



Bird & Bird & Internationalising your Franchise

Webinar Series Part 1: UK, The Netherlands and Poland

Wednesday 15 September

Introduction



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Lourdes is head of the corporate and M&A team in the Madrid office and has combined expertise in franchising/corporate and commercial matters having assisted many clients in their internationalization.

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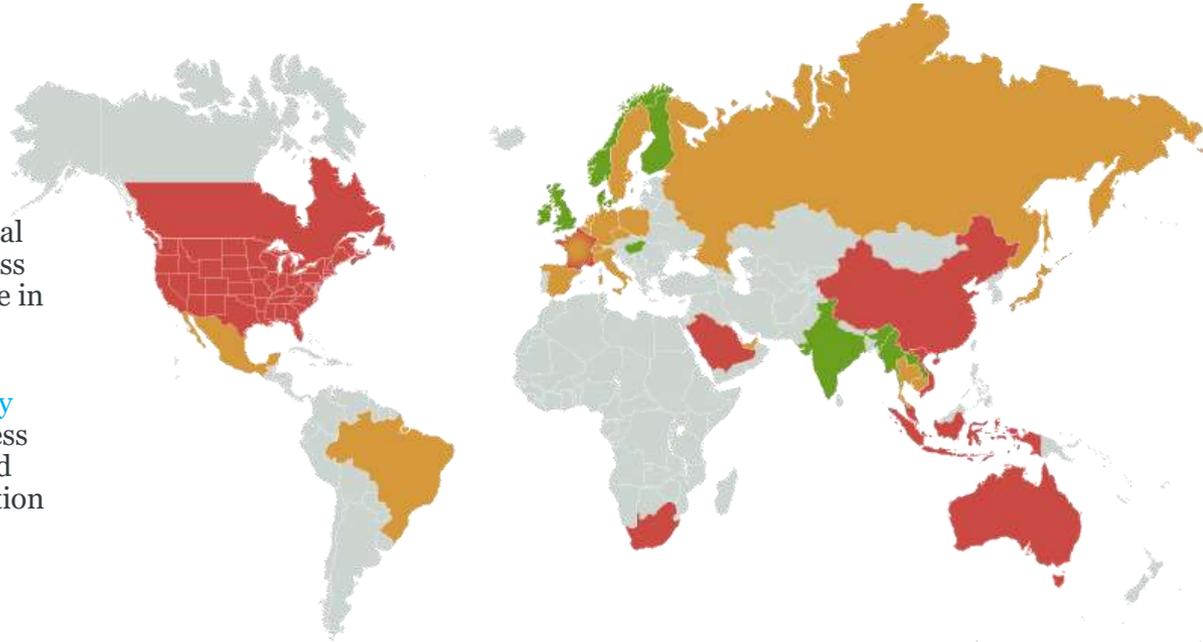
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Diana is part of the corporate and M&A team in the Madrid office and has extensive experience in advising franchisors and franchisees in their local and international expansion.

Bird&Bird & International Franchising

- With more than 1,300 lawyers across a network of [29 offices in Europe, the Middle East and Asia Pacific](#), Bird & Bird is able to provide growing businesses with on the ground support through our international offices.
- With [franchise experts in each of our international offices](#), together with our global network of specialist franchise counsel across the Americas and Africa, we can you operate in a range of sectors to achieve their growth objectives via franchising or distribution.
- We also work with Bird & Bird's [consultancy arm, OXYGY](#), to support clients with business projects that require a range of skills beyond pure legal issues including internationalisation support.
- You can access our [online international franchise laws tracker](#), which provides a comparison of franchise laws across the jurisdictions in which we have offices or work with local franchising experts.



[Access online our International Franchise Laws Tracker](#)

What you need to consider

- How to structure your franchise or distribution model
- Whether you may need a sophisticated hybrid strategies to support your global expansion
- Whether you may need the drafting and negotiation of core franchise, distribution and legal documentation
- What are the international franchise market entry regulations applicable
- Whether you may need support with ongoing franchise and distribution network management
- Whether you need exit planning as well as strategic acquisitions and disposals
- How to implement risk management including how to avoid and handle disputes

You may also need to take into consideration other key related areas such as:

- Brand management
- Advertising and social media
- Use of technology and data
- Corporate structures
- Competition
- E-commerce and m-commerce
- Employment and immigration
- Real estate
- Tax matters

Our webinar series

Welcome to our webinar series in partnership with the Spanish Association of Franchisors:

UK, The Netherlands & Poland: Wednesday 15 September

Australia & China: Tuesday 5 October

Italy, France & Morocco: Wednesday 27 October

India & Middle East: Thursday 11 November



Today's speakers

Dr Saskia King

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Saskia has over 15 years' experience at the cutting edge of UK and EU competition law and policy, having worked at regulators, competition authorities, in academia and private practice, with a particular focus on regulated sectors.

