

Public consultation on Dutch Franchise Act

The Dutch government published the long awaited (revised) draft Franchise Act and concurrently opened an internet-consultation, inviting all interested parties to participate in the consultation by submitting input via this [website](#).

The consultation is relevant for all franchisors and franchisees currently doing business or planning to do business in the Netherlands.

The overall aim of the new draft Franchise Act is to strengthen the position of the franchisee during the pre-contractual phase and during the term of the franchise agreement.

The consultation would generally be the last opportunity to provide formal input on the draft act, before it is being sent to Parliament.

Accordingly, if you are or consider to become involved in franchise activities in the Netherlands, this consultation would be the perfect opportunity to ensure your viewpoints are heard and taken into account in the future.

Background

At present, no franchising-specific laws exist in the Netherlands. Instead, franchising is governed by the general principles of contract law as set out in the Civil Code and other laws not specific for franchising such as competition, IP, employment and privacy laws.

In 2015 the minister of economic affairs encouraged franchisors and franchisees to implement a code of conduct through self-regulation. The Franchise Code of Conduct was subsequently adopted in 2016. However there was great reluctance, specifically on the part of franchisors, to declare the Franchise Code of Conduct voluntarily applicable.

Hence, in April 2017 the outgoing minister of economic affairs submitted legislation regulating franchise agreements to Parliament. This legislation incorporated parts of the Franchise Code of Conduct into the Civil Code. Following a public consultation, it became apparent that there was substantial criticism on this proposed legislation, particular by franchisors. Consequently, this initial draft legislation was withdrawn and a [new \(second\) draft Franchise Act](#) has been published on 12 December 2018.

This (second) draft Franchise Act, which is now up for consultation, aims to strengthen franchisees position, primarily by:

- Establishing **information requirements**, related to the pre-contractual period as well as to the term of the franchise agreement;
- Introducing a "**cooling off period**" of 4 weeks between the moment on which franchisee received all required information and the moment of signing the franchise agreement;
- Setting condition for making **amendments to the franchise agreement** which could have substantial consequences for the franchisee; and
- Providing instructions as to the **content of the franchise agreement**, including:
 - Limiting **non-competition** restrictions to a maximum of 1 year following the termination or expiry of the franchise agreement and the territory of operation of the franchise formula by franchisee;
 - Setting conditions for the validity of **exclusive purchase obligations** of franchisee;
 - Requiring parties to capture in the franchise agreement the right of franchisee to receive reasonable **goodwill** following the termination of the franchise agreement; and
 - Requiring parties to include in the franchise agreement that parties shall at least on a yearly basis **consult each other**.

Action

Consequently, if your business is or is planning to be involved in franchise activities in the Netherlands, you may consider contributing to the consultation via the online consultation on the website. Contributions should be submitted no later than 31 January 2019.

Naturally, the Bird & Bird team would be more than happy to assist you in this process. We will keep you updated on any new developments in this regard.

More information

For more information please contact us.