

The House of Representatives
of the States General
hereby sends the adopted
legislative proposal
to the Senate.

The President,

16 June, 2020

Amendment Book 7 of the Dutch Civil Code in connection with the introduction of rules regarding the Franchise agreement (Franchise Act)

AMENDED PROPOSAL OF LAW

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc.

Greetings to all who will see or hear these presents! Be it known:

Whereas We have considered that it is desirable to lay down rules on franchises in order to strengthen the position of the franchisee vis-à-vis the franchisor;

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Article I

In Book 7 of the Civil Code, the following title will be inserted after title 15:

TITLE 16. FRANCHISE

Article 911

1. A franchise agreement is an agreement pursuant to which the franchisor grants a franchisee, in return for a fee, the right and the obligation to operate a franchise formula, in the manner indicated by the franchisor, for the production or sale of goods or the provision of services.
2. In this title, the following terms will be understood to have the meanings assigned to them below:
 - a. franchise formula: an operational, commercial, and organisational formula for the production or sale of goods or the provision of services that is decisive for a uniform identity and image of the franchise enterprises within the chain where this formula is applied, and that in any case comprises:
 - 1°. a trademark, model or trade name, house style or design; and
 - 2°. know-how: i.e. an entirety of practical information not protected by intellectual property rights, derived from the franchisor's experience and from the investigations it has carried out, which information is secret, substantial, and identified;
 - b. derived formula: an operational, commercial, and organisational formula that:
 - 1°. is decisive for a uniform identity and image of the enterprises where this formula is applied;
 - 2°. corresponds to a franchise formula in one or more distinctive features that are recognisable to the public, and which
 - 3°. is used directly or through third parties by a franchisor for the production or sale of goods or the provision of services that are wholly or largely the same as the goods or services covered by the franchise formula within the meaning of 2°;

- c. franchisor: a natural or legal person who/that is the titleholder of, or party entitled to use, a franchise formula and who/that, in the exercise of his/its profession or business, grants others the right to also operate that formula;
- d. franchisee: a natural or legal person who/that, in the exercise of his/its profession or business, operates a franchise formula at his/its own expense and risk.

Article 912

The franchisor and the franchisee will behave towards one another as befits a good franchisor and a good franchisee.

Article 913

1. The prospective franchisee will provide the franchisor with timely information about his/its financial position, in so far as such is reasonably relevant for conclusion of the franchise agreement.
2. The franchisor will provide the prospective franchisee, in a timely manner, with:
 - a. the draft of the franchise agreement, including its appendices;
 - b. a statement of the content and scope of rules regarding fees, surcharges, or other financial contributions to be paid by the franchisee or regarding the investments required from him/it;
 - c. information about:
 - 1°. the manner and frequency of consultation between the franchisor and the franchisees and, if available, the contact details of the body representing the franchisees;
 - 2°. the extent to which and the manner in which the franchisor can enter into competition with the franchisee, whether or not by means of a derived formula; and
 - 3°. the extent to which, the frequency with which, and the manner in which the franchisee will have access to turnover-related data relating to the franchisee or relevant to his/its business operations.
3. In addition, the franchisor will provide the prospective franchisee with the following information in a timely manner, in so far as it is available to him, to a subsidiary within the meaning of Article 24a of Book 2, or to a group company affiliated with him/it within the meaning of Article 24b of Book 2, and is reasonably relevant to conclusion of the franchise agreement:
 - a. information about his/its financial position; and
 - b. financial data regarding the intended location of the franchise enterprise or, if such is lacking, financial data of one or more enterprises considered by the franchisor to be comparable, with the franchisor making clear the reasons why he/it considers them to be comparable.
4. The franchisor will provide the prospective franchisee with all other information that he/it knows, or can reasonably assume, to be relevant for conclusion of the franchise agreement.

Article 914

1. The information within the meaning of Article 913(2), (3) and (4) will be provided at least four weeks prior to conclusion of the franchise agreement.
2. During this period, the franchisor will not proceed:
 - a. to amend the draft of the franchise agreement, unless such amendment is to the benefit of the franchisee;
 - b. to conclude with the franchisee the franchise agreement or any agreement considered inseparable therefrom, with the exception of a confidentiality agreement for the prospective franchisee to keep secret the confidential information provided by the franchisor for the purposes of concluding the franchise agreement; or
 - c. to induce the prospective franchisee to make payments or investments associated with the franchise agreement that is yet to be concluded.
3. The first and second paragraphs of this article will not apply with respect to:
 - a. the conclusion of a subsequent franchise agreement between the same parties regarding the same franchise formula;
 - b. the conclusion of a subsequent franchise agreement within the meaning of (a) if such is concluded between the same franchisor and a subsidiary of the franchisee, within the meaning of Article 24a of Book 2, or a group company affiliated with him/it within the meaning of Article 24b of Book 2.

Article 915

Within the bounds of reasonableness and fairness, the prospective franchisee will take measures that are necessary to prevent him/it from concluding the franchise agreement under the influence of incorrect assumptions.

