



Business in Spain

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The Spanish economy keeps growing at a higher rhythm than its European neighbours. Among the challenges of the institutions, the low business competitiveness, derived from the constant fall of productivity and aggravated by the shortcoming of petroleum and the globalisation, the dependence of construction works and tourism as well as the shrinkage of the external sector and foreign-owned investment, stands out. The present article intends to give a general vision of the legal aspects of the companies' functioning in Spain.

Associative forms of cooperation

The commercial activity of Spanish companies within the internal market increased 15,4% in 2005, and the higher increases took place in the iron and steel industry, constructions works and premises sectors, pursuant to the last Bulletin of Commercial Transactions of Credit and Security. The Spanish Companies take more and more care of the commercialisation of their products and services. In this area, the so-called commercial agents whose contract is regulated by the Law 12/1992, of May 27, about Contract of Agency play an important roll. They should not be mistaken with the agents mediating in commerce whose relationship with the entrepreneur is regulated in the Code of Commerce, and they are defined as those merchandisers whose activity consists on facilitating the conclusion of mercantile business. The contract of agency is defined as a contract through which a person gets obliged in front of another in a continuous or stable way in exchange for a compensation, to promote acts or commerce transactions for other person, or to carry out them and to conclude them in the name of the other, as independent intermediary, without assuming, except for agreement to the contrary, the risk of such operations. A series of rights and obligations of the agents are regulated, being they authorized to carry out the acts or transactions subject of the agency contract, as long as they execute them

on behalf of the entrepreneur. One will be able to remunerate the agent with a fixed quantity, a commission or a combination of both. Regarding the completion of the agency contract, we should highlight that the agent is entitled to a compensation for clientele, in the event that has attracted new clients to the establishment or has raised the operations considerably with the already existing clientele. There are a series of limitations and exceptions to the foreseen compensation.

Distributors also have an important weight in the commercial activity of the companies. The contracts or distribution are agreements through which the manufacturers organize the commercialisation of their products by means of intermediaries that sell them, enabling the company to concentrate the sale of its production. These contracts can be with exclusivity or not. They are with exclusivity when a company commits to give its products for resale within a particular territory just to another establishment, or when an establishment accepts the obligation of buying its products just to a particular company for resale purposes, or when both obligations are reciprocal. In other cases, however, the distribution networks can be open, in the sense that they don't preview any exclusivity or allotment of markets. The contract of distribution is an atypical contract not regulated by the Spanish mercantile legislation. It is governed, therefore, by that agreed and, in its defect, by the Code of Commerce and the Civil Code. The appointment

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of exclusive distributor of self products, obliged to the promotion of sales, after sales services, main-tenance of stock, etc., is the best way to compete inside the market against other manufacturers' products.

Companies

We could define a company as any voluntary association pursuing the consecution of a common purpose through the contribution of all its partners. The company, as a voluntary gathering of persons, has its origin in a legal business ascribed to the comprehensive category of contracts.

In the Spanish legislation we can find the following companies:

- Partnership
- Limited partnerships: simple commandite or commandite by shares
- Limited Liability Company
New Limited Liability Company
- Corporation

A Partnership is an external company that exploits a mercantile activity under a unified corporate name. Here all partners respond unlimitedly; therefore, this type of company is not very attractive and the incorporation of this type of companies has decreased.

A Commandite is a modification of partnerships since it counts with both general partners and commandite partners whose liability is limited. Commandite by shares differs from simple commandite in that the former has all its capital divided in shares and has a corporative structure. A Limited-Liability Company is a capitalistic company where the capital, not less than 3.000 EUR, is divided in equal, cumulative and indivisible shares that can neither be incorporated to negotiable titles nor be denominated stocks, and where the liability of the members is limited to the contributed capital. The New Limited-Liability Company is a speciality of the limited liability one, simplified and adapted to the size of small-size establishments to enable its consolidation in the first years of life, since these those years are the most complicated. Thus, initial deferments of taxes are contemplated and its administration bodies are suitable to the operation of this small company, being of easy notice of meeting. The social capital, between 3.012 and 120.202 EUR, should only be subscribed by natural persons. At the time of incorporation it cannot count with more than 5 partners. In

the event that it counts with a sole partner, the latter cannot be sole partner of another New Limited-Liability Company.

A Corporation is a capitalistic company where the social capital is divided in shares that could be freely transferred and where the partners do not respond for the social debts. The minimum social capital at the time of incorporation shall be 60.102,21 EUR.

Labour

Spain has experienced an important evolution in the last decades, acquiring more economical weight the services' sector against the agrarian or industrial sectors.

The normative hierarchy applicable to employment relationships in Spain is contained in the Spain's Constitution of 1978, International Treaties and Conventions, Organic Laws, Ordinary Laws, Legislative and Legal Decrees, Union contracts, Work Statutes or Regulations, the employment contract, uses and costume and general legal principles. Recently, collective negotiations and the celebration of collective bargain agreements between employers and workers' representatives have been promoted in order to solve conflicts. The following two types of representation are possible:

- Unitary representation: formed by the Works Committee and the delegates of personnel. They represent and defend the common interests of the employees. The existence of one or other organ depends on the number of employees of the company or working centre,
- Syndic representation: carried out syndic sections and the trade union representatives who represent and defend the interests of those affiliated to the pertinent trade union.

