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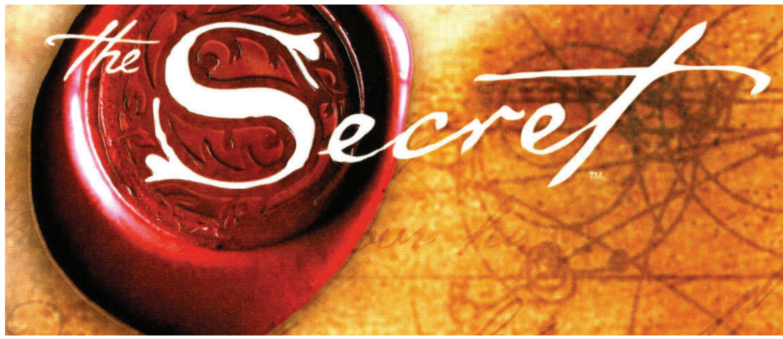


# FRANCHISING IN PORTUGAL: PASS ON THE SECRET

One of our recent newsletters dealt with the whys and hows of franchising in Spain. On this occasion we will take a look at its Iberian neighbour, Portugal, and why it makes sense for franchisors to get in the Portuguese market.

## *Lisbon calling*

While the dimension of the market itself, roughly 10.5 million, may not seem too enticing there are several reasons why Portugal should not be passed on by alert investors. First and foremost, Portuguese are knowledgeable about the franchise system, due to, in no small part, the ever growing number of franchises. 2011 saw the total number rise to 578 (+ 8 from 2010) which is an impressive figure when considering there were 363 ten years ago[1].

[1] All quoted figures sourced from the Instituto de Informação de Franchising's 17th annual census.

Another reason is the openness of the market, as just 61% of brands are Portuguese. Spain comes in second with 13%, then USA (7%), France (4%), Italy (3%), UK (3%), Brazil (2%), and others (7%). Which brings us to our third reason. If you are already franchising in Spain, you might as well make the most of it and go into Portugal, as it's the usually the number one choice for Spanish brands when going international.

Portugal is also an excellent platform or trampoline. Lusophone (Portuguese speaking) countries have a combined population of approximately 250 million, spread across four continents, including Brazil, Angola, Mozambique, Cape Verde, Guinea Bissau, São Tomé and Príncipe and East Timor. Many franchises choose Portugal as their test tube before going on to other markets, specifically Brazil. Apart from the language, other benefits such

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as double taxation treaties should not be neglected when considering further investments.

In fact 72 Portuguese brands are present in other countries with 776 establishments (+ 26 from 2010), while for many their foreign income represents 50% of their total revenue. Once again Brazil is signaled out as the number one preference.
An interesting feature of the Portuguese market is that it revolves around two or three cities at most. Indeed, 44% of all franchises are based in Lisbon and 24% in Oporto; Setúbal (5%), Aveiro (4%) and Braga (4%) complete the top 5. This ensures a greater degree of control for the franchisor while cutting back on travel and expenses.

The franchise sector as a whole represents 3.1% of Portuguese GDP or € 5,297 million. Other relevant data show that the total number of establishments has slightly decreased from 12,014 in 2010 to 11,760 in 2011, and the total number of employees has gone down 4% (there are now 70,151 which make 1.5% of the total number of employees in Portugal).

## *Legal considerations*

As in any EU Member State, attention must be paid to Commission Regulation (EU) 330/2010, of 20 April 2010. But unlike other EU Member States such as Spain or Italy, Portugal does not have local legislation specific to franchising. Consequently, Portuguese Courts have chosen to apply by analogy the Agency Law, although only with regard to the chapter on the termination of the agency agreement. Special care must be taken with a franchisee's request for indemnity upon termination of the agreement. The Courts have established that a franchisee may be entitled to such indemnity if he can produce enough evidence that his contribution was decisive in order to increase the franchise's business and clientele in a substantial way.

Other issues to cope with are intellectually property (namely trademark and/ or patent registration and use), unfair competition, personal data protection, consumer protection and, if you're a foreign franchisor, forum selection. Franchisors should also consider appropriate guarantees while franchisees should get legal advice on the implications of their lease agreement.

To sum things up, Portugal is a dynamic market (with 73 new brands in 2011) and an interesting prospect by itself but also an efficient stepping stone towards larger markets, so why not brush up on your Portuguese?