

Franchising in Spain

Year after year the franchise sector in Spain has been growing with new brands, more outlets and additional jobs created. According to the information published by the Spanish Association of Franchisors, in 2020 a total of 1,381 franchised brands were in operation in Spain, and although the pandemic may have had an impact on the franchising sector in 2021, no doubt that this has been temporary and that franchising will continue its expansion in 2022 and beyond.

Out of the 1,381 franchised brands in operation in Spain, a total of 249 brands came from other countries, most notably France (with 56 brands), the United States (with 46 brands), Italy (with 44 brands) and the United Kingdom (with 16 brands).

This means that foreign brands represent only 18% of the total number of franchised brands in Spain, which shows that there is still room for foreign brands to expand in the Spanish market.

Franchisors can operate in Spain without being registered as franchisors and with no need to record their franchise agreements in the Franchising Registry. Prior franchise legislation in Spain required such registration, but this obligation was removed in 2018 to eliminate unnecessary bureaucracy and facilitate the expansion of franchising in the country.

In Spain, the commercial activity under the franchise system is regulated by Article 62 of Law 7/1996 on Retail Trade and by the Royal Decree 201/2010, of February 26, as amended in December 2018, and it states that a franchise contract must contain at least three essential elements to be considered franchising:

1. The assignment of the use of a trademark, corporate image, uniform presentation of premises or means of transport.
2. The contribution by the franchisor of its own technical knowledge or know-how, which must be substantial and unique.
3. A continuous commercial and/or technical support from the franchisor to the franchisee throughout the term of the agreement.

Exclusive distribution contracts, the granting of a manufacturing licence, the assignment of a registered trademark for use in a certain area or the assignment of the use of a commercial sign are not considered franchising.

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As in many other countries, in Spain there is also a disclosure obligation, and the franchisor must disclose certain information to potential franchisees at least 20 days before entering into the franchise contract and before the franchisee pays the franchisor any amount.

The pre-contractual information, to be provided in writing, must include:

- a) Identification data of the franchisor, including its share capital. If there is a master franchisee, the data referring to its franchisor must also be included.
- b) Ownership of the trademark and distinctive signs, duly registered in Spain and the description of any circumstance that could affect them.
- c) A description of the sector of activity in which the franchise business operates.
- d) Experience of the franchisor/master franchisee and how the franchised network has developed.
- e) Content and characteristics of the franchise business, which shall include a general explanation of the system, the know-how, the commercial or technical assistance that franchisor will provide to its franchisees, as well as an estimate of the investments and expenses necessary for launching and operating the business, all of which shall be based on actual experience or substantiated studies.
- f) Description of the franchise network in Spain, including its organisation, the number of outlets in Spain, specifying those operated directly by the franchisor and those operated by third party independent franchisees, town in which they are located and the number of franchisees that have ceased to belong to the network in Spain in the last two years, stating whether the termination occurred due to expiry of the contractual term or due to other causes of termination.
- g) The essential aspects of the franchise agreement, specifying the rights and obligations of the respective parties, the duration of the contract, termination conditions, exclusivity and limitations for the franchisee, and other relevant aspects.

If the franchisor plans to operate only and exclusively in a certain region within Spain, it will also be important to check if any specific local franchising regulation exist for that region (“Comunidad Autónoma”).

Regarding the franchise contract to be implemented in Spain, a foreign franchisor will normally use its existing template of franchise contract (as used in its country of origin) adapted to Spanish law and practice. Among other aspects, the franchisor must verify that the contract complies with EU/Spanish applicable competition law.

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Another frequently asked question is about the language of the franchise contract. Generally speaking, if the parties enter into a master franchise contract, translation may not be required if the master franchisee understands the foreign language, but if it is a franchise contract directed to individual franchisees, translation into Spanish language will probably be necessary.

Apart from disclosing the pre-contractual information and preparing a template of the franchise contract, there are many other aspects that a foreign franchisor will have to consider from a legal perspective when launching in Spain, which will vary depending on whether the foreign franchisor is launching the brand in Spain through a third party independent master franchisee or directly as franchisor. Aspects such as the corporate structure, capital requirements, the royalty flow, the establishment of online sales, etc. It is always advisable to consider and analyse all of them before launching the brand and entering into the first franchise contract.

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