

## **FRANCHISING IN SPAIN WITH A LOCAL PARTNER**

Out of the approximately 1,381 franchise brands operating in Spain, more than 249 come from other countries, most notably France, the United States, Italy and the United Kingdom. This means that about 20% of the franchise brands in Spain are foreign brands, and this percentage keeps growing year after year.

Large and internationally well-known franchise brands are more likely to find candidates willing to open a Master Franchise in Spain, but for small and medium size Franchisors it is always more difficult to expand internationally, as they still need to prove that their business models work successfully in other counties.

Finding suitable candidates to open a Master Franchise in Spain may often become a challenge and our experience show that partnership between the Franchisor and the local candidate can be a very good option to show commitment, ensure operational success and reduce reputational risks.

We have recently advised on such partnerships for the launch of new foreign franchise brands in Spain.

### **Partnership's advantages**

The partnership approach will show to local candidates that the Franchisor is confident about its brand and its business model working in Spain. It will also show the Franchisor's commitment to support the new Master Franchisee operating in Spain.

For the Franchisor, partnership will provide more in-depth visibility of the newly established Master Franchisee, more control of the local operation to ensure the success of the brand in Spain and will reduce risks for the brand.

### **Joint-venture structure**

To launch a new Master Franchisee through the partnership approach, the Franchisor and the local partner will normally incorporate a limited liability company ("[\*Sociedad Limitada\*](#)") that will become the Master Franchisee in Spain.

The Franchisor and the local partner will need to agree on the percentages that they will own in the Master Franchisee company and enter into a Shareholders' Agreement establishing the basic rules of their partnership.

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A Shareholders' Agreement will typically include the investments that both parties will commit, either in the form of share capital, loans and/or collaterals for bank financing, how the Master Franchisee company will be managed, decisions that will require special majorities, how to resolve any deadlock, exit mechanisms, etc.

### **Put and Call Options**

The partnership approach can be used by the Franchisor with the intention to remain in the company for a long time, or just as a mechanism to help with the launch of a Master Franchisee in Spain. If it is the latter, the Franchisor and the local partner will need to enter into a Put and/or Call Option Agreement setting the terms for the transfer of all the Master Franchisee shares to the local partner after a period of time and upon achieving certain goals.

### **Franchise Agreement**

In any event, the Franchisor and the newly incorporated Spanish company will need to enter into a [Franchise Agreement](#) for the operation of the franchised business. This could take the form of a Master Franchise Agreement if the territory granted will be all Spain and the new company will have the right to sub-franchise, or it could have the form of a Franchise Agreement for the initial operation of one outlet by the joint-venture company, with the option of transforming it into a Master Franchise Agreement in the future if certain conditions are met.

This second option is often used when the Franchisor wants to check first the feasibility of the business model in Spain and the suitability of the local partner before committing to a Master Franchise structure. Should this be the case, the parties will need to include the Master Franchise option in the Shareholders Agreement and set an exit mechanism in case the joint venture company never achieves the Master Franchise rights.

### **Coexistence of the Master Franchise Agreement and the Shareholders' Agreement**

A Franchisor using the partnership approach will have double control rights over the Master Franchisee company; as a shareholder and as franchisor. This means that for the Franchisor, being a majority shareholder in the local company may not be that relevant, as it will also have important overview and control rights through the Master Franchise Agreement. It will be essential, though, that both agreements, the Master Franchise Agreement and the Shareholders' Agreement are drafted carefully and their terms are consistent.

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