Doing business in the Netherlands

A practical guide

DECLERCQ Attorneys · Notary 175 YEAR

Doing business in the Netherlands

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Preface

This introduction is aimed at companies wishing to set up a business in the Netherlands and anyone who wants to learn more about the (legal aspects) of doing business in The Netherlands. When deciding where to set up your business, issues such as geographic location, infrastructure, political and social stability and wage levels are crucial. On top of that, laws regarding, for example, employment and litigation in the Netherlands are relevant to understand. With this in mind, we have compiled an overview of the key legal frameworks that companies operating in the Netherlands must comply with.

We hope you find this introduction informative and inspiring.

De Clercq Attorneys & Notary

Our Firm & Partners

Our story – the De Clercq story – is about entrepreneurs who wish to grasp opportunities and thrive. About authorities that strive for the optimal performance of their public duties. And about private individuals who need legal representation or notary services. Briefly put: our story is about our clients and how we can further assist them.

Innovative and focused

Ever since our firm was established in 1850, De Clercq has been forward-looking. Where do clients' opportunities lie? And where do ours? And how can we excel together? This requires vision as well as focus. We have therefore specialized in a select number of areas of the law and in specific markets. Within these areas and markets, we monitor developments closely, analyse their impact and develop innovative legal solutions. To achieve this, we move beyond the boundaries of what is known, foreseeable and commonplace.

Client-oriented and cooperative

We strive for equal cooperation and a partnership with our clients. Long term considerations always have priority over short-term gain. As such, we are keen to invest time and energy in order to get to know you and the context in which you operate better. This is a pleasant and effective process, for you and us. Our approach is widely appreciated. Many clients – throughout the Netherlands and abroad – therefore find their way to De Clercq.

Decisive and targeted

As De Clercq is a no-nonsense firm, you can rest assured there will be no obscure language or veiled jargon from our side. We cut to the chase, openly tackle challenges and do not flinch from plain speaking. And we expect the same from you. In order to achieve your objective, we work pragmatically and creatively. And as long as it benefits your case, we dare to step off the beaten track: removing obstacles and clearing the way for you.

Razor-sharp and critical

To enable us to achieve the best result for you, we set the bar high for ourselves. Good is not good enough, we want to excel. Our lawyers are therefore selected on the basis of their expertise and experience, as well as their ability to sink their teeth into a case. Because knowledge counts, experience dominates and every detail can be decisive.

Therefore, we can put our necks on the line and say that De Clercq has the best knowledge to represent you or your legal department in a dispute.

Social and committed

De Clercq operates at the heart of society. In addition to your interests, we are thus keen to serve in the public interest. For this reason, we support various institutions, associations and initiatives, including ZZ Leiden Basketball, the SPARK Foundation and Ronald McDonald House Leiden.

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Introduction to the Netherlands

The Netherlands is a parliamentary democracy with a constitutional monarchy. In other words, the king is the ceremonial unelected head of state while the government is elected by the people.

The Dutch government operates at a national, regional and local level, and its role goes far beyond providing the nation's security and ensuring economic stability. It is responsible for a wide range of essential services, such as the welfare system, the public health service, the education system and the transport and telecommunication infrastructure. The level and extent of these services is reflected in the country's high standard of living. The Netherlands was ranked third in the global Human Development Index (HDI)[1] in 2011.

Of course, this standard of living comes at a cost. Government expenditure, which accounts for about half of GDP[2], is largely financed by individuals and companies in the form of taxes and social security contributions. Most of the proceeds from social security contributions are spent on health care and on social benefits, such as unemployment benefit and state pensions. Taxes are spent on other services, such as the police, schools and roads. The responsibility for levying and collecting taxes and some social security contributions falls to the Tax and Custom Administration (*Belastingdienst*).

Although the overall tax burden for individuals is heavy, the rate of corporation tax is globally competitive[3]. The economy of the Netherlands is relatively small but it is very open, fostering enterprise and entrepreneurial activity. A number of factors contribute to this: the country is heavily involved in international commerce, it has a high degree of economic freedom and the regulatory regime is transparent and efficient. Moreover, the judicial system is independent and free of corruption, and the workforce is highly educated. Remaining true to the country's historic trading roots, the government acknowledges that its tax system should not provide an obstacle to companies operating internationally. The Netherlands is, one might say, open for business.

1 http://hdr.undp.org/en/statistics
2 2013 Index of Economic Freedom
3 2013 Index of Economic Freedom

Legal forms

The most common legal forms of business in the Netherlands are the following:

- private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid - BV*);
- public company with limited liability (*naamloze vennootschap – NV*);
- partnership;
  - General partnership (*vennootschap onder firma – VOF*)
  - Limited partnership (*commanditaire vennootschap – CV*)
- co-operative (*coöperatie*);
- foundation (*stichting*).

