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World Ready

Guide to Doing Business

Netherlands

Prepared by Lex Mundi member firm, Houthoff

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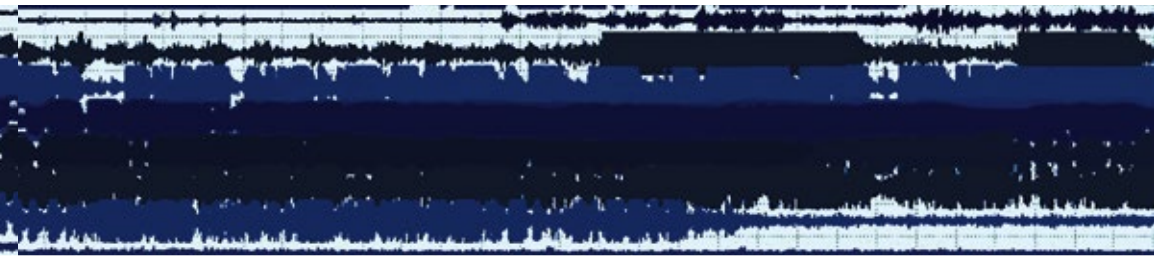
HOUTHOFF BURUMA

GUIDE TO DOING BUSINESS IN THE NETHERLANDS

2015



IN-HOUSE COUNSEL PRACTICAL GUIDE

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1. INTRODUCTION TO HOUTHOFF BURUMA

Houthoff Buruma is a long-established Netherlands-based law firm with over 250 lawyers worldwide. The firm's lawyers in each practice area and across its offices work collaboratively to help clients assess new opportunities and manage risk in a redefined marketplace. As the fabric of the global economic environment unravelled, Houthoff Buruma worked with its clients to respond to unprecedented circumstances with innovative solutions and sound legal judgement. Houthoff Buruma has a vision of economic growth that is productive, sustainable and inclusive.

As an independent law firm, a substantial part of our work has an international dimension. We have offices in London, Brussels and New York, which gives us direct access to the world of international finance and all European institutions. We often work together with leading firms in London and New York, as well as major firms in other global economic centres.

Houthoff Buruma is the only Lex Mundi firm in the Netherlands. Lex Mundi is the world's leading association of independent law firms. Member selection criteria are very stringent; members have to be the leading law firms in their jurisdictions and are continuously assessed for quality. Lex Mundi is more than a network; great efforts are invested by members in exchanging best practices and arranging training events to provide seamless services. If required by a client, the independent Lex Mundi firms are able to work together as if they were one firm. Our membership gives us access to more than 100 jurisdictions worldwide.

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Finance Litigation
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Intellectual Property
Investment Management
IT & Internet
Labour & Employment
Notarial Law
Outsourcing
Pensions & Employee Benefits
Privacy and Data Protection
Private Equity
Procurement
Projects & Project Finance
Public Law
Real Estate
Supreme Court Litigation
Tax
Telecom, Media and Technology
Transport & Logistics

2. THE COUNTRY AT A GLANCE

Country	**Kingdom of the Netherlands**
Membership	**European Union**
Capital	**Amsterdam**
Official languages	**Dutch and Frisian**
Population	**more than 16.8 million**
Area	**41,526 km²**
Time zone	**CET (UTC + 1)**
Calling code	**+31**
Currency	**Euro (€)**
GDP per country (2014)	**€ 653,476 million (Eurostat)**
GDP per capita (2010)	**€ 38,700 (Eurostat)**

2.1 THE NETHERLANDS

Geography & climate

The Netherlands (often called "Holland") is a modern, prosperous nation located in north-west Europe. With a population of 16.8 million people and an area of 41,526 km², it is one of the world's most densely populated countries. The Netherlands is part of the Kingdom of the Netherlands, which also includes Aruba, Curaçao, St Maarten and three other islands in the Caribbean.

The Netherlands has a mild, maritime climate, with comparatively cool summers and mild winters. Summers are generally warmer with colder, rainy periods. Winters can be fairly cold, windy, with rain and some snow. The average temperature is 2°C (36°F) in January and 19°C (66°F) in July.

Language

The official language is Dutch, a language spoken by 23 million people worldwide. English is also widely understood and spoken. A second official language, Frisian, is spoken by approximately 350,000 people in the province of Friesland.

Culture & religion

The culture of the Netherlands is diverse, reflecting regional differences as well as foreign influences, thanks to the Dutch mercantile spirit and their zest for exploring, and the influx of immigrants. The Netherlands has a liberal image, which stems from pragmatism and a "live and let live" attitude. The Netherlands is a consensus-based society, with making compromises and joint problem-solving being an essential part of the Dutch character.

The business community in the Netherlands is rather close-knit, and most senior-level people know one another. The Dutch are hospitable, but this is often reserved for family and friends. In business matters they tend to be reserved and formal. Their communication style has been described by some observers as "direct". They tend to avoid the small talk and get to the point rather quickly. In addition, punctuality for meetings is taken very seriously.

In the Netherlands, 55% of the population describe themselves non-religious. The largest religious denomination is the Roman Catholic Church (23%), followed by the Protestant Church in the Netherlands (10%), and Islam (5%). The rapid secularisation of the Netherlands since the 1960s has meant that the importance of religion in the social and cultural lives of many Dutch people has decreased.

Currency

The euro is the official currency in the Netherlands. The exchange rate on 27 March 2015 was approximately €1 = $1.0973 (ECB). Bank transfers within the euro area are relatively inexpensive.

Finance and economy

The Netherlands has the 17th-largest GDP in the world (2014) (IMF). It has a modern banking and financial system, which is fully integrated into the international system.

The Dutch economy has a strongly international focus. The Netherlands has had a long history as a trading nation. Foreign trade is the lifeblood of Dutch prosperity: the Netherlands is the eighth-largest exporter of goods and capital in the world. Owing to its relatively small domestic market, the Dutch economy is one of the most open and outward-looking in the world. Royal Dutch Shell, Unilever, Philips and Heineken are just a few of the multinationals based in the Netherlands.

Infrastructure

The Netherlands lies on the North Sea at the delta of three major rivers leading into the heart of Europe: the Rhine, Maas and Scheldt. Due to its prime maritime location, the Netherlands has long played an important role as a key port and distribution centre for companies operating worldwide. The port of Rotterdam, handling some 441.5 million tonnes of goods in 2012, is the biggest port in Europe. Inland waterways and ports (especially in the Amsterdam area) link the various parts of the Netherlands together and to its European neighbours.

Amsterdam Airport Schiphol is ranked as Europe's third-largest individual cargo airport, reporting an annual transfer of well over 1.6 million tonnes of cargo in 2014. With passenger numbers totalling 54.978 million, Amsterdam Airport Schiphol was ranked as Europe's fifth-largest passenger airport in 2014. In addition, there are a number of regional airports in the Netherlands, the main ones being Rotterdam Airport, Eindhoven Airport, Groningen Airport and Maastricht Airport.
In addition, the Netherlands has an excellent infrastructure, good roads, a first-rate public transport system and a close-knit network of trains and buses. France, Britain, Germany, Italy, Austria and Switzerland are within easy reach by rail and road.

Communications

The communications network in the Netherlands is one of the best in the world. The highly developed and well-maintained telephone system has an extensive fixed-line fibre-optic network, and its cellular telephone system is one of the largest in Europe, with three major network operators utilising the third generation of the Global System for Mobile Communications (GSM). Submarine cables and satellite earth stations enable international communication. Use of the internet is widespread at home and at work. Approximately 90% of Dutch people have an internet connection at home.

Utilities

Natural gas is produced in the Netherlands and is commonly used in homes and businesses for cooking and heating. Production and supply (using a government-owned network) are predominantly handled by the private sector. Rates charged to customers are monitored but not fixed by the government. The same is generally true for electricity. The public sector is responsible for water supply and quality.

2.2 DIPLOMATIC RELATIONS / EUROPEAN UNION

There is easy access from the Netherlands to the single European market (including the financial and commercial centres in Britain, France and Germany) and every corner of the European Union.

The Netherlands is one of the founding members of the European Union and plays an active role in many international organisations. It has active diplomatic and economic relations with most countries in the world.

Other member states of the EU include: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

The Netherlands is also a member state of the European Economic Area (EEA), the Schengen Area, the EU Customs Union and the Council of Europe.

Visit www.government.nl for further information about how to contact Dutch embassies, consulates and permanent representations.

Detailed visa information is available at www.ind.nl/en.

2.3 DUTCH GOVERNMENT

Democracy and stability

The Netherlands is a constitutional monarchy with a parliamentary system. Although His Majesty King Willem-Alexander formally heads the government, it is the prime minister who governs in practice, together with the other ministers and state secretaries. The ministers are accountable to the Dutch parliament for the government's actions, including those of the monarch.

The Dutch parliament consists of the Second Chamber (the 150-member *Tweede Kamer*) and the First Chamber (the 75-member *Eerste Kamer*). Both houses together are officially referred to as the States General (*Staten Generaal*). The members of the Second Chamber are directly elected by the people (using proportional representation). Elections usually take place every four years. The Second Chamber has the power to compel the government to resign by means of a motion of no confidence. Members of the First Chamber are elected by the provincial councils, i.e. by the members of the twelve provincial legislatures.

Every year, on the third Tuesday in September – a day known as *Prinsjesdag* – the government presents its budget for the coming year, and the King delivers a speech from the throne outlining the government's policy and plans for the coming year. The budget requires the approval of parliament. The monarch also plays a role in the formation of a new government, which in the Netherlands always consists of a coalition of various political parties. There are currently eleven political parties represented in the Second Chamber. Two of them together form the current coalition government.

Provinces and municipalities

The Netherlands has twelve provinces and 393 municipalities. There are three levels of government.

Legislative process

A legislative proposal is made by the minister responsible for the legislative domain (with government approval) or by one or more members of parliament (without government approval).

Before a legislative proposal is sent to the Second Chamber, it is reviewed by the Council of State (*Raad van State*). Sometimes the proposal is amended on the Council of State's advice. The advice of the Council of State is sent to the Second Chamber at the same time as the legislative proposal and an explanatory memorandum (*memorie van toelichting*).

The legislative proposal is first discussed in the Second Chamber, which has the right to amend it. After a legislative proposal has been adopted by the Second Chamber, it is sent to the First Chamber. The First Chamber does not have the right to amend the proposal. It can merely adopt or reject it.

2.4 LEGAL SYSTEM

Civil law

The Netherlands has a civil-law system similar to that used in France, Germany and many other countries. As a member of the European Union, the Netherlands is also subject to European law.

Constitutional framework

Among many other things, the Dutch constitution provides for the legal system and enshrines the independence of the judiciary. It is the role of the legislature (with the advice of the Council of State) to ensure that laws are constitutional. In the Netherlands, the constitutionality of a law is not a matter for the courts.

The civil and criminal courts

Civil and criminal cases are dealt with by eleven district courts located throughout the Netherlands, four courts of appeal, and the Supreme Court of the Netherlands (*Hoge Raad*). The courts are divided into various sectors (e.g. family sector, criminal sector and tax sector).

Some courts have specific expertise in and jurisdiction over cases in specific areas. For example, the Enterprise Chamber (*Ondernemingskamer*) of the Amsterdam Court of Appeal has exclusive jurisdiction over certain matters relating to corporate law.

Both at first instance and on appeal, cases are examined on both their facts and their legal merits. The Supreme Court, however, does not review the facts of a case.

Civil litigation in the Netherlands is often a relatively expeditious process – it may take only several months to a year (but occasionally longer) to obtain a final decision. Sometimes the courts try to expedite matters by calling on the parties to enter into settlement negotiations during a rather informal hearing (*comparitie van partijen*).

However, even this is considered too slow in some situations. In Dutch civil law, it is possible to have a matter heard by way of summary proceedings (i.e. in the context of a request for interim measures). Sometimes a decision can be obtained in just a few days. It is not unusual for litigation to continue no further than these summary proceedings, the parties considering the summary decision to be a reliable indication of the eventual outcome.

Arbitration

Arbitration is quite common in civil and commercial cases. On 1 January 2015, the new Arbitration Act entered into force in the Netherlands. Principal reasons for modernising Dutch arbitration law include: the codification of best practices, increasing the consumer's faith in arbitration, reducing

the costs for parties, restricting the procedure for setting aside awards to one fact-finding instance, and making the Netherlands a more attractive venue for international arbitral proceedings. The new Arbitration Act awards greater power to the parties to structure the proceedings in a way they deem fit, while limiting court interference to a considerable extent. As the Netherlands is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Dutch arbitral awards are in principle easily enforceable in over 150 states worldwide (and vice versa).

Commercial contracts often bind parties to rely on the rules of the Dutch Arbitration Institute (*Nederlands Arbitrage Instituut*) in the event of a dispute. More information on this (including standard clauses) is provided at www.nai-nl.org/en.

Mediation

Mediation is also becoming more common, not only in divorce and other family-related cases but also in civil and commercial cases. New legislation to strengthen the position of mediation and its quality has been proposed and is currently subject to negotiations in parliament.

Administrative proceedings

Most administrative law matters involving the government are heard by the courts. However, these cases are often preceded by objection proceedings (essentially requests for reconsideration) made to the administrative decision-makers themselves. Objection proceedings are very common in the Netherlands.

Certain administrative courts have specific expertise in and jurisdiction over certain types of proceedings.

The Administrative Jurisdiction Division of the Council of State is the highest administrative court in the Netherlands. It hears appeals lodged by members of the public against decisions or orders issued by municipal, provincial or central government (decisions in individual cases as well as orders of a general nature). Applications for provisional relief (pending the outcome of the proceedings) can also be submitted to the Administrative Jurisdiction Division of the Council of State.

2.5 ENFORCEMENT OF FOREIGN JUDGMENTS

A judgment rendered by a foreign court is not automatically recognised and enforced by the courts of the Netherlands unless a treaty on recognition or enforcement is applicable. However, if a person has obtained from a foreign court a final judgment for the payment of money that is enforceable in the relevant jurisdiction, and if that person files the claim with a court in the Netherlands, the Dutch court will generally recognise the foreign judgment if the court finds that (i) the jurisdiction of the foreign court is based on grounds that are internationally acceptable and (ii) the appropriate procedures were duly followed. In this event, the Dutch court will render a similar decision to that of the foreign court and that decision – as a Dutch decision – will be enforceable in the Netherlands. However, a Dutch court will not allow a foreign judgment to be recognised if the court finds that the foreign judgment is (i) against "Dutch public order" according to Dutch legal standards or (ii) incompatible with a judgment rendered by a Dutch court in a dispute between the same parties, or incompatible with a prior foreign judgment that is subject to recognition in the Netherlands in a dispute between the same parties on the same subject matter and with the same cause.

For the enforcement in the Netherlands of a judgment in civil or commercial matters issued by a court in another EU member state following legal proceedings that were instituted on or after 10 January 2015, Council Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) states that no leave to enforce is required anymore, meaning that such a judgment is directly enforceable. For a judgment to which Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters continues to apply, the Dutch court's leave for enforcement can be obtained within a few weeks. For EFTA member states, a similar procedure for obtaining leave for enforcement applies. For judgments made under the European Enforcement Order or the European Payment Order, the enforcement of judgments by other EU member states in the Netherlands (and vice versa) is even quicker and easier because, like Council Regulation (EU) No. 1215/2012, no leave for enforcement is required in the country where enforcement is sought.

Dutch courts generally recognise contractual choice-of-law clauses and jurisdiction clauses, but not if they are considered to contravene "public order" by Dutch legal standards.

3. BUSINESS STRUCTURES

3.1 GENERAL

Dutch law recognises the existence of foreign legal entities. Any foreign individual, partnership or company (resident or non-resident) may do business in the Netherlands without having to adopt a Dutch legal form. The status of a foreign-owned company in the Netherlands is the same as a Dutch company. There may, however, be registration requirements.

For liability reasons, foreign investors often choose to do business in the Netherlands by setting up a Dutch subsidiary. Generally, either a B.V. or an N.V. is used for this purpose. A B.V. is a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), and an N.V. is a public limited liability company (*naamloze vennootschap*). For further details, please see paragraphs 3.2 and 3.3.

A foreign investor can also consider structuring its business as an S.E. S.E. stands for "Societas Europaea" or "European company" (*Europese vennootschap*). Please refer to paragraph 3.4 for further information on the S.E.

Other corporate forms in the Netherlands include the cooperative (*coöperatie*), foundation (*stichting*) and various types of partnerships.

A foreign company that is operating in the Netherlands but that has not set up a Dutch subsidiary is required to register as what is known as a "branch" or "representative office". This must be registered in the trade register (*handelsregister*) of the Dutch Chamber of Commerce (*Kamer van Koophandel*). For further details, please see paragraph 3.9.

3.2 B.V.

3.2.1 General

A B.V. is a private company with limited liability. The B.V. is generally the preferred vehicle for privately held companies.

3.2.2 Incorporation

A B.V. is incorporated by one or more incorporators. A deed of incorporation is prepared in Dutch and executed before a Dutch civil law notary (*notaris*). This notarial deed includes the B.V.'s articles of association (*statuten*). In addition, the deed of incorporation states, amongst other things, the amount of issued share capital.

3.2.3 Share capital

A B.V.'s issued share capital is divided into shares with a par value typically stated in euros, but this may also be stated in a foreign currency. Although this is no longer required for the B.V., its articles of association may also state the maximum authorised capital (*maatschappelijk kapitaal*). As of 1 October 2012, the requirement to pay up a minimum amount of €18,000 as issued and paid-up share capital has been abolished for the B.V. The issued share capital can be paid up either in cash or in kind. If payment is made in kind, a description of this payment must be drawn up and signed by the incorporators. Generally, each issued share entitles the respective shareholder to one vote in the general meeting of shareholders. A B.V. may also issue shares without voting rights provided that such shares entitle the holder to dividends or reserve payments or *vice versa* (i.e. shares with voting rights that do not entitle their holders to dividends or reserve payments).

A B.V. can issue several classes of shares. The most typically used classes are common, preferred, and priority shares. Preferred shares differ from common shares in that they entitle the shareholder to dividend payments before any dividend is paid to the other shareholders. Priority shares are shares that give the holder certain controlling rights, for example, the right to appoint the managing directors (or to make a binding recommendation for the appointment of these directors) and approval rights (prior or otherwise) in certain decisions taken by the management board or the other shareholders.

Depository receipts (certificaten van aandelen) can be issued. The holder of a depository receipt is entitled to dividends but, in principle, does not have any voting rights. The corresponding shares are held by a foundation, i.e. a "trust office" (*stichting administratiekantoor*) specifically incorporated to hold and administer the underlying shares. For further details, please refer to paragraph 3.6.

B.V. shares have to be registered. The company's articles of association may provide for transfer restrictions, for example, by granting a right of approval or a right of first refusal to the non-transferring shareholders.

3.2.4 Board structure

Both the B.V. and the N.V. may be incorporated with a regular, a one-tier or a two-tier board structure. Companies with a regular board structure have a management board (*bestuur*) that consists of one or more managing directors, whereas companies with a one-tier board have a board of directors that consists of one or more executive directors (*uitvoerende bestuurders*) and one or more non-executive directors (*niet uitvoerende bestuurders*). Companies with a two-tier board have both a management board and a supervisory board (*raad van commissarissen*) comprising one or more supervisory directors (*commissarissen*).

3.2.5 Management board

The management board of a B.V. or N.V. has the authority to represent the company and manages its day-to-day business. In addition, the articles of association may provide that one managing director acting solely or two or more managing directors acting jointly are authorised to represent the company.

The articles of association may provide that certain decisions by the management board require the approval (prior or otherwise) of another corporate body (*orgaan*) of the company, for example, its general meeting of shareholders or its supervisory board. A B.V.'s articles of association may further provide that the management board must follow the instructions of another corporate body, provided that these instructions do not conflict with the interests of the B.V. and its business.

The management board may be liable to the company for mismanagement. A specific managing director may be liable for failure to carry out the duties specifically assigned to him or her. However, at the annual general meeting of shareholders, the shareholders usually discharge the managing directors from liability for their management during the previous financial year. In the event of bankruptcy, the managing directors are jointly and severally liable for the debt if the bankruptcy is caused by negligence or improper management during the preceding three years. An individual managing director can avoid liability by proving that, *grosso modo*, the bankruptcy was not the result of his or her management and that he or she as the director has not been negligent in taking measures to prevent mismanagement.

3.2.6 One-tier board

In general, the provisions for a management board also apply to the board of directors of a B.V. or N.V. with a one-tier structure. The executive directors of a one-tier board manage the day-to-day business, and the non-executive directors advise and supervise the board of directors. As opposed to a B.V. or N.V. with a regular or two-tier board, the articles of association of a company with a one-tier board may provide that one or more directors may resolve matters that are assigned to these particular directors.

3.2.7 Supervisory board

Some (large) companies in the Netherlands have both a management board and a supervisory board. The supervisory board's main task is to advise and supervise the management board.

If a B.V. or N.V. meets certain criteria, it will qualify as a large company under the Dutch Civil Code (*Burgerlijk Wetboek*) and must be registered as such in the trade register with the Chamber of Commerce. The company must follow the large company regime (*structuurregeling*) if it has been registered as a large company in the trade register with the Chamber of Commerce for three consecutive years. The main requirement of the large company regime is that the company must instate a supervisory board that appoints the management board members and that approves certain material management board decisions. The Dutch Civil Code does provide for certain exemptions, for example, for companies within a group where another company applies the large company regime. In addition, the mitigated large company regime may apply under certain circumstances. Under the mitigated large company regime, the requirement that the management board members must be appointed by the supervisory board does not apply.

The criteria (for classification as a large company) are:

- According to the balance sheet, the sum of the company's issued share capital and its reserves amounts to at least €16,000,000;
- The company or one or more of its dependent companies (*afhankelijke maatschappijen*) has a works council (*ondernemingsraad*); and
- The company and its dependent companies together employ at least one hundred employees in the Netherlands.

