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## 1. Introduction to Houthoff Buruma

With over 300 lawyers, Houthoff Buruma is one of the largest law firms in the Netherlands. The firm has a strong focus in the areas of corporate, finance and litigation. Its lawyers provide first-rate client service, as evidenced by the consistently high levels of client satisfaction reported in independent studies. Houthoff Buruma has always been, and still is, a long-established and truly Dutch law firm. The firm has offices in Amsterdam, Rotterdam, The Hague, Brussels and London.

Houthoff Buruma's international experience and status as an independent firm means it is the firm of choice for U.K. and U.S. law firms and companies doing, or looking to do, business in the Netherlands: almost 50% of Houthoff Buruma's business is internationally focused. Due to our membership in the Lex Mundi network, we have excellent relationships with many law firms that share our aim of delivering the best service to clients. Houthoff Buruma can deal with the full spectrum of Dutch law issues and many European law issues as well. Not just having offices in the three largest cities in the Netherlands, the firm is also conveniently situated in the financial heart of London and in the European legislative heart of Brussels.

## Our services

### Practice areas:

- Asset Finance & Structured Finance
- Banking
- Capital Markets (Debt & Equity)
- Construction
- Corporate & Commercial
- IP & IT
- Insolvency, Restructuring & Recovery
- Investment Management
- Labor & Employment
- Litigation & Arbitration
- M&A
- Pensions & Employee Benefits
- Private Equity
- Real Estate
- Regulatory
- Tax

### Economic sectors:

- Automotive
- Corporate Criminal Law
- Emerging Markets
- Energy & Utilities
- EU & Competition
- Health Care
- Insurance & Reinsurance
- Manufacturing & Distribution
- Netherlands Antilles & Aruban Law
- Notarial Law
- Privacy and Data Protection
- Procurement
- Projects & Project Finance
- 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 km <sup>2</sup>
Time zone	CET (UTC + 1)
Calling code	31
Currency	Euro (€)
GDP per country (2008)	€ 595,883 billion
GDP per capita (2008)	€ 35,672

### 2.1 The Netherlands

#### *Geography & climate*

The Netherlands (often called "Holland") is a modern, prosperous nation located in north-western Europe. Having 16.6 million people and an area of 41,526 km<sup>2</sup>, 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 22 million people worldwide. English is also widely understood and spoken. A second official language, Frisian, is spoken by approximately 400,000 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 March 2010 was approx. €1 = US\$1.38. Bank transfers within the euro area are relatively inexpensive.

### *Finance and economy*

The Netherlands has the 16th largest GDP in the world (2008). 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 400 million tonnes of goods every year, 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 of over 1.4 million tonnes of cargo. With passenger numbers totalling 47.4 million, Amsterdam Airport Schiphol was ranked as Europe's fifth-largest passenger airport in 2008. 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 83% 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](http://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](http://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](http://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. However, if a person has obtained from a foreign court a final judgment for the payment of money and this 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.

There are special procedures to obtain approval for the enforcement of a foreign judgment in civil or commercial matters in the Netherlands. For the judgment of a court in another EU Member State (excluding Denmark), the Dutch court’s permission can be obtained within a few days under Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Under this same law, Dutch judgments in similar cases can be enforced in other EU Member States (excluding Denmark). Whether the enforcement of other judgments is possible usually depends on the bilateral agreements between the relevant country and the Netherlands.

Dutch courts generally apply 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 company (*naamloze vennootschap*). This is described further in 3.2 and 3.3.

A foreign investor nowadays also may consider structuring its business as an "SE". "SE" stands for "Societas Europaea". This means "European company" (*Europese vennootschap*). See 3.4. Other corporate forms in the Netherlands include cooperatives, foundations and partnerships of several kinds (see further in this chapter).

A foreign company that is operating a foreign business in Netherlands but has not set up a subsidiary is required to register as a "branch" or "representative office". This is registered at the Trade Registry (*Handelsregister*) of the local Chamber of Commerce (*Kamer van Koophandel*). See 3.9.

## Business Structures

### 3.2 BV

A Dutch 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.

#### *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 the amount of issued share capital.

Prior to incorporation, a ministerial certificate of no objection (*verklaring van geen bezwaar*) is required from the Ministry of Justice. This certificate states that no objection to the incorporation of the BV has been raised. Some information about the incorporator(s) and the nominated directors is submitted as part of the application.

#### *Amendments in 2010*

There is currently a bill before the Dutch parliament that is expected to result in simpler and more flexible rules for a Dutch BV. The bill is expected to become law in the course of 2010.

The most notable change will be the abolition of the requirement for minimum paid-up capital and the abolition of the transfer restrictions. Incorporating a BV will become much easier.