Graeme Payne

Partner, UK

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As a specialist in UK and international franchising, distribution and supply chain arrangements, Graeme helps retail and consumer-facing businesses integrate and manage their multi-channel growth strategies.

Roelien van Neck

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Roelien has combined expertise in franchising/commercial, tech and end-user protection. She advises on commercial contracts including distribution, sales and agency arrangements, acting on behalf of suppliers and customers.

Kuba Ruiz

Senior Counsel, Poland

Commercial Law

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Kuba has advised on, drafted and negotiated a variety of contracts and commercial arrangements, including contracts for the supply of goods or services, agency, distribution, franchising and licensing.

EU Competition update



The EU Vertical Agreements Block Exemption Regulation (VBER)

Current position relating to franchise agreements

- The VBER automatically **exempts** agreements between a franchisor and franchisee which comply with the following **criteria**:
 - The parties each have a market share below 30%; and
 - The agreement does not contain any '**hardcore**' restrictions
- The current VBER came into force in 2011 and will **expire on 31 May 2022**

Agreements containing the following **hardcore** restrictions are usually forbidden under the rules:

- **Franchisors fix or impose a minimum resale price on franchisees**
- **Franchisors prevent franchisees from selling into other (non-exclusive) territories**
- **Franchisors prevent franchisees from selling over the internet or receiving non-solicited customer orders**
- Including a **hardcore** restriction in an agreement means the agreement is more likely to be **void and unenforceable** and exposes the parties to a **fine of 10% of global turnover**
- PLUS requirements that the franchisee does **not compete** with the franchisor and other franchisees should not exceed **5 years** otherwise they too may infringe the competition rules

Changes to the current EU regime

In a nutshell

- The new regime is expected to largely **retain the structure and substance** of the VBER but some **new rules** to look out for:
 - ✓ Dual pricing and marketplace bans - to be **exempted**
 - ✓ Price comparison website restrictions - to become **hardcore** restrictions
 - ✓ A supplier using a selective distribution model is **no longer required to impose on its authorised distributors identical criteria for online and physical sales**, as long as this does not prevent online sales
 - ✓ Wide retail parity obligations – no longer exempted
 - ✓ Dual Distribution - 10% joint market share requirement

- The Competition & EU team has produced a lot of relevant materials in this area
- Changes also afoot in the UK – please come and speak to us!

Franchising in UK



An Introduction to Franchising in the UK

Franchising Basics

- Regulation of franchising in the UK
- Pre-contractual disclosure / misrepresentation
- How does the franchise agreement interact with the operations manual?
- Relational contracts and good faith
- Franchise network management – the role of the franchisee champions

UK contd.

Hot Topics and Horizon Scanning

- E-commerce / IT infrastructure / Payment Service Providers
- Working with 'aggregators' (takeaway.com, JustEat, Deliveroo, etc.) and how this impacts/relates to franchisees
- Data
- Sustainability and the supply chain
- Central Procurement of business critical relationships
- Real estate – now is a good time

A decorative graphic consisting of two blue curved lines, one on the left and one on the right, with a small Dutch flag (red, white, and blue horizontal stripes) positioned between them.

