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DOING BUSINESS IN NETHERLANDS





COMPANY FORMATION IN THE NETHERLANDS

MAIN FORMS OF COMPANY/BUSINESS IN THE NETHERLANDS

The main forms of a company in The Netherlands are the Private Limited Liability Company (BV) and a public limited liability company (NV).

Private Limited Liability Company (BV)

Share capital

A BV must have a share capital, divided into a number of shares with a par value expressed in Euro, or a currency other than Euro. There are no requirements for a minimum share capital for a BV. It will be sufficient if at least one share with voting rights is held by a party other than the BV.

Payment for shares can be in cash or in kind. Payments in kind are contributions of property and/or other non-cash items. These payments are restricted to items that can be objectively appraised. If these payments take place upon incorporation of the BV, the incorporators must describe the contributed assets.

Shares

A BV may only issue registered shares. Besides ordinary shares, a BV may also issue priority shares, to which certain (usually voting) rights are allocated in the articles of association, and preference shares, which entitle the shareholder to fixed dividends that have preference over any dividends on ordinary shares. The voting right is linked to the nominal value of the share. However, it is possible to attach different voting rights to classes of shares (even when the nominal values of the various classes are equal). Moreover, it is possible to create non-voting shares and shares without any profit right. Non-voting shares must give a right to profit.

It is not mandatory to include share transfer restrictions in the articles of association. However, if a BV opts to include such restrictions in its articles of association, it will be also be able to include detailed rules on how the price of the shares will be determined. The articles of association may also include a lock-up clause prohibiting the transfer of shares for a specific period.

Shares in a BV are transferred by a deed of transfer executed before a civil-law notary.

The board of directors of a BV must keep an up-to-date shareholders' register, which lists the names and addresses of all shareholders, the number of shares, the amount paid-up on each share and the particulars of any transfer, pledge or usufruct of the shares.

Management structure

The management structure of a BV consists of the board of directors and the General Meeting of shareholders. A BV can, in addition, under certain circumstances have a supervisory board.

Board of directors

The board of directors is responsible for managing the BV. The members of the board of directors are appointed and removed by the shareholders (unless the BV is a large BV). The articles of association generally state that each director is solely authorized to represent the company. However, the articles of association may provide that the directors are only jointly authorized.

The articles of association may provide that certain acts of the board of directors require the prior approval of another corporate body such as the shareholders' meeting or the supervisory board. Such a provision is only internally valid and cannot be invoked against a third party, except where the party in question is aware of the provision and did not act in good faith.



A member of the board of directors of the company can be held liable by the BV, as well as by third parties. The entire board of directors can be held liable to the BV for mismanagement. An individual member of the board of directors can be held liable with respect to specific assigned duties. Besides the liability prior to incorporation and registration, liability towards third parties can occur in several situations. For example, in case of the bankruptcy of the BV, the members of the board of directors are severally liable for the deficit if the bankruptcy was caused by negligence or improper management in the preceding 3 years. An individual member of the board of directors can exonerate himself by proving that he is not responsible for the negligence or improper management.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

There are no taxes due related to establishing a company. When the company has been established the company has to be registered at the Dutch Tax Authorities. After the registration a VAT number will be granted, a number for the corporation tax and for the wage tax. If a company is established under Dutch law it is tax liable for the corporation tax, independent of the place of management.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

A BV is incorporated by one or more incorporators pursuant to the execution of a notarial deed of incorporation before a civil-law notary. The notarial deed of incorporation must be executed in the Dutch language and must at least include the company's articles of association and the amount of issued share capital.

While the BV is in the process of incorporation, business may be conducted on its behalf provided that it adds to its name the letters, 'i.o.' (for 'in oprichting'), which means in the process of being incorporated. The persons acting on behalf of the BV i.o. are severally liable for damages incurred by third parties until the BV (after its incorporation) has expressly or implicitly ratified the actions performed on its behalf during the process of incorporation. A similar liability arises for the persons responsible if the BV is not incorporated or if the BV fails to fulfil its obligations under the ratified actions and the responsible persons knew that the BV would be unable to do so. In the event of bankruptcy within 1 year of incorporation, the burden of proof lies with the persons responsible.

Members of the board of directors are also severally liable to third parties for legal acts performed after incorporation, but preceding the registration of the BV with the Trade Register.

Public Limited Liability Company (NV)

In general, everything mentioned above that applies to the BV also applies to the NV. This section will outline the most significant differences between the NV and the BV.

Share capital and shares

An NV must have an authorized capital. At least 20% of the authorized capital must be issued and at least 25% of the par value of the issued shares must be paid up. The issued and paid-up capital of an NV must amount to at least € 45,000.

Besides registered shares, an NV may also issue bearer shares. Bearer shares must be fully paid up and are freely transferable. Registered shares have to be transferred by executing a deed of transfer before a civil-law notary. An NV is authorized to issue share certificates (certificaten).

