

# Spain's "Create and Grow" Law

On 29 September 2022, Law 18/2022 of 28 September, on the creation and growth of companies ("Create and Grow Law") was published in the Official State Gazette (*Boletín Oficial del Estado*). The law aims to facilitate the creation of companies, boost their growth, promote certain improvements in the venture capital and collective investment sectors and combat late payment. It will come into force 20 days after its publication, except for the rules governing crowdfunding platforms, which will come into force on 10 November 2022, and certain measures to combat commercial late payment, which will have their own timetable.

## 1. PURPOSE OF THE LAW

In the context of the EU NextGeneration Plans, the Council of Ministers approved the **Spanish Recovery, Transformation and Resilience Plan** on 27 April 2021. The Plan was prepared in compliance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

One of the Plan's "lever policies" is the "Modernisation and digitalisation of the industrial network and SMEs, recovery of tourism and promotion of an entrepreneurial Spain", which includes an ambitious programme of investments and structural reforms by establishing a **legal framework** to promote the creation of companies and foster their growth by implementing regulatory improvements, removing obstacles to economic activities, reducing commercial late payment and providing financial support, as well as to promote certain improvements on the venture capital and collective investment sectors.

The Create and Grow Law aims to make business creation and growth more agile and flexible and responds to specific recommendations by different international organisations in recent years to improve the business climate and encourage the emergence of new businesses in Spain.

## 2. TYPES OF MEASURES

The Create and Grow Law contains various measures aimed at **making companies more agile and flexible through all stages of their life cycle**, thereby improving the productivity and resilience of the Spanish business network, particularly SMEs. The law includes measures that (i) improve certain aspects of the legal regime of collective investments, (ii) facilitate access to financing, (iii) simplify business creation, (iv) promote business growth, and (v) combat late payment.

### 3. PREVIEW OF THE MEASURES

#### (A) Collective investments:

- The Spanish regulations on collective investment and venture capital vehicles have been amended to, among others:
  - ✓ include a new category of “closed-ended collective investment schemes of loans” (*entidades de inversión colectiva de tipo cerrado de préstamos* or EICCP), commonly known as “debt funds”, which principal purpose is to invest in bills, loans, credit and commercial paper commonly used in the course of trade, and that have to be managed in accordance with certain credit risk management and diversification requirements, and
  - ✓ allow the marketing of venture capital vehicles to retail investors when the latter make their investment on the basis of a personalised investment advice recommendation and provided that, when their assets do not exceed €500,000, the investment is at least €10,000 and does not represent more than 10% of those assets.

#### (B) Facilitate access to financing:

- The legal framework governing crowdfunding platforms has been adapted to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, which introduces significant modifications to the existing national legal regime for these platforms:
  - ✓ a distinction is made between harmonised and non-harmonised crowdfunding platforms under EU law, the former being able to benefit from the “EU passport”,
  - ✓ the new service category “individual portfolio management of loans” is included,
  - ✓ crowdfunding service providers are obliged to provide prospective investors with certain key investment information sheets, and
  - ✓ allows novel investor-pooling mechanisms already available in other EU Member States to be used.

#### (C) Simplify business creation:

- The minimum share capital for limited liability companies has been set at EUR 1, with specific safeguards to compensate for the effects of such low minimum share capital figure.
- It will no longer be possible to set up a limited liability company on a rolling formation basis, as this ceases to make sense in view of the new minimum share capital.
- New enterprise limited liability companies (*sociedades limitadas nueva empresa*), whose usefulness has been surpassed by the implementation of the Single Electronic Document (*Documento Único Electrónico* or “**DUE**”), will no longer be a type of company contemplated in the law.

- In order to boost the use of the Business-Creation Information Centre and Network (*Centro de Información y Red de Creación de Empresas* or “**CIRCE**”) and the DUE, notaries and intermediaries that advise on and participate in the creation of limited liability companies will be subject to certain information duties and other obligations.
- New measures have been introduced to make the formalities involved in setting up limited liability companies through a standardised public instrument more precise.

**(D) Promote business growth:**

- The catalogue of activities that do not need a prior licence has been extended to include activities such as market research and comprehensive postal and telecommunications services.
- The regulations on market unity have been amended to establish, among other things, that the limits or requirements to access and exercise regulated professions must undergo a proportionality test to assess whether they are really necessary or not.
- The Market Unity Council has been modified and replaced by the Sectoral Conference for Regulatory Improvement and the Business Climate, which is entrusted with analysing and evaluating the state of market unity in Spain and promoting the necessary regulatory changes to eliminate obstacles to it.
- The right to file a complaint with the Secretary for Market Unity for an infringement of freedom of establishment or freedom of movement has been extended to any natural or legal person.
- The National Markets and Competition Commission (*Comisión Nacional de los Mercados y la Competencia*) will no longer be able to use the special procedure to guarantee market unity to automatically suspend provisions or acts under appeal, meaning that it will need to follow the ordinary channel (that applicable to all precautionary measures).

**(E) Combat late payment:**

- The newly created State Observatory on Private Late Payment (*Observatorio Estatal de la Morosidad Privada*) has been tasked with drawing up an annual report on the status of payment deadlines and late payments in commercial transactions to more efficiently monitor late payment in Spain.
- Listed and unlisted companies that do not submit simplified annual accounts will be required to provide more information. In addition to including the average supplier payment period in their annual accounts report and on their website, they must now include the monetary volume and number of invoices paid in a period that is shorter than the maximum one established in the regulations on late payment, as well as the percentage it represents of the total number of invoices and of the total monetary payments to their suppliers.
- The law has made electronic invoicing the standard in commercial relations between entrepreneurs and professionals. It sets a specific timeframe to comply with this obligation

(one year from the implementing regulations regarding the interoperability requirements for entrepreneurs and professionals with a turnover of more than EUR 8 million, and two years for the rest).

- Repeated failure to comply with the rules on combatting late payment in commercial transactions will be considered unfair competition.

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