

LEGALINK

INVESTMENT AND BUSINESS START UP IN SPAIN

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

Spain has a civil law legal system based on statutory law.

2. What are the major law courts in your country?

The Supreme Court of Spain (Tribunal Supremo) is the highest judiciary body in Spain. Composed of five halls, it covers all jurisdictional orders and its rulings cannot be appealed, except to the Constitutional Court, when one of the parties claims that their constitutional rights have been infringed.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

According to article 1 of the Spanish Civil Code, the sources of law in Spain are:

- *Law.*
- *Usage.*
- *General principles of law.*

Jurisprudence is considered a secondary source of law: court decisions in Spain are not a source of law themselves but they usually provide interpretative criteria for the rest of the sources.

4. What is/are the official language(s) in your country?

Spanish is the official national language in Spain. However, the autonomous community system allows each of Spain's regions to elect a co-language. Six regions have taken up this option: Catalonia and the Balearic Islands have Catalan, Valencia has Valencian, the Basque Country and Navarra have Basque and Galicia has Galician.

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

Foreign investment in Spain is unrestricted. However, investments in the following sectors are subject to specific regulations and may require administrative authorization:

- *Air transportation.*
- *Banking and financial services.*
- *Gambling.*
- *Manufacturing, marketing and distribution of weapons and explosives for civil use and activities related to national security.*
- *Minerals and raw materials of strategic importance.*
- *Radio and television.*
- *Telecommunications.*

Also investments from tax heavens are subject to a special regime that require previous communication and authorization of the relevant authorities.

6. Are there any exchange control or currency regulations in your country?

As a general rule, all acts, businesses, transactions and operations between residents and non-residents which involve or may involve payments abroad or receipts from abroad are completely deregulated. This deregulation includes payments or receipts made either directly or by offset of the underlying transactions, as well as transfers to or from abroad and variations in accounts or financial debtor or creditor positions abroad. It also covers the import or export of means of payment.

In certain cases, in order to calculate the Spanish balance of payments and to maintain statistical control of monetary flows there are certain formalisms and registry obligations, which includes prior registration of the origin, destination and holding of funds when some means of payment are made.

Nevertheless, in certain cases some formalisms are required, it stands out the notification of foreign loans and credits provided by non-residents to residents requires (prior to the first draw-down of funds of the loan or credit provided) the resident borrower concerned

to obtain a financial transaction number (“NOF”) when the amount thereof is equal to or higher than €3,000,000 (it is not necessary to file any returns for lower amounts).

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

Financial incentives are offered in Spain at various levels (national, autonomous community and municipal) and, among others, they are usually related to certain investments:

- *Technological improvements.*
- *Research.*
- *Regional development.*
- *Job creation.*

Investment in many regions may benefit from EU Structural Funds when such investments are related to:

- *Infrastructure.*
- *Training and employment.*
- *Rural development.*

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

The most common corporate form used by national and foreign investors is a Limited Liability Company (Sociedad de Responsabilidad Limitada – S.L.), despite Public Limited Companies (Sociedad Anónima – S.A.) are also incorporated (i) in larger investments, and/or (ii) when stock market listing is contemplated and/or (iii) when it is required for developing certain regulated activities.

Please provide details on:

- i. Registration formalities;

Companies in Spain shall be incorporated by means of a deed executed before a Notary Public and they shall be registered in the Mercantile Registry of the company address. Such process usually takes up to one month.

ii. Minimum (and maximum) share capital;

The capital of a Limited Liability Company may not be less than €3,000. The quotas into which the capital of a Limited Liability Company is divided shall be fully assumed by the respective shareholders and the face value of each of them shall be fully paid at the time of execution of the incorporation deed.

The capital of a Public Limited Company may not be less than €60,000. The shares into which the capital of a Public Limited Company is divided shall be fully subscribed by the respective shareholders and paid at least to the extent of a 25% of the face value of each of them at the time of execution of the incorporation deed.

There is no maximum share capital.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

Shares issued for non-cash consideration are permitted by Spanish law to the extent that such non-cash consideration can be valued.

Non-cash contributions in Public Limited Companies are subject to the valuation of an independent expert appointed by the relevant Mercantile Registry.

Any contributions to the capital of a Spanish Company shall be duly documented by means of a deed executed before a Notary Public and they shall be registered in the relevant Mercantile Registry.