Franchising in The Netherlands

Franchising in The Netherlands

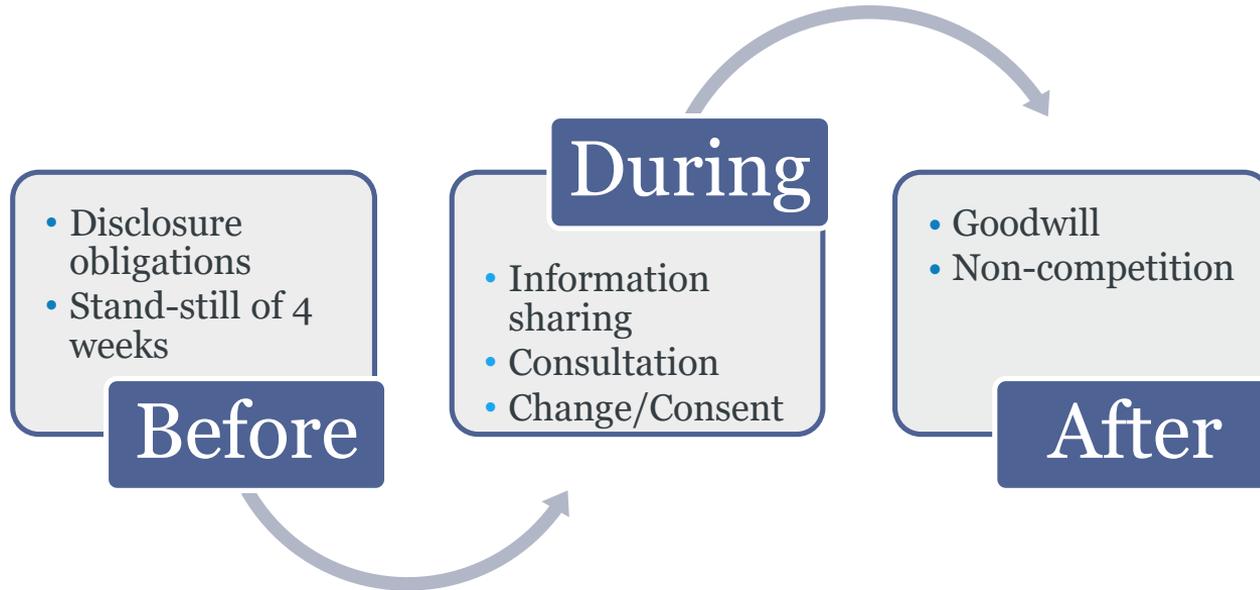
Franchise regulation

Dutch Franchise Act (per 1 January 2021)

- The overall aim of the Dutch Franchise Act is to strengthen the position of the franchisee:
 - during the pre-contractual phase
 - during the term of the franchise agreement;
 - balance between protection and freedom of contract;
 - post-term protection.
- Similar to some other (European) countries.

What to expect?

Aspects of **all phases** of the franchise relationship are regulated:



International aspects

The Dutch Franchise Act will not always apply:

- Possibility to avoid applicability of the Dutch Franchise Act by including other than Dutch law in the franchise agreement?
What about franchisees not based in NL where Dutch law applies to the franchise agreement?
- Location of franchisee business is decisive

Franchising in Poland



Franchising in Poland

Franchise regulation

No specific laws or regulations governing franchising in Poland.

Franchising is governed by a mixture of: civil law; IP law; tax law; competition law; and data protection law (GDPR).

Franchising (as a service) can be contracted and provided from abroad – no local presence required.

Parties are free to choose: governing law, jurisdiction, language of the contract (Polish is not required).

No pre-contractual disclosure or registration of documents required.

Franchising in Poland

Other material law

Any manuals or other terms & conditions need to be provided to franchisees on durable medium prior to entering into the franchising agreement.

"Polish" IP rights can be effectively transferred only upon written agreement (wet ink signature or QES).

Contracts cannot be terminated solely due to bankruptcy / insolvency event.

The President of the Office of Competition and Consumer Protection:

- conducts antitrust proceedings
- conducts proceedings in case of practices that violate the common interests of consumers, which may result in:
 - the prohibition of contested activities;
 - an order for rectification of the effects of a breach being issued; or
 - the imposition of a fine;
- controls the concentration of entrepreneurs

In terms of personal data processing, the Polish Personal Data Protection Office is the competent authority.

Franchising in Poland

What to expect

Everchanging Tax Regime (WHT, New Order – if local presence, other?)

Very long common court proceedings

A New Franchising Law is being discussed – very early stage

- increased Franchisees protection
- pre-contractual disclosure
- termination will be more difficult
- the President of the Polish Competition Authority will have increased powers over franchising
- the regulation is planned to affect all Franchising contracts, not only future ones

Thank you & Bird & Bird

Follow up with:

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