

# DOING BUSINESS IN THE NETHERLANDS

**HEUSSEN**

Lawyers & Civil Law Notaries

DOING BUSINESS  
IN THE NETHERLANDS

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## **Preface**

This guide has been specifically prepared for the benefit of international investors who consider doing business in the Netherlands as well as their advisers. Please note that the guide offers a high-level overview and summary of the relevant laws, rules and regulations only and should not be regarded as exhaustive or comprehensive, nor should it be considered to constitute legal advice. If you need specific advice on or assistance with any issue you are facing when entering the Dutch market or doing business there or if you need any information on Heussen and the services rendered by Heussen, please feel free to contact one of the Heussen partners through the Heussen website at [www.heussen-law.nl](http://www.heussen-law.nl).

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Heussen Lawyers & Civil Law Notaries

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# 1. THE NETHERLANDS

## 1.1 The country in a nutshell: statistics and facts

Country	The Netherlands
Location	Northwestern part of Europe
Official languages	Dutch and Frisian
Head of State	King Willem-Alexander
Type of state	constitutional monarchy
Capital	Amsterdam
Seat of government	The Hague
Currency	euro (EUR, €)
Population	approx. 18.1 million
Density	533/km <sup>2</sup>
Area	41,543 km <sup>2</sup>
Land below sea level	26%
Provinces	Drenthe, Flevoland, Friesland, Gelderland, Groningen, Limburg, Overijssel, Noord-Brabant, Noord-Holland, Utrecht, Zuid-Holland, Zeeland
Largest cities	Amsterdam, Rotterdam, The Hague, Utrecht

The Netherlands (also informally referred to as “Holland”) is a country in Europe and a Member State of the European Union. The Netherlands is part of the Kingdom of the Netherlands which, apart from the Netherlands, consists of the Caribbean islands Aruba, Curaçao and Sint Maarten. The three Caribbean islands of Bonaire, Sint Eustatius and Saba became special municipalities of the Netherlands after the dissolution of the Netherlands Antilles on 10 October 2010.

## 1.2 Culture and religion

The Netherlands has an attractive cultural climate. Throughout history, the Dutch have always been a trading and exploring nation, which resulted in many different foreign influences and in a diverse culture. The Dutch are considered open-minded, internationally oriented and innovative. They often communicate in a rather direct manner and avoid small talk.

In the Netherlands, more than 55% of the population consider themselves non-religious. In 2020, the largest religion was Christianity (34% of the total population), followed by Islam (5%).

## 1.3 Government

The Netherlands is a constitutional monarchy within a parliamentary democracy. The Head of State is King Willem-Alexander, but the country is in practice governed by the Prime Minister together with other ministers and state secretaries. The Dutch government is seated in The Hague, but the capital of the Netherlands is Amsterdam.

The Dutch parliament consists of two chambers, being the Second Chamber or Lower Chamber (*Tweede Kamer*) with 150 members and the First Chamber or Upper Chamber (*Eerste Kamer*) with 75 members. Together the chambers constitute the “States General” (*Staten Generaal*). The members of the Second Chamber are directly elected by the people, in principle every four years. The members of the First Chamber are elected through a system of indirect elections.

## 1.4 Economy

The Dutch economy, the fifth largest in the European Union and the eighteenth largest in the world, has a strong international focus. Due to the relatively small size of the country and its domestic market, the Dutch economy is one of the most open and internationally orientated in the world. Multinationals

based in the Netherlands include Ahold Delhaize, AkzoNobel, ASML, Booking.com, Heineken and Philips. Multinational companies having their regional headquarters in the Netherlands include Adidas, Cisco Systems, Netflix, Nike, Panasonic and Under Armour.

The volume of goods exported by the Netherlands is among the largest in the world. The number one destination of goods from the Netherlands is Germany, followed by Belgium, France, the United Kingdom and the United States. The top goods exported by the Netherlands concern refined petroleum, broadcasting equipment, photo lab equipment and computers. The Netherlands is also one of the world's largest exporters of services.

## **1.5 Infrastructure**

The Netherlands has an excellent infrastructure and is often called the "Gateway to Europe", as it enables companies to serve markets in the European Union and the rest of Europe.

The Netherlands borders the North Sea and has three major rivers leading into the heart of Europe: the Rhine, the Maas and the Schelde. The port of Rotterdam, handling almost 450 million tonnes of cargo per year, is the largest port in Europe. Amsterdam Airport Schiphol is one of Europe's busiest airports both in terms of passenger traffic and passenger volume and in terms of aircraft movements. Furthermore, there are several regional airports in the Netherlands, the main ones being Rotterdam The Hague Airport, Groningen Airport, Eindhoven Airport and Maastricht Aachen Airport.

The quality of the roads, railways and waterways is first-rate, making it easy to reach the neighbouring countries in Europe.

The Netherlands also has an excellent and highly developed telecommunications and technological infrastructure and is one of the top ten most advanced ICT economies in the world.

Other reasons why the Netherlands is often called the "Gateway to Europe"

include the number of investments in the Netherlands by other countries, which is largely due to the stable and flexible work environment and the well-educated multilingual work force in the Netherlands, as well as the central geographic location of the Netherlands.

## 2. BUSINESS FORMS

### 2.1 General

A foreign company may conduct its business in the Netherlands through either an entity or a branch. This chapter provides a brief introduction to the most common business forms available in the Netherlands.

### 2.2 BV

The private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid* or *BV*) is the most frequently used business form in the Netherlands. It is a legal entity with legal personality and is comparable to the “Société à responsabilité limitée” (S.à r.l.) in France, the “limited company” (Ltd) in the United Kingdom and the “Gesellschaft mit beschränkter Haftung” (GmbH) in Germany. The BV is a very flexible business form that can easily be incorporated with articles of association tailored to the shareholders’ particular needs..

#### *Incorporation*

A BV is incorporated by means of a notarial deed executed before a Dutch civil law notary (*notaris*). Incorporators typically grant a power of attorney to staff members of the civil law notary’s office, enabling them to execute the notarial deed of incorporation on their behalf so that no physical appearance is required. After execution of the notarial deed of incorporation, which includes the BV’s initial articles of association, the civil law notary registers the company with the trade register of the Chamber of Commerce. The articles of association may likewise be amended by notarial deed.

#### *Share capital*

A BV’s capital is divided into shares. There is no statutory minimum issued or paid-up capital and there is no statutory maximum (authorized) capital.

At least one share must be held by a person or legal entity other than the BV itself or its subsidiaries. Shares may only be issued and transferred by means of a notarial deed executed before a Dutch civil law notary.

### *Shares*

All shares must have a nominal value which may be denominated in either euro or in a foreign currency. A BV may issue three types of registered shares, namely: ordinary shares, priority shares and preference shares. Priority shares are shares that carry certain controlling rights pursuant to the articles of association (usually voting rights). Preference shares entitle their holders to a fixed dividend before the holders of ordinary shares are paid. A BV cannot issue bearer shares.

A BV may issue non-voting shares as well as shares without profit rights. It is, however, not possible to issue non-voting shares without profit rights. A BV may also issue depository receipts (*certificaten*) for shares to separate the voting rights from the profit rights attached to the shares.

The articles of association of a BV may include restrictions on the transfer of shares (a so-called blocking clause), but this is not mandatory. They may also include various other provisions relating to the shares and the rights attached to them, such as so-called lock-up provisions, additional obligations for shareholders and quality requirements.

The management board of a BV is obliged to keep an up-to-date shareholders' register. The shareholders' register must contain the names and addresses of all shareholders, the types and numbers of shares, the amount paid-up on each share and the particulars of any issue or transfer of shares, any right of pledge or usufruct over the shares, and any depository receipts for shares that carry meeting rights.

### *General meeting*

The general meeting is the corporate body composed of all shareholders of the BV. It has all powers that are not vested in the management board

or in any other corporate body. Under the Dutch Civil Code (*Burgerlijk Wetboek*), the general meeting has several powers that are important for the existence and continuation of the company or the position and rights of its shareholders. These powers include the right to appoint and dismiss members of the management board and the right to resolve to amend the articles of association, to issue shares, to adopt the annual accounts, to legally merge or de-merge the company, to convert the company into an entity with a different legal form or to dissolve and liquidate the company.

Unless the articles of association provide otherwise, shareholders' resolutions are adopted by an absolute majority (more than 50%) of the votes cast. A shareholders' meeting must be held at least once a year.

The articles of association may provide that the general meeting can give directions to the management board, but the general meeting may not act as the executive body of the BV; that power rests exclusively with the management board).

### *Management board*

The management board is the executive body of the BV and consists of one or more members. Board members (the managing directors) are adopted by the general meeting, unless the articles provide for a different appointment mechanism. The management board is responsible for the BV's day-to-day operations as well as for defining the BV's strategy and policy. Board members may be natural persons or legal entities, and it is not required that they are resident in the Netherlands or have the Dutch nationality. The members of the management board have a fiduciary duty towards the BV and perform their duties in good faith and in the best interests of the company and its business. If the management board consists of two or more members, they share a collective responsibility for the management of the company.

In principle, the management board may adopt resolutions either during a meeting or in writing. The Dutch Civil Code contains very few provisions on convening and holding board meetings and decision making by the management board. It is quite common for the management board to adopt

separate board regulations, a set of internal rules, governing its functioning, the conduct of board meetings and the allocation of tasks and responsibilities among its members. In addition, a BV's articles may provide that certain management board resolutions specified in the articles or designated by the general meeting (or other corporate body) require the prior approval of the general meeting (or such other corporate body).

A managing director may not take part in any discussion or decision making with respect to a transaction or a topic in relation to which he has a direct or indirect personal conflict of interest with the BV.

### *Supervisory board*

The supervisory board supervises the management board, its policy and the general course of affairs within the company. It also renders advice to the management board. It carries out its duties in the interest of the company, taking into account the interests of all stakeholders. The members of the supervisory board (the supervisory directors) may not participate in the management of the BV. As with managing directors, supervisory directors may not take part in any discussion or decision making relating to a transaction or matter in which they have a direct or indirect personal conflict of interest with the BV.

Under Dutch law, establishing a supervisory board is optional, unless certain statutory size requirements are met. The supervisory board of a "large company" (*structuurvennootschap*) has additional powers compared to a supervisory board of a regular company. Instead of having a supervisory board, a BV may opt for a one-tier board (see below).

### *One-tier board vs. two-tier board*

In a two-tier board structure, a separate supervisory board supervises the management board and gives advice to the management board. In a one-tier board structure, there is no separate supervisory board, but instead, both executive and non-executive directors are members of the (one-tier) board. The executive directors are responsible for the BV's management, while the non-executive directors are responsible for supervising the management.

Although their roles are different, executive and non-executive directors are members of the same board and therefore share a collective responsibility for the management of the company.

### *Directors' liability*

Each managing director shall be responsible towards the company for the proper performance of his duties. In case of an improper performance of management duties, each managing director may be held liable towards the company on the basis of collective responsibility, but only in cases of serious negligence and unless the managing director was not negligent in taking measures to avert the consequences of the improper management.

A managing director may also be liable towards third parties, for non-payment of taxes and social premiums, for the deficit in case of bankruptcy if the managing directors have neglected their management duties and it is apparent that this is an important cause for the bankruptcy, for the deficit arising from a distribution to shareholders (see below), for damages caused by publishing misleading financial statements and for damages caused by a wrongful act. In exceptional circumstances, the shareholders of a BV may also be held liable for acts performed in the name of the company (also known as "piercing the corporate veil"). This may occur, for example, if the company's conduct constitutes a wrongful act and the court determined that the shareholder and the company cannot be regarded as fully separate entities.

### *Distributions*

Dividend distributions and other distributions to shareholders may be made without any statutory requirement for a minimum amount of equity to remain within the company, except for reserves that must be maintained under the law or the BV's articles of association. In addition, distributions may only be made with the consent of the management board. The management board may only withhold its consent if it knows or should reasonably foresee that the BV will no longer be able to continue paying its due and payable debts after the proposed distribution.

The Dutch Civil Code further provides that if the BV becomes insolvent and the managing directors of the BV at the time of the distribution knew, or should reasonably have foreseen, that the BV would not be able to continue paying its due and payable debts, the managing directors will, in principle, be jointly and severally liable towards the BV for the deficit arising as a result of the distribution. For this reason, the management board will typically perform a form of liquidity or solvency test before approving a resolution of the general meeting to make a distribution to the BV's shareholders. Also, a shareholder who has received the distribution while knowing, or who should reasonably have anticipated, that the BV would no longer be able to continue paying its due and payable debts after the distribution, will be liable towards the BV for the deficit arising as a result of the distribution, up to the amount or value that the shareholder has received.

### *Structure regime*

If a BV (or other legal entity) meets the statutory requirements for the applicability of the so-called structure regime, it must file a statement to this effect with the trade register of the Chamber of Commerce within two months after the adoption of its annual accounts for the financial year in which the company meets those requirements. These requirements are:

- (a) according to the company's balance sheet with explanatory notes, the sum of the issued capital of the company and its reserves amounts to at least EUR 16 million;
- (b) the company or one of its dependent companies (*afhankelijke maatschappij*) has a works council (*ondernemingsraad*); and
- (c) the company and its dependent companies together normally employ at least one hundred employees in the Netherlands.

If a company has filed the statement with the trade register and the statement has not been withdrawn for a period of three consecutive years, the structure regime will apply to that company. Before the end of this three-year period, the company must amend its articles of association to comply with the structure regime rules. Apart from including a provision in the articles of association explicitly prescribing that the BV shall have a supervisory board consisting

of at least three members, which provision includes requirements regarding the composition of the supervisory board as well as on the procedure to be followed in order to appoint a new member of the supervisory board, the following changes are typically made:

- The articles of association will stipulate that the managing directors shall be appointed, dismissed and suspended by the supervisory board (except where the so-called mitigated regime applies in which case these powers remain with the general meeting).
- The articles will include a list of certain management board decisions, as set out in the Dutch Civil Code, that require the prior approval of the supervisory board.
- The articles will stipulate which persons cannot be appointed as members of the supervisory board.
- The articles will include rules on retirement, removal and suspension of supervisory directors.

If a company no longer meets the structure regime requirements, it may withdraw the statement previously filed with the trade register. The structure regime will cease to apply if three consecutive years have passed since the withdrawal and no new statement has been filed during that period.

If the structure regime applies, the BV may opt for a one tier board instead of having a separate supervisory board.

## **2.3 NV**

A company limited by shares (*naamloze vennootschap* or *NV*) is a legal entity comparable to the British “P.l.c.”, the German “Aktiengesellschaft” (AG) and the French “Société Anonyme” (SA). The NV is the legal form used mostly for large companies and listed companies.

In general, many rules applying to a BV also apply to an NV, but there are several important differences. The main differences are set out below.

## *Incorporation*

In addition to the incorporation requirements for a BV, the incorporation of an NV requires either a declaration from a bank or an auditor's certificate confirming that the amount payable on the shares issued upon incorporation has been paid.

## *Share capital*

An NV must have an authorized share capital, being the maximum nominal amount for which shares may be issued. At least 20% of the authorized share capital must be issued and at least 25% of the nominal value of the issued shares must be paid up. By law, an NV must have an issued and paid-up capital of at least EUR 45,000.

## *Shares*

Unlike a BV, an NV may issue not only registered shares, but also bearer shares, although only in dematerialised form. An NV cannot issue non-voting shares or shares without profit rights. However, like a BV, an NV may issue depository receipts (*certificaten*) to separate voting rights and profit rights.

Registered shares can only be transferred by means of a notarial deed of transfer executed before a Dutch civil law notary, unless the NV is officially listed on a regulated stock exchange. Since 1 January 2020, bearer shares can only be traded through a securities account with an intermediary (such as a bank) and therefore only by book-entry.

## *Distributions*

An NV may only make distributions to its shareholders to the extent that its shareholders' equity exceeds the amount of the paid and called-up part of the capital plus the reserves that must be maintained by virtue of the law or the articles of association. The formal approval of the management board is not required.

### *Financial assistance*

In principle, it is prohibited for NVs (and its subsidiaries) to provide collateral, guarantee full payment of an agreed purchase price or otherwise guarantee or bind itself jointly with or for the benefit of third parties if this is done for the purpose of the subscription or acquisition of shares in the NV's issued capital. The financial assistance rules only apply to NVs, not to BVs or other legal entities.

## **2.4 Cooperative**

A cooperative (*coöperatie*) is an association with specific features making it suitable for business purposes. A cooperative is an entity with legal personality. Although originally, the cooperative was typically used for agricultural business purposes, until recently it enjoyed popularity as a business form used as a holding vehicle in international structures due to its flexibility and certain tax aspects. The name of a cooperative must contain the word "coöperatief".

By law, the objective of a cooperative is to provide for material needs of its members under an agreement, other than insurance agreements, concluded with them in the course of its business and for the benefit of its members. It is noted that the cooperative is considered an extension of the businesses of its members.

### *Incorporation*

A cooperative is incorporated by at least two incorporators by means of a notarial deed executed before a Dutch civil law notary. The incorporators will be the initial members of the cooperative, unless the deed of incorporation provides otherwise. A cooperative must be registered with the trade register of the Chamber of Commerce.

### *General meeting of members*

As the cooperative is a special form of association, it has members rather than shareholders. Legal entities, partnerships and natural persons can be members of a cooperative.

The general meeting of members has all powers that are not vested in the management board or other corporate bodies of the cooperative. For example, the general meeting of members has the right to appoint, suspend and dismiss the managing directors, to approve the admission of new members and to adopt the annual accounts, to amend the articles of association, to legally merge or de-merge the cooperative, to convert the cooperative into an entity with a different legal form and to dissolve and liquidate the cooperative. A members' meeting should be held at least once a year.

### *Management board and supervisory board*

A cooperative must have a management board. It can have a one-tier board structure or a two-tier board structure. The tasks and responsibilities and the liability of the members of the management board and the supervisory board are similar to those of the members of a management board and a supervisory board in a BV (see paragraph 2.2 above).

### *Capital*

The capital of a cooperative is not divided into shares. There is no statutory minimum capital requirement for a cooperative. Typically, capital contributions by the members are recorded in so-called member accounts maintained by the cooperative for each member.