Services cannot be contributed as capital.

iv. Any restrictions on foreign shareholders;

There are no restrictions on foreign shareholders, except for regulated sectors.

v. Management structure and any restrictions on foreign managers;

The administration of a Spanish company may be conferred upon:

- *A sole director, or;*
- *Multiple directors acting jointly and severally or jointly (but not severally), or;*
- *A board of directors.*

In a Public Limited Company, when joint administration is conferred on more than two directors, they will constitute a board of directors.

There is no statutory requirement that the directors be Spanish nationals or residents

vi. Directors' liability;

Directors of Spanish companies will be liable to the company, the shareholders and the creditors of such company for any damage they cause through acts or omissions:

- *Contrary to the law, and/or;*
- *Contrary to the articles of association of such company, and/or;*
- *Violating the duties inherent in their office.*

The fact that the act or wrongful resolution has been passed, authorized or ratified by the General Meeting of Shareholders in no case will result in exoneration from liability.

All the directors that passed the resolution or executed the wrongful act will be jointly and severally liable, except for those who prove that, not having participated in its adoption and implementation:

- *They were unaware of its existence, or;*
- *If they were aware of it, did everything appropriate to avoid the damage, or at least;*
- *The expressly opposed such resolution.*

vii. Parent company liability; and

Shareholders liability is limited to the payment of share capital subscribed

viii. Reporting requirements (including filing of accounts).

In general terms, a Spanish company shall report to the Mercantile Registry the following information (and each and any changes to such data):

- *The articles of association of the company.*
- *The registered address of the company.*
- *The management structure of the company and the identity of its directors and legal representatives.*
- *Any modifications in the capital amount.*

- *Any modifications in the capital structure.*
- *The annual accounts of the company.*

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The main laws on labour matters in Spain are the following:

- *The 1995 Statute of Workers, recently modified in July 2012.*
- *The 1994 General Law of the Social Security.*
- *The 1995 Law on the Prevention of Occupational Hazards.*

These laws apply also to Spanish nationals working abroad for Spanish companies if the parties to the employment contract choose Spanish law as the applicable law.

Spanish labour courts usually have jurisdiction over all issues relating to a labour relationship where the services are provided in Spain.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

It is not compulsory to sign a written contract, with the exception of certain types of contracts, such as temporary contracts. Nevertheless, there is a general obligation for employers to inform in writing regarding certain terms of the employment relationship, as the schedule of the time of work, the site, vacations, salary, etc.

There are special some other employment contracts as senior executive employment contracts, that must also be in writing.

Collective bargaining agreements contain provisions on elements of the relationship that improve those established in the law.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

It is necessary to make a difference between UE nationals, and the rest of foreign employees. This second collective require a work and residence permit, and its costs depends on the type of the authorisation.

As an example, for an ordinary work and residence permit the cost is between €190 and €380, depending on the employee's remuneration. The procedure can take about six months but it can vary depending on the region, and the type of permit.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Employees are not entitled to participate in the management of the company, but they have some rights regarding general information according to the Statute of Workers.

Employee's representatives or, in some cases, the employees themselves, are entitled to receive information regarding certain issues as for example, in cases of a proposed merger, and also they must be consulted when an important collective decision is to be taken that may affect them (for example, collective substantial modifications of employment conditions or collective redundancies).

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

There are two legal texts that contain this kind of questions, the Statute of Workers, and the corresponding collective bargaining according to the company activity. They establish the minimum salary, the vacation period, the maximum working hours, the price of the overtime, etc.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

The 1994 General Law of Social Security establish the general pension system paid by the corresponding authorities.

Nevertheless, in Spain is possible to agree an extra pension system too, paid by the company every year during the relationship, with the only obligation of signing in these pension amounts in a bank, not being perceived directly by the employee.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

Dismissals in Spain can be declared fair, unfair, and null.

Under Spanish Labour Law there are two types of dismissals:

- *Disciplinary dismissal. This is based on a serious and wilful breach of employment duties and includes for example situations like continuous and unjustified tardiness or*

absences from the workplace; insubordination or a lack of discipline towards the employer or other employees; a verbal or physical offence directed against the employer, a colleague or any of their relatives; a breach of the duty of good faith and abuse of trust in performing work duties; a continuous and voluntary decline in the employee's performance; habitual drunkenness or drug addiction affecting work performance, etc.

The collective bargaining usually contains more specific situation added to these.

