# The role of a Spanish notary

OLSWANG

## Overview

The notary's role in a Spanish share transaction is to verify that the transaction is validly entered into by basically checking the identity of the parties, reviewing the ownership of the shares and ensuring that the documents are properly signed in his presence. By doing this the notary "gives public faith" of the share transfer. The parties will need to take a number of steps before they are ready to enter into a share transaction before a notary public.

## Preliminary steps involved in the notarization process

***Granting powers of attorney***: where the buyer or seller is a foreign company, it will need to grant a power of attorney, for instance in favour of its Spanish lawyers, so that it can be duly represented before the Spanish notary public. Powers of attorney can be granted either before the Spanish consul in the foreign investor's home country or (more commonly in our experience) before a notary of the foreign investor's home country, in which case the document will need to be legalized, either with the apostille of the Hague Convention or by a Spanish consul abroad.

***Obtaining a tax identification number ("NIF")***: this identification number is needed for foreign legal entities in order to appear before a Spanish notary. Spanish lawyers will be able to obtain this NIF on their client's behalf on a same day basis, relying on the power of attorney referred to above.

***Obtaining a foreign identification number ("NIE"):*** this identification number is needed for individuals in order to: (i) appear before a notary, for instance, in relation to an acquisition of shares; and (ii) be appointed as director of a Spanish company. Spanish lawyers will be able to obtain this NIE number on their client's behalf on a same day basis, relying on a power of attorney granted under the same terms as described above and relevant ancillary documents.

***Identifying the "real owner" of the shares:*** Spanish law for the prevention of money laundering and terrorist financing requires the notary public to identify the "real owner" of the shares. The "real owner" is defined as the individual who ultimately owns or controls, directly or indirectly, more than 25% of the share capital or voting rights of the legal entity, or who otherwise exercises, directly or indirectly, control over the management of the legal entity. This rule implements the EU-wide Directive 2005/60/EC of the European Parliament and the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Identification of the "real owner" before the notary can be carried out by the company's Spanish lawyers under the power of attorney referred to above.

***Notification of foreign investment:*** as a general rule (with other additional steps being required in the case of listed company IPOs and in relation to certain sectors which are regulated or affect national security), after a foreign investor has acquired shares in a Spanish company, the transaction will need to be notified by the notary public to the Spanish Economy Ministry (mainly for statistical purposes). However, where the foreign investor is resident in a tax haven the transaction will need to be notified before it takes place. This is subject to exceptions in the case of certain offers to the public or where the foreign investment does not exceed 50% of the share capital of the Spanish company.