Baker McKenzie.

Doing Business in the Netherlands

2025

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Table of Contents

Foreword

We are pleased to present to you the Doing Business in the Netherlands guide.

This handbook is your personal guide to the Dutch legal and taxation system and beyond. It gives you an informative view of the key aspects of doing business and investing in the Netherlands and covers a wide array of topics, such as the main aspects of corporate law, employment law, tax law and ICT and e-commerce law, as well as many other legal aspects and regulations of relevance.

With its central geographical position and excellent infrastructure, the Netherlands is the ideal gateway to enter the EMEA market. Strategically located at the heart of Europe, the country offers seamless access to over 500 million consumers within a day's reach. Its world-class logistics network—including the Port of Rotterdam and Amsterdam Airport Schiphol—combined with a highly educated, multilingual workforce and a pro-business regulatory environment, makes the Netherlands a top choice for international companies.

Baker McKenzie — with our rich history dating back to 1949 — is strongly positioned in the Netherlands. We are legal and tax advisers to many of the world's leading corporations on the complex issues of today's integrated global market.

If you require more information about any of the topics covered in this guide, our attorneys and tax advisers will be happy to assist you. We hope that you find this guide useful and would like to wish you every success in the Netherlands.

Baker McKenzie Amsterdam

1

The Netherlands

1. The Netherlands

General information	
Location	Western Europe, bordering the North Sea, between Belgium and Germany
National language	Dutch
Capital city	Amsterdam
Seat of government	The Hague
Currency	Euro (EUR)
Climate	Temperate; maritime; cool summer and mild winter
International dialing code	+31
Internet domain	.nl

The country's central geographical position, combined with its accessibility through excellent infrastructure and logistics services, entices numerous European, US and a growing number of Asian companies to establish their European head offices in the Netherlands. This is why more than 400 of the 500 largest companies in the world have offices in the country.

In this chapter, we will give you a glimpse of the excellent business environment that the Netherlands offers.

1.1 Country and cities

Land information[1]	
Population	18,053,293 (13 February 2025)
Total area	41,543 km^2
Land	33,880 km^2
Water	7,645 km^2
Land below sea level	26%
Administrative regions	12 provinces: Drenthe, Flevoland, Friesland, Gelderland, Groningen, Limburg, Noord-Brabant, Noord-Holland, Overijssel, Utrecht, Zeeland, Zuid-Holland
Largest cities	Amsterdam: 931,298 inhabitants Rotterdam: 670,610 inhabitants The Hague: 566,221 inhabitants Utrecht: 374,238 inhabitants

[1] Source: Statistics Netherlands (Centraal Bureau voor de Statistiek (CBS)).

Kingdom of the Netherlands

The Netherlands is a kingdom, officially known as the Kingdom of the Netherlands. It consists of the Netherlands itself and three islands in the Caribbean Sea, which are: (i) Aruba; (ii) Curacao; and (iii) Sint Maarten. After the dissolution of the Netherlands Antilles on 10 October 2010, the three Caribbean islands of Bonaire, Saint Eustatius and Saba became special municipalities of the Netherlands.

The Netherlands in its entirety is often referred to as "Holland," although North and South Holland are actually only two western coastal provinces that have played a dominant role in the country's history.

Delta of three major rivers

The Netherlands lies on the delta of three major rivers: (i) the Rhine; (ii) the Meuse; and (iii) the Scheldt. It owes its existence to feats of hydraulic engineering. A quarter of the Netherlands' land area lies below sea level. The low-lying areas consist mainly of "polders," which are flat stretches of land surrounded by dikes where the water table is controlled artificially. From as early as the 16th century, windmills have been used not just to keep the land dry, but also to drain entire inland lakes. Since it has forced the Dutch people to learn how to work as a team. The Dutch are proud of their water management skills. Their struggle to keep the land dry has helped them develop a can-do attitude. That is why their European partners and the broader international community regard the Dutch as bridge builders and often ask them to serve as such.

The Windmill at Wijk bij Duurstede, Jacob Isaacksz van Ruisdael, c. 1668-c. 1670

1.2 Infrastructure, traffic and transport

Traffic and transport 2024[2*]	
Main airport	Amsterdam Airport Schiphol
Number of (air) passengers	66.8 million[2]
Passenger destinations	301
Air freight capacity	1.49 million tons
Main seaport	Port of Rotterdam
Annual throughput	438 million tons

[2] Sources: Schiphol Airport and Port of Rotterdam

Main internet hub	Amsterdam Internet Exchange

The Netherlands has excellent infrastructure and logistics services, with good roads and world-class public transport services, thanks to its close-knit network of trains, buses and trams. Due to its first-rate logistics and technological infrastructure, the Netherlands is also classified as one of the most "wired" countries in the world, taking part as a dynamic force in electronic commerce, communications and outsourcing.

Amsterdam Airport Schiphol

Amsterdam Airport Schiphol is one of the four main European airports. It is close to the Port of Amsterdam and the Port of Rotterdam and is also supported by a wide transport network of rail and road, making it a true European gateway.

Main port and distribution center

The Netherlands plays an important role as a main port and distribution center for companies operating worldwide because of its favorable location by the North Sea. The port of Rotterdam is one of the largest logistics and industrial hubs in Europe. With an annual throughput of 469 million tons of cargo, Rotterdam is by far Europe's largest seaport. Rotterdam's position can be attributed to its excellent accessibility via the sea, its hinterland connections, and the many companies and organizations that are active in the port and industrial complex.

The port area is about 12,500 hectares (land and water, of which about 6,000 hectares consist of industrial sites, including Maasvlakte 2). The length of the port area is over 40 kilometers.

Amsterdam Internet Exchange (AMS-IX)

The AMS-IX is one of the largest internet hubs in Europe. After Frankfurt and London, Amsterdam is the most connected city in terms of broadband capacity. Interconnecting hundreds of networks by offering professional IP exchange services, AMS-IX serves a very diverse and unique mix of internet companies, including international carriers, mobile operators, content providers, voice over IP parties, application providers, hosting companies, television broadcasters and other related businesses.

Gateway to Europe

These different systems of infrastructure are some of the reasons the Netherlands is often called the "Gateway to Europe." As the gateway to Western and Eastern Europe, the Netherlands enables companies to serve markets in the current and future member states of the EU, the Middle East and Africa.

1.3 Government

Head of state	King/queen
Head of government	Prime minister
Form of government	Constitutional monarchy
Seat of government	The Hague

The Netherlands was one of the first parliamentary democracies. Among other affiliations, the country is a founding member of the EU, NATO, OECD and WTO. It also forms the Benelux economic union with Belgium and Luxembourg. The Netherlands itself is a constitutional monarchy, with a

parliamentary system in which the government consists of the king or queen, the ministers and the state secretaries. For historical reasons, The Hague is the seat of government, but Amsterdam is the capital.

Dutch Parliament

Parliament is made up of two houses: (i) the Senate; and (ii) the House of Representatives. The Senate has 75 indirectly elected members, who only have the power of veto in the legislative process. The House of Representatives, on the other hand, has 150 members elected directly by the people.

1.4 Economy

Macroeconomic figures, 2024[3]	Value
Gross domestic product (GDP)	EUR 1,150 billion
GDP growth	0.1%
Inflation rate	3.2%
Total workforce	9.8 million
Unemployment rate	3.7%

The Dutch economy has a strong international focus, with the country being one of the EU's most dynamic centers of trade and industry.

Trade (import and export), 2024[4]	
Exports	EUR 254,000 billion
Export country comparison to the world	6
Exports — commodities	Food and live animals; beverages and tobacco; crude materials; inedible substances, except fuels, mineral fuels, lubricants, relative materials, animal and vegetable oils, chemicals; machinery and transport equipment; miscellaneous articles
Imports	EUR 64,200 billion
Import country comparison to the world	6
Imports — commodities	Food and live animals; beverages and tobacco; crude materials; inedible substances, except fuels, mineral fuels, lubricants, relative materials, animal and vegetable oils, chemicals; machinery and transport equipment; miscellaneous articles

[3] Sources: Statline and CBS
[4] Sources: CBS and Globaledge.

The Netherlands' exports totaled EUR 496 million in 2018. Dutch prominence in European exports can be attributed mainly to transit exports to other European countries. In this sense, the Netherlands really is the gateway to Europe for many products from other regions. Around half of the exports are transit ones.

1.5 Dutch people and culture

The people	
Total population	18,053,293 (13 February 2025)
Languages	Dutch (official), Frisian (official)
Life expectancy	Men: 80.3 years; women: 83.3 years
Nationalities	200

1.5.1 People

The Dutch themselves are surprising people. They live, all 18 million of them, on 41,543 square kilometers of land, which is just a little more than half the size of Scotland. The Netherlands is thus one of the world's most densely populated countries. Dutch professionals are internationally oriented and are among the most multilingual in the world, enabling them to operate successfully in companies in any industry and to serve customers across the globe. Another distinctive fact is the attractive cultural climate. Dutch people are anti-authoritarian, innovative and open-minded.

Self-portrait, Rembrandt van Rijn, c. 1628

1.5.2 Arts, culture and science

The Netherlands is a country with a rich cultural and traditional heritage. The arts, in every form, flourish in the country, which has outstanding museums and an impressive variety of classical and innovative music, as well as theatre.

Dutch masters

The Netherlands has had many well-known painters. The 17th century, when the Dutch republic was prosperous, was the age of the "Dutch masters," such as Rembrandt van Rijn, Johannes Vermeer, Jan Steen, Jacob van Ruysdael and many others. Famous Dutch painters of the 19th and 20th centuries were Vincent van Gogh and Piet Mondriaan. M. C. Escher is a well-known graphics artist. Willem de Kooning was born and trained in Rotterdam, although he is considered to have reached acclamation as a US artist.

The Netherlands is the country of philosophers Erasmus of Rotterdam and Spinoza. All of Descartes' major works were also done in the Netherlands. Dutch scientist Christiaan Huygens discovered Saturn's moon (Titan) and invented the pendulum clock. Antonie van Leeuwenhoek, also a Dutch scientist, was the first to observe and describe single-celled organisms with a microscope. Jan Hendrik Oort was a Dutch astronomer who made significant contributions to the understanding of the Milky Way and was also a pioneer in the field of radio astronomy. The Oort cloud, the Oort constants and the asteroid, 1691 Oort, were all named after him.

Museums

With approximately 1,250 museums, the Netherlands has the highest museum density in the world. Some of the most famous are: (i) the Rijksmuseum in Amsterdam; (ii) the Vincent van Gogh Museum also in Amsterdam; (iii) the Museum Boijmans-Van Beuningen in Rotterdam; (iv) the Mauritshuis in The Hague; and (v) the Het Loo Palace in Apeldoorn.

Outstanding collections of modern and contemporary art may be seen at the Stedelijk Museum in Amsterdam, the Kröller-Müller Museum in Otterlo and the Bonnefanten Museum in Maastricht.

Dutch creative climate and Dutch design

Dutch design is famous around the world. The minimalist, economical approach that characterizes Dutch design attracts many young designers, architects and artists, who come specifically to Amsterdam to work in a climate of artistic freedom, dialogue and innovation.

The Netherlands is also renowned for its architecture and exceptional urban development. Nearly 62,000 buildings are listed as monuments, which the government protects and helps maintain. The world's planners and architects flock here to learn about Dutch solutions for crowded countries.

Holidays

National holidays are important in Dutch culture. Several holidays have a rich history and have been celebrated for a very long time, with some having strong cultural ties to local regions. For instance, King's Day, which the Dutch celebrate in April, is an annual holiday in honor of the reigning king. On 5 May, Liberation Day is celebrated, which marks the end of the Second World War. Each year, numerous festivals, concerts and other activities are organized on Liberation Day and an official nonworking day is granted in honor of this holiday once every five years.

St. Nicholas (Sinterklaas) is a very popular mythical figure, in whose honor feasts are held, for children and adults alike. Sinterklaas' arrival is in November and his birthday is celebrated on 5 December. Celebrations include gatherings with family and friends, the exchanging of presents and treats, and the performance of festive songs dedicated to St. Nicholas. This is not an official public

holiday as many businesses and people dedicated to St. Nicholas tend to be busy arranging the festivities during this time of year.

1.5.3 Did you know?

- The Netherlands and Holland are one and the same place.
- 26% of the Netherlands is below sea level.
- Holland still has 1,100 old-fashioned working windmills.
- The International Court of Justice (at the Peace Palace) and the International Criminal Court are both situated in The Hague.

- Holland has nearly 37,000 kilometers of cycle paths.
- Holland is the second biggest exporter of agricultural produce, preceded only by the US, even though just over 2% of the Dutch population work in the agricultural sector.
- The Dutch are among the tallest people in the world.
- Amsterdam was built entirely on piles.
- There are 22.9 million bicycles and 9.1 million cars in the Netherlands.
- Amsterdam is the capital, but the government is in The Hague.
- Nearly 200 nationalities live in the Netherlands.
- Rotterdam is one of the largest ports in the world.

- Nieuwerkerk aan den Ijssel, which is the lowest point in Holland, is 6.76 meters below sea level.
- Gezelligheid is a typical Dutch word for which there is no good equivalent in other languages, and which stands for pleasant social gatherings and a fine atmosphere.
- Holland has more than 7,000 kilometers of navigable rivers, canals and lakes.
- The Dutch saying "act normally, that's crazy enough" fits the Dutch like a glove.
- The Netherlands has approximately four million cows, which together produce 14 billion liters of milk.
- On average, the Dutch eat 17 kilos of cheese per person per year.
- Nearly 942.8 million kilos of cheese are exported per year.

2

Legal forms of doing business

2. Legal forms of doing business

A company may engage in business in the Netherlands through a Dutch holding company, a subsidiary or a branch. Compared with the laws in many other EU countries, Dutch corporate law provides a flexible and liberal corporate framework for the organization of branches and subsidiaries by (nonresident) companies or private individuals. There are no specific restrictions on foreign-owned companies planning to start a business in the Netherlands.

2.1 Branch

The organization of a branch of a foreign company in the Netherlands does not require prior governmental approval. The foreign company should file the following documents and data with the Trade Register of the Chamber of Commerce:

- For the branch — the name, principal place of business of the foreign company, a short description of the actual business activities, number of employees and full address of the branch (A (local equivalent of a) trade registry extract and the articles of association of the foreign company are to be submitted.)
- For the directors of the foreign company — the full name, address, date and place of birth, nationality and authority to represent the foreign company, signature and certified copy of an identity card (passport or driver's license)
- For the branch manager (no residency requirement) — the full name, address, date and place of birth, nationality, extent of power and authority to represent the branch, signature and certified copy of an identity card (passport or driver's license)
- The annual accounts of the foreign company filed locally

2.2 Subsidiary

Dutch law distinguishes between two types of limited liability companies: public companies (naamloze vennootschap (NV)) and private companies with limited liability (besloten vennootschap met beperkte aansprakelijkheid (BV)). In general, Dutch law provides more flexibility regarding the governance, share structuring and other aspects of BVs then NVs. The main differences between these two entities are as follows:

- Shares in NVs can be listed on the Dutch Stock Exchange. If certain conditions are met, the shares in a BV could be listed as well.
- NVs must have a minimum issued and paid-in capital of EUR 45,000. For BVs, no minimum issued and paid-in capital is required, if at least one share is issued to a person or legal entity other than the BV or its subsidiaries.
- All shares in the capital of BVs are registered shares. Shares in the capital of NVs can be registered shares or they can be issued by way of a global certificate held by the central institute or an intermediary.[5]
- The nominal value of shares in BVs (as opposed to NVs) may be denominated in another currency other than euro.

[5] On 1 July 2019, the "Act on the conversion of bearer shares" ("**Act**") entered into force. Under the Act, bearer shares can only be issued by way of a global certificate held by the central institute or an intermediary. Dutch NVs were required to convert issued bearer shares into registered shares before 1 January 2020 if the bearer shares were not yet included in a global certificate.

- BVs, as opposed to NVs, can issue shares without voting or profit rights.
- BVs are subject to less strict capital and creditor protection rules than NVs. For example, BVs do not need to acquire an auditor statement for contributions in kind.
- Holders of a certain class of BV shares may appoint, suspend and dismiss their "own" managing director or supervisory director. Holders of a certain class of NV shares may only have nomination rights in relation to the appointment of managing directors or supervisory directors (these nomination rights may be overruled at the general meeting of shareholders).

A Dutch subsidiary may be established and owned by one or more shareholders that may either be individuals or legal entities, regardless of their nationality. A single-member company is an NV or a BV in which all shares are held by a single legal entity or a private individual. The sole shareholder must be registered with the Trade Register of the Chamber of Commerce.

The issuance and transfer of registered shares and the transfer of a restricted right to the shares (for instance, a right of pledge) require the execution of a notarial deed before a Dutch civil law notary in the Netherlands. This obligation does not apply to NVs with shares officially listed on a regulated stock exchange.

2.3 Branch versus subsidiary

The most important difference between a branch and a subsidiary lies in the exposure to liability. A subsidiary has limited liability. As a result, a shareholder, in principle, is liable only to the extent of its capital contribution. A branch is not considered a separate legal entity. Therefore, the foreign company can be fully liable for all the obligations to which the branch is bound. However, the liability of a branch (including the liability of its manager and directors) depends on the rules and regulations that govern the liability of the foreign subsidiary, which will absorb the liability of the branch.

Under Dutch law, directors and officers of a subsidiary can benefit from extensive protection from personal liability. If there is willful misconduct or gross negligence that leads to the bankruptcy of a subsidiary, directors can be held liable by third-party creditors.

Furthermore, third-party creditors may hold a director of a Dutch company liable, pursuant to damages they have suffered as a result of an action arising from wrongful trading.

Manufacturing, warehousing and rendering of services may be carried out by both types of operations. Holding, finance and licensing operations are better conducted by a subsidiary, as it is able to benefit from tax treaties. The circumstances and relevant factors must be considered each time before a final decision is made as to which type of legal entity is used in the Netherlands.

2.4 Cooperative (coöperatie)

A cooperative is an association established as a cooperative by a notarial deed. The cooperative does not have shareholders, unlike an NV or BV, but members. At incorporation, the cooperative must have at least two members (leden). By law, the cooperative's objective is to provide the material needs of its members under an agreement concluded with them in the course of the business it conducts or causes to be conducted, and for the benefit of its members. If a cooperative is used in a holding structure, its goal is generally to make profits through investments. To achieve this, the cooperative enters into contribution agreements with its members, pursuant to which the members contribute capital (e.g., cash or other assets) to the cooperative. In exchange for these contributions, the capital accounts maintained for each member are credited. A cooperative may distribute profits among its members. The members' entitlement to the cooperative's profits is usually relative to their respective contributions.

2.5 European company (Societas Europaea (SE))

There are four ways to incorporate an SE, which is a company that has a legal personality and is, in many respects, comparable to a Dutch NV, as follows:

- Through a legal merger between two companies based in different EU member states
- Through the incorporation of an SE as a holding company for two companies based in two different EU member states or with subsidiaries in two different EU member states
- Through the incorporation of an SE as a subsidiary of either of the following:
    - Two companies based in two different EU member states
    - An SE
- Through a legal conversion from an NV into an SE

Only legal entities may form an SE; private individuals may become a shareholder of the SE after its incorporation. An SE may transfer its registered office from one EU member state to another.

In addition, a group that has companies throughout the EU may now create a uniform management structure by forming an SE, since SEs may opt for a one-tier or two-tier board system.

Dutch SEs are governed by Dutch corporate law as well as by EU law (i.e., Council Regulation No. 2157/2001) and can be used for the same purposes as BVs and NVs. SEs can also be listed on a Dutch or foreign stock exchange. Furthermore, SEs can transfer their legal seat as well as their principal place of business to other member states within the EU.

Finally, an SE can benefit from the same tax regime that is applicable to NVs and BVs once an SE is organized under the laws of the Netherlands.

2.6 Societas Cooperativa Europaea (SCE)

An SCE is currently able to operate across all member states of the EU based on registration in one member state and may be incorporated by any of the following:

- Five or more private individuals or legal entities that reside in or are governed by the law of at least two member states
- A merger of legal entities that have their corporate seats and head offices in one of the member states, and where at least two of the entities involved are governed by the law of at least two member states
- A conversion of a cooperative into an SCE

The principal objective of an SCE is to satisfy its members' needs. Unlike a Dutch cooperative, an SCE has a subscribed share capital of at least EUR 30,000. Membership in the SCE is gained through ownership of shares in the capital of the SCE. Just like the SE, the SCE may transfer its legal seat and registered office from one EU member state to another.

2.7 Partnership

A partnership, whether general (vennootschap onder firma (VOF)) or limited (commanditaire vennootschap (CV)) may be formed by two or more partners that may either be private individuals or legal entities. The parties conclude a partnership agreement and the partnership (not the contract) must be registered with the Trade Register of the Chamber of Commerce. The partners in a general partnership are jointly and severally liable for all obligations of the partnership. Pursuant to a limited

partnership, however, the limited or "silent" partner is only liable up to the amount of its capital contribution, if the partner does not, in any way, take part in the representation of the partnership vis-à-vis third parties. The general partner is registered with the Trade Register. The limited partner is not.

A special partnership form is the European Economic Interest Grouping (EEIG) (Europees economisch samenwerkingsverband), which seeks to foster cooperation between entrepreneurs in Europe. The EEIG is a legal form based on a European statute. An EEIG formed under Dutch law has a legal personality and enjoys fiscal transparency throughout the European Economic Area (EEA). It is suitable for joint venture activities and specific intragroup purposes. There are no restrictions on foreign nationals entering into a partnership with Dutch residents. The formation of an EEIG requires at least two partners, which may comprise partnerships, that are residing within the EEA.

2.8 Formal foreign companies

According to the Formal Foreign Companies Act (FFCA), a company that is incorporated under any law other than Dutch and that conducts its business entirely or almost entirely in the Netherlands without having any further real ties with the state under whose law it was incorporated is considered a formal foreign company.

Under the act, the management of such company is obliged to register its deed of incorporation, articles of association, the number under which the company is registered and the details of the sole shareholder (if applicable) with the Trade Register of the Chamber of Commerce in the Netherlands. Furthermore, formal foreign companies must file their annual accounts with the Trade Register of the Chamber of Commerce. However, companies that are subject to the laws of the EEA are exempt from most of the provisions of the FFCA.

3

The subsidiary

3. The subsidiary

3.1 Incorporation of an NV and BV

An NV and a BV are incorporated by one or more incorporators, pursuant to the execution of a notarial deed of incorporation, which includes the company's articles of association.

The notarial deed of incorporation must be executed in Dutch before a Dutch civil law notary in the Netherlands. In the event of an incorporation of an NV, an auditor's statement must be obtained prior to incorporation.

The bank statement should be issued by a bank registered as a credit institution pursuant to the WFT. It must confirm that the incorporation capital has been transferred to a bank account in the name of the NV in incorporation. After the issuance of this bank statement, the NV can be incorporated by execution of a notarial deed. It is not necessary to obtain a bank statement or open a bank account for the incorporation of a BV.

If, on incorporation, it is agreed that a noncash contribution will be made on shares, the management board must prepare a description of the noncash contribution. For an NV, a Dutch qualified auditor must issue a statement in respect of the contributed assets. The statement must confirm that the value of the contribution to be made, established by means of generally acceptable valuation methods, is at least equal to the amount payable of the incorporation capital. The aforementioned statement is not required for a noncash contribution on BV shares.

The name of the company is followed by "NV" or "BV," and if an NV or a BV is in the process of formation, the abbreviation "io" (in oprichting, or in the process of being incorporated) is annexed to the name. An NV or a BV is allowed to conduct business during the preincorporation period, and the NV io or the BV io may be registered with the Trade Register of the Chamber of Commerce. The persons acting on behalf of the NV io or the BV io, or the NV or BV, are personally liable until the NV or BV is duly registered in the Trade Register of the Chamber of Commerce, and has ratified the actions performed on its behalf during the preincorporation period.

3.2 Incorporation of a cooperative

A cooperative is incorporated by a Dutch civil law notary executing a notarial deed in Dutch in the Netherlands. Unlike the NV and similar to the BV, no bank statement or auditor's statement is required for the incorporation of a cooperative. Dutch law requires that a cooperative be incorporated by at least two incorporators. Unless the deed of incorporation explicitly states otherwise, the incorporators automatically become members of the cooperative upon incorporation.

The word "coöperatief" must be included in the official name of the cooperative as well as one of the following abbreviations: WA for wettelijke aansprakelijkheid (full statutory liability), BA for beperkte aansprakelijkheid (limited liability) or UA for uitsluiting van aansprakelijkheid (exclusion of liability), which indicates its members' level of liability. Upon incorporation, the cooperative is registered with the Trade Register of the Chamber of Commerce.

3.3 Capitalization

NV

An NV must have an authorized and issued capital, divided into a number of shares with a par value expressed in euro. Shares without a par value are not permitted. Upon formation, at least 20% of the authorized capital must be issued and at least 25% of the par value of each share issued must be paid in. The minimum issued share capital is EUR 45,000 for an NV.

BV

The incorporators of a BV may determine the amount of capital to be paid, without considering the specific capital requirements that apply for NVs. It is possible to choose an authorized capital in the articles of association of a BV, but it is not mandatory. The nominal value of shares may be denominated in another currency other than the euro.

Cooperative

There is no statutory requirement for a cooperative to maintain a minimum amount of capital. The articles of association or the separate members' agreement may oblige a member to contribute funds or assets to acquire a membership interest in the cooperative.

3.4 Transfer of shares and membership interest

An NV's authorized capital may be divided into transferable — bearer or registered — shares, while a BV's capital may be divided into registered shares. Bearer shares are freely transferable upon delivery of the related share certificates, either electronically or physically. Registered shares may be ordinary, preferred or priority shares. Registered shares issued by an NV or BV may be freely transferred, subject to any restrictions contained in the company's articles of association.

The transfer of registered shares in an NV and BV requires a notarial deed of transfer to be executed before a Dutch civil law notary in the Netherlands. The transfer of shares is recorded in the shareholders' register. The registration with the Trade Register of the Chamber of Commerce is updated accordingly for a sole shareholder.

Membership interests in the cooperative may be held by private individuals, legal entities and partnerships, either foreign or Dutch. Membership interests are, in general, freely transferable, but certain restrictions can be included in the articles of association of a cooperative. A transfer of membership interest can be made subject to certain restrictions, such as prior consent from the board of managing directors, general meeting of members, or meeting of holders of a certain class of membership interests.

After each transfer, admission or termination, the members' register must be updated accordingly.

3.5 Shareholders' register and members' register

The board of managing directors of an NV or BV with registered shares must keep a shareholders' register at the registered office of the company. The register must contain: the company name; corporate seat; (authorized and) issued share capital; the number of all registered shares; the names and (electronic) addresses of the shareholders, pledgers and usufructuaries; the extent to which the par value of the shares has been paid up; the particulars of the incorporation; any amendment to the articles of association; and issuance, transfer, pledge, attachment or usufruct on the shares. The shareholders' register is not publicly available.

A similar register is kept for the cooperative and contains information with respect to the name, corporate seat, member's interest, contributions, members, pledgers, usufructuaries and any amendment to the articles of association, transfer, pledge and usufruct on interest.

Each shareholder, member, pledger or usufructuary of shares or interest has the right to inspect the register and receive a certified excerpt. Any amendments or adjustments in the registers require the signature of one of the managing directors.

3.6 Issuance of new shares

Upon the issuance of registered NV shares, at least 25% of the par value of the shares must be paid up. This requirement does not apply to the issuance of BV shares. Shares may also be paid in kind; in which case a management board description of the contribution is required. For an NV, an additional auditor's statement is to be obtained, confirming that the value of the contribution in kind is equal to or exceeds the total par value of the issued shares. The amount exceeding the total par value is considered non-stipulated share premium.

The issuance of registered shares requires a notarial deed executed before a Dutch civil law notary in the Netherlands and is recorded in the shareholders' register. The registration with the Trade Register of the Chambers of Commerce is updated accordingly.

3.7 Board of managing directors

NVs, BVs and cooperatives are managed by a board of managing directors consisting of one or more managing directors appointed by the general meeting of shareholders or members, who also have the authority to dismiss them. A managing director may be a private individual or a legal entity, either foreign or Dutch. From a Dutch corporate law point of view, none of the managing directors need to be Dutch residents; however, a Dutch tax adviser can advise otherwise to create substance.

The articles of association state the minimum number of managing directors and whether a managing director is solely or jointly authorized to represent and bind the company without any limitations and conditions. A provision to this effect may be invoked against third parties.

3.8 Reserved matters

The articles of association may provide that a number of specified acts of the board of managing directors require prior approval of the shareholders, members and the board of supervisory directors or another corporate body. The absence of approval will not impair the representative authority of the board of managing directors or of its members.

3.9 Board of supervisory directors

An NV, a BV and a cooperative may institute a supervisory board to advise and supervise the managing directors, but are not allowed to participate in management affairs. If a company meets certain thresholds, it may be required to install a mandatory supervisory board. This so-called large company regime is further described in Section 3.11. Only a private individual may be appointed as a supervisory director. Supervisory directors are appointed and dismissed from their positions through the general meeting of shareholders or members. No person may serve as managing director and supervisory director of the same entity at the same time. Instead of a two-tier board structure, consisting of a separate management board and a supervisory board, a one-tier board of management directors can be installed, consisting of executive and nonexecutive members. This board structure is further described in Section 3.12.

3.10 Proxy holders

Dutch law does not recognize the concept of officers. The board of managing directors may appoint proxy holders and grant them limited or unlimited power of attorney. The title and scope of authority are determined by the management board. The determination may be subject to the prior approval of the board of supervisory directors or the meeting of shareholders or members. At all times, the persons appointed must act under the responsibility of the board of managing directors. The proxy holders are known to third parties due to their registration with the Trade Register of the Chamber of Commerce.

3.11 Large companies regime

An NV, a BV or a cooperative is subject to the large companies regime if the company, for three consecutive years, meets the following criteria:

- The issued capital of the company, together with the reserves as reflected in the balance sheet, amounts to at least EUR 16 million.
- The company or an affiliated company (i.e., an enterprise in which the company owns at least 50% of the shares) has installed a works council.
- Together, the company and its affiliates employ an average of at least 100 employees in the Netherlands.

Therefore, the NV, BV or cooperative should install a board of supervisory directors or, alternatively, a board consisting of executive and nonexecutive members. A company may voluntarily apply to be subject to the large companies regime. If certain conditions are met, a mitigated large companies regime is available to an NV or BV. If the mitigated regime applies, the board of managing directors will be appointed by the general meeting of shareholders instead of the supervisory board.

An international holding company that restricts its activity exclusively or almost exclusively to the management and financing of group companies and of its and their participations in other legal persons may be exempted from the large companies regime, if the majority of their employees, employed by the company and by group companies, work outside the Netherlands.

3.12 One-tier board

For several years, it has been possible to install one single board of directors for a Dutch NV or BV, which comprises both executive and nonexecutive directors. As opposed to Anglo-American jurisdictions, the Netherlands (as with many other civil law countries in Europe) used to only provide for a two-tier board system, a management board consisting of executive directors and a supervisory board consisting of nonexecutives. Over the past few years, the "formal" differences between the one-tier board and the two-tier board have become less significant, particularly as a result of international discussions on a more active role for supervisors or nonexecutives and on corporate governance in general. In the one-tier board system, the general course of affairs will be the responsibility of the board of directors as a whole (both executives and nonexecutives), resulting in a more timely and direct involvement of the nonexecutives. The executives will be charged with the day-to-day business of the company. The one-tier board system is considered an alternative to the two-tier board system.

3.13 Register of ultimate beneficial owners (UBOs)

All Dutch entities have been required to register their UBOs with the UBO register of the Dutch Chamber of Commerce since 27 March 2022 due to the full implementation of the EU directive on 27 September 2020. For newly formed entities, the registration is a prerequisite to obtaining a registration number from the Chamber of Commerce.

A UBO is considered a person who ultimately owns or controls an entity, by holding more than 25% of the shares, voting rights or profit rights, or effectively controlling the company by other means. A UBO is always an individual — never a legal entity.

If, after having exhausted all possible means, it proves impossible to identify a natural person who ultimately owns or controls the company in scope based on the aforementioned criteria, then all individuals belonging to the board of managing directors of the relevant entity are deemed to be the UBOs.

An NV or a BV is exempt from registering its UBOs with the UBO register of the Dutch Chamber of Commerce if it is listed on a regulated market (stock exchange) that is either a regulated market in the EEA, or subject to equivalent international standards that ensure adequate transparency of ownership information, or is a wholly owned subsidiary of such listed entity.

3.14 Director disqualification

It is possible for a natural person to be suspended from managing a Dutch legal entity or being associated as a supervisory director of the entity for a maximum of five years. The purpose of this act is to combat bankruptcy fraud and prevent managing directors from continuing mala fide activities through existing or new legal entities.

A disqualification will be registered on a special list kept by the Trade Register of the Chamber of Commerce, which will be made public though its website. The list and the legislation governing it are yet to be developed.

4

Doing private M&A deals

4. Doing private M&A deals

This chapter is intended to give an overview of the rules and regulations that may apply to private mergers and acquisitions (M&A) in the Netherlands. It is intended to provide a general level of understanding to professionals — with or without a legal background — who may be unfamiliar with the Dutch M&A market (or certain aspects of it) but do have some level of experience when it comes to selling or acquiring a business.

4.1 General legal framework

4.1.1 Applicable legislation

The main framework governing private M&A transactions is the Dutch Civil Code (Burgerlijk Wetboek) (DCC), of which Book 2 (legal entities) and Book 6 (obligations and contracts) are particularly important. Furthermore, the Works Council Act (Wet op de Ondernemingsraden), the Dutch 2015 Merger Code of the Social and Economic Council (SER-besluit Fusiegedragsregels 2015), the Dutch Investment, Mergers and Acquisitions Security Screening Act (Wet veiligheidstoets investeringen, fusies en overnames) and the Dutch Competition Act (Mededingingswet) apply depending on the size and nature of the proposed transaction.

If the proposed transaction involves a business that operates in the financial sector, the Financial Supervision Act (Wet op het financieel toezicht) (WFT) provides additional rules that need to be considered.

Since 2023, regulatory scrutiny in the Netherlands and across the EU has intensified around foreign direct investment (FDI) screening, anti-money laundering compliance, cybersecurity resilience and the use of artificial intelligence (AI) in financial services. This includes the introduction and stricter enforcement of the Dutch Investment, Mergers and Acquisitions Security Screening Act, the EU's Sixth Anti-Money Laundering Directive, the Digital Operational Resilience Act and the AI Act, which impose new obligations on acquirers of (regulated) entities, financial institutions and fintechs. Parties to a transaction should carefully assess whether the target operates in a regulated or vital infrastructure sector or processes sensitive data, as this may trigger notification, licensing or approval requirements from supervisory authorities, such as the Bureau for Verification and Investments (Bureau Toetsing Investeringen) as part of the Ministry of Economic Affairs and Climate Policy, the Dutch Central Bank (De Nederlandsche Bank (DNB)), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten (AFM)) or the European Central Bank (ECB). Early legal and regulatory due diligence is essential to avoid delays or post-closing compliance risks.

Even though the Netherlands is a civil law jurisdiction, case law from the Supreme Court of the Netherlands (Hoge Raad der Nederlanden) and appellate courts forms an alternate source of Dutch law, particularly when it comes to interpreting agreements (including M&A documentation). The Supreme Court has ruled that agreements should be interpreted based on the parties' intentions. The intentions of the parties to an agreement are determined based on (i) the wording of the agreement, (ii) the meaning that parties could have given to the agreement under specific circumstances and (iii) what parties could have expected from each other based on reasonableness and fairness. Where professional parties are involved, judges will rely more heavily on the literal text as included in agreements to interpret the parties' intentions.

In addition, the Enterprise Chamber of the Amsterdam Court of Appeal (Ondernemingskamer) is competent to decide on corporate disputes by way of provisional relief or other measures during an inquiry proceeding. These decisions will usually encompass an investigation into a company's affairs.

4.2 Acquisition methods

4.2.1 Transfer of shares

Acquisition of shares is the most common way to acquire a company in the Netherlands. The aim is usually to acquire 100% of the shares or at least enough shares to obtain a controlling interest in the target company (>51%).

The transfer of all the shares in a company results in the transfer of the business as a whole, including all its assets and liabilities (whether past, present or future). Therefore, as all liabilities of the target company are inherited, such an acquisition may prove risky and requires extensive due diligence on the business.

Funding the transaction or financial assistance

If the target company (or any of its subsidiaries) is a BV, it is permitted to (i) provide security for the external financing or (ii) grant a loan to the purchaser to fund the acquisition of the target company. If the target company provides financial assistance for the purchaser's benefit, it should be ascertained that it will not act beyond its power and that the act is aligned with the company's corporate interest.

An NV is not allowed to provide security to the purchaser. However, the target company or its subsidiaries are allowed to grant a loan to the purchaser for the acquisition of the shares in its capital. The granting of such a loan is only permitted under certain conditions, e.g., against reasonable market terms (including interest) and only for an amount not exceeding the distributable reserves.

4.2.2 Transfer of assets and liabilities

If a purchaser only wishes to acquire certain assets or liabilities in a company, the purchaser can acquire those assets or liabilities separately. The transfer of each type of asset or liability is subject to different transfer formalities, as in the following examples:

- A transfer of real estate requires a notarial deed to be executed and transfer tax to be paid.
- A debt takeover requires the consent of the creditor concerned.
- A contract takeover requires the other contracting party's cooperation.

In asset and liability transfers, there is a risk that government (or other) approvals, permits or licenses held by the business may not be transferable and will remain with the seller.

4.2.3 Buyout of minority shareholders

If shares are bought from a majority shareholder with the intention of acquiring 100% of the shares, an issue may arise when a minority shareholder does not cooperate with the sale of its shares in the target company. In this event, a legal buyout (also referred to as a squeeze-out) may be helpful to acquire all shares of the target company. Any shareholder holding at least 95% of the issued share capital (including voting rights) of a company may file a legal claim with a court against the other shareholders to demand a transfer of their shares. The same applies if two or more group companies jointly hold 95% of the issued share capital (including voting rights). They can file a legal claim to demand a transfer of the shares to either of them.

4.2.4 Transfer of shares versus assets and liabilities

Below is a schematic overview of the differences between share transfers and transfers of assets and liabilities under Dutch law.

Share transfer	Asset and liability transfer

Transaction • This is carried out as a single transfer of shares (and thus the underlying business). • The purchaser will inherit any past liabilities (through its interest in the target company), and thus extensive due diligence is required.	Transaction • Assets and liabilities are individually transferred. Therefore, most of the time a purchaser can choose the assets and liabilities it wishes to acquire. • Different requirements for the transfer of different assets and liabilities can prolong the process. • The transfer of a contract requires each counterparty's cooperation. If the contract is duly transferred, the purchaser will also inherit any outstanding rights and obligations that have not been previously satisfied.
Tax • Generally, no transfer taxes, stamp duties or VAT is levied. • In principle, the purchaser can carry forward the target company's losses. • No transfer tax is imposed if the target owns real property as part of its business activities. • If a participation exemption (deelnemingsvrijstelling) applies to the target company, capital gains and dividends are not taxed and transaction costs are not deducted. • No depreciation of assets at purchase price or amortization of goodwill is allowed. • The purchaser is liable for the target company's existing tax liabilities.	Tax • The seller incurs taxable capital gains. • The seller may offset capital gains against losses available for carryforward. • The target company's losses cannot be carried forward to the buyer. • A purchaser can depreciate the assets and amortize goodwill from the purchase price (fair market value). • Real property is taxed at 6% (2% for residential property) when transferred. • Tax liabilities are not transferred to the buyer. • Transaction costs are deductible for corporate income tax (CIT) purposes.
Employment • The target company's employees will remain employed post-acquisition.	Employment • Employees dedicated to the business will be transferred along with the business in the case of a transfer of undertaking. • All rights and obligations following the employment of the employees involved will be transferred to the purchaser by operation of law (exceptions for pensions apply), without requiring the individual employees' consent. Amending the terms and conditions of employment as part of a transfer of undertaking is in principle not allowed. The seller and the purchaser will for at least one year after the transfer be jointly and severally responsible (liable) for

	the performance of these rights and obligations if these obligations had already come to existence before the transfer date. • Employees enjoy special protection against dismissal in the event of a business transfer.
Regulatory • Permits, approvals and licenses will in principle remain in place (subject to change of control or termination rights).	Regulatory • Permits, approvals and licenses most likely require refiling with the respective (government) agencies.

4.3 Pre-signing aspects

4.3.1 Confidentiality

In the precontractual stage, confidentiality is key. It is possible to include a confidentiality clause in a letter of intent (LOI) (refer to Section 4.3.3 for information on the LOI). More often, and especially in larger transactions, concluding a separate nondisclosure agreement (NDA) is the first step. The NDA will contain provisions that prevent parties from disclosing any information they obtain from the other party in the context of the negotiations, including all information about the target company that will be disclosed to the purchaser during due diligence. The NDA may also govern the way both parties make certain information public during the transaction process. By breaching the NDA, a party will be subject to injunctive action, compensatory damages or both, depending on what the parties have agreed to in the NDA. Some NDAs contain a penalty clause, which, if triggered, requires the breaching party to pay a predetermined punitive sum to the other party.

4.3.2 Precontractual obligations

While negotiating the acquisition of a company, parties must be aware of the principle of precontractual good faith. Under Dutch law, the notion of contractual freedom stands for the parties' ability to enter into a contractual relationship with whomever they choose and to terminate negotiations at any stage. However, each party must consider the other party's reasonable interests while enjoying this contractual freedom. This could mean that a party, under certain circumstances, is not free to terminate ongoing negotiations without being liable for damages incurred by the other party. In extreme cases, damages may even include lost profits. Whether there is reasonable ground for liability will depend on all relevant facts and circumstances of the matter at hand, which will be determined before a court. These circumstances include the actions of all parties involved, their reasonable expectations and their level of professionalism (including that of their advisers).

As most parties wish to eliminate any uncertainties upfront, they often opt to sign a pre-acquisition agreement, such as an LOI, to govern the rights and obligations during the negotiation phase. Usually, such an agreement will include specific provisions stipulating that parties are entitled to terminate the negotiations at any stage until a definitive agreement governing the transaction has been executed.

4.3.3 Letter of intent

An LOI (which is also referred to as heads of terms, a memorandum of undertaking or a term sheet) is an agreement in which the parties define their legal relationship during the precontractual stage. The LOI contains the parties' intentions and sets out the proposed transaction's general framework before due diligence is conducted. Typically, the purchaser prepares the initial draft, after which the parties

will negotiate the specifics. The LOI's contents will largely depend on the proposed transaction. Due to the principle of contractual freedom under Dutch law, parties can address a wide array of topics in the LOI. It usually contains the following items: the (nature and range of the) consideration, the scope and timing of the due diligence process, conditions precedent or specific provisions that parties require to be included in the definitive agreement, confidentiality, transaction time frame and the exclusion of certain liabilities, e.g., as a result of a negotiation breakoff. The LOI is an agreement in itself and thus legally binding on the parties to it. Noncompliance with the LOI constitutes a contractual breach and entitles the other contracting party to damages as stipulated in it.

4.3.4 Exclusivity agreements

To secure the negotiations and limit competition for a certain period, it is common for a purchaser to demand a degree of exclusivity from a selling party. Parties could agree that the seller will terminate any existing negotiations, will not enter into any negotiations with other interested parties or will seek approval from the prospective purchaser before commencing negotiations with another party. Usually, these exclusivity arrangements will be included in the LOI. A breach of the exclusivity arrangement will usually entitle the nonbreaching party to damages. Under rare circumstances, a court could also grant an injunction to force parties to continue negotiations. Alternatively, to prevent lengthy proceedings, setting a break fee is also possible.

4.3.5 Due diligence and fairly disclosed principle

A due diligence investigation's main goal is to carry out a risk analysis on the target company. By means of a due diligence investigation, the purchaser can learn more about, among others, the target company's background, determine the chances of a successful transaction and determine whether the proposed purchase price is accurate. The extent of the due diligence procedure is usually described in the LOI. The timing of due diligence heavily depends on the competitiveness of the sale process and whether requests for information are processed by the target company's management in a timely manner.

In the Netherlands, it is common practice for all relevant data to be made accessible through a secure virtual data room. After the due diligence investigation, the contents of the data room are typically archived digitally via encrypted cloud storage or secure download links, rather than on physical media. These archived materials are then referenced in the definitive sale and purchase agreement. It is also common practice for all documents made available in the data room to be considered (fairly) disclosed. In the definitive sale and purchase agreement, parties usually agree that the seller will not be liable for damages resulting from a breach of a representation or warranty if and to the extent that the relevant fact, circumstance or matter giving rise to the breach has been (fairly) disclosed. This concept is quite different from the use of an extensive disclosure letter and disclosure schedules, as is more common in the United States, for example.

4.3.6 Exchange of competitively sensitive information and gun-jumping issues

The exchange of competitively sensitive information between competitors may violate the cartel prohibition under Dutch and EU competition law. Whether this is the case will be assessed by the Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt (ACM)) in accordance with the guidelines of the European Commission on horizontal cooperation agreements. To avoid the risk of consummating a concentration before the ACM has approved it (gun jumping), the parties should ensure that they continue to act as competitors until the proposed transaction is completed. As a rule, the parties should, prior to completion, act as independent entities and not make any joint business decisions or base independent business decisions on the other party's competitively sensitive information.

4.3.7 Notification and consultation requirements

4.3.7.1 Works council

The Dutch Works Councils Act generally requires every Dutch company with more than 50 employees to set up and maintain a works council (ondernemingsraad). A works council is a group of employees that represents the employees' interests within a company.

If the control over a company is intended to be transferred, the works council must be consulted regarding the proposed board resolution to transfer control. The works council's advice has to be requested in writing and at a time when it can still have a substantial influence on the contemplated board resolution to enter into the proposed transaction. If a transfer of control is under preparation at the time of one of the regular consultative meetings, the works council must be informed of this during this consultative meeting. This is becoming increasingly important due to recent case law. The Enterprise Chamber of the Amsterdam Court of Appeal has rendered that even the mere decision to appoint advisers for a potential divestment (such as the appointment of a corporate finance adviser or investment bank to investigate the appetite in the market) may be subject to works council consultation under some circumstances.

The works council's advice can be included as a condition precedent in the share purchase agreement (SPA) or the asset purchase agreement (APA). However, parties more often seek and obtain the works council's advice before the SPA or the APA is executed. In that case, a so-called signing protocol is signed, freezing the text of the SPA as much as possible. If the proposed board resolution is not aligned with the works council's advice, such as when parties are not willing to meet all conditions imposed by the works council in its advice, the management board will have to postpone the execution of its resolution and the proposed transaction for one month. During this month, the works council can lodge an appeal against the proposed board resolution at the Enterprise Chamber of the Amsterdam Court of Appeal. The works council can waive this one-month waiting period. In theory, a transaction can be effectuated even if the works council has initially rendered negative advice or has decided not to appeal. However, in practice, it is important for the business and for flexibility in the decision-making processes going forward to have the works council (positively) on board, and to handle the works council consultation process carefully. From experience, failure to comply with the obligation to, in a timely manner, request the works council to grant its advice often results in substantial delays, unwanted media exposure, unrest among employees and (where applicable) trade unions, and in the worst-case scenario, court proceedings resulting in the obligation to reverse the adopted decision, including all implementation measures.

Please refer to Section 13.5 (Employee representation) for more information on works councils and the Dutch Works Councils Act.

4.3.7.2 Trade unions

If the proposed transaction or merger results in (i) a third party acquiring control over the target company or business and (ii) one of the companies or businesses involved employing 50 or more employees in the Netherlands, the seller and the purchaser are required to inform any trade unions involved in the preparations for the proposed transaction before the parties reach a definitive agreement. Trade unions are involved if a collective bargaining agreement applies or one or more employees of the target company or group are members of a trade union, or both. The parties to the proposed transaction must provide the trade unions with background information on the proposed transaction, the purchaser's intention and policy toward the employees going forward, as well as information on any anticipated social, economic or legal consequences of the proposed transaction. The relevant trade unions must be given the opportunity to express their views on the proposed merger or transaction to the extent that it might affect the employees' interests.

4.3.7.3 Dutch Social and Economic Council

At the same time the trade unions are informed, the Dutch Social and Economic Council (Sociaal Economische Raad) must be notified of a planned merger in accordance with the Dutch 2015 Merger Code of the Social and Economic Council. It is the Social and Economic Council's responsibility to ensure that any relevant trade unions are duly informed of a planned merger or transaction.

Note that under this Merger Code, only a duty to inform is imposed on the respective parties. The decision taken by the parties to proceed with the proposed transaction does not depend on the trade unions' or the Social Economic Council's approval.

4.4 Key aspects of the acquisition agreement

The definitive acquisition agreement's composition will be set out in detail in an SPA or an APA. Clauses commonly included in an SPA or an APA governed by Dutch law will be discussed in the following sections.

4.4.1 Purchase price

The SPA or the APA will stipulate the purchase price for either the shares or the specific assets or liabilities. There are multiple ways in which the purchase price can be calculated, most commonly the following: (i) a purchase price mechanism whereby the purchase price is estimated on the date of the transfer with a settlement mechanism based on final accounts to determine the final purchase price in the following months; and (ii) a locked-box mechanism where the purchase price is fixed and based on accounts as per a date prior to the proposed transaction's completion. Examples of common purchase price adjustment clauses are cash, debt-free and working capital adjustment clauses, capex clauses, net asset value clauses and earn-out clauses.

4.4.2 Conditions precedent

The conditions precedent generally set out all the conditions that need to be fulfilled before the parties are required to effect the proposed transaction's completion. Conditions often seen and used include the works council's advice, the approval of any relevant FDI, competition or financial authorities and the ability to raise appropriate funding. A material adverse change occurring between the signing of the SPA or the APA and the proposed transaction's completion is not commonly seen in Dutch transactions, though this depends on the deal's circumstances and the sellers' leverage. Sometimes, a purchaser requires that certain counterparties under material agreements containing a change of control clause waive the right to terminate the material agreement as a result of the proposed transaction before being required to continue to completion.

(a) Approval from relevant competition authorities

When acquiring a business that generates turnover in the Netherlands, Dutch and EU competition law may come into play, particularly the requirement to obtain prior merger control approval from the ACM or the European Commission. Mergers, acquisitions and the creation of certain types of joint ventures that bring about a change of control (concentration) may be subject to merger control regulations. Concentrations that meet Dutch notification thresholds are not allowed to be consummated until the ACM has been notified of the intention to conduct the proposed transaction and approves. If the turnovers of the parties to a concentration meet the EU merger control thresholds, approval must be obtained from the European Commission under the "one-stop shop" principle rather than at the national level in each EU country where the notification threshold is met.

Filing a concentration with the ACM is mandatory when the worldwide annual turnover of the companies involved exceeds specific thresholds. We refer to Sections 10.2.3 and 10.2.4 for more information on the thresholds in the Netherlands and potential fines for failing to notify the ACM of a proposed concentration or the consummation of a notifiable concentration.

If a transaction does not raise substantive competition concerns, the notification process with the ACM can be completed within four weeks following the notification, but this can be longer if the ACM requires more information for its assessment. If at the end of the first review period the ACM concludes that a concentration might significantly impede competition, it will decide that an additional investigation phase is necessary. This means that a new (more detailed) notification would need to be submitted, for which the formal review period is another 13 weeks. In reality, this phase two review typically takes longer.

In addition to merger control notifications, a transaction may also be notifiable under FDI legislation. This legislation applies to mergers, acquisitions or other investments that may pose a risk to national security, including those involving critical infrastructure, such as electricity, gas and telecommunications. If an investment meets the criteria set out in sector-specific screening regimes relating to electricity, gas or telecommunications, or falls under the broader investment screening regime — namely, the Dutch Investment, Mergers and Acquisitions Security Screening Act — approval must be obtained from the Dutch Bureau for Verification and Investments. For more information, please refer to Section 10.3.

(b) Approval from financial authorities

For transactions involving companies active in the financial sector, there may be an obligation to notify or obtain the approval from the AFM or the DNB prior to completion.

For example, the AFM's approval may be required if a new policymaker (beleidsbepaler) will be appointed. A policymaker can be a statutory director but can also be any other person that (co-) determines the company's policy.

The DNB's prior approval must be obtained if by means of the proposed transaction, a 10% equity interest or controlling interest will be obtained in a Dutch investment firm, pension institution, pension fund, insurance company or any other type of financial institution. If the proposed transaction involves a 10% interest in a bank, the ECB's prior approval must be sought.

(c) Acquiring the necessary funding

There are many ways to finance a transaction, although external funding is often required to acquire the necessary funds. Especially when the proposed transaction depends on getting a loan from a bank, parent company, subsidiary or investor, the acquisition of funds might be a condition precedent. The nature and scope of the loan will largely depend on the proposed transaction, which will only become evident after concluding the SPA or the APA. However, the deal cannot be executed without the availability of the necessary monetary means, and thus the condition precedent will be that the purchaser will only be required to effect the proposed transaction's completion when it has secured the appropriate funds.

(d) Material adverse change

As stated above, a material adverse change (MAC) clause is fairly uncommon in the Dutch M&A market, although this very much depends on the deal dynamics. A MAC clause allocates the risks if there is a gap between the signing of the SPA or the APA and the completion of the proposed transaction. It also provides the purchaser the option to walk away in the event of a fundamental adverse change in circumstances. What exactly will be constituted as an adverse change will largely depend on the specific circumstances and the scope of the proposed transaction. Nevertheless, a MAC is generally described as an "effect, event, development or change that, individually or in the aggregate, is materially adverse to the business, results of operations or financial condition of the company and its subsidiaries, taken as a whole," whereby the other party cannot reasonably be expected to effect completion. Taking this as a starting point, parties can negotiate certain excluded events that will not constitute a material adverse change. Generally, market risks are allocated to the

purchaser, and risks that disproportionately harm the target company are allocated to the seller (i.e., a company-specific MAC clause).

4.4.3 Representations and warranties

The SPA or APA typically contains the parties' representations and warranties for the benefit of one another. These representations and warranties allocate risks between parties and, subject to customary limitations of the seller's liability (including caps and baskets), will serve as grounds for a claim by the purchaser in the event of a breach. The terms "representation" and "warranty" originate from the Anglo-Saxon practices where a breach of a "representation" by either party may in certain cases entitle the other party to different claims compared to a breach of a "warranty." In the Netherlands, this is not the case, and both terms are basically interchangeable. A breach of a representation or warranty may give a purchaser, unless otherwise agreed upon in the SPA or the APA, grounds to claim damages or specific performance or to terminate the agreement. Often, parties exclude the latter two and agree that a claim for damages will be the other party's only remedy in the event of a breach.

The seller's representations and warranties are often much more extensive because they disclose material facts about the target company, the business, the shares, or the assets and liabilities being sold. The representations and warranties are often linked with the due diligence process. If the due diligence process has given the purchaser a large insight into the business, the seller can argue that the purchaser was able to determine that certain representations were true, and that, therefore, there is no need to provide certain warranties, or that the warranties should be limited to a short period.

4.4.4 Indemnities

Generally, a seller seeks to enjoy the full benefit of the purchase price, with minimal future liabilities related to the business or the asset that was sold. The purchaser, by contrast, does not want to be held liable for issues that arise from inaccuracies in how the business was conducted or the asset was used prior to completion. If the purchaser has identified a possible substantial risk to materialize as a cost for the company after completion, though it may not be possible to know for sure if, when and at what cost the risk will materialize, the purchaser may ask for an indemnity from the seller. An indemnity is a statement by the seller that it will compensate the purchaser for any costs that arise as a result of certain issues identified in due diligence.

