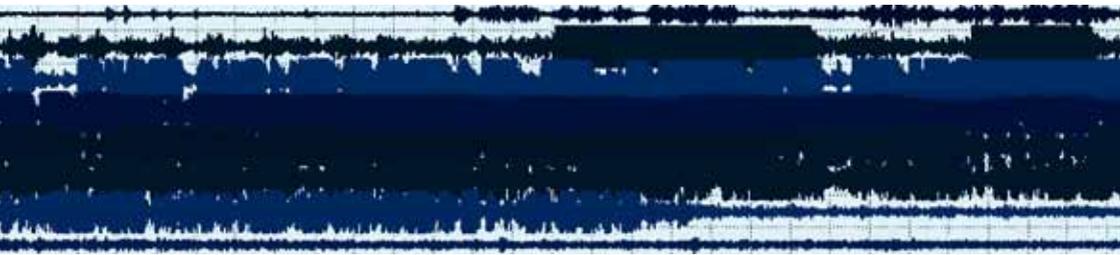


HOUTHOFF BURUMA

GUIDE TO DOING BUSINESS IN THE NETHERLANDS

2012



IN-HOUSE COUNSEL PRACTICAL GUIDE

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1. INTRODUCTION TO HOUTHOFF BURUMA

Houthoff Buruma is a long-established Netherlands based law firm with over 250 lawyers worldwide. The firm's lawyers in each practice area and across its offices work collaboratively to help clients assess new opportunities and manage risk in a redefined marketplace. As the fabric of the global economic environment unravelled, Houthoff Buruma partnered with clients to respond to unprecedented circumstances with innovative solutions and sound legal judgement. Houthoff Buruma has a vision on economic growth that is productive, sustainable and inclusive.

Due to Houthoff Buruma's international experience and reputation, it is the firm of choice for U.K., U.S., and international law firms and companies doing, or looking to do, business in The Netherlands. Houthoff Buruma prides itself in being internationally focused. We have an exclusive membership in Lex Mundi, the world's leading association of independent law firms whose member selection criteria are very stringent; members have to be the leading law firms in their jurisdictions and are continuously assessed for quality. With a network covering 160 jurisdictions worldwide, our membership allows us to have excellent relationships with many law firms that share our aim of delivering the best service to our clients. Houthoff Buruma also has offices in London, Brussels, and New York, which gives us direct access to the world of international finance and all European institutions.

OUR SERVICES

Practice areas:

- Asset Finance & Structured Finance
- Banking
- Capital Markets (Debt & Equity)
- Construction
- Corporate / M&A
- Corporate & Commercial
- Dispute Resolution
- Financial Markets Regulation
- Insolvency, Restructuring & Recovery
- Intellectual Property
- Investment Management
- IT & Internet
- Labor & Employment
- Pensions & Employee Benefits
- Private Equity
- Real Estate
- Supreme Court Litigation
- Tax

Economic sectors:

- Agro Food
- Automotive
- Corporate Criminal Law
- Emerging Markets
- Energy & Utilities
- EU & Competition
- Health Care
- Insurance & Reinsurance
- Notarial Law
- Privacy and Data Protection
- Procurement
- Projects & Project Finance
- Public Law
- Telecom, Media & Technology
- Transport & Logistics

2. THE COUNTRY AT A GLANCE

Country	Kingdom of The Netherlands
Membership	European Union
Capital	Amsterdam
Official language	Dutch and Frisian
Population	More than 16 million
Area	41,526 km²
Time zone	CET (UTC + 1)
Calling code	31
Currency	Euro (€)
GDP per country (2010)	\$ 780 668 millions (IMF)
GDP per capita (2010)	\$ 51 410 (IMF)

2.1 THE NETHERLANDS

Geography & climate

The Netherlands (often called “Holland”) is a modern, prosperous nation located in north-western Europe. Having 16.8 million people and an area of 41,526 km², it is one of the world’s most densely populated countries. The Netherlands is part of the “Kingdom of The Netherlands”, which also includes Aruba, Curaçao, St Maarten and three other islands in the Caribbean.

The Netherlands has a mild, maritime climate, with cool summers and mild winters. Summers are generally warm with colder, rainy periods. Winters can be fairly cold, windy, with rain and some snow. The average temperature is 2°C (36°F) in January and 19°C (66°F) in July.

Language

The official language is Dutch, a language spoken by 23 million people worldwide. English is also widely understood and spoken. A second official language, Frisian, is spoken by approximately 350,000 people in the province of Friesland.

Culture & religion

The culture of The Netherlands is diverse, reflecting regional differences as well as foreign influences, thanks to the merchant and exploring spirit of the Dutch and the influx of immigrants. The Netherlands has a liberal image, which stems from pragmatism and a “live and let live” attitude. Also The Netherlands is a consensus society, making compromises and joint problem-solving being an essential part of the Dutch character.

The business community in The Netherlands is rather close-knit and most senior-level people know one another. The Dutch are hospitable, but this is often reserved for family and friends. In business matters they tend to be reserved and formal. The communication style of the Dutch has been described by some observers as “direct”. They tend to avoid the small talk and get to the point. Also, punctuality for meetings is taken very seriously.

In The Netherlands, 40% of the population call themselves non-religious. The largest religious denomination is the Roman Catholic church (30%), followed by the Protestant Church in The Netherlands (21%), and Islam (4%). The rapid secularisation of The Netherlands since the 1960s has meant that religion plays a decreasing role in the social and cultural lives of many Dutch people.

Currency

The euro is the official currency in The Netherlands. The exchange rate on 15 May 2012 was approx. €1 = \$1.285. Bank transfers within the euro area are relatively inexpensive.

Finance and economy

The Netherlands has the 16th largest GDP in the world (2010) (IMF). It has a modern banking and financial system fully integrated into the international system.

The Dutch economy has a strongly international focus. The Netherlands has had a long history as a trading nation. Foreign trade is the life-blood of Dutch prosperity: The Netherlands is the eighth largest exporter of goods and capital in the world. Owing to the relatively small size of its domestic market, the Dutch economy is one of the most open and outward-looking in the world. Royal Dutch Shell, Unilever, Philips and Heineken are just a few of the multinationals based in The Netherlands.

Infrastructure

The Netherlands lies on the North Sea at the delta of three major rivers leading into the heart of Europe: the Rhine, Maas and Schelde. Due to its prime maritime location, The Netherlands has long played an important role as a main port and distribution centre for companies operating worldwide. The port of Rotterdam, handling some 434.6 million tonnes of goods in 2011, is the biggest port in Europe. Inland waterways and ports (especially in the Amsterdam area) also link the various parts of The Netherlands together and to its European neighbours.

Amsterdam Airport Schiphol is ranked as Europe’s third-largest individual cargo airport, reporting the annual transfer in 2011 of well over 1,5 million tonnes of cargo. With passenger numbers totaling 49.75 million, Amsterdam Airport Schiphol was ranked as Europe’s fourth-largest passenger airport in 2011. In addition, there are a number of regional airports in The Netherlands, the main ones being Rotterdam Airport, Groningen Airport, Eindhoven Airport and Maastricht Airport.

Furthermore, The Netherlands has an excellent infrastructure, good roads, a first-rate public transport system, and a close-knit network of trains and buses. France, Britain, Germany, Italy, Austria and Switzerland are within easy reach by rail and road.

Communications

The communications network in The Netherlands is one of the best in the world. The highly developed and well maintained telephone system has an extensive fixed-line fibre-optic network and its cellular telephone system is one of the largest in Europe, with five major network operators utilizing the third generation of the Global System for Mobile Communications (GSM). Submarine cables and satellite earth stations enable international communication. Use of the internet is widespread at home and at work. Approximately 90% of Dutch people have an internet connection at home.

Utilities

Natural gas is produced in The Netherlands and is commonly used in homes and businesses for cooking and heating. Production and supply (using a government-owned network) are predominantly handled by the private sector. Rates charged to customers are monitored but not fixed by the government. The same is generally true for electricity. Water supply and quality is handled by the public sector.

2.2 DIPLOMATIC RELATIONS / EUROPEAN UNION

From The Netherlands there is easy access to the single European market (including the financial and commercial centres in Britain, France and Germany) and every corner of the European Union.

The Netherlands is one of the founding members of the European Union and plays an active role in many international organisations. The Netherlands has active diplomatic and economic relations with most countries in the world.

Other member states of the EU include: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovenia, Romania, Slovakia, Spain, Sweden and United Kingdom.

In addition, The Netherlands is a member state of the European Economic Area (EEA), the Schengen Area, the EU Customs Union and the Council of Europe.

Visit www.minbuza.nl for further information (in various languages) about how to contact Dutch embassies, consulates and permanent representations.

Detailed visa information is available (in English and Dutch) at www.ind.nl.

2.3 DUTCH GOVERNMENT

Democracy and stability

The Netherlands is a constitutional monarchy with a parliamentary system. While Her Majesty Queen Beatrix formally heads the government, it is the prime minister who governs in practice, together with the other ministers and state secretaries. The ministers are accountable to the Dutch parliament for the government's actions, including those of the monarch.

The Dutch parliament consists of the Second Chamber (the 150-member Tweede Kamer) and the First Chamber (the 75-member Eerste Kamer). Both houses together are officially referred to as the "States General" (Staten Generaal). The members of the Second Chamber are directly elected by the people (proportional representation). Elections usually take place every four years. The Second Chamber has the power to compel the government to resign by means of a motion of no confidence. Members of the First Chamber are elected by the provincial councils, i.e. by the members of the twelve provincial legislatures.

Every year, on the third Tuesday in September – a day known as Prinsjesdag – the government presents its budget for the coming year and the Queen delivers the Speech from the Throne outlining the government's policy and plans for the coming year. The budget requires the approval of parliament. The monarch also plays a role in the formation of a new government, which in The Netherlands always consists of a coalition of various political parties. There are currently nine political parties represented in the Second Chamber. Three of them together form the current coalition government.

Provinces and municipalities

The Netherlands has 12 provinces and 431 municipalities. There are three levels of government.

Legislative process

A legislative proposal is proposed by the minister responsible for its subject matter (with government approval) or by one or more members of parliament (without government approval).

Before a legislative proposal is sent to the Second Chamber, it is reviewed by the Council of State (Raad van State). Sometimes the proposal is amended as a result of the Council of State's advice.

The advice of the Council of State is sent to the Second Chamber at the same time as the legislative proposal and an explanatory memorandum (*memorie van toelichting*).

The legislative proposal is first discussed in the Second Chamber, which has the right to amend it. After a legislative proposal is adopted by the Second Chamber, it is sent to the First Chamber. The First Chamber does not have the right to amend the proposal. It can merely adopt or reject it.

2.4 LEGAL SYSTEM

Civil law

The Netherlands has a civil-law system similar to that used in France, Germany and many other countries. As a member of the European Union, The Netherlands is also subject to European law.

Constitutional framework

Among many other things, the Dutch constitution provides for the legal system and enshrines the independence of the judiciary. It is the role of the legislature (with the advice of the Council of State) to ensure that laws are constitutional. In The Netherlands, the constitutionality of a law is not a matter for the courts.

The civil and criminal courts

Civil and criminal cases are dealt with by nineteen courts located throughout The Netherlands, five regional courts of appeal, and the Supreme Court of The Netherlands (*Hoge Raad*). The courts are divided into various sectors (e.g. “family sector”, “criminal sector” and “tax sector”).

Some courts have specific expertise in, and jurisdiction over, cases in specific areas. For example, the Enterprise Chamber (*Ondernemingskamer*) of the Amsterdam Court of Appeal has exclusive jurisdiction over certain matters relating to corporate law.

Both at first instance and on appeal, cases are examined on both their facts and their legal merits. The Supreme Court, however, does not review the facts of a case.

Civil litigation in The Netherlands is often handled quite expeditiously – it may take only several months to a year (but occasionally longer) to obtain a final decision. However, even this is considered too slow in some situations. In Dutch civil procedure, it is possible to have a matter heard by way of summary proceedings (i.e. in the context of a request for interim measures). Sometimes a decision can be obtained in just a few days. It is not unusual for litigation to continue no further than these summary proceedings, the parties considering the summary decision to be a reliable indication of the eventual outcome.

Mediation and arbitration

Sometimes the courts try to expedite matters by calling on the parties to enter into settlement negotiations during a rather informal hearing (*comparitie van partijen*).

Mediation is also becoming common in certain proceedings, especially divorce cases. Arbitration is quite common in civil cases. Contracts often bind parties to rely on the rules of the Dutch Arbitration Institute (*Nederlands Arbitrage Instituut*) in the event of a dispute. More information on this (including standard clauses) is provided (in English and Dutch) at www.nai-nl.org.

Administrative proceedings

Most administrative law matters involving the government are heard by the courts. However, these cases are often preceded by objection proceedings (essentially requests for reconsideration) made to the administrative decision-makers themselves. Objection proceedings are very common in The Netherlands.

Certain administrative courts have specific expertise in, and jurisdiction over, certain types of proceedings.

The Administrative Jurisdiction Division of the Council of State is the highest administrative court in The Netherlands. It hears appeals lodged by members of the public against decisions or orders given by municipal, provincial or central government (decisions in individual cases as well as orders of a general nature). Applications for provisional relief (pending the outcome of the proceeding) can also be submitted to the Administrative Jurisdiction Division of the Council of State.

2.5 ENFORCEMENT OF FOREIGN JUDGMENTS

A judgment rendered by a foreign court is not automatically recognised and enforced by the courts of The Netherlands unless a treaty on such recognition or enforcement is applicable. However, if a person has obtained from a foreign court a final judgment for the payment of money which is enforceable in the relevant jurisdiction, and if that person files the claim with a court in The Netherlands, the Dutch court will generally recognise the foreign judgment if the court finds that the jurisdiction of the foreign court is based on grounds that are internationally acceptable and that the appropriate procedures were duly followed. In this event, the Dutch court will render a similar decision as the foreign court and that decision – as a Dutch decision – will be enforceable in The Netherlands. However, a Dutch court will not allow a foreign order to be recognised if the court finds that the foreign judgment is against “Dutch public order” according to Dutch legal standards.

For a judgment in civil or commercial matters issued by a court in another EU member state, the Dutch court's leave for enforcement can be obtained within a few weeks under Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or for Denmark, under a similar Brussels Convention. For EFTA member states, a similar procedure applies. For judgments made under the European Enforcement Order or the European Payment Order, the enforcement of judgments by other EU member states in The Netherlands (and vice versa) is even quicker and easier because no leave to enforce is required in the country where enforcement is sought.

Dutch courts generally recognise contractual choice-of-law clauses and jurisdiction clauses, but not if they are considered to be a contravention of "public order" by Dutch legal standards.

3. BUSINESS STRUCTURES

3.1 GENERAL

Dutch law recognises the existence of foreign legal entities. Any foreign individual, partnership or company (resident or non-resident) may do business in The Netherlands without having to adopt a Dutch legal form. The status of a foreign-owned company in The Netherlands is the same as a Dutch company. There may be registration requirements, however.

For liability reasons, foreign investors often choose to do business in The Netherlands by setting up a wholly owned subsidiary. The subsidiary created is usually either a “BV” or an “NV”. A BV is a private limited liability company (besloten vennootschap met beperkte aansprakelijkheid). An NV is a public limited liability company (naamloze vennootschap). For further details, we refer to paragraphs 3.2 and 3.3.

A foreign investor can also consider structuring its business as an “SE”. “SE” stands for “Societas Europaea”. This means “European company” (Europese vennootschap). For further detail we refer to paragraph 3.4. Other corporate forms in The Netherlands include cooperatives, foundations and various types of partnerships.

A foreign company that is operating a foreign business in The Netherlands, but has not set up a subsidiary is required to register as a “branch” or “representative office”. This must be registered at the Trade Registry (Handelsregister) of the local Chamber of Commerce (Kamer van Koophandel). For further detail, we refer to paragraph 3.9.

3.2 BV

3.2.1 GENERAL

A BV is a private limited liability company. Because the shares of a BV are not freely transferable, the BV is generally preferred as the vehicle for privately held companies.

3.2.2 INCORPORATION

A BV is incorporated by one or more incorporators. A deed of incorporation is prepared in the Dutch language and executed before a Dutch civil-law notary (notaris). The deed includes the articles of association (statuten). Furthermore, the deed states, amongst other things, the amount of issued share capital.

3.2.3 SHARE CAPITAL

Under current law, the issued and paid-up share capital of a BV must be at least €18,000 at incorporation. Paying up the share capital can occur either in cash, or in kind. If payment is made in cash, a bank statement (stating that the BV has these funds available on or immediately after incorporation) is attached to the notarial deed of incorporation. A BV's share capital consists of an authorised and issued share capital divided into shares with the par value expressed in euros. Generally, each issued share entitles the respective shareholder to one vote in the general meeting of shareholders.

The BV can issue several classes of shares. The most commonly used classes are common, preferred, and priority shares. Preferred shares differ from common shares in that they entitle the shareholder to dividend payments before any dividend is paid to the other shareholders. Priority shares are shares that give the holder certain controlling rights, e.g. the right to appoint the managing directors (or to make a binding recommendation for the appointment of such directors), and approval rights (prior or otherwise) regarding certain decisions by the managing directors or the other shareholders.

Depository receipts (certificaten van aandelen) can be issued. The holder of the depository receipts is entitled to dividends but does not have any voting rights. The corresponding shares are held by a foundation, i.e. a "trust office" (stichting administratiekantoor) specifically incorporated to hold and administer the shares. For further detail, we refer to paragraph 3.7.

BV shares have to be registered and cannot be freely transferred. The articles of association have to include some form of transfer restriction, either by implementing a right of approval or a right of pre-emption for the non-transferring shareholders.

3.2.4 MANAGEMENT BOARD

A Dutch board of directors is typically referred to as a "management board" (raad van bestuur) and its members "managing directors" (bestuurders). The management board has the authority to represent the BV and it manages the day-to-day business of the BV. In principle, each managing director has the power to represent the BV, but the articles of association may provide that all or some managing directors are only jointly authorised to do so. Moreover, the articles of association may provide that certain decisions of the management board require the approval (prior or otherwise) of e.g. the shareholders or the supervisory board.

The management board may be liable towards the BV for mismanagement. A specific managing director may be liable for failure to carry out the duties specifically assigned to the director. However, at the annual general meeting of shareholders, the shareholders usually discharge the managing directors from liability for their management during the previous financial year. In the

event of a bankruptcy, the managing directors are jointly and severally liable for the deficit if the bankruptcy is caused by negligence or improper management during the preceding three years. An individual managing director can avoid liability by proving that, *grosso modo*, the bankruptcy was not the result of the director's management.

3.2.5 SUPERVISORY BOARD

Some (large) companies in The Netherlands elect to have a management board and a "supervisory board" (*raad van commissarissen*) consisting of a number of "supervisory directors" (*commissarissen*). The supervisory board's main task is to supervise and advise the management board.

If a BV or NV meets certain criteria, it is considered a large company for purposes of the Dutch Civil Code, and it must be registered as such at the Trade Registry with the local Chamber of Commerce. The company must apply the large company regime (*structuurregeling*) if it is considered to be a large company (however, a mitigated large company regime also exists). If the company has been registered as a large company at the Trade Registry with the local Chamber of Commerce for three consecutive years, the large company regime is mandatorily applicable. The main requirement of the (mitigated) large company regime is that the company must institute a supervisory board.

The criteria (for classification as a large company) are:

- according to the balance sheet, the sum of the issued share capital of the company and its reserves amounts to at least €16 million;
- the company or its "dependent companies" (*afhankelijke maatschappijen*) have a works council; and
- the company and its dependent companies together normally employ at least one hundred employees in The Netherlands.

A "dependent company" means (a) a legal person to which a company or one or more dependent companies, solely or jointly and for its or their own account, contribute(s) at least one half of the issued capital, or (b) a partnership, a business of which has been registered in the trade register and for which a company or a dependent company is fully liable as a partner towards third parties for all liabilities.

Currently a bill is pending in parliament, which, *inter alia*, creates a statutory basis for a one-tier board system. In the one-tier board system, there is a single board consisting of both executive directors and non-executive directors. The role of the non-executive directors is similar to that of supervisory directors, but the statutory rules are not identical. The bill is expected to enter into force (for both the BV and NV) in 2012 or 2013.

3.2.6 SHAREHOLDERS

A general meeting of shareholders (algemene vergadering van aandeelhouders) is held at least once a year. The general meeting of shareholders has all the powers not specifically assigned to the management board or supervisory board (be it by law or by the articles of association). Shareholder decisions typically include topics like amendments of the articles of association, the appointment, remuneration and dismissal of managing and supervisory directors and the issuance of shares. The articles of association can specify that certain management board decisions require the approval (prior or otherwise) of the general meeting of shareholders.

Shareholder resolutions are usually adopted by a simple majority of the votes cast, but the articles of association may provide otherwise. Resolutions may also be adopted outside a meeting if the articles of association so provide, and the resolution is adopted unanimously.

