

Legal forms



CONCEPTION



MODELLING



PLANNING



IMPLEMENTATION

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01

Introduction

Entities dedicated to offering business start-up advice and guidance are accustomed to the fact that one of the main concerns of entrepreneurs using their services for the first time is choosing a legal form and the procedures this process entails: what is popularly known as the *paperwork*.

So, the didactic work is to make them understand that of all the aspects that need to be analysed when starting a business (e.g. a business plan), surely the legal form is the least decisive factor in the success or failure of a business.

A business may fail because of an incorrect marketing policy, since if nothing sells, having a clear understanding of the legal form makes little difference; or bad financial planning, because it does not matter if you have followed all the procedures correctly when you run out of money and the banks cut you off. It is unlikely, however, that a business would have to close for choosing the wrong legal form.

Increasingly, this obsession with legal forms and procedures, which is normal in legalistic societies like ours, means that entrepreneurs often spend too much time and effort on activities with very little added value (procedures) and, consequently, do not put the same time and effort into much more important activities like how to reach customers.

Let's not forget that these bureaucratic tasks can be outsourced to accountants/consultants with experience in these areas.

02

Which is the best legal form?

This is a frequently asked question among entrepreneurs faced with a large range of possibilities (see the legal forms table in Section 7).

The answer is that no legal form is better than another. They all have advantages and disadvantages, and at the end of the day, every project has a legal form that suits it best.

Therefore, before choosing a legal form, you must consider several aspects:

- The type of economic activity; for-profit or non-profit; in some cases, the regulations force you to choose a specific legal form.
- Number of partners.
- Liability of the promoters.
- Minimum capital.
- Incorporation and management expenses and procedures.
- Social security scheme for partners.
- Taxation.
- Subsidies: access to certain subsidies or grants may make some legal forms unsuitable.
- The company image.

According to the type of activity, we discuss an important distinguishing feature between legal forms:

- For-profit businesses, which will be the focus of this report.
- Non-profit businesses: essentially, associations and foundations. For more information on this topic, go to the Torre Jussana website, a municipal team that offers services and resources to associations in the city: <https://www.tjussana.cat>

03

Legal forms: for-profit organisations

Legal forms can be divided into two main groups: sole proprietorships and partnerships (as explained in detail in the attached legal forms table). The differences between these two groups are considerable. In fact, in each of these groups, the similarities between the legal forms are more significant than the differentiating factors.

SOLE PROPRIETORSHIPS

These are companies that carry out an economic activity without formally constituting a separate financial entity from the people who form it. In other words, when these people send invoices, they do so using their first name, surname and identity document (individual business people), or their name and tax identification number (abbreviated as CIF), in the case of private civil companies (abbreviated as SCP), while still using the financial details of the people who form the SCP.

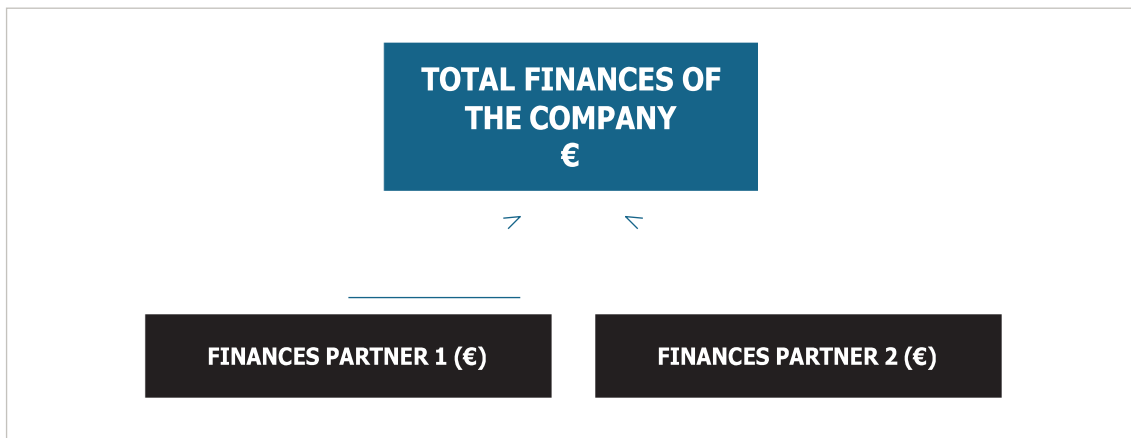
THERE IS NO LEGAL/FINANCIAL SEPARATION BETWEEN THE BUSINESS AND INDIVIDUAL

The most well-known aspects are as follows:

- **Individual business person** (EI), or as they are incorrectly and popularly known, freelancers, etcetera.
- **Private civil companies**, which are similar, but it is when two or more people decide to join their assets or money (known as *equity partners*, or work and industry, (known as *work or industrial partners*) with the intention to share the profits. This decision is formalised in a private contract, which can be made public by means of a notary.

PARTNERSHIPS

To carry out economic activity as a partnership, you must create a separate legal person. However, as far as the market is concerned, this entity can operate just as a natural person would. Therefore, the person who employs, invoices, and has debts and goods will be the new legal person (company) and not the partners who own the business.



There is legal/financial separation between the company and its partners.

The most widely used are:

- **Private Limited Companies (abbreviated as SL)**
- **Public Limited Companies (abbreviated as SA)**
- **Employee-owned companies: Employee-owned Private Limited Company (abbreviated as SLL) and Employee-owned Public Limited Company (SAL)**
- **Cooperatives (abbreviated as SCCL)**

04 Differences between sole proprietorships and partnerships

Once you grasp the concept of a *legal person*, it is easy to understand the differences shown in the following table:

	SOLE PROPRIETORSHIPS (EI, SCP)	PARTNERSHIPS (SL, SA, SLL, SAL, Coop)																					
Responsibility	The company collateralises its assets and, in the absence thereof, the partners collateralise all their personal assets (present and future), accepting UNLIMITED liability.	The newly created company is legally and financially liable, i.e. the liability of the partners is LIMITED ¹ to the capital contributed.																					
Incorporation	Incorporation is easier and not as expensive (€).	More procedures involved (slower) and more expensive.																					
Accounting management	Accounting is much easier for private civil companies without commercial objectives. This means that it is more ECONOMICAL if a third party does it. Private civil companies with a legal personality and commercial objective must keep accounts in accordance with the Code of Commerce. This involves more complex accounting.	More complex accounting. This means that it is more EXPENSIVE if a third party does it.																					
Capital contribution	There is no compulsory legal minimum.	From €1 share capital (liability of €3,000) in SL and SLL. Minimum €3,000 share capital for SA, SAL, and Cooperative.																					
Image	Perceived as less solid by third parties.	Perceived by third parties as more solid than self-employed.																					
Taxation	Pays IRPF (Income Tax); a progressive tax that increases as profits increase. IRPF is a general tax: you must declare your profit to the tax office, as well as bank interest, the sale of investment funds, mortgages, etc. Self-employed workers pay IRPF according to their income: between 19% and 45% in 2019.	Pays corporate tax (abbreviated as IS), which is a fixed rate regardless of your income. For corporate tax, you only declare your business' income. With a high income, IS may be a better option. COMPANY TAX RATES: General rate: 25% planned for 2019. Newly created businesses: 15% for the first two periods provided that the tax base is positive. 20% rate for cooperatives . Private civil companies with legal personality and commercial objective pay corporate tax. <table border="1"> <thead> <tr> <th>TYPE OF TAX RATE</th> <th>2018</th> <th>2019</th> </tr> </thead> <tbody> <tr> <td>General</td> <td>25%</td> <td>25%</td> </tr> <tr> <td>Newly created businesses</td> <td>15%</td> <td>15%</td> </tr> <tr> <td>Small enterprises</td> <td></td> <td></td> </tr> <tr> <td>Taxable base up to €300,000</td> <td>25%</td> <td>25%</td> </tr> <tr> <td>Over €300,000 €</td> <td>25%</td> <td>25%</td> </tr> <tr> <td>Cooperatives</td> <td>20%</td> <td>20%</td> </tr> </tbody> </table>	TYPE OF TAX RATE	2018	2019	General	25%	25%	Newly created businesses	15%	15%	Small enterprises			Taxable base up to €300,000	25%	25%	Over €300,000 €	25%	25%	Cooperatives	20%	20%
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¹ When we talk about limited liability, we are referring to liability for debts and here we need to point out two things: firstly, this implies almost all the debts except those requiring personal guarantees (common in bank debt) and, second, if things go wrong and the established legal procedures are not followed, the company administration may be retroactively liable.

