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Doing business in The Netherlands

A comparative guide

July 2023

A guide to doing business in The Netherlands

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.

No.	Question

A. Legal system and landscape

1 **Is the system of law in your jurisdiction based on civil law, common law or something else?**

Civil law.

B. Entity establishment

2 **What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?**

There are 4 main types of legal entities:

1. The "Naamloze Vennootschap" (**NV**), which is a public company with limited liability.
2. The "Besloten Vennootschap" (**BV**), which is a private limited company with limited liability.
3. The "Coöperatie", which is an cooperative with members instead of shareholders.
4. A partnership, whether general ("v**ennootschap onder firma**" or "**VOF**") or limited ("**commanditaire vennootschap**" or "**CV**").

3 **Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?**

Foreign entities can register a Dutch branch or register the foreign entity in the Netherlands and use this entity to start doing business. Alternatively a foreign entity can set up a Dutch company and become a (sole) shareholder of such entity. There are no special restrictions on foreign-owned companies planning to start a business in The Netherlands.

4 **Are there are any capital requirements to consider when establishing different entity types?**

NVs must have a minimum issued and paid-in capital of EUR 45,000. For BVs no minimum issued and paid-in capital is required, as long as at least one share is issued to a person or legal entity other than the B.V. or its subsidiaries. No capital requirements apply to the cooperative and partnerships.

5 **How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?**

NVs, BVs and cooperation's are established by means of the execution of a notarial deed. Partnerships can be established by means of a private instrument. Most commonly used is the BV for professional investments.

6 **How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?**

Most companies are managed by a management board, consisting of executive directors only. For large entities a supervisory board may be required. The supervisory board supervises the management board and provides advice. Alternatively a one-tier board can be installed, which consists of executive and non-executive board members.

7 **Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?**

All companies must have at least one director. There is no requirement for a director to be based in The Netherlands or to have Dutch nationality.

In general, directors (a private individual or a legal entity, either foreign or Dutch) are appointed by the general meeting of shareholders or members. Unless disqualified as director and/or representative by the court, every individual / legal entity is appointable to act as representative and/or director of a company.

The articles of association may contain additional requirements or restrictions regarding the representation and management of the company.

There is no requirement for a shareholder to be resident in The Netherlands or to have Dutch nationality. Both a private individual and a legal entity can act as shareholder.

The articles of association may contain specific requirements or restrictions for (potential) shareholders.

8 **Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

Unless otherwise stipulated in the articles of association an entity or establishment is free to expand business operations in The Netherlands through commercial agents and or resellers.

C. Entity operation

Please answer the following questions only for the most common entities within your jurisdiction:

C1. Governance

9 **Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

The Dutch Corporate Governance Code (also: Code) is the most dominant governance code and applies to – briefly put – listed entities. The Code was lastly revised in 2022.

The Code set outs general principles, which are considered as reflecting widespread views on good corporate governance. These principles are each followed by and supplemented with specific best practice provisions. Together, the principles and best practice provisions aim to define responsibilities for:

- **Long-term value creation**
  The management board is responsible for the continuity of the company and its affiliated enterprise. The Code emphasizes the relevance of the management board to focus on long-term value creation for the company and to take into account the stakeholder interests that are relevant in this context.
- **Effective management and supervision**
  The Code aims to strengthen the checks and balances between the management board and the supervisory board with provisions related to effective corporate governance and independent supervision.
- **Remuneration**
  Pursuant to the Code, the remuneration policy applicable to management board members should be clear and understandable, should focus on long-term value creation for the company and its affiliated enterprise, and take into account the internal pay ratios.
- **The general meeting**
  The general meeting should be able to exert such influence on the policies of the management board and the supervisory board of the company that it plays a fully-fledged role in the system of checks and balances in the company. Good corporate governance requires such level of participation of the general meeting.

Compliance with the Code is based on the "comply or explain" principle. Listed entities are obliged to comply with each principle and provision of the Code, but may deviate therefrom. In case of a deviation, the entity in question must explain, in a separate chapter of its management report, the extent to which it did not comply with any principles and best practice provisions during the relevant financial year.

The updated Code, that entered into force on 1 January 2023, introduces elements that concern, amongst other things, long-term value creation in combination with ESG and the role of shareholders in recognizing the importance of a sustainable long-term approach for the company as well as diversity and inclusion (D&I). Furthermore, the updated Code pays attention to technological developments and emphasizes the importance that companies should be aware of risks, such as cyber threats, and anticipate them. It is therefore crucial that the management board and supervisory board have expertise and experience with this.

C2. Capital

10 **What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

There are several ways for a shareholder to provide the entity with working capital. The main options are 1) a shareholders cash contribution, 2) subscribing for more shares and 3) executing a shareholder loan agreement.