#### *3.2.1 Share capital*

##### *Share capital*

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

The BV can issue several types of shares. Of these types, the most used are common shares, preferred shares and priority shares. Preferred shares differ from common shares in that they entitle the owner to dividend payments before any dividend is paid to the other shareholders. Priority shares are shares that give the holder certain controlling rights, for example, the right to appoint the managing directors or to make a binding recommendation for the appointment of such directors and the right of prior approval of 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 trust office (*stichting administratiekantoor*), which is specifically incorporated to hold and administer the shares. See section 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.

#### *3.2.2 Directors*

##### *Management board*

A Dutch board of directors is called a "management board" (*Raad van Bestuur*) and its members "managing directors" (*bestuurders*). The board has the authority to represent the BV and it manages the day-to-day business of the BV. In principle, each director has the power to represent the company, but the articles may provide that all or some directors must do this jointly. Further, the articles may provide that certain acts taken by the board require approval (e.g. of the shareholders or the supervisory board).



The board may be liable to the BV for mismanagement. A specific board member may be liable for failure to carry out duties specifically assigned to him or her. However, at the annual meeting the shareholders usually discharge the managing directors from liability for their management over the past year. In the event of a BV's bankruptcy, the managing directors are jointly and severally liable for the deficit if the bankruptcy was caused by negligence or improper management in the preceding three years. Individual members can exculpate themselves from this liability by proving that the bankruptcy had nothing to do with their management.

### 3.2.3 Supervisory board

Some large companies in the Netherlands have two boards. In addition to the management board, there is a "supervisory board" (*Raad van Commissarissen*) consisting of a number of "supervisory directors" (*Commissarissen*). The supervisory board's sole concern is to protect the interests of the BV. Its main task is to supervise and advise the management board. Having a supervisory board is mandatory for BVs or NVs that exceed a certain size threshold. A company that has a supervisory board is said to be subject to a "large company regime" (*structuurregime*). However, it is possible for other companies to voluntarily opt to have a supervisory board and to be subject to this regime.

For either a BV or an NV, the size threshold is set out in articles 2:153(2) and 2:163(2) of the Dutch Civil Code (*Burgerlijk Wetboek*). A company must have a supervisory board if:

- 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 by law; 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.

### 3.2.4 Shareholders

#### *General meeting of shareholders*

At least once a year, a general meeting of shareholders (*algemene vergadering van aandeelhouders*) is held. The general meeting of shareholders has all the remaining powers not specifically assigned to the management board or supervisory board. Generally, it decides on issues like amendments of the articles of association and the appointment, remuneration and dismissal of directors on the two boards. The general meeting of shareholders typically has a right of approval regarding certain specific major decisions of the board.

Shareholders' resolutions are usually adopted by a simple majority of the votes, but the articles of association may provide otherwise. Resolutions may also be adopted outside a general meeting if the articles of association so provide and the shareholders unanimously agree on the resolution.



### 3.3 NV

An NV is a public limited liability company. In general, the description of the BV applies to an NV. The law governing an NV is similar to the law governing a BV.

However, there are a few important differences. The minimum issued and paid-up capital for an NV is €45,000. An 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 provide for share transfer restrictions. An NV's shares may be listed on a stock exchange (e.g. Euronext Amsterdam). Also, an NV is authorised to issue depository receipts for shares (*certificaten*) through a trust office (*stichting administratiekantoor*).

### 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.

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

The cooperative (*coöperatie*) 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 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 to obtain a no-objection certificate from the Ministry of Justice and 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.

Another 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.

Foundations are frequently used as legal entity to hold and administer the shares of a company. In this case, the foundation issues the corresponding depository receipts to the receipt holders. These holders do not have a voting right but are entitled to the dividend distribution and the increase of value of the corresponding shares. By issuing depository receipt, the controlling rights and the rights to profits and dividends are not held by the same person, which is in certain cases very useful.

### 3.7 Partnership

There are several types of partnership in 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 liable in equal parts;
- general partnership: all partners are jointly and severally liable;
- limited partnership: the general 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.

The law on partnerships is expected to be amended soon. After the amendment, it will become possible for a partnership to opt for the status of legal entity. This, however, will not change the liability position.

### 3.8 Joint venture

"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, this cooperation taking effect as a separate self-supporting enterprise and the enterprises involved contributing to the know-how of the enterprises and participating in the capital of the enterprise. The joint venture can have the form of an NV, a BV 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 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 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. A sole proprietorship (*eenmanszaak*) must be registered at the Trade Register at the local Chamber of Commerce.

### 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 sells products or services for the account of the principal (whether in the agent's own name or in the name 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 mandatory and therefore the parties cannot contract out 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.

