

DOING BUSINESS IN THE NETHERLANDS

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(Important Notice:

The information in these notes is intended to give an introduction in outline of the subject. These notes do not constitute legal advice, and are therefore not a comprehensive commentary on the subject. Detailed legal, tax and accountancy advice should always be obtained before proceeding with any business activity in the Netherlands.

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INDEX

| | |
|--|----|
| I. General Information on The Netherlands | 2 |
| 1. Information on the Country | 2 |
| 2. The Organisation of the Dutch State | 3 |
| II. General Information on the Dutch Legal System | 4 |
| 1. Civil Law | 4 |
| 2. Administrative Law | 4 |
| 3. Tax Law | 4 |
| 4. Criminal Law | 5 |
| III. Doing Business | 5 |
| 1. Businessmen and Business Vehicles | 5 |
| 2. Means of Starting a Business | 5 |
| 3. Brief explanation of the three main and some alternative options: | 5 |
| 3.1 Individuals Doing Business | 5 |
| 3.2 Corporate Vehicles which are Legal Entities / Bodies Corporate | 5 |
| 3.3 Contractual Vehicles | 6 |
| 3.4 Foundations | 6 |
| 3.5 Other Vehicles | 6 |
| 4. Incorporation of a Body Corporate | 6 |
| 4.1 General Requirements | 6 |
| 4.2 Minimum Share Capital B.V. and N.V. | 7 |
| 4.3 Board of a B.V. (two-tier and one-tier) | 7 |
| 5. Compliance and Filing Requirements | 8 |
| 5.1 General Requirements | 8 |
| 5.2 Regular Filing Requirements | 8 |
| IV. Sources of Trade, Commercial and Statistic Information | 9 |
| V. Legal Services | 9 |
| VI. Accountancy and Tax Services | 10 |
| VII. Further Information | 10 |
| VIII. Contact | 10 |

I. GENERAL INFORMATION

I.1 General Information on the Country

I.1.1 Basic Information

The Netherlands is a densely populated country (17,5 million inhabitants) with a surface of 42,000 km² of which 20% lies below sea-level.

Dutch is the official language spoken in the Netherlands but in the province of Friesland, Frisian is also recognised as an official language.

However, almost all Dutch have a fair command of English and most have basic command of German and/or French, as these languages are taught in secondary school.

Amsterdam is the capital of the Netherlands; however, the government is located in The Hague.

I.1.2 Economic Centres and Infrastructure

The “Randstad area” is the most densely populated, economically leading area.

By Randstad, the Dutch refer to the area which is roughly formed by the area containing and encircling the cities of The Hague, Amsterdam, Utrecht and Rotterdam. It covers parts of the provinces of South- and North-Holland as well as of the province of Utrecht.

The pan-European and international hub, Amsterdam Airport, is also situated within that area.

The infrastructure of the Netherlands is very well developed.

By air almost every important international destination can be reached directly.

The national railway, bus and light-rail network, as well as local transport by bus and/or tramway is calling on major and smaller stations, thus providing frequent service. Motorways are well maintained and have recently been expanded, which has led to some reduction of traffic jams.

Rotterdam, a leading harbour in the world, is also known as the main-gate to Europe. It has direct access to all European countries by water, rail and road. However, the Rotterdam area is also known for petrochemical facilities, refineries and storage of oil and gas, as well as electronic industry and automotive services.

Amsterdam is well-known for providing financial and other services, e.g., trust-services because of certain tax facilities available. However, the Amsterdam harbour is also a very big and important world harbour, which is a focal point for the world trade of goods, e.g., cacao.

The Hague has a longstanding reputation as the legal capital of the world. The city hosts various international courts and institutions, including the Peace Palace, hosting the UN International Court of Justice and the UN International Criminal Court as well the OPCW, UN Organisation for the Prohibition of Chemical Warfare.

The northern and eastern parts of the Netherlands are renowned for their high quality and high-tech production of agricultural products.

The east also produces natural gas and oil, whereas the western part of the Netherlands is focussed on trade and logistics as well as on providing services.

The south is the industrialised production area, producing e.g., chemical and all kinds of technical plants and related trade.

I.1.3 Workforce and Quality of Life

The Dutch workforce (approximately 8 million people) is renowned as a reliable partner in business, consisting of highly educated and skilled individuals.

Trade unions are not so much an adversary, but a co-operative partner, in regulating employment matters.

Labour conflicts are generally resolved without strikes through amicably reached compromise through negotiations between all parties involved, e.g., the government, the employers and the trade unions. (This modus operandi is also referred to as the “Dutch polder model”.)

Unemployment is traditionally low.