3.2.7 AMENDMENTS FOR A MORE FLEXIBLE BV

Currently a bill is pending in parliament, which, inter alia, is expected to result in simpler and more flexible rules for a BV ("Flex BV Bill"). The Flex BV Bill is expected to enter into force in 2012 or 2013. The most notable change will be the elimination of the requirement for minimum paid-up capital, which will result in easier incorporation, and the elimination of mandatory transfer restrictions.

3.3 NV

A NV is a public limited liability company. Generally, the foregoing paragraphs on the BV, apply to the NV as well. However, there are a few important differences. The minimum issued and paid-up capital for a NV is €45,000. A NV may also issue bearer shares in addition to registered shares. Bearer shares must be fully paid up and are freely transferrable. There is no statutory requirement that the articles of association contain share transfer restrictions. A NV's shares may be listed on a stock exchange.

3.4 SE

The "Societas Europaea" (SE) was created as a corporate legal form by Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company. The purpose of the SE is to allow companies incorporated in a different European jurisdiction to merge or form a holding company or joint subsidiary in another European jurisdiction, thus avoiding the legal and practical problems arising from the existence of different legal systems throughout Europe. An SE may be created in one of five ways:

- the conversion of an NV to an SE;
- the incorporation of a subsidiary SE by two or more national companies;
- the incorporation of a holding SE;
- the merger of national companies from different member states; or
- the incorporation of an SE by an existing SE.

Pursuant to incorporation of an SE under Dutch law, the SE must be registered at the Trade Registry of the local Chamber of Commerce (Kamer van Koophandel). An SE incorporated under Dutch law is subject to several provisions of the Dutch Civil Code.

The registered office of an SE must be the place of its central administration, its true centre of operations. The minimum issued share capital of an SE is €120,000. Either a two-tier or an one-tier board system can be chosen to manage the SE.

3.5 COOPERATIVE

A cooperative (coöperatie) bears a close resemblance to an association (vereniging). In principle, the provisions under the Dutch law regarding associations apply mutatis mutandis to the cooperative, unless the provisions of the Dutch Civil Code stipulate otherwise.

The cooperative arose as a business form in the agricultural sector as a means of structuring the joint business of individual business owners. However, in recent years the cooperative is often used to structure international investments. It is a separate legal entity under Dutch law, having its own rights and obligations and having the capacity to legally own assets and to enter into agreements. A cooperative may act as a holding company or as a general investment vehicle. A cooperative is incorporated by at least two members (having fewer members may result in dissolution of the cooperative) by execution of a notarial deed. Unlike companies, cooperatives do not have shareholders, but members. Pursuant to incorporation, the cooperative must be registered at the Trade Registry of the local Chamber of Commerce.

The incorporation process of a cooperative takes less time than setting up a BV or an NV, as there is no requirement for payment of a minimum of capital. There are also fewer mandatory provisions in the articles of association of a cooperative, leaving considerable freedom to organise a cooperative according to the wishes of the parties. For example, the articles of association should provide for the financial obligations of the members towards the cooperative. Dutch law provides for three alternative levels of liability of the members of a cooperative:

1. statutory liability (wettelijke aansprakelijkheid or WA);
2. excluded liability (uitgesloten aansprakelijkheid or UA); and
3. limited liability (beperkte aansprakelijkheid or BA).

These different levels of liability are of importance in the event of liquidation of the cooperative.

An important advantage of structuring a business as a cooperative (if the cooperative is properly set up) is that a cooperative's dividend distributions are not subject to Dutch dividend withholding tax, as a cooperative does not have a capital divided into shares.

3.6 FOUNDATION

A foundation (stichting) is a separate legal entity. It is created to realise a certain goal or serve a specific purpose, often a charitable purpose. A foundation does not have members and is incorporated by the execution of a notarial deed.

A foundation is frequently used as a legal entity to hold and administer the shares of a company (i.e. a "trust office" or stichting administratiekantoor). In this case, the foundation is the holder of shares in the capital of a BV or NV and issues corresponding depository receipts for these shares to the depository receipt holders (certificaathouders). These depository receipt holders do not have voting rights (the foundation retaining the voting rights on the shares), but are entitled to the dividend distribution and the increase of value of the corresponding shares. By issuing depository receipts, the voting rights and the rights to profits and dividends are not held by the same person, which in certain cases may be very useful. With the implementation of the Flex BV Bill (for further detail, we refer to paragraph 3.2.7) it will become possible for a BV to create shares without voting rights, but with a right to profits and dividends, which may result in an alternative to the issuance of depository receipts.

3.7 PARTNERSHIP

There are several types of partnership under Dutch law:

- a partnership (maatschap): a partnership used by partners to jointly exercise a profession (such as in the medical or legal profession);
- a general partnership (vennootschap onder firma): a partnership used by partners to jointly set up a business;
- a limited partnership (commanditaire vennootschap) entered into by one or more managing partners (beherende vennoten) and one or more silent partners (stille / commanditaire vennoten).

None of these partnerships is a legal entity under Dutch law. An investor's potential liability is as follows:

- in a partnership: each of the partners is liable in equal parts;
- general partnership: all partners are jointly and severally liable;
- limited partnership: the managing partners are jointly and severally liable; the silent partners are only liable up to the amount of their financial contribution to the partnership.

There are no residence or nationality requirements.

3.8 JOINT VENTURE

A "joint venture" is not a statutory concept in Dutch law, but it does exist in The Netherlands.

A joint venture is a form of partial cooperation between two or more enterprises, the partners of the joint venture. This cooperation takes effect as a separate self-supporting enterprise and the partners involved contributing to the know-how of the enterprise and participating in the capital of the enterprise. The joint venture can have the form of an NV, a BV, a cooperative or a partnership. Or it can have no form at all and be simply a contractual arrangement.

Prior to setting up a joint venture (in whatever form), the joint venture partners will often enter into a joint venture agreement (or in the case of an NV or BV, a shareholders' agreement) in which they agree, among other things, on the contribution of each of the partners, the profit distributions and the management of the joint venture.

3.9 BRANCH & REPRESENTATIVE OFFICE

A foreign company may structure its business in The Netherlands as a branch or representative office. Registration at the Trade Registry of the local Chamber of Commerce is required.

The following information is required:

- the name, date of establishment, location, purpose, and management of the branch;
- the capital structure of the foreign company; and
- personal data (full name, address, place and date of birth) of each of the managing directors of the foreign company.

A foreign company remains liable for the acts of a branch office. Unlike a subsidiary, a branch is not considered a separate legal entity.

3.10 SOLE PROPRIETORSHIP

An individual may set up a business as a sole proprietor (eenmanszaak). A sole proprietorship must be registered at the Trade Register at the local Chamber of Commerce, but is not considered a legal entity. The sole proprietorship does not have a separate capital. Therefore, the proprietor will be liable for all debts of the sole proprietorship.

3.11 TRUST AND OTHER FIDUCIARY ENTITIES

The common-law “trust” is unknown in Dutch law. The Netherlands is, however, party to the Hague Convention on the Law Applicable to Trusts and on Their Recognition and as such recognises trusts governed by foreign law, even with respect to assets situated in The Netherlands. However, if a trust is connected solely to The Netherlands in every way except for the domicile of the trustee and the governing law of the trust, the court may refuse to recognise the trust. The Hague Trusts Convention also provides for rules that prevent a trust from being used in non-trust countries to circumvent mandatory rules in the field of succession law, securities law and suchlike.

4. OPERATING A BUSINESS

4.1 GENERAL

A foreign investor may choose to set up its own branch office or subsidiary in The Netherlands, but it could also choose to involve local agents or distributors to sell its products or services (see 4.2).

Commercial transactions are generally governed by contract. In principle, contracting parties are free to agree to the terms they wish, but there are statutory restrictions relating to good faith, consumer protection (4.4) and price controls (4.5).

In certain cases, it is necessary to register a product before bringing it onto the Dutch market (4.6). Specific attention must be paid to product liability rules (4.7). In general, a manufacturer, agent or distributor may be liable if a defective product causes loss or damage to third parties.

There are restrictions relating to the retail sale of goods (4.8) and advertising (4.9).

Insurance coverage is recommended and sometimes necessary when operating a business in The Netherlands (4.10).

For an import/export business, there are certain regulations that apply (4.11).

4.2 AGENCY AND DISTRIBUTION CONTRACTS

Distribution contracts

In a distribution agreement, the distributor buys products from the manufacturer or wholesaler and resells these products in its own name and for its own account to the next party in the chain. There are no specific Dutch statutory provisions relating to distribution agreements, although a few general principles relating to all contracts apply.

Distribution agreements are considered more flexible than agency agreements.

Agency contracts

In an agency agreement, the agent is someone who is not employed by the principal and who carries out negotiations for a principal and possibly sells products or services in the name and for

the account of the principal, in exchange for which the agent receives remuneration from the principal.

For agency agreements, there are specific statutory rules in articles 7: 428 – 445 of the Dutch Civil Code (Burgerlijk Wetboek). These rules are mostly mandatory and therefore the parties cannot contract out of most of them. For example, a principal or agent who wishes to terminate the agreement is required to give notice. If the contract does not include a notice period, the minimum notice period is four months. It becomes five months for a contract that has been valid for three years or longer and two months for a contract of six years or longer. The parties are free to contract out of this, but in that case the notice cannot be less than one month in the first year of a contract, two months in the second year and three months in the third year and later. If the parties agree on longer notice periods, the principal cannot have a shorter notice period than the agent.

In most cases, agents are entitled to compensation if an agency agreement is terminated by the principal. If the agent brings new customers to the principal or has increased the principal's business within the existing customer base, the principal must compensate the agent for goodwill. The amount of compensation depends on the situation, but the maximum is the amount of the average annual remuneration over the last five years.

4.3 COMMERCIAL CONTRACTS

Under Dutch law, commercial parties are in principle free to agree to any contractual terms that are not contrary to certain Dutch statutory provisions. A contract that breaches Dutch statutory provisions may be declared fully or partly void by the court.

In general, the principle that "contracts must be obeyed" (*pacta sunt servanda*) applies to a contractual relationship. However, a principle developed in the Dutch case law is that the parties in every contractual relationship must act in good faith towards each other. Depending on the specific circumstances, a Dutch court may declare contractual provisions to be void on the grounds that they are a breach of good faith.

General terms and conditions (*algemene voorwaarden*) are a very common aspect of commercial life in The Netherlands and often apply to commercial transactions. However, they are only applicable if the other party has been informed of them and has been provided a copy of them.

In Dutch consumer law, there are certain rules on the validity of general terms and conditions when consumers are involved. Certain terms and conditions are listed on a “black list” or a “grey list” (articles 6: 236 and 237, Dutch Civil Code). Terms and conditions on the “black list” are considered unreasonably onerous, and may be declared void by the court, whereas terms and conditions on the “grey list” are presumed to be unreasonably onerous. The onus would be on the party relying on the terms and conditions to prove that these terms are reasonable in the circumstances.

4.4 CONSUMER PROTECTION LAWS

Under Dutch law, there are consumer protection laws relating to product safety and liability for defective products. The following European regulations on product safety and liability for defective products have been implemented into Dutch law:

- Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (85/374/EEC);
- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety;
- Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees;
- Directive 2002/95/EC of the European Parliament and of the council of 27 January 2003 on the restrictions of the use of certain hazardous substances in electrical and electronic equipment.

4.5 PRICE CONTROLS

Only a few price controls are in effect in The Netherlands. Sectors that are subject to price controls in accordance with EU legislation include the markets for transmission and distribution of energy (both gas and electricity), certain segments of the postal market and the electronic communications markets. Prices are also regulated in the water sector, health-care sector and in the public-housing sector. In addition, prices as regards the retail market for books in the Dutch language, the railway sector, the air traffic with regard to Schiphol and pilots in Dutch harbors are subject to controls.

4.6 PRODUCT REGISTRATION

Except in certain industries, no prior product registration is generally required in The Netherlands. Products in general, however, must comply with all the relevant provisions regarding product composition and safety, packaging and labelling.

In line with EU legislation, market authorisations are required for medicinal products for human and veterinary use, chemicals (REACH Regulation), biocides, plant protection products, genetically modified food and feeding products and novel foods. In general, high standards of production apply to the food and feed sectors (including imports) and provisions allow for traceability of products and effective controls and enforcement on a national and Community level. Equally, other products, such as cosmetics and fertilizers are subject to specific EU and national legislation concerning composition, market controls and enforcement.

When authorisation is required, the application form must be sent to the relevant authority. For instance, an application for authorisation of a medicinal product has to be sent to the Pharmaceuticals Assessment Board (College ter Beoordeling van Geneesmiddelen) and applications for authorisation of registration of biocides and plant protection products must be sent to the Board for the Authorisation of Plant Protection Products and Biocides (College voor de toelating van gewasbeschermingsmiddelen en biociden or "Ctgb"). The length of the application process and the fees differ depending on which authority is involved.

4.7 PRODUCT LIABILITY

In general, product liability in The Netherlands is approached as a tort law issue. There are generally two kinds of claims: tort claims based on negligence (article 6:162 of the Dutch Civil Code) and claims made under the Product Liability Act and based on strict liability (article 6:185 of the DCC). The Product Liability Act implements Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

Under article 6:162 of the DCC, a buyer (or third party) is entitled to compensation from a manufacturer if the product causes injury or damage in a situation of normal use. The buyer has the onus of showing that it was unlawful to introduce the product into the market and that this unlawful act is attributable to the manufacturer, that he suffered damage as a consequence of the unlawful act. In general, all losses suffered (consequential or other losses) should be fully reimbursed. Compensation is therefore not limited to damage to property or injury to persons.

There must be a causal link between the unlawful act and the losses. The limitation period is five years commencing at the time the injured party becomes aware of the injury, loss or damage and the identity of the liable person.

Under article 6:185 of the DCC, a manufacturer is liable to consumers (both the buyers and third parties) for any loss or damage caused by a faulty product if there is damage within the meaning of article 6:185 of the DCC, unless the manufacturer can rely on certain exceptions set out in the same article. Liability under article 6:185 only accrues to the party putting the product into circulation, the party that presents itself as producer by placing its name, trademark or other distinguishing mark on the product, and the party that imported the product into the European Economic Area. A product is defective if it fails to provide the safety that one might have expected of it, taking all circumstances into consideration. Liability under article 6:185 may result from damage to property or injury to persons caused by the defective product. Liability within the meaning of article 6:185 of the DCC extends to (i) damage caused by death or personal injuries and (ii) damage caused by the faulty product to another thing, which is usually intended for private use or consumption, and which has indeed been used or consumed by the person suffering the loss, principally for private purposes, with an excess or deductible of € 500. In addition, compensation for damage to the defective product itself falls outside the scope of the liability. The limitation period for commencing a lawsuit is three years from the date on which the aggrieved party first becomes aware of the loss or damage and the identity of the liable person.

4.8 SALE OF GOODS

There are a few general restrictions on when, where and how goods may be sold. For example, there are government-mandated closing times for shops (generally from 10 p.m. to 6.30 a.m. on weekdays and on Sundays and public holidays). Another example is the requirement for location and professional expertise for the sale of specific products (e.g. prescription medicines in pharmacies).

4.9 ADVERTISING

Misleading advertisements are not allowed under the Dutch Civil Code and considered an unlawful act. Advertisements are misleading if they contain false factual statements or if they contain incomplete information. The Unfair Commercial Practices Act has been in force since 2008. This act was introduced as a result of EU legislation and contains additional stipulations

regarding misleading advertisements in relation to consumers. The act is integrated in the Dutch Civil Code in articles 193a to 193j of Book 6.

Comparative advertising has been allowed in The Netherlands since April 2002, when Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 (amending Directive 84/450/EEC concerning misleading advertising and comparative advertising) was implemented into Dutch law. Comparative advertising is permitted if it is done in accordance with article 6:194a of the Dutch Civil Code.

The Dutch Advertising Committee (a self-regulatory authority set up by seven organisations in the advertising sector) is the supervisory body for matters coming under the Dutch Advertising Code. The Dutch Advertising Code consists of a general code and several specialised codes for, amongst others, tobacco, alcoholic beverages, gambling, the advertising of medicine to the general public, etc. Public advertisements regarding medicine require the authorization of the Inspection Board for the Public Advertising of Registered Drugs (KOAG) in accordance with its articles.

Games of chance are regulated by the Games of Chance Act. A special regulation exists for promotional games of chance (the code of conduct for promotional games of chance). If the requirements of this code have been met, it is not necessary to obtain a government licence to organise a promotional game of chance.

4.10 INSURANCE

Dutch law does not generally require businesses to take out certain insurance policies. However, it is very common for businesses to do so. It is advisable to obtain the services of an insurance broker to check whether the company requires certain insurance coverage.

Most business take out insurance against the risk of third-party liability (aansprakelijkheidsverzekering voor bedrijven). For risks to housing, accommodation and goods, it is common to have homeowner's insurance (opstalverzekering) and property insurance (inboedelverzekering). Professionals often take out professional liability insurance (beroepsaansprakelijkheidsverzekering) to protect themselves from liability arising as a result of the exercise of their profession.

4.11 IMPORT AND EXPORT REGULATIONS

As a member of the EU, The Netherlands is subject to European customs regulations and which form the basis of the Customs Union of the single European internal market. Furthermore, it is subject to all the various EU trade arrangements.

4.11.1 CUSTOMS REGULATIONS

The 1992 Community Customs Code is the regulation applicable to the import and export of goods between the European Community and other countries: Regulation (EEC) No 2913/92 and its implementing regulation, Regulation (EEC) No 2454/93.

Since 2008, a modernised Customs Code has been in force (Regulation (EC) No. 450/2008) but is not yet applicable. The new Code provides for a new electronic customs environment. Customs procedures in the member states have been integrated and convergence of the computerised systems of the 27 customs authorities has been reinforced. The modernised Code will replace the 1992 Community Customs Code once the necessary implementing provisions are adopted and made applicable. This will happen on or before 24 June 2013.

Recently, changes were made to customs controls for goods brought into or out of the European Community customs territory. These changes, introduced for security and simplification reasons, entail the adoption by customs authorities of a risk management system based on agreed standards and risk criteria for the selection of goods and economic operators. These economic operators provide pre-arrival or pre-departure information about goods brought into or out of the European Community. The relevant documents are in electronic format.

For goods that are released into free circulation in the EU and subsequently traded between EU member states, there is no customs process and there are no duties. The European Community's customs territory is a huge single market. All customs borders between the member states have been abolished.

Goods imported from non-EU countries into the EU are subject to various customs processes (Title III, 1992 Customs Code).

Goods which are for the first time entering the customs territory of the EU from a non-EU country ('non-Community goods') are imported into The Netherlands (i.e. the Kingdom of The Netherlands in Europe) by sea or by air. Such goods brought onto Dutch territory must, without delay, be taken to the appropriate Dutch Customs office (Douane). As a rule, 24 hours before the presentation of the goods to Dutch Customs for import, a summary declaration has to be filed

or a customs declaration indicating the desired customs procedure (such as release into the EU market, transit, re-exportation and storage) has to be made. This occurs under the responsibility of the person who brings them into the European Community customs territory, or anyone assuming responsibility for the carriage of the goods following entry. In the case of a summary declaration, the goods will be stored in a "Temporary Storage Premise" for no more than 45 days for goods imported by sea and 20 days for goods imported by air. Within this period, a final destination (i.e. customs-approved treatment or use) must be assigned to the goods.

The Netherlands uses an automated support system (Sagitta Entry) to restrict logistical delays to a minimum, and for risk management purposes. The system provides for a completely electronic declaration process on entry of goods. This facility is currently operational for goods that arrive by sea and for goods arriving by air at Schiphol Airport.

For more information on customs regulations and the relevant forms for the different customs procedures, consult the website of Dutch Customs www.douane.nl.

4.11.2 IMPORT

Goods that are imported into the EU across the EU's external borders are subject to import duties.

Import duties on goods are determined by their classification (nomenclature), the corresponding duty rates and other relevant Community legislation. Regulation (EEC) No 2658/87 on tariff and statistical nomenclature applies. The Common Customs Tariff (CCT) also applies.

The CCT is the name given to the combination of nomenclature and duty rates that apply to each class of goods. The CCT includes all other Community legislation that has an effect on the level of customs duty payable on a particular import. The Integrated Tariff of the European Communities is referred to as TARIC. More information is available on the website of the European Commission: ec.europa.eu.

Goods are classified according to a system called the Combined Nomenclature (CN), which is based on the Harmonised System (HS) of the 1983 International Convention on the Harmonised Commodity Description and Coding System. Each class of goods has a corresponding CN code.

Duty rates are set out annually in a regulation reproducing a complete version of the CN and CCT duty rates, and amending Annex I to Regulation (EEC) 2658/87 (see for 2012: Commission Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 282, 28.10.2011, p. 1).

