


Directors Remuneration in Spanish Companies

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 By Rubén Ferrer and David Riopérez, Gómez-Acebo & Pombo, New York

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Overview

Foreign businesses with investments in Spain should bear in mind that there are generally no restrictions on non-Spanish nationals becoming directors of a Spanish company ([Marca España](#)). From a purely formal perspective, such individuals will however need to obtain a Spanish tax identification number (NIE), but this does not involve any additional tax obligations unless such a director becomes a tax resident or receives any income in Spain ([Spanish Ministry of Foreign Affairs & Cooperation](#)).

This article highlights certain corporate and tax aspects related to the directors' remuneration regime in Spain, which applies irrespective of the nationality of the director. It is worth noting that this regime applies only if the company paying the director is a Spanish entity (it does not therefore apply if the director is paid directly by, for example, a US-based parent company).

In addition, we highlight certain particularities now applicable to a director's service agreement introduced by a recent amendment to the Spanish Companies Act ([Spanish Companies Act](#)).

Corporate aspects

General regime

By way of background, Spanish regulations establish that a director may not be remunerated unless the company's articles of association determine a remuneration system. If so, the articles must set out the nature of the remuneration to be earned by the directors acting in such a capacity.

- Nature of Remuneration: The law provides a non-exhaustive list of remuneration items, which may apply cumulatively: fixed fees; per diems; profit-sharing; variable remuneration with general benchmark indicators or parameters; remuneration in shares or pegged to performance; severance pay (provided that such severance is not based on a breach of the director's duties); savings or pension schemes deemed appropriate by the company; and life insurance, etc.
- Maximum amount: The General Shareholders' Meeting must approve the maximum amount of the annual remuneration to be paid to the directors as a whole (gross) in their capacity, which will remain in force until an amendment thereof is approved.
- Distribution: The directors shall resolve the distribution of the remuneration amongst themselves, unless the General Shareholders' Meeting determines otherwise. Such distribution must take into account both the roles and responsibilities assigned to each director.
- Reasonable and proportional: The remuneration must be reasonable and proportional to the size of the company, its prevailing financial situation and the market standards of comparable companies. The remuneration system must aim at encouraging the company's long-term profitability and sustainability and include the necessary precautions to avoid assuming excessive risk and rewarding poor

performance.

New director's service agreement

Recent amendments to the Spanish Companies Act now provide that any directors with executive functions, attributed through delegation as a Chief Executive Officer or under another title such as Executive Director, must sign a director's service agreement with the relevant company. This agreement must be approved by a two-thirds majority vote of the company's Board of Directors and the relevant director(s) having a conflict of interest are required to abstain; however, they must be taken into account when determining the quorum of the meeting. From a formal perspective this agreement must be attached to the minutes of the relevant Board of Directors' meeting but does not need to be registered with any public registry (for example the [Spanish Mercantile Registry](#)).

The director's service agreement must describe in detail all the items of remuneration to be earned by the director for the performance of the executive function, aside from any other remuneration they may receive from the company for the performance of the supervisory and control functions inherent to the director position.

There is no need to sign a director's services agreement if one is already in force (irrespective of what it may be called, for example, a senior management agreement or services agreement), as long as such agreement sets forth the director's remuneration for the performance of the executive functions. However, ratification of the existing agreement by the Board of Directors will be necessary in this case and in accordance with the abovementioned corporate and formal requirements.

Finally, it is worth noting that the law expressly provides that "the director is not entitled to receive any amounts that are not envisaged in the agreement for the performance of their executive functions", thus, any such amounts received would be regarded as unlawful ([Spanish Ministry of Justice](#)). In fact, the company's shareholders could claim the return of such amounts.

Multiple roles and external remuneration

A director may perform multiple roles regardless of the nature of their relationship with the company (e.g. employment/business/services), to the extent that such further functions are not inherent to the office of director. The provisions of the relevant agreement or applicable legislation will govern these multiple roles, which may for instance encompass consulting services, legal advice or advertising services, etc.