- *Dismissals on objective grounds. Most frequently, this type of dismissal is based on an objective need to eliminate specific positions in the workplace for economic, technical, production or organisational reasons. There are other reasons that can justify an individual objective dismissal such as an employee's lack of adaptation to technical modifications made on his work post. It is necessary to notice this kind of termination contract 15 days before.*

On the other hand, dismissals can be declared:

- *Fair. This is if the alleged reasons by the company are proven and are considered serious enough.*
- *Unfair. This is if the reasons for the dismissal are insufficient, not proportional, or have not been proven by the employer or, in some cases, the adequate procedure has not been followed.*
- *Null. This is if the employer has breached the employee's constitutional rights or acted in a discriminatory way.*

Notice period and severance pay

In a disciplinary dismissal, the employer must not give prior notice and the employee is not entitled to receive a severance payment, unless the dismissal is declared unfair after.

As it has been described above, this kind of termination of the contract is based in an important breach of the employee's obligations, so that is why the law allows employers to extinct the relationship in the same moment as they are aware of these serious facts.

However, for an individual dismissal on objective grounds, the employer must give 15 calendar days' notice in writing to the affected employees and include a detailed explanation of the circumstances causing the dismissal. A copy must be delivered to the employees' representatives. The notice must also include the severance payment of 20

days' salary per year of service up to a maximum of 12 months' salary. This payment must be offered at the same time that the dismissal letter is delivered.

Unfair dismissals

When the dismissal is deemed unfair, it is given to the employer the option to choose between:

- *Reinstating the employee keeping the same conditions as before;*
- *Making a severance payment equivalent to 45 days' salary per year of service with a maximum of 42 months' salary (until 12th February 2012) and the rest of the period making a severance payment equivalent to 33 days salary per year of service with the maximum of 24 months` salary*

If the dismissed employee is an employee representative, he can choose between reinstatement or severance payment.

Dismissals deemed null and void

A dismissal is regarded as null and void if the employer has breached the employee's constitutional rights or if the dismissal is considered to be discriminatory. In these cases, the employer must reinstate the employee, who is then entitled to receive the salary accrued from the date of dismissal to the date of reinstatement.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Redundancies are regulated in the Statute of Workers, with the maximum amounts described in question number 15, according to the type of the dismissal.

The procedure for individual objective redundancies is easy. In practice, it is usually to reach an agreement with the employees if the employers consider the dismissal unfair, because a very restrictive interpretation is carried out by the labour court regarding the reasons argued for individual objective dismissals.

Collective objective dismissals must follow a strict procedure, informing and discussing with the employees' representatives (during, at least, 30 days, or 15 days in companies with fewer than 50 employees) but nowadays it is not necessary the approval of the competent Labour Authority like before. In practice, agreement with the employees is usually reached, and if not, the employers can apply their decisions. In these cases where the parts did not reach an agreement, the employees uses to sue against the companies in order to achieve higher redundancies amounts.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Residency is the applicable principle in Spain for Personal Income Tax. Employees are taxed on their worldwide income. Individuals shall be deemed to have their principal residence in this country if they are in any of the following situations:

- *They spend 183 days or more during a calendar year.*
- *Have in Spain their main economic activity or interests.*

In order to determine whether an individual has its main economic interests in Spain, the source of income, location of assets and personal and family relations will be taken into account. An individual shall be deemed to be a resident if, in accordance with the aforementioned criteria, his or her legally non-separated spouse and dependent minor children have their principal residence in Spain. It is important to note that employees are taxed on their worldwide income.

18. Under what circumstances are employees subject to taxation in your country?

As above stated, the main applicable principle is residence. Employees are required to pay taxes without exception, over all monetary considerations or in kind, directly or indirectly derived for employee relationship, subject to applicable double taxation treaties.

19. What income tax or social security contributions must be paid by:

i. Employees?

Employees are liable for personal income tax being subject to the application of progressive rates from 24% to 52%. However, the rates vary according to the law of each autonomous community, who can increase slightly those rates.

Currently, individuals who have moved over to Spain as a result of an employment contract may choose to pay Income Tax for Non Residents during the tax period in which the change of residence takes place and for the following five tax periods, subject to certain requirements being met:

- *Not having been resident in Spain during the previous ten years.*
- *That the change of residence is due to the employment contract.*
- *The work is actually carried out in Spain.*
- *The work is carried out for a Spanish company or the permanent establishment (PE) in Spain of a foreign company not resident in Spain.*
- *The remuneration does not exceed, in each period, the amount of €600,000.*

The option for Income Tax for Non Residents implies a flat tax rate of 24.75

Capital gains, interests and dividends are taxed differently. Under €6,000, the rate is 21%, and above €6,000, 27%. Additionally social security contributions have to be paid monthly, the sum being based on the employee's salary and professional status.