Indemnity clauses play an important role in managing the risks associated with transactions by protecting against the negative effects of an act, a contractual default or another party's negligence. An ongoing court procedure is a common example of a situation where it may be reasonable for the seller to offer the purchaser a specific indemnity for the cost and outcome of the proceedings. Other examples of circumstances that may call for an indemnity are identified environmental or tax risks where there is a certain likelihood that they will result in costs for the company at some point after completion. It is fairly common (especially in locked-box deals) to include a tax indemnity even when no specific risks have been identified during due diligence.

As with "representations" and "warranties," the use of "indemnities" comes from Anglo-Saxon practices. While the term "indemnity" (vrijwaring) may refer to a specific legal concept under UK or US law, this is not the case in the Netherlands and there is no clear legal framework. The effect of an "indemnity" depends on the wording included in the relevant provision and the meaning that the contracting parties attribute to it. As mentioned above, indemnities are mostly used to cover for potential liabilities that have been identified and are to some extent known, whereas representations and warranties cover for unidentified/unknown liabilities.

4.4.5 Restrictive covenants

Pre-completion covenants

A purchaser would want to protect the business that it has agreed to acquire in the period between signing and completion. Therefore, it is common to include "pre-completion covenants" or "interim restrictions" in the SPA or the APA, whereby the seller procures that the business will refrain from undertaking certain actions without the purchaser's consent. Depending on the purchaser's leverage during negotiations, the list of restrictions may vary in length. However, the list would usually include, at a minimum, restrictions on (i) lending or borrowing money, (ii) changing the company's share capital, (iii) amending the constitutional documents, (iv) incurring capital expenditures exceeding a certain materiality threshold, (v) commencing or settling any legal proceedings, and (vi) materially amending the terms of employment or hiring or dismissing key employees.

Post-completion covenants

The parties may also agree to certain obligations and restrictions that will apply in the period following completion. Usually, noncompete and nonsolicitation restrictions are agreed between the parties, the scope of which will depend on the nature of the transaction and the parties involved, e.g., whether the seller is a financial sponsor, whether the seller is an entrepreneur with specific knowledge of the acquired business, etc. In this respect, it should be noted that Dutch and EU competition laws provide for rules that determine the boundaries of noncompete and nonsolicitation restrictions. Therefore, these should be carefully considered when negotiating this type of covenant. Other post-completion covenants may include the seller's access to the acquired business's information, the acquired business's (restricted) use of the seller's names and trademarks, and the manner in which employees and employee benefit matters are dealt with. The latter is typically more important in the event of a transfer of assets and liabilities compared to a transfer of shares.

4.4.6 Dispute settlement and governing law

When the target company is incorporated under Dutch law, the sale and purchase agreement typically contains a choice-of-law clause that provides Dutch law as an option. In addition, the sale and purchase agreement typically contains a forum selection clause exclusively selecting a Dutch court to settle disputes.

Alternatively, the dispute settlement clause could also refer parties to an alternative way of dispute resolution, such as mediation or arbitration. The latter's benefit is that such a dispute may be behind closed doors and conducted in English.

The Netherlands Commercial Court (NCC) has been fully operational since 2019 and has established itself as a preferred forum for resolving complex civil and commercial disputes with an international dimension. The NCC operates in English, uses digital case management and is staffed by judges with specialized expertise in international commercial law. Its pragmatic and efficient approach to dispute resolution makes it an attractive choice for parties involved in Dutch law-governed transactions, particularly where confidentiality, speed and international enforceability are key considerations.

4.5 Warranty and indemnity insurance

4.5.1 Warranty and indemnity insurance

A warranty and indemnity (W&I) insurance protects against liabilities arising from a breach of a warranty or from a claim under an indemnity. The purpose of W&I insurance is to transfer the unknown risks that arise in relation to representations, warranties and (tax) indemnities to an insurer. The use of W&I insurance is now well established and considered standard market practice in Dutch private M&A transactions, particularly in deals involving private equity sellers.

A buy-side W&I insurance is the most commonly used form. It protects the purchaser against losses resulting from a breach of a seller's warranty or a claim under an indemnity, as included in the SPA. The policy typically covers unknown risks existing prior to signing (or closing, if applicable). In the event of a claim, the purchaser can claim directly against the insurer, and the insured amount is paid

directly to the purchaser. The "sell-side flip" concept became increasingly common in competitive auctions, especially in Europe and the Netherlands. It describes a process in which the seller initiates a buy-side W&I insurance policy. During the process, responsibility shifts ("flips") from the seller to the buyer, who ultimately becomes the policyholder and formally takes out the insurance.

The purchaser generally bears the same burden of proof toward the insurer as it would have toward the seller.

A sell-side W&I insurance protects the seller against claims brought by the purchaser under the warranties and indemnities in the SPA. If a claim arises, the seller pays the purchaser and then seeks reimbursement from the insurer. While less common than buy-side policies, sell-side W&I insurance may be used where the seller wants to retain control over the claims process. Coverage is subject to standard underwriting requirements, including a retention, de minimis threshold and sufficient due diligence.

Usually, an insurer will require (i) a monetary retention that remains uninsured before the policy starts, (ii) a de minimis threshold aligned with the claim hurdle as included in the sale and purchase agreement, (iii) satisfactory due diligence in the relevant areas of coverage, and (iv) bring-down statements from the relevant parties and, often, their representatives that formed part of their deal teams at signing, closing or both.

It is important to note that insurers may exclude coverage for known risks, areas with limited due diligence or specific high-risk matters, such as environmental risks. Tax indemnities are often included, even in the absence of identified risks, particularly in locked-box structures. The scope of coverage and exclusions is subject to negotiation and underwriting.

4.6 Differences between a share transfer and an asset transfer

4.6.1 Share transfer

(a) Transfer of employees

In the case of a share purchase, all rights, duties and liabilities owed by, or to, the target company's employees continue to be owed by, or to, the target company. In this respect, the purchaser "inherits" all those rights, duties and liabilities. If the target company's business is integrated with the purchaser's business post-acquisition, this is likely to constitute a transfer of assets or a business transfer, and the considerations below will be relevant:

(b) Legal protection of employees after the transaction

Before, during and after a transaction, the employees of a company that is subject to the transaction enjoy a high degree of protection against dismissal. However, a dismissal due to economic, technical or organizational reasons not relating to the transaction is still possible.

(c) Related tax regime

Stamp duty

The Dutch tax system does not require stamp duties or similar documentary taxes or charges. As such, the transfer of shares in a Dutch company is not subject to stamp duties (or other similar taxes or charges relating to any documents, registration of documents or formalities that have anything to do with documents).

Corporate income tax

For CIT purposes, acquired shares are generally carried in the fiscal books at cost price. Intercompany transactions should be carried out on an arm's-length basis. If the shares qualify for the application of the Dutch participation exemption regime, all acquisition costs in relation to the acquired

shareholding will not be tax-deductible and should be added to the fiscal cost price of the participation. If a Dutch resident company acquires the full legal and beneficial ownership of at least 95% of the nominal paid-up share capital of another Dutch resident company, which represents at least 95% of the statutory voting rights and gives rise to at least 95% of the profits and at least 95% of that company's equity, the companies can, subject to certain conditions, form a fiscal unity and thus be treated as one taxpayer for Dutch CIT purposes.

Please refer to Chapter 17 for more information on Dutch CIT.

Real estate transfer tax

The acquisition of at least one-third of the outstanding shares (or a similar financial interest) in a company owning real estate may trigger the levy of Dutch real estate transfer tax (RETT) of 10.4%. A company qualifies as a "real estate company" if the following conditions are met at the level of the company in which the shares are transferred (on a consolidated basis):

(i) The company's assets consist (or have consisted in the preceding year) of the following:

  (A) At least 50% real estate (including rights that qualify as real estate, e.g., economic ownership, financial lease)

  (B) At least 30% real estate within the Netherlands

(ii) The main purpose (at least 70%) of the company is the acquisition, sale and/or exploitation of real estate owned by the company, i.e., the real estate is not used as part of the business activities conducted by the company.

Some specific RETT exemptions apply. For example, a RETT exemption could apply within the context of an internal reorganization, merger or demerger.

VAT

It is the basic principle that the passive acquisition, holding and sale of shares do not constitute economic activities that are within the scope of VAT. In such cases, the sale of shares is not subject to VAT. The input VAT on costs relating to the acquisition and sale of shares (such as advisory and legal services) is in principle not deductible by the seller.

Shareholding activities fall within the scope of VAT if the shareholding activities by the shareholder are accompanied by VAT-able activities, e.g., management or administrative services for consideration. In such cases, the sale of shares is subject to VAT but is VAT-exempt. The input VAT on costs relating to the sale of these shares (such as advisory and legal services) is in principle not deductible by the seller. The input VAT on costs relating to the acquisition of these shares (such as advisory and legal services) is in principle deductible on a pro rata basis.

The transactions relating to shares are also within the scope of VAT if they are carried out as part of a commercial share-dealing activity, such as the activities of share brokers. In such cases, the sale of shares is subject to VAT but is VAT-exempt. The input VAT on costs relating to the acquisition and sale of these shares (such as advisory and legal services) is in principle not deductible by the seller. However, the input VAT on costs is deductible by the seller, if the purchaser is established outside the EU.

If the disposal of shares is equivalent to the transfer of a totality of assets or part of an undertaking (transfer of a going concern (TOGC)), the sale of shares is not subject to VAT. The input VAT on costs relating to the acquisition and sale of the shares (such as advisory and legal services) is in principle recoverable by the seller on a pro rata basis.

4.6.2 Transfer of assets and liabilities

(a) Transfer of employees

If the transfer of certain assets and liabilities qualifies as the transfer of an undertaking (overgang van onderneming) under Dutch law, the employees affiliated with the assets and liabilities will automatically be transferred with those assets and liabilities to the purchaser. A transfer of affiliated employees implies that all rights and obligations arising from the relevant employment contracts will be transferred to the purchaser. The purchaser has an obligation to offer the employees a benefits package identical to the package that the employees had with the seller (as their former employer). It is not possible to exclude all, or some, employees affiliated with the assets and liabilities in an asset transaction.

Employees of the seller's business have the right to refuse to be transferred to the purchaser, but their employment will then terminate by operation of law, effective on the transfer date, and they will not be entitled to severance compensation if they exercise this right. Consequently, they will have no remedy against either the seller or the purchaser. An exception to this rule applies if the transfer involves or would involve a substantial change in working conditions that would be materially detrimental to the transferring employees. Assuming employees do not exercise their right to object to the transfer, the purchaser takes the seller's place as the employer and assumes liability for the transferring employees and their contractual rights, provided that for debts and obligations accrued but unpaid before the transfer date, the seller and the purchaser are jointly liable for one year. It is not possible for the seller and purchaser to agree upon deviations in employment terms. However, under certain circumstances, altering an employment contract is allowed with the employee's explicit consent.

(b) Legal protection of employees after the transaction

Before, during and after a transaction, the employees of a company that is subject to the transaction enjoy a high degree of protection against dismissal. More specifically, Dutch law prohibits the seller and purchaser from dismissing any employee as a direct result of the transaction. However, a dismissal due to economic, technical or organizational reasons not relating to the transaction is still possible.

(c) Related tax regime

CIT

The basis for the amortization or depreciation of acquired assets is the purchase price (fair market value). Acquired goodwill can be amortized for tax purposes at a maximum rate of 10% per annum. Other business assets can be depreciated at a maximum rate of 20% per annum.

Depreciation on real estate is allowed for tax purposes, but real estate cannot be depreciated to an amount lower than (100% of) the Waardering Onroerende Zaken (WOZ) value. The WOZ value of a building is an estimation of the fair market value and is determined by the Dutch municipal authorities on an annual basis.

In an asset deal, any existing tax losses available for loss carryforward remain with the transferring entity. Please see Section 17.10 for an overview of the loss compensation rules.

RETT

The acquisition of Dutch immovable property, including the acquisition of the beneficial ownership in real estate, is in principle subject to RETT. The RETT is calculated at fair market value, or if higher, the property's purchase price. The RETT is due by the purchaser, but the parties could agree on who will (economically) bear it.

The transfer of building sites and new immovable property on or ultimately two years after the first use is subject to VAT by law. As a main rule, an exemption from the RETT is available if the property's transfer is subject to VAT by law.

Some specific RETT exemptions apply. For example, a RETT exemption could apply within the context of an internal reorganization, merger or demerger.

VAT

As a rule, all supplies of goods and services are subject to VAT. Dutch VAT is due if transactions are (deemed to) take place in the Netherlands. A transfer of assets and liabilities will in principle be regarded as several distinct supplies of goods (and services), each with its own Dutch VAT treatment. However, if a transfer of assets and liabilities qualifies as a TOGC, the transfer will not be considered a supply of goods and services and will, therefore, be outside the scope for Dutch VAT purposes. A transfer of assets and liabilities could qualify as a TOGC under the following circumstances:

- The transferred assets and liabilities constitute a business or a separate part of the business.
- The assets consist of tangible elements and intangible elements.
- The business or part of that business is capable of carrying out an economic activity.
- The transferee intends to continue the business or a separate part of the business.

5

Reporting, auditing and publication requirements

5. Reporting, auditing and publication requirements

5.1 Financial statements

The annual accounts of a Dutch NV, BV or cooperative consist of the balance sheet, the profit and loss account and explanatory notes, and the consolidated annual accounts, if applicable. Cooperatives should substitute the profit and loss account for a statement of operating income and expenses.

Each year, within five months after the end of the financial year of the NV or BV, and within six months after the end of the financial year of the cooperative, the board of managing directors prepares annual accounts. All managing directors and supervisory directors (if any) must sign the annual accounts. If one or more of their signatures are missing, this must be stated, giving the reason for it. The annual accounts are submitted to the general meeting of shareholders or members for adoption. For BVs, if all shareholders are also managing directors, the annual accounts can be adopted by having the managing directors (and the supervisory directors, if any) sign the accounts. In special circumstances, the general meeting of shareholders or members may provide for an extension of four months for the cooperative and five months for the NV and BV. The adoption should take place within one month (cooperative) or two months (NV and BV) after preparation. If the company is subject to the large companies regime, the annual accounts are also to be submitted to the company's works council. Depending on the size of the business, the annual accounts must be accompanied by a director's report and an auditor's report.

The board of managing directors must file the adopted annual accounts with the Trade Register of the Chamber of Commerce within eight days after the adoption by the general meeting of shareholders or members. If the annual accounts are not adopted within one month (cooperative) or two months (NV and BV) after the period permitted by law, the board of managing directors should immediately file the draft annual accounts with the Trade Register of the Chamber of Commerce with a reference to their draft status.

If a cooperative has not installed a supervisory board and no auditor's report is submitted to the general meeting of members, an audit committee consisting of at least two persons (none of whom can be a managing director) has to be appointed annually by the general meeting of members, and this committee will report on the annual financial documents provided by the board of managing directors.

5.2 Director's report

The board of managing directors must draw up the director's report. Micro companies and small companies (as defined in Section 5.7) are exempt from this obligation. The report must give a true and fair view of the position on the balance sheet date and of the course of the business during the financial year.

The director's report contains information on expected future business, particularly (unless this conflicts with legitimate interests) on investments, financing, personnel, the development of turnover and profitability, as well as information about research and development (R&D) activities.

Pursuant to the Dutch Corporate Governance Code, listed NVs are expected to devote a chapter in the annual report to the broad outline of their corporate governance structure, compliance with the Corporate Governance Code and the non-application of any best practice provisions.

The effect on the projections of unusual events, which need not be reflected in the annual accounts, must be disclosed. The director's report should not conflict with the annual accounts.

5.3 Accounting principles

The annual accounts, prepared in accordance with generally accepted accounting principles, must provide such a view enabling a sound judgment to be formed on the assets, liabilities and results of the company and, insofar as the nature of annual accounts permits, of its solvency and liquidity. If justified by the international structure of its group, the annual accounts may be prepared in accordance with generally accepted accounting principles in any of the member states of the EU. If the company makes use of such option, it should make a statement in the explanatory notes of its annual accounts.

Micro companies and small companies (as defined in Section 5.7) are allowed to use the valuation principles that are used in their corporate tax filings when preparing their statutory annual accounts (commerciële jaarrekening). This is to prevent the preparation of two different sets of annual accounts.

5.4 Other information

The annual accounts prepared by the board of managing directors may include: an auditor's report or information as to the reason for its absence; proposed allocation of profits, including the determination of amounts available for dividends or the treatment of losses for the financial year; a summary of profit-sharing certificates or similar rights; important events after the balance sheet date that have material financial consequences; and a list of branches and the countries where those branches are located.

Furthermore, Dutch law contains detailed requirements for the composition of the balance sheet, as well as the profit and loss statement, the explanatory notes, the valuation principles and determination of the results.

5.5 Language

The annual accounts and the director's report must be written in Dutch, unless the general meeting has resolved to use another language. The annual accounts and director's report must be translated into Dutch, French, German or English prior to filing with the Trade Register of the Chamber of Commerce.

5.6 Currency

The sums quoted in the annual accounts must be expressed in euro. However, if justified by the activity of the company or the international structure of its group, its annual accounts may be prepared in another foreign currency.

5.7 Classification

The minimum reporting, auditing and publication requirements depend on the size of the company. It may suffice for small and medium-sized companies to publish an abridged balance sheet, profit and loss accounts, and explanatory notes. A micro company will only have to file a balance sheet and does not need to publish its profit and loss accounts, explanatory notes and other information. Small companies do not need to publish their profit and loss accounts, and medium-sized companies must publish an abridged version of their profit and loss account. Micro, small, medium-sized and group companies whose accounts are included in the consolidated accounts of another company are subject to less stringent reporting, auditing and publication requirements. A company qualifies as micro, small, medium-sized or large if it meets certain criteria.

Financial information on subsidiaries is used to determine the size of a company as if the company were required to consolidate, unless it is exempt from group consolidation requirements. A company

will not be reclassified unless and until it meets two or three of the criteria of another category for two consecutive years:

	Micro	Small	Medium	Large
Total value of assets	≤ EUR 450,000	≤ EUR 7.5 million	≤ EUR 25 million	> EUR 25 million
Net turnover	≤ EUR 900,000	≤ EUR 15 million	≤ EUR 50 million	> EUR 50 million
Number of employees	< 10	< 50	< 250	≥ 250

5.8 Exemption for group companies

Subject to strict requirements, a group company may be exempt from meeting its reporting, auditing and publication requirements. The exempt group company has the right to prepare an abridged version, consisting solely of its individual annual accounts; it does not need to prepare a director's report, nor does it have to comply with certain auditing and publication requirements. To be exempt, the following circumstances must exist:

- The exempt company's financial information has been consolidated by another company whose accounts have been drawn up in accordance with the Seventh EC Directive.
- The consolidating company has declared in writing that it assumes joint and several liability for any obligations arising from legal acts by the exempted company.
- The shareholders or members have declared in writing their agreement to derogate from the statutory requirements after the commencement of the financial year and before the adoption of the annual accounts.
- The consolidated accounts, the director's report and the auditor's report have been drawn up in or translated into Dutch, French, German or English.
- The declarations and documents are to be filed for deposit with the Trade Register of the Chamber of Commerce.

5.9 Consolidated accounts

The company, which solely or jointly with another company heads its group, must include consolidated annual accounts in the notes to its annual accounts, showing its own financial information and that of its subsidiaries in the group and other group companies.

The obligation to consolidate will not apply to information concerning the following:

- Group companies whose combined significance is not material to the whole
- Group companies whose required information can only be obtained or estimated at disproportionate expense or with great delay
- Group companies whose interest is only held for disposal

Consolidation may be omitted under the following circumstances:

- On consolidation, the company qualifies as a small company.

- No company to be involved in the consolidation has securities in issue officially listed on an exchange.
- The company has not been notified in writing by at least 1/10 of its members or by holders of at least 1/10 of its issued capital of an objection to that within six months from the commencement of its financial year.

A part of a group may be excluded from the consolidation if the following conditions are met:

- The company has not been notified in writing by at least 1/10 of its members or by holders of at least 1/10 of its issued capital of an objection to that within six months from the commencement of its financial year.
- The financial information that the company should consolidate has been included in the consolidated annual accounts of a larger entity.
- The consolidated accounts and the director's report are prepared in accordance with the Seventh EC Directive or similar principles.
- The consolidated accounts, the director's report and the auditor's reports are drawn up in or translated into Dutch, French, German or English and submitted to the Trade Register of the Chamber of Commerce.

5.10 Auditing requirements

Medium-sized and large companies are required to have their annual accounts audited. Annual accounts of group companies that do not need to be drawn up in accordance with the legal requirements due to group exemptions or consolidation do not need to be audited. The external auditor must examine whether the annual accounts provide the requisite legal disclosures and whether the annual accounts, the director's report and other information comply with the statutory requirements. It should also be verified that the director's report does not conflict with the annual accounts. The auditor must be a Dutch certified public accountant or a foreign auditor licensed to practice in the Netherlands, and is to be appointed by the general meeting of members or shareholders. If the shareholders or members fail to do so, the board of supervisory directors or managing directors may be authorized to appoint the auditor.

6

Corporate Governance Code

6. Corporate Governance Code

The Dutch Corporate Governance Code applies to: (i) Dutch companies with shares (or depositary receipts of shares) that are admitted to trading on a regulated market or any comparable system; and (ii) Dutch companies with a balance sheet value of more than EUR 500 million and whose shares (or depositary receipts of shares) are admitted to trading on a multilateral trading facility or any comparable system. The companies under (i) and (ii) are referred to in this chapter as "**Listed Companies**".

The Dutch Corporate Governance Code was first adopted in 2003 and was amended in 2008 and 2016. On 20 December 2022, the Corporate Governance Code Monitoring Commission published a revised Dutch Corporate Governance Code 2022 ("**Code**"), which replaced the Dutch Corporate Governance Code 2016. The Code is legally enshrined in the DCC as per 12 October 2023.

The Code sets out general principles, which are considered to reflect widespread views on good corporate governance. These principles are followed by and supplemented with specific best practice provisions. Together, the principles and best practice provisions aim to define responsibilities for long-term value creation, risk control, effective management and supervision, remuneration, and the relationship with shareholders (including the general meeting) and stakeholders. In short, the Code provides guidance for effective cooperation and management regarding the governance of Listed Companies and, in this respect, facilitates a sound and transparent system of checks and balances.

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

The Code is divided into several chapters containing principles and best practice provisions in relation to the following:

- Sustainable long-term value creation
- Effective management and supervision
- Remuneration
- General meeting
- One-tier governance structure

The most important principles and best practice provisions of each chapter are set out in the sections below. The last section focuses on the compliance with and the enforcement of the Code. The full text of the Code and additional information on it can be found on the Corporate Governance Code Monitoring Commission's website: http://www.mccg.nl/english.

6.1 Sustainable long-term value creation

Sustainable long-term value creation[6]

The management board is responsible for the continuity of the company and its affiliated enterprise. The Code emphasizes the relevance of the management board to focus on sustainable long-term value creation for the company and to consider the stakeholder interests that are relevant in this context. The supervisory board monitors the management board on this and should be engaged early on in defining the strategy for sustainable long-term value creation. Furthermore, the supervisory

[6] Principle 1.1 and Best Practice Provision 1.1.3 of the Code.

board supervises the manner in which the management board implements the strategy for sustainable long-term value creation.

Therefore, it should regularly discuss the implementation of the strategy and the principal risks associated with it.

Risk management[7]

Pursuant to the Code, a company should have adequate internal risk management and control systems in place. The management board is responsible for identifying and managing the risks associated with the company's strategy and activities. At least once a year, the management board should monitor the design and operation of the internal risk management and control systems and conduct a thorough assessment of their effectiveness. Attention should be paid to observed weaknesses, instances of misconduct and irregularities, indications from whistleblowers, lessons learned and findings from the internal audit function and the external auditor.

Internal audit function[8]

The task of the internal audit function is to assess the design and operation of internal risk management and control systems. The management board is responsible for the internal audit function. The supervisory board oversees the internal audit function and maintains regular contact with the person fulfilling this function. The internal audit function should draw up an audit plan, after consultation with the management board, the audit committee and the external auditor. This plan must be submitted for approval to the management board and subsequently to the supervisory board.

Reporting on risk management

The management board describes the design and operation of the internal risk management and control systems in the management report. The company's annual report must include a description of the main risks it encounters in carrying out its tasks in this respect.

Statement by the management board

The management board should make a statement confirming that it has provided sufficient insight into the risks, including foreseeable risks relevant to the continuity of the company. In this regard, material shortcomings that have been identified and material risks and uncertainties that can reasonably be foreseen at the time the statement is issued, as well as the broad impact of these material risks and uncertainties on the company, should be included.

Role of the supervisory board

The supervisory board should supervise the policies carried out by the management board and the general affairs of the company and its affiliated enterprise. Furthermore, the supervisory board should also focus on the effectiveness of the company's internal risk management and control systems, and the integrity and quality of the financial and sustainability reporting. Moreover, the supervisory board should submit the nomination for the appointment of the external auditor to the general meeting and should supervise the external auditor's functioning.

6.2 Effective management and supervision

The Code aims to strengthen the checks and balances between the management board and the supervisory board with provisions related to effective corporate governance and independent supervision.

[7] Principle 1.2 and Best Practice Provision 1.2.3 of the Code.
[8] Best Practice Provision 1.3.2 of the Code.

Executive committee[9]

The management report should include an account of the following: (i) the decision to work with an executive committee; (ii) the role, duty and composition of the executive committee; and (iii) the way in which the supervisory board and the executive committee are in contact with each other. The supervisory board should be informed adequately and pay specific attention to the dynamics and the relationship between the management board and the executive committee.

Diversity and inclusion (D&I) policy[10]

The company should have a D&I policy for the enterprise. The D&I policy should in any case set specific, appropriate and ambitious targets to achieve a good balance in gender diversity and the other D&I aspects of relevance to the company regarding the composition of the management board, the supervisory board, the executive committee (if any) and a category of employees in managerial positions ("senior management") to be determined by the management board. The supervisory board adopts the D&I policy for the composition of the management board and the supervisory board. The management board should adopt the D&I policy for the executive committee (if applicable), senior management and for the rest of the workforce with the prior approval of the supervisory board. If one or more goals for the composition of the management board, supervisory board, the executive committee (if any) or senior management are not achieved, an explanation of these reasons should be included in the corporate governance statement, along with an explanation as to which measures are being taken to achieve the goals, and by when this is likely to be achieved.

Independence of the supervisory board[11]

The composition of the supervisory board is such that the members are able to operate independently and critically toward each other, the management board and any particular interests involved. To safeguard its independence, the supervisory board is subject to certain criteria. Supervisory board members are not independent if they or their spouse, registered partner or life companion, foster child or relative by blood or marriage up to the second degree have or are any of the following:

(i) Has been an employee or member of the management board of the company[12] in the five years prior to the appointment

(ii) Receives personal financial compensation from the company, or an entity associated with it, other than the compensation received for the work performed as a supervisory board member and insofar as this is not in line with the normal course of business

(iii) Has had an important business relationship with the company or an entity associated with it in the year prior to the appointment

(iv) Is a member of the management board of a company in which a member of the management board of the company that they supervise is a supervisory board member

(v) Has temporarily performed management duties during the previous 12 months in the absence or incapacity of management board members

(vi) Has a shareholding in the company of at least 10%

(vii) Is a member of the management board or supervisory board — or is a representative in some other way — of a legal entity that directly or indirectly holds at least 10% of the shares in the company, unless the entity is a group company

[9] Best Practice Provision 2.1.3 of the Code.
[10] Best Practice Provision 2.1.5 and 2.1.6 of the Code.
[11] Best Practice Provision 2.1.7 and 2.1.8 of the Code.
[12] Or an issuing institution associated with the company as referred to in Section 5:48 of the WFT.

The supervisory board should not be composed of more than one supervisory board member that falls under any of the abovementioned criteria as referred to under (i) to (v) above. The total number of supervisory board members to whom the criteria referred to above are applicable should account for less than half of the total number of supervisory board members. For a shareholder or group of affiliated shareholders who directly or indirectly hold more than 10% of the shares in the company, the supervisory board should not be composed of more than one supervisory board member that falls under the abovementioned criteria as referred to under (vi) and (vii) and can be considered to be affiliated with or representing the (group of affiliated) shareholders.

Appointment of management board and supervisory board members[13]

A management board member is appointed for a maximum period of four years and can only be reappointed for consecutive terms with a maximum period of four years each. Pursuant to the Code, supervisory board members can be appointed for two consecutive four-year terms.

Reappointment is possible for up to two additional two-year periods and must be justified in the supervisory board's report. The purpose of such justification is to promote a greater focus on the composition of the supervisory board. A member of the supervisory board or the management board should retire early in the event of inadequate performance, structural incompatibility of interests and in other instances in which this is deemed necessary by the supervisory board. Early retirement should be published by way of a press release.

Culture[14]

The management board is responsible for creating a culture aimed at sustainable long-term value creation for the company, whereas the supervisory board should supervise the activities of the management board in this regard. The management board should draw up a code of conduct and monitor the effectiveness and compliance with such code. Additionally, the management board should establish a procedure for reporting irregularities within the company.

Preventing conflicts of interest[15]

Dutch law sets out the conflict of interest rule, which stipulates that management board members and supervisory board members cannot participate in the consultation and decision-making process whenever they have a direct or indirect conflict of interest regarding the interest of the company. In addition, the Code applies a stricter conflict of interest rule, stipulating that any form of conflict of interest between the company and the management board members or supervisory board members should be prevented.

Takeover situations[16]

In takeover situations, the management board and supervisory board should ensure that the stakeholders' interests are carefully weighed and any conflict of interest is avoided. They should consider the interests of the company in takeover situations, whereby the management board must ensure that the supervisory board is involved in the takeover process closely and in a timely fashion.

6.3 Remuneration

Remuneration policy[17]

[13] Best Practice Provision 2.2.1 and 2.2.3 of the Code.
[14] Principle 2.5 and 2.6 and Best Practice Provision 2.5.2 of the Code.
[15] Principle 3.1 of the Code.
[16] Principle 2.8 and Best Practice Provision 2.8.1 of the Code.
[17] Principle 3.1 of the Code.

Pursuant to the Code, the remuneration policy applicable to management board members should be clear and easy to understand, focus on sustainable long-term value creation for the company and its affiliated enterprise, and consider the internal pay ratios. Thus, the remuneration policy should not encourage management board members to act in their own interest, nor to take risks that are not in line with the strategy and the defined risk appetite. The supervisory board is responsible for formulating the remuneration policy and its implementation. The general meeting must adopt the remuneration policy for it to become applicable.

Determination of management board remuneration[18]

The supervisory board determines the remuneration of the individual board members within the limits of the remuneration policy adopted by the general meeting. The Code does not stipulate any explicit requirements regarding the amount of remuneration, except that in the event of dismissal, the severance payment should not exceed one year's fixed salary. However, the Code does address aspects that play a role in establishing and awarding remuneration, such as the degree to which the remuneration is in accordance with sustainable long-term value creation and the underlying social context. These aspects should be included in the remuneration report prepared by the remuneration committee (under the supervision of the supervisory board) and must be published on the company's website. Furthermore, when determining the amount and structure of the remuneration, the supervisory board should consider the management board member's own view.

Remuneration of supervisory board[19]

The supervisory board should submit a clear and understandable proposal to the general meeting for its own remuneration. In this respect, its remuneration should promote an adequate performance of its role and should not be dependent on the results of the company. Supervisory board members must not be awarded remuneration in the form of (rights to) shares.

6.4 The general meeting

The general meeting should be able to exert such influence on the policies of the management board and the supervisory board of the company that it plays a fully-fledged role in the system of checks and balances in the company. Good corporate governance requires such level of participation of the general meeting.[20]

Proposal for approval or authorization[21]

A proposal on the agenda of the general meeting, which is subject to shareholders' approval or authorization, requires a written explanation from the management board. This explanation should be published on the company's website. Material changes to the company's articles of association and proposals for the appointment of members to the management board or supervisory board should be presented separately in the general meeting. Furthermore, the profit retention/dividend policy (and changes to it) will be placed on the agenda of the general meeting separately.

Shareholders placing items on the agenda and management board's response time[22]

Shareholders may exercise their respective rights to put items on the agenda only after consulting with the management board. If the management board stipulates a response time, this should be a reasonable period that does not exceed 180 days from the moment one or more shareholders inform the management board of their intention to put an item on the agenda to the day of the general

[18] Principle 3.2 and 3.4 and Best Practice Provision 3.1.2, 3.2.2 and 3.2.3 of the Code.
[19] Principle 3.3 and Best Practice Provision 3.3.2 of the Code.
[20] Principle 4.1 of the Code.
[21] Best Practice Provision 4.1.4 and 4.1.3 of the Code.
[22] Best Practice Provision 4.1.6 and 4.1.7 of the Code.

meeting at which the item is to be dealt with is held. The management board should use the response time for further deliberation and constructive consultation with the relevant shareholders, and should explore the alternatives.

Contacts and dialogue with shareholders[23]

The company should formulate a policy on the outlines of bilateral contracts with shareholders. This policy should be published on the company's website. Shareholders and the company should be prepared to enter into dialogue, where appropriate and at their own discretion. The company is expected to facilitate the dialogue unless, in the management board's opinion, this is not in the interests of the company and its affiliated enterprise.

Proxies[24]

The company must offer its shareholders, as well as other persons who are entitled to vote, the opportunity to deposit their proxy to vote with an independent third party prior to the general meeting.

Institutional investors' engagement policy[25]

Institutional investors should report at least annually on their website how they implemented their engagement policy. The report should provide a general description of their voting behavior, as well as an explanation of the most significant votes and the use of the services of proxy advisers.

6.5 One-tier governance structure[26]

The Code is focused on the two-tier governance structure, which traditionally is the governance basis of Dutch corporate law. Within companies making use of a two-tier board, management and supervision are divided between two corporate bodies: the management board and the supervisory board. Companies with a one-tier board have a board of directors comprising both executive and nonexecutive directors. In this scenario, the nonexecutives supervise the executives. Nonexecutive directors and executive directors have joint management responsibility.

The Code equally applies to Listed Companies with a one-tier governance structure. The provisions in the Code that pertain to supervisory board members also apply to nonexecutive directors, without prejudice to the other responsibilities these nonexecutive directors may have.

The composition and functioning of a board of directors comprised of both executive and nonexecutive directors must be such that the supervision by nonexecutive directors is properly carried out, and independent supervision can be assured. The majority of the board of directors must be made up of nonexecutive directors. The independence requirements for supervisory board members apply in full to nonexecutives.

The nonexecutive directors provide an account of the supervision exercised in the past financial year. Furthermore, the chair of the board of directors cannot be a (former) executive director of the company; they should be independent. In addition, the chair should ensure that the board as a collective and its committees function properly and have a balanced composition.

6.6 Compliance with and enforcement of the Code

Both the management board and the supervisory board (or in the case of a one-tier board, the board) are responsible for the company's corporate governance and compliance. The broad outline of the governance of a Listed Company is set out in a separate chapter of the management report or

[23] Best Practice Provision 4.2.2 of the Code.
[24] Principle 4.3 and Best Practice Provision 4.3.2 of the Code.
[25] Best Practice Provision 4.3.5 and 4.3.6 of the Code.
[26] Principle 5.1 and Best Practice Provisions 5.1.1 to 5.1.3 and 5.1.5 of the Code.

published on its website each year. As mentioned above, compliance with the Code is based on the "comply or explain" principle. Therefore, any deviation from its principles and best practice provisions should be specifically disclosed in a separate chapter of the company's management report or published on the company's website. In it, the Listed Company explicitly states the extent to which it complies with the principles and best practice provisions in the Code and to what extent it departs from them.

The management board and supervisory board account for compliance with the Code in the general meeting. For any deviation from the principles and best practice provisions, the management board and supervisory board should give substantive and transparent explanations in the general meeting with regard to any noncompliance with the Code. Listed Companies either provide the general meeting with a broad outline of the corporate governance structure and compliance with the Code in a chapter in the management report, or publish the outline on the company's website.

7

Commercial business-to-business and business-to-consumer contracts

7. Commercial business-to-business and business-to-consumer contracts

7.1 General Dutch contract law

Dutch contract law is liberal, business minded and allows for substantial freedom of contract. For many types of contracts, the rules of the DCC are largely default rules that apply if and to the extent that the parties have not arranged for a specific topic in their contract. However, some types of contracts are governed by mandatory rules. This is in part mandated by EU regulations and applies to consumer contracts, contracts with a Dutch commercial agent, franchise contracts with a Dutch franchisee, lease contracts, insurance contracts and transport-related contracts.

The principles of reasonableness and fairness (redelijkheid en billijkheid), which is essentially the same as good faith, underpin Dutch contract law. These principles may be invoked to either supplement a contract agreed on by the parties if there is a gap or, in very exceptional circumstances, prevent a party from relying on a contractual clause in full.

Besides these principles of reasonableness and fairness, some other distinctive features of Dutch law are as follows:

- Rescission: In the event of a breach, the nonbreaching party is allowed to rescind the contract, unless the breach does not justify the rescission and its consequences. This also applies in the event of force majeure. The rescission releases the parties from their current obligations under the contract. To the extent that these obligations have already been performed, rescission requires the parties to reverse the performance of the obligations that they have already received.
- Specific performance: In the event of a breach of contract, the nonbreaching party may claim specific performance, also in fast-track court proceedings, regardless of whether this possibility has been expressly specified in the contract.
- Penalties: Parties are free to agree on a penalty. The amount of the penalty does not have to be equal to the expected damages, although a court is entitled to reduce the amount of the penalty. Unless expressly agreed otherwise, the penalty replaces the right to claim specific performance and damages. Penalties awarded by Dutch courts in reasoned judgments must be recognized throughout the EEA.

The first two special features of Dutch law can be contractually excluded. The third, as noted, only applies if the parties expressly agreed to it.

The Netherlands is a party to the UN Convention on the International Sale of Goods 1980 (CISG). As in all CISG jurisdictions, the CISG should be expressly excluded in sales contracts if the parties do not want it to apply.

7.2 General business-to-business terms and conditions

Under the DCC, professional parties are fairly easily bound to general terms and conditions (Ts&Cs) that were declared applicable. The user of the Ts&Cs should give the other party a reasonable opportunity to take account of the Ts&Cs. This normally entails that the user of general Ts&Cs provides a hard copy of them to the other party. The DCC grants a certain protection to small Dutch businesses against unfair Ts&Cs. A provision of general Ts&Cs is voidable if a court finds such provision to be "unreasonably onerous" (onredelijk bezwarend). Such protection will only apply if both parties are established in the Netherlands and the business of the counterparty is below certain statutory thresholds.

If the contract relates to an international business-to-business sale, (lower) Dutch courts decided that the CISG will determine the applicability of the general terms — in accordance with Opinion No. 13 of the CISG Advisory Counsel. As such, general terms will be included if the other party had reasonable opportunity to take notice of these terms.

7.3 Business-to-consumer sales

Doing business in the Netherlands with Dutch consumers entails that Dutch mandatory consumer law applies. Just like in other countries in the EEA, such mandatory law cannot be excluded contractually. Further, Dutch consumers may turn to the Dutch courts to invoke such mandatory law regardless of a contractual forum choice. A forum choice that specifies otherwise is likely to be found void and misleading.

Consumer protection involves, among other things, legislation with respect to consumer sales - both online and offline. A consumer sale is a sales agreement concluded by and between a seller that acts in the course of a profession or a business, and a buyer, being a natural person who does not act within the course of a profession or a business. The principal rule regarding consumer sales is that a product delivered must, of course, conform to the agreement. If not, the DCC grants the consumer statutory remedies, such as repair, replacement or refund of the purchase price.

Based on EU consumer protection directives, the seller has extensive information obligations regarding, for example, its identity, the characteristics of the goods/services, price, address and delivery. Not providing such information will, among other things, qualify as an unfair trade practice. The consumer may void agreements that result from unfair trade practices and courts must look into certain information obligations on their own initiative. They will also do so when a business seeks payment from a consumer. Further, a consumer can cancel a distant selling contract for any reason within 14 days, which can be extended up to 12 months if the required information is not provided. If the consumer makes use of its statutory cancellation right, the trader must generally reimburse all payments received from the consumer within 14 days of the cancellation.

Consumer law and its enforcement evolves rapidly in the Netherlands and in Europe. Therefore, companies should seek advice upfront before offering products or services to consumers living in these markets.

7.4 Consumer authority

The ACM is the supervisory body for consumer law and fair trade in the Netherlands. The ACM has civil and administrative investigation and enforcement remedies at its disposal. It may also levy substantial fines, which can be turnover based. In addition, the ACM may publish any measures it has taken against companies within the context of its supervisory role, possibly causing negative publicity for the companies involved ("naming and shaming"). The ACM has become more active. It conducts sectoral specific investigations, such as on compliance with discounting policies by web shops, as well specific investigations following complaints.

Importantly, the Netherlands is also a convenient forum for consumer litigations and class actions. Accordingly, enforcement is carried out not only by the ACM but also through litigation before the courts. Additionally, consumers may raise certain issues of consumer law with, for example, the Dutch Advertising Committee.

7.5 Agency agreements

A commercial agent is a person or a company that, in consideration for a fee, acts as an intermediary for the conclusion of contracts and, possibly, concludes those contracts in the name and for the account of the principal.

Dutch agency law is based on EC Directive 86/653/EC and is substantially mandatory in nature, particularly regarding those provisions aimed at protecting the agent. For example, mandatory minimum notice periods apply and an agent is, in principle, entitled to receive goodwill compensation upon termination of an agency agreement.

Parties are free to determine the governing law of their agreement. However, choosing foreign law will not set aside the so-called Dutch "overriding mandatory rules." The rules regarding goodwill compensation are considered as overriding mandatory rules.

Finally, EU and Dutch competition rules may also have an impact on agency agreements.

7.6 Distribution agreements

A distribution agreement differs from an agency agreement because in a distribution agreement, the distributor purchases and resells products in its own name and for its own account.

Distribution agreements are governed by general rules of Dutch contract law. The parties are thus generally bound by their agreement, including its termination provisions. Such provisions typically include termination grounds (including termination for convenience), notice periods and possible compensation.

Parties are advised to consider whether they want to fix a term for their distribution contract, as competition law may also be relevant here. Dutch case law distinguishes termination regimes of fixed-term distribution contracts on the one hand and distribution contracts entered into without an end date on the other hand. The first type of contract generally needs to be performed in full, for business certainty. The second type can generally be terminated, also without a specific contractual ground. If the parties agree to an end date, they may also consider whether the contract should provide for tacit renewal periods. A party that contemplates a termination may want to seek legal advice before issuing notice, as further to Dutch case law one has to operate somewhat carefully in terms of, among other things, invoking a specific ground, observing a notice period and offering compensation.

7.7 Franchise agreements

Certain Dutch statutory law on franchise applies if the franchisee is established in the Netherlands, as certain statutory provisions provide a certain protection to the franchisee. If the franchisee is not Dutch, the parties may agree to the application of Dutch law without such specific franchisee protection. This practically entails that there is a very large degree of contractual freedom.

If the franchisee is Dutch, the franchisor has certain information obligations before a contract is concluded and in the event of changes to the franchise formula. Certain other topics are then regulated as well, such as post-contractual noncompete provisions.

8

Digital marketing and advertising

8. Digital marketing and advertising

8.1 Advertising

Advertising rules applicable to online and offline advertising are mainly set out in the DCC and the self-regulatory Dutch Advertising Codes. The DCC prohibits misleading commercial practices via-a-vis consumers, which means that advertisers may not provide false or misleading information in advertising. Compliance with these rules is subject to supervision and enforcement by the ACM, which has the power to conduct investigations and impose sanctions for noncompliance.

In the Netherlands, more specific rules for advertising are laid down in self-regulatory industry codes, i.e., General and Specific Advertising Codes. The General Advertising Code applies to any advertising and includes generally applicable rules, such as that advertising must comply with the law, truth, good taste and decency. Various Specific Advertising Codes contain specific rules applicable to specific types of claims, products, services or sectors. For example, there are specific Advertising Codes for sustainability claims; advertising for food, alcohol and low-alcohol products, gambling and cosmetic products; and advertising aimed at children.

Anyone who feels that that an advertisement violates the Advertising Code can file a complaint with the Advertising Code Committee. This committee will assess the complaint, invite the advertiser to defend itself, and render its opinion as to whether the advertising practice constitutes a violation of the Advertising Codes and should be discontinued. The committee does not have the power to impose sanctions, and its opinion is not legally binding. An advertiser that chooses not to follow the committee's opinion may, however, be placed on a public list of noncompliant advertisers.

8.2 Cookies

Cookies are small files that can be stored on an end user's computer by a website operator. Cookies serve different purposes, such as remembering the contents of a digital shopping basket or a website visitor's language preferences. Cookies can also be used to track users across different websites and allow the user of the cookie to target advertising based on browsing behavior.

Under Dutch law, most cookies, including tracking cookies, may only be placed after obtaining consent from the end user. Cookies that are strictly necessary for the functioning of the website and cookies with no or minimal consequences for the user's privacy may be used without prior consent.

Websites that use cookies must display a banner to inform visitors of the use of cookies and allow them to either accept or reject the cookies for which consent is required. In any case, the party placing cookies must provide sufficient information regarding the purposes of the cookies, e.g., by making available a privacy and cookie statement.

Compliance with cookie legislation is actively enforced by the Dutch Data Protection Authority.

8.3 Direct marketing

Under Dutch law, as a main rule, unsolicited commercial communications by electronic message (e.g., email, SMS) or telephone is only permitted with the prior consent (opt-in) of the recipient.

There are some exemptions to the main rule. In particular, a company's existing customers may receive direct marketing pertaining to the company's own products or services without consent, provided that the customer has been given the opportunity to opt out of receiving direct marketing at the time their contact details were collected. A direct marketing recipient must be given the opportunity in each message or call to object to receiving any further direct marketing (opt-out). The ACM, the Dutch regulator, has a history of taking a proactive approach to combating spam and unwanted calls, and has imposed numerous penalties for infringing the applicable rules.

8.4 Influencer marketing

For the past couple of years, influencers who have met certain conditions have fallen within the scope of the Dutch Media Act and have, in addition to traditional media and video on-demand services providers, been subjected to registration requirements and supervision by the Dutch Media Authority (Commissariaat voor de Media). Specifically, this applies to video uploaders who are active on specific social media platforms, have more than 500,000 followers/subscribers per platform, post a minimum of 24 videos per year, generate earnings from the videos (in money or kind), and are registered as entrepreneurs with the Dutch Chamber of Commerce.

Influencers who meet these conditions are also obliged to register with the Dutch Advertising Committee and use the age-rating icons of the Dutch Kijkwijzer to warn the audience about violent or scary content.

Based on the specific Dutch Advertising Code for Social Media and Influencer Marketing, any influencer who advertises on social media must be transparent about the commercial nature of the content posted, such as by clearly labelling the content as "advertisement" or "paid promotion." Advertisers must ensure the contractual arrangements with an influencer contain appropriate provisions in this respect.

9

Real estate

9. Real estate

9.1 Introduction

This chapter provides a concise overview of various Dutch law aspects related to real properties situated in the Netherlands in order to assist in understanding the legal framework and practical considerations.

This chapter covers several key areas, in particular:

- Owned property, purchase agreements and rights in rem (Sections 9.2-9.5)
- Construction and renovation (Section 9.6)
- Sustainability (Section 9.7)
- Environmental aspects (Section 9.8)
- Leased property (Section 9.9)

Although real property transactions are being structured as share deals to an increasing extent (mainly for tax reasons), any reference in this section to a transfer of real property will mean a transfer of the actual asset.

9.2 Ownership

The transfer of title of real property generally requires: (i) prior agreement, commonly laid down in written form, such as a sale and purchase agreement; and (ii) the execution of a notarial deed of transfer, which must be registered at the Land Registry for the transfer of title to take legal effect. This also applies to the establishment and transfer of restricted rights in rem, which include security rights (e.g., a right of mortgage).

Since ownership is the most complete right to a real property, the owner of such property may use the real property at their own discretion. The only exception to this principle is if there are restrictions attached to the ownership, based on statutory provisions or (unwritten) law.

The transfer of commercial real estate is subject to RETT or turnover tax.

As a rule, RETT will be calculated at a rate of 10.4% of the market value of the real property (whether it is commercial, industrial, residential or any other type of real property). For residential properties, a different RETT rate — either 0% or 2% of the market value — will apply, if the purchaser (i) is a private individual and (ii) will use the relevant residential property — other than temporarily — as their main residence. If a purchaser of a residential property does not meet both these requirements, the (standard) rate of 10.4% will apply. From 1 January 2026, the standard RETT rate for residential properties will be reduced to 8% of the market value, while the abovementioned exceptional rates for private individuals will remain.

Turnover tax is calculated at a rate of 21% of the agreed purchase price and is applicable for a transfer of "newly developed" real estate or building land within the meaning of the Turnover Tax Act 1968, which, under certain circumstances, may result in an exemption from RETT.

9.3 Purchase agreements for real properties

Sale and purchase agreements regarding commercial properties can be drawn up without any specific formalities. This means that even oral agreements may be regarded as binding sale and purchase agreements. Therefore, during negotiations it is important to manage the expectations of the other party and to clearly record in writing any conditions (such as obtaining board approval, irrevocable

permits, financing or a satisfactory outcome of a due diligence audit) to which a binding sale and purchase agreement remains subject. This is already relevant at the stage of negotiating an LOI, which — without the proper built-in conditionality — may constitute a binding sale and purchase agreement or may give rise to claims for compensation from the other party based on precontractual good faith when a party abandons the transaction during negotiations.

The above, however, does not apply to transactions in which a residential property is transferred and where the purchaser is a private individual. In such cases, the sale and purchase agreement is required to be made in writing. Furthermore, the purchaser of a residential property (who is a private individual) has the option to repudiate the sale and purchase agreement within three working days after signing, without any further explanation.

9.4 Land Registry

Rights over real property are registered in the Land Registry, which is publicly accessible (through an electronic account for an administrative fee). The information registered in the Land Registry includes ownership, mortgages, easements and other rights in rem. Furthermore, other administrative restrictions in the use of real property are also registered (such as designations as a listed building (monument), municipal preemption rights and decrees pursuant to the Environment and Planning Act (Omgevingswet) (EPA)).

Leases cannot be recorded in the Land Registry unless it concerns a ground lease (erfpacht), which is a right in rem. The fees charged by the Land Registry, such as fees for accessing the publicly available information and for the registration of notarial deeds, are relatively low.

9.5 Other rights and obligations

The purchaser of real property should investigate all legal aspects of such property by, among other things, consulting the Land Registry. Furthermore, it is advisable for the purchaser to investigate whether the applicable environmental plan (omgevingsplan) allows for the existing use of the real property or for any envisaged post-acquisition redevelopment and to verify with the seller whether they are aware of any (upcoming) changes in the existing environmental plan.

Under Dutch law, there are two types of rights in relation to real property that restrict ownership: (i) qualitative rights, i.e., rights attached to a certain capacity; and (ii) rights in rem. Qualitative rights arise from an agreement and relate to real property, such as an agreement with a municipality that gives the municipality the right of first refusal if the real property is sold in the future. Examples of rights in rem are: easements (erfdienstbaarheden), rights of superficies (opstalrechten) or ground lease rights (erfpachtrechten). Rights in rem are established by the execution of a notarial deed, which must be registered at the Land Registry.

Under Dutch law, the seller has a statutory obligation to transfer title to a real property without any special charges and restrictions (such as the abovementioned easements and qualitative obligations), unless the purchaser expressly accepts these. This imposes an obligation on the seller to disclose all information in relation to the real property. Case law prescribes that the purchaser also has a responsibility to conduct reasonable investigations in relation to the real property.

If the seller fails to inform the purchaser of the existence of special charges and restrictions, the purchaser can, under certain circumstances, bring legal action against the seller to have the relevant rights cancelled or to claim compensation in the form of a lump sum payment.

9.6 Construction and renovation

The Netherlands is a small but densely populated country. Consequently, the use of space for residential and business purposes is tightly regulated. The environmental plan sets out specifically

how land is to be used and developed. To this effect, each municipality adopts an environmental plan, which contains regulations on a detailed scale for every plot of land in a municipality.

These regulations may concern the use of the plot (i.e., agricultural, industrial, residential, etc.) and the dimensions of the buildings allowed on the plot (e.g., building height, volume, number of floors).

Under the EPA, licensing/permitting requirements apply for execution of activities regarding building, renovation, demolition, construction, the environment, nature and open spaces. The EPA establishes a single governing all-inclusive environmental permit (omgevingsvergunning) for these activities. This permit needs to be adhered to by all parties and both the employer and the contractor (as the case may be) can apply for this permit.

Zoning law, in particular as it relates to the environmental plan and the environmental permit, is enforced by the authorities, which have a wide range of instruments at their disposal to ensure the observance of the conditions in any zoning plan and of any permit and take enforcement measures if required. Such enforcement measures include an order under penalty (last onder dwangsom), an administrative order (last onder bestuursdwang) and an administrative penalty (bestuurlijke boete).

In addition, newly constructed buildings or renovated buildings have to meet the requirements set by the EPA. Under the EPA, municipalities are obliged to set building and renovation regulations in their environmental plan. An environmental plan does not include technical building regulations, but it does contain, for example, regulations that prohibit building on polluted soil, regulations regarding the demolition of a building and requirements regarding the external appearance of buildings. The technical regulations are included in the Environment Buildings Decree (Besluit bouwwerken leefomgeving).

General construction law is, in principle, governed by Dutch civil law, as codified in the DCC. The Dutch legislature has created a separate section in the DCC for a number of special agreements, including specific rules for general construction contracts.

In the Dutch market, standard forms of contract are often used as the basis for construction agreements. The most common forms of contract are Uniform Administrative Conditions 2012 (or Uniforme Administratieve Voorwaarden 2012) for construction work, Uniform Administrative Conditions for integrated contracts 2025 (or Uniforme Administratieve Voorwaarden voor geïntegreerde contracten 2025) for design and construct projects, and The New Rules 2011 (or De Nieuwe Regeling 2011) for design and other consultancy work. These forms are well known/accepted and, therefore, efficient to implement. We include a brief description of these forms below. International Federation of Consulting Engineers forms of contract are also used in the Netherlands, in particular in projects involving international contractors or financiers. The same applies for New Engineering Contract forms of contract, although to a lesser extent.

Bespoke contracts are also possible, but could result in lengthier negotiations. A bespoke contract may be advisable for a contractor wishing to implement a specific form of contract across multiple jurisdictions.

Ultimately, choosing the form of contract depends on preferences and project particulars.

9.7 Sustainability

In recent years, various regulations have been introduced concerning sustainability that are relevant for the built environment in the Netherlands. In this respect, the Dutch Housing Act (Woningwet), the EPA and the Environment Buildings Decree require the owner of an existing building to carry out energy-saving measures if local authorities deem it necessary. Regarding new buildings, minimum standards are set for energy performance according to the "Nearly Energy Neutral Buildings" (Bijna Energieneutrale Gebouwen). In addition, the EPA states that a company is required to save energy by undertaking energy conservation provisions with a payback time of within five years.

There is a mandatory energy performance certification for buildings in the Netherlands called "energy label" (energielabel) with ratings varying from G (being the lowest) to A++++ (as the highest possible rating). When selling or leasing a building, building owners are obliged to provide the purchaser or tenant with an energy label. This certificate is valid for 10 years from the date the relevant purchase or lease agreement is executed. As of 1 January 2023, the usage of all office buildings over 100 square meters became prohibited without having a valid energy label with a minimum C rating. By 2030, the goal will be to achieve an energy label requirement of at least A. It is expected that retail spaces will also have to comply with stricter energy label requirements in the future, similar to the requirements for office spaces.

To encourage more efficient energy use in buildings, the Netherlands offers two main schemes of fiscal subsidies: the Energy Investment Allowance (Energie-investeringsaftrek) (EIA) and the Environment Investment Allowance (Milieu-investeringsaftrek) (MIA). The EIA covers energy-saving measures or costs for energy research, energy advice or tailored advice, while the MIA covers sustainable renovation plans. Both schemes offer an approximate 11% net benefit of the investment.