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

#### 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 energy (both gas and electricity), water, certain segments of the postal market, the electronic communications markets and the railway transport sector. Prices are also regulated in the health-care sector and in the public-housing sector. In addition, prices in the retail market for books in the Dutch language 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*). 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. 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, 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. Compensation for damage to the defective product itself falls outside the scope of the liability. Furthermore, the amount of the loss or damage must exceed the threshold of €500 for article 6:185 to be applicable. 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. Advertisements are considered misleading if they contain misstatements of fact or if they are incomplete. 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 to consumers. The act has been integrated into the Dutch Civil Code as articles 193a to 193j of Book 6.

Comparative advertising has been allowed in the Netherlands since April 2002, which is when Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 (amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising) was implemented into Dutch law. Comparing products 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 tobacco, alcoholic beverages, gambling, prescription drugs, etc. Public advertisements about prescription drugs require the authorization of the Inspection Board for the Public Advertising of Registered Drugs (KOAG) in accordance with its articles.



Draws for prizes 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

The GATT rules apply in the Netherlands. Through the European Union, GATT tariff concessions have been integrated into the Dutch customs system and the Dutch authorities comply with them. The Netherlands has conceded powers relating to trade matters to the European Commission, including the power to negotiate international trade agreements.

As a member of the EU, the Netherlands is subject to European customs regulations. 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 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 are imported into the Netherlands (i.e. the Kingdom of the Netherlands in Europe) by sea or by air. 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, consult the website of Dutch Customs [www.douane.nl](http://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](http://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 2009: Regulation (EC) 1031/2008).

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 European Commission, at [ec.europa.eu](http://ec.europa.eu).

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 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).

Until recently, 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) is 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](http://www.ez.nl), link [onderwerpen/exportcontrole](http://www.ez.nl/onderwerpen/exportcontrole)).

## 5. Liquidation, Insolvency and Bankruptcy

### 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, results in the company's liquidation (other than a resolution or act whose object is 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*

If one of the events listed above occurs, the court usually appoints a liquidator. If the court does not appoint a liquidator, the liquidators are 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.

After the appointment of a liquidator the company continues to exist as required for the purpose of the liquidation of its property, rights, interests and liabilities.

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

## Liquidation, Insolvency and Bankruptcy

### *Phase 2: Liquidation phase*

The liquidator handles the liquidation of the company. The liquidator must convert all the company's assets into cash and pay off its debts. If the liquidator determines that the liabilities of the company exceed its assets, the liquidator is obliged to file for bankruptcy unless all known creditors agree to a request by the liquidator for continuation of the liquidation.

### *Phase 3: Final phase*

If there is a surplus after the company's assets are liquidated and all creditors are paid, the liquidator must distribute the surplus to the parties entitled to it pursuant to the articles of association of the company, or otherwise to the shareholders. The liquidator must prepare and issue a report on this (*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

There are two main insolvency processes in the Netherlands:

- bankruptcy (*faillissement*); and
- suspension of payment (*surseance van betaling*).

### *5.2.1 Bankruptcy*

Bankruptcy in the Netherlands is governed by the Dutch Bankruptcy Act (*Faillissementswet*). Involved in the process are a bankruptcy judge (*rechter-commissaris*) and a bankruptcy trustee (*curator*).

#### *Purpose and scope*

The purpose of bankruptcy is ultimately to liquidate the debtor's assets for the benefit of all its creditors. In other words, bankruptcy is a collective way for all creditors to have recourse. All the proceeds of the debtor's assets are distributed amongst the creditors.

During the bankruptcy process, a debtor may offer its debtors a composition (*akkoord*).

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 debtor that has its residence or place of business in the Netherlands and 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 bankruptcy petition is filed at the court office in the judicial district in the Netherlands that is the centre of the debtor's main interests in the Netherlands. For an individual, this is mostly his or her place of residence. For a company, there is a rebuttable presumption that this centre is the judicial district in which the company's seat (*zeteel*) is located. The seat is identified in the articles of association. However, the centre of the company's main interests may be found to be elsewhere if there are objective factors (ascertainable by third parties) that allow the conclusion to be drawn that the centre is in another judicial district.

The bankruptcy process ends in the event of liquidation initiated in one of these four ways:

- 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 creditor verification meeting;
- same, but with no verification 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 verification meeting; or
- court-approved composition becoming final (not subject to appeal).

### 5.2.2 Suspension of payment

Suspension of payment in the Netherlands is governed by the Dutch Bankruptcy Act (*Faillissementswet*). Involved in the process are a bankruptcy judge (*rechter commissaris*) and an administrator (*bewindvoerder*).

### Purpose and scope

Suspension of payment is aimed at giving a debtor in financial distress the opportunity to reorganise its business, to find another means of financing its debts and to continue its business in a profitable manner. The key concept in the suspension of payment is the continuation of the debtor's business.