### *Distributions*

The cooperative's profits may be distributed to its members. The members' profit entitlement is often based on the amount or value of their respective contributions to the cooperative.

## *Liability of the members*

In general, the members of a cooperative are not liable for the obligations of the cooperative during its existence. In case of a dissolution or bankruptcy of a cooperative, its members can be liable for a possible deficit depending on the type of cooperative. There are three types of cooperatives: the cooperative with excluded liability (members are not liable in any event), the cooperative with limited liability (liability of a member is limited to the maximum amount stated in the articles of association of the cooperative) and the cooperative with statutory liability (each member is liable for the deficit in equal parts).

In case of a cooperative with excluded liability, the letters “U.A.” (*uitgesloten aansprakelijkheid*) must be placed after its name. In case of a cooperative with limited liability, the letters “B.A.” (*bepaalde aansprakelijkheid*) must be added and if there is no limitation applicable, the letters “W.A.” (*wettelijke aansprakelijkheid*) must be added.

## **2.5 Partnership**

Under Dutch law, partnerships are contractual arrangements which do not possess legal personality. There are three types of partnerships: (i) the professional partnership (*maatschap*), (ii) the general partnership (*vennootschap onder firma* or *VOF*) and (iii) the limited partnership (*commanditaire vennootschap* or *CV*). Even though a partnership is not a legal entity, it does have a so-called separate equity (*afgescheiden vermogen*), which means that business creditors of the partnership have priority over the creditors of the individual partners if they wish to take recourse on the partnership's assets. A partnership can be a party to an agreement and sue or be sued in legal proceedings.

It is not mandatory for the parties to enter into a written partnership agreement in order to set up a partnership, although it is common practice to do so.

### *Re (i) Professional partnership*

A professional partnership is traditionally used for the purpose of jointly exercising a profession (by persons such as lawyers, architects or doctors). A professional partnership must be formed by at least two partners that may either be private individuals or legal entities. Each partner must make a contribution to the professional partnership in the form of cash, labour or assets. Each partner must share in the professional partnership's profits.

Each partner in a professional partnership is liable for the professional partnership's deficits in equal parts, unless agreed otherwise. A partner who joins a professional partnership is also liable for debts of the partnership that were incurred before joining the partnership. A resigning partner remains liable for the debts incurred before his resignation.

### *Re (ii) General partnership*

A general partnership is a partnership that is used by the partners to jointly conduct a business under a joint name. A VOF and its partners must be registered with the trade register of the Chamber of Commerce. Each partner is required to make a contribution to the VOF in the form of cash, labour or assets. The profits must be shared among all partners.

All partners of a VOF are jointly and severally liable for the obligations of the VOF. Creditors can take recourse not only on the assets of the VOF but also on the personal assets of the VOF's partners. A partner who joins a VOF is also liable for debts of the VOF that were incurred before joining the VOF. A resigning partner remains liable for the debts incurred during the period in which he was a partner of the VOF.

### *Re (iii) Limited partnership*

A limited partnership (*commanditaire vennootschap* or *CV*) is a partnership between one or more general partners (*beherend vennoten*) and one or more limited partners (*commanditaire vennoten*). The general partners are responsible for the management, and the day-to-day business of the CV. Limited partners are silent partners whose primary responsibility is the

financing of the CV. Only the general partners can represent the CV. The name of a limited partner may not appear in the CV's name. Each partner is required to make a contribution to the CV in the form of cash, labour or assets, whereby it is not possible for a limited partner to only contribute labour. The profits must be shared among all partners.

The general partners are jointly and severally liable for the CV's obligations. Limited partners are, in principle, not liable towards creditors of the CV. Their internal liability is limited to the amount of their contribution to the CV. A general partner who joins a CV is also liable for debts of the CV that were incurred prior to joining the CV. A resigning general partner remains liable for debts that were incurred before the resignation.

## **2.6 SE**

A "Societas Europaea" or European Company (*Europese naamloze vennootschap* or *SE*) is a supranational legal form with legal personality, introduced by the EU Regulation on the Statute for a European Company.

SEs can be transferred from one Member State of the European Economic Area to another. Dutch SEs are subject to both Dutch corporate law and EU law. To a certain extent, the SE is comparable to a Dutch NV. An SE can be used for the same business purposes as BVs and NVs.

## **2.7 Branch**

A foreign company can also conduct its business activities in the Netherlands through a branch. A branch is not a separate legal entity as it is part of the foreign legal entity. A branch of a foreign company must be registered with the trade register of the Chamber of Commerce.

## 2.8 Companies formally registered abroad

If a foreign company is registered outside the EU or EEA and, in practice, carries out (almost) all its business activities in the Netherlands and has no real connection with the country of its incorporation, such a company is subject to the Companies Formally Registered Abroad Act (*Wet op de formeel buitenlandse vennootschappen*). This act aims to prevent the use of legal entities for the purpose of circumventing rules protecting creditors and other stakeholders, specifically by having activities in the Netherlands performed by a legal entity incorporated under the laws of a country with a liberal corporate regime. To prevent such abuse, the Companies Formally Registered Abroad Act imposes certain obligations to qualifying companies under the act.

These obligations include: (i) reporting to the trade register of the Chamber of Commerce that the company conforms to the statutory description of a company formally registered abroad, (ii) stating the complete name, legal form, statutory seat and the fact that company meets the criteria for a company formally registered abroad on all documents, printed materials, and announcements, and (iii) preparing and filing annual accounts and a directors' report with the trade register of the Chamber of Commerce in accordance with the statutory rules applying to Dutch legal entities. In addition, certain provisions of the Dutch Civil Code aimed at protecting creditors, inter alia those relating to distributions to shareholders, the repurchase of shares, and the reduction of the issued capital resulting in a repayment to shareholders, also apply to these legal entities.

### 3. FINANCIAL REPORTING

#### 3.1 General

Title 9 of Book 2 of the Dutch Civil Code, which sets out rules on financial reporting and annual accounts, applies to cooperatives (*coöperaties*), mutual insurance societies (*onderlinge waarborgmaatschappijen*), companies limited by shares (*naamloze vennootschappen*) and private companies with limited liability (*besloten vennootschappen met beperkte aansprakelijkheid*). It also applies to limited partnerships (*commanditaire vennootschappen*) and general partnerships (*vennootschappen onder firma*) in which all partners are companies formed under foreign law and are fully liable for the partnership's debts.

The Dutch Civil Code distinguishes between "micro", "small", "medium sized" and "large" entities whereby, in general, micro entities are subject to the least burdensome reporting requirements. A company falls within a particular category if it meets two of the following three criteria:

	<b>Micro</b>	<b>Small</b>	<b>Medium-sized</b>	<b>Large</b>
<b>(1) Value of assets in accounts</b>	Not more than EUR 450,000	Not more than EUR 7.5 million	Not more than EUR 25 million	More than EUR 25 million
<b>(2) Annual net turnover</b>	Not more than EUR 900,000	Not more than EUR 15 million	Not more than EUR 50 million	More than EUR 50 million
<b>(3) Annual average number of employees</b>	Fewer than 10	Fewer than 50	Fewer than 250	250 or more

The value of the assets, the turnover and number of employees of group companies must be aggregated, as if consolidated annual accounts were required. This aggregation requirement does not apply to Dutch group companies to which the consolidation exemption of Section 2:408 of the

Dutch Civil Code applies (see paragraph 3.7 below).

As a company's circumstances change, it may meet the criteria for a different category. Sometimes these changes are only minor fluctuations in value or numbers that may even be only temporary. To avoid the administrative burden caused by such fluctuations, a company will not move from one category to another until it has satisfied the criteria for that other category for two consecutive financial years.

As an example:

	<b>Conditions satisfied</b>	<b>Subject to requirements for</b>
<b>Year 1</b>	small company	small company
<b>Year 2</b>	medium company	small company
<b>Year 3</b>	medium company	medium company

### **3.2 Annual accounts, management report and additional information**

Dutch law requires the management board (*bestuur*) to prepare annual accounts (consisting of the balance sheet, profit and loss account and notes; *jaarrekening*), a management report (*jaarverslag*) and certain additional information (*overige gegevens*). These documents must be made available for inspection by the shareholders at the offices of the company each year. They must be prepared within 5 months after the end of the company's financial year; on account of special circumstances, the general meeting may extend this period by a maximum of five months. The content requirements differ depending on the size category of the entity.

The annual accounts must be prepared in accordance with generally accepted accounting standards and must provide such insight that a responsible opinion can be formed regarding the entity's equity and results, as well as its solvency and liquidity. The management report must give a true and fair view of the situation on the balance sheet date, the development during the financial year and the results of the legal entity and any group

companies whose financial data are included in its annual accounts. The additional information includes the auditor's report (if required), the allocation of profits, significant post-balance sheet events, a list of the entity's branches and the countries in which they are located and certain details included in the legal entity's articles of association.

The annual accounts and the consolidated accounts may be prepared in a foreign currency if this is justified by the activities of the entity or the international structure of the group the entity belongs to. The items stated in the annual accounts must be described in the Dutch language, unless the general meeting has resolved to use another language. The management report is normally prepared in the Dutch language. However, the general meeting may decide that a different language shall be used.

The annual accounts must be signed by all members of the management board and all members of the supervisory board (*raad van commissarissen*) (if there is one). If one or more of the required signatures are missing, this must be stated, giving the reason for the omission.

### **3.3 Audit requirements**

All entities - except micro and small entities and entities that apply the exemption of Section 2:403 of the Dutch Civil Code (see paragraph 3.6 below) - must appoint an auditor to audit their annual accounts. The auditor must express an opinion on whether the accounts give a fair representation of the company's financial position. In addition, the auditor must determine:

- whether the annual accounts comply with the statutory requirements;
- whether the management report complies with the law and is consistent with the annual accounts; and
- whether all mandatory additional information has been included in the annual accounts.

The auditor must be a Dutch registered accountant or a licensed foreign auditor. An audit firm may also be appointed. The auditor is appointed, in order of priority, by:

- the general meeting;
- the supervisory board (if any); or
- the management board.

The auditor may be dismissed at any time by the body that appointed him or by a body with a higher “priority” in the appointment hierarchy.

The auditor must report to the management board and, if applicable, to the supervisory board on the matters subject to his review. The auditor sets out the result of his audit in a certificate stating whether the annual accounts give a true and fair representation of the company's financial situation.

### **3.4 Adoption of the annual accounts**

The annual accounts of a legal entity must be adopted by the general meeting. The accounts can only be adopted if the general meeting has been able to review the auditor's certificate, which must be attached to the annual accounts. The date of adoption must be mentioned when filing the annual accounts with the trade register of the Chamber of Commerce (see paragraph 3.5 below).

### **3.5 Publication of the annual accounts**

The following documents (in Dutch, German, French or English) must be filed with the trade register of the Chamber of Commerce:

#### *Large companies:*

- full balance sheet, full profit and loss accounts and notes (consolidated and unconsolidated);
- management report and additional information

#### *Medium-sized companies:*

- limited balance sheet, limited profit and loss accounts and notes (consolidated and unconsolidated)
- management report and additional information

*Small companies:*

- summary of balance sheet and notes, including information on the number of employees (consolidated and unconsolidated)

*Micro companies:*

- limited summary of balance sheet (consolidated and unconsolidated)

The deadlines for publication of the annual accounts are as follows:

- (1) the filing must take place within eight days after the annual accounts have been adopted by the general meeting;
- (2) if the annual accounts are not adopted within seven months after the end of the financial year, the management board must immediately file the unadopted annual accounts, together with a statement stating that they have not yet been adopted, unless (3) below applies;
- (3) the general meeting may, on account of special circumstances, grant the management board an extension of the statutory five-month period for preparing the annual accounts by up to five months (for cooperatives, a statutory period of six months applies, with a maximum extension of four months). If such an extension has been granted, the annual accounts must be adopted within two months after the end of the extended period; and
- (4) the annual accounts – whether adopted or not – must in all cases be filed within twelve months after the end of the financial year.

The Chamber of Commerce monitors compliance, in particular with the obligation mentioned under (4) above. Non-compliance is an economic offence, and, in certain circumstances, the managing directors may be personally liable to creditors if the company is declared bankrupt and the accounts were not properly published.

The legal entity must ensure that its annual accounts, the management report and the additional information are available at its offices from the day on which notice of the general meeting at which the accounts will be discussed is given.

### **3.6 Group exemption (Section 2:403 of the Dutch Civil Code)**

If certain conditions are met, a Dutch entity belonging to a group may apply the exemption under Section 2:403 of the Dutch Civil Code. If applied, the company does not have to comply fully with the statutory accounting and reporting provisions, provided that its obligations are guaranteed by its EU-based consolidating parent company (the so-called group exemption or 403-exemption). When the 403-exemption applies, the relevant entity is not obliged to:

- (1) prepare its annual accounts in accordance with the statutory provisions normally applicable to companies;
- (2) supplement the annual accounts with the additional information normally required;
- (3) appoint an auditor to audit the annual accounts;
- (4) file or deposit annual accounts or a management report.

To apply the 403-exemption, the following conditions must be met:

- (a) the balance sheet must at least show the total fixed assets, total current assets and the amount of the shareholders' equity, provisions and liabilities;
- (b) the profit and loss account must at least show the net result from ordinary operations and the net balance from any other income and expenditures;
- (c) after the start of the financial year, but before the adoption of the annual accounts, the shareholders must have declared in writing their agreement to deviate from the statutory provisions on the preparation of the annual accounts;
- (d) the financial information of the company must have been included in the consolidated annual accounts of another legal entity or partnership (the parent company) to which, pursuant to applicable law, the Seventh Directive on Company Law of the Council of the European Communities applies;
- (e) insofar as the consolidated annual accounts are not prepared in or translated into Dutch, they must be prepared in or translated into French, German or English;

- (f) the auditor's certificate and the management report must have been prepared in or translated into the same language as the consolidated annual accounts;
- (g) the legal entity or partnership referred to under (c) above must have declared in writing that it assumes joint and several liability for any debts arising from the legal acts of the Dutch company; and
- (h) the following documents must be filed with the trade register of the Chamber of Commerce:
  - (i) the declaration under (c) (the shareholders' agreeing to deviate from the applicable statutory provisions) must be filed annually within six months after the balance sheet date or within one month after a permitted later publication date;
  - (ii) the documents or translations mentioned under (d) (consolidated accounts) and (e) (auditor's certificate) must be filed annually within six months after the balance sheet date or within one month of a permitted later publication date;
  - (iii) the declaration under (f) (declaration of joint and several liability) must be filed once, when the 403-exemption is applied for the first time.

The parent company may withdraw the declaration of joint and several liability by filing a separate declaration to that effect with the trade register of the Chamber of Commerce. Notwithstanding the foregoing, the parent company will continue to be responsible for debts arising from legal acts performed before the guarantee is withdrawn. This residual responsibility will cease only if all of the following conditions have been satisfied:

- (a) the Dutch company no longer belongs to the group of which the parent company is part;
- (b) a notice of the parent company's intention to withdraw the declaration of joint and several liability has been filed with the trade register of the Chamber of Commerce;
- (c) at least two months have elapsed since the parent company its intention to withdraw the declaration of joint and several liability in a nationally distributed newspaper, which announcement must mention where the notice of its intention to withdraw is available for inspection; and

- (d) no creditors have opposed the parent company's intended withdrawal of the declaration of joint and several liability in a timely manner or any opposition made has been withdrawn or declared unfounded by an irrevocable decision of the court.

### **3.7 Consolidation exemption (Section 2:408 of the Dutch Civil Code)**

Section 2:406 of the Dutch Civil Code prescribes that the legal entity which, alone or jointly with another group company, heads its group must prepare consolidated accounts. These consolidated accounts must include its own financial data and that of its subsidiaries, other group companies and other legal entities over which it has dominant control or which fall under its central management. Under Section 2:408 of the Dutch Civil Code, intermediate holding entities may be excluded from the statutory consolidation requirements, provided that:

- (a) within six months after the commencement of its financial year, the legal entity has not been notified in writing of an objection by at least one-tenth of its members or of its shareholders holding at least one-tenth of its issued capital;
- (b) the financial information that the legal entity would otherwise be required to consolidate has been included in the consolidated accounts of another entity;
- (c) the consolidated annual accounts and the management report have been prepared in accordance with the provisions of the Seventh Directive on Company Law of the Council of the European Communities or, if these provisions do not need to be observed, in an equivalent manner (even if the consolidating entity is not EU or EEA based);
- (d) insofar as the consolidated annual accounts, the auditor's certificate and the management report have not been prepared in or translated into Dutch, they have been entirely prepared in or translated into French, German or English;
- (e) each year, within six months of the balance sheet date or within one month of a later permitted publication date, the documents or

translations referred to under (d) above have been filed with the trade register of the Chamber of Commerce; and

- (f) the legal entity states in the notes to its balance sheet that it is applying the consolidation exemption.

## 4. INSOLVENCY

### 4.1 General

In the Netherlands, there are two main types of insolvency procedures:

- (i) bankruptcy (*faillissement*); and
- (ii) suspension of payments (*surséance van betaling*).

The rules applicable to bankruptcy and to suspension of payments are included in the Dutch Bankruptcy Act (*Faillissementswet*), which treats domestic creditors and foreign creditors equally. A third type of insolvency procedure, the debt management for natural persons (*schuldsanering natuurlijke personen*), is governed by a separate act. It applies only to natural persons and will not be addressed here.

All bankruptcies and suspensions of payments are listed in the Central Insolvency Register (*Centraal Insolventieregister*), which can be consulted via the website of the registrations with the Central Insolvency Register ([www.rechtspraak.nl](http://www.rechtspraak.nl)).

The Dutch Bankruptcy Act also contains provisions relating to the restructuring of the debts and equity of distressed debtors to avert bankruptcy, which will be discussed in the final paragraph of this chapter.

### 4.2 Bankruptcy

A Dutch company can be declared bankrupt if it has ceased paying its due and payable debts. A petition for bankruptcy may be filed by the company itself or one or more of its creditors. In exceptional cases, the public prosecutor may file for bankruptcy if this is required in the public interest.

