

DOING BUSINESS IN THE NETHERLANDS

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1. Introduction

Doing Business in the Netherlands is published by your accountant who is a member of the SRA network. The purpose of this detailed manual is to guide you through the investment environment in the Netherlands. It offers practical information about the country and how to set up a business, adopt the ideal legal form, the subsidy schemes, the tax system, labour law and much more. For more detailed information, please do not hesitate to contact your personal SRA accountant.

Economy

The Netherlands is an open economy, carried along by international economic trends. International economic or financial crises mainly affect the Dutch economy through exports, as a result of a reduction in world trade. However these have a relatively limited direct real impact on Dutch exports. The financial situation of companies (profitability and solvency) is on average in good heart, enabling companies to withstand the ups and downs in the global economy.

Country and Government

The Netherlands has a total population of 17.3 million inhabitants (January 2019) and is governed by a monarchy. The ministers are the people's representatives with respect to the actions of the government. The head of state does not bear political responsibility and can therefore not be held politically accountable by the parliament. The Netherlands has 12 provinces, each with its own local authorities. Since 2010 the Netherlands, together with the countries of Aruba, Curacao and Sint-Maarten have formed part of the Kingdom of the Netherlands. The islands of Bonaire, Sint-Eustatius and Saba have a separate status and form part of the Caribbean part of the Kingdom.

Location

Most of the major industries in the Netherlands are situated in the country's western regions. The Port of Rotterdam is one of the biggest ports in the world. The railway line, the 'Betuweroute', ensures fast and efficient transport from the port to the European hinterland. Utrecht is a central traffic junction and Schiphol, the main Dutch airport, is growing at a rapid rate. The Low Lands,

as the Netherlands is also known, play an extremely important role in the functioning of the transport artery.

Export

The country's perfect location and healthy financial policy have helped to ensure that the Netherlands has grown into an important import and export nation. The country's most important industrial activities include oil refineries, chemicals, foodstuff processing and the development of electronic products. Germany, Belgium, Luxembourg, China, Great Britain, France and the United States are the country's main import partners. All the above-mentioned countries, including Italy, are also the country's most influential export partners.

Finances

The Dutch National Bank (De Nederlandsche Bank, DNB) is responsible for the money flow in the Netherlands. One of the government's most important objectives is to keep prices stable and thereby to contain inflation. Dutch banks offer an extensive range of financial services: some are specialized, while others offer an extremely wide range of services. Dutch banks are reliable: most financial institutions use organizational structures that prevent the possibility of entanglement of interests. The general prohibition on commission also contributes to this from 1 April 2014.

Right to establish a business

Foreign companies wishing to set up shop in the Netherlands can set up the existing foreign legal entity in the country without the need to convert it into a Dutch legal entity. They will however be required to deal with both international and Dutch law. All foreign companies with establishments in the Netherlands must be registered with the Chamber of Commerce.

A most competitive economy

The Netherlands is an attractive base for doing business and for investment. Its open and international outlook, well-educated work force and strategic location are contributors. The attractive fiscal climate and technological infrastructure create favourable propositions for international business.

2. Starting business

Under Dutch law, a foreign individual or company may operate in the Netherlands through an incorporated or unincorporated entity or branch. Dutch corporate law provides a flexible and liberal framework for the organization of subsidiaries or branches. There are no special restrictions for a foreign entrepreneur to do business in the Netherlands.

The business operations can be set up in the Netherlands with or without a legal personality. If a legal entity has legal personality, the entrepreneur cannot be held liable for more than the sum it contributed to the company's capital.

Dutch law distinguishes two types of companies both of which possess legal personality: the private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid - BV*) and the public limited liability company (*naamloze vennootschap - NV*). These forms of legal entities are most commonly used for doing business in the Netherlands. Other commonly used legal entities in the Netherlands are the cooperative (*coöperatie*) and the foundation (*stichting*). The foundation is a common form used within the non-profit and health care sector.

Other common business forms are sole proprietorship (*eenmanszaak*), general partnership (*vennootschap onder firma - VOF*), (civil) partnership (*maatschap*) and limited partnership (*commanditaire vennootschap - CV*). None of the latter forms possesses legal personality and, as a consequence thereof, the owner or owners will be fully liable for the obligations of the entity.

All entrepreneurs engaged in commercial business and all legal entities have to register their business with the Trade Register (*Handelsregister*) at the Chamber of Commerce (*Kamer van Koophandel*). This section covers the abovementioned legal entities for doing business in the Netherlands from a legal perspective. After dealing with the distinction between a subsidiary and a branch, the above mentioned entities will be described in greater detail. Finally, this will be followed by a summary of the status of intellectual property rights in the Netherlands. Further, this manual will explain the advantages and disadvantages of doing business through a subsidiary or a branch.

Branch, subsidiary

Branch

A branch is not a separate legal entity. A branch is a permanent establishment of a company from which business operations are carried out. As a result, the company that establishes a branch in the Netherlands is liable for claims incurred by actions carried out by the branch.

Subsidiary

A subsidiary is a separate legal entity that may be established by one or more shareholders. The subsidiary is a legal entity that is controlled by the (parent) company. Control of a subsidiary is mostly achieved through the ownership of more than 50% of the shares in the subsidiary by the (parent) company. However, under certain circumstances it is also possible to obtain control by special voting rights or diversity of the other shareholders. These shares or rights give the (parent) company the votes to determine the composition of the board of the subsidiary and thereby to exercise control. Since a subsidiary has limited liability, a shareholder (the parent company) is generally only liable to the extent of its capital contribution.

Private limited liability company (BV)

Incorporation

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

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

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

Share capital

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

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

Shares

A BV may only issue registered shares. Besides ordinary shares, a BV may also issue priority shares, to which certain (usually voting) rights are allocated in the articles of association, and preference shares, which entitle the shareholder to fixed dividends that have preference over any dividends on ordinary shares. Within a given type of share, the articles of association may also create different classes of shares (e.g. A, B and C shares) to which certain specific rights are allocated (e.g. upon liquidation).

The voting right is linked to the nominal value of the share. However it is possible to attach different voting rights to classes of shares (even when the nominal values of the various classes are equal). Moreover, it is possible to create non-voting shares and shares without any profit right. Non-voting shares must give a right to profit.

It is not mandatory to include share transfer restrictions in the articles of association. However, if a BV opts to include such restrictions in its articles of association, it will be also be able to include detailed rules on how the price of the shares will be determined. The articles of association may also include a lock-up clause prohibiting the transfer of shares for a specific period. Furthermore, it is possible to include provisions in the articles of association imposing additional obligations on shareholders (e.g. the obligation to extend a loan to the BV or to supply products to it).

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

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

Management structure

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

Board of directors

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

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

A member of the board of directors of the company can be held liable by the BV, as well as by third parties. The entire board of directors can be held liable to the BV for mismanagement. An individual member of the board of directors can be held liable with respect to specific assigned duties. The shareholders can discharge the members of the board of directors from their liability to the company by adopting an express resolution barring statutory restrictions. Besides the aforementioned liability prior to incorporation and registration, liability towards third parties can occur in several situations. For example, in case of the bankruptcy of the BV, the members of the board of directors are severally liable for the deficit if the bankruptcy was caused by negligence or improper management in the preceding 3 years. An individual member of the