

The New Spanish Draft Create and Grow Bill: Set up a Limited Company with €1, Business Digital Transformation and B2B e-Invoicing

On 30 of November 2021, the Spanish Council of Ministers agreed to pass to the Congress for discussion the *Crea y Crece* (Create and Grow) draft bill and if approved, it is expected to become enforceable within 2022.

The said law is part of the Spain's "Recovery, Transformation and Resilience" Plan which aim is to accelerate the economy after the Covid crisis, by promoting enterprise, and digital transformation.

Below, we address the key points of the Spanish Create and Grow draft bill.

Setting up a Limited Liability Company with the minimum amount of 1 euro, within 10 days (or less) and electronically

Pursuant to the Create and Grow draft bill, a limited liability company can be set up in Spain with a minimum capital amount of just 1 Euro, as opposed to the 3,000 Euros currently required.

However, for the purpose of safeguarding the interests of creditors, the limited liability company must at least allocate 20% of its profits to its legal reserves until the said reserves, together with the company's capital, reaches the amount of 3,000 Euros.

Additionally, if the company goes into liquidation, if its assets are insufficient to meet its obligations, the shareholders shall be jointly and severally liable for the difference between the amount of 3,000 Euros and the company's capital.

According to the Create and Grow draft bill, it will be possible to set up a limited liability company online within a maximum of 10 working days and without the need to appear before a notary public nor at the Registro Mercantil (Companies House) in person.

Also, any variation of the company's capital, will be published at the Mercantile Registry and effective within 10 working days.

Indeed, the Create and Grow draft bill establishes that all public notaries with power within the Spanish territory must be registered at the Notarial Electronic Agenda, in order to carry out the incorporation of companies online. A notary public cannot refuse any incorporation procedure initiated through the online system.

Combating Late Payment

According to article 4 of the Spanish Law 3/2004 of 29 December regarding payments in commercial transactions, the maximum period within which the debtor must pay any outstanding debt to a creditor is 30 days, unless the two counterparts set up another date of payment, which cannot exceed 60 days.¹

However, it is not uncommon for those deadlines not to be met and due to that, small and medium-size business can suffer lack of liquidity.

In order to combat late payment, the Create and Grow draft bill establishes that a company which does not makes a payment within the period mentioned above, will not be entitled to apply to any public subsidies nor be eligible for take part in public contracts.

Mandatory B2B e-Invoicing

Pursuant to the Create and Grow draft bill, electronic invoices must be used in all commercial relations between companies and self-employed people. This measure not only contributes to reinforce the digitalization of the business operations, but also guarantees greater traceability and control of payments for the public administration in order to combat the late payment mentioned above.

If the current version of the Create and Grow draft bill is approved, companies and self-employed with annual turnover over eight million Euros, must use the e-invoicing system within a year after the said draft bill enters into effect, while companies and self-employed with turnover under eight million Euros, must use the e-invoicing system within three years once the bill becomes enforceable.

According to the Create and Grow draft bill, businesses and self-employed must give free of charge access to their e-invoices, which should be readable, printable and downloadable.

In addition, said access to must be maintained for up to four years since the invoices were produced, even if the persons invoiced had expressly refused having access to them.

If businesses or self-employed persons do not comply with the e-invoicing regulation, they could face a fine of up to €10,000.

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¹https://www.lamoncloa.gob.es/lang/en/gobierno/councilministers/Paginas/2021/20211130_council.aspx