Outside the shareholder – entity relation, the entity may consider a loan from another entity within the same group or from a third party. In addition to this the company may opt for other alternatives such as the restructuring of debts and asset refinancing.

C3. Return of proceeds

11 **What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.**

NVs and BVs can return proceeds to their shareholders in several ways. For both the NV and the BV distributions of dividend are subject to certain capital requirements. These capital requirements aim to avoid bankruptcy or harm to creditors.

By far the most popular option is to provide shareholders with a **(stock)dividend**.

Dividend distributions - NV
The general meeting (of shareholders) of a Dutch NV can resolve to distribute the NV's profits to its shareholders as dividend only upon adoption of the annual accounts and only if the NV's equity exceeds the amount of the paid-up and called-up capital and the reserves required to be maintained by law and the articles of association.

Interim dividend is only allowed if (i) an interim dividend is specifically allowed by the NV's articles of association; and (ii) the NV's equity exceeds the amount of paid-up and called-up capital and the reserves required to be maintained by law and the articles of association. The NV's equity in this regard should be calculated on the basis of an interim balance sheet not older than the first day of the third month prior to the month when a resolution on interim dividend is adopted.

Dividend distributions - BV
The general meeting (of shareholders) of a Dutch BV can resolve to distribute the BV's profits to its shareholders at any time as long as the BV's equity exceeds the amount of the reserves required to be maintained by law and the articles of association. A resolution of the general meeting in this regard will remain without any effect until the BV's management board approves it, which approval the management board can only withhold when it knows or should reasonably foresee that following the distribution the BV will not be able to continue paying its due (and foreseeable) debts.

The entity may also execute **Share buybacks**.

Repurchase of NV-shares
A Dutch NV is allowed to repurchase its own, fully paid-up, shares with or without consideration unless its articles of association exclude or limit such possibility. A transfer of NV's shares requires a Dutch law notarial deed of transfer, except when the shares are listed on a regulated stock exchange.

A repurchase of shares with consideration is only allowed if the NV's equity less the purchase price for the shares is not less than the paid-up and called-up share capital and the reserves the NV is required to maintain by law and the articles of association. The NV's equity in this regard shall be calculated on the basis of the last adopted balance sheet less (i) the share purchase price, (ii) the amount of loans granted by the NV with a view of acquisition by a third party of shares in its capital, and (iii) (dividend) distributions made by the company or its subsidiaries after the balance sheet date. If more than 6 months have lapsed since the end of a financial year without the annual accounts for that year having been adopted, no repurchase of shares is allowed.

Repurchase of BV-shares
A Dutch BV is allowed to repurchase its own, fully paid-up, shares with or without consideration unless its articles of association exclude or limit such possibility.

A repurchase of shares with consideration is only allowed if (i) the BV's equity less the purchase price for the shares is not less than the reserves the BV is required to maintain by law and the articles of

association and (ii) the BVs' management board has approved the share buyback, which approval the management board can only withhold when it knows or could reasonably foresee that following the share buyback the BV will not be able to continue paying its due (and payable) debts. As opposed to the NV, Dutch law does not include any specific requirements regarding the balance sheet of the BV based on which its equity should be calculated.

C4. Shareholder rights

12 **Are specific voting requirements / percentages required for specific decisions?**

Voting requirements and thresholds are normally laid down in the articles of association of Dutch companies.

13 **Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?**

In principle, shareholders (or members) are not authorised to issue binding instructions to the management. However, the articles of association may stipulate that the managing board must act in accordance with the instructions of the general meeting. The managing board shall be obliged to follow such instructions unless these instructions are contrary to the interests of the company and its affiliated enterprise.

C5. Employment

14 **What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?**

Right / Protection	Details
National Minimum Wage	All employees are entitled to be paid at least the national minimum wage for all working hours. As of 1 January 2023, the hourly rates of pay on a full time basis are: • Employees aged 21 or more: € 11,16; • Employees aged 20: € 8,93; • Employees aged 19: € 6,70; • Employees aged 18: € 5,58; • Employees aged 17: € 4,41; • Employees aged 16: € 3,85; • Employees aged 15: € 3,35.* *these are gross amounts based on a full time 40 hour work week. This may vary into 38 or 36 hour work week, depending on the type of industry. In that case, different hourly rates apply.
Holiday	On an annual basis, an employee is entitled to a number of paid vacation days that at least equals 4 times the agreed weekly working hours – in other words 20 days on a full time basis. In practice employers tend to award additional vacation days on top of this minimum. In the Netherlands, it is common practice to grant