05

Distinctive features of each legal form

As mentioned above, the most significant differences between legal entities are based on whether a business is a sole proprietorship or partnership. However, each legal form also has its own special characteristics that require explanation.

SELF-EMPLOYED WORK (INDIVIDUAL BUSINESS PERSON)

- The possibility of capitalising 100% of unemployment benefits to make an investment or pay the Social Security contributions under the self-employed scheme.
- Discount on the self-employed person tax rate for 12 months for self-employed individuals who are registering for the first time, or who have not been registered in the previous two years:

- For the first 12 months, they will be eligible for an reduction in the rate: €80 per month.
- Self-employed collaborators: 50% discount on the rate for the 18 months following registration and 25% for the following six months.

PRIVATE CIVIL COMPANY

- The union between two or more people by means of a private contract to carry out an economic activity. Possibility to register the contract with a notary.
- The associated workers contribute under the Social Security scheme for self-employed.
- Capitalisation of unemployment benefits: same as the previous (individual business person).
- The same grants as an individual business person.
- The private civil companies carrying out professional, agricultural, livestock, forestry and mining activities pay IRPF. The private civil companies with a legal entity and commercial objective pay IS.
- Discount on the self-employed person tax rate for 12 months for self-employed individuals who are registering for the first time: or who have not been registered in the previous two years:

→ For the first 12 months, they will be eligible for a reduction in the rate: €80 per month.

LIMITED LIABILITY COMPANIES (SL) AND LIMITED COMPANIES (SA)

- At least one associated person: in this case, it would be called a single-person limited liability company.
- Minimum capital: SL: From 1€ share capital; SA: €60,102.
- Decision-making power depends on the % of the capital.
- Working partners with control fall under the self-employed scheme (see the legal forms table)
- Capitalisation of working partners of newly created business corporations (so long as they have actual control over the company) can capitalise their unemployment benefit for contributions to share capital; to cover incorporation expenses; acquire specific consulting, information technology and training services; or for their Social Security contributions. You can capitalise unemployment benefit for creating a private limited company or buying shares in a private limited company created in the previous 12 months (at most), provided that you have actual control over the company. You cannot capitalise unemployment benefit to buy shares in a private limited company if you were an employee at the company before becoming unemployed.

- Capitalisation can include incorporation expenses including taxes and fees for legal advice.

Capitalisation must be requested before the start of economic activity or the creation of the limited company.

EMPLOYEE-OWNED COMPANIES: EMPLOYEE-OWNED PRIVATE LIMITED COMPANY AND EMPLOYEE-OWNED PUBLIC LIMITED COMPANY (SLL AND SAL)

- These are hybrids between private limited companies and cooperatives
- Minimum capital: SLL: From 1€ share capital; SAL: €60,102.
- No member can have more than one third of the capital. This implies a minimum of three members.
- More than 50% of the capital must belong to working partners.
- Working partners pay into the Social Security general scheme (see the legal entities table).
- Possibility to capitalise 100% of unemployment benefits from the beginning. It must enter as issued capital.
- Access to the annual call for grants for cooperatives and employee-owned companies

COOPERATIVES

- There are different types of cooperatives depending on the members and type of activity. Here, we will focus on associated work cooperatives. Changes to Act 12/2015, of 9 July.
- Their purpose is for people to join and provide labour as part of carrying out a professional or business activity. Specifically, the purpose is to give their members jobs with collective production and provision of services to third parties.
- This is the most democratic model: every member has a vote regardless of capital.
- Reduction of the number of members: in associated worker cooperatives, the minimum number of workers is two; in consumer's and user's cooperatives, this number is reduced from 300 to 10 members.
- Social Security scheme: all members either pay into the general scheme or into the scheme for the self-employed.
- Minimum capital: €3,000

