

## **New Franchise Act: strengthening of franchisee position**

The new Franchise Act was adopted by the Senate on 30 June 2020. This paves the way for its entry into force on 1 January 2021. All franchise agreements concluded from that date onwards are subject to the provisions of this Act. In this blog we will briefly discuss the changes and implications of this new act.

### **The franchise agreement**

So far, the franchise construction has been a form of cooperation not regulated by Dutch law. In this respect, the franchisor often has a significantly better position compared to the franchisee. This is all the more so in the case of so-called hard-franchise formulas, usually blown over from the United States of America. The new Franchise Act not only regulates the franchise structure in general, but in particular corrects the dominant relationship between franchisor and franchisee. Spearheads of this new act are therefore to increase transparency, participation and rights for the benefit of the franchisee. The following elements stand out.

### **Key points of the new Franchise Act**

The Franchise Act firstly regulates the pre-contractual phase and the conclusion of the franchise agreement. Among other things, it determines what information the intended franchisee should receive before he enters into the agreement. This concerns all information of which the franchisor knows or should reasonably suspect that it is important for the franchisee to have in order to make an informed choice whether or not to enter into the cooperation. The franchisee must receive this information four weeks prior to concluding the agreement. Subsequently, during that four-week period, he has the time to reach a well-considered decision. Adjusting information or conditions during that period is in principle not permitted.

Moreover, the Franchise Act recognizes that franchise structures are evolving and that the underlying franchise formulas are constantly being revised. This applies in particular to relatively new franchise formulas that experience many developments in a short period of time. It regularly happens that the franchisee is expected to do more than initially agreed upon. The Franchise Act restricts such (interim) changes by, among other things, making it compulsory to inform the franchisee in the event of certain changes. If, for example, the franchisee is expected to invest more, the franchisee may be obliged to inform the franchisor in advance. Moreover, for larger investments a certain threshold can be set in the agreement. Insofar more investments are expected than this threshold, the franchisee will have to be informed.

In addition, the Franchise Act provides that the franchisor and franchisee must consult each other regularly and that the franchisor must also assist the franchisee. It should be noted that most franchise agreements already provide for these aspects and this is therefore not new for most situations.

### **The termination of the franchise agreement**

Finally, an essential aspect of any franchise cooperation is the termination and unwinding of the relationship. During a franchise agreement, a franchisee usually builds up a certain amount of goodwill. When settling the cooperation, however, the question is how to deal with this goodwill. The Franchise Act provides a number of guidelines on how this goodwill should be remunerated or taken over. Equally important, however, is the restriction of a possible non-competition clause. In this respect, the Franchise Act stipulates that this may not exceed one year and the geographical scope of that clause may not be more extensive than the exclusive territory in which the franchisee operated. Although these obligations are usually in line with the agreements entered into and therefore well established, for many franchisees it is a welcome addition that this restriction is laid down by law.

In short, the new Franchise Act brings about a number of changes for both franchisors and franchisees. It is therefore a good thing not only to take this into account in new agreements from 1 January 2021, but also to assess existing collaborations in view of, for example, an extension.

### **Need some advice?**

This blog is written by Arsen Mukuchian. Do you have questions about the new Franchise Act or franchise agreements in general? Feel free to contact one of our lawyers.