Regarding the financing of projects, the Scheme for Green projects (Regeling groenprojecten 2022) gives banks the possibility to offer credit at lower interest rates to investors planning to invest in green real estate projects.

9.8 Environmental aspects and soil pollution

In the context of a proposed real property acquisition, it is important to obtain clarity regarding the presence of soil pollution. Moreover, the requirements and environmental aspects, which are stipulated in the EPA regarding the environmental permit, need sufficient attention. These aspects of the permit are linked to the setup, change and operations of the real property (facility) and are important regulatory instruments.

The EPA also contains a general duty of care regarding prevention and remediation of soil contamination. Any party carrying out activities that may have adverse effects on the physical environment is obliged to prevent or mitigate these effects as far as possible.

Practice has shown that these and other environmental issues can be duly managed by means of a timely due diligence audit, combined with clear contract language, e.g., in the form of warranties or indemnities and, where appropriate, negotiations with the relevant authorities.

9.9 Leases

Leases are subject to various statutory provisions and administrative regulations. Three main leasing regimes can be identified: (i) residential; (ii) retail; and (iii) office and other commercial space. For residential and retail leases, specific statutory provisions of mandatory law apply, whereas the statutory framework for offices and other commercial spaces is based on freedom of contract (contractsvrijheid) and is, therefore, limited in scope.

For all three types of leases, the Dutch Real Estate Council (Raad voor Onroerende Zaken (ROZ)) provides a market standard contract, which also includes a set of general terms and conditions that form an integral part of the contract. An ROZ contract contains certain approved deviations from mandatory law and is generally considered landlord friendly.

In the last decade, the residential sector has become increasingly challenging, as there is a lack of affordable housing for young professionals and families. In an effort to accommodate tenants, the Dutch legislator recently adopted the Fixed Leases Act (Wet vaste huurcontracten), which ensures that in principle residential leases are concluded for an indefinite period of time (subject to limited exceptions). Furthermore, the Dutch legislator introduced the Affordable Rent Act (Wet betaalbare huur), which regulates the maximum allowable rent for mid-segment housing based on the housing value system (woningwaardesysteem). Solely residential spaces that exceed the liberalization

threshold of the housing value system (which is based on the quality and amenities of the relevant unit) may be rented out at a rent determined by the landlord at full discretion. The aim of the aforementioned legislation is to provide tenants with greater security and protection from the negative consequences of housing shortages.

For office space and other commercial spaces, a semi-mandatory system applies, which allows parties, to a great extent, to freely negotiate the rent and other terms of their agreement based on prevailing market conditions. The rental price is often indexed based on a locally published consumer price index. Upon termination of a lease, other than following from a notice given by the tenant, the tenant is, by way of law, granted a suspension of its obligation to vacate the leased space (which, in principle, arises at the end of a lease). Based on a request filed by the tenant, the district court can grant additional protection from eviction to a tenant for up to one year. This may be extended twice (each time for a maximum of one year) following a repeated request by the tenant, for a maximum period of three years in total. In assessing the request for a suspension of the obligation to vacate, the district court will consider the interests of both parties.

For retail business space, a more complicated and more regulated semi-mandatory system applies. This system allows the tenant to initially rent for a fixed five-year term, which will be extended by operation of law for another five years if the tenant does not give notice of termination toward the end of the initial lease term. An exception to this extension is made if the lease is terminated by mutual agreement or termination by the landlord subject to court approval. The landlord can only start court proceedings when a notice of termination has been served, stating one of only two exhaustive termination grounds under mandatory law: failure of due care by the tenant, or an urgent need of usage of the leased space for the landlord. The district court will test the grounds for termination by considering the interests of both parties. Toward the end of the second five-year term, the allowed grounds for termination are broader and subject to a reasonable balancing of interests of both parties.

10

Competition rules and free movement of goods

10. Competition rules and free movement of goods

10.1 EU competition rules

The EU competition rules provided in Articles 101 and 102 of the Treaty on the Functioning of the EU ("**Treaty**") have a direct effect in the Netherlands. Therefore, individuals can invoke these articles before the Dutch courts and the courts are obliged to apply them.

10.1.1 Restrictive agreements/concerted practices between undertakings

Article 101(1) of the Treaty prohibits agreements and concerted practices between undertakings that have as their object or effect to appreciably prevent, restrict or distort competition in the EU, and which may have an effect on trade between EU member states.

Agreements and practices under the prohibition of Article 101(1) of the Treaty will nevertheless be lawful if they meet the conditions of Article 101(3) of the Treaty. These conditions are met if the agreement or practice improves the production or distribution of goods or services or promotes technical or economic progress, while allowing consumers a fair share of the resulting benefit. Furthermore, the agreement or practice may neither impose restrictions that are not indispensable to the attainment of these goals nor afford the parties the opportunity to eliminate competition for a substantial part of the products or services in question.

Whether a certain agreement or practice satisfies the conditions for exemption has to be determined by means of self-assessment. The European Commission has provided guidance through a set of notices to facilitate such self-assessment exercises.

In addition, the European Commission has adopted so-called Block Exemption Regulations that automatically exempt certain categories of agreements. This implies that there is a presumption of compatibility with EU competition law if the conditions of these regulations are met. EU Block Exemption Regulations currently exist in relation to, among other things, technology transfer agreements, specialization agreements, R&D agreements and other agreements in specific sectors, such as the motor vehicle sector. All EU Block Exemption Regulations have a direct effect and are directly applicable in the Netherlands. By virtue of the Dutch Competition Act, these regulations even apply in situations where an effect on trade between EU member states is absent.

The EU Block Exemption Regulation on vertical agreements is among the most important EU Block Exemption Regulations. In principle, this regulation automatically exempts vertical agreements for the purchase or sale of goods and services from Article 101(1) of the Treaty, if the supplier's and buyer's respective market shares do not exceed 30% and the agreement concerned does not contain any "hardcore restrictions." Typical hardcore restrictions are fixed and minimum (re)sale prices, absolute territorial restrictions, absolute customer restrictions and an absolute restriction on online sales.

If the above 30% market share threshold is exceeded, an agreement is not eligible for automatic exemption but may still be exempt on the basis of Article 101(3) of the Treaty following an individual self-assessment.

10.1.2 Abuse of a dominant position

Article 102 of the Treaty provides that any abuse of a dominant position by one or more undertakings within (a substantial part of) the EU is prohibited if there is a (potential) effect on trade between EU member states. Abusive behavior may include exploitative practices (e.g., excessively high pricing) and exclusionary practices (e.g., predatory pricing and fidelity rebates).

10.1.3 Merger control

The EU Merger Regulation, which gives the European Commission jurisdiction over mergers, acquisitions and certain types of joint ventures with an EU dimension, is also directly applicable in the Netherlands. A transaction is considered to have an EU dimension if the undertakings concerned meet certain turnover thresholds. In such case, prior notification and clearance of the proposed transaction from the EU Commission is mandatory in the EU.

Transactions that fail to meet the turnover thresholds of the EU Merger Regulation may still be caught by the national merger control regimes of EU member states.

10.1.4 Fines

Upon infringement of the prohibitions laid down in Articles 101 and 102 of the Treaty, the European Commission has the power to impose fines of up to 10% of the aggregate worldwide group turnover of the undertakings concerned. In addition, the European Commission may impose fines of up to 10% of the aggregate worldwide group turnover if an acquiring undertaking fails to notify a concentration.

Fines of up to 1% of the aggregate worldwide group turnover may be imposed for providing incorrect or misleading information to the European Commission.

10.2 Dutch Competition Act

The Dutch Competition Act took effect on 1 January 1998. Articles 6 and 24 of the Dutch Competition Act contain prohibitions that are virtually identical to Articles 101 and 102 of the Treaty, respectively.

10.2.1 Restrictive agreements/concerted practices between undertakings

Article 6(1) of the Dutch Competition Act contains a general prohibition on restrictive agreements and practices, both of a horizontal and a vertical nature. However, this prohibition is not applicable if the turnover or market shares of the parties concerned stay below certain de minimis thresholds. Agreements or practices that violate the prohibition are void.

Similar to Article 101 of the Treaty, agreements or practices prohibited under Article 6(1) of the Dutch Competition Act may be exempt under certain conditions. Whether a certain agreement or practice satisfies the conditions for exemption has to be determined by means of self-assessment. As previously stated in Section 10.1.1, the European Commission has provided guidance for this self-assessment through a set of notices. The Dutch competition authority (ACM) has similarly provided guidance in this respect.

Pursuant to the Dutch Competition Act, present and future EU Block Exemption Regulations directly apply in the Netherlands. Any agreement benefiting from an exemption under an EU Block Exemption Regulation is, therefore, automatically exempt. In practice, EU Block Exemption Regulations may also easily apply to purely Dutch restrictive agreements. Therefore, EU Block Exemption Regulations are the most relevant documents for scrutinizing commercial agreements in the Netherlands from a competition law point of view.

In addition, there are specific Dutch block exemptions for certain agreements offering temporary protection from competition to undertakings in new shopping centers and certain cooperation agreements in retail trade.

10.2.2 Abuse of a dominant position

Article 24 of the Dutch Competition Act prohibits abuse of a dominant position by one or more undertakings. This prohibition generally also applies to undertakings or governmental bodies entrusted with the operation of services of a general economic interest, as is similarly outlined in

Article 102 of the Treaty. In addition, detailed behavioral rules apply to Dutch governmental bodies that engage in economic activities in the Netherlands.

10.2.3 Merger control

The Dutch Competition Act also provides for a system of prior merger control. A proposed concentration (i.e., a merger, acquisition or certain types of joint ventures) falls within the scope of the Dutch merger control provisions if the following thresholds are met: (i) the undertakings concerned have generated a total combined worldwide turnover of at least EUR 150 million in the previous calendar year; and (ii) at least EUR 30 million of such turnover has been generated in the Netherlands in the previous calendar year by each of at least two of the undertakings concerned. The turnover of undertakings in the banking and insurance sectors is calculated according to specific rules. Alternative turnover thresholds apply to pension funds.

Undertakings involved in a concentration over which the European Commission has automatic jurisdiction can benefit from "one-stop shopping" under the EU Merger Regulation. This concept implies that the ACM does not have to be notified of a concentration if the EU Merger Regulation thresholds are met. In addition, the undertakings concerned may request that only the European Commission reviews the proposed transaction (and not the individual national competition authorities) if this transaction should (otherwise) be notified in three or more EU member states.

The parties to a concentration are free to decide when to submit a merger notification (if its structure is sufficiently clear), but the proposed merger may not be implemented until four weeks after the formal notification (Phase 1). Within this four-week period (which can be extended if the ACM asks formal questions), the ACM will inform the notifying parties of whether a license is required. If the ACM fails to notify the parties within this period, the proposed concentration is deemed to be approved. If the ACM decides within the four-week period that no license is required, the parties are allowed to implement the transaction.

If the ACM has reason to believe that the concentration will significantly impede effective competition in the Dutch market or a part thereof, especially as a result of the creation or strengthening of a dominant position, it may decide that a license is required (Phase 2). The parties will then need to file a separate notification, as the concentration may not be realized without this license. Upon closer examination of the proposed concentration, the ACM will either grant or refuse the license within 13 weeks. The license will not be granted if the ACM concludes that the concentration significantly impedes effective competition in the Dutch market or a part thereof, especially as a result of the creation or strengthening of a dominant position.

The Dutch minister of economic affairs has the power to ultimately decide to approve a concentration on request of the parties concerned, thereby overruling the ACM's refusal if it is believed that overriding social interests would demand an approval of the concentration.

10.2.4 Fines

As of 1 July 2016, the maximum fines that can be imposed by the ACM for competition law infringements are significantly higher. The new maximum fines only apply to infringements committed after their entry into force. If the infringement began before this date but ended after it, the old maximum fines will apply.

For infringements relating to anticompetitive agreements or concerted practices, the ACM may impose fines of up to EUR 900,000 (previously, EUR 450,000) or 10% of the worldwide group turnover of the undertaking concerned (whichever is higher), multiplied by the number of years the infringement lasted — with a minimum of one year and a maximum of four years. Therefore, the relative maximum fine for such infringement may be 40% of the group's annual worldwide turnover,

which is significantly higher than the fine cap of 10% of annual worldwide turnover applied by the European Commission.

In addition, the ACM may impose fines of up to EUR 900,000 (previously, EUR 450,000) or 10% of the undertaking's worldwide group turnover, whichever is higher, for "major" infringements (e.g., abuse of a dominant position or failure to notify a concentration). The fines for "minor" infringements (e.g., withholding information or providing inaccurate or misleading information to the authorities) can be up to EUR 900,000 (previously, EUR 450,000) or 1% of the company's worldwide group turnover, whichever is higher.

The ACM can also impose personal fines of up to EUR 900,000 (previously, EUR 450,000) on natural persons who exercised de facto leadership over, or commissioned, a competition law infringement.

In case of recidivism, both the absolute and the relative maximum fines can be doubled. This applies if the undertaking concerned has received an irrevocable fine for a violation of a "same or similar statutory provision" within five years of the date of the fine report concerning the infringement. In theory, this means that the maximum fine for an infringement of the cartel prohibition can be as high as 80% of the group's annual worldwide turnover.

10.3 Foreign direct investment

In 2019, the European Parliament and Council adopted a regulation ((EU) 2019/452) establishing a framework for the screening of FDIs into the EU. This framework had to be adopted by the individual member states. Following this regulation, the Netherlands adopted its FDI screening regime in June 2023. This newly formed "broad" investment screening regime exists alongside several sector-specific screening regimes relating to electricity, gas and telecoms.

The Dutch broad investment screening regime is laid down in the Investment, Mergers and Acquisitions Security Screening Act and is aimed at identifying national security risks. Unlike various regimes in the EU, it is investor-origin agnostic and may be applicable if (i) it concerns a so-called "acquisition activity," and (ii) the relevant activities in the Netherlands qualify as a "vital service" (or activity, e.g., nuclear energy, Amsterdam airport and Port of Rotterdam, financial credit and market infrastructure, etc.), manager of business campuses or as active in the field of sensitive technologies (e.g., dual-use, military items and specified highly sensitive technologies such as semiconductor, quantum, photonics and high-assurance products/services).

If the activities are within the scope of the Investment, Mergers and Acquisitions Security Screening Act or sector-specific FDI regimes, a mandatory notification should be submitted to the Dutch Investment Screening Bureau (Bureau Toetsing Investeringen (BTI)) prior to the effectuation of the acquisition activity.

Once notified, the statutory review period is as follows. A first phase review may last up to eight weeks and, if a further in-depth investigation is required, a second phase review may last up to an additional eight weeks. The BTI makes use of stop-the-clock questions that temporarily halt the statutory review period until the questions have been answered satisfactorily.

In addition, both phases can be extended by up to six months (in total) where, for example, additional time for review or additional information is required. Any extension during the first phase will also count and be deducted from any extension in the second phase (i.e., the total maximum extension for both phases together is six months).

A further maximum three-month extension may be applied if the relevant acquirer is a non-EU investor that would trigger the EU FDI Regulation, which permits sharing the notification with the European Commission and other member state FDI authorities for their views and thoughts.

10.4 Public procurement rules

10.4.1 Sources of law

Effective 1 July 2016, Dutch public procurement law was (substantially) amended due to the implementation of three directives adopted by the European Council on 11 February 2014, which aim to modernize the European procurement regime. Dutch public procurement law currently consists of legislation implementing the EU Public Procurement Directives (2014/23/EU, 2014/24/EU and 2014/25/EU) and several purely national regulations that contracting authorities are either allowed or obliged to apply.

The Dutch Public Procurement Act 2012, among other things, incorporates the European procurement legislation into a single framework. This framework consists of the following:

- The Dutch Public Procurement Act 2012, which implements the EU Directives (2014/23/EU, 2014/24/EU and 2014/25/EU)
- The Decree on Public Procurement, which regulates the implementation of certain topics from the Procurement Act and designates the applicability of certain guidelines
- Guidelines (including the Proportionality Guide and the Works Procurement Regulations 2016)

The Proportionality Guide provides guidance on the restriction for contracting authorities to refrain from imposing onerous terms for public contracts. In addition, there is a separate Procurement Act for works, supply and service contracts in the fields of defense and security, which implements Directive 2009/81/EC.

10.4.2 Main principles

Dutch public procurement law is based on four main principles:

- Nondiscrimination — contracting authorities should not distinguish by nationality
- Equal treatment of tenderers (particularly in relation to the provision of information)
- Transparency — contracting authorities should ensure an appropriate degree of publicity, e.g., for the notice of their intention to award a public contract
- Proportionality — the requirements, terms and conditions in any tender procedure should be in reasonable proportion to its subject

These principles derive from European procurement law. Contracting authorities should honor these principles for any public procurement contract, and are furthermore bound to principles following from Dutch administrative law such as the general principles of good administration.

10.4.3 The public procurement procedure

The public procurement rules apply to a large range of authorities, including the Dutch state, regional or local authorities; bodies governed by public law; or associations formed by one or several of such authorities (in this chapter jointly referred to as "contracting authorities").

Private companies might also be subject to the laws of public procurement, for example, when the company operates based on special or exclusive rights or if a contracting authority procures through a private entity, such as an outside adviser.

Contracting authorities must use a regulated award procedure to award public contracts if the value of the respective contract exceeds certain threshold values. The regulated award procedure used may

vary depending on, for example, the nature of the procured contract or service, or the number of eligible tenderers. Generally, after selecting the award procedure, the contracting authority will do the following:

- Publish a public contract notice after which tenderers may submit their tender
- Verify whether a tenderer falls under a ground for exclusion
- Verify whether the suitability requirements are met by the tenderer (Suitability requirements might relate to the company's financial and economic standing on the one hand, and to the tenderer's technical knowledge or abilities on the other.)
- Verify whether the (objectively defined) technical specifications, requirements and standards set by the contracting authority are met by the tenderer's proposition
- Assess all valid tenders based on the set of award criteria (Public contracts may be awarded to the most economically advantageous tender (best price-quality ratio), based on lowest price or lowest costs using a cost-effectiveness approach.)
- Draft a record of the award of the contract, motivating the application of all criteria
- Communicate the award decision
- Facilitate a standstill period (This 20-calendar day standstill period allows tenderers to take notice of the award decision and its underlying reasons and to possibly challenge the decision and try to obtain an injunction against the conclusion of the agreement.)
- Enter into contract
- Publish the contract award notice

Please note that the specifics of the award procedure may vary, depending on the chosen procedure. In some instances, tenderers have to be invited, or play a more active role in shaping the request or size of the public procurement if the state of certain technologies or innovations require this.

The deadline for submitting a tender after the public contract notice is published varies between 30 and 45 days, depending on the award procedure used and, for example, whether the contracting authority has made use of an advance notice before its publication of the contract notice. In exceptional circumstances, time limits may be reduced if urgency renders the time limit impracticable.

In practice, disputes may arise throughout all stages of the public procurement procedure. Often, these disputes concern the application of legal safeguards and principles by the contracting authority, the objectivity and proper application of requirements and criteria, the possibility of using subcontractors, and whether alterations of the awarded contract should lead to a retender.

10.5 Import and export: free movement of goods

Trade to and from the Netherlands (like trade to and from any other EU member state) is subject to the rules on the free movement of goods. Articles 34 to 37 of the Treaty prohibit all measures that tend to restrict imports from or exports to other EU member states. Such restrictions can only be justified in exceptional cases (e.g., for reasons of public security, the protection of the health and lives of human beings, animals or plants, or the protection of industrial and commercial property).

Generally, any product that has been legally manufactured and marketed in another EU member state may be lawfully marketed in any other EU member state. Articles 34 to 37 of the Treaty have a direct effect in the Netherlands and can be invoked before Dutch courts. All customs duties have been abolished for trade between the Netherlands and other EU member states.

The common EU customs tariff rate applies to trade between the Netherlands and non-EU countries. In addition, the European Commission's import and export regulations for trade with non-EU countries must be observed. Depending on the country of origin or destination of a product or the type of goods (e.g., dual-use or strategic goods), import or export licenses may be required. Additional control mechanisms exist for certain goods, such as livestock or chemicals.

10.6 EEA

The EEA currently consists of 27 EU member states, plus Iceland, Norway and Liechtenstein. The EEA Agreement, which took effect on 1 January 1994, provides for a set of competition rules that are virtually identical to the EU competition rules. In addition, the abovementioned "free movement of goods" rules also apply to goods of EEA origin.

10.7 Standardization

One of the objectives of the EU is to eliminate barriers to trade and to promote the use of European standards. To achieve this objective, a considerable number of EU directives and regulations have been enacted to harmonize technical and quality requirements. This legislation relates to the lawful marketability of a variety of products, such as machinery, toys and medical devices. Products that have been manufactured in conformity with European standards are presumed to be in conformity with the essential requirements of the applicable EU legislation. Products that comply with such legislation are required to carry a CE mark and can be freely marketed throughout the EU.

11

Intellectual property

11. Intellectual property

11.1 Copyright

The Dutch Copyright Act (Auteurswet) (DCA) was adopted in 1912, the year the Netherlands acceded to the Berne Convention. It is one of the oldest copyright laws in the world. Although the DCA has been amended numerous times, it has never been completely revised. Generally, worded principles were designed in the times of paper press and vinyl records, but are nowadays still being applied in the digital era.

The DCA is especially flexible in its definition of the rights granted under copyright. Right holders enjoy two rights of exploitation, which are defined and interpreted in a very broad manner: a right of reproduction (verveelvoudigen) and a right of communication to the public (openbaarmaken).

The right of reproduction comprises the right of reproduction strictu sensu, as well as a right of translation and adaptation. The right of communication to the public covers all acts of making a work available to the public, including acts of publishing and distribution, performing, exhibiting, reciting, broadcasting and cable (re)transmission, among others.

The concept of a copyrighted work is in line with the "own intellectual creation" criterion of the Copyright Directive as further detailed by the European Court of Justice in its *Infopaq* decision: a particular object qualifies as a copyrighted "work" if it has its own original character and bears the author's "personal stamp." The originality threshold for a work to enjoy protection as copyrighted work is rather low: it requires that it is not banal in nature.

In line with the Berne Convention, the DCA does not contain any formal requirements that must be met to obtain copyright protection. Therefore, registration is not a requirement. Copyright is obtained by the mere creation of a work that is "original and has the personal imprint of the author." Furthermore, copyrightable works made in other countries party to the Berne Convention or the Universal Copyright Convention are also protected under the DCA (the principle of assimilation).

Copyright protection continues for 70 years after the death of the author or, in some cases, after the publication of the work.

Ownership, works for hire and transfer

The copyrights to a work are owned by the "author." This is typically the individual who created the work. If the work was created by the employee during their employment, the employer will be considered the copyright owner by virtue of law.

The works for hire concept has a very limited scope compared to some other jurisdictions. If an independent contractor creates works, that contractor will normally be the owner of the copyrights in this work. Only if the work by the third-party contractor is done under the supervision and specific instructions of the party that hired the third-party contractor, then copyright may vest in the instructing party.

Therefore, a company that wishes to own the copyrights in the works created for it by persons other than its employees can have these copyrights assigned (transferred) to it. Copyrights can be assigned by means of a "deed" (akte), a document that is destined to serve as evidence of the transfer and executed by a wet ink or electronic signature of the original copyright owner (the assignor).

Licenses can generally be granted in any form. The only exception to this is the **exclusive** license, which is granted by a private individual. This license requires a deed in order to be valid and binding, similar to a transfer of copyrights.

Furthermore, independent creators have a statutory right to receive equitable remuneration when granting exploitation rights, and they have the right to receive additional remuneration in certain circumstances (e.g., the bestseller clause). In addition, a non-usus rule is in place, meaning that if someone to whom the exploitation rights were granted does not or not sufficiently exploit the copyrighted work, the agreement in which the rights were granted can be terminated.

11.2 Neighboring rights

Performing artists, producers of sound recordings and broadcasting/film/record companies are entitled to neighboring rights. Neighboring rights are related to copyrights under the Dutch Neighboring Rights Act (Wet op de naburige rechten) (DNRA), which implements the Rome and Geneva Conventions.

The DNRA entitles the neighboring right holders to decide the following:

(a) Whether a performance may be recorded

(b) Whether a recording of a performance may be reproduced

(c) Whether a recording or reproduction may be sold, rented out, delivered or otherwise put on the market

(d) Whether a performance, recording or reproduction may be (re)broadcasted or otherwise made available or communicated to the public

It is not necessary to register neighboring rights. Neighboring rights may be exercised for a period of 50 years after 1 January of the year following the year of the initial performance.

11.3 Protection of databases

The Dutch Database Act (Databankenwet) (DDA) was adopted in 1999 to implement European Directive 96/9 of 11 March 1996 on the legal protection of databases. It created sui generis protection for databases that cannot be protected under copyright law because they do not meet the originality threshold.

Under the DDA, the producer of a database is granted exclusive rights to prevent the unauthorized extraction or reutilization of the contents of the database. The protection covers any unauthorized act of appropriation and distribution to the public of the whole or a substantial part of the contents of a database.

The protection runs from the date of completion of the database and will expire 15 years from 1 January of the year following the date of completion of the database. To enjoy database rights, the producer must have substantially invested in the obtaining, verification or presentation of the contents, rather than in the creation of the content itself. This investment will have to be evaluated both quantitatively and qualitatively and must be assessed in relation to the total volume of the contents of a database.

11.4 Trademarks

In the Netherlands, three types of registered trademarks are acknowledged: Benelux trademarks, European trademarks and international registrations designating the Benelux. There is no such thing as a national "Dutch" trademark as Belgium, the Netherlands and Luxembourg, together forming the Benelux region, have had a uniform trademark protection law since 1971. On 1 September 2006, the Benelux Trademarks Act and the Benelux Designs and Models Act were merged into the Benelux Convention on Intellectual Property (Benelux-Verdrag inzake de Intellectuele Eigendom) (BCIP).

To acquire trademark protection under the BCIP, a trademark must be registered with the Benelux Office for Intellectual Property (Benelux Bureau voor de Intellectuele Eigendom) (BOIP) in The Hague.

Any sign that is able to distinguish goods or services can be registered as a trademark. Words, symbols, colors, three-dimensional shapes and sounds are all signs that are able to distinguish goods or services. The BOIP may refuse signs for registration.

The most important grounds for refusal are the following:

1. The sign is descriptive. A sign is descriptive if, for example, it describes or recommends the product or service for which the trademark application is filed.
2. The sign lacks distinctive character. A descriptive sign automatically lacks distinctive character. In addition, a nondescriptive trademark can also be nondistinctive, such as slogans and single colors. These signs may be registered only after having acquired distinctive character through use.
3. The sign is misleading or is in violation of public order.
4. Official emblems and flags of a state or international registration are used.
5. The sign consists of a shape that results from the nature of the goods or is necessary to obtain a technical result, including where there is an overlap with another IP right, such as a patent or design.

An appeal against the (provisional) decision to refuse the registration of a sign as a trademark is possible for a period of three months, which can be extended to six months.

Once accepted, the application will be published. After publication, opposition against the registration may be filed within a period of two months. This provides the possibility for prior trademark owners to oppose an application for registration of a conflicting sign before the BOIP. The goal of these administrative opposition proceedings is to establish, at an early stage, whether a trademark can be registered. Furthermore, these rules are meant to encourage parties to reach an amicable settlement. Oppositions may be lodged against new trademarks filed for goods and services in all classes.

Under Benelux trademark law, the applicant or owner of a prior trademark can file an opposition against the following:

1. The registration of identical trademarks filed for the same goods or services
2. The registration of identical or similar trademarks filed for the same or similar goods or services, where there exists a likelihood of confusion among the public
3. If the newer trademark can cause confusion with a well-known trademark within the meaning of Article 6-bis of the Paris Convention
4. If the newer trademark is applied for in bad faith

If the published application is not (successfully) opposed, the trademark is registered. A trademark registration is valid for 10 years and can be renewed for successive 10-year terms.

Once registered, prior right holders may still challenge the registration by initiating cancellation actions before the Benelux courts or BOIP, based on the same grounds as mentioned above for opposition or if the trademark has not been used for a consecutive period of five years.

The owner of a Benelux trademark has the right to prohibit others from using a newer sign in the following circumstances:

1. It is identical for identical products or services in commerce.

2. It is identical or similar for identical or similar products or services if this may cause confusion.

3. It is identical or similar for other products or services if the trademark has a reputation in the Benelux and the use of that sign, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the trademark.

4. For other purposes than to distinguish a product or service, if this use, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the trademark.

As indicated above, in addition or instead of a Benelux trademark registration, an EU trademark (EUTM) registration that covers all 27 member states of the EU can be applied for. Trademark attorneys can file such applications from any EU country at the European Office for Intellectual Property (EUIPO). Owners of older national trademark rights in one of the member states can file an opposition against an allegedly conflicting EUTM.

The Netherlands is party to the Madrid Convention and the Madrid Protocol ("**Madrid System**"), which enables (i) persons or legal entities with a real and effective industrial or commercial establishment in a country that is a party to the Madrid System, or (ii) persons or legal entities with domicile or a registered seat in an EU member state, to extend a Benelux trademark registration to another member state and vice versa.

In general, the main advantage of an international registration is that it is more cost effective than filing individual national applications for registration in each country of interest. The disadvantage of this type of registration is that it automatically lapses or is canceled in all member states if the national application/registration on which the international registration is based lapses or is canceled within five years after the international registration. Opting for an international registration may also have strategic advantages, which differ from case to case.

Countries that are party to the Madrid System or the Paris Convention can claim priority rights within six months after the application date of the identical trademark's first application.

With our trademark database, Global IP Manager (GIPM), Baker McKenzie can provide web-based worldwide trademark portfolio management services. GIPM enables our clients to instantly review online all IP matters being handled by Baker McKenzie. Organized by country and legal action, or structured according to brand categories, GIPM replaces the need for in-house lawyers to trace information on the status of pending applications or current contentious matters.

Collective trademarks/certification marks

It is possible to register collective trademarks in Benelux. In addition, on 1 March 2019 the certification mark was introduced in Benelux.

A collective mark must be owned by an association or a legal entity under public law and serves to inform that the products or services are provided by a business that is a member of that organization. A collective mark can serve as an indicator of geographical origin (for example, by a group of farmers from a certain region).

A certification mark, on the other hand, serves to indicate that the products or services meet certain requirements and guarantees specific characteristics of certain goods and services. It indicates that the goods and services bearing the mark comply with a given standard set out in the regulations of use and controlled under the responsibility of the certification mark owner, irrespective of the identity of the undertaking that actually produces or provides the goods and services at issue and actually uses the certification mark. The owner of a certification mark is not allowed to use the trademark itself and it cannot serve as an indication of geographical origin.

11.5 Designs and models

The provisions of the BCIP also protect registered designs and models for functional products (i.e., features of shape, ornaments or patterns). Applications for registration are filed with the BOIP or with the International Bureau for the Protection of Industrial Property for international applications.

Novelty and having a "distinctive character" are conditions for protection, but originality of a design is not required. Nevertheless, a design is still considered "new" if it was not made public for the first time more than 12 months before the filing. The Benelux Designs and Models Act was merged with the Benelux Treaty for Intellectual Property on 1 September 2006. The protection term (five years) can be extended four times, to a maximum of 25 years.

As a result of EC Council Regulation 6/2002 of 12 December 2001 on Community Designs, a new and separate system has been created for the protection of designs in the EU.

This system also incorporates the unregistered community design right, which provides protection for three years from the day the product incorporating the design is made available to the public in the EU. This unregistered design right only allows the owner to oppose the use of identical designs, whereas the registered community design right entitles the owner to also oppose the use of designs that produce a similar impression. The latter right provides protection for a five-year period, which can be renewed four times (giving a total of 25 years of protection). Applications for this right are to be filed with the EUIPO.

The Netherlands is a party to The Hague Agreement for the International Registration of Designs and Models. This agreement makes it possible to apply for "international registration" in all member states. Registration is effected with the World Intellectual Property Organization (WIPO) in Geneva.

Countries that are a party to the Paris Convention can claim priority rights, within six months, to acquire a priority date, as of which the owner of the design or model can object to all identical and similar design or model applications and registrations.

11.6 Trade names

The Dutch Trade Name Act (Handelsnaamwet) (DTNA) prohibits the use of names that are identical or similar to those already being used by another company if such use creates the risk of confusion among the public, considering the nature and location of the businesses.

A company cannot acquire the right to a trade name merely by registering it in the Trade Register maintained by the Dutch Chamber of Commerce; to claim trade name protection under the DTNA, the name must actually be used as a trade name. Similarly, even names that were used as trade names but not registered as such in the Trade Register enjoy protection under the DTNA and can be invoked to object to any confusingly similar trade names of third parties.

Trade names can be transferred, but only as part of the business with which they are associated.

11.7 Patents

Patent law protection in the Netherlands is provided for in the Dutch Patent Act (Rijksoctrooiwet 1995). A patent is an exclusive right to a (technical or chemical) invention. A Dutch patent right holder has the exclusive right to prohibit a third party from using the invention for commercial purposes in the Netherlands. The lifetime of the patent is 20 years from the date of filing the application.

To obtain a Dutch patent, the invention must meet three material requirements. It should: (i) be novel, meaning that the proposed patented product/process should not have been disclosed to the public before filing the patent application; (ii) include an "inventive step," meaning that the invention should not be too obvious; and (iii) relate to a "technical" product or production process, which excludes, for

example, scientific theories from patent protection. After filing the patent application, the applicant should file a "search report" containing an investigation into the existing "state of the art" within 13 months of the filing date of the application.

Applications for Dutch patents must be submitted to the Netherlands Patent Office in Rijswijk, the Netherlands. Although the description of the patent application may be filed in English, the patent claims in the application must be submitted in Dutch.

European patent applications can be filed with the European Patent Office in Munich, Germany, or with its subdivision in Rijswijk, the Netherlands.

Where a prohibited act regarding a patented invention is commissioned without permission from the patent holder, this will constitute a patent infringement. Furthermore, the "use," which can be prohibited by the Dutch patent holder, is very broad and includes manufacturing, using, putting on the market, selling, lending, supplying, offering, importing and having in-stock infringing products.

The test for patent infringement boils down to the question of whether the infringing act (product/process) falls within the scope of the invoked Dutch patent. This means that the patent claims and specifications will need to be analyzed against the infringing act. Furthermore, Dutch courts also tend to apply the "equivalence test," meaning that there will also be an infringement of a Dutch patent even if the infringing product or process does not fall within the literal scope of the patent's claims, but can be considered "equivalent" to the claimed invention.

Dutch patent law acknowledges the distinction between "direct" and "indirect" infringement. Direct infringers commit acts that fall within the scope of the patent, for example, by manufacturing a product for which the patent claims protection. Indirect infringement includes the supply of goods that "direct infringers" use to exploit the patented invention, for example, the supply of raw materials. To be held liable for patent infringement, the "indirect infringer" must be aware or should have been aware that the goods supplied were intended to be used in the infringing products/process.

Under Dutch patent law, any person or entity engaging in an infringing act can be held liable for patent infringement. Potential defendants may include producers/manufacturers, suppliers, distributors, importers, exporters and retailers, to purchasers and end users.

Furthermore, Dutch patent owners can demand that intermediaries stop providing patent-infringing services to third parties.

In the Netherlands, civil action is the most important remedy for patent infringement. There are various types of civil proceedings available under Dutch (patent) law: preliminary (ex parte) injunction proceedings, proceedings on the merits and accelerated proceedings on the merits. The District Court of The Hague has exclusive jurisdiction on patent infringement and validity cases in the Netherlands. Consequently, The Hague Court of Appeal has exclusive jurisdiction in patent (preliminary) appeal proceedings.

In both the preliminary proceedings and proceedings on the merits, the losing party may, in addition to the damages, be ordered to pay for the reasonable and proportional legal costs that the prevailing party incurred, including lawyers' and patent agents' fees.

Although Dutch patent law stipulates that intentional patent infringement is subject to criminal proceedings, Dutch prosecuting authorities rarely prosecute patent infringers.

Apart from opposition proceedings before the Dutch patent authority, there are no administrative actions applicable to patent infringement.

Furthermore, the patent right holder may grant licenses to third parties for the use of its patent at its own discretion. However, if it is considered necessary for public interest, or if the patent is not adequately used in the Netherlands within three years after the patent right is granted, the patent right

holder may be compelled to grant a license. Compulsory licensing can also be enforced if there is a certain level of dependency between an existing patent and the application for which the license has been requested, and if it involves important new technology.

11.8 IP enforcement

In the Netherlands, enforcement of IP rights is typically handled in proceedings before the civil courts, either in summary (preliminary relief) proceedings or in proceedings on the merits.

IP owners have many means of enforcement at their disposal in the Netherlands. These include the general civil law enforcement proceedings, such as infringement cease orders, procedures for the preservation of evidence and the protection thereof, and provisional measures, such as seizure of assets, claims for financial compensation and surrender of profits, injunctions and damages.

In addition, remedies specifically available to IP right holders include the destruction, recall or permanent removal from the market of illegal goods, as well as preliminary measures such as ex parte injunctions.

IP owners may also request that the court orders certain persons to reveal the names and addresses of those involved in distributing infringing goods or services, along with details of the quantities and prices involved.

Since the European Directive on the Enforcement of Intellectual Property Rights (2004/48) was implemented in the Netherlands (in 2007), the legal fees awarded to the party winning IP infringement claims (or defenses) have increased dramatically. In both preliminary proceedings and proceedings on the merits, the losing party may, in addition to the damages, be ordered to pay for the reasonable and proportional legal costs that the prevailing party incurred, including legal fees. In this regard, the courts have issued guidelines for the amounts that are considered "standard," which are significantly higher than the compensation in matters not involving IP rights. Moreover, the courts can still award the actual amount of legal fees on a case-by-case basis and deviate from their guidelines. Dutch courts appear to award higher legal fee compensation amounts to IP owners (and defendants against ill-founded infringement claims) than the courts in surrounding countries.

11.9 Anti-counterfeit measures

As a member of the EU, the Netherlands has implemented measures to harmonize customs controls for IP rights. Council Regulation 608/2013 lays down measures concerning the importation of counterfeit goods into the European Community. These measures provide an effective tool for protecting most IP rights against counterfeit trade.

Under the Council Regulation, customs can seize goods that are suspected of infringing certain IP rights and notify the IP rights holder, if an appropriate notice was filed with customs beforehand. Filing a customs notice is relatively simple and straightforward. Customs charges no administrative costs for processing such notice.

Once customs has detained potentially infringing goods, there is a customs procedure available for right holders to have the goods (voluntarily) surrendered by the importer, either by explicit or implied consent, after which the counterfeit goods can be destroyed, or to commence civil or criminal proceedings against the importers. Practice shows that the goods are usually voluntarily surrendered for destruction to avoid legal proceedings.

Baker McKenzie offers various global web-enabled tools to cost-effectively fight counterfeiting at the customs level on a global basis, such as pre-litigation enforcement services on a fixed-fee basis, which includes customs recordation of IP rights, preparing cease-and-desist letters and dealing with initial responses from the adverse parties to reach a settlement.

11.10 IP protection of software and (IT) hardware

11.10.1 Computer software, protection and reverse engineering

In the Netherlands, computer software may be protected by copyright under the DCA, if it satisfies the originality requirement. The courts in the Netherlands directly apply the doctrine of the European Court of Justice for copyrights to software products. Similar to all other works of literature, science and art, no formalities are required to obtain copyright protection for computer software and its graphical user interface; the first is protected under the Software Directive (2009/24/EC), while the second is protected under common copyright law.

A developer of computer software may have, and be able, to enforce its copyrights if (parts of) the source code or the particular behavior of the software qualify as one's "own intellectual creation," as set forth in the *Infopaq* decision of the European Court of Justice on 16 July 2009.

First sale doctrine/limitations

In 2012, the Dutch Supreme Court confirmed the court of appeal's decision that the provisions on "sale" of Book 7 of the DCC apply to off-the-shelf software licenses if the licenses are sold for a set amount and are not limited in time (Dutch landmark case *Beeldbrigade*). This means that specific provisions regarding conformity, obligation to complain and prescription apply to the purchase of this software.

On a European level, it was ruled that the licensing of standard software against a one-off license fee for use for an unlimited period is considered a sale, regardless of whether the software was provided in a physical medium or downloaded by the licensee. The first sale doctrine applies to such "sale," meaning that the licensee can sell its rights and the original licensor cannot enforce its right against the purchaser of secondhand software. Moreover, the European Court of Justice held that a contractual prohibition to transfer a license is void because it is in conflict with the first sale rule. In this decision (European Court of Justice, 3 July 2012, *Oracle/UsedSoft*), the court actually abandoned the "licensed, not sold" legal theory.

Reverse engineering/reengineering

The developer/owner of a software product cannot prohibit legitimate users (licensees) from decompiling and reverse engineering the software if the original source code is not used for this reengineering process. This follows from the SAS/World Programming decision of the European Court of Justice on 2 May 2012, the doctrine of which has been applied by courts in the Netherlands in various decisions.

Ownership

Software that is being developed by employees will, in principle, be owned by the company that employs them by virtue of law (see Section 11.1). However, if software development activities are commissioned to independent contractors or other auxiliary persons, the copyrights to such software will not automatically be owned by the company hiring these resources. Generally, the "work for hire" doctrine has no equivalent in the Netherlands. Unless otherwise agreed on in a written and signed agreement, the programmer (or their employer) will be considered the owner of the copyrights of the software source code produced by them.

Patent protection

The possibility of protecting software by means of a patent is still under discussion, even at the European level. There is little case law in the Netherlands on patent protection for computer software. Although software "as such" is not eligible for patenting, patents have been granted for inventions that

comprise software implemented in hardware. Companies should at least verify whether their computer software qualifies for patent protection in the Netherlands.

11.11 Advertising

Misleading advertising is primarily addressed under tort law. The DCC declares it a tort to misrepresent the nature, composition, quantity, quality, characteristics, user possibilities, origin or price of a product.

Comparative advertising is permitted under Dutch law, if it gives an objective comparison of one or more materials, relevant, verifiable and representative features or qualities of the products or services being compared. Other trademarks may be used in such comparisons, if the advertisement does not harm the reputation of the other trademark.

For misleading or unlawful advertising, an injunction, a rectification or compensation for damages can be sought before the Dutch courts based on the relevant provisions of the DCC.

Furthermore, advertising standards are regulated by separate laws for specific industries and by the industry itself. The Dutch Advertising Code (Nederlandse Reclame Code) is an example of such self-regulation and provides that advertising must be in accordance with the law, the facts and good taste, and that it may not be contrary to public interest, public order or common decency. Advertising that misleads the public (e.g., regarding the price or origin of a certain product) is prohibited. Specific regulations apply to, among other things, advertising directed at children and to that of alcoholic beverages, pharmaceuticals and financial products.

Both consumers and competitors are entitled to file complaints with the Advertising Code Committee and its board of appeal. Although the decisions of either group are not legally binding, negative decisions are normally respected by the affiliated media (which is almost all media in the Netherlands), which will refrain from publishing the advertisement in question. The Advertising Code Committee and its board of appeal can render an "individual recommendation," which is communicated only to the plaintiff and the offender in question, or it can render a "public recommendation," which is published in various media sources.

Tobacco

The advertisement of tobacco products has been banned in the Netherlands. The Dutch Tobacco Act also restricts the use of tobacco trademarks and distinguishing signs for nontobacco products.

Pharmaceuticals

The Pharmaceuticals Act (Geneesmiddelenwet) regulates advertising pharmaceuticals. It is further regulated by self-regulatory codes, such as the Code of Conduct for the Advertising of Pharmaceuticals of the foundation for the code on pharmaceutical advertising (Stichting Code Geneesmiddelenreclame) and the Code for the Advertising of Medicinal Products to the General Public of the inspection board for the public promotion of medicines (Stichting Keuringsraad Openlijke Aanprijzing Geneesmiddelen (KOAG)). The advertising of pharmaceuticals is strictly regulated. Public advertising of nonprescription pharmaceuticals is allowed under certain conditions, but public advertising of prescription pharmaceuticals is prohibited. Strict rules apply to comparative advertising for pharmaceuticals.

Complaints regarding violations of the Code of Conduct for the Advertising of Pharmaceuticals can be filed with the Code Committee of the Stichting Code Geneesmiddelenreclame. Complaints regarding violations of the Code for the Advertising of Medicinal Products to the General Public can be filed with the Code Committee of the Stichting KOAG. Appeals against the code committees' decisions can be filed with the respective boards of appeal. It is also possible to initiate court proceedings against competitors based on unfair competition.

Promotional games of chance

Advertising through (promotional) games of chance is strictly regulated by the Betting and Gaming Act (Wet op de kansspelen) and the Code of Conduct on Promotional Games of Chance (Gedragscode promotionele kansspelen). A violation of these regulations is an economic offense.

Under the Code of Conduct on Promotional Games of Chance, a maximum of one promotional game of chance per product, service or organization is allowed per year. No costs other than the costs of communication may be charged for participation in a prize draw. Furthermore, such costs of communication may not exceed EUR 0.45 per entry and must be clearly communicated beforehand. The original price of the product or service may not be increased merely because of the prize draw. The total amount of any winnings must not exceed EUR 100,000 per year. In addition, there must be no more than 20 prize draws in one promotional game of chance.

The organizer of a promotional game of chance must use general terms and conditions that include specific information, such as the name and address of the organizer, the period during which the prize draw is open, the number, nature and value of the prizes, the communication costs, the date of the prize draw, the way that the tax on games of chance will be paid, and other similar details.

For "small promotional games of chance" where the total value of the prizes is less than EUR 4,500, the regulations are less strict.

11.12 Advertising and freedom of expression

Article 7 of the Dutch Constitution (Grondwet) regarding the freedom of expression does not apply to commercial advertising. However, the corresponding Article 10 of the European Convention on Human Rights (ECHR), which supersedes the national constitutions within the EU, does not exclude commercial advertising. This implies that according to European law commercial advertising can fall under the scope of the right to freedom of expression.

In practice, the scope of protection under Article 10 of the ECHR for commercial advertising is limited. It does not provide advertisers with an unrestricted right to advertise for their own benefit and at their competitors' expense. In Dutch and European case law, it has been established that in a conflict between commercial advertising and, for instance, the IP rights of a competitor, the court will weigh the interests involved.

11.13 Unfair competition

Under certain conditions, recourse may be claimed against passing-off or unfair competition under Dutch tort law. To base a claim against unlawful reproduction or copying of goods on unfair competition, it will generally have to be demonstrated that the unlawful acts led to (a danger of) public confusion that could have been avoided without hampering the reliability and usefulness of the goods concerned. Furthermore, it will have to be demonstrated that the unlawful acts in question have caused damages to the plaintiff.

Other unlawful acts, such as unfairly competing with one's former employer, theft of trade secrets or misleading (comparative) advertising claims can also be redressed based on unfair competition under Dutch tort law.

11.14 Trade secrets

The scope of protection of trade secrets in the Netherlands has broadened due to the introduction of the new Dutch Trade Secrets Act (DTSA) on 23 October 2018. The DTSA implements the EU Trade Secrets Directive (Directive 2016/943/EU) and provides protection to companies in the Netherlands that are confronted with unlawful disclosures of their trade secrets. The DTSA provides for protection of information as a trade secret if the following applies:

1. The information is secret, meaning that it is not generally known among or readily accessible to persons within the circle of people that would normally deal with the kind of information concerned.

2. The information has commercial value because it is secret.

3. Reasonable steps have been taken by the person lawfully in control of the information to keep it secret.

What steps are reasonable for protection as a trade secret will depend on the circumstances, but may typically include implementing strict nondisclosure policies and implementing procedures or measures to secure the relevant data from unauthorized access.

The DTSA contains measures and remedies to enforce trade secrets. For example, the holder of a trade secret may start civil proceedings to prohibit the further use or disclosure of an unlawfully obtained trade secret or claim damages. In addition, the DTSA provides for various remedies against "infringing goods," meaning goods the design, characteristics, functioning, production process or marketing of which significantly benefits from trade secrets unlawfully acquired, used or disclosed.

11.15 Assignment, licensing and pledge

Further to the specific provisions under Dutch IP law, the assignment, licensing and pledge of certain IP rights are subject to the general provisions of Dutch property and contract law and to European and Dutch competition law. No government approval is required. However, for certain assignments, licenses and pledges (of, for example, patents, trademarks or designs) to be effective against third parties, they must be registered with the applicable registration offices.

11.16 International IP treaties and legislation

In addition to the treaties previously mentioned, the Netherlands is also a party to, among others, the Agreement on Trade-Related Aspects of Intellectual Property Rights (effective since 1 January 1996) and the Paris Convention establishing the WIPO.

12

Data protection

12. Data protection

12.1 General

In the Netherlands, the main legislation governing the protection of personal data is the EU General Data Protection Regulation (GDPR) and its supplementing national law, the Dutch GDPR Implementation Act (Uitvoeringswet Algemene Verordening Gegevensbescherming). Moreover, the Dutch Telecommunications Act (Telecommunicatiewet) implements data privacy provisions originating from the EU ePrivacy Directive, which particularly relate to privacy in electronic communications.

12.2 Key definitions

Under the GDPR, "personal data" is defined as any information relating to an identified or identifiable natural person, referred to as the data subject.

An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

This broad concept extends to data pertaining to a data subject when acting in its professional capacity, such as an employee email address. Data relating to a deceased person does not fall under the scope of the definition of personal data.

Specific protection is afforded to personal data that is more sensitive in nature. This includes personal data revealing a person's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, health, sex life or sexual orientation (also referred to as "special category data"), as well as personal data relating to criminal convictions and offenses and national security number (burgerservicenummer) of Dutch nationals.

The concept of "processing" personal data means any operation or set of operations that is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. This essentially includes all acts performed during the entire data lifecycle, from collection to deletion of personal data.

12.3 Key compliance principles

The GDPR is largely built around key principles that must be observed when personal data is processed. These include the following:

- **Lawfulness, fairness and transparency**, meaning that any data processing operation must have a specific legal basis as provided for by the GDPR and applicable national law. Companies have a duty to inform data subjects about the specifics of the personal data processing, for example, through a privacy statement.
- **Purpose limitation**, meaning that personal data must be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. It is generally not permitted to collect personal data without a clearly defined use case.
- **Data minimization**, meaning that personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed. Excessive data collection is not permitted.

- **Accuracy**, meaning that personal data must be accurate and, where necessary, kept up to date. Every reasonable step must be taken to ensure that personal data that is inaccurate is erased or rectified without delay. Data subjects have the right to correct data that is inaccurate.
- **Storage limitation**, meaning that personal data must be kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which the personal data is processed. Companies must define appropriate data retention periods applicable to the datasets processed and implement these in practice.
- **Integrity and confidentiality**, meaning that personal data must be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures.
- **Accountability**, meaning that the company that decides on the purposes and means of personal data processing, i.e., the controller, shall be responsible for and be able to demonstrate compliance with the foregoing. This calls for adequate (internal) policies and recordkeeping of data protection related assessments and decisions made.

12.4 Specific compliance obligations

In addition to adhering to the above principles, the GDPR sets forth a number of specific compliance obligations that include the following:

- **Data protection impact assessment**. Before conducting data processing activities that pose higher risks, the impact of the envisaged operations on personal data protection must be assessed.
- **Keeping a record of data processing activities conducted**. Companies must keep and maintain detailed overviews of the personal data processing activities conducted.
- **Data breach reporting**. Companies have a duty to report data breaches to the competent data protection authority within 72 hours upon detection, unless the breach is unlikely to result in a risk to the rights and freedoms of persons impacted. A data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed. This includes a range of events, from a wrongfully addressed email to hacking. If the breach is likely to pose a high risk to data subjects, they must be notified as well without undue delay.
- **Contractual arrangements**. Companies that provide or provide access to personal data to others, whether within or outside the corporate group, must ensure data protection related arrangements appropriate to the roles and responsibilities of the parties are made. This includes, for example, a situation where a company engages external service providers for data hosting, payroll or marketing activities that involve personal data processing by the third-party service provider.
- **International data transfer**. Personal data may only be transferred to recipients outside the EEA when there are safeguards in place that ensure adequate protection of the data once transferred. One way to accommodate this is by using European Commission-approved standard contractual clauses. A transfer impact assessment must be conducted prior to the transfer to determine the level of protection, taking into account, for example, the data protection laws and the access rights of local authorities in the country where the data is transferred to.

- **Data subject rights**. Data subjects have specific rights in respect of their data, including the right to access, correct and erase personal data and to restrict or object to the processing of data. Not all these rights are absolute, and a company may have valid grounds to refuse a request made. Either way, companies must respond to requests without delay, and at the latest within one month of receipt. In specific circumstances, the response term may be extended by two months.

12.5 Enforcement

The Dutch Data Protection Authority (Autoriteit Persoonsgegevens) is appointed by law as the supervising authority for data protection matters in the Netherlands. It has the power to conduct investigations and take corrective and punitive action.

In line with the GDPR, administrative fines can go up to EUR 20 million or 4% of an organization's total worldwide annual turnover, depending on the nature of the violation.

13

Labor law

13. Labor law

13.1 Form and term of the employment contract

An employment contract may be concluded verbally or in writing. A written contract may take the form of a contract signed by both parties, an exchange of letters or a single confirmation (a single document). Under either form, the employer is legally required to provide the employee with a written statement setting out specific terms relating to the employment contract (such as the place of work, the position of the employee, the name and place of the employer and employee, whether a collective labor agreement (CLA) applies, the pension arrangement in place (if any), the paid leave entitlements, the notice period, the composition of the wages, etc.). Moreover, certain provisions, such as a noncompetition clause or probationary clause, will only be valid when agreed in writing.

An employment contract may be concluded for (i) an indefinite term, (ii) a specified term (a "fixed-term contract") or (iii) a specific task or project. If no term, task or project has been specified, the contract will be considered concluded for an indefinite term.

13.2 Probationary period

The statutory maximum probationary period for an indefinite-term employment contract is two months. It is not possible to agree on a probationary period in fixed-term contracts that do not exceed six months. For a fixed-term employment contract exceeding a period of six months and less than two years, a one-month probationary period is allowed. For a fixed-term employment contract of two years or more, a two-month probationary period is allowed. Deviation to the detriment of the employee is only possible pursuant to a CLA or by an order of an administrative body.

13.3 Noncompetition clause

Indefinite-term contracts

Noncompetition clauses, applicable to a certain scope of activities in certain geographical areas and for a certain number of years, are common in the Netherlands. In order to validly restrict an employee from accepting competing employment after the employment contract's termination, the noncompetition clause must be agreed upon in writing and signed by both parties (the employee must be at least 18 years old at the time of signing).

Mere reference to a noncompetition clause in a CLA or internal rules and regulations will, in principle, not suffice to bind the employee. The employee should expressly agree to the contents of a noncompetition clause, such as by signing an employment contract that includes the noncompetition clause.

Depending on the circumstances of the case, the court will have the discretion to mitigate a noncompetition clause in duration or scope (both in terms of geographic area and product or service) or order to pay a fair compensation to the employee for enforcing the clause. This could be the case if the employee contests the applicability of the noncompetition clause in court, taking the position that the noncompetition clause significantly obstructs the employee from entering into the service of another employer. The court will then take a weighing-interests approach.

Furthermore, a noncompetition clause may become invalid if the responsibilities ensuing from the employee's position have been substantially amended during their employment as a result of which the noncompetition clause has become more burdensome to the employee.

Fixed-term contracts

It is not possible to agree on a noncompetition clause in fixed-term employment contracts, irrespective of their duration, unless the employer can substantiate, in writing, having a weighty business or

service interest that necessitates a noncompetition clause. The substantiation must be part of the noncompetition clause.