All EU member states apply the CCT. The CCT theoretically applies to any non-EU country, but various bilateral and unilateral agreements provide for exceptions to the levying of full duties. Such agreements have been concluded with several countries, including Turkey, Andorra and San Marino (Customs Union), the EEA countries (Free Trade Area), the Mediterranean countries, some Eastern European countries, the ACP countries (Cotonou Agreement), the Overseas Countries and Territories (Decision (EC) 2001/822), the countries benefiting from the Generalized System of Preferences (Regulation (EC) 980/2005) and the countries enjoying the benefits of the Everything But Arms initiative (Regulation (EC) 980/2005). More information is available on the website of the the Directorate Taxation and Customs Union of European Commission, at http://ec.europa.eu/taxation_customs/index_en.htm.

Most products may enter the European Community customs territory without restrictions. For some sensitive agricultural products, such as sugar, textiles and clothing products, a preferential tariff is only applicable up to a certain limit (tariff quotas). Additionally, the limitations may apply to certain countries only. In this case, the importer has to apply for an import licence.

4.11.3 EXPORT AND EXPORT CONTROL

Moving Community goods from The Netherlands to another EU member state is not considered to be exporting them.

Under the Community Customs Code, an exporter must file an export declaration to export Community goods to a country outside the EU.

In line with EU legislation, in The Netherlands restrictions apply to the export of strategic goods. Strategic goods are military goods and “dual-use items”, the latter being items that may have both civilian and military use. Legal measures prohibiting the export of most of these goods without a licence flow from security objectives and international agreements on strategic goods. Also, the import of certain chemical substances and the transit and brokering of military goods are subject to controls.

The Netherlands participates in several non-proliferation regimes and export control arrangements, such as the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers’ Group and the Australia Group, and has ratified the Chemical Weapons Convention prohibiting the import, export or transit of certain chemicals to non-member states. In addition, The Netherlands complies with internationally established United Nations, European Union or OSCE sanctions and embargoes that may include restrictions on the trade in certain goods, restrictions on financial activities, and visa restrictions for certain people and companies.

The Netherlands' control list for military goods is in fact the Dutch language version of the Common Military List of the European Union based on the European Union Code of Conduct on Arms Exports of 1998 and its 2008 review (Common Position 2008/944/CFSP, extending the scope of application to brokering, transit transactions and intangible transfers of technology).

The Netherlands' control list for dual-use items was found in the Annexes of Regulation (EC) no. 1334/2000 (EU Dual-Use Regulation). On 27 August 2009, this Regulation was repealed by Regulation (EC) no. 428/2009 (OJ EU L 134 of 29.5.2009). The new EU Dual-Use Regulation updates the list of items (including software and technology) controlled prior to export and introduces controls on brokering of dual-use items that are located in third countries under very limited circumstances. It also introduces the possibility for Member States' competent authorities to prohibit the transit of non-Community dual use items entering the EU customs territory and having a destination outside the EU. There is freedom of circulation in the single market for dual-use items, with some exceptions.

The Community General Export Authorisation covers most of the exports of the controlled items to seven countries (USA, Canada, Japan, Australia, New Zealand, Switzerland and Norway). For all other exports for which an authorisation is required under the Regulation (individual, global or general) an authorisation is granted at national level. National general export authorisations are, if in force, published in Member States' official journals. Currently seven member states have these authorisations, including The Netherlands. Additionally, Member States are, at the national level, allowed to control the export of additional, non-listed, dual-use items, so that exporters should as a general practice always check whether controls apply to their specific transactions.

Currently, the national rules in force in The Netherlands with regard to strategic goods are the Strategic Goods Order (Besluit strategische goederen of 24 June 2008) and the implementing regulation (Uitvoeringsregeling strategische goederen of 14 July 2008). Authorisation is required for export and intra-Community transfers of listed dual-use items. Authorisation is required for export and transit of listed military goods and certain chemical substances as referred to in the Chemical Weapons Convention. Notification to Customs is required for export and transit of other military goods (with some exceptions). A bill on strategic services (intangible transfer of software and technology, technical assistance and brokering) was expected to be introduced in 2010.

For more information on export controls, please visit the website of the Dutch Ministry of Economic Affairs (www.ez.nl, link [link onderwerpen/exportcontrole](http://link.onderwerpen/exportcontrole)).

5. LIQUIDATION AND INSOLVENCY PROCEDURES

5.1 LIQUIDATION

Four events initiating liquidation (vereffening)

A Dutch company (BV and NV) is liquidated in the event of one of the following:

- a resolution to that effect by the general meeting of shareholders;
- an event that automatically, pursuant to the articles of association, triggers the company's liquidation;
- an order to that effect by the Chamber of Commerce; or
- an order to that effect by the court (made in certain circumstances set out in statute).

In general the liquidation of a company takes place in three phases:

Phase 1: Appointment of liquidator (vereffenaar)

If the court does not appoint a liquidator, the liquidators are in most cases the managing director(s) of the company.

Unless the articles of association provide otherwise, the liquidator has the same powers, duties and liability as a managing director acting as a liquidator. The liquidator, however, is required to keep a keen eye on the interests of the creditors.

After the appointment of a liquidator, the company continues to exist, but only for the purpose of the liquidation of its assets.

In documents and announcements issued by the company, the Dutch words "in liquidatie" must be added to its name.

Phase 2: Liquidation phase

The liquidator handles the liquidation of the company. The liquidator must convert the company's assets into cash and pay its debts. If the liquidator determines that the liabilities of the company exceed its available assets, the liquidator is obliged to file for bankruptcy. An exception to this obligation is made if all known creditors agree to a request by the liquidator for continuation of the liquidation outside the formal bankruptcy process. There is no formal

possibility for the liquidator to present a restructuring plan to the creditors for a vote. Therefore, there is no formal procedure for the majority of the creditors to overrule a dissenting minority. Creditors can, however, collectively agree to accept a haircut on their respective claims.

Phase 3: Final phase

If there is a surplus after the company's assets are liquidated and all creditors are paid, the liquidator distributes the surplus to the parties entitled to it pursuant to the articles of association of the company, or otherwise to the shareholders. The liquidator prepares and issues a report on the allocation of such surplus (rekening en verantwoording).

The liquidation of a company ends when there are - to the liquidator's knowledge - no further assets. The company ceases to exist at this point and the liquidator submits a notice to that effect to the trade register.

5.2 INSOLVENCY PROCEDURES

There are three main insolvency procedures in The Netherlands:

- bankruptcy (faillissement);
- suspension of payment (surseance van betaling); and
- debt restructuring for natural persons (Schuldsaneringsregeling Natuurlijke Personen, not elaborated on here).

5.2.1 BANKRUPTCY

Both natural persons and legal entities can be declared to be in a state of bankruptcy (in staat van faillissement). Bankruptcy in The Netherlands is governed by the Dutch Bankruptcy Act (Faillissementswet). The process requires the involvement of a supervisory judge (rechter-commissaris) and a bankruptcy trustee (curator), both appointed by the court.

Purpose and scope

In principle, the purpose of bankruptcy is to liquidate a debtor's assets for the benefit of its creditors. Bankruptcy therefore is a collective means of taking recourse. The proceeds of the debtor's assets are distributed amongst the creditors.

Even though there is a specific reorganisation process whose specific aim is the survival of the debtor as a legal entity (see "suspension of payment" below), it is also possible for a debtor to offer its creditors a composition plan (akkoord) as part of the bankruptcy process. Such an offer for a composition plan is accepted if more than 50% of the general unsecured

creditors present at the meeting vote in favour of the plan and these creditors voting in favour represent at least half of the total amount of the claims filed. Even if these criteria are not met, the supervisory judge can still rule that the plan of composition has been accepted by the creditors if:

- at least 75% of the number of the recognized creditors present at the meeting voted in favour of the composition; and
 - the initial rejection of the composition plan was the consequence of a vote against the plan by one or more creditors that, in doing so, could not have been acting reasonably.
- All circumstances have to be taken into account here.

The bankruptcy estate includes all the debtor's property at the time of the declaration of bankruptcy (whether in The Netherlands or not) and everything acquired during the bankruptcy process.

Requirements and procedure

The Dutch bankruptcy process applies to a natural person who resides in The Netherlands and has ceased to pay his or her debts. For a legal entity, the process applies if the place of business is in The Netherlands and the legal entity has ceased to pay its debts. The court declares a debtor bankrupt in the event of the following:

- a petition for bankruptcy is filed by one or more creditors;
- a debtor files a voluntary petition for bankruptcy; or
- the public prosecutor files for bankruptcy in the public's interest.

A voluntary petition for bankruptcy by the debtor can be made orally or in writing at the court registry. Legal representation is not required.

A bankruptcy petition by one or more creditors should be filed at the court registry by a practising Dutch lawyer. To meet the requirement of showing that a debtor "has ceased to pay" debts, it must be shown that, for a certain minimum period of time, the debtor has had at least two creditors and at least one of the debts is due and payable and has not been paid.

Under the European Insolvency Regulation, the initiation of the bankruptcy process in The Netherlands is recognized and has immediate effect throughout the European Union (except Denmark).

The bankruptcy process ends in one of the following four ways:

- full payment of the creditors;
- if the bankruptcy estate is such that full or partial payment of preferential creditors and unsecured creditors is possible: a final distribution plan and a claims admission meeting;

- if the bankruptcy estate is such that full or partial payment is possible only for estate creditors and privileged claims: discontinuation of the bankruptcy and no claims admission meeting; or
- court-approved composition plan becoming final.

5.2.2 SUSPENSION OF PAYMENT

Suspension of payment in The Netherlands is governed by the Dutch Bankruptcy Act (Faillissementswet). The process requires the involvement of a supervisory judge (rechter-commissaris) and an administrator (bewindvoerder), both appointed by the court.

Purpose and scope

The aim of suspension of payment is to enable a debtor in financial distress to continue its business by giving the debtor the opportunity to reorganise its debts and to find another means of financing its debts. The key concept in the suspension of payment process is the continuation of the debtor's business within the same legal entity.

Suspension of payment does not affect secured creditors and privileged creditors such as the Dutch tax authorities. During the suspension of payment period, the debtor is allowed to continue its business activities, but only under court supervision and with the requirement that legal acts first be approved by the administrator.

During the suspension of payment period, the debtor may offer a composition plan to its creditors. The requirements are similar to those for a composition plan in the bankruptcy process (discussed above). The composition plan is binding on all creditors affected by the reorganization procedure, i.e. all pre-petition creditors that are neither preferred nor secured creditors. The plan of composition requires the approval of an ordinary majority of the recognized creditors present at the meeting, these approving creditors representing at least half of the total amount of the recognized claims. Even if these criteria are not met, the supervisory judge can still rule that the plan of composition has been accepted by the creditors if:

- at least 75% of the number of the recognized creditors present at the meeting voted in favour of the composition; and
- the initial rejection of the composition plan was the consequence of a vote against the plan by one or more creditors that, in doing so, could not have been acting reasonably.

All circumstances have to be taken into account here.

Requirements and procedure

An individual may be granted a suspension of payment only if he or she is exercising a profession or carrying on a business. Suspension of payment cannot be granted to a credit institution or insurance company.

Only a debtor may request suspension of payment. On a voluntary application made by the debtor to the court for suspension of payment, the court may order suspension of payment of the debtor's debts.

Under the European Insolvency Regulation, the initiation of the suspension of payment process in The Netherlands is recognized and has immediate effect throughout the European Union (except Denmark).

The suspension-of-payment process ends in one of these three situations:

- the debtor pays all its debts;
- a court-approved composition becomes final; or
- revocation of the suspension followed by bankruptcy.

6. INVESTMENT INCENTIVES

6.1 GENERAL

The Dutch government and the European Union offer certain investment incentives to companies wishing to do business in The Netherlands. Both non-Dutch companies and Dutch companies have access to these incentives on an equal basis.

The following overview is not meant to be a comprehensive listing. Incentives are set out in detailed regulations that are subject to amendment from time to time.

A company intending to apply for a government incentive should always carefully examine whether the aid received from a state is such that it requires the approval of the European Commission.

6.2 NETHERLANDS FOREIGN INVESTMENT AGENCY

The Netherlands Foreign Investment Agency (NFIA) is part of the Agency for International Business and Cooperation (EVD), which is itself part of the Ministry of Economic Affairs. The NFIA supports businesses and public organisations with international enterprises and partnerships. One important task of the NFIA is to assist foreign businesses wishing to set up a headquarters or branch in The Netherlands.

For this purpose, the NFIA has organised an Investor Development Programme (IDP) in close cooperation with regional economic development companies. The focus is on innovation and sustainability. The objectives of the IDP are as follows:

- the embedding of existing activities;
- the realization of expansion projects;
- the involvement of foreign companies in indicating bottlenecks in The Netherlands' investment climate; and
- the involvement of non-Dutch companies in the acquisition of new foreign investment projects.

The NFIA provides its services free of charge and on a confidential basis. It has offices and websites in various different parts of the world (including North America, UK & Ireland, Japan, China, Taiwan, Korea, Singapore, Malaysia, India and the Gulf region). For more, see www.nfia.nl.

6.3 BILATERAL INVESTMENT TREATIES

The Netherlands has UNCTAD-sponsored bilateral investment treaties with more than 90 countries in Asia, Latin America, Africa and Eastern Europe. These agreements provide security and protection to investors from a contracting country in the territory of The Netherlands for the duration of the agreement. For more information, see www.UNCTAD.org.

The core of the standard agreement is non-discrimination. Investors are given equal treatment and most-favoured-nation treatment in the host country.

In addition, the standard agreement contains provisions on the free transfer of payments related to an investment, on just compensation in the event of expropriation, and on dispute settlement.

6.4 EXPORT FINANCING AND INSURANCE

The Dutch government provides financing and insurance coverage for companies seeking to export to certain countries.

Special government subsidies in the form of guarantees are provided for on the basis of a statute called the Framework Act on the Provision of Funds by the Ministry of Finance (Kaderwet financiële verstrekkingen Financiën). These subsidies are managed by a company called Atradius Dutch State Business NV (Atradius DSB), a full subsidiary of the privately owned Atradius Group (formerly Gerling NCM). Atradius DSB, as a representative of the Dutch state, offers credit insurance services relating to national and international business-to-business trade in capital goods and services. The Dutch government is directly underwriting the export credit insurance and investment guarantee policies for banks and exporters.

Applications for coverage are submitted to Atradius DSB. Forms are to be filled out in accordance with the accepted terms and conditions of international trade set out in the OECD-sponsored Arrangement on Guidelines for Officially Supported Export Credits.

The Export Credit Insurance Facility is a reinsurance facility for the export from The Netherlands of capital goods and services.

The Investments Reinsurance Scheme covers political risks involved in investing in designated countries. This is provided for in the Investment Reinsurance Regulation 2010, which entered into force on 25 December 2010. Both schemes come under the responsibility of the Minister of Finance. For more information, see <http://global.atradius.com>.

Other schemes

Two other government facilities (both managed by the Ministry of Economic Affairs) are intended to cover risks that do not come under these other schemes:

- the Emerging Markets Guarantee Facility (GOM, Garantiefaciliteit Opkomende Markten), which is especially designed for risks relating to exporting to countries that qualify for a grant under the Economic Cooperation Programme (ORET) of the Minister for Development Assistance; and
- the SENO (Stichting Economische Samenwerking Nederland) Facility, which is designed to cover risks for export transactions with Eastern and Central European countries.

Private-sector financing

In addition, medium-to-long-term or long-term export financing is available at market rates from commercial banks, depending on the provision of guarantees and collateral.

A number of insurance and finance companies provide export credit insurance. NL EVD International administers several projects supporting exports and export financing for the benefit of Dutch companies. For more information, see www.agentschapnl.nl.

MIGA

Furthermore, The Netherlands is a member of the Multilateral Investment Guarantee Agency (MIGA), which is part of the World Bank Group. MIGA can help investors deal with non-commercial risk of investing in developing countries by insuring eligible projects against losses relating to currency transfer restrictions, expropriation, war and civil disturbance, and breach of contract. MIGA also benefits investors and lenders by mediating disputes, accessing funding and providing extensive country knowledge. Eligible investors include nationals of any MIGA member country, provided that they are not nationals of the country where the investment is being made.

6.5 GRANTS, SUBSIDIES AND FUNDING

Limited, targeted investment incentives have long been a tool in Dutch economic policy to facilitate economic restructuring and to promote energy conservation, regional development, environmental protection, R&D and sustainable development. Investment incentives are funded by both the Dutch government and the European Union. At a national level, subsidies are also available in the form of tax credits. (See 6.8) Non-tax incentives include direct grants, low-interest loans, public guarantees, local government participation and guarantees for exports to selected areas. Specific subsidies are granted to small and medium-sized businesses.

Visit www.subsidieshop.nl, a website of the Ministry of Economic Affairs, for more information on subsidies relevant to corporate investment.

In addition, the European Commission has approved a new Regional State Aid Map for The Netherlands for the years 2007-2013. Under the EC's new Regional Guidelines for this period, regional aid is available in parts of the country where economic development is needed. This is mainly in the north and far south of The Netherlands. The Subsidy Scheme for Regional Investment Projects (Regionale investeringsprojecten, subsidies) aims to encourage corporate investment by providing grants for new investments in industrial or commercial projects in designated municipalities.

Investment expenses eligible for grants under this scheme include those for the acquisition of buildings, durable equipment or land. Under the new scheme, grants can cover 10% or a maximum of 15% of investment expenses for eligible operations, whereas the maximum aid intensity under the previous scheme (for the period 2000-2006) was 20%. Under the new scheme, areas where 7.5% of the Dutch population live are eligible for regional aid, compared to 15% under the old scheme. This reduction is attributable to the aim of re-focusing regional aid on the most disadvantaged regions of the enlarged EU.

EU programmes

Because The Netherlands is a member of the European Union, companies doing business in The Netherlands have access to EU funding. These programmes make available a wide range of support in the form of grants, loans and co-financing for training, feasibility studies and infrastructure projects in key sectors like the environmental, transportation and energy sectors. Visit the European Commission's website for further information on EU grants, funding and programmes: ec.europa.eu/contracts_grants/index_eu.htm.

Projects relating to innovation and sustainability

Government policy on innovation, the environment and sustainability is implemented by an agency of the Ministry of Economic Affairs. The agency can be approached for subsidies, advice and help with the recruitment of project partners. Visit www.agentschapnl.nl for more information.

6.6 EMPLOYMENT-RELATED INCENTIVES

Incentives are available for employers who hire unemployed persons who have completed re-training courses or employees doing technological research on new products and services.

These incentives consist of reductions in payroll tax and social security contributions.

6.7 RESEARCH AND DEVELOPMENT INCENTIVES

To co-finance research efforts, venture capitalists active in innovative fields can participate in a range of government-sponsored funding initiatives that offer tax breaks, low-interest loans, and subsidies for high-tech equipment, personnel and facilities that contribute to innovative research and development.

One of the largest support organisations for private-sector research in the field of technology, energy and the environment is Agentschap NL, an agency of the Ministry of Economic Affairs. Visit www.agentschapnl.nl for more information.

The European Investment Fund (EIF) is an EU fund established to support small and medium-sized businesses, to increase their competitiveness and to foster innovation and technology in Europe. It does not lend money to businesses directly; rather, it arranges financing through private banks. Its main operations are in the areas of venture capital and guaranteeing loans. The EIF also supports innovation by increasing overall investment and private-sector involvement in major research and development projects.

6.8 TAX INCENTIVES

The following tax incentives may be available:

- innovation box;
- new R&D cost-related deduction;
- free depreciation;
- general investment deduction;
- energy investment deduction; and
- environmental investment deduction.

Innovation Box

Starting 1 January 2010, a company deriving income from self-developed, patented intangible assets (excluding logos and trademarks), or from intangible assets arising out of R&D activities for which an R&D statement has been obtained, may opt to report this income in the “Innovation Box” on the tax form. If a company chooses this option, qualifying income that exceeds the intangible’s assets development costs is taxed at an effective tax rate of 5%. Gains derived from the sale of the qualifying intangible assets are also eligible for the Innovation Box.

Losses connected to the qualifying intangible assets are deductible against the maximum general rate of 25% (2012). If such losses are reported, a full recovery of the losses at the maximum rate is required before the effective 5% rate available via the Innovation Box becomes available again for the profits derived from that intangible asset.

The Innovation Box has replaced the Patent Box that had been introduced in 1 January 2007. Transitional provisions apply to income derived from a patented intangible asset developed between 1 January 2008 and 31 December 2010, inclusive, and for which an R&D statement has been issued. The income from these assets eligible for the Innovation Box (and its effective tax rate of 5%) is capped at four times the production costs of the intangible asset. The excess is taxed at the general rates.

