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### Franchising Fact Sheet – Spain (2013, April)

1. How is franchising defined under national law?	<p>Franchise contract appears defined under article 62 of the Law 7/1996 on retail commerce, that provides the following:</p> <p>The franchisee arrangement is an agreement or contract whereby a party called the franchisor assigns to the other party called the franchisee the right to exploit the system developed by the franchisor.</p> <p>Although the franchising contract is mentioned in the Spanish law, there is no law that governs the franchise contract in the private-law, contract-law sense.</p>
2. Are there any pre-contract disclosure requirements?	<p>Yes. The Royal Decree 201/2010 of 26th of February, on the Registry of Franchisors establishes the minimum and mandatory information that has to be disclosed to the potential franchisee at least 20 days before signing the contract.</p> <p>This duty implies informing about: identification data of the franchisor, the accreditation of the ownership or the license of the signs that are going to be used, the structure of the network in Spain, the essential points of the contract, the main characteristics of the business, etc.</p> <p>Of course, during the pre-contractual phase both parts must act in good faith (bond of trust), and the contract may be rendered void or voidable when there is a case of mistake or misrepresentation.</p>
3. Does the franchisor have any liability for claims against the franchisee?	<p>As a general rule the franchisor and the franchisee are independent parties, therefore each one is to be held liable for the damages that it has caused.</p> <p>The franchisor and the franchisee could be held severally liable before the consumers according to the rules of product liability.</p>
4. When can the franchisor terminate the franchise agreement?	<ol style="list-style-type: none"><li>1. Whenever it is established in the agreement.</li><li>2. When the contract is permanent it can be unilaterally withdrawn with a period of previous notice (<i>ad nutum</i>).</li><li>3. Termination for breach of contract.</li></ol>
5. Are any particular formalities required for a franchise agreement to be legally valid and enforceable under national law?	<p>No, the general principle of form freedom applies.</p>



6. Does a foreign franchisor have to establish a subsidiary or branch in the country?	No.
7. Are there any other relevant requirements/provisions?	<p>1. All the franchisors that operate in Spain must be registered in the Registry of Franchisors.</p> <p>If the franchisor is established in a Member State and operates in Spain without permanent establishment is only required to communicate the beginning of its activities.</p> <p>2. Issues in relation with competition law. The franchise contracts could have a forbidden market sharing effect.</p>

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