13.4 Termination

13.4.1 Employment for an indefinite period

The employer generally has four ways to terminate an employment contract for an indefinite period:

- Termination with immediate effect for "urgent cause"
- Termination following permission of the labor office (Uitvoeringsinstituut Werkgeversverzekeringen (UWV)) or through dissolution by the court
- Termination by mutual consent
- Termination during the probationary period

Termination with immediate effect for "urgent cause"

Employees can be dismissed without notice or prior approval for "urgent cause," i.e., a cause of such a nature that no employer could reasonably be expected to continue the employment relationship any longer.

Dutch law sets forth a number of examples of "urgent cause," such as gross negligence in the performance of duties, disclosure of trade or professional secrets, theft, fraud, embezzlement or crimes involving breach of trust. Even if the employee has committed such an offense, this does not automatically give rise to an urgent cause for dismissal, as the employee's conduct must be sufficiently serious so as to justify immediate dismissal. Performance issues typically do not justify a termination for urgent cause. Ultimately, only the competent court can assess whether the circumstances of a case at hand actually constitute an urgent cause justifying immediate termination.

The employee may contest a summary dismissal by submitting a request to the court. The employee can choose to claim either nullification of the termination (vernietiging van de opzegging) or reasonable compensation (billijke vergoeding). The employee should file a petition for such a claim within two months after the immediate dismissal.

Termination following permission of the UWV or through dissolution by the court

Without "urgent cause," dismissals are, in principle, only allowed if: (i) there is a reasonable ground for dismissal; (ii) there is no possibility of redeploying the employee in a suitable alternative position within the (global) organization of the employer (not even after training/education during a reasonable time frame); and (iii) the employer has obtained the prior permission of the UWV for giving notice of termination, or the court has granted the employer's request to dissolve the employment contract.

The law provides for the following nine exhaustive "reasonable grounds":

(a) Headcount reduction for business or economic reasons (redundancy)

(b) Long-term disability (more than 104 weeks), provided that recovery is unlikely to occur within 26 weeks and that the contractually agreed work cannot be performed in an adapted form

(c) Frequent and disruptive absence due to sickness

(d) Incapacity to perform the contractually agreed work other than for a medical reason (i.e., nonperformance), provided that: (i) the employer has informed the employee of the performance issues in due time; (ii) the employer has taken sufficient steps to enable the

employee to improve their performance; and (iii) the inadequate performance has not been caused by insufficient efforts by the employer to train the employee or by poor working conditions

(e) Culpable acts or omissions of the employee, such that the employer cannot reasonably be required to continue the employment contract

(f) Refusal to perform contractual duties for reasons of conscience, provided that the contractually agreed work cannot be performed in an adapted form

(g) Disturbed working relationship, provided that the impairment is so serious that the employer cannot reasonably be required to continue the relationship

(h) Other reasons of such nature that the employer cannot reasonably be expected to continue the employment relationship

(i) Cumulation ground (a combination of reasons under c, d, e, g and h)

Ground (h) cannot be used as a "catch-all" for cases falling outside the scope of the list. Only truly exceptional cases will be accepted as reasonable grounds within the meaning of (i).

Dismissals based on grounds (a) and (b) require permission from the UWV. Dismissals under (c) to (i) are only possible by court decision. In all cases, the employer needs a sound business case for the dismissal that can be substantiated with objective facts and figures.

For dismissals based on nonperformance (i.e., ground (d) above), the employer will need to file a petition with the court and prove that the termination is necessary. This means that the inadequate performance needs to be thoroughly documented (i.e., a "performance file"). Such a performance file should include performance reviews (rated insufficient or with critical improvement points), documentation showing that the employer offered the employee help on the improvement points (coaching and a performance improvement plan) and that the employer worked with the employee on their performance, subsequent documents issued to the employee indicating that the improvement points have still not been met and therefore the employment contract's termination is inevitable, etc.

The cumulation ground (ground (i)) allows circumstances from different grounds for dismissal to be combined and to provide a reasonable ground for dismissal. However, in order to encourage employers to strive for a single, well-supported ground for dismissal as much as possible, and not to regard the cumulation ground as a general or residual ground, an "additional compensation" is introduced, payable to the employee. This additional compensation is to be awarded by the court depending on the circumstances of the case and amounts to a maximum of 150% of the statutory transition payment to which the employee is entitled.

An employee who has been dismissed without permission from the UWV or a court decision, or in breach of a dismissal prohibition, may ask the court to annul the dismissal or to award reasonable compensation. An employee is also entitled to appeal the decision of the UWV or court, up to the Supreme Court.

Different rules for termination may apply for employees nearing or having reached the (state) pension age.

Termination by mutual consent

An employment contract may be terminated at any time by means of a termination agreement, i.e., by mutual consent between the employer and the employee. Termination can take place with or without observance of the statutory or agreed-upon notice period, and with or without payment of compensation to the employee. It is important for the employer to ensure that the employee's consent to the agreement is explicit and unambiguous. Therefore, it is recommended that the employer

enables the employee to seek legal advice in this respect before accepting any offer for termination of the employment contract.

After the parties have reached agreement on the termination of the employment contract by mutual consent, a mandatory "reflection period" of two weeks applies. During this period, an employee has the right to dissolve the termination agreement without need for court proceedings and without having to give reasons. The employer has an obligation to inform the employee of this right. Failure to inform the employee of this right in the termination agreement will extend the reflection period to three weeks. The reflection period does not apply to managing directors.

Termination during the probationary period

During the probationary period, either party may terminate the employment contract at any time without observing the notice period, unless the termination is, for instance, based on discriminatory reasons. At the employee's request, the employer must provide the reasons for terminating the employment contract during the probationary period.

The employer will not be able to apply probationary dismissal if the parties agreed to a probationary period exceeding the maximum allowed period. In that case, the agreed probationary period will be void.

13.4.2 Fixed-term employment

Termination

The aforementioned rules and procedures generally also apply to the premature termination of a fixed-term contract, noting that premature termination of a fixed-term employment contract is in principle only possible if the parties have agreed to the option of premature termination.

Notification requirement

At least one month before a fixed-term contract of six months or more will end, the employer should inform the employee of: (i) whether the contract will be continued; and (ii) what conditions will apply to the continued employment.

Noncompliance may result in the following penalties:

- If the employer has not complied with the obligation to inform the employee whether the employment contract will be continued at all, it may result in an obligation to pay one month's gross salary.
- If the employer was late in complying with the obligation to inform the employee whether the employment contract will be continued, it may result in an obligation to pay one day's gross wages for each day the employer has been late in notifying the employee (up to a maximum of a month's gross salary).

If the employment contract is continued, but the employer has not fully complied with the notification requirement, the employment contract will be continued under the same conditions and duration as the previous contract. This time, however, the duration will be extended to one year if the parties tacitly continue the employment relationship without making further arrangements.

"Chain of contracts rule"

A fixed-term contract may be renewed by the employer. However, a fixed-term contract will automatically be converted into an indefinite-term contract if: (i) the chain of fixed-term contracts covers 36 months or more without a rest period between contracts of at least six months; or (ii) the chain of fixed-term contracts consists of more than three fixed-term contracts without a rest period of

at least six months between contracts ("chain of contracts rule"). For employees who have reached the state pension age, different rules apply.

If the employee performs the same kind of work for a new employer that they previously performed for another employer, successive employership may apply. In that case, the chain of contract rule also applies.

13.4.3 Financial compensation

Transition payment

In case of termination, employees are entitled to the statutory transition payment if: (i) the termination of the employment contract is "involuntary"; or (ii) they are on a fixed-term contract that will not be extended by the employer. This transition payment will be paid as compensation for terminating the employment contract and will transition the employee to alternative employment.

The transition payment accrues as from the commencement of the employment contract. The transition payment is also due if the employment contract is terminated during the probationary period. The transition payment amounts to one-third of the monthly salary (including all gross emoluments and average monthly bonus over the past three years) per year of service, calculated based on the actual length of service. This payment is capped at EUR 98,000 gross (for 2025) or the employee's annual salary, including all emoluments and bonuses if this is higher.

The transition payment is not due in the following circumstances:

- If the employment contract ends (by operation of law) due to an employee reaching the (state) pension age
- If the employment contract ends due to serious acts or omissions attributable to the employee
- If the employment contract ends before the employee reaches the age of 18 and the average working hours per week are 12 hours or less
- If the employee resigns for reasons unrelated to any seriously culpable acts or omissions by the employer
- In case of termination by mutual consent

Employees will generally not be inclined to agree to a termination by mutual consent if the offer reflected in the termination agreement is not more favorable than their entitlement in case of termination following permission from the UWV or through dissolution by the court. Consequently, termination agreements generally provide for severance amounts at least equal to the transition payment.

Reasonable compensation

Depending on the circumstances leading up to the termination, the court may order the employer to pay the employee reasonable compensation in case of termination. There is no fixed formula for calculating the amount of reasonable compensation. Instead, the amount of reasonable compensation is determined by the court taking into account the relevant circumstances of the case, guided by considerations following from case law.

Examples of situations where reasonable compensation may be awarded are when the employment contract is terminated due to the employer's severe culpable conduct or negligence, or when the employer has terminated the employment contract in violation of a discrimination law or ban on termination or without the permission of the UWV (where required).

13.4.4 Managing director

Termination of the employment contract of a managing director (statutair directeur) who has been appointed pursuant to the articles of association of a legal entity differs from termination of the employment contract of a regular employee. The reason for this difference is that a managing director has a twofold relationship with the company: (i) a corporate relationship and (ii) an employment relationship.

Depending on the company's articles of association and/or contractual agreements in place, the shareholders will, in principle, be authorized to dismiss a managing director from their corporate position during a shareholders' meeting.

To convene a shareholders' meeting, invitations and letters, including an overview of the items on the agenda (i.e., the intended dismissal), should be sent in a timely manner to all shareholders, managing directors and members of the supervisory board (if any).

The managing director must be given the opportunity to defend themselves during the shareholders' meeting. Subsequently, the other managing directors of the company, if any, and members of the supervisory board, if any, should be offered the opportunity to render their advisory vote during the shareholders' meeting before the ultimate decision to dismiss the managing director is taken.

In principle, the employment contract of the managing director will also end as a result of the dismissal during the shareholders' meeting (i.e., the corporate and employment relationship will end simultaneously). It is therefore not required to ask the UWV or court for (permission for) termination.

The notice period does still apply and the managing director will be entitled to the statutory termination entitlements, such as the transition payment.

A managing director contesting their termination cannot request reinstatement but may claim reasonable compensation if: (i) there is severe culpable conduct or negligence from the employer; (ii) the dismissal lacks a reasonable ground; or (iii) the managing director could have been redeployed in another alternative position within the (global) organization of the employer. If the managing director falls sick before having received the invitation to the shareholders' meeting, the dismissal during the shareholders' meeting will only result in the termination of the corporate relationship, not the employment relationship due to the ban on termination during illness.

If the company has established a Works Council and the managing director is the consultation partner of the Works council (bestuurder, within the meaning of the Dutch Works Councils Act), the prior advice of the Works Council on the intended dismissal of the managing director must be requested before the decision to dismiss them is adopted and implemented.

13.5 Employee representation

13.5.1 Works councils

Under the Dutch Works Councils Act, companies with 50 or more employees must establish a works council.

The members of the works council are chosen by the employees from their own ranks. The number of members varies from three to 25, depending on the total number of employees of the company. One of the members is appointed as chairperson. A managing director may not be a member of the works council.

The management of the company and the works council must meet at least twice a year to discuss the general affairs of the company. Management is obliged to provide the works council with relevant company data and documentation such as the company's financial results and legal structure. Furthermore, management must inform the works council about the company's results and prospects.

The works council is also entitled to receive information on the scope and content of the terms and conditions of employment with respect to different groups of employees within the company, including the general development of their remuneration.

Before adopting certain intended decisions, for example, relating to the transfer of control of the company, the termination of or a major change in the company's activities, major investments, significant reorganizations, mergers, takeovers, changes in location or major workforce layoffs and dismissals, the works council should be asked to render its written advice.

In addition, the works council should be asked for consent before adopting certain intended decisions that directly affect employment conditions, such as pension plans and all kinds of in-house regulations, including regulations relating to working hours or holidays, working conditions, and policy on appointments, dismissals or promotions.

Failure to comply with the obligation to timely request the works council for advice or consent may result in substantial delays, unwanted media exposure, unrest among employees and (where applicable) trade unions, and in a worst-case scenario, court proceedings resulting in the obligation to reverse the adopted decision, including all implementation measures.

The general aim of the Dutch Works Councils Act is to promote consultation between management and employees, especially about intended changes in business or policies that can affect personnel (i.e., employment conditions, terms of employment, etc.).

Members of the works council must observe confidentiality in relation to all business and industrial secrets that may come to their knowledge, as well as all matters with respect to which the company or the works council has imposed an obligation of confidentiality.

For larger companies, it may be considered or necessary to establish a joint works council or a central works council.

13.5.2 Smaller companies

The Dutch Works Councils Act contains employee participation/consultation obligations for companies that do not have a Works Council. For example, companies with at least 10 but fewer than 50 employees are, without a works council, required to set up a three-member "employee representative body" if the majority of the employees so request.

Management must consult with the employee representative body on a number of subjects, including intended decisions that may result in job losses or major changes in the working conditions of at least 25% of the employees working in the company.

Small companies with fewer than 10 employees also have to set up a three-member employee representative body if the majority of the employees so request. In comparison with the powers of an employee representative body of a company with 10 to 50 employees, the powers of an employee representative body of a company with fewer than 10 employees are far more limited and only relate to intended decisions that require prior consent based on the Dutch Works Councils Act.

Without a works council and an employee representative body, a company with at least 10 but fewer than 50 employees is obliged to give its employees the opportunity to meet with management twice every calendar year during a personnel meeting. Furthermore, the employees of such a company should be given the opportunity to render their advice on any proposed decision that may lead to a loss of jobs or to major changes in the terms of employment or working conditions of at least 25% of the persons working in the company.

The Dutch Works Councils Act provides the personnel meeting with the same advisory powers as an employee representative body in a company with at least 10 but fewer than 50 employees.

An employee representative body or personnel meeting has limited powers in comparison with the powers of a works council. As opposed to a works council, an employee representative body or personnel meeting will not be able to engage in legal proceedings if the company does not abide by its written advice.

14

Visas, residence permits and work permits for non-EU nationals

14. Visas, residence permits and work permits for non-EU nationals

14.1 Executive summary

Under Dutch immigration law, there are various procedures available to obtain required work and residence permits for foreign non-EU/EEA/Swiss nationals. These procedures range from temporary business visas to permanent residence permits. Requirements and processing time vary by procedure.

14.2 Key government agencies

The Ministry of Foreign Affairs issues visas through Dutch embassies and consulates around the world.

The Immigration and Naturalization Service (Immigratie en Naturalisatiedienst (IND)) is part of the Ministry of Justice and is, in general, responsible for decisions in visa and residence permit applications. The UWV handles work permit applications, while the Social Affairs and Employment Inspectorate (Inspectie SZW) focuses on investigations and enforcement actions involving employers and foreign nationals.

14.3 Visit to the Netherlands not exceeding 90 days

Foreign nationals from most non-EU/EEA/Swiss countries are generally required to have a visa for a temporary visit to the Netherlands. It is advisable to check with the Dutch embassy or consulate to confirm whether a visa is required.

The visa is issued for a maximum period of 90 days and is not extendable. Furthermore, the holder of the visa may stay no longer than 90 days within 180 days within the Schengen area, whose member states include: Austria; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Italy; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; the Netherlands; Norway; Poland; Portugal; Romania; Spain; Slovakia; Slovenia; Sweden; and Switzerland.

It is possible to apply for a multiple-entry visa allowing foreign nationals to leave and reenter the Schengen Area during the visa period.

Visa waiver

Passport holders of the following countries and jurisdictions do not require a visa for a stay of 90 days or less: Albania; Andorra; Antigua and Barbuda; Argentina; Australia; the Bahamas; Barbados; Bosnia and Herzegovina; Brazil; Brunei Darussalam; Canada; Chile; Colombia; Costa Rica; Dominica; East Timor; El Salvador; Georgia; Grenada; Guatemala; Honduras; Hong Kong; Israel; Japan; Kiribati; Macau; Malaysia; Marshall Islands; Mauritius; Mexico; Micronesia; Moldova; Monaco; Montenegro; Nauru; New Zealand; Nicaragua; Northern Macedonia; Palau; Panama; Paraguay; Peru; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Solomon Islands; Samoa; San Marino; Serbia; Seychelles; Singapore; South Korea; Taiwan; Tonga; Trinidad and Tobago; Tuvalu; Ukraine; United Arab Emirates; the United States; Uruguay; Vanuatu; Vatican City; and Venezuela.

Business visit

All foreign nationals, with the exception of EU/EEA/Swiss nationals, need work authorization (i.e., a work permit) to engage in work activities in the Netherlands, irrespective of the duration of the work activities. For some limited categories of activities, the work permit requirement is waived. Whether this requirement can be waived depends on the circumstances of the case, such as the nature of the conference and the activities associated with the visit.

Work authorization is not required for attending conferences or business meeting where information may be exchanged and shared on an equal level. Whether a level is deemed equal depends on the level of experience, education, capacities, etc. As a guideline, there should be no knowledge transfer during the meeting. As soon as, for example, training or exchanging knowledge takes place, work authorization will be required. The activities must also adhere to the duration limits. For this scenario, the work authorization requirement is waived for a maximum of 13 weeks in a period of 52 weeks (multiple stays are allowed). Any activities beyond these waivers or duration limits require a work permit before starting the work.

Furthermore, a work permit is generally not required for a foreign employee who will be in the Netherlands to install, adapt to or provide instructions on the use of software produced and supplied by an employer established outside the Netherlands. These specific activities may be performed for a maximum of 12 consecutive weeks within a 36-week period.

Note that if the foreign national will also work remotely during the time they are in the Netherlands for the situations mentioned above, the work authorization can also not be waived.

Dutch law provides for additional — though very limited and strict — exemptions to the obligation to apply for work authorization. The majority of intended work activities in the Netherlands will not qualify for an exemption.

14.4 Visit to the Netherlands exceeding 90 days

A foreign national, with the exception of EU/EEA/Swiss nationals, intending to stay in the Netherlands for more than 90 days (including the days spent in other Schengen member states) is required to have a Dutch residence permit (verblijfsvergunning). The conditions for obtaining a residence permit depends on the purpose of stay in the Netherlands.

A foreign national intending to work and reside in the Netherlands must usually obtain three types of documents:

(a) A provisional residence permit (Machtiging tot Voorlopig Verblijf (MVV)), which enables the holder to enter the Netherlands (Please note that an MVV is not required for citizens of the EU/EEA, Australia, Canada, Japan, Monaco, New Zealand, South Korea, Switzerland, the United Kingdom, the United States and Vatican City.)

(b) A residence permit, which enables the holder to live in the Netherlands

(c) A work permit that enables the holder to work in the Netherlands, if the residence permit does not provide for work authorization in addition to residence privileges

Please note that the employer is responsible for applying for a work permit to employ the foreign national within its organization in the Netherlands. In its absence, the employer can be penalized (not the employee). The next section of this chapter provides further information regarding work permit requirements.

MVV

Either of the following two application procedures can be considered to obtain an MVV:

(a) The foreign national can apply at the Dutch mission/embassy in the country where they live.

(b) The employer in the Netherlands or the person with whom the foreign national will be staying in the Netherlands ("**Sponsor**") can apply on their behalf.

Depending on the purposes of the stay, obtaining an MVV can take between two weeks and six months. The Sponsor in the Netherlands can follow a single procedure to start the application for both the MVV and a residence permit for the foreign national.

Residence permit

A residence permit is generally issued for a maximum of one year or, in case of residence for labor purposes, for the duration of employment in the Netherlands, up to a maximum of five years. If no changes of circumstances have occurred, the permit can be extended. After having been in the possession of a residence permit for five years, the foreign national may apply for a permanent residence permit.

The residence permit will only be granted upon obtaining an MVV.

14.5 Work permit

If an employer wishes to employ a non-EU national from outside of the EU, EEA or Switzerland, the foreign national generally needs a work permit. There are two types of work permit: the work permit (tewerkstellingsvergunning (TWV)) and the combined residence and work permit (gecombineerde vergunning verblijf en arbeid (GVVA)). The application for a TWV must be submitted at the UWV, while the application for the GVVA must be submitted at the IND.

The employer generally applies for a TWV if the employee is already in possession of a residence permit or if the employee is coming to the Netherlands to work for a maximum of 90 days. If the employee intends to work in the Netherlands for more than 90 days, applying for the work permit is not the suggested approach, as stringent criteria apply. The employer has to substantiate that the Dutch/EU/EEA/Swiss labor market has been scanned for potential candidates for three months, but did not result in any suitable candidates.

Therefore, if the employee intends to work in the Netherlands for more than 90 days, the employer generally applies for the GVVA. There are different types of combined permits. The most common permits are the highly skilled migrant permit, the intra-corporate transferee (ICT) permit and the European Blue Card.

The best permit to apply for must be determined on a case-by-case basis and depends on the specific circumstances (e.g., whether intracompany assignment to the Netherlands is intended, whether the Dutch employer is a recognized sponsor, the employee's salary level in the Netherlands and the educational level of the employee).

Permit application procedures require extensive preparation, which can easily take several weeks (aside from the time it takes the authorities to process the application).

14.6 Highly skilled migrant

Skilled and highly educated foreign nationals can apply for the GVVA. A foreign national will qualify as "highly skilled migrant" primarily based on their salary. A highly skilled migrant is a foreign non-EU/EEA/Swiss national who will be employed in the Netherlands (based on a local contract) and who will receive a gross monthly salary of at least EUR 5,688 (EUR 6,143.04 including 8% holiday allowance) or at least EUR 4,171 (EUR 4,504.68 including 8% holiday allowance) if aged 30 years or younger. The foregoing salary levels reflect the thresholds applicable in 2025 and will be indexed every year.

Employers that want to hire highly skilled migrants must hold a so-called recognized sponsorship (erkend referentschap) with the IND. Recognized sponsors are deemed by the IND to be in compliance with all relevant obligations under the Dutch Modern Migration Policy Act. As a result, the

IND applies an expedited handling procedure and aims to decide on a permit application within a period of approximately two weeks.

Unfortunately, the IND is hardly ever able to meet its two-week target term in practice. Generally, the procedure will take an additional two to four weeks. Employers that do not qualify as recognized sponsors yet, should take into account an additional 90 days to acquire recognized sponsorship accreditation.

The residence permit for a highly skilled migrant provides residence and work privileges in the Netherlands. As indicated above, an additional work permit is not required, unless the foreign national no longer qualifies as a highly skilled migrant (for example, they no longer meet the salary threshold) or starts work activities for an employer that does not hold a recognized sponsorship.

A highly skilled migrant may receive a residence permit for up to five years, assuming that their employment in the Netherlands is intended to last for at least five years. Should this not be the case, the residence permit will be issued for the shortest validity period mentioned in the employment contract or assignment letter.

A highly skilled migrant may start working in the Netherlands upon receipt of the residence permit. Dependents who accompany the highly skilled migrant to the Netherlands will not be required to hold a work permit to perform work activities in the Netherlands. Upon receipt of their residence permits, they will obtain residence and work privileges similar to those granted to the highly skilled migrant.

European Blue Card

The Netherlands adopted the European Blue Card, a separate permit category alternative to the highly skilled migrant procedure. The purpose of the European Blue Card is to make the EU more attractive to highly educated and skilled workers (and, as such, strengthen the competitiveness and economic growth of the EU). This permit category makes it easier for a foreign national (and their family) to transfer from one EU member state to another.

To qualify for the European Blue Card, the foreign national must have an employment contract for at least six months and must earn a gross minimum of EUR 5,688 per month (EUR 6,143.04 including holiday allowance) or at least EUR 4,171.00 (EUR 4,504.68 including 8% holiday allowance) if aged 30 years or younger. The foregoing salary levels reflect the thresholds applicable in 2025 and will be indexed every year.

In addition, the foreign national must have a degree for the completion of higher education that lasted at least three years. The degree must be accredited and measured against the Dutch educational system (Nuffic). Alternatively, the foreign national must have five years of relevant work experience. The work experience is comparable to the level of a higher education diploma. If the foreign national is an ICT manager or ICT professional, then at least three years of relevant work experience in the seven years prior to application applies.

A potential advantage for companies is that they do not require the recognized sponsor status with the IND to apply for a European Blue Card.

ICT

The ICT residence permit applies to non-EU/EEA/Swiss employees who have an employment contract with a non-EU/EEA/Swiss entity belonging to the same group of companies established in the EU/EEA or Switzerland to which they are seconded. To apply for the ICT residence permit, the following conditions must be met:

- The individual must have been employed within the group of companies for at least three consecutive months immediately prior to the secondment.

- The individual must qualify as a "manager," "specialist" or "trainee" under the definition thereof stipulated in the European ICT Directive (2014/66).
- The individual must have the qualifications and experience required by the host company to which they are seconded as a manager or specialist. If the individual is seconded as a trainee, a university degree and training agreement are required.
- The individual must enjoy equal treatment with nationals occupying comparable positions as regards the remuneration they receive during the entire secondment. In principle, the salary thresholds for a highly skilled migrant are considered for this purpose.
- It is intended that the individual returns to a group company outside of the Netherlands after the secondment.

If the ICT permit conditions are triggered, other (labor-related) permit categories (e.g., the highly skilled migrant permit and the European Blue Card) will not be available as alternative means to obtain work and residence authorization.

The maximum duration of the ICT permit is three years (one year for trainees).

Companies do not need to have recognized sponsor status with the IND to sponsor an ICT permit.

15

Social securities and pensions

15. Social securities and pensions

15.1 Social security system

With respect to the social security system in the Netherlands, the following distinctions can be made:

- National insurance (premies volksverzekeringen)
- Welfare provisions
- Employee insurance (premies werknemersverzekeringen)

15.2 National insurance

The types of insurance in the national insurance system apply generally to all residents of the Netherlands, irrespective of their nationality and whether they are working. However, there are some exceptions to this general rule, such as for assigned employees and employees who are working abroad. The following acts fall under the national insurance category:

15.2.1 General Old Age Pensions Act[27]

The General Old Age Pension Act (Algemene Ouderdomswet (AOW)) provides for a basic old-age pension for all residents of the Netherlands. The national pension benefit is accrued between the ages of 17 and 67 (2025) with 2% for every insured year, and it differs for (i) single people, (ii) single parents with children up to age 18 and (iii) married couples or registered partners. Until 2012, the state pension age for the AOW was 65. As of 1 January 2013, the state pension age for the AOW was set to be increased, as stated in the table below. As of 2025, the state pension age for the AOW is linked to two-thirds of the remainder of the life expectancy at 65 years. Whether the state pension age for the AOW will increase automatically follows from the life expectancy determined by the Central Bureau of Statistics. The state pension age is published five years in advance.

Year	2013	2014	2015	2016	2017	2018
AOW state pension age (in years and months)	65+1	65+2	65+3	65+6	65+9	66

Year	2019-2021	2022	2023	2024-2027	2028-2030
AOW state pension age	66+4	66+7	66+10	67	67+3

The target retirement age, which is a basic assumption for the adoption of the maximum fiscal pension scheme, increased from 67 to 68 as of 1 January 2018.

15.2.2 Surviving Dependents Act

Under specific conditions, the Surviving Dependents Act (Algemene nabestaandenwet (ANW)) provides benefits for the partner of the deceased and their half-orphans. These conditions involve

[27] https://www.svb.nl/int/nl/aow/wat_is_de_aow/wanneer_aow/.

taking care of a child under the age of 18 who does not belong to another family, or partners who are at least 45% disabled. Furthermore, the partner of the deceased should be younger than the pensionable age for the AOW.

15.2.3 General Child Benefit Act

The General Child Benefit Act (Algemene Kinderbijslagwet (AKW)) provides benefits with regard to children, stepchildren and foster children up to the age of 18. The amount of the benefit depends on the child's age and whether the child lives at home.

15.2.4 Long-Term Care Act

The Long-Term Care Act (Wet Langdurige Zorg (WLZ), previously known as Algemene Wet Bijzondere Ziektekosten), insures all residents in the Netherlands against risks for exceptional expenses that are not covered by the Health Insurance Act (Zorgverzekeringswet) and the Act on the Health Insurance Allowance (Wet op de zorgtoeslag).

15.2.5 Health Insurance Act and the Act on the Health Insurance Allowance

The Health Insurance Act obliges all residents of the Netherlands, and all individuals who work in the Netherlands and pay tax on wages, to take out at least a standard insurance for medical expenses. Under certain conditions, the Health Insurance Allowance (Wet op de zorgtoeslag) provides an additional health insurance allowance (zorgtoeslag). The employee has to pay the nominal premium to the health insurance company. If the employer would like to reimburse this premium, the reimbursement is taxable as employment income.

The employer or the social security authorities will have to pay to the Dutch health insurance institution a mandatory income-related contribution of 6.51% (2025) of the maximum annual salary of EUR 75,860 (2025).

15.3 Premiums

In general, all premiums paid within the national insurance system are levied with and are part of the personal income tax rates.

In general, the premiums are levied up to an income of EUR 38,098 (2024). As of 1 January 2016, 17.90% is levied for the AOW premiums, while 9.65% is levied for the WLZ and 0.10% for the ANW premiums. The AKW premium is 0% because it is funded by the government.

15.4 Welfare provisions

The welfare provisions fill the gap of insufficient (family) income to a social minimum with regard to a specific life situation, or provide for specific provisions or compensation with regard to a life situation.

The following acts fall under this category:

(a) Supplementary Benefits Act (Toeslagenwet)

(b) Invalidity Insurance (Young Disabled Persons) Act (Wet arbeidsongeschiktheidsvoorziening jonggehandicapten ("**Wajong**"))

(c) Older and Partially Disabled Unemployed Workers Income Scheme Act (Wet inkomensvoorziening oudere en gedeeltelijk arbeidsongeschikte werkloze werknemers (IOAW))

(d) Older Unemployed Persons Income Scheme Act (Wet inkomensvoorziening oudere werklozen (IOW))

(e) Older and Partially Disabled Former Self-Employed Persons Income Scheme Act (Wet inkomensvoorziening oudere en gedeeltelijk arbeidsongeschikte gewezen zelfstandigen)

(f) Participation Act (Participatiewet)

(g) Act providing pregnancy and childbirth benefits to the self-employed (Wet Zwangerschapsen bevallingsuitkering zelfstandigen (ZEZ))

(h) Social Support Act 2015 (Wet maatschappelijke ondersteuning 2015)

The Wajong, ZEZ and Supplementary Benefits Act are executed by the UWV. The other acts are executed by either the local authorities (gemeenten) or the National Insurance Bank (Sociale Verzekeringsbank). All these acts are funded by the government.

Over the past few years, the government has severely tightened the conditions for qualifying for the welfare provisions and the national insurance allowances. The government and social partners agreed that the IOAW would expire for employees born after 1965 and the IOW would expire on 1 January 2020. However, it was then agreed to extend the IOW for a period of eight years, until 1 January 2028.

15.5 Employees' insurance

Performing employment activities in the Netherlands generally leads to compulsory insurance in compliance with the following acts:

15.5.1 Sickness Benefits Act (Ziektewet)

Under Dutch law, an employer is, in principle, obliged to pay 70% of the employee's last salary (capped at 70% of the maximum daily wage) during the first 104 weeks of disability, or up to the date that the employment contract is terminated if that date is earlier. During the first 52 weeks, the salary should at least be equal to the minimum wage. The maximum daily wage amounts to EUR 216.9 per workday (July 2019).

15.5.2 Disability Insurance Act and Work and Income (Capacity for Work) Act

The Disability Insurance Act (Wet op de arbeidsongeschiktheidsverzekering (WAO)) and the Work and Income (Capacity for Work) Act (Wet Werk en Inkomen naar Arbeidsvermogen (WIA)) both insure employees for a wage replacement benefit after 104 weeks of full or partial disability. The WIA replaced the WAO as of 1 January 2006 and creates more incentives for rehabilitation and reintegration of employees into the workforce. The WAO still applies to employees who became disabled before 1 January 2004.

15.5.3 IVA and WGA/WhK

The WIA divides disability into the following two plans: (i) for individuals who are fully incapable of working due to full permanent disability (IVA); and (ii) for individuals who are deemed able to work and, therefore, have residual earnings and can still earn some income (WGA/WhK). Based on the IVA, as of 1 January 2007, fully and permanently disabled employees are entitled to 75% of their last salary, increased to the maximum daily wage. Based on the WGA/WhK, partially disabled employees who meet the requirements are entitled to a wage-related benefit, increased to the maximum daily wage. In the first two months, the benefit amounts to 75% of the monthly wages minus the current income. After these two months, the WGA benefit amounts to 70% of the monthly wages minus the current income. Since 1 January 2016, the maximum WGA benefit period of 38 months has been reduced by one month every quarter. Since 1 April 2019, the maximum WGA benefit period has been 24 months at maximum. The maximum benefit period for benefits under the Unemployment Insurance Act (Werkloosheidswet (WW)) reduced similarly to 24 months as of 1 April 2019.

In Q2 2017, the social partners agreed to a private additional CLA (CLA PAWW) that provides for an additional third year of WW and wage-related WGA benefit payments, based on which the maximum benefit period can be restored to 38 months. Employers can decide whether to affiliate with the CLA PAWW. The additional contributions (0.1% in 2025) are paid by the employees and deducted from the gross salary by the employer.

After the wage-related benefit, employees could be entitled to benefits that supplement their salary (loonaanvulling) or that are a percentage of the minimum wage (vervolguitkering).

Individuals who are less than 35% disabled (but who earn more than 65% of the maximum hourly wage) (maatman inkomen per uur) are not eligible for WGA/WhK benefits or IVA benefits. The basic WGA/WhK and IVA contributions, together with the basic contribution of the WAO and WIA (which also includes a contribution for childcare), are paid by the employer and amount to a percentage of the annual salary, maximized to an annual salary of EUR 75,860.

In 2025, the percentage is 6.78% for small enterprises and 8.14% for large enterprises.

The percentage of the differentiated WhK and WGA contribution depends on the company's disability risk and whether the employers decided to either self-fund this disability benefit or insure this risk with private insurers or pay contributions to a government agency (the UWV).

15.5.4 WW

The WW insures employees and civil servants, under certain conditions, against the financial consequences of unemployment. For the first two months, the WW benefit is 75% of the most recent salary (increased to the maximum day wage) and 70% from then on. The duration of the benefit will depend on the employee's labor history and whether the employee meets certain conditions (e.g., not receiving other benefits, like the WAO, IVA or WGA/WhK benefits).

Since 1 April 2019, the maximum unemployment benefit period has been two years. In Q2 2017, the social partners agreed to a private additional CLA (CLA PAWW) that provides for an additional third year of WW and wage-related WGA benefit payments, based on which the maximum benefit period can be restored to 38 months. Employers can decide whether to affiliate with the CLA PAWW. The additional contributions (0.1% in 2025) are paid by the employees and deducted from the gross salary by the employer.

15.5.5 The Participation Act

The Participation Act aims to incentivize an additional CLA (CLA) (CLA PAWW) for people with an illness or disability to work. According to this act, these people are entitled to assistance when they meet the requirements, are not able to provide basic living standards for themselves and are not entitled to any other benefit.

The Reimbursement Wage Domain Act (Wet tegemoetkoming loondomein) provides for a labor cost benefit (loonkostenvoordeel). This means that the employer may be entitled to a "subsidy" from the Dutch tax authorities for hiring employees who are, for example, disabled or aged 56 or older. The labor cost benefit can be requested via the employer's Dutch wage tax return.

15.6 The Dutch pension system

The pension system in the Netherlands is based on a three-pillar system. These pillars are as follows:

(a) The first pillar of the Dutch pension system is the national pension insurance, known as the AOW ("state pension"). This is a national insurance for which the current benefits are paid by the current working population ("pay-as-you-go system"). There is no relation between the amount of AOW benefits and the amount of paid contributions. All residents of the

Netherlands are entitled to the AOW as of the date they reach the state pension age. Currently, the state pension age is 67 years.

(b) The second pillar of the pension system consists of old-age pension benefits, which are supplementary to the AOW. This is either agreed on or mandatorily applicable (CLA or industry-wide) to the employer and employee. Sometimes, the second-pillar pension includes a disability pension supplementary to WIA benefits, or more often, a surviving relative pension supplementary to ANW benefits (ANW-gap pension) (see the AOW, WIA and ANW benefits under 15.2 National insurance). The second-pillar pensions are financed by contributions paid by the employer to the pension provider. These contributions can be shared between the employer and the employee. There are many ways in which second-pillar pension benefits can be arranged (see Sections 15.6.1 to 15.6.3).

Due to the amended state pension age (see above under point a), the tax framework for second-pillar pension has also been changed.

As of 1 January 2014, the target retirement age for tax legislation increased from 65 to 67. As of 1 January 2018, the target retirement age increased from 67 to 68.

Since 2019, the target retirement age has been linked to the increased life expectancy.

Furthermore, the maximum pensionable salary is capped at EUR 145,951 (2025). Above this amount, pensions can no longer be accrued with tax relief (pension cap). The maximum pensionable salary is indexed annually.

(c) The third pillar of the Dutch pension system consists of private insurance for the employee's salary that is in excess of the second-pillar benefits. It can be taken out by the employees themselves.

Subject to detailed tax legislation, second-pillar and third-pillar pension contributions are not classified as taxable wages, and in principle can be paid to the pension provider (e.g., the pension fund or insurance company) free of payroll taxes. However, the payments to be received by the employee upon retirement will be taxable for personal income tax purposes. An exception applies for the net pension in the second pillar and tax-excessive pension accrual.

15.6.1 Second pillar

In principle, the employer is not obliged to make pension commitments, unless this is contractually agreed on or the employer falls within the scope of a mandatory industry-wide pension fund (verplichtgesteld bedrijfstakpensioenfonds), which applies to an entire branch (industry). An employee who belongs to a group of employees that has been offered a pension scheme by the employer will be considered to have been offered the same pension scheme, unless explicitly agreed otherwise with the employer.

Furthermore, legislation on equal treatment (e.g., based on age, gender, full-time/part-time work, temporary/indefinite labor contracts), existing CLAs or a transfer of undertaking might lead to (additional) pension obligations for the employer.

15.6.2 Dutch pension reforms

As of 1 July 2023, the Future Pensions Act (Wet toekomst pensioenen (Wtp)) entered into force. This law triggers an amendment to the Dutch pension system. The specific reason for amending the pension system was the financial crisis in 2008 and the resulting insights into the financial foundations for a future-proof pension system. In addition, the aim was to better align the pension system with developments in the modern, flexible labor market.

Old-age pension

Until 1 July 2023, the Dutch pension system had three types of pension agreements: the defined contribution agreement, the defined benefit agreement (average pay or final salary) and the capital agreement. Under the Wtp, only defined contribution agreements with an age-independent (flat) premium are permitted. Under a defined contribution system, it is not the final pension that is the standard, but the offered premium that forms the basis of the pension commitment. In this system, the pension benefit depends on (i) the contribution paid, (ii) the interest percentage and (iii) the return on investment.

New pension schemes that are set up on or after 1 July 2023 must immediately comply with the Wtp. Transitional rules apply to pension schemes existing on 30 June 2023; these pension schemes must comply with the Wtp by 1 January 2028 at the latest.

In addition to the transitional rules, the Wtp offers the possibility of deference for insured defined benefit agreements and defined contribution agreements with an age-related (tiered) contribution existing on 30 June 2023. The deference gives the possibility to continue a defined contribution agreement with an age-related (scaled) contribution after 1 January 2028 for employees who participate in this pension scheme by 31 December 2027 at the latest - or as soon as the defined contribution agreements with an age-related (scaled) contribution are concluded for new employees. Insured defined benefit agreements can also use the deference effect, provided that the defined benefit agreement has been converted into a defined contribution agreement with an age-related (tiered) contribution before 1 January 2028.

When the deference effect is used, two pension schemes are created: one for current employees with an age-related (tiered) contribution and one for new employees with an age-independent (flat) contribution.

Survivor's pension

The survivor's pension consists of three components: (i) partner's pension in the event of death before the retirement date; (ii) partner's pension in the event of death on or after the retirement date; and (iii) orphan's pension. In particular, the Wtp changes the partner's pension in the event of death before the retirement date.

There are currently three forms of accrual/insurance for a survivor's pension before the retirement date. They are as follows:

i. Accrual basis (The value of the survivor's pension continues to exist after the end of the employment.)

ii. Risk basis (No value is accrued. The surviving dependents are only assured of a benefit if the employee participates in the pension scheme/is employed.)

iii. A combination of the structure and risk bases

In addition, the amount of the survivor's pension can be calculated in different ways. For example, the amount may be a percentage of the pension base or may depend on the duration of the employment.

As a result of the entry into force of the Wtp, the survivor's pension must be adjusted as follows:

i. The survivor's pension in the event of death before the retirement date is insured on a risk basis.

ii. The amount of the survivor's pension in the event of death before the retirement date is expressed as a percentage of the pensionable salary (a maximum of 50% for a partner's

pension and a maximum of 20% of the last pensionable salary received for an orphan's pension).

iii. The amount of the survivor's pension is independent of the number of years of service.

Types of flat-rate defined contribution schemes

There are three types of age-independent defined contribution agreement under the Wtp, the two most important of which are the flexible premium scheme and the solidarity premium scheme.

- Flexible contribution scheme

The flexible premium scheme is most similar to the already-existing defined contribution scheme. Participants are entitled to individual pension assets. These individual pension assets are invested according to the life cycle principle, which means that the investment risk decreases as the retirement age approaches. Furthermore, life cycle investing will consider the risk attitude per age cohort, which is determined periodically by means of a risk preference survey.

Financial windfalls and setbacks are processed directly into the individual pension assets based on the returns achieved. The participant has the choice to continue investing after the retirement date, resulting in a variable pension benefit or a fixed benefit. The employer or social partners can opt for a risk-sharing reserve, which allows financial windfalls or setbacks to be shared collectively. The risk-sharing reserve can only be filled through premiums, not from assets.

- Solidarity contribution scheme

The solidarity contribution scheme is distinguished by extensive risk-sharing. The investment risk, the micro-longevity risk and the macro-longevity risk are borne by the (former) participants and pensioners. Future participants also share in these risks through a solidarity reserve.

Social partners determine a sufficient premium for a pre-agreed period in relation to the pension objective agreed on by them. The total assets in the new contract are invested collectively. The collectively achieved investment result must be allocated periodically and per age cohort on the basis of predetermined distribution rules, appropriate to the risk attitude of these age cohorts.

The return on investments made by the pension fund must initially be used for what is known as a protection return. All (former) participants and pensioners first receive an annual theoretical discount on their pension assets from the protective return. It is then determined per age cohort how much protection the (other) participant groups receive against interest rate drops that would reduce their benefits. The basic principle is that older participants and pensioners are more protected against interest rate risk than younger participants.

The excess return on the investments is the difference between the actual collective return achieved minus the protective returns granted. The excess return is divided over all personal pension assets. Because younger participants, due to their greater future accrual, have a relatively greater risk capacity, they will be allocated a relatively larger share of the excess return. This excess return can be either positive or negative. Adjustments to pension benefits as a result of allocating the excess return and sharing longevity risks may be spread within the pensioner's pension assets over a maximum of 10 years.

In a solidarity contribution scheme, the solidarity reserve is mandatory. This reserve can be used to supplement pension assets and benefits, and share risks collectively. The solidarity reserve is not a separate asset, but part of the collective asset. The solidarity reserve participates in the protection return and the excess return. The solidarity reserve is filled with premium (maximum 10%) or excess returns (maximum 10%). The participant does not have the option of a fixed benefit; after the retirement date, a variable pension benefit is mandatory.

Conversion of accrued pension entitlements

If the pension agreement is placed with a pension fund, the standard path for social partners is to request that the pension fund convert the pension entitlements accrued until the transition date into a personal pension capital via a collective value transfer in accordance with the solidarity contribution scheme or the flexible contribution scheme, unless this would be disproportionately unfavorable for (former) participants, pensioners or the employer. Unlike a regular collective value transfer in which the pension agreement is amended (Article 83 of the Pension Act), the participant has no right of objection here.

Abolition of the average system — compensation option for disadvantaged cohorts

The Wtp also provides for the abolition of the average system. The average system concerns the combination of an age-independent premium with an age-independent (time-proportional) accrual of pension entitlements. Mandatory industry-wide pension funds and occupational pension funds must also apply an age-independent average premium under the current financial regime. Instead of the average system and the average premium, the Wtp has opted for a system with age-independent premiums and actuarially neutral pension accrual. The abolition of the average system and the introduction of age-independent premiums and actuarially neutral pension accrual have consequences for pension accrual in almost every pension scheme, unless a decision is made to use the transitional law.

Particularly for participants in the 40-55 age category, the abolition of the average system may mean that they will accrue less pension than would have been the case if the average system or progressive contributions had been continued. According to the Dutch government, a balanced switch to a premium scheme with an age-independent premium will therefore require that active participants who suffer a disproportionate disadvantage are adequately and cost-neutrally compensated.

This compensation can be financed in various ways. The employer can finance additional pension entitlements through additional premiums. To this end, the tax contribution limit has been temporarily increased by 3 percentage points to 33% until 31 December 2036. The premium for compensation amounts to a maximum of 33% of the pension base minus what is deposited for regular pension accrual.

If the pension agreement has been placed with a pension fund and the accrued pension entitlements will be converted into pension entitlements under the new pension scheme, part of the collective assets can be used for the lump-sum allocation to the personal pension assets of injured participants. Part of the collective assets can also be used to fill a compensation deposit. The compensation deposit is an earmarked asset on the balance sheet of the pension fund, from which the compensation intended for active participants is fully or partially financed.

Compensation can also take place outside the pension sphere in extra wages. If compensation is provided in extra wages instead of additional pension entitlements, the compensation will have to be financed by the employer.

15.6.3 Administering second-pillar pensions

If the employer has offered a pension promise to its employees, the employer is legally obliged to administer that promise with an external pension provider within the meaning of the Dutch Pension Act. Otherwise, it may be subject to a fine of EUR 1 million.

In this light, the following pension providers could administer second-pillar pensions:

- An industry-wide pension fund (This might be mandatory.)
- A company pension fund (i.e., a self-administered fund)

- A general pension fund (algemeen pensioenfonds (APF))
- An insurance company that is licensed by the Dutch supervisory authorities
- A licensed pension institution registered in another EU member state
- A premium pension institution (premiepensioeninstelling (PPI))

Pension providers are supervised by supervising authorities, such as the Dutch National Bank and the AFM.

Since 1 January 2007, employees have no longer been entitled to set up an individual pension scheme with an insurer by themselves (known as the c-policy). Only the employer is entitled to set up a pension scheme with a pension provider and to become the policyholder. An exception exists for existing c-policies (individual pension schemes that were effective prior to 1 January 2007), which can be continued as long as the employee is employed by the same employer.

The employer is obliged to enter into an agreement with the pension administrator to implement the administration of the pension promise. In this agreement, in any event, the following needs to be agreed on:

- Determination of the pension contributions
- Payment (terms) of the pension contribution
- Information that the employer provides to the pension administrator
- Proceedings when the employer does not fulfill the payment obligations concerning the pension contributions
- Proceedings for drafting and changing the pension scheme in connection with closing and changing the pension agreement
- Criteria and conditions for indexation
- Assumptions and procedures for decision-making on deficits, surpluses or profit-sharing
- Termination conditions of the administration agreement with an insurance company, PPI or APF
- Criteria that the PPI applies in choosing an insurance company for purchasing a pension benefit
- Costs for implementing the pension schemes, which can be deducted from the separated equity held by an APF
- Costs that can be paid out of the contribution for the separate equity held by the APF
- Agreements with regard to the service quality with an APF

16

Personal income tax

16. Personal income tax

16.1.1 Resident versus nonresident taxpayers

In general, all individuals who reside in the Netherlands are subject to taxation on their worldwide income and wealth. Individuals are considered to "reside" in the Netherlands if they have a sustainable personal bond with the Netherlands, according to all facts and circumstances of their case. They are then called resident Dutch taxpayers and may be entitled to certain deductible items and tax credits under Dutch tax law, depending on their personal situation. If other jurisdictions also assert the right to taxation on (parts of) their income and wealth, relief of double taxation may be claimed via the Dutch tax treaty network or the Dutch unilateral rule for the prevention of double taxation.

Individuals who do not live in the Netherlands (i.e., nonresident Dutch taxpayers) are subject to taxation only on certain sources of income in the Netherlands, such as income from employment carried out in the Netherlands, benefits from a substantial shareholding in a Dutch company, the value of Dutch real estate, etc. However, nonresident Dutch taxpayers may be granted the status of qualifying nonresident taxpayers if they meet certain specific conditions. In that case, they are entitled to the same deductible items and tax credits as resident Dutch taxpayers.

16.2 The "Box" system

The Dutch Personal Income Tax Act distinguishes between three types of income: "Box I," "Box II" and "Box III." Each box has its own rules to determine the tax rate and the taxable base.

- Box I taxes income from work (e.g., from a private enterprise, from employment, from other activities, etc.) and from private dwelling. For 2025, there are three income tax brackets in Box I, in principle (assuming the individual is below the pensionable age):

Bracket	Taxable income (EUR)	Rate (%)
1	0-38,440	8.17
2	38,441-76,816	37.48
3	76,817 >	49.50

  Tax credits may apply, depending on personal circumstances, among other things.

- Box II taxes income from a substantial interest (i.e., ≥ 5% of any class of shares in a company, including options). Income in Box II is taxed at 24.5% on the first EUR 67,804 of income and at 31% on the excess (2025).
- Box III taxes income from savings and investments at a flat tax rate of 36% (2025). In principle, this tax is calculated using certain fixed rates of return on the net value of all taxable assets that the taxpayer owns as of 1 January of the calendar year. The tax is only levied to the extent the net value of the assets exceeds the annual exempt amount (EUR 57,684 for 2025, amount to be doubled for so-called fiscal partners). Please note that the Box III income can be adjusted at the taxpayer's request, if the actual investment yield turns out to be lower than the fixed rates of return. In that case, the annual exempt amount as described above does not apply.

16.3 Box I tax on income from a private enterprise

In general, this taxation applies to entrepreneurs who earn profits in one-person businesses or small companies without limited liability. Certain specific Dutch tax deductions are available for entrepreneurs, which reduce their tax base. The total profit less the relevant deductions and less the tax reduction for entrepreneurs forms the basis of taxation.

16.4 Box I tax on income from employment

16.4.1 Employees: wage tax

Wage tax is a so-called advance levy on the total income tax liability. This means the total income tax liability is reduced by the amount of wage tax already withheld. A Netherlands-based employer normally qualifies as a wage tax withholding agent, and as such has to withhold, report and remit the wage tax due by its employees on their salaries. Different rules may apply for (executive and supervisory) statutory directors, as well as for employers based outside the Netherlands.

The wage tax return and payments to the tax authorities (including social insurance contributions, if the applicable ceiling has not yet been reached through the individual's regular salary — refer to section 16.4.6 below) should generally be submitted by the withholding agent before the end of the month following that in which the taxable event occurred. The gross annual wages should also be included in the annual year-end salary statement (jaaropgave) that is provided to the employee upon the conclusion of the tax year.

16.4.2 Work-related costs scheme

Under the Dutch work-related costs scheme (WKR), employers can reimburse, provide or make available certain untaxed compensation items by means of so-called targeted exemptions and nil valuations. These are available for particular items of income specifically mentioned in the law, whereby additional conditions often apply.

Even if no targeted exemptions and nil valuations can be applied, it may still be possible to reimburse, provide or make available the tax-free compensation item, under the system of "final-levy wages," provided for by the Dutch WKR. In short, this system means that employers may spend a percentage of the total Dutch taxable salaries they pay out (i.e., the "salary threshold") on tax-free reimbursements, provisions or available offerings to their employees. This can be done by designating those benefits as final-levy wages. A two-tier system applies to calculate the salary threshold:

1. Up to and including total Dutch taxable salaries of EUR 400,000, the salary threshold is 2% (amount for 2025).
2. On the excess of total Dutch taxable salaries, the salary threshold is 1.18% (amount for 2025).

Note that the compensation items so provided may not deviate by more than 30% from what is **customary** in comparable circumstances. Comparable circumstances include the following:

1. Other employees of the same employer
2. Colleagues of the employee in the same job category
3. Employees of other employers

Reimbursements, benefits in kind or provisions up to a maximum of EUR 2,400 per person per year are considered customary by the Dutch tax authorities, in principle. Therefore, the 30% threshold does not normally apply to this amount. Additional conditions and requirements apply in this respect and should be assessed on a case-by-case basis.

No wage tax is due on the final-levy wages that fall within the salary threshold. Any final-levy wages above the salary threshold are subject to payroll taxes in the form of a final levy of 80%. To designate reimbursements, provisions or offerings as final-levy wages, the employee does not have to incur costs first. This means that the employer does not have to ask for receipts or invoices from the employees.

16.4.3 Expatriate tax facility

Employees who are recruited from abroad (expatriates) often receive compensation for the extra costs of staying outside their country of origin (extraterritorial costs). For that compensation, a targeted exemption applies. The employer can choose between reimbursing the actual extraterritorial costs or, under certain conditions, applying the so-called expatriate tax facility (formerly known as the 30% facility).

If an employer elects to reimburse the actual extraterritorial costs, the reasonably incurred costs must be substantiated. The employer must then keep track of these costs, and the compensation per employee, in the payroll administration. The costs may be reimbursed to the employee free of tax during a maximum period of five years. Once that period has ended, the compensation qualifies as the employee's taxable wages. However, the compensation may then still be designated as final-levy wages.

If the employer uses the expatriate tax facility, a targeted exemption can be applied to the compensation for extraterritorial costs during a maximum period of five years, without further proof of the actual extraterritorial costs incurred. This targeted exemption is capped at a fixed percentage of the salary, including the compensation. Up to and including 2026, this is 30% over a certain maximum basis. The maximum basis is the standard from the Dutch Top Incomes Standardization Act (the WNT standard). For 2025, the WNT standard is EUR 246,000 (the amount is indexed every year). Thus, the maximum amount of the specifically exempted allowance is 30% of EUR 246,000, or EUR 73,800. These amounts apply on an annual basis: if the expatriate tax facility only applies for part of the calendar year, the maximum amount must be applied on a time-proportion basis.

To qualify for the expatriate tax facility, the employee must, among other things, have "specific expertise." An income standard applies to demonstrate this specific expertise, which is indexed every year. In 2025, specific expertise applies if the employee has a taxable annual salary exceeding EUR 46,660, excluding the targeted exemption for the compensation of extraterritorial costs itself. For employees who have obtained a Dutch master's degree in scientific education or an equivalent foreign degree, and who are under 30 years old, the taxable annual salary only has to exceed EUR 35,468, excluding the targeted exemption for the compensation of extraterritorial costs itself. An exception applies to employees who conduct scientific research at certain institutions and doctors in training to become specialists: they do not have to meet an income standard.

In principle, the expatriate tax facility only applies to employees who lived for more than 16 months at a distance of more than 150 kilometers from the Dutch border during the 24 months before their first working day in the Netherlands. Therefore, employees from Belgium, Luxembourg, Northern France and certain parts of Germany and of the United Kingdom are not eligible for the facility, in principle.

Multiple additional requirements and conditions apply in connection with the Dutch expatriate tax facility. There is also a complex system of transitional provisions relating to grants of this facility that were made in previous years.

16.4.4 Punitive employer's levies

Dutch wage tax law provides for a punitive employer's levy of 75% (payable by the employer and in principle not recoverable from the employee), which pertains to end-of-employment payments that are considered "excessive" under the legislation in question. The punitive levy applies in addition to the regular wage tax withholding from the employee. It aims to tax the excessive part of any payments

made following termination of employment. Under the levy, the employer needs to pay a 75% tax on the excessive part of any such payment to employees who leave the employment of the company. The employer only needs to pay this levy if the employee's so-called reference wages in the second year before the year of termination exceed the threshold wages of EUR 680,000 (amount for 2025) and insofar as the termination pay exceeds the reference wages.