The standard and the quality of life in the Netherlands are regarded as one of the highest in Europe. Although some areas are very densely populated, there are vast areas of land and water which offer excellent recreational value.

For expats certain attractive tax provision are applicable, e.g., reducing the income tax due by up to approximately 30%

I.2 The Organisation of the Dutch State

I.2.1 Basic Information (organisational and political)

The Dutch State is organised as a constitutional monarchy governed by a parliamentary democracy.

The directly elected Second Chamber (the Commons) consists of 150 members of parliament.

The First Chamber consists of 75 senators, who are elected indirectly.

These two chambers are the highest ranking democratically elected and legislative bodies.

Both Chambers and the Central Government are located in The Hague.

The Central Government comprises the Head of State, at present King Willem Alexander, and the ministers (a prime minister, vice-prime ministers, several ministers and vice-ministers).

The King does not actively participate in matters of state. However, the head of state is informed and consulted with on a regular basis.

At present a coalition government, consisting of VVD (liberal party), D66 (liberal democrats), CDA (Christian Democrats) and CU (Christian Union) ministers, headed by prime-minister Mark Rutte (VVD) is in power.

I.2.2 Provinces and Municipalities

The country is divided into 12 provinces. Each province is headed by a government appointed King's Commissioner. Provinces have a certain form of legislative and decision-making autonomy. Each province has a capital where the provincial government is located. However, the Netherlands is not a federal state.

Furthermore the Netherlands at present has 352 municipalities, each governed by a directly elected municipal council which controls the council of aldermen. A state appointed, non-political major is the senior executive and presides over the council meetings.

Within the frame of existing legislation, the Provinces and the Municipalities have (although limited) legislative and executive power.

An important task of the provinces and the municipalities lies in issuing permits and licenses for all kind of works, enterprises etc.

The directly elected representatives of the provincial governments in turn elect the senators of the first chamber.

II. General information on the Dutch Legal System

II.1 Civil Law

The Dutch Civil Code, containing the material civil law, is divided into 10 Books, each dealing with a specific part of the Civil Law.

The interpretation of the Civil Law is guided by the jurisprudence of various Courts, but final decisions are held by the Dutch Supreme Court.

The Dutch Civil Procedural Rules are a codex containing the formal civil law.

In general, the court system has three levels: the court of first instance, the court of appeal, both of which deal with matters of fact and law, and the supreme court, which deals with matters of law only.

II.2 Administrative Law

The Administrative Code contains material and formal legal requirements, defining rights and obligations which apply in the matters between the authorities and the citizens.

The basic rule is that the individual rights of every citizen (including businesses, enterprises, bodies corporate etc.) are safeguarded by a system in which a judge finally decides disputes and issues verdicts which also bind the state or the authority which has been a party to the proceedings.

In general, the administrative law system also has three levels, whereby the Council of State (the supreme court in administrative matters), acts as highest legal instance.

II.3 Tax Law

The Dutch tax law and system reflects the awareness of the Dutch authorities of their position within the global economy. Therefore, the tax climate for entrepreneurs is favourable in many aspects and creates an attractive basis for all kind of international businesses and groups of companies.

“Advanced Pricing Agreements” and “Advance Tax Rulings”, arrangements as well as treaties exist with leading states providing e.g. relief from double taxation and in some cases relief of taxation at source as well. In addition, there is no withholding tax on interest and royalties.

Although these issues are worldwide discussed, the present tax regime still proves to be attractive for foreign investors and enterprises.

For further information, please inspect: www.minfin.nl/english

II.4 Criminal Law

Apart from the Criminal Code, which contains the basic material Criminal Law and the Criminal Procedure Rules, which contain formal criminal law, various special laws contain rules, which when disregarded, carry fines and/or imprisonment and/or confiscating profits made illegally. Criminal offences involving business are often punishable and dealt with as provided for in the “*Wet op de economische delicten*” (Law on economic business and financial offences).

III. DOING BUSINESS

III.1 Individuals, Businessmen, and Business Vehicles

The Dutch legal system does not distinguish between individuals who are businessmen or those individuals who are a private person only.

A body corporate has, in as far as possible, the same rights and obligations as an individual.

III.2 Means of Organising and Setting up / Starting a Business

Setting up a business is possible through e.g.:

- (i) starting to do business as an individual (single trader), or
- (ii) incorporating a corporate vehicle/body corporate to utilise for doing business, or
- (iii) as individual(s) and/or company(ies) setting up a contractual business vehicle.