During suspension of payment, the debtor may offer a composition.

Suspension of payment does not affect secured creditors and privileged creditors. During the suspension of payment the debtor is allowed to continue its business activities, but under court supervision and with the requirement that acts having legal consequences (i.e. juridical acts) first be approved by the administrator.

### Requirements and procedure

The Dutch suspension-of-payment process applies to a debtor that has the centre of its main interests in the Netherlands and the debtor expects that it will not be able to pay its debts when they fall due. An individual can only be granted a suspension of payment 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. This is filed with the court by a Dutch lawyer (*procureur*).

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

- the debtor pays all its debts;
- a court-approved composition becomes final (not subject to appeal); or
- revocation of the suspension followed by bankruptcy. (There is no longer any prospect of the debtor paying its debts. The administrator or one or more creditors files a request with a bankruptcy judge, who then exercises the power to end the suspension of payment.)



## 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.

## Investment Incentives

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](http://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.

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 offers credit insurance services relating to national and international business-to-business trade in capital goods and services, and these risks are reinsured with the Dutch government.

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 Framework Act is currently under review. It is likely that the present system (i.e. risk reinsurance) will be replaced by a formal system that will involve the Dutch government's direct underwriting of export credit insurance and investment guarantee policies for banks and exporters.

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 Temporary Investment Reinsurance Regulation 2004 (which expires on 3 June 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. The Agency International Business and Cooperation (EVD) administers several projects supporting exports and export financing for the benefit of Dutch companies. For more information, see [www.evd.nl/business/evd/index.asp](http://www.evd.nl/business/evd/index.asp).

#### *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](http://www.subsidieshop.nl), a website of the Ministry of Economic Affairs, for more information on subsidies relevant to corporate investment.

#### *Regional subsidies*

Some of the subsidies are available to companies operating in specific regions. One important scheme is Regional Growth Subsidy Scheme (*Subsidieregeling Sterkte in de Regio*, formerly known as *Pieken in de Delta*). This scheme is designed to improve the economy in six regions of the Netherlands. Subsidies are provided for activities that contribute to the business and investment climate in those areas. These activities include those aiming to enhance international business services, development of port facilities and industry, life sciences, food and nutrition, health and technology, and activities in support of technological innovation and a knowledge-based economy. The Ministry of Economic Affairs is making subsidies for eligible projects available to companies and research institutions until 31 December 2010. Project funding has recently increased as a result of the authorization of the temporary aid described at 6.7.

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, energy sectors. Visit the European Commission's website for further information on EU grants, funding and programmes: [ec.europa.eu/grants/index\\_en.htm](http://ec.europa.eu/grants/index_en.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](http://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](http://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:

- free depreciation,
- general investment deduction,
- energy investment deduction,
- environmental investment deduction.

### *Free depreciation*

For certain categories of investments, free depreciation (*willekeurige afschrijving*) may be available. Under a temporary measure introduced in December 2008, new assets important for the economic development of the Netherlands (equipment, means of transport, outdoor installations) could be depreciated in two years starting in 2009 (50% in 2009 and 50% in 2010), provided that the assets are in use before 1 January 2012. The amount of free depreciation is limited to the cost of acquisition or production. Excluded from this tax facility are real estate, immaterial assets (including software), motorcycles and passenger cars (with the exception of energy efficient cars).

As part of the same incentive, but available under different conditions, free depreciation is also possible for assets that are important for the protection of the environment in the Netherlands. It is also available for other assets, in particular, investments by start-ups.

### *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 €2,200 and €300,000 (for 2010).

### *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 €2,200 (for 2010). The energy investment deduction is equal to 44% 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 €115 million (for 2010).

### *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 €2,200 (for 2010). The environmental investment deduction is computed as a percentage of the cost price of each qualifying investment. The percentages vary from 15 to 40%.



## 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 Articles 101 and 102 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, for example, by imposing unfair conditions on buyers or by excluding competitors. Dominant positions arise as a result of mergers or acquisitions (see 7.3 for more on abuse of a dominant position).

The NMa assesses merger proposals to avoid the emergence of concentrations obstructing 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", so this term is used.

## Competition & Public Procurement

## 7.2 Prohibition on cartels

A cartel is an agreement between undertakings or associations of undertakings that restrains competition on all or part of the Dutch market. Concerted practices of this nature are also considered to be a cartel. An “undertaking” here refers not just to a company, but also to a non-profit organisation or other private-sector organisation. Cartels have generally been prohibited since 1 January 1998.