There is also another levy that targets early retirement schemes (RVUs). This is a punitive levy of 52% (again, payable by the employer and in principle not recoverable from the employee) that is applicable if a payment is considered an RVU under Dutch law. The punitive levy again applies in addition to the regular wage tax withholding from the employee. Note that the legislation is drafted widely and includes arrangements that, based on their objective conditions and characteristics, aim to bridge the period until the employee's retirement, or to provide supplements to the employee's pension scheme. The Dutch tax authorities assess whether an RVU exists on the basis of all of the scheme's objective conditions and characteristics. Currently, a temporary RVU threshold exemption provides that under certain conditions, the punitive 52% levy does not apply for an employer, to the extent that the payments made under the RVU scheme stay below a certain threshold amount and are paid Within 36 months before the Dutch state pension age (AOW age). However, as the law now stands, this threshold exemption is only temporary.

The punitive levy for excessive severance payments is not applied to any amount that is already subject to the punitive levy for early retirement schemes. Therefore, the measure against excessive severance payments gives priority to the measure against early retirement schemes.

16.4.5 False self-employment

Until 1 January 2025, the fiscal rules against false self-employment were only enforced if the Dutch tax authorities deemed a company to have malicious intent. This was the case if that company deliberately allowed a situation of apparent false self-employment to arise or to continue despite knowing or where it should have known that there was in fact an employment relationship. In that case, the Dutch tax authorities could impose correction obligations or additional assessments on the company. To do so, they needed to prove three things:

1. A (real or deemed) employment relationship
2. Obvious false self-employment
3. Intentional false self-employment

If an investigation by the tax authorities showed that there was a (real or deemed) employment relationship, but no malicious intent existed, the authorities did not immediately enforce the law. Instead, they provided further instructions. The company then needed to comply with those instructions and do either of the following:

1. Shape the employment relationship in such a way that it could be qualified as working outside employment
2. Report the relationship as an employment relationship in the Dutch wage tax returns

The company was usually given three months to comply. If the tax authorities determined after this period that the company had not followed their instructions, or had not followed them sufficiently, while there was still a (real or deemed) employment relationship, the authorities could enforce the law. In the abovementioned cases, the tax authorities could impose correction obligations and additional assessments, possibly including fines, penalties and interest.

However, starting 1 January 2025, the Dutch tax authorities will fully and actively enforce the rules against false self-employment. As per that date, the tax authorities can impose correction obligations,

additional assessments, fines, penalties and interest if they determine, during an audit for example, that there is in fact an employment relationship. In doing so, they will not look further back than 1 January 2025, unless there is malicious intent or failure to comply with their instructions. Additionally, there will be a transition period of one year, during which employers and contingent workers should not receive a penalty if they can prove that they are taking steps to combat false self-employment.

As the current rules remain somewhat unclear, the Dutch government is also currently working on new legislation to provide more clarity in this respect. In the meantime, the tax authorities have also proactively shared additional guidance (which is mostly in Dutch) for employers via its website[28] containing additional information and online tools to assist in analyzing employment relationships. However, this guidance does not provide any legal certainty.

16.4.6 Employees: social insurance

There are three types of social insurance contributions in the Netherlands: national insurance contributions, employees' insurance contributions and income-related contributions under the Healthcare Insurance Act (Zorgverzekeringswet). The applicable contribution rates and ceilings are as follows:

- Employee rate: National insurance contributions are borne by the employee and apply at a rate of 27.65% to the first EUR 38,440 (2025) of income. In addition, the employee must pay a fixed annual premium for the mandatory private health insurance ("nominal premium" per adult). This amount differs per health insurer (average for 2025: EUR 1,868).
- Employer rate: Employees' insurance contributions are paid by the employer and apply to the first EUR 75,864 (2025) of income. The exact rate of employees' insurance varies depending on a number of factors, such as industry type, employee age and the type of employment contract (a lower contribution applies for employees with a permanent contract, and a higher contribution applies for employees with a temporary contract).
- The income-related contributions under the Healthcare Insurance Act are, in principle, paid by the employer and apply to the first EUR 75,864 (2025) of income. The applicable rate is 6.51% (2025).

Employee and employer social insurance contributions will be due to the extent that applicable annual contribution ceilings have not been reached. The employer is also required to withhold the employee portion (if applicable). Credits may apply, depending on personal circumstances, among other things. Different rules may apply for (executive and supervisory) statutory directors.

When determining the social insurance position of employees in cross-border employment situations, three groups of countries must be distinguished:

1. The countries that fall under the European social insurance regulations (regulation countries[29]): If the employee has the nationality of one of the regulation countries and lives and works in one or more of these countries, EU Basic Regulation No. 883/2004 and Implementing Regulation No. 987/2009 determine which country's social insurance legislation applies. That country's social insurance legislation then determines whether the employee is socially insured and, as such, whether the employer and employee must pay social insurance contributions. Under certain conditions, the European social insurance regulations also apply to employees with a nationality other than that of a regulation country.
2. The countries with which the Netherlands has concluded a social insurance treaty (treaty countries[30]): These treaties regulate which country's social insurance legislation applies and,

[28] https://www.belastingdienst.nl/wps/wcm/connect/nl/arbeidsrelaties/arbeidsrelaties.
[29] Refer to https://www.svb.nl/en/id/eu-and-eea-countries for an overview of these countries.
[30] Refer to https://www.svb.nl/en/id/treaty-countries for an overview of these countries.

as such, in which country the employer and employee must pay social insurance contributions. The conditions for this may differ per treaty country.

3. All other countries: If no European social insurance regulation or social insurance treaty applies, the national legislation of the home country and the host country determine where the employee is socially insured. In certain cases, double social insurance may occur.

Again, different rules may apply for (executive and supervisory) statutory directors.

16.5 Box I tax on income from other activities

16.5.1 Lucrative interests

The Dutch lucrative interest scheme aims to tax the income from carried interest structures, commonly used for investment managers, for example.

A lucrative interest is defined as shares, receivables or similar entitlements, including debts for which a future waiver can be expected (under certain conditions), provided it can reasonably be assumed that one of the purposes of these items is to remunerate the taxpayers' (employment) activities. Indications for that purpose may be the existence of special conditions or (leaver) provisions, or the fact that the return on the interest depends on certain management or shareholder objectives, e.g., Internal Rate of Return, profit or turnover. The legal text of the lucrative interest scheme only focuses on the following:

1. Classes of shares that are subordinated to other classes of shares and constitute less than 10% of the total share capital

2. Classes of shares with a preference percentage of at least 15%

3. Certain loans/receivables and rights similar to the aforementioned shares and loans/receivables

However, the explanatory notes to the lucrative interest scheme are much more elaborate. They clarify that the lucrative interest scheme aims to tax any and all income or gains arising from lucrative interests, which according to the notes may cover common management participation plan instruments, including leveraged structures, (cumulative) preference shares and ratchet shares (both ordinary and reverse ratchets).

Based on the lucrative interest scheme, all income and/or gains derived from lucrative interests (i.e., typically dividends and alienation proceeds) are taxed at the progressive "Box I" tax rates, with a maximum of 49.5% (for 2025). However, if the interests are held through a holding company, of which the beneficiary is a substantial interest holder, the Dutch personal income tax may under certain conditions be levied at the lower progressive rates that apply to "Box II," i.e., up to 31% (for 2025). To qualify as a substantial interest holder of the holding company, the beneficiary should own, or be entitled to purchase, 5% or more of the capital issued on a class of the holding company's shares.

If a holding company is used, careful structuring may be required to ensure application of the Dutch participation exemption for corporate tax purposes. Without the participation exemption, the combined corporate tax and income tax rates may be less favorable. The personal holding company will have to make a (taxable) distribution of at least 95% of the benefits under the lucrative interest plan to the participants. Please note that any benefit that occurs when entering into the lucrative interest structure (e.g., shares acquired for less than the fair market value) may still be taxed at the progressive "Box I" rates with a maximum of 49.5% (for 2025).

16.6 Box II tax on substantial interests

Generally, individuals have a substantial interest if, alone or together with their partner, they, directly or indirectly, have or own any or all of the following:

1. Own 5% or more of any class of a company's capital
2. Have the right to acquire 5% or more of a company's subscribed capital (e.g., through stock options)
3. Have a profit-sharing right entitling them to 5% or more of the annual profits or liquidation revenue

Even if individuals hold less than 5% of the capital, they may still have a substantial interest if certain relatives hold a substantial interest in that capital. If individuals hold a substantial interest, all of their other holdings in the company, including stock options, claims and other forms of profit participation, will qualify as a substantial interest as well, and will be subject to Box II tax.

Individuals owning a substantial interest are taxed on all proceeds derived from it, including periodic benefits, such as dividends and capital gains received upon the disposal of shares, at a rate of 24.5% on the first EUR 67,804 of income, and 31% on the excess (2025). A capital gain consists of the transfer price less the acquisition price and can also be negative (i.e., a capital loss). A capital loss resulting from a substantial interest may, in principle, only be deducted from the income from substantial interests in Box II.

Notwithstanding the above, if the individual places an asset at a company's disposal while that individual also has a substantial interest in that same company, the income from the asset will be subject to personal income tax at the progressive rates for Box I. Similarly, assets placed at a partnership's disposal will be subject to personal income tax at the progressive rates. The net income from option rights in the company in which the individual holds a substantial interest will also be taxed at the progressive rates for Box I.

16.6.1 Customary wage scheme

For substantial interest holders (and their partners, if applicable) who are employed by the company, the customary wage scheme applies. This scheme determines the minimum salary of the substantial interest holder. The terms "most comparable employment relationship" and "affiliated company" are important in calculating that wage. Start-up companies and loss-leading companies may in certain cases assume a lower customary wage.

To calculate the customary wage, a comparison must be made with the "most comparable employment relationship." This may also be a comparison with the wage of employees who do not carry out exactly the same work. A company "affiliated" with the company in question is any of the following:

1. A company in which the company in question has at least a one-third interest
2. A company that has at least a one-third interest in the company in question
3. A company in which a third party has at least a one-third interest, while this third party also has at least a one-third interest in the company in question

The Dutch tax authorities assume that substantial interest holders receive a wage that is customary for the level and duration of their work. This wage is the highest of the following amounts:

1. 100% of the wage for the most comparable employment relationship

2. The wage of the highest-earning employee of the company in question or of an affiliated company

3. EUR 56,000

The wage may be set at a lower amount in the following cases:

1. It is plausible that the wage from the most comparable employment relationship is lower than EUR 56,000. The wage is then set at 100% of the wage from the most comparable employment relationship.

2. It is plausible that 100% of the wage from the most comparable employment relationship is lower than the wage of the highest-earning employee of the company in question or of an affiliated company. The wage is then set at 100% of the wage from the most comparable employment relationship.

If a substantial interest holder works part-time, the customary wage may not automatically be set at an amount lower than EUR 56,000. Additionally, it must be demonstrated that the wage from the most comparable employment relationship or the wage of the highest-earning employee is lower than EUR 56,000.

With the customary wage scheme, the Dutch tax authorities assume that substantial interest holders receive a wage that is customary for their work. If a wage is paid but is less than the customary wage, the difference must be processed as wage in the payroll administration and payroll taxes must be calculated on it. That difference is the so-called fictitious wage: it is not actually paid. The taxable moment for this fictitious wage is the end of the calendar year, or the moment at which the employment relationship ends, if this is during the calendar year.

16.6.2 Excessive borrowing

As of 1 January 2023, the excessive borrowing legislation has entered into force in the Netherlands. Under this legislation, substantial shareholders who, together with the fiscal partner or not, borrow more than EUR 500,000 (2025) from the company in which they hold a substantial shareholding are subject to Box II taxation for the amount exceeding the EUR 500,000 threshold (at 24.5% for the first EUR 67,804 of income and a rate of 31% for the income above). Home acquisition debt is excluded.

16.7 Box III income from savings and investments

Box III of the Dutch personal income tax system seeks to tax income from savings and investments. This tax is levied at a flat tax rate of 36% (2025).

Throughout the calendar year, the Dutch tax authorities may issue preliminary income tax assessments, whereby the Box III tax is calculated using certain fixed rates of return on the net value of all taxable assets that the employee owns as of 1 January of the calendar year. However, the tax is only levied to the extent the net value of such assets exceeds the annual exempt amount (EUR 57,684 for 2025, amount to be doubled for so-called fiscal partners).

These fixed rates of return are intended to be close to the actual investment yield that the employee will have realized at the end of the calendar year. In making this calculation, the tax authorities consider the actual distribution of the different types of assets that the employee may have, i.e., bank balances, other assets and debts. A separate fixed rate of return applies to each of these asset types.

However, the Dutch Supreme Court recently ruled that taxpayers' actual investment yield should be taxed in Box III for 2025, in case this yield is lower than the fixed rates of return per asset type. This actual investment yield will obviously only be known at the end of the calendar year. Therefore, the

tax authorities have been instructed to adjust taxpayers' Box III income via the 2025 personal income tax return, if the actual investment yield later turns out to be lower than the fixed rate of return.

If taxpayers wish to apply the actual investment yield, they should submit a request for it via a separate form, which is expected to become available in mid-2025. When calculating the actual investment yield, the annual exempt amount as described above does not apply. Please note that the Dutch government has proposed further significant changes to the Box III tax for the future, which means this information (like all tax information) is subject to change.

16.8 Income tax return filing obligations

Dutch personal income tax is levied through a tax assessment, which is issued following the submission of a tax return to Dutch tax authorities. Taxpayers usually receive a notice to file a tax return for a certain year automatically, which they must then comply with before 1 May of the following calendar year. An extension may be obtained upon request.

Advance levies, such as Dutch wage and dividend tax already paid, can generally be offset against the personal income tax due.

On balance, the return may result in zero income tax liability, a refund of overpaid income tax, or an additional payment of income tax due.

17

Corporate income tax

17. Corporate income tax

The Dutch Corporate Income Tax Act (Wet op de vennootschapsbelasting 1969) (CITA) distinguishes between resident and nonresident taxpayers. Dutch subsidiaries of foreign companies are regarded as resident taxpayers, while Dutch branches of foreign companies are regarded as nonresident taxpayers. In recent years, the CITA has been amended more than once with respect to the CIT rate, the participation exemption regime, the rules on interest and cost deductions, and the possibility of carrying back and carrying forward tax losses, among other things.

17.1 Subsidiaries

In general, Dutch subsidiaries are subject to Dutch CIT on their worldwide income.

17.1.1 Tax rates

Under current legislation, profits up to EUR 200,000 are taxed at 19% (2025), while profits exceeding EUR 200,000 are taxed at 25.8% (2025).

17.1.2 Residency

A company incorporated under the laws of the Netherlands is deemed to be a resident of the Netherlands for CIT purposes. If a company is incorporated in accordance with foreign law, the place of residence for Dutch CIT purposes will be determined based on factual circumstances, whereby the place of the company's effective management is often regarded as a decisive factor.

17.1.3 Computation of taxable profits

The CITA does not prescribe a specific method for computing the annual taxable profits. It only requires that the annual profits be determined in accordance with sound business practice (goed koopmansgebruik) and consistently from year to year, regardless of the probable outcome. A modification of the method used is only allowed if it is justified based on sound business practice.

Sound business practice is not defined by law. The Dutch Supreme Court has held that a method of computing annual taxable profits complies with sound business practice if it is based on generally accepted accounting principles concerning the proper method of determining profits. A method of computing annual taxable profits is only deemed not to comply with sound business practice if its application is found incompatible with explicit statutory provisions.

A Dutch taxpayer may, upon prior request and subject to certain conditions, calculate its taxable income using a functional currency. This allows Dutch taxpayers to eliminate currency exchange risks for tax purposes.

The CITA contains certain limitations on the annual depreciation of assets. A specific limitation of annual depreciation applies to real estate used for the taxpayer's own benefit, disallowing depreciation below (100% of) the WOZ value. This value is determined on the basis of the Valuation of Immovable Property Act (WOZ) by local tax authorities every other year for municipal real estate tax purposes and resembles an estimate of the fair market value. With respect to the valuation of inventory, there is considerable freedom in adopting a suitable system as long as it is in accordance with sound business practice.

Based on the loss compensation rules introduced in January 2022, compensation of losses in a year is limited to EUR 1 million increased with 50% of that year's taxable profit (the profit after the deduction of EUR 1 million). The losses can be carried back one year and carried forward indefinitely (see Section 17.10 on Losses).

17.1.4 The arm's-length principle

The arm's-length principle (ALP) is codified in Article 8b of the CITA. This article requires taxpayers to maintain information in their administration on how the transfer prices between the taxpayer and the associated enterprises have been determined. This article further prescribes that taxpayers document in their administration that the intercompany transactions they entered into were done so under arm's-length circumstances.

In addition to the provisions contained in Article 8b, supplementary and contemporaneous transfer pricing documentation requirements were introduced in the Netherlands. These are applicable to fiscal years starting on or after 1 January 2016, for multinational enterprises (MNEs) with consolidated revenues of EUR 50 million or more. Given the Netherlands' legislative history, tax authorities will provide the taxpayer with a reasonable term to submit information or transfer pricing documentation upon the Dutch tax authorities' request. Section 17.16, Transfer pricing regime, provides an overview of the Dutch transfer pricing regime and the additional transfer pricing documentation requirements starting from 2016.

As of 1 January 2020, the Anti-Tax Avoidance Directive II (ATAD 2) has been introduced into Dutch legislation, tackling hybrid mismatches that resulted in the avoidance of taxation. Furthermore, as of 1 January 2022, specific rules addressing mismatches that arise from the application of ALP have also been introduced. These rules ensure that transactions between related companies are valued consistently, preventing tax avoidance through transfer pricing discrepancies.

17.1.5 Innovation box and R&D deduction

Under the Dutch innovation box, qualifying income that results from endeavors in the R&D field is taxed at an effective tax rate of only 9% (2025) (the normal tax rate is 25.8%).

A taxpayer can only apply the innovation box for intangibles that originate from activities for which the Ministry of Economic Affairs has granted an R&D declaration (S&O Verklaring). Independent access solely through a patent or plant breeders' rights is therefore no longer possible.

Companies with (a) more than EUR 50 million global groupwide turnover and (b) at least EUR 7.5 million per year in gross revenues from all IP assets will only have access to the regime when their intangibles originate from activities for which an R&D Declaration has been granted and when additional requirements in relation to the qualifying intangibles are met. In that case, the qualifying intangible needs to qualify as any of the following:

- Software program
- (Pending) patent
- Authorization for the marketing of a medicine or drug
- Supplementary protection certificate
- Utility model
- Exclusive license to use the above-listed intangible assets

Qualifying income can be limited if, and to the extent that, a taxpayer has outsourced part of its R&D activities to a company within its group. This is the codification of the so-called modified nexus approach, which was introduced in BEPS Action Plan 5.

The costs of R&D are immediately and fully deductible from the taxable profit and must be recovered first. The qualifying income is taxed at a 9% rate if it exceeds the previously reported costs.

For further details, please refer to Chapter 20 on investment incentives.

17.1.6 Dividend withholding tax

The Dutch domestic dividend withholding tax rate is 15%, which may be reduced by applicable tax treaties.

However, dividend distributions made by a Dutch company (such as a BV or NV) are, under Dutch domestic rules, exempt from Dutch dividend withholding tax if, in short, the recipient is a corporate entity with a minimum shareholding of 5% in the nominal paid-up share capital of the Dutch entity and the recipient is either of the following:

(i) Corporate tax resident in the Netherlands or a member state of the EEA (including the EU)

(ii) Resident in a jurisdiction with which the Netherlands has concluded a tax treaty that contains a dividend income clause (It is important to note that even if the dividend income clause does not provide for a 0% rate, the exemption will nevertheless apply in full based on the mere fact that a tax treaty is in place.)

The exemption principally only applies to corporate shareholders that are resident in a tax treaty jurisdiction, although specific relief is available for hybrid entities that receive dividends from a Dutch company, provided certain conditions are satisfied.

However, the exemption is rejected if (i) the foreign shareholder holds the interest in the Dutch company with the purpose of mitigating the levy of Dutch taxation and (ii) an artificial arrangement is in place. These two "anti-abuse" tests already existed in Dutch tax law. Similar to the existing tests, the new rules should not result in the levy of Dutch dividend withholding tax in the case of dividend distributions by a Dutch taxpayer to (i) any shareholders with an active business enterprise or (ii) intermediate holding companies that (indirectly) link two active business enterprises, provided that the intermediate holding company has relevant substance in its country of establishment (i.e., the safe harbor rule). The intermediate holding company is said to have relevant substance if, among others, (a) the intermediate holding company incurs at least EUR 100,000 (or the equivalent in a different currency) in wage costs that form the remuneration for the linking role activities of the intermediate holding company and (b) the intermediate holding company has an office space available with the customary facilities for performing the linking role activities.

Until 2020, if the conditions under the safe harbor rule were satisfied, the Dutch domestic dividend withholding tax exemption could be applied. However, as of 1 January 2020, satisfying conditions under the safe harbor rule by an intermediate holding company that establishes the abovementioned link no longer automatically guarantees that the Dutch dividend withholding tax exemption applies. Instead, as of 1 January 2020, the Dutch tax authorities can challenge the exemption by demonstrating that the structure or transaction is abusive, even if the conditions under the safe harbor rule are met. Therefore, satisfying the conditions under the safe harbor rule allocates the burden of proof to the Dutch tax authorities.

The Dutch cooperative

As of 2018, profit distributions made by a Dutch cooperative to its members are, in principle, not subject to Dutch dividend withholding tax, unless the cooperative qualifies as a "holding cooperative." Holding cooperatives must, in principle, withhold Dutch dividend withholding tax at a rate of 15% on profit distributions to qualifying members.

A cooperative qualifies as a holding cooperative if the activities of the cooperative usually consist of 70% or more of (i) owning shareholdings that qualify for the Dutch participation exemption regime or (ii) financing-related entities. A qualifying member is a member that is entitled to at least 5% of the annual profits or 5% of the holding cooperative's liquidation proceeds.

However, holding cooperatives and its qualifying members may be eligible for the exemption in tax treaty situations as described in this section above. Furthermore, the application of bilateral tax treaties may reduce this domestic withholding tax rate to a lower rate.

17.1.7 Nonresident shareholder taxation

A nonresident entity that owns at least 5% of the issued share capital in a Dutch company (defined as a "substantial shareholding" in the Dutch Personal Income Tax Act 2001) may be subject to 25.8% Dutch CIT (19% for profits not exceeding EUR 200,000) in relation to profit distributions, capital gains and interest from loans in connection with the substantial shareholding. This is an anti-abuse rule that only applies under the following cumulative conditions:

(i) The foreign shareholder owns the interest with the avoidance of Dutch personal income tax as the main or one of the main purposes.

(ii) The structure can be considered an artificial arrangement or part of a series of artificial arrangements.

A structure will not be considered artificial if the interest in the Dutch company can be attributed to a business enterprise carried out by the shareholder itself. This condition will be met if the shareholder is the top holding company with substantial management involvement in the group activities. The criterion will also be met if the shareholder fulfills a "linking function" between a top holding company and the underlying operational companies. In this way, group structures will not be burdened with this measure. However, a company is required to have a certain level of "substance" in its country of residence to qualify as a linking company as described (the so-called safe harbor rule). We refer to section 17.1.6 for a more detailed description of the legislation regarding the conditions under the safe harbor rule as of 1 January 2020.

17.1.8 Conditional withholding tax

The Netherlands looks to discourage tax avoidance by introducing a new conditional withholding tax. As of 1 January 2021, the Netherlands has implemented a conditional interest and royalty withholding tax ("**Conditional Interest and Royalty WHT**"), which applies to interest and royalty payments made by a Dutch company to a related company if that related company is located in an identified low-tax jurisdiction or in a blacklisted jurisdiction. At 25.8%, the proposed Conditional Interest and Royalty WHT rate is the same as the Dutch CIT rate applicable to the highest bracket. As of 1 January 2024, the Netherlands also applies a conditional dividend withholding tax of 25.8% ("**Conditional Dividend WHT**") on dividend payments to low- tax jurisdictions and certain blacklisted jurisdictions, and in certain abusive situations also to recipients that are not resident in a low-tax jurisdiction. This new Conditional Dividend WHT may also apply to dividend distributions that are currently exempt from Dutch dividend withholding tax under the domestic exemption.

17.1.9 Pillar Two

As of 31 December 2024, the Netherlands has implemented the EU directive on minimum taxation, also known as Pillar Two. In short, this results in a minimum tax of 15% being due by multinationals with a global turnover of at least EUR 750 million. The law includes several top-up mechanisms to ensure compliance.

The Netherlands has decided to introduce a qualifying domestic minimum top-up tax. This means that if a Dutch entity's effective tax rate falls below 15%, a top-up tax will be levied to bring the total tax up to the minimum rate of 15%.

Furthermore, the Income Inclusion Rule (IIR) applies to foreign controlled entities, requiring the parent company to pay a top-up tax on the low-taxed income of its subsidiaries. This ensures that the profits of foreign subsidiaries are taxed at least at the minimum rate of 15%.

As of 1 January 2025, the Undertaxed Payments Rule (UTPR) will provide for a backstop to the IIR. If the IIR does not fully capture the top-up tax, the UTPR ensures that the remaining top-up tax is collected by denying deductions or making equivalent adjustments in the jurisdiction where the low-taxed entity is located. This rule ensures that all profits are taxed at the minimum rate, even if they are shifted to low-tax jurisdictions.

17.2 Branches

Dutch branches of nonresident companies are regarded as nonresident taxpayers for CIT purposes.

17.2.1 Domestic source income

Nonresident taxpayers are only subject to CIT with respect to their Dutch-sourced income. Dutch-sourced income mainly consists of the following:

- Profits derived from any business carried out in the Netherlands by a branch/permanent representative
- Income from a substantial shareholding in a resident company as defined in Chapter 4 of the Personal Income Tax Act 2001 (i.e., a shareholding of at least 5%), if the anti-abuse rule described in section 17.1.7 above applies
- Net income from immovable property located in the Netherlands

17.2.2 Branch profit remittances

Branch profit remittances are not subject to withholding tax. The nonresident company is regarded as the taxpayer, not the Dutch branch of the company.

17.2.3 Computation of taxable profits

The CITA does not contain any provisions on how taxable income should be attributed to a Dutch branch of a nonresident company. In practice, the following principles govern the attribution:

- The branch is considered an independent entity for CIT purposes.
- Intercompany transactions should be carried out on an arm's-length basis.

The allocation of profits to a Dutch branch is cumbersome and can be subject to discussion. Generally, the Dutch tax authorities are willing to enter into agreements with taxpayers on the determination of the taxable profits of the branch by agreeing on an APA (please see Section 17.16, Transfer pricing regime) based on an arm's-length allocation of income. These agreements are confirmed in writing in the form of APAs and are strictly observed by the Dutch tax authorities.

17.2.4 Method of taxation and tax rates

Determining taxable income is basically the same for branches and subsidiaries. The branch is subject to CIT at the same rate as the subsidiary (i.e., 25.8% for profits exceeding EUR 200,000 and 19% for profits up to EUR 200,000 in 2025).

17.2.5 Foreign branch profits

A base exemption for Dutch CIT applies to income realized through foreign branches of a Dutch resident company. As a result, foreign profits are considered as exempt income for Dutch CIT purposes. This also means that foreign losses are, in principle, not deductible.

However, similar to liquidation losses of foreign participations, foreign losses that become permanent when the foreign branch ceases its activities could be deductible in the Netherlands. Therefore, the fact that losses of the foreign branch are initially not deductible should not result in a higher tax

burden. There is only a difference in the moment at which the foreign branch's losses are deductible: losses of the foreign branch are not deductible in the year in which the losses were incurred, but in the year the foreign branch ceased its activities. To qualify for the branch income exemption, the foreign branch must conduct an active business enterprise or be subject to a tax of at least 10%, according to Dutch tax standards. If the foreign branch does not qualify for the branch income exemption, a credit system will be applicable to the foreign branch profits, unless a double tax treaty provides for an exemption.

17.3 Branch versus subsidiary

As indicated above, branches and subsidiaries are taxed virtually on the same basis, especially due to the foreign branch exemption.

The main differences are described below:

(a) Most tax treaties provide that certain auxiliary activities carried out in the Netherlands do not constitute a branch for CIT purposes, and as a result do not give rise to Dutch taxation. This exception does not apply to Dutch subsidiaries.

(b) Profits from a Dutch branch may be transferred to its headquarters free from any withholding tax. However, dividends paid by a subsidiary to a foreign parent company may be subject to up to 15% Dutch dividend withholding tax (although in many cases a withholding exemption will apply; see section 17.1.6).

(c) Interest expenses on loans and royalties either accrued or paid by a subsidiary are, in general, tax deductible if the interest or royalty is considered to be at arm's length (however, see section 17.6, Limitations on deductions of interest). Internal interest and royalties are not considered between a branch and its headquarters.

17.4 Dutch participation exemption

17.4.1 Basic rule

The Dutch participation exemption provides for a full exemption of all benefits (e.g., dividends, capital gains and liquidation proceeds) derived from a qualifying shareholding in a subsidiary. Historically, the participation exemption regime resulted in thousands of holding companies being established in the Netherlands.

A shareholding in a subsidiary generally qualifies for the participation exemption if it represents 5% or more of the nominal paid-up share capital of the subsidiary, a so-called qualifying shareholding, unless the shareholding in the subsidiary is (deemed to be) held as a passive investment. This shareholding is classified as a "low-taxed passive investment participation."

A qualifying shareholding in a subsidiary is considered to be held as passive investment participation if it is the taxpayer's objective to obtain a return that may be expected from normal asset management. If the taxpayer has a mixed motive, the predominant motive will be decisive. A shareholding in a subsidiary is not held as passive investment participation if the parent company is involved in the management of the subsidiary and if the subsidiary in which the shareholding is held is engaged in the same line of business as the enterprise conducted by the taxpayer. These subjective criteria provide more room for Dutch tax inspectors to grant tax rulings with respect to the application of the participation exemption.

A shareholding in a subsidiary will be deemed to be held as a passive investment if more than half of the subsidiary's consolidated assets consist of shareholdings of less than 5% or if the predominant function of the subsidiary — together with the function of lower-tier subsidiaries — is group financing or making assets (e.g., IP) available to group companies. However, a shareholding in a subsidiary

may still qualify for the participation exemption if the subsidiary is subject to a "realistic levy of tax" by Dutch standards (the "subject-to-tax test") or if the assets of the subsidiary consist of less than 50% of free portfolio investments (the "asset test").

The subject-to-tax test

If a subsidiary is not subject to a tax on its profits, resulting in a tax levy that is considered realistic according to Dutch standards (usually considered to be a rate of at least 10%), the subsidiary does not meet the subject-to-tax test. Whether or not a subsidiary is subject to a realistic levy of tax on its profits has to be determined by comparing the effective tax rate to which the subsidiary is subject with the rate that would be applied had the company been subject to tax in the Netherlands. In this respect, loss carry-forward, double taxation or group relief should not be considered.

The asset test

If the assets of the subsidiary consist of more than 50% of free portfolio investments, the subsidiary does not meet the asset test. Free portfolio investments are assets that are not necessary for the business activities conducted by the subsidiary. Examples of free portfolio investments are shares in companies that are held as an investment, intragroup payables/receivables and excess cash. Immovable property is, by definition, not a free portfolio investment.

If a subsidiary of a Dutch entity has among its assets a subsidiary, i.e., a sub-subsidiary, the assets and liabilities of that sub-subsidiary should be attributed to the subsidiary's assets on an aggregated basis when determining whether the participation meets the asset test.

17.4.2 Expenses incurred in relation to qualifying shareholdings

Apart from certain provisions limiting the deduction of interest expenses (as indicated in Section 17.6, Limitations on deductions of interest), all expenses incurred in connection with a subsidiary qualifying for the participation exemption are generally deductible. Expenses related to the acquisition of a subsidiary to which the participation exemption applies are added to the subsidiary's cost price and are therefore not effectively tax deductible. Expenses incurred in connection with the disposal of a qualifying subsidiary are also not deductible. Currency losses realized on loans that are used to fund participations may be recognized as soon as they are incurred, whereas a currency gain will normally be taxable upon redemption of the loan. For companies that fund foreign participating interests with loans denominated in currencies other than the euro, it is particularly important to check whether it is possible to avoid exposure to currency exchange risks by a functional currency ruling, which can be obtained by filing an ATR request with the Dutch tax authorities.

17.4.3 Capital losses under the participation exemption

Generally, capital losses and a decline in the value of the shares in a qualifying participating interest are not deductible. However, losses incurred on a completed liquidation of a subsidiary could be deductible. This exception is subject to complex anti-abuse rules, which will only be discussed here to a limited extent. In general, the deductible amount is equal to the difference between the funds invested and the liquidation proceeds. This amount will be reduced by dividend payments made in the previous five (or, in specific cases, 10) years.

Liquidation losses may not be deducted if the activities of the liquidated subsidiary are continued elsewhere within the same group. Deduction of losses incurred during the liquidation of an intermediate holding company may be denied in certain situations. If a foreign branch is converted into a subsidiary, the participation exemption will, under certain circumstances, only apply once previous losses incurred by the branch have been recovered.

17.4.4 Conversion of loans

Under certain circumstances, a Dutch creditor realizes a gain upon the upward revaluation of a loan receivable on its subsidiary that was earlier converted into equity. This applies if the loan was revaluated downward by the creditor at an earlier stage.

The essence of this provision is to tax a decrease and a later increase in the value of a loan that is converted into equity in the same way as an unconverted loan. If the downward revaluation was tax deductible, a later upward revaluation, when the loan is converted into equity, is taxable.

17.4.5 Possible tax planning opportunities

The application of the Dutch participation exemption may provide for a number of interesting tax planning opportunities, depending on the specific facts and circumstances.

17.4.6 Active companies located in "tax havens"

Shareholdings of 5% or more in active operations that are completely exempt from local taxation are eligible for the Dutch participation exemption. This makes the Netherlands very attractive for all sorts of active investments in jurisdictions that do not traditionally levy a profit tax or grant extensive tax holidays and that are currently referred to as "tax havens." However, we refer to the section below with respect to the measures against controlled foreign companies.

17.4.7 Controlled foreign company rule

Dutch tax law did not provide for a specific controlled foreign company (CFC) legislation other than the regulation for low-taxed investment subsidiaries and the general ALP.

Based on ATAD 1, EU member states are required to implement a CFC rule according to which the non-distributed earnings of a foreign subsidiary or permanent establishment may be taxed in the Netherlands if certain criteria are fulfilled. ATAD 1 offered the following two options when implementing the CFC rule:

- Model A: Non-distributed passive income of the subsidiary or permanent establishment, such as interest, royalties, dividend and financial leasing, will be included in the taxpayer's tax base.
- Model B: Income generated through assets and risks that are linked to significant people functions carried out by the taxpayer (i.e., the controlling company), to be calculated in accordance with the ALP, will be included in the taxpayer's tax base.

The Netherlands already applies Model B, since the ALP is already an important part of Dutch tax legislation. This way the Netherlands government is of the view that Dutch tax law already meets the minimum standard of the ATAD 1 CFC legislation.

However, the Netherlands has also chosen to apply Model A for specific situations as of 1 January 2019. This is the case where the following criteria are fulfilled with respect to a foreign subsidiary or permanent establishment:

- The Dutch taxpayer — with or without affiliated persons — has a direct or indirect interest of at least 50% of the nominal paid-up capital, voting rights and the profits in the foreign subsidiary or permanent establishment.
- The foreign subsidiary or permanent establishment is not subject to CIT in its country of residence; is subject to CIT in its country of residence at a statutory rate of less than 9%; or is located in a country that is included in the EU list of noncooperative jurisdictions.

However, the CFC rule will not apply if either of the following applies:

- The income of the foreign subsidiary or permanent establishment consists of more than 70% of nonpassive income.
- The foreign subsidiary or permanent establishment does not have a substantial economic activity.

17.4.8 Mutual investment funds and private equity funds

With regard to mutual investment funds, the participation exemption regime used to only be available to 5% quota holders in Dutch mutual investment funds. Currently, provided the mutual investment fund qualifies for the participation exemption, a Dutch holding company may apply the participation exemption to such investments, regardless of the jurisdiction in which the fund is located. This makes the Netherlands an excellent jurisdiction for feeder companies holding large investments in certain mutual and private equity funds.

17.4.9 Hybrid instruments

Dutch tax law used to allow a Dutch parent company to derive exempt benefits from instruments, whereas the remuneration on the hybrid instrument is deductible in the country of issuance ("hybrid debt instruments"). On the basis of the participation exemption regime, tax exemption will no longer be allowed on proceeds from instruments that result in deductibility in a foreign country.

17.4.10 Real estate companies

The application of the participation exemption regime on real estate companies is determined on the general criteria described in section 17.4.1. For the purposes of the asset test, real estate is not considered a free portfolio investment. Therefore, the participation exemption generally applies to shareholdings in real estate companies.

17.5 Capital gains

Capital gains are generally subject to CIT at the ordinary rate. However, under certain conditions, capital gains derived from the voluntary or involuntary disposition of tangible and certain intangible capital assets can be deferred by temporarily allocating the gain to a "reinvestment reserve." There is a claw-back provision if the reinvestment reserve is not used for the acquisition of a new asset within a three-year period after the creation of the reinvestment reserve (please see section 17.9.3, Provisions and tax-free reserves).

Capital gains earned when a capital asset is exchanged for another capital asset with a similar economic function in the business can also be deferred. For assets with a maximum depreciation period of 10 years, the acquired asset must have a similar economic function within the business as the replaced asset.

Capital gains may even be exempt under the following circumstances:

(a) Capital gains on the alienation of a qualifying shareholding in resident or nonresident companies (as referred to in Section 17.4 regarding the participation exemption)

(b) Capital gains on the transfer of assets (comprising a business or an independent part of it) by one corporate taxpayer to another in exchange for shares (see Section 17.12, Mergers and demergers)

Capital losses are deductible for Dutch CIT purposes, unless they are exempt under the Dutch participation exemption regime.

As of 1 January 2020, ATAD 2 has been introduced into Dutch legislation, countering hybrid mismatches that resulted in the avoidance of taxation. Furthermore, as of 1 January 2022, specific rules addressing mismatches that arise specifically from the application of the ALP have also been introduced. These rules ensure that transactions between related companies are valued consistently, preventing tax avoidance through transfer pricing discrepancies.

These rules also cover capital gains, ensuring that any gains from the transfer of assets between related companies in different countries are appropriately valued and taxed. This helps prevent situations where differences in tax rules between countries lead to profits not being taxed anywhere, aligning Dutch tax law with international standards.

17.6 Limitations on deductions of interest

This section provides an overview of certain restrictions on the deduction of interest expenses, considering certain peculiarities of hybrid loans.

17.6.1 Interest deduction on "hybrid loans"

A debt instrument is requalified into equity for tax purposes if the hybrid loan meets certain requirements. As a result, the interest paid on hybrid loans is requalified into dividends. Therefore, this interest will not be deductible for CIT purposes (or if received tax-exempt under the participation exemption, if applicable).

Debt is requalified into equity for tax purposes if the following conditions are fulfilled:

(a) The remuneration on the loan depends (almost) entirely on the debtor's profit.

(b) The loan is subordinated to all creditors.

(c) The loan has no fixed maturity date but may be reclaimed only in the case of the debtor's insolvency or liquidation, or the loan has a term of more than 50 years.

Conversely, the participation exemption regime applies to income and gains received on hybrid loans under the following conditions:

- The creditor of the hybrid loan also has a shareholding in the issuer that qualifies for the application of the participation exemption regime.
- A related company of the creditor of the hybrid loan has a shareholding in the issuer that qualifies for the application of the participation exemption regime.
- The issuer (debtor) is a related company of the creditor.
- No corresponding payment is effectively deductible for profit tax purposes (in a foreign jurisdiction).

17.6.2 Interest deduction on loans relating to "tainted" transactions

Interest expenses on loans from affiliated entities or individuals may be disallowed for Dutch CIT purposes if the loan is related to any of the following "tainted" transactions:

- A profit distribution or repayment of share capital
- A capital contribution to an affiliated entity
- An acquisition or increase of the shareholding in an entity that qualifies as an affiliated entity after the acquisition

An entity qualifies as an affiliated entity if the Dutch taxpayer has or acquires a direct or indirect interest of at least one-third in the entity or vice versa, or if a mutual (indirect) shareholder has or acquires a direct or indirect interest of at least one-third in both the Dutch taxpayer and the other entity.

In addition, an entity qualifies as affiliated if it **individually** does not meet the one-third threshold but is part of a "cooperating group" of entities that **jointly** meet the one-third threshold.

Notwithstanding the above, interest expenses are allowed if the taxpayer can demonstrate either of the following:

- The debt and the related transaction are predominantly business-driven.
- The interest payments are effectively taxed in the hands of the creditor at a tax rate of 10% of a taxable profit calculated in accordance with Dutch tax law, and the recipient is furthermore not eligible to offset tax losses.

However, if the tax authorities can reasonably establish that (i) the debt is provided with the intention to set off tax losses or use other claims arising in a current year or the near future; or (ii) the debt or the related transaction is not predominantly business-driven, then the interest expenses are not deductible.

17.6.3 Interest deduction on low-interest loans

The interest paid and capital losses realized on a loan are not deductible, provided that the following characteristics are present:

(a) The debtor and creditor of the loan are affiliated companies.

(b) The loan has no term or a term of more than 10 years.

(c) The remuneration on the loan deviates considerably (i.e., by 30% or more) from an arm's-length interest rate.

If the loan's redemption date is postponed, its term will be deemed extended accordingly as of the date of its issuance.

17.6.4 Earnings-stripping rule

As part of the implementation of ATAD 1, the Netherlands introduced a general interest deduction rule, also referred to as the earnings-stripping rule. Based on this rule, the balance of the interest paid and interest received is not deductible insofar as it is higher than EUR 1 million or 24.5% (2025) of the year's EBITDA.

17.7 Flow-through entities

Dutch entities that do not incur a genuine risk in respect of intragroup loans or royalty transactions are not permitted to credit the foreign withholding taxes related to that interest or royalty income. The flowthrough entity is treated as an intermediary company.

Technically, the denial of the credit is achieved by excluding the interest and royalties received and paid from the tax base in the Netherlands.

The interest and royalties received and paid are excluded from the Dutch tax base under the following conditions:

(a) The Dutch entity receives and pays interest or royalties to and from a foreign entity within the same group.

(b) The interest and royalties received and paid relate directly or indirectly to a loan or a royalty transaction.

(c) The transactions are "closely connected."

(d) The flow-through company does not incur a genuine risk that may affect its equity.

A flow-through company is deemed to incur a genuine risk in respect of a loan if the equity is at least 1% of the outstanding loans, or EUR 2 million, and the taxpayer can prove that the equity capital will be affected if a risk arises. Even though the interest and royalty income and expenses are excluded from the taxable income, the flow-through entity should still report an arm's-length remuneration with regard to the services relating to the loan or royalty transaction.

During informal discussions in 2005 between tax advisers and the Dutch Tax Administration, representatives of the Dutch Revenue indicated that a flow-through company is deemed to incur a genuine risk in respect of the receipt and payment of royalties if its equity at risk is at least 50% of the expected gross royalty payments to be made by it, or EUR 2 million and at least 50% of that amount has been paid in advance to the licensor.

In addition, a flow-through entity that qualifies as an FSC (i.e., a company with activities that consist of 70% or more of directly or indirectly receiving and paying interest, royalties, rent or lease installments, to or from nonresident group companies, over a fiscal year) must currently indicate on its annual CIT return whether certain minimum substance requirements are met.

As of 1 January 2020, the existing substance requirements are expanded with the following additional requirements:

(i) EUR 100,000 salary costs

On an annual basis, the FSC must incur at least EUR 100,000 (or the equivalent in a different currency) in salary costs that form the remuneration for the licensing or financing activities performed by the FSC.

(ii) Office space

The intermediate holding company will be required to have an office space available with the customary facilities for performing the licensing or financing activities for a period of at least 24 months.

If these substance requirements are not met, the Dutch tax authorities can spontaneously exchange information regarding a company's factual situation with the foreign tax authorities of countries that have provided a relief of taxation to the Dutch company on the basis of a tax treaty or the EU Interest and Royalty Directive (i.e., foreign source countries).

17.8 Anti-dividend stripping

A refund, reduction, exemption or credit of Dutch dividend withholding tax based on Dutch tax law or based on a tax treaty between the Netherlands and another jurisdiction will only be granted under the Dutch Dividend Tax Act of 1965 (DWTA) if the dividends are paid to the dividends' beneficial owner. Using so-called dividend stripping transactions, taxpayers subject to dividend withholding tax have sought to benefit from tax treaty and domestic law provisions to which they themselves were not entitled, e.g., by transferring shares temporarily to another party that would benefit from a full exemption from dividend withholding tax.

The legislator has introduced anti-dividend stripping rules combating cases in which a party cannot be considered the beneficial owner of the dividends. Under these rules, a natural person or a legal entity is not deemed the beneficial owner if, in relation to becoming entitled to the dividend distribution, that

person or entity has paid a consideration (in the broadest sense) within the framework of a combination of transactions where the following may be assumed:

(a) All or part of the dividend distributions have been made, directly or indirectly (for instance, due to the payment of the consideration), for the benefit of either of the following:

- An individual or legal entity with respect to whom or which no exemption may be granted from the withholding obligation, whereas such exemption may be granted to the party paying the consideration
- An individual or legal entity (again, usually the original shareholder) whose entitlement to a reduction or refund of dividend tax is lower than that of the party paying the consideration

(b) The individual or legal entity, directly or indirectly, retains or acquires a position in stock, profit-sharing certificates or profit-sharing bonds similar to its position in such stock, profit-sharing certificates or profit-sharing bonds before the commencement date of the combination of transactions referred to above.

Certain factors reduce the chance of a dividend-stripping situation arising, such as the period between the time of the transfer and the dividend distribution, the kind of dividend (regular, incidental or liquidation distribution) and the duration of the transfer.

On 19 January 2024, the Dutch Supreme Court clarified the criteria that apply when determining a dividend's beneficial owner. The Dutch Supreme Court confirmed that the party that is legally entitled to the dividend is in principle also its beneficial owner, unless it cannot freely dispose of the dividend, acts as a fiduciary or agent for another party or if specific anti-dividend stripping measures apply. This case demonstrated that it remains challenging for the Dutch tax authorities to prove that a transaction falls within the scope of the anti-dividend stripping rules.

As of 1 January 2024, Dutch tax law has been amended so that it is now the taxpayer's (instead of the Dutch tax authorities') responsibility to demonstrate that they are the beneficial owner of a dividend payment. The Dutch government has recently reaffirmed the intention to further combat dividend stripping transactions. The Dutch government is still considering and investigating the introduction of additional measures.

17.9 Tax incentives

The following measures provide tax relief to taxpayers:

17.9.1 Investment allowance

The investment allowance (investeringsaftrek) is limited to small investments (EUR 2,900 to EUR 392,230) and comprises a deduction of a percentage at a maximum of 28%.[31]

Investment	Percentage/amounts
EUR 0-EUR 2,900	0%
EUR 2,901-EUR 70,602	28%
EUR 70,603-EUR 130,744	EUR 19,769

[31] 2019 amounts.

Investment	Percentage/amounts
EUR 130,745-EUR 392,230	EUR 19,769 less 7.56% of the amount exceeding EUR 130,744
More than EUR 392,230	0%

In addition, an investment allowance of 40% is available for energy- saving investments (up to EUR 151 million). Furthermore, an investment allowance of 27%, 36% or 45% is available for certain qualified environmental investments (but not if an energy investment has already been applied for).

If, within five years after the beginning of the calendar year in which the investment took place, more than EUR 2,900 (2025) in assets for which an investment allowance was claimed is disposed of, a proportionate percentage will be added to the company's profit (divestment addition (desinvesteringsbijtelling)). Withdrawal from an asset is deemed a disposal in this respect. Assets used for the operation of a business that is subject to a regulation to prevent international double taxation are excluded from the investment allowance. However, the Dutch minister of financial affairs could make an exception.

17.9.2 Random depreciation

Random accelerated depreciation (e.g., in one year) may be claimed for certain environmentally friendly assets that are on the list of assets and regions compiled by the Ministry of Environmental Affairs. In addition, other assets on this list are eligible for random depreciation.

17.9.3 Provisions and tax-free reserves

Provisions can be created for future expenses, the cause of which exists on the balance sheet date. An increase in such provision leads to a decrease in taxable income and vice versa. For example, provisions can be created for the payment of certain pensions, for events that may occur in the future and for bad debts.

A company alienating an asset, whether tangible or intangible, may create a reinvestment reserve if the asset's sales proceeds exceed its book value for tax purposes. The reinvestment must take place within a period of three years; otherwise, the reserve must be added to taxable profits. The new asset does not have to have the same economic function, unless the alienated asset is not depreciated or is depreciated over a period of more than 10 years.

A tax-free allocation of profits to a reserve is also permitted for spreading intermittently recurring costs ("equalization reserve").

17.10 Losses

A tax loss incurred during a fiscal year may be carried back to the preceding year or carried forward indefinitely, subject to certain detailed anti-abuse provisions. Compensation of losses in a year is limited to EUR 1 million, plus 50% of the taxable profit for that year (the profit after the deduction of EUR 1 million).

The amount of tax losses that may be carried back or forward has to be determined by the Dutch tax authorities after the taxpayer files its annual CIT return. Certain anti-abuse provisions restrict loss compensation if: (i) at least 30% of the ultimate ownership of a company changed as compared to the earliest year in which the losses were incurred; and (ii) the change of control occurred after the company terminated or largely reduced its former business activities.

Old loss compensation rules that are no longer in force as of 1 January 2019, stated that losses incurred in years during which the taxpayer qualifies as a "holding company" (i.e., for 90% of the year, 90% or more of the company's activities consist of holding or group financing activities) may solely be set off against profits derived in years during which the taxpayer also qualifies as a holding company. This rule was intended to prevent pure holding companies from initiating active operations with the (exclusive) aim of setting off their (holding) losses against operating profits. A holding company may also not carry forward its losses, if a holding company increases the balance of its intercompany loans and liabilities (compared to the balance in the year when the loss was incurred) to generate additional interest income, which is to be set off against previous losses. This rule still applies to tainted losses that arose before 1 January 2019.

17.11 Liquidation

Capital gains arising from the liquidation of a company are subject to CIT at normal rates, unless an exemption applies (e.g., participation exemption for a capital gain on a qualifying shareholding).

Liquidation distributions to shareholders are treated as follows:

- Repayment of paid-in capital, including share premiums and capitalized profits but excluding retained earnings, is tax-free (with certain exceptions).
- Any other payment is deemed to be a dividend and is, therefore, subject to dividend withholding tax. Dividend withholding tax will not be levied if the recipient is any or all of the following:
    - A Dutch resident company that qualifies for the participation exemption
    - An EU resident company that qualifies for the EU Parent-Subsidiary Directive and, at the time of the liquidation, holds at least 5% of the nominal paid-up share capital of the distributing company
    - A recipient that may benefit from an exemption based upon a tax treaty

17.12 Mergers and demergers

17.12.1 Business merger

Taxation of capital gains realized on the transfer of the assets and liabilities (comprising a business or an independent part thereof) of one company to another (existing or newly incorporated) company may be "rolled over" under the "merger exemption" if the business is transferred in exchange for shares in that other company. This exemption is subject to the following conditions:

(a) The only compensation received by the transferring company consists of shares in the receiving company.

(b) The future levying of CIT is assured. This condition implies that for tax purposes, the transferee company must apply the same basis in the assets and liabilities that the transferring company applied immediately prior to the transfer.

(c) None of the companies suffered losses eligible to be carried forward prior to the merger.

(d) Both companies are subject to the same tax regime. This will not be the case if, for instance, one company is a regular taxpayer while the other company qualifies as an investment institution and is, therefore, subject to a 0% CIT rate.

(e) The shares acquired by the transferring company are not disposed of within three years.

Under Dutch tax law, mergers and demergers may be exempt from Dutch CIT if certain requirements are met. In general, the legal merger and demerger exemption does not apply if the merger/demerger is predominantly pursued with the aim of avoiding or deferring taxation.

The Ministry of Finance issued several regulations in the form of "standard conditions" that must be met for the merger exemption to apply. This exemption has only undergone technical changes as a result of the implementation of the EU Merger Directive. For instance, the exemption is also applicable if a permanent establishment of a nonresident company is converted into a resident company. In principle, this exemption will apply only insofar as the transfer of assets leads to a full financial and economic integration of the business involved.

17.12.2 Merger by share-for-share exchange

The implementation of the EU Merger Directive has made it possible for a nonresident taxpayer (e.g., an individual) holding shares in a Dutch corporation to exchange those shares for shares in another EU corporation without triggering Dutch CIT. Once again, specific requirements must be met. One of the most relevant conditions is that both EU corporations involved in the merger must be qualified corporations. Furthermore, the (acquiring) corporation must acquire more than 50% of the voting shares in the Dutch corporation.

17.12.3 Legal merger

The CITA also provides for the "legal merger" facility, whereby the assets and liabilities of the absorbed company are passed on to the absorbing company and the absorbed company itself ceases to exist. The shareholders in the absorbed company receive shares in the absorbing company. The two companies are amalgamated into one, without the need to liquidate the absorbed company. Alternatively, a new third company can absorb the assets and liabilities of the two former companies. One of the conditions for a legal merger is that the qualifying companies involved are tax residents in the Netherlands, the EU, Iceland or Norway. In practice, the tax treatment of a legal merger will be similar to that of a business merger.

17.12.4 Demerger

In general, the legal demerger of companies allows the transfer of all or part of the property, rights, interest and liabilities of one legal entity to one or more other legal entities by means of a universal transfer of title, i.e., without the separate transfer of all of the assets and liabilities. The main principle is that all the shareholders of the legal entity being demerged become shareholders of the transferee company (i.e., the acquiring company or companies). In general, there are two main types of demergers, as follows:

(a) A full demerger, whereby the property, rights, interests and liabilities of a legal entity that ceases to exist on completion of the demerger are acquired by two or more other legal entities

(b) A partial demerger, involving a split, whereby all or part of the property, rights, interests and liabilities of one legal entity are acquired by one or more other legal entities (the original legal entity does not cease to exist on completion of the demerger)

Demergers may be effected without incurring CIT under certain conditions, which is quite similar to the condition for the transfer of assets.

17.13 Fiscal unity

The CITA provides for a fiscal unity regime that, subject to certain conditions, permits companies that are members of a fiscal unity to file a consolidated tax return. Upon request, companies that are tax residents of the Netherlands (an NV, BV, a Dutch cooperative or a mutual guarantee association) may

form a fiscal unity with subsidiaries in which a participation of at least 95% is held. The main advantages of the fiscal unity regime are that profits and losses may be freely set off among members of the fiscal unity, and members can avoid the realization of income on transactions between them. After the formation of a fiscal unity, only the parent company is actually recognized as a taxpayer for Dutch CIT purposes. Any income or expense at the level of the subsidiary company is automatically aggregated at the level of the parent company.

The most important characteristics of a fiscal unity are as follows:

(a) To opt for fiscal unity, a parent company must (directly or indirectly) own at least 95% of the nominal paid-up share capital of a subsidiary, including statutory voting rights and profit entitlement.

(b) Under certain conditions, qualifying subsidiaries may enter into a fiscal unity with the parent company during the fiscal year (e.g., as of the date of acquisition of the subsidiary).

(c) Fiscal unities may be ended with respect to one or more consolidated subsidiaries during the course of the fiscal year (e.g., as of the date of disposal of the subsidiary).

(d) A company leaving the fiscal unity may, under certain conditions, retain losses that have not yet been set off and that were incurred during the fiscal unity period, if these losses were attributable to that company.

