

DOING BUSINESS IN THE NETHERLANDS

Important:

The information in this note is intended to give an introduction in outline of the subject. This note does not constitute legal advice, and is not a full or exhaustive commentary on the subject. Detailed legal and accountancy advice should always be obtained before proceeding with any business activity in the Netherlands.

(Re-)publication, by whatever media or means or in whatever format, is prohibited.

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I. GENERAL INFORMATION

General information on the country

The Netherlands is a densely populated country (490 inhabitants per km²) 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.

(Almost all Dutch have a fair command of English and they can usually also communicate in German and/or French, as these languages are taught in secondary school.)

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

The “Randstad area” is the economically leading area.

By Randstad, the Dutch refer to the area which is roughly formed by the densely populated 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 hub, Amsterdam (Schiphol) Airport, is situated within that area.

The infrastructure of the Netherlands is very well developed.

By air one can reach almost all important international destinations 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 a drastic reduction of traffic jams.

Rotterdam, a leading harbour in the world, is also known as the main-gate to Europe, with direct access by water, rail and road. However, there are also facilities to produce and finish products, e.g. refineries, electronic industry, automotive services etc.

Amsterdam is well-known for providing financial and other services, e.g. trust-services because of certain tax facilities available. However there is also an extensive 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, hosting the various international courts and institutions, including the Peace Palace, hosting the International Court of Justice and the International Criminal Court.

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.

The Dutch workforce (some 8 million people) is regarded as a pleasant, 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 amicable settlements reached through negotiations between all parties involved, e.g. the government, the employers and the trade unions. (This means is referred to as the “polder model”.)

Unemployment is traditionally low.

The standard and the quality of living 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.

The Organisation of the Dutch State

The Dutch State is organised as a constitutional monarchy governed by a parliamentary democracy. The Second Chamber (consisting of 150 parliamentarians) is elected directly, whereas the First Chamber (consisting of 75 senators) is elected indirectly.

These two chambers are the highest ranking democratically elected and legislative organs. Both Chambers and the Central Government are located in The Hague.

The Central Government consists of the Head of State, at present Queen Beatrix, and her ministers (a prime minister, a vice-prime minister, several ministers and vice-ministers).

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

At present a minority government, consisting of VVD (liberal party) and CDA (christian democrat party) ministers, headed by Prime-minister Mark Rutte (VVD) is in power. This coalition is support by the PVV (right wing liberal democrats) who do not participate.

The country is divided into 12 provinces, each with a provincial capital where the provincial government is located.

Furthermore the Netherlands counts 430 municipalities, each governed by a directly elected municipal council which acts as commons in respect the council of aldermen and a state appointed major.

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

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

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

II. General information on the Dutch legal system

Civil Law

The Dutch Civil Code, containing the material civil law, is divided into 8 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 Procedure 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.

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 organ which has been a party to the proceedings.

Tax Law

The Dutch tax law and system reflects the awareness of the Dutch authorities of their position with a global economy. Thus the tax climate for entrepreneurs is favourable in many ways.

As well as “Advanced Pricing Agreement” and “Advance Tax Ruling” arrangements, treaties also exist with leading states providing 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. This all provides an attractive tax regime for foreign investors and enterprises.

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

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 laws contain rules, which when disregarded, involve financial penalty and/or imprisonment with the emphasis on rehabilitation into society.

III. DOING BUSINESS

Businessmen and business vehicles

The Dutch legal system does not distinguish between an individual who is a businessman or an individual who is a private person.

Means of starting a business

Setting up a business is possible through

- (i) starting to do business as an individual, or
- (ii) indirectly, through incorporating a corporate vehicle, or
- (iii) individuals and/or bodies corporate may start a business after having concluded an association agreement as a fiscal transparent company.

(i) Individuals doing business:

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

(ii) Corporate vehicles which are legal entities / bodies corporate:

the “*besloten vennootschap met beperkte aansprakelijkheid*”, B.V., a private body corporate (company) with shares (held by registered shareholders only) with limited liability, whereby the shares may only be transferred by a notarial deed and after the blocking provisions in the articles of association have been observed.

the “*naamloze vennootschap*”, N.V., a private or public (listed) body corporate (company) with shares, whereby the shares basically are held by anonymous shareholders and the transfer of shares is not restricted.

(iii) 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 parte liable for the liabilities acquired by the association, which is fiscally transparent.

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 for all liabilities of the association, which is fiscally 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 (individuals and/or bodies corporate) (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 fiscally transparent, but only after the assets of the association have been liquidated. The liability of the silent associate is limited to the investment he contributed to the association.

