Global Financial Services Regulatory Guide - Spain

5. What are the requirements to obtain authorization in your jurisdiction?

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# What are the requirements to obtain authorization in your jurisdiction?

The requirements to obtain authorization vary depending on: (i) how the applicant wishes to conduct banking business in Spain (i.e., the incorporation of a new entity with a Spanish license, the establishment of a Spanish branch, the incorporation of a Spanish subsidiary or the provision of cross-border services in Spain without a permanent establishment); and (ii) the nature of the applicant.

1. Credit institutions

1.1 Incorporation of new CIs

As a general rule, any person or entity seeking to undertake a banking business in Spain through a Spanish legal entity must first obtain a banking license. The application for authorization must be addressed to the Bank of Spain, although it is the ECB that ultimately grants the authorization, based on the proposal issued by the Bank of Spain.

Before conveying its proposal to the ECB, the Bank of Spain must obtain a report from the SEPBLAC and, where appropriate, from the CNMV and the General Directorate for Insurance and Pension Funds.

Authorization may be denied if: (i) the applicant lacks adequate organizational structure, does not comply with the minimum capital requirements, or fails to have adequate administrative and accounting procedures or internal controls to ensure safe and sound management; (ii) the shareholders or directors are not fit and proper; (iii) the applicant lacks adequate procedures for the prevention of money laundering or terrorism financing; or (iv) the entity fails to meet any of the basic statutory requirements mentioned below.

The basic statutory requirements for incorporating a new CI in Spain include, but are not limited to, the following:

The entity must be incorporated as a public limited company (*sociedad anónima*).

The entity must have a minimum fully paid up share capital of EUR 18 million represented by shares, which must be nominative.

The corporate purpose of the entity must be limited to banking activities.

Shareholders owning qualifying holdings must be considered suitable according to Article 6 of Spanish Royal Decree 84/2015 developing CSSCIA (CSSCIR).

No special rights or preferences must be granted to the entity’s founders.

Management must be entrusted to a board of directors of at least five members, all of whom must be suitable. Any person who has been convicted of a criminal offense or has been indicted for crimes involving dishonesty or a breach of a fiduciary duty, such as money laundering, misuse of public funds, “unfaithfulness” in the custody of documents or disclosure of secrets, is ineligible to serve as a director. Furthermore, the majority of the members of the board of directors must have practical and theoretical knowledge and expertise in running a bank. All of the foregoing requirements also apply to the entity’s general managers.

The entity must have an appropriate administrative and accounting organization, as well as internal control procedures that ensure safe and sound management.

The entity’s registered address and headquarters must be in Spain.

The entity must put in place appropriate proceedings for the prevention of money laundering in accordance with applicable legislation. This requirement also includes the drafting of an AML manual and the appointment of a representative before the SEPBLAC (i.e., MLRO).

1.2 Incorporation of a subsidiary

Regarding the incorporation of subsidiaries, it must be noted that while the rules for incorporating a subsidiary of a foreign CI are substantially the same as the rules applicable to the incorporation of a new bank in Spain, two major differences exist for non-EU-based entities:

A foreign bank may be denied permission to incorporate a Spanish subsidiary if the country of residence of the parent foreign bank does not guarantee reciprocal treatment for Spanish banks under an international agreement.

The Bank of Spain may require the parent bank to guarantee the obligations of the Spanish subsidiary.

1.3 Opening of a Spanish branch

As will be further explained in question 7, the opening of Spanish branches by CIs incorporated in EU member states are regulated through the “EU-passport,” which enables an applicant that already holds authorization from its home member state to carry out activities in Spain by notifying its home country’s competent authority, which shall in turn notify the Bank of Spain. Consequently, there is no prior authorization requirement vis à vis the Spanish authorities.

Conversely, the establishment of branches of CIs from non-EU countries is subject to the prior authorization of the Bank of Spain. The authorization must comply with requirements similar to those outlined for the incorporation of new CIs in Spain, although adapted to the legal nature of branches in Spain (i.e., non-legal entities, part of their parent undertaking). The main requirements are as follows:

References to minimum share capital shall be deemed to be made to permanent/fixed funds indefinitely allocated to the Spanish branch, available for loss absorption.

The requirement of a board of directors is substituted by two general managers. The same eligibility criteria and requirements apply.

The Spanish branches’ business cannot include activities for which the parent undertaking does not hold a license in its home country.

The application shall include detailed information on the financial, legal and management characteristics of the parent undertaking, as well as evidence proving the parent undertaking is a duly authorized and registered CI in its home country.

The application may be rejected based on a lack of reciprocity for Spanish CIs in the home country of the parent undertaking.

1.4 Representative office’s incorporation

Representative offices are permanent establishments that are functionally and organically dependent on a duly authorized CI based in another country. The main purpose of such an establishment relates to the general promotion of information services on banking activities, as well as to provide support to the provision of cross-border services without a fixed commercial establishment in Spain. Consequently, representative offices cannot be remunerated for the provision of these services.