(e) Under certain conditions, Dutch permanent establishments of foreign companies may enter into fiscal unity with a Dutch (resident) company or another Dutch branch of a foreign company, if there is a shareholding of at least 95% between the companies.

A fiscal unity can also be established between Dutch sister companies with a common shareholder within the EU that owns at least 95% of the shares, voting rights and profit rights of these sister companies. The same applies for a Dutch parent company that holds a 95% interest in a Dutch subsidiary through a foreign company within the EU.

As of 1 January 2019, certain provisions of the Dutch CITA and Dutch DWTA must be applied as if the Dutch fiscal unity does not exist (with retroactive effect to 1 January 2018).

17.14 Fiscal investment institution

A fiscal investment institution (Fiscale Beleggingsinstelling (FBI)) enjoys a beneficial tax regime, if certain requirements are met. Based on this regime, profits are subject to CIT at a rate of 0%. Profit distributions by an FBI to its shareholders will give rise to Dutch dividend withholding tax at a rate of 15%, unless reduced by an applicable tax treaty or the Parent-Subsidiary Directive.

To qualify as an FBI, a company must meet the following cumulative requirements throughout the entire tax year:

(a) The FBI must be set up as a Dutch public company (NV), a Dutch limited liability company (BV), an open-ended investment fund for joint account (fonds voor gemene rekening (FGR)) or a comparable foreign legal entity established under the laws of Bonaire, Sint Eustatius, Saba (the BES islands), Aruba, Curacao, Sint Maarten, an EU member state or any other state, if a double tax treaty containing a nondiscrimination provision has been concluded with that state. Comparable foreign legal entities are not required to be residents of the Netherlands, but should be liable to Dutch CIT.

(b) The FBI must restrict its activities to making portfolio investments (passive investments).

(c) The FBI is subject to leverage restrictions. Debt is maximized at 60% of the tax book value of real property investments and 20% of the tax book value of other investments.

(d) An FBI is required to distribute all of its profits to its shareholders within eight months after the end of its financial year. An FBI is allowed to exclude the net balance of capital gains and losses from its taxable profit and allocate this balance to a so-called reinvestment reserve. Distributions from the reinvestment reserve are not subject to Dutch dividend withholding tax under certain circumstances.

(e) If an FBI is listed on a financial market within the meaning of the WFT, or if the FBI or its manager (beheerder) has a license under the WFT (or has been exempted from being licensed), the following conditions must be met:

  (i) Not more than 45% of the FBI may be held by an entity (or by two or more related entities, as defined by law) subject to a profit tax

  (ii) A single individual may not hold an interest of 25% or more

(f) If the FBI is not listed on a financial market, or if the FBI or its manager does not have a license under the WFT (nor has it been exempt from being licensed), the following conditions must be met:

  (i) At least 75% of the shares in the FBI must be held by individuals, corporate entities exempt from CIT or listed FBIs

  (ii) Individuals may not hold an interest of 5% or more

(g) Dutch resident companies may not hold 25% or more of the shares in an FBI via nonresident corporate shareholders or mutual funds

A director of an FBI or more than half of the members of the supervisory board of an FBI cannot also be a director, a member of the supervisory board or an employee of an entity that holds (alone or with related entities) an interest of 25% or more in the FBI, unless the latter entity is an FBI listed in a financial market within the meaning of the WFT.

The FBI must restrict its activities to passive real estate investments; it is not permitted to develop real estate itself. Real estate development activities are allowed under the following limitations:

(a) The FBI is allowed to hold shares in a subsidiary that conducts real estate development activities. Such subsidiaries should be subject to tax at the general CIT rate. If the FBI wishes to develop its own real estate investments, the subsidiary may develop the real estate held by the FBI in exchange for an arm's-length remuneration.

(b) The improvement and expansion of existing real estate by the FBI itself are allowed if the investments do not exceed 30% of the market value of the real estate, determined under the WOZ.

Under certain conditions, the FBI may credit foreign withholding tax on income it receives against the Dutch dividend withholding tax to be paid by the FBI. If an FBI no longer meets one or more of the abovementioned requirements in a certain financial year, it loses its status as an FBI. As a result, the entity becomes a regular corporate taxpayer from the beginning of that financial year.

As of 1 January 2025, FBIs are no longer allowed to directly invest in Dutch real estate. Receivables primarily linked to income from Dutch real estate will also be considered prohibited assets for FBIs.

17.15 Exempt investment institution

The exempt investment institution (vrijgestelde beleggingsinstelling (VBI)) is fully exempt from tax. Upon request, a taxpayer in the Netherlands subject to CIT can benefit from the VBI regime, if the following requirements are met:

- The VBI is set up as an NV, an FGR or a comparable foreign legal entity established under the laws of the BES islands, Aruba, Curacao, Sint Maarten, an EU member state or any other state, if a double tax treaty containing a nondiscrimination provision has been concluded with that state.
- The VBI is set up as an open-ended investment fund.
- The activities of the VBI consist of collective passive investments.
- The VBI is only allowed to invest in "financial instruments," as defined in the Markets in Financial Instruments Directive (e.g., shares, bonds, options, futures, swaps). It is allowed to invest in Dutch and foreign real estate indirectly (i.e., via a nontransparent, Dutch or foreign entity or real estate fund).

A VBI cannot credit withholding taxes incurred as it is not subject to tax. Because it is not subject to tax, the VBI is not eligible for tax treaty protection. Withholding tax levied on income received by the VBI will be an actual cost for the VBI.

The VBI has no specific shareholder requirements; individuals, corporations and institutional investors may invest via a VBI. To meet the requirement of collective investment, the VBI may not be used as a portfolio investment company that was primarily set up for one shareholder. The VBI should diversify its risks (it cannot invest in only one asset).

The VBI is not subject to any funding restrictions.

The VBI regime does not have any distribution obligations. Dutch (corporate and individual) investors have to reevaluate their interest in the VBI to fair market value every year, as a result of which the underlying (realized and unrealized) income will be taxable at the level of the Dutch shareholders.

The Dutch participation exemption does not apply to a shareholding in a VBI. Profit distributions by a VBI to its shareholders are not subject to Dutch dividend withholding tax.

As of 1 January 2025, the definition of the VBI has been limited, with only investment institutions and undertakings for collective investment in transferable securities that offer participation rights to the general public or institutional investors eligible to apply the VBI regime.

17.16 Transfer pricing regime

The Dutch tax authorities generally adhere to the OECD Transfer Pricing Guidelines and apply the ALP. The ALP requires that all intragroup transactions occur at conditions that would have been agreed upon between unrelated parties. Therefore, if the transfer price differs from what unrelated parties would have agreed upon, the pricing would generally not be considered to be at arm's length and the tax authorities may adjust the pricing accordingly.

17.16.1 Transfer pricing documentation

Under Dutch tax law, taxpayers are obliged to maintain documentation for transactions with related parties. Such documentation must demonstrate how the intercompany price was established.

From 1 January 2016, supplementary and contemporaneous transfer pricing documentation requirements apply to companies that are part of a multinational group with consolidated revenues of EUR 50 million or more. These additional transfer pricing documentation requirements follow the

recommendations from the OECD as part of the BEPS project (see Action Item 13: Country-by-Country Reporting Implementation Package[32] ("**Action Item 13**")).

More specifically, entities located in the Netherlands that are part of an MNE with consolidated revenues of EUR 750 million or more must prepare transfer pricing documentation that consists of a Master file and one or more Local files. In addition, a Country-by-Country Report (CbCR) must be filed with the Dutch tax authorities or must be made available to the Dutch tax authorities through automatic exchange (see below).

Entities that are part of an MNE with consolidated revenues of between EUR 50 and EUR 750 million, must prepare transfer pricing documentation that consists of a Master File and Local File. A CbCR filing is not required.

For entities that are part of an MNE with consolidated revenues of less than EUR 50 million, only the pre-2016 transfer pricing documentation requirements are applicable.

The reference year for determining whether one of the thresholds is met is the preceding fiscal year of the MNE. This means that the fiscal year that starts on or after 1 January 2015 is the relevant year for determining the applicable transfer pricing documentation requirement for 2016. MNEs must notify the Dutch tax authorities by the last day of the relevant fiscal year[33] about whether the local subsidiary in the Netherlands is required to file a CbCR and, if not, which other entity in the group will file the CbCR instead.

Before the notification deadlines in various countries, MNEs will need to decide on which entity in the group will act as a surrogate parent for CbCR purposes. The notifications in the Netherlands should be filed online via the notification tool prepared by the Dutch tax authorities.

Moreover, the Dutch tax authorities require a notification to be filed by the Dutch subsidiary of a foreign MNE if the Dutch subsidiary is required to file the CbCR with the Dutch tax authorities, but whereby the MNE's ultimate parent company refuses to provide that Dutch subsidiary with the information necessary to complete and submit the report.

The Master File and Local File must be included in the taxpayer's administration within the term for filing the CIT return, i.e., within five months after the end of the fiscal year, and they should only be filed with the Dutch tax authorities upon request. If an extension is granted for filing a tax return, the Dutch tax authorities have indicated that they will also not request the Master File and Local File before this date. The requirements related to the content of the Master File and Local File are generally in line with the recommendations from Action Item 13.

The CbCR must be filed with the Dutch tax authorities within 12 months after the end of the fiscal year. The ultimate parent entity of a group is in any case required to file the CbCR with the Dutch tax authorities if this entity is located in the Netherlands. However, on some occasions, a subsidiary of an MNE could also be required to file a CbCR in the Netherlands. The CbCR should, in short, contain aggregate tax jurisdiction-wide information on the global allocation of income, the taxes paid per country and the activities performed in these countries.

Moreover, Public CbCR applies to financial years starting on or after 22 June 2024. It impacts EU multinational groups with consolidated revenue of at least EUR 750 million, as well as non-EU multinationals with subsidiaries or branches in the EU meeting any two of three criteria: (i) assets valued at EUR 5 million, (ii) net turnover of EUR 10 million, and (iii) 50 employees. These entities must publicly disclose the CIT paid and related information (the nature of activities, subsidiaries,

[32] http://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf

[33] Please note, however, that for the first reporting year only (i.e., fiscal years that started on or after 1 January 2016), the notification deadline was extended until 1 September 2017.

turnover, number of employees, retained earnings, and profit before tax) in each EU member state and jurisdictions considered noncooperative for tax purposes (EU black list and EU grey list). The reports must be published in the EU register and on the company's website for a minimum of five years.

The Dutch government is a signatory to the Multilateral Competent Authority Agreement, issued by the OECD, based on which the CbCR can be exchanged between competent authorities on a bilateral basis.

17.16.2 Consequences of noncompliance with the documentation requirements

Failure to comply with the information and documentation obligations mentioned above, including the CbCR, Master File and Local File, may result in a reversal of the burden of proof from the tax authorities to the taxpayer, or in administrative penalties. To prevent shifting the burden of proof from the tax authorities to the taxpayer, it is recommended to strategically consider how the arm's-length character of intercompany transactions within an MNE can be substantiated with sufficiently detailed transfer pricing documentation. Intentionally not meeting the obligations or any gross negligence may (in extreme cases) also result in criminal prosecution.

In addition to the penalties mentioned above, for the CbCR requirements, including the related notification requirements in the Netherlands, there is a specific penalty that may apply for noncompliance, i.e., the maximum administrative penalty for not complying, intentionally or due to gross negligence, with the information obligations in relation to the CbCR and the related notification for CbCR purposes is EUR 820,000.[34]

17.16.3 Dutch transfer pricing decree

Extensive guidance has been issued by the Dutch Ministry of Finance in the form of decrees, providing further guidance regarding the interpretation/application of the ALP and procedures for obtaining an APA or ATR in the Netherlands.[35] In 2013, the Dutch Ministry of Finance issued a transfer pricing decree No. IFZ2013/184M, which combines and replaces two previous transfer pricing decrees issued in 2001 and 2004 (No. IFZ2001/295M and No. IFZ2004/689M, respectively). The OECD Transfer Pricing Guidelines are incorporated in domestic law by reference in the transfer pricing decree.

The Netherlands' transfer pricing regime can be characterized as pragmatic. All the OECD transfer pricing methods are accepted and so are Pan-European comparables. Transfer pricing documentation must be prepared in Dutch or English. For years prior to fiscal year 2016, and thereafter for MNEs with consolidated revenues of less than EUR 50 million, transfer pricing documentation that is in line with the EU Code of Conduct on transfer pricing documentation is generally accepted by the Dutch tax authorities. For fiscal year 2016 and onward, the additional transfer pricing documentation rules as set forth above apply to MNEs with consolidated revenues of EUR 50 million or more.

Intragroup business restructurings, such as intangibles transfers or reorganizations, are one of the focus areas of the Dutch tax authorities in audits context. Furthermore, intercompany transactions involving intragroup charges such as management fees and royalties usually attract the tax inspector's interest. Additionally, multinational companies with group entities in low-tax jurisdictions

[34] This **maximum** penalty for noncompliance with the CbCR requirement and the related notification requirement was increased in 2017.
[35] An APA is an agreement between an MNE and the Dutch tax authorities on the arm's-length remuneration of cross-border transactions (goods and services) between related parties. An ATR is an agreement between an MNE and the Dutch tax authorities that provides certainty on the tax consequences of a proposed transaction or a set of transactions for international issues mentioned in the ATR decrees.

can expect scrutiny, whereby outgoing payments are invariably reviewed during transfer pricing audits.

Recent developments, including the OECD's BEPS project and the additional transfer pricing documentation requirements, indicate that transfer pricing is a major concern for governments and international organizations. These developments, together with the Dutch tax authorities' increased awareness of transfer pricing, will most likely result in more frequent transfer pricing audits. The government has already indicated that the Dutch tax authorities will use the CbCR as a risk-assessment tool to determine the focus of audits. As such, taxpayers should be able to better substantiate that their supply chain structure and their intercompany transactions are in line with value creation.

A new transfer pricing degree was published on 1 July 2022, which replaces the previous decree. Among other things, it addresses recent developments that have led to changes in the OECD guidelines and clarifies the application of the ALP.

Key changes include adjustments to the section on financial transactions, amendments to the section on intragroup services and an expansion of the section on government policy to include government support measures in response to events like the COVID-19 pandemic. Additionally, textual changes have been made to better align the used terminology with the OECD guidelines and Dutch legislation.

17.16.4 Dutch decree on profit allocation to permanent establishments

Furthermore, the 2022 Dutch decree on permanent establishments clarifies the Dutch tax authorities' approach to profit allocation in line with the OECD Transfer Pricing Guidelines. It emphasizes that "control over risk" involves authority and capability to decide on both (i) the assumption, deference or rejection of a risks, and (ii) the response to and management of these risk. The decree also reiterates the application of the Dutch object exemption introduced in 2012, which eliminates positive and negative income of foreign permanent establishments from the Dutch tax base. In treaty situations, profit attribution follows the relevant treaty article, while in non-treaty cases, the most recent version of Article 7 of the OECD Model Tax Convention applies. The Dutch tax authorities may deviate from its policy to prevent double non-taxation.

17.16.5 Dutch Amount B position

While the Netherlands has opted not to apply Amount B rules domestically to baseline marketing and distribution activities, the Dutch tax authorities respect the application of Amount B in covered jurisdictions. Provided that a jurisdiction has (i) implemented Amount B into domestic law, (ii) applied Amount B correctly, and (iii) a bilateral tax treaty with the Netherlands, the Dutch tax authorities will provide a corresponding adjustment to prevent double taxation. The Decree extends its scope to both affiliated legal entities and to the profit allocation of permanent establishments.

17.16.6 Certainty in advance

APAs and ATRs are encouraged, and the Dutch tax authorities aim to be the premier service providers as they strive to provide for relatively efficient processes in achieving advance certainty for a mutually agreed period of time. However, note that certain information on tax rulings will be subject to automatic exchange within the EU, as discussed in this section.

Within five days after receipt of an APA or ATR request, the Dutch tax authorities will grant a notification of receipt. ATR requests will, in principle, be finalized within eight weeks upon receipt of the request. This period can be extended if additional information is required to assess the request properly.[36] For APA requests, there will be a joint "case management plan" drafted between the tax

[36] Organization and Competence regulation of the APA/ATR team of the Dutch tax authorities, Decree DGB 2014/296M, 12 June 2014.

authorities and the taxpayer, in which the estimated handling period of the APA request will be determined.[37] The tax authorities aim to process and finalize all APA and ATR requests in the shortest possible period.

As of 1 July 2019, taxpayers need to have sufficient economic nexus in the Netherlands to obtain an APA or ATR. In addition, an APA or ATR with an international character will be denied if (i) the sole or decisive motive is to avoid taxes, or (ii) a low-tax jurisdiction is involved.[38]

The Dutch tax authorities publish anonymized summaries of ruling requests with an international character (which have been accepted into the ruling process) and anonymized summaries of concluded APAs/ATRs with an international character, in an online publicly accessible register.

As of December 2023, it is possible to obtain certainty in advance regarding the Dutch application of Pillar 2 and, under strict circumstances, the full dismantling of tax avoidance structures. This includes the application of anti-base erosion rules that eliminate tax avoidance elements and sever links with low-tax or noncooperative jurisdictions. However, no certainty will be granted if this results in low-taxed or untaxed income abroad while allowing depreciation in the Netherlands, or if related-party transactions continue in low-tax or noncooperative jurisdictions — unless the ruling relates to the innovation box, tonnage regime or third-party transactions covered by an APA. Lastly, a critical assumption can be included in APAs for transfer pricing adjustments in jurisdictions not party to the ruling, in alignment with the mutual agreement procedure.

17.16.7 Automatic exchange of information

In October 2015, the Council of EU Finance Ministers reached an agreement on the exchange of basic information on tax rulings within the EU starting from 1 January 2017. As a result, in December 2015, EU Directive 2011/16/EU on administrative cooperation between the member states was amended to provide for the automatic exchange of information on tax rulings. The Netherlands implemented this directive in Dutch legislation effective from 1 January 2017.

Based on this amendment, the tax authorities of the member states, including the Dutch tax authorities, will exchange information on tax rulings with other member states that are potentially affected by a ruling. The agreement covers both APAs and ATRs and will, in principle, be applied retroactively to APAs and ATRs entered into on or after 1 January 2012. However, there is a transitional arrangement.

The information that will be exchanged includes the identification of the taxpayer, a summary of the ATR or APA, a description of the relevant business activities, the relevant dates, the type of APA or ATR, the amount of the transactions covered by the agreement, and information on the transfer pricing remuneration applied to the transactions included in the APA or ATR.

EU Directive 2011/16/EU was further amended in January 2017 to allow for the automatic exchange of the CbCRs that are filed in one EU member state with the other EU member states in which the MNE is located. The Netherlands implemented this amendment in Dutch legislation on 5 June 2017, applicable to CbCRs that are filed for fiscal years starting on or after 1 January 2016.

A further amendment of EU Directive 2011/16/EU followed in 2021 to increase transparency of income earned through digital platforms by EU residents (DAC7). The Netherlands implemented this directive in Dutch legislation effective from 1 January 2023. It requires digital platforms to report information on sellers that generate an income through their platforms. This information is

[37] Handling procedure for APA requests, Decree DGB 2014/3098, 12 June 2014.
[38] The Netherlands publishes a list each year with low-tax jurisdictions and noncooperative jurisdictions against tax avoidance. This list is updated annually by the Dutch government, which means that jurisdictions may be removed or added to this list. This list is used in several measures to combat tax avoidance, such as the measure against CFCs. We refer to Section 17.4.7, and the conditional withholding tax that has been introduced in Dutch legislation.

automatically shared with the tax authorities of EU member states for which this information may be relevant. As of 2023, tax transparency rules were also introduced for crypto-assets. It is expected that the Netherlands will implement this amendment as of 1 January 2026.

17.17 Competent authority/Arbitration Convention

Although the Dutch transfer-pricing regime can be characterized as pragmatic, a transfer pricing adjustment or another cross-border conflict may result in double taxation. In such cases, the competent authorities can resolve the double taxation resulting from the dispute by way of competent authority proceedings under a bilateral tax treaty, or under the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises ("**Arbitration Convention**"), if both states involved are signatories to this Arbitration Convention. In the decree of 29 September 2008, No. IFZ2008/248M, Stcrt. No. 188, the Dutch state secretary of finance issued specific guidance regarding competent authority proceedings under a bilateral treaty or the Arbitration Convention.

The government actively promotes the effectiveness of both procedures. One of the more recent initiatives of the government includes the introduction of the Netherlands Accelerated Mutual Agreement Procedure. The main goals of this initiative are to improve transparency, reduce taxpayer costs and find a resolution within a target (short) timeframe.

A person who is residing in the Netherlands for tax treaty purposes and who is subject to economic or juridical double taxation is allowed to invoke competent authority proceedings under an applicable bilateral tax treaty. All bilateral tax treaties for the avoidance of double taxation concluded by the Netherlands contain a provision similar to Article 25 of the OECD Model Convention. Since 1992, the Netherlands has generally been in favor of including an arbitration clause in the competent authority article when concluding a bilateral tax treaty. This was long before the 30 January 2007 report adopted by the Committee on Fiscal Affairs regarding the inclusion of a new paragraph 5 to Article 25 of the OECD Model Convention with an option to send a case to arbitration upon the request of the taxpayers. Furthermore, the Netherlands favors the inclusion of the arbitration option in renewed treaties. The Netherlands has an arbitration clause included in treaties with various countries. As part of the BEPS project, the Netherlands, as well as a large portion of the other OECD countries, has also agreed to add an article to the bilateral tax treaties that provides for a mandatory arbitration procedure, in addition to the mutual agreement procedure, which is already present in many bilateral treaties.

Moreover, the 2013 transfer pricing decree introduces an early-stage mechanism whereby, upon the anticipation of double taxation by the taxpayer and at the taxpayer's request, the Dutch tax authority is willing to engage in an exchange of information or a coordinated audit with the other tax authority to prevent double taxation at an early stage.

Aside from the applicable treaties for the avoidance of double taxation, double taxation arising from transfer pricing adjustments within the EU may be resolved under the Arbitration Convention. This convention explicitly caters for transfer pricing issues. It has a significant advantage over regular treaties for the avoidance of double taxation in that it applies to situations such as permanent establishments of EU companies in other EU states as well.

The Arbitration Convention guarantees the removal of double taxation within a certain period. Under the Arbitration Convention, if the member states concerned are unable to agree with one another through mutual consultation after two years, a second (arbitration) phase ensures that a solution is found through the arbitration committee within six months. After the arbitration committee has given its advice, the competent authorities of the member states are obliged to resolve the double taxation issue within six months.

17.18 EEIG and SE

17.18.1 EEIG

Since July 1989, it has been possible to form an EEIG in the Netherlands. An EEIG must be registered with the Trade Register of the Chamber of Commerce. An EEIG with an official address in the Netherlands is considered a legal entity under Dutch law. Regulation has been published regarding taxation of EEIGs.

The following general rules apply:

(a) EEIGs are "tax-transparent" and are, therefore, not subject to Dutch CIT. The profits resulting from the activities of an EEIG are only taxable in the hands of its members. Any distributions made are not subject to Dutch dividend withholding tax. Tax transparency does not apply to other taxes (e.g., wage tax).

(b) Foreign members will only be subject to tax in the Netherlands if the business in the Netherlands is conducted via a permanent establishment or a permanent representative.

(c) The EEIG itself does not have access to the Dutch tax treaty network, as it does not qualify as a Dutch tax resident.

17.18.2 SE

Since 2004, it has been possible to incorporate an SE. The SE has legal personality and is, in many respects, comparable to a Dutch NV or a BV. For Dutch tax purposes, an SE that has its registered office in the Netherlands is treated similarly to a Dutch NV (a public limited liability company). This means that an SE is subject to the same taxes as a Dutch NV. It also means that an SE has access to the same tax facilities available to a Dutch NV, such as the fiscal unity facility and the participation exemption. An SE is also eligible for the benefits of the EU Parent-Subsidiary Directive, the EU Interest and Royalties Directive and the EU Merger Directive.

There are four ways to incorporate an SE:

(a) Through a legal merger between two companies based in different EU member states

(b) Through the incorporation of an SE as a holding company for two companies based in two different EU member states or with subsidiaries in two different EU member states

(c) Through incorporation of an SE as a subsidiary of either of the following:

  (i) Two companies based in two different EU member states

  (ii) An SE

(d) Through a change of corporation form from an eligible company (e.g., an NV) to an SE

Although there are rules restricting the way that an SE may be incorporated, anyone can become a shareholder. An SE is able to transfer its registered office from one EU member state to another. In addition, a group that has companies throughout the EU can create a uniform management structure by forming an SE, as an SE may opt for a one-tier or a two-tier board system.

17.19 EU Interest and Royalty Directive

The EU Interest and Royalty Directive took effect on 1 January 2004. Companies that are directly related and are able to meet certain conditions are no longer subject to withholding tax on interest and royalty payments. Furthermore, EU member states have the option not to apply the directive if companies do not meet a direct shareholders' test for an uninterrupted period of two years. The

directive is effective for EU member states. As the Netherlands does not levy a withholding tax on interest and royalty payments, the effects of the directive on Dutch legislation is limited.

17.20 EU Parent-Subsidiary Directive

This directive gives complete relief from double taxation in the EU on dividend income by abolishing dividend withholding tax on dividends flowing from a subsidiary to its parent company (or to a permanent establishment of the parent company) within the EU, if the companies have a qualifying parent-subsidiary relationship. The withholding tax exemption may be applied under the directive if all of the following criteria are met:

(a) The parent company holds a minimum of 10% of the capital of the subsidiary.

(b) Both the parent and subsidiary have one of the legal forms listed in the annex to the directive.

(c) The parent and subsidiary are companies that, according to the tax laws of their respective countries, are considered resident in their respective countries for tax purposes and under the terms of a double taxation agreement concluded with a third country. Neither of them is considered a resident for tax purposes outside the EU.

(d) The parent and subsidiary are companies that are subject to one of the taxes listed in the directive, without the possibility of being exempt or having an option to be exempt.

As of 1 January 2007, Dutch domestic law provides for an exemption from dividend withholding tax on distributions made to shareholders in the EU with a stake of 5% or more of the nominal paid-up share capital. This means that the Dutch rules toward EU shareholders are more favorable than those required by the EU participation exemption.

17.21 EU Merger Directive

The EU Merger Directive is implemented in Dutch law and is described under Section 17.12, Mergers and demergers.

17.22 Summary of the Netherlands' bilateral tax treaties

The Netherlands has one of the most extensive tax treaty networks in the EU. The treaties generally provide for substantial reductions of withholding tax on dividends, interest and royalties. Most tax treaties negotiated by the Netherlands relating to income and capital are based on the draft models published by the OECD in 1963, 1977 and 1992 to 2000.

Double taxation or taxation not in accordance with the convention for the avoidance of double taxation is to be resolved under Decree of 29 September 2008, No. IFZ 2008/248M.

Tax treaties are currently in force with the following countries and jurisdictions:

Albania	Algeria	Andorra
Argentina	Armenia	Aruba
Australia	Austria	Azerbaijan
Bahrein	Bangladesh	Barbados

Belarus	Belgium	Bermuda[39]
Brazil	Bulgaria	Canada
Chile	Croatia	Curacao
Cyprus	Czech Republic[40]	Denmark
Egypt	Estonia	Ethiopia
Finland	France	Georgia
Germany	Ghana	Greece
Hong Kong SAR	Hungary	Iceland
India	Indonesia	Ireland
Israel	Italy	Japan
Jordan	Kazakhstan	Kosovo
Kuwait	Kyrgyzstan	Latvia
Liechtenstein	Lithuania	Luxembourg
Mainland China	Malaysia	Malta
Mexico	Moldova	Morocco
New Zealand	Nigeria	North Macedonia
Norway	Oman	Pakistan
Panama	Philippines	Poland
Portugal	Qatar	Romania
Saudi Arabia	Singapore	Slovak Republic
Slovenia	South Africa	South Korea
Spain	Sri Lanka	St. Maarten
Suriname	Sweden	Switzerland
Taiwan	Thailand	Tunisia

[39] Only regarding individuals, i.e., not regarding corporate entities.
[40] The Netherlands continues to apply the Czechoslovak treaty to the Czech Republic and the Slovak Republic. The treaty has, however, been amended by protocols with both republics.

Türkiye	Uganda	Ukraine
United Arab Emirates	United Kingdom	United States
Uruguay	Uzbekistan	Venezuela
Vietnam	Zambia	Zimbabwe

Tax treaties are still in force with the following countries after their split or separation from the (former) Soviet Union and Yugoslavia:

Bosnia and Herzegovina	Kosovo	Kyrgyzstan*
Montenegro	Serbia	Tajikistan*

*The treaty was unilaterally applied by the Netherlands. Kyrgyzstan has announced that it does not apply the treaty.

The Netherlands has concluded new tax treaties, which are not yet in force, with the following countries:

Bangladesh (2024)	Belgium (2023)	Colombia (2022)
Iraq (2019)	Kenya (2015)	Malawi (2015)

Negotiations are underway or have already been held with the following countries:[41]

Aruba	Ecuador	Suriname
Belgium	Mozambique	Sweden
Benin	Portugal	Uganda
Brazil	Romania	—

Tax-sparing credits are granted in respect of the following developing countries:

Brazil (dividends/interest/royalties)	China (interest/royalties)	Pakistan (interest/royalties)
Philippines (interest/royalties)	Sri Lanka (dividends/interest/royalties)	Suriname (dividends/interest/royalties)

[41] Overview published by the Dutch Ministry of Finance regarding the expected negotiations of tax treaties in 2025.

Zambia (dividends)	—	—

Tax treaties regarding profits from air or sea shipping are currently in force with the following countries and jurisdictions:

Albania — air	Argentina — air/sea	Armenia — air
Azerbaijan — air	Bahrain — air	Barbados — air
Belarus — air	Bermuda — air/sea	Brunei — air
Cuba — air	Czech Republic — air	Estonia — air/sea
Georgia — air	Hong Kong SAR — air/sea	Hungary — air
Isle of Man — air/sea	Latvia — air/sea	Lithuania — air/sea
Macau SAR — air	Macedonia — air	Madagascar — air
Maldives — air	Moldova — sea	Oman — air
Panama — air/sea	Poland — sea	Qatar — air
Saudi Arabia — air	Slovak Republic — air	South Korea — sea
Ukraine — air	United Arab Emirates — air	Uzbekistan — air
Venezuela — air/sea	Vietnam — air	—

Furthermore, the Netherlands is a signatory to the EU Arbitration Convention of 23 July 1990.

18

Other taxes

18. Other taxes

18.1 Value-added tax (VAT)

18.1.1 Taxable persons

In general, taxable persons include all entities or individuals in the Netherlands that supply goods, services or intra-community acquisitions (ICAs) in the course of a business. If a (foreign) business supplies goods and/or services, it is considered a taxable person for Dutch VAT purposes.

VAT grouping

If taxable persons established in the Netherlands are closely connected from a financial, economic and organizational perspective, these taxable persons together form a so-called VAT group. For VAT purposes, the VAT group will be regarded as one single taxable person instead of regarding the individual taxable persons as such. Transactions between the taxable persons forming a VAT group are considered out of scope and are therefore not taxable.

Under certain conditions, nontaxable persons can also be part of a VAT group, such as pure holding companies.

18.1.2 Taxable transactions

VAT is imposed on the following transactions:

(a) The supply of goods or services by a taxable person in the course of a business

(b) The ICA of goods from other EU countries by a taxable person or a nontaxable legal person in excess of a certain threshold

(c) The ICA of a new means of transport by anyone

(d) The importation of goods from outside the EU by anyone

In principle, Dutch VAT is due if these transactions are considered to take place in the Netherlands. However, a VAT exemption may apply (see Section 18.1.8).

18.1.3 VAT rates

The general VAT rate in the Netherlands is 21%.

A reduced VAT rate of 9% applies to certain essential goods and services, such as food and drink (excluding alcoholic drinks), gas, electricity, certain types of medical devices, medicines, certain pharmaceutical products, tickets to certain events, books and e-books, public transport (including taxis), and certain labor-intensive repair and maintenance activities.

A 0% VAT rate generally applies to supplies of goods not cleared through customs (either because they are merely passing through the Netherlands or because they are stored in the Netherlands), supplies of goods that are exported from EU countries, and intracommunity supplies and services connected to such supplies.

Furthermore, cross-border passenger transport by airplane and sea vessels (i.e., tickets) is also taxed at the 0% VAT rate.

18.1.4 Compliance

Periodical VAT return

In general, a VAT return should be submitted per quarter. If desired, you can request that the Dutch tax authorities submit the VAT return per month. Under certain conditions, an annual VAT return is permitted. VAT returns must be submitted and the VAT due must be paid within one month after the filing period. Taxable persons must file their VAT returns electronically (i.e., online or using a designated software program).

EU sales listing

If a Dutch VATable person supplies goods and services to business-to-business customers in other EU member states, an EU sales listing should be filed next to the periodical VAT return. In principle, an EU sales listing can be filed monthly, every two months, quarterly or annually. However, VATable persons should file monthly EU sales listings when such supplies within the EU exceed the threshold of EUR 50,000 on a quarterly basis.

Intrastat

For the statistical agencies to receive their information regarding the trade between the EU member states, an Intrastat return should be filed if companies supply goods to customers within the EU or buy goods from suppliers within the EU. Companies that exceed the threshold of EUR 1 million in sales to customers in other EU member states, or EUR 800,000 in purchases from suppliers in other EU member states, must file the Intrastat return monthly. Once the threshold is exceeded during a year, the obligation to file an Intrastat return starts as of the month in which the threshold has been exceeded.

Recordkeeping

Based on Dutch administrative law, records should, in principle, be kept for seven years. However, there are exceptions. Records relating to real property (transactions) should be kept for at least 10 years. The records can be kept as hard copies or in electronic format.

Invoicing

An invoice can be issued on paper or by means of electronic invoicing. In line with the EU VAT Directive, the Dutch VAT Act provides the details that are to be included in the invoice. The format of the invoice is (more or less) free, as long as the authenticity of origin, the integrity of the content and the clarity of the invoice are safeguarded. There are no further rules regarding the (financial) system/software that is used to generate the invoice. **Self-billing and third-party billing** are allowed if certain conditions are met. Under certain conditions, a so-called **simplified VAT invoice** can be issued if the chargeable amount does not exceed EUR 100 (including VAT).

The invoice should ultimately be issued before the 15th of the month following the month of the taxable supply.

Registration threshold

There is no VAT registration threshold in the Netherlands.

18.1.5 Place of supply

If goods or services are supplied, the rules of the place of supply determine the country in which VAT is due.

18.1.6 Supply of goods

For supplies of goods, the place of supply (and liability to pay VAT) will be in the country where the goods are located at the time the right to dispose, as owner of the goods, has been transferred (regardless of where the supplier or recipient is established). If the goods are transported as a result of the supply, VAT is due in the country of dispatch.

Additional rules apply for cross-border supplies within the EU ("intracommunity supplies") or supplies to recipients outside the EU (see Section 19.8.1). A taxable person who sells and supplies goods from the Netherlands to a taxable person (business-to-business) located in another EU country is deemed to be performing an intracommunity supply in the Netherlands (EU country that dispatched the goods). This intracommunity supply is, in principle, exempt from VAT (the Netherlands generally refers to a supply taxed at the 0% VAT rate). The same applies for export supplies (to non-EU countries) from the Netherlands.

When applying the 0% VAT rate on cross-border supplies of goods from the Netherlands, additional VAT requirements apply, such as additional invoice requirements. As of 1 January 2020, the recipient must provide a valid VAT identification number of the member state of arrival on the invoice to apply the 0% VAT rate. Furthermore, it is recommended to keep relevant documents proving the supply and shipment of the goods at hand. At least two items of noncontradictory evidence, issued by two different parties, need to be provided. For an intracommunity supply, the receiving taxable person will perform a taxable ICA in the EU member state of arrival of the goods. The recipient should report the VAT due on the acquisition in its own local VAT return.

Nontaxable legal entities are treated as taxable persons for their ICA if such acquisitions exceed an annual threshold (EUR 10,000 in the Netherlands) in the current calendar year, or have exceeded this threshold in the previous calendar year.

For EU business-to-consumer cross-border supplies of goods, the so-called Distance Selling rules apply. Based on these rules, these business-to-consumer supplies are taxable in the EU member state of dispatch unless the sales exceed a threshold determined by the recipient EU member state.

For sales from other EU member states to recipients in the Netherlands, a threshold of EUR 100,000 applies. Once this threshold is exceeded, the underlying supply of goods is, in principle, taxable in the Netherlands.

18.1.7 Supply of services

The general rule for business-to-business supplies of services is that services are deemed to take place in the country where the (VATable) recipient of the service is established. In cross-border situations, the liability to pay VAT is shifted to the (VATable) recipient (this includes VAT-exempt entities, such as insurance companies, banks and hospitals).

Certain types of services are taxable according to varying approaches. For example, services related to real property and the transportation of persons is taxable in the EU member state where the real property is located or where the transportation takes place.

According to the general rules for business-to-consumer services, such services are taxable in the country of the service provider. However, exceptions may apply for certain rules.

Business-to-consumer broadcasting, telecommunication and electronically supplied services are VAT taxable in the member state of the customer. Service providers that render business-to-consumer broadcasting, telecommunication and electronically supplied services should, in principle, charge the local VAT of the EU member state of their customer. This VAT should be reported and remitted through a local VAT return.

MOSS

To avoid an increase in administrative and compliance obligations, the so-called Mini-One-Stop-Shop (MOSS) makes it possible for businesses to register for VAT purposes in one single EU member state, and then file their VAT returns for each EU member state in which VAT should be reported for business-to-consumer broadcasting, telecommunication and electronically supplied services, through one single Pan-EU VAT return. This so-called MOSS VAT return can be filed in the EU member state where the service provider is established.

Even though the MOSS is used, a provider of any of the abovementioned services shall charge the VAT rates applicable in the country where the customer resides or is established, and remains liable for the local VAT in all of the EU member states of its customers.

Both EU-based and non-EU-based companies can participate in this scheme. Participation is not mandatory. If you do not make use of this scheme, you will have to register for VAT purposes, file VAT returns and remit VAT in all member states where your customers are established.

18.1.8 Exempt activities

VAT exemptions include the following categories:

(a) Certain supplies of real property (The Dutch VAT Act provides the possibility of opting for a VAT taxable supply.)

(b) Lease of real property (Note that the lease of certain types of real property is excluded from the exemption. Furthermore, the Dutch VAT Act provides for the possibility of opting for a VATable lease. When opting, certain conditions must be fulfilled.)

(c) Provision of healthcare and closely related services and supplies

(d) Provision of education and closely related services and supplies

(e) Certain services related to youth care, child day care and social welfare

(f) Certain services related to sports

(g) Certain financial services and transactions

(h) Games of chance

18.1.9 Charging VAT and taxable amounts

VAT should be charged over the price actually received for the goods and/or services. The remuneration can be paid in cash or in kind (in case of a barter).

Local reverse-charge mechanisms

A special regime applies in the event that a foreign-established business (without a fixed establishment in the Netherlands) supplies goods or services, which are taxable in the Netherlands, to a taxable person or a nontaxable entity established in the Netherlands.

In this case, a so-called reverse-charge mechanism applies. Pursuant to the reverse-charge mechanism, the Dutch VAT due is levied from the taxable person, or in certain cases, the nontaxable entity receiving the goods or services. The supplier does not charge Dutch VAT. Instead, the recipient of the goods or services must self-assess the Dutch VAT due.

Furthermore, a local reverse-charge mechanism can apply to certain transactions in relation to real property, mobile phones, computers, laptops, tablets, emission rights, waste and old materials, and services with in relation to supplying staff in certain sectors.

Margin schemes

The VAT should be reported for the aggregated value of the goods and services sold during the VAT filing period. However, a special scheme exists for certain sales of used goods, works of art, antiques and collectors' items. Under this scheme, VAT can be calculated on the margin.

18.2 RETT

The acquisition of Dutch real property, including the acquisition of beneficial ownership, is in principle subject to RETT of 10.4%. The transfer tax is calculated on the purchase price or the market value, depending on the higher of the two. Legally, transfer tax is to be paid by the purchaser. However, it is common for the buyer and the seller to agree on who will effectively bear the tax.

The acquisition of residential property (or certain legal rights related to such real property) is taxable at a 2% RETT rate.

The acquisition of (the beneficial ownership of) rights to real estate, shares belonging to a substantial interest in a real estate company, and certain certificates entitling the holder to a proportionate share of immovable property are, under certain conditions, also subject to a 10.4% transfer tax.

For an acquisition of real property within six months of a previous acquisition of the same real property by another person, the transfer tax due will be based on the transfer price minus the initial transfer price.

Acquisitions by way of inheritance and gifts (except for gifts of shares in real estate companies) and acquisitions by a company, within the scope of an internal reorganization, qualify for an exemption of transfer tax under certain conditions.

Furthermore, a RETT exemption applies when transferring newly constructed real estate or building land, provided that certain conditions are met.

18.3 Withholding tax on dividends

Dividends and other distributions of profits (including interest on loans that are considered equity and liquidation distributions in excess of the paid-in capital) paid by companies that are resident in the Netherlands are, in principle, subject to a 15% dividend withholding tax.

However, an exemption from withholding tax on dividends may be available in relation to distributions to companies that own at least 5% of the shares in the distributing company, and that are residents in the Netherlands or another EU country. Furthermore, tax treaties may provide for a limitation or an exemption of the dividend withholding tax.

A dividend withholding tax return must be filed with the local tax inspector by the distributing company, and the dividend withholding tax must be paid to the tax collector within one month after the date on which the dividend becomes payable. The tax inspector may impose a penalty if a dividend tax return is filed late. In situations where an exemption of dividend withholding tax applies, a notification should be filed within one month after the date on which the dividend becomes payable.

18.4 Interest and royalties

As of 2021, a Dutch conditional withholding tax applies to interest and royalties in certain situations involving low-taxed jurisdictions or abusive structures. As of 2024, the Dutch conditional withholding

tax has also been extended to dividends. The applicable tax rate is equal to the highest Dutch CIT rate (2024: 25.8%).[42]

The conditional withholding tax is generally limited to situations where the payer and payee are (deemed to be) affiliated (as defined in Dutch law), and any of the following applies:

- The payee is a tax resident of a jurisdiction with a statutory CIT rate of less than 9% (as published on an annually updated Dutch list).
- The payee is a tax resident of a jurisdiction that is listed on the EU list of noncooperative jurisdictions.
- The payments received by the payee are allocated to a permanent establishment located in a jurisdiction that meets at least one of the above criteria.
- The payee is interposed with the main purpose or one of the main purposes to artificially avoid tax with another person, whereas a situation is generally considered artificial if it is not established for valid business reasons reflecting economic reality.

Furthermore, the conditional withholding tax may apply in certain situations where an entity involved is considered tax transparent by one of the jurisdictions involved.

[42] Cumulation of conditional dividend withholding tax and (general) dividend withholding tax is prevented: the conditional withholding tax to be withheld on dividends is reduced by the (general) dividend withholding tax levied on those dividends.

19

International distribution centers/customs facilities

19. International distribution centers/customs facilities

Upon importation of goods and their release into free circulation in the EU, import duties and import VAT (and, if applicable, excise duties), in principle, become due (see Section 19.1). Import duties are, in most cases, calculated based on the customs value of the goods, multiplied by the applicable tariff rate. The applicable tariff rate depends on the customs classification and the origin of the goods.

Once paid, import duties are generally nonrefundable and become a cost. This also applies if the imported goods are later exported out of the EU customs territory. To avoid this cost, it is beneficial to delay paying import duties until it is certain that the goods will remain in the EU. To do so, goods can be kept under customs bond using customs procedures, such as customs bonded warehousing (see Section 19.3). Delaying import duties may also offer cash flow advantages. Therefore, avoiding or deferring import duties for goods entering the Netherlands can be beneficial.

Once goods enter into free circulation, they can be transferred to other EU member states without import duties becoming due on arrival. However, such a transfer may give rise to VAT compliance requirements (see Section 19.8).

Customs regulations are primarily governed at the EU level through the Union Customs Code (UCC) and associated regulations, including the Union Customs Implementing Act and the Union Customs Delegated Act.

In the UCC, compliance is key. Most simplifications, exemptions and authorizations are only accessible if the importer can guarantee a sufficient level of compliance. In certain cases, these simplifications can only be obtained if the importer has attained the status of trusted party, or authorized economic operator (AEO) (see Section 19.6.3). It is important to note that when assessing the compliance record of an importer under the UCC, its compliance record regarding other taxes, such as corporate tax and VAT, are also considered. Furthermore, under the UCC, it pays to be in control: if an importer discovers a situation of noncompliance before the customs authorities do, the associated customs debt can in principle be eliminated if measures are taken to remedy the situation.

19.1 Releasing goods into free circulation

19.1.1 General procedure

When goods are brought into the EU customs territory, a declaration must be lodged with the customs authorities at the place of entry. If the goods are released for free circulation, import duties and other levies and taxes (if applicable) become due, unless an exemption applies. In principle, the declarant, i.e., the person in whose name the declaration is filed, is the customs debtor. Under certain conditions, it is possible to file a customs declaration in the name or on behalf of another person. Ownership of imported goods is not required for customs purposes.

The importer of record for customs duty purposes, i.e., the declarant, must be established in the EU. If the designated declarant is not established in the EU, another person must act as the declarant on its behalf. In the Netherlands, it is also possible to have a (different) importer of record for VAT purposes, which is not the importer of record for customs duty purposes.

19.1.2 Customs value and applicable customs rate

Import duties are, in most cases, calculated based on the customs value of the goods multiplied by the applicable tariff rate. The applicable tariff rate depends on the customs classification and the origin of the goods. For certain goods, tariff quotas or tariff suspensions apply. In addition, a reduced or even a 0% duty rate may be applicable for specific processing of certain goods (e.g., "end use").

To determine the customs value of goods imported, several methods can be used, which have to be applied in sequential order. This means that one is only allowed to use a subsequent customs

valuation method if the previous method cannot be applied. The first and most common valuation method is the transaction value method. In this respect, the transaction value is defined as the price actually paid or payable for the goods when sold for export to the EU customs territory. Certain additions or deductions to the customs value used may have to be made depending on the circumstances of the case at hand.

Under the UCC, the sale occurring immediately before the goods enter EU territory, i.e., last sale principle, serves as the basis for customs valuation purposes. To obtain legal certainty on the determination of the customs value for a particular flow of goods, a ruling can be requested from the Dutch customs authorities. Such ruling is only valid in the Netherlands.[43]

19.1.3 Applicable customs duty rate

Customs classification of goods imported

The tariff classification code of goods determines the customs duty rate, special duty privileges and import restrictions. Based on the Harmonized System (HS) of the World Customs Organization, it is used by over 200 countries. The HS provides a six-digit tariff classification code, ensuring uniform classification at this level in participating countries. The EU's customs classification uses the Combined Nomenclature, which in turn is derived from the HS, adding two more digits to the HS six digits for further specification.

Since the applicable tariff duty rate depends on the customs classification (i.e., tariff classification code), failure to correctly classify imported goods can result in post-clearance recovery of import duties, and, in a worst-case scenario, in fines or penalties becoming due.

Binding tariff information (BTI) can be obtained to acquire legal certainty regarding customs classification. As from 1 October 2019, the application to obtain a BTI must be submitted digitally through the EU Customs Trade Portal. BTIs are valid in all EU member states for a period of up to three years and are binding on both its holder and all EU customs authorities. During this period, however, BTIs can be revoked under certain circumstances. This, in principle, does not affect prior and pending imports.

BTIs issued in the EU are maintained in a publicly accessible database. This database can be accessed through the European Commission's website.[44] Although this database is a useful tool to assess the customs classification of goods, importers cannot rely on BTIs issued to other importers. BTIs only present legal certainty regarding customs classification of the associated goods to the holder of that BTI.

Origin of goods imported

Establishing the origin of the goods is relevant because it determines whether goods are eligible for customs duty preferences ("preferential origin," e.g., if a free trade agreement applies) and if they are subject to import restrictions, such as embargoes, quotas and antidumping or countervailing duties ("non-preferential origin").

The country of origin may be defined as the country where the imported goods were grown, manufactured or produced. While this may appear to be a simple concept, the rules related to country of origin are diverse and often complex. To obtain legal certainty on the (preferential) origin, it is possible to obtain binding origin information (BOI), which is comparable to a BTI. The BOI must be requested by letter submitted to the local customs authorities.

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[43] Like the described Dutch customs valuation ruling, it should be noted that from 1 December 2027, binding valuation information (BVI) can also be requested, which has a similar effect. Contrary to the Dutch customs valuation ruling, the BVI can be requested from all EU customs authorities and is valid throughout the EU.
[44] https://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en

19.2 Use of customs procedures

To defer or prevent payment of import duties, goods brought into the EU customs territory can be kept under customs bond by placing them under a customs procedure. Depending on the procedure used, the goods can be stored (see Section 19.3), transferred (see Section 19.4), processed (see Section 19.5) or reexported. For the use of certain procedures, a customs license may be required. In all situations, a guarantee must be put up for the full amount of the customs debt that may become due. If the holder of the procedure is AEO-certified (see Section 19.6.3), the amount of the guarantee may be reduced to 30% of the customs debt.

If goods are sold while placed under a customs procedure, this may trigger a VATable event. However, if such a transaction takes place in the Netherlands, this supply for VAT purposes is usually subject to a 0% VAT rate.

19.3 Customs bonded warehouses

One of the customs procedures for deferring or preventing payment of import duties is to store goods in a customs bonded warehouse. Importers can use the customs warehouses of third-party logistical service providers, taking away the need to set up such a facility.

Using the customs transit procedure, it is possible to transfer goods under deferral of import duties between two places, including customs warehouses, in the EU (see Section 19.4).

A customs bonded warehouse is a designated location (such as a storage tank, building or silo), in which non-EU goods can be stored. Operating such a warehouse requires an inventory system authorized by and subject to the control of the supervising customs authorities (typically within whose jurisdiction the customs bonded warehouse is situated).

Applicable import duties, VAT and excise duties (if applicable) become due only when the goods are removed from the customs bonded warehouse and released into free circulation, unless the goods are placed under a subsequent customs procedure.

Customs bonded warehousing arrangements in principle only allow the storage of goods. If approved by the customs authorities, some basic activities are allowed regarding the goods. These include actions to ensure the reasonable condition of the goods during storage and actions that prepare the goods for further distribution (e.g., repackaging). However, one is not allowed to actively process or alter the goods while these are stored under customs bonded warehouse arrangements. Such processing is, in principle, only possible using the customs procedure described in Section 19.5.

19.4 Customs bonded transport

Goods under customs bond can be transported through the EU customs territory using the "external union transit" (or "T-1 transit") procedure. As a result, no customs duties and import VAT are to be paid when the goods physically cross an EU border (see Section 19.8 regarding ICAs). However, one needs to prove that all goods transported under customs bond are also declared to customs authorities upon the arrival of the goods at their designated end destination. Otherwise, customs duties may become due as a result of irregularities while these goods are in transit.

In certain situations, and subject to restrictions detailed in the required customs license, the customs procedures foresee the possibility to "transfer" goods to another location without them having to be placed under the "external union transit" procedure (e.g., goods already placed under the export customs procedure are treated as being placed under the "external union transit" procedure).

The "internal union transit" (or "T-2 transit") procedure is reserved for the transportation of goods categorized as EU goods, between two places in the customs territory via the territory of a third

country. An example of this is the transportation of goods in free circulation from Germany (EU) via Switzerland (non-EU) to Italy (EU).

19.5 Processing

19.5.1 Inward processing relief (IPR)

Under the so-called IPR customs procedure, goods like raw materials or semi-manufactured goods can be imported into the EU to be processed for, for example, reexport without import duties and VAT being imposed on the importation of the goods. Strict (administrative) requirements must be met for this relief to be granted.

Processed goods can be reexported without EU import duties, or used to release goods into free circulation. This can be advantageous if the imported unprocessed goods are subject to a higher EU import duty rate than the processed goods. For instance, finished pharmaceutical goods often have a 0% EU import duty rate, while the active pharmaceutical ingredient (which is the basis for the finished pharmaceutical goods) is usually subject to a duty rate of up to 6.5%.

19.5.2 Outward processing relief (OPR)

Under this customs duty relief, goods that are already in free circulation within the EU can be exported for processing in a third country (i.e., outside the EU customs territory). Upon the processed goods' return to the EU, a full or partial exemption for customs duties is granted. Several (administrative) requirements must be met for OPR to be granted.

The advantage of using OPR is that less import duties (or none) have to be paid on the import of the processed goods (e.g., customs duties are only due for the value increase as a result of the processing instead of using the full value of the processed goods as the taxable basis).

19.6 Specific use

19.6.1 Temporary admission

Goods can enter the EU customs territory temporarily without import duties, subject to certain restrictions. The admission term, as well as the use of the goods authorized under the temporary admission procedure, depends on the nature and the use of the goods involved. A similar exemption can be applied for VAT purposes.

Before the term for the use expires, the goods must be placed under a subsequent customs procedure, such as reexportation or releasing the goods into free circulation.

19.6.2 End use

For goods that are in short supply in the EU, the applicable import duties are suspended for a definite or indefinite period. In certain cases, this suspension only relates to the specific use of the goods. Importers can apply for an "end use" customs license to claim this suspension for goods used for that specific purpose. It is possible to transfer such end use goods to another license holder.

19.6.3 AEO

To help international trade and enhance security, EU regulations provide for the AEO concept. The AEO certified operators benefit from more lenient administrative requirements regarding the import and export of goods to and from the EU. To qualify as an AEO, a trader has to demonstrate compliance with solid security criteria and controls set by EU regulations. AEO certified operators are

listed in the EU commission database, which can be accessed through the European Commission's website.[45]

AEO certified operators may also benefit from simplified customs procedures and facilitated customs controls related to safety and security. In addition, AEO operators may be informed in advance if their consignment has been selected for controls and receive priority treatment for these controls. Other benefits that AEO operators are entitled to include a reduction in the amounts of mandatory guarantees, being allowed to submit less data to customs authorities and being subject to fewer controls. This is because they are considered to be trusted partners by customs and their compliance and reliability have been thoroughly checked before issuing the AEO certificate.

The application to qualify as an AEO must be submitted digitally via the EU Trader Portal. Applications can no longer be submitted by letter. Existing AEO certificates can also be viewed in the portal.

There is no legal obligation to become recognized as an AEO, although it may be beneficial for the operator, as the recognition demonstrates compliance with the solid security criteria and controls. This can provide a competitive advantage to participating companies.

19.7 VAT and excises

The importation of goods is subject to import duties and VAT on importation and (if applicable) excises.

19.8 VAT on importation and exportation

VAT on importation is, in principle, due at the moment of importation. If import duties are deferred through a customs procedure, VAT payment is also deferred. When goods are released into free circulation, import VAT is calculated based on the customs value (see Section 19.1.2) plus some additional amounts.

If certain conditions are met, an import VAT deferment license can be obtained, as a result of which the import VAT can be reported through the periodic VAT return, rather than actual payment at the moment of physical importation. This so-called "Article 23 deferment license" can thus create a cash flow advantage as, if the importer is entitled to a full right to recover input VAT, the VAT on importation can be deducted as input VAT in the same VAT return in which it is declared.

If the goods are placed under a customs procedure (see Section 19.2), the supply of such goods is considered a VATable event. However, such a supply of goods in the Netherlands is subject to a zero rate of VAT.

If the goods, after release into free circulation, are consigned to a consignee in another EU member state, VAT compliance formalities must be considered. Although no import duties become due in the EU member state of the consignee, a so-called intra-community transaction takes place. This consists of a VATable intra-community supply in the EU member state of dispatch, subject to a 0% VAT rate, followed by a VATable ICA in the EU member state of arrival. The consignee self-assesses the ICA VAT, which, if the consignee is entitled to a full right to recover input VAT, can be deducted in the same VAT return in which the ICA VAT is reported. These formalities result in the goods leaving the consignor's EU member state without being subject to any local VAT but being subject to VAT in the EU member state of arrival (see Section 19.1.6).