III.3. Brief Explanation of these Three Main Options and some Alternative Options:

III.3.1 Individuals:

an individual who does business, e.g., sets up an enterprise using a business name, is referred to as “*Mr./Ms. X handelend onder de naam Y*”, which reads, Mr./Ms. X conducting business under the business name Y.

III.3.2 Corporate Vehicles/Bodies Corporate:

- the “*besloten vennootschap met beperkte aansprakelijkheid*”, B.V., a private limited liability body corporate (company) with shares (held by registered shareholders only), whereby shares may generally only be transferred by a notarial deed and if the blocking provisions in the articles of association have been observed.
- the “*naamloze vennootschap*”, N.V., a private or public (listed) body corporate (company) on shares, whereby the shares basically are held by shareholders and the transfer of shares is generally not restricted.

III.3.3 Contractual Vehicles:

- the “*maatschap*” is a specific form of association of individuals and/or bodies corporate (which does not require a written agreement to be established), doing business/providing certain services, whereby each participant is personally pro rata liable in respect of liabilities acquired by the association, which is basically a fiscal transparent vehicle.
- the “*vennootschap onder firma*” is a specific form of association of individuals and/or bodies corporate (established by a written agreement), doing business under a certain name, whereby each participant is personally and fully liable in respect of liabilities of the association, which vehicle is fiscal transparent, but only after the assets of the association have been liquidated.
- the “*commanditaire vennootschap*” is a specific form of association which has active and silent associates (for which individuals and bodies corporate qualify) (established by a written agreement), doing business under a certain name. However only active participants may be held personally and fully liable for the sum of all liabilities of the association, which is a fiscal transparent vehicle, but only after the assets of the association have been liquidated. The liability of the silent associate is limited to the investment the silent associate contributed to/invested in the association.

III.3.4 Foundations

“*Stichting*”, (“foundation”), has been disregarded, because this body corporate is not intended for business operations, although if used for such purpose, which is not prohibited, the tax regime applies similarly as it were an ordinary business enterprise.

III.3.5 Other Vehicles

Only the most common vehicles have been summed up above. However, there are other vehicles which are often used for specific types of business or co-operation, or which are used in order to optimise a certain tax situation or limit certain risks or liabilities. No attention has been paid to the European Bodies Corporate e.g., the *Societas Europaea* (SE)

III.4 Incorporation of a Body Corporate

A body corporate can only be incorporated by a notarial deed issued by a Dutch civil law notary. The notary, however, may only incorporate a B.V. or a N.V. after compliance with various requirements by the incorporating party(ies), including but not limited to identification, verification, providing specified information on the ultimate beneficial owner(s) (UBO), politically exposed persons (PEP), participants and prospective board members and competence of all of those who are involved in the formation. These requirements are predominantly anti-money laundering and terrorism law based.

It is advised to keep in mind, that the incorporation may take some time, especially if certain documentation has to be obtained abroad, which might have to be certified before these may be presented and/or submitted to the Dutch authorities. Since the actual documents required depend on many different matters of fact, it is impossible to provide a general list.

A copy of a separate publication is available upon request by e-mail to: pjf@fresacher.nl

III.4.1 Minimum Share Capital

No minimum share capital is required any more for incorporation of a B.V. However, a share capital of e.g., € 1.00 may shed doubt in respect of the seriousness of the business, whereas if the share capital is set and paid-up at e.g., € 18,000.00 (the abolished former minimum share capital), the B.V. is likely to be assumed trustworthy.

The minimum share capital at incorporation of a N.V. is still € 45,000.00.

III.4.2 Management Board

At the moment of incorporation, the “*bestuur*”, the executive management board (and in as far applicable, the “*raad van commissarissen*”, the non-executive supervisory board) will be appointed for the first time, which is reflected in the notarial deed.

The separation between the executive and the supervisory board in two different organs reflects the classic, predominant Dutch two-tier board system.

However, the articles of association of the B.V. may provide for a one-tier board. This would lead to one organ/body within the B.V. which consists of all of the executive management board members as well as all of the non-executive supervisory board members.

Thereafter the appropriate “*orgaan*” organ or body of the corporate entity takes care of dismissals and new appointments, as provided for by law and or the articles of association. (The executive management board as well as the supervisory non-executive board and the general meeting of shareholders are organs of the body corporate.)

A resident as well as a non-resident foreign individual or legal entity may be appointed a member of the executive management board.

However, only an individual may be appointed a member of the non-executive supervisory board.

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III.5. Filing Requirements

III.5.1 General Filing Requirements to be Observed

Every enterprise, every individual doing business and every body corporate is obliged to register with the Commercial Register. There is one Commercial Register which is kept by the “*Kamer van Koophandel (KvK)*”, Chamber of Commerce.

