

GOMEZ-ACEBO & POMBO  
ABOGADOS

# **“DOING BUSINESS IN SPAIN”**

***LEGAL ENVIRONMENT  
Best Practices***

**Alberto Echarri**

Partner - Head of M&A

[aecharri@gomezacebo-pombo.com](mailto:aecharri@gomezacebo-pombo.com)

[www.gomezacebo-pombo.com](http://www.gomezacebo-pombo.com)

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## INVEST IN SPAIN: FACTS & FIGURES

- ***Spain is the world's 8th largest economy, with sustained growth above the EU average. It is the country with the fastest rate of job creation in the OECD.***
- ***Spain is the 8th largest FDI recipient in the world and the 3rd largest investor in the world.***
- ***Spain has a privileged geo-strategic position: access to 1,300 million consumers in the world. It is an international business hub.***
- **440 million people in the world speak Spanish.**



# INVEST IN SPAIN: FACTS & FIGURES

**What foreign investors value most of Spain is:**

- 1. Cost of investment**
- 2. Local human resources**
- 3. Geographical & Financial Environment**

**Generous incentives for R&D.**

**Access to the EU and Latin America.**



# INVEST IN SPAIN: FACTS & FIGURES

More than *11,000 foreign companies & 54 international banks* are located in Spain.

Spain has modern infrastructures and *excellent business opportunities*, namely in ICT, Biotechnology, Renewable Energy, Environment & Water Treatment.

Quality of life: Spain is the first choice for European executives faced with relocation, according to *Financial Times*. It is *the world's 2nd tourist destination* and is known for its passion for work, arts, sports, and life.



## **PRIORITY SECTORS: ICT**

**Spain has one of the most burgeoning ICT (Information & Communications Technologies) markets in Europe, with a turnover of 87+ billion €.**

**40% of private R&D investment in Spain is devoted to this sector.**

**Spain offers tax advantages / cost relief for companies.**

**The Spanish telecom network is completely digital and has over 1,400,000 km of transmission networks. Mobile phone penetration exceeds 105%. Growth in broadband connection was more than 45% in 2005, with 4.5 million users.**

**16% of employees in this sector are devoted to R&D.**



# PRIORITY SECTORS: RENEWABLE ENERGIES

## 3 main renewable energy resources:

1. Solar
2. Wind
3. Co-generation

Spain is one of the most attractive countries in the world for renewable energy projects: *Spain is the 3rd country in the world in wind energy*. Spain has 13% market share in this sector.

According to Greenpeace, if Spain exploited its natural energy resources, it would have 50 times more energy than necessary by 2050.

Spain possesses insulation towers for solar energy: *Companies will invest over 1 billion \$ in solar parks over the next few years.*



## **PRORITY SECTORS: BIOTECH, PHARMA, HEALTH**

**The biotech sector has expanded over 300% in the last 4 years. Spain is the 4th country in the EU for biotechnology scientific production.**

**Spain has 60 scientific & technological parks within the biotech industry, with 150 companies fully dedicated to biotech whose revenues total 420 million €.**

**The number of biotech companies has multiplied by 3 in the last 5 years, such that over 14,500 professionals & 425 research units are involved in biotech projects in Spain, producing over 4% of the world's publications in this field.**

***Spain's government wants R&D in this sector to reach 2% of GDP by 2010. As such, many new start-ups are funded by the government.***

**Spain collaborates with over 200 centers in the development of almost 128 clinical studies of the highest quality.**



## PRIORITY SECTORS: ENVIRONMENT

*Spain is the world's leader in water treatment and desalination using reverse osmosis technology. There are over 900 desalination plants in Spain.*

**1.5 million m3 of desalinated water is produced per day.**

*The economy is looking for a new impulse in recycling.*

**There are 814 Spanish companies authorized to work as used-vehicle treatment centers.**

**Cars & motors are increasingly environmentally friendly.**

**4 million tons of recycled waste was produced from 2000-2004. 250,000 tons of tires are recycled per year.**





## **PRIORITY SECTORS: ENVIRONMENT**

**According to European regulations, Spain and the rest of the EU countries must reuse and recover 95% of materials used in vehicle production by 2015.**

**Recycling culture also affects home appliances, such that they are dismantled rather than buried in landfills. Spain aims to manage 160,000 tons of this waste using environmentally-friendly methods. Currently, 100,000+ tons are treated.**

**The number of home appliances recovered grows by 10% every year. Spain is working to recover and transform sludge from construction material extraction processes and agricultural waste plastic.**