Income generated outside of Spain is not subject to taxation in Spain when under Non Resident Tax.

ii. Employers, in relation to their employees?

The employer must make payment of an additional social security contribution, related to the social security contribution for the employee.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Tax residency principle applies. In order to consider a company as resident in Spain, it must either (a) be incorporated in accordance with Spanish law, (b) have its registered office in Spain, or (c) be controlled and managed from Spain.

21. Under what circumstances are incorporations subject to taxation in your country?

Corporations are subject to taxation by their residence.

Non-resident corporations shall be liable to pay taxes when they act in Spain, applying territorial source principles.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

Corporate Income Tax (CIT)

The standard CIT rate for tax residents is 30%, but lower and reduced rates may apply to small companies.

Value Added Tax (VAT)

The supply of goods and services is subject to following rates:

- *Standard rate: 21%.*
- *Reduced rate: 10%.*
- *Super-reduced rate: 4%.*

Capital Tax

Certain corporate amendments and transactions are subject to this tax such the liquidation of companies and the capital decreases, applying a rate of 1% of their value.

The incorporation of a company, a capital increase, the contributions made by shareholders and the relocation to Spain of the management or registered office of the company when were previously located in a Member State of the EU, are all exempt from this tax.

Transfer Tax

The transfer of property over Real Estate is subject to up to 7% or 8% rates, when they are not subject or exempt from VAT, depending on the subject transferred and where the transfer takes place.

Real state tax

This tax is payable once a year and its rates vary from 0,3% to 1.1% of the real state cadastral value.

Business activity tax

This flat rate local tax applies when business is carried out in Spain bearing a global turnover that exceeds €1 million.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

General rule sets that the dividends paid will be subject to a 21% withholding tax, unless agreed different under the applicable double tax treaty. However, dividends could be exempt, among other requests, if:

- *The corporate shareholder is a resident in another EU Member State pursuant to the provisions of the EU Parent/Subsidiary Directive.*
- *The Spanish company paying the dividend is subject to the special rules for Spanish holding companies.*

ii. Dividends received from foreign companies?

Dividends received from foreign companies may be exempt provided that the following concur:

The company receiving the dividends holds, directly or indirectly, at least 5% of the share capital; the company paying dividends is not a resident in a tax heaven and is already subject to a tax of related or similar nature to the company income tax, and; the 5% interest is held steadily for one year or the required one-year holding period is concluded after, but the dividends are obtained from business conducted abroad.

iii. Interest paid to foreign corporate shareholders?

General rule sets that the dividends paid will be subject to a 21% withholding tax, unless agreed different under the applicable double tax treaty. However, in cases where the interest is paid to residents or permanently established in a EU Member State, no tax is withheld in Spain.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

General rule sets that the dividends paid will be subject to a 21% withholding tax, unless agreed different under the applicable double tax treaty. However, in cases where the interest is paid to residents or permanently established in a EU Member State, no tax is withheld in Spain.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

The overall limit to deductions of financial expenses is 30% of the operating profit of each fiscal year. This limit only applies on the net financial expense higher than €1,000,000.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

Yes, Spanish tax law incorporates to the taxable income of Spanish companies the passive incomes obtained by affiliates resident in countries with very low or no taxation.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

Transactions between related persons or entities necessarily are valued by market value and the non-compliance with this obligation is considered a tax violation punishable by law.

27. How are imports and exports taxed in your country?

Imports from outside the EU are subject to value added tax at 21% rate; the exports of goods outside the EU are usually exempt from the value added tax. Regarding tariffs, Spain as a Member State of the EU uses the Harmonized to classify merchandise by applying common external tariffs, which are generally low and many of the raw materials are exempt.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

Spain has an extensive network of international treaties to avoid double taxation which currently includes 80 countries around the world, especially with most of the South American countries.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

Spanish main competition law is the 2007 Antitrust Law (Law 15/2007 of 3rd July), in force from 1st September 2007 which develops the antitrust premises set under the Treaty Establishing the European Community.

It is also worth noting the Unfair Competition Law (Law 3/1991 of 10th January), which governs the functioning of the market.