Banks from EU countries that are looking to establish a representative office in Spain need to communicate their intention to the Bank of Spain. Non-EU banks must apply for prior authorization from the Bank of Spain in order to establish the office.

Both the notification and the authorization should contain the following information:

Details of the activities to be carried out by the representative office

The name and personal details of the manager of the office

2. Other licensed entities providing banking services

According to Spanish law, there are other institutions that, though not CIs, are entitled to carry out certain banking activities:

2.1 Financial credit entities

Regulated by Royal Decree 309/2020 of 11 February 2020 on the legal regime for financial credit entities, these entities can provide the following services: (a) lending, including, inter alia, consumer credit, mortgage credit and factoring; (b) leasing, including certain ancillary services in relation thereto; and (c) the granting of financial guarantees. Additionally, and subject to a specific regime, these entities could provide payment services or issue e-money. The incorporation of financial credit entities is authorized by the Ministry of Economy and Business, in light of the conclusions of reports issued by the Bank of Spain and SEPBLAC.

2.2 Financial institutions

Pursuant to the implementation to Spanish law of Article 34 of Directive 2013/36/EU of the European Parliament and of the Council, dated 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD IV), undertakings other than CIs, when subsidiaries of a CI or jointly owned subsidiaries of two or more CIs based in EU member states — the principal activity of which is to acquire holdings or to pursue one or more of the banking activities listed in Annex I of CRD IV (except taking deposits and other repayable funds), including a financial holding company, a mixed financial holding company, a payment institution or an asset management company — also benefit from EU-passport for the cross-border provision of services recognized for the parent CIs. As a consequence, these entities may provide services in Spain, either under the “freedom to provide services” regime or on a “right of establishment” as explained in question 7.

As this regime is ultimately based on EU legislation, there is no legal framework for the benefit of non-EU financial institutions.

2.3 Payment service providers

Regulated by Royal Decree - Act 19/2018 on payment services and other urgent financial measures and Royal Decree 736/2019, dated 20 December 2019, enacting the legal framework of payments services and payment service providers (PSRs), these entities may carry out: (i) the provision of services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account; (ii) the provision of services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account; (iii) the execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider; (iv) the execution of payment transactions where the funds are covered by a credit line for a payment service user; (v) the issuance of payment instruments and/or acquiring of payment transactions; (vi) the provision of money remittance services; (vii) the provision of payment initiation services; and (viii) the provision of account information services.

The incorporation of payment service providers (PSPs) must be authorized by the Bank of Spain, based on the conclusions of the reports obtained by SEPBLAC. In order to obtain the abovementioned authorization, the applicant must meet the requirements set forth in Article 2 of PSR.

In relation to the cross-border provision of payment services in Spain, one must differentiate between two regimes: one applicable to PSPs based in EU member states and another one for non-EU PSPs. While the former benefit from EU-passport regime, enabling them to provide services either under the “freedom to provide services” or under the “right of establishment” without requiring authorization from Spanish authorities (i.e., authorization is granted by the competent authority in its home country, which notifies the Bank of Spain of its approval), the latter need to apply for prior authorization from the Bank of Spain.

2.4 E-money entities

Regulated by Act 21/2011, dated 26 July 2011, on e-money, and Royal Decree 778/2012, dated 4 May 2012, on legal regime of e-money issuers, these entities can carry out the issuance of e-money and granting of credit in relation with some payment services.

The incorporation of e-money entities must be authorized by the Ministry of Economy and Business, based on the conclusions of reports obtained by the Bank of Spain and SEPBLAC.

With respect to the cross-border provision of payment services in Spain, a regime similar to that mentioned for PSPs applies.

3. Incorporation of investment firms

According to Article 128 of SMA and Article 3 of the Spanish Royal Decree 813/2023, dated 8 November 2023, on the legal regime of investment firms and other entities providing investment services (RD 813/2023), Spanish law recognizes four different types of investment firms (IFs), the main differentiating characteristic among them being the scope of their authorization (i.e., the investment services they are allowed to perform):

3.1 Broker dealer (*sociedades de valores*):

These are investment firms that are entitled to operate either in their own name or in the name and on behalf of third parties, and which can carry out all the investment services and ancillary investment services described in Articles 125 and 126 of the SMA (which mirrors the list of services and activities under Section A and B of Annex I to Directive 2014/65/EU of the European Parliament and of the Council, dated 15 May 2014, on markets in financial instruments (MiFID II)).

3.2 Securities broker (*agencias de valores*)

These are investment firms that are only entitled to act in the name and on behalf of third parties, either with or without representation. Securities agencies are entitled to carry out all the investment services and ancillary financial services described in Articles 125 and 126 of the SMA, with the exception of: (i) dealing on own account; (ii) underwriting of financial instruments and/or placing of financial instruments (in relation to financial services); and (iii) the granting of credits or loans to an investor, allowing them to carry out a transaction in one or more financial instruments envisaged under the SMA and its implementing provisions, provided that the undertaking granting the credit or loan is involved in the transaction.

