

Transformation of a Company Incorporated in Spain

A company's transformation refers to a process through which a company changes its legal structure without losing its legal personality. For example, a public company can turn into a limited private company without it being necessary to be strike out from Companies House and reincorporate as a new entity.

In certain circumstances, especially when a company is facing new challenges, it is necessary to change its legal structure to adapt to its needs.

The transformation of a company incorporated in Spain, is regulated at the Structural Modifications in Companies Law (*Ley sobre modificaciones estructurales de las sociedades mercantiles*¹)

The types of transformations are indicated in its Article 4. Below we address two of the most common transformations.

Transformation of a Public Company into a Limited Company

In order to transform a public company into a limited company, the following requirements are needed:

- a) The company's transformation must be agreed at a General Meeting by its shareholders, with a Reinforced Quorum.
- b) Unless the transformation agreement is agreed unanimously through a Universal General Meeting, the company must give access to its shareholders at the company's headquarters, the following information:
 - i. Report produced by the Director(s) explaining the reasons for the proposed transformation indicating the consequences that the transformation may have for shareholders.

Moreover, the said report should indicate the potential gender impact that this transformation may have over the governance structure of the company.

¹ <https://www.boe.es/buscar/act.php?id=BOE-A-2009-5614>

- ii. A balance sheet of the company, which has to be closed within six months of the date on which the General Meeting, called for the purposes of transformation, will take place.
- iii. Auditor's report concerning to the balance sheet which the company being transformed is required to submit for audit.
- iv. A draft of the new Articles of Association of the new company, alongside other agreements between shareholders, which will be registered at the Mercantile Register.

The company's transformation agreement should be published at the Official Gazette of the Spanish Mercantile Register (BORME² per its acronym in Spanish).

Those shareholders who did not vote in favour of the transformation agreement, will have the right to leave the company.

Transformation of a Limited Company into a Public Company

According to Article 199 of the Spanish Company Act ³ the transformation of a limited company into a public company must be carried out through a General Meeting agreed by a Reinforced Majority of votes of it's shareholders.

As to the rest of the requirements, these are the same as above mentioned in relation to the transformation from a public company to a limited company.

Written by Laura Gallego Herráez.

² [BOE.es - BORME de Abril de 2022](https://www.boe.es/BOE-A-2010-10544)

³ <https://www.boe.es/buscar/act.php?id=BOE-A-2010-10544>