New R&D cost-related deduction

The new R&D facility provides for an additional tax deductible item, on top of the regular available deductions for R&D activities (“R&D deduction”). The amount of the R&D deduction is based on a certain percentage of the qualifying costs and investments directly attributable to the R&D activities (“qualifying cost base”). The qualifying cost base will not include wage costs (because these costs are already facilitated in the wage tax incentive) and costs incurred for the outsourcing of R&D activities to third parties. Further rules on the determination of the qualifying cost base and the percentage applied to the qualifying cost base will be promulgated in a ministerial decree that was issued on 21 December 2011. The 2012 percentage is set at 40%. Currently, this implies a benefit of 10% for a company subject to the corporate income tax rate of 25% (2012).

To be eligible for the R&D deduction, an “R&D cost statement” (RDA-beschikking) is required from Agentschap NL (visit www.agentschapnl.nl for more information). An application for this statement will be based on an estimate of the qualifying costs and investments, but the statement can be amended should the actual costs differ from the initial estimate. A ministerial decree will be issued with more detailed rules about the application procedure. It is expected that the procedure should be similar to and coincide with the application for the R&D wage tax statement.

Free depreciation

For certain categories of investments, free depreciation (willekeurige afschrijving) may be available.

General investment deduction

On request, an investment deduction (kleinschaligheids investeringsaftrek or "KIA") is granted for small-scale investments in certain assets. The deduction is available if the sum of all investments in a calendar year is between €2,300 and €306,931 (2012).

Energy investment deduction

An energy investment deduction (energie investeringsaftrek or "EIA") may, on request, be granted for new investments that contribute to energy efficiency. The deduction is available if the sum of all qualifying investments in a calendar year exceeds €2,300 (2012). The energy investment deduction is equal to 41.5% of the total amount of energy investments in a calendar year. The maximum deduction is reached if the qualifying investments amount to a total of €118 million (2012).

Environmental investment deduction

An environmental investment deduction (milieu investeringsaftrek or "MIA") may, on request, be granted for investments that contribute to the protection of the environment in The Netherlands. The deduction is available if the sum of all qualifying investments in a calendar year exceeds €2,300 (2012). The environmental investment deduction is computed as a percentage of the cost price of each qualifying investment. The percentages vary from 13.5 to 36%.

7. COMPETITION & PUBLIC PROCUREMENT

7.1 GENERAL

The Dutch Competition Authority (NMa) is the competition watchdog in The Netherlands. The NMa's enforcement powers are found in the Competition Act (Mededingingswet). Moreover, the NMa applies Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) in The Netherlands.

Like the European cartel prohibition in Article 101 of the TFEU, the Competition Act prohibits companies from restricting competition by entering into agreements with competitors (see 7.2 for more on cartels).

In addition, companies with a dominant position are prohibited from abusing this position in the same way as under Article 102 of the TFEU, e.g. by excluding competitors from the market (see 7.3 for more on abuse of a dominant position).

The NMa assesses merger proposals to prevent the emergence of concentrations that would obstruct the proper functioning of markets (see 7.4 for more on merger control).

Public procurement rules are discussed at 7.5.

The European Commission is responsible for regulating state aid (i.e. government aid that gives a company an unfair competitive advantage). It enjoys many investigative and decision-making powers to carry out this task.

The term used to describe a business in this area of law is "undertaking". Hence, this term is used in this chapter of the Guide as well.

7.2 PROHIBITION ON CARTELS

Cartels are prohibited by the Competition Act that entered into force on 1 January 1998.

A cartel is an agreement between undertakings or associations of undertakings that restrains competition in all or part of the Dutch market. Concerted practices, in which undertakings coordinate their commercial policy without a formal agreement, may also constitute a cartel. An "undertaking" here refers not just to a company, but also to a non-profit organisation or other private-sector organisation, as long as they are engaged in an economic activity in the market.

Exemptions

Under the Dutch Competition Act, there are certain exemptions from this prohibition:

- agreements of little significance: “de minimis” agreements or “bagatelles” (articles 7, 8 and 9);
- agreements necessary for, and directly related to, the creation of a concentration (article 10);
- agreements made by companies responsible for carrying out a duty in the general economic interest (article 11);
- agreements exempted under a European Block Exemption Regulation or an individual exemption by the European Commission (articles 12 and 14);
- agreements that only have a national dimension, but do meet the material conditions for a European block exemption (article 13);
- agreements exempted under a Dutch national block exemption by the Minister of Economic Affairs (article 15);
- agreements that are compulsory by law or that require the approval of, or may be prohibited by, a different public authority (article 16).

If these exemptions apply, the undertakings involved are not required to take any action themselves.

Individual exemptions

Individual exemptions are treated differently. Agreements restraining competition may be eligible for an individual exemption if they meet the criteria in article 6(3) of the Dutch Competition Act, which has similar criteria to those set out in Article 101(3) of the TFEU. In this situation, a party is required to assess itself whether the relevant criteria for the exemption are met.

Fines for running a cartel

The NMa may impose a fine of up to 10% of the turnover in the previous calendar year on an undertaking engaged in cartel practices. It may also impose a fine of up to €450,000 on individuals liable for having given instructions to violate competition law or having exercised de facto leadership in relation to a cartel.

Undertakings and individuals may obtain immunity or a reduction in the fine (leniency). To be eligible for leniency, parties must submit a leniency application to the NMa's Leniency Office and cooperate fully with the NMa. A leniency application must contain proof of a cartel and an admission of the undertaking's participation.

7.3 ABUSE OF DOMINANT POSITION

An undertaking that is so powerful that it has little need to take other market players into account (e.g. competitors, suppliers, buyers and end users) is considered dominant and must not abuse its dominant position. Examples of abuse are:

- charging extremely high prices;
- imposing unfair supply conditions;
- excluding certain buyers from supplies;
- charging different prices for the same performance;
- foreclosing competitors from the market; or
- preventing new companies from entering the market (e.g. by charging extremely low prices).

7.4 MERGER CONTROL

Under the Competition Act, mergers and acquisitions are assessed by the NMa beforehand to make sure they will not create a significant impediment to competition on the market. This does not apply to concentrations already subject to review by the European Commission.

There are three types of concentrations: mergers, acquisitions and full-function joint ventures.

Merger control only applies when large companies are involved: the joint annual worldwide turnover of the undertakings involved amounts to more than €113,450,000 and at least two of them each have an annual turnover in The Netherlands of at least €30 million. Other (lower) thresholds apply to undertakings in specific sectors (e.g. financial and credit, insurance and healthcare).

The NMa must be notified of these concentrations. The transaction cannot proceed unless NMa clearance is received. The waiting period is at least four weeks. It takes at least an additional thirteen weeks if a licence is required.

7.5 PUBLIC PROCUREMENT

The Dutch Public procurement legislation is based on two EC directives: 2004/17 and 2004/18.

Government bodies and bodies governed by public law (Directive 2004/18 and Bao) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the

coordination of procedures for the award of public works contracts, public supply contracts and public service contracts was implemented into Dutch law by the adoption of the Decree on the Tendering Rules for Public Procurement (Besluit aanbestedingsregels overheidsopdrachten or "Bao"). Under this law, all public bodies and "bodies governed by public law" are required to comply with the public procurement rules.

Subsidised bodies (Directive 2004/18 and Bao)

Certain types of contracts which are more than 50% subsidised directly by contracting authorities fall within the scope of the "Bao" rules. This applies to certain types of public works contracts as well as public service contracts connected with such works contracts. If the estimated value of the contract exceeds the threshold applicable (see below), the contract has to be awarded in conformity with the "Bao" rules.

Airports, ports, transport, postal service, and utility companies (Directive 2004/17 and Bass) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors was implemented into Dutch law by the adoption of the Decree on Tenders in Special Sectors (Besluit aanbestedingen speciale sectoren or "Bass"). Under this law, undertakings active in special sectors (e.g. airports, ports, as well as gas, water, and electricity suppliers) are also subject to public procurement rules.

Draft legislation

The European Commission has recently published proposals for new public procurement directives, which the Commission aims to have implemented before 30 June 2014.

In The Netherlands, a public procurement bill (Aanbestedingswet) is currently before the Eerste Kamer. This law is expected to enter into force in the second half of 2012 at the earliest.

Thresholds

The obligation to organise a European public tender process in conformity with the "Bao" rules only arises where the estimated value is more than €5,000,000 (in the case of a public works contract or a public works concession) or €200,000 (in the case of a public supply or public service contract). With regard to public supply and public service contracts, the threshold for central government authorities is €130,000 instead of €200,000.

For contracting entities under the "Bass" rules, the thresholds are €5,000,000 for public works contracts and €400,000 for public supply or service contracts.

All thresholds are net of VAT and were set for 2012-2013. For 2014, the revised threshold will be published in due course.

Even under the thresholds, procurement rules sometimes apply

In principle, there is no obligation to launch a public tender process if these thresholds are not reached.

Nevertheless, this obligation may arise if the nature and scope of the contract is such that trade between the various EU member states will be affected. According to the case law of the European Court of Justice, in order to comply with the transparency principle, if a contract is of “certain cross-border interest”, a contracting authority must ensure for the benefit of any potential tenderer a degree of advertising sufficient to enable the market to be opened up to competition.

The same applies to service concessions and public service contracts for B-services (e.g. hotel services, legal services).

Principles of procurement law

Whenever a company or government body conducts a procurement process, it is required to follow its own rules and to comply with the principles of procurement law (e.g. principle of equal treatment and transparency principle). This process is to be conducted in good faith (Supreme Court of The Netherlands, 4 April 2003, RZG/Comformed).

8. BANKING, SECURITIES AND PENSION FUNDS

8.1 GENERAL

Act on Financial Supervision

The law governing financial services and the financial markets in The Netherlands is the Dutch Act on Financial Supervision (Wet op het financieel toezicht or "Wft") and the secondary legislation issued pursuant to the Wft.

This act came into effect on 1 January 2007, replacing a number of separate statutes that applied to the banking, insurance and securities sectors. The Wft was the end result of a major overhaul that took place in 2002. The former sector-based supervisory model, with separate regulators for the banking, insurance and securities industries, was replaced by a functional ("Twin Peaks") supervision model consisting of the following:

- cross-sector prudential supervision (prudentieel toezicht) by the Dutch Central Bank (De Nederlandsche Bank or "DNB"); and
- cross-sector supervision of business conduct (gedragstoezicht) by the Dutch Authority for the Financial Markets (Autoriteit Financiële Markten or "AFM").

The Wft provides for a consistent regulatory framework for participants in the Dutch financial markets and at the same time has reduced administrative costs. Here is an overview of the Wft's five chapters:

- 1. General Provisions:** definitions, scope, responsibilities of the DNB and AFM, and cooperation between them;
- 2. Market Access:** requirements for financial undertakings to access the Dutch financial markets (e.g. licensing requirements);
- 3. Prudential Supervision:** liquidity, capital adequacy, administrative organization, internal controls and more;
- 4. Supervision of Conduct of Financial Undertakings:** information to be supplied to consumers of financial services, rules implementing the EU Markets in Financial Instruments Directive for investment firms, etc.;
- 5. Supervision of Conduct of Financial Markets:** issue of securities, rules applying to the operator of a regulated market, transparency rules applying to issuers (including disclosure of voting rights, major holdings and capitals interest in issuers), rules for the prevention of market abuse and rules in for public takeover bids.

Financial enterprises

In the Wft, the following are considered to be “financial enterprises” (financiële ondernemingen):

- (a) management companies of collective investment schemes;
- (b) collective investment schemes;
- (c) investment firms;
- (d) depositaries;
- (e) clearing institutions;
- (f) entities for risk acceptance;
- (g) financial service providers;
- (h) certain other non-bank financial institutions (financiële instellingen);
- (i) credit institutions; and
- (j) insurers.

8.2 SECURITIES

Pursuant to the Wft, it is prohibited to offer securities to the public in The Netherlands or have securities admitted to trading on a regulated market or situated or operating in The Netherlands, unless a prospectus is generally made available for the offer or admission, which has been approved by the AFM or by a supervisory authority in another member state of the European Economic Area (“EEA”).

This prospectus requirement does not apply if the issuer offers the securities:

- (a) solely to qualified investors (which includes banks, brokers, dealers and institutional investors holding a licence or being otherwise designated as active on the financial markets within the meaning of the Wft);
- (b) to fewer than 100 persons in The Netherlands who are not qualified investors;
- (c) for an equivalent value of at least €100,000 per investor or a denomination of the securities of at least €100,000; or
- (d) the total equivalent value of the offer of securities to the public is less than €100,000, this limit being calculated over a period of 12 months.

If an offerer makes use of one of the exemptions above, it must inform potential investors in the offer itself, and in every marketing document or other document which holds out the prospect of an offer, of the fact that no prospectus will be made generally available and that the offer is not under the supervision of the AFM. For this purpose, the AFM has developed a warning sign, which the issuer is obliged to use. The warning sign does not have to be used if the offer is only directed to qualified investors.

8.3 COLLECTIVE INVESTMENT SCHEMES

It is prohibited to offer units in a collective investment scheme in The Netherlands unless the management company of the scheme (or, if it is self-managed, the scheme itself) has obtained a licence from the AFM. No license is required if the units are offered:

- (a) to fewer than one hundred persons that are not qualified investors;
- (b) solely to qualified investors (which includes banks, brokers, dealers and institutional investors holding a licence or being otherwise designated as active on the financial markets within the meaning of the Wft); and
- (c) for an equivalent value of at least €100,000 per investor or a denomination of the unit of at least €100,000.

If an collective investment scheme of management company makes use of one of the exemptions above, it must inform potential investors in the offer of the units itself, and in every marketing document or other document which holds out the prospect of an offer, of the fact that no prospectus will be made generally available and that the collective investment scheme or management company is not supervised by the AFM and DNB. For this purpose, the AFM has developed a warning sign, which the issuer is obliged to use. The warning sign does not have to be used if the offer is only directed to qualified investors.

Certain collective investment schemes qualifying as “Undertakings for Collective Investment of Transferable Securities” (UCITS) and having their seats in other EEA member states may be able to benefit from having a “European passport”. They merely have to notify the AFM of their intention to offer units in The Netherlands.

A comparable regulatory regime applies to non-UCITS investment schemes established in certain states that have been designated by the Dutch Minister of Finance as states having adequate supervision of collective investment schemes.

8.4 CONSUMER CREDIT

Certain legal obligations relating to consumer credit agreements are set out in the Wft, the regulations issued under this Act, the Consumer Credit Act and the Dutch Civil Code and regulations issued under the act. Requirements relating to the financial supervisor (AFM) – e.g. the obligation to obtain a licence from the AFM to offer credit to consumers in The Netherlands – are found in Wft. The AFM is the supervisory body for consumer credit.

8.5 INVESTMENT SERVICES AND ACTIVITIES

The Wft defines an “investment firm” as a firm that:

- (a) provides investment services; or
- (b) performs investment activities.

Investment services include the receipt and transfer of orders, order execution, portfolio management, provision of investment advice and placing agent services.

Investment activities are performed in the pursuit of a profession or business for the investment firm’s own account. According to the Wft, there are two types of investment activities:

- (a) dealing in financial instruments using own capital, which results in the conducting of transactions; and
- (b) the operating of a multi-lateral trading facility.

In principle, an investment firm is not allowed to provide investment services or conduct investment activities without an AFM licence. Exemptions to this licensing requirement may exist, if for example, the services are offered by an investment firm that is duly licensed in another member state of the European Economic Area (either by offering services on a cross-border basis or through a branch office in The Netherlands). Certain exemptions are also available for investment firms originating from Switzerland, Australia or the United States of America.

8.6 FINANCIAL SERVICES

Pursuant to the Financial Supervision Act it is prohibited by law to offer financial products, to advise, or to act as intermediary, in relation to certain financial products without an AFM or DNB license. Exemptions to this licensing requirement may exist. Financial products for which it may be necessary to have a licence in order to provide financial services are for example consumer credit, insurance, bank accounts and savings accounts.

8.7 PENSION FUNDS AND INSURANCE COMPANIES

There are three laws governing pension funds in The Netherlands:

- Pension Act (Pensioenwet);
- Act on Obligatory Occupational Pension Schemes (Wet verplichte beroepspensioenregeling);
- and

- Decree on the Execution of the Pension Act (Besluit uitvoering pensioenwet en wet verplichte beroepspensioenregeling).

The Act on Financial Supervision also plays an important role.

A pension fund is required to be registered with the DNB. The DNB has the task of supervising the capital adequacy of pension funds. The AFM is responsible for supervising pension fund compliance with certain rules relating to business operations and ethical conduct found in the Pension Act and the Act on Financial Supervision.

8.8 INSURERS

Insurers are subject to the Act on Financial Supervision and are required to obtain a licence from the DNB. In addition, insurers must also comply with the rules of business conduct in respect of operating in markets in financial instruments.

8.9 BANKS

A bank is defined by the fact that it has at its disposal repayable funds received from the public and others beyond a restricted circle (i.e. not from professional market parties) and grants loans at its own expense in the course of its business.

A DNB licence is required to do business as a bank. In addition, the Wft prohibits a bank not licensed by the DNB from attracting, obtaining or having at its disposal repayable funds in The Netherlands (with an exception being made for funds from a restricted circle or professional market parties).

Foreign banks established in another EEA member state may, by virtue of their “European passport”, provide banking services in The Netherlands, either by setting up a branch in The Netherlands or on a “cross-border basis”. Foreign banks established in a non-EEA country generally are required to obtain a DNB licence to conduct the business of a bank or electronic money institution in The Netherlands.

8.10 BANK ACCOUNT IN THE NETHERLANDS

Under the Act on Financial Supervision, an investor has no obligation to open a bank account in The Netherlands in order to invest in an institution in The Netherlands. However, it might be practical for an investor to open a bank account for a number of reasons.

Nor is a financial undertaking required to open a bank account in The Netherlands. However, virtually all banks in The Netherlands have joined the DNB's payment system. The DNB handles most of the automated payments in euros made from bank to bank and manages the bank accounts of its account members.

8.11 STOCK MARKET (NYSE EURONEXT)

Since 4 April 2007, the US-based NYSE and Euronext have been merged as "NYSE Euronext". The trading platforms of NYSE Euronext are located in six countries. These platforms include the New York Stock Exchange, Euronext, Liffe, Alternext and NYSE Arca Options. Euronext Amsterdam by NYSE Euronext is the regulated market in The Netherlands and is maintained by NYSE Euronext Amsterdam N.V.

As a market operator, NYSE Euronext has laid down rules for the organisation of the European markets that are part of NYSE Euronext. While the majority of the rules are harmonised and therefore applicable in all the relevant Euronext jurisdictions (Amsterdam, Brussels, Lisbon, London and Paris), some are still unharmonised and therefore differ from one country to another. The harmonised rules (applicable to all Euronext regulated markets) are laid down in the Euronext Rulebook I. The non-harmonized rules (applicable only to Euronext Amsterdam) are laid down in Rulebook II.

8.12 STOCK MARKET (EURONEXT)

The Amsterdam stock market is called "Euronext Amsterdam by NYSE Euronext". It is part of "NYSE Euronext". Euronext Amsterdam is divided into two markets: one for securities and one for derivatives.

Euronext Amsterdam is a full subsidiary of NYSE Euronext NV, a Dutch company that also has subsidiaries operating the securities and derivative markets in France, Belgium, Portugal and the United Kingdom. NYSE Euronext NV provides services relating to regulated stock markets

and derivatives markets in The Netherlands, Belgium, France, and also Portugal and the United Kingdom (but in the UK, this only relates to futures and options).

The aim is to promote cross-border trade in securities. The Euronext markets facilitate public offerings and provide trading facilities for cash and derivatives products. Also, they supply market data and sell software systems for real-time financial data feeds, connectivity, order management, confirmation and clearing. Euronext Amsterdam has been successful in attracting listings from non-Dutch companies and funds.

The Act on Financial Supervision prohibits the operation of a multi-lateral trading facility (MTF) in The Netherlands without first obtaining a licence from the AFM. In addition, it is prohibited to operate or manage a regulated market in The Netherlands without a licence from the Dutch Minister of Finance.

NYSE Euronext is licensed to operate a regulated market in The Netherlands and to operate an MTF (in particular, the Alternext market) in The Netherlands.

9. TAX ON CORPORATIONS

9.1 DUTCH TAX SYSTEM

Four key points

Corporate income tax is levied on income and capital gains alike at a maximum rate of 25% for more than €200,000 taxable income. A reduced rate of 20% applies to taxable income up to €200,000.

There are no provincial or municipal taxes on income.

Losses can in principle be carried back for one year and carried forward for nine years.

To improve taxpayers' cash flow positions, a temporary relaxation of the loss carry back rules has been introduced. As a result, taxpayers have the option to request to carry back their losses for three years rather than one year. If so, the carry forward period is limited to six years, rather than nine years. The election is only available for losses suffered in the taxable years 2009 to 2011.

The Netherlands has a participation exemption regulation which allows companies to receive dividends, or realize capital gains, for qualifying subsidiaries, without becoming subject to corporate income tax for this type of income.