3.3 Portfolio management companies (*sociedades gestoras de cartera)*

These are investment firms that are only entitled to provide two financial services: (i) portfolio management services; and (ii) investment advice, as well as two ancillary financial services: (i) advice to undertakings on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings; and (ii) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

3.4 Financial advisory entities (*empresas de asesoramiento financiero*)

These are legal persons that can only provide investment advice (as financial service) and two ancillary financial services: (a) providing advice to undertakings on capital structure, industrial strategy and related matters, and advice and services relating to mergers and the purchase of undertakings; and (b) undertaking investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

3.5 National financial advisory entities (*empresas de asesoramiento financiero nacionales*)

These are not considered to be a type of investment firm as per the SMA and are only permitted to provide services in Spain. These are legal or natural persons that can only provide investment advice (as financial service) and two ancillary financial services: (a) providing advice to undertakings on capital structure, industrial strategy and related matters, as well as advice and services relating to mergers and the purchase of undertakings; and (b) undertaking investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

For purposes of carrying out investment services in Spain, investment firms must be duly authorized and registered with the relevant registry of the CNMV.

Pursuant to Article 131 of the SMA, authorization to create investment firms shall be granted by the CNMV. Any entity wishing to obtain authorization must submit an application before the CNMV, which should include a program of activities identifying the investment services to be pursued by the applicant, as well as its organizational arrangements and the means for the performance of the same.

In order to be granted authorization, the relevant applicant must satisfy, among others, the following statutory requirements:

As a general rule, entities must be incorporated as a public limited company (*sociedad anónima*). As an exception, financial advisory entities may be incorporated as private limited companies (*sociedades de responsabilidad limitada*).

Investment firms must respectively have the following a minimum fully paid-up share capital1:

Securities entities: EUR 750,000

Securities agencies: As a general rule, EUR 150,000, and for those not authorized to hold funds or securities of their clients, EUR 75,000

Portfolio management companies (any of the following alternatives):

An initial capital of EUR 75,000

Financial advisory entities (any of the following alternatives):

An initial capital of EUR 75,000

National financial advisory entities (any of the following alternatives):

An initial capital of EUR 50,000

A civil liability insurance policy covering professional liability in the EU, for an amount of up to EUR 1 million in relation to each claim for damages, and a total annual amount of EUR 1.5 million for all claims

The corporate purpose of the relevant entity must be limited to the investment services and ancillary investment services it shall pursue.

No special rights or preferences may be granted to the entity’s founders.

As a general rule, the relevant entity must be governed by a board of directors of at least three members. All members of the board of directors of the company as well as its general managers or persons with similar positions, must satisfy the requirements of suitability, experience and good repute as encapsulated in Article 161 of the SMA.

The entity must have appropriate administrative and accounting procedures, as well as internal control procedures that ensure safe and sound management of the activities it intends to perform.

The entity must have internal conduct regulation based on the rules and regulations governing the Spanish Securities Markets (as established by SMA), as well as a special regime for the transactions to be performed by directors, executives, employees and attorneys of the entity, which guarantee the fulfillment of the conduct of business rules.

All investment firms and the National financial advisory entities must adhere to the Spanish Investment Guarantee Scheme (*Fondo de Garantía de Inversiones*).

The entity’s registered address and headquarters must be in Spain.

The entity must have a business plan evidencing the viability of its project.

The CNMV may only reject an application for authorization for purposes of establishing an investment firm under the following circumstances:

The applicant entity fails to comply with any of the statutory requirements.

Shareholders owning qualifying holdings in the share capital of the entity fail to be considered suitable on the grounds of the safety and soundness of the entity's management.

There is lack of transparency in relation to the group structure to which the entity shall eventually belong or where there are close links with other investment firms or natural or legal persons that could hinder the effective execution of the CNMV's supervisory functions.

The applicable legal framework to the natural or legal persons of a non-member state with whom the investment firm has close links may block effective supervision.

The members of the board of directors are not suitable, or lack sufficient expertise and good repute.

There are significant conflicts of interest between the offices, responsibilities or functions held by the members of the board of directors of the investment firm and other offices, and/or responsibilities or functions simultaneously held.

Finally, Spanish investment firms will also be entitled to carry out activities in a foreign country, albeit the regime will differ depending on the targeted country:

If a Spanish investment firm wishes to open a branch or carry out activities without a fixed establishment in another member state, it must notify the CNMV, which shall in turn convey that information to the supervisory authority of the relevant member state.

If the investment firm wishes to operate in a non-EU country by opening a branch or without a fixed establishment, it must obtain prior authorization from the CNMV.

Notwithstanding the foregoing, a Spanish entity must comply with the regulations and specific requirements of the country where it intends to operate.

1 Without prejudice to the need of complying with additional own funds requirements.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.