Article 916

1. The franchisor will provide the franchisee, in a timely manner, with:
 - a. information regarding proposed amendments to the agreement;
 - b. information regarding investments that he/it requires of the franchisee;
 - c. notification of a decision to use, directly by the franchisor or through third parties, a derived formula, including an indication of the content and scope of the derived formula concerned; and
 - d. other information that the franchisor knows, or can reasonably assume, to be relevant with a view to performance of the franchise agreement by the franchisee.
2. The franchisor will inform the franchisee annually of the extent to which the surcharges or other financial contributions made by the franchisee in the preceding financial year in accordance with the franchisor's requirement cover the costs or investments that the franchisor intends or intended to cover with this amounts.
3. Consultation will take place between the franchisor and the franchisee at least once a year.

Article 917

1. Provision of the information within the meaning of Articles 913 and 916 will be effectuated in such a way as to make this information accessible unaltered for future consultation during a period of time commensurate with the purpose for which the information was provided.
2. The information provided by the franchisor pursuant to Articles 913 and 916 will be formulated and structured in such a way that a prospective franchisee can reasonably adopt a well-considered decision on conclusion of the franchise agreement or a franchisee can determine whether and to what extent it is necessary to adjust his/its business operations or implement actual measures.

Article 918

Further rules may be set by a general administrative order regarding the nature, content, and means of providing the information within the meaning of Articles 913 and 916.

Article 919

1. The franchisor will provide the franchisee with the assistance and commercial and technical support that may be expected reasonably and in relation to the nature and scope of the franchise formula with a view to operation of the franchise formula by the franchisee.
2. If the franchisee considers a certain kind of assistance or support within the meaning of paragraph 1 to be necessary, he/it will notify the franchisor and the franchisor and franchisee will enter into consultation regarding the matter.

Article 920

1. The franchise agreement will in any case stipulate:
 - a. the manner in which the following will be determined:
 - 1° whether any goodwill is present in the franchisee's enterprise;
 - 2° if so, what the extent of such goodwill is; and
 - 3° to what extent such goodwill is attributable to the franchisor;
 - b. how goodwill reasonably attributable to the franchisee will be reimbursed to the franchisee upon termination of the franchise agreement if the franchisor takes over the franchise enterprise from the franchisee in question in order to continue this enterprise independently or to transfer it to a third party with whom/which the franchisor concludes a franchise agreement.
2. A provision restricting the franchisee's power to operate in a certain manner after the end of the franchise agreement will only be valid if:
 - a. it is set out in writing;

- b. the restriction on performance of activities concerns only goods or services that compete with the goods or services to which the franchise agreement relates;
- c. the restriction is indispensable to protect the know-how transferred by the franchisor to the franchisee;
- d. it does not exceed one year after the end of the franchise agreement; and
- e. the geographic scope is not broader than the area within which the franchisee has operated the franchise formula under the franchise agreement concerned.

Article 921

1. If the franchisor intends to alter the franchise formula using a provision contained in the franchise agreement or intends to have a derived formula operated directly or through third parties without amending the franchise agreement, and with a view to such intention the franchisor:

- a. requires an investment from the franchisee;
- b. introduces or modifies, to the detriment of the franchisee, an obligation of the franchisee to pay a fee, a surcharge, or any other financial contribution other than the investment within the meaning of (a);
- c. requires the franchisee to bear other costs; or
- d. can reasonably foresee that implementation of the intention will lead to a loss of turnover for the franchisee's enterprise;

and such investment, fee, surcharge, or other financial contribution or expected loss of turnover exceeds a level set out in the franchise agreement, then the franchisor will require prior consent for implementation of the plan concerned from:

- 1°. a majority of the franchisees established in the Netherlands with whom the franchisor has concluded a franchise agreement concerning the franchise formula; or
- 2°. each of the franchisees established in the Netherlands affected by the intention of the franchisor in the manner set out in (a), (b), (c), or (d).

2. If the level within the meaning of paragraph 1 is not specified in the franchise agreement, prior consent within the meaning of paragraph 1 will always be required, regardless of the extent of the required investment, financial contribution or costs or loss of turnover within the meaning of subparagraphs (a), (b), (c), or (d) of paragraph 1.

Article 922

- 1. With respect to franchisees established in the Netherlands, the provisions of this Title cannot be derogated from to their detriment and a clause contrary to Article 920 is null and void, irrespective of the law governing the franchise contract.

Article II

In Title 8 of the New Civil Code (Transition) Act [*Overgangswet Nieuw Burgerlijk Wetboek*], the following article will be inserted after Article 208j:

Article 209

Articles 920 and 921 will become applicable to franchise agreements concluded before the entry into force of Title 16 of Book 7 two years after that point in time.

ARTICLE IIa

Our Minister of Economic Affairs and Climate Policy shall, within five years of this Act coming into force, send the States General a report regarding the effectiveness and effects of this Act in practice, paying particular attention to the effect of this Act on the growth of the franchise sector, the scope for innovation and cooperation within that sector.

ARTICLE III

This Act will enter into force at a time determined by Royal Decree; such time may differ for the various articles or parts thereof.

ARTICLE IV

This Act may be cited as the Franchise Act [*Wet franchise*]

We hereby order and command that this Act be published in the Bulletin of Acts, Orders, and Decrees and that all ministries, authorities, boards, and public officials to whom such applies will take measures to implement it diligently.

Given

The State Secretary for Economic Affairs and Climate Policy,

The State Secretary for Economic Affairs and Climate Policy,

The Minister for Legal Protection,

The Minister for Legal Protection,