If goods are sold for export to a consignee's non-EU country, the 0% VAT rate for export can be applied to the supply of these goods. The application of this 0% VAT rate is subject to the supplier

[45] https://ec.europa.eu/taxation_customs/dds2/eos/aeo_consultation.jsp?Lang=en

being able to prove that the goods supplied are exported out of the EU. The export declaration filed, and accepted by the customs authorities, for these goods plays an important part in this respect.

Only EU-established entities can be listed as exporters on the export customs declarations, and only they can formally act as exporters.

19.8.1 Excise duties

Excise duties are levied for the (deemed) consumption of alcoholic beverages, tobacco products and energy products (e.g., mineral oils). The deferral of import duties also results in the deferral of excise duties.

On importation, when excise goods are released into free circulation for excise duty purposes, excise duties become due as well. However, the levying of duties on excise goods can also be deferred under certain circumstances. In that case, the excise goods remain under customs supervision using special excise-bonded arrangements.

In principle, the levying of excises takes place in the EU member state where the goods are used or consumed. Excise goods that are not transferred using a suspension regime are, in principle, subject to Dutch excise duties upon their release into free circulation in the Netherlands. However, if the excise goods, after their release for free circulation, are shipped to another EU member state or exported out of the EU, the earlier-paid Dutch excise duties can be refunded after payment of excise duties in the EU member state of arrival (and after showing proof of this payment to the Dutch customs authorities) or if the excise goods are exported out of the EU.

In principle, any movement of excise goods within the EU, such as shipping excise goods intra-community or exporting them, must be reported in the electronic Excise Movement and Control System (EMCS). The EMCS is used for recording and monitoring the movement of excise goods within the EU. Additionally, the EMCS serves to prove that excise duties have been paid in, for example, the EU member state of dispatch.

20

Investment incentives

20. Investment incentives

The Dutch government and EU authorities grant incentives to, among other things, encourage investment in new business activities, expansion of existing activities, R&D for new technologies and investment in economically disadvantaged (local) regions. The incentives may take the form of, for example, financing credits or subsidies. While investment incentive schemes, and terms and conditions for awarding subsidies, are often amended, Baker McKenzie can help you discover the variety of funds and the beneficial opportunities offered by the various EU organizations, member state governments and local authorities.

The collection of subsidies described below offers an impression of the various funds available. It is always advisable to verify subsidy or incentive opportunities before making an investment and when exporting to foreign jurisdictions. Our office has up-to-date information and contacts with competent authorities, and can offer you effective advice, including assisting you with (drafting) the necessary documentation required for an application under any of the listed investment regimes.

20.1 Tax incentives

Several tax facilities are granted. First, tax relief is granted in the form of 75% random depreciation for specific investments related to "green investments" (Willekeurige afschrijving milieu-bedrijfsmiddelen) (VAMIL). These investments must be innovative, the assets invested in must not be commonly used in the Netherlands and must contribute to a better environment. The Ministry of Infrastructure and Environment determines which investments qualify.

Second, the EIA grants a one-off tax deduction of 40% (2025) of the investment cost of an energy-efficient investment of at least EUR 2,500 (2025) per asset. Qualifying investments are determined by the Ministry of Economic Affairs, Agriculture and Innovation.

Third, the MIA also grants a one-off tax deduction of 45%, 36% or 27% (2025), respectively, depending on the type of investment, for investments in green assets. The Ministry of Infrastructure and Environment determines which investments qualify.

To claim EIA or MIA, a request must be filed with the proper authorities in the year the investment is made. The EIA and MIA cannot coincide. However, it is possible for the VAMIL to coincide with either the EIA or MIA.

20.2 (International) investment enhancing credits

If you intend to export goods or services, it is generally advisable to contact the Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland) at the Ministry of Economic Affairs and Climate for information on foreign markets and the Dutch export regime.

The government has several special programs to stimulate companies' export activities. These programs provide, for example, financial support for export transactions. A selection of the export-enhancing credits available is given below.

20.2.1 Dutch Good Growth Fund (DGGF)

Through the DGGF, the Ministry of Foreign Affairs supports SMEs that are willing to invest in emerging markets and developing economies. Eighty-two jurisdictions have been appointed as "qualifying DGGF jurisdictions."[46] Dutch entrepreneurs investing in these jurisdictions may qualify for financing by the fund.

As of 1 July 2014, applications may be submitted in the following cases:

[46] For a list of qualifying jurisdictions, see here: Countries | DGGF.

- Directly financing investments in Dutch entrepreneurs doing business in emerging markets and developing economies
- Financing local SMEs via intermediary funds
- Financing/insuring exports
- Financing/insuring imports

Please note that the DGGF is not a subsidy, but a loan or guarantee that must be repaid.

20.2.2 Export Credit Insurance

The aim of the Export Credit Insurance (Export Kredietverzekering) (EKV) is to promote Dutch exports. The Dutch government provides a reinsurance facility that covers the nonpayment risk of commercial export credit in cases that may be too risky or too valuable to be insured via a private export insurance company. Atradius Dutch State Business NV is the insurer.

20.2.3 Export credit guarantee facility

In addition to the EKV, the Ministry of Finance introduced a guarantee facility (Exportkredietgarantieregeling) during the credit crisis. Originally, the program was to run until 31 December 2014. However, as of 1 May 2025, the program is still in operation. The aim of the program is to stimulate market parties that finance exports (mainly banks) to finance export credit and loans. The guarantee facility can be added to the EKV, and, as such, the premium for this guarantee is added to the premium for the EKV.

20.3 Innovation box: reduced CIT rate

Under the Dutch innovation box (innovatiebox), qualifying income that results from endeavors in the field of R&D is taxed at an effective tax rate of only 9% (the normal tax rate is 25.8% for profits over EUR 200,000).

Under the innovation box regime, a taxpayer can only apply the innovation box for intangibles that originate from activities for which the Ministry of Economic Affairs has granted an R&D declaration. Independent access solely through a patent or through plant breeders' rights is, therefore, no longer possible.

Companies with: (a) more than EUR 250 million global group-wide turnover; and (b) at least EUR 37.5 million per year in gross revenues from all IP assets will only have access to the regime when their intangibles originate from activities for which an R&D declaration has been granted and when additional requirements regarding the qualifying intangibles are met. In that case, the qualifying intangible needs to qualify as any of the following:

- Software program
- (Pending) patent
- Authorization for the marketing of a medicine/drug
- Supplementary protection certificate
- Utility model
- Exclusive license to use the above-listed intangible assets

The costs of R&D are immediately and fully deductible from the taxable profit, and must be recovered first. The qualifying income is taxed at a 9% rate to the extent that it exceeds the previously reported costs.

Qualifying income can be limited if, and to the extent that, a taxpayer has outsourced part of its R&D activities to a company within its group. The qualifying income is limited based on the proportion of qualifying R&D expenditures incurred by the taxpayer in relation to the overall R&D expenditures incurred by the taxpayer for the relevant intangible asset.

20.4 R&D

The government provides incentives for R&D projects in, for example, information, biotechnologies and environmental technologies. However, it is also possible to benefit from general R&D grants.

20.4.1 Wage withholdings facility

The Research and Development Promotion Act (Wet Bevordering Speur- en Ontwikkelingswerk (WBSO)) was enacted to encourage investment in R&D activities in the Netherlands. The R&D facility provides a reduction in payroll tax and social security contribution withheld from the salary of experts engaged in R&D in the Netherlands. This results in a decrease in R&D labor costs, which benefits the employer. The reduction for a given year is 36% of the wage withholding tax on R&D wages up to EUR 380,000.

For companies that qualify as a start-up, the percentage amounts to 50%. The reduction for wages in excess of EUR 380,000 is 16% of the wage withholding tax. Self-employed persons may request a reduction of their taxable profit of EUR 15,738 (2025). First-time self-employed persons may request an additional reduction of EUR 7,875 (2025). Qualifying R&D activities are awarded an R&D declaration by the Ministry of Economic Affairs, Agriculture and Innovation. Such intangible assets may also benefit from the patent/innovation box facility as described above.

In 2025, the WBSO budget will be EUR 1,582 billion.

20.4.2 Innovation credit

This program was set up by the Ministry of Economic Affairs, Agriculture and Innovation to offer support to innovative companies in the SME sectors.

It entails an interest-bearing loan, up to, in principle, a maximum of EUR 10 million. If the project fails or is aborted for commercial reasons, the loan may be released under certain circumstances. If the project succeeds, the loan, plus interest, must be repaid within 10 years. In 2025, the innovation credit budget was EUR 50 million.

21

Tax benefits of regional headquarters/coordination centers

21. Tax benefits of regional headquarters/coordination centers

Regional headquarters or coordination centers are generally established to supervise the operations of European and often Middle Eastern and African (EMEA) subsidiaries. Sales and marketing coordination, administration and accounting, cash management, central billing, reinvoicing, advertising and public relations, as well as group financing and licensing, are typical activities of regional headquarters. The Netherlands, in most cases, is a preferred location for central sales and distribution activities in EMEA and beyond. The Dutch company could then operate as a principal (or base) company. If desired, rulings can be obtained to confirm the tax consequences well in advance and for an agreed amount of time, which will be further discussed in this chapter. The Netherlands offers a central location in Europe, excellent airport facilities, a sophisticated banking system, highly skilled and multilingual employees, and adequate office spaces. In addition, several tax advantages are available to both companies and expatriates.

21.1 General advantages

The Netherlands has the most extensive tax treaty network of all EU member states. Regional headquarters may apply these treaties in collecting dividends, interest and royalties from subsidiaries and other group companies. The international focus is also reflected in the Dutch tax system, with the participation exemption and the absence of withholding tax on interest and royalties; for some exceptions, see Section 21.5.2. The Dutch Tax Administration is consistent, approachable, transparent and focused on finding solutions within the parameters laid down in legislation, policy and case law. This includes giving businesses certainty in advance on proposed juridical acts, including foreign investment decisions. Expatriates who are temporarily assigned to a Dutch office may qualify for a special tax regime, known as the "30% ruling."

Generally, Dutch companies must report taxable income in the national currency, i.e., the euro. They may also report taxable income in another currency, the US dollar for instance, if certain requirements are met, to avoid exchange gains and losses due to currency fluctuations. The main requirement is simply for the company to prepare its financial statements in the desired currency.

In the Netherlands, headquarters can charge certain typical shareholders' activities on a full-cost basis to affiliates instead of applying a markup. A list of qualifying shareholders' activities has been published. For other typical support services, such as distribution and administration, a profit markup on costs is usually appropriate (at arm's length) and sufficient.

For 2025, the CIT rate on profits up to EUR 200,000 is 19%; the general CIT rate on profits is 25.8%.

21.2 Tax ruling

Foreign investment is very important for an open economy such as the Netherlands, and the tax authorities are generally willing to confirm the tax consequences for foreign investors in advance and at relatively short notice. In principle, rulings (advance pricing agreements (APAs) and advance tax rulings (ATRs)) are issued by the local tax inspector and assisted by a team of government experts to guarantee a consistent ruling policy. An APA is an agreement on transfer pricing methods, arm's-length results and, in general, for operating in conformity with the OECD Transfer Pricing Guidelines. An ATR confirms the tax aspects of certain fact patterns, such as the absence of a permanent establishment. APAs and ATRs are issued as "determination agreements" governed by Title 15 of Book 7 of the DCC. The Netherlands' ruling practice has not remained immune from recent allegations of state aid; however, the Dutch government has successfully appealed the Starbucks case. As such, an APA or ATR remains a valuable instrument from a tax-risk management perspective.

Among other provisions, all rulings contain a provision on the exchange of information, allowing the Dutch tax authorities to share information with EU member states or treaty partners. The Dutch government commenced with the automatic exchange of information on rulings by the European Commission and the OECD in 2016, and this is now a standard element of each APA or ATR file. APAs and ATRs are granted for a period of five years, unless the facts of a specific case require a different term. It is possible to arrange a prefiling meeting with the Dutch tax authorities to discuss the information to be submitted by the taxpayer. Since July 2019, all rulings are published (although anonymized).

The following typical examples can be given on tax rulings granted to foreign investors in the Netherlands:

- Holding companies: Rulings issued on the application of the participation exemption to income from shares (see Section 21.3, Holding of shares).
- Headquarter companies: Usually, a cost-plus ruling on management services, providing for a fixed profit markup on management costs charged to affiliates; headquarter activities are often combined with a shared services center.
- Distribution centers: Usually, a cost-plus ruling on supporting activities (warehousing, distribution) conducted for the benefit of affiliates (see Chapter 19, International distribution centers/customs facilities).
- Principal (i.e., base) company rulings: A Dutch company acts as the principal for sales activities through a network of affiliated sales entities, earning an arm's-length distribution margin based on sales volume. Intellectual property (IP) and other intangibles are licensed to the Dutch principal company against a royalty.
- Ruling for group financing and group licensing structures (see Section 21.4, Group financing and group licensing): It is also possible to reach an agreement with the Dutch tax authorities regarding the tax treatment of central invoicing, leasing and foreign exchange clearing, and cash management and treasury activities performed within the group, provided in combination with the appropriate level of substance (see Section 21.4.1.).

21.3 Holding of shares

Holding companies have no special tax status under the laws of the Netherlands. Tax benefits are available to all companies holding shares in Dutch or foreign subsidiaries. The Dutch tax authorities are willing to issue ATRs on the applicability of the participation exemption for intermediate holding companies in international situations and for ultimate holding companies. For an ATR, the company must be part of a group that carries out operational business activities in the Netherlands (the so-called economic nexus) (see Section 21.4.1.).

Dividends received by a Dutch company from nonresident subsidiaries are fully exempt from Dutch income tax under certain conditions (see the application participation exemption as described in Chapter 17, Corporate income tax). The exemption also applies to capital gains upon the disposal of shares in subsidiaries. Regarding capital losses and costs related to the subsidiary, reference is made to Chapter 17, Sections 17.4.2 and 17.4.3.

Certain limitations on interest deductions may apply in the Netherlands (see Chapter 17, Corporate income tax). Tax treaties concluded by the Netherlands generally provide that withholding tax on dividends distributed to a Dutch company holding at least 25% of the shares in the distributing company is reduced to a substantially lower percentage, often to zero. The Netherlands' current statutory dividend withholding tax rate on dividends is 15%. Based on the EU Parent-Subsidiary Directive, dividend distributions made in an EU context are exempt from withholding tax if certain

conditions are met. This includes dividend distributions made by a qualifying EU subsidiary to a qualifying Dutch company and vice versa (see Chapter 17, Corporate income tax).

21.4 Group financing and group licensing

The Netherlands may also be attractive for group financing activities. The tax treaties concluded by the Netherlands generally reduce the foreign withholding tax on interest paid to a Dutch company to substantially lower percentages, even to zero. Moreover, the Netherlands does not impose stamp duty or a withholding tax on interest (except in case of abuse, see Section 21.5.2).

Dutch companies engaged in licensing (i.e., as a licensee of patents, trademarks or technology with the right to sublicense those intangibles) may obtain certainty on their Dutch transfer pricing position by applying for an APA. An APA would typically confirm an arm's-length remuneration for the Dutch company's functions and activities (usually a percentage of the royalties received). Moreover, the tax treaties entered into by the Netherlands provide for a reduction of foreign withholding tax on royalties to a substantially lower percentage, often to zero. Appendix II contains an overview of the available reductions. The Netherlands does not levy withholding tax on (outbound) royalties, except in case of abuse (see Section 21.5.2).

Based on the EU Interest and Royalties Directive, interest and royalty payments made in an EU context are exempt from withholding tax if the relevant conditions are met. This includes interest and royalty payments made by a qualifying EU company to a qualifying Dutch recipient company and vice versa.

21.4.1 Substance

A Dutch financial services company (FSC) must have a minimum level of substance in the Netherlands. The tax authorities have developed the following minimum requirements:

- At least 50% of all authorized directors are tax residents of the Netherlands.
- The directors residing in the Netherlands have the relevant professional knowledge and skills to execute their obligations as directors.
- The FSC has qualified personnel to execute and administer its transactions.
- The (main) directorial decisions are taken in the Netherlands.
- The FSC's (main) bank account is maintained in the Netherlands.
- The FSC's books and accounts are kept in the Netherlands.
- The FSC is a tax resident of the Netherlands and is not deemed a resident of any other country.
- The FSC has a minimum of EUR 100,000 labor costs in relation to the licensing or financing activities.
- The FSC has its own office space (minimum 24 months lease).

The FSC (either with or without an APA) must declare in its tax return that these substance requirements are fulfilled. Lack of substance may cause spontaneous exchange of information with foreign tax authorities and disallowance of tax treaty benefits. The adoption of the final action reports of the Base Erosion and Profit Shifting Project (BEPS reports) in October 2015 and the introduction of anti-abuse provisions in tax treaties (see Section 21.5) will limit the use of tax treaties by FSCs lacking appropriate substance. In addition, the Dutch government introduced a withholding tax on interest and royalties as of 1 January 2021 for payments to related companies in certain situations (see Section 21.5.2).

21.4.2 Minimum risk profile

FSCs must be subjected to a minimum level of risk for borrowing and lending within the group. This is the case if their equity is at least equal to 1% of the total outstanding loans or EUR 2 million, whichever is lower. For licensing, 50% of the net royalties received per annum or EUR 2 million as minimum equity, whichever is lower, is generally assumed sufficient. As mentioned, this equity must be at risk in case of a debtor defaulting. This risk should not be assumed by other parties or entities to the effect that the Dutch entity is de facto not (sufficiently) exposed to risks.

If the substance and minimum risk requirements are adequately fulfilled, an APA can be concluded to confirm that the compensation for the FSC is at arm's length. An APA is not compulsory to act as an FSC and the activities of an FSC can be combined with holding or operating activities in one Dutch company.

Dutch entities that do not incur sufficient risk (as outlined above) may not credit any foreign withholding taxes related to interest or royalty income. Moreover, interest and royalties received and paid by the entity are disregarded for income tax purposes in the Netherlands, which may cause a spontaneous exchange of information with foreign tax authorities and the disallowance of tax treaty benefits. It should be noted that even if interest or royalty income is excluded from the Dutch taxable income, the Dutch entity must still report arm's-length remuneration for services relating to the loan or royalty transaction.

21.5 Anti-abuse provisions

The Dutch fiscal investment climate for multinational companies has been leaning for decades on its "crown jewels," such as the participation exemption, the extensive tax treaty network and the absence of withholding taxes on interest and royalties as described above. These "crown jewels," along with the fact that the Dutch tax authorities are prepared to give certainty in advance through tax rulings, makes the Netherlands an attractive place for multinationals to do business. This also applies to the use of Dutch companies exclusively for international holding, financing and licensing activities without material business substance, which left the Netherlands with the image of facilitating tax avoidance.

To overturn this image, the Dutch government has introduced a number of changes to the existing policy and legislation. These may affect some of the tax benefits described above, depending on the circumstances.

21.5.1 Ruling policy

Under the Dutch decree regarding rulings, a taxpayer applying for an ATR or APA is required to have sufficient "economic nexus" in the Netherlands to conclude a ruling. In short, this means that a business activity must be carried out by a sufficient number of relevant employees in the Netherlands. A ruling will generally not be granted if the purpose or one of the main purposes of the transaction is to avoid Dutch or foreign taxation, or if low-taxed (tax rate lower than 9%) or EU blacklisted jurisdictions are involved in the transaction.

21.5.2 Introduction of withholding tax on interest and royalties

As of 1 January 2021, interest and royalties that are directly or indirectly paid to a related company or permanent establishment resident of a low-taxed or EU blacklisted jurisdiction will become subject to 25.8% withholding tax. In this respect, the Dutch Ministry of Finance will publish a definitive list of low-taxed and EU blacklisted jurisdictions annually.

Winter Landscape with Ice Skaters, Hendrick Avercamp, c. 1608

22

Lending and taking security

22. Lending and taking security

22.1 Lending in the Netherlands

22.1.1 Current state of the Dutch lending market

For 2025, we expect to see a continuation of borrowers turning to alternative funding options. Investors are looking at new ways to get solid returns on investments. This is shown in the growth of alternative lending structures, set up in case traditional bank loans cannot be obtained.

The intense competition between alternative lenders and banks has resulted in various financial products being offered to borrowers, including senior-only structures, mezzanine, unitranche and several combinations of these products. Dutch borrowers expect their use of funding sourced from insurance companies, pension funds and other nonbanks to increase over the next few years. Banks will play a significant role as intermediaries assisting with arranging alternative credit funding.

Digital innovation is driving an unprecedented shift in financial services. Financial institutions and fintech innovators require legal advice to develop and adopt products and services such as crowdfunding, e-payment platforms, cryptocurrencies, digital banking and peer-to-peer lending. The fintech industry requires advice in relation to data protection, regulatory compliance, digitalization and digital operation resilience, tax structuring, capital raising, consumer protection, commercial contracts, M&A, competition and employment.

A relatively new development is the use of AI. While (legal) text has become the most popular modality of AI applications since the advent of ChatGPT, data modalities range from structured datasets like numbers and text to unstructured data like images and videos. Data can even comprise of audio and scientific or biometric data (e.g., genetic sequences). Some AI systems are multimodal, which means they can process data in a variety of formats that include text, image, video and more. Processing images and audio is more challenging than text, and there is more textual data available for training and evaluation. Fintechs and traditional financial institutions are very focused on integration of AI in their operations, and financial regulators are closely monitoring any risks involved in digitalization and use of AI.

22.1.2 Trends

Unitranche financing

The strong competition between banks and alternative lenders has led to product differentiation. Unitranche financing remains a very popular offering from direct lenders. It has expanded tranche sizes and evolved to become a product offered in a wide variety of forms. We expect this way of financing to gain even more popularity in the Netherlands over the next few years.

Unitranche is a combination of senior and subordinated debt made available by several lenders based on one contract applying one interest rate. It offers more flexibility to borrowers compared to the traditional way of financing by means of a senior and a mezzanine debt. Contrary to the common way of financing, unitranche offers advantages such as allowance of higher leverage, covenant-lite structures, no need for syndication and no or lower amortization (allowing more retained cash for growth and investment). The documentation has increasingly become more in line with the structures in the market, and although a standardized approach has been formed in some areas, further developments are expected.

Supply chain finance

Companies are always searching for more efficient financing terms. An alternative way of financing companies is the so-called supply chain financing or supplier financing. Buyers and suppliers join forces in obtaining preferred financing terms for both: lower financing costs that improve the working

capital of the supplier and longer payment terms improving the liquidity of the buyer. Generally, buyers want to pay their invoices as late as possible, whereas (international) suppliers want to collect payment as soon as possible. This often results in an imbalance between, for instance, a large buyer and a small supplier, where a large buyer may impose its preferred terms (such as late payment terms) on the small supplier. However, this can result in (and often has resulted in) the heaviest burden being borne by the weakest supply chain party. Consequently, strong buyers were confronted with defaulting and bankrupt suppliers, as those suppliers could no longer bear their financing costs while satisfying their clients' demands.

Various Dutch banks and non-Dutch banks active in the Dutch market have established a supply chain finance program under which: (i) the buyer can get a postponed payment term maturity date; and (ii) the supplier can get paid in advance with a (relatively small) discount. The program is initiated by the buyer (which is often the stronger party). Based on the buyer's risk profile, the bank determines the discount per day that it will charge for prepaying the invoiced amount to the supplier. As a result, the financing terms borne by the weaker supplier are based on the profile and creditworthiness of the stronger buyer. The bank acts as a (reverse) factor or as a (pre)payment agent, depending on the mechanics of the program, and receives a fee for its services.

In future years, an increase in alternative financing models is expected to shape the optimization of supply chain finance. Since the Netherlands has a leading (international) role in the facilitation of logistics shipments, the potential of supply chain finance programs will expand. Besides the collaboration of major corporations, it is likely that small and medium-sized companies will employ new financing tools to optimize their working capital strategy. Through government initiatives, such as the introduction of financing platforms, small to medium-sized enterprises are already able to obtain the liquidity support necessary, which may contribute to further reinforcement of the economy in the Netherlands.

Real estate finance

With volatility in the global economy and the emergence of new real estate investors, the commercial real estate market has become much more competitive. Evolving regulatory requirements in key real estate markets and rapidly changing economic environments have made it more challenging for multinational companies and other investors to manage their real estate portfolios. Given the current market conditions, borrowers and lenders require advice in relation to property investments, real estate finance, development, leasing, PPP and property-related projects, and tax structuring, fund formation and property-related litigation.

In 2024, areas of significant growth included logistics, data centers, office transformations, hotels and leisure, residential (student accommodation, short stay, young professionals starting on the residential market), urban cluster retail, renewable energy, transformations and distressed portfolios.

Other developments included the following:

Enforcement of energy label C. Since 1 January 2023, office buildings are required to have at least an energy label C. According to estimates (1 July 2024), 59% of the approximately 65,000 office buildings to which the energy label C obligation applies comply, 10% of the office buildings hold label D and 31% of the office buildings are without any label. Municipalities are authorized to impose administrative orders or incremental penalties to enforce the obligation (EUR 2,500 per week) and are now implementing such enforcement.

Devaluation of commercial real estate. According to EBA guidelines implemented by the DNB, the current value of real estate (investments) must be determined every three years by way of revaluation. Devaluation in commercial real estate is occurring and banks should consider whether a revaluation should be applied more frequently.

Bankruptcy of retail chains and developers. Big retail chains and real estate developers such as Big Bazar, BCC, Certitudo Capital and Gerchgroup have been declared bankrupt for various reasons: high (interest) costs, energy costs, shortage of labor, nitrogen legislation and stagnating demand. The Court Approval of a Private Composition Act for the prevention of insolvency cannot always be applied.

Buyout protection regime. Permits are required to lease affordable and mid-market residential dwellings during the first four years after transfer of ownership. This applies in all major cities in the Netherlands including Amsterdam and Rotterdam but also Amstelveen and Nijmegen.

Distribution centers and limitations in use. The Dutch House of Representatives has passed a motion introducing new legislation leading to more efficient use of existing distribution centers and fewer new distribution centers. It is, therefore, likely that such regulation will come into force in the (near) future.

Data centers and limitations on use. The moratorium on the expansion of existing data centers and the construction of new data centers has been lifted. The Dutch House of Representatives has passed a motion introducing new legislation leading to more sustainable use of existing data centers and extended requirements for the construction of new data centers.

Social housing regulation. Since 1 January 2024, social housing regulation applies to more residential dwellings. The modernized housing valuation system applies to mid-market rental houses for which maximum rental prices will be imposed (EUR 1,100).

Bank asset sales

Divestment strategies deployed by several financial institutions during recent years have led to an increase in activity on the nonperforming loans market. The implementation of new financial regulation will reinforce financial institutions to further engage in deleveraging balance sheets. Driven by nonbank entities' changing risk appetite, an increase in activity is expected in the market for residential and real estate loans.

22.1.3 Legal risks for lenders

Fraudulent acts (actio pauliana)

In an insolvency scenario, a receiver can nullify — by an extrajudicial statement — any legal act performed by a Dutch entity (such as the granting of (quasi-)security) under the following circumstances:

(a) The act was performed without a legal obligation to do so.

(b) The act is detrimental to other creditors of the company.

(c) Both the debtor and the beneficiary of the act knew, or should have known, that such detriment would occur (which is rebuttable, assumed in case of certain legal acts and in the case of all legal acts performed without consideration, in each case when performed within one year prior to bankruptcy).

If the debtor receives no consideration for the legal act performed, the beneficiary of the act is not affected by the nullification if it did not know and should not have known that such detriment would occur, and proves that no benefit was received by it as a result of the legal act at the time of bankruptcy.

Similarly, such legal acts may also be annulled at the request of creditors outside insolvency. However, this right is rarely invoked.

Satisfaction of a due claim may also be nullified, but only if it has been established that (i) the beneficiary of the payment knew that a file for the debtor's bankruptcy had already been made by the time of payment, or (ii) the payment was made as a result of a consultation between the debtor and the creditor with the aim of putting the creditor in a better position vis-à-vis other creditors.

Financial assistance

Unlike in the UK, there is no whitewash procedure available under Dutch law. A Dutch public limited liability company (NV) cannot grant security, give a price guarantee or otherwise bind itself (jointly and severally or otherwise) for the purpose of acquiring (by itself or others) shares in its share capital. Furthermore, an NV cannot (for the same purpose) grant loans, unless the company's board of directors has resolved to do so and only under the following circumstances:

(a) The loan (and interest received by and any security granted to the NV) is made on reasonable and common market terms.

(b) The equity capital (eigen vermogen) of the NV minus the amount of the loan is not less than the amount of the paid-up and called capital (gestorte en opgevraagde deel van het kapitaal) and any statutory reserves.

(c) The creditworthiness of the NV's counterparties has been carefully assessed.

(d) If the loan is made for a subscription of shares in connection with an increase in the share capital for the acquisition of shares held by the NV in its own capital, the purchase price for the shares is reasonable.

The board resolution to grant the loan is subject to shareholder approval, which requires a qualified majority (or a 95% majority if (the depositary receipts of) the shares are listed).

These prohibitions extend to all subsidiaries of the NV, whether they are (from a Dutch law perspective) foreign companies or Dutch incorporated ones (including private companies with limited liability (BVs)), even though the financial assistance restrictions for transactions where a BV is the subject of the acquisition of shares were removed from the DCC in October 2012.

Corporate benefit

If a legal act is not within a company's corporate objects (ultra vires), the act may be nullified (by the company or its receiver in bankruptcy) if the recipient of the act knew or should have known (without investigating) that the legal act was not in the entity's corporate interest.

To determine whether a specific legal act should be regarded ultra vires, the appropriate court must take all relevant circumstances into consideration (including its group relations). The courts will assess the following:

(a) Whether the objects clause in the articles of association of the company allows the transaction

(b) Whether the transaction is in the corporate interest of the company

(c) Whether the transaction affects the continuing existence of the company

22.2 Dutch law security

22.2.1 Forms of in rem security

In the Netherlands, security is usually granted as in rem security in the form of a right of mortgage or a right of pledge. The appropriate form depends on the type of asset that is to be encumbered. The only

other form of security under Dutch law is the financial collateral agreement, which is actually a right of pledge when constituting a security financial collateral agreement.

Mortgage

A right of mortgage (hypotheekrecht) is the appropriate form of security to encumber registered goods (registergoederen), such as real estate and rights in relation to them (such as rights of superficies and long leases), as well as vessels and aircraft that are registered with the Dutch public registry (Kadaster). A right of mortgage is granted pursuant to a notarial deed executed by a Dutch civil law notary and its registration at the relevant Dutch public registry. The deed is statutorily required to include: (i) a description of the encumbered asset (with registration number); (ii) a description of the secured claims or facts based on which the secured claims can be determined; and (iii) the maximum amount for which the security is granted.

Pledge

A right of pledge (pandrecht) is the appropriate form of security to be used for (non-registered) tangible assets, such as inventory, stock in trade, equipment, etc., and title documents, claims to order, claims to bearer and receivables. A pledge can either be possessory or non-possessory (for tangibles) and disclosed or undisclosed (for receivables).

Non-possessory pledge. This is the most common type of pledge and is created by a written deed of pledge, which is either (i) executed in the form of a notarial deed or, more commonly, (ii) executed as a non-notarial deed and registered with the Dutch tax authorities (being date stamped, no actual records are maintained). Such registration with the Dutch tax authorities is free and should be completed within two weeks.

Possessory pledge. This form of pledge is created by bringing the asset in the (physical) possession of the pledgee or a third party as agreed between the pledgor and the pledgee. No deed is required, but claims to bearer should be endorsed. Whenever the pledgor regains control over the pledged asset, the pledge automatically terminates. This form of pledge is rarely used in practice, except for pledges over title documents in certain trade finance transactions.

Disclosed right of pledge. This form of security is created by a written (non-notarial) deed and notice of the right of pledge to the debtor. Receivables against a bank in relation to a bank account (including for cash deposits administered to the bank account) are to be encumbered with a disclosed right of pledge.

Undisclosed right of pledge. An undisclosed right of pledge is to be created by a written deed of pledge, which is either (i) executed in the form of a notarial deed or (ii) registered with the Dutch tax authorities, in a similar fashion to the non-possessory right of pledge. A claim or receivable "to order" can also be encumbered by means of an undisclosed pledge.

Financial collateral agreements. Security over financial collateral (as defined in Directive 2002/47/EC on financial collateral arrangements ("**Financial Collateral Arrangements Directive**")) is created by way of a financial collateral agreement (financiëlezekerheidsovereenkomst). The Dutch regime relating to financial collateral agreements is based on the Financial Collateral Arrangements Directive. A financial collateral agreement can only be created if none of the parties is a private person (not acting in the conduct of their business or profession) and at least one of the parties is a regulated financial institution (such as a bank), a governmental authority, central bank or supranational financial institution.

A financial collateral agreement can create a security interest by way of pledge or security transfer. Contrary to a "regular" right of pledge, a financial collateral agreement can provide that the security beneficiary can enforce the security by appropriating the encumbered assets or setting off the value of those assets against the secured claim. When a financial collateral agreement relates to securities

that are transferable by Giro transfer (see below), security should be granted in accordance with the laws of the jurisdiction where the account in which the securities are held is maintained.

Special assets

Securities, such as shares, depositary receipts of shares or registered bonds, which are transferable through book-entries under the Act on the Securities Giro System (Wet giraal effectenverkeer) can be pledged by a book-entry in the name of the pledgee by the custodian bank. If the pledgee is also the custodian bank, then a pledge is created by an agreement between the pledgor and the custodian bank. If the securities are transferable by book-entry but not governed by the Act on the Securities Giro System, they can be pledged by a deed of pledge and notice of the pledge to the bank that maintains the bank account in the Netherlands in which the securities are held. Under Dutch law, a security interest must be granted over these securities in accordance with the law of the jurisdiction where the securities account is maintained.

Registered shares. A right of pledge over registered shares in a BV or an NV (and depositary receipts of such shares) must be created by way of a notarial deed and notification of it to the company in the capital of which the shares are being pledged.

Membership interests and partnership interests. A right of pledge over membership interests in a cooperative or a right of pledge of partnership interests in a CV can be created either by way of a notarial deed or a non-notarial deed, depending on the terms and conditions of the relevant entity's constitutional documents and what is agreed between the members or the partners.

IP rights. The form of security that can be granted over IP rights (registered and unregistered patents, trademarks, copyright, domain names, designs and databases) is a right of pledge, if such IP rights have a legal basis and are capable of being transferred. A right of pledge over IP rights is created by way of a (non-notarial) deed. For the right of pledge to be enforceable against third parties, the right of pledge should be registered with the same registries as the relevant IP rights, those for the Netherlands being the Dutch Patent Office (Octrooiencentrum Nederland) and the BOIP. If an IP right comprises a receivable, notification of the right of pledge should be made to third parties against whom the IP right is to be enforced.

No security can be granted over trade names or over IP rights that are "personal" (for instance, certain copyrights).

Assets of the AI ecosystem. In the context of debt financing, securing AI assets provides significant advantages for both lenders and borrowers. AI assets, encompassing datasets, algorithms, models, software and hardware, are critical components of contemporary AI enterprises. The primary benefits are as follows:

(a) **Enhanced collateral value**: AI assets substantially increase the collateral value in debt financing arrangements. These assets are integral to the operational and competitive capabilities of AI companies, rendering them highly desirable as security.

(b) **Risk mitigation**: Taking security over AI assets enables to mitigate the risks associated with extending credit to AI companies. In the event of a default, lenders can access valuable assets that may be liquidated or utilized to recover the outstanding loan amount, thereby reducing the overall risk profile of the loan.

(c) **Legal protection**: Taking security over AI assets ensures that lenders have legal recourse in the event of a default. This legal protection is essential for safeguarding the interests of lenders and providing assurance that their investments can be recovered.

(d) **Operational continuity**: In times of financial distress, a structured security arrangement can prevent abrupt disruptions in the utilization of critical AI assets, thereby maintaining customer trust and business operations.

By taking security over AI assets, lenders obtain assurance and security, while borrowers gain access to capital and the ability to invest in growth initiatives. This structured approach is crucial for the successful financing of AI companies.

Future assets. In general, security in the form of a right of pledge can be granted over all present and future tangible movable property, financial instruments, receivables and IP rights. No valid right of mortgage can be created over future registered property. The security right becomes effective if and when the pledgor becomes authorized to dispose of the (to-be) encumbered asset.

Fungible assets. Security rights can be granted over fungible assets if their description makes them sufficiently identifiable. This concept may be broadly interpreted. As such, it is common practice to use a description of an entire type of assets stored at a particular location. However, one should be aware of the risk of the encumbered assets commingling with identical assets owned by a third party.

Assets with transfer restrictions and personal rights. No security right can be granted over contractual rights that have a (contractual) restriction with proprietary effect on transfers or the creation of a security interest, or over personal rights that, by their nature, cannot be transferred, such as certain rights under limited partnership agreements and certain IP rights, as mentioned previously.

22.2.2 Enforcement of in rem security

General rules on enforcement methods

Under Dutch law, a pledge must be enforced in one of the following three ways:

(i) A public sale ("auction")

(ii) A private sale by the pledgee to a third party in either of the following ways:

i. With the consent of the pledgor and any other interested party (such as the holder of a junior ranking pledge, or conservatory or executory attachment)

ii. With the approval from the competent court

(iii) Accrual of the pledged asset to the pledgee ("appropriation") with the approval from the competent court for a price determined by that court

A payment default should have occurred before a pledgee becomes entitled to enforce a pledge. However, this does not mean that the pledge will only be enforceable if the borrower has failed to pay regular interest, instalments, fees or costs and expenses. A payment default will also occur upon acceleration of the facilities. Thus, although technically a payment default is required, the critical trigger event will be an event of default (or other event or circumstance) that allows the lender to accelerate.

Outside bankruptcy

Rights of pledge and mortgage are generally enforced either by way of public sale or by means of an alternative procedure. Security created pursuant to a security financial collateral agreement can be enforced by: (i) selling the collateral (securities) on the (capital) markets and applying the proceeds toward the satisfaction of its secured claims; (ii) appropriating the collateral and setting off its secured claims against the value of the collateral; and (iii) setting off the collateral (cash) against its secured claims. Parties can agree otherwise in the relevant financial collateral agreement.

Public sale

The DCC provides for various options for the security beneficiary to sell the encumbered assets. The general rule is that the assets are sold in a public auction according to local customs and applicable standard terms and conditions, as follows:

(a) For a right of mortgage, the public sale must take place before a civil law notary.

(b) For pledged assets that can be traded on a market or an exchange, the sale can take place on the market through a broker or on an exchange through a qualified intermediary, according to the rules and usages applicable to an ordinary sale on that market or exchange.

(c) For assets consisting of receivables, the secured creditor can enforce the right of pledge by collecting the receivables. If the receivables are not yet due and payable but can be declared due and payable by termination, the secured creditor has the right to do so.

Enforcement of share pledges

A private sale (either in-court or out-of-court) followed by a controlled auction or similar commercial process is possible, but that auction or commercial process is no longer part of the enforcement framework. This structure is usually referred to as "warehousing." An enforcement sale is effected to a special purpose vehicle (SPV) (either a Dutch foundation (stichting) or a BV) where the group will be "warehoused" for a certain period. During that time, a competitive M&A process is initiated and completed. The benefit is that this M&A process can take place from a stable and non-distressed platform without the need for accelerated M&A. This should generally enhance recovery rates versus a "fire sale" and is, therefore, in the interest of both the secured creditors and pledgor.

The easiest method of enforcement of a pledge of shares is by way of an out-of-court private sale by the secured creditors to a third party with the approval of the parties that have an interest, being the pledgor and, if applicable, a holder of a junior ranking pledge or (conservatory or executory) attachment, because this does not involve court proceedings (including the requirements that come with it, e.g., a valuation). Approval by the pledgor for such a sale can only be given validly after the pledgee has become entitled to enforce the pledge, which is upon the occurrence of a payment default (i.e., upon acceleration of the facilities).

In practice, however, even where the pledgor is prepared to cooperate with a sale of the relevant shares, we see a preference for a court approved sale. This may be to mitigate liability risks (if any) or, for a typical security agent, to fulfill "fair value" obligations. The court will assess whether the method of sale of the pledged assets proposed by the pledgee will yield the highest proceeds.

A secured creditor may not appropriate the pledged assets, but it is allowed to request the court to order that the pledged assets accrue to (verblijven) the pledgee as purchaser for a price determined by the court.

Alternative procedure

An alternative enforcement procedure (such as a private sale to a third party or to the security beneficiary or, for pledges, any other solution) requires the prior approval of the Dutch preliminary relief judge (voorzieningenrechter). This approval is discretionary, but is usually granted if the proceeds of the private sale are anticipated to be higher than the proceeds that would have been received if the collateral were to be sold at a public auction.

Regarding a right of pledge, the pledgor and pledgee can agree on an alternative method of sale without involving the preliminary relief judge, if such agreement is reached after the right of pledge has become enforceable. If the pledged assets are encumbered with a limited right (beperkt recht) or an attachment (beslag), the cooperation of the holder of the limited right or attachment would also be required.

When enforcing a right of pledge over shares in a private or public company with limited liability incorporated under Dutch law, (i) any share transfer restrictions set out in the articles of association of the company in the capital of which the shares have been pledged will have to be observed by the enforcing pledgee, and (ii) the offering of shares in the context of enforcement could be prohibited without an approved prospectus being published and may also involve the rendering of regulated investment services.

In bankruptcy

In general, there are two formal standard insolvency proceedings under Dutch law for companies (which are not financial institutions): bankruptcy and suspension of payments. Security beneficiaries have a strong position in Dutch insolvency proceedings and can enforce their rights as if no insolvency proceedings have commenced. This is because the encumbered assets may be deemed as being separate from the other assets in the estate of the insolvent company.

When enforcing without involving the receiver, security beneficiaries do not contribute to the general costs and expenses of the insolvency proceeding and the proceeds of enforcement fall outside the bankruptcy. The following order of priority applies in a bankruptcy proceeding for assets that are part of the estate (or, for pledged/mortgaged assets, proceeds realized with the involvement of the receiver):

(a) General costs and expenses of the bankruptcy proceedings themselves, including the receiver's fees (boedelschulden)

(b) Secured creditors for proceeds of encumbered assets, where they have not themselves taken enforcement measures (of these, the mortgagee and pledgee rank highest)

(c) Creditors with a specific privilege, that is, creditors with priority for the distribution of the proceeds of a particular asset, such as creditors that have incurred costs to preserve the assets

(d) Creditors with a general privilege, for example, wages and pensions

(e) General, unsecured/unprivileged/unsubordinated creditors

(f) Subordinated creditors

(g) Shareholders

There are a number of exceptions to this general order of distribution, as a specific privilege may rank above a pledge on a certain asset, and the Dutch tax authorities rank above the creditors with a privilege and above the holder of a non-possessory pledge over movable inventory on the debtors' premises (fiscaal bodemvoorrecht).

In addition to the prohibition as to fraudulent acts, as described above, secured lenders should be aware of the following:

(a) A receiver can set a "reasonable" time frame in which the mortgagee or pledgee must enforce its security, failing which the receiver may sell the encumbered assets. For undisclosed right of pledge, the Supreme Court has determined that if the pledgee has not notified the relevant debtors within 14 days of the start of the bankruptcy, the receiver can collect the relevant debts. The pledgee and mortgagee will have preferential rights for the proceeds of sale, but would have to share in the bankruptcy costs and will have to wait for receipt of payment until the receiver has made up a distribution list. The bankruptcy costs (or any share therein) may be as high as the actual sales proceeds.

(b) If receivables that are encumbered with an undisclosed right of pledge are paid by the debtor to the pledgor in bankruptcy proceedings, then (similar to the situation described under (a) above) the pledgee has a preferred claim on these payments, but must share in the bankruptcy costs and wait for payment until the distribution list has been made up and payments are made by the receiver. To avoid this, those debtors of pledged receivables should be notified of the right of pledge in time, for the right of pledge to become a disclosed right of pledge. As a rule, a receiver may not, within 14 days following their appointment, actively seek to collect receivables that are subject to an undisclosed right of pledge in favor of a bank. As a result, a bank pledgee is advised to provide notification of any pledges within that 14-day period to the relevant debtors, or to at least notify the receiver in that period of its intention to notify the relevant debtors (which would not prevent the relevant debtors from paying the bankrupt pledgor).

(c) A receiver may cause the release of encumbered assets against payment of the relevant secured obligations and any enforcement expenses of the security beneficiary.

(d) The supervisory judge can declare a cooling-off period of not more than two months (which can be extended once, with an additional period of up to two months), during which creditors, including secured creditors, are prevented from claiming movables that are subject to a non-possessory right of pledge from the receiver and no (other) enforcement action on secured assets belonging to the estate can be taken. This includes movables that are subject to a possessory right of pledge. This period allows the supervisory judge and receiver to assess the scope of the insolvent company's estate with relative ease. The supervisory judge may also decide to only apply the cooling-off period to certain parties, thereby exempting pledged assets already in the possession of the pledgee. The pledgee of an undisclosed right of pledge can give notice to the relevant debtors and collect such receivables, even during the cooling-off period. The cooling-off period does not affect the secured creditor's rights under a security financial collateral agreement.

(e) Legal acts performed by the insolvent company on the date of it being declared bankrupt or granted a suspension of payments lose their effect, as the declaration of bankruptcy/suspension of payments has a retroactive effect, and, as such, the company loses the authority to bind its assets as per the beginning of that day ("00.00 hours rule"). This is especially relevant where a right of pledge is granted over future assets, as mentioned above. The 00.00 hours rule does not affect a right of pledge created pursuant to a security financial collateral agreement.

22.2.3 Release of in rem security

Dutch security rights are accessory rights. Therefore, they are terminated by operation of law whenever the secured claims are satisfied or discharged. Additionally, security rights can be terminated without any further formalities (opzeggen) by a written statement from the secured creditor if the security document provides for such (which is usually the case). Alternatively, security rights can be waived (afstand doen van) by an agreement between the security provider and the security beneficiary, without any further formalities other than those applicable to the creation of the security right (such as execution in the form of a notarial deed).

A mortgage release must be registered in the Dutch public land register. The release should also be notified to third parties that have been notified of the security, IP registers and companies in which capital shares are pledged.

22.2.4 Quasi-security

Quasi-security can be obtained either by the granting of personal security (persoonlijke zekerheden), such as guarantees, or by implementing structures that give a similar benefit as a security right but

would not (necessarily) be characterized as such, such as sale and lease-back constructions, (reverse) factoring and hire purchase constructions. Title retention arrangements and setoff rights may also be considered quasi-security, as well as certain liens.

Guarantees

Corporate guarantees are commonly used in the Netherlands in the form of an abstract guarantee, as opposed to suretyship (borgtocht), and joint and several debtorship (hoofdelijkheid). Such an abstract or independent guarantee is a contractual undertaking by the guarantor and, as such, is due to the freedom of contract; in principle, to be enforceable in accordance with its terms. No formalities apply, but it is advisable to make it clear that the guarantee is an independent guarantee and not a suretyship or a joint and several debtorship, and that if it would nonetheless be characterized as such, certain Dutch law provisions should be waived (to the extent permitted by law).

Sale and leaseback

In a typical sale and leaseback, the user/lessee of an asset sells it to a buyer/lessor, who then leases it back to the user/lessee. In a finance lease, the lease period would be equivalent to (or at least 75% of) the useful life of the asset and the lease instalments are equal to (or are at least 90% of) the fair value of the asset. At the end of the lease term, title to the asset transfers to the lessee, or the lessee can purchase the asset at an advantageous price. In an operating lease, the term is shorter, the sum of the lease instalments is lower and there is no purchase option.

(Reverse) factoring

In a factoring transaction, a creditor sells all or a certain amount of its receivables to a factor at a discount, either with or without recourse to the creditor. If the debtor satisfies the receivable, the factor may either: (i) hold the entire amount as received; or (ii) withhold an amount covering its costs and fees and transfer the remainder to the creditor, depending on the factoring arrangements. If the receivable is not satisfied by the debtor (for instance, due to insolvency), this either remains for the account of the factor (nonrecourse) or the creditor has to reimburse the factor for monies lost (with recourse). In regular factoring, one creditor sells all or a certain amount of its receivables against (usually) a multitude of debtors to a factor. For reverse factoring, a multitude of creditors sell all or a certain amount of their receivables against one and the same debtor to a factor. Depending on its terms, (reverse) factoring may be commercially similar to a loan secured by a pledge over the receivables.

Hire purchase

A hire purchase transaction comprises a lease with an option to purchase the asset for a nominal amount at the end of the lease term. If the lessee becomes insolvent before exercising the purchase option, the lessor remains the owner of the asset. From a commercial perspective, this is equivalent to a loan for financing the purchase price of the asset, the repayment of which is secured by a right of pledge over the asset. For hire purchase transactions with consumers, regulatory limitations apply.

Retention of title

The seller of an asset may stipulate that, although the asset is transferred to the buyer (or someone acting on behalf of the buyer), title to the asset will not transfer unless and until the purchase price has been paid in full. This is commercially similar to a loan secured by a right of pledge over the asset.

The Dutch Supreme Court recently ruled that a buyer who has purchased an asset, subject to retention of title, can create a right of pledge on such asset, which is unaffected by the buyer's bankruptcy. The buyer obtains conditional ownership of the asset until the acquisition price has been fully paid and they are able to pledge or transfer such ownership under the same conditions.

Consequently, a right of pledge can be created on an asset subject to retention of title, evolving in a right of pledge on the fully owned asset once the acquisition price has been paid.

Setoff

A debtor may set off its (due and payable) debts toward a counterparty against its claims toward the same, if certain conditions are met. Parties can agree to widen or restrict the scope of the setoff, and certain conditions are not applicable in a bankruptcy. The commercial outcome of exercising the right of setoff is the same if the debtor is a bank, as enforcement of a financial collateral security arrangement (with monies or bank accounts as collateral), or a right of pledge over accounts held with it by the counterparty.

Mutual security surplus arrangement

The Dutch Supreme Court has recently clarified the financing option of lenders via a mutual security surplus arrangement (wederzijdse zekerhedenregeling). In a mutual security surplus arrangement, different secured lenders guarantee the payment obligations of the borrower by way of a suretyship. The liability of each lender under the suretyship is limited to the net value of the enforcement proceeds of the security granted by the borrower. The lender's right of recourse (regres) to the borrower arising from the suretyship forms part of the secured obligations of that security.

The Dutch Supreme Court recently ruled that mutual security surplus arrangements are bankruptcy-proof if: (i) they are entered into prior to the bankruptcy of the borrower; and (ii) the borrower is party to them. The Dutch Supreme Court further ruled that recourse claims (including claims relating to mutual security surplus arrangements) that come into existence **after** the borrower is declared bankrupt can be secured, but only to the extent that they arise from a legal relationship existing prior to bankruptcy. Such clarification is good news for the Dutch financing market, as it provides lenders with further financing options.

Mutual security surplus arrangements should: (i) be entered into by the lenders and the borrower at the time the loans (and other finance documents) are executed; and (ii) contain a confirmation from the borrower that a contractual recourse claim against it has been created, which comes into existence on execution of the arrangement. A mutual security surplus arrangement that the borrower is not aware of will not hold up in bankruptcy.

22.3 Structuring the priority of debts

In general, creditors are entitled to the net proceeds of the liquidation of a debtor's estate in proportion to their claims. However, a creditor and a debtor can agree that a creditor's claim will have a lower ranking for all or certain other creditors. Such a subordination of claims is common in certain types of larger finance transactions and is typically achieved by a subordination or intercreditor agreement between the various creditors and the debtor, or by incorporating subordination provisions in the loan agreement. It would also be possible to have a subordination agreement between a junior creditor and a debtor with only a third-party stipulation in favor of a senior creditor, but such a stipulation may be revoked until the senior creditor accepts it. In addition to the actual subordination, the contractual arrangements in the subordination or intercreditor agreement may include: (i) an obligation to turn over amounts received; (ii) a restriction on enforcing claims; and (iii) a power of attorney granted to the senior creditor to release the junior debt.

Instead of a contractual subordination, one may also implement a structural subordination by lending on different levels in the group structure or by contractually agreeing to limit recourse (to certain assets of certain group entities).

22.4 Agent and trust concepts

Recognition

Dutch law does not have a concept or doctrine identical to the concept of a trust. However, the Netherlands has ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985 ("**Hague Trust Convention**"), and, as such, any trust validly created under its governing law will be recognized by the Dutch courts, according to, and subject to the limitations of, the act on the law applicable to trusts (Wet conflictenrecht trustkantoren) ("**Trust Act**"), which implements this convention. However, the agency concept is recognized in the Netherlands only as a contractual arrangement. In theory, however, Dutch law will recognize certain trust relations created under other laws; the extent of this is unclear and parties do not tend to rely on a trust.

Enforcement

A foreign security trustee can enforce its rights in the Dutch courts. Section 4 of the Trust Act stipulates that rules of Dutch law regarding transfer of property, security interests or protection of creditors on insolvency do not prevent recognition of the trust under Section 11 of the Hague Trust Convention.

Alternative: parallel debt

Dutch security is commonly granted to secure a security agent's claims under a mechanism by which the obligors undertake to pay the security agent, at intervals, an amount equal to the total amounts outstanding toward the finance parties (excluding the payment obligations so undertaken toward the security agent): the parallel debt. There is uncertainty under Dutch law and discussion in Dutch legal literature whether security can be validly created in favor of a person who is not the creditor of the secured claim. By way of the parallel debt mechanism, the obligors' parallel debt corresponds to the total debt, and security is held by the security agent for its own claims (corresponding with the finance parties' claims). There is no statutory law or case law available on parallel debts and the security provided for such debts, but the mechanism is commonly accepted and applied in the Dutch market.

Debt trading and transfer mechanism

Both unsecured and secured debts are traded in the Netherlands. The transfer of a claim under Dutch law can be achieved by executing a simple transfer certificate, which must comply with the requirements for transferring claims (cessie) or (if obligations are to be transferred as well) for transfer of contract (contractsoverneming).

If all rights under a bilateral loan agreement are transferred, the security accessory to the transferred rights (as a Dutch law security will typically be) follows the transferee by operation of law.

If a participation under a syndicated loan agreement is transferred and the participation is secured by Dutch law security, buyers of the debt obtain the benefit of the related security by relying on the parallel debt structure (please see above).

23

Financial Regulations

23. Financial regulations

23.1 Exchange control regulations

Pursuant to the 2003 Reporting Provisions, the so-called special finance institutions (Bijzondere Financiële Instellingen) (SFIs) that are incorporated or established in the Netherlands are obliged to register with the DNB. SFIs are resident enterprises or institutions, irrespective of their legal form, in which nonresidents hold a direct or indirect participating interest through a shareholding or otherwise, and whose objective is — or whose business consists to a major extent of — receiving funds from nonresidents and channeling them to nonresidents. The following are examples of SFIs:

- Holding companies of (mainly) foreign companies
- Finance companies that typically extend loans to foreign group companies and are themselves financed mainly from abroad
- Royalty companies and film and music rights companies that receive royalties mainly from abroad
- Re-invoicing companies that are mainly invoiced by foreign entities and invoice other foreign entities
- Operational lease companies that typically lease durables to foreign customers
- SPVs created by foreign originators whose balance sheets almost exclusively contain foreign assets and foreign liabilities

An SFI must notify the DNB within three weeks after its incorporation for the DNB to assess whether a monthly and yearly or biyearly reporting obligation should be imposed. Such reporting obligation is set out in the 1994 Foreign Financial Relations Act (Wet financiëlebetrekkingen buitenland 1994) and the 2003 Reporting Provisions (Rapportagevoorschriften betalingsbalansrapportages 2003).

If a reporting obligation is imposed, the company has to file with the DNB reports containing the balance of payments for the Netherlands. The imposition of a reporting obligation by the DNB is based on certain criteria (e.g., international payment volume and the amount of foreign assets and liabilities).

