

SPAIN



Spain

PART I: CONTRACTUAL – NO OFFICE IN THE TARGET COUNTRY

A. Direct sale

A.1. Without written agreement – general terms

1. *What are the formalities a foreign seller must complete in your jurisdiction in order to make sure that its terms and conditions of sale are binding and enforceable towards local purchasers? Are these conditions enforceable towards non commercial parties?*

There are no special formalities a foreign seller must complete. The general terms are only binding for the local purchaser, being wholesaler, retailer of consumers, if the following two conditions are fulfilled: (1) The purchaser needs to have the chance to examine the general terms and conditions of sale. (2) The purchaser needs to accept the general terms and conditions.

A.2. With a written agreement

2. *What are the clauses a foreign seller should integrate in a written sales agreement (or in his general terms and conditions) and the reasons why?*

- (a) **Retention of title:** *Is this provided for in your jurisdiction? What are the conditions to make it enforceable towards local purchasers and third parties?*

Yes, the retention of title can validly be provided within contractual conditions, but only for costumers, neither for wholesalers nor retailer, and only by fulfilling the following two steps:

- The conditions to make the retention of title enforceable towards local purchasers are the same as the conditions we mentioned with regard to the general terms and conditions.
 - To make it enforceable towards third parties, however, the purchase contract must be registered in a special Register depending on the Commerce Registry of each province.
- (b) **Interest and penalty clause:** *Are these clauses enforceable in your jurisdiction? Can they be reduced or annulled? What are the consequences if this clause is not integrated in the*

agreement? What is the legal rate in your jurisdiction?

Parties are free to agree on payment, interest and penalty clauses in their agreements, as long as they are not considered unfair or forced by one of them. Those clauses can be questioned by the Court.

Only for wholesalers and retainers, with the law of 29 December 2004, Spain implemented the European Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions. This law is also applicable if parties didn't agree on payment, interest and/or penalty clauses.

The interest rate is the one agreed between the parties or, failing such agreed rate, the rate fixed by the Central European Bank plus 7%.

(c) **Applicable law and competent jurisdiction:** *Are these clauses enforceable in your jurisdiction? What are the consequences if this clause is not integrated in the agreement?*

- **National transaction:**

A clause that determines the territorial competent jurisdiction is valid between parties if it has been accepted by both parties.

- **International transaction:**

- Applicable law

Spain undersigned the 1980 Rome Convention on the Law applicable to Contractual Obligations (The European Contracts Convention).

So parties can chose the applicable law, or the contract will be ruled by the law of the country with which is most closely connected, meaning the one where the most characteristic part of the contract will take place.

- Competent jurisdiction

As regards transactions between persons domiciled in a EU member state, the council regulation nr. 44/2001 of 22 December 2000 applies. If it is a consumer who claims, can chose his jurisdiction or the seller's; if claims a seller, the jurisdiction is that of the consumer; and if the problem is with wholesalers or retainers, the jurisdiction of the place where the goods were or had to be served.

For non EU members, the Brussels convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters is the main international convention in Spain regarding the rules of international jurisdiction. As a general rule, this convention provides that persons domiciled in a contracting state shall, whatever their nationality, be sued in the courts of that state. If the defendant is not domiciled in a contracting state, the jurisdiction of the courts of each contracting state shall, subject to the provisions of the Brussels Convention, be determined by the law of that state.

B. Commercial Intermediaries

3. *What types of commercial intermediaries do exist in your jurisdiction?*

- **Distribution agreement:**

Agreement whereby one party (the supplier) agrees with another (the distributor) to supply the latter with products or services for the purpose of resale. The distributor sells the products or services in his own name and on his own account.

- **Commercial agent:**

An agreement whereby an independent intermediary has the authority to negotiate and conclude agreements in the name and on behalf of the principal. The legal intermediary acts on behalf of his principal in such a manner that the legal relationship is created directly between the principal and the customer.

- **Franchising:**

An agreement between two parties (Franchisee and Franchisor) whereby the Franchisee has the right, in exchange for a direct or indirect financial consideration, to use the Franchisor's trade name, and/or trade mark and / or service mark, know-how, business and technical methods, procedural system, and other industrial and /or intellectual property rights, supported by continuing provision of commercial and technical assistance by the Franchisor.