# MOST DYNAMIC SECTORS

## 1. Private equity

- Declining

### Energy

- Power companies: ENDESA/IBERDROLA
- Renewable Energies

### Air transport

- IBERIA
- SPANAIR

### Hospitality

### Chemical sector

### Environment

### Real estate



# THE LEGAL ENVIRONMENT

## Sophisticated legal system

- Meets EU/US/CAN standards
- Principles equivalent to Common Law

## Common legislation throughout the country

- Civil law exceptions: inheritance / family law
- Specific sector regulations:
  - Generally central regulations
  - Regional legislation for delegated matters
    - Transportation
    - Hospitality sector
    - Environment
    - Water treatment
    - Tax in Basque Country, Navarra and Canary Is.

## Municipal regulations



# THE LEGAL ENVIRONMENT

## Friendly and open environment

- Contract law principle of freedom of will of the parties
- Contractual restraints limited by:
  - EU competition regulations / vertical restraints
  - Employment law
- Freedom of investment / disinvestment
- Freedom of establishment in the EU
- Foreign investment deregulation



# ESTABLISHING A BUSINESS

## Incorporation formalities

- Standard documentation
- Notarized incorporation: 10 days
- 15-30 days for registration of company
- Companies may operate from day 1
- SS and TAX registration: day 2

## No registration of agreements except

- Effects vis-à-vis third parties
  - Corporate documents
  - Real Estate deals
  - Guarantees



# HOME COUNTRY AGREEMENTS

**Generally adjustable to local requirements**

- Commercial agreements**
- Acquisition agreements**

**Choice of law**

**Choice of forum**

**Choice of language**

**Arbitration**



# **MOST COMMON VEHICLES**

## **Common distribution agreements**

- Agency**
- Distribution / Licensing / Concession**
- Franchising**

## **Joint ventures**

## **Direct acquisition of**

- Shares**
- Assets**
- Securities**



# AGENCY AGREEMENTS

**Free will of the parties**

**Contractual restraints**

- **In-term**
- **Post-term**

**Public order rules / Agency Act**

- **Goodwill indemnity payment**
- **Spanish law**
- **Spanish forum**





# **DISTRIBUTION AGREEMENTS**

## **COMMERCIAL DISTRIBUTION**

- Exclusive / Non-exclusive
- Contractual restraints
- Limited non-compete clauses
  - EU Regulations on concessionaires

## **LICENSING/TECHNOLOGY TRANSFER**

- Know-How, Technical Assistance, IP
- EU BER on licensing agreements

## **FRANCHISING**

- Represents almost 8% of retail trade
- Governed by agreement
- Pre-contractual information required
- BE Regulation for anti-compete clauses



# JOINT VENTURES (I)

## Common SPVs

- Limited liability company (SA / SL)
- UTE
- EIG

## Legal Structure/Documentation

- Corporate SPV
- By-laws of SPV
- Shareholders' Agreement
- Business Plan



## **JOINT VENTURES (II)**

**Corporate governance rules**

**Non-compete clauses**

**Territorial scope**

**Veto rights**

**Investment restraints**

**Financial provisions**

**Step-out clauses**

- Russian Roulette**
- Put and call options**



# ACQUISITION (I)

## Standard international practices

Players

LOI

Offer letter and exclusivity period

NDA

DD Review

- Legal
- Tax & Finance

Acquisition agreement

Agreements with managers and directors

Non-compete covenants



# ACQUISITION (II)

## Price

- Price retention
- Escrow / bank guarantees

## Reps. & Warranties

- Standard Common Law provisions
- Time limitations
- Caps
- Labour contingencies

## Conditions precedent (antitrust)

## Interim period clauses (MAE, BAU)



# ACQUISITION (III)

## Public companies

- 30% threshold
- Reporting obligations

## Financing

- Acquisition finance
  - Financial assistance prohibited
  - Guarantees
- Project finance
  - Project guarantees
- Shareholder loans: subordinated/Equity
- Capital contributions



# REAL ESTATE DEALS

## Corporate acquisition

### Assets

### Due diligence

- Land Registry searches
- Zoning certificates
- Leased property

### Purchase agreement

- Notarized deed

### Complex acquisitions

- Shopping malls
- Sites under construction



# GUIDE FOR FOREIGN INVESTORS

## Friendly legal environment

- Sophisticated legal advisors
- Reliable judiciary
- Arbitration

## Standardized practices

- Adjustment of home agreements
- Choice of law and forum. English language

## Exchange control de-regulation

## Tax-efficient SPVs/Spanish Holdcos

## Standard business and financial practices

## Minor business culture differences