30. Are restrictive agreements and practices regulated by competition law in your country?

Yes, any agreements, decisions, practices or recommendations that may prevent, restrict or difficult the competition may be considered as unlawful under Law 15/2007. In particular, those that seek: the direct or indirect fixation of prices, the limitation or control of the production, distribution, development or investment, the distribution of the market or its supplies, the application of unequal conditions to equivalent transactions, or the acceptance of benefits which are not related to the main business of the company and main business is depending on such benefits.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

It is regulated in the Antitrust Law (Law 15/2007) which determines that the abusive exploitation of the market by one or more enterprises taking advantage of its single-firm position is prohibited.

Imposing, directly or indirectly, prices or other commercial conditions; imposing limitations to the production and distribution damaging other enterprises or consumers; the unjustified refusal to meet the purchase demand of goods or services; the acceptance of benefits that are not related to the ordinary business of the Company and on which the ordinary business depends on; or, applying unequal conditions to equivalent transactions that place certain competitors in a disadvantageous position, may all be considered as unilateral conducts.

All these practices constitute serious infringements of the Law.

32. Are mergers and acquisitions subject to merger control in your country?

Mergers and acquisitions are subject to merger control if they become an economic concentration. In this sense, the Antitrust Law states that there is an economic concentration when there is a stable change of control in one or several companies obtaining at least 30% of the market share or a total annual turnover over €240M (when at least two members of the economic concentration have €60M each), as a result of:

- *The merger of two or more enterprises that were independent before;*
- *The acquisition of the control over the all or part of one or several companies;*
- *The creation of a joint-venture and the acquisition of joint control over one or more companies when these permanently carry out the business of an independent entity.*

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

Patents

i. What is the nature of the right?

Under Spanish law an invention is patentable when:

- *It is something new.*
- *It has an industrial application.*
- *It involves an inventive step.*

The patent holder can prohibit a non authorized third party from manufacturing, offering, selling or using the object/content of the patent.

ii. How is it protected?

Patents shall be registered in the Spanish Patents and Trademarks Office and, by virtue of the European Patent system, can be also registered in a third country becoming effective within the Spanish territory.

The patent holder can prohibit a non authorized third party from manufacturing, offering, selling or using the object/content of the patent.

iii. How is it enforced?

Patents can be enforced in two different levels:

- *Before the Spanish Patents and Trademarks Office (in order to avoid third party registrations in conflict with the patent), or;*
- *Before the courts to impose, among others, the cessation of the infringement and the payment of a compensation.*

iv. How long is it protected?

Twenty years from the date of filing.

Registered designs

i. What is the nature of the right?

Under Spanish law appearance consisting in two-dimensional designs and three-dimensional models of a product derived from the characteristics of the outline,

shape, colours, form, texture and materials of a product or its ornamentation can be protected provided it is new and singular.

ii. How is it protected?

Designs shall be registered with the Spanish Patents and Trademarks Office to be protected.

The right holder has the exclusive right to use and to prohibit non authorized third party from using the registered design. The right to use includes the right to manufacture, sell, import or export the product incorporating such registered design.

iii. How is it enforced?

Registered designs are enforced in an identical manner as patents rights (see precedent section).

iv. How long is it protected?

Five years from the filing date. Renewable for one or more successive terms up to a total protection term of twenty five years.

Trademarks

i. What is the nature of the right?

Under the Spanish law a trademark shall be used to differentiate certain goods or services of one individual from identical or similar goods or services offered by a third party within the market. To these effects, it must be possible to represent the trade mark graphically.

ii. How is it protected?

Trademarks shall be registered with the Spanish Patents and Trademarks Office to be protected. However, unregistered well-known and notorious trademarks enjoy some protection by virtue of the 1883 WIPO Paris Convention for the Protection of Industrial Property and the Spanish Trademark Law(Law 17/2001).

The right holder can prohibit a non authorized third party from using the trade mark or any other similar distinctive sign to identify identical or similar products.

iii. How is it enforced?

Trademark rights are enforced in an identical manner as patents rights (see Patent section).

iv. How long is it protected?

Ten years from the date of filing. Indefinitely renewable for successive ten-year terms.

Copyright

i. What is the nature of the right?

Copyright subsists in original literary, artistic and scientific works. Other protected works comprise performances by artists, phonograms, audiovisual recordings, productions of broadcasting entities, photographs, database productions and certain editorial productions.

ii. How is it protected?