4. *What legislation does apply in your jurisdiction with regard to the above mentioned types of distribution agreements?*

- **Distribution agreement:**

There is no specific Law, but Spanish Courts usually decide, in some cases, by analogy, on the basis of the Commercial agent Law 12/1992.

- **Commercial agent:**

Commercial agent Law 12/1992.

A goodwill indemnity is due if the agent has recruited new customers or if the agent has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits.

The amount may not exceed a figure equivalent to an indemnity for one year calculated on the remuneration over the preceding five years.

To finish the contract the employer must tell the agent with a period notice of 6 months, except if there is a fair cause, and then no compensation has to be paid.

- **Franchising:**

Our specific rules are Law 7/1996 and Real Decreto 2485/1998 modified by RD 419/2006, which introduce and refers to Rule CEE 4087/88, and Rule CEE 2790/1999.

The clauses of the contract are free, within the framework of the general principles of contract law and public policy, but the pre-contractual information to be given to the Franchisee, at least 20 days before signing the contract, is mandatory:

- All the data registered in the special Spanish Registry, in the foreign Registry if exists and all the official information about the company.
- The documents proving the property of the mark and all what will be the object of the contract.
- A description of the planned activity, know-how, net of franchisees in the country, etc...
- Experience of the company.
- The main clauses of the contract.

PART II: BRANCH – OFFICE IN THE TARGET COUNTRY BUT NO LEGAL PERSON:

5. *What are in your jurisdiction the differences between starting up a branch and starting up of a company (subsidiary)?*

As a branch has no legal personality, obligations incurred through such branch can be enforced on the assets of the foreign company, even if they are located abroad.

Since the subsidiary is a separate legal entity, its liability is limited to its own assets. The shareholders will therefore not be personally affected by the liabilities of the subsidiary beyond the amount of subscribed capital.

6. *What formalities must be fulfilled for opening a branch?*

Basically, to sign a deed at a Spanish Notary, joining the decision to open the branch and a legalized certificate about the registration and statutes of the parent company, obtain a trade registration number and a N.I.F. (Tax Identification Number).

7. *Why would you rather advise a foreign seller to set up a branch and not a company in your country, or vice versa?*

I would advice to set up a company, basically because any change or formality for a branch must engage the mother company to fulfill documents and then translate them, and all the relation with Spanish authorities is easier for a local company. Besides that, a branch's annual filing will reveal consolidated financial information about the mother entity and all its branches around the world.

8. *Is a branch authorized to act before the court, to engage people, ...?*

Yes, and a legal representative (named Delegate) must be designated for the purposes of managing the branch and representing the company in dealings with third parties and in legal proceedings in connection with the activities of the branch.

9. *What is the liability of the legal representative of the branch?*

The legal representative of a branch is a person with special faculties for the daily matters, and he has almost the same liability towards third parties as a director of a Spanish Company.

10. *Is there an automatic liability of the head office for the operations or acts of the branch?*

The head office is entirely liable for all undertakings of the branch office in Spain.

11. *Which language will the documents be in?*

In Spanish.

12. What are the accounting requirements for a branch?

Branches have the obligation to keep accounting records in accordance with the Spanish accounting rules and are required to publish the annual accounts of the parent company. The consolidated accounts of the head office need also to be published if the legislation of the parent company establishes this obligation. The parent company's accounts must be audited and certified according to its own national regime.

PART III: SUBSIDIARY – LEGAL PERSON (SEPARATE LEGAL LOCAL ENTITY) IN THE TARGET COUNTRY

13 What are the advantages of establishing a subsidiary compared to establishing a branch?

Already answered in 7, adding that, because the subsidiary and the parent company are separate legal entities, the parent company is not exposed to any liabilities of the subsidiary, except in the cases of anti-Trust rules.