	employees approximately 5 additional paid vacation days per year (on a fulltime basis). In addition, there are approximately 6 public holiday days in the Netherlands. Further, collective bargaining agreements can include alternative regulations with regards to vacation days.
Working Hours	Unless an exemption applies, The employees' working hours should not exceed 12 hours per shift and 60 hours per week. Over a period of 4 weeks, the employees' average hours should not exceed 55 hours per week, unless agreed otherwise by a collective bargaining agreement or company regulations. Over a period of 16 weeks, the employees' average hours should not exceed 48 hours per week. A working week runs from Monday 00:00 to Sunday 24:00.
Rest Periods	Unless an exemption applies, employees are entitled to the following rest periods: • 11 hours' uninterrupted rest per day. The 11 hours rest period may be shortened to a minimum of 8 hours once every 7 days, but this may only be done if it is necessary for the work concerned; • 36 hours' uninterrupted rest per week (or 72 hours' uninterrupted rest per fortnight, which rest period may be split into uninterrupted rest periods of at least 32 hours each); and • A rest break of 30 minutes when working more than 5 ½ hours per day; or • A rest break of 45 minutes when working more than 10 hours per day.
Pension rights	The Dutch state pension scheme (in Dutch: "AOW") automatically insures everyone living or working in the Netherlands when reaching the minimum required age of 66 years and 10 months in 2023. Most employees accumulate a supplementary pension through their employer. It is however not obligatory for the employer to supplement the state pension of its employees. If, however, a company operates in a certain line of industry where either a collective bargaining agreement applies or a pension fund has been declared mandatorily applicable, then the company may be obliged to participate in an industry pension scheme. In those situations, the employer should meet the conditions as described in the collective bargaining agreement or the decree that declares the pension fund mandatorily applicable, including the obligation to provide a specific collective private pension scheme.
Discrimination	Employers are protected against discrimination on the basis of the following protected characteristics:

	• Religion or belief; • Political beliefs; • Race; • Sex; • Pregnancy and maternity; • Nationality; • Sexual orientation; • Marital status; • Disability or chronic illness; • Civil status • Age; • Working hours (fulltime/parttime); and • Type of contract (fixed or indefinite term).
Pregnancy- and Maternity Leave / Pay	Employees have the right to take a minimum period of 16 weeks paid pregnancy- and maternity leave. The earliest date that leave can be taken is 6 weeks before the expected day of childbirth, but ultimately 4 weeks before the expected day of childbirth. The total leave (pregnancy + maternity leave) amounts to 16 weeks, therefore the remaining leave after the birth will generally be between 10 and 12 weeks. An employer is entitled to file an application with the Employee Insurance Agency ('**UWV'**) to receive a state benefit on behalf of the employee during the maternity leave, the benefit being 100% of the average daily earnings (limited to the maximum daily wage). As of 1 January 2023 the maximum daily wage is € 256,54 gross. Please note that in case of twins/triplets, an employee is entitled to 20 weeks of paid maternity leave.
Paternity Leave	Employees are eligible for paternity leave if the partner gives birth (including through surrogacy arrangement). Employees are entitled to a (paid) leave period of one working week (i.e. the Employee's weekly working hours), the pay being 100% of the average daily earnings. Employees should make use of this right within four weeks after the birth – or in case of giving birth in a hospital – within four weeks after the child has returned home. Employees are also entitled to an additional leave period of 5 times their weekly working hours, which should be taken within the first 6 months after the birth. Employees who take this (unpaid) leave will be able to claim benefits from the UWV for up to 70% of their salary (limited to 70% the maximum daily wage, being € 179,58, which is 70% of € 256,54 gross as of 1 January 2023).
Parental Leave	Employees are eligible for parental leave if they are parent of a child or adopted child younger than 8 years old. They have the right to unpaid leave for a maximum of 26 times the employee's weekly working hours (per child). Employees may be entitled to a paid parental leave if agreed in an applicable collective bargaining agreement.

	Employees are entitled to file an application with the UWV to receive a state benefit of 70% of their average daily earnings (limited to 70% of the maximum daily wage, being € 179,58, which is 70% of € 256,54 gross as of 1 January 2023) for the first 9 weeks of parental leave (In Dutch: "W*et betaald ouderschapsverlof*"). Employees should make use of this right within the first year of birth.
Statutory sick pay	An employer is obliged to pay a sick employee at least 70% of his salary during the first two years of illness (limited to 70% of the maximum daily wage, being € 179,58. As of 1 January 2023 the maximum daily wage is € 256,54 gross). For the first year of illness, the amount to be paid to the employee cannot be lower than the minimum wage which is € 1.934,40 gross per month (as of 1 January 2023), unless a collective bargaining agreement provides a higher percentage. Many employers diverge from this rule and agree to pay more (100% of the regular salary during the first year and 70% of the regular salary during the second year).
Statutory Notice Periods	The statutory notice period for the employee is one month. The statutory notice period that needs to be considered by the employer is related to the length of service of the employee: One month for less than 5 years of service; Two month for service between 5 and less than 10 years; Three months for service between 10 and less than 15 years; Four months for 15 or more years of service. Parties can agree in writing on a longer notice period for the employee, provided that the notice period for the employee cannot exceed six months and the notice period for the employer must then be at least twice the length of the notice period of the employee. Collective bargaining agreements may, however, deviate from this rule and the statutory notice period. Notice has to be given at the end of a calendar month.
Termination of the employment agreement	There are four main ways to terminate the employment agreement (unilaterally or mutual): • the UWV; • Subdistrict Court; • Mutual consent; • Termination due to urgent reasons. There are nine exhaustive grounds on which an employer can dismiss an employee:

	• Economic reasons; • Long-term illness; • Frequent sickness; • Non-performance; • Culpable behavior or omission; • Conscientious objections; • Disrupted employment relations; Other reasons; • A combination of grounds c, d, e, g and/or h. Not only must the requirements for dismissal be fully met, the employer is in general also obliged – prior to a dismissal and within a reasonable period – to try to redeploy the employee in another position, if necessary by offering education. If a prohibition against a termination of the employment agreement applies, the UWV or Subdistrict Court will in principle not give permission to terminate of (respectively) dissolve the employment agreement. Several types of employees have special dismissal protection. This includes e.g.: • Sick employees (during the first 104 weeks of sickness); • Pregnant employees (pre-maternity); • Employees on post-maternity leave (including a period of at least six weeks after pregnancy leave); • Members of an employee representation body (e.g. the works council); • Trade union members; • Employees using their rights to special leave; • Employees who are or were recently involved in a transfer of undertaking. Please be noted that even though the employee has special dismissal protection, it could occur that under specific circumstances the permission to terminate the employment agreement will be given (by the UWV), or, the employment agreement will be dissolved (by the Subdistrict Court). For instance, based on case law, the assessment of the Subdistrict Court in these specific circumstances will be determined on a case-by-case basis and therefore depends on all circumstances of that particular case.
Statutory Redundancy Payment	Each employee is under specific conditions entitled to a so-called transition fee (in Dutch: "*Transitievergoeding*") in case of a termination of the employment agreement. One important condition is that the initiative to terminate or not to continue the employment lies with the employer. This applies to both permanent and fixed term contracts. In principle there will be no statutory entitlement to the transition fee for terminations by mutual consent, but this will naturally play a role when arrangements are made about the termination.

	The transition compensation amounts to one-third of the gross monthly salary per year of service. The transition compensation has a maximum (€ 89.000 gross in 2023) or one year of salary for the employees whose salary is higher than this amount. "Monthly salary" means the employee's base fixed salary, increased with pro-rata holiday pay, fixed end-year payments (13th month), bonus and variable pay and certain other fixed payments. In some cases, the transition fee does not have to be paid, such as to the retiring employee, if the employee is terminated for seriously culpable behavior or negligence, in case the collective bargaining agreement (if any) has an equal arrangement or in case of bankruptcy of the employer. If the termination of the employment was caused by seriously culpable behaviour or on the part of the employer, the Subdistrict Court may award an additional fair compensation to the employee.
Statement of particulars	When employing an individual in the Netherlands, the employer is required to provide specific information to the individual, in writing or electronically, within – in general - one month after the beginning of their employment, concerning the applicable employment conditions. An exhaustive list of topics has been included in the Dutch Civil Code and for example includes the following topics: • The name and domicile of both parties; • The place(s) the work has to be performed; • The position of the employee or the kind of work to be performed by him/her; • The wage amount; • Whether or not the employee will participate in a pension scheme; and • The applicable collective bargaining agreement (if any). The details that must be provided are very specific. Any employer who provides incorrect information or who refuses to comply with this obligation can be held liable for the damages suffered by the employee.

15 On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Dismissal procedure
See above under 'Termination of the employment agreement'

Associated Cost
See above under 'Statutory Redundancy Payment

Collective dismissals
A collective dismissal implies the dismissal for business reasons of more than 20 employees (working in the same business area, with the dismissals taking place within a period of 3 months).

In case of a collective dismissal, the trade unions and UWV should be notified in time. The employer should submit a dismissal plan. After the notification, the employer should also notify the works council (if any). All aforementioned stakeholders should be able to have a substantial influence on the decision. Therefore, they should be involved before the final decision has been made.

16 **Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

Trade unions

Under Dutch labour law, trade unions play an important role in the negotiation of collective bargaining agreements. Collective bargaining agreements have to be concluded between trade unions, as the employees' representatives, and organizations that represent the employers or individual companies. The company can also be bound to a collective bargaining agreement if it is not represented by an employers' organization but if the agreement is declared generally binding by the Dutch Minister of Social Affairs.

Collective bargaining agreements are customary in a large number of industries in the Netherlands and lead to additional rights and obligations to be observed by the employer. Whether or not a collective bargaining agreement is applicable depends, amongst other things, on the activities performed by the company and the individual employee.