9.2 TAXABLE PERSONS

The following entities are subject to Dutch corporate income tax:

- public companies with limited liability (NV), private companies with limited liability (BV) and open limited partnerships;
- cooperative societies and other associations based on the cooperative principle;
- mutual insurance companies and other associations that act as insurance or credit organisations on the principle of mutuality;
- associations with or without legal personality and foundations to the extent that they conduct a business;
- funds for joint account; and
- a number of government-owned companies.

9.3 RESIDENCE

Entities incorporated under Dutch law are deemed to be residents of The Netherlands (the “incorporation theory”). This fiction applies to corporate income tax and for dividend withholding tax purposes.

For entities not incorporated under Dutch law, the place of residence is determined on the basis of all the facts and circumstances in each particular case.

9.4 TAXABLE BASE

General

Resident entities are subject to Dutch corporate income tax on their worldwide income. Non-resident entities are only subject to Dutch corporate income tax on certain Dutch source income.

Starting 1 January 2012, profits and losses of foreign permanent establishments (a “PE”) are excluded from the Dutch corporate income tax base of a company. Under the new rules, any overall losses realised during the existence of the PE may be taken into account in The Netherlands at the time the PE is closed (stakingsverlies), but only if these losses cannot be offset against any other (future) foreign income in the country in which the permanent establishment was located. In addition, such losses can only be taken into account if the business of the PE is not continued by a party related to the Dutch taxpayer.

Deduction of expenses

In principle, all expenses relating to the ordinary course of business of an entity are deductible.

Non-deductible expenses

Dividend distributions, as well as hidden dividend distributions, are non-deductible.

If certain conditions are met, interest expenses are non-deductible if they are paid on or relate to loans from related companies or if loans should in fact be considered as capital.

For example, thin-capitalisation rules may limit the deductibility of interest. Thin-capitalisation rules apply to inter-company debt only and do not limit the deductibility of interest on third-party debt. The loan is treated as an inter-company loan if a bank debt is guaranteed by the parent of the acquiring company and if this loan would not have been made by the bank had such guarantee not been in place. A company is deemed to have excessive debt if its average annual debt exceeds three times the company’s equity according to its tax accounts. Interest on

the first €500,000 of debt exceeding this ratio remains deductible. If it can be demonstrated that the consolidated commercial accounts of the group to which the acquisition vehicle belongs apply a higher ratio, the company may also apply this higher ratio.

Furthermore, interest on debt, whether third party debt or group debt, related to the acquisition of, or an increase in an investment in, a Dutch company may partly not be tax deductible if (i) the target company is included in a fiscal unity (fiscale eenheid) with the acquiring company, or (ii) the target company and the acquiring company enter into a legal merger or a legal demerger. In the calculation of the amount of non-deductible interest, a threshold will apply to (i) interest up to the amount of EUR 1,000,000 and (ii) the acquisition debt amounts to less than 60% of the acquisition price.

Finally, fines and penalties are in principle also non-deductible.

Valuation of inventories

In principle, inventories are valued at either cost or lower market value. However, if certain conditions are fulfilled, the last-in, first-out (LIFO) and the base-stock methods of valuation are acceptable.

Depreciation

In principle, any system of depreciation may apply if and to the extent that the system is in accordance with "sound business practice" (goed koopmansgebruik) and that this system is consistently applied.

Real estate owners may no longer depreciate their real estate to a value lower than a predetermined value assessed by the Dutch tax authorities. Real estate held as a portfolio investment may not be depreciated to a value lower than the value assessed for Dutch immovable property tax purposes. However, real estate actually used by its owners may be depreciated to half the value assessed by the Dutch tax authorities for Dutch immovable property tax purposes.

Depreciation of purchased goodwill is limited to a maximum charge of 10% per annum. The general depreciation of all other assets (cars, computers, etc.) is limited to a maximum charge of 20% per annum.

Capital gains

Capital gains are taxed at the same maximum rate as ordinary income (a maximum rate of 25% applies). Capital gains realised on the disposal of shares of a qualifying participation are exempt on the basis of the participation exemption.

Losses

The loss of an entity in one year can in principle be carried back to be set off against profits of the preceding year and can be carried forward for nine years. To improve taxpayers' cash flow positions, a temporary relaxation of the loss carry back rules was introduced. As a result, taxpayers have the option to request to carry back their losses for three years rather than one year. If this specific rule is applied, the carry forward period will then be limited to six years, rather than nine years. The election is only available for losses suffered in the taxable years 2009 to 2011.

In the event of a significant change in ownership of the shares in the company, the carrying forward of losses may be restricted to prohibit trade in losses. Losses stemming from holding and finance activities can only be compensated with taxable income from similar activities.

9.5 WITHHOLDING TAX ON DIVIDENDS

Introduction

The standard flat rate for Dutch dividend withholding tax is 15%. This rate also applies to interest on qualifying hybrid loans since such loans are deemed to be equity of the debtor. Dividends on shares are exempt from dividend withholding tax if and to the extent the dividend is distributed by a Dutch resident company that is eligible for the participation exemption (see 9.7).

An exemption from Dutch dividend withholding tax also applies to an eligible entity in another European Union member state. According to Dutch dividend withholding tax law (corresponding with the EC Parent-Subsidiary Directive), any dividends paid by an entity are exempt from withholding tax if the following requirements are met:

- each company is considered to be resident in a jurisdiction within the European Union (EU) or the European Economic Area (EEA);
- the EU or EEA investor has a minimum holding of 5% in its EU shareholding, which qualifies under the Dutch participation exemption rules if the place of residence of the EU /EEA investor would have been located in The Netherlands.

The 15% dividend-withholding tax rate may also be reduced under a tax treaty concluded by The Netherlands.

Dividend stripping

Exemption/reduction of Dutch withholding tax is not granted in the event of dividend stripping.

Cooperatives

As a general rule, profit distributions by a Dutch cooperative (“co-op”) are not subject to Dutch dividend withholding tax. However, Dutch dividend withholding tax will be payable on profit distributions by a co-op to a member if (i) the co-op directly or indirectly owns shares in a company with the main purpose (or one of the main purposes) of avoiding Dutch dividend withholding tax or non-Dutch taxation of another person and (ii) the membership interest in the co-op directly or indirectly held by that other person cannot be allocated to the business enterprise of the member.

Stock repurchases

Stock repurchases are generally subject to Dutch withholding tax. In certain circumstances an exemption may apply to Dutch listed companies.

Withholding tax on interest

There is no withholding tax on interest other than on certain hybrid loans.

Withholding tax on royalties

There is no withholding tax on royalties.

9.6 ADMINISTRATION

Tax returns and assessments

Taxpayers should file their tax return after they receive an invitation to file a tax return from the tax inspector. However, if the tax inspector fails to send an invitation to file a tax return, a taxpayer is obliged to request for an invitation within six months following the tax year.

The tax authorities issue provisional income tax assessments every year.

In the end, the tax authorities must issue the final income tax assessment within three years after the end of the tax year. If new information becomes available, additional assessments are allowed within five years of the end of the tax year. However, this period is extended to twelve years in the case of foreign source income. Furthermore, an additional tax assessment that is based on new data may result in a penalty of up to 100% of the additional assessment plus interest. This penalty is not deductible.

9.7 GROUPS OF COMPANIES

Fiscal unity

A Dutch resident parent company may file a consolidated tax return with one or more of its Dutch group companies if the parent company directly or indirectly holds at least 95% of each class of the nominal issued capital of one or more other Dutch resident companies. This “fiscal unity” may also include certain foreign companies (established in (i) The Netherlands Antilles, (ii) Aruba, (iii) an EU member state or a country with which The Netherlands has concluded a tax treaty) if their place of effective management is located in The Netherlands. Furthermore, a permanent establishment in The Netherlands of a company with its effective management abroad may be included in the fiscal unity. Each company included in a fiscal unity is fully liable for the total corporate income tax debt of the fiscal unity.

The participation exemption

Under the participation exemption, dividends, currency gains and capital gains received by Dutch resident companies or Dutch permanent establishments of non-resident companies are in principle fully exempt from Dutch corporate income tax. Furthermore, currency losses and capital losses are in principle under the participation exemption non-deductible from Dutch corporate income tax. Finally, acquiring expenses relating to qualifying participations are non-deductible from Dutch corporate income tax.

Ownership test

The participation exemption is subject to a minimum ownership requirement. The ownership test is met if one of the following applies to a Dutch resident company or Dutch permanent establishment of a non-resident company.

- The company owns a shareholding of at least 5% of the issued nominal share capital of a Dutch mutual fund or a company with capital divided into shares (for example a BV or NV).
- The company is a member of a Dutch cooperative.
- The company holds a participation in an open limited partnership as a limited partner and therefore has at least a 5% participation in the profits that are realized by that open limited partnership.
- The company holds at least 5% of the voting rights in a company established in a member state of the European Union and the tax treaty with that state provides for a reduction of the dividend withholding tax on the basis of voting rights.
- The company holds profit rights owned by a qualifying subsidiary or hybrid loans granted to a qualifying participation.
- The company holds a participation of less than 5%, a hybrid loan or a profit share in a company and a related company owns a qualifying participation in the same company.

Starting 1 January 2010, the participation exemption has generally applied if (i) the subsidiary held by the Dutch resident company does not qualify as a portfolio investment subsidiary or (ii) the subsidiary is a qualifying portfolio investment subsidiary.

Intention test

Whether a subsidiary is held as portfolio investment should in principle be considered from the point of view of the taxpayer (i.e. the owner of the subsidiary). A subsidiary is considered to be held as portfolio investment if the subsidiary is held in order to receive a return that can be expected with normal asset management. Furthermore, the participation exemption should also apply if the taxpayer is a top holding of the group, serves as an intermediate holding company, or if the activities of the subsidiaries are in line with the activities of the parent of the taxpayer. The latter is in line with the policy that existed prior to 1 January 2007.

A subsidiary is deemed to be a passive investment if one of the following applies:

- The assets of the subsidiary on a consolidated basis consist for more than 50% of minor interests in other subsidiaries (less than 5%).
- The subsidiary qualifies as a group financing subsidiary. A group financing subsidiary is (unless an exception applies), together with its own subsidiaries of at least 5%, for more than 50% involved in granting loans to the taxpayer or related entities. Putting assets at the disposal of the taxpayer or related entities is also considered group financing.

Qualifying portfolio investment subsidiary

If the subsidiary qualifies as a portfolio investment subsidiary, the participation exemption will nevertheless apply if one of the following applies:

- The subsidiary is subject to a reasonable tax on its profits from a Dutch tax perspective. This is generally the case if the subsidiary is subject to a profits-based tax with a regular statutory rate of at least 10%.
- The assets of the portfolio investment subsidiary consist, directly or indirectly, of less than 50% of low taxed free portfolio investments. Free portfolio investments are assets that are not required for the business of the owner of these assets. Real estate, as well as rights directly or indirectly related to real estate, not owned through certain (exempt) portfolio investment entities (FBI/VBI) are not considered free portfolio investments. Also in this case, "low taxed" refers to income from free portfolio investments not being subject to a reasonable tax on profits from a Dutch perspective.

9.8 CAPITAL DUTY

No capital duty is levied in The Netherlands.

9.9 INTERNATIONAL ASPECTS

Resident companies

Under the tax treaties concluded by The Netherlands, Dutch resident companies may qualify for a full or partial exemption from Dutch tax on certain elements of their foreign income.

Unilateral relief

If no tax treaty applies, a unilateral decree for the avoidance of double taxation may provide relief from Dutch corporate income tax (such as foreign business profits derived through a permanent establishment abroad).

Non-resident companies

Non-resident companies are subject to Dutch corporate income tax on the following:

- business income derived from a Dutch permanent establishment or permanent representative;
- income from immovable property located in The Netherlands;
- remunerations derived from a directorship of a resident entity;
- income, including capital gains, from debt claims related to a substantial shareholding (i.e. more than 5% of the shares held in that company do not form part of an enterprise); and
- income and capital gains from rights related to the exploration for or exploitation of natural resources situated in The Netherlands or in The Netherlands' part of the continental shelf.

However, the above-mentioned taxable income and profits may be limited or exempt (not taxed) from Dutch corporate income tax under the participation exemption and the tax treaties that The Netherlands has concluded with other countries.

9.10 ADVANCE TAX RULINGS

A Dutch resident or a non-resident taxpayer may request certainty in advance regarding the tax qualification of certain fact patterns and/or proposed transactions by applying for an advance tax ruling (ATR). ATR requests are to be filed with the Rotterdam Tax Inspectorate for Large Enterprises.

9.11 ADVANCE PRICING AGREEMENTS

An advance pricing agreement (APA) provides some certainty on the assessment of at arm's length remuneration or a method for the assessment of such remuneration for cross-border transactions involving goods or services between related entities. There are three kinds of APAs: unilateral, bilateral and multilateral.

A unilateral APA involves the relationship between the taxpayer and the Dutch tax authorities. This form of APA may be used in less complex situations. It may also be used if it is not possible to obtain a bilateral (due to the absence of a double tax treaty) or multilateral APA.

A bilateral APA is obtained with the approval of the tax authorities of both The Netherlands and the other country involved. One condition is that there is a double tax treaty with this other country.

A multilateral APA is an APA between The Netherlands and more than one other country. In a multilateral APA, mutual agreement between the various tax authorities and the existence of tax treaties between The Netherlands and those other countries is also required.

Where to file the request

A request should be addressed to the competent tax inspector, i.e. the tax inspector that deals with the day-to-day tax affairs of the requesting company. If a request has been filed for a bilateral APA, it is advisable for the entity in The Netherlands to co-ordinate this request with the related entity in the other country involved so that the two entities file their requests with the respective tax authorities at the same time.

Royalty companies and finance companies

Under the ruling policy of the Dutch tax authorities, a Dutch entity can apply for an APA with respect to its royalty activities or financing activities under the following conditions:

- the Dutch entity meets certain substance requirements;
- the Dutch entity meets certain minimum equity requirements;
- the Dutch entity receives an adequate at-arm's-length handling fee for the activities performed;
and
- the Dutch entity receives an adequate at-arm's-length remuneration for the equity at risk.

9.12 ANTI-AVOIDANCE

If certain conditions are met, the Dutch tax authorities may void one or more transactions if the main motive for entering into the transaction is to avoid tax and the taxpayer is violating the purpose and objective of Dutch tax law by entering into these transactions.

Transfer pricing

Under the at-arm's-length principle, a Dutch entity should have information in its administration showing how parties came to a certain pricing (i.e. the remuneration for the Dutch entity) and from which it can be deduced that the price has been agreed under conditions that third parties would also have agreed. Such documentation can be set up by the Dutch entity itself or by a transfer pricing analyst through a transfer pricing report.

Thin capitalization

Dutch thin capitalization rules were introduced on 1 January 2004. They apply to inter-company debt only and do not limit the deductibility of interest on third-party debt. The loan is treated as an inter-company loan if a bank debt is guaranteed by the parent of the acquiring company and if this loan would not have been made by the bank had such guarantee not been in place. A company is deemed to have excessive debt if its average annual debt exceeds three times the company's equity according to its tax accounts. Interest payable on the first €500,000 of debt exceeding this ratio remains deductible. If it can be demonstrated that the consolidated commercial accounts of the group to which the acquisition vehicle belongs apply a higher ratio, the company may also apply this higher ratio.

9.13 CONTROLLED FOREIGN COMPANY (CFC)

There is no CFC legislation in The Netherlands.

9.14 VALUE ADDED TAX (VAT)

VAT is charged for the consumption of goods and services in The Netherlands.

Taxable person

A resident company is considered to be a "taxable person" if it is an "entrepreneur" for VAT purposes under the 1968 Dutch VAT Act. If a supplier of goods or services in The Netherlands is a foreign company, the company is considered to be an entrepreneur for VAT purposes.

B2B / B2C services

Services carried out for the benefit of taxable persons by another taxable person (“business-to-business” or “B2B” services) are generally deemed to be supplied at the place where the recipient of the services is established. In the case of cross-border services within the EU, a Dutch entrepreneur does not have to charge Dutch VAT, but the recipient of these services must account for the VAT payable on these services in its local VAT return under the reverse charge mechanism. This VAT is deductible in the same VAT return according to the normal rules. Business-to-consumer services (“B2C”) are generally deemed to be supplied in the country where the supplier is established.

Exemptions

If the supply of newly constructed immovable property takes place at least two years after the first actual use, the supply is exempt for VAT purposes. Furthermore, the supply of social and cultural goods and services, the supply of insurance services, financial services and health services are exempt from VAT. The transfer of all or some of a business is exempt from VAT if certain requirements are met. The recipient of the business continues the business or has at least the intention to continue the business.

VAT rates

The general rate is 19%. A lower rate of 6% applies to basic goods and services. A rate of 0% applies to intra-community supplies, exports and certain services rendered in connection with exports. Furthermore, a rate of 0% applies to the export of electronic services to customers outside the EU. Non-residents are taxed as resident taxpayers if they carry out any taxable transactions in The Netherlands. Therefore, they too must register with the VAT authorities.

Administrative requirements

Entrepreneurs must register with the competent VAT authorities to receive a VAT identification number. The VAT identification number begins with the letters “NL”. The entrepreneur must file a tax return monthly, quarterly or yearly. The frequency depends on the amount of VAT payable. Also, if the VAT liability for a particular declaration period is less than the input VAT deduction, the difference will only lead to a refund if the taxpayer files a VAT return.

10. TAX ON INDIVIDUALS

10.1 INCOME TAX

Resident or non-resident taxpayer

Dutch income tax is levied on individuals who are residents of The Netherlands and on non-residents if and to the extent that they have income from sources in The Netherlands. If certain conditions are met, non-resident taxpayers can opt to be taxed as resident taxpayers. Some resident taxpayers can opt to be taxed as non-resident taxpayers. Since there is no definition of “resident” in Dutch tax law, the tax residency of an individual depends on the circumstances in each case. The most relevant facts and circumstances are the place of the permanent home, the place where the spouse and children live, and the place of personal and economic relations. If a resident of The Netherlands leaves The Netherlands without becoming a resident of another state and returns within one year, this person is deemed to have been a resident for this entire period.

Taxable income

Resident individuals are taxed on their worldwide income. Sources of income are divided into three boxes, and each box has its own tax rate. The taxable income in Box 1 is the income from employment and dwellings. The taxable income in Box 2 is the income from a substantial interest in companies and the income in Box 3 is the income from savings and investments.

Box 1: Income from employment and dwellings

Box 1 includes among other things the income from and expenses deduction in relation to:

- business;
- present and past employment;
- other activities;
- periodical payments and pensions;
- owner-occupied dwellings, including mortgage interest deduction.

The income derived from other activities includes income that cannot be considered business income or income derived from present and past employment (residual category). The income that falls under the scope of Box 1, less the personal deductions and allowances, is taxed at progressive rates.

Box 2: Substantial interest in companies

The income that falls under the scope of Box 2 includes dividends from a substantial interest in resident and non-resident companies. An individual is considered to have a substantial interest if

the individual directly or indirectly owns – alone or together with a spouse or partner – at least 5% of the issued share capital or at least 5% of a particular class of shares in a resident or non-resident company. A substantial interest may also exist if a lineal ascendant or descendant of the taxpayer owns a substantial interest in the same company.

The tax rate in Box 2 is 25%.

Box 3: Income from savings and investments

The worldwide net value of the assets of a taxpayer on 1 January of a tax year is deemed to produce a 4% net yield. This yield is taxed at a flat rate of 30%. Consequently, the income from savings and investments is taxed at a flat rate of 1.2%.

Losses

Losses in one box cannot be set off against positive income in another box. However, losses from one source in Box 1 (such as negative balance of income from dwelling and mortgage interest) may be set off against the positive income from another source in the same box. If part of the loss cannot be set off against other sources of income, the surplus may be carried back to be set off against the taxable income of the same box for the three preceding years or may be carried forward for 9 years.

Exempt income

If and to the extent any income does not fall under the scope of the above-mentioned three boxes, this income is exempt from Dutch income tax or not regarded as income.

10.2 EMPLOYMENT INCOME TAX

Employment income is subject to Dutch income tax in Box 1 and includes wages and salaries, sickness benefits and certain social security payments. However, in most cases, the employment income has already been taxed by means of a withholding tax, which is a prepayment by the employer of the employee's income tax.

Benefits

If an employee receives remuneration in kind from the employer, this remuneration must be valued at fair market value and is taxable as employment income. If the employer provides the employee with stock options that are priced lower than the market value, the difference between the acquisition price and the fair market value of the stock option is taxed as employment income. Capital gains realised on the sale of the stock options are taxed at the time of the exercise or transfer of the option.

Pension

If certain conditions are met, pension benefits granted individually or collectively are exempt from tax until retirement. In The Netherlands the “EET” system applies. Employee contributions are not taxed; investment returns on acquired benefits are exempt; and pensions in payment are taxed.

Director’s remuneration

For Dutch income tax purposes, managing directors and supervisory directors are considered to be employees. Their remuneration is taxable as employment income and all rules for employees apply.