14. Can you present the main characteristics of the company forms existing under your jurisdiction in the following schedule:

There are many more, but these are the most usual:

COMPANY FORM	S.A. Sociedad Anónima Public limited liability company	S.L. / S.R.L. Sociedad de Responsabilidad Limitada Limited liability company	S.C. Sociedad Colectiva
Limited liability	YES	YES	NO
Free transferability of the shares	It depends: Bearer Stockholders, YES Registered shares, NO	NO	NO
Fixed or variable capital	Fixed	Fixed	Fixed
Minimum capital	60,000.00 EUR	3,000.00 EUR	No
Number of founders	1	1	2
Notarial deed	YES	YES	YES

COMPANY FORM	S.Com./S.ComA Sociedad comanditaria simple/por acciones
Limited liability	YES, but only for the limited partners, not for the managing partners
Free transferability of the shares	NO
Fixed or variable capital	Variable with possibility to make a contribution of labour
Minimum capital	0 EUR/60,000.00 EUR
Number of founders	2
Notarial deed	YES

15. *Which of the company forms is used most frequently in your jurisdiction?*

S.L. (Sociedad de Responsabilidad Limitada) and S.A. (Sociedad Anónima)

16. *Which company form is used most frequently in case of small or family business?*

S.L. (Sociedad de Responsabilidad Limitada)

17. *What are the main formalities a foreign company has to comply with in order to establish a subsidiary (filial/filiale)?*

The most usual legal steps required when establishing a company are similar for all types of companies and consists of the following steps:

- Obtaining a N.I.E. (Identification tax Number for Foreigners) for all the shareholders and future administrator/s, if they are going to be foreign people.
- Deposit of the share capital in a blocked bank account. In the case of a contribution in cash, a bank account must be opened in the name of the company "to be incorporated" with a bank in Spain and each shareholder must deposit the amount to be paid up on its shares in this account, prior to the execution of the incorporation deed. The bank will issue a certificate, which must be delivered to the notary on the date of execution of the incorporation deed, confirming that the paid-up amount of the capital is in the bank account.
- To sign a notarial deed in Spain stating the details of the shareholders who incorporate the company and specify

the amount of the capital contribution made by each shareholder, joining the company's articles of association, which determine the rules governing the company. The directors will be appointed on incorporation of the company.

- Pay taxes of 1% of the capital, register the deed in the Commerce Registry of the province, make public the registration through the B.O.R.M.E. (Boletín Oficial del Registro Mercantil) and fulfilling all the further tax obligations, such as obtaining a N.I.F. (Tax Identification Number).

18. *What are the costs of establishing a subsidiary in your jurisdiction?*

They depend on the amount of the capital (for instance, taxes are 1%), but a minimum of 3.000,- EUR would be normal, including Lawyer, Notary, taxes and registration, for a sharecapital of 6.000,-EUR.

19. *How long does it take to establish a subsidiary in Spain?*

Bearing in mind that all the shareholders and administrators must previously ask for a N.I.E. (Identification tax Number for Foreigners), it can last a minimum of 1-2 months to have the company duly registered.

20. *Is there specific legislation with regard to the liabilities of the founders and the directors of the most used company form?*

No, they are ruled inside the Ley de Sociedades de Capital, RDL 1/2010, with little differences for S.L.

PART IV – MISCELLANEOUS

A. Real estate

A.1. Purchase of a real estate

21. *Who do you turn to in order to close a valid purchase agreement?*

A transfer of real estate does already occur when the parties mutually agree on price and object of the sale, even by means of a privat (verbal or in a written form) contract, but, to be enforceable against third parties it requires a Notarial deed (or judgement) and being registered in the Property Register.

22. *What are the costs related to the purchase agreement?*

Transfer of real estate is subject to a transfer tax partially transferred to the regions (Comunidades Autónomas). The

default rate is of 6% in Spain (or VAT of 10% if it is a first occupancy of real estate destined for housing purposes, or higher in other cases, specially if it is a company who sells a terrain), so if you add notarial fees and registration, the total is from 12 to 18% of the price, approximately.

23. *Is there in your jurisdiction legislation that can slow down the purchase process (e.g. environmental legislation requiring preliminary soil examinations)*

Yes.