Most recently, the present government has introduced an important employment reform in order to reduce the high level of temporary employment in our country. According to the last surveys, our country has 31,8% of temporary contracts in front of 12,8% of its European neighbours. Temporary employment is the true „heel of Achilles“ of the labour national market. Such problem mainly affects women and the younger people. Among the main measures that the Government intends to adopt, is the depreciation of dismissal for the entrepreneur, fixing the new compensation in 33 days per year worked instead of the previous 45 days. Formative contracts have been suppressed.

Ownership

In our legislation, for the transmission of the property, the system of free form is followed. A private document followed by the handover of the property is enough to transfer the ownership of the same. However, public deeds have the following advantages:

- Increase legal security,
- Reduce conflicts given the previous notarial advice and because the notary will check the ownership and impositions of the housing and verify the legality of the agreement's terms.

The deed by itself is enough to transfer the ownership (it is equal to the handover). Besides other important effects that benefit both parties (purchaser and seller):

- It evidences the celebration of the contract and the date,
- It is proof of the statements made by the parties,
- The full legality of the document is assumed and its value can only be destroyed in Court.
- It guarantees the legal capacity and legitimation,
- It guarantees the title and liens, through the telematic coordination with the Property Registry.

The public deed enables the access to the Property Registry. Only the sale through public deed has access to the Registry. In the event that other documents could access the Registry, its credibility would be reduced.

The security of the transfer is obtained through its inscription at the Property Registry. The Notary, once issue the deed of sale, can send a fax to the Property Registry communicating the operation the same day of the deed's issuing. The close collaboration between notaries and property registrars offers the certainty that the real estate is bought from the true seller and free of liens, and that it cannot be affected by fraud or errors.

If wanted, the Notary could carry out the following steps after the deed's issuing: settlement of taxes, filing and withdraw of documents at the Property Registry, change of cadastral ownership, etc. The deed's cost depends on the selling price, the deed's extension, number of copies requested or the existence of connected transactions such as the subrogation in an already existing mortgage.

Taxes

The fiscal imposition regarding the GDP is in Spain one of those smaller than European Union, (EU) with 35,6%, only before Ireland and some new members of the East. However, the fiscal allotment discovers that in Spain the imposition on the consumer spending ascends to 16,5%, on the work to 29,8% and on the capital to 30,3%. Thus, with respect to the other members, Spain has the lowest rates in taxes on the consumer products, but the highest regarding the capital. Companies have their own „income tax“ that encumbers their benefits and that receives the denomination of Corporation tax. Concretely, it is a tax of direct character and personal nature that encumbers the income of societies and other legal entities not submitted to the Income tax of Natural Persons as well as the entities without legal capacity.

Through this tax the revenues obtained by the company in a tax period are encumbered. This period will coincide with that of the calendar year unless another is specified in the Articles of Association of a corporation and in no case could exceed 12 months.

The Corporation tax is of 35%. If the establishment has an overlying benefit of less than three million euros, some incentives can be requested:

- 30% applicable to the first 90.000 EUR of the capital submitted to the tax,
- Accelerated amortisation of some assets,
- 10 deduction % for investments in technology, internet, enhancements I + D.

We should make a brief reference to the fiscal tax specialties in the Basque country. The Basque country has its own tax system, by virtue of the Economic Concert, with practically all the habitual competencies to regulate and to manage the taxes. The general tax rate for societies there is of 32,5%. By virtue of the Economic Concert, the competent Institutions in the 3 Basque Provinces have almost limitless powers to regulate this tax, as long as they respect the set forth harmonization principles. The standards of the Basque Corporation tax are applied to the entities domiciled (for tax purposes) in Basque country. A series of allowances exist that can be applied to the accrued corporation tax such as the allowances to promote investments in material assets and of the company's financing.

Factors of Investment

The General Direction of Commerce and Investment of the Department of Economic Affairs is in charge of the promotion of the Foreign-owned investment in Spain. Overseas it operates through their Offices of Economy and Commerce in Spain's Embassies. The Direction advises to the potential investors about the possibilities of carrying out commercial transactions in Spain and it provides reports to measure on the questions and doubts that could arise when elaborating an investment plan, such as location strategies, available financial aids, taxes and labour regulations as well as economic trends. On the other hand, the bank entities also have loans to help the new entrepreneurs to finance their projects.

One of the traditional problems that small and medium-sized enterprises encounter, especially those of recent creation or innovators, and that it constitutes a limitation for their development, it is the one that refers to the difficulty that they have to access to the long term financing, either in form of own funds or other people's. At the present time, small companies count with several means to obtain financing; the Spanish Institute of Foreign commerce (ICEX), following the line set forth years ago, opens a new notice of meeting of aids to company programs for the financial year of this year 2006. Among the different programs that could be requested during the whole year is that of Syndicates of Export, addressed to small establishments and their syndicates that intends to support the grouping of these for the commercialisation of their products in external markets and the international promotion of the same in a joint way. The Plan of Overseas Implantation is another aid addressed to Spanish companies and groups of companies that have a share in the subsidiary higher to 50%. This plan would support the commercial implantation, through subsidiaries and branches, in external markets of countries not belonging to the EU. There is also the Support to Spanish Trademarks whose objective is to support the consolidation and positioning of these trademarks in the markets located outside of the European environment. The establishments incorporated in Spain with registered trademark both in Spain and in the objective market can benefit of this program. The notice of meeting of IBEX of this year also includes the Fund of integral aid to the projects, addressed to Spanish establishments of engineering, consultancy and contractors of civil and industrial projects and that they have as objective to encourage the participation of these establishments in international competitions officially summoned and outside of the EU.

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