Personal deductions, allowances and credits

Some expenses relating to income in Box 1 and Box 2 may be deducted, depending on detailed rules. The expenses relating to the income in Box 3 are not deductible. Liabilities may, however, be deductible from the taxable base.

There are allowances for all residents and for employees, as well as allowances depending on the taxpayer’s personal situation.

Rates

For the year 2012, the progressive tax rates (including social security contributions) for Box 1 are as follows:

- Income below €18,945: 33.10%
- Income from €18,945 to €33,863: 41.95%
- Income from €33,863 to €56,491: 42%
- Income above €56,491: 52%

The 33.10% and 41.95% rates include, respectively, 1.95% and 10.80% for income tax. The remaining 31.15% in both cases are national social security contributions.

Income reported in Box 2 is subject to a flat rate of 25%.

For Box 3, the net yield of 4% is taxed at a flat rate of 30% resulting in a tax of 1.2% on the net assets.

The tax year

The tax year is the same as the calendar year.

Tax returns

Tax returns must be filed by 1 April of the year following the tax year; however, extension of the filing date is usually possible. The tax authorities prepare and issue taxpayers with provisional income tax assessments every tax year, usually before or early in the relevant tax year.

In the end, tax authorities must prepare and issue the final income tax assessment within three years from the end of the tax year. If new information becomes available, additional assessments are allowed but only within five years of the end of the tax year. However, this period is extended to twelve years in the case of foreign source income. Furthermore, an additional tax assessment based on new data may result in a penalty of up to 100% of the additional assessment plus interest. This penalty is not deductible.

10.3 WITHHOLDING TAX

Withholding tax or payroll tax is usually called “wage tax” in The Netherlands. Employers are obliged to withhold wage tax from salaries and other taxable remunerations paid to their employees. The benefit relating to a company car is also subject to wage tax. The wage tax due is a prepayment of the income tax and is credited against the final income tax liability. The withholding also includes national social security contributions.

Car allowance

If an employer provides an employee with a car, the employee may use this car for private purposes as well. The benefit of a car provided by the employer is subject to wage tax, based on 25% of the official dealer price (original value) of the car (35% for cars older than 15 years, on the basis of the economic value). If certain conditions are met in relation to the car’s emissions, wage tax payable in connection with the use of a company car may be reduced to 20%, 14% or 0%. However, if the employee proves that the car will not be used for private purposes for more than 500 km a year, the benefits from this employer-provided car is not subject to any wage tax.

Travel allowance

If an employee uses his or her own car for business reasons, the employer may compensate the travelling expenses of the employee, up to a maximum of €0.19 per kilometre. This compensation is not subject to wage tax. If the actual compensation exceeds €0.19 per kilometre, the surplus will be subject to Dutch wage tax.

If an employee travels by public transport, the actual travelling expenses or €0.19 per kilometre may be compensated. This compensation is not subject to Dutch wage tax. If the actual

compensation exceeds €0.19 per kilometre, the employer has to keep the compensated tickets, and the surplus will not be subject to Dutch wage tax.

New cost reimbursement rules

The current system for reimbursing the business expenses of employees changed on 1 January 2011 and is now based on the Work-Related Costs Scheme (werkkostenregeling). However, up to and including 2013 there is a transitional period in which it is still possible for employers to opt for the former regime.

This new regulation will enable an employer to spend 1.4% of the total payroll expenses for the reimbursements of the regular costs of employees, without these expenses leading to wage tax becoming due (either by the employee or by a gross-up for the employer). It is for the employer to decide which employee is entitled to make use of this budget and to what extent. It will still be possible to reimburse the specific costs referred to in the Dutch Wage Tax Act 1964 outside the scope of this budget.

Wage tax rates

See under "Rates" at paragraph 10.2.

10.4 INHERITANCE AND GIFT TAXES

Introduction

Residents and non-residents are subject to inheritance and gift taxes if they acquire property by inheritance or gift and the deceased or the donor was a resident of The Netherlands at the time of death or the gift. If the deceased or the donor is a non-resident, inheritance and gift taxes are payable for certain types of property situated in The Netherlands. If a person with Dutch citizenship emigrates to another country, this person is deemed to be resident for the purposes of the inheritance and gift taxes for ten years following the date he or she emigrated. Persons who do not have Dutch citizenship and who have been resident in The Netherlands remain liable for gift tax in the year following their departure. Inheritance tax is payable by the beneficiary. However, Dutch tax authorities may recover from all beneficiaries with respect to the tax debt of any non-resident beneficiaries. The recipient is subject to gift tax. However, the donor and the recipient are equally liable for the payment.

Rates

The tax rates for inheritance and gift taxes are the same. The progressive tax rate depends on the proximity of the relationship between the deceased or the donor and the beneficiary or the recipient and may vary from 10% to 40%.

Double taxation relief

Foreign taxes are deductible as a liability on the inheritance or gift received. The Netherlands has concluded tax treaties on inheritance taxes with several countries.

10.5 INTERNATIONAL ASPECTS

Double taxation relief

Resident taxpayers may receive relief from double taxation by way of a tax exemption or by way of an ordinary tax credit. Unilateral relief from double taxation is calculated separately for each box in accordance with the special rules applicable to these boxes.

Leaving The Netherlands with pension and annuity

If an employee leaves The Netherlands, specific tax rules apply to pension and other retirement benefits. The leaving resident receives a tax assessment from the Dutch tax authorities for the current pension claim. In certain circumstances, the leaving resident is allowed to suspend the payment of the assessment for a period of 10 years. If and to the extent the leaving resident retires and draws on the pension and other retirement benefits within the 10 year period, the suspension ends and the tax owed is collected by the Dutch tax authorities.

11. INTELLECTUAL PROPERTY

11.1 PATENTS

Dutch patents are protected under the Dutch Patent Act (Rijksoctrooiwet) 1995. For an invention to be patentable, it must be new, involve an inventive step and susceptible to industrial application.

Excluded from protection are discoveries, scientific theories and mathematical methods, aesthetic creations, schemes, rules and methods for performing mental acts, playing games, doing business, computer programmes and presentations of data.

Despite the exclusion of computer programs from this list, computer programs can be patented in so far as they have a technical character. Software patents are generally granted for computer programs in combination with a specific apparatus.

Furthermore, no protection can be obtained *inter alia* for the following:

- inventions the commercial exploitation of which would be contrary to public order or morality (for example, a process for cloning human beings and the use of a human embryo);
- parts of the human body (including parts of gene sequences);
- plant and animal varieties;
- essentially biological processes for the production of plants or animals and the products thereof;
- methods for treatment of a human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body (excluding products, in particular, substances or compositions, for use in any of these methods).

An invention is new if it does not form part of the state of the art. The state of the art comprises everything that has been made available to the public, orally or in writing, before the date of filing (or, if priority is claimed, before the priority date). Although a search into the state of the art is conducted, the Dutch Patent Office does not assess whether the invention fulfils the requirements of novelty, inventive step and industrial applicability. In a patent dispute, these requirements are assessed by the courts.

11.2 DESIGNS

Designs in The Netherlands are regulated by the Benelux Treaty on Intellectual Property. It is not possible to obtain protection in just one Benelux country, as the Benelux is considered a single jurisdiction for the purpose of this law.

An application is submitted to the Benelux Office on Intellectual Property. The duration of protection is five years. Renewal is possible for up to 25 years in total.

Unregistered designs are not protected by the Benelux Treaty on Intellectual Property, but merely by the Community Design Regulation (Regulation 6/2002), which came into force on 6 March 2003.

11.3 TRADEMARKS

Trademarks in The Netherlands are protected by the Benelux Treaty on Intellectual Property. It is not possible to obtain protection in just one Benelux country, as the Benelux is considered a single jurisdiction.

An application is submitted to the Benelux Office on Intellectual Property.

The duration of protection is ten years. Renewal for an indefinite period is possible.

11.4 COPYRIGHT

Copyright in The Netherlands is regulated by the Copyright Act. Copyright arises when an original work is created. No formality, such as registration or the use of a copyright notice like “©”, is required. There is no copyright register.

However, it is possible to have a Dutch civil-law notary (or the Dutch Tax Agency) date copyright protected work. This dating merely generates evidence that on the date of receipt by the notary (or the Dutch tax authorities) the work was in existence.

The copyright of a work is protected for seventy years after the death of its author.

11.5 NEIGHBOURING RIGHTS

The efforts of performing artists, phonogram and film producers and broadcasting organisations are protected by the Neighbouring Rights Act (Wet op de naburige rechten). As with copyright, neighbouring rights arise when the performance is given or the work created. No formalities are required. For phonograms, it is common to use the ownership notice listing the proprietor's name and year of first publication. The duration of a neighbouring right is 50 years following the creation of the work.

11.6 DATABASE RIGHTS

The Database Act, implementing the European Database Directive (Directive 96/9/EC), protects a collection of works, data or other independent materials arranged in a systematic or methodical way and individually accessible by electronic or other means and which shows that there has been a qualitatively and/or quantitatively substantial investment in either the obtaining, verification or presentation of the contents. The duration of a database right is 15 years.

11.7 KNOW-HOW PROTECTION

In The Netherlands, the protection of know-how is not a separate legal concept. There is no specific legislation dealing with the protection of know-how, except for two provisions in the Criminal Code.

It is advisable to have the disclosure and use of confidential information governed by a non-disclosure agreement or confidentiality agreement.

11.8 TRADE NAMES

A trade name right arises through the use of the trade name. No formalities are required.

A company can have several trade names. A trade name owner can prohibit a third party's use of a trade name if it is identical or only slightly different from the earlier trade name and if there is a danger of it confusing the public, partly taking into account the character and location of the companies' businesses (including the territory where the trade names are commonly known). The Trade Name Act (Handelsnaamwet) also offers protection against the use of misleading trade names by third parties.

11.9 INTERNATIONAL TREATIES

The Netherlands has subscribed to the following treaties in relation to intellectual property rights:

- I. Paris Convention for the Protection of Industrial Property (Stockholm text);
- II. TRIPS Agreement (attachment to the WTO);
- III. Berne Convention for the Protection of Literary and Artistic Works (Paris text);
- IV. Universal Copyright Convention (Paris text);
- V. WIPO Copyright Treaty;
- VI. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization (Rome Convention);
- VII. Madrid Agreement concerning the International Registration of Marks (Stockholm text);
- VIII. Protocol relating to the Madrid Agreement concerning the International Registration of Marks;
- IX. Benelux Treaty on Intellectual Property;
- X. Nice agreement concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (Geneva text);
- XI. Lisbon Agreement for the Protection of Appellations of Origins and their International Registration (Stockholm text);
- XII. Strasbourg Convention for the Unification of Principles relating to Patents;
- XIII. Locarno Agreement establishing an International Classification for Industrial Designs;
- XIV. Washington Convention on cooperation regarding patents;
- XV. European Patent Convention;
- XVI. Hague Agreement concerning the International Deposit of Industrial Designs (Hague text and Stockholm integration);
- XVII. International Convention for the Protection of New Varieties of Plants;
- XVIII. WIPO Performances and Phonograms Treaty;
- XIX. Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs;
- XX. Brussels Convention relating to the Distribution of Program-Carrying Signals Transmitted by Satellite.

11.10 EUROPEAN LEGISLATION

Relevant European intellectual property legislation applicable in The Netherlands:

- I. Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (privacy);
- II. Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (block exemption);
- III. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;
- IV. Directive 2009/24/EC of the European Parliament and of the Council of 14 May 1991 on the protection of software;
- V. Council directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (neighbouring rights);
- VI. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (the satellite directive);
- VII. Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights;
- VIII. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 regarding database protection;
- IX. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;
- X. Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art;
- XI. Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
- XII. Directive 2006/116/ of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights;
- XIII. Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights;
- XIV. Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office;
- XV. Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark;

- XVI. Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark;
- XVII. Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks;
- XVIII. Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products ;
- XIX. Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems;
- XX. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;
- XXI. Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs;
- XXII. Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs;
- XXIII. Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs;
- XXIV. Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products;
- XXV. 94/824/EC: Council Decision of 22 December 1994 on the extension of the legal protection of topographies of semiconductor products to persons from a Member of the World Trade Organization;
- XXVI. Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;
- XXVII. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive');
- XXVIII. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

11.11 REGULATORY GUIDELINES FOR LICENCES

In addition to general European regulatory guidelines in Articles 81 and 82 of the EU Treaty, there are European regulatory guidelines regarding licences in the Block Exemption Regulation (Regulation no. 772/2004 of the Commission of 7 April 2004).

11.12 ROYALTIES

No specific criterion exists to determine whether royalties are excessive. Excessive royalties might be prohibited on the ground of unfair competition if the licensor is a monopolist or oligarchist. Licenses are governed by European competition law (i.e. Block Exemption Regulation no. 772/2004 of the Commission of 7 April 2004) and Dutch competition law.

11.13 FOREIGN CORPORATIONS AND SUBSIDIARIES

Typically, the agreements between foreign companies and their wholly owned subsidiaries are licensing agreements.

12. EMPLOYMENT AND PENSIONS

12.1 APPLICABLE LAW

In The Netherlands, there are five different kinds of law that might apply to employment.

1. statutory law;
2. collective labour agreements (called “CAOs” in Dutch);
3. supplemental agreements at company level;
4. agreements with an employees’ organisation called a “works council”; and
5. individual employment contracts.

12.1.1 STATUTORY LAW

Dutch Civil Code

Employment in The Netherlands is predominantly governed by the Dutch Civil Code. This code contains detailed, mandatory provisions relating to the employment relationship and various employment issues:

- a general obligation of the employer and the employee to act in good faith;
- the obligations of the employer and the employee;
- remuneration, including disability and sickness benefits;
- holiday and leave;
- equal treatment;
- probationary period;
- loyalty;
- confidentiality;
- contractual penalties;
- non-competition;
- employer liability;
- rights of the employee upon transfer of undertaking; and
- termination of employment.

Other statutes

In addition to the Dutch Civil Code, there are several other statutes that also deal with a number of employment issues, including the following:

- termination of employment;
- collective dismissal;
- social security;

- discrimination;
- working conditions, especially health and safety;
- minimum wages;
- special forms of leave, including maternity leave and parental leave;
- pension schemes (including implementation of the schemes by insurance companies);
- company pension fund; and
- industry-wide pension fund.

12.1.2 EMPLOYMENT AGREEMENTS

As explained further in this chapter, there are a number of collective agreements that may be applicable to an employment relationship. However, the employment relationship in The Netherlands is first and foremost governed by the individual employment agreement.

Under Dutch law, it is not permitted for the parties to agree to contract out of statutory provisions or the terms of a CAO. These are applicable even if the parties agree otherwise.

Some employment agreements are quite detailed. Others are limited in both content and size, especially if the employment relationship is already governed by one of the collective agreements described below.

An employment agreement may be oral or in writing. However, most CAOs require that employment agreements be in writing. Additionally, some employment conditions must be agreed on in writing (such as a non-compete clause).

12.1.3 COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining agreements play an important role in The Netherlands. They are called “collective labour agreements” (collectieve arbeidsovereenkomst). The abbreviation “CAO” is commonly used.

CAOs are long-term agreements negotiated by national labour unions and national employers’ organisations. Their statutory maximum term is five years, but usually the term is one or two years.

There are two kinds of CAO: industry-wide and company-level. By law, a CAO must be registered with the Ministry of Social Affairs and Employment. An employer has some discretion in the choice of a CAO. However, the scope of the CAO has to be taken into account. In practice, most employers select the CAO for the company’s specific industry, sector or trade and that was negotiated by the union with which the company and/or its employees are affiliated.

CAOs typically cover the following extensively and in detail:

- remuneration;
- employment obligations;
- seniority increases and bonuses;
- working hours;
- holidays;
- parental leave;
- disability and sickness benefits;
- early retirement;
- pension schemes;
- social security;
- termination of employment;
- etc.

Compulsory industry-wide pension schemes are generally organised separately under the 2002 Pensions Act.

CAOs are normally binding in relation to both employees and employers who are a member of a trade union or employers' organization respectively which are parties to the CAO. By law, a CAO-bound employer is expressly prohibited from making a distinction between employees who are union members and employees who are not union members. The CAO is applicable to both groups.

Moreover, the government may declare a CAO to be wholly or partially binding nation-wide for two years or less. In this event, the CAO acquires the status of a law and all employers in the industry, sector or trade covered by the CAO are, in principle, obliged to govern their affairs in accordance with the CAO. The parties concerned cannot depart from the CAO to the detriment of the employee.

Consequently, in every individual employment relationship, both the statutory law and any applicable CAO must be taken into consideration.

12.1.4 OTHER AGREEMENTS

Company-level collective agreements

Another kind of collective agreement is the company-level collective agreement. Such agreements are usually drafted unilaterally by the employer. They may deal with issues like working conditions. In certain cases, the agreement by law requires the approval of the works council (if any).

The employer may include in individual employment agreements a provision empowering it to unilaterally amend the collective agreement. Again, the amendment may require the works council's approval.

Agreements with the works council

An employer and the works council may agree on certain terms and conditions. These agreements usually pertain to fringe benefits. An employee is only directly bound by these terms if this is stated in the individual employment agreement or if the employer and individual employee agreed on these terms afterwards.

12.2 EMPLOYMENT CONDITIONS

Remuneration

In general, the parties are free to agree on the remuneration. However, this remuneration is subject to minimum wage laws, equal treatment laws and any applicable CAOs. If the parties have not agreed on the remuneration, the Dutch Civil Code provides that the employee is entitled to the remuneration that was customary at the time of entry into the contract for the agreed kind of work or, in the absence of this criterion, remuneration that is regarded as fair in the circumstances of the case.

Working hours

By law, working hours may not exceed nine hours per shift, 45 hours per week, and an average of 40 hours per week in any thirteen consecutive week periods. In a CAO, this may be increased to a maximum of ten hours per shift, 50 hours per week in each period of four weeks, and an average of 45 hours per week in any thirteen consecutive week period.

There are numerous exceptions to these rules. Overtime is one. Night-time work between midnight and 6 a.m. is another. A third exception applies to certain categories of employees, including executive-level employees who earn more than twice the annual minimum wage and all high-level employees whose annual income exceeds three times the annual minimum wage.

In general, employees may be required to do overtime. The obligation to do overtime may be derived from the individual employment agreement, an applicable CAO, or the general principles of good faith that apply in any employment relationship (i.e. an employee's duty to act as a good employee). There may or may not be an entitlement to additional remuneration for overtime work, depending on the individual employment agreement, the CAO (if any), and the general principles of good faith.

Holidays

The Dutch statutory holidays in any given year can be found online (e.g. www.feastdagen.nl or www.feastdagen-nederland.nl). One holiday (Bevrijdingsdag) is obligatory only every five years (2015, 2020, etc.).

The minimum annual holiday entitlement is, by law, 20 days (four weeks) of paid leave for full-time employment (five days per week). Employees who work part time (which is very common in The Netherlands) receive an amount proportionate to the less time worked. An individual employment contract or CAO may provide an employee with more than this statutory minimum.

If a minimum holiday entitlement is unused, it lapses within six months after the end of the year in which this minimum has been accrued. A holiday entitlement in excess of the statutory minimum lapses within five years, however.

In Dutch law, an employee may not waive this statutory minimum holiday entitlement in exchange for more compensation during the employment. An employee entitled to holidays on termination of the employment has in principle a right to receive remuneration in lieu of taking the holidays.

Disability and illness

In the event of long-term illness, an employer is required by law to pay the sick employee at least 70% of the agreed remuneration for as long as the employee is ill but only for a maximum of two years.

If the amount of this benefit is higher than a statutory cap, the benefit may be reduced to this statutory cap. During the first year of illness, if this amount is lower than the statutory minimum wage, the benefit is increased to the statutory minimum wage. In a CAO it may be agreed that an employee is to receive a higher amount (i.e. 71-100% of salary) during this period of illness. However, it has been agreed by the government, representatives of employers and representatives of employees that this amount cannot, in a two year period, be higher than 170% of the annual salary.

If the employee is still unable to return to work after two years, the employee may become entitled to a government disability benefit. The employer is required by law to make every endeavour to have the employee reinstated during the two-year period. The employee is required by law to make every endeavour to return to work during this period. An employee who is significantly uncooperative may lose his or her entitlement to these employer benefits and risks dismissals.

12.3 HIRING

Equality

There are a few statutory rules governing the recruitment of employees. First and foremost of these are the various laws prohibiting discrimination and mandating the equal treatment of employees. Discrimination by an employer on the basis of gender, age, race, nationality, disability, sexual preference, religious belief, political views or marital status is generally prohibited. A potential or new employee cannot be required to undergo a medical examination, subject to limited exceptions.

Citizenship

In general, there are no specific restrictions on the citizenship of employees in The Netherlands. A company is free to hire all Dutch citizens or all foreign citizens, for example. However, employment discrimination on the ground of nationality is prohibited by law, subject to a few specific exceptions. A foreign citizen may be required to obtain a work permit and/or residence permit.