The DNB has established certain specific institution profiles, such as pension funds, central securities depositaries and undertakings for collective investment. The nature of the foreign payment information to be provided to the DNB by a resident designated as a reporting entity depends on the category of institution to which the resident belongs.

23.2 Regulated financial activities

The WFT, including related lower regulations and decrees, and European directives and regulations encompass practically all the rules and conditions that apply to (i) Dutch financial undertakings, (ii) financial undertakings that provide financial services in the Netherlands through a Dutch branch office and (iii) financial undertakings that provide financial services in the Netherlands on a cross-border basis.

Under the WFT, a distinction is made between (i) prudential supervision, which is conducted by the DNB, and (ii) conduct of business supervision, which is performed by the AFM. Below, a high-level overview of the main activities regulated under the WFT is set out. Please note that this description is non-exhaustive and we would be happy to provide you with more specific information at your request.

23.2.1 Banking activities

The WFT prohibits the use of the word "bank" in a company or trade name, unless such company is a licensed bank under the WFT or in another member state of the EEA.

The WFT prohibits anyone from attracting, obtaining or having at its disposal repayable funds in the Netherlands in the pursuit of business from the public. Please note that until a European definition of "the public" is established, the Dutch legislator will interpret this as beyond a restricted circle (besloten kring) from parties other than the so-called professional market parties (professionele marktpartijen).

Any party undertaking this activity, combined with the granting of loans for its own account in the Netherlands, qualifies as a "bank" and must obtain a banking license with the ECB, or if such bank has its statutory seat outside of Europe, with the DNB, except where a general exemption applies. The ECB or DNB may also grant an individual dispensation in exceptional cases.

Attracting, obtaining or having at its disposal repayable funds

As set out above, it is prohibited for anyone to attract, obtain or have at its disposal repayable funds beyond a restricted circle in the Netherlands in the pursuit of a business from other parties other than so-called professional market parties.

Under the WFT, any funds that must be repaid, for whatever legal reason, qualify as "repayable funds," if it is clear beforehand what the nominal repayable amount is and in what manner any applicable compensation (such as interest) is to be calculated.[47] The definition of "repayable funds" could entail more than just the borrowing of funds. For instance, it is possible that monetary obligations, created in the context of complex financing structures (which do not necessarily entail an obligation to repay borrowed money), may nevertheless be considered to qualify as obtaining "repayable funds" within the meaning of the WFT. Similarly, considering the wide scope of the term "bank" under the WFT, certain finance companies may also qualify as banks within the meaning of the WFT.

As mentioned, the prohibition does not apply if the activity takes place within a restricted circle. A "restricted circle" is defined in the WFT as a circle composed of persons or companies from which a person or company obtains the disposal of repayable funds. The circle must also meet the following criteria:

- It is accurately defined.
- The joining criteria of the circle have been defined in advance, are verifiable and do not facilitate entry for persons or companies that do not belong to the circle.
- The members of the circle already have a legal relationship with the person or company obtaining the repayable funds, and, at that time, they can, in all reasonableness, be aware of its financial position.

In most instances, finance companies operating exclusively within a group of companies (i.e., obtaining repayable funds in the Netherlands within a "restricted circle" of legal persons or entities) do not qualify as banks.

Therefore, they are likely to be exempt from the WFT's requirements if certain conditions are met. This exemption may typically be available for an intragroup cash-pooling structure.

Pursuant to the WFT, "professional market parties" include, among others, licensed financial undertakings (such as banks, investment firms and undertakings for collective investment) and certain

[47] Note that shares must not be regarded as "repayable funds," as there is no upfront obligation to repay the nominal amount.

large corporations. The Banking Directive has introduced a scheme of mutual recognition of licenses granted to banks within the EEA. If a license is granted to a bank within the EEA, this license can be "passported" to the Netherlands or any other country within the EEA. To passport such license, the supervisory authority of the country in which the license was granted must notify the DNB. Subject to the fulfillment of the relevant notification requirements, the bank may provide services in the Netherlands either through branch offices in the Netherlands or on a cross-border basis. A bank that has successfully passported its license to the Netherlands is not under an obligation to apply for a Dutch banking license for the provision of banking activities in the Netherlands.

The ECB closely supervises the administration, liquidity and solvency of all banks established in the EEA.

Dutch banks are generally involved in a wide range of financial activities, including (but not limited to) the following:

- Granting loans
- Effecting domestic and international money transfers
- Providing payment services
- Exchanging foreign currency
- Brokering publicly listed securities
- Acting as a listing agent and underwriter in the context of an application for admission to trading on NYSE Euronext Amsterdam NV

The WFT also regulates the activities of "financial institutions" (financiële instellingen) in the Netherlands, that is, companies whose main business is to perform one or more of the activities listed in Appendix I of the (Revised) Capital Requirements Directive 2013/36/EU[48] or that acquire or hold participating interests, but do not qualify as a bank as they do not attract, obtain or have repayable funds at their disposal (as described above). In general, such companies may nevertheless be under a (different) license obligation. The type of license may vary, depending on the characteristics of the activities.

EEA-based financial institutions that are granted a license by the supervisory authorities in their home state for certain services may rely on such license for the provision of the same services in the Netherlands (either via a branch office or on a cross-border basis), subject to prior notification to the DNB.

[48] These include the following activities: (i) lending; (ii) financial leasing; (iii) provision of payment services (e.g., services enabling cash to be placed on a payment account, services enabling cash to be withdrawn from a payment account, execution of payment transaction, money remittance and issuing payment instruments); (iv) issuing and administering means of payment (e.g., credit cards, travelers' checks and bank drafts); (v) guarantees and commitments; (vi) trading for one's own account or for account of customers in: (a) money market instruments (checks, bills of exchange, certificates of deposit and similar instruments); (b) foreign exchange; (c) financial futures and options; (d) exchange and interest rate instruments; and (e) transferable securities; (vii) participation in securities issues and the provision of services related to such issues; (viii) advice to undertakings on capital structure, industrial strategy and related questions and advice, as well as services relating to mergers and the purchase of undertakings; (ix) money broking; (x) portfolio management and advice; (xi) safekeeping and administration of securities; and (xii) issuing electronic money.

23.2.2 Offering and admitting securities to trading

Pursuant to the WFT, it is prohibited to offer securities[49] to the public in the Netherlands or to have securities admitted to trading on a regulated market[50] situated or operating in the Netherlands, unless a prospectus is drafted in accordance with the Prospectus Regulation (EU) 2917/1129 ("**Prospectus Regulation**").

Prior to such offering of securities or admission to trading, a prospectus must be approved by the AFM or by the relevant competent EEA supervisory authority. If the competent supervisory authority of an EEA country has already approved a prospectus, a notification by the supervisory authority to the AFM is sufficient for the issuer to be allowed to offer the securities in the Netherlands.

The Prospectus Regulation contains exemptions from the prospectus requirement pertaining to, among other things, the following:

- Offerings of securities within the EEA with a total consideration of less than EUR 2.5 million, which must be calculated over a period of 12 months
- Offerings exclusively targeting "qualified investors" (gekwalificeerde beleggers)
- Offerings to less than 150 (legal) persons in the Netherlands who are not "qualified investors"
- Offerings of securities with a minimum consideration per investor/minimum denomination per security of EUR 100,000

A peculiarity under Dutch law is the inclusion of a prescribed warning sign in the event of certain exemptions to the prospectus obligation. This warning sign is to be included in all commercial expressions and other documents relating to the offer of the securities. Specific rules apply to the location and sizing of the sign.

23.2.3 Public takeover offer

The public takeover offer process for an offer on the issued and outstanding securities of a public company, whose securities are admitted to trading on a regulated market in the Netherlands ("**Public Company**"), is subject to the statutory rules set out in the WFT and its subordinate regulations.

Announcement of a friendly public takeover offer

If a person or entity wishes to make a friendly offer on the securities of a Public Company, the public takeover offer process begins with the announcement of the intention of such person or entity to make such an offer. This will usually be in the form of a press release. The press release would state that the parties (i.e., the offeror and the target company) have reached a "conditional or unconditional agreement."

The announcement of the intention to make a public takeover offer will trigger, among other things, statutory rules relating to the timing of the offer.

Approval of the offer document

Pursuant to the WFT, it is prohibited to make an offer for securities of a Public Company unless an offer document has been made publicly available by the offeror before launching the offer. This offer document must meet certain specific criteria and must be approved by the AFM or by the competent

[49] Securities are: (i) negotiable shares or other negotiable securities or rights equivalent to negotiable shares; (ii) negotiable bonds or other forms of negotiable debt instrument; or (iii) other negotiable securities issued by a legal person, company or institution through which securities meant under (i) or (ii) may be acquired by the performance of the rights pertaining thereto or by conversion or giving rise to money settlement.
[50] Within the meaning of the Markets on Financial Instruments Directive 2004/39/EC.

supervisory authority of another EEA country before its publication. The AFM (or, if applicable, the competent supervisory authority of another EEA country) will assess whether the offer document contains all the required information for a reasonably informed person to form a well-considered opinion on the offer. It usually takes one or two months for the AFM to approve an offer document.

The "put up or shut up" rule

The "put up or shut up" rule is legally enshrined in Dutch law. According to this rule, the target company can request the AFM to demand the potential offeror to clarify its intentions regarding a possible public takeover offer by publishing, within six weeks, either: (i) a "put up" statement (public takeover offer announcement as described above); or (ii) a "shut up" statement (public announcement stating that the potential offeror has no intention of launching a public takeover offer).

This rule aims to prevent a potential takeover offer from negatively affecting a target company in a situation where it remains unclear whether a potential offeror will make a public takeover offer on the target company. If the AFM has requested the potential offeror to announce that it has no intention to launch a public takeover offer, the offeror will not be permitted to announce or launch a public takeover offer for a period of six or nine months.

Mandatory takeover offer

Pursuant to Dutch law, the person or entity that acquires "predominant control" in a Dutch Public Company is obligated to launch a public takeover offer on all the issued and outstanding securities of such Public Company. "Predominant control" is deemed to occur when the acquiring person or entity is able to exercise 30% or more of the voting rights in the general meeting of shareholders of the Public Company.

The obligation to launch a public takeover offer will also apply to persons or entities that acquire predominant control while acting in concert, together with other persons or entities.

Undertakings

In the event of a friendly takeover offer, the management board of the target company may require the offeror to agree to a number of undertakings, a few of which are listed below.

NDA/standstill provision

It is common market practice for the target company to require the offeror to enter into an NDA containing a standstill provision before entering into the negotiations on the terms and conditions of the public takeover offer. The NDA will usually prohibit the offeror from launching the public takeover offer without the approval of the target company's management board.

Furthermore, the NDA will also prohibit the offeror from: (i) trading in the target company's shares; (ii) disclosing any (inside) information it has obtained from the target company to third parties; and (iii) recommending third parties to trade in the target company's shares.

Fairness opinion

A fairness opinion is an opinion issued by a third party, usually an investment bank, on whether the terms of the public takeover offer are fair for the target company's shareholders from a financial perspective. Although a fairness opinion is not required under Dutch law, it is common market practice that such opinion will be issued at the target company's request.

23.2.4 Market abuse

On 3 July 2016, Market Abuse Regulation No. 596/2014 (MAR) came into effect. As of that date, the prevention of market abuse in the Netherlands is primarily governed by the provisions of the MAR, which are directly applicable in the Netherlands. The MAR contains various rules that aim to prevent

market abuse, and such rules pertain to inside information and its disclosure, as well as tipping and (other forms of) market manipulation. The provisions aim to promote the integrity of the financial markets and to create a level playing field.

Inside information

Generally, the MAR prohibits any person from conducting or effecting a transaction in securities with the use of inside information. Inside information is:

> awareness of specific information that relates directly or indirectly to an issuer to which the securities pertain or to the trade in those securities that has not been publicly disclosed and which, if disclosed, could have a significant influence on the price of the securities or on the price of securities derived therefrom.

A typical example of inside information is the (nonpublic) knowledge that a public bid will be launched.

Executing one's own intention (e.g., buying securities by an offeror before launching a public offer) is not considered a prohibited use of inside information.

Disclosure of inside information and tipping

Generally, no one is allowed to inform a third party of data to which inside information relates, other than in the course of normal duties, profession or position. This prohibition is strict and the exemptions in the course of normal duties, profession or position are very limited.

Furthermore, the MAR prohibits recommending or inducing a third party to conduct or effect transactions in certain financial instruments (the so-called tipping prohibition).

Market manipulation

The prohibition of market manipulation applies to everyone. The MAR specifies four categories of market manipulation:

(a) Entering into a transaction, placing an order to trade or any other behavior that does either of the following:

  (i) Gives, or is likely to give, false or misleading signals as to the supply of, demand for or price of a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances

  (ii) Secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, unless the person entering into a transaction, placing an order to trade or engaging in any other behavior establishes that such transaction, order or behavior has been carried out for legitimate reasons, and conforms with an accepted market practice

(b) Entering into a transaction, placing an order to trade or any other activity or behavior that affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance

(c) Disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for or price of a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances, or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on

emission allowances at an abnormal or artificial level, including the dissemination of rumors, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading

(d) Transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew, or ought to have known, that it was false or misleading, or any other behavior that manipulates the calculation of a benchmark

The AFM has broad discretion in determining the appropriate measure (such as (public) warnings, fines or incremental penalties). In this regard, any measures imposed by the AFM will be in proportion to the nature, duration and gravity of the breach. In addition, the AFM will usually consider whether the breach was a "first offense." In practice, in most cases, the AFM — upon establishing that a particular entity is in breach of Dutch financial regulations — will first issue a warning prior to imposing additional sanctions (such as administrative fines). The AFM may also refer the case to the Public Prosecution Service (Openbaar Ministerie).

There is a wide variety of administrative sanctions that the AFM has at its disposal to prevent market abuse. The sanctions imposed depend on the specific circumstances of the violation of the law. The penalty for every violation of insider trading rules may amount to: (i) EUR 5 million for private individuals; (ii) EUR 10 million or, if higher, 10% of the annual net turnover for legal persons; or (iii) an amount pertaining to three times the value of any benefits derived from an offense (without reference to statutory maximum amounts).

23.2.5 Major holdings disclosure

The WFT contains reporting requirements regarding major holdings in the following issuing institutions:

(i) Public companies established under the laws of the Netherlands, whose shares have been admitted to trading on a regulated market

(ii) Legal entities with a home member state other than the Netherlands, whose shares have been admitted to trading solely on a regulated market in the Netherlands

(iii) Legal entities established under the laws of a non-EU member state, whose shares have been admitted to trading on a regulated market in the Netherlands

These requirements include the following:

(a) Reporting requirements applicable to issuing institutions themselves regarding their issued share capital (e.g., reporting requirements for each 1% change in issued share capital or more when compared with the issued share capital at the time of the previous notification)

(b) Initial and ongoing reporting requirements for managing directors and supervisory directors of Dutch issuing institutions regarding their voting rights and participating interest in both the issuing institution and the "related issuing institutions"

(c) Ongoing reporting requirements for shareholders and other persons holding a right to vote at the shareholders' meeting of an issuing institution

The scope of the overview below is limited to the reporting requirements covered under (c) above.

Pursuant to the WFT, any person or entity acquiring or losing control over shares in the issued capital of an issuing institution, or of voting rights regarding an issuing institution, must report such change to the AFM if it leads to a transgression of one of the thresholds laid down in the WFT. The following thresholds are currently applicable: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and

95%. The reporting requirements are applicable to changes in both the participating interest held (i.e., shares) and the total number of votes a person is entitled to cast at the general meeting of shareholders of an issuing institution.

The WFT contains a detailed regime for determining what entity is obliged to report the relevant participating interests or total votes held, and how these must be calculated. For example, a parent company is deemed to hold both the participating interests and the voting rights held by its subsidiaries; a subsidiary is deemed not to hold any participating interests or voting rights. This rule may result in the parent company being obliged to aggregate and disclose different participating rights or votes held in the same issuing institution by different subsidiaries. Similarly, a person is deemed to indirectly hold the voting rights that a third party holds if such person has entered into a lasting voting agreement (i.e., for a period of time longer than one shareholders' meeting) with such third party (and vice versa).

The obligation to report changes also applies to indirect control held through (security) interests (e.g., right of pledge, right of usufruct). The WFT also contains specific provisions on participating interests and votes held by undertakings for collective investment or their management companies. In certain cases, (temporary) exemptions may apply.

The disclosure of major holdings in listed companies is supervised by the AFM.

Furthermore, issuing institutions are subject to transparency obligations before convening of a general meeting of shareholders. In particular, issuing institutions are obliged under certain circumstances to publish on their website draft resolutions and proposals legally submitted by a shareholder that are subject to voting during a forthcoming general meeting.

23.2.6 Investment services and markets in financial instruments

In principle, investment firms (beleggingsondernemingen), e.g., brokers, dealers, market makers, financial advisers and portfolio managers, are obligated to apply for a license/must hold a license to provide their investment services in the Netherlands. To obtain such a license, investment firms must comply with certain financial, administrative and organizational requirements. The (day-to-day) policymakers and, where applicable, supervisory board members of investment firms must also pass certain integrity and suitability tests before their appointment. The requirements that investment firms must fulfill are quite elaborate. Investment firms are closely monitored by the AFM.

EEA-based investment firms with a license to offer their services in another EEA country may offer their services in the Netherlands after due notification to the AFM by the supervisory authority of that EEA country. If all notification requirements are met, such investment firms may offer their services either through a branch office in the Netherlands or on a cross-border basis. The majority of Dutch rules governing the investment firms' conduct of business in the Netherlands will still apply to branch offices located in the Netherlands. For a variety of such rules, dispensation can be requested from either the AFM (responsible for business supervision) or the DNB (responsible for prudential supervision).

Investment firms operating from a number of non-EEA countries (the US, Switzerland and Australia) are exempt from the obligation to apply for a license with the AFM, if certain requirements are met. Again, the majority of Dutch rules regarding the investment firm's conduct of business in the Netherlands will still be applicable. For a variety of such rules, dispensation can be requested from either the AFM (responsible for business supervision) or the DNB (responsible for prudential supervision).

One of the centerpieces of the financial markets reform of the EU over the past years has been the adoption of the Markets in Financial Instruments Regulation (Regulation 600/2014) (MiFIR) and the revised Markets in Financial Instruments Directive (Directive 2014/65) (MiFID II).

The MiFIR/MiFID II framework introduced significant reforms in the regulatory landscape, affecting most aspects of trading within the EU. Key areas affected by MiFIR and MiFID II include, among other things:

(i) Trading venues: The trade of certain financial instruments on organized venues is mandated and a new form of organized venue is introduced — the organized trading facility.

(ii) Investor protection: New requirements are imposed for product governance, internal control functions, the development of services, communication to clients, restrictions on inducements for independent advisers and portfolio managers, appropriateness assessments and product stability.

(iii) Conduct of business: New provisions regarding conduct of business are introduced, including conflicts of interest.

(iv) Transaction reporting: Certain classes of assets, and certain types of investment firms, which were exempt from transaction reporting obligations under the previously existing framework, are not subject to reporting requirements. The MiFIR/MiFID II framework also imposes stricter requirements for data retention and control frameworks.

(v) Pre- and post-trade transparency: Pre- and post-trade transparency requirements are extended to other "equity like instruments and non-equity like instruments and all trades must be reported to an approved reporting mechanism."

(vi) Third-country regimes: The MiFIR/MiFID II framework introduces a harmonized regime for third-country investment firms and market operators.

23.2.7 Investment funds

In the Netherlands, two types of collective investment funds are regulated: the "alternative investment funds" and "undertakings for collective investment in transferable securities." An undertaking for collective investment in transferable securities is an undertaking with the sole object of collective investment in transferable securities or in other liquid financial assets of capital raised from the public and which operate on the principle of risk spreading. An alternative investment fund is an investment fund that: (i) does not qualify as an undertaking for collective investments in transferable securities; and (ii) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors. Typical examples of alternative investment funds are hedge funds and private equity funds.

Pursuant to the WFT, participation rights in an investment fund, whether it be an undertaking for collective investment in transferable securities or an alternative investment fund, may only be offered in the Netherlands if (the management company) of such undertaking has been granted a license by the AFM. A license to operate as (a management company of) an investment fund in the Netherlands will be granted if certain financial, administrative, organizational, integrity and expertise criteria are met. A licensed fund manager must continuously meet a large number of requirements related to, for example, (minimum) capital, day-to-day management, remuneration, conflicts of interests, risk management, valuations, disclosure toward supervisors and investors (including a prospectus obligation), delegation, appointment of a depositary and use of leverage finance.

A "light" regime may be applicable to managers of alternative investment funds in instances where the cumulative funds under management fall below a threshold of EUR 100 million (or EUR 500 million if the fund is not leveraged and has a minimum lock-in period of five years).

This "de minimis exemption" only applies to Dutch fund managers. Pursuant to the WFT, a "Dutch fund manager" has been defined, to the extent relevant for the applicability of the de minimis exemption, as a management company that: (i) has its statutory seat in the Netherlands; (ii) has a Dutch license and its statutory seat in a jurisdiction other than an "appointed state"; or (iii) has

appointed the Netherlands as its "member state of reference." A member state of reference is an EEA member state where that manager intends to undertake, broadly speaking, most, if not all, of its European business. In essence, this appointed state becomes a fund manager's "European seat" for regulatory purposes. Furthermore, exempted managers still have to comply with certain WFT provisions, such as reporting to the DNB.

Non-EEA alternative investment fund managers may be exempted from the requirement to obtain a license if they only offer shares or units to "qualified investors." A fund manager wishing to benefit from this exemption must provide due notification to the AFM.

23.2.8 Other regulated activities

The WFT also regulates the following activities and entities (among others):

Activities

- Providing insurance and reinsurance activities (including (re)insurance intermediation and advice on insurance products)
- Offering, advising and intermediating on individual investment objects
- Offering, advising and intermediating on financial products to consumers in the Netherlands
- Advertising regarding financial products in the Netherlands
- Recognizing and operating securities exchanges and certain types of trading platforms in the Netherlands
- Providing technical services relating to payment transactions (afwikkeldiensten)
- Issuing e-money
- Acquiring qualified holdings (i.e., 10% or more) in a clearing and settlement institution (afwikkelonderneming), a bank, a management company of an undertaking for collective investment in transferable securities, an investment firm, an entity for risk acceptance or an insurer established in the Netherlands

Entities

- Clearing institutions (i.e., entities whose business it is to conclude contracts regarding financial instruments with a central counterparty that acts as an exclusive counterparty for these contracts, where the provisions of these contracts indicating the essence of the performance correspond to the provisions forming part of the contracts concluded by third parties, or by the party itself in its capacity as a party to the contract, on a market in financial instruments and indicate the essence of the performance in the latter contracts)
- Payment services providers
- Crypto-asset service providers

23.3 Money laundering

The Money Laundering and Terrorist Financing Prevention Act (Wet ter voorkoming van witwassen en financieren van terrorisme) (Wwft) provides important and extensive money laundering provisions.

The Wwft is principle-based and risk-based, rather than rule-based. Thus, it does not prescribe what specific anti-money laundering mechanisms an institution should have in place, or how it should carry out its obligations under the Wwft. Rather, the Wwft sets out certain objectives that must be achieved

by the institution in its prevention of money laundering and terrorist financing. The Wwft covers (i) customer due diligence and (ii) the reporting of unusual transactions.

Customer due diligence

The Wwft provides for various levels of customer due diligence, whereby the levels are dependent on the risk level of money laundering or terrorist financing. It stipulates how the institutions to which the Wwft applies must identify and monitor their customers. Customer due diligence can be: (i) ordinary; (ii) simplified; or (iii) enhanced in character. The institution must assess what customer due diligence category is applicable, following an assessment of the risk of money laundering and terrorist financing of each transaction or client.

In certain circumstances, the application of customer due diligence measures may be delayed. The verification of the customer's identity may be carried out after a business relationship has been entered into (instead of before) if there is a low risk of money laundering or terrorist financing, and if a postponement is necessary to avoid disrupting the services to be provided to the customer. In such a case, verification of the customer's identity must be carried out as soon as possible after the first contact with the customer.

Reporting of unusual transactions

Institutions are obligated to report unusual transactions to the Financial Intelligence Unit Nederland. The assessment as to when transactions must be reported is left at the discretion of the institution. To provide for a framework as to when a particular transaction could be potentially unusual, the Wwft contains several indicators. In addition, various governmental bodies and international organizations have published guidelines pertaining to the assessment of whether a transaction could be potentially unusual.

Scope

Institutions to which the Wwft applies include the following:

- Financial enterprises, such as banks, payment service providers, money transfer offices, life insurers, investment firms, alternative investment funds and financial service providers
- Parties conducting certain other types of professions or businesses, such as tax advisers, accountants, trust offices, casinos, traders in high-value goods (all traders that accept cash payments of EUR 10,000 or more), real estate brokers, pawn shops, crypto service providers, lawyers and civil law notaries

The Wwft does not provide an exhaustive list of services to which it is applicable. Rather, it contains criteria that may give rise to obligations under the Wwft. The Wwft applies in any of the following circumstances:

- A business relationship is entered into with a customer.
- One or more (incidental) cash transactions with an aggregate value of EUR 10,000 or more are carried out.
- There are indications that a customer is involved in money laundering or terrorist financing.
- There are doubts as to the reliability of information obtained from the customer.
- The risk of potential involvement of an existing customer in money laundering or terrorist financing activities gives cause to do so.
- There is an enhanced risk of money laundering or terrorism financing based on the country in which the client has its residence, is established or has its statutory seat.

If an institution reports a suspicious transaction, it is not allowed to disclose to its customer that authorities are conducting (or intend to conduct) investigations into the reported transaction.

AML Package

The AML Package, published on 19 June 2024, continues to harmonize EU rules for anti-money laundering and countering the financing of terrorism. The most remarkable change is the introduction of a new supervisory authority. The package consists of the Anti-Money Laundering Regulation (AMLR) and the Sixth Anti-Money Laundering Directive (AMLD 6).

AMLR

The AMLR establishes the Anti-Money Laundering Agency (AMLA) as the central authority for overseeing and coordinating anti-money laundering and countering the financing of terrorism activities within the EU. Based in Frankfurt, Germany, the AMLA will become operational in the summer of 2025, with direct supervision starting in 2028.

The AMLR further extends obligations to new sectors, such as traders in precious metals and stones, high-value goods, certain professional football clubs and agents, investment migration operators and crypto-asset service providers. The AMLR also tightens customer due diligence requirements and increases the transparency of beneficial ownership. Additionally, the AMLR mandates member states to interconnect central registers of bank accounts to improve the traceability of financial transactions. Most provisions of the AMLR will apply as of 10 July 2027.

AMLD 6

The AMLD 6 extends criminal liability to legal entities, introduces harsher penalties and adds new offenses like cybercrime and environmental crime. Member states are authorized to extend anti-money laundering rules to high-risk sectors and must regulate golden visas and passports with enhanced security measures. Member states are also required to maintain and publish anti-money laundering and countering the financing of terrorism statistics and a central register of accounts. The AMLA will issue guidelines for sanctions, which member states must follow. The AMLD 6 clarifies the role of financial intelligence units, mandates a fundamental rights officer and enhances cross-border cooperation and supervision.

The AMLD 6 also extends the obligation to maintain centralized mechanisms for identifying persons holding or controlling bank accounts to include securities and crypto-asset accounts.

EU member states must transpose the AMLD 6 by 10 July 2027.

UBO register

In the UBO register, all UBOs of companies and other legal entities established in the Netherlands will be registered with personal data such as name, date of birth and social security number. The purpose of the UBO register is to combat financial and economic crime, for example, money laundering, corruption, tax evasion, fraud and financing of terrorism. Because the information in the register is partly public, individuals and organizations can make better informed decisions with whom they want to do business.

The AMLD 6 mandates member states to maintain a UBO register and ensure access to the UBO register for specific persons. The AMLR requires legal entities and legal arrangements to identify and register their UBOs, ensuring uniform rules across all member states. These amendment must be transposed by 10 July 2025.

Further key changes under the AML Package include broadening the UBO definition, lowering the ownership threshold to 25% and including family ties as a control criterion. Non-EU entities acquiring

real estate, luxury goods or entering business relationships in the EU must also register their UBOs. The AMLR also tightens exemption rules for listed companies.

24

Liability

24. Liability

24.1 Liability

24.1.1 Introduction

Under Dutch liability law, individuals bear their own damages unless another party is liable under a contract or the law.

Both types of liability — contractual liability and noncontractual liability — are regulated in the DCC. The basis for contractual liability is the nonperformance of a contractual obligation ("breach of contract"). The basis for noncontractual liability is committing a wrongful act.

The two types of liability may coincide, such as in a situation in which a party to a contract causes damage to the other party, resulting in contractual liability, while the event also qualifies as a wrongful act toward a third party with whom there is no contractual relationship.

24.2 Contractual liability

24.2.1 Nonperformance

A specific section of the DCC applies to all contractual liabilities, regardless of the type of contract. The main provision of that section is Article 6:74 of the DCC, which stipulates that a party is liable for all the other party's damages resulting from the first party's nonperformance of any contractual obligation (breach of contract). Such a party may avoid liability if it can prove that the nonperformance is not attributable to it on the basis of its factual or legal actions, the law or the generally prevailing public opinion (cf. the well-known concept of force majeure).

24.2.2 Other consequences of nonperformance

In addition to the right to claim damages in case of nonperformance incurred as a result of the breach, the creditor has two additional remedies: (i) to claim specific performance (nakoming); or (ii) to (partly) dissolve the contract (ontbinding). In all cases in which the debtor is still able to comply with its obligations, the creditor may claim specific performance. Alternatively, the creditor may (partly) dissolve the agreement. Upon dissolution of an agreement, the parties are no longer bound by the obligations arising from the agreement, and each party must undo or repay any obligation that the other party has already performed.

Furthermore, in a situation where both parties to a contract have obligations vis-à-vis one another, the nonperformance of one party may provide the other party with the right to suspend its own obligations under the contract.

Several types of contracts are governed by specific statutory provisions, which may provide for more specific obligations in case of nonperformance.

24.2.3 Limitation of liability

The parties to an agreement are, in principle, free to contractually exclude or limit their potential liability for damage incurred by another party, thereby deviating from the liability provisions in the DCC. There are some restrictions and exceptions.

1. For agreements with consumers, a limitation of liability in general terms and conditions can be declared void if the limitation is deemed to be unreasonably onerous to the consumer.

2. A limitation of liability drastically sacrificing the interests of one party for the other party's interests can be invalid because it is contrary to public morality (strijd met goede zeden) or can be declared void because of an abuse of circumstances (misbruik van

omstandigheden). A limitation of liability is usually contrary to public morality if the damage is caused intentionally or by gross negligence.

3. A limitation of liability cannot be successfully invoked if invoking such clause would be contrary to the principles of reasonableness and fairness. Whether this is the case depends on the circumstances of the case, such as the extent to which the other party was aware of (the meaning of) the clause, the manner in which the clause was agreed on, the nature and further contents of the contract, the possible negligence of the other party, the nature and seriousness of the interests at stake, the relative bargaining strength of the parties, and the mutual relationship between the parties.

24.2.4 Obligation to timely complain

As a starting point and barring any specific regimes, for contractual obligations, Article 6:89 of the DCC states that if a creditor does not complain within a reasonable time after discovering a shortcoming in the performance or after they should have reasonably discovered it, they lose all rights in relation to that shortcoming. The definition of "reasonable time" is subject to interpretation and depends on the specific circumstances of each case. Consequently, there is extensive case law on this matter.

24.3 Noncontractual liability

24.3.1 Wrongful act

Article 6:162 of the DCC is the principal basis for noncontractual liability. It stipulates that any party committing a "wrongful act" (onrechtmatige daad) against another party is liable for all damages incurred by the injured party, provided that the wrongful act is attributable to the party committing it and there is a causal connection between the damage and the wrongful act. A wrongful act is categorized into three types: (i) infringement of a subjective right; (ii) an act or omission violating a statutory duty; and (iii) conduct contrary to the general standard of conduct acceptable in society. Examples of wrongful acts within these categories include: (i) a physician's breach of confidentiality concerning medical records, thereby violating a party's privacy rights; (ii) construction undertaken without the requisite legal permit; and (iii) creating a hazardous situation likely to cause injury without taking reasonable precautions or preventive measures.

A party cannot be held liable if the rule they violated was not meant to protect the interests of the injured party that were affected.

24.3.2 Strict liability

Liability under Article 6:162 of the DCC, in principle, is liability based on fault. Under Dutch law, however, several types of noncontractual liability are based on strict liability (risicoaansprakelijkheid), one of the main types being a liability for defective products. Strict liability means a liability based on risk. The requirement of attributability or the applicability of one of the categories of wrongful acts mentioned above is less relevant to establishing liability. The main components of a wrongful act based on strict liability are: (i) the existence of damage; and (ii) the causal connection between such damage and the liable party's actions (deemed to be a wrongful act).

24.3.3 Product liability

Product liability was incorporated in the DCC in 1988 as a result of the EC Directive of 25 July 1985 on liability for defective products. This legislation provides for strict liability on which a consumer can hold a manufacturer liable if the latter has brought defective products on the market. The term "manufacturer" also includes a party importing products into the EEA, or a party that presents itself as the manufacturer by selling the product under its own brand name. The contractual party of the

consumer (the seller) is, in principle, not liable for damages for which the manufacturer would be liable.

According to the DCC, a product is defective if it does not provide the safety that one is entitled to expect, considering all circumstances, particularly: (a) the presentation of the product; (b) the reasonably anticipated use of the product; and (c) the moment the product is brought into circulation.

The manufacturer is liable for all damages resulting from physical injury or death caused by the defective product. The manufacturer is also liable for damage to other goods intended and applied for private use by consumers if such damage exceeds EUR 500. It is not possible to contractually exclude product liability toward the injured party (the consumer). Such a clause in a contract can be declared void. However, companies (in a distribution chain) can limit their liability toward one another.

To establish liability, the consumer must demonstrate the damage they suffered, the defect of the product, and the causal connection between the defect and the damage suffered.

Dutch product liability legislation does not contain any provisions on product recalls, but this subject is covered by the general product safety regulation (Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety). This regulation aims to ensure that products sold in the EU are safe for consumers by updating and enhancing safety requirements, including those for online and offline sales. It replaces Directive 2001/95/EC and introduces stricter risk assessments, increased accountability for economic operators, and improved market surveillance.

24.3.4 Other strict liability

Strict liability under Dutch law means that a party can be held liable for damages without the need to prove fault. It applies to scenarios such as when damages are caused by moveable or immovable objects, wrongful acts by employees or subcontractors, and certain forms of environmental damage. The main components required to establish strict liability are the existence of damage and a causal connection between the damage and the liable party's actions.

24.4 Compensation

The sections of the DCC that govern compensation apply to both contractual and noncontractual liabilities.

24.4.1 Types of damage

The DCC provides that two types of damage may be compensated: (i) financial loss (vermogensschade) and (ii) other disadvantages (ander nadeel).

Financial loss includes both losses suffered and lost profits. Financial losses also include reasonable costs made in order to avoid or limit one's damages, reasonable costs made in order to establish the damages and the liability, and reasonable costs made in order to collect one's damages out of court. "Other disadvantages" is defined as immaterial or emotional damage. This damage will be compensated only in as far as the law provides for a legal basis for it. A legal basis for compensation exists, for instance, in case of either (a) intentional damage or (b) personal injury or damage to the injured party's reputation.

In principle, Dutch law does not distinguish between direct damages and consequential damages. All damages suffered must, in principle, be compensated, provided that: (i) there is a sufficient connection between the damage and the event that has led to liability; and (ii) the damage may in reasonableness be attributed to the party as a consequence of that event, considering the nature of both the liability and the damage.

24.4.2 Evaluation and calculation of damages

Normally, damages will be compensated in money, but the injured party may demand compensation in other forms, in certain situations.

Although, in principle, the injured party has a right to claim compensation for the exact damage it has suffered, the courts are free to evaluate the damage in a more abstract way, if this corresponds better to the nature of the damages. The court may also reduce the obligation to compensate the injured party for the damage if the court believes that full compensation would clearly lead to unacceptable results.

In addition, if the liable party has profited because of its breach of contract or a wrongful act, the court may (but not ex officio) calculate the damages at such profit or as part of such profit.

Dutch law does not provide for a system of "punitive damages" nor overcompensation; only the suffered damages can be compensated.

24.4.3 Contributory damages

If the damages are also, to a certain extent, a consequence of a circumstance attributable to the injured party, the liable party's obligation to compensate (after liability is established) is reduced proportionately.

24.4.4 Penalty clauses

Penalty clauses are allowed under Dutch law, regardless of whether the penalties serve as compensation for damages or as an incentive to perform. The creditor cannot claim both the payment of the penalties and the specific performance at the same time. Unless otherwise agreed upon, the penalty is the only compensation that may be claimed, regardless of the penalty amount. A party that is obliged to pay a penalty may request the court to reduce the penalty amount if payment of the full penalty would clearly be unacceptable.

24.5 Period of limitation of action

The sections of the DCC that govern the period of limitation of action apply to both contractual and noncontractual liabilities. Only the discharge by prescription is discussed in this section, and not the acquisition by prescription.

24.5.1 Short-term (usually five years)

The prescription term for claims for contractual penalties and for damages is usually five years. The term starts running on the day following the day on which the injured party became aware of both (i) the damage or the fact that the contractual penalty has become due and payable and (ii) the identity of the liable party.

24.5.2 Long-term (usually 20 years)

Insofar as no other prescription term applies, claims prescribe after 20 years from the day they have arisen, unless the prescription is interrupted.

24.5.3 Exceptions

Special regimes apply for specific types of claims or damages (such as terms for pollution-related claims). Furthermore, exceptions to the general rules apply in extraordinary circumstances (such as claims related to exposure to asbestos).

24.5.4 Contractual restrictions and interruption of the prescription period

Parties to a contract can limit prescription periods for claims arising out of the contract.

The prescription of claims is interrupted by initiating proceedings with respect to a claim. Furthermore, a written notice in which the injured party unequivocally states that they reserve their rights vis-à-vis the debtor will also interrupt the prescription period in most cases. However, specific requirements apply to such a notice. The debtor's acknowledgement of the injured party's claims will also interrupt a running prescription period.

For most claims, the consequence of a valid interruption will cause a new prescription period to start running, with the same duration as the original, unless the original period is longer than five years, in which case the new period is limited to five years.

25

Dispute Resolution

25. Dispute resolution

25.1 Jurisdiction

In the Netherlands, the civil and criminal judiciary comprises 11 district courts (with cantonal branches), four courts of appeal and the Supreme Court. The district courts have general jurisdiction in the first instance over civil law disputes, administrative disputes and criminal cases, which are all judged by separate branches of the district courts. Judges are professional judges and appointed for life.

In civil and commercial cases, the cantonal branches of the district courts handle first-instance claims up to EUR 25,000, irrespective of the claim's cause. These branches also deal with disputes involving employment law, agency and lease agreements, consumer purchases and consumer credit. It is not mandatory to have an attorney-at-law for proceedings before the cantonal divisions of the district courts.

District court civil branches handle all other first-instance civil and commercial claims. Judgments from both civil and cantonal branches can be appealed to a court of appeal, which reassesses the case fully on factual and legal grounds.

A judgment given by the court of appeal may, in principle, be submitted for review (or "cassation") before the Supreme Court of the Netherlands on issues of law only. Thus, the Supreme Court will not decide on any factual issues. A submission for cassation to the Supreme Court may be brought on grounds of noncompliance with formal requirements (for instance, if a court fails to give adequate reasons for its judgment) or breach of law, but not a breach of any foreign law.

The Dutch Supreme Court and lower courts have no authority to examine statutes for compliance with the Dutch Constitution, neither regarding the manner in which statutes are established nor as to their substance. However, statutes may be tested for compatibility with treaties to which the Netherlands is a party and with European legislation.

There is a separate division of the Amsterdam Court of Appeal dealing with certain aspects of corporate law and governance issues. The so-called Enterprise Chamber decides on disputes in the first instance on, among others: (i) annual accounts; (ii) mismanagement; (iii) buyouts of minority shareholders; and (iv) the Dutch Works Councils Act. In addition, on appeal, the Enterprise Chamber deals with disputes on, among others: (a) the mandated departure or ejection of shareholders; (b) the revocation of responsibility for a group company; and (c) objections to a reduction of capital, legal merger or split.

On 1 January 2019, the NCC was established in Amsterdam. The NCC aims at settling international trade disputes in the Netherlands in first instance and on appeal, while appeal decisions are subject to Supreme Court review. The NCC primarily focuses on major international commercial disputes submitted by parties pursuant to a contract or a subsequent agreement. Dutch parties can also choose — either in advance by contract or after the dispute arises — to bring a commercial dispute without an international character before the NCC. The NCC is a special facility with dedicated judges who have expertise and experience in complicated commercial disputes. By default, proceedings are conducted in English. The NCC also offers the possibility to litigate in Dutch.

25.2 Course of the court proceedings

The rules governing Dutch civil legal proceedings are laid down in the Dutch Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering) ("**Code**"). Most civil and commercial proceedings are initiated by the plaintiff issuing a writ of summons against the defendant. The proceedings take place before the district court. The writ of summons must include the legal and factual grounds for the claim. In principle, one judge will hear cases, but, depending on the complexity or the scope of the case, it may be judged by a panel of three judges.

A writ of summons mandates that the defendant must appear in court on a designated date. In civil district court, the defendant needs to be represented by a lawyer. The initial appearance is mainly for administrative purposes and does not require physical attendance. If the defendant appears, the court typically grants a six-week term to submit a written statement of defense.

After the statement of defense is submitted, additional briefs may subsequently be exchanged, but usually the court will order a hearing (on its own initiative or on request). The purpose of such hearing is usually threefold: for the parties to (i) supply information to the court, (ii) argue their case before the court and (iii) attempt to reach a settlement.

Appeal proceedings are initiated by serving a notice of appeal (within three months from the district court's judgment). In principle, only two briefs are exchanged. In the appellant's brief, the party filing the appeal explains why it disagrees with the judgment passed in first instance. The opponent may then file an answer, and a counterappeal, to which the initial appellant may file an answer. Next, a hearing is usually held. A three-judge panel hears the appeal.

The course of the proceedings, both in the first instance and on appeal, may be complicated by several motions on procedural issues (such as a motion on jurisdiction) or by ordering examination of witnesses or expert opinions.

25.3 Summary proceedings

In urgent cases, a judge of the district court may sit in summary proceedings to provide provisional relief. There are few restrictions on the type of dispute that may be heard. Summary proceedings are even used to obtain a payment order for essentially undisputed claims.

Summary proceedings are usually done with dispatch. At the plaintiff's request, the court will schedule a date for the summary hearing to take place within a few weeks. In very urgent cases, hearings can even be scheduled for the same day. The plaintiff initiates the summary proceedings by serving a writ of summons on the defendant. The defendant may file a statement of defense, this is usually not required, and, therefore, it is not common practice. In specific circumstances, the court may order a defendant to submit a statement of defense before the hearing. On the date of the summary hearing, the parties and their counsel appear before the court to explain their positions through oral arguments (although a defendant may appear without counsel).

The court has a great degree of latitude to decide on the procedure at a hearing. Although witnesses cannot be heard in the context of summary proceedings, the court may question people present at the hearing. That way, although no sworn statements are taken, the court is still able to obtain information from the people involved before deciding on the issue.

The court generally hands down its decision in summary proceedings within 14 days from the hearing, but may do so earlier if the case is urgent. A summary judgment is immediately enforceable. The judgment can be sanctioned by a (substantial) penalty to be forfeited if the judgment is not complied with. The judgment may be appealed before the competent court of appeal (within four weeks after the judgment in first instance is rendered). It is also possible to lodge a summary appeal, so that the proceedings before the court of appeal are conducted more swiftly. In that case, there is no separate appellant's brief, as the grounds for the appeal must be included in the notice of appeal. A decision by the court of appeal may be submitted for cassation to the Supreme Court (on issues of law).

After the summary proceedings (or even in parallel with summary proceedings), either of the parties may start principal proceedings to have the case judged on the merits (as summary proceedings are merely a provisional remedy). The court in the principal proceedings is not bound by a judgment given in summary proceedings. However, it is quite common for parties not to initiate principal proceedings after summary proceedings and instead decide to accept the judgment given in summary proceedings.

25.4 Prejudgment attachment

To secure a claim, the plaintiff may levy prejudgment attachments on the debtor's assets, before or during legal proceedings. Under certain circumstances, it is also possible to attach documents, data and data carriers for preserving evidence (bewijsbeslag).

The district court's leave is required for a prejudgment attachment. Such leave is generally easily obtained (often on the same day or the following day) in ex parte proceedings. The plaintiff must file a petition with the court substantiating the claim. This petition is examined prima facie. A bailiff subsequently levies prejudgment attachments. An attachment on movable property, or on seized documents or data, may be combined with judicial custody. This means that the bailiff turns over the attached property to a person appointed by the court to keep the property in their custody, pending the legal proceedings.

The party subject to a prejudgment attachment may object to the attachment in summary proceedings. The court will lift the attachment if it is demonstrated that: (i) specific formal attachment requirements were not complied with; (ii) the asserted claim is prima facie nonexistent or frivolous; or (iii) the attachment is unnecessary. For a monetary claim, the court will also lift the attachment if the party subject to prejudgment attachment provides adequate security (generally, a bank guarantee by a first-class Dutch bank).

If legal proceedings are not yet pending at the time of filing the petition for the court's leave to attach, the court will set a period within which such proceedings must be initiated. The standard period is generally 14 days, but may be extended upon the petitioner's request. In addition, this period may be extended (several times) at the request of the attaching party. However, there must be good reasons for such an extension. If, eventually, the claim for which the attachment was made is completely dismissed, the attachment will be held wrongful. In that case, the attaching party is liable for any damages caused by the attachment. In practice, however, such damages may be hard to substantiate.

25.5 International enforcement

Judgments passed by the courts of EU member states can easily be enforced in the Netherlands. EU member states are subject to the Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, Recast (No. 1215/12).

For Switzerland, Norway and Iceland, the (recast) Lugano Convention applies.

Before the enforcement of a judgment handed down by a court in one of the states referred to above, leave to do so must be obtained from the district court. The procedure to obtain leave generally takes no more than a number of weeks from filing the request. Similarly, Dutch judgments are easy to enforce in such states.

Judgments passed by courts in states with which the Netherlands has no enforcement convention cannot be recognized or enforced in the Netherlands. To obtain an enforceable title in the Netherlands, these cases must be retried by the Dutch courts. However, during these proceedings, the court may decide that the foreign judgment does meet certain formal requirements for recognition, in which case a full review of the merits of the case is not required, and the claims awarded in the foreign judgment are awarded by the Dutch court. However, the Dutch court is free to determine the weight given to decisions of the foreign court.

25.6 European enforcement order for uncontested claims

The European Parliament and Council Regulation of 21 April 2004 creating a European Enforcement Order for uncontested claims (No. 805/2004) lays down minimum procedural standards to ensure that judgments, court settlements and authentic instruments on uncontested claims can be easily enforced

in the EU member states. The regulation is applicable in civil and commercial matters. It does not cover revenue, customs or administrative matters. It is applicable in all EU member states, with the exception of Denmark.

The regulation provides that a judgment that has been certified as a European Enforcement Order in the EU member state of origin will be recognized and enforced in other member states without the need for a declaration of enforceability and without any possibility of opposing its recognition. A judgment on an uncontested claim can be certified as a European Enforcement Order if certain requirements are met, such as enforceability in the EU member state of origin. Certification is carried out by means of a standard form.

The regulation lays down minimum standards for the service of documents initiating the proceedings to protect the defendant's procedural position.

If a European Enforcement Order is given, the judgment can be enforced in any EU member state through a copy of the judgment and a copy of the European Enforcement Order certificate (sometimes with a translation).

25.7 European payment orders

The European Parliament and Council Regulation of 12 December 2006 creating a European order for payment procedure (No. 1896/2006) allows creditors to recover their uncontested civil and commercial claims before the courts of the EU member states (except Denmark) according to a uniform procedure that operates based on standard forms. The existence of a procedure that is common to all member states reduces the need for creditors to familiarize themselves with foreign civil procedures.

The procedure is cost-efficient and does not require an appearance before the court. It can be initiated and managed electronically. The claimant only needs to submit an application, without any additional formalities or intervention. This is to ensure swift and efficient handling of the claim, especially considering the length of traditional court proceedings.

The European payment order obtained as a result of this procedure can be easily enforced in other EU member states. The creditor will not have to take intermediate steps to enforce the decision abroad.

25.8 European small claims

The European Parliament and Council Regulation of 11 July 2007 establishing a European Small Claims Procedure (No. 861/2007) is intended to speed up litigation and reduce costs concerning small claims in cross-border disputes in all EU member states, except Denmark.

This procedure provides an alternative to other — more costly and complex — legal proceedings. It applies to civil and commercial matters where the claim (excluding interest, expenses and disbursements) does not exceed EUR 2,000. It does not extend to revenue, customs or administrative matters or state liability for acts and omissions in the exercise of the state's authority.

25.9 Collective action

Articles 3:305a and 3:305b of the DCC allow associations and foundations with full legal capacity as well as certain public law entities ("representative organization") to initiate collective actions with the aim of protecting "similar interests of other persons (natural or legal)." There are various formal requirements that apply to representative organizations. Their articles of association should stipulate that the foundation or association serves the interests of the parties it represents. In addition, the representative organization must actually engage in activities relevant to such interests. Before filing a claim, the representative organization is obliged to make an effort to settle the dispute out of court.

The parties represented by the representative organization will not be a party to the proceedings; however, since the introduction of the Dutch Collective Damages Act (Wet afwikkeling massaschade in collectieve actie or (WAMCA)) on 1 January 2020, the parties will be bound to the decision in the collective proceedings unless they opt out. Parties that have opted out retain the right to submit their own claim.

Under the WAMCA, associations and foundations can claim damages in class actions. The WAMCA applies to class actions initiated on or after 1 January 2020, which relate to events that occurred on or after 15 November 2016. In class actions that fall outside of this scope, the old class action regime applies, under which damages could not be claimed by the representative organization. Under the old regime, the representative organization usually seeks a declaratory judgment, after which either a mass settlement is sought (see below in Section 25.10) by the representative organization, or the individual parties claim damages from the party that caused damages.

25.10 Collective settlement of mass damages

The Dutch Act on the Collective Settlement of Mass Damages facilitates binding court-endorsed, collective out-of-court settlement agreements regarding mass damages between a representative organization and the party or parties responsible for the damages. The procedure for achieving a binding settlement agreement as described in the act is undertaken in three phases.

During the first phase, the representative organization and the responsible party or parties negotiate a possible settlement agreement.

The articles of association of the representative organization should indicate that it serves the interests of the parties affected. The claims of the affected parties must, to a certain extent, be similar. In the settlement agreement, the amount of monetary compensation to each affected party, or a formula to calculate the monetary compensation based on the objective criteria, must be specified. The party responsible must provide sufficient security for its payment obligations under the settlement agreement.

In the second phase, the representative organization and the responsible party file a joint request with the Amsterdam Court of Appeal to declare the settlement agreement binding for all parties affected or a group of affected parties. Pending the request with the court of appeal, all legal proceedings against the responsible party involved can be suspended. In principle, all affected parties known to the responsible party must be invited to a hearing of the court of appeal in order to give them the opportunity to file any objections against the settlement agreement and against declaring such settlement agreement binding.

After this hearing, the court of appeal must assess whether the settlement agreement meets the criteria as set out in the act, such as whether the compensation is reasonable. The court of appeal may either declare the settlement agreement binding, deny the request or allow the parties to amend the settlement agreement before making its final decision.

The third phase concerns the execution of the settlement agreement. If the court of appeal declares the settlement agreement binding, the settlement must then be published in one or more Dutch newspapers and be sent to all known affected parties. The affected parties who do not want to be bound by the settlement agreement have the option to "opt out" within, in principle, three months after the court decision. The affected parties not "opting out" may collect their compensation within a time frame specified in the settlement agreement. If the responsible party does not fulfill its payment obligations in a timely manner, the affected person may dissolve the settlement agreement in as far as it concerns the part of the settlement agreement relating to the compensation of that affected person.

25.11 Inspection or taking copies of certain identifiable documents instead of full discovery

Dutch law does not provide for full discovery of documents. However, it does provide for the possibility to request the court to order the defendant to disclose documents. This procedure has recently been updated under the new Simplification and Modernization of Evidence Law Act, which took effect on 1 January 2025. Under the new act, the requirements for obtaining evidence in Dutch civil proceedings have been updated to make the process more accessible and efficient.

One significant change is the new right of inspection. Previously, under Article 843a of the Code, a party needed to demonstrate a legitimate interest to request access to documents. This meant showing a direct and concrete legally relevant interest. However, the new act replaces this with a "sufficient interest" standard. Now, a party only needs to make it plausible that it has an interest in inspecting certain data.

The right of inspection has also been transferred to the evidence section of the Code, replacing the current Article 843a with Articles 194, 195 and 195a. This change aims to put the right of inspection on a more equal footing with other forms of evidence, making it a more accessible option rather than a last resort.

The following are other elements considered by Dutch courts when reviewing whether to order a party to disclose documents:

1. Identification of documents: The documents requested must be identifiable. The requesting party should specify the documents or at least a category of documents it sees.
2. Confidentiality and compelling reasons: The court will consider whether the documents contain confidential information. If the confidentiality of the information amounts to a compelling reason, the court may decide not to order disclosure.
3. Balancing interests: The court weighs the interests of both parties. If the respondent's interest in not disclosing the information outweighs the applicant's interest in obtaining it, the court may refuse the request.

Overall, the changes to the gathering of evidence included in the Evidence Law Act are designed to streamline the evidence-gathering process, making it more straightforward for parties to obtain the necessary documents to support their claims.

25.12 Preliminary witness hearing and expert opinion

As is the case during civil legal proceedings, before legal proceedings are commenced, the court may be requested to hold a preliminary hearing of witnesses. The purpose is to preserve evidence and evaluate the chances in litigation or in settlement negotiations.

The court orders witnesses to appear in court and to testify. A witness who refuses to testify can be escorted to court by the police or taken into custody for a maximum of one year. An uncooperative witness can also be liable for damages caused by their refusal to testify.

The hearing is held before the court and the witnesses are heard under oath. A single judge will hear the witness. Counsel to the parties are also given the opportunity to question the witness. There are no sound recordings of witness hearings and no word-for-word transcript is made. The judge summarizes the witness's statements in the presence of the witness and the parties in an official record of the hearing (proces-verbaal). The witness signs that record at the end of the hearing.

25.13 Arbitration

Parties may also choose to settle their disputes by arbitration, rather than in court. The Dutch Arbitration Act provides that, if either party invokes an arbitration agreement, the Dutch court must decide that it has no jurisdiction over the case. The district court may be competent to grant provisional relief in summary proceedings, even if the parties concluded an agreement for arbitral summary proceedings, if the court believes that the remedy provided in arbitration is inadequate.

The best-known Dutch arbitration institute is the Netherlands Arbitration Institute (NAI) in Rotterdam, which has its own arbitration rules that parties can adopt in their arbitration agreement. The NAI may appoint the arbitrators, or the parties may do so themselves, depending on the arbitration agreement. The NAI has a list of qualified and experienced arbitrators, who are often lawyers as well.

Dutch arbitral decisions can easily be enforced in the Netherlands. Like many European countries and the US, the Netherlands is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Thus, arbitral awards given in the territory of these states can, in principle, be enforced in the Netherlands and vice versa.

25.14 Mediation

Mediation as an instrument for dispute resolution is becoming somewhat more popular in the Netherlands. At the start, mediation was mainly used in family law cases. Today, though, mediation is being used with increasing frequency in other types of disputes. The Dutch courts have even developed an initiative promoting mediation during pending legal proceedings.

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