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Greenberg Traurig, LLP Amsterdam

Master Franchise agreements

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What is a franchise agreement?

- A commercial cooperation agreement between independent entrepreneurs: franchisor and franchisee
- As regards the exploitation of the business operation concept of the franchisor:
 - use of trade name, trademarks, intellectual property rights and knowhow
 - commercial and technical support by franchisor to franchisee

Specifics of a franchise agreement

- Independence of the franchisee
 - but close cooperation as to protect identity and reputation of the franchise formula
 - and protection of the IP and know-how shared by the franchisor with the franchisee

Specifics of a franchise agreement

- If the know-how to be shared is
 - secret
 - material and
 - defined

then the agreement may benefit from special rules as regards competition law

- Licensing of IP is not required to qualify as a franchise

Why a franchise agreement?

- Franchise allows a franchisor to quickly expand its business by entering into a strategic cooperation with other entrepreneurs, without losing control over the business
- Franchisees can use the know-how and reputation developed by a franchisor to quick-start their own businesses

Master franchise – a special form of franchise

- A master license allows a franchisee to become a regional franchisor and to enter into franchise agreements with other (sub) franchisees
- Individuals or corporations can use their local expertise and network to create a network of sub-franchises in a specific region or country
- Using master licenses allows the franchisor to efficiently expand into a specific territory by using a local partner to build up and manage the network

Legal framework

- In law a master franchise is not distinguished from a regular franchise
- No specific rules or regulations apply under Dutch law as regards franchise. The playing field is defined by general rules of contract law and case law
- Franchise is acknowledged in EU competition law as an unique distribution method
 - restrictions which are objectively required to protect the identity and reputation of the franchise formula are exempted from competition law
 - EC regulation on vertical restraints applies to all other restrictions

Legal framework

- EU competition law does not make a distinction between master franchises and regular franchises; it is all franchise
- Best practice rules: European code of practice concerning Franchising of the European Franchise Federation:
 - transparency and disclosure requirements as regards franchisor
 - information on other franchisees and performance data relevant to the territory of the franchisee
 - disclosure of other distribution channels

Legal framework

- The European code does make a distinction between master franchise and regular franchise
- The master franchisee is considered a franchisor
 - the European code does not apply to the master license
 - the master franchisee has to comply with the European code in his contract with sub-franchisees
- As best practice the European code may indirectly determine the obligations of the franchisor also in respect of a master franchise

Essentials of a master franchise agreement

- terms of exclusive license
- development obligation and training and assistance
- sub-licensing procedures
- protection of intellectual property rights and know-how
- territorial protection and online sales
- financial compensation
- pricing policy (strictly regulated by the Vertical restraints regulation)
- purchase/sales policy
- term and renewal conditions
- continuity safeguards

Essentials of a master franchise agreement

- Regular franchise agreements in the Dutch market typically are for 5 year periods
 - maximum duration of non-compete is 5 years (Vertical restrains regulation)
 - lease contracts normally have a 5+5 term
- No extension possibility, therefore new negotiations for a new agreement
- The above considerations do not necessarily apply to a master franchise, allowing for longer period

Essentials of a master franchise agreement

- Early termination should be possible if certain bench marks cannot be made. Financial compensation may be due
- Reasonable term of notice for termination for cause (protection of the franchisee)
- Change of control provisions
- Post-term non-compete

Regulatory aspects of assisted living

- Reimbursed assisted living
 - heavily regulated
 - license and agreement with “zorgkantoor” required for collective provision
 - reimbursed household services tendered by municipality
 - opportunities in segment of private choice by service recipients
- Privately financed assisted living
 - less heavily regulated

Regulatory aspects of assisted living

- Overarching rules
 - providers (*Kwaliteitswet Zorginstellingen*)
 - rules underpinning quality of services provided by providers
 - client rights (*Wet Cliëntenrechten Zorg*)
 - currently on fast track in legislative procedure (pending since 2009)
 - will codify a number of rights of care/assisted living services receivers, and procedural obligations for providers

Regulatory aspects of assisted living

- Increasing regulatory scrutiny
 - as a result of IGZ report showing lack of expertise at unlicensed providers (“cowboys”)
 - opportunities for well-organised providers

About Greenberg Traurig, LLP

Key Facts: Global

- Greenberg Traurig was established in Miami in 1967 by Mel Greenberg and Bob Traurig;
- Today Greenberg Traurig, LLP is an international, full-service law firm with approximately 1800 attorneys serving clients from more than 30 offices in the United States, Europe and Asia.
- In the US, the firm has more offices than any other among the Top 10 on *The National Law Journal's* 2010 NLJ 250.
- In the UK, the firm operates as Greenberg Traurig Maher LLP. Greenberg Traurig has a strategic alliance with the independent law firm, Studio Santa Maria in Milan and Rome.
- The firm was Chambers and Partners' USA Law Firm of the Year in 2007 and among the Top 3 in the International Law Firm of the Year at the 2009 The Lawyer Awards.

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Key Facts: Amsterdam

The Amsterdam office opened in 2003;

Located in the Zuidas business district.

GT's Amsterdam office is home to approximately 65 lawyers, tax advisors and civil law notaries, who are well-versed in European and Dutch law, and who work closely with our international lawyers throughout the rest of the firm.

We offer our clients an integrated corporate, tax and notarial practice – and an analysis of their business.

As a result, we can advise on issues and strategic decisions, as well as provide clients with practical, business-focused counsel from various perspectives.

We are experienced in many sectors including real estate, venture capital, shipping, media, financial institutions, technology, telecommunications, logistics, automotive, fashion and retail. We are advisors to established domestic and international companies listed on the Dutch stock exchange.

GT's Amsterdam office has been responsible for handling high-profile situations in The Netherlands, including coordinating pan-European affairs.

Practice areas

GT Amsterdam's attorneys are experienced in

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- European and competition law
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- Notarial law
- Real estate
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- GT Amsterdam was recognized as the fastest growing law firm in The Netherlands, 2003-2008 by the Dutch State of the Bar.

- The following Practice Groups of GT Amsterdam were recognized by Chambers and Partners in 2009
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