### Exemptions

Under the Dutch Competition Act, there are certain exemptions from this prohibition. If these exemptions apply, the undertakings involved are not required to take any action themselves:

- 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 European competition law or for which the European Commission has granted an individual exemption (articles 12 and 14);
- agreements which do not fall within the scope of the European prohibition on cartels, but do meet the conditions for an EC block exemption (article 13);
- agreements granted a 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).

### 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 or exercised *de facto* leadership in relation to a cartel.

Undertakings and individuals may obtain immunity or a reduction in the fine (leniency). To qualify for leniency, parties must submit a leniency application to the NMa’s Leniency Office and cooperate fully with the NMa.

## 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 a threat to an open and free market if it abuses its dominant position. Examples include an undertaking that:

- charges extremely high prices,
- imposes unfair supply conditions,
- excludes certain buyers from supplies,
- charges different prices for the same performance,
- forecloses competitors from the market, or
- prevents 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 are not in violation of competition law rules. This does not apply to concentrations already subject to regulation 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 (i.e. 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 specific 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

Public procurement rules in the Netherlands are based on two EC directives: 2004/17 and 2004/18. National legislation applies in certain cases, e.g. the purchase of public bodies.

### *Government bodies and associated organisations*

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 any organisation associated with a public body (through financing, supervision or management) are required to comply with the public procurement rules.

### *Airports, ports and utility companies*

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 has been implemented into Dutch law by the adoption of the Decree on the Tendering Rules in Specific Sectors (*Besluit aanbestedingsregels speciale sectoren* or "*Bass*"). Under this law, undertakings active in specific sectors (e.g. airports, ports, gas supply, water supply, electricity) are also subject to public procurement rules.

### *Thresholds*

The obligation to go through the European public tender process only arises where the work involved is for more than €4,845,000 (in 2010). Special thresholds apply for undertakings under the "*Bass*" rules (€387,000) and for services (€193,000), except for national public bodies (*centrale overheid*) the threshold is €125,000.

### *Even under the thresholds, procurement rules sometimes apply*

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

Nevertheless, this obligation may arise if the nature and scope of the task is such that trade between the various EU member states will be affected.

Whenever a company or government body conducts a procurement process, it is required to follow certain rules. This process is to be conducted in good faith. (Supreme Court of the Netherlands, 4 April 2003, RGZ/Conformed).



## 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”)

## Banking, Securities and Pension Funds

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 a "multilateral trading facility" (MTF) situated or operating in the Netherlands, unless a prospectus is generally made available for the offer or admission 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 €50,000 per investor or a denomination of the securities of at least €50,000.



### 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.

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 Consumer Credit Act (*Wet op het Consumentenkrediet*) 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 the Act on Financial Supervision. The AFM is the supervisory body for consumer credit.

Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (and repealing Council Directive 87/102/EEC) has not yet been implemented into Dutch law, but is expected to be implemented before 11 June 2010.

### 8.5 Investment services and activities

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

- (a) provides investment services (including the receipt and transfer of orders, order execution, investment management, provision of advice regarding financial instruments); or
- (b) performs investment activities.

Investment services are provided in the pursuit of a profession or business on behalf of third parties.

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.

### 8.6 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.



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.

#### 8.7 Credit institutions

Pursuant to the Act on Financial Supervision (Wft), a credit institution in the Netherlands is either a bank or an electronic money institution.

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.

An electronic money institution is a party, not being a bank, whose business it is to obtain the disposal of funds in exchange for which electronic money with which payments can be made is issued, including to parties other than the party issuing the electronic money.

A DNB licence is required to do business as a bank or electronic money institution. 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 credit institutions 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 credit institutions 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.

#### 8.8 Bank account in the Netherlands

Under the Act on Financial Supervision, an investor has no obligation to open a bank account in the Netherlands 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.

#### 8.9 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 and NYSE Arca Options.

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.



### 8.10 Stock market (Euronext)

The Amsterdam stock market is called "Euronext Amsterdam". It is part of "Euronext", which is now 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 Euronext NV, a Dutch company that also has subsidiaries operating the securities and derivative markets in France, Belgium, Portugal and the United Kingdom. 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.

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

#### *Three key points*

Corporate income tax is levied on income and capital gains alike at a maximum rate of 25.5% 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 and/or 2010.

### 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 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.

#### *Deduction of expenses*

In principle, all business expenses are deductible (including all expenses relating to foreign shareholdings as from 1 January 2004).

#### *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.

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. A de minimis rule applies pursuant

to which 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.

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 the 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 tax authority. Real estate held as a portfolio investment may not be depreciated to a value lower than the value assessed by the tax authority for Dutch immovable property tax purposes. However, real estate actually used by its owners may be depreciated to half the value assessed by the tax authority 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 (25.5%). 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 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 and/or 2010.

In the event of a significant change in ownership of the shares in the company, the carry-forward of losses may be restricted. 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 qualifies for the participation exemption (see 9.7).

