



COMPANY FORMATION IN THE NETHERLANDS

MAIN FORMS OF COMPANY/BUSINESS IN THE NETHERLANDS

The main forms of a company in The Netherlands are the Private Limited Liability Company (BV) and a public limited liability company (NV).

Private Limited Liability Company (BV)

Share capital

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

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

Shares

A BV may only issue registered shares. Besides ordinary shares, a BV may also issue priority shares, to which certain (usually voting) rights are allocated in the articles of association, and preference shares, which entitle the shareholder to fixed dividends that have preference over any dividends on ordinary shares. The voting right is linked to the nominal value of the share. However, it is possible to attach different voting rights to classes of shares (even when the nominal values of the various classes are equal). Moreover, it is possible to create non-voting shares and shares without any profit right. Non-voting shares must give a right to profit.

It is not mandatory to include share transfer restrictions in the articles of association. However, if a BV opts to include such restrictions in its articles of association, it will be also be able to include detailed rules on how the price of the shares will be determined. The articles of association may also include a lock-up clause prohibiting the transfer of shares for a specific period.

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

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

Management structure

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

Board of directors

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

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



A member of the board of directors of the company can be held liable by the BV, as well as by third parties. The entire board of directors can be held liable to the BV for mismanagement. An individual member of the board of directors can be held liable with respect to specific assigned duties. Besides the liability prior to incorporation and registration, liability towards third parties can occur in several situations. For example, in case of the bankruptcy of the BV, the members of the board of directors are severally liable for the deficit if the bankruptcy was caused by negligence or improper management in the preceding 3 years. An individual member of the board of directors can exonerate himself by proving that he is not responsible for the negligence or improper management.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

There are no taxes due related to establishing a company. When the company has been established the company has to be registered at the Dutch Tax Authorities. After the registration a VAT number will be granted, a number for the corporation tax and for the wage tax. If a company is established under Dutch law it is tax liable for the corporation tax, independent of the place of management.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

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

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

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

Public Limited Liability Company (NV)

In general, everything mentioned above that applies to the BV also applies to the NV. This section will outline the most significant differences between the NV and the BV.

Share capital and shares

An NV must have an authorized capital. At least 20% of the authorized capital must be issued and at least 25% of the par value of the issued shares must be paid up. The issued and paid-up capital of an NV must amount to at least € 45,000.

Besides registered shares, an NV may also issue bearer shares. Bearer shares must be fully paid up and are freely transferable. Registered shares have to be transferred by executing a deed of transfer before a civil-law notary. An NV is authorized to issue share certificates (certificaten).

If payment on shares is made in kind upon incorporation of the NV, the incorporators must describe the contributed assets and an auditor must issue a statement to the effect that the value of the contribution is at least equal to the par value of the shares. The auditor's statement is to be delivered to the civil-law notary involved prior to incorporation.