Partnership (VOF and CV)

Both the VOF and CV are not legal entities, but forms of (contractual) partnership. Therefore the VOF and CV do not possess legal personality, such as the BV and NV, and do not need to be incorporated by notarial deed. Partners can be both natural persons and legal entities, such as BV's and NV's.

The VOF form of partnership is used by two or more people running a (usually) small business. Each partner brings money, goods and/or manpower into the business. Any partnership contract, which is not compulsory but certainly advisable, should address the duration of the partnership as well as the contribution, authority, profits share and arrangements for resignation of each partner. Partners are jointly and severally liable for the partnership's debts.

The CV form of partnership is different to the VOF in that it has limited (silent) partners in addition to general partners. Silent partners act as capital contributors. They are not permitted to act as a general partner, or give that impression, and they are liable for the debts of the partnership confined to the extent of their capital contribution. CVs are common for joint ventures.

Private company with limited liability (BV)

A BV is a privately owned company. It is usually either a small to medium-sized independent business or a subsidiary of a larger (inter)national company. Additionally it can be established for group holding or tax-optimisation purposes. A BV can issue only registered shares. The risk for shareholders is reduced to the money they have invested in the company. For further information, please see 'Incorporating a Dutch BV – corporate issues'.

Public company with limited liability (NV)

A public limited company differs from the private version in the way that it can sell its shares to the public and may be quoted on the stock exchange. Unlike the BV, a NV is able to issue bearer shares in addition to registered shares. Shares of a NV are freely transferable.[4]

Co-operative

The co-operative is a specific form of association, incorporated by at least two members and based on articles of association drawn up by a Dutch civil law notary. The co-operative is commonly used as a legal form for a holding company. The main reason for employing a co-operative is that its legal form is more flexible than a limited company, which is subject to many statutory rules of the Dutch Civil Code. For further details, please go to Section 3.

Foundation

A foundation does not have members or shareholders. It does not need capital to be incorporated, although it does use capital to achieve its goals. These goals are often idealistic or social, as set out in its articles of association. A foundation can make profits, but its distributions are limited to its designated beneficiaries, excluding founders, directors or any other body of the foundation.

A 'depository foundation' (*Stichting Administratiekantoor – STAK*) is set up to acquire and administer shares of a company by issuing depository receipts for these shares. A STAK separates voting rights from economic rights (to dividend and capital gains)[5] and is used frequently to protect assets and run employment participation plans.

[4] The Flex B.V. Act gives the Dutch BV more leeway in governing its business, including lifting the share transfer restriction clause in the articles of association.

[5] See also 'Legislation regarding the simplification of rules governing Dutch BVs – the Flex BV Act'.

Incorporating a Dutch BV – corporate issues

The BV is one of the most common legal entities in the Netherlands. Below is a short overview of its corporate characteristics.

Incorporation

The incorporation of a BV is effected by a notarial deed of incorporation. The deed has to be signed by every incorporator and by anyone who takes shares in the BV. The deed of incorporation has to be in Dutch and for foreign incorporators the notary will provide an English translation. The incorporators can be represented by means of a written power of attorney.

The statutory minimum paid-in capital for incorporating a BV is EUR 0,01.

The deed of incorporation, which establishes the company as a separate legal entity, must embody the articles of association. Once incorporated, the articles of association may be amended only by notarial deed of amendment.

Registration in the Trade Register and UBO Register

The company must register with the Trade Register of the Dutch Chamber of Commerce within eight days of incorporation and deposit certified copies of the deed of incorporation. The company and each of the managing directors are jointly or severally liable for all legal actions undertaken on behalf of the company during the period from incorporation to registration in the Trade Register. It is advisable to arrange registration as soon as incorporation has been completed. The notary will be able to guide the incorporators in this process.

A BV is required to file details of all its managing directors and supervisory directors. Details of proxy holders, and the scope of their powers, must also be filed. If all issued and outstanding shares in the company are held by one individual or legal entity, this sole shareholder must also be registered.

Many organisations in the Netherlands have a duty to register their ultimate beneficial owners (UBOs). UBOs are the natural persons who ultimately benefit from, or have an interest in, a business or organisation. Examples of UBOs of BVs are persons who:

a) own 25% or more of the shares in a BV;
b) have 25% or more of voting rights of a BV;

c) are the statutory directors of a BV; or
d) are effectively in control of the BV.

