

SPAIN

In Spain, provisions relating to franchising were introduced as Article 62 of Law No. 7/1996 of 15 January 1996 relating to the retail trade.¹ Whereas the first paragraph is limited to providing a brief definition of franchising, the second states that all physical or legal persons who intend to develop activities as franchisors in Spain must enter the franchise in a Registry as determined by the competent authorities and this Registry must be co-ordinated with the national State Registry. Paragraph (3) indicates the information that a franchisor must in particular disclose to a prospective franchisee before the franchise agreement or a pre-contract is signed, or before the franchisee pays the franchisor any amount prior to the signing of the agreement. Furthermore, Article 65(1)(r) states that non-observance on the part of the party granting the franchise of the obligation to register in the Registry which is referred to in Article 62(2) shall be considered a serious offence.

The State Registry is created to guarantee the centralisation of data in relation to franchisors operating in more than one Autonomous Region of Spain for the purposes of information and publicity. The information is submitted to the Registry either by the Government of the Autonomous Region in the territory of which the franchisor is headquartered, or directly by franchisors whose registered offices are not in Spain.

In November 1998 the implementing regulations were adopted.² These implementing regulations not only specified in more detail the information that franchisors have to disclose to prospective franchisees (Article 3), they also provided for the creation of the Registry (Article 5), indicated its purpose (Article 6) and stated the basic rules regulating procedures for registration (Articles 7 to 10). A further development was the adoption in April 2006 of a decree modifying the regulations, in particular as regards the Registry.³ Both these decrees were repealed by a new Royal Decree, No. 201/2010 of 26 February 2010,⁴ which replaced them.

The purpose of Decree 201/2010 is to lay down the basic conditions for the granting of franchises and the regulation of the operation and organisation of the Registry of Franchisors provided for by Article 62 of Law 7/1996.

Article 2(1) defines franchising, giving its main characteristics. Article 2(2) defines master franchising and paragraphs (3) and (4) specify what should not be considered to be a franchise.

Article 3 lists the items of pre-contractual disclosure, which include data identifying the franchisor (name or corporate name, domicile and data of registration in the Registry of franchisors. In the case of foreign franchisors, data on registration in the Registries of Franchisors in their countries of origin, trademarks and other intellectual property, franchise

¹ *Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista, Boletín Oficial del Estado*, number 15 of 17 January 1996. For an English translation, see CCH, *Business Franchise Guide*, at ¶ 7255.

² *Real decreto 2485/1998 de 13 de noviembre, por el que se desarrolla el artículo 62 de la Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista, relativo a la regulación del régimen de franquicia, y se crea el Registro de Franquiciadores, Boletín Oficial del Estado*, number 283 of 26 November 1998. For an English translation, see CCH, *Business Franchise Guide*, at ¶ 7256.

³ *Real Decreto 419/2006 de 7 de abril, por el que se modifica el Real Decreto 2485/1998 de 13 de noviembre, relativo a la regulación del régimen de franquicia y el registro de franquiciadores, Boletín Oficial del Estado*, number 100 of 27 April 2006.

⁴ *Boletín Oficial del Estado*, number 63 of 13 March 2010.

experience, know-how, a specification of the commercial or technical assistance that the franchisor will provide to its franchisees, judicial proceedings which may affect the ownership of the intellectual property, the duration of the licence, a general description of the sector of activity of the franchise, data on the franchised enterprise, the investments and expenses necessary to start up a business like the franchise). If the franchisor has provided the potential franchisee with sales estimates, these must be based on experience or studies that must have a sufficient basis. Information on the franchise network, on the structure of the network, distinguishing between company-owned outlets and franchised outlets, as well as information on the franchisees that have left the network during the last two years and information on the essential elements of the franchise agreement also have to be disclosed (duration, conditions for termination or of renewal, exclusivities, etc.).

Chapter III of the Decree (Articles 5 – 12) deals with the Registry of Franchisors. The articles deal with the Registry (Article 5) and who has the obligation to register⁵ (physical or legal persons who intend to engage in the activity of granting franchises in Spain must communicate their data within three months of the start of their activity either to the Registry of the Autonomous Region in which they intend to start operations, or, if the Autonomous Region does not provide for the necessity to communicate the data to it, directly to the Registry of Franchisors of the Ministry of Industry, Tourism and Commerce. Registration is for information purposes only and does not condition the starting of operations. If Registration does not occur, the penalty is determined in accordance with the sanctions established by Law No. 7/1996 of 15 January 1996.

Article 5 also specifies who is exempt from registration: franchisors who are established in other European Union States which operate without a permanent establishment in Spain, under a free services regime. In this case, the only obligation is to communicate the starting of its activity to the Registry.⁶

Article 6 details the functions of the Registry, all linked to the information function. Article 7 specifies the procedure for the communication of data, Article 8 the obligations of the franchisors with respect to the communication of data. Article 9 concerns the computerisation of the Registry and Article 10 the coordination among the Registries created in the different Autonomous Regions and that of the Ministry of Industry, Tourism and Commerce which guarantee technical interoperability. Article 11 deals with the documentation which may voluntarily be deposited with the Registry of Franchisors for publicity and information purposes. Article 12 considers the classification of the enterprises: a special section devoted to consolidated franchisors is established in the Registry.

A number of additional provisions conclude the Decree, the first of which concerns the communication of data by the Autonomous Regions to the Registry of Franchisors of the Ministry of Industry, Tourism and Commerce, the second concerns data communicated directly to the Registry of the Ministry, the third provides that the Decree cannot occasion costs for the State. The Decree is concluded by two transitional and three final provisions.

⁵ Article 5(3).

⁶ See Article 5(4) for the details.