If payment on shares is made in kind upon incorporation of the NV, the incorporators must describe the contributed assets and an auditor must issue a statement to the effect that the value of the contribution is at least equal to the par value of the shares. The auditor's statement is to be delivered to the civil-law notary involved prior to incorporation.



PERMANENT ESTABLISHMENT IN THE NETHERLANDS: BRANCH OR SUBSIDIARY?

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A branch is a permanent establishment of a company from which business operations are carried out. Dutch tax legislation has no definition of a permanent establishment. For the definition, the tax treaties are leading. So, for example, there is a permanent establishment if there is a building site or construction or installation project that lasts more than twelve months. No branch is constituted if the activities of the company in Holland only have a preparatory or auxiliary character. An important condition to constitute a branch is whether the people working in Holland are entitled to make decisions, may sign contracts, and/or sell the goods of services of the company. In any case, the question of whether the activities will be qualified as a branch is casuistic and should be checked in the applicable treaty.

Many foreign companies make use of a subsidiary rather than a branch. The main legal reason to set up a subsidiary, instead of a branch, is limitation of liability. As a shareholder of a subsidiary, the foreign company's liability is basically limited to the extent of its capital contribution; whereas, if the foreign company makes use of a branch, it is fully responsible for all the obligations and liabilities of the branch.

One major advantage of setting up a branch is that it does not generally require the same legal formalities required for setting up a subsidiary. However, the simplification and flexibility of the Dutch limited company law (as mentioned above) may well diminish this advantage.

Another important aspect to consider with respect to the choice of setting up a branch or a subsidiary in the Netherlands is the matter of local tax regulations. The choice of setting up a branch or a subsidiary will be determined based on the circumstances and relevant factors with respect to the business as such, and the Dutch tax regulations and tax treaties.

TAX AND ACCOUNTING OBLIGATIONS

A branch has to be registered at the Dutch Chamber of Commerce. With the number of the Chamber of Commerce, a branch can apply for registration at the Dutch tax authorities. A VAT number will be granted to the branch. If the activities of the branch do not apply for a VAT exemption, every month or every quarter the branch is obliged to fill in a VAT tax form. In most situations there will be staff working for the branch. For these employees the branch has to take care for pay rolling and is obliged to pay wage tax every month. Once a year a corporation tax return has to be made. Only corporation tax is due for the profits that can be attributed to the branch. To prevent the payment of huge interest, it is profitable not to wait until the year passed away, but to apply for a provisional assessment.

REGISTRATION FORMALITIES

Registration of a branch is quite easy. A representative of the company registers the branch at the Dutch Chamber of Commerce. For this registration, the Chamber of Commerce uses standard forms. It is not obliged to go in person to the Chamber of Commerce. Notarized documents can also be sufficient for identification. After this registration, the registration at the Tax office is quite simple, only requiring completion of some standard forms.



STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

Besides the aforementioned tax obligations, the branch has to carefully provide good bookkeeping. Every year the branch has to publish the annual accounts of the branch at the Chamber of Commerce. Furthermore, all legal requirements that apply for Dutch companies apply for the branch. This concerns, for example, minimum wage rules, collective agreements for employees, and permit requirements.



HOW TO HIRE MY FIRST EMPLOYEE IN THE NETHERLANDS

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Personnel

Dutch legislation includes various provisions to secure the rights and obligations of both employer and employee in the Dutch employment market. As a general rule, the employer and employee should behave according to the standard of good employership or employeeship respectively. The employer has a number of specific legal obligations with respect to work and rest times, leave, and working conditions.

Employment relationships

According to Dutch law, three different general types of agreements are used to determine the rights and duties of persons performing activities in the course of a business for another party. The employment agreement ('arbeidsovereenkomst') is the most common agreement. The others are assignment agreement and contracting agreement.

Essential features of the employment agreement are the obligation to perform labour in person in return for pay, and the authority of the other party to give instructions as to how the labour is to be performed. Other agreements lack one or more of these features.

The employment agreement itself is not subject to rules regarding its form. According to Dutch labour law the employer is under the obligation to provide certain information in writing to the employee with respect to the employment agreement. This relates among others to place of work, job title, the date the employment agreement enters into force, remuneration, working hours, terms and conditions relating to holidays, and the applicability of any collective labour agreement.

Governing law and collective labour agreement (CAO)

The parties to an employment agreement are limited to negotiations of their own terms and conditions by both Dutch labour law and any applicable collective labour agreement (CAO), since these contain many mandatory rules on terms and conditions of employment. It depends on the branch if there is a CAO. It is also possible that no CAO is applicable.

Employment law regulations

Employment relations in the Netherlands are mostly regulated by the Dutch Civil Code ('Burgerlijk Wetboek'). An important principle of the employment provisions of the Dutch Civil Code is the protection of what is known as the weakest party, i.e. the employee. Apart from the Dutch Civil Code, regulations concerning labour law can be found in several other regulations and legislative acts, such as the Works Council Act and the Working Conditions Act.