An exemption from Dutch dividend withholding tax also applies to a qualifying 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 an European Union (EU) or an European Economic Area (EEA) State; and
- 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 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.

### *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 will generally apply 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

On 1 January 2006, capital duty was abolished.

## 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 in the following conditions:

- the Dutch entity meets certain substance requirements,
- the Dutch entity meets certain minimum equity requirements,
- the Dutch entity receives an adequate arm's-length handling fee for the activities performed and
- the Dutch entity receives adequate arm's-length remuneration for the equity put 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, which shows 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. A de minimis rule applies pursuant to which 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.



### 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.

#### *New place-of-supply rules for B2B services*

On 1 January 2010, the place-of-supply rules for services were amended. As from this date, services carried out for the benefit of taxable persons by another taxable person (“business-to-business 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, 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. As a result of this new “basic rule” for cross-border business-to-business services, in many cases VAT will no longer have to be charged (and reclaimed).

#### *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. (See section 13 on Expats). Since there is no definition of “resident” in Dutch tax law, the tax residency of an individual is a matter of 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.

## Tax on Individuals

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*

Starting 1 January 2001, the worldwide average net value of the difference in the assets of a taxpayer between 1 January and 31 December 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 2010, the progressive tax rates (including social security contributions) for Box 1 are as follows:

- Income up to €18,218 33.45%
- Income from €18,218 up to €32,738 41.95%
- Income from €32,738 up to €54,367 42%
- Income from €54,367 52%

The 33.45% and 41.95% rates include, respectively, 2.30% 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**

Employers are obliged to withhold tax from salaries and other taxable remunerations paid to their employees. The benefit relating to a company car is also subject to withholding tax. The withholding tax 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 25% Dutch withholding tax, based on the list price of the car. If certain conditions are met, Dutch withholding 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 Dutch withholding tax.

Starting in 2010, cars that were put into use 15 years ago or earlier are subject to withholding tax in the amount of 35% of the market value.

#### *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 Dutch withholding tax. If the actual compensation exceeds €0.19 per kilometre, the surplus will be subject to Dutch withholding 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 withholding 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.



*Mobile phone, blackberry, personal computer etc.*

An employer may provide an employee with a mobile phone, BlackBerry and personal computer free of Dutch withholding tax, if and to the extent that the equipment is used for business reasons 10% or more.

*Dividend withholding tax*

See under "Rates" at 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 donee is subject to gift tax. However, the donor and the donee 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 donee 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

In the Netherlands, patents are protected by the Dutch Patents Act 1995.

Not all inventions are protected. Inventions that are new, that involve an inventive step and that are susceptible to industrial application are protected.

Not protected are discoveries, scientific theories and mathematical methods, esthetic 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.

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.

## Intellectual Property

### 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 Agency) 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

The following European legislation applies 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 (copyright);
- IV. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (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 the Council of 11 March 1996 regarding database protection;
- IX. Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 regarding harmonisation of certain aspects of copyright and neighbouring rights in the information society;
- X. Directive 2001/84/EC of the European Parliament and the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art;
- XI. Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights;
- XII. Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark;
- XIII. First Council Directive 2008/95 of 22 October 2008 to approximate the laws of the Member States relating to trade marks.



- XIV. Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products;
- XV. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;
- XVI. Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs;
- XVII. Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs;
- XVIII. Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products;
- XIX. 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.

#### 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;
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.

### *12.1.3 Collective labour 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, but the scope of the CAO has to be taken into account and, in practice, most employers select the CAO for the company’s specific industry, sector or trade and the CAO 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 times;
- 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 union members and union non-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*

In the Netherlands, another kind of collective agreement is that agreed on at company level.

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 work of the agreed kind 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 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.feestdagen.nl](http://www.feestdagen.nl) or [www.feestdagen-nederland.nl](http://www.feestdagen-nederland.nl)). One holiday (*Bevrijdingsdag*) is obligatory only every five years (2010, 2015, 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.

In Dutch law, an employee may never waive this statutory minimum holiday entitlement in exchange for more compensation. An employee entitled to holidays on termination of the employment has 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.

An employer is moreover 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; or
- apply to the court for dissolution of the employment agreement on "serious grounds".

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.

The dismissal of a pregnant employee or a sick employee is generally prohibited, even if notice is given. 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 month's 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.

An employment contract or CAO may provide for a different notice period. 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 years 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 is disappearing 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 to dismiss twenty or more employees within the jurisdiction of a local Employment Office (*UWV WERKbedrijf*) within a three month period. Prior to these 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 contact 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.) In practice, the court orders dissolution of the employment agreement, but the court also states that the order is effective on a future date. The time between the court issuing its order and the order becoming effective is the notice period. In this way, the employer is deemed to have given due notice to the employee and the employee may therefore receive unemployment benefits during the notice period. Furthermore, in this event, the notice period may be reduced by one month (in accordance with the process described further below for obtaining permission from the Employment Office).