A petition for bankruptcy must be submitted to with the competent court located in the jurisdiction of the debtor's residence or registered office. A creditor filing for bankruptcy must:

- provide prima facie evidence of his claim against the debtor;
- demonstrate that the debtor has ceased paying its debts; and
- show that the debtor has multiple creditors and that at least one of those creditors holds a claim against the debtor that is due and payable.

A creditor is required to engage a lawyer to file for the debtor's bankruptcy. A debtor may, however, file a petition for its own bankruptcy without legal representation. To do so, the debtor must complete a specific form and submit it to the competent court.

If the court declares the debtor bankrupt, it will appoint a bankruptcy trustee (*faillissementscurator*). From midnight on the day on which the bankruptcy is declared, the company's directors lose the power to dispose over the company's assets. The bankruptcy trustee will liquidate the company's assets and distribute the proceeds among the company's creditors in accordance with the statutory priority rules. The bankruptcy trustee operates under the supervision of a bankruptcy judge (*rechter-commissaris*).

### **4.3 Suspension of payments**

A suspension of payments allows the debtor to restructure its debts and to explore alternative financing arrangements.

If a company is temporarily unable to pay its due and payable debts, it may request the court to grant a suspension of payments to safeguard the continuation of its business. During a suspension of payments, unsecured creditors are prohibited from enforcing their claims against the debtor. The claims of secured creditors and preferred creditors (such as the Dutch tax authorities) are, however, not affected by a suspension of payments.

If the court grants the requested suspension of payments, it will appoint an administrator (*bewindvoerder*). The administrator and the debtor jointly manage the company's affairs, and the administrator assists the debtor in negotiations with its creditors. Certain legal acts of the debtor require the prior approval of the administrator.

A suspension of payments may be granted for a maximum period of 18 months. This period may be extended by additional 18-month periods without limitation upon request by the debtor. The suspension of payments will end when all creditors have been paid in full or when a composition agreement is accepted by both the creditors and the court (see below). If it becomes apparent that the financial difficulties are not temporary and the company is structurally unable to pay its debts, the suspension of payments is typically followed by bankruptcy.

#### **4.4 Composition**

During suspension of payments or bankruptcy proceedings, the debtor may propose a composition to its unsecured creditors holding claims that arose before the opening of the proceedings. A composition is an arrangement between the debtor and its unsecured creditors under which the debtor offers partial payment to the creditors in exchange for full and final discharge of their claims. If a majority of the unsecured creditors agrees to and accepts the composition, it becomes binding on all unsecured creditors. Once the court approves the composition, the suspension of payments or bankruptcy is terminated.

#### **4.5 Restructuring to prevent bankruptcy**

On 1 January 2021, the Act on the court approval of private restructuring plans (*Wet Homologatie Onderhands Akkoord* or *WHOA*) entered into force. The WHOA is compliant with EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the “Restructuring Directive”), and may, to a certain extent, be regarded as the transposition of the Restructuring Directive in the Netherlands.

The WHOA introduces an effective restructuring framework that enables distressed debtors to restructure their debts and equity and to amend or prematurely terminate burdensome contracts outside formal insolvency

proceedings. The restructuring framework under the WHOA bears similarities to the English scheme of arrangement and the US Chapter 11 procedures.

Under the WHOA, the debtor or a so-called restructuring expert prepares a restructuring plan in which creditors and shareholders are divided into different classes. The restructuring plan is presented to only those creditors and shareholders whose rights are affected by the restructuring plan, and the debtor or the restructuring expert may opt to submit the restructuring plan to only specific classes of creditors, or even to only one class of creditors, to vote on its acceptance. If at least one class of creditors votes in favour of the restructuring plan, it may be submitted to the court for approval. If the court approves the plan, it becomes binding on the debtor and on all creditors to whom the plan was submitted for a vote. The rights of other creditors remain unaffected.

## **5. REGULATORY**

### **5.1 Financial Supervision Act**

The Financial Supervision Act (*Wet op het financieel toezicht* or *Wft*) regulates the financial sector in the Netherlands. The Wft provides, among other things, rules on the supervision of banks, insurers, investment firms, collective investment schemes (being investment companies and unit trusts) and financial service providers.

For supervisory purposes, the Wft distinguishes between (i) prudential supervision, which is conducted by the Dutch Central Bank (*De Nederlandsche Bank* or *DNB*), and (ii) conduct of business supervision, which is carried out by the Dutch Authority for the Financial Markets (*Autoriteit Financiële Markten* or *AFM*). The AFM, whose role is comparable to that of the SEC in the United States and the BaFin in Germany, is the independent supervisory authority for the savings, lending, investment, and insurance markets. Chapter 4 of the Wft, which concerns the supervision of financial enterprises, sets out rules that financial enterprises must observe when providing their services, such as rules on informing consumers (transparency) and duties of care towards clients. The purpose of prudential supervision is to ensure the financial soundness of financial undertakings and prudential supervision and thereby contribute to the stability of the financial sector. Conduct of business supervision focuses on orderly and transparent market processes, fair relations between market participants, and the careful treatment of clients of financial institutions.

### **5.2 Cross-border payments**

According to its mission statement, the DNB is committed to a stable financial system, characterised by stable prices, solid financial institutions and properly functioning payment transfers. Under the Foreign financial relations act 1994 (*Wet financiële betrekkingen buitenland 1994* or *Wfbb*) the DNB is, among other things, responsible for collecting data on cross-border payments to and from the Netherlands and providing such data to the Minister of Finance.

Pursuant to the Wfbb, so-called special financial institutions (*bijzondere financiële instellingen*) can be designated as reporting entities.

A special financial institution (SFI) is an institution domiciled in the Netherlands that is directly or indirectly owned by non-residents and whose purpose or main business is to receive and pay funds from and to non-residents. Examples of SFIs include:

- holding companies controlled by foreign companies;
- finance companies that typically extend loans to foreign group companies and are themselves financed mainly from abroad;
- royalty companies and film and music rights companies that receive royalties mainly from abroad;
- re-invoicing companies that invoice other foreign entities and are themselves mainly invoiced by foreign companies.

An SFI must register with the DNB within three weeks after its incorporation. The DNB will assess whether the SFI will be designated as a reporting entity.

### **5.3 Money laundering**

On 25 July 2018, the revised Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme* or *Wwft*) entered into force. By the entry into force of the *Wwft*, the Netherlands transposed the European directive on prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the Fourth Anti-Money Laundering Directive or AMLD4) into national legislation. On 21 May 2020, the Fifth Anti-Money Laundering Directive (AMLD5), aimed at mitigating criminal activity, was transposed into Dutch law by way of an amendment of the *Wwft*. Furthermore, the Sixth Anti-Money Laundering Directive, which supplements AMLD5, entered into force on 10 July 2024, but has not yet been transposed into Dutch law.

The *Wwft* applies to institutions such as credit institutions, financial institutions, life insurance companies, investment firms, investment institutions, financial

service providers, money market institutions, trust offices, accountants, tax advisors, lawyers, notaries, casinos, companies that distribute credit cards and certain natural and legal entities trading in goods, to the extent that payments are made in cash in an amount of EUR 10,000 or more. The Wwft applies to both legal entities and natural persons.

The objective of the Wwft is to prevent and combat financial and economic crime, in particular money laundering and the financing of terrorism, with a view to maintaining the integrity of the Dutch financial system. The Wwft adopts a risk-based approach rather than a rule-based approach: institutions must perform their own assessment of the risks posed by individual clients or products and may adapt their compliance efforts to those risks. The two main obligations under the Wwft are (i) performing customer due diligence and (ii) reporting unusual transactions.

#### *Customer due diligence*

Institutions to which the Wwft applies are obliged to verify the identity of the client and the client's ultimate beneficial owners (the so-called UBOs) and, where necessary, to determine the origin of the funds used. This verification must be carried out before the services are provided. The depth of client due diligence should be adapted to the risks posed by the relevant clients, services and transactions.

#### *Reporting of unusual transactions*

Deviating transaction patterns may give rise to an institution classifying a transaction as unusual. An institution is obliged to report such unusual (proposed) transactions to the Financial Intelligence Unit (FIU-the Netherlands) without delay. A mere suspicion of money laundering or the financing of terrorism is sufficient.

#### *UBO register*

All companies, other legal entities and partnerships incorporated or established under Dutch law are required to register their ultimate beneficial

owners (UBOs) in a UBO register. The introduction of the UBO register forms part of the implementation of the Fourth and Fifth European Anti-Money Laundering Directives. An ultimate beneficial owner is defined as ‘the natural person who ultimately owns or controls a company or other legal entity’. The UBO register is maintained by the Chamber of Commerce. The Netherlands has also established a separate UBO register for trusts and similar legal arrangements, which entered into force on 1 October 2022.

## 5.4 Sanctions

The Sanctions Act 1977 (*Sanctiewet 1977*) provides the legal framework for the Netherlands to implement international sanctions. It enables the Dutch government to enforce measures such as trade restrictions, asset freezes, travel bans, arms embargoes and other economic or diplomatic actions when required by the United Nations or the European Union by issuing sanctions orders. A sanctions order renders the violation of international sanctions a criminal offense. The act ensures that international sanctions can be applied quickly and uniformly within the Netherlands.

The Dutch government intends to replace the Sanctions Act 1977 by the International Sanctions Measures Act (*Wet internationale sanctiemaatregelen*). The aim of this new act is to modernise the legal framework, enabling the Netherlands to implement and enforce international (EU and UN) sanctions more effectively.

Proposed key changes include:

- introducing administrative enforcement in addition to criminal enforcement;
- expanding information-sharing powers between authorities;
- establishing a Central Sanctions Reporting Office where sanctions-related notifications and reporting must be submitted;
- imposing sanctions-related compliance obligations on certain additional “gatekeepers”, including legal and financial service providers, who will be required to conduct client due diligence and sanctions screening; and

- providing clearer rules for the management of frozen assets and for dealing with businesses affected by sanctions.

It is currently unclear when the new act will enter into force.

## **6. SECURITY RIGHTS**

### **6.1 Types of security rights in the Netherlands**

In the Netherlands, security is typically provided in the form of in rem security rights over assets. Under Dutch law, there are two types of security rights that can be created over assets: (i) a right of mortgage and (ii) a right of pledge. A right of mortgage can be established over registered property, such as real estate, registered vessels and aircrafts. A right of pledge can be established over movable assets, such as inventory, equipment, stock and commodities, receivables (including trade receivables, intercompany receivables, bank account receivables and insurance receivables), registered shares and intellectual property rights.

A Dutch law security right can only be established to secure present and future monetary payment obligations and only over assets that are sufficiently identifiable and transferable or assignable. A security assignment (i.e., the transfer of legal title to assets for security purposes) is not permitted under Dutch law.

#### *Right of mortgage over registered property*

A right of mortgage may be established over real estate, registered vessels and aircrafts registered in the Netherlands. It is created by means of a notarial deed of mortgage executed before a Dutch civil law notary and registration thereof in the relevant Dutch public register.

#### *Right of pledge over receivables*

A right of pledge over receivables can be either disclosed or undisclosed and requires a written pledge agreement between the pledgor and the pledgee. A disclosed right of pledge over receivables must be notified to the relevant debtors and is usually established with respect to intercompany receivables, insurance receivables and bank account receivables. In the case of an undisclosed right of pledge over receivables, the pledge agreement must be registered with the Dutch tax authorities, unless the pledge agreement

is executed in the form of a notarial deed. For commercial reasons, a right of pledge over trade receivables is generally not notified to the debtors and is therefore created as an undisclosed right of pledge over receivables; however, notification of the right of pledge to the trade debtors is required to enforce the right of pledge.

#### *Right of pledge over movable assets*

A right of pledge over movable assets can be created as either a non-possessory right of pledge or a possessory right of pledge and is established by means of a written pledge agreement between the pledgor and the pledgee. In the case of a non-possessory right of pledge, the pledge agreement must be registered with the Dutch tax authorities, unless the pledge agreement is executed as a notarial deed. In the case of a possessory right of pledge, the pledgee (or a third party appointed by the pledgor and the pledgee and acting on behalf of the pledgee) must have effective and exclusive control over the movable assets, and such control may not be exercised jointly with the pledgor.

#### *Right of pledge over registered shares*

A right of pledge over registered shares in the capital of a Dutch private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid* or *BV*) or a Dutch public company with limited liability (*naamloze vennootschap* or *NV*) is established by means of a deed of pledge over shares executed before a Dutch civil law notary. As a pledgee can only enforce its rights as a pledgee against the company in whose capital the shares are pledged if the company has been notified of the right of pledge, the company is usually a party to the notarial deed.

#### *Right of pledge over intellectual property rights*

A right of pledge over intellectual property rights is established by means of a written pledge agreement between the pledgor and the pledgee or by means of a deed of pledge executed before a Dutch civil law notary. In general, each written pledge agreement relating to IP rights or related rights should be registered with the Dutch tax authorities for evidence purposes. In relation

to licences and domain names, such registration is a perfection requirement. In addition, the pledge agreement (or notarial deed, as the case may be) should be registered with the relevant IP register and/or the .nl internet domain name registrar, if applicable. Each register or registrar has its own registration requirements.

### *Guarantees and other forms of security*

Corporate guarantees and declarations of joint and several liability by the parent company and/or its (key) subsidiaries are common in group financings and are typically included in the facility agreement. Limitations on the maximum amount of a guarantee are uncommon in the Netherlands.

## **6.2 Limitations on the granting of security rights and guarantees**

### *Ultra vires/corporate benefit*

Under Dutch law, granting upstream, downstream and cross-stream guarantees or security is permitted, provided that (i) this falls within the scope of the company's corporate objects clause, and (ii) there is sufficient corporate benefit for the company. Any legal act entered into by a Dutch company may be nullified by the company or, in the event of bankruptcy, by the bankruptcy trustee if it is ultra vires (i.e., falls outside the scope of the company's objects). A legal act may be ultra vires if (i) the legal act is not expressly permitted by the objects clause in the company's articles of association and cannot be conducive to the realisation of those objects, and (ii) the other party was aware of this or should be aware of this without conducting an independent investigation. Whether a specific legal act qualifies as ultra vires must be assessed on the basis of all relevant circumstances.

### *Corporate authorisation and capacity*

Prior to the establishment of a right of pledge over shares in a BV or an NV, it should be verified whether the articles of association of the company permit the establishment of a right of pledge over its shares and the transfer of the voting rights attached to those shares. In addition, the articles of association

may contain share transfer restrictions. Furthermore, depending on the provisions of the articles of association, the establishment of a right of pledge over shares may require a shareholders' resolution of the company approving the (conditional) transfer of the voting rights attached to the shares.

### *Works council*

A Dutch company with 50 or more employees is required to have a works council. If a works council is in place, its prior advice must be obtained for certain important decisions relating to the transactions listed in the Dutch Works Council Act (*Wet op de ondernemingsraden*), such as a change of control over the company, borrowing under material loans and the granting of security for material loans, unless the granting of security takes places in the ordinary course of business.

### *Financial assistance*

Under Dutch law, an NV may not provide collateral, give a price guarantee, or otherwise bind itself (jointly and severally or otherwise) for the purpose of the subscription or acquisition (by third parties or itself) of shares in its own capital. In addition, an NV may not grant loans for the aforementioned purpose, unless the management board of the NV has resolved to do so after having received the prior approval of the general meeting of the NV and provided that the following conditions are met:

- (a) the loan, including the interest received by the company and any security provided to the company, is granted on fair market terms;
- (b) the equity of the company, less the amount of the loan, is not lower than the paid-up and called-up part of the capital plus the reserves that must be maintained under the law or the articles of association;
- (c) the creditworthiness of the third party or, in the case of multiparty transactions, of each party involved, has been carefully assessed; and
- (d) if the loan is granted with a view to the subscription for shares in the context of an increase of the company's issued capital or with a view to the acquisition of shares held by the company in its own capital, the price at which the shares are subscribed for or acquired is fair.

The financial assistance prohibition also applies to all (Dutch or foreign) subsidiaries of an NV, including Dutch BVs, even though the financial assistance prohibition with respect to BVs was abolished upon the entry into force of the Act on the simplification and flexibilisation of the rules applicable to Dutch BVs (*Wet vereenvoudiging en flexibilisering van het bv-recht*) on 1 October 2012. Security rights, guarantees and loans granted in breach of the financial assistance prohibition are null and void.

### *Actio pauliana*

A legal act (such as the granting of guarantees or security rights) performed by a person or a legal entity may be nullified at the initiative of any creditor (or, in the event of bankruptcy of the company, the bankruptcy trustee) if all of the following requirements are met:

- (a) the legal act was performed without a legal obligation to do so,
- (b) the person performing the legal act and the other party or parties knew or should reasonably have known, that the legal act would adversely affect the recourse possibilities of present and future creditors, and
- (c) the legal act was prejudicial to the recourse possibilities of the creditors of the person performing the legal act.

### *Parallel debt*

In the Netherlands, the prevailing view is that a right of pledge cannot be validly created in favour of a person who is not the creditor of the secured obligations. Therefore, if Dutch law security is to be held by a security agent, a “parallel debt” is created. Under this structure, each obligor undertakes an additional and separate obligation to pay to the security agent (in its own name and not as the representative of the lenders) amounts equal to the amounts outstanding to the finance parties under the loan documentation. Subsequently, a Dutch law security right is created solely in the name of the security agent (and not also in the name of the other finance parties) as security for the payment of its own claims, being the parallel debt.

### **6.3 Enforcement of security rights**

Under Dutch law, if a debtor is in default in the performance of the secured obligations, a security right can be enforced by way of a public auction or a private sale authorised by the competent Dutch court and in case of a right of pledge also by way of a private sale agreed between the pledgor and the pledgee after the pledgee has become entitled to enforce the right of pledge. The mortgagee or the pledgee may apply the proceeds from the enforcement towards satisfaction of the secured obligations as they are due and payable.

## **7. EMPLOYMENT**

### **7.1 Types of employment**

#### *Employment contract*

An employment contract can be defined as an agreement whereby the employee undertakes to perform work in the service of the employer in return for remuneration during a given period. An employment contract exists as soon as three core elements are present: work, wages and authority to instruct. When determining whether a relationship qualifies as an employment contract, the court considers not only what the parties intended upon entering the agreement and what they have subsequently agreed (whether verbally or in writing), but also (and often predominantly) how the parties act in practice. All relevant facts and circumstances are taken into account by the court.