Minimum wage

There is a legal minimum wage for employees aged from 15 till 23 (published by the government). The minimum wage for employees aged 23 or over is € 1,507.80 gross per month, excluding 8% holiday allowance).

Employment agreements

Parties are free to enter into consecutive employment agreements for a fixed period of time, ending by operation of law, however two restrictions (chain provision) apply:

1. The aggregate duration of the consecutive employment agreements (with interruptions of not more than 6 months) may not exceed 24 months; if the aggregate duration is longer than 24 months (interruptions



included), the last employment agreement shall be deemed to be an employment for an indefinite period of time.

2. The number of consecutive employment agreements must be less than 4. If the number of consecutive employment agreements exceeds 3 (while there are no interruptions of more than 6 months in between the employment agreements), the fourth employment agreement will be considered to be an employment agreement for an indefinite period of time.

Termination of an employment agreement

With respect to termination of an employment agreement, a distinction must be made between an employment agreement for a fixed period of time and an employment agreement for an indefinite period of time. There are several ways for employment agreements to terminate: e.g. Parties can agree upon a probation period, Lapse of the agreed period, Summary dismissal, Dissolution by the Court.

Working conditions

Under Dutch law, the employer is responsible for organizing work in such a way that it protects the safety, health and well-being of the employees in accordance with a statutory set of standards and criteria. In principle, all employers are highly recommended to avail themselves of the professional assistance of a certified occupational health service ('Arbodienst') in respect of the implementation of a significant part of the applicable health and safety measures (for example the occupational health medical examination).

Foreign Nationals (Employment) Act

Workers from the European Union, EEA countries (Norway, Iceland and Liechtenstein) and Switzerland do not need special permits to work in the Netherlands. Non-qualifying nationals, however, do need a 'residence permit for work' permit to work legally in the Netherlands.

As of 1 January 2014 the Foreign Nationals (Employment) Act was amended. The employer applies for the residence permit. There are different types of residence permits, including for regular employment, as a highly skilled migrant, holder of a European blue card, lecturer, (guest) lecturer, trainee doctor, or scientific researcher. For the highly skilled with no employer a residence permit for a search year is possible. This residence permit gives the right to find an appointment as a highly skilled migrant within one year.

When applying for the residence permit, the employer acts as sponsor. The sponsor is responsible for the employee complying with the conditions. A residence permit for regular employment can be applied for by any employer with a branch or commercial agent in the Netherlands. Registration of the employer with the Chamber of Commerce is required.

To be admitted as a highly skilled migrant income requirements are laid down. To be admitted as a trainee doctor or (guest) lecturer, the employer making the application must be a sponsor authorised by the IND (Immigration and Naturalisation Service of the Ministry of Security and Justice). Authorisation is carried out by the IND. The authorisation as a sponsor is in a number of cases a condition for the application for the residence permit.

Employees with a European blue card are employees who carry out highly qualified work within the European Union and meet the salary and training requirements. For scientific researchers admission to the Dutch labour market is regulated by EU Directive 2005/71/EC.

With effect from 2014 the UWV is obliged every year to check a job taken by a foreign employee (from outside the European Union, EEA countries or Switzerland) against the labour market status. The recruitment efforts of employers who wish to recruit or continue to employ foreign workers required by law issue no more than an employment permit for a maximum of one year (up to 2014 a maximum of three years). After five years (up to 2014 after three years) labour migrants gain free access to the Dutch labour market. After that a permit may be refused if an employer has in the past been sentenced for infringing labour legislation.



HOW TO READ FINANCIAL STATEMENTS IN THE NETHERLANDS

The basic Dutch Financial Statements always consist of:

- Balance Sheet
- Profit and Loss Account
- Disclosure (General disclosure giving details on the accounting rules used by the entity, and specific disclosure on significant events, balance sheet items and P&L items)

Following is a translation of the Balance Sheet and Profit and Loss Account items from Dutch to English.



Waardeveranderingen vorderingen vaste activa en effecten	Value changes of receivables from fixed assets and securities				
Rentelasten en soortgelijke kosten	Interest and similar expenses				
Totaal financiële baten en lasten	Total financial income and expenses				
Bedrijfsresultaat vóór belastingen	Total operating income before taxes				
Belastingen	Taxes				
Drukkende vennootschapsbelasting	Company income taxes				
Vrijval belastinglatentie	Release deferred taxes				
Aandeel in resultaat deelnemingen	Share in result of participations				
Dividend uit deelnemingen	Dividend of participations				
Resultaat deelnemingen	Result of participations				
Buitengewone baten en lasten	Extraordinary results				
Buitengewone baten	Extraordinary income				
Buitengewone lasten	Extraordinary expenses				
Belastingen buitengewoon resultaat	Taxes on extraordinary result				
Resultaat aandeel derden	Result third party share				
Aandeel derden in groepsmaatschappijen	Third party share in group companies				
Aandeel derden in overige participanten	Third party share in other participations				
Netto resultaat na belastingen	Net result after taxation			0	0