The registration has to be kept up-to-date and filing requirements have to be observed.

This also applies for the UBO (ultimate beneficial owner) register kept by the KvK.

Every enterprise, every individual doing business, and every body corporate is also obliged to register with the Tax Authorities, apply for a tax identification number, and apply for tax return forms under tax laws cover e.g., “*BTW*” (Value Added Tax, VAT), “*LH*” (Salary Tax and Premium Social Benefits) etc. and file tax returns as required.

III.5.2 Regular Filing Requirements to be Observed

The annual accounts have to be filed with the Commercial Register within the period of time set in the applicable Corporate Law (Book 2 of the Dutch Civil Code).

Non-compliance is fined and it may trigger director’s personal liability.

The appointment as well as the resignation of company directors, associates etc. has to be filed with and is subsequently published by the KvK.

The filing of tax returns regarding VAT, LH (salary tax and social benefits premium), as well as Corporate Tax are also examples of regular filing requirements.

It goes without saying, that a number of other legal and filing requirements, stemming e.g. from immigration laws, Health and Safety at Work regulations, collective labour agreements etc. have, where applicable, to be observed by every enterprise, individuals doing business and every body corporate.

IV. General Business, Trade and Commercial Information

The Chamber of Commerce (KvK) provides general information on various topics regarding e.g., the starting of a business, the registration of a company etc.: www.kvk.nl/english

Various ministries and governmental agencies provide information and these can be found on the internet, e.g.:

- Dutch ministry of economic affairs: www.minez.nl
- Dutch ministry of finance: www.minfin.nl
- Dutch ministry of foreign affairs: www.minbuza.nl

However, also various governmental or publicly funded agencies may be found on the web as well, e.g.:

- Dutch Economical and Trade Board (EVD): www.evd.nl
- Dutch Internal Revenue Service: www.belastingdienst.nl
- Dutch Statistic Institute (CBS): www.cbs.nl
- Dutch board for work and income (CWI): www.werk.nl

(Most of these web-sites provide (focal) information in English as well.)

V. LEGAL SERVICES

Legal advice and services are primarily provided by solicitors/advocates (“*advocaten*”) and by civil law notaries (“*notarissen*”). Both titles, “advocaat” as well as “notaris”, are exclusive titles protected law.

Both, advocates as well as civil law notaries are regulated by their respective law societies and both are e.g. required to annually fulfil obligations under a permanent education scheme. Both have to obey strict professional rules, laid down in disciplinary law and both are subject to the enforcement by internal disciplinary boards.

The solicitor (“*advocaat*”) is the advisor of the client, representing the client and only having only the client’s interest at heart.

By law the solicitor is bound to professional secrecy.

The solicitor also represents clients in court cases where legal representation, by e.g., a solicitor or a barrister, is required by law.

The civil law notary (“*notaris*”) is a state appointed civil servant, although not remunerated by the state, who issues notarial deeds, authenticated documents which mostly certify a specific legally relevant acts, e.g., the transfer of title of shares in a B.V.

A notarial deed is often required by law in order to achieve a certain result e.g., a transfer of title.

It is, however, advisable to see a solicitor first. This enables the client to take out overall legal advice, also on forehand covering areas and themes which are not covered by civil law notaries.

After the solicitor has full insight in e.g., what the client wants to achieve, how the client would prefer to do that and how the entire project has to be imbedded and fitted into the (foreign jurisdiction) group of the client, the solicitor will be instrumental to guide the client and refer the client for specialist advice e.g., regarding administrative matters, tax, accountancy but also housing and all other related issues a client encounters when setting up a business in the Netherlands.

Seeing a solicitor first is simply a pragmatic choice which saves time, effort and costs.

VI. ACCOUNTANCY SERVICES

Dutch law distinguishes between an accountant (“*Accountant-Administratieconsulent*” (AA)) and a chartered accountant (“*Registeraccountant*” (RA)).

In order to use either of these two titles or to call oneself “accountant”, registration in the Dutch accountant’s register, which is kept by the (“*Nederlandse beroepsorganisatie van accountants*” (NBA)), is obligatory.

An AA primarily focusses on accounting and registering, whereas a RA predominantly engages in certifying e.g., annual accounts and certain returns.

Both the AA as well as the RA are regulated by the NBA, and both are bound by a professional code and subject to enforcement by internal disciplinary boards.

VII. FURTHER INFORMATION

It goes without saying, that this publication merely scratches the surface.

Many questions and issues have not even been touched upon.

Therefore, please feel free to contact the author directly if you would like to address other questions or issues.

VIII. CONTACT

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