An employer in The Netherlands is not required to hire a minimum number of Dutch citizens.

Moreover, an employer is not required to assign specific job positions to Dutch citizens; quite the opposite, since doing so could qualify as discrimination on the ground of nationality.

Number of employees

An employer in The Netherlands is not required to hire a minimum number of employees in general.

If a company has more than a certain number of employees, employment law implications may result, including rules governing collective dismissals and the requirement for a works council or other employee representative body. These rules are generally unfavourable to the employer.

Consequences of late-stage withdrawal

An employer may incur contractual or tort liability if the employer unjustifiably (i.e. at an advanced stage of the hiring process) abruptly withdraws from the job selection process and does not offer the job.

Identification and registration

An employer is required to ascertain the identity of a new employee and to keep a copy of the employee's identification papers throughout the duration of the employment relationship.

An employer is required to register a new employee with the Dutch Tax and Customs Administration (Belastingdienst) for the purpose of national social security insurance (including disability, sickness and unemployment contributions) and making employer deductions from salary payments. No distinction is made between Dutch citizens and others.

An employer's obligation to pay social security contributions and taxes in a timely manner is strictly enforced. Failure to do so is subject to severe penalties. If required, an employer must register a new employee with the Arbodienst (the government organisation responsible for workplace safety, health and welfare) and the pension fund and insurance company organised through the employer.

12.4 DISMISSAL IN GENERAL

Jobs are strongly protected in the Dutch employment law system. An employer's ability to dismiss an employee is limited. Ordinarily, an employer wishing to dismiss an employee is required to:

- apply to the local Employment Office (UWV WERKbedrijf) for permission to give notice to terminate the employment; or
- apply to the court for dissolution of the employment agreement.

Employment may be terminated without permission in the following circumstances:

- with the written consent of both parties;
- on expiry of a fixed-term contract at the end of its term;
- during the initial trial period of two months or less;
- in the case of summary dismissal, for sufficiently urgent reasons; or
- in the case of a managing director of a company.

In the case of an employee who is sick or pregnant, termination is prohibited. Managing directors who are sick or pregnant also cannot be dismissed. An employee with a long-term illness may be dismissed after two consecutive years of illness, but only with the approval of the UWV WERKbedrijf or the court.

12.4.1 Obtaining government permission for dismissal

If an employer in The Netherlands wishes to dismiss an employee, a permit is required from a government organisation called UWV WERKbedrijf ("Employment Office"). A department in the Employment Office is responsible for considering and issuing these permits.

The employer is required to fill out an Employment Office application. In the application, the employer is invited to state the reasons for the dismissal and to submit sufficient supporting evidence. The reasons ordinarily accepted for dismissal are “business reasons” (e.g. employer’s restructuring or financial difficulties) or “non-business reasons” relating to the poor performance of the employee or the existence of serious and long-lasting problems in the employer-employee relationship.

The burden of proving the necessity of dismissal always rests on the employer. Having received the application, the Employment Office provides the employee an opportunity to object to the request for dismissal. Normally, the Employment Office then provides each party another opportunity to state their case. An oral hearing may also be held. This is not compulsory however.

Subsequently, the Employment Office seeks the advice of a special Dismissal Advisory Committee (Ontslagadviescommissie). If necessary, they also seek the advice of the Health and Safety Inspectorate (Arbeidsinspectie) or the office responsible for unemployment insurance or both. The Employment Office then decides whether to issue the permit to the employer.

The complete procedure usually takes four to six weeks, although it can be longer in particularly complex cases. It is not at all exceptional for an employer to be refused a permit in the end. The decision of the Employment Office is irrevocable and not subject to appeal. However, an employer may still apply to a Dutch civil court to have the employment agreement dissolved on “serious grounds”.

Even if the Employment Office issues a permit, or even if no permit is required, an employer must still give the employee the contractually agreed notice or the statutory minimum notice. Failure to comply with the applicable notice period does not affect the dismissal per se, but does lead to liability on the part of the employer.

Even if the Employment Office issues a permit and even if the employer gives proper notice, it is still open to an employee (including a managing director) to apply to the court for a finding that the dismissal was “obviously unreasonable” (kennelijk onredelijk). A Dutch court will make this finding if the employee was dismissed for no reason, for a reason that was a mere pretext, or for a false reason, or if the hardship suffered by the employee is disproportionate to the employer’s interest in dismissing the employee. In this event, the court may order reinstatement or compensation in an amount to be determined by the court.

Statutory minimum notice period

By law, an employer in The Netherlands must give the following notice of dismissal:

- for less than 5 years of employment: one months' notice;
- for 5 to 10 years of employment: two months' notice;
- for 10 to 15 years of employment: three months' notice;
- for more than 15 years of employment: four months' notice.

The notice period applicable to an employee is one month.

An employment contract or CAO may provide for a different notice period. The notice period of the employer must be at least twice as long as that applicable to the employee, unless otherwise agreed upon in a CAO or in another collective agreement.

If the Employment Office has issued a permit, the minimum notice may be reduced by one month (but cannot be reduced to lower than one month). For example, if the statutory requirement is to give two months' notice, the statutory notice period becomes one month if the Employment Office issues a permit. If the statutory requirement is to give one month's notice, the statutory period remains at one month even if the Employment Office issues a permit.

12.4.2 OBTAINING A COURT ORDER FOR DISMISSAL

In certain circumstances, an employer does not require the permission of the Employment Office to dismiss an employee, but may apply directly to the court for a court order for dissolution of the employee agreement on "serious grounds". A court may grant such an application in two situations:

- urgency: the employment circumstances are such that they constitute "urgent reasons" that are sufficient for immediate dismissal; or
- change of circumstances: the employment circumstances have changed so significantly that it is reasonable for the contract to be terminated immediately or in the short term.

In the case of change of circumstances, the court may award a party (almost always the employee) compensation in the amount considered reasonable in the circumstances. It is not rare at all for an employee to be awarded compensation calculated according to the following formula. In the calculation below, the salary is the gross salary (including holiday allowance and fixed benefits such as a year end bonus).

no. of full years of service before the age of 35 x a half month's salary
(including gross salary, holiday allowance and fixed benefits)
plus
no. of full years of service between 35 and 45 years of age x 1 month's salary
plus
no. of full years of service between 45 and 55 years of age x 1½ months' salary
plus
no. of full years of service after the age of 55 x 2 months' salary

In addition, the court may decide to apply a multiplier ("adjustment factor") to the outcome. In general, if the termination was based on circumstances for which the employer bore the risk or fault, a multiplier larger than one may be applied. Conversely, if the termination was based on circumstances for which the employee bore the risk or fault, a multiplier smaller than one may be applied. If a position has become redundant due to reorganization, a multiplier of one is generally applied. Other circumstances of the case may influence the outcome as well.

If the requesting employer is not willing to pay the amount of compensation ordered, the court will grant the employer a certain number of days to withdraw the application. If the employer withdraws the application, the employment agreement remains in effect. If the application is not withdrawn within the time period stated, however, the employment agreement is dissolved and the employer has an obligation to pay the court-ordered compensation.

There is no appeal from the court's decision, except in the unlikely event that a fundamental legal principle has been violated in such a manner that the matter cannot have been handled fairly and impartially.

12.4.3 OTHER DISMISSAL SITUATIONS

Collective dismissals

Special statutory rules apply if an employer proposes, for economic and/or organizational reasons, to dismiss twenty or more employees within the jurisdiction of a local Employment Office (UWV WERKbedrijf) within a three-month period (regardless of the form of dismissal).

Prior to the dismissals, the employer must first consult with the works council, if there is one. In addition, the employer must notify the relevant trade unions and the relevant local Employment Office in writing. On giving notice, the employer must give reasons for the dismissals and other relevant information, including the number of employees involved, the criteria used to select those employees, the method of calculation of any severance payments, and whether there is a works council.

The Employment Office then gives the employer, trade unions and works council (if any) an opportunity to consult with each other. Subsequently, the Employment Office takes notice of any individual requests for an Employment Office permit to dismiss.

An informal meeting with the Employment Office prior to complying with all the various statutory requirements is standard practice. In this meeting the Employment Office may be informed of the collective dismissal and consultations may be held with the Employment Office about it. This generally helps create an atmosphere of "goodwill" in the relationship between the employer and the Employment Office.

Summary dismissal in sufficiently urgent situations

Occasionally it may be necessary for an employer to summarily dismiss an employee without going through the processes described above. If the reason is sufficiently urgent, the employer may forgo giving notice, obtaining a government permit and obtaining court order. This applies if the employee commits an act, has a characteristic or engages in conduct such that the employer cannot reasonably be required to allow the employment to continue. Examples include the discovery of theft or fraud and an act of intimidation.

For summary dismissal to be supported by the court in the legal proceedings that will most likely follow, and to reduce the possibility of a court order for reinstatement or damages, it is absolutely essential that the employer act promptly when these urgent reasons arise. The dismissal of an employee in this situation is warranted as soon as the sufficiently urgent reason arises or becomes known. Still, it is preferable to put it in writing than to do it just orally.

12.5 THE END OF THE EMPLOYMENT

Employment contracts for a fixed period

Generally, an employment agreement for a fixed period ends automatically on expiration of the agreed period. However, in a limited number of situations, statute law or an applicable CAO may deem such contracts to be indefinite contracts.

For example, under Dutch law, the fourth contract entered into by the same parties for a fixed period is deemed to become an indefinite contract. This then triggers the application of the various statutory requirements relating to dismissal (i.e. permit, notice, permission from the government, court order, etc.)

Termination by mutual agreement

Sometimes an employer and employee genuinely agree to end the employment. This may happen, for example, if the parties reach a settlement about terminating the employment.

Usually, this includes a severance payment, which is ordinarily determined according to the formula described in part 12.4.2.

In certain situations, termination by mutual agreement may have an effect on the government unemployment benefits to which the employee is entitled. For this reason, it is standard practice in The Netherlands – and not considered inappropriate – for the employer and the employee to structure the mutually agreed upon end of the employment as a dismissal by the employer. Notice is still given. If a settlement agreement is involved, notice becomes one of the terms in the settlement agreement. (If notice were not given, the employee would not be entitled to unemployment benefits during the applicable notice period and the employee would have to rely on the severance payment in lieu of unemployment benefits during this period.)

12.6 TRAINING EMPLOYEES

An employer in The Netherlands is not under a statutory obligation to provide training for its employees.

An exception applies to employees who are on the works council.

In addition, an employer may be required to provide training to a partially disabled or dysfunctional employee if the employee is under an obligation (as part of its duty as a good employer) to find a suitable position for that person (duty to act as a good employer).

An applicable CAO may also include provisions dealing with employee training.

Finally, if a company is unable to find a potential employee within the European Economic Area (EEA) and Switzerland to fill a certain vacancy, and subsequently requests a work permit for an employee residing outside the EEA and Switzerland, the Employment Office handling the request may require the company to provide a training program to ensure a future sufficient supply of employees with those particular skills in the EEA and Switzerland.

12.7 SAFETY STANDARDS

An employer in The Netherlands has a general statutory duty to comply with strict, detailed health and safety regulations, to ensure the health and safety of employees, and if necessary to improve conditions at the workplace.

With regard to the safety of employees, an employer has a general duty to investigate, which among other things means that the employer is required to adopt a pro-active approach regarding inherent dangers (including, for example, dangers relating to existing and new equipment) and take all measures necessary to deal with the risks observed. In addition, an employer in The Netherlands has an obligation to take measures to regulate employee conduct in this area.

The working conditions at an employer's work place may be inspected periodically by the Health and Safety Inspectorate (Arbeidsinspectie). Furthermore, an employer is required to prepare risk inventories and assessments of the working conditions.

Failure of an employer to comply with health and safety regulations may lead to liability. In general, an employer in The Netherlands may be liable for all loss or damage incurred by an employee during and after the employment in relation to accidents or illnesses that occurred in the course of employment, unless the employer can prove that the employer complied with all relevant health and safety regulations or that the accident or illness would have occurred even if the regulations had been complied with. In addition, an employer may escape liability by proving that the accident or illness was caused intentionally by the employee or by deliberately reckless behaviour on the part of the employee. However, in practice, this is very difficult to prove.

12.8 LABOUR UNIONS

The right of association and assembly is protected by the Dutch constitution. Unions are legal and recognised by the government. The dismissal of an employee on the ground of participation in a union, the exercise of union rights or the carrying out of union activities is prohibited. Unions play a significant role although not to the extent seen in some other countries. Another aspect of the Dutch private sector is that many employers have grouped together into employers' associations. Collective bargaining is standard practice in most industries. There are about a thousand CAOs in effect.

Important unions

- Dutch Trade Union Federation (Federatie Nederlandse Vakbeweging or “FNV”)
- Dutch Federation of Christian Trade Unions (Christelijke Nederlandse Vakvereniging or “CNV”)
- Trade Union Federation of Intermediate and Senior Staff (Vakcentrale voor middengroepen en hoger personeel or “MHP”).

Important employer associations

- Merger of the Federation of Dutch Industry and the Federation of Dutch Christian Employers (Verbond van Nederlandse Ondernemingen en het Nederlands Christelijk Werkgeversverbond or “VNO-NCW”)
- General Dutch Employers’ Federation (Algemene Werkgeversvereniging Nederland or “AWVN”)
- Dutch Federation of Small and Medium-Sized Enterprises (Midden- en Kleinbedrijf Nederland or “MKB Nederland”).

12.9 WORKS COUNCILS

In Dutch law, a company is obliged to establish a “works council” (ondernemingsraad) if the company has more than 50 employees. This works council has a right to advise management on certain management decisions. If management does not follow this advice, it could result, for example, in blocking a corporate transaction (on the basis of a court decision). Furthermore, a works council has a right to refuse to give its approval for certain rules relating to employment conditions.

12.10 PENSIONS

In The Netherlands, the pension promise made by the employer to its employees forms part of the employee’s terms and conditions of employment. An employer is not obliged to offer membership of a pension scheme to its employees. However, if an employer does decide to offer staff a pension, it is obliged by law to do so either by setting up a pension fund or by providing the employee access to a separately insured pension policy (provided through an insurance company).

Participation in an industry-wide pension fund is mandatory in certain sectors of industry (including the building industry and the mechanical and electrical engineering industry). This means that all employers who are active in such a sector are required by law to register their employees with, and pay pension contributions to, the relevant industry-wide pension fund.

If a mandatory industry-wide pension scheme applies, an employer may apply for an exemption. Exemptions are generally granted only if the employer offers its employees membership of an alternative pension scheme which provides retirement benefits that are broadly no less favourable overall than those provided under the industry-wide scheme. An independent actuary would have to verify that members do not lose out as a result of not being able to accrue pension under the industry-wide pension scheme.

Two kinds of pension scheme

There are two main types of occupational pension schemes: defined benefit (DB) and defined contribution (DC).

The benefits paid out in a DB pension scheme are determined by a formula based on a member's salary and length of pensionable service. These schemes can either be career average schemes (where the ultimate pension is calculated by reference to the average of a member's salary over the course of their working career with the employer) or final salary (where the eventual pension is linked to the member's salary on retirement). Not surprisingly, the costs of financing a final salary scheme can be prohibitive for employers, and more and more companies have therefore switched from offering final salary pensions to offering career average pensions in recent years.

In a DC pension scheme, each member has their own individual account or "pot". The only obligation on the employer is to pay regular pension contributions into a member's pot, which are then invested on the stock market. The ultimate size of the pension is then determined by the investment performance of the pot and the value of the annuity that the member can afford to buy with the accumulated value of his investment. Essentially, the value of the pot will move up and down according to the fluctuations of the stock market. From an employer's point of view, the advantage of providing DC benefits lies in the fact that the member bears the ultimate risk as to what size of pension can be bought. Not surprisingly, therefore, DC pension schemes have also grown in popularity over recent years.

In both types of schemes it is usual to provide survivor's and ill-health benefits.

Contributions

An employer is responsible for paying contributions into the pension fund or the insurance company. It can only deduct contributions from the employee's salary with the consent of the employee (i.e. usually by entering into an employment agreement stipulating that the employee is responsible for paying part of the total contribution).

Funding

Dutch pension schemes are required by law to be fully funded at all times. If a scheme is in deficit, a recovery plan has to be submitted to the Pensions Regulator, showing how the scheme expects to return to solvency within a set timeframe.

Pensions Act

The Dutch Pensions Act contains detailed provisions touching on, for example, scheme disclosure requirements, bulk transfer payments between different schemes as well as the treatment of deferred pensions (preservation). The Act also sets out requirements regarding scheme governance and scheme funding.

13. ENTERING AND WORKING IN THE NETHERLANDS

13.1 PART OF A BORDERLESS EUROPE

The Netherlands is a member state of the Schengen Treaty and the Schengen Implementation Agreement. This provides for the free movement of persons by parallel and gradual removal of internal border controls as well as strengthening the common external border of the member states involved. Other Schengen countries include Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, Switzerland and Sweden.

Common immigration controls apply throughout the territory of the Schengen Area. In addition, immigration rules favourable to nationals of member states of the EEA and Switzerland apply.

13.2 EEA CITIZENS

The EEA countries are the 27 countries of the European Union, Iceland, Liechtenstein and Norway.

EEA citizens do not require a provisional residence permit (MVV), a regular resident permit (VVR) or a work permit (TWV). They may simply take up residence in The Netherlands, although they are required to register their residence as described below under “Basic residence reporting requirements”.

It is advisable (but not legally required) for a foreign employee from an EEA country or Switzerland to go through the formality of applying to the Immigration and Naturalisation Service (IND) for a regular residence permit (VVR). In this case, it would be a “special” residence permit. Certain Dutch authorities (including the Tax and Customs Administration) require proof of lawful residence in The Netherlands. A passport or equivalent travel document may turn out to be insufficient for this purpose.

13.3 WHO MAY ENTER THE NETHERLANDS?

Entry into The Netherlands is allowed for a traveller carrying a passport or equivalent recognized travel document that is valid for an extended period of time, i.e. for at least three months after the end of the visa period. A visa may also be required, as explained in more detail below. The possession of a valid visa does not necessarily guarantee entry to The Netherlands.

There are a number of other requirements, although most travellers are not confronted with them. Not all of the conditions below are applicable to all visitors coming to The Netherlands. People entering the country are required to have a travel reservation to leave the country. An official may ask for documentary evidence that the traveller has sufficient means of support for the duration of the stay, transit or return journey, including bank statements, traveller's cheques or cash. If this cannot be shown, a statement from a guarantor or formal invitation from a third party may suffice if it can be shown that the guarantor or third party has sufficient and sustainable means of support. A traveller may be asked to provide documentary evidence showing the purpose and conditions of the planned visit (e.g. (legalized) letters of invitation, hotel reservations and work permits) and showing an intention to return to the country of origin or establishment.

A traveller must be prepared to provide documentary evidence of health insurance. Some may be asked to undergo tuberculosis test. However, this does not apply to a citizen of an EEA member state, Australia, Canada, Israel, Japan, Monaco, New Zealand, Suriname, United States and Switzerland.

A traveller with a criminal record, or a traveller who is currently wanted by the police in The Netherlands or another Schengen country, may not be able to enter The Netherlands. Entry may also be denied to someone who is considered to be a threat to public order (including someone who might become an illegal immigrant), to national security or to the international relations of any Schengen country.

13.4 SCHENGEN VISAS (LESS THAN THREE MONTHS)

The Dutch immigration department is called the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst) or usually just "IND".

Many people who wish to stay in The Netherlands for a short period (i.e. less than three months) are required to obtain a Schengen visa. If that person is coming first to The Netherlands, an application is made to the Dutch embassy in the country of origin or permanent residence,

which may then either forward the application to the IND in The Netherlands or issue the visa itself. The fee is currently €60 (2012).

A Schengen visa allows the visa holder to enter The Netherlands and temporarily travel for a specific period of three months or less within The Netherlands and usually within other Schengen countries as well. Depending on the circumstances, a Schengen visa may be limited to one or more Schengen countries, in which case the visa holder will be permitted to visit only those Schengen countries.

Citizens of some countries (including of course the Schengen countries themselves) do not require a Schengen visa when coming to The Netherlands.

The list of countries for which a Schengen visa is or is not required is subject to change. To find out whether someone currently requires a Schengen visa, go to www.ind.nl and use the "Residence Wizard" or contact the local embassy or Dutch Ministry of Foreign Affairs for the latest information.

A Schengen visa is not a substitute for the other visas in the Dutch system. The various types of visas are treated differently. For example, if a situation calls for an "MVV" visa (explained further below), a Schengen visa will not suffice.

Only rarely and in very special circumstances (e.g. a situation beyond someone's control) may a Schengen visa be extended from three to six months.

There are three types of Schengen visa in The Netherlands:

- **Airport transit visa (Type A)**

Some people may require an airport transit visa to make a stopover at an airport in a Schengen country during an international flight to a country outside the Schengen area. This also applies to Schiphol Airport Amsterdam and other airports in The Netherlands. During this stopover, they are not allowed to leave the airport's international zone. Access to Schengen territory is prohibited.