The workforce of a company in the Netherlands usually consists of a permanent core of staff employed under employment contracts for an indefinite period of time. In addition, companies often engage more flexible staff under employment contracts for a definite period of time. Aside from these two types of employment contracts and depending on the nature of the company and the business activities to be performed, employers may make use of other flexible forms of employment, such as on-call contracts and temporary agency work, i.e., individuals employed by and hired through temporary employment agencies. Mandatory provisions of Dutch employment law apply to these types of employment relationships.

#### *Employment contract versus service contract*

A service contract can be defined as a contract whereby an independent contractor (i.e., a consultant or service provider) agrees to perform work for a principal, other than on the basis of an employment contract. The main differences between the two can be summarised as follows:

<b>Employee</b>	<b>Independent Contractor</b>
Subject to instructions, authority and supervision	Only subject to instructions of a general nature
No entrepreneurial risk	Entrepreneurial risk
“Unequal” relationship	“Equal” relationship
Mandatory employment and/or CLA regulations applicable	Contractual freedom except for incidental statutory regulations
Wage tax and social security premiums	VAT

The main distinguishing factor is the relationship of control (authority to instruct), which exists in the case of an employment contract, but not in the case of a service contract. The most significant inherent risk incurred by a company when entering into a service contract is that the relationship may in fact qualify as an employment contract if, in practice, the independent contractor is subject to the direct control or authority of the company. If the service contract is reclassified as an employment contract, the company may face retroactive liabilities for wage tax and social security contributions, together with possible fines, penalties and/or interest. In addition, mandatory rules of employment law will apply retroactively.

## **7.2 Terms of the individual employment contract**

### *Minimum wage*

Parties are free to negotiate a salary, although the statutory minimum wage for employees must be respected. The level of the statutory minimum wage varies according to age and may be adjusted to the cost-of-living index twice a year (as of 1 July 2025 it amounts to EUR 2,496 gross per month excluding 8% holiday allowance, based on a 40-hour working week, for employees aged 21 years and over).

In addition to salary, the employee is entitled to a statutory holiday allowance amounting to 8% of the gross annual salary, which is usually payable once a year in May or June over the preceding 12 months. If the annual salary

exceeds three times the annual minimum wage, the statutory holiday allowance may be deemed to be included in the gross salary, provided that this is agreed in writing.

If a Collective Labour Agreement (“CLA”) applies, the CLA will, as a rule, govern salaries and periodic salary increases. Companies may only deviate from the provisions of an applicable CLA if the CLA qualifies as a so-called minimum-CLA and the deviation benefits the employees. Please refer to paragraph 7.4 for more information about CLAs.

### *Working hours*

The Act on Working Hours (*Arbeidstijdenwet*) provides a general framework for the number of working hours an employee is permitted to work. Employees are permitted to work a maximum of 12 hours per day and 60 hours per week, provided that the average working hours over a consecutive four-week period do not exceed 55 hours per week and the average working hours over a consecutive 16-week period do not exceed 48 hours per week.

Additional rules, including rules regarding work on Sundays or during night hours, are contained in the Act on Working Hours. The statutory rules on maximum working hours and minimum periods of rest are, in principle, not applicable insofar as the employee’s salary exceeds three times the statutory minimum wage, including holiday allowance.

### *Notice period*

The statutory notice period to be observed by the employer depends on the length of employment and is as follows:

<b>Years of service</b>	<b>Notice period</b>
0-5 years	1 month
5-10 years	2 months
10-15 years	3 months
15 years or more	4 months

The statutory notice period to be observed by an employee is always one month. Subject to certain conditions, the contracting parties are free to agree in writing on a different notice period, provided that the notice period for the employee does not exceed six months and that the notice period for the employer is at least double the notice period for the employee. Any notice period agreed in violation of these statutory provisions is null and void. In that case, the statutory notice period applies if this is more beneficial to the employee and the employee invokes it.

### *Paid holidays and public holidays*

Under statutory law, in the event of a working week of 40 hours spread over five days, an employee is entitled to at least 20 paid holidays per year. On average, Dutch employers tend to offer approximately 25 days of paid holiday per year based on fulltime employment.

In addition to paid holidays, it is common practice in the Netherlands to grant employees leave for public holidays, to the extent that these coincide with a working day. The public holidays in the Netherlands are as follows:

- New Year's Day;
- Easter Monday;
- King's Day (celebrated on 27 April);
- Liberation Day (5 May - a statutory day off only once every 5 years);
- Ascension Day;
- Whit Monday;
- Christmas Day;
- Boxing Day.

### *Trial period*

Parties to an employment contract may agree on a trial period. To be valid, the trial period must be agreed in writing and must be equal for both parties. During the trial period, the employment contract may be terminated with immediate effect by either party, without observing a notice period. The maximum length of the trial period depends on the duration of the employment contract and is as follows:

<b>Employment contract</b>	<b>Maximum trial period</b>
Definite period of time > 6 months and < 2 years	1 month
Definite period of time $\geq$ 2 years	2 months
Definite period of time whereby no specific termination date has been agreed (e.g. project basis)	1 month
Indefinite period of time	2 months

### *Illness/incapacity for work*

In the event of illness or other incapacity to work, the employer is under a statutory obligation to continue (partial) payment of the employee's salary for a maximum period of 104 weeks. The minimum payment during illness is 70% of the employee's salary, insofar as this does not exceed a statutory maximum. Many employers continue payment of 100% of the actual salary during the first 52 weeks of illness, followed by the 70% of the salary during the subsequent 52 weeks. It is possible to take out an illness absence insurance to cover these salary payments.

### *Non-competition*

A non-competition clause must be agreed in writing to be valid. Such a clause may be limited in time or scope or rescinded by a court if, in comparison with the employer's interests protected by such a clause, it unreasonably restricts the employee from accepting employment commensurate with his or her abilities and experience. It is not permitted to include a non-competition clause in an employment contract for a definite period of time, unless the clause contains a written explanation demonstrating that there are substantive business or company interests that necessitate its inclusion. These interests must be substantiated in detail.

### *Fringe benefits*

Companies may use various fringe benefits to attract and retain personnel, such as additional paid holidays, employee saving plans, pension scheme contributions, a company car, (net) expense allowances, stock-option or

other incentive plans, contributions towards supplemental health insurance, additional disability insurance coverage, and variable compensation schemes such as bonuses.

### **7.3 Termination of employment**

#### *Termination of individual employment contracts*

Individual employment contracts may be terminated by the employer in the following ways:

- (i) during the trial period, without any formalities to be observed (apart from confirmation in writing);
- (ii) by giving written notice of termination with due observance of the applicable notice period, after having obtained prior permission from the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen* or *UWV*);
- (iii) by court order;
- (iv) by instant dismissal;
- (v) by mutual consent; or
- (vi) with the consent of the employee.

#### *Re (ii): notice of termination after permission from the UWV*

The UWV will only grant permission to terminate an employment contract if, after considering all relevant facts and circumstances, it is convinced that there is a valid ground (or grounds) for termination. UWV proceedings can, in principle, only be initiated on specifically listed statutory grounds. These include the following:

- company economic dismissals;
- long-term illness, i.e., illness lasting longer than two years, whereby no recovery is anticipated within the next 26 weeks, nor that the employee will be able to perform his or her duties in an adapted form within that period.

*Re (iii): court order*

A party to an employment contract may file a petition requesting the court to terminate an employment contract. If the court finds that there is a valid ground for termination, it will terminate the employment contract. Termination by the court is only possible on the following specifically listed statutory (reasonable) grounds:

- recurring incapacity for work due to illness or other disability of the employee, with unacceptable consequences for the employer's operations;
- incapacity of the employee to perform his or her duties other than as a result of illness or disability;
- serious misbehaviour, to such an extent that the employer cannot reasonably be expected to continue the employment relationship;
- refusal by the employee to perform his or her duties due to a serious conscientious objection;
- an impaired employment relationship;
- other circumstances of such a nature that the employer cannot reasonably be expected to continue the employment relationship; or
- a combination of circumstances referred to in two or more of the above grounds.

*Re (iv): instant dismissal*

The Dutch Civil Code provides examples of "urgent valid grounds" on the basis of which termination may take place immediately and without compensation. Urgent valid grounds for the employer are those acts, omissions or circumstances attributable to the employee that result in a situation in which the employer cannot reasonably be expected to continue the employment contract. Urgent valid grounds justifying instant dismissal must be communicated to the employee as soon as possible after they have become known to the employer. The employee must be given the opportunity to respond to the grounds (allegations). It should be noted that the courts tend to be very reluctant to accept instant dismissals, due to the far-reaching consequences for the employee (loss of employment and, potentially, loss

of entitlement to unemployment benefits). It is therefore highly advisable to obtain legal advice in advance.

*Re (v): by mutual consent*

Employment contracts may also be terminated by mutual consent. Although there is no statutory obligation to do so, such an agreement should preferably be concluded in writing (a settlement or termination agreement), setting out the conditions of termination and settling all outstanding issues. The employee has the right to dissolve the settlement or termination agreement in writing within 14 days after signing it, without having to provide reasons, provided that this right is included in the agreement.

*Re (vi): with consent of the employee*

As an alternative to termination by mutual consent, the employer may terminate the employment contract with the explicit written consent of the employee. In this case as well, the employee may withdraw the given consent within 14 days of the termination date without having to provide any reasons.

*Financial compensation in the event of termination of employment*

Under Dutch law, a statutory entitlement to severance compensation exists in the event of termination of employment. This severance compensation, referred to as 'transition compensation', is payable by the employer upon termination of an employment contract. The manner in which the employment contract is terminated is, in principle, irrelevant. However, if the employee terminates the employment contract by giving written or if the employment contract is terminated by mutual consent, the employee is in principle not entitled to statutory transition compensation. Statutory transition compensation amounts to one third of the employee's gross monthly salary (including certain other remuneration components) for each year of employment, calculated over the entire period of employment, with incomplete years taken into account on a pro rata basis. In addition, the court may award additional compensation if the employer is considered to have acted in a 'seriously negligent' manner.

### *Collective dismissals*

An employer wishing to terminate the employment of at least 20 employees within any three-month period must (i) notify both the UWV and the trade unions of the intended dismissal and (ii) provide the UWV with a list of employees whose employment is to be terminated, as well as the reasons for termination. Upon receipt of the notification, the UWV will assess whether all required information has been submitted and whether the works council and the trade unions (where applicable) have been informed. If this is the case, a one-month waiting period generally applies, during which the UWV will not take into consideration any individual request for permission to terminate an employment contract in connection with the collective dismissal (reorganisation). After notifying and consulting the trade unions and the UWV regarding the proposed redundancies, the employer may request permission from the UWV to terminate the employment contracts for each individual case. In the event of a collective dismissal, it is common practice to set up a social plan, under which employees are granted certain redundancy packages.

### *Termination of employment of a managing director*

Unless otherwise stipulated in the articles of association, a member of the management board (*a managing director* or *statutair bestuurder*) of an NV or a BV is appointed and dismissed by the general meeting of the company. In the event of a dismissal of a managing director by the general meeting, specific statutory formalities must be observed. A failure to strictly observe these formal requirements results in a voidable resolution of the general meeting.

The dismissal of a managing director, in his or her capacity as managing director, by means of a resolution of the general meeting, results in the automatic termination of the employment contract with the entity in which he or she is appointed as a managing director, unless there is a statutory prohibition on terminating the employment contract or the parties have agreed otherwise. Therefore, and unlike in the case of “regular” employees, no prior UWV or court proceedings are required.

### *Termination of employment because of or after reaching the statutory pensionable age*

Unless parties have agreed otherwise, the employer may terminate the employment contract because of or after the employee has reached the applicable contractual or statutory pensionable age. The statutory pensionable age is the date on which the employee becomes entitled to a State Old Age Pension Benefit. Termination must take place by means of written notice of termination, observing the applicable contractual or statutory notice period. In the event of termination of employment of employees who have reached or have already passed the statutory pensionable age, no transition compensation is due. Statutory transition compensation is therefore not payable if the employment contract terminates or is not extended due to the employee reaching the statutory pensionable age.

## **7.4 Collective Labour Agreement (CLA) / trade unions**

In addition to statutory rules and regulations, an employment relationship between an employer and an employee may be subject to a CLA. A CLA is an agreement concluded between one or more companies (i.e., employers) or employers' associations on the one hand and one or more (employee) trade unions on the other hand, which exclusively or primarily concerns employment conditions that must be observed in respect of employment contracts. Examples of such employment conditions include salaries, working hours, paid holidays and overtime pay. It is not uncommon for a CLA to contain provisions relating to the conclusion and termination of employment contracts, training, redundancies, or negotiations with trade unions in the event of a (collective) dismissal. The applicability of a CLA may have a substantial impact on the terms governing an employment contract. In addition to CLAs regulating employment conditions, there are also CLAs pursuant to which the employer is obliged to pay a contribution to a foundation established for specific projects, such as permanent employee training and employability.

The applicability of a CLA depends on whether the company falls within the

scope of the CLA and, if so, whether the company is (i) a member of an employers' association that is a contracting party to the CLA, or (ii) the CLA has been declared generally applicable.

## **7.5 The Works Councils Act / European works council**

Employee participation and co-determination have a strong tradition in the Netherlands. Since the Second World War, when employee participation and co-determination first started to become institutionalised, the works council (and the employee representative body) has steadily developed into its current form. Through these bodies, employees are granted a certain level of participation in the management of the company, specifically with the aim of protecting their interests. The rules on employee participation and co-determination are laid down in the Works Councils Act.

### *Works council*

Companies which, as a rule, have at least 50 persons working within the undertaking are required to establish a works council. Like an employee representative body, a works council is a representative body, that ensures employees a certain level of participation in the management of the company employing them and is established to protect the interests of the employees. With regard to certain intended decisions to be taken by the company, the works council has the right to render prior advice. Other specifically listed intended decisions relating to the social policy of the undertaking and concerning policies, arrangements or schemes that are not related to an individual employee, but concern the workforce as a whole (such as pension schemes, remuneration schemes and working hours arrangements) require the works council's prior approval.

### *Employee representative body*

Companies which, as a rule, have fewer than 50 persons working within the undertaking may establish an employee representative body on a voluntary basis. However, if the majority of the persons working in an undertaking with

more than 10, but fewer than 50 employees request the establishment of an employee representative body, the company must comply with this request, provided that no works council exists. A company (or undertaking) is required to give the employee representative body the opportunity to render prior advice on any intended decision that may result in the loss of employment of at least 25% of the persons working within the undertaking. In addition, the employee representative body has a right of prior approval with respect to certain intended decisions regarding policies, schemes or arrangements (such as working hours and rest periods).

### *Employee meeting*

If no works council or employee representative body exists, a company with at least 10, but fewer than 50 employees is obliged to give its employees the opportunity to meet with the management twice in each calendar year. Such an employee meeting has the same right to render advice as the employee representative body described above.

### *European works council*

Community-scale undertakings and community-scale groups of undertakings are required to establish a European works council for the purpose of informing and consulting European employees of the undertaking on transnational matters. A community-scale undertaking is defined as "*an undertaking which over the preceding 2 years has had an average of at least 150 employees in at least two EU Member States, Liechtenstein, Norway or Iceland and an average of at least 1,000 employees in the combined EU Member States, unless it belongs to a community-scale group of undertakings*".

## 8. SOCIAL SECURITY AND PENSION

### 8.1 Social security

Social security contributions in the Netherlands can be divided into so-called National Social Insurance Schemes (compulsory for all residents of the Netherlands), such as the General Old Age Pension Act, and Employee Insurance Schemes (compulsory in case of employment in the Netherlands), such as the Disability Benefit Act. The Employee Insurance Schemes consist of both an employer's and an employee's contribution, although the employee's contribution has been reduced to zero in recent years).

		<b>Employer</b>	<b>Employee</b>
<b>Social Security System</b>	National Social Insurance ("volksverzekeringen")	Deducts and pays Wage tax (National Social Insurance premiums are included in the wage tax) from the gross salary.	Does not pay directly. Wage tax (which includes National Social Insurance premiums) is deducted from the gross salary by the employer.
	Employee Insurance ("werknemersverzekeringen")	Pays contributions, part of which (being the employee's contribution, insofar as applicable) is deducted from the gross salary. Both the employer's and employee's contribution is paid to the tax authorities.	Does not pay directly. The employee's contribution to the Employee Insurance premium is deducted from the gross salary by the employer.

## 8.2 The pension system

The pension system is based on the following three pillars: (i) state pension (AOW), (ii) additional pension benefits agreed between employer and employee (either through a mandatory industry-wide pension fund or a voluntary (collective) pension scheme) and (iii) individual insurance taken out by private individuals. The second and third pillars are, where applicable, supplementary to the AOW-benefit. The AOW-benefit applies to all residents of the Netherlands as of the date on which they reach the statutory pensionable age.

### *Mandatory participation*

Participation in an industry-wide pension fund is mandatory in certain sectors of industry. Employers that are active in such a sector are required to participate in the relevant pension fund. If this is not the case, there is, in principle, no obligation to offer employees participation in a pension scheme, let alone to make contributions to such a pension scheme.

### *Types of schemes*

There are several ways in which pension benefits can be financed, but traditionally, the main schemes are a defined benefit scheme (which can be further divided into an average pay scheme or a final pay scheme), a defined contribution scheme and a combination scheme.

That said, on 1 July 2023 the Dutch Future Pensions Act (*Wet toekomst pensioenen*) entered into force, bringing about a significant transformation of the Dutch pension system. The transition to this new pension system will be completed by 1 January 2028 and requires a great deal of effort from all parties involved: employers, employees, trade unions, works councils and pension providers. The key change is that the new pension system will be based on a defined contribution scheme and a defined benefit scheme will no longer be allowed (see below).

Employers have a duty of care in relation to pensions. Case law has established that they must provide employees with adequate information

regarding life events and changes to the pension scheme. This duty of care is particularly important during and after the transition to the new pension system. The fact that the Future Pensions Act also imposes an obligation on pension insurers to offer guidance to employees does not diminish the employer's duties of care.

