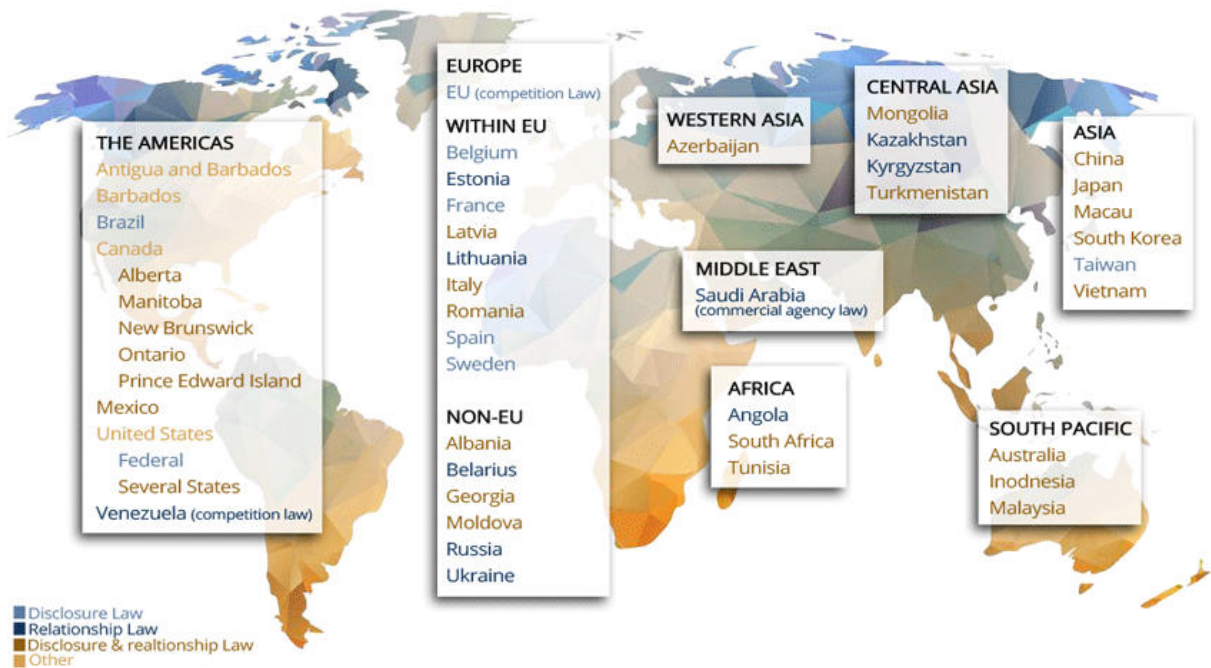




# INTERNATIONAL RESOURCES ABSTRACT

Laws and agencies that regulate the offer and sale of franchises



## NETHERLANDS



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## Laws and agencies that regulate the offer and sale of franchises

### Which laws and government agencies regulate the offer and sale of franchises?

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Franchising is, from a civil law point of view, not specifically regulated in Dutch law. Instead, the general laws of contract apply as well as Dutch court decisions. Book 6 of the Dutch Civil Code sets out the requirements relating to the formation of contracts. These provisions must be read in conjunction with the more general rules regarding juridical acts; that is, acts intended to invoke legal consequences provided in book 3 of the Dutch Civil Code. In Dutch legal literature and jurisprudence, certain rules of law in relation to franchise have been developed.

Besides the civil law aspects, in franchising (as well as distribution and all other vertical agreements) competition laws play an important role and should be kept in mind. The EC Guidelines to the Commission Regulation (EU) No. 330/2010 of 20 April 2010 on the applicability of article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices is very important, as well as the EC Guidelines thereto. The Dutch Competition Authority (NMa) ensures compliance with European and Dutch competition laws (for more details see questions 39 and 40).

Franchisors that are members of the NFV are bound by the rules in the European Code of Ethics for Franchising (Code) drawn up by the European Franchise Federation ([www.eff-franchise.com](http://www.eff-franchise.com)).

There are no specific government agencies that regulate the offer and sale of franchises.

### What are the exemptions and exclusions from any franchise laws and regulations?

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There are no specific franchise laws or regulations in the Netherlands.

### Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

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As there are no specific franchise laws or regulations in the Netherlands, there are no specific requirements to be met before a franchisor may offer franchises.

### Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

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No, such restrictions are not applicable in the Netherlands. However, all contracts are subject to the general requirements of reasonableness and fairness .

### In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the subfranchisor?

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The allocation of respective responsibilities between the franchisor and the sub-franchisor towards a (prospective) sub-franchisee will depend on what has been agreed between them. This is not



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specifically regulated by Dutch law. If nothing has been agreed, in principle, the sub-franchisor (assuming that this will be the contracting party of the sub-franchisee) shall be responsible for pre-sale disclosures towards the sub-franchisee.

### Is there any obligation for continuing disclosure?

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The obligation for continuing disclosure will mainly depend on what has been agreed in the contract between the franchisor and franchisee. Case law indicates that the franchisor has a duty of care, which means that if a franchisee does not reach the forecast turnover, the franchisor may have the continuing obligation to provide the franchisee with advice and assistance. Parties will have to reach a situation that is as far as possible in accordance with the spirit and purport of the franchise agreement, meaning that the franchisor and franchisee both benefit from the franchise.

### How do the relevant government agencies enforce the disclosure requirements?

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See first question

### Do other laws affect the franchise relationship?

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The Dutch Data Protection Act (DPA) lays down several requirements for processing of personal data. 'Personal data' is any data relating to an identified or identifiable person and 'processing' means almost anything that can be done with personal data, such as collecting, storing, erasing, using or retrieving. The DPA applies to both processing of personal data by automatic means and processing other than by automatic means. The DPA also contains restrictions relating to the transfer of personal data to other countries.

Applied to a franchising context, the DPA would be relevant, for instance, where the franchisee or franchisor collects customer details pursuant to a customer loyalty programme. The DPA is the Dutch implementation of the EU Data Protection Directive.