt (€2 million)
- Business projects in Spain considered being of general interest

Where is to I apply?

- Visas will be processed at the Spanish Consulate in your country of origin or residence
- Residence permits will be processed by the Large Business and Strategic Groups Unit [Unidad de Grandes Empresas y Colectivos Estratégicos (UGE-CE)]

What are the requirements and what documents are needed?

The general documents:

- Identity document or passport
- Public or private health insurance taken out with a company operating in Spain
- Background check
- Proof of sufficient funds to support the applicant and members of his/her family during residence in Spain

The specific documents:

Documents providing for a proof of the investment:

- **Property:** certificate of registration of the property and purchase deeds of the real estate
- **Unlisted shares and equity:** statement of investment filed with the Investments Register of the Ministry of Economy and Competitiveness (Registro de Inversiones)
- **Listed shares:** document from a financial broker registered with the National Securities Market Commission (CMNV) or the Bank of Spain
- **Public debt:** certificate from the financial institution or the Bank of Spain indicating that the applicant has been the sole owner of the investment for a period of not less than five years
- **Bank deposits:** certificate from the financial institution indicating that the applicant is the sole owner of the bank deposit
- **Business project:** before applying for a visa or permit, a favourable report is required on the business and entrepreneurial activity intended to be carried out in Spain

Where do I request the general interest report?

For visas, the report on entrepreneurial activity of interest should be requested from the Spanish Economic and Trade Office in the same area where the visa is requested.

For residence permits, the general interest report should be requested before applying for a residence permit at the Directorate-General for Trade and Investment.

What should I bring to request the report?

The business plan of the project, specifically: the professional profile of the investor, the type of business activity, the number of jobs that will be created, the features and qualifications required for each, where the project will be set up (geographical area), how much the investment will be and the origin of the funds.

What is a project in the general interest?

- A project that creates jobs
- Investments with a social and economic impact on the geographical area where they are made
- One that makes a significant contribution to scientific and/or technological innovations

More Information

Every immigration is an individual process. We strongly recommend talking to your lawyer at De Micco & Friends before starting any procedures.

Next steps, Lawyers and Advisors fees

If you are interested to be represented by our advisors in your immigration process, we need a mandate about the **evaluation** of your case. We check your individual situation and match it with the newest legal situation and the immigration possibilities here in Spain. The result will be a proposal about what is to do and what is the best way to reach the residency - if an immigration is possible. Please respect that every case is different! For the evaluation we charge a fix fee of **1,000 Euro** for individuals and **3,000 Euro** for individual investors who like to immigrate by a Spanish investment program.

As we receive hundreds of requests every week, please understand that we can't answer to single questions by eMail without an evaluation mandate.