#### 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. Employees are not entitled to board representation.

#### 12.10 Pensions

In the Netherlands the pension promise made to employees is part of the terms and conditions of employment. An employer is not obliged to offer a pension scheme to its employees. However, if a pension agreement is made, the Dutch Pensions Act (*Pensioenwet*) requires the employer to execute the pension promise externally through a legally independent pension fund or by taking out an insurance policy with an insurance company.

Participation in an industry-wide pension fund is mandatory in some sectors, 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 contribution to, that industry-wide pension fund. If a mandatory industry-wide pension scheme applies, an employer may apply for an exemption, but an exemption is generally granted only if the employer offers its employees a pension scheme on financial and actuarial terms similar to the industry-wide pension fund or enters into an agreement with the unions with a comparable outcome.

#### 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 in which the employee’s pay, years of employment, age at retirement and other factors are taken into account. There are two kinds of DB pension schemes: schemes based on career average salaries and schemes based on final pay. Pension schemes based on career average salaries are becoming more widespread and have overtaken final pay schemes as the most popular type of scheme.

In a DC pension scheme, there is an individual account for each participant and the benefits are based solely on the amount contributed to the account, plus or minus income, gains, and the expenses and losses allocated to the account. On retirement, a member’s account is used to provide retirement benefits through the purchase of an annuity. DC pension schemes have also gained popularity in recent years.

In both types of schemes it is usual to provide survivor’s benefits and the disability insurance by providing for contribution-free accrual in the case of disability.



### *Contributions*

An employer is responsible for paying contributions to the pension fund or the insurance company. It can only withhold 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).

Industry-wide pension funds use average contributions (in which age and marital status are not taken into account); insurance companies usually calculate individual premiums on a case-by-case basis. In general, vested pension benefits have to be fully financed on the basis of complex legal funding principles called the "FTK principles". The concept of fully funded is not comparable to the same concept under IAS 19 or FASB 87. The coverage ratio depends on market interest (obligation) and the market value of investments. It is possible for the IAS 19 calculation to show a surplus (with or without an asset ceiling), in which event the fund reports a deficit under the Dutch Pensions Act.

### *Pensions Act*

There are detailed rules in the Dutch Pensions Act about communication with beneficiaries and pensioners, collective and individual transfer of benefits, proration of benefits over the life cycle of employment, vesting and deferral and co-determination. The Dutch Pensions Act also deals with the organisation, governance and financing of pension funds and supervision by the Dutch Central Bank.

## **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 Customs and Tax 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 (2010).

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](http://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)

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

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 €830 (2010), 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](http://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](http://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 have an employment agreement. There are also rules relating to minimum income and other requirements. The exact nature of these requirements depends on whether the employee is “highly skilled” or not.

For further information, contact the Immigration and Naturalisation Service (IND) or visit their website at [www.ind.nl](http://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 (TWV) 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 may be about €600 (2010). If only a regular residence permit (VVR) is requested, the fee may be about €400 (2010). There is no fee for a work permit (TWV).

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 (TWV) is required.



#### *Conditions for granting a work permit (TWV)*

TWVs 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 (TWV).
- 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, 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 or 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 10 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 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 30% ruling also applies for Dutch employees seconded to certain developing countries for periods of at least 45 days a year.

### 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 7.05% (2010) 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 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. 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 can no longer 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 Housing, Spatial Planning and the Environment (VROM) at <http://international.vrom.nl>.

## Environmental Considerations

## 14.2 Environmental law and regulations

### *Legislative amendment expected in 2010*

The current system is expected to undergo a major overhaul sometime in 2010 on the enactment of the General Provisions on Environmental and Planning Law Act (*Wet algemene bepalingen omgevingsrecht* or "WABO"). This wide-ranging legislation includes everything from permits and other environmental decision-making to zoning, construction and demolition. WABO integrates about 25 different permits, notifications, and exemptions into a single permit. There will be a single integrated permit, a single integrated digital application process and a single authority to issue the permit. Needless to say, WABO will change the legal framework described below.

### *Current system*

The framework for Dutch environmental legislation is mainly the Environmental Management Act (*Wet milieubeheer* or "EMA"). Chapter 8 of the EMA regulates the issuance of permits and provides for the general rules applicable to business sites.

Other applicable chapters in the EMA include:

- Chapter 7 (environmental impact assessment),
- Chapter 9 (reach, chemical substances),
- Chapter 10 (waste),
- Chapter 16 (emission trade), and
- Chapter 18 (enforcement).