(iv) Foundations

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

(v) Other Vehicles

Only the most common vehicles have been detailed 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.

General Filing Requirements to be Observed

Every enterprise, every individual doing business and every body corporate is obliged to register with the Trade Register or Commercial Register, kept by the various local Chambers of Commerce. The registration has to be kept up-to-date and filing requirements have to be observed.

Every enterprise, every individual doing business and every body corporate is also obliged to register with the Tax Authorities and apply for a tax identification number and apply for tax returns under tax laws who cover e.g. B.T.W. (Value Added Tax), LH (Salary Tax and Social Benefits) etc.

Regular Filing Requirements to be Observed

It goes without saying, that a number of other legal 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, individual doing business and every body corporate.

Incorporation of a Body Corporate

A body corporate can only 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, various requirements have been complied with, including having approved the articles of association as complying with

the law as well as with the guidelines issued by the Dutch Ministry of Justice, as well as having received proof of the share capital having been made available to and put at the disposal of the body corporate to be incorporated.

(A major revision of the Company Law is pending and it is expected, that it will be adopted and subsequently come into force by mid 2012. Therefore major changes may be expected in the Company Law shortly.)

Also specific requirements under the anti-money laundering and terrorism laws have been met.

(One has to be aware of the fact, 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. The actual documents that are required depend on many different matters of fact, and so it is not practical to provide a list.)

Please view our publication on this issue, which is in our Publications page.

Minimum Share Capital

The minimum share capital required to incorporate a B.V. is Euro 18,000.00 and for a N.V. is Euro 45,000.00.

(The minimum share capital requirement has been abolished for the B.V. but that law has yet to come into force.)

Management

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. Thereafter the appropriate “*orgaan*” body of the corporate entity takes care of dismissals and new appointments.

A resident or a non-resident foreign individual or legal entity may be appointed as a member of the management board. However, only an individual may be appointed member of the non-executive supervisory board.

Please view our publication on this issue, which is in our Publications page.

IV. General Trade and Commercial Information

The various regional Chambers of Commerce provide general information on various topics regarding e.g. the setting-up of a business, the incorporation of a company etc.

The web-site of the Federation of Chambers of Commerce provides basic information in English: www.kvk.nl/english

Various ministries provide information as well and these can be found on the web, 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 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 (“*advocaten*”) and by civil law notaries (“*notarissen*”), which are both regulated by their respective law societies. However, sometimes foreigners prefer to consult (unregulated) legal advisors.

The solicitor (“*advocaat*”) is solely an advisor to his client, representing the client and only having the client's interest at heart. By law the solicitor is bound to secrecy. The solicitor also can represent the client in court cases where legal representation is required by law, like e.g. a barrister in foreign jurisdictions.

The civil law notary (“*notaris*”) is in fact a public servant, although not paid by the Government, who issues notarial deeds, authenticated documents which mostly certify a specific legally relevant act, e.g. the transfer of title of shares in a B.V.. Such a notarial deed is often required by law in order to achieve a certain result (e.g. the aforementioned transfer of title which is impossible to achieve without such notarial deed.) The civil law notary may not only look after the interest of one party, but has to mind the interest of both parties (and sometimes even of third parties who are not even present or represented).

One should bear in mind, that only solicitors and civil law notaries are bound to professional secrecy imposed upon them by law.

Furthermore, only these professionals are required to annually fulfill 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.

It is advisable to see a lawyer, be it a solicitor or a civil law notary, first.

In doing so, a lot of otherwise most certainly unnecessarily spent time, effort and costs may be saved.

VI. ACCOUNTANCY SERVICES

Under Dutch law, neither “*accountant*” nor “*boekhouder*” are protected professional titles.

However, if an accountant uses the suffix “RA”, which is the abbreviation of “*register accountant*”, this indicates that he is an accountant, in foreign jurisdictions often called a Chartered Accountant, a qualified individual bound by professional rules and regulations.

Almost the same goes for an accountant using the suffix “AA”, which is the abbreviation of “*accountant administratieconsulent*”, which indicates that this accountant, in foreign jurisdictions often also called “accountant”, is also a qualified individual bound by professional rules and regulations. However, a chartered accountant is regarded as an accountant of higher education, and the RA may exclusively execute certain allocated to the RA by law.

VII. CONTACT FOR FURTHER INFORMATION

Please view our publications on various issues, which are in our Publications page.

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24 January, 2012

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