

Specialised System Of Arbitration For Franchises

The Spanish Association of Franchisors (AEF) and the Spanish Association for the development and protection of the franchisee (AEDEF), as well as independent professionals in the legal and business spheres, have been the driving force behind the recently created Franchise Arbitration Tribunal, the first specialised system of alternative dispute

CALVIN HAMILTON
EVA VAZQUEZ

resolution in this unique business structure. This specialised arbitration system is the first institution of its kind in the Spanish sector and comes about as a specialised, independent and flexible procedure for the alternative resolution of conflicts in the area of franchising.

This entity provides a viable alternative to recourse before the courts, the customary avenue for controversies arising between franchisees and franchisors. The Tribunal originates from the legal framework established by the Arbitration Act 36/1988 of 5th December which permits non-profit-making associations that provide for arbitral functions in their by-laws to administer arbitration and appoint arbitrators in accordance with its own set of rules.

The Franchise Arbitration Tribunal will have the function of overseeing mediations and arbitrations that are submitted to its competence. Additionally it will maintain an up-dated list of arbitrators and appoint arbitrators to intervene in each mediation as well as assume responsibility for collaborating with other existing arbitration bodies.

Reasons Behind the Setting-up of the Spanish Franchise Tribunal

The Spanish Franchise Tribunal came about from an early attempt at promoting dispute resolution by means of the arbitration procedure, for which reason it was created with an integrationist vocation of the different sectorial interests, and can therefore be

considered an Arbitration Tribunal which offers an alternative, quick, consensual, specialised and consequently efficient procedure for the resolution of conflicts which may arise in that field of activity.

The Spanish Franchise Tribunal will perform its arbitration functions in the field of Franchising contracts, in that concerning the relations between Franchisor (or licensor) and the Franchisees (licensees), relations between the Master-Franchisor and its licensees, or any other party that may become involved in a direct or indirect relationship with the given activity by mutual agreement of the parties.

Advantages of this System of Arbitration

Alacrity will be one of the major advantages that the new Tribunal will introduce to the Spanish franchising system. Awards will be rendered within a maximum period of 6 months from when the arbitrator agrees to resolve the controversy, in stark contrast to the time that the ordinary jurisdiction takes to resolve claims.

Other advantages are that the resolution of these disputes will be in the hands of arbitrators who specialise in the commercial formula of franchising. This is key given the complexity of the franchise contract and that the awards handed down will be final and of difficult appeal before the ordinary Courts, the parties involved having agreed to abide with the award -without delay- by the mere fact of having submitted the dispute to arbitration before the Spanish Franchise Tribunal.

As regards the cost that one of these procedures may incur, an official fee is being prepared that will vary between 20% and 25%, less than that offered by the bar associations (*Colegios de Abogados*). Notwithstanding, the members of the Tribunal recognise that this is a mechanism which is more expensive than the ordinary courts, even though the great advantage of the time limitation is that it is economically profitable for the litigants.

This initiative is of significant importance if we bear

in mind that the sphere of an activity as global as franchising is not free of conflicts. In Spain, some 30,000 franchising contracts have been executed of which 1.5% are subject to a degree of tensions and disputes and therefore are now susceptible to being submitted to an arbitration as an alternative to the ordinary procedure.

Procedural Rules of the Tribunal

It falls to the Tribunal to determine the seat of the arbitration. As a general rule, the place of the arbitrations falling under this Regulation will be Madrid, unless there is an agreement of the parties to the contrary and/or the Tribunal takes into consideration the particular circumstances of the case when determining a different seat.

The arbitration procedure ends with the rendering of the award by the appointed Arbitration Tribunal or Arbitrator. The award must resolve the points submitted to the decision of the appointed Arbitration Tribunal or Arbitrator.

Unless the parties have agreed differently, the arbitrator(s) must decide within the maximum period of six months, running from the day on which the arbitrator(s) is seized of the controversy, or from the day in which the last of the members of the appointed Arbitration Tribunal or Arbitrator was substituted. This time period may be extended by agreement of the parties notified to the arbitrator(s) prior to the conclusion of the initial period.

If the period concludes without the rendering of an award, the arbitration agreement will become ineffective and the way will be cleared to raise the controversy before the ordinary courts.

Types of Disputes in the Franchising Contract

With the signing of the contract for the development of a franchise, the relationship between franchisor and franchisee begins. Specification of the matters which are to be covered in this agreement and the attempt to avoid possible differences arising from the company's growth are some of the key factors which maintain the order in the ensign.

Prior to signing the contract and thus setting the franchise in motion, the franchisee must request specific information about certain issues: the Royalties -fixed amounts which the franchisee must pay for belonging

to the franchise-, the profitability, and the training and support from the franchisor. The contract will set out the conditions that are to regulate the commercial relationship between two independent business professionals that work under the same trademark and share economic interests.

The most common disputes in the relations between franchisor and franchisee are nearly always the same. For the franchisee, typical problems are: the failure to pay the periodic payments or Royalties, the non-fulfilment of the franchisor's guidelines, the sale of unauthorised products, non attendance at training sessions, unfair competition and the use of know-how for a purpose different to that established.

In the case of the franchisor, the most common deficiencies are the lack of technical assistance, the failure to provide information, the lack of know-how, the non-compliance of prices in the supply, the lack of publicity in the network, competing with the franchisee and the breach of the exclusivity provision (non- installation of establishments of the same chain in the area of influence that already exists).

This new instrument will help to settle these disputes with greater agility and specialisation than at the present time.

Consequently, this magnificent project is unique in Europe and we are convinced that it will provide a more constructive formula for the prevention and resolution of conflict between any one of the protagonists of this business structure called Franchising.

mmm&m
MONEREO, MEYER & MARINEL-LO
A B O G A D O S

Calle Bárbara de Braganza nº 11 2nd Floor,
28004 Madrid, Spain
Tel: +34 91 319 96 86
Fax: +34 91 308 53 68
Email: mad@mmmm.es
Web address: <http://www.mmmm.es/>

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Managing Partner: Andrés Monereo
Total Partners: 5 **Total Lawyers:** 25
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