A.2. *Rent a real estate*

24. *Is there imperative law in your jurisdiction with regard to the rent of offices, industrial real estate or commercial real estate? Can you give a summary of the major stipulations of these regulations?*

They are all ruled in the Ley de Arrendamientos Urbanos (L.A.U.), nr. 29/1994 of 29 November 1.994, and basically in the Civil Code.

The contents of the contract is mostly free, without any minimum term, and only some obligatory clauses: the priority in purchasing the property, the right to sell the contract to another party (with an increase of the rent to be paid), to inherit the contract and to be compensated when leaving depending on circumstances.

25. *Are there any formalities to fulfil in order to enforce the lease agreement towards third parties?*

Yes, registering the contract in the Property Register, but it is only a voluntary formality.

A.3. *Environmental issues:*

26. *For what types of activities is an environmental permit required?*

For many, such as farms, food industries, mines, energy industries, chemistry and so on, described in the Real Decreto Legislativo 1302/1986 and Law 27/2006.

27. *Can you describe briefly this procedure? How much time will this procedure normally take*

It will take several months, as the competence may be of the Spanish authorities or the autonomic regions, and the procedure is subjected to public information to recall all possible opinions from the people affected.

Basically, the documents to deliver to the competent authority are:

- A description of the project and its actions
- An examination of the possible alternatives and reasons to chose one.
- Description of the ecological interactions.
- Identification an evaluation of the impacts.
- Establishment of protective and corrective measures
- Program of security measures

28. *Are there any specific regulations with regard to outsourcing of employees?*

Yes, Ley 45/1999, de 29 de noviembre, "sobre el desplazamiento de trabajadores en el marco de una prestación de servicios transnacional".

29. *Applicable legislation according to the type of employment (differences between employment by local company or by head office for the local branch)*

Employment by local company is ruled by Real Decreto Legislativo 1/1995, de 24 de marzo, called "Estatuto de los Trabajadores".

Employment by head office is ruled by the Law the parties choose when signing, but at the end if the employee remains in Spain Spanish Law will rule the relationship.

30. *Legal engagement and dismissal requirements and formalities*

A written form is needed, and if a temporary contract lasts more that 24 months in a thirty months period, they are automatically transformed into permanent ones.

Basically, dismissal is free if there is a fair reason based on a guilty behaviour of the worker; if not, the employer must pay compensation/redundancy payment. For dismissals due to objective reasons has a 20 days compensation for each year worked, or fraction of it, with a maximum amount of 12 months. Unjustified dismissals receive a 33 days compensation for each year worked, or fraction of it, with a maximum amount of 24 months.

Also the employee can finish the agreement by granting a notice period.

31. *Social security regulations*

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- The Spanish social security law is of public order and an employee is submitted to it when he is employed in Spain by an employer established / settled in Spain, or when the employer is established / settled abroad and the employee is connected with a registered office in Spain.
 - The Spanish Social Security implies mainly: the regulation concerning pension, the unemployment, the insurance for work accidents, the insurance for occupational diseases, the family allowance, annual vacation and the health insurance.

For outsourcing employees, Spain follows the CEE Rules 1408/71 and 574/72, and the uniform documents to inform the Social Security nr. E102 and E103.

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Eurojuris IBG members aim to provide a Partner level service to clients and, through close co-operation with European colleagues, to provide a consistent and seamless service.

Eurojuris IBG aims to offer a uniform presentation and mutual legal education schemes with common practices and to develop common services for the clients of member firms.

As more and more businesses find that improved communication and access opens the way to more international trade, the need for legal representation throughout a number of jurisdictions becomes essential. Eurojuris IBG provides access to expert local knowledge through a lawyer in the jurisdiction of the client's head office.

The members of Eurojuris IBG maintain close levels of co-operation and knowledge of each other's firms. This is achieved not only via the usual media of email, fax and telephone, but also through regular meetings, some of which take place in the offices of the member firms to enable members to understand the way in which they can better serve their client's needs.

The members of Eurojuris IBG fulfill very strict criteria: they are business minded, they work with business clients across Europe and overseas, they all work in the English language and have some knowledge of other European languages. Importantly they are equipped with the most up to date information technology systems and maintain substantial Professional Indemnity Insurance.

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