- Possibility to capitalise 100% of unemployment benefits from the beginning. It must enter as issued capital.
- Access to the annual call for grants for cooperatives and employee-owned companies. (Dept. Of Work of the Generalitat of Catalonia).
- Corporate tax rate of 20%.
- Surpluses accounted for by the cooperative must be allocated to:

- A compulsory reserve fund: 20% of net results.
- The cooperative's education and promotion fund: 10% of net results.
- There are two options for the remaining 70% of net results: paying them into the reserve fund or cooperative (dividends).

- The main tax breaks are as follows:

- Tax on property conveyances and documented legal acts: exemption for the acquisition of goods and rights that complement the social and statutory purposes of the cooperative.
- 50% discount on total corporate tax.

- The possibility to set up a cooperative (express procedure) in two days.
- Discount on the self-employed person tax rate for 12 months for self-employed individuals who are registering for the first time, or who have not been registered in the previous two years:

- For the first 12 months, they will be eligible for an 80% reduction in the rate: €80 per month.

06

Conclusion: Summary of the selection criteria

After reading the different sections of the report, it should be clear that, as stated above, there is no superior legal form; they all have advantages and disadvantages. Additionally, it is important to have a clear understanding of your project, particularly regarding the following selection criteria:

NUMBER OF PARTNERS, INVOLVEMENT, RELATIONSHIP AND RESPONSIBILITY

As an individual, you can only opt to be self-employed, a single-person private limited company or a single-person public limited company. If you most value not having to risk your personal credit, you should choose a partnership legal entity, etc.

MINIMUM CAPITAL

Although capital constitutes the assets that are transferred to a new legal person, and this person can invest however it likes, this is not required for sole proprietorships or individual business people as their personal and business finances are one.

INCORPORATION AND MANAGEMENT EXPENSES AND PROCEDURES

Facility and cost are directly related, above all if you hire a third party - accountant or consultant. The more paperwork there is, the higher the cost.

SOCIAL SECURITY SCHEME FOR PARTNERS

You cannot choose which contribution scheme you join. Each legal form, based on the percentage of capital, determines the contribution scheme of working partners.

TAXATION

If you are expecting to earn a lot of profit or if you have non-business revenue which when added to your company profits raise your tax base to more than approximately €40,000, it is wiser to register as a partnership.

SUBSIDIES

Subsidies are more accessible for social economy companies (employee-owned companies and cooperatives) and, to a lesser extent, sole proprietorships such as individual business people and civil companies - (see the summary report on financing and subsidies).

TYPE OF ACTIVITY

There are certain types of economic activity, for example, travel agencies, which by law must adopt a specific legal form; in this case, either an SL or SA. Additionally, some franchises require their franchisees to choose some type of partnership.

Regarding a company's image, it is often advisable to choose to be a certain type of company.

07

Legal Forms summary table

	PARTNERS:	CAPITAL	FISCAL	LIABILITY
Self-employed Work, Individual Business Person	1	There is no legal limit	unlimited (personal)	VAT IAE registration Income Tax (IRPF)
Private Civil Company	2 or more	There is no legal limit	unlimited (personal)	VAT IAE registration Income allocation: Income tax for natural persons IS, SCP, commercial entities
Private Limited Company	Minimum 1 (single-person SL)	From 1€	Limited to capital contributed	VAT IAE registration Corporate tax (rate 15- 28%)
Public Limited Company	Minimum 1 (single-person SA)	Minimum €60,101.21	Limited to capital contributed	VAT IAE registration Corporate tax (rate 25- 30%)
Employee-owned companies SAL/SLL	3, of which 2 must work	Minimum SLL From 1€ Minimum SAL €60,101.21	Limited to capital contributed	VAT IAE registration Corporate tax (rate 25- 30%)
Worker Cooperative	2 natural persons	Min. €3,000	It must be specified in the articles of association if you want limited or unlimited	VAT IAE registration Corporate tax (rate 20%)