In addition to the EMA, other environmental legislation and regulations (e.g. those issued by the Ministry of Environment or "VROM") may also be applicable. This includes the following:

- Soil Protection Act (*Wet bodembescherming*),
- Water Act (*Waterwet*),
- National Air Emissions Guideline (*Nederlandse emissierichtlijn lucht* or "NeR"),
- Noise Act (*Wet geluidhinder*),
- Air Quality Act (*Wet luchtkwaliteit*).



### 14.3 Environmental permits

Recently in the Netherlands there has been a process of reducing licensing costs and streamlining regulations. The system for permit issuance in Chapter 8 of the EMA was changed from an individual system to a general system effective 1 January 2008.

For the bulk of business sites (*inrichtingen*), businesses have been relieved of the obligation to obtain an individual permit for each site. The requirement for each site now is to comply with the general regulations stated in a decree issued under the EMA, the Activity Decree (*Besluit algemene regels voor inrichtingen milieubeheer*).

The system used to be that a permit was required for a specific “site” unless stated otherwise. However, under the new system, general rules apply to a site, unless a permit is specifically required under the Activity Decree. (Exceptions are made for certain sites covered by the IPPC, Directive 96/61/EC, as explained further below).

The discharge of waste water from a site is also regulated by the general rules set out in the Activity Decree. In addition, a permit under the Water Act (*Waterwet*) is separately required in the case of direct discharges into surface water.

These regulations are based on the concept of a “site” (*inrichting*). A site is defined as every recurring business activity carried out within certain boundaries. For example, a short, non-recurring event is not a “site”. Keeping horses as a hobby is not considered a “site”. Activities carried out by a ship (i.e. mobile and not already belonging to a specific site) are not considered a “site”.

Sites are specifically appointed and categorised in a special decree called the Sites and Permits Decree (*Inrichtingen- en vergunningenbesluit milieubeheer*). This decree is also designated as appointing the site to the relevant jurisdiction of a municipal or provincial authority.

If an activity with a possible impact on the environment is not covered by the definition of a site, or is not designated in the Sites and Permits Decree, the regulations in Chapter 8 EMA are not applicable. If the activity is a “site”, and does come within a category pursuant to this decree, the following is important.





There are four general categories of sites to which Chapter 8 of the EMA is applicable:

IPPC sites (EMA, art. 8.1(1))

- These sites are not covered by the Activity Decree. A permit is required.

Activity Decree (EMA, art. 8.1(2))

- Category A (no permit is required; minor impact on the environment, such as offices, small retail, schools etc.) - Some rules are applicable.
- Category B (no permit is required; every site that is not in Category A or C) - This applies to most of the sites. All rules are applicable.
- Category C (sites designated in Appendix I; a permit is required) - In addition to a permit obligation, certain relevant chapters in the Decree are also applicable.

For each site, it is important to determine the category of the site, the category determining the regulations (or combination of thereof) that are applicable and the competent authority.

In addition to this, the Activity Decree includes a large chapter containing transitional provisions that are in effect until 2012. For existing sites, the former permit or general rules that were applicable before 1 January 2008 will expire, but the requirements will remain valid for three years.

## 15. Useful Information

### 15.1 Websites

Government information for entrepreneurs: laws and permits in The Netherlands

[www.antwoordvoorbedrijven.nl](http://www.antwoordvoorbedrijven.nl)

Tax

[www.belastingdienst.nl](http://www.belastingdienst.nl)

Netherlands Central Bank

[www.dnb.nl](http://www.dnb.nl)

Customs

[www.douane.nl](http://www.douane.nl)

Ministry of Economic affairs

[www.ez.nl](http://www.ez.nl)

Immigration and Naturalisation Service

[www.ind.nl](http://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](http://ec.europa.eu/grants/index_en.htm)

Amsterdam stock exchange NYSE Euronext

[www.euronext.com](http://www.euronext.com)

## Useful Information

The Agency for International Business and Cooperation (EVD)  
[www.evd.nl](http://www.evd.nl)

The Netherlands Chamber of Commerce  
[www.kvk.nl](http://www.kvk.nl)

Ministry of Foreign Affairs / Foreign Embassies in the Netherlands  
[www.minbuza.nl](http://www.minbuza.nl)

Ministry of Finance  
[www.minfin.nl](http://www.minfin.nl)

Netherlands Arbitration Institute  
[www.nai-nl.org](http://www.nai-nl.org)

Dutch Governmental Organisations  
[www.overheid.nl](http://www.overheid.nl)

Amsterdam Airport Schiphol  
[www.schiphol.nl](http://www.schiphol.nl)

Ministry of Economic Affairs site on innovation and sustainability  
[www.agentschapnl.nl](http://www.agentschapnl.nl)

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