Although there are no formal registration requirements, registration at the Registry of Intellectual Property helps the author to protect the copyright.

The right holder can prohibit a non authorized third party from using, reproducing, distributing and/or communicating to the public in general his work. The right holder can also modify his work and determine the exploitation manners.

iii. How is it enforced?

Copyrights can be judicially enforced. The court can sentence, among others, the payment of a compensation.

iv. How long is it protected?

Seventy years after from the author's death or seventy years following the making public of the creation for entrepreneurial works.

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

i. Agency;

Under the Spanish legislation, agency contracts are regulated by the Law 12/1992 of 27th May.

There are several mandatory provisions which protect agents, such as:

- *The termination of the agency agreement creates a right to a compensation for the agent who has generated new customers during the term of the agreement, as long as such activities of the agent continue to generate benefits for its former principal, as a result of taking over such clientele.*
- *The compensation will not exceed the average annual wage received by the agent during the last five years or during the term of the agreement if shorter.*
- *Compensation is excluded when its principal terminates the agreement as a result of a breach of the agent's obligations or when the agent has transferred to a third party any rights or obligations subject to the Agency agreement.*
- *A minimum notice period to terminate the indefinite duration agreement, is mandatory.*
- *Non-compete clauses that restrict the rights of the agents during a certain period after the agency agreement expires may be included.*

ii. Distribution; and

Distribution agreements are not regulated specifically in Spanish law. This lack of regulation leads in practice to an indirect application by law courts of the agent-protective legal provisions (namely, termination, compensations explained above) in favour of distributors.

iii. Franchising

There are no specific laws which regulate the franchise agreements or that govern the rights of the parties under these contracts. However, the Retail Trade Regulation (Law 7/1996 of 15th January) establishes the legal definition of franchise, and some minimum administrative obligations on franchising companies to set up franchises in Spain.

Under the anti-trust legislation the franchise agreements are regulated by certain clauses such as the ones that impose the prices of resale of the products, or the restriction of the territory where the franchise holder can distribute the products of the franchise.

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

The 34/2002 Law on Information Society Services and E-commerce Act implements Directive 2000/31/CE on certain legal aspects of information society services, in particular electronic commerce in the internal market. This law sets up an Internal Market Framework for electronic commerce which provides legal certainty for businesses and consumers alike.

The 1996 Retail Market Act regulates distance selling by establishing a legal framework for retail trade and regulates as well certain special sales and commercial and promotional activities.

The 2003 Electronic Signature Act regulates electronic signature and its legal effects.

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details.

The 1999 Personal Data Protection Act implements Directive 95/46/EC on data protection.

Under such legislation, when a business or an organization collects personal data, it shall notify the creation of data files to the Spanish Data Protection Agency and it shall inform the individual explicitly beforehand of the following:

- *The existence of a file collecting his data, the objectives of storing the data and the recipients of this information.*
- *The mandatory or the optional character of the information collected.*
- *The consequences of providing or not providing the data.*
- *The rights to access, rectify, delete or oppose the data stored.*
- *The identity of the individual responsible of the treatment and the storage of the data or his representative.*

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

The current regulation of product liability and safety in the European market is found in the Directive 85/374/EEC on liability for defective products and Directive 2001/95/EC on general product safety. Spain has implemented these Directives through the Law 22/1994 of 6th July and the Royal Decree 1801/2003 of 26th December.

Manufacturers and importers are strictly responsible for defective products that may cause damages. If the manufacturer or importer cannot be identified, the responsibility is passed on to the distributor of the product.

A product is considered to be safe if it fulfils the safety clauses imposed by the European legislation. Producers are required to sell products that fulfil these safety requirements.

Following European Union regulations, the Spanish government is entitled to do any of the following:

- *Establish prohibitions in the supply of unsafe goods.*
- *Take appropriate measures to avoid risks, such as, recalling the product from the market, warn the consumers by informing them that certain goods are unsafe, or asking for the return of the products already provided to consumers.*
- *In certain circumstances, the supply of goods that are not reasonably safe may imply criminal liability for the manufacturers. The liability of the manufacturer lasts for ten years since the defective product started circulating in the market.*

The distributors are equally obliged to accomplish general safety obligations, to take part in the supervision of the products that are in the market, and to provide the necessary documentation to guarantee the tracking of the products.

The manufacturers and distributors will inform immediately and cooperate with the competent authorities if they discover that a product is dangerous.