The UBO register aims to prevent financial and economic crimes such as money laundering, financing terrorism, tax fraud and corruption. Failure to register UBOs may lead to fines. Note that the UBO registration obligation also applies to other legal forms, such as foundations, cooperatives and partnerships. Public limited companies that operate on the stock exchange are not required to register UBO.

Articles of association

The articles of association contain the provisions which govern the company after its incorporation. They must contain at least the name of the company, the city where the company has its registered seat, the purpose of the company, the authorised capital in Euros and its division in shares and the conditions for share transfer.

Corporate/trade name

The (trading) name of the company should be sufficiently different from existing trading names, whether or not registered, and should not cause confusion to the public. The name should have some distinctive character and must not be too general. The characters "B.V." must be included in the name. It is common practice to do so at the end of the name.

Seat/office address

The registered seat must be in the Netherlands and mentioned in the articles of association. The company must also have its office address registered with the previously mentioned Trade Register. The office address can be in the Netherlands or abroad. Tax reasons can be a reason for the decision where to register office.

Purpose of the company

A general description of the company's proposed business activities are listed in the articles of association's objects clause. The remainder of the objects clause can be general, but the company's activities are limited to those stated in the objects clause.

Share capital

A BV may be incorporated with one share at a value of EUR 0.01 and one voting right. In principal, each issued share is fully paid upon its issuance, but the articles of association may provide that the company and its shareholders need only pay the nominal value or a part thereof.

Shares

Shares in a BV may only be issued in registered form. Shareholdings should be registered in the Shareholders' Register of the company (which is an internal document). This register should be kept up to date by the managing director(s) of the company. Payment for shares may be in cash and/or in kind. For payment in kind, a description of the contribution must be drawn up and signed by the company's directors.

Dutch law permits the BV to issue shares with different types of rights:

- shares with both voting rights and (full or limited) profit rights;
- shares with only voting rights;
- shares with only (full or limited) profit rights.

A profit right is the right to a share of the profits or reserves of a BV, which may be limited to a certain amount or percentage. All shares of a certain type or description must be given the same voting and/or profit rights in the articles of association.

Examples of other types and classes of shares are:

- Ordinary shares: these provide equal rights to each shareholder (although they may be subdivided into different classes with different corporate rights, such as special reserves, voting rights and separate redemption rights).

- Preference shares: these have priority over other types of shares regarding the distribution of dividends and distributions upon liquidation of the company (preference shares may be cumulative or non-cumulative with regard to distribution rights).

- Priority shares: these may confer a specific authority on the holders, such as the authority to make binding recommendations for the appointment of supervisory and/or managing directors.

Finally, shareholders may need to meet a number of quality requirements, if the articles of association provide for such quality requirements.

<u>Depository receipts</u>

Converting shares into depository receipts to separate voting and economic rights is common practice in e.g. family businesses and employee participation plans. Depository receipts are created by issuing shares to a Trust Foundation (*Stichting Administratiekantoor*), which in turn issues depositary receipts representing the

economic rights accruing to such shares. Holders of depository receipts may have meeting rights, but only if those rights have been explicitly included in the articles of association.

Transfer of shares

If the articles of association do not contain a transfer restriction clause, shares in a BV are freely transferable. Shares can be transferred either without restrictions or subject to a contractual arrangement in a shareholders' agreement. If transfer restrictions are included in the articles of association, restrictions apply.

The transfer of shares in a BV requires a notarial deed of transfer between the seller and purchaser. Unless the company itself is party to the notarial deed of transfer, the rights pertaining to such shares can only be exercised after the company has acknowledged the transfer of the shares or the notarial deed of transfer has formally been served on the company by a bailiff so that the company is informed on the transfer.

Corporate bodies

In general, under Dutch corporate law, joint-stock companies should have at least two corporate bodies: the Management Board (*bestuur*) consisting of managing directors (*bestuurders*) and the General Meeting of Shareholders (*algemene vergadering van aandeelhouders*). Some larger Dutch companies are required to have a Supervisory Board (*raad van commissarissen*). For other companies, having a Supervisory Board is optional, but not mandatory.

Management Board

The responsibility of managing the company[6] on a daily basis rests with the Management Board. The position of board members, known as managing directors, is comparable to the executive members of the Board of Directors of a US or a UK company. Managing directors are usually appointed and dismissed by the General Meeting of Shareholders or, in the case of a co-operative, by members. Under Dutch law, a managing director may be a (foreign) private individual or a (foreign) legal entity.

A managing director (*statutair bestuurder*) can be dismissed at any time by a resolution of the General Meeting of Shareholders or, if applicable, the Supervisory Board. The dismissal must comply with the specific procedure outlined in the company's articles of association and the general legal requirements.

[6] NVs, BVs, co-operatives.

Before a dