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DOING BUSINESS IN SPAIN

DOING BUSINESS IN SPAIN'S GUIDE

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2014

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IMPORTANTE: IN SPANISH LANGUAGE.

Espero que el dossier explicativo le resulte interesante y si tienen alguna otra idea o duda, por favor compártela por correo electrónico.

Recuerden que este dossier se realiza con el único objetivo de transmitir unos conocimientos y opiniones, se autoriza su divulgación y se realiza totalmente de forma altruista.

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“La figura del Gestor de Proyectos o Projects Manager es una figura profesional muy difundida e importante en el Mundo Anglosajón y Europa.

Profesional de reciente reconocimiento en España que se está asentando con fuerza en el mercado que le corresponde por su profesionalidad, conducta, ética profesional, trabajo y logro de objetivos, facilitando la gestión de los proyectos disminuyendo notablemente los costes y aumentando la eficiencia y beneficios.

Cuente con nosotros,”

Saludos

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El comienzo de una actividad empresarial es una decisión importante y debe ser muy meditada, no se debe tener miedo al fracaso, ni a la pérdida económica que podemos tener. "Grandes ejemplos de éxitos empresariales muy relevantes venían de fracasos previos..."

Lo anterior no significa que "nos tiremos al ruedo" a probar suerte. No.

Se debe realizar un estudio técnico, económico, de mercado y solvencia adecuado, una planificación eficiente, marcar unos objetivos realistas dentro de nuestras posibilidades económicas, personales, etc.

Solo logrando definir estos parámetros, no nos asegura el éxito de nuestro negocio pero, reduce bastante nuestra incertidumbre y posibilidades de fracaso.

La situación del local comercial (si queremos disponer de este), el mercado potencial al que queremos llegar, etc. son aspectos muy importantes que intentaré explicar en otros documentos y publicaciones.

Se suele pensar en muchos profesionales que nos ayuden a realizar todos los trámites de una forma efectiva y lo más ágil y cómoda posible. Dentro de estos profesionales podemos pensar en Abogados, Economistas, Asesores o una figura nueva que se está asentando con fuerza, por su profesionalidad y conduzca profesional en el mercado, no es otro que el Gestor de Proyecto, colectivo al cual tengo el honor de pertenecer.

Sea el profesional que consideren más adecuado les recomiendo que lo contraten.

In this guide, I try that YOU KNOW THE FIRST THINGS TO START YOUR BUSINESS

A. DOING BUSINESS – TYPES OF CORPORATIONS

A. **Types of corporations**

1. **Sole proprietorship**

A foreign single person may start a business in Spain. He must have legal capacity, according with the law of his home country, to carry on businesses activities.

It would be advisable to have the assistance of a Professional in order to set up your company in Spain.

2. **Stock corporation**

Stock corporations (Sociedad Anónima – S.A.) are normally used in Spain for investments in major projects.

The deed of incorporation must be signed before a notary and then registered at the Spanish Corporate Registry (Registro Mercantil). A single person can form this type of company.

The minimum share capital is € 60,101.21. Contributions may be made in the form of money, goods or intellectual property, which can be valued. Work is not valid as a capital contribution.

The shareholders are not personally liable for corporate debts; they are only liable to the extent of their contribution to the corporate.

3. **Limited Liability Company**

The Limited Liability Company (Sociedad de Responsabilidad Limitada – S.L.) is normally used in Spain to form small or medium sized businesses, it may be created by a single founder.

The deed of incorporation must be signed before a notary and then registered at the Corporate Registry (Registro Mercantil).

The minimum capital requirements are € 3,005.06, which must be fully subscribed and paid-up at the time that the company is set-up. Contributions may consist of credit rights, real property, etc. Work is not valid as a capital contribution.

Partners are not personally liable for company's debts; their liability is limited to their investment in the company. Only one

shareholder is needed, however there is no limit on the number of shareholders.

4. **Worker and partnerships**

In this type of company the share capital of Cooperatives (Cooperativas) and Labour Corporations (Sociedades Laborales) is owned by the workers.

5. **Joint Ventures**

Joint Ventures in Spain may use different forms.

- A group of companies can form temporary business associations (uniones temporales de empresas – UTE) to carry on specific projects for a limited time, each company will keep its legal status.
- Economic Interest Groups (Agrupación de Interés Económico – AIE); which are set up to help their members to achieve their individual objectives; its members are liable for the company debts.
- Entrepreneurs may agree to contribute with money or in kind to a venture that they do not manage (contrato de cuentas en participación), the non-managing participants do not become shareholders, they receive the right to an agreed share of the profit resulting from the venture.

6. **Branches**

The branch is an organization depending on its parent company, which is located abroad. It has the same legal personality as its parent company and runs similar activity.

A branch has to be set up through a public deed made before a notary and registered at the Corporate Registry.

B. DOING BUSINESS – HOW TO SET UP YOUR BUSINESS IN SPAIN

A PROCEDURE TO SET UP YOUR BUSINESS IN SPAIN

1. Main steps to follow
2. Hiring workers
3. Subsidies granted by the Spanish government
4. Getting legal help

1. Main steps to follow

In general terms, to acquire legal status and start any economic activity in Spain, the following procedural formalities are necessary (in some cases additional steps may be required):

1. Registration of the company name. (Registro Mercantil Central), confirming that the name you intend to use is not already registered.
2. Apply for your C.I.F (company tax identification code) at the tax office.
3. Deposit the capital into a bank account in the company's name
4. Deed of incorporation. The founding partners, when applicable, shall sign the constitution deed for the business before a notary in Spain.
5. Registering the company at the Corporate Registry (Registro Mercantil), it shall be done once the transfer tax has been paid. Deed of incorporation will be required.
6. A Formal Declaration to start the activity of the company shall be filed before the Spanish Tax Office (Delegación de Hacienda), which shall contain the tax system for which the company will be liable.
7. The company will be liable for the Spanish Tax on Economic Activity.
8. Registration of the company at the Social Security General Treasurership.
9. The company's director with direct control of the society shall join the Autonomous workers' special system.

10. It is necessary that your company acquires the libro de matricula. This book will log personnel registration as well as the visits that Labour Inspectors (Inspección de trabajo) pay to the work centre.
11. Communication of the opening of the work center or resumption of economic activity, it must be filed before the Regional Work Authorities Office (Dirección Provincial de Trabajo).
12. You must apply for the opening license at the Spanish Town Council (Ayuntamiento).
13. Depending on the kind of company, tax books (libros contables) may be required.
14. Declaration of foreign investments in Spain. Foreign investments assigned to set up a company in Spain shall be declared to the Spanish Investments Register (Registro de Inversiones) of the Tax and Economy Ministry.

2. Hiring workers

If you need to hire employees for your business in Spain, you shall register them at the Social Security General Treasurership (Tesorería General de la Seguridad Social).

Remember that employees in Spain, whether they are Spanish or foreigners, are entitled to all the benefits provided by the Spanish labour legislation: working conditions, dismissal indemnities, maternity leave, etc.

Spanish law provides different types of employment contracts, some of them permit the rendering of services where additional labour is needed, e.g. the part time work contract; This may help to solve small new businesses' needs in certain moments.

These are only general guidelines and not definitive statements of the law, all questions about the law's applications to individual cases shall be directed to a Spanish Professional.

3. Subsidies granted by the Spanish government

Spanish government gives incentives aimed at promoting the creation of industrial estates, innovation, technological improvement, research, development, and job creation. Spanish and foreign-owned companies as well as individuals willing to set up their own company in Spain may receive these subsidies.

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The incentives are granted by local, regional or national authorities, and may consist of non-refundable cash subsidies as a percentage of eligible investment expenditure.

Your company shall meet the requirements that the national, regional or local administrative body establishes in order to apply for each subsidy. Usually, applicants are required to do something prior their applications: e.g. hire workers, make any specific investment, etc. Applications shall normally be submitted within a short period of time since the subsidy was published.

Depending on the exact nature of your business there may be a whole series of aids and grants available to you. We may provide you with clear and accurate information about Spanish subsidies adequate for your needs, and may deal with your application.

c. DOING BUSINESS – BUSINESS WITHOUT INVESTING

Doing business in Spain without investing

1. Signing a Distribution Agreement
2. Operating through an agent
 - 2.1. Overview
 - 2.2. The Agency Contract
3. Franchising
4. Getting legal help

1. Signing a Distribution Agreement

You may promote your goods without investing in Spain by using external distribution. The Distribution Agreement must relate to the supply of goods to distributors for they to resell them in its own name.

Under a distribution agreement the supplier is liable in relation to the goods supplied. The distributor company must assume the risks

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derived from the distribution of the goods as it acts in its own name and right.

In general terms, Distribution Agreements are subject to the terms that the parties freely agree. European Union's regulations on exclusive distribution are applicable in Spain. A very specific regime is provided to regulate these contracts.

The provisions that may be included in a distribution agreement are as follows:

- Supplier and distributor's details.
- A pricing system and modifications.
- Payment terms (agree on currency).
- Minimum volume of sales and its subsequent modifications.
- Supplier's liability for defective product.
- Duration of the agreement.
- Law and jurisdiction applicable in case of dispute.
- The geographical area to be covered by the distribution.

There are some issues that you must remember when signing a distribution contract with a Spanish distributor; you must protect your Intellectual Property, your home country protection is not protection in Spain, your Spanish distributor may need licenses to use your intellectual property rights in Spain.

You need full advice about other important issues such as the usage of your trademark in Spain. Local legal assistance is strongly advisable. An expert Spanish lawyer can draft a distribution agreement for you to work in Spain, he may also advise you about the work relationship with your Spanish distributor.

2. Operating through an agent

2.1. Overview

You may penetrate the Spanish market without investing through hiring an internal agent in Spain. He will promote your products or services in your name, without assuming any risk, you will be bound by the acts of your agent. The agent cannot bind his principal by acts which are beyond the scope of his authority.

If you hire a non-Spanish sales agent to promote your products in Spain, be advised that he will be required to hold a visa and work permit. He may need licenses in order to use the principal's intellectual property rights in Spain.

It will be necessary the principal employer's consent for the sales agent to represent another different company, which activity is in competition of the principal. The agent shall maintain independent accounting for each principal represented.

The sales agent may appoint sub-agents prior consent of the principal.

Law and jurisdiction applicable is that of the principal employers country.

2.2. The Agency Contract

Agency contracts may have a definite or indefinite duration. Contracts for a definite period terminate as they expire and no renewal is made. Contracts for an indefinite period may be terminated at any time unilaterally, prior written notice of the parties.

Remuneration of the sales agent may be fixed, variable or a combination of the two. He may be compensated with a special indemnity when contributing new clients to the business of its principal or increasing significantly the volume of sales with existing clients. The principal must pay the commissions by the end of each quarter of the year. The agent's expenses must be fully reimbursed to him, remuneration does not include reimbursement for expenses, unless otherwise agreed.

Under certain circumstances, the agency agreement may include a non-competition provision to restrict the professional activities that the agent may undertake after the termination of this contract. This restriction cannot last longer than 2 years after completion of the contract.

An expert Spanish Lawyer can provide you with full advice about work relationship with your sales agent in Spain; he may also draft an agency agreement for you (see our services below).

3. Franchising

Franchises have increased in Spain and grown rapidly. This method for doing business in Spain without investing has become very popular, it has effectively been used for small retailers to compete with larger retail stores.

Through a franchising contract, franchisee is given the right to use goods, services, trademark and advertising of the franchisor for a

specific period of time. The franchisee must pay the franchisor as a condition of obtaining or commencing the franchise operation.

Franchising companies must be entered in a special Administrative Franchise Registry within a minimum of 20 days prior the signature of a franchising contract or making any payment to franchiser. The franchiser may be seriously fined for non-registration.

The franchisee is the franchise business owner, though this takes part of a commercial network. He must submit to the network business organization.

D. DOING BUSINESS – RENTING AND LETTING BUSINESS PREMISES

Renting and letting business premises in Spain

1. The rental contract

1.1. Legal Provisions

Legal provisions on renting and letting business premises in Spain are contained in the Law of Urban Lettings (Ley de Arrendamientos Urbanos) of 1994, which applies to rental contracts made after January 1, 1995. Contracts signed before such date are governed by other rules, which have been modified by the current law of urban lettings.

Although the afore-mentioned Spanish law allows agreements entered into between landlord and tenant stating the parties rights and obligations, however, it is always advisable that tenant and landlord state the rental conditions in a written contract.

The following provisions are to be contained in a rental contract:

- Details of landlord and tenant.
- Description of the property.
- The contract term.
- Amount of rent and payment terms.
- Any other legal provisions that the parties agree.

Rental contract may be made before a notary and recorded at the Spanish Property Registry (Registro de la Propiedad).

1.2. The contract time period

Both parties agree the term for which the property will be rented. When the contract duration is not provided, this will run for 1 year.

If at the end of the period stated in the contract, none of the parties notice each other their intention to terminate their contract, this will be renewed annually up to the moment that one of the parties decides to terminate it.

2. The rent

The parties shall agree the amount of rent and have it set forth in detail on the written rental contract.

Unless otherwise is agreed, rent is monthly paid 7 days before the end of the month. On no account must the landlord ask for more than 1 month rent to be paid in advance.

The manner of payment is that stated in the contract, where it is not provided, payment shall be made in cash at the premises.

Upon receiving the monthly rent, the landlord must provide the tenant with a receipt for each payment, unless it is proven by other means; e.g. proof of payment through bank transfer. Make sure you get these receipts or any proof of payment as these constitute an implicit contract.

During the first 5 years, rent will be increased or reduced according to the consumer price (inflation) index (índice de precios al Consumo – IPC); after such period, rent will increase according to what both parties agree upon signing the contract.

3. The deposit

A security deposit (fianza) is a deposit of money to the landlord to ensure that rent will be paid and other responsibilities of the agreement will be performed. The deposit shall be equal to 2 months rent.

This deposit cannot be used to pay the rent to the landlord.

Such deposit will be returned as the tenant moves out, assuming that the property is in good conditions.

The deposit may be updated according to the consumer price index after 5 years of contract time period.

4. Subletting the business premises. Transferring the rental contract.

The tenant may sublet the premises or transfer the rental contract to a third party without landlord previous consent, the tenant shall notice it to the owner within one month from the date of subletting or transference.

In these cases the landlord may raise the rent 10% when subletting part of the premises, or increase 20 % of the amount when subletting all the premises or transferring the rental contract.

Keep in mind that upon transfer of rental contract, the tenant transfers all rights as well as obligations to the transferee third party.

Notwithstanding you may be forbidden from subletting your unit if this was previously agreed in your rental contract.

You should consult Spanish Professionals in order to avoid pitfalls.

5. Repairs in the premises

Usually it involves many problems to clarify who must make the repairs in the premises and pay any related costs, here you have a general guideline about repairs when renting/subletting business premises. Other problems may arise, and thus it is advisable that you hire the services of a Spanish professional.

The landlord must make all necessary repairs to keep the property in a fit condition to use it, however landlord is not responsible for repairing damages caused by the tenant.

Tenant shall make those small repairs on account of the property daily use.

Urgent maintenance repairs may be undertaken by the tenant in order to avoid serious and immediate damages in the property, these

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must be made previous notice to the landlord, repair costs will be returned to tenant.

The landlord must give the tenant three-months notice of his intent to undertake repairs affecting to health and hygiene in the property. In this case tenant may renounce the rental contract within 1 month from the notice. If the tenant decides to stay he may get a reduced rental rate in relation to the part of the premises that cannot be used because of the repairs. These repairs entitle the landlord to increase the rent after 5 years of validity of the rental contract.

E. DOING BUSINESS – FRANCHISE

Franchises

Franchises have increased in Spain and grown rapidly. This method for doing business in Spain without investing has become very popular, it has effectively been used for small retailers to compete with larger retail stores.

Through a franchising contract, franchisee is given the right to use goods, services, trademark and advertising of the franchisor for a specific period of time. The franchisee must pay the franchisor as a condition of obtaining or commencing the franchise operation.

Franchising companies must be entered in a special Administrative Franchise Registry within a minimum of 20 days prior the signature of a franchising contract or making any payment to franchiser.

The franchiser may be seriously fined for non-registration.

The franchisee is the franchise business owner, though this takes part of a commercial network. He must submit to the network business organization.

Franchisor must deliver written information to the franchisee before the signature of the franchising contract, in order that the franchisee may decide on whether to join the franchise team or not.

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The franchising contract must state those terms that the parties consider appropriate, as long as those are not contrary to law or public policy.

The following provisions are commonly stated:

- a. Initial franchise fee: This is what it costs to join the franchise network
- b. Royalty fees: These payments will continue as long as the franchise lasts. Normally these fees range from 4 percent to 20 percent, depending on the revenues.
- c. Advertising fees: Once you join the team you will be expected to pay annual fees for the franchise advertising, this charge will not exceed 3 percent of gross sales.

Getting advice

We provide advice on for corporate and individual customers who are intending to invest in Spain.

*NOW, YOU KNOW THE FIRST THINGS TO START
YOUR BUSINESS*

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