- **Five-day transit visa (Type B)**

Some people may require a transit visa to make a transfer that takes them out of the airport during travel to a country through the Schengen area. A transit visa may be issued for five days or less. A visa may be issued for multiple visits, each no longer than five days. This visa is issued only if the final destination is a non-Schengen country to which entry has been guaranteed.

• **Three-month short-stay visa (Type C)**

These are issued for a number of reasons, including business, sporting activities, tourism, vacation and visiting family or friends.

Non-Dutch citizens taking up residence in The Netherlands may be subject to a reporting requirement, even if this is for a period of less than three months. This is described under “Basic residence reporting requirements”.

13.5 TEMPORARY RESIDENCE PERMITS (LONGER THAN THREE MONTHS)

Generally speaking, a foreigner wishing to stay or reside in The Netherlands for longer than three months goes through a four-step process.

1. The process starts outside The Netherlands with the issuance of a “provisional residence permit” (MVV). In principle, it is not permitted to apply for residence from within The Netherlands. Citizens from a number of countries, including EEA countries, are exempt from this process.
2. This allows the person to enter The Netherlands, where he or she is then in a position to comply with the requirements for a second permit called a “regular residence permit” (VVR). Citizens from EEA countries are exempt from this process.
3. These resident permits may be extended year after year.
4. After five years, the resident becomes eligible for a permanent resident permit. (There are a number of exceptions. For example, the period is three years if the applicant is married to or the partner of a Dutch citizen),

These permits are not the same as the Schengen visa or a work permit. Different processes are involved.

Fees apply for both these applications and for extensions. This can range from €188 to €1250 (2012), depending on the purpose of the stay.

Generally, it takes the IND or a Dutch embassy between three and six months to process an application for permits of this kind.

The decision of the Dutch government to reject a visa application is subject to legal recourse in various ways, including an appeal to the courts.

Provisional residence permit (MVV)

Most non-Dutch citizens require a provisional residence permit before travelling to The Netherlands. In Dutch, this is called a “machtiging voorlopig verblijf” or “MVV”. This application is made to a Dutch embassy in the country of origin or residence.

A citizen of one of the following countries is excluded from the MVV requirement: an EEA country, Switzerland, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Vatican City and the United States.

To be eligible for a MVV, the applicant must meet certain requirements and provide certain documents. What these are exactly depends on the purpose of the stay (work, study, family, visiting, etc.)

Issuance of an MVV may require successful completion of a “civic integration examination” outside The Netherlands.

To find out more about the requirements for a MVV, go to www.ind.nl and use the “Residence Wizard” or contact the local embassy or Dutch Ministry of Foreign Affairs for the latest information.

Non-EEA citizens: On arrival in The Netherlands and taking up residence

This part and the part below apply to a non-EU citizen who becomes a newly arrived resident of The Netherlands and intends to stay for longer than three months. It applies both to a holder of a temporary residence permit (MVV) and a person exempt from the MVV requirement (e.g. a citizen from Australia, Canada, Japan, Monaco, New Zealand, South Korea, Vatican City or the United States.)

Once having entered The Netherlands, a newly arrived resident intending to stay longer than three months must apply as soon as possible (and no later than three months after arrival) for a regular residence permit (VVR).

The municipality subsequently sends the application to the IND. The procedure for applying for a residence permit is largely the same for all new arrivals (MVV holders and otherwise). However, MVV holders will need to provide fewer documents with their application, as a number of documents were already provided and checked when applying for the MVV.

There are also reporting requirements relating to residence, which are described further under “Basic residence reporting requirements”. This is a separate procedure.

Non-EEA citizens: Regular residence permit (VVR)

A regular residence permit is called a “verblijfsvergunning” in Dutch. With certain important exceptions, every non-Dutch citizen requires a regular residence permit to reside in The Netherlands. An exception is made for a citizen of Switzerland or an EEA country (except Bulgaria and Romania). Bulgarians and Romanians require a special residence permit called “proof of lawful residence”, even though their countries are part of the EU.

This is the second permit in a two-step process. Generally an MVV obtained outside the country is needed before a VVR can be issued inside the country. To be eligible for a VVR, the new arrival must meet certain requirements and provide certain documents. What these are exactly depends on the purpose of the stay (work, study, family, visiting, etc.) To find out more about the requirements for a VVR, go to www.ind.nl and use the “Residence Wizard” or contact the local embassy or Dutch Ministry of Foreign Affairs for the latest information.

Non-EEA citizens: Extensions and permanent residence

On arrival, a residence permit is generally issued for one year. An extension may be issued, but the application for extension must be submitted before the expiry of the residence permit. Whether the residence permit is extended, and for how long, depends entirely on the circumstances of the case.

Resident permit holders who have lived in The Netherlands continuously for five years with a valid residence permit for a stay with a non-temporary purpose may become entitled to a residence permit for an indefinite period.

13.6 BASIC RESIDENCE REPORTING REQUIREMENTS

Registration of non-Dutch citizens

With a few important exceptions, in The Netherlands all non-Dutch citizens are required to report their arrival and residence to a local office of an agency called the Vreemdelingenpolitie. They must do this within three days of arrival. Not all foreigners are required to do this, however. The exceptions are:

- people staying three days or less;
- people staying at a hotel;
- citizens of an EEA member state or Switzerland.

Failure to comply with this requirement constitutes a criminal offence.

Reporting the intention to stay longer than three months

In addition, a Schengen visa holder who is visiting The Netherlands for less than three months, but then decides to stay in The Netherlands for longer than three months, must report this intention as soon as possible (and no later than within three months of arrival).

Registration of residence

In The Netherlands there is a central register of basic information about all residents of The Netherlands (including temporary residents). This is called the “Municipal Administration” (Gemeentelijke Basis administratie), although it may be useful to think of it as the registry of births, marriages, deaths and residence. When someone takes up residence, or changes residence, this is reported to the appropriate office (usually located in the municipal town hall).

Even a citizen from an EEA country or Switzerland staying in The Netherlands for more than three months must register with the Municipal Administration and the IND.

A citizen of Bulgaria or Romania must apply for a special residence permit called “proof of lawful residence”.

13.7 OBTAINING A WORK PERMIT

For an employer to bring an employee to The Netherlands from a country outside the EEA, one of the requirements is that the employee must have an employment agreement.

For further up-to-date information, contact the Immigration and Naturalisation Service (IND) or visit their website at www.ind.nl. You may wish to obtain their brochure (in English) called “Bringing a foreign employee to The Netherlands”. In this part a brief overview of the process is provided.

Work permit (TWV)

With certain important exceptions, every non-Dutch citizen requires a work permit to work in The Netherlands. The exceptions are citizens of an EEA country or Switzerland. Bulgarians and Romanians require a permit, even though their countries are part of the EU. In Dutch a work permit is called a tewerkstellingsvergunning or “TWV”.

Work permit procedure

An employer in The Netherlands wishing to hire an employee is required to obtain a work permit (TWV) from the Employment Office (UWV WERKbedrijf). Although Bulgaria and Romania are part

of the EU, a citizen of one of those countries also requires a TWV.

Before a foreign employee comes to The Netherlands, the employer or employee must also arrange for the employee to obtain a provisional residence permit (MvV) from Dutch authorities. This permit can be obtained from the IND or the Dutch embassy in the country of origin or permanent residence.

Once having entered The Netherlands, the foreign employee is required to report to a special agency called the Vreemdelingenpolitie within three working days after entry. This does not apply to citizens of an EEA member state or Switzerland or foreign citizens staying at a hotel. Failure to comply with this requirement constitutes a criminal offence.

In addition, after entry in The Netherlands, the employee must as soon as possible (and no later than within three months) apply to the IND for a regular residence permit (VvR). The holder of a work permit (Tvw) and short-stay authorisation (MvV) may work in The Netherlands only after filing an application for this permit (VvR).

If both a provisional (MvV) and regular (VvR) residence permit are requested, the fees are €938 (2012). If only a regular residence permit (VvR) is requested, the fee may be about €750 (2012). There is no fee for a work permit (Tvw).

It usually takes the Employment Office five weeks to make a decision about a work permit application. An employer is thus advised to commence the process at the Employment Office at least ten weeks before the actual employment starts. There are several avenues of recourse following an Employment Office's decision to reject a work permit application. An application to the court is one.

A TWV is valid for three years at most. The TWV is only applicable to that employee and to the specific activities for which the work permit is granted. If an employee carries out other activities, a new work permit (Tvw) is required.

Conditions for granting a work permit (Tvw)

Tvws may be granted for a maximum term of three years and only in the following circumstances:

- The employer must make every endeavour to actively recruit suitable candidates in The Netherlands and other member states of the EEA (but not Bulgaria or Romania).
- An employer is normally required to submit notice of a vacancy to the nearest Employment Office at least five weeks before applying for a work permit (Tvw).

- The employer must show that an employee already in the West European labour market cannot be found, or retrained within three months, to do the work;
- The foreign employee must receive remuneration at least equal to the statutory minimum wage for full-time employees, irrespective of whether he or she works part time or full time;
- The working conditions, terms of employment and employment relations in the employer's company must comply with, or exceed, the applicable statutory standards and CAO standards.

The employer must provide for the employee's suitable accommodation.

The employee must be between 18 and 45 years of age (with the exception of Bulgaria and Romania).

Highly skilled employees

An employee that falls into a certain category may be exempt from some of the procedural requirements. This applies particularly to a "highly skilled worker". No work permit (TWV) is required and the process is expedited (i.e. average time of two weeks). However, this is dependent on the employer signing a declaration and on the annual remuneration of the highly skilled employee exceeding certain statutory thresholds.

13.8 THE 30% RULING

Inbound expatriates

If certain conditions are met (these conditions having been tightened on 1 January 2012), an inbound expatriate coming to The Netherlands can opt for an allowance called the "30% ruling". One of the conditions is that the inbound expatriate must have some sort of "specific expertise" which is scarce in The Netherlands (i.e. based on level of education, level of experience and level of remuneration).

As a result of the 30% ruling, 30% of all taxable benefits of the inbound expatriate – which in this case includes allowances for housing and compensation for local costs but not schools fees, which are allowed separately – can be paid tax free as compensation for "extra-territorial costs" for a maximum period of 8 years. Both the employer and the employee must file a request to apply for the 30% ruling. The 30% ruling only applies if the Dutch tax authorities have approved the request.

The allowance includes the option to be treated as non-resident for the income reported in Box 2 and Box 3. (See paragraph 10.1, Income Tax). The 30% allowance is not included in pension calculations, which is an advantage to the employer that may be reallocated by adding the

saving to the income, which in turn leads to a higher 30% allowance. The allowance is also not included in social security calculations.

Outbound expatriates

A specific 30% ruling also applies to Dutch employees performing certain specific activities in another country, or who are seconded to certain developing countries.

13.9 EDUCATION FOR THE CHILDREN

It is compulsory for children in The Netherlands to attend school on a full-time basis from the age of five to sixteen and at least on a part-time basis between the ages of 16 and 18. There is a government-funded public-school system. There are also private schools, which are eligible for government funding if they meet certain criteria. Primary schools are for children aged 4 to 12.

Secondary schools

Children older than 12 years of age enter the secondary school system. The Dutch secondary education system is divided into three streams. Children in The Netherlands are tested and enter these streams at a fairly early age.

- VMBO – a four-year pre-vocational secondary education programme that is meant to prepare children for upper secondary vocational education (MBO);
- HAVO – a five-year general secondary education programme that is meant to prepare children for higher professional education (HBO); and
- WO – a six-year pre-university secondary education programme that is meant to prepare children for academic studies at the university level (WO).

There is a variety of special education programmes for students with behavioural or learning difficulties. There are also adult and vocational education programmes.

International schools

International schools are located in the largest cities, especially The Hague, with the curriculum taught in English, French or German. Once studies are completed, an international baccalaureate certificate is awarded. Foreign postgraduates can also attend specialist programmes at certain institutes in The Netherlands which run them most commonly in English.

Higher education

There are two kinds of higher education. One is a four-year higher professional education programme called "HBO" and leading to a four-year bachelor's degree. Another is a three-year academic or university education programme called "WO" and also leading to a bachelor's degree. Graduates with a bachelor's degree may, subject to meeting the requirements, go on to study for a master's degree, which is ordinarily an extra year of study.

Some Dutch universities allow foreign students to enter a Dutch university degree programme at an intermediate level. Only certain universities allow this and the decision is made on a case-by-case basis. Foreign students wishing to enter a Dutch university must have an adequate level of English. Any Dutch embassy, consulate or education support office can provide valuable information on English examination tests acceptable to Dutch universities.

Employers may grant tax free allowances for school fees.

13.10 MEDICAL CARE

The Netherlands has a public-private health care insurance system in which everyone has national health insurance coverage, but this is provided through a private health care insurer (zorgverzekeraar) of their own choosing.

A number of insurance companies offer a variety of packages at different rates. An insurance company is required to offer a basic package, but the insurance company offers more extended packages with optional extras for those who wish to pay for it. Every resident is free to choose their insurance company and the level of coverage. A resident can switch insurance company as often as once a year.

Unless otherwise provided by international social security law, all residents aged 18 or older are required to pay a nominal premium to the insurance company. A premium of 10% (2012) is withheld by the employer from salary, but there is a cap on how much is withheld. Various no-claim rules apply.

The application of this law depends on the social security situation, which may in general be linked to residence or country of origin. See the section on "Social security" below.

13.11 SOCIAL SECURITY

All residents of The Netherlands are insured under national insurance schemes covering old age (AOW), death (Anw), certain extraordinary medical expenses (AWBZ), health benefits (Zvw) and child benefits (AKW). The premiums are not deductible for tax purposes. In addition, employees are insured against disability (WIA) and unemployment (WW). Contributions are tax deductible (EET).

A determination of the country of residence of an individual is made on a case-by-case basis. (This is the same kind of determination made for tax purposes. See “Resident or non-resident taxpayer”). A citizen of an EU country, Iceland, Liechtenstein, Norway or Switzerland may opt to remain insured under the social security system of their country of origin without having to pay social security premiums in The Netherlands. The employee is required to obtain an E-101 statement from the social security authorities in the country of origin. The employer can get this for the employee. The E-101 statement is valid for a period of 12 months and can, in certain circumstances, be extended to five years in total.

The Netherlands have concluded social security treaties with a number of other countries including:

Australia	Croatia	New Zealand
Bolivia	Cyprus	Serbia
Bosnia-Herzegovina	Israel	South Korea
Canada	Macedonia	Tunisia
Cape Verde	Montenegro	Turkey
Chile	Morocco	USA

These treaties provide the rules governing the social security arrangements. The rules are similar to those for the EU and EEA countries.

14. ENVIRONMENTAL CONSIDERATIONS

14.1 GENERAL

The Dutch government has an environmental protection policy. To reduce the correlation between pollution and economic growth, environment policy has been integrated into, amongst others policies, the policies for agriculture, transport and energy. The environmental policy of The Netherlands currently addresses numerous themes, including climate change, contaminated land and waste disposal.

Although emissions of some pollutants have been cut by more than 80%, many environmental problems continue to exist due to production and consumption patterns and other reasons. The use of fossil fuels by both consumers and producers is still (far too) high. Motor vehicle use by the country's population is increasing each year, giving rise to increased acidification, spatial demands and noise pollution. This has an ongoing negative effect on flora and fauna. These problems cannot be resolved by environmental policy alone.

So far, there has been some success in reducing emissions. Government policy is now focused on persistent environmental problems, including noise pollution and decreasing biodiversity.

For the latest information on The Netherlands, the environment and environmental regulations, visit the website of The Netherlands Ministry of Infrastructure and the Environment (I&M) at <http://english.verkeerenwaterstaat.nl>.

14.2 ENVIRONMENTAL MANAGEMENT LAW AND REGULATIONS

The most important point of intervention in Dutch environmental management law is the "establishment" (inrichting). The term "establishment" is defined in the Environmental Management Act (Wet milieubeheer or "EMA") as "any enterprise undertaken by humans commercially or of a size commensurate with a commercial enterprise, and which is conducted within certain bounds". For example, a short, non-recurring event is not an "establishment". Keeping horses as a hobby is not considered an "establishment". Activities carried out by a ship (i.e. mobile and not already belonging to a specific site) are not considered an "establishment".

For many years establishments had to have an environmental permit to be established and operational unless general rules applied to the category of establishments. This judicial

system changed in 2008. Since then, general rules apply to an establishment unless there is an obligation to acquire a permit. The regulations concern issues such as noise, energy, waste, air quality and soil quality.

Currently the permit requirement applies unreservedly only to IPPC establishments. For non-IPPC establishments, the Activities Decree (Activiteitenbesluit) in combination with the General Planning and Environmental Law Provisions Act (Wet algemene bepalingen omgevingsrecht, or Wabo (see 14.3) forms the basis for these regulations. These regulations contain the following categories:

Type A

If there is negligible impact on the environment, no permit/notification is required. Those establishments must comply with the general rules and regulations set out in the Activities Decree. There is no need to give notification or to submit an application for a permit. Examples of Type A establishments are care institutions (for example, for childcare), churches, banks, libraries and schools.

Type B

If there is a substantial environmental impact, there is an obligation to notify the municipal authority of the commercial activities of the establishment. The notification must be given when an establishment is being set up, changed or expanded. Examples of Type B establishments are iron and steel industrial plants, dental laboratories, and silk screen printing.

A type B establishment can carry out other activities for which an all-in-one permit for physical aspects (omgevingsvergunning) is required (see below). In that case, there is an obligation to do so at the same time as submitting the environmental management notification.

Type C

If the environmental impact is extensive, the establishment requires a permit from the provincial or municipal authority. In exceptional cases, a permit is required from the Minister of Infrastructure and the Environment (I&M) or the Minister of Economic Affairs, Agriculture and Innovation (EL&I). This applies in any event to IPPC establishments and to some other designated activities (Besluit omgevingsrecht, Appendix I). In addition to a permit obligation, certain relevant chapters in the Activities Decree are also applicable.

For each establishment it is important to determine the category of the establishment because the category is relevant to the applicable rules and the competent authority. Apart from operating establishments, there are many other activities that can have a harmful effect on

the environment. For this reason, Dutch legislation also imposes rules on dealing with certain materials, such as plant protection products and fertilizers, transportation of harmful substances, work on or in the soil, etc.

14.3 WABO

After a lengthy legislative process, a new law referred to in short as “Wabo” (described in full above) came into force in October 2010. This wide-ranging legislation pertains to everything from permits and other environmental decision-making to zoning, construction and demolition. Wabo has integrated about 25 different permits, notifications and exemptions into a single all-in-one permit for physical aspects (omgevingsvergunning). This new permit also replaces the permit that used to be issued under chapter 8 of the EMA.

The central aim is to make it possible for both individuals and businesses to apply for permits from the authorities to carry out activities that have an impact on the physical environment using a transparent procedure with one application, one competent authority and a single all-in-one permit for physical aspects (omgevingsvergunning). There is also only one procedure for legal protection or for an appeal against the decision. This means that there are no unnecessary differences in procedure and it is easier to determine which permit or permits are actually needed.

The Wabo did not substantively integrate the former legislation. The individual checks and balances to which the individual permits are subject are still intact.

Establishments can do an online permit check (<https://www.omgevingsloket.nl>) before applying for the permit in order to be certain whether a permit really is needed. The permit check is available only in Dutch.

At this time, the Minister of Infrastructure and the Environment (I&M) is preparing further integration of all the various environmental rules (including the Wabo) into a single Environmental Act (Omgevingswet). This Environmental Act should contain a whole new system which should be more transparent than the current system. Whether or not this will be realised and at what time is still uncertain.

15. USEFUL INFORMATION

15.1 WEBSITES

Government information for entrepreneurs: laws and permits in The Netherlands
www.antwoordvoorbedrijven.nl

Tax

www.belastingdienst.nl

Netherlands Central Bank

www.dnb.nl

Customs

www.douane.nl

Ministry of Economic affairs

www.ez.nl

Immigration and Naturalisation Service

www.ind.nl

Ministry of Housing, Spatial Planning and Environment

<http://international.vrom.nl>

EC site on grants, funding and programmes

http://ec.europa.eu/grants/index_en.htm

Amsterdam stock exchange NYSE Euronext

www.euronext.com

The Agency for International Business and Cooperation (EVD)

www.evd.nl

The Netherlands Chamber of Commerce

www.kvk.nl

Ministry of Foreign Affairs / Foreign Embassies in The Netherlands

www.minbuza.nl

Ministry of Finance

www.minfin.nl

Netherlands Arbitration Institute

www.nai-nl.org

Dutch Governmental Organisations

www.overheid.nl

Amsterdam Airport Schiphol

www.schiphol.nl

Ministry of Economic Affairs site on innovation and sustainability

www.agentschapnl.nl

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