

Franchising in Spain

FRANCHISING IN SPAIN

I. Spain: Essential data

With an area of 493,484 km² beside the Canaries Islands, the Balears Islands and the autonomous cities of Ceuta and Melilla, which amount to a total of 505,992 km², Spain is the second biggest country in Western Europe and in the European Union after France. It is surrounded by the Mediterranean Sea in the South and East. At the North, it is separated from France, Andorra and the Bay of Biscay by the Pyrenees mountains. It is populated by more than 46 million inhabitants concentrated essentially on the maritime facades, with the exception of big cities as Madrid, Valladolid and Saragossa.

Spain has a central State administration and three levels of local administration:

- 17 autonomous communities (Comunidad autónoma),
- 50 provinces (Provincia),
- 8,112 municipalities (Municipio).

The official language of the country is Spanish, also called « Castillan ». However, every autonomous community has developed its own official language in addition to Spanish; in Mallorca for instance, inhabitants speak Mallorquin.

Spain is a hereditary constitutional Monarchy endowed with a bicameral parliament: the « Cortes ». The Spanish Constitution of 1978 was qualified as the «Constitution of the consensus ». It acknowledges the principle of judicial, executive and legislative separation of the powers.

II. Economy in Spain and retail sector

After recording one of the highest economic growth in Europe in the 2000's, Spain has been severely hit since the summer of 2008 by the global financial crisis. The Gross Domestic Product (GDP) stood in 2009 at 1.006 million euros (including 2.9% for agriculture, 30.4% for industry and 66.7% for services). The country registered a growth of 0.9% in 2008, and entered recession in 2009 (-3.7%). The forecasts for 2010 suggest a negative growth of 0.8%. The unemployment rate, which stood at 11% in 2008, rose to 17.9% in 2009. For 2010, it is estimated to a staggering 20%. Spain's Finance Minister, Elena Salgado, announced a possible return to growth with an estimated increase of the GDP (up 1.8% in 2010 and 2.7% in 2012).

Franchise law only appeared in Spain in the Fifties. Since then, franchising has considerably developed, in particular in domains such as the food industry, the hotel business, the clothing and cosmetics industry. The franchise sector proved resistant to the crisis, which is currently hitting Spain. It recorded a 20.3 billion euro turnover in 2007 and grew to € 20.8 billion in 2008. Around 80% of franchises operating in Spain are from Spanish origin. The remaining 20% are mainly French (Phildar, Franck Provost) and American franchises.

III. The regulations of franchising in Spain

Act n°7/1996 of January 15th of 1996 called « Ley de Ordenación del Comercio Minorista » governs Spanish franchising law. Chapter VI, entitled « de la actividad comercial en régimen de franquicia» pertaining to franchising includes only one article. Contrary to the French law, this article clearly defines franchising as a « commercial activity carried out by virtue of contract whereby a company, called franchisor, grants another one, called

franchisee, the right to operate a system relating to the marketing of products or services (...) ». This article also imposes two obligations on the franchisor, which are further detailed by a royal decree n°2.485/1998 of November 13th of 1998.

The first obligation consists in the obligation for every franchisor to be duly registered with several authorities. Those registers are originally created by the competent administration; therefore every franchisor must, before starting his activity, complete registration formalities. This obligation also concerns franchisors who operated a franchising business before the entry into force of the decree. The latter had a deadline of a month to complete their registration. According to the law, this obligation must be complied with « every physical person or company who wishes to operate in Spain a franchising activity (...) ». This register works at the level of the Spanish state but is held by the autonomous communities of the registered office or the place of residence of the franchisor.

The second obligation, which directly stems from French law, relates to pre-contractual information. Article 62-3 of the act of 1996 requires that every supplier hands in to any prospective franchisee, at least 20 days before the signature of the contract or before the delivery by the franchisee of any payment, a written document containing all necessary information so that the prospective franchisee can decide freely and in any knowledge whether to join the franchising network. The contents of this disclosure document are dense and mainly relate to data of identification of the franchisor. The decree of 1988 detailed the contents of this obligation. Franchisors must therefore prove that they are duly registered on the franchisor's registry, that they are registered with the commercial registry and provide information as to the amount of their share capital.

Besides, every franchisor must prove his property right on the trademark or the distinguishing features. He also has to indicate to any prospective franchisee the number of franchisees having left the network during the last two years as well as the motive behind the end of the contractual relationship with these former franchisees. Finally, the franchisor must also clearly specify the future rights and obligations of the parties to the franchising agreement, the financial terms thereof and the provisions pertaining to renewal or termination of the contract.

During the execution of the contract, breach of contractual obligations by either party to the agreement can give rise to the termination of the franchising agreement. Spanish law has been widely inspired by French law, thus imposing on the franchisor a pre-contractual obligation pertaining to the clauses of the contract.

Gilles Menguy

Avocat & Solicitor, GM Avocats

gmenguy@gm-avocats.com