The trade unions should be consulted with respect to collective dismissals (more than 20 dismissals). In that case also the UWV should be notified.

Works council

According to the Dutch Works Council Act, an employer must establish a works council if at least 50 employees work within the company. The works council has various rights to promote and protect the interests of employees. It must be given the opportunity to render advice with respect to various decisions to be taken by the company, before they can be implemented. Certain other decisions require prior consent of the works council before they can be implemented. The detailed requirements of the Works Council Act are beyond the scope of this guide.

In the event of a company which employs at least 10 and less than 50 persons, no works council has to be established. An employee representative body (*personeelsvertegenwoordiging*) can in that case be established. In case no employee representative body is established, the employer shall give the employees the opportunity of a meeting with an employer representative at least twice each calendar year. The level of rights and responsibilities of a certain representative body depends on the type of body as described above.

C6. Anti-corruption / bribery / money laundering / supply chain

17 **Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

Yes, bribery and corruption are considered criminal offences as per the Dutch Penal Code (*Wetboek van Strafrecht*, hereinafter referred to as DPC). While corruption is not defined and is assimilated to bribery in Dutch law, the term bribery is enshrined in the DPC. Particularly, Sections 177, 178, 363 and 364 DPC contain provisions regarding bribery of a public official; while Sections 136, 32ter and 328

quarter DPC refer to bribery of non-public officials. Additionally, entities may be held criminally liable for bribery committed by individuals, pursuant to Section 51 DPC.

There are no separate regulations with regards to the punishment of bribery and corruption; however, various laws and regulations apply to different entities to ensure prevention thereof.

Regarding enforcement, the Public Prosecutor of The Netherlands is responsible of such, and follows specific instructions for the investigation and prosecution of bribery of public officials in the Netherlands (*Aanwijzing opsporing en vervoling ambtelijke corruptie in Nederland*). Furthermore, it may decide, based on its principles and rules, to extend the reach of its instruction and handling of foreign bribery cases, which also must follow the instructions for the investigation and prosecution of bribery abroad (*Aanwijzing opsporing en vervolging buitenlandse corruptie*).

18 What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

See responses to question 17 above. In some cases it is obligatory to report money laundering and terrorism financing to the Dutch Finance Intelligence Unit Nederland (FIU-Nederland). This applies among others to financial organizations, business service providers, and financial service providers, including, among others, lawyers, accountants, public notaries, casinos, trust offices, and life insurance brokers.

19 How is money laundering and terrorist financing regulated in your jurisdiction?

In The Netherlands, AML/CFT is regulated in the Anti-Money Laundering and Anti-Terrorist Financing Act (*Wet ter voorkoming van witwassen en financieren van terrorisme – Wwft*), in force since 2008. In broad terms, it follows a risk-based approach, which means that persons (legal and natural) obliged by it are free to determine the degree of risk they want to take and the mitigation measures they must put into place. Thus, persons are obliged to (i) monitor their customers and transactions; and (ii) notify any unusual transactions to the FIU-Nederland). Also, regulatory agency, such as DNB (Netherlands Central Bank) provide(d) additional authoritative guidance such as the Leidraad voor wwft en sanctiewet.

20 Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Yes, the Child Labor Due Diligence Act (*Wet Zorgplicht Kinderarbeid*), which applies to all companies that sell or supply goods to Dutch consumers, regardless of where they are established or registered. Under the new law, companies are obliged to investigate whether a product or service in their supply has been produced using child labor. If so, the company must develop and implement an action plan to ensure child labor is prevented in the future in its supply chains.

Furthermore, as a Member State of the European Union, the Netherlands will in coming years enact national legislation on the basis of the long-awaited Directive on Corporate Due Diligence, which currently has taken the form of a Proposal and has yet to be implemented.

Apart from the Dutch act on child labor, there is other legislation and regulations on environmental aspects in the supply chain, waste disposal, human rights, fair trade related aspects in supply chains.

C7. Compliance

21 **Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**

The management board of Dutch companies are obliged to prepare annual financial statements, generally within five months after the end of the financial year. Extensions are allowed, provided that the annual accounts are adopted by the annual general meeting and filed at the Dutch Trade Register within 12 months after the lapse of a financial year.

Audit of annual accounts is only required for medium-sized and large companies.

The exemptions for micro, small and medium-sized companies only apply if their annual accounts are prepared in accordance with Dutch generally accepted accounting principles (i.e. no IFRS).

A BV qualifies as a micro, small, medium-sized or large company respectively if it meets two or three of the following criteria on two consecutive balance sheet dates, without interruption afterwards on two consecutive balance sheet dates:

	Micro	Small	Medium	Large
Total value of assets	≤ €350,000	≤ €6 million	≤ €20 million	> €20 million
Net turnover	≤ €700,000	≤ €12 million	≤ €40 million	> €40 million
Number of employees	< 10	< 50	< 250	≥ 250

22 **Please detail any corporate / company secretarial annual compliance requirements?**

Books and records should be kept at the companies address. These documents include the minutes of board meetings and shareholders meeting as well as the by-laws of the company and the companies' shareholders or members register.

23 **Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?**

Every financial year at least one shareholders meeting should be held. During this meeting the annual accounts will be discussed and submitted for approval of the shareholders meeting. Furthermore discharge will be requested for the members of the management board and supervisory board for their management and supervisory duties in a separate agenda item.

24 **Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") of entities? If yes, please briefly describe these requirements.**

Companies and legal entities must register 1 or more UBOs. UBOs (Ultimate Beneficial Owners) are the owners or the persons who are in charge of a company. The UBO register helps to prevent

financial and economic crimes such as money laundering, financing terrorism, tax fraud and corruption. The register makes it clear to whom money is sent. This way, people cannot hide any potential financial crimes behind a corporation.

An UBO is the owner or the person who is effectively in control of an organization:

Ultimate beneficial owners are for instance:

- persons who own more than 25% of shares of a company or legal entity, or
- persons who have more than 25% of voting rights of a company or legal entity, or
- persons who have more then 25% economic interest of a company or legal entity, or
- persons who are effectively in control of the company

If there is no person who qualifies as an UBO based on the abovementioned criteria, all members of the management board of the Dutch company must be registered as so-called Pseudo-UBOs.

C8. Tax

25 What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

Corporate income tax
Public and private companies pay corporate income tax on their profits. Special rules apply to companies that form a tax group and to companies that own 5% or more of another company.

Corporate income tax rates in 2023
The corporate income tax rate depends on the taxable amount. The taxable amount is the taxable profit in a year reduced by deductible losses.

- If the taxable amount is € 200,000 or less, the corporate income tax rate is 19%.
- If the taxable amount is more than € 200,000, the corporate income tax rate is € 38,000 plus 25,8% for the taxable amount exceeding € 200,000.

Taxation of international businesses
The government wants to avoid international businesses being taxed twice. The Netherlands has therefore concluded tax treaties with a large number of countries.

Resident taxpayers
All businesses that are incorporated under Dutch law or that are located in the Netherlands pay tax on their worldwide income in the Netherlands. Worldwide income includes income earned outside the Netherlands. However, it excludes income earned through foreign based permanent establishments.

Non-resident taxpayers
Non-resident businesses pay corporation tax in the Netherlands on:

- taxable profit from a Dutch business;
- taxable income from a substantial holding in a businesses located in the Netherlands;
- taxable profit from a business located on Aruba, Curaçao or St Maarten or a permanent establishment located on Bonaire, St Eustatius and Saba, subject to certain conditions.

Tax treaties
A tax treaty is an agreement between two countries laying down which of them may tax which income. One country will levy taxes and the other will provide a tax reduction or exemption.

A list of the countries with which the Netherlands has signed a tax treaty is available on the Tax and Customs Administration's website.

APA/ATR policy
The Netherlands is in favor of Advance Pricing Agreements (APAs) and Advance Tax Rulings (ATRs). APAs and ATRs are binding agreements made with the Tax and Customs Administration on the application of tax laws to international groups of companies.

APAs and ATRs provide foreign investors with assurance on how national and international tax rules will apply to them in the Netherlands. This avoids differences of interpretation in the future.

26 Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

A reduced rate of 9% applies to activities covered by the innovation box. The innovation box provides tax relief to encourage innovative research. All profits earned from innovative activities are taxed at this special rate.

27 Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Dividend tax
Companies can distribute some of their profits as dividend to their shareholders. Dividends are subject to tax. The general rate of dividend tax is 15%.

Withholding and deduction of dividend tax
Dividend tax is withheld from the profit distributed to shareholders. Shareholders can deduct the withholding from the balance payable on their income tax or company tax returns. If a company receives a dividend on the shares it owns in another company it can deduct the dividend tax from the balance of its corporation tax payable. A private individual can deduct it from the balance of income tax payable.

Dividend tax exemption or refund
In some circumstances, a company may be entitled to partial or full exemption from dividend tax or to a dividend tax refund.

Withholding on interest and royalty payments
A conditional withholding tax may be levied on interest- and royalty payments to affiliated entities based in low taxed jurisdictions or in cases of abuse. The general rate of withholding tax is equal to the highest corporate income tax rate (i.e. 25.8%).

28 Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Transfer tax on immovable property
Acquisition of economic or legal ownership of immovable property in the Netherlands is subject to a transfer tax over its market value. The general tax rate of the transfer tax increased from 8% to 10.4% as of 1 January 2023.

No Stamp duties or Capital tax is applicable.

C9. M&A

29 Are there any public takeover rules?

The Financial Supervision Act and the Public Takeover Bid Decree set out specific rules for Dutch listed companies that are the subject of a public offer. Certain rules in the Civil Code may also be important in relation to a transaction with a Dutch public company, for example:

- Shareholder approval is required for certain significant transactions;
- There are rules regarding (cross-border) legal (de)mergers;
- There are general corporate governance rules.

EU regulations may also be relevant in the context of a tender offer on a Dutch listed company. In particular, the following are important when making a public offer:

- Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation).
- Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation).

The main regulatory body in The Netherlands regarding the public offer process is the Authority for the Financial Markets ('**AFM**'). In addition to regulating the public offer process, the AFM may also be involved if the target company is regulated by the AFM because of the sector it operates in (for example, financial services).

In relation to Dutch public companies, the Corporate Governance Code also applies on a "comply or explain" basis. The Corporate Governance Code sets out rules and best practices on governance, and also more specifically in relation to takeovers.

Other regulations that may be relevant in the context of a public offer for a Dutch public company are the:

- Competition Act.
- Works Council Act.
- Merger Code.

Other potentially relevant regulators include the:

- Netherlands Authority for Consumers and Markets ('**ACM**'), and the European Commission (competition authorities).
- Dutch Central Bank (financial sector).
- Minister of Economic Affairs (energy sector)
- Healthcare Authority (healthcare sector).

30 Is there a merger control regime and is it mandatory / how does it broadly work?

There is a mandatory merger control regime which applies to "concentrations". A concentration is defined in the Dutch Competition Act ('**DCA**') as:

- a merger of two or more previously independent undertakings;
- the acquisition of control by one or more undertaking(s) over the whole or parts of one or more other undertaking(s); and

- the creation of a joint venture that performs all the functions of an autonomous economic entity on a lasting basis.

The Netherlands Authority for Consumers and Markets ('**ACM**') must be notified of a potential concentration / merger if the following two (cumulative) thresholds are met:

- the merging businesses have a combined global annual turnover of at least EUR150 million; and
- at least two of the merging businesses each have an annual turnover of at least EUR30 million in the Netherlands.

Different thresholds apply for mergers in the healthcare and pension fund sectors.

The review process of merger control notifications under the DCA consists of two phases: the notification phase (Phase 1) and the license phase (Phase 2).

Phase 1 starts when the ACM receives the notification. During Phase I the ACM must decide within four weeks whether the transaction requires a license. If no license is required, the parties can execute the transaction. If the ACM decides that a license is required, the parties can apply for the license at their discretion and according to their own timetable. However, without a license the transaction cannot be implemented. Phase 2 is initiated with the submission of a license request. During Phase 2, the ACM will conduct a more in-depth analysis of the effects of the concentration. To obtain the necessary license, the undertakings concerned must provide more detailed information to the ACM. The ACM must decide on the license request within 13 weeks. On average, however, a Phase 2 procedure typically takes five to six months. If the ACM decides not to grant a license, the notifying parties are not allowed to execute the transaction.

31 Is there an obligation to negotiate in good faith?

Dutch case law supports that negotiating parties have the obligation to negotiate in good faith. Moreover, the principle of reasonableness and fairness applies to negotiating parties. Said principle entails, among other things, that if a party is contemplating on breaking off the negotiations, such party has the obligation to respect the legitimate interests of the other party(ies), which may lead to pre-contractual liability depending on the stage of the negotiations and the legitimate expectations of the other party(ies).

32 What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

The acquisition of the employer does not directly affect the employment contracts of the employees. In situations where a target company has a works council, such work council does have certain rights on the basis of the Works Council Act.

The Works Council Act regulates the different forms of voluntary and mandatory employee representation within Dutch companies. A legal entity with 50 employees or more is legally required to establish a works council. A works council has different rights, such as:

- The right to be informed on certain types of decision or on certain aspects of the company;
- The right to be consulted in respect of certain types of economic and organizational decisions, such as (amongst others) major investments, the appointment or dismissal of a member of the management board, important changes in the organization of the company, restructurings

affecting the company and the transfer of all or part of the company (such as a merger or asset sale). The consultation obligation could also apply if the respective decision is taken in a group context at a higher level (for example by the management of the parent company).

- A co-determination right (i.e. the right to consent) with respect to certain other types of decisions, e.g. important decisions in the social field, such as amendments to working hours, working conditions, bonus/incentive schemes or a job evaluation system.

With respect to consultation procedures, the works council has to be involved in an early stage, so that it can have a significant influence on the decision to enter into the relevant transaction. If these procedures are not followed correctly, the company risks a negative advice or advice under certain conditions from the works council, which could result in a delay in the decision-making process or even in litigation before the Dutch District Court

C10. Foreign direct investment

33 **Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**

Security Screening

On 17 May 2022, the Dutch Senate adopted the 'Investments, Mergers and Acquisitions Security Screening Bill' (*Wet Veiligheidstoets Investeringen, Fusies en Overnames*) (hereafter: 'ISB'). The ISB is complementary to the existing sector-specific EU Regulation on Foreign Direct Investment Screening (Regulation 2019/452) (for telecom, gas and electricity). It introduces an ex ante and ex post screening mechanism for investment activities related to vital providers, business campuses or companies active in sensitive technology in the Netherlands.

The ISB introduces a general investment test for activities that may pose a risk to national security. Any intention to carry out an acquisition activity that leads to control or significant influence in a target company, that falls within the scope of the ISB, must be reported to the Minister of Economic Affairs and Climate Policies (the Minister) by one of the reporting entities (acquirer or target company). In practice, this means that a report must be made to the Dutch Investment Review Agency (*Bureau Toetsing Investeringen*, or 'BTI') and that the BTI implements the process.

Scope

The ISB applies to companies based in the Netherlands that are (a) vital providers, (b) an operator of a high tech campus or (c) companies active in the field of sensitive technology. Vital providers are companies that are active in the fields of: heat transport, nuclear energy, air transport, management of business campuses, port areas, banking, infrastructure for the financial market, recoverable energy or gas storage. For both, vital providers and companies active in the field of sensitive technology, the Minister can designate additional categories.

Procedure

After reporting to the BTI, the BTI determines if a review decision is required. There is a prohibition on carrying out the acquisition activity until the assessment of the notification has been completed or until the investment test has been completed and a positive assessment decision has been made.

If, according to the BTI, an acquisition activity leads to a risk to national security on the basis of the assessment, the Minister decides whether a further investment assessment is necessary. The Minister can decide that an acquisition activity is permitted if certain requirements or further regulations are met. If the Minister decides that an acquisition activity leads to a risk to national security that cannot be sufficiently limited by requirements or regulations, the Minister can prohibit the acquisition activity.

Retroactive effect

The law is expected to enter into force in mid-2023. The ISB provides that the rules will have retroactive effect as of 8 September 2020. This means that the future rules may already apply to transactions completed prior to the ISB's entry into force. The Minister can exercise this right and order the parties involved to file a notification up to eight months after the ISB enters into force.

Sector specific approvals

The Minister of Economic Affairs and Climate Policy has the power to prohibit acquisitions of predominant control in a telecommunications party if the public interest is threatened. Similar other sector-specific restrictions apply for other sectors on the basis of the Electricity Act 1998, the Gas Act and the Financial Supervision Act.

Other

Additionally, there is in place an EU Regulation establishing a foreign investments control framework, applicable directly in the Netherlands. In broad terms, it is a set of rules that enable Member States to cooperate by sharing information and raise concerns related to specific foreign investments. It enables the EU Commission to issue opinions when an investment threatens to undermine security, public order or public interest of more than one Member State, and sets specific requirements for Member States that wish to adopt national foreign direct investment rules.

34 **Does your jurisdiction have any exchange control requirements?**

No.

D. Entity closure

35 **What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

The most common method to wind up a BV or NV is by means of a voluntary dissolution and liquidation. The general meeting of shareholders can resolve to dissolve a company at any time. Upon dissolution, an entity continues to exist for the purposes of liquidating its assets. The liquidation and settlement of all debts is carried out by a liquidator appointed by the general meeting. It is a common practice in the Netherlands that the (former) board member(s) continue acting as liquidator(s).

The liquidation procedure requires (i) a filing of the liquidation accounts and distribution plan with the Dutch trade register, (ii) announcement in a daily newspaper and (iii) expiration of a two-months creditors' opposition period during which any creditor may oppose the liquidation by filing a petition with a local court. The liquidation cannot be completed until a creditor's opposition is resolved or lifted.

Any positive liquidation surplus available upon settlement of all known debts shall be distributed to the shareholder(s) in conformity with the articles of association. If upon dissolution a liquidator is confronted with a negative liquidation surplus, he must file for bankruptcy unless all known creditors reach an agreement to proceed with liquidation outside the bankruptcy process.

An entity ceases to exist and can be deregistered from the Dutch trade register as from the moment it ceases to hold any asset.

If there are no assets or capital left in an entity, an entity may opt for the fast-track liquidation method. With this method, only a resolution of the general meeting of shareholders resolving on the dissolution is required to dissolve the entity. The resolution dissolves the legal entity with immediate effect. Must be noted that the a fast-track liquidation is not without risks. A creditor can demand payment through court if it turns out afterwards that there are outstanding debts. As a result, shareholders are now personally liable, because the legal entity has been dissolved.

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