SOCIAL SECURITY SCHEME			
self-employed work Individual business person		Special scheme for self-employed (RETA)	
Private Civil Company		Special scheme for self-employed (RETA)	
Private limited company and public limited company	Administrator or director	With directorial and management functions, remunerated and with no more than +1/4 of the capital: Assimilated general scheme (no unemployment benefit or insolvency provision fund)	
		No directorial or management functions and with no more than +1/3 of the capital; General scheme	
		No partners: Assimilated general scheme (no unemployment benefit or insolvency provision fund)	
	Working partners	With more than 50% of the capital Scheme for the self-employed	
		With less than 50% of the capital	With Directorial and Management functions and +1/4 of the capital: Scheme for the self-employed
No Directorial or Management functions and does not have +1/3 of the capital: General scheme			
50% of the capital in the hands of up to second-degree family members: Scheme for the self-employed			
Employee-owned companies (SAL/SLL)	Working partners that form part of the board of directors	General scheme	
	Working partners with directorial and management functions	Remunerated position	General assimilated system (No unemployment benefit or insolvency provision fund)
		Senior management employment relationship	
Partners who together with up to second-degree family members have 50% of the capital		Scheme for the self-employed	

ADVANTAGES		DISADVANTAGES
self-employed work Individual business person	This is the easiest method to begin economic activity. Incorporation process is not required. No minimum capital required. Can capitalise 100% unemployment benefit for investment.	Unlimited liability: business people are personally liable with their assets.
Private Civil Company	Requires few steps to get started, neither complex nor expensive. Can be formalised by means of a notary and acquisition of a legal person. No minimum capital required. Can capitalise 100% unemployment benefit for investment.	Unlimited subsidiary and joint liability; all partners are liable for the company's obligations to third parties.
Private Limited Company	Limited liability for the capital contributed. Restriction on entry of new partners. Can capitalise 100% unemployment benefit for share capital.	Payment of 100% of the capital when incorporated.
Public Limited Company	Shareholders' liability limited to the capital contributed. There is the option of initially paying only 25% of the share capital. Can capitalise 100% unemployment benefit for share capital.	High incorporation costs. High minimum capital.
Employee-owned companies SAL/SLL	Can capitalise 100% unemployment benefit for share capital. Additional tax benefits for SMEs.	Cannot hire interns or people in training. No partner can have more than one third of the capital. Limitation on hiring non-member staff (cannot exceed 15% of the hours worked by working members).
Worker Cooperative	Can capitalise 100% unemployment benefit for share capital. Additional tax benefits for SMEs.	Difficulty decision-making (1 person + 1 vote). Obligatory constitution of reserve fund and education fund. Limitation on hiring non-member workers (cannot exceed 30% of the hours worked by working members).

CAPITALISATION:

In all the permitted methods for capitalisation, if you do not obtain the total amount of your benefit in a lump sum, in accordance with the previous sections, you can simultaneously request the payment of the remaining amount as a subsidy for your Social Security contributions while carrying out your economic activity. The payments are made monthly.

It is possible to request to exclusively receive the total amount of your pending benefit to subsidise your worker contributions to the Social Security.

Written by the technical team at **Barcelona Activa Entrepreneurship**, using the following sources of information:

- Act 31/2015, of 9 September, Regulations for Self-employment and the Promotion of Self-employment.
- Directorate General of Small and Medium-sized Enterprise Policy:
<http://www.ipyme.org/>
- Action: <https://www.accio.gencat.cat>
- Business creation guide:
<https://www.crear-empresas.com/>
- The Federation of Worker Cooperatives of Catalonia:
<https://www.cooperativestrebball.coop/>
- Information for the self-employed: <https://www.infoautonomos.com/>
- Torre Jussana: <https://www.tjussana.cat/>

Produced by the **Barcelona Activa Entrepreneurship's** technical team:
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