In addition, directors cannot obtain or accept any other benefits or remuneration from third parties other than those received from the company and its group for the fulfillment of their duties. Exceptions do however apply to small gifts pertaining to the habits and customs of a country or, for example, a private equity shareholder that appoints a director and wants to promote the attainment of certain targets by additional remuneration. Directors may also be exempted from the above prohibition by an appropriate resolution of the General Shareholders' Meeting.

Tax aspects

The following tax aspects should be taken into account for a director's remuneration:

Corporate tax deductibility

The remuneration received by the directors for functions inherent to their office must be taken into account and verified to be within the remuneration items set out in the articles of association and within the amount approved, by a resolution of the General Shareholders Meeting or in the director's services agreements signed by those that perform executive functions in the case of a Board of Directors – insofar as the sum of the total remuneration received does not exceed the amount provided for. Expenses incurred by the relevant company in relation to both will be deductible for corporate tax purposes, provided that they comply with all legal requirements in terms of accounting entry, accrual, correlation of revenue and expenses and documentary justification ([Spanish Institute of Accounting and Audit](#)). Any amount in excess of such caps is not deductible.

In cases of multiple roles, any expenses incurred in relation to the remuneration paid under a common employment/business/services

relationship shall be deductible for corporate tax purposes, provided again that it complies with all legal requirements in terms of deductibility ([Spanish Tax Agency](#)).

Accrual of income and expenses and withholding rate

In general terms, expenses relating to the remuneration paid to directors shall be charged to the year in which the profit was earned by the relevant director, given that this is the year in which the services generating the right to remuneration were provided.

Any expenses stemming either from the termination of a common or special employment relationship, or the termination of a business relationship between the director and the company, will also be deductible provided they do not exceed the higher of following limits per recipient:

- One million euros, or
 - The amount stipulated by the Workers' Statute ([Ministry of Employment and Social Security](#)), its implementing regulations or, as the case may be, regulations governing the enforcement of judgments, without being regarded as such the amount established under convention, agreement or contract between the company and the director (this second limit is not applicable to business relationships).
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Conclusions

Recent amendments introduced to the Spanish Companies Act regarding directors' remuneration do not require, per se, an alteration of a company's articles of incorporation, given that the prevailing remuneration system remains unaltered. Nevertheless, we strongly recommend revising the company's articles in order to verify that, if the position of director is remunerated, they duly reflect all remuneration items payable to the directors.

The maximum total amount of annual remuneration to be paid to the directors in their capacity as such must be approved at the General Shareholders' Meeting.

The law only mentions the need to detail the items of the directors' remuneration for the performance of executive functions. However, a director's service agreement may also be advisable in any organizational structure (executive or non-executive directors, sole director and joint and several or joint directors), including where the director position is not remunerated, in order to define the terms and conditions of the relationship which in practice tend to be disregarded – this may include the provision of additional services, duties of confidentiality, the prohibition of post-contractual competition, and the reinforcement of such prohibition retention clauses in the event of change of control, as well as the use of company property, etc.

Although the new regulation is not retrospective and in principle does not affect directors appointed prior to the implementation of the amendment (i.e. before 24 December 2014), the inherent risks regarding the tax deductibility of directors' remuneration makes it strongly advisable to adapt to the new law in order to be "within the safe harbor".

The matters described above highlight a few of the general issues foreign investors and their legal counsel must bear in mind when reviewing directors' remuneration in Spain. Experienced and specific Spanish legal counsel is, therefore, imperative to know how to best approach them.

Additional Resources

- [Advice on obtaining a Spanish NIE](#)
- [Foreign Investments Registry, Spanish Ministry of Economic Affairs and Competitiveness](#)
- [Spanish Consulates around the World](#)
- [Spanish Ministry of Finance & Public Administration](#)
- [Spanish Ministry of Foreign Affairs & Cooperation](#)
- [US-Spain Chamber of Commerce](#)

About the Authors

Rubén Ferrer

Email: rferrer@gomezacebo-pombo.com

Gómez-Acebo & Pombo, New York

www.gomezacebo-pombo.com

David Riopérez

Email: drioperez@gomezacebo-pombo.com

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www.gomezacebo-pombo.com

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