### *Defined contribution scheme*

As mentioned, the Future Pensions Act prescribes a defined contribution scheme, which will be based on a flat-rate contribution regardless of age and subject to a tax ceiling. A defined contribution scheme has no predetermined pension benefit, but a pension premium only, which will be invested in accordance with the employee's preference. With a defined contribution scheme, the employer does not guarantee a certain pension, but merely agrees to pay the pension premium. The final available amount therefore depends on the return on the investments made. The investment risk thereby lies with the employee. Upon retirement, the employee will be offered a periodic pension benefit payable by the pension insurer from the balance of the pension pot.

### *Pensionable age*

Every year, the Dutch government sets the pensionable age that will apply in the upcoming five years. The state pension age depends mainly on life expectancy predicted by Statistics Netherlands (CBS). The pensionable age in 2026 is 67 years and will be increased in the following years as follows:

<b>Year</b>	<b>Pensionable age (AOW-gerechtigde leeftijd)</b>
2026	67 years
2027	67 years
2028	67 years and 3 months
2029	67 years and 3 months
2030	67 years and 3 months
2031	67 years and 3 months

## 9. COMMERCIAL CONTRACTS

### 9.1 Dutch contract law

Under Dutch law, a contract is entered into by means of an offer made by one party and the acceptance of the offer by another party. In principle, the conclusion of a contract is not subject to any formal legal requirements. This means that a contract may be drafted in any language and may be concluded in writing, or orally. In some cases, however, a specific legal form is prescribed.

Parties are free to agree on any terms to be included in the contract, provided that such terms do not violate mandatory provisions of Dutch law, public order or public morality. Any contractual provisions that violate mandatory provisions of Dutch law, public order or public morality are null and void.

A contract not only has the effects and consequences expressly agreed upon by the parties, but also those which, according to the nature of the contract, apply by virtue of law, custom or the principles of reasonableness and fairness (*redelijkheid en billijkheid*). These principles require the parties to take each other's interests into account. All contracts must be interpreted in accordance with these principles. In exceptional circumstances, the principles of reasonableness and fairness may prevent a party from relying on and invoking a contractual provision (the restrictive effect of the principles of reasonableness and fairness). In addition, these principles may be invoked to supplement a contract if the contract contains a gap (the supplemental effect of the principles of reasonableness and fairness).

When interpreting the terms of a contract, in principle not only the literal wording of the contract must be taken into account, but also the intention of the parties and their mutual reasonable expectations vis-à-vis each other (the so-called Haviltex standard). This standard applies to all contracts. However, in the case of agreements affecting third party rights, where those third parties had no influence on the content or wording of the agreement (such as collective labour agreements), or in the case of detailed commercial contracts between professional parties, the wording of the contract often carries decisive weight.

## 9.2 General terms and conditions

General terms and conditions (*algemene voorwaarden*) often apply to commercial contracts. Part 6.5.3 of the Dutch Civil Code contains provisions that apply specifically to general terms and conditions. Section 6:231 of the Dutch Civil Code defines general terms and conditions as one or more provisions drafted for the purpose of being included in a number of contracts, with the exception of terms that define the core of the services, provided that the latter are clearly and comprehensibly worded. In principle, general terms and conditions only apply if the user declares them applicable prior to or at the time of entering into the agreement. The counterparty is then bound by the general terms and conditions. Furthermore, a copy of the general terms and conditions must be provided by the user to the other party prior to or at that the conclusion of the agreement. If this requirement is not met, the general terms and conditions are voidable.

Part 6.5.3 of the Dutch Civil Code also contains several provisions aimed at protecting consumers against unreasonably burdensome clauses in general terms and conditions used by an enterprise. A general condition appearing on the so-called blacklist (Section 6:236 of the Dutch Civil Code) is, vis-à-vis a consumer, deemed unreasonably burdensome by definition and is therefore null and void. A general condition appearing on the so-called grey list (Section 6:237 of the Dutch Civil Code) is presumed to be unreasonably burdensome vis-à-vis a consumer. This presumption is rebuttable: the user of the general terms may prove that the relevant clause is not unreasonably burdensome in the circumstances of the case.

Section 6:247 of the Dutch Civil Code provides the following rules of private international law concerning the applicability of Part 6.5.3 of the Dutch Civil Code:

- (a) where both parties act in the course of a profession or business and are both located in the Netherlands, Part 6.5.3 of the Dutch Civil Code applies regardless of the law governing the contract;
- (b) where both parties act in the course of a profession or business and one of them is not located in the Netherlands, Part 6.5.3 of the Dutch

Civil Code does not apply, regardless of the law governing the contract; and

- (c) where the other party is a consumer with his or her habitual residence in the Netherlands, Part 6.5.3 of the Dutch Civil Code applies regardless of the law governing the contract.

### **9.3 Agency agreements**

An agency agreement (*agentuurovereenkomst*) is an agreement under which one party (the commercial agent) acts for another party (the principal), for a fixed or indefinite period of time and for remuneration, as an intermediary in the conclusion of contracts between the principal and third parties. The commercial agent may be a natural person or a legal entity. A commercial agent always acts for the account and risk and in the name of the principal, and not on his own behalf. The commercial agent is not employed by the principal and there is no relationship of authority between the principal and the commercial agent. To qualify as an agency agreement, the relationship between the principal and the commercial agent may not be of an incidental nature.

The Dutch Civil Code contains various specific mandatory provisions concerning agency agreements, particularly in relation to the termination of the agreement, such as statutory minimum notice periods and the obligation to pay damages if the agency agreement is terminated without observing the statutory minimum notice period.

As agency agreements may contain provisions that restrict competition, such provisions may be prohibited under Dutch or European competition law.

### **9.4 Distribution agreements**

Under a distributorship arrangement, a distributor purchases goods from a supplier and resells these goods to third parties in its own name and for its own account and risk.

Distribution agreements are not governed by specific statutory provisions, which means that the general rules of Dutch contract law apply. Consequently, the parties are in principle free to agree on the terms governing their relationship, provided that such terms do not violate mandatory provisions of Dutch law, public order or public morality. The parties may agree on the manner in which and the conditions under which the distribution agreement may be terminated, as well as the consequences of such termination. According to case law, the principles of reasonableness and fairness dictate that, if a distribution agreement does not contain a provision on termination, the agreement may in principle be terminated subject to a reasonable notice period and, in special circumstances, the payment of additional damages.

Provisions in distribution agreements may be prohibited by Dutch and European competition law if they restrict competition.

## **9.5 Franchise**

A franchise agreement is an agreement whereby one party, the franchisor, grants another party, the franchisee, the right to sell certain goods or services using the franchisor's proven business concept. Typically, the franchisee is granted the right to use certain IP rights owned by the franchisor, such as a trade name, a trademark and know-how, in exchange for a royalty and other payments.

Franchise agreements are governed by the Dutch Franchise Act. The Franchise Act defines a franchise agreement as an agreement whereby the franchisor grants a franchisee a right and imposes on the franchisee an obligation to exploit, for a consideration, a franchise formula in the manner designated by the franchisor for the manufacture or sale of goods and the provision of services. The basic principle of the Franchise Act is that the franchisor and the franchisee behave towards each other like a good franchisor and a good franchisee. Important provisions of the Franchise Act include:

- the obligation for the franchisor to provide certain information to the franchisee, both in the pre-contractual phase and during the term of the franchise agreement;
- the requirement that amendments to the franchise agreement or the franchise formula that have, or may have, a significant impact on the position of the franchisee require the franchisee's consent;
- the obligation for the franchisor to provide the franchisee with such commercial and technical assistance and support as may reasonably be expected, having regard to the nature and scope of the franchise formula;
- specific rules governing goodwill payments upon the termination of a franchise agreement;
- certain restrictions applicable to non-compete clauses included in franchise agreements.

The Franchise Act is mandatory law applicable to all franchise agreements where the franchisee is based in the Netherlands. Contractual goodwill and non-compete provisions that do not comply with the Franchise Act are invalid, irrespective of the law governing the franchise agreement.

Specific arrangements between the franchisor and the franchisee may be prohibited under Dutch and European competition law.

## 10. LITIGATION AND DISPUTE RESOLUTION

### 10.1 The structure of the judicial system

The legal system of the Netherlands is founded on civil law. The Dutch Civil Code and the Dutch Code of Civil Procedure contain the most essential regulations.

There are three tiers of civil courts in the Dutch judicial system:

- (i) civil cases are brought at first instance to one of eleven district courts, where they are typically handled by a single judge. More complex matters are frequently referred to a panel of three judges;
- (ii) a party may file an appeal with one of the four courts of appeal. Appeals are always heard by a panel of three judges;
- (iii) the Supreme Court (*Hoge Raad*) is the highest court in the Netherlands and examines rulings of lower courts solely with respect to legal issues. The Supreme Court is required to review all decisions brought before it, although it may dismiss objections without providing reasons if they are deemed to be manifestly unfounded.

Two components of the judicial system merit special notice:

- (i) the Enterprise Chamber (*Ondernemingskamer*) acts as the court of first instance for various corporate disputes. It has jurisdiction over two main types of proceedings: (a) inquiry proceedings (*enquêteprocedures*); and, as of 1 January 2025, (b) statutory shareholder dispute resolution proceedings (*geschillenregelingsprocedures*). Inquiry proceedings relate to the policy and course of events within a company or other legal entity and concern alleged mismanagement and similar corporate disputes. Statutory shareholder dispute resolution proceedings include, among other things, the squeeze-out procedure (*uitstotingsprocedure*) and the exit procedure (*uittreedingsprocedure*). In the squeeze-out procedure, a (group of) shareholder(s) may request that a fellow shareholder transfer his shares. The exit procedure is the reverse: a shareholder may request that his co-shareholder(s) acquire

- his shares, enabling him to exit the company;
- (ii) the Netherlands Commercial Court (NCC) is an international commercial chamber consisting of the NCC District Court and the NCC Court of Appeal, where (international) parties may resolve complex international commercial disputes. The NCC is staffed by judges with specific expertise and experience in complex commercial matters. Proceedings before the NCC are conducted exclusively in English. This means that all court documents, proceedings-related communications and the judgement itself are in English. Parties must expressly agree in writing that proceedings will be conducted by the NCC. A designation of the NCC included solely in a party's general terms and conditions and accepted tacitly by the other party does not satisfy this requirement. Such a designation has no legal effect, unless there is explicit written acceptance in writing of the NCC clause, either at the time the agreement is concluded or at a later stage.

### *Courtroom representation by counsel*

In civil court proceedings, parties are generally required to be represented by lawyers admitted to the Netherlands Bar. If a case is heard by a subdistrict court presided over by a single judge, and in certain other limited situations, legal representation is not mandatory, although parties often opt to be represented, nonetheless. Under EU law, lawyers admitted in other EU Member States may represent clients in Dutch courts under certain conditions.

## **10.2 Legal proceedings**

Most legal proceedings in the Netherlands are handled in writing. The claims asserted by the plaintiff are set out in the writ of summons. This is followed by a statement of defence, in which the defendant may also assert a counterclaim. The court will then order the parties to appear in court. The purpose of this hearing is to obtain additional information from the parties and to seek an amicable settlement.

The parties are permitted to submit additional written evidence throughout

the proceedings. In cases with greater complexity, the court may permit or require a second written round (reply and rejoinder).

In an interim ruling, the court may require a party to submit evidence, appoint an expert, or schedule a witness hearing or site inspection. If a witness hearing has already taken place, the other party will have the opportunity to have witnesses heard in a counter-examination.

After a case has been filed with the court, each party has the option of initiating interim proceedings or requesting injunctive relief. Motions opposing jurisdiction, requests for the inspection of documents or copies thereof, third-party claims, requests for joinder or intervention, referral and consolidation of cases, and requests for security for litigation costs are examples of interim proceedings.

### **10.3 Injunctive relief / summary proceedings**

A party with an urgent need for injunctive relief may initiate summary proceedings. The range of available injunctions is extensive. In summary proceedings, the court has the authority to lift prejudgment attachments or suspend the implementation of a court order. It is also possible to prohibit the distribution of products that infringe copyrights, to forbid the execution of a judgement, or to suspend the exercise of the right to strike by employees. In addition, the court may order a party to specifically perform its obligations. An injunction ordering the payment of a sum of money is conceivable if it is sufficiently likely that the defendant owes the amount claimed and if there is no risk that the claimant will be unable to repay the amount should the court rule differently in proceedings on the merits of the case.

Summary proceedings are significantly quicker than regular proceedings. A judgement is rendered between the time of the hearing and two weeks thereafter.

After summary proceedings (or even concurrently with them), either party may initiate proceedings on the merits, as summary proceedings constitute

only a provisional remedy. The court is in no way bound by a ruling rendered in summary proceedings. Nonetheless, it is common for parties to decide not to commence proceedings on the merits after summary proceedings and instead to accept the outcome of the summary proceedings (whether or not on appeal).

#### **10.4 Prejudgement attachment**

Before or during legal proceedings, a plaintiff may levy a prejudgment attachment to secure its claim. Under certain conditions, it is also possible to attach evidence-preserving documents, data, and data storage devices.

A prejudgement attachment may only be levied after permission of a district court. Generally, such permission is obtained quickly (typically on the same or the following day) in *ex parte* procedures. The plaintiff must submit a petition to the court that sets out the claim *prima facie*. A bailiff is required to levy a prejudgement attachment.

The party subject to a prejudgement attachment may seek to have the attachment lifted in summary proceedings. If it can be demonstrated that (i) the formal requirements for attachment were not met, (ii) the alleged claim is non-existent or frivolous, or (iii) the attachment is unwarranted, the court will lift the attachment. In the event of a monetary claim, the court will also lift the attachment if the party subject to the attachment offers sufficient security (generally, a bank guarantee issued by a first-class Dutch bank).

If legal proceedings are not yet pending at the time the petition for permission to attach is filed, the court will set a time limit within which proceedings on the merits must be commenced. The typical period is fourteen days, although the petitioner may request an extension. This period may be extended multiple times at the request of the attaching party. If the claim is subsequently dismissed, the attachment is deemed to have been wrongful. In such a case, the attaching party is liable for any damages suffered as a result of the attachment.

## **10.5 Evidence**

In civil litigation, in theory all types of evidence are admissible. The court has broad discretion on the evaluation of evidence. Certain types of evidence are governed by statutory provisions. Legally valid deeds provide conclusive proof, meaning that the court must presume the accuracy of the contents of such documents unless the opposing party provides evidence to the contrary.

Until 1 January 2025, the (oral) witness testimony of a party testifying in its own favour was given limited significance and had to be corroborated by additional evidence. As of 1 January 2025, this limitation has been abolished. The court is now free to determine the probative value to be attached to witness statements and other evidence.

Expert evidence may be provided by the submission of written expert reports by one of the litigants or through the examination of an expert as a witness. At the request of the parties or ex officio, the court may appoint an (independent) expert to produce a report or to be heard at a hearing.

## **10.6 Investigation and information collection**

The Dutch judicial system lacks discovery and disclosure procedures akin to those found in common law jurisdictions. However, there are tools available for obtaining additional information to establish the truth.

Interested parties may request inspection of, or excerpts from, specific documents held by persons who have access to them. To that end, parties have a so-called pre-trial right of inspection. This allows a party to request specific data from a counterparty or third party without court intervention. The following conditions apply to the pre-trial right of inspection: (i) the requesting party must be a party to a legal relationship; (ii) the requested data must be sufficiently specified; (iii) the requesting party must have a legitimate interest in obtaining the information; and (iv) the other party must possess the requested data. The counterparty or third party is obliged to comply, unless it is entitled to privilege or compelling reasons oppose doing so. This

request may also be made in summary proceedings or as an interim request in ongoing proceedings.

In addition, a party or an interested party may request the court to order a preliminary witness hearing or to obtain an expert report, even if no legal proceedings are pending.

## **10.7 Timing and costs**

From the time a writ of summons is issued until the final judgement, a typical commercial dispute takes between twelve and eighteen months. However, this period may be significantly extended in complex cases, if motions or procedural objections are filed, or if additional evidence is required.

Parties are responsible for their own litigation expenses, although in most situations, the losing party will be required to pay the winning party's litigation expenses, such as court fees and witness and expert fees. Legal fees are based on fixed amounts for certain typical acts (such as filing a written statement, attending an oral hearing, or levying a prejudgement attachment) and the value of the claim. Rarely does the amount awarded cover the actual costs and lawyers' fees incurred by the successful party.

In the Netherlands, lawyers are barred from offering "no win, no fee" services. Alternative fee agreements (such as a basic fee with a success fee) that are partially contingent on the outcome of the lawsuit are permitted.

## **10.8 Legal privilege**

Legal professional privilege applies to every member of the Netherlands Bar Association. Insofar as the law does not stipulate otherwise, a lawyer is required to safeguard the confidentiality of all information that comes to his or her attention in the course of professional practice. This obligation also extends (in a derivative form) to the lawyer's employees and colleagues, as well as to those participating in the lawyer's professional practice, such as advisers directly retained by the lawyer.

## **10.9 Collective actions**

The Dutch Act on the Collective Settlement of Mass Damages (WAMCA) permits court-approved, collective out-of-court settlement agreements between a representative organisation and the party liable for mass damages.

After the court's decision, affected parties who do not wish to be bound by the settlement have the opportunity to "opt out." Affected parties who do not "opt out" may claim their compensation within the time limit designated in the settlement.

In addition, the Dutch Civil Code permits organisations and foundations to initiate actions aimed at safeguarding the rights of third parties, whether natural or legal persons.

The foundation or representative organisation files the claim in its own name. The interested parties are not included as parties to the proceedings. An interested party retains the right to submit an individual claim. In principle, a judicial decision does not affect an interested party that objects to the personal effect of the decision on it.

Representative organisations may also claim damages in collective actions. A collective action may therefore result in an award of monetary compensation or be followed by a court-approved, binding settlement between the liable party and the harmed parties.

## **10.10 International enforcement**

In accordance with the recast Brussels I Regulation, civil and commercial judgements rendered by a court of an EU Member State are directly enforceable throughout the European Union without the need to obtain permission from a local court. For Switzerland, Norway and Iceland, the (recast) Lugano Convention applies. Judgements rendered by courts in jurisdictions with which the Netherlands does not have an enforcement treaty are neither recognized nor enforceable in the Netherlands. To obtain

an enforceable title in the Netherlands, such matters must be retried before the Dutch courts.

Nevertheless, if a foreign judgement satisfies the following four minimal standards, the Dutch court will not review the case on its merits and will determine the matter in conformity with the foreign judgement:

- the foreign court assumed jurisdiction on the basis of an internationally accepted basis for jurisdiction;
- administration of justice rules were observed;
- recognition of the judgement would not violate Dutch public policy; and
- the foreign judgement is not irreconcilable with an earlier judgement of a Dutch court between the same parties involving the same cause of action, or with an earlier judgement of a foreign court between the same parties involving the same cause of action, provided that such foreign judgement meets the requirements for recognition in the Netherlands.

### **10.11 Alternative dispute resolution**

The most common forms of alternative dispute resolution in the Netherlands are arbitration, mediation, and binding advice.

#### *Arbitration*

The Dutch Arbitration Act stipulates that if any party invokes an arbitration clause, the Dutch court must rule that it lacks jurisdiction over the dispute. Even if the parties have agreed to arbitral summary proceedings, the district court may nevertheless be competent to grant interim relief in summary proceedings if it determines that the remedy available in arbitration is inadequate or that the relief sought is too urgent.

The most well-known Dutch arbitration institute is the Netherlands Arbitration Institute (NAI) in Rotterdam, which has its own arbitration rules that parties

may adopt as part of an arbitration agreement. Depending on the arbitration agreement, the NAI or the parties themselves may appoint the arbitrator(s). The NAI maintains a roster of qualified and experienced arbitrators, who are frequently also lawyers.

In the Netherlands, arbitral judgements rendered in the Netherlands are easily enforceable. The Netherlands, along with several European nations and the United States, is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Consequently, arbitral awards rendered in these jurisdictions are, in principle, enforceable in the Netherlands and vice versa.

In addition, there are several other well-organized arbitration institutes in the Netherlands, such as the Court of Arbitration for the Building Industry (RvA), arbitration institutes for shipping, shipbuilding, transport, storage, logistics and international trade (Unum), for complex financial disputes (P.R.I.M.E. Finance) and for disputes in the art world (CAfA).

The majority of international arbitrations seated in the Netherlands are conducted in accordance with the rules of the ICC, UNCITRAL or the NAI. The Permanent Court of Arbitration, with its seat at the Peace Palace in The Hague, conducts a significant number of arbitrations each year, both in the field of public international law and in commercial arbitration.

A request to vacate an arbitral award must be filed within three months of the date on which the award was rendered, or within three months of the award debtor receiving of leave for enforcement (in which case only the debtor may file the request). An arbitral award may be vacated only on a limited number of grounds. The Supreme Court has consistently held that courts should exercise restraint when dealing with requests to set aside arbitral awards. It has ruled unequivocally that proceedings to vacate an award cannot be used as a disguised appeal and that the public interest in the effectiveness of arbitration requires that a court set aside an arbitral award only in clear-cut cases.

An arbitral award is not enforceable unless leave for enforcement (exequatur)

is granted, which, in the case of international arbitral awards, must be granted by the court of appeal. Once leave for enforcement has been obtained, the arbitral award may be enforced against the award debtor's assets in the Netherlands.

### *Mediation*

In the Netherlands, mediation is firmly established as one of the principal forms of alternative dispute resolution. There are no rules under Dutch law that compel parties to mediate or that prescribe how mediation must be conducted. Business mediation is frequently used in high-stakes disputes between national and international corporations. In corporate mediation, parties often choose established sets of mediation rules, such as those of the ICC, the Netherlands Arbitration Institute (NAI) or the Netherlands Mediation Institute (NMI).

### *Binding advice*

Parties may agree to have their dispute resolved by one or more advisors whose decision is legally binding. The advice rendered is regarded as an agreement between the parties. Consequently, a party that disregards binding advice is in breach of contract. Considering its aim to provide clarity and finality, an agreement on binding advice may be revoked only under specific conditions, such as mistake, undue influence, duress or misrepresentation. A legally enforceable binding advice agreement does not preclude the possibility of seeking remedies in summary proceedings. Except for general procedural and contractual requirements, there are no special procedural rules governing binding advice.

The procedure for binding advice is structured in a manner similar to arbitration and is facilitated by a number of the aforementioned organisations.

## **10.12 Litigation financing**

In the Netherlands, third-party litigation financing is expanding significantly. General counsels and financial directors of Dutch corporations are increasingly

adopting litigation financing as an alternative form of corporate financing. The concept is compelling: a corporation obtains non-recourse financing against its portfolio of disputed claims, which would otherwise remain dormant on its balance sheet, while litigation expenses place pressure on working capital and profit margins. Typically, a litigation financier requests 30-35% of the proceeds, with variations depending on the nature of the claim and the level of risk involved). Generally, third-party litigation finance is available for claims with a value starting at approximately EUR 500,000. The amount of the costs the funder is willing to finance, whether in stages or otherwise, depends on the financial stakes involved in the case.

Disclosure of litigation finance arrangements to the opposing party, the court or arbitral tribunals is not expressly required under Dutch law. However, particularly where the litigant also claims financing costs, disclosure of the financing agreement may be required. Under the NAI arbitration rules, a party is required to disclose the existence of litigation finance arrangements.

Dutch law imposes no specific constraints on litigation financing or on the degree of control a third-party litigation financier may exercise over a funded case. In the Netherlands, the common law doctrines of maintenance and champerty do not apply.

A litigation financing arrangement is governed by general principles of contract law, meaning that parties are, in principle, free to structure their financing agreement how they see fit, provided that the agreement does not violate public policy, including due process considerations.

## 11. INTELLECTUAL PROPERTY

### 11.1 Patents

Patents are granted for inventions that are new, involve an inventive step and are capable of industrial application. A patent grants its owner the right to exclude others from commercially exploiting the invention (product or process) for a maximum period of 20 years. In the Netherlands, patents are protected under the Dutch Patent Act 1995 (*Rijksoctrooiwet 1995*). Dutch patents are granted by the Netherlands Patent Office (*Octrooi Centrum Nederland*), which is part of the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*).

European patents are granted by the European Patent Office (EPO), which has its seat in Munich, Germany. In the Netherlands, the EPO has a branch office in Rijswijk. A European patent is, in fact, a bundle of individual national patents which provides its owner the same rights as a national patent in each country for which it is granted, rather than a single patent valid in all relevant countries. Accordingly, an applicant may apply for a European patent as an alternative to obtaining individual national patents in the countries that are parties to the European Patent Convention.

In addition to classic European patents, the EPO may also grant European patents with unitary effect, also known as unitary patents. Unitary patents provide uniform protection throughout the Member States participating in the unitary patent system (as of 1 September 2024, 18 Member States participate). The Unified Patent Court has exclusive jurisdiction over disputes involving unitary patents.

A patent may be granted only for inventions that do not form part of the (worldwide) state of the art, meaning everything that has been made available to the public, either orally or in writing, prior to the filing date of the patent application. Under the Dutch Patent Act 1995, a novelty search must be conducted to ascertain the state of the art. If the applicant does not request a novelty search within 13 months following the filing of the patent application,

the application will lapse. Similar rules regarding the novelty search apply under the European Patent Convention.

## 11.2 Trademarks

Trademarks are signs (for example words, numbers, sounds, symbols, forms, colours) that serve to distinguish the goods or services of one undertaking from those of others. In principle, trademarks are protected only if they are registered. A trademark can be registered as a Benelux trademark, an EU trademark or an international trademark.

### *Benelux trademark*

A Benelux trademark is registered under the Benelux Convention on Intellectual Property (*Benelux Verdrag inzake de Intellectuele Eigendom* or *BVIE*), which entered into force on 1 September 2006 and applies in Belgium, the Netherlands and Luxembourg. Benelux trademarks must be registered with the Benelux Office for Intellectual Property (*Benelux-Bureau voor de Intellectuele Eigendom* or *BOIP*).

The BVIE distinguishes between individual trademarks, collective trademarks and certification trademarks. An individual trademark is a trademark that distinguishes the goods or services of one undertaking from those of other undertakings. Most trademarks are individual trademarks. A collective trademark is a trademark used by the members of an association and is owned by that association. It is used to indicate that the goods or services bearing the certification trademark are provided by a member of that association. A certification trademark is used to indicate that the owner of the trademark guarantees that the goods or services bearing the certification trademark meet certain quality requirements or have other specific characteristics, for example that goods that have been produced in a particular manner. A certification trademark may be owned by any legal entity, provided that such entity does not itself supply the relevant goods or services.

### *EU trademark*

An EU trademark grants its owner a uniform exclusive right applicable throughout the European Union. EU trademarks are created pursuant to the EU Trademark Regulation (Regulation (EU) 2017/1001 replacing Regulation (EU) 2015/2424 (Amending Regulation)). For EU Member States, the EU trademark (formerly the Community trademark) has an effect comparable to that of a Benelux trademark in the Benelux countries. Applications for EU trademarks are filed with the European Intellectual Property Office (EUIPO) in Alicante, Spain.

### *International trademark*

An international trademark offers protection in all countries that have ratified the Madrid Agreement Concerning the International Registration of Marks of 1891 (the “Madrid Agreement”) and the Madrid Protocol relating to the Madrid Agreement, including all EU Member States (except Malta), Japan, the United States and Australia. Under the Madrid Agreement and the Madrid Protocol, it is possible to obtain protection in all or some of the countries that are party to the Madrid Agreement and the Madrid Protocol by filing an application with the relevant office in the applicant’s country of origin, such as the BOIP. The relevant office forwards the application to the World Intellectual Property Organization (WIPO), the organisation responsible for the registration of international trademarks. The WIPO examines the application for compliance with the requirements of the Madrid Protocol and its regulations. If these requirements are met, the International Bureau records the relevant trademark in the International Register, publishes the international registration in the WIPO Gazette of International Marks, and notifies each country in which protection has been designated by the applicant. Each designated country then examines the international registration for compliance with its domestic legislation and may refuse protection in its territory, usually within 12 months from the date of notification. The registration of a trademark in the International Register is valid for a period of ten years and may be renewed for successive ten-year periods.

### **11.3 Trade names**

According to Section 1 of the Dutch Trade Name Act (*Handelsnaamwet*), a trade name is the name under which a business is conducted. When choosing a trade name, the conditions of the Dutch Trade Name Act must be taken into account. In particular, it is not permitted to use a trade name that is identical or similar to a trade name already used by another company or enterprise if such use could lead to confusion among the public. The owner of an enterprise may use various trade names.

It is possible to check in the trade register of the Chamber of Commerce whether a trade name is already in use. As registration of a trade name is not mandatory, however, the outcome of a trade name search in the trade register of the Chamber of Commerce is not conclusive.

A trade name must actually be used as a trade name to claim trade name protection under the Dutch Trade Name Act. The mere registration of a trade name with the trade register of the Chamber of Commerce is not sufficient.

If a company wishes to use its trade name as a trademark, the trade name must be registered with the BOIP.

### **11.4 Copyright**

The Dutch Copyright Act (*Auteurswet*), which entered into force in 1912, defines copyright as the exclusive right of the maker of a literary, scientific or artistic work, or his successors in title, to make the work public and to reproduce it, subject to the limitations laid down by law. At present, computer programs, databases and photographs also fall within the scope of the Copyright Act. To be protected, a work must have its own original character and must reflect the personal imprint of the author.

In principle, the person who created the work owns the copyright. However, Section 7 of the Copyright Act stipulates that the copyright in certain works created by an employee in the course of employment vests in the employer, unless the parties have agreed otherwise.

A copyright entitles an author to the exclusive right to reproduce his work and to make it publicly available, as well as to certain so-called personality rights, such as the right to oppose publication without mentioning the author's name or publication under another name, the right to oppose any modification of the author's work, and the right to oppose any impairment of the work. Personality rights remain vested in the author even if the author has transferred his exploitation rights.

It is not necessary for a work to be registered to obtain copyright protection. A copyright notice is also not required for a work to be protected.

Copyright protection ends 70 years after the author's death. If a work is owned by a legal entity or if the identity of the author is unknown, copyright protection ends 70 years after the work was lawfully made available to the public.

## **11.5 Neighbouring rights**

Neighbouring rights are rights that protect the efforts and achievements of performers, music producers, film producers and broadcasters. The protection of these rights resembles that of copyrights, which is why they are called "neighbouring". Neighbouring rights are laid down internationally in the 1961 Rome Convention. In the Netherlands, neighbouring rights are regulated by the Neighbouring Rights Act (*Wet op de naburige rechten* or *WNR*) of 1993.

The WNR recognises that there is a personal bond between the performing artist and his or her performance. The WNR therefore grants the performing artist certain specific rights that protect this personal bond, and, consequently, the reputation of the performing artist. These rights, which are also referred to as personality rights, largely correspond to the personality rights that the author of a work has under copyright law.

For the rights of performing musicians and music producers, the term of protection is 70 years after the release of the relevant recording. For other neighbouring rights, the term of protection is 50 years.

## 11.6 Database protection

Under the Databases Protection Act (*Databankenwet* or *DBW*), the data in a database are protected to the extent that the database cannot be protected as a copyright under the Copyright Act. Under the DBW, databases are protected as a “collection”, which means that the producer of the database has the exclusive right to prevent the unauthorized extraction of data from the database. A database is automatically protected upon its creation. The protection applies for a period of up to 15 years after production.

## 11.7 Designs

The appearance of a product can be protected as a drawing or as a design. A drawing (two-dimensional appearance) and a design (three-dimensional appearance) result from features such as the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation. The owner of a design or drawing right has the exclusive right to use the design or drawing (jointly referred to as the “design”) and to prevent any third party from using the design without the owner’s authorisation. A design can be registered as a Benelux design, an EU design (formerly known as a “Community design”) or an international design.

### *Benelux design*

A Benelux design is registered under the Benelux Convention on Intellectual Property (*Benelux Verdrag inzake de Intellectuele Eigendom* or *BVIE*). Benelux designs must be registered with the Benelux Office for Intellectual Property (*Benelux-Bureau voor de Intellectuele Eigendom*). The BVIE stipulates that, to be protected, a design must be new and have a distinctive character. The protection of a Benelux design under the BVIE lasts for a period of five years and may be renewed four times, each time for a further period of five years, up to a maximum of twenty-five years.

## *EU design*

An EU design grants its owner exclusive protection throughout the European Union. There are two types of EU designs: registered EU designs and unregistered EU designs. A design may be registered with the European Intellectual Property Office (EUIPO). A registered EU design grants its owner the exclusive right to use the design and prohibit third parties from using the design without the owner's authorisation. Like the protection of a Benelux design, the protection of a registered EU design lasts for a period of five years and may be renewed four times, each time for a further period of five years, up to a maximum of twenty-five years.

An unregistered EU design comes into existence automatically when the owner makes the design available to the public, without any registration requirement. The owner of an unregistered EU design also has the exclusive right to prohibit third parties from using the design without the owner's authorisation, but only in the event of counterfeiting (i.e., in case of identical designs). The protection of an unregistered EU design lasts for a period of three years from the date on which the design is first made available to the public within the European Union.

## *International design*

An international design offers protection in the countries that are party to the Hague Agreement Concerning the International Registration of Industrial Designs of 1925 (the "Hague Agreement"). The owner of a design may request protection in a number of these countries or, if desired, all countries that are party to the Hague Agreement. Applications for international designs are filed with the World Intellectual Property Organization (WIPO). The procedure to be followed resembles that applicable to the registration of an international trademark.

## 11.8 Trade secrets

Trade secret protection in the Netherlands is primarily governed by the Trade Secrets Act (*Wet bescherming bedrijfsgeheimen* or *Wbb*). The *Wbb*, which has been in force since 2018, provides a dedicated framework to prevent the unlawful acquisition, use, or disclosure of confidential business information (trade secrets). By means of the *Wbb*, the Netherlands has transposed Directive (EU) 2016/943 on the protection of undisclosed know how and business information (the Trade Secrets Directive) into Dutch law.

Under the *Wbb*, information qualifies as a trade secret only when the following three conditions are met:

1. the information must be genuinely secret, meaning it is not generally known or easily accessible;
2. the information must have commercial value because it is secret; and
3. the lawful holder must have taken reasonable steps to keep it confidential, such as security controls, restricted access, or the use of non disclosure agreements.

Examples of such information include formulas and recipes, manufacturing processes, software source code, financial data, customer lists, and research data.

The *Wbb* prohibits the unlawful acquisition of trade secrets, as well as the unauthorized use or disclosure of such information. The lawful holder may initiate civil proceedings to stop further use or disclosure, or to claim damages. Unlike intellectual property rights such as patents, trade secrets do not need to be registered and can last indefinitely, provided the information remains secret and the holder continues to take reasonable protective measures.

## **12. DATA PROTECTION**

### **12.1 General**

The EU Data Protection Regulation (GDPR) entered into force on 24 May 2016 and became directly applicable in all EU Member States on 25 May 2018. Although, due to the direct effect of the GDPR, it was not necessary for the Netherlands to transpose the GDPR into national legislation, the Netherlands has introduced the GDPR Implementation Act, which supplements the GDPR and repeals the previously applicable Personal Data Protection Act (*Wet bescherming persoonsgegevens* or *Wbp*). The Personal Data Protection Act had transposed the EU Data Protection Directive (DPD) into Dutch legislation and had been in force since 2001. An amendment to the GDPR Implementation Act is expected in 2026, introducing several substantive and technical changes.

### **12.2 Personal data**

The GDPR defines “personal data” as: any information relating to an identified or identifiable natural person (the “data subject”). In this context, an “identifiable natural person” means a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The GDPR imposes specific obligations regarding the processing of personal data on “controllers” and “processors” of personal data, whereby “controllers” are natural persons, legal entities or organisations that determine the purposes and means of the processing of personal data, and “processors” are natural persons, legal entities or organisations that process personal data on behalf of the controller. With respect to the processing of personal data, the GDPR provides that such processing must be carried out in accordance with the following principles:

- 'lawfulness, fairness and transparency': personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject;
- 'purpose limitation': personal data must be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- 'data minimisation': personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- 'storage limitation': personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
- 'integrity and confidentiality': personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

The GDPR further stipulates that controllers shall be responsible for, and be able to demonstrate compliance with, these principles.

Article 6 of the GDPR provides that the processing of data shall be lawful only if and to the extent that at least one of the following applies:

- the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- processing is necessary for the performance of a contract to which the data subject is party, or to take steps at the request of the data subject prior to entering into a contract;
- processing is necessary for compliance with a legal obligation to which the controller is subject;
- processing is necessary to protect the vital interests of the data subject or of another natural person;
- processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject that require protection of personal data, in particular where the data subject is a child.

### **12.3 Data breaches**

The GDPR stipulates that, in the event of a personal data breach, the controller shall, without undue delay and, where feasible, within 72 hours after having become aware of it, notify the personal data breach to the supervisory authority (in the Netherlands: the Dutch Data Protection Authority or *Autoriteit Persoonsgegevens*), unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. If the notification is not made within 72 hours, it must include the reasons for the delay. According to the GDPR, the notification shall at least (a) describe the nature of the personal data breach, (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained, (c) describe the likely consequences of the personal data breach, and (d) describe the measures taken or proposed to be taken by the controller to address the personal data breach. If the processor becomes aware of any data breach, the processor shall notify the controller without undue delay.

### **12.4 Enforcement**

Enforcement of the GDPR in the Netherlands is the responsibility of the Dutch Data Protection Authority. In the event of data breaches, the Dutch Data Protection Authority may impose fines. The most serious infringements of the GDPR may result in a fine of up to EUR 20 million or 4% of the organisation's worldwide annual revenue for the preceding financial year, whichever amount is higher. That said, it appears that the Dutch Data Protection Authority is more inclined to encourage and guide organisations to comply with the GDPR and the GDPR Implementation Act than to impose sanctions.

## **13. COMPETITION LAW**

### **13.1 General**

In the Netherlands, competition is regulated by the Dutch Competition Act (*Mededingingswet* or *Mw*), which entered into force in 1998, as well as by European law, in particular certain provisions of the Treaty on the Functioning of the European Union (TFEU) and the EC Merger Regulation (Council Regulation (EC) No 139/2004), given that the relevant provisions of the TFEU and the EC Merger Regulation have direct effect in the EU Member States. The provisions of the *Mw* are based on, and strongly resemble, the corresponding provisions of the TFEU and the EC Merger Regulation. Under both Dutch and European competition law, agreements, decisions and concerted practices are prohibited only if they restrict competition to an appreciable extent. A requirement that applies exclusively under EU competition law is that the conduct in question must affect trade between Member States of the European Union.

The Authority for Consumers and Markets (*Autoriteit Consument & Markt* or *ACM*) is responsible in the Netherlands for the enforcement not only of the *Mw*, but also of the competition law provisions of the TFEU and the EU Merger Regulation. The ACM has the authority to investigate possible infringements, issue binding instructions to cease infringements, and impose fines and other administrative sanctions.

In this chapter, the most relevant aspects of Dutch competition law will be addressed.

### **13.2 Anti-competitive agreements and concerted practices**

Section 6(1) of the *Mw*, which is the Dutch law equivalent of Article 101 of the TFEU, prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings that have as their object or effect the prevention, restriction or distortion of competition in the Dutch market or in a part thereof. This prohibition covers

both horizontal arrangements (between competitors operating at the same level of the supply chain) and vertical arrangements (between parties operating at different levels of the supply chain, for example an agreement between a manufacturer and its distributor).

Any agreement, decision or concerted practice falling within the scope of this prohibition is null and void. However, the prohibition does not apply if the combined turnover or the combined market share of the undertakings concerned does not exceed certain de minimis thresholds. Furthermore, agreements, decisions or concerted practices that in principle fall within the scope of the Section 6(1) prohibition may be exempt in specific circumstances. Such exemptions include agreements, decisions or concerted practices which fulfil the material conditions of an EU block exemption or for which the European Commission has granted an individual exemption under Article 101(3) TFEU.

### **13.3 Abuse of a dominant position**

Section 24(1) of the Mw, which is the Dutch law equivalent of Article 102 of the TFEU, prohibits undertakings that hold a dominant position on the Dutch market to abuse that position. Section 1 under (i) of the Mw defines a “dominant market position” as a “position of one or more undertakings which enables them to prevent effective competition being maintained on the Dutch market or in part of it by giving them the possibility of behaving to an appreciable extent independently of their competitors, suppliers, customers or end-users”.

Examples of the abuse of a dominant position include:

- directly or indirectly imposing unfair purchase or sale prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- making the conclusion of contracts subject to acceptance by the

other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The pursuit, holding or strengthening of a dominant position by normal means is not prohibited.

Until 1 September 2025, Section 24(1) of the Mw could not be applied to mergers or acquisitions, because Section 24(2) - which was deleted with effect from that date - explicitly provided that the creation of “concentrations” (meaning mergers, acquisitions and certain joint ventures; see paragraph 13.4 below) could not constitute an abuse of a dominant position. Following the deletion of Section 24(2), the ACM can now retrospectively investigate M&A transactions for potential abuse of dominance, including smaller transactions that fall below the notification thresholds.

### **13.4 Merger control**

Chapter 5 of the Mw, which is the Dutch law equivalent of the EU Merger Regulation, relates to “concentrations”, being mergers, acquisitions and certain joint ventures. Concentrations falling within the scope of application defined in Chapter 5 of the Mw are subject to merger control under the Mw, unless they have an “EU dimension”. Such concentrations must be notified to the ACM before they can be implemented.

Section 29 of the Mw stipulates that a concentration must be notified to the ACM if the combined turnover of the undertakings concerned in the preceding calendar year exceeded EUR 150 million, whereby at least two of the undertakings concerned have each achieved a turnover of at least EUR 30 million in the Netherlands. Different thresholds apply for transactions occurring in specific sectors.

The merger control procedure consists of two phases: the notification phase (Phase 1) and the phase in which a license may be applied for (Phase 2). The required notification may be submitted by any of the parties concerned

and may also be submitted jointly on behalf of several parties. Once the ACM has received the notification, it will be announced in the Government Gazette (*Staatscourant*) and on the ACM's website. This will give interested parties the opportunity to submit comments on the intended concentration. Following notification, the ACM has a period of four weeks to determine whether the implementation of the concentration requires a license. During this period, the concentration may not be implemented, unless an exemption is granted for important reasons.

The ACM may determine that a concentration which it has reason to believe may significantly impede effective competition in the Dutch market or in a part thereof, in particular as a result of the creation or strengthening of a dominant position, is subject to a license. If the ACM determines that no license is required, the parties may implement the transaction. If the ACM determines that a license is required, the parties may submit an application for the license. There is no deadline for submitting such an application. Once an application has been submitted, the ACM must either grant or refuse the license within thirteen weeks after the date on which the application was made. If no decision has been taken within that period, the license is deemed to have been granted.

Following a refusal by the ACM to grant a license to implement a concentration, the Minister of Economic Affairs may, upon application by the relevant parties, decide to grant such license if, in the Minister's view, important reasons of public interest outweigh the likely restriction of competition. This decision is of a political rather than an economic or legal nature. To date, the Minister of Economic Affairs has exercised this authority only once (in September 2019).

### **13.5 Foreign Direct Investments**

A foreign direct investment (FDI) is an investment made in the form of acquiring a controlling stake in a company or business by an investor or company from another country. Foreign portfolio investments made for the purpose of passively holding stock or other securities in foreign companies are not regarded as FDIs.

FDI screening is becoming increasingly important, in particular in the context of cross-border M&A transactions. At present, the Netherlands has certain sector-specific screening mechanisms in place in the electricity, natural gas and telecommunications sectors. Pursuant to these regulations, prior permission from the Ministry of Economic Affairs must, in the interest of public security, be obtained for the proposed acquisition of control over a Dutch company operating in one of these sectors. On 1 June 2023, the Investment, Mergers and Acquisitions (Security) Act (*Wet veiligheidstoets investeringen, fusies en overnames* or *Wet Vifo*) entered into force, which contains FDI-like rules that are not limited to a specific sector.

At the EU level, Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union, entered into force on 10 April 2019 and has been fully applicable in all EU Member States since 11 October 2020. The Regulation establishes an EU-wide framework for screening FDIs on the grounds of national security and public order. Its scope includes a broad range of investments of any kind that establish or maintain lasting and direct links between investors from third countries and undertakings carrying out an economic activity in an EU Member State. Portfolio investments are not covered by the Regulation.

The Regulation promotes cooperation, information-sharing and a minimum level of transparency regarding FDI screening between the European Commission and the EU Member States, rather than harmonising FDI measures at Member State level or replacing existing national FDI screening regimes. The Netherlands has implemented the EU FDI framework through the Implementation Act on Foreign Direct Investment (*Uitvoeringswet screeningsverordening buitenlandse directe investeringen*), which entered into force on 4 December 2020.

### **13.6 Foreign Subsidies Regulation**

Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (the Foreign Subsidies Regulation or FSR) contains rules and procedures allowing the European Commission to assess any foreign subsidy from a non-EU

Member State that directly or indirectly benefits an economic activity in the EU and to redress any distortions caused by such foreign subsidies. Under the FSR, companies are required to notify “foreign financial contributions” (FFCs) if the estimated value of a government contract or framework agreement is equal to or exceeds EUR 250 million, and if the company has received foreign financial contributions with a value equal to or exceeding EUR 4 million in the three years preceding the notification. The FSR covers a wide range of forms of state support (including loans, guarantees, tax advantages, equity and certain commercial transactions with public entities), from any non-EU country. In the context of M&A transactions, a mandatory filing with the European Commission is required if (a) at least one of the merging undertakings, the target or the joint venture is established in the EU and has an EU turnover equal to or exceeding EUR 500 million, and (b) the parties together received EUR 50 million or more in FFCs from non-EU states in the three years preceding the transaction. In the event of non-compliance, the dissolution of the merger or joint venture or the divestiture of the acquired assets may be required to restore the pre-transaction situation, and fines may be imposed.

## 14. REAL ESTATE

### 14.1 Ownership and other rights

Ownership is the most absolute and comprehensive right that a person can have to a property. Pursuant to the legal concept known as accession (*natrekking*), ownership of land also includes the buildings and other immovable assets on the land, as well as subterranean structures. A limited right (*beperkt recht*) is a right derived from a more comprehensive right (such as ownership), encumbered with such limited right. A limited right created over a property is also a right in rem (*zakelijk recht*).

In relation to real property, rights in rem (*zakelijke rechten*) include the right of mortgage (*hypotheek*), the right of superficies (*opstal*), the right of leasehold (*erfpacht*), easement (*erfdienstbaarheid*) and agricultural tenancy (*pacht*). The right of mortgage is a security right established over real property (or other registered property). The right of leasehold is the right to hold and use a piece of land owned by another person. The right of superficies gives the holder the right to own buildings, works or plants in, on or over a piece of land owned by someone else. An easement is a right in rem by which an immovable property is encumbered in favour of another immovable property. An example of an easement is the right of way (*recht van overpad*). Agricultural tenancy is an agreement whereby the agricultural lessor undertakes to provide the agricultural lessee with immovable property for agricultural use for a consideration.

Ownership of real property can be divided into several apartment rights (*appartementsrechten*), which are separately transferable and can separately be encumbered with a limited right. Houses and apartment buildings can be divided into separate apartment rights.

The transfer of ownership (legal title) and the creation or transfer of other rights in rem to real property are effected by way of a notarial deed of transfer executed before a Dutch civil law notary. To become legally effective, the rights to real property must be registered with the Land Registry Office (*Kadaster*) (see also paragraph 14.3 below).

## 14.2 Lease

Lease is not a right in rem, but rather a personal right to use certain property. With respect to real property, Dutch law distinguishes between residential lease and the lease of business premises. In this paragraph, only the lease of business premises will be addressed. There are two types of business premises leases: (i) lease of retail premises and (ii) lease of other business premises.

The lease of retail premises is subject to detailed, semi-mandatory statutory provisions from which the parties cannot deviate to the detriment of the lessee. These provisions apply to premises that, according to the lease agreement, are used to conduct a retail business, a restaurant or café business, a take-away and delivery service, a craft business, or a hotel or camping business. For these provisions to apply, a publicly accessible space for the direct supply of movable goods or for the provision of services must be present. Except for agreements entered into for a period of no more than two years, lease agreements in this category must be concluded for an initial period of at least five years and are in principle extended by law for another period of five years. The lease agreement does not terminate automatically at the end of the five year or ten year period, but may be terminated by giving notice to the other party, to take effect at the end of the five year or ten year period. A notice period of one year (or longer if agreed between the parties) must be observed. The lessor (not the lessee) must give a valid reason for the termination and, if the lessee does not consent to the termination in writing, the lessor will have to initiate court proceedings to have the lease agreement terminated.

The lease of other business premises (such as offices) is less regulated than the lease of retail premises. The lessor and the lessee are generally free to negotiate the rent and the other terms of the lease agreement, except that special statutory rules apply regarding the lessee's obligation to vacate the premises in the event of termination by the lessor, which rules cannot be deviated from to the detriment of the lessee.

The Real Estate Council of the Netherlands (*Raad voor Onroerende Zaken* or ROZ), an association of professional parties active in the real estate

industry, has prepared model lease agreements and related general terms, which are regarded as the industry standard for lease agreements. These model documents are regularly updated.

### **14.3 Land Registry Office**

The Land Registry Office (*Kadaster*) registers geographical information concerning real estate located in the Netherlands, as well as mortgages and other limited rights created over real estate. In addition to registering information on real estate, it also registers information on ships, aircraft and networks. The Land Registry Office is also responsible for national mapping and for the maintenance of the national reference coordinate system. The Land Registry Office is a non-departmental public body under the political responsibility of the Ministry of the Interior and Kingdom Relations.

By registering certain information, the Land Registry Office safeguards legal certainty. In the event of a sale of real estate, the buyer becomes the legal owner only upon registration of the deed of transfer with the Land Registry Office. The civil law notary (*notaris*) before whom the deed of transfer is executed is responsible for registration with the Land Registry office. The registered information is available to the public and can be obtained (for a modest fee) through the Land Registry Office's website, as well as in person or by telephone.

### **14.4 Zoning Plan and All-In-One Permit For Physical Aspects**

As the Netherlands is a densely populated country, the development and use of land for residential or business purposes is heavily regulated. The choice of a particular location must be in line with the applicable municipal zoning plan (*bestemmingsplan*). A zoning plan not only includes detailed rules on how a plot of land or premises may be used, for example, by specifying where houses, hotels and shops may be established, but also sets limits on the maximum height or width of buildings or other constructions. Zoning plans are updated regularly.

If it is intended to construct a new building or to rebuild, alter or renovate an existing building, an all-in-one permit for physical aspects (*omgevingsvergunning*) will in most cases be required. An all-in-one permit can be applied for online. The application is assessed against the applicable zoning plan. In practice, it may take between two to six months before the municipality decides whether the all-in-one permit is granted.

## 15 TAX

### 15.1 Corporations

Under the Dutch Corporate Income Tax Act (*Wet op de vennootschapsbelasting 1969* or *CITA*) entities incorporated under Dutch law are deemed to be Dutch tax residents for corporate income tax (CIT) purposes. A Dutch resident company is subject to CIT on its worldwide income. Non-resident entities have a limited tax liability meaning that only Dutch source income is included in the tax base. The corporate residence of an entity is based on the relevant facts and circumstances, whereby the effective place of management is an important factor in establishing where the entity is resident.

A non-Dutch resident entity holding 5% or more of the nominal issued capital in a Dutch company (a so-called substantial interest) can become subject to CIT on dividends, capital gains and interest on loans derived from such substantial interest, but only in certain specific situations.

#### *Tax rates*

The CITA distinguishes between two different tax rates: a standard rate of 25.8% and a lower rate of 19%, which applies to taxable income up to EUR 200,000 (2026 rates and brackets). If certain conditions are met, fiscal investment funds are taxed at a 0% CIT rate. Certain entities, such as public bodies, may also opt for a tax-exempt status.

#### *Calculation of taxable profit*

The CITA does not contain a specific provision detailing how annual taxable profit must be determined. Instead, it requires that annual profits be determined in accordance with “sound business practice” (*goed koopmansgebruik*). Sound business practice entails that profits and losses are attributed to financial years in accordance with the principles of realisation, matching, reality, prudence and simplicity practices.

Business expenses are generally tax deductible, although certain deduction restrictions apply (for example with respect to interest expenses).

### *Loss compensation*

Tax losses can be carried back for one year and carried forward indefinitely. However, annual loss compensation is limited to EUR 1 million, increased with 50% of the taxpayer's annual taxable profit exceeding EUR 1 million.

### *The arm's length principle and transfer pricing*

Based on the arm's length principle, the terms and conditions of transactions between related parties should be similar to the terms and conditions that would be agreed upon between unrelated parties in otherwise comparable circumstances. The interpretation of the arm's length principle in the Netherlands is based on the OECD Transfer Pricing Guidelines. In general, the Dutch tax authorities adhere to these guidelines. If a transaction is not conducted at arm's length the Dutch tax authorities may adjust the pricing of the transaction.

Additionally, corporate taxpayers are required to include specific information in their administration, including documentation demonstrating that intercompany transactions were conducted in accordance with the arm's length principle. Supplementary transfer pricing documentation is required for entities exceeding certain turnover thresholds. Entities that are part of a multinational group ("MNE") with a consolidated turnover of EUR 50 million or more are required to prepare a master file and local file (i.e., a group-level a file and an entity level file, respectively). Entities that are part of an MNE with a consolidated turnover of EUR 750 million or more must also prepare a Country-by-Country Report, which provides key financial information of the MNE on a per-jurisdiction basis. Failure to comply with these obligations may result in a reversal of the burden of proof and the imposition of administrative penalties.

## *Dutch participation exemption*

The Dutch participation exemption provides a full exemption for certain income received from qualifying subsidiaries, most importantly dividends and capital gains. A subsidiary qualifies for the participation exemption if an interest of at least 5% in the nominal contributed capital is held, provided that the participation is not held as a portfolio investment (i.e., a passive investment). This is known as the 'Intention test'.

### *Intention test*

The decisive criterion for the Intention test is the intention with which the participation is held by the Dutch company. The Intention test is considered to be met if the Dutch company's objective is to obtain a return on its investment that exceeds the return that may be expected from regular portfolio asset management. In addition, the test may be met if the shareholder performs essential activities in the business of the subsidiary (e.g., management activities, strategy or policy-making activities, or financial activities). If a participation is held with mixed intentions, the predominant intention is decisive. A participation is not regarded as a passive investment if the participation is engaged in the same line of business as the Dutch company.

However, if this Intention test is not met, the Dutch participation exemption may still apply if the participation can be considered a "qualifying portfolio investment participation". This is the case if the participation meets either the "Subject-to-tax test" or the "Asset test".

### *Subject-to-tax test*

The Subject-to-tax test is met if the participation is subject to a profits tax in its country of residence that results in a "reasonable levy" of tax according to Dutch tax standards. This is the case if the participation is subject to a profits tax at a regular statutory rate of at least 10%, provided that the local tax base does not significantly deviate from the Dutch tax base. In cases where significant deviations exist, the Subject-to-tax test can still be met if the participation is effectively subject to a profits tax of at least 10%.

## *Asset test*

The Asset test is met if the directly and indirectly held assets of a participation consist of less than 50% low-taxed free portfolio investments. Free portfolio investments include:

- assets that are not used in the business of the participation and have a portfolio character (e.g., excess cash, securities and intercompany loans), except for real estate investments (real estate assets do not qualify as portfolio assets);
- intercompany loan receivables, unless these are used by an active group finance company or are financed for 90% or more with third party debt; and
- assets used for intercompany leasing activities, unless they are used in an active leasing business or are financed for 90% or more with third party debt.

Free portfolio investments are considered low-taxed if the income from these assets is not subject to tax at a rate of at least 10% (so-called bad assets). Assets which do not qualify as low taxed free portfolio investments are generally classified as “good assets”. The Asset test is a continuous test and the test is applied on a fair market value basis, whereby potential (hidden) goodwill relating to active business operations may be treated as a “good asset” for the purposes of this test.

## *Research and Development (R&D)*

Certain tax incentives exist to promote R&D related activities in the Netherlands, such as the innovation box. In addition, taxpayers may apply for the WBSO, a tax incentive regime offering compensation for part of an entity's R&D related wage costs and other qualifying expenditures.

### *Innovation box*

The innovation box is a tax incentive aimed at stimulating R&D activities in the Netherlands. Income that can be allocated to the innovation box is taxed at a corporate tax rate of 9% instead of the regular corporate tax rate.

Only benefits arising from “qualifying” intangible assets are eligible for the innovation box. In this respect, a distinction is made between “small” and “large” taxpayers. Small taxpayers are subject to less stringent requirements regarding what constitutes a qualifying intangible asset. These taxpayers qualify for the innovation box if they have obtained the R&D statement required for the application of the WBSO.

For large taxpayers, an “access ticket” is required, in addition to the R&D statement. This ticket may consist of the following:

- (i) a patent;
- (ii) an exclusive license;
- (iii) a software program;
- (iv) a plant breeder’s right; or
- (v) a pharmaceutical certification.

A taxpayer is considered a small taxpayer if the following conditions are met:

- (i) the total amount of benefits arising from intangible assets in a given year plus the four preceding years is less than EUR 37.5 million (i.e. an average of EUR 7.5 million per year); and
- (ii) the net turnover in a given year plus the four preceding years of the taxpayer (together with its group companies) is less than EUR 250 million (i.e. an average of EUR 50 million per year).

## **WBSO**

WBSO is a tax incentive scheme offering compensation for part of an entity’s research and development (R&D) related wage costs and other related expenditures. The R&D wage tax deduction amounts to 36% of the first EUR 391,020 of wages and related costs, and 16% of further qualifying R&D costs. For start-ups, the tax deduction for the first EUR 391,020 of costs is 50%. The amount of the allowance is not capped. Taxpayers must request an R&D statement in order to apply the WBSO.

To find out whether an entity may be eligible for this incentive, it is

recommended to engage a specialized subsidy advisor to review the activities performed. Although the allowance is processed as a reduction of the wage tax to be paid, it is essentially a subsidy granted upon meeting certain technical requirements).

### *Fiscal unity*

The CITA provides for a consolidation regime called the fiscal unity (fiscale eenheid). If certain conditions are met, entities that are part of the same group may become members of a fiscal unity in order to file a consolidated tax return. Entities that are tax residents of the Netherlands may form a fiscal unity with subsidiaries in which an interest of at least 95% is held. The fiscal unity generally eliminates intercompany transactions between its members, so that no income is realized on these transactions. The main advantages of the fiscal unity are:

- (i) the offsetting of losses and profits among its members;
- (ii) the filing of a single corporate tax return as the parent entity is solely responsible for filing the return; and
- (iii) the elimination of intercompany transactions.

The individual members of the fiscal unity are jointly and severally liable for any tax debts of the fiscal unity.

### *Object exemption*

Income allocable to a permanent establishment (“PE”) can be exempt from CIT under the so-called object exemption. Under this exemption, the income and expenses that must be allocated to the PE are excluded from the Dutch taxable base. The result attributable to the PE must be calculated in accordance with Dutch tax standards, but in the local functional currency. Translation results therefore remain included in the Dutch taxable base.

### *Dividend tax*

Profit distributions made by Dutch entities are subject to Dutch dividend tax at a rate of 15%. The tax must be withheld by the distributing entity and

remitted to the Dutch tax authorities. An exemption from Dutch dividend tax applies to profit distributions to EU companies or companies resident in a state with which the Netherlands has concluded a tax treaty that includes a comprehensive dividend provision, provided that the company holds a participation that would qualify for the Dutch participation exemption. However, under Dutch anti-abuse rules, the dividend tax exemption may not be applied if one of the following applies:

- (i) the recipient of the dividend is considered in its country of residence to be a resident of a non-EU state with which the Netherlands has not concluded a tax treaty that includes a comprehensive dividend provision;
- (ii) the recipient of the dividend performs a function comparable to that of a qualifying Dutch (portfolio) investment fund;
- (iii) the recipient of the dividend can be considered part of an “abusive” structure, which is the case if the following two cumulative conditions are met:
  - a. the recipient of the dividend holds the shares in the Dutch company with the principal purpose (or one of the principal purposes) of avoiding Dutch dividend tax for another party (the “Motive test”), and
  - b. the structure is considered artificial, meaning it is not established for valid business reasons that reflect economic reality (the “Artificiality test”); or
- (iv) the recipient of the dividend is not the beneficial owner of the income received from the Dutch company.

The Dutch dividend tax due (if any) may be reduced under the application of tax treaties to which the Netherlands is a party.

### *The Dutch Cooperative*

Profit distributions made by a Dutch cooperative to its members are, as a general rule, not subject to Dutch dividend tax. However, if the cooperative qualifies as a so-called holding cooperative, Dutch dividend tax at a rate of 15% is due when profits are distributed to ‘qualifying members’. A qualifying member is a member that is entitled to at least 5% of the annual profits of the cooperative or at least 5% of the liquidation proceeds.

A cooperative is deemed to be a holding cooperative if 70% or more of its activities consist of:

- (i) owning shareholdings that qualify for the Dutch participation exemption;  
or
- (ii) related-party financing activities.

Holding cooperatives and their qualifying members that are subject to Dutch dividend tax may be tax exempt or eligible for a reduced rate under bilateral tax treaties.

### *Conditional Withholding Tax on Interest, Royalties and Dividends*

In principle, the Netherlands does not levy withholding tax on interest or royalty payments. However, as of 1 January 2021, the Netherlands introduced a conditional withholding tax on interest and royalty payments in certain specific situations. As of 1 January 2024, this regime has been extended to also cover dividend distributions. The Dutch conditional withholding tax (“CWHT”) has an anti-abuse character and should not adversely affect genuine business transactions between unrelated parties. CWHT is levied at the headline CIT rate.

In short, CWHT is triggered in cases involving:

- (i) payments to related companies located in a low-taxed jurisdiction (“LTJ”);
- (ii) payments to certain related hybrid entities; and
- (iii) abusive situations (e.g., indirect payments to an LTJ or hybrid company through a conduit company).

An LTJ is a jurisdiction that either:

- does not levy a profits tax,
- levies a profits tax at a statutory rate of less than 9%, or
- appears on the EU list of non-cooperative jurisdictions.

Each year by 1 October, the Netherlands publishes the list of LTJs, which applies for the following calendar year.

## 15.2 Individuals

As a general rule, an individual residing in the Netherlands is subject to tax on his or her worldwide income and wealth. An individual is deemed to be a resident of the Netherlands if the socio-economic centre of his or her life's interests factually lies in the Netherlands. An individual who qualifies as a Dutch resident taxpayer is eligible for certain deductions and tax credits.

An individual who does not live in the Netherlands is only subject to Dutch personal income tax on certain sources of income, for example benefits from a substantial shareholding, employment or real estate located in the Netherlands.

### *The Box system*

Under the Dutch Personal Income Tax Act (*Wet op de inkomstenbelasting 2001*), a distinction is made between three categories of income: "Box 1", "Box 2" and "Box 3". Each box has its own rules, tax rate and taxable base:

- Box 1 concerns income from employment, business income and income from miscellaneous activities. Box 1 income is subject to personal income tax based on progressive tax brackets, as shown below.

<b>Box 1 income including social security premiums (2026)</b>	<b>Tax rate (2026)</b>
Up to EUR 38,883	35.75%
Between EUR 38,883 and EUR 78,426	37.56%
More than EUR 78,426	49.50%

An individual's private residence in the Netherlands is also included in Box 1, meaning that mortgage interest (if any) may be tax deductible, provided that certain conditions are met.

- Box 2 concerns income (including capital gains) from a substantial interest (i.e., participations of at least 5% of the nominal issued capital

of a company). Box 2 income is subject to tax at the following rates:

<b>Box 2 income (2026)</b>	<b>Tax rate (2026)</b>
Up to EUR 68,843	24.5%
More than EUR 68,843	31%
More than EUR 78,426	49.50%

- Box 3 concerns income from savings and (portfolio) investments, real estate, and other assets to the extent that such income is not categorized in Box 1 or Box 2. The asset base takes into account a tax-free threshold of EUR 59,357. Box 3 assets are divided in three categories: bank deposits, other assets and debts, which are deemed to generate a return ranging from -2.70% to 6%. The deemed returns for 2026 are still subject to change and will be officially confirmed in early 2027.

<b>Box 3 income</b>	<b>Deemed return (2026, preliminary)</b>	<b>Tax rate (2026)</b>
Bank deposits	1.28%	36%
Other assets	6%	36%
Debts	-/- 2.70%	36%

Taxation based on deemed returns has been challenged before the Dutch Supreme Court. Consequently, it is also possible to be taxed on the actual return, provided that the taxpayer can demonstrate the actual return for the relevant tax year. In order to do so, an objection must be filed against the personal income tax assessment (which is initially based on the deemed return).

### *The expat facility*

The expat facility is a preferential Dutch tax regime, that may currently be applied for a maximum period of 5 years. Under the expat facility, 30% of the gross income from employment in Box 1 (up to a maximum income of EUR 262,000) may be paid free from Dutch personal income tax. This will be reduced to 27% as of 1 January 2027, except in individual cases where the expat facility was granted before 1 January 2024.

To qualify for the expat facility, the individual has to meet the following criteria:

- the individual must be hired from abroad or seconded to a domestic employer in the Netherlands. To meet this requirement, it is strongly recommended that the employment agreement is signed before the date of the individual's migration to the Netherlands (the effective date of the employment agreement may be a date after the migration date);
- the individual must be paid through a Dutch payroll, i.e., the salary of the individual must be subject to Dutch wage tax withholding. The Dutch employer is usually considered a withholding agent for Dutch wage tax purposes;
- the individual must have specific expertise, which is generally deemed to be the case only if the individual earns a taxable annual wage of at least EUR 48,013 after the application of the expat reduction. This means that the expat facility benefit can be maximised for a gross annual salary of at least EUR 68,590; and
- the individual must have lived at a distance of more than 150 km from the Dutch border for more than two-thirds of the 24-months period prior to commencing employment in the Netherlands.

To apply the expat facility, a request must be timely filed with the Dutch tax authorities.

### **15.3 Value-added tax (VAT)**

To be regarded as a taxable person for VAT purposes, a company must perform economic activities (i.e., the supply of goods or services for consideration). This may also include the provision of management services or the granting of interest-bearing loans.

Economic activities may consist of VAT-taxable and VAT-exempt activities. The supply of VAT-exempt services generally does not give rise to a right to deduct input VAT (i.e., VAT incurred on purchased goods or services). The granting of interest-bearing loans to borrowers within the EU is a VAT-exempt activity and, in principle, does not entitle the lender to deduct input

VAT. The granting of interest-bearing loans to borrowers outside the EU is also VAT-exempt, and does give a right to deduct input VAT.

The mere holding of shares in a subsidiary (without performing economic activities for that subsidiary), is not regarded an economic activity for VAT purposes and therefore does not give the right to VAT recovery. However, if economic activities are performed for a subsidiary (e.g., management services or providing interest-bearing loans), the holding of shares in that subsidiary may also be regarded as economic activity. The subsidiaries described above are therefore classified as “passive subsidiaries” and “active subsidiaries”, respectively.

### *VAT rates*

The general VAT rate in the Netherlands is 21%. A reduced rate of 9% applies to, among other things, food, non-alcoholic beverages, art, hairdressing services and public transport. Furthermore, a 0% VAT rate applies to intra-community supplies and sea-going vessels. VAT-exemptions apply to specific financial services, insurances, education, medical services and real estate.

### *VAT fiscal unity*

Dutch VAT-taxable persons that are financially, economically and organisationally closely linked to each other are, together, regarded as one VAT-taxable person - a VAT fiscal unity - if the following requirements are met:

- financial link: 50% or more of the shares in the members are directly or indirectly held or controlled by the same person;
- organisational link: the members are under the same management, which primarily concerns the composition of the management board;
- economic link: the members must have the same client base, perform complementary activities, or one member must perform more than 50% of its transactions on behalf of another member of the VAT fiscal unity.

Dutch VAT policy allows a pure holding company that does not otherwise

qualify as a VAT-taxable person, to be included in a VAT fiscal unity, if that holding company has a steering and policy-making function within the group.

If the above requirements are met, a VAT fiscal unity exists by virtue of the law. The members of the VAT fiscal unity may file separate VAT returns or file a single return jointly. Transactions between members of the VAT fiscal unity fall outside the scope of VAT and therefore no VAT is due on such transactions.

The right to deduct input VAT is determined on the basis of the activities of the VAT fiscal unity as a whole. Exempt activities between members therefore do not negatively affect the overall right to deduct input VAT.

Members of the VAT fiscal unity are jointly and severally liable for the VAT due by any of the members. This joint and several liability continues until the Dutch tax authorities are notified of the termination of the VAT fiscal unity.

#### *VAT recovery*

With respect to the right to deduct input VAT, a distinction should be made between (a) directly attributable costs and (b) general costs.

##### *(a) Directly attributable costs*

Directly attributable costs are costs that can be directly allocated to specific activities. Entities are entitled to (fully) deduct input VAT on costs to the extent that those costs are directly related to VAT-taxable output or directly related to the provision of interest-bearing loans to non-EU parties.

On the other hand, VAT on costs directly attributable to income not giving a right to deduct input VAT (e.g., interest-bearing loans to EU parties) is not deductible at all.

##### *(b) General costs*

In addition to directly attributable costs, entities may incur general costs that are not directly (and fully) attributable to VAT-taxable or VAT-exempt

activities. These can, for example, consist of holding and organisational costs. The VAT on these general costs becomes partially deductible using the so-called pro rata. The pro rata is calculated on an annual basis and expressed as a percentage that is rounded up to the next whole number (for example, 48.2% is rounded up to 49%). The pro rata is calculated as follows:

$$\frac{\text{VAT taxable turnover} + \text{VAT exempt turnover with recovery right}}{\text{Total turnover (including financial income)}} \times 100\%$$

According to the Dutch tax authorities, the pro rata must be further reduced by the so-called pre pro rata if in addition to economic activities, the entity also performs non-economic activities, such as the mere holding of shares in a subsidiary. There is no fixed statutory method for calculating the pre pro rata, but the ratio between active and passive subsidiaries is relevant.

#### *(VAT recovery) of import VAT*

Import VAT is due on the importation of goods into the Netherlands from outside the EU. Import VAT is, in principle, due at the moment of importation and can subsequently be reclaimed through the regular VAT return, insofar as the goods are used for VAT-taxable activities.

Dutch VAT law provides a facility to avoid pre-financing this import VAT, which is called an “Article 23 license”. With this license, import VAT does not need to be paid at the moment of importation, but, instead, it is shifted and must be reported in the regular VAT return, where it can also be deducted, insofar as the imported goods are used for VAT-taxable activities. This results in a nil (zero) VAT payable position.

## **15.4 Real estate transfer tax**

Real estate transfer tax (“RETT”) is due on the acquisition of Dutch property, including the acquisition of beneficial ownership. The tax due is calculated on the higher of (i) the purchase price of the property and (ii) the market value of the property.

In principle, RETT is due at a rate of 10.4% for all acquisitions of real estate, including, in certain cases, the acquisition of shares in a Dutch real estate entity, rights to real estate (such as beneficial ownership), and certain certificates entitling the holder to benefits derived from that real estate).

A reduced RETT rate of 8% applies to the acquisition of residential real estate. This can be further reduced to 2% for the acquisition of residential real estate that will be used as the purchaser's primary residence for a longer period. An even further reduction to 0% applies to acquisition of residential real estate by buyers aged 18 to 35 who will use the property as their primary residence for a longer period, provided that the property's value does not exceed EUR 555,000. This last exemption may only be used once.

If the same real estate is sold again within a six-month period to another person or entity, RETT is due on the basis of the purchase price of the second transaction minus the initial purchase price.

Furthermore, under certain conditions, the acquisition of real estate within the same group is exempt from RETT.







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