A "dependent company" means (a) a legal person to which a company or one or more dependent companies, solely or jointly, and for its or their own account, contribute(s) at least half of the issued capital, or (b) a partnership, a business of which has been registered in the trade register and for which a company or a dependent company is fully liable as a partner towards third parties for all liabilities.

3.2.8 Shareholders

A general meeting of shareholders (*algemene vergadering van aandeelhouders*) is, in principle, held at least once a year. The general meeting of shareholders has all the powers not specifically assigned to the management board, board of directors or supervisory board (be it by law or by the articles of association). Shareholder decisions typically encompass issues such as amendments to the articles of association, the appointment, remuneration and dismissal of directors, and the issuance of shares. The articles of association may specify that certain management board decisions require the approval (prior or otherwise) of the general meeting of shareholders.

Shareholder resolutions are usually adopted by a simple majority of the votes cast, but the articles of association may provide otherwise and may provide for specific majority requirements for particular subjects on which a resolution is to be adopted. Resolutions may also be adopted outside a meeting if the articles of association so provide. For a B.V., all parties that have meeting rights must consent in writing to this manner of decision-making. For an N.V., resolutions adopted outside a meeting must be in writing and unanimous.

3.3 N.V.

An N.V. is a public limited liability company and is typically chosen when listing the company's equity securities on a stock exchange, although shares in a B.V. can, in principle, now also be listed following legislative changes in 2012.

Generally, the foregoing paragraphs on B.V.s apply to N.V.s as well. However, there are a few key differences. An N.V. must have authorised share capital and a minimum issued and paid-up capital of €45,000. An N.V. may also issue bearer shares (*aandelen aan toonder*) in addition to registered shares (*aandelen op naam*). Bearer shares must be fully paid up and are freely transferable. Note that further differences apply.

3.4 S.E.

The Societas Europaea (S.E.) was created as a corporate legal form by Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European Company. The purpose of the S.E. is to allow companies incorporated in a different European jurisdiction to merge or form a holding company or joint subsidiary in another European jurisdiction, thus avoiding the legal and practical issues that may arise from the existence of different legal systems across Europe. An S.E. may be created in one of five ways:

- The conversion of an N.V. to an S.E.;
- The incorporation of a subsidiary S.E. by two or more national companies;
- The incorporation of a holding S.E.;
- The merger of national companies from different member states; or
- The incorporation of an S.E. by an existing S.E.

Pursuant to the incorporation of an S.E. under Dutch law, the S.E. must be registered in the trade register of the Dutch Chamber of Commerce. An S.E. incorporated under Dutch law is subject to several provisions of the Dutch Civil Code.

The registered office of an S.E. must be the place of its central administration, its true centre of operations. The minimum issued share capital of an S.E. is €120,000. Either a regular, one-tier or two-tier board system can be chosen to manage the S.E.

3.5 COOPERATIVE

A cooperative (*coöperatie*) bears a close resemblance to an association (*vereniging*). In principle, the provisions under Dutch law applicable to associations apply mutatis mutandis to cooperatives, unless the provisions of the Dutch Civil Code stipulate otherwise.

The cooperative arose as a business form in the agricultural sector to structure the joint business of individual business owners. However, in recent years the cooperative has often been used to structure international investments. The cooperative is a legal entity under Dutch law that has its own rights and obligations and the capacity to legally own assets and to enter into agreements. A cooperative may act as a holding company or as a general investment vehicle. A cooperative is incorporated by at least two members (having less than two members may result in the dissolution of the cooperative) by executing a notarial deed. Unlike B.V.s and N.V.s, cooperatives do not have shareholders but members. Following incorporation, the cooperative must be registered in the trade register of the Dutch Chamber of Commerce.

Dutch law provides for three different levels of liability for the members of a cooperative:
Statutory liability (*wettelijke aansprakelijkheid or W.A.*);
Excluded liability (*uitgesloten aansprakelijkheid or U.A.*); and
Limited liability (*beperkte aansprakelijkheid or B.A.*).
These different levels of liability are of importance in the event of the liquidation of the cooperative.

An important advantage of structuring a business as a cooperative (if the cooperative is properly set up) is that a cooperative's dividend distributions are not subject to Dutch dividend withholding tax, as a cooperative does not have a capital divided into shares.

3.6 FOUNDATION

A foundation (*stichting*) is a separate legal entity. It is generally formed to achieve a certain goal or to serve a specific purpose, often a charitable purpose. A foundation does not have members or shareholders, and is incorporated by the execution of a notarial deed.

A foundation is frequently used as a legal entity to hold and administer the shares of a B.V. or N.V. (i.e. a "trust office" or stichting administratiekantoor). In this case, the foundation holds the shares in the capital of a B.V. or N.V., and issues corresponding depository receipts for these underlying shares to the depositary receipt holders (*certificaathouders*). These depositary receipt holders, in principle, do not have voting rights (the foundation retains the voting rights on the shares), but are entitled to dividend distribution and the increase in value of the underlying shares. By issuing depository receipts, the voting rights and the rights to profits and dividends are not held by the same person, which in certain cases may be very useful. Note that, as of 1 October 2012, it is also possible for a B.V. to issue shares without voting rights but with a right to dividends or reserve payments.

3.7 PARTNERSHIP

There are several types of partnership under Dutch law:

- The partnership (*maatschap*): a partnership used by partners to jointly exercise a profession (such as in the medical or legal profession);
- The general partnership (*vennootschap onder firma*): a partnership used by partners to jointly set up a business; and
- The limited partnership (*commanditaire vennootschap*) entered into by one or more managing partners (*beherende vennoten*) and one or more silent partners (stille/commanditaire vennoten).

None of these partnerships is a legal entity under Dutch law. An investor's potential liability is as follows:

- Partnership: each partner is equally liable;
- General partnership: all partners are jointly and severally liable;
- Limited partnership: the managing partners are jointly and severally liable, but the silent partners are only liable up to the amount of their financial contribution to the partnership.

3.8 JOINT VENTURE

A joint venture is not a statutory concept in Dutch law, but it does exist in the Netherlands.

A joint venture is a form of partial cooperation between two or more enterprises, which are the partners of the joint venture. This cooperation takes effect as a separate, self-supporting enterprise, and the partners involved contribute to the know-how of the enterprise and participate in its capital. The joint venture can adopt the form of an N.V., a B.V., a cooperative or a partnership. Alternatively, it can have no form at all and simply be a contractual arrangement.

Prior to setting up a joint venture, the joint venture partners will often enter into a joint venture agreement (or in the case of an N.V. or B.V., a shareholders' agreement) in which they agree, among other things, on the contribution of each of the partners, the profit distribution and the management of the joint venture.

3.9 BRANCH & REPRESENTATIVE OFFICE

A foreign company may structure its business in the Netherlands as a branch or representative office. Registration in the trade register with the Dutch Chamber of Commerce is required. The following information is required:

- The name, date of establishment, location, purpose and management of the branch;
- The capital structure of the foreign company; and
- Personal data (full name, address, place and date of birth) of each of the managing directors of the foreign company.

A foreign company remains liable for the acts of a branch office. Unlike a subsidiary, a branch is not considered a separate legal entity.

3.10 SOLE PROPRIETORSHIP

An individual may set up a business as a sole proprietor (*eenmanszaak*). A sole proprietorship must be registered in the trade register with the Dutch Chamber of Commerce, but is not considered a legal entity. A sole proprietorship does not have separate capital or its own rights and obligations. Therefore, the proprietor is personally liable for all debts of a sole proprietorship.

3.11 TRUST AND OTHER FIDUCIARY ENTITIES

The common law trust is not known in Dutch law. The Netherlands is, however, party to The Hague Convention on the Law Applicable to Trusts and on their Recognition (the "Hague Trusts Convention") and as such recognises trusts governed by foreign law, even with respect to assets located in the Netherlands. However, if a trust is connected solely to the Netherlands in every way except for the domicile of the trustee and the governing law of the trust, the court may refuse to recognise the trust. The Hague Trusts Convention also provides for rules that prevent a trust from being used in non-trust countries to circumvent mandatory rules in the field of succession law, securities law and similar areas.

4. OPERATING A BUSINESS

4.1 GENERAL

A foreign investor may choose to set up its own branch office or subsidiary in the Netherlands, but it can also choose to involve local agents or distributors to sell its products or services (see 4.2).

Commercial transactions are generally governed by contract (see 4.3). In principle, contracting parties are free to agree to the terms they wish, but there are statutory restrictions relating to good faith, consumer protection (see 4.4) and price controls (see 4.5).

In certain cases, it is necessary to register a product before bringing it onto the Dutch market (see 4.6). Special attention must be paid to product liability rules (see 4.7). In general, a manufacturer, agent or distributor may be liable if a defective product causes loss or damage to third parties.

There are restrictions relating to the retail sale of goods (see 4.8) and advertising (see 4.9).

Insurance cover is recommended and sometimes required when operating a business in the Netherlands (see 4.10).

For an import/export business, there are certain regulations that apply (see 4.11).

4.2 AGENCY AND DISTRIBUTION CONTRACTS

Distribution contracts

In a distribution agreement, the distributor buys products from the manufacturer or wholesaler, and resells these products in its own name and for its own account to the next party in the chain. There are no specific Dutch statutory provisions relating to distribution agreements, although a few general principles relating to all contracts apply.

Distribution agreements are considered more flexible than agency agreements.

Agency contracts

In an agency agreement, an agent is someone who is not employed by the principal and who carries out negotiations for a principal and possibly sells products or services in the name and for the account of the principal, in exchange for which the agent receives remuneration from the principal.

For agency agreements, there are specific statutory rules in articles 7:428 – 445 of the Dutch Civil Code (*Burgerlijk Wetboek*). These rules are mostly mandatory, and therefore the parties cannot contract out of most of them. For example, a principal or agent who wishes to terminate the agreement is required to give notice. If the contract does not include a notice period, the minimum notice period is four months. It becomes five months for a contract that has been valid for three years or longer, and six months for a contract that has been valid for six years or longer. The parties are free to contract out of this; in that case the notice period cannot be less than one month in the first year of a contract, two months in the second year and three months in the third year and on. If the parties agree on longer notice periods, the principal cannot have a shorter notice period than the agent.

In most cases, agents are entitled to compensation if an agency agreement is terminated by the principal. If the agent brings new customers to the principal or has considerably increased the principal's business within its existing customer base, the principal must compensate the agent for the goodwill. The amount of compensation depends on the situation, but the starting point is the gross remuneration paid to the agent in the preceding twelve months. Furthermore, the compensation will never exceed the average amount of the annual remuneration paid to the agent over the last five years.

4.3 COMMERCIAL CONTRACTS

Under Dutch law, commercial parties are in principle free to agree to any contractual terms that are not contrary to certain Dutch statutory provisions. A contract that breaches Dutch statutory provisions may be declared fully or partly void by the court.

In general, the principle that "contracts must be kept" (pacta sunt servanda) applies to a contractual relationship. However, a principle developed in Dutch case law is that the parties in every contractual relationship must act in good faith towards each other. Depending on the specific circumstances, a Dutch court may declare contractual provisions to be void on the grounds that they are a breach of good faith. Moreover, if a dispute arises as to the interpretation of the contract, the Dutch court will look at what the parties, under the given circumstances, could have reasonably intended with the provision and what they could have reasonably expected from one another.

General terms and conditions (algemene voorwaarden) are a very common aspect of commercial life in the Netherlands and often apply to commercial transactions. They are generally only applicable if the other party has been informed of them and has been provided with a physical copy of them, unless the contract is concluded electronically or is between companies with over 50 employees.

In Dutch consumer law, there are certain rules on the validity of general terms and conditions when consumers are involved. Certain terms and conditions are listed on a "black list" or a "grey list" (articles 6:236 and 237, Dutch Civil Code). Terms and conditions on the black list are considered unreasonably onerous and may be declared void by the court, whereas terms and conditions on the grey list are presumed to be unreasonably onerous. The onus is on the party relying on the terms and conditions to prove that these terms are reasonable in the circumstances.

4.4 Consumer protection laws

Provisions for consumer protection feature extensively the Dutch Civil Code and are highly influenced by European regulations on consumer protection that have been implemented in Dutch law (most recently Directive 2011/83/EC of the European Parliament and of the Council of 25 October 2011 on consumer rights).

Consumer protection provisions in contract law aim to protect the rights of the consumer who is considered the weaker party, legally and economically, when contracting with a trader. These provisions may be found on various levels. In general, contractual terms should be drawn up in plain, intelligible language. If there is doubt as to the meaning of a stipulation, the interpretation most favourable to the consumer will prevail (article 6:238 sub 2 DCC). Furthermore, when contracting with a consumer and using general terms, a trader should be aware that certain terms may be assumed or deemed to be unreasonably onerous on the consumer (e.g. terms that lead to the automatic extension or renewal of a contract for a fixed term without the other party having the right to give notice of the termination of the extended contract at any time with a term of notice not exceeding one month; terms that exclude the right of setting-off; etc.) (articles 6:236 - 6:237 DCC). Also, mandatory legal provisions apply to the sale of goods to consumers, such as: "if the goods are to be delivered to the buyer under a consumer sale, they shall be at the risk of the buyer from the moment when the buyer or a third party designated by him (other than the carrier) receives the goods" (article 7:11 DCC) and "the goods delivered must perform in conformity with the contract" (article 7:17 DCC). When introducing new products onto the Dutch consumer market, it is important to be aware of product safety and liability rules aimed at protecting the consumer and that hold the producer liable for defective products (see par. 4.7).

In Dutch procedural law, consumer organisations have a specific right to start collective actions for the benefit of a group of consumers, which may lead to a collective settlement. The collective settlement procedure was introduced in Dutch law in 2005 with the Wet collectieve afwikkeling van massaschades (WCAM, Dutch Act on Collective Settlements) (articles 7:907-7: 910 DCC, Dutch Civil Code and 1013-1018a DCCP, Dutch Civil Code of Procedure). A bill on redress of mass damages in collective actions is currently being drafted.

4.5 PRICE CONTROLS

Only a few price controls are in effect in the Netherlands. Sectors that are subject to price controls in accordance with EU legislation include the markets for the transmission and distribution of energy (both gas and electricity), certain segments of the postal market and the electronic communications markets. Prices are also regulated in the water sector, health care sector and in the public housing sector. In addition, prices in the retail market for books and sheet music in the Dutch language, the railway sector, air traffic in connection with Schiphol and pilots/warehouses in Dutch harbours are subject to controls. Taxis and medicines are also subject to maximum rates.

4.6 PRODUCT REGISTRATION

Except in certain industries, no prior product registration is generally required in the Netherlands. Products in general, however, must comply with all the relevant provisions regarding product composition and safety, packaging and labelling.

In line with EU legislation, market authorisations are required for medicinal products for human and veterinary use, chemicals (REACH Regulation), biocides, plant protection products, detergents, genetically modified food and feeding products, and novel foods. In general, high standards of production apply to the food and feed sectors (including imports), and provisions allow for the traceability of products, effective controls and enforcement at a national and Community level. Similarly, other products, such as cosmetics and fertilisers are subject to specific EU and national legislation concerning composition, market controls and enforcement.

Where authorisation is required, the application form must be sent to the relevant authority. For instance, an application for the authorisation of a medicinal product has to be sent to the Pharmaceuticals Assessment Board (*College ter Beoordeling van Geneesmiddelen*), and applications for the authorisation and registration of biocides and plant protection products must be sent to the Board for the Authorisation of Plant Protection Products and Biocides (*College voor de toelating van gewasbeschermingsmiddelen en biociden or Ctgb*). The duration of the application process and the fees differ depending on which authority is involved.

4.7 PRODUCT LIABILITY

In general, product liability in the Netherlands is seen as a tort law issue. There are generally two kinds of claims: tort claims based on negligence (article 6:162 of the Dutch Civil Code) and claims made under the Product Liability Act and based on strict liability (article 6:185 of the DCC). The Product Liability Act implements Council Directive 85/374/EEC of 25 July 1985 (as amended) on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

Under article 6:162 of the DCC, a buyer (or third party) is entitled to compensation from a manufacturer if the product causes injury or damage in a situation of normal use. The onus is on the buyer to show that it was unlawful to introduce the product into the market, that this unlawful act is attributable to the manufacturer and that he suffered damage as a consequence of the unlawful act. In general, all losses suffered (consequential or other losses) are to be fully compensated. Compensation is therefore not limited to damage to property or injury to persons. There must be a causal link between the unlawful act and the losses. The limitation period is five years commencing from the time at which the injured party becomes aware of the injury, loss or damage and the identity of the liable person.

Under article 6:185 of the DCC, a manufacturer is liable to consumers (both the buyers and third parties) for any loss or damage caused by a faulty product if there is damage within the meaning of article 6:185 of the DCC, unless the manufacturer can rely on certain exceptions set out in the same article. Liability under article 6:185 only accrues to the party putting the product into circulation, the party that presents itself as the producer by placing its name, trademark or other distinguishing mark on the product, and the party that imported the product into the European Economic Area. A product is defective if it fails to provide the safety that might be expected of it, taking all circumstances into consideration. Liability under article 6:185 may result from damage to property or injury to persons caused by the defective product. Liability within the meaning of article 6:185 of the DCC extends to (i) damage caused by death or personal injuries and (ii) damage caused by the faulty product to another object that is usually intended for private use or consumption and that has indeed been used or consumed by the person suffering the loss, principally for private purposes, with an excess or deductible of €500 (compensation of the full amount if the damage exceeds €500). Compensation for damage to the defective product itself falls outside the scope of liability. The limitation period for commencing a lawsuit is three years from the date on which the aggrieved party first becomes aware of the loss or damage and the identity of the liable person. Note that the right to damages is extinguished on the expiry of ten years from the beginning of the day following that on which the producer put the faulty product into circulation. The same applies to the right of a third person who is also liable for the damage with respect to his or her right of recourse against the producer.

4.8 SALE OF GOODS

There are a few general restrictions on when, where and how goods may be sold. For example, there are government-mandated closing times for shops (generally from 10 p.m. to 6.30 a.m. on weekdays and on Sundays and public holidays). Another example are the requirements regarding the location and professional expertise for the sale of specific products (e.g. prescription medicines in pharmacies).

4.9 ADVERTISING

Misleading advertisements are not allowed under the Dutch Civil Code and considered an unlawful act. Advertisements are misleading if they contain false factual statements or if they contain incomplete information. The Unfair Commercial Practices Act has been in force since 2008. This act was introduced as a result of EU legislation and contains additional stipulations regarding misleading advertisements in relation to consumers. The act is incorporated in the Dutch Civil Code in articles 193a to 193j of Book 6.

Comparative advertising has been allowed in the Netherlands since April 2002, when Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 (amending Directive 84/450/EEC concerning misleading advertising and comparative advertising) was implemented into Dutch law. Comparative advertising is permitted if it is done in accordance with article 6:194a of the Dutch Civil Code.

The Dutch Advertising Committee (a self-regulatory authority set up by seven organisations in the advertising sector) is the supervisory body for matters coming under the Dutch Advertising Code. The Dutch Advertising Code consists of a general code and several specialised codes for – amongst others – tobacco, alcoholic beverages, gambling, the advertising of medicine to the general public, social media use, child and young adult advertisement, etc. Public advertisements for medicines require the authorisation of the Inspection Board for the Public Advertising of Registered Drugs (KOAG) in accordance with its articles.

Games of chance are regulated by the Games of Chance Act. With regard to advertising and games of chance, the Dutch Advertising Committee drew up a Code on Advertising for Gambling offered by licensees under the Act on Games of Chance 2015 and a Code for Promotional Games of Chance. If the requirements of the Code of Conduct for Promotional Games of Chance 2014 have been met, it is not necessary to obtain a government licence to organise a promotional game of chance.

4.10 INSURANCE

Dutch law does not generally require businesses to take out specific insurance policies. However, it is very common for businesses to do so. It is advisable to obtain the services of an insurance broker to check whether the company requires specific insurance cover.

Most business take out insurance against the risk of third-party liability (*aansprakelijkheidsverzekering voor bedrijven*). For risks to housing, accommodation and goods, it is common to have homeowner's insurance (*opstalverzekering*) and property insurance (*inboedelverzekering*). Professionals often take out professional liability insurance (*beroepsaansprakelijkheidsverzekering*) to protect themselves from liability arising from the exercise of their profession.

4.11 IMPORT AND EXPORT REGULATIONS

As a member of the EU, the Netherlands is subject to European customs regulations and regulations that form the basis of the Customs Union of the single European market. Furthermore, it is subject to all the various EU trade arrangements.

4.11.1 Customs regulations

In the Netherlands, the Union Customs Code (UCC) (Regulation (EU) No. 952/2013) applies. Additional national provisions, in so far as they are permitted on the basis of the UCC, are laid down in the General Customs Act and the implementing rules thereto.

The UCC ensures that customs practices in all EU countries are uniform and transparent. Currently the UCC Commission acts (Delegated and Implementing Acts) are under discussion. For that reason, only the substantive provisions of the UCC setting out the delegation of power and the conferral of implementing powers and the provisions on charges and costs have applied since 30 October 2013. The other provisions should apply from 1 June 2016 (see article 288 paragraph 1) once the UCC Commission acts have been adopted. In this area, the Union's basic customs legislation, the Customs Code (Council Regulation (EEC) No. 2913/92) and its implementing provisions, will continue to apply until 1 June 2016.

For goods that are released into free circulation in the EU and subsequently traded between EU member states, there is no customs process, and there are no duties. The European Union's customs territory is a huge single market. All customs borders between the member states have been abolished.

Goods imported from non-EU countries into the EU are subject to various customs processes (Title III, 1992 Customs Code).

Goods that enter the customs territory of the EU from a non-EU country for the first time ("non-Community goods") are imported into the Netherlands (i.e. the Kingdom of the Netherlands in Europe) by sea or by air. Such goods brought into Dutch territory must, without delay, be taken to the appropriate Dutch Customs office (Douane). As a rule, an entry summary declaration (ENS) has to be filed, or a customs declaration indicating the desired customs procedure (such as release into the EU market, transit, re-exportation and storage) has to be made. For maritime entry this needs to be done 24 hours before the presentation of the goods to Dutch Customs for import, and for entry by air, four hours prior to arrival or, in the case of short flights, when the aircraft actually takes off.
A number of goods such as electrical power are excluded from filing an ENS.
The filing of an ENS falls under the responsibility of the person who brings them into the European Union's customs territory or anyone assuming responsibility for the carriage of the goods following entry. In the Netherlands, the Regional Office Customs Rotterdam Port processes the summary declarations for entry by sea, and the Regional Office Customs Schiphol Cargo processes the summary declarations for entry by air. Once an ENS has been submitted, customs provides a Movement Reference Number (MRN). In the case of an entry summary declaration, the goods will be stored in a "Temporary Storage Premise" until they are given a customs designation for no more than 45 days for goods imported by sea and 20 days for goods imported by air. Within this period, a final destination (i.e. customs-approved treatment or use) must be assigned to the goods.

The Netherlands uses an automated support system (Sagitta Entry) to keep logistical delays to a minimum and for risk management purposes. The system provides for a completely electronic declaration process for the entry of goods. This facility is currently operational for goods that arrive by sea and for goods arriving by air at Schiphol Airport.

For more information on customs regulations and the relevant forms for the different customs procedures, please consult the website of the Dutch Customs service www.belastingdienst.nl.

4.11.2 Import

Goods that are imported into the EU via the EU's external borders are subject to import duties.

Import duties on goods are determined by their classification (nomenclature), the corresponding duty rates and other relevant Community legislation. As of 1 January 2015, the schedules of Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature have been replaced by Regulation (EU) No. 1101/2014. The Common Customs Tariff (CCT) also applies.

The CCT is the name given to the combination of nomenclature and duty rates that apply to each class of goods. The CCT includes all other Community legislation that has an effect on the level of customs duty payable on a particular import. The integrated Tariff of the European Communities is referred to as TARIC. More information is available on the website of the European Commission: ec.europa.eu.

Goods are classified according to a system called the Combined Nomenclature (CN), which is based on the Harmonised System (HS) of the 1983 International Convention on the Harmonised Commodity Description and Coding System. Each class of goods has a corresponding CN code.

Duty rates are set out annually in a regulation reproducing a complete version of the CN and CCT duty rates and amending Annex I to Regulation (EEC) 2658/87 (see for 2014: Commission Implementing Regulation (EU) No. 1001/2013 of 4 October 2013 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 290, 31.10.2013, p. 1).

All EU member states apply the CCT.

The CCT theoretically applies to any non-EU country, but various bilateral and unilateral agreements provide for exceptions to the levying of full duties. Such agreements have been concluded with several countries, including Turkey, Andorra and San Marino (Customs Union), the EEA countries (Free Trade Area), the Mediterranean countries, some Eastern European countries, the ACP countries (Cotonou Agreement), the Overseas Countries and Territories (Decision (EC) 2013/755/EU), the countries benefiting from the Generalised System of Preferences (Regulation (EC) 978/2012) including the countries enjoying the benefits of the Everything But Arms initiative.
More information is available on the website of the Taxation and Customs Union Directorate-General of the European Commission, at http://ec.europa.eu/taxation_customs/index_en.htm.

Most products may enter the European Community customs territory without restrictions.
For some sensitive agricultural products, such as sugar, textiles and clothing products, a preferential tariff is only applicable up to a certain limit (tariff quotas). Additionally, the limitations may apply to certain countries only. In this case, the importer has to apply for an import licence.

4.11.3 Export and export control

Moving Community goods from the Netherlands to another EU member state is not considered to be exporting them.

Under the UCC, an exporter must file an export declaration to export Union goods to a country outside the EU.

In line with EU legislation, in the Netherlands restrictions apply to:

- The export of strategic goods and services;
- The export of goods and services to countries for which specific sanction regimes have been adopted at Union level.

Strategic goods are military goods and "dual-use items", the latter being items that may have both civilian and military use. Legal measures prohibiting the export of most of these goods without a licence stem from security objectives and international agreements on strategic goods. In addition, the import of certain chemical substances and the transit and brokering of military goods are subject to controls.

The Netherlands participates in several non-proliferation regimes and export control arrangements, such as the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group and the Australia Group, and has ratified the Chemical Weapons Convention prohibiting the import, export or transit of certain chemicals to non-member states. In addition, the Netherlands complies with internationally established United Nations, European Union or OSCE sanctions and embargoes that may include restrictions on the trade in certain goods, restrictions on financial activities and visa restrictions for certain people and companies.

The common military list of the European Union (the latest version was adopted by the Council on 17 March 2014) lists equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, which also applies in the Netherlands.

The EU Dual-Use Regulation (EC) No. 428/2009 updates the list of items (including software and technology) controlled prior to export and introduces controls on the brokering of dual-use items that are located in third countries under very limited circumstances. It also introduces the possibility for Member States' competent authorities to prohibit the transit of non-Community dual-use items entering the EU customs territory and having a destination outside the EU. There is freedom of circulation in the single market for dual-use items, with some exceptions.

The EU Dual-Use Regulation 428/2009 provided originally for only one General Export Authorisation. This was known as the Community General Export Authorisation (CGEA). It covered most exports of the controlled items to seven specified countries (Australia, Canada, Japan, New Zealand, Norway, Switzerland and the USA). This licence is now amended by Regulation (EU) No. 1232/2011 to include Liechtenstein as a permitted destination, and as part of its ongoing remit in relation to controls on dual-use goods, the EU has introduced a number of new open general licences or European Union General Export Authorisations (EU GEAs) with regard to the export of certain dual-use items to certain destinations, export after repair/replacement, temporary export for exhibition or fair, telecommunications and chemicals. For all other exports for which an authorisation is required under the Regulation (individual, global or general), an authorisation is granted at national level.

Additionally, Member States are, at the national level, allowed to control the export of additional, non-listed, dual-use items, so that exporters should as a general practice always check whether controls apply to their specific transactions.

Currently, the national rules in force in the Netherlands with regard to strategic goods are the Strategic Goods Order (Besluit strategische goederen of 24 June 2008) and the implementing regulation (Uitvoeringsregeling strategische goederen 2012). Authorisation is required for export and intra-Community transfers of listed dual-use items. Authorisation is required for the export and transit of listed military goods and certain chemical substances as referred to in the Chemical Weapons Convention. Notification to Customs is required for the export and transit of other military goods (with some exceptions). The Strategic Services Act (intangible transfer of software and technology, technical assistance and brokering) was introduced in 2012.

An application for a licence for the export or transit of strategic goods or goods subject to sanctions must be submitted to the Dutch customs service (CDIU) For more information, please consult the website of the Dutch Customs service (www.belastingdienst.nl).

For more information on export controls, please consult the website of the Dutch Ministry of Economic Affairs (www.ez.nl).

5. LIQUIDATION AND INSOLVENCY PROCEDURES

5.1 LIQUIDATION

Four events triggering liquidation (vereffening)

A Dutch company (BV and NV) is liquidated outside insolvency proceedings in the event of one of the following:

- A resolution to that effect by the general meeting of shareholders;
- An event that automatically, pursuant to the articles of association, triggers the company's liquidation;
- An order to that effect by the Chamber of Commerce; or
- An order to that effect by the court (made in certain circumstances set out in statute).

In general the liquidation of a company takes place in three phases:

Phase 1: Appointment of liquidator (vereffenaar)

If the court does not appoint a liquidator, the liquidators are in most cases the managing director(s) of the company.

Unless the articles of association provide otherwise, the liquidator has the same powers and duties as a managing director. The liquidator, however, is required to keep a keen eye on the interests of the creditors.

After the appointment of a liquidator, the company continues to exist, but only for the purpose of the liquidation of its assets.

In documents and announcements issued by the company, the Dutch words "in liquidatie" must be added to its name.

Phase 2: Liquidation phase

The liquidator handles the liquidation of the company. The liquidator must convert the company's assets into cash and pay its debts. If the liquidator determines that the company's liabilities exceed its available assets, the liquidator is obliged to file for bankruptcy. An exception to this obligation is made if all known creditors agree to a request by the liquidator for a continuation of the liquidation process outside the formal bankruptcy process. There is no formal possibility for the liquidator to present a restructuring plan to the creditors for a vote. Therefore, there is no formal procedure for the majority of the creditors to overrule a dissenting minority. Creditors can, however, collectively agree to accept a haircut on their respective claims.

Phase 3: Final phase

If there is a surplus after the company's assets have been liquidated and all creditors have been paid, the liquidator distributes the surplus to the parties entitled to it pursuant to the company's articles of association or otherwise to the shareholders. The liquidator prepares and issues a report on the allocation of such surplus (*rekening en verantwoording*).

The liquidation of a company ends when there are – to the liquidator's knowledge – no further assets. The company ceases to exist at this point and the liquidator submits a notice to that effect to the trade registry.

5.2 INSOLVENCY PROCEDURES

There are three main insolvency procedures in the Netherlands:

- Bankruptcy (*faillissement*);
- Suspension of payment (*surseance van betaling*); and
- Debt restructuring for natural persons (*Schuldsaneringsregeling Natuurlijke Personen, not elaborated on here*).

5.2.1 Bankruptcy

Both natural persons and legal entities can be declared to be in a state of bankruptcy (*in staat van faillissement*). Bankruptcy in the Netherlands is governed by the Dutch Bankruptcy Act (*Faillissementswet*). The process requires the appointment of a supervisory judge (*rechter-commissaris*) and a bankruptcy trustee (*curator*), both of whom are appointed by the court.

Purpose and scope

In principle, the purpose of bankruptcy is to liquidate a debtor's assets for the benefit of its creditors. The proceeds of the debtor's assets are distributed amongst the creditors.

Even though there is a specific reorganisation process whose aim is the survival of the debtor as a legal entity (see "Suspension of payment" below), it is also possible for a debtor to offer its creditors a composition plan (*akkoord*) as part of the bankruptcy process.
Such an offer for a composition plan is accepted if more than 50% of the general unsecured

creditors present at the meeting vote in favour of the plan, and these creditors voting in favour represent at least 50% of the total amount of the recognised claims. Even if these criteria are not met, the supervisory judge can still rule that the plan of composition has been accepted by the creditors if:

- At least 75% of the number of the recognised creditors present at the meeting voted in favour of the composition; and
- The initial rejection of the composition plan was the consequence of a vote against the plan by one or more creditors that, in doing so, could not have been acting reasonably, taking into account all of the circumstances.

The bankruptcy estate includes all the debtor's property at the time of the declaration of bankruptcy (whether in the Netherlands or not) and everything acquired during the bankruptcy process.

Requirements and procedure

The Dutch bankruptcy process applies to a natural person who resides in the Netherlands and has ceased to pay his or her debts. For a legal entity, the process applies if the place of business is in the Netherlands and the legal entity has ceased to pay its debts. The court declares a debtor bankrupt in the event of the following:

- A petition for bankruptcy is filed by one or more creditors;
- A debtor files a voluntary petition for bankruptcy; or
- The public prosecutor files for bankruptcy in the public's interest.

A voluntary petition for bankruptcy by the debtor can be made orally or in writing at the court registry. Legal representation is not required.

A bankruptcy petition by one or more creditors should be filed at the court registry by a practising Dutch lawyer. To meet the requirement of showing that a debtor has ceased to pay its debts, it must be shown that, for a certain minimum period of time, the debtor has had at least two creditors and at least one of the debts is due and payable, and has not been paid.

Under the European Insolvency Regulation, the initiation of the bankruptcy process in the Netherlands is recognised and has immediate effect throughout the European Union (except in Denmark).

The bankruptcy process ends in one of the following four ways:

- Full payment of the creditors;
- If the bankruptcy estate is such that full or partial payment of preferential creditors and unsecured creditors is possible: a claims admission meeting and a final distribution plan;
- If the bankruptcy estate is such that full or partial payment is possible only for estate creditors and privileged claims: discontinuation of the bankruptcy and no claims admission meeting; or
- A court-approved composition plan becoming final.

5.2.2 Suspension of payment

Suspension of payment in the Netherlands is governed by the Dutch Bankruptcy Act (*Faillissementswet*). The process requires the appointment of a supervisory judge (*rechter-commissaris*) and an administrator (*bewindvoerder*), both of whom are appointed by the court.

Purpose and scope

The aim of suspension of payment is to enable a debtor in financial distress to continue its business by giving the debtor the opportunity to reorganise its debts and to find a means to finance its debts. The key concept in the suspension-of-payment process is the continuation of the debtor's business within the same legal entity.

Suspension of payment does not affect secured creditors and privileged creditors such as the Dutch tax authorities. During the suspension of payment period, the debtor is allowed to continue its business activities, but only under court supervision and with the requirement that legal acts be approved by the administrator.

During the suspension of payment period, the debtor may offer a composition plan to its creditors. The requirements are similar to those for a composition plan in the bankruptcy process (discussed above). The composition plan is binding on all creditors affected by the reorganisation procedure, i.e. all pre-petition creditors that are neither preferred nor secured creditors. The plan of composition requires the approval of more than 50% of the recognised creditors present at the meeting, with these approving creditors representing at least 50% of the total amount of the recognised claims. Even if these criteria are not met, the supervisory judge may still rule that the plan of composition has been accepted by the creditors if:

- At least 75% of the number of the recognised creditors present at the meeting voted in favour of the composition, and
- The initial rejection of the composition plan was the consequence of a vote against the plan by one or more creditors that, in doing so, could not have been acting reasonably, taking into account all of the circumstances.

Requirements and procedure

An individual may be granted a suspension of payment only if he or she is exercising a profession or carrying on a business. Suspension of payment cannot be granted to a credit institution or insurance company.

Only a debtor may request a suspension of payment. On a voluntary application made by the debtor to the court for a suspension of payment, the court may order a suspension of payment on the debtor's debts.

Under the European Insolvency Regulation, the initiation of the suspension-of-payment process in the Netherlands is recognised and has immediate effect throughout the European Union (except in Denmark).

The suspension-of-payment process ends in one of the following three situations:

- The debtor pays all its debts;
- A court-approved composition plan becomes final; or
- Revocation of the suspension followed by bankruptcy.

6. INVESTMENT INCENTIVES

6.1 GENERAL

The Dutch government and the European Union offer certain investment incentives to companies wishing to do business in the Netherlands. Both non-Dutch companies and Dutch companies have access to these incentives on an equal basis.

The following overview is not meant to be comprehensive. Incentives are set out in detailed regulations that are subject to amendment from time to time.

A company intending to apply for a government incentive should always carefully examine whether the aid received from a state is such that it requires the approval of the European Commission.

6.2 NETHERLANDS FOREIGN INVESTMENT AGENCY

The Netherlands Foreign Investment Agency (NFIA) is part of the Ministry of Economic Affairs. The NFIA supports businesses and public organisations with international enterprises and partnerships. One of the NFIA's important tasks is to assist foreign businesses wishing to set up a headquarters or branch in the Netherlands.

For this purpose, the NFIA has organised an Investor Development Programme (IDP) in close cooperation with regional economic development companies. Its focus is on innovation and sustainability. The objectives of the IDP are as follows:

- The embedding of existing activities;
- The realisation of expansion projects;
- The involvement of foreign companies in alleviating bottlenecks in the investment climate in the Netherlands; and
- The involvement of non-Dutch companies in the acquisition of new foreign investment projects.

The NFIA provides its services free of charge and on a confidential basis. It has offices and websites in various different parts of the world (including North America, UK & Ireland, Japan, China, Taiwan, Korea, Singapore, Malaysia, India, Brazil, Turkey and the Middle East). For more information, please consult the website (www.nfia.nl).

6.3 BILATERAL INVESTMENT TREATIES

The Netherlands has UNCTAD-sponsored bilateral investment treaties with more than 95 countries in Asia, Latin America, Africa and Eastern Europe. These agreements provide security and protection to investors from a contracting country in the territory of the Netherlands for the duration of the agreement. For more information, please consult the website (www.unctad.org).

The core of the standard agreement is non-discrimination. Investors are given equal treatment and most-favoured-nation treatment in the host country.

In addition, the standard agreement contains provisions on the free transfer of payments related to an investment, on just compensation in the event of expropriation and on dispute settlement.

6.4 EXPORT FINANCING AND INSURANCE

The Dutch government provides financing and insurance coverage for companies seeking to export to certain countries.

Special government subsidies in the form of guarantees are provided for on the basis of the statute the Framework Act on the Provision of Funds by the Ministry of Finance (*Kaderwet financiële verstrekkingen Financiën*). These subsidies are managed by a company called Atradius Dutch State Business N.V. (Atradius DSB), a full subsidiary of the privately owned Atradius Group. Atradius DSB, as a representative of the Dutch state, offers credit insurance services for national and international business-to-business trade in capital goods and services. The Dutch government directly underwrites the export credit insurance and investment guarantee policies for banks and exporters.

Applications for cover are submitted to Atradius DSB. Forms are to be filled out in accordance with the accepted terms and conditions of international trade set out in the OECD-sponsored Arrangement on Guidelines for Officially Supported Export Credits.

The Export Credit Insurance Facility is a reinsurance facility for the export from the Netherlands of capital goods and services. The Reinsurance Scheme for Investments covers political risks involved in investing in designated countries. This is provided for in the Investment Reinsurance Regulation 2010, which entered into force on 25 December 2010. Both schemes come under the responsibility of the Minister of Finance. For more information, see http://global.atradius.com.

Other schemes

Two other government facilities (both managed by the Ministry of Economic Affairs) are intended to cover risks that do not come under these other schemes:

- The Emerging Markets Guarantee Facility (*GOM, Garantiefaciliteit Opkomende Markten*), which is especially designed for risks relating to exporting to countries that qualify for a grant under the Economic Cooperation Programme (ORET) of the Minister for Development Assistance; and
- The SENO (*Stichting Economische Samenwerking Nederland Oost-Europa*) Facility, which is designed to cover risks relating to export transactions with Eastern and Central European countries.

Private-sector financing

Medium-to-long-term or long-term export financing is also available at market rates from commercial banks, depending on the provision of guarantees and collateral.

A number of insurance and finance companies provide export credit insurance. NL EVD International administers several projects supporting exports and export financing for the benefit of Dutch companies. For more information, please visit the website english.rvo.nl.

MIGA

Furthermore, the Netherlands is a member of the Multilateral Investment Guarantee Agency (MIGA), which is part of the World Bank Group. MIGA can help investors manage the non-commercial risk of investing in developing countries by insuring eligible projects against losses relating to currency transfer restrictions, expropriation, war and civil disturbance, and breach of contract. MIGA also assists investors and lenders by mediating disputes, accessing funding and providing extensive country knowledge. Eligible investors include nationals of any MIGA member country, provided that they are not nationals of the country where the investment is being made.

6.5 GRANTS, SUBSIDIES AND FUNDING

Limited, targeted investment incentives have long been a tool in Dutch economic policy to facilitate economic restructuring and to promote energy conservation, regional development, environmental protection, R&D and sustainable development. Investment incentives are funded by both the Dutch government and the European Union. At a national level, subsidies are also available in the form of tax incentives (see 6.7). Non-tax incentives include direct grants, low-interest loans, public guarantees, local government participation and guarantees for exports to selected regions. Specific subsidies are granted to small- and medium-sized businesses.

Visit www.ondernemersplein.nl (Dutch only), a website provided by the Ministry of Economic Affairs and other bodies and institutions, or english.rvo.nlfor more information on subsidies relevant to corporate investment.

Employment-related subsidies have been made available by the Ministry of Education, Culture and Science for the years 2014-2018, in relation to employers who hire and coach unemployed persons in completing re-training courses or employees doing (technological) research. Please visit www.rvo.nl/subsidies-regelingen/subsidieregeling-praktijkleren (Dutch only) for more information.

EU programmes

As the Netherlands is a member of the European Union, companies doing business in the Netherlands have access to EU funding. These programmes make available a wide range of support in the form of grants, loans and co-financing for training, feasibility studies and infrastructure projects in key sectors such as the environmental, transportation and energy sectors. Visit the European Commission's website for further information on EU grants, funding and programmes.

In addition, the European Commission has approved new Regional State Aid Guidelines for the Netherlands for 2014-2020. Under the EC's new Regional State Aid Guidelines for this period, regional aid is available in parts of the country where economic development is needed.

Projects relating to innovation and sustainability

Government policy on innovation, the environment and sustainability is implemented by the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland - RVO.nl*), an agency of the Ministry of Economic Affairs. The agency can be approached for subsidies, advice and help with the recruitment of project partners. Please visit english.rvo.nl for more information.

6.6 RESEARCH AND DEVELOPMENT INCENTIVES

To co-finance research efforts, venture capitalists active in innovative fields can participate in a range of government-sponsored funding initiatives that offer tax breaks, low-interest loans and subsidies for high-tech equipment, personnel and facilities that contribute to innovative research and development.

One of the largest support organisations for private sector research in the field of technology, energy and the environment is the Rijksdienst voor Ondernemend Nederland (RVO, Netherlands Enterprise Agency), an agency of the Ministry of Economic Affairs. Please visit www.rvo.nl for more information.

The European Investment Fund (EIF) is an EU fund established to support small- and medium-sized businesses, to increase their competitiveness and to foster innovation and technology in Europe. It does not lend money to businesses directly; rather, it arranges financing through private banks. Its main operations are in the areas of venture capital and guaranteeing loans. The EIF also supports innovation by increasing overall investment and private sector involvement in major research and development projects. Please visit www.eif.org for more information.

6.7 TAX INCENTIVES

The following tax incentives may be available:

- Innovation Box;
- New R&D cost-related deduction;
- Free depreciation;
- General investment deduction;
- Energy investment deduction; and
- Environmental investment deduction.

Innovation Box

With effect from 1 January 2010, a company deriving income from self-developed, patented intangible assets (excluding logos and trademarks) or from intangible assets arising from R&D activities for which an R&D statement has been obtained may opt to report this income in the Innovation Box on the tax form. If a company chooses this option, qualifying income that exceeds the intangible assets' development costs is taxed at an effective tax rate of 5%. Gains derived from the sale of the qualifying intangible assets are also eligible for the Innovation Box.

Losses connected to the qualifying intangible assets are deductible against the maximum general rate of 25% (2015). If such losses are reported, a full recovery of the losses at the maximum rate is required before the effective 5% rate available via the Innovation Box becomes available again for the profits derived from that intangible asset.

The Innovation Box has replaced the Patent Box that had been introduced in 1 January 2007. Transitional provisions apply to income derived from a patented intangible asset developed between 1 January 2008 and 31 December 2010 (inclusive) and for which an R&D statement has been issued. The income from these assets eligible for the Innovation Box (and its effective tax rate of 5%) is capped at four times the production costs of the intangible asset. The excess is taxed at the general rates.

New R&D cost-related deduction

The new R&D facility provides for an additional tax-deductible item, on top of the standard deductions for R&D activities ("R&D deduction") available. The amount of the R&D deduction is based on a certain percentage of the qualifying costs and investments directly attributable to the R&D activities ("qualifying cost base"). The qualifying cost base will not include wage costs (because these costs are already facilitated in the wage tax incentive) and costs incurred in the outsourcing of R&D activities to third parties. Further rules on the determination of the qualifying cost base and the percentage applied to the qualifying cost base were promulgated in a ministerial decree issued on 21 December 2011. The 2015 percentage has been fixed at 60%. Currently, this produces a net benefit of approximately 15% for a company subject to corporate income tax at a rate of 25% (2015).

To be eligible for the R&D deduction, an R&D cost statement (*RDA-beschikking*) is required from the RVO (please visit www.rvo.nl for more information). An application for this statement will be based on an estimate of the qualifying costs and investments, but the statement can be amended should the actual costs differ from the initial estimate. A ministerial decree called Besluit RDA has been issued with more detailed rules on the application procedure.
Where the income of a company exceeds €1 million, only 20% is deductible.

Free depreciation

For certain categories of investments, free depreciation (*willekeurige afschrijving*) may be available.

General investment deduction

On request, an investment deduction (*kleinschaligheids investeringsaftrek* or *KIA*) is granted for small-scale investments in certain assets. The deduction is available if the total of all investments in a calendar year is between €2,300 and €306,931 (2015).

Energy investment deduction

An energy investment deduction (*energie investeringsaftrek* or *EIA*) may, on request, be granted for new investments that contribute to energy efficiency. The deduction is available if the total of all qualifying investments in a calendar year exceeds €2,500 (2015). The energy investment deduction equates to 41.5% of the total amount of energy investments in a calendar year. The maximum deduction is reached if the qualifying investments amount to a total of €106 million (2015).

Environmental investment deduction

An environmental investment deduction (*milieu investeringsaftrek* or *MIA*) may, on request, be granted for investments that contribute to the protection of the environment in the Netherlands. The deduction is available if the sum of all qualifying investments in a calendar year exceeds €2,500 (2015). The environmental investment deduction is computed as a percentage of the cost price of each qualifying investment. The percentages vary from 13.5% to 36%.

7. COMPETITION & PUBLIC PROCUREMENT

7.1 GENERAL

The Netherlands Authority for Consumers & Markets (ACM) is the competition watchdog in the Netherlands. The ACM's enforcement powers are set out in the Competition Act (*Mededingingswet*), the Act establishing the ACM (*Instellingswet*) and the General Administrative Law Act (*Algemene Wet Bestuursrecht or Awb*). In addition, the ACM applies articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) in the Netherlands.

In line with the prohibition of cartels in the EU in article 101 of the TFEU, the Competition Act prohibits companies from restricting competition by entering into agreements with competitors (please see 7.2 for more on cartels).

In addition, companies with a dominant position are prohibited from abusing this position in the same way as under article 102 of the TFEU, e.g. by excluding competitors from the market (please see 7.3 for more on abuse of a dominant position).

The ACM assesses merger proposals to prevent the emergence of concentrations that would obstruct the proper functioning of markets (please see 7.4 for more on merger control).

Public procurement rules are discussed under 7.5.

The European Commission is responsible for regulating state aids (i.e. government aid that gives a company an unfair competitive advantage). It has many investigative and decision-making powers at its disposal to fulfil this responsibility.

The term used to describe a business in this area of law is an "undertaking". Hence, this term is used in this chapter of the Guide as well.

7.2 PROHIBITION ON CARTELS

Cartels are prohibited by the Competition Act, which entered into force on 1 January 1998. A cartel is an agreement between undertakings or associations of undertakings that restricts competition in all or part of the Dutch market. Concerted practices, in which undertakings coordinate their commercial policy without a formal agreement, may also constitute a cartel. An "undertaking" here refers not just to a company, but also to other private-sector organisations, non-profit organisations and government bodies, as long as they are engaged in an economic activity in the market.

Exemptions

Under the Dutch Competition Act, there are certain exemptions from the cartel prohibition:

- Agreements of little significance: de minimis agreements or "bagatelles" (articles 7, 8 and 9);
- Agreements necessary for, and directly related to, the creation of a concentration (article 10);
- Agreements made by companies responsible for the performance of a duty in the general economic interest (article 11);
- Agreements exempted under a European Block Exemption Regulation or an individual exemption granted by the European Commission (articles 12 and 14);
- Agreements that only have a national dimension, but do meet the material conditions for a European block exemption (article 13);
- Agreements exempted under a Dutch national block exemption granted by the Minister of Economic Affairs (article 15);
- Agreements that are compulsory by law or that require the approval of, or may be prohibited by, a different public authority (article 16).

If these exemptions apply, the undertakings involved are not required to take any action themselves.

Individual exemptions

Individual exemptions are treated differently. Agreements restricting competition may be eligible for an individual exemption if they meet the criteria in article 6(3) of the Dutch Competition Act, which specifies similar criteria to those set out in article 101(3) of the TFEU. In this situation, the party is required to assess itself whether the relevant criteria for the exemption are met.

Fines for running a cartel

The ACM may impose a fine of up to 10% of the turnover in the previous calendar year on an undertaking engaged in cartel practices. It may also impose a fine of up to €450,000 on individuals liable for having given instructions to violate competition law or having exercised de facto leadership in relation to a cartel.

Undertakings and individuals may be granted immunity or a reduction of the fine (leniency). To be eligible for leniency, parties must submit a leniency application to the ACM's Leniency Office and cooperate fully with the ACM's investigation. A leniency application must contain proof of the existence of a cartel and an admission of the undertaking's participation.

7.3 ABUSE OF A DOMINANT POSITION

An undertaking that is so powerful that it has little need to take other market players into account (e.g. competitors, suppliers, buyers and end users) is considered dominant and must not abuse its dominant position (article 24). Examples of abuse are:

- Charging extremely high prices;
- Imposing unfair supply conditions;
- Refusing to supply certain buyers;
- Charging different prices for the same service or product;
- Excluding competitors from the market; or
- Preventing new companies from entering the market (e.g. by charging extremely low prices).

Special rules apply to government bodies that are engaged in economic activities to prevent them from abusing their privileged position (articles 25g-25ma).

7.4 MERGER CONTROL

Under the Competition Act, mergers and acquisitions are assessed by the ACM prior to completion to make sure that they will not create a significant impediment to competition on the market. This does not apply to concentrations that are subject to review by the European Commission.

There are three types of concentrations: mergers, acquisitions and full-function joint ventures.

Merger control only applies where large companies are involved: the joint annual worldwide turnover of the undertakings involved must amount to more than €150 million and at least two of them must each have an annual turnover in the Netherlands of at least €30 million. Other (lower) thresholds apply to undertakings in specific sectors (e.g. finance and healthcare).

The ACM must be notified of these concentrations. The transaction cannot proceed unless ACM clearance is received. The waiting period is at least four weeks (first phase). It takes at least an additional thirteen weeks if an in-depth investigation is required (second phase).

7.5 PUBLIC PROCUREMENT

Dutch public procurement legislation is based on two European directives: 2004/17/EC and 2004/18/EC.

Government bodies and bodies governed by public law (Directive 2004/18/EC and Aanbestedingswet 2012)

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts was implemented into Dutch law by the adoption of the Public Procurement Act 2012 (Aanbestedingswet 2012). Under this legislation, all public bodies and "bodies governed by public law" are required to comply with public procurement rules.

Subsidised bodies (Directive 2004/18/EC and Aanbestedingswet 2012)

Certain types of contracts that are subsidised directly by the contracting authorities to more than 50% of their value fall within the scope of the public procurement rules. This applies to certain types of public works contracts as well as public service contracts connected with such works contracts. If the estimated value of the contract exceeds the threshold applicable (see below), the contract has to be awarded in conformity with the public procurement rules.

Airports, ports, transport, postal services and utility companies (Directive 2004/17/EC and Aanbestedingswet 2012)

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors was implemented into Dutch law by the adoption of the Public Procurement Act 2012 (*Aanbestedingswet 2012*). Under this act, undertakings active in utilities sectors (e.g. airports, ports, as well as gas, water and electricity suppliers) are also subject to public procurement rules.

New directives

On 26 February 2014 the European Parliament and the Council adopted three directives on public procurement of concession contracts (Directive 2014/23/EU), public procurement by contracting authorities (Directive 2014/24/EU) and public procurement by entities operating in the water, energy, transport and postal services sectors (Directive 2014/25/EU).

For the first time concession contracts are now regulated in a separate directive that includes services concessions and not just public works concessions. Previously services concessions were excluded from the scope of the procurement directives.

These new directives must be implemented into Dutch law no later than 18 April 2016.

Thresholds

The obligation to organise a European public tender process in conformity with the public procurement rules for contracting authorities only arises where the estimated value is more than €5,186,000 in the case of a public works contract or a public works concession or €207,000 in the case of a public supply or public service contract. In the case of public supply and public service contracts, the threshold for the central government is €134,000 instead of €200,000.

For entities in the utilities sectors, the thresholds are €5,186,000 for public works contracts and €414,000 for public supply or service contracts.

All thresholds exclude VAT and are set for 2014-2015. The revised thresholds for 2016 will be published in due course.

Even under the thresholds, procurement rules sometimes apply

In principle, there is no obligation to follow a public tender process if these thresholds are not exceeded.

Nevertheless, an obligation to organise some form of tender may arise if the nature and scope of the contract is such that trade between the different EU member states may be affected. According to the case law of the European Court of Justice, in order to comply with the transparency principle, if a contract is of a "certain cross-border interest", a contracting authority must ensure, for the benefit of any potential candidate, a degree of advertising sufficient to enable the market to be opened up to competition.

The same principle applies to service concessions and public service contracts for B-services (e.g. hotel services, legal services). The distinction between A-services – that fall within the full scope of the procurement rules – and B-services – that are currently only subject to the transparency principle – will, however, be removed after the implementation of the new Directive 2014/24/EU.

Principles of procurement law

Whenever a government body conducts a procurement process, it is required to follow its own procurement policy and to comply with the principles of procurement law (e.g. the principle of equal treatment and the transparency principle). This process is to be conducted in good faith (Supreme Court of the Netherlands, 4 April 2003, RZG/ComforMed). This rule applies to undertakings as well; however, undertakings may exclude the application of the principles of procurement law in their requests for tender (Supreme Court of the Netherlands, 3 May 2013, KLM/Crombeen Commercial Cleaning).

8. BANKING, SECURITIES AND PENSION FUNDS

8.1 GENERAL

Act on Financial Supervision

The Dutch Act on Financial Supervision (*Wet op het financieel toezicht or Wft*) is the law governing financial services and the financial markets in the Netherlands. The Wft provides for a consistent regulatory framework for participants in the Dutch financial markets, such as banks, investment firms, (management companies of) collective investment undertakings, insurance companies, investors and shareholders. The Wft essentially covers all regimes applicable to regulated financial institutions and financial markets. It covers the relevant authorisations that may be applied for by financial institutions, the rules in force governing regulated financial institutions, and the rules and restrictions applicable to parties active on the financial markets.

Impact of European law

The Wft consists, for a large part, of rules and regulations implemented further to European financial regulatory legislation. Due to the ongoing revision and expansion of the scope of European financial regulatory legislation, the scope of the Wft is widening and includes various regulated businesses that were unregulated some years ago. In addition, the impact of European law is becoming more and more important for parties active on the Dutch markets. Apart from the fact that European financial regulatory legislation is implemented into Dutch law, leaving less room for deviation due to maximum harmonisation, European regulations have direct effect in the Netherlands without implementation into Dutch law. As a result, the Wft is no longer the only relevant source of law governing the Dutch financial markets. Notable examples include the European Markets Infrastructure Regulation (Regulation (EU) No. 648/2012) (EMIR) and the Capital Requirements Regulations (Regulation (EU) No. 575/2013) (CRR).

8.2 THE OFFERING OF SECURITIES

Pursuant to the Wft, it is prohibited to offer securities to the public in the Netherlands or have securities admitted to trading on a regulated market situated or operating in the Netherlands unless a prospectus is made generally available for the offer or admission, and this prospectus has been approved by the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) (AFM) or by a supervisory authority in another member state of the European Economic Area (EEA). This regime has been implemented further to the Prospectus Directive (2003/71/EC, as amended) (PD).

This prospectus requirement does not apply if the offeror offers securities:

(a) Solely to qualified investors (which includes banks, brokers, dealers and institutional investors holding a licence or otherwise designated as active on the financial markets within the meaning of the Wft);

(b) To fewer than 150 persons in the Netherlands who are not qualified investors;

(c) For an equivalent value of at least €100,000 per investor or a denomination of the securities of at least €100,000; or

(d) Provided the total equivalent value of the offer is less than €2,500,000, this limit being calculated over a preceding period of twelve months.

The prospectus requirements also do not apply to the admission to trading of fewer than 10% of the total number of shares outstanding of the same class that have already been admitted to trading. This percentage is to be calculated over a preceding period of twelve months.

In addition, the Wft provides for a number of exceptions that apply to the offering of securities as well as to the admission of securities to trading. This includes securities issued as dividends in kind and employee stock option plans.

If an offeror makes use of one of the exceptions under (b), (c) and (d) above, it must inform potential investors in the offer itself and in every marketing document that no prospectus will be made generally available and that the offer is not subject to the supervision of the AFM. For this purpose, the AFM has developed a mandatory warning sign. The offeror is obliged to use in its marketing materials in accordance with certain publication standards. The warning sign does not have to be used if the offer is directed to qualified investors only.

8.3 MARKETING AND MANAGEMENT OF COLLECTIVE INVESTMENT UNDERTAKINGS

Pursuant to the Wft, it is generally prohibited to offer units in a collective investment undertaking or to manage an alternative collective investment undertaking in the Netherlands unless the management company of the scheme (or, if it is self-managed, the undertaking itself) is appropriately authorised. Two regimes exist. These regimes are implemented further to the Alternative Investment Fund Managers Directive (2001/61/EU, as amended) (AIFMD) and the Undertakings for Collective Investments in Transferable Securities Directive IV (2009/65/EC, as amended) (UCITS IV).

AIFMD

Further to the AIFMD, both the marketing in the Netherlands of an AIF and the management of a Dutch AIF require appropriate authorisation of the alternative investment fund manager (AIFM). In conformity with the AIFMD, this requires either a licence granted to the AIFM by a competent authority in the EEA, the registration of the AIFM with the AFM (smaller AIFMs only) or compliance with the Dutch private placement regime.

The present private placement regime provides for fewer options than the old Dutch regime for collective investment undertakings, which was in effect prior to the entering into force of the Dutch AIFMD regime. This is primarily because the AIFMD no longer allows various Dutch private placement options under the old regime to continue. Currently, the most notable private placement option takes the form of an article 42 notification under the AIFMD that requires marketing to "qualified investors" only as well as a cooperation agreement between the AFM and the competent authority of the jurisdiction of domicile of the AIFM (which has to be confirmed by an attestation by this authority for the purposes of notification). Following notification under this regime, the AIFM has to meet certain ongoing requirements in accordance with article 42 of the AIFMD. Apart from this notification option, the Dutch "designated states regime" continues to apply. This regime essentially provides for a favourable treatment of AIFMs from the USA (if registered with the SEC), Guernsey and Jersey. While such AIFMs do not require a licence, they will have to comply with certain ongoing requirements, effectively resulting in a light-touch regime.

UCITS

Further to UCITS IV, the marketing of UCITS in the Netherlands requires appropriate authorisation. This essentially implies a licence granted by a competent authority in the EEA. Following the implementation of the AIFMD, private placement of UCITS is no longer an option.

8.4 PROVISION OF (CONSUMER) CREDIT

Legal restrictions relating to the providing of or mediation in consumer credit in the Netherlands are set out in the Wft, the Dutch Consumer Credit Act (*Wet op het consumentenkrediet*) and the Dutch Civil Code (*Burgerlijk Wetboek*). As a principle, the providing of or mediation in consumer credit requires appropriate authorisation. In addition, various rules provide for stipulations or prohibitions in relation to the providing of consumer credit, the most notably doubtless being that a maximum interest rate may be charged when providing consumer credit (this being 12% over and above the non-professional statutory interest rate, which is set at 2% as per 1 January 2015).

Only the providing of consumer credit is restricted by Dutch law. The providing of professional credit is not regulated. However, the combination of providing (*professional*) credit on the one hand and the attracting of repayable funds on the other is regulated as it is deemed to constitute banking business.

8.5 PROVIDING INVESTMENT SERVICES AND PERFORMING INVESTMENT ACTIVITIES

Under the Wft, both the providing of investment services and the performing of investment activities in the Netherlands require appropriate authorisation, either in the form of a Dutch licence or on the basis of a European passport. Certain exemptions apply, such as an exemption available for investment firms domiciled in Switzerland, Australia or the United States of America and subject to appropriate supervision in their jurisdiction of domicile.

Investment services are provided to a client and relate to receipt and transfer of orders, order execution, portfolio management, provision of investment advice and underwriting or placing agent services, all in accordance with the investment services set out in the Markets in Financial Instruments Directive (2004/39/EC, as amended) (MiFID). Investment services must relate to "financial instruments", which includes transferable securities, units in collective investment schemes and all kinds of derivatives.

Investment activities are performed in the pursuit of a profession or business for the investment firm's own account and relate to own account dealing and the operation of a multilateral trading facility, also in accordance with MiFID. Investment activities must also relate to financial instruments.

8.6 FINANCIAL SERVICES

Pursuant to the Wft, it is prohibited by law to offer "financial products" and to advise or to act as intermediary in relation to financial products without appropriate authorisation. Certain exceptions and exemptions apply. Financial products have to be distinguished from "financial instruments" and "(transferable) securities". Financial products include consumer credit, insurance products and payment and savings accounts. As opposed to the other regimes discussed in this chapter, the Dutch regime relating to financial services is of local origin, albeit that some parts of it (e.g. insurance mediation) are implemented further to European financial regulatory legislation.

8.7 PENSION FUNDS

Pension funds are primarily governed by the Dutch Pension Act (*Pensioenwet*), the Dutch Act on Mandatory Industry-Wide Pension Funds (*Wet verplichte deelneming bedrijfstakpensioenfondsen*) and the Dutch Act on Obligatory Occupational Pension Schemes For Self-Employed Professionals (*Wet verplichte beroepspensioenregeling*), depending on the type of pension fund (company pension fund, industry pension fund or pension fund for self-employed professionals).

While a pension fund does not require formal licensing, it is required to be registered with the Dutch Central Bank (*De Nederlandse Bank, DNB*). The DNB primarily monitors the capital adequacy (solvency) of pension funds. The AFM is responsible in particular for supervising obligations concerning the communication of issues to participants.

8.8 INSURANCE COMPANIES

Pursuant to the Wft, insurance companies require authorisation, either in the form of a Dutch licence from the DNB or on the basis of a European passport. In addition, insurance companies must also comply with the rules of business conduct applicable to operating in markets in financial instruments. This regime is implemented further to the European life and non-life insurance directives.

8.9 BANKS AND THE ATTRACTING OF REPAYABLE FUNDS

A bank (or credit institution) is defined as having at its disposal deposits or other repayable funds received from the public while granting loans at its own expense in the course of its business. Banks require authorisation, either in the form of a Dutch licence from DNB or on the basis of a European passport. In addition to the required authorisation to act as a bank, the mere attracting of, obtaining of or having at its disposal repayable funds in the Netherlands is also subject to authorisation. This regime is implemented further to the Capital Requirements Directive IV (2013/36/EU).

Certain exemptions exist, the most notable being available to so-called group financing companies. Group financing companies have to meet certain requirements in order to remain outside the scope of (required) authorisation including (i) a guarantee, either by a bank or by a holding company, of its obligations towards its lenders and (ii) lending of at least 95% of its balance sheet total to group companies. This regime is not available to banking groups from certain jurisdictions outside the EEA.

Another notable exemption to the authorisation required for the attracting of repayable funds relates to the attracting of repayable funds while issuing securities in accordance with the regime applicable to the offering of securities.

8.10 BANK ACCOUNTS IN THE NETHERLANDS

Under the Wft, an investor or financial institution does not have an obligation to open a bank account in the Netherlands in order to invest or do business in the Netherlands.

8.11 STOCK MARKET (EURONEXT)

The Amsterdam stock market is called Euronext Amsterdam. It is a regulated market in accordance with MiFID. Euronext Amsterdam is part of Euronext, the European stock market operator that is also active in Belgium, France, Portugal and the United Kingdom.

As a market operator, Euronext has set out rules for the organisation of the European markets that are part of Euronext. While the majority of the rules are harmonised and therefore applicable in all the relevant Euronext jurisdictions (Amsterdam, Brussels, Lisbon, London and Paris), some are still not harmonised and therefore differ from one country to another. The harmonised rules (applicable to all Euronext-regulated markets) are set out in the Euronext Rulebook I. The non-harmonised rules (applicable only to Euronext Amsterdam) are set out in Rulebook II.

Apart from Euronext Amsterdam, Euronext also operates Alternext, a multilateral trading facility. TOM MTF is also active in the Netherlands as multilateral trading facility.

9. TAX ON CORPORATIONS

9.1 DUTCH TAX SYSTEM

Corporate income tax is levied on income and capital gains alike at a maximum rate of 25% for more than €200,000 in taxable income. A reduced rate of 20% applies to taxable income up to €200,000.

There are no provincial or municipal taxes on income.

The Netherlands has a participation exemption regulation that allows companies to receive dividends or realise capital gains for qualifying subsidiaries without these becoming subject to corporate income tax for this type of income.

9.2 TAXABLE PERSONS

The following entities are subject to Dutch corporate income tax:

- Public companies with limited liability (N.V.), private companies with limited liability (B.V.) and open limited partnerships;
- Cooperative societies and other associations based on the cooperative principle;
- Mutual insurance companies and other associations that act as insurance or credit organisations on the principle of mutuality;
- Associations with or without legal personality and foundations to the extent that they conduct a business;
- Funds for joint account; and
- A number of government-owned companies.

9.3 RESIDENCE

Entities incorporated under Dutch law are deemed to be residents of the Netherlands (the "incorporation theory"). This fiction applies to corporate income tax and for dividend withholding tax purposes.

Where a tax treaty is applicable, the place of residence will be determined on the basis of all facts and circumstances in each particular case. The same goes for entities not incorporated under Dutch law.

9.4 TAXABLE BASE

General

Resident entities are subject to Dutch corporate income tax on their worldwide income. Non-resident entities are only subject to Dutch corporate income tax on certain Dutch-source income.

With effect from 1 January 2012, profits and losses of foreign permanent establishments (a PE) are excluded from the Dutch corporate income tax base of a company. Under the new rules, any overall losses realised during the existence of the PE may be taken into account in the Netherlands at the time the PE is closed (stakingsverlies), but only if these losses cannot be offset against any other (future) foreign income in the country in which the permanent establishment was located. In addition, such losses can only be taken into account if the business of the PE is not continued by a party related to the Dutch taxpayer.

Deduction of expenses

In principle, all expenses relating to the ordinary course of business of an entity are deductible.

Non-deductible expenses

Dividend distributions, as well as hidden dividend distributions, are non-deductible.

If certain conditions are met, interest expenses are non-deductible if they are paid on or relate to loans from related companies or if the loans should in fact be considered as capital.

Deduction of interest expenses is also not allowed in the case of the excessive debt financing of subsidiaries to which the participation exemption applies. The deduction of interest paid in respect of this kind of debt may be limited. However, when a threshold of €750,000 is not exceeded, the interest remains deductible.

The amount of non-deductible interest expenses is computed on a mathematical basis (see the calculation below) in such a way that the fiscal equity of a company and the total amount of its debt in the relevant year will be taken into account. If and to the extent that the amount of accrued interest does not exceed the threshold of €750,000, the interest is usually deductible.

(this has to be reformatted by our designer the same way as the picture formula):

Non-deductible interest =

$$\left(\frac{\text{Average acquisition price of the participation -/- equity}}{\text{Total amounts of loans}} \times \text{total interest and costs} \right) \text{ -/- EUR 750,000}$$

Furthermore, interest on debt, whether third-party debt or group debt, related to the acquisition of, or an increase in an investment in, a Dutch company may not be tax-deductible in part if (i) the target company is included in a fiscal unity (fiscale eenheid) with the acquiring company, or (ii) the target company and the acquiring company enter into a legal merger or a legal demerger. In the calculation of the amount of non-deductible interest, a threshold will apply to (i) interest up to the amount of €1,000,000 and (ii) the acquisition debt that amounts to less than 60% of the acquisition price.

Finally, fines and penalties are, in principle, also non-deductible.

Valuation of inventories

In principle, inventories are valued at the lower of either cost or market value. However, if certain conditions are fulfilled, the last-in, first-out (LIFO) and the base-stock methods of valuation are acceptable.

Depreciation

In principle, any system of depreciation may apply if and to the extent that the system is in accordance with "sound business practice" (goed koopmansgebruik) and that this system is consistently applied.

Real estate owners may no longer depreciate their real estate to a value lower than a predetermined value assessed by the Dutch tax authorities. Real estate held as a portfolio investment may not be depreciated to a value lower than the value assessed for Dutch immovable property tax purposes. However, real estate actually used by its owners may be depreciated to half the value assessed by the Dutch tax authorities for Dutch immovable property tax purposes.

Depreciation of purchased goodwill is limited to a maximum charge of 10% per annum.
The general depreciation of all other assets (cars, computers, etc.) is limited to a maximum charge of 20% per annum.

Capital gains

Capital gains are taxed at the same maximum rate as ordinary income (a maximum rate of 25% applies). Capital gains realised on the disposal of shares in a qualifying participation are exempt on the basis of the participation exemption.

Losses

The loss of an entity in one year can, in principle, be carried back to be set off against profits of the preceding year and can be carried forward for nine years.

In the event of a significant change in ownership of the shares in the company, the carrying forward of losses may be restricted to prohibit trade in losses. Losses stemming from holding and finance activities can only be compensated with taxable income from similar activities.

9.5 WITHHOLDING TAX ON DIVIDENDS

Introduction

The standard flat rate for Dutch dividend withholding tax is 15%. This rate also applies to interest on qualifying hybrid loans since such loans are deemed to be equity of the debtor. Dividends on shares are exempt from dividend withholding tax if and to the extent that the dividend is distributed by a Dutch-resident company that is eligible for the participation exemption (see 9.7).

An exemption from Dutch dividend withholding tax also applies to an eligible entity in another European Union member state. According to Dutch dividend withholding tax legislation (corresponding with the EC Parent-Subsidiary Directive), any dividends paid by an entity are exempt from withholding tax if the following requirements are met:

- Each company is considered to be resident in a jurisdiction within the European Union (EU) or the European Economic Area (EEA);
- The EU or EEA investor has a minimum holding of 5% in its EU shareholding, which qualifies under the Dutch participation exemption rules if the place of residence of the EU /EEA investor would have been located in the Netherlands.

The 15% dividend withholding tax rate may also be reduced under a tax treaty concluded by the Netherlands.

Dividend stripping

An exemption/reduction of Dutch withholding tax is not granted in the event of dividend stripping.

Cooperatives

As a general rule, profit distributions by a Dutch cooperative (*co-op*) are not subject to Dutch dividend withholding tax. However, Dutch dividend withholding tax will be payable on profit distributions by a co-op to a member if (i) the co-op directly or indirectly owns shares in a company with the main purpose (or one of the main purposes) of avoiding Dutch dividend withholding tax or non-Dutch taxation of another person and (ii) the membership interest in the co-op directly or indirectly held by that other person cannot be allocated to the business enterprise of the member.

Stock repurchases

Stock repurchases are generally subject to Dutch withholding tax. In certain circumstances an exemption may apply to Dutch-listed companies.

Withholding tax on interest

There is no withholding tax on interest other than on certain hybrid loans.

Withholding tax on royalties

There is no withholding tax on royalties.

9.6 ADMINISTRATION

Tax returns and assessments

Taxpayers should file their tax return after they receive an invitation to file a tax return from the tax inspector. However, if the tax inspector fails to send an invitation to file a tax return, the taxpayer is obliged to request an invitation within six months following the end of the tax year.

The tax authorities issue provisional income tax assessments every year.

In the final event, the tax authorities must issue the final income tax assessment within three years after the end of the tax year. If new information becomes available, additional assessments are allowed within five years of the end of the tax year. However, this period is extended to twelve years in the case of foreign-source income. Furthermore, an additional tax assessment that is based on new data may result in a penalty of up to 100% of the additional assessment plus interest. This penalty is not deductible.

9.7 GROUPS OF COMPANIES

Fiscal unity

A Dutch-resident parent company may file a consolidated tax return with one or more of its Dutch group companies if the parent company directly or indirectly holds at least 95% of each class of the nominal issued capital of one or more other Dutch-resident companies. This "fiscal unity" may also include certain foreign companies (established in (i) the Netherlands Antilles, (ii) Aruba, (iii) an EU member state or a country with which the Netherlands has concluded a tax treaty) if their place of effective management is located in the Netherlands. In addition, a permanent establishment in the Netherlands of a company with its effective management abroad may be included in the fiscal unity. Each company included in a fiscal unity is fully liable for the total corporate income tax debt of the fiscal unity.

The participation exemption

Under the participation exemption, dividends, currency gains and capital gains received by Dutch-resident companies or Dutch permanent establishments of non-resident companies are, in principle, fully exempt from Dutch corporate income tax. In addition, currency losses and capital losses are, in principle, non-deductible from Dutch corporate income tax under the participation exemption. Finally, acquiring expenses relating to qualifying participations are non-deductible from Dutch corporate income tax.

Ownership test

The participation exemption is subject to a minimum ownership requirement. The ownership test is met if one of the following applies to a Dutch-resident company or Dutch permanent establishment of a non-resident company.

- The company owns a shareholding of at least 5% of the issued nominal share capital of a Dutch mutual fund or a company with capital divided into shares (for example a B.V. or N.V.).
- The company is a member of a Dutch cooperative.
- The company holds a participation in an open limited partnership as a limited partner and therefore has at least a 5% participation in the profits that are realised by that open limited partnership.
- The company holds at least 5% of the voting rights in a company established in a member state of the European Union and the tax treaty with that state provides for a reduction of the dividend withholding tax on the basis of voting rights.
- The company holds profit rights owned by a qualifying subsidiary or hybrid loans granted to a qualifying participation.
- The company holds a participation of less than 5%, a hybrid loan or a profit share in a company and a related company owns a qualifying participation in the same company.

With effect from 1 January 2010, the participation exemption has generally applied if (i) the subsidiary held by the Dutch-resident company does not qualify as a portfolio investment subsidiary or (ii) the subsidiary is a qualifying portfolio investment subsidiary.

Intention test

Whether a subsidiary is held as a portfolio investment should, in principle, be considered from the perspective of the taxpayer (i.e. the owner of the subsidiary). A subsidiary is considered to be held as a portfolio investment if the subsidiary is held in order to receive a return that can be expected with normal asset management.
Furthermore, the participation exemption should also apply if the taxpayer is a top holding of the group, serves as an intermediate holding company or if the activities of the subsidiaries are in line

with the activities of the parent of the taxpayer. The latter condition is in line with the policy that existed prior to 1 January 2007.

A subsidiary is deemed to be a passive investment if one of the following applies:
- The assets of the subsidiary on a consolidated basis consist for more than 50% of minor interests in other subsidiaries (less than 5%).
- The subsidiary qualifies as a group financing subsidiary. A group financing subsidiary is (unless an exception applies), together with its own subsidiaries of at least 5%, for more than 50% involved in granting loans to the taxpayer or related entities. Putting assets at the disposal of the taxpayer or related entities is also considered group financing.

Qualifying portfolio investment subsidiary

If the subsidiary qualifies as a portfolio investment subsidiary, the participation exemption will nevertheless apply in the case of one of the following:

- The subsidiary is subject to a reasonable tax on its profits from a Dutch tax perspective. This is generally the case if the subsidiary is subject to a profits-based tax with a regular statutory rate of at least 10%.
- The assets of the portfolio investment subsidiary consist, directly or indirectly, of less than 50% of low-taxed free portfolio investments. Free portfolio investments are assets that are not required for the business of the owner of these assets. Real estate, as well as rights directly or indirectly related to real estate not owned through certain (exempt) portfolio investment entities (FBI/VBI), is not considered free portfolio investments. In this case, "low taxed" refers to income from free portfolio investments not subject to a reasonable tax on its profits from a Dutch perspective.

9.8 CAPITAL DUTY

No capital duty is levied in the Netherlands.

9.9 INTERNATIONAL ASPECTS

Resident companies

Under the tax treaties concluded by the Netherlands, Dutch-resident companies may qualify for a full or partial exemption from Dutch tax on certain elements of their foreign income.

Unilateral relief

If no tax treaty applies, a unilateral decree for the avoidance of double taxation may provide relief from Dutch corporate income tax (such as foreign business profits derived through a permanent establishment abroad).

Non-resident companies

Non-resident companies are subject to Dutch corporate income tax on the following:

- Business income derived from a Dutch permanent establishment or permanent representative;
- Income from immovable property located in the Netherlands;
- Remuneration derived from a directorship of a resident entity;
- Income, including capital gains, from debt claims related to a substantial shareholding (i.e. more than 5% of the shares held in that company do not form part of an enterprise); and
- Income and capital gains from rights related to the exploration for or exploitation of natural resources situated in the Netherlands or in the Netherlands' part of the continental shelf.

However, the above taxable income and profits may be limited or exempt (not taxed) from Dutch corporate income tax under the participation exemption and tax treaties that the Netherlands has concluded with other countries.

9.10 ADVANCE TAX RULINGS

A Dutch-resident or a non-resident taxpayer may request certainty in advance regarding the tax qualification of certain fact patterns and/or proposed transactions by applying for an advance tax ruling (ATR). ATR requests are to be filed with the Rotterdam Tax Inspectorate for Large Enterprises.

9.11 ADVANCE PRICING AGREEMENTS

An advance pricing agreement (APA) provides some certainty as to the assessment of at-arm's-length remuneration or a method for the assessment of such remuneration for cross-border transactions involving goods or services between related entities. There are three kinds of APAs: unilateral, bilateral and multilateral.

A unilateral APA involves the relationship between the taxpayer and the Dutch tax authorities. This form of APA may be used in less complex situations. It may also be used if it is not possible to obtain a bilateral (due to the absence of a double taxation treaty) or multilateral APA.

A bilateral APA is obtained with the approval of the tax authorities of both the Netherlands and the other country involved. One condition is that there is a double taxation treaty with this other country.

A multilateral APA is an APA between the Netherlands and more than one other country. In a multilateral APA, mutual agreement between the various tax authorities and the existence of tax treaties between the Netherlands and those other countries is also required.

Where to file the request

A request should be addressed to the competent tax inspector, i.e. the tax inspector that deals with the day-to-day tax affairs of the requesting company. If a request has been filed for a bilateral APA, it is advisable for the entity in the Netherlands to co-ordinate this request with the related entity in the other country involved so that the two entities file their requests with the respective tax authorities at the same time.

Royalty companies and finance companies

Under the ruling policy of the Dutch tax authorities, a Dutch entity can apply for an APA with respect to its royalty activities or financing activities under the following conditions:

- The Dutch entity meets certain substance requirements;
- The Dutch entity meets certain minimum equity requirements;
- The Dutch entity receives an adequate at-arm's-length handling fee for the activities performed; and
- The Dutch entity receives adequate at-arm's-length remuneration for the equity at risk.

9.12 ANTI-AVOIDANCE

If certain conditions are met, the Dutch tax authorities may void one or more transactions if the main motive for entering into the transaction is to avoid tax and the taxpayer is violating the purpose and objective of Dutch tax law by entering into these transactions.

Transfer pricing

Under the at-arm's-length principle, a Dutch entity should have information in its administration showing how parties came to a certain pricing (i.e. the remuneration for the Dutch entity) and from which it can be deduced that the price has been agreed under conditions to which third parties would also have agreed. Such documentation can be drawn up by the Dutch entity itself or by a transfer pricing analyst in the form of a transfer pricing report.

9.13 CONTROLLED FOREIGN COMPANY (CFC)

There is no CFC legislation in the Netherlands.

9.14 VALUE ADDED TAX (VAT)

VAT is charged for the consumption of goods and services in the Netherlands.

Taxable person

A resident company is considered to be a "taxable person" if it is an "entrepreneur" for VAT purposes under the 1968 Dutch VAT Act. If a supplier of goods or services in the Netherlands is a foreign company, the company is considered to be an entrepreneur for VAT purposes.

B2B / B2C services

Services carried out for the benefit of taxable persons by another taxable person (business-to-business or B2B services) are generally deemed to be supplied at the place where the recipient of the services is established. In the case of cross-border services within the EU, a Dutch entrepreneur does not have to charge Dutch VAT, but the recipient of these services must account for the VAT payable on these services in its local VAT return under the reverse charge mechanism. This VAT is deductible in the same VAT return according to the normal rules. Business-to-consumer services (B2C) are generally deemed to be supplied in the country where the supplier is established.

Exemptions

If the supply of newly constructed immovable property takes place at least two years after the first actual use, the supply is exempt for VAT purposes. Furthermore, the supply of social and cultural goods and services, the supply of insurance services, financial services and health services are exempt from VAT. The transfer of all or some of a business is exempt from VAT if certain requirements are met; namely the recipient of the business must continue the business or at least have the intention to continue the business.

VAT rates

The general rate is 19%. A lower rate of 6% applies to basic goods and services. A rate of 0% applies to intra-community supplies, exports and certain services rendered in connection with exports. In addition, a rate of 0% applies to the export of electronic services to customers outside the EU. Non-residents are taxed as resident taxpayers if they carry out any taxable transactions in the Netherlands. Therefore, they too must register with the VAT authorities.

Administrative requirements

Entrepreneurs must register with the competent VAT authorities in order to receive a VAT identification number. VAT identification numbers in the Netherlands begin with the letters "NL". The entrepreneur must file a tax return monthly, quarterly or yearly. The frequency depends on the amount of VAT payable. In addition, if the VAT liability for a particular declaration period is less than the input VAT deduction, the difference will only lead to a refund if the taxpayer files a VAT return.

10. TAX ON INDIVIDUALS

10.1 INCOME TAX

Resident or non-resident taxpayer

Dutch income tax is levied on individuals who are residents of the Netherlands and on non-residents if and to the extent that they have income from sources in the Netherlands. If certain conditions are met, non-resident taxpayers can opt to be taxed as resident taxpayers. Some resident taxpayers can opt to be taxed as non-resident taxpayers. Since there is no definition of "resident" in Dutch tax law, the tax residency of an individual depends on the circumstances in each case. The most relevant facts and circumstances are the individual's place of permanent home, the place where the individual's spouse and children live, and the place of his or her personal and economic relations. If a resident of the Netherlands leaves the Netherlands without becoming a resident of another state and returns within one year, this person is deemed to have been a resident for this entire period.

Taxable income

Resident individuals are taxed on their worldwide income. Sources of income are divided into three boxes, and each box has its own tax rate. The taxable income in Box 1 is the income from employment and dwellings. The taxable income in Box 2 is the income from a substantial interest in companies, and the income in Box 3 is the income from savings and investments.

Box 1: Income from employment and dwellings

Box 1 includes, among other things, the income from and expenses deduction in relation to:

- Business;
- Present and past employment;
- Other activities;
- Periodic payments and pensions;
- Owner-occupied dwellings, including mortgage interest deduction.

The income derived from other activities includes income that cannot be considered business income or income derived from present and past employment (residual category). The income that falls within the scope of Box 1, less the personal deductions and allowances, is taxed at progressive rates.

Box 2: Substantial interest in companies

The income that falls within the scope of Box 2 includes dividends from a substantial interest in resident and non-resident companies. An individual is considered to have a substantial interest if the individual directly or indirectly owns – alone or together with a spouse or partner – at least 5% of the issued share capital or at least 5% of a particular class of shares in a resident or non-resident company. A substantial interest may also exist if a lineal ascendant or descendant of the taxpayer owns a substantial interest in the same company.

The tax rate applicable to Box 2 is 25%.

Box 3: Income from savings and investments

The worldwide net value of the assets of a taxpayer on 1 January of a tax year is deemed to produce a 4% net yield. This yield is taxed at a flat rate of 30%. Consequently, income from savings and investments is taxed at a flat rate of 1.2%.

Losses

Losses in one box cannot be set off against positive income in another box. However, losses from one source in Box 1 (such as a negative balance of income from dwellings and mortgage interest) may be set off against positive income from another source in the same box. If part of the loss cannot be set off against other sources of income, the surplus may be carried back to be set off against the taxable income in the same box for the three preceding years or may be carried forward for nine years. In Box 2, losses can also be set off against positive income. In Box 3, however, the compensation of losses is not possible.

Exempt income

If and to the extent that any income does not fall within the scope of the three boxes mentioned above, this income is exempt from Dutch income tax or not regarded as income.

10.2 EMPLOYMENT INCOME TAX

Employment income is subject to Dutch income tax in Box 1 and includes wages and salaries, sickness benefits and certain social security payments. However, in most cases, employment income will have already been taxed by means of a withholding tax, which is a prepayment by the employer of the employee's income tax.

Benefits

If an employee receives remuneration in kind from his or her employer, this remuneration must be valued at fair market value and is taxable as employment income. If the employer provides the employee with stock options that are priced lower than the market value, the difference between the acquisition price and the fair market value of the stock option is taxed as employment income.

Capital gains realised on the sale of the stock options are taxed at the time of the exercise or transfer of the option.

Pensions

If certain conditions are met, pension benefits granted individually or collectively are exempt from tax until retirement. In the Netherlands, the EET system applies. Employee contributions are not taxed; investment returns on acquired benefits are exempt; and pensions in payment are taxed.

Director's remuneration

For Dutch income tax purposes, managing directors and supervisory directors are considered to be employees. Their remuneration is taxable as employment income, and all rules applicable to employees apply.

Personal deductions, allowances and credits

Some expenses relating to income in Box 1 and Box 2 may be deducted, depending on detailed rules. The expenses relating to income in Box 3 are not deductible. Liabilities may, however, be deductible from the taxable base.

There are allowances for all residents and for employees, as well as allowances depending on the taxpayer's personal situation.

Rates

For 2015 the progressive tax rates (including social security contributions) for Box 1 are as follows:

- Income below €19,822: 36.50%
- Income from €19,822 to €57,585: 42%
- Income above €57,585: 52%

The 36.25% and 42% rates (the income bands between €19,645 and €33,363) include, respectively, 5.10% and 10.85% for income tax. The remaining 31.15% in both cases are national social security contributions.

Income reported in Box 2 is subject to a flat rate of 25%.

For Box 3, the net yield of 4% is taxed at a flat rate of 30%, resulting in a tax of 1.2% on the net assets.

The tax year

The tax year is the same as the calendar year.

Tax returns

Tax returns must be filed by 1 April of the year following the end of the tax year; however, an extension of the filing date is usually possible. The tax authorities prepare and issue taxpayers with provisional income tax assessments every tax year, usually before or early in the relevant tax year.

In the final event, tax authorities must prepare and issue the final income tax assessment within three years from the end of the tax year. If new information becomes available, additional assessments are allowed but only within five years of the end of the tax year. However, this period is extended to twelve years in the case of foreign-source income. Furthermore, an additional tax assessment based on new data may result in a penalty of up to 100% of the additional assessment plus interest. This penalty is not deductible.

10.3 WITHHOLDING TAX

Withholding tax or payroll tax is usually called "wage tax" in the Netherlands. Employers are obliged to withhold wage tax on salaries and other taxable remuneration paid to their employees. Benefits relating to a company car are also subject to wage tax. The wage tax due is a prepayment of income tax and is credited against the final income tax liability. The withholding also includes national social security contributions.

Car allowance

If an employer provides an employee with a car, the employee may use this car for private purposes as well. The benefit of a car provided by the employer is subject to wage tax, based on 25% of the official dealer price (original value) of the car (35% for cars older than 15 years, on the basis of the economic value). If certain conditions are met in relation to the car's emissions, wage tax payable in connection with the use of a company car may be reduced to 25%, 21%, 15% or 4%. However, if the employee proves that the car will not be used for private purposes for more than 500 km a year, the benefits from this employer-provided car are not subject to any wage tax.

Travel allowance

If an employee uses his or her own car for business reasons, the employer may compensate the employee's travelling expenses, up to a maximum of €0.19 per kilometre. This compensation is not subject to wage tax. If the actual compensation exceeds €0.19 per kilometre, the surplus will be subject to Dutch wage tax.

If an employee travels by public transport, the actual travelling expenses or €0.19 per kilometre may be compensated. This compensation is not subject to Dutch wage tax. If the actual compensation

exceeds €0.19 per kilometre, the employer has to keep the compensated tickets, and the surplus will not be subject to Dutch wage tax.

New cost reimbursement rules

The system for reimbursing employees' expenses is currently based on the Work-Related Costs Scheme (*werkkostenregeling*).

This new regulation will enable an employer to spend 1.2% of its total payroll expenses on the reimbursement of employees' regular costs, without these expenses being subject to wage tax (either by the employee or as a gross-up for the employer). It is for the employer to decide which employee is entitled to make use of this budget and to what extent. It will still be possible to reimburse the specific costs referred to in the Dutch Wage Tax Act 1964 outside the scope of this budget.

Wage tax rates

Please see under Rates in paragraph 10.2.

10.4 INHERITANCE AND GIFT TAXES

Introduction

Residents and non-residents are subject to inheritance and gift taxes if they acquire property by inheritance or gift and the deceased or the donor was a resident of the Netherlands at the time of death or the gift. If the deceased or the donor is a non-resident, inheritance and gift taxes are payable for certain types of property situated in the Netherlands. If a person with Dutch citizenship emigrates to another country, this person is deemed to be resident for the purposes of inheritance and gift taxes for ten years after the date that he or she emigrated. Persons who do not have Dutch citizenship and who have been resident in the Netherlands remain liable for gift tax in the year following their departure. Inheritance tax is payable by the beneficiary. However, Dutch tax authorities may recover from all beneficiaries the tax debt of any non-resident beneficiaries. The recipient is subject to gift tax. However, the donor and the recipient are equally liable for its payment.

Rates

The tax rates for inheritance and gift taxes are the same. The progressive tax rate depends on the proximity of the relationship between the deceased or the donor and the beneficiary or the recipient, and may vary between 10% and 40%.

Double taxation relief

Foreign taxes are deductible as a liability on the inheritance or gift received. The Netherlands has concluded tax treaties on inheritance taxes with seven countries; these are Finland, Israel, Austria, the United Kingdom, the United States, Sweden and Switzerland.

10.5 INTERNATIONAL ASPECTS

Double taxation relief

Resident taxpayers may receive relief from double taxation by way of a tax exemption or by way of an ordinary tax credit. Unilateral relief from double taxation is calculated separately for each box in accordance with the special rules applicable to these boxes.

Leaving the Netherlands with a pension and annuity

If an employee leaves the Netherlands, specific tax rules apply to pension and other retirement benefits. The leaving resident receives a tax assessment from the Dutch tax authorities for his or her current pension claim. In certain circumstances, the leaving resident is allowed to suspend the payment of the assessment for a period of ten years. If and to the extent that the leaving resident retires and draws the pension and other retirement benefits within the ten-year period, the suspension ends and the tax owed is collected by the Dutch tax authorities.

11. INTELLECTUAL PROPERTY

11.1 PATENTS

Dutch patents are protected under the Dutch Patent Act (*Rijksoctrooiwet*) 1995. For an invention to be patentable, it must be new, involve an inventive step and be susceptible to industrial application.

Excluded from protection are discoveries, scientific theories and mathematical methods, aesthetic creations, schemes, rules and methods for performing mental acts, playing games, doing business, computer programs and presentations of data.

Despite the exclusion of computer programs from this list, computer programs can be patented in so far as they have a technical character. Software patents are generally granted for computer programs in combination with a specific apparatus.

Furthermore, no protection can be obtained, inter alia, for the following:

- Inventions the commercial exploitation of which would be contrary to public order or morality (for example, a process for cloning human beings and the use of a human embryo);
- Parts of the human body (including parts of gene sequences);
- Plant and animal varieties;
- Essentially biological processes for the production of plants or animals and the products thereof;
- Methods for the treatment of a human or animal body by surgery or therapy and diagnostic Methods practised on a human or animal body.
- The above excludes products, in particular, substances or compositions, for use in any of these methods.

An invention is new if it does not form part of the state of the art. The state of the art comprises everything that has been made available to the public, orally or in writing, before the date of filing (or, if priority is claimed, before the priority date). Although a search into the state of the art is conducted, the Dutch Patent Office does not assess whether the invention fulfils the requirements of novelty, the inventive step and industrial applicability. In a patent dispute, these requirements are assessed by the courts.

11.2 DESIGNS

Designs in the Netherlands are regulated by the Benelux Convention on Intellectual Property. It is not possible to obtain protection in just one Benelux country, as the Benelux is considered a single jurisdiction for the purpose of this law.

An application is submitted to the Benelux Office for Intellectual Property. The duration of protection is five years. Renewal is possible for up to twenty-five years in total.

Unregistered designs are not protected by the Benelux Convention on Intellectual Property, but merely by the Community Design Regulation (Regulation 6/2002), which came into force on 6 March 2003.

11.3 TRADEMARKS

Trademarks in the Netherlands are protected by the Benelux Convention on Intellectual Property. It is not possible to obtain protection in just one Benelux country, as the Benelux is considered a single jurisdiction.

An application is submitted to the Benelux Office for Intellectual Property.

The duration of protection is ten years. Renewal for an indefinite period is possible.

11.4 COPYRIGHT

Copyright in the Netherlands is regulated by the Copyright Act (Auteurswet). Copyright arises when an original work is created. No formality, such as the registration or the use of a copyright notice such as "©", is required. There is no copyright register.

However, it is possible to have a Dutch civil law notary (or the Dutch Tax Agency) date copyright-protected work. This dating merely generates evidence that, on the date of receipt by the notary (or the Dutch tax authorities), the work was in existence.

The copyright of a work is protected for seventy years after the death of its author or seventy years after the date of a work's first (lawful) publication where the author is considered a legal person.

11.5 NEIGHBOURING RIGHTS

The efforts of performing artists, phonogram and film producers, and broadcasting organisations are protected by the Neighbouring Rights Act (Wet op de naburige rechten). As with copyright, neighbouring rights arise when the performance is given or the work created. No formalities are required. For phonograms (the recordings of sound only), it is common to use the ownership notice listing the proprietor's name and the year of first publication. The duration of a neighbouring right is fifty years following the creation of the work or, in the case of a phonogram of a performance that has been (lawfully) released within these fifty years, seventy years following the date of the release of this phonogram.

11.6 DATABASE RIGHTS

The Database Act, implementing the European Database Directive (Directive 96/9/EC), protects a collection of works, data or other independent materials arranged in a systematic or methodical way and individually accessible by electronic or other means and that shows that there has been a qualitatively and/or quantitatively substantial investment in either the obtaining, verification or presentation of the contents. The duration of a database right is 15 years.

11.7 KNOW-HOW PROTECTION

In the Netherlands, the protection of know-how is not a separate legal concept. There is no specific legislation dealing with the protection of know-how, except for two provisions in the Criminal Code.

It is advisable to have the disclosure and use of confidential information governed by a non-disclosure agreement or confidentiality agreement.

11.8 TRADE NAMES

A trade name right arises through the use of the trade name. No formalities are required.

A company can have several trade names. A trade name owner can prohibit a third party's use of a trade name if it is identical to or only slightly different from the earlier trade name and if there is a danger of it confusing the public, taking into account to an extent the character and location of the companies' businesses (including the territory where the trade names are commonly known). The Trade Name Act (*Handelsnaamwet*) also offers protection against the use of misleading trade names by third parties.

11.9 INTERNATIONAL TREATIES

The Netherlands has subscribed to the following treaties in relation to intellectual property rights:

1. Paris Convention for the Protection of Industrial Property (Stockholm text);
2. TRIPS Agreement (attachment to the WTO);
3. Berne Convention for the Protection of Literary and Artistic Works (Paris text);
4. Universal Copyright Convention (Paris text);
5. WIPO Copyright Treaty;
6. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisation (Rome Convention);
7. Madrid Agreement concerning the International Registration of Marks (Stockholm text);
8. Protocol relating to the Madrid Agreement concerning the International Registration of Marks;
9. Benelux Convention on Intellectual Property;
10. Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Geneva text);
11. Lisbon Agreement for the Protection of Appellations of Origins and their International Registration (Stockholm text);
12. Strasbourg Convention on the Unification of Certain Points of Substantive Law on Patents for Invention;
13. Locarno Agreement establishing an International Classification for Industrial Designs;
14. Washington Convention on Cooperation regarding Patents;
15. European Patent Convention;
16. Hague Agreement concerning the International Deposit of Industrial Designs (Hague text and Stockholm integration);
17. International Convention for the Protection of New Varieties of Plants;
18. WIPO Performances and Phonograms Treaty;
19. Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs;
20. Brussels Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
21. Singapore Treaty on the Law of Trademarks;
22. Agreement on the application of article 65 of the Convention of the Grant of European Patents.

11.10 EUROPEAN LEGISLATION

Relevant European intellectual property legislation applicable in the Netherlands:

1. Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.
2. Commission Regulation (EC) No. 772/2004 of 27 April 2004 on the application of article 81(3) of the Treaty to categories of technology transfer agreements (block exemption);
3. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;
4. Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs
5. Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (neighbouring rights);
6. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (the Satellite Directive);
7. Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights;
8. Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases;
9. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;
10. Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art;
11. Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
12. Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights;
13. Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights;
14. Commission Regulation (EC) No. 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the Community Plant Variety Office;
15. Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trade mark;
16. Commission Regulation (EC) No. 2868/95 of 13 December 1995 implementing Council Regulation (EC) No. 40/94 on the Community trade mark;
17. Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks;
18. Regulation (EC) No. 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products;
19. Regulation (EC) No. 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems;
20. Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;
21. Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs;
22. Commission Regulation (EC) No. 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No. 6/2002 on Community designs;
23. Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs;
24. Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products;
25. 94/824/EC: Council Decision of 22 December 1994 on the extension of the legal protection of topographies of semiconductor products to persons from a Member of the World Trade Organisation;
26. Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;
27. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive");
28. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;
29. Regulation (EU) No. 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights (and repealing Council Regulation (EC) No. 1383/2003);
30. Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (Text with EEA relevance).

11.11 REGULATORY GUIDELINES FOR LICENCES

In addition to the general European regulatory guidelines in article 101 (3) of the Treaty on the Functioning of the European Union, there is a European regulatory guideline regarding licences in the Block Exemption Regulation (Regulation (EU) No 316/2014 of the Commission of 21 March 2014).

11.12 ROYALTIES

No specific criterion exists to determine whether royalties are excessive. Excessive royalties might be prohibited on the grounds of unfair competition if the licensor is a monopolist or oligarch. Licences are governed by European competition law (i.e. Block Exemption Regulation No 316/2014 of the Commission of 21 March 2014) and Dutch competition law.

11.13 FOREIGN CORPORATIONS AND SUBSIDIARIES

Typically, agreements between foreign companies and their wholly owned subsidiaries are licensing agreements.

12. EMPLOYMENT AND PENSIONS

12.1 APPLICABLE LAW

In the Netherlands, there are five different kinds of laws or agreements that might apply to employment:

1. Statutory law;
2. Collective labour agreements (called "CAOs" in Dutch);
3. Supplemental agreements at the company level;
4. Agreements with an employees' organisation called a "works council"; and
5. Individual employment contracts.

12.1.1 STATUTORY LAW

Dutch Civil Code

Employment in the Netherlands is predominantly governed by the Dutch Civil Code. This code contains detailed, mandatory provisions relating to employment relationships and various employment issues. These provisions include:

- A general obligation on the employer and the employee to act in good faith;
- The obligations on the employer and the employee;
- Remuneration, including disability and sickness benefits;
- Holiday and leave;
- Equal treatment;
- Probationary period;
- Loyalty;
- Confidentiality;
- Contractual penalties;
- Non-competition;
- Employer liability;
- Rights of the employee upon transfer of the undertaking; and
- Termination of employment.

Other statutes

In addition to the Dutch Civil Code, there are several other statutes that also deal with a number of employment issues, including the following:

- Termination of employment;

- Collective dismissal;
- Social security;
- Discrimination;
- Working conditions, especially health and safety;
- Minimum wages;
- Special forms of leave, including maternity leave and parental leave;
- Pension accrual

12.1.2 Employment agreements

As explained in more depth later in this chapter, there are a number of collective agreements that may be applicable to an employment relationship. However, employment relationships in the Netherlands are governed first and foremost by the individual's employment agreement.

Under Dutch law, it is not permitted for the parties to agree to contract out of statutory provisions or the terms of a CAO if a CAO is applicable. CAOs are applicable even if the parties agree otherwise.

Some employment agreements are quite detailed. Others are limited in both content and length, especially if the employment relationship is already governed by one of the collective agreements described below.

An employment agreement may be oral or in writing. However, most CAOs require that employment agreements be in writing. Additionally, some employment conditions must be agreed on in writing (such as a non-compete clause).

12.1.3 Collective bargaining agreements

Collective bargaining agreements play an important role in the Netherlands. They are called collective labour agreements (collectieve arbeidsovereenkomst). The abbreviation "CAO" is commonly used.

CAOs are long-term agreements negotiated by national labour unions and national employers' organisations. Their statutory maximum term is five years, but usually the term is one or two years.

CAOs typically cover the following extensively and in detail in order to fulfil the specific scope of the CAO

- Remuneration;
- Employment obligations;
- Seniority increases and bonuses;
- Working hours;
- Holidays;
- Parental leave;
- Disability and sickness benefits;
- Early retirement;
- Pension schemes;
- Social security;
- Termination of employment;
- etc.

There are two kinds of CAO: industry-wide and company-level. By law, a CAO must be registered with the Ministry of Social Affairs and Employment. An employer has some discretion in the choice of the CAO that is to apply. However, the scope of the CAO has to be taken into account. In practice, most employers select the CAO for the company's specific industry, sector or trade and that was negotiated by the union with which the company and/or its employees are affiliated.

CAOs are normally binding for both employees and employers who are a member of a trade union or employers' organisation respectively that are parties to the CAO. By law, a CAO-bound employer is expressly prohibited from making a distinction between employees who are union members and those who are not union members. The CAO is applicable to both groups.

Moreover, the government may declare a CAO to be wholly or partially binding nationwide for two years or less. In this event, the CAO acquires the status of a law, and all employers in the industry, sector or trade covered by the scope of the CAO are, in principle, obliged to govern their affairs in accordance with the CAO. The parties concerned cannot depart from the CAO to the detriment of the employee. Whether or not they are parties to the specific CAO is not relevant.

Consequently, in every individual employment relationship, both statutory legislation and any applicable CAO must be taken into consideration.

Compulsory industrywide pension schemes are generally organised separately under the 2006 Pensions Act.

12.1.4 Other agreements

Company-level collective agreements

Another kind of collective agreement is the company-level collective agreement. Such agreements are usually drafted unilaterally by the employer. They may deal with issues such as working conditions. In certain cases, the agreement by law requires the approval of the works council (if there is one).

The employer may include in individual employment agreements a provision empowering it to unilaterally amend the collective agreement. Again, amendments may require the works council's approval.

Agreements with the works council

An employer and the works council may agree on certain terms and conditions. These agreements usually relate to fringe benefits. An employee is only directly bound by these terms if this is stated in his or her individual employment agreement or if the employer and individual employee subsequently agreed to these terms.

12.2 EMPLOYMENT CONDITIONS

Remuneration

In general, the parties are free to agree on remuneration. However, this remuneration is subject to minimum wage laws, equal treatment laws and any applicable CAOs. If the parties have not agreed on remuneration, the Dutch Civil Code provides that the employee is entitled to the remuneration that was customary at the time of entry into the contract for the agreed kind of work or, in the absence of this criterion, remuneration that is regarded as fair in the circumstances of the case.

Working hours

By law, working hours may not exceed nine hours per shift, 45 hours per week, and an average of 40 hours per week in any thirteen-consecutive-week period. In a CAO, this may be increased to a maximum of ten hours per shift, 50 hours per week in each period of four weeks, and an average of 45 hours per week in any thirteen-consecutive-week period.

There are numerous exceptions to these rules. Overtime is one. Night-time work between midnight and 6 a.m. is another. A third exception applies to certain categories of employees, including executive-level employees who earn more than twice the annual minimum wage and all high-level employees whose annual income is three times higher than the annual minimum wage.

In general, employees may be required to do overtime. The obligation to do overtime may be derived from the individual employment agreement, an applicable CAO or the general principles of good faith that apply in any employment relationship (i.e. an employee's duty to act as a good employee). There may or may not be an entitlement to additional remuneration for overtime work, depending on the individual employment agreement, the CAO (if applicable) and the general principles of good faith.

Holidays

The Dutch statutory holidays in any given year can be found online (e.g. *www.feestdagen.nl* or *www.feestdagen-nederland.nl*). One statutory holiday (*Bevrijdingsdag*) is obligatory only every five years (2015, 2020, etc.).

The minimum annual holiday entitlement is, by law, 20 days (four weeks) of paid leave for full-time employment (five days per week). Employees who work part-time (which is very common in the Netherlands) receive an amount proportionate to the reduced time worked. An individual employment contract or CAO may provide an employee with more than this statutory minimum.

If an employee's minimum holiday entitlement is unused, it expires within six months after the end of the year in which this minimum accrued. However, holiday entitlement in excess of the statutory minimum expires within five years after the end of the year in which this excess accrued.

In Dutch law, an employee may not waive this statutory minimum holiday entitlement in exchange for more compensation for his or her employment. An employee entitled to holidays on termination of employment has, in principle, a right to receive remuneration in lieu of holiday.

Disability and illness

In the event of long-term illness, an employer is required by law to pay the sick employee 70% of a statutory cap for as long as the employee is ill but only for a maximum of two years. During the first year of illness, if this amount is lower than the statutory minimum wage, the benefit is increased to the statutory minimum wage. If the salary is higher than the statutory cap, parties could agree to a higher amount. In a CAO it may also be agreed that an employee is to receive a higher amount (i.e. 71-100% of his or her salary) during this period of illness. However, it has been agreed by the government, employers' representatives and employee representatives that this amount should not, in a two-year period, be higher than 170% of the annual salary.

If the employee is still unable to return to work after two years, the employee may become entitled to a government disability benefit. The employer is required by law to make every endeavour to reinstate the employee during the two-year period. The employee is required by law to make every endeavour to return to work during this period. An employee who is significantly uncooperative may lose his or her entitlement to these employer benefits and risks dismissals.

12.3 HIRING

Equality

There are a few statutory rules governing the recruitment of employees. First and foremost of these are the various laws prohibiting discrimination and mandating the equal treatment of employees. Discrimination by an employer on the basis of gender, age, race, nationality, disability, sexual preference, religious belief, political views or marital status is generally prohibited. A potential or new employee cannot be required to undergo a medical examination, subject to limited exceptions.

Citizenship

In general, there are no specific restrictions on the citizenship of employees in the Netherlands. A company is free to hire all Dutch citizens or all foreign citizens, for example. However, employment discrimination on the basis of nationality is prohibited by law, subject to a few specific exceptions. A foreign citizen may be required to obtain a work permit and/or residence permit.

An employer in the Netherlands is not required to hire a minimum number of Dutch citizens.

Moreover, an employer is not required to assign specific positions to Dutch citizens, quite the opposite, since doing so could qualify as discrimination on the basis of nationality.

Number of employees

An employer in the Netherlands is not required to hire a minimum number of employees in general.

If a company has more than a certain number of employees, there may be implications in terms of employment law, including rules governing collective dismissal and the requirement for a works council or other employee representative body. These rules are generally unfavourable to the employer.

Consequences of late-stage withdrawal

An employer may incur contractual or tort liability if this employer unjustifiably (i.e. at an advanced stage of the hiring process) abruptly withdraws from the employment selection process and does not offer the job.

Identification and registration

An employer is required to ascertain the identity of a new employee and to keep a copy of the employee's identification papers throughout the duration of the employment relationship.

An employer is required to register a new employee with the Dutch Tax and Customs Administration (*Belastingdienst*) for the purpose of national social security insurance (including disability, sickness and unemployment contributions) and making employer deductions from salary payments. No distinction is made between Dutch citizens and others.

The obligation on employers to pay social security contributions and taxes in a timely manner is strictly enforced. Failure to do so is subject to severe penalties. If required, an employer must register a new employee with the Arbodienst (the government organisation responsible for workplace safety, health and welfare) and the pension fund and insurance company organised by the employer.

12.4 DISMISSAL IN GENERAL

Jobs are strongly protected under Dutch employment law. An employer's ability to dismiss an employee is limited. Ordinarily, an employer wishing to dismiss an employee is required to:

- Apply to the local Employment Office (*UWV WERKbedrijf*) for permission to give notice to terminate the employment; or
- Apply to the court for dissolution of the employment agreement.

Employment may be terminated without permission in the following circumstances:
- With the written consent of both parties;
- On expiry of a fixed-term contract at the end of its term;
- During the initial trial period of two months or less;
- In the case of summary dismissal for sufficiently compelling reasons; or
- In the case of a managing director of a company.

In the case of an employee (even a managing director) who is sick or pregnant, termination is prohibited even if permission has been granted by the UWV. However, a request for the dissolution of the employment contract could be made to the court. The court will only dissolve the contract if the sickness or the pregnancy is not the reason for the dissolution. An employee with a long-term illness may be dismissed after two consecutive years of illness, with the approval of the UWV WERKbedrijf or the court.

12.4.1 Obtaining government permission for dismissal

If an employer in the Netherlands wishes to dismiss an employee, it has two options. The first option is to apply for a permit from a government organisation called the *UWV WERKbedrijf*

("Employment Office"). A department in the Employment Office is responsible for considering and issuing these permits.

The employer is required to fill out an Employment Office application. In the application, the employer is invited to state the reasons for the dismissal and to submit sufficient supporting evidence. The reasons ordinarily accepted for dismissal are "business reasons" (e.g. restructuring of the employer's business or financial difficulties) or "non-business reasons" relating to the employee's poor performance or the existence of serious and long-running problems in the employer-employee relationship.

The burden of proving that dismissal is necessary always lies on the employer. On receipt of the application, the Employment Office provides the employee with an opportunity to object to the request for dismissal. Normally, the Employment Office then provides each party another opportunity to state their case. An oral hearing may also be held. However, this is not compulsory.

Subsequently, the Employment Office seeks the advice of a special Dismissal Advisory Committee (Ontslagadviescommissie). If necessary, they also seek the advice of the Health and Safety Inspectorate (Arbeidsinspectie) or the office responsible for unemployment insurance or both of these. The Employment Office then decides whether to issue the permit to the employer.

The complete procedure usually takes four to six weeks, although it can be longer in particularly complex cases. It is not at all exceptional for an employer to be refused a permit in the end. The decision of the Employment Office is irrevocable and not subject to appeal. However, an employer may still apply to a Dutch civil court to have the employment agreement dissolved on "serious grounds".

Even if the Employment Office issues a permit, or even if no permit is required, an employer must still give the employee the contractually agreed notice or the statutory minimum notice. Failure to comply with the applicable notice period does not affect the dismissal per se, but liability on the part of the employer arises.

Even if the Employment Office issues a permit and even if the employer gives proper notice, it is still open to an employee (including a managing director) to apply to the court for a finding that the dismissal was "manifestly unreasonable" (kennelijk onredelijk). A Dutch court will make this finding if the employee was dismissed for no reason, for a reason that was a mere pretext, or for a false reason or if the hardship suffered by the employee is disproportionate to the employer's interest in dismissing the employee. In this event, the court may order reinstatement or compensation in an amount to be determined by the court.

Statutory minimum notice period

By law, an employer in the Netherlands must give the following notice of dismissal:

- For less than five years of employment: one month's notice;
- For five to ten years of employment: two months' notice;
- For ten to 15 years of employment: three months' notice;
- For more than 15 years of employment: four months' notice.

The notice period applicable to an employee is one month.

An employment contract or CAO may provide for a different notice period. The notice period of the employer must be at least twice as long as that applicable to the employee, unless otherwise agreed upon in a CAO or in another collective agreement.

If the Employment Office has issued a permit, the minimum notice may be reduced by one month (but cannot be reduced to lower than one month). For example, if the statutory requirement is to give two months' notice, the statutory notice period becomes one month if the Employment Office issues a permit. If the statutory requirement is to give one month's notice, the statutory period remains at one month even if the Employment Office issues a permit.

12.4.2 Obtaining a court order for dismissal

The second option for dismissal is to apply directly to the court for a court order for the dissolution of the employee agreement on "serious grounds". A court may grant such an application in two situations:

- Urgency: the employment circumstances are such that they constitute "compelling reasons" that are sufficient for immediate dismissal; or
- Change of circumstances: the employment circumstances have changed so significantly that it is reasonable for the contract to be terminated immediately or in the short term.

In the case of a change of circumstances, the court may award a party (almost always the employee) compensation in the amount considered reasonable in the circumstances. It is not rare at all for an employee to be awarded compensation calculated according to the following formula. In the calculation below, the salary is the gross salary (including holiday allowance and fixed benefits such as a year-end bonus).

No. of full years of service before the age of 35 x a half month's salary
(including gross salary, holiday allowance and fixed benefits)
Plus

No. of full years of service between 35 and 45 years of age x 1 month's salary
Plus
No. of full years of service between 45 and 55 years of age x 1½ months' salary
Plus
No. of full years of service after the age of 55 x 2 months' salary

In addition, the court may decide to apply a multiplier ("adjustment factor") to the outcome. In general, if the termination was based on circumstances for which the employer bore the risk or fault, a multiplier larger than one may be applied. Conversely, if the termination was based on circumstances for which the employee bore the risk or fault, a multiplier smaller than one may be applied. If a position has become redundant due to reorganisation, a multiplier of one is generally applied. Other circumstances of the case may influence the outcome as well.

If the requesting employer is not willing to pay the amount of compensation ordered, the court will grant the employer a certain number of days to withdraw the application. If the employer withdraws the application, the employment agreement remains in effect. If the application is not withdrawn within the time period stated, however, the employment agreement is dissolved and the employer has an obligation to pay the court-ordered compensation.

There is no appeal against the court's decision, except in the unlikely event that a fundamental legal principle has been violated in such a manner that the matter cannot have been handled fairly and impartially.

With effect from 1 July 2015 and based on the Act on Work and Security (*Wet werk en Zekerheid*), the rules on dismissal and severance payments will change quite substantially.

The employer will no longer have a choice between applying for a permit from the UWV to give notice and obtaining a court order for dismissal. Where the dismissal is the result of a reorganisation or where the employee has been sick for at least two years, the employer must apply for a permit in order to be able to give notice. In all other situations the employer needs to obtain a court order for dismissal. The exceptions mentioned in chapter 12.4 remain.

Contrary to the situation before 1 July 2015, it will be possible to appeal against the court decision in a case concerning dismissal.

Under the new law, if the employee is to be dismissed after being employed by the employer for more than two years, the employer needs to pay the employee that has been dismissed, either in accordance with a permit from the UWV or a court decision, a fixed severance (in Dutch: *a transitievergoeding*). The transitievergoeding is also payable when a fixed-term contract expires and the employer does not want to continue the employment contract.

The transitievergoeding is based on a formula. For the first ten years of the employment agreement, the employee is entitled to 1/6 of his or her salary for each period of six months. Where the employment agreement had lasted more than ten years, the employee is entitled to 1/4 of his or her monthly salary for each period of six months. The maximum amount is €75,000 unless the annual salary of the employee is higher than €75,000, in which case the transitievergoeding is equal to the annual salary.

If the employee is 50 years or older at the time of the dismissal and has been employed at least ten years and the employer employs at least 25 employees the transitievergoeding is higher. For every period of six months after the employee's 50th birthday, the employee is entitled to half the monthly salary. This rule will enter into force by 1 January 2020.

Where the dismissal is based on the fact that the employee has reached the pensionable age, no transitievergoeding is payable.

The transitievergoeding is intended to be spent by the employee on finding new employment, although this is not a requirement. If the employer has invested in opportunities for the employee's benefit to enable him or her to be more easily employed elsewhere should the employee be dismissed, the employer is allowed to reduce the transitievergoeding in line with the amount spent on the employee to improve his or her employability.

The court may grant the employee an additional severance where the employer has not acted according to the rules applicable to the dismissal based on a permit from the UWV or where the employer has acted in a seriously blameworthy manner, among other grounds. The amount of the additional severance is not fixed but based on reasonableness and fairness.

12.4.3 Other dismissal situations

Collective dismissals

Special statutory rules apply if an employer proposes, for economic and/or organisational reasons, to dismiss twenty or more employees within the jurisdiction of a local Employment Office (*UWV WERKbedrijf*) within a three-month period (regardless of the form of dismissal).

Prior to the dismissals, the employer must first consult with the works council, if there is one. In addition, the employer must notify the relevant trade unions and the local Employment Office in writing. On giving notice, the employer must give reasons for the dismissals and other relevant

information, including the number of employees involved, the criteria used to select those employees, the method of calculation of any severance payments, and whether there is a works council.

The Employment Office then gives the employer, trade unions and works council (if any) an opportunity to consult with each other. Subsequently, the Employment Office takes notice of any individual requests for an Employment Office permit to dismiss.

An informal meeting with the Employment Office prior to complying with all the various statutory requirements is standard practice. In this meeting the Employment Office may be informed of the collective dismissal, and the Employment Office may be consulted on this issue. This generally helps create an atmosphere of "goodwill" in the relationship between the employer and the Employment Office.

Summary dismissal in sufficiently compelling situations

Occasionally it may be necessary for an employer to summarily dismiss an employee without going through the processes described above. If the reason is sufficiently compelling, the employer may forgo giving notice, obtaining a government permit and obtaining court order. This applies if the employee commits an act, has a characteristic or engages in conduct such that the employer cannot reasonably be required to allow the employment to continue. Examples include the discovery of theft or fraud and an act of intimidation.

For summary dismissal to be supported by the court in the legal proceedings that will most likely follow, and to reduce the possibility of a court order for reinstatement or damages, it is absolutely essential that the employer act promptly should these compelling reasons arise. The dismissal of an employee in this situation is warranted as soon as the sufficiently compelling reason arises or becomes known. It is still preferable to put it in writing rather than to simply dismiss the employee verbally.

12.5 THE TERMINATION OF EMPLOYMENT

Employment contracts for a fixed period

Generally, an employment agreement for a fixed period ends automatically on expiration of the agreed period. However, in a limited number of situations, statute or an applicable CAO may deem such contracts to be indefinite contracts.

For example, under Dutch law, the fourth contact entered into by the same parties for a fixed period is deemed to be an indefinite contract. This then triggers the application of the various statutory requirements relating to dismissal (i.e. permit, notice, permission from the Employment Office, court order, etc.)

Termination by mutual agreement

Sometimes an employer and employee genuinely agree to end the employment. This may happen, for example, if the parties reach a settlement on terminating the employment.

Usually, this includes a severance payment, which is ordinarily determined according to the formula described in section 12.4.2. With effect from 1 July, 2015 the severance will be the transitievergoeding, unless the employer's reasons for dismissal are such that the employee might expect that the employer will not be granted a permit from the Employment Office or will not be granted a dismissal from the court, in which case the severance might increase or the employer might decide to take his changes and still apply for a permit from the Employment Office or try to obtain a dismissal from the court, depending on the reasons for dismissal.

In certain situations, termination by mutual agreement may have an effect on the government unemployment benefits to which the employee is entitled. For this reason, it is standard practice in the Netherlands – and not considered inappropriate – for the employer and the employee to structure the mutually agreed upon end of the employment as a dismissal by the employer. Notice is still given. If a settlement agreement is involved, notice becomes one of the terms in the settlement agreement. (If notice were not given, the employee would not be entitled to unemployment benefits during the applicable notice period and would have to rely on the severance payment in lieu of unemployment benefits during this period.)

Under the Wet Werk en Zekerheid, the employee must be given a period of 14 days during which period he or she is entitled to revoke the agreement without having the obligation to specify a reason.

12.6 TRAINING EMPLOYEES

An employer in the Netherlands is not under a statutory obligation to provide training for its employees.

An exception applies to employees who are on the works council.

In addition, an employer may be required to provide training to a partially disabled or dysfunctional employee if the employer is under an obligation (as part of its duty as a good employer) to find a

suitable position for that person (in accordance with the duty to act as a good employer).

An applicable CAO may also include provisions relating to employee training.

Finally, if a company is unable to find a potential employee within the European Economic Area (EEA) and Switzerland to fill a certain vacancy, and subsequently requests a work permit for an employee residing outside the EEA and Switzerland, the Employment Office handling the request may require the company to provide a training programme to ensure a sufficient supply of employees in the future with those particular skills in the EEA and Switzerland.

12.7 SAFETY STANDARDS

An employer in the Netherlands has a general statutory duty to comply with strict, detailed health and safety regulations, to ensure the health and safety of employees and, if necessary, to improve conditions at the workplace.

With regard to the safety of employees, an employer has a general duty to investigate, which, among other things, means that the employer is required to adopt a proactive approach regarding inherent dangers (including, for example, dangers relating to existing and new equipment) and to take all measures necessary to deal with the risks observed. In addition, an employer in the Netherlands has an obligation to take measures to regulate employee conduct in this area.

Working conditions at an employer's workplace may be inspected periodically by the Health and Safety Inspectorate (Arbeidsinspectie). Furthermore, an employer is required to prepare risk inventories and assessments of working conditions at its workplace.

Failure by an employer to comply with health and safety regulations may lead to liability. In general, an employer in the Netherlands may be liable for all loss or damage incurred by an employee during and after the termination of employment in relation to accidents or illnesses that occurred in the course of his or her employment, unless the employer can prove that the employer complied with all relevant health and safety regulations or that the accident or illness would have occurred even if the regulations had been complied with. In addition, an employer may escape liability by proving that the accident or illness was intentionally caused by the employee or by deliberately reckless behaviour on the part of the employee. However, in practice, this is very difficult to prove.
12.8 Labour unions

The right of association and assembly is protected by the Dutch constitution. Unions are legal and recognised by the government. The dismissal of an employee on the ground of participation in a union, the exercise of union rights or the carrying out of union activities is prohibited. Unions play a significant role, although not to the extent seen in some other countries. Another aspect of the Dutch private sector is that many employers have grouped together into employers' associations. Collective bargaining is standard practice in most industries. There are about a thousand CAOs in force.

Important unions

- Dutch Trade Union Federation (*Federatie Nederlandse Vakbeweging or FNV*)
- Dutch Federation of Christian Trade Unions (*Christelijke Nederlandse Vakvereniging or CNV*)
- Trade Union Federation for Intermediate and Senior Staff (*Vakcentrale voor middengroepen en hoger personeel* or *MHP*).

Important employer associations

- Confederation of Netherlands Industry and Employers (*Verbond van Nederlandse Ondernemingen en het Nederlands Christelijk Werkgeversverbond* or *VNO-NCW*)
- General Dutch Employers' Federation (*Algemene Werkgeversvereniging Nederland* or *AWVN*)
- Dutch Federation of Small- and Medium-Sized Enterprises (*Midden- en Kleinbedrijf Nederland* or *MKB Nederland*).

12.9 WORKS COUNCILS

Under Dutch law, a company is obliged to establish a works council (*ondernemingsraad*) if the company has more than 50 employees. This works council has a right to advise management on certain management decisions. If management does not follow this advice, it could result, among other things, in the blocking of a corporate transaction (on the basis of a court decision). Furthermore, a works council has a right to refuse to give its approval for certain rules relating to employment conditions.

12.10 PENSIONS

In the Netherlands, the pension promise made by the employer to its employees forms part of the employee's terms and conditions of employment. An employer is not obliged to offer membership of a pension scheme to its employees. However, if an employer does decide to offer staff a pension, it is obliged by law to do so either by setting up a pension fund or by providing the employee access to a separately insured pension policy (provided through an insurance company).
In 2011 a new type of pension provider has been introduced: the premium pension institution (PPI). The PPI is primarily aimed at combining pension schemes from different jurisdictions, but it can

also be used to combine different schemes provided by different employers in the Netherlands only. When different schemes are combined in one PPI, these schemes can be separated into different sections. By combining these schemes in one PPI, this can lead to economies of scale in several areas. In the Netherlands, the PPI is only allowed to execute DC schemes (see below).

We expect that in the course of 2015 another new vehicle will be introduced: the General Pension Fund (APF), which is comparable with the PPI but will be able to execute both DB and DC schemes, separated into different sections.

Participation in an industry-wide pension fund is mandatory in certain industry sectors (including the construction industry and the mechanical and electrical engineering industry). This means that all employers who are active in such a sector are required by law to register their employees with, and pay pension contributions to, the relevant industry-wide pension fund. If a mandatory industry-wide pension scheme applies, an employer may apply for an exemption. Exemptions are generally granted only if the employer offers its employees membership of an alternative pension scheme that provides retirement benefits that are broadly no less favourable overall than those provided under the industry-wide scheme. An independent actuary would be required to verify that members do not lose out as a result of not being able to accrue pension benefits under the industry-wide pension scheme.

Two kinds of pension scheme

There are two main types of occupational pension schemes: defined benefit (DB) and defined contribution (DC).

The benefits paid out in a DB pension scheme are determined by a formula based on a member's salary and length of pensionable service. These schemes can either be career average schemes (where the final pension is calculated by reference to the average of a member's salary over the course of their working career with the employer) or final salary (where the final pension is linked to the member's salary on retirement). Not surprisingly, the costs of financing a final salary scheme can be prohibitive for employers, and more and more companies have therefore switched from offering final salary pensions to offering career average pensions in recent years.

In a DC pension scheme, each member has his or her own individual account or "pot". The only obligation on the employer is to pay regular pension contributions into the member's pot, which are then invested in the stock market. The final amount of the pension is then determined by the investment performance of the pot and the value of the annuity that the member can afford to buy with the accumulated value of the investment. Essentially, the value of the pot will rise and fall according to the fluctuations of the stock market. From an employer's point of view, the advantage of providing DC benefits lies in the fact that the member bears the ultimate risk as to the amount of the pension can be bought. Not surprisingly, therefore, the popularity of DC pension schemes has risen in recent years.

In both types of schemes it is usual to provide survivors' and ill-health benefits.

Contributions

An employer is responsible for paying contributions into the pension fund or to the insurance company. It can only deduct contributions from the employee's salary with the consent of the employee (i.e. usually by entering into an employment agreement stipulating that the employee is responsible for paying part of the total contribution).

Funding

Dutch pension schemes are required by law to be fully funded at all times. If a scheme is in deficit, a recovery plan has to be submitted to the Pensions Regulator, showing how the scheme expects to return to solvency within a set timeframe.

Pensions Act

The Dutch Pensions Act contains detailed provisions concerning, for example, scheme disclosure requirements, bulk transfer payments between different schemes as well as the treatment of deferred pensions (preservation). The Act also sets out requirements regarding scheme governance and scheme funding.

13. ENTERING AND WORKING IN THE NETHERLANDS

13.1 PART OF A BORDERLESS EUROPE

The Netherlands is a member state of the Schengen Agreement and the Convention Implementing the Schengen Agreement. This provides for the free movement of persons by parallel and gradual removal of internal border controls as well as the strengthening of the common external border of the member states involved. Other Schengen countries include Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, Switzerland and Sweden.

Common immigration controls apply throughout the territory of the Schengen Area. In addition, immigration rules favourable to nationals of the member states of the EEA and Switzerland apply.

13.2 EEA CITIZENS

The EEA countries are the 28 countries of the European Union, Iceland, Liechtenstein and Norway.

EEA citizens do not require a provisional residence permit (MVV), a regular resident permit (VVR) or a work permit (TWV). They may simply take up residence in the Netherlands, although they are required to register their residence as described below under "Basic residence reporting requirements".

It is advisable (but not legally required) for a foreign employee from an EEA country or Switzerland to go through the formality of applying to the Immigration and Naturalisation Service (IND) for a regular residence permit (VVR). In this case, it would be a "special" residence permit. Certain Dutch authorities (including the Tax and Customs Administration) require proof of lawful residence in the Netherlands. A passport or equivalent travel document may turn out to be insufficient for this purpose.

13.3 WHO MAY ENTER THE NETHERLANDS?

A traveller carrying a passport or equivalent recognised travel document that is valid for an extended period of time, i.e. for at least three months after the end of the visa period is permitted to enter the Netherlands. A visa may also be required, as explained in more detail below.
The possession of a valid visa does not necessarily guarantee entry to the Netherlands.

There are a number of other requirements, although most travellers are not confronted with them. Not all of the conditions below are applicable to all visitors coming to the Netherlands. In some cases, travellers entering the country are required to have a travel reservation to leave the country. An official may ask for documentary evidence that the traveller has sufficient means of support for the duration of the stay, transit or return journey, including bank statements, traveller's cheques or cash. If this cannot be shown, a statement from a guarantor or formal invitation from a third party may suffice if it can be shown that the guarantor or third party has sufficient and sustainable means of support. A traveller may be asked to provide documentary evidence showing the purpose and conditions of the planned visit (e.g. (legalised) letters of invitation, hotel reservations and work permits) and showing an intention to return to the traveller's country of origin or establishment.

A traveller must be prepared to provide documentary evidence of health insurance. Some may be asked to undergo a tuberculosis test. However, this does not apply to citizens of an EEA member state, Australia, Canada, Israel, Japan, Liechtenstein, Monaco, New Zealand, Suriname, the United States and Switzerland.

A traveller with a criminal record or a traveller who is currently wanted by the police in the Netherlands or another Schengen country may not be able to enter the Netherlands. Entry may also be denied to someone who is considered to be a threat to public order (including someone who might become an illegal immigrant), to national security or to the international relations of any Schengen country.

13.4 SCHENGEN VISAS (LESS THAN THREE MONTHS)

The Dutch immigration department is called the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst) or usually simply IND.

Many people who wish to stay in the Netherlands for a short period (i.e. less than three months) are required to obtain a Schengen visa. If that person is coming to the Netherlands for the first time, an application is made to the Dutch embassy in his or her country of origin or permanent residence,

which may then either forward the application to the IND in the Netherlands or issue the visa itself. For current fees, please visit www.ind.nl.

A Schengen visa allows the visa holder to enter the Netherlands and temporarily travel for a specific period of three months or less within the Netherlands and usually within other Schengen countries as well. Depending on the circumstances, a Schengen visa may be limited to one or more Schengen countries, in which case the visa holder will be permitted to visit only those Schengen countries.

Citizens of some countries (including, of course, the Schengen countries themselves) do not require a Schengen visa when coming to the Netherlands.

The list of countries for which a Schengen visa is or is not required is subject to change. To find out whether someone currently requires a Schengen visa, go to www.ind.nl or contact your local embassy or the Dutch Ministry of Foreign Affairs for the latest information.

A Schengen visa is not a substitute for the other visas in the Dutch system. The various types of visas are treated differently. For example, if the situation calls for an MVV visa (explained in more detail below), a Schengen visa will not suffice.

Only rarely and in very special circumstances (e.g. a situation beyond someone's control) may a Schengen visa be extended from three to six months.

There are three types of Schengen visa in the Netherlands

- **Airport transit visa (Type A)**

Some people may require an airport transit visa to make a stopover at an airport in a Schengen country during an international flight to a country outside the Schengen area. This also applies to Amsterdam Airport Schiphol and other airports in the Netherlands. During this stopover, they are not allowed to leave the airport's international zone. Access to Schengen territory is prohibited.

- **Five-day transit visa (Type B)**

Some people may require a transit visa to make a transfer that takes them out of the airport during travel to a country through the Schengen area. A transit visa may be issued for five days or less. A visa may be issued for multiple visits, each no longer than five days. This visa is issued only if the final destination is a non-Schengen country to which entry has been guaranteed.

- **Three-month short-stay visa (Type C)**

These are issues for a number of reasons, including business, sporting activities, tourism, vacation and visiting family or friends.

Non-Dutch citizens taking up residence in the Netherlands may be subject to a reporting requirement, even if this is for a period of less than three months. This is described under "Basic residence reporting requirements".

13.5 TEMPORARY RESIDENCE PERMITS (LONGER THAN THREE MONTHS)

Generally speaking, a foreigner wishing to stay or reside in the Netherlands for longer than three months applies via a four-step process.

1. The process starts outside the Netherlands with the issuance of a provisional residence permit (MVV). In principle, it is not permitted to apply for residence from within the Netherlands. Citizens of a number of countries, including EEA countries, are exempt from this process.
2. This allows the person to enter the Netherlands, where he or she is then in a position to comply with the requirements for a second permit called a regular residence permit (VVR). Citizens of EEA countries are exempt from this process.
3. These resident permits may be extended from year to year.
4. After five years, the resident becomes eligible for a permanent resident permit. There are a number of exceptions. For example, the period is three years if the applicant is married to or the partner of a Dutch citizen.

These permits are not the same as the Schengen visa or a work permit. Different processes are involved.

Fees apply for these applications and for extensions. For current fees, please visit www.ind.nl.

Generally, it takes the IND or a Dutch embassy between three and six months to process an application for permits of this kind.

Decisions by the Dutch government to reject visa applications are subject to legal review in various ways, including an appeal to the courts.

Provisional residence permit (MVV)

Most non-Dutch citizens require a provisional residence permit before travelling to the Netherlands. In Dutch, this is called a machtiging voorlopig verblijf or MVV. This application is made to a Dutch embassy in the individual's country of origin or residence.

A citizen of one of the following countries is excluded from the MVV requirement: an EEA country, Switzerland, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Vatican City and the United States.

To be eligible for a MVV, the applicant must meet certain requirements and provide certain documents. What these are exactly depends on the purpose of the stay (work, study, family reunification, visiting, etc.).

Issuance of an MVV may require successful completion of a civic integration examination outside the Netherlands.

To find out more about the requirements for a MVV, go to www.ind.nl or contact your local embassy or the Dutch Ministry of Foreign Affairs for the latest information.

Non-EEA citizens: On arrival in the Netherlands and taking up residence

This section and the section below apply to a non-EU citizen who becomes a newly arrived resident of the Netherlands and intends to stay for longer than three months. It applies both to holders of a temporary residence permit (MVV) and persons exempt from the MVV requirement (e.g. a citizen of Australia, Canada, Japan, Monaco, New Zealand, South Korea, Vatican City or the United States.)

After entering the Netherlands, a newly arrived resident intending to stay longer than three months must apply as soon as possible (and no later than three months after arrival) for a regular residence permit (VVR) at their municipality.

The municipality then sends the application to the IND. The procedure for applying for a residence permit is largely the same for all new arrivals (MVV holders and otherwise). However, MVV holders will need to provide fewer documents with their application, as a number of documents will have already been provided and checked when applying for the MVV.

There are also reporting requirements relating to residence, which are described in greater detail below under "Basic residence reporting requirements". This is a separate procedure.

Non-EEA citizens: Regular residence permit (VVR)

A regular residence permit is called a verblijfsvergunning in Dutch. With certain important exceptions, every non-Dutch citizen requires a regular residence permit to reside in the Netherlands. An exception is made for citizens of Switzerland or an EEA country.

This is the second permit in a two-step process. Generally an MVV obtained outside the country is needed before a VVR can be issued inside the country.

To be eligible for a VVR, the new arrival must meet certain requirements and provide certain documents. What these are exactly depends on the purpose of the stay (work, study, family reunification, visiting, etc.). To find out more about the requirements for a VVR, go to www.ind.nl or contact your local embassy or the Dutch Ministry of Foreign Affairs for the latest information.

Non-EEA citizens: Extensions and permanent residence

On arrival, a residence permit is generally issued for one year. An extension may be issued, but the application for an extension must be submitted before the expiry of the residence permit. Whether the residence permit is extended, and for how long, depends entirely on the circumstances of the case.

Resident permit holders who have lived in the Netherlands continuously for five years with a valid residence permit for a stay with a non-temporary purpose may become entitled to a residence permit for an indefinite period.

13.6 BASIC RESIDENCE REPORTING REQUIREMENTS

Registration of non-Dutch citizens

With a few important exceptions, in the Netherlands all non-Dutch citizens are required to report their arrival and residence to a local office of an agency called the Vreemdelingenpolitie. They must do this within three days of arrival. Not all foreigners are required to do this, however. The exceptions are:

- People staying three days or less;
- People staying at a hotel;
- Citizens of an EEA member state or Switzerland.

Failure to comply with this requirement constitutes a criminal offence.

Reporting the intention to stay longer than three months
In addition, a Schengen visa holder who is visiting the Netherlands for less than three months but then decides to stay in the Netherlands for longer than three months must report this intention as soon as possible (and no later than within three months of arrival).

Registration of residence

In the Netherlands there is a central register of basic information about all residents of the Netherlands (including temporary residents). This is called the Municipal Personal Records Database (Gemeentelijke Basis administratie), although it may be useful to think of it as the registry of births, marriages, deaths and residence. When someone takes up residence or changes residence, this is reported to the appropriate office (usually located in the municipal town hall).

Even a citizen of an EEA country or Switzerland staying in the Netherlands for more than three months must register with the Municipal Administration and the IND.

Citizens of Bulgaria or Romania must apply for a special residence permit called "proof of lawful residence".

13.7 OBTAINING A WORK PERMIT

For an employer to bring an employee to the Netherlands from a country outside the EEA, one of the requirements is that the employee must have an employment agreement.

For further up-to-date information, contact the Immigration and Naturalisation Service (IND) or visit their website at www.ind.nl. You may wish to obtain their brochure (in English) called Bringing a foreign employee to the Netherlands. In this section, a brief overview of the process is provided.

Work permit (TWV)

With certain important exceptions, every non-Dutch citizen requires a work permit to work in the Netherlands. The exceptions are citizens of an EEA country or Switzerland. Croatians require a permit, even though Croatia is part of the EU. In Dutch a work permit is called a tewerkstellingsvergunning or TWV.

Work permit procedure

An employer in the Netherlands wishing to hire an employee from a country outside the EEA is required to obtain a work permit (TWV) from the Employment Office (*UWV WERKbedrijf*). Although Croatia is part of the EU, a citizen of Croatia also requires a TWV.

Before a foreign employee comes to the Netherlands, the employer or employee must also arrange for the employee to obtain a provisional residence permit (MVV) from the Dutch authorities. This permit can be obtained from the IND or the Dutch embassy in the employee's country of origin or permanent residence.

After entering the Netherlands, the foreign employee is required to report to a special agency called the Vreemdelingenpolitie within three working days after entry. This does not apply to citizens of an EEA member state or Switzerland or foreign citizens staying at a hotel. Failure to comply with this requirement constitutes a criminal offence.

In addition, after entering the Netherlands, the employee must as soon as possible (and no later than within three months) apply to the IND for a regular residence permit (VVR). The holder of a work permit (TWV) and a provisional residence permit (MVV) may work in the Netherlands only after filing an application for this permit (VVR).

For current fees, please visit www.ind.nl.

It usually takes the Employment Office five to eight weeks to make a decision about a work permit application. An employer is therefore advised to commence the process with the Employment Office at least twelve weeks before the actual employment is due to start. There are several avenues of redress following a decision by the Employment Office to reject a work permit application, including an application to the court.

A TWV is valid for a maximum of three years. The TWV is only applicable to that employee and to the specific activities for which the work permit is granted. If an employee carries out other activities, a new work permit (TWV) is required.

Conditions for granting a work permit (TWV)

TWVs may be granted for a maximum term of three years and only in the following circumstances:

- The employer must make every endeavour to actively recruit suitable candidates in the Netherlands and other member states of the EEA.
- An employer is normally required to submit notice of a vacancy to the nearest Employment Office at least five weeks before applying for a work permit (TWV).
- The employer must show that an employee in the EEA labour market cannot be found, or retrained within three months, to do the work.
- The foreign employee must receive remuneration at least equal to the statutory minimum wage for full-time employees, irrespective of whether he or she works part-time or full-time;
- The working conditions, terms of employment and employment relations in the employer's company must comply with, or exceed, the applicable statutory standards and CAO standards.

The employer must provide for suitable accommodation for the employee.

The employee must be between 18 and 45 years of age.

Highly skilled employees

Employees that fall under a certain category may be exempt from some of the procedural requirements. This applies in particular to what are known as "highly skilled workers". A work permit (TWV) is not required, and the process is expedited (average time of four weeks). However, this is dependent on the employer signing a declaration and on the annual remuneration of the highly skilled employee exceeding certain statutory thresholds. Please be advised that a higher minimum salary for highly skilled employees is required.

13.8 THE 30% RULING

Inbound expatriates

If certain conditions are met, an inbound expatriate coming to the Netherlands can take advantage of an allowance called the "30% ruling". One of the conditions is that the inbound expatriate must have some sort of "specific expertise" that is scarce in the Netherlands (based on his or her level of education, level of experience and level of remuneration). Another important condition is that the expatriate must have been, prior to his or her assignment abroad, residing at least 150 kilometres from the Netherlands.

As a result of the 30% ruling, 30% of all the inbound expatriate's taxable benefits – which in this case includes allowances for housing and compensation for local costs but not schools fees, which are allowed separately – can be paid tax-free as compensation for "extra-territorial costs" for a maximum period of eight years. Both the employer and the employee must file a request to apply for the 30% ruling. The 30% ruling only applies if the Dutch tax authorities have approved the request.

The allowance includes the option to be treated as a non-resident for the income reported in Box 2 and Box 3. (See paragraph 10.1, Income Tax). The 30% allowance is not included in pension calculations, which is an advantage for the employer that may be reallocated by adding the saving to the employee's income, which in turn results in a higher 30% allowance. The allowance is also not included in social security calculations.

Outbound expatriates

A specific 30% ruling also applies to Dutch employees performing certain specific activities in another country or who are seconded to certain developing countries.

13.9 EDUCATION FOR CHILDREN

It is compulsory for children in the Netherlands to attend school on a full-time basis from the age of five to sixteen and at least on a part-time basis between the ages of 16 and 18. There is a government-funded public-school system. There are also private schools, which are eligible for government funding if they meet certain criteria. Primary schools are for children aged four to twelve.

Secondary schools

Children older than twelve years of age enter the secondary school system. The Dutch secondary education system is divided into three streams. Children in the Netherlands are tested and enter these streams at a fairly early age.

- VMBO – a four-year pre-vocational secondary education programme that is designed to prepare children for upper secondary vocational education (MBO);
- HAVO – a five-year general secondary education programme that is designed to prepare children for higher professional education (HBO); and
- WO – a six-year pre-university secondary education programme that is designed to prepare children for academic studies at university level (WO).

There is a variety of special education programmes for students with behavioural or learning difficulties. There are also adult and vocational education programmes.

International schools

International schools are located in the largest cities, especially The Hague, and offer a curriculum taught in English, French or German. On completion of studies, an international baccalaureate certificate is awarded to students. Foreign postgraduates can also attend specialist programmes at certain institutes in the Netherlands; in the majority of cases, these are offered in English.

Higher education

There are two kinds of higher education. One is a four-year higher professional education programme called HBO and leads to a four-year bachelor's degree. The other is a three-year academic or university education programme called WO and also leads to a bachelor's degree. Graduates with a bachelor's degree may, subject to meeting the requirements, go on to study for a master's degree, which is normally an extra year of study.

Some Dutch universities allow foreign students to enter a Dutch university degree programme at an intermediate level. Only certain universities allow this, and the decision is made on a case-by-case basis. Foreign students wishing to enter a Dutch university must have an adequate level of English. Any Dutch embassy, consulate or education support office can provide valuable information on the English language examinations accepted by Dutch universities.

Employers may grant tax-free allowances for school fees. It is advisable to obtain a residence permit prior to registration.

13.10 MEDICAL CARE

The Netherlands has a public-private health care insurance system in which everyone has national health insurance cover, but this is provided through a private health care insurer (*zorgverzekeraar*) of their own choosing.

A number of insurance companies offer a variety of packages at different rates. An insurance company is required to offer a basic package, but the insurance company offers more extended packages with optional extras for those who wish to pay for these. Every resident is free to choose their insurance company and the level of cover. A resident can switch insurance company once a year.

Unless otherwise provided by international social security law, all residents aged 18 or older are required to pay a nominal premium to their insurance company. Without insurance, individuals face several penalties imposed by the Netherlands Health Care Institute (*Zorginstituut Nederland)*. The application of law in this area depends on the individual's social security situation, which may, in general, be linked to either residence or country of origin. See the section on "Social security" below.

13.11 Social security

All residents of the Netherlands are insured under national insurance schemes covering old age (AOW), death (Anw), certain extraordinary medical expenses (AWBZ), health benefits (Zw) and child benefits (AKW). The premiums are not tax-deductible. In addition, employees are insured against disability (WIA) and unemployment (WW). These contributions are tax-deductible (EET).

An individual's country of residence is determined on a case-by-case basis. This is the same kind of determination as that made for tax purposes. For further details, see "Resident or non-resident taxpayer". A citizen of an EU country, Iceland, Liechtenstein, Norway or Switzerland may opt to remain insured under the social security system of his or her country of origin without having to pay social security premiums in the Netherlands. The employee is required to obtain an A1/(E) 101-statement from the social security authorities in his or her country of origin. The employer can obtain this for the employee. The E-101 statement is valid for a period of twelve months and can, in certain circumstances, be extended to five years in total.

The Netherlands has concluded social security treaties with a number of other countries including:

Australia	Israel	South Korea	Serbia
Canada	Japan	Bosnia-Herzegovina	Tunisia
Chile	Macedonia	Cape Verde	Turkey
Egypt	New Zealand	Morocco	
India	United States	Montenegro	

These treaties provide the rules governing social security arrangements. The rules are similar to those for EU and EEA countries.

14. ENVIRONMENTAL CONSIDERATIONS

14.1 GENERAL

The Dutch government has an environmental protection policy, which has been integrated into the policies for agriculture, transport and energy, amongst other policies. The Netherlands' environmental policy currently addresses a wide range of issues, including climate change, contaminated land waste disposal, noise pollution and decreasing biodiversity.

Although emissions of some pollutants have been cut substantially, many environmental problems continue to exist. Use of fossil fuels by both consumers and producers is still high. Motor vehicle use by the country's population is increasing each year, leading to increased acidification, greater demands on space and noise pollution. This has an ongoing negative effect on flora and fauna. These problems cannot be resolved by environmental policy alone.

For the latest information on the Netherlands, the environment and environmental regulations, visit the website of the Netherlands Ministry of Infrastructure and the Environment (I&M) at http://www.government.nl/ministries/ienm.

14.2 ENVIRONMENTAL MANAGEMENT LAW AND REGULATIONS

Dutch environmental law is set out in the Environmental Management Act (*Wet milieubeheer or EMA*). The EMA regulates "establishments" (*inrichtingen*). The term "establishment" is defined as "any enterprise undertaken by humans commercially or of a size commensurate with a commercial enterprise, and which is conducted within certain bounds". For example, a short, non-recurring event is not an establishment. Keeping horses as a hobby is not considered an establishment. Activities carried out by a ship (i.e. mobile activities not connected to a specific site) are not considered an establishment.

For many years building activities and the operation of most establishments required an environmental permit. Since 2008, general rules have applied to most establishments. These general rules concern issues such as noise, energy, waste, air quality and soil quality.

Currently the permit requirement still applies to so-called IPPC establishments. Non-IPPC establishments are regulated on the basis of the Activities Decree (Activiteitenbesluit) in combination with the General Planning and Environmental Law Provisions Act (*Wet algemene bepalingen omgevingsrecht, or Wabo; see 14.3*). The Activities Decree defines three categories.

It is important to determine the category of the establishment because this determines the applicable rules and the competent authority.

Type A establishment

If there is negligible impact on the environment, no notification permit is required. These establishments must comply with the general rules and regulations set out in the Activities Decree. There is no need to give notification or to submit an application for a permit. Examples of Type A establishments are care institutions (for example, for childcare), churches, banks, libraries and schools.

Type B establishment

If there is substantial environmental impact, there is an obligation to notify the municipal authority. Notification must be given when an establishment is being set up, changed or expanded. Examples of Type B establishments are iron and steel industrial plants, dental laboratories and silk screen printing.

A type B establishment can carry out other activities, for which an all-in-one permit for environmental aspects (*omgevingsvergunning*) is required (see below). In that case, there is an obligation to apply for this permit at the same time as submitting the environmental management notification.

Type C establishment

If the environmental impact is extensive, the establishment requires a permit from the provincial or municipal authority. In exceptional cases, a permit is required from the Minister of Infrastructure and the Environment (I&M) or the Minister of Economic Affairs (EZ). This applies in any event to IPPC establishments and to some other designated activities (*Besluit omgevingsrecht, Appendix I*). In addition to a permit obligation, certain relevant chapters in the Activities Decree are also applicable.

Apart from constructing and operating establishments, there are other activities that can have a harmful effect on the environment. For this reason, Dutch legislation also imposes rules on handling certain materials, such as plant protection products and fertilisers, transporting harmful substances, working on or in the soil, etc.

14.3 WABO

The Wabo came into force in October 2010. Apart from environmental permits and other environmental decision-making processes, this wide-ranging act also regulates construction and

demolition. Wabo integrates about 25 different permits, notifications and exemptions into a single all-in-one permit for environmental aspects (*omgevingsvergunning*). This permit has replaced the environmental permit that used to be issued under chapter 8 of the EMA.

The Wabo regulates a transparent procedure with one application, one competent authority and a single all-in-one permit for environmental aspects (omgevingsvergunning) for activities that have an impact on the physical environment. It also regulates a procedure for legal protection. As a result, there are no unnecessary differences in procedures, and it is easier to determine which permit or permits are actually needed.
Establishments can do an online permit check (https://www.omgevingsloket.nl) before applying for a permit in order to be certain whether a permit is needed. The permit check is available only in Dutch.

At the time of writing, the Minister of Infrastructure and the Environment (I&M) is preparing further integration of the various environmental laws and regulations (including the Wabo) into a single Environmental Act (*Omgevingswet*). This Environmental Act should contain a new, more transparent system than the current system. It is expected that the Environmental Act will enter into force as of 2018.

15. USEFUL INFORMATION

15.1 WEBSITES

Government information for entrepreneurs: laws and permits in The Netherlands
www.ondernemersplein.nl/

Tax
www.belastingdienst.nl

Netherlands Central Bank (De Nederlandsche Bank, DNB)
www.dnb.nl

Customs
www.douane.nl

Ministry of Economic Affairs
www.ez.nl

Immigration and Naturalisation Service
www.ind.nl

Ministry of Infrastructure and the Environment
http://www.government.nl/ministries/ienm

EC site on grants, funding and programmes
http://ec.europa.eu/grants/index_en.htm

Amsterdam stock exchange NYSE Euronext
www.euronext.com

Netherlands Enterprise Agency
http://english.rvo.nl/

The Netherlands Chamber of Commerce
www.kvk.nl

Ministry of Foreign Affairs / Foreign Embassies in the Netherlands
www.minbuza.nl

Ministry of Finance
www.minfin.nl

Netherlands Arbitration Institute
www.nai-nl.org

Dutch Governmental Organisations
www.overheid.nl

Amsterdam Airport Schiphol
www.schiphol.nl

Ministry of Economic Affairs site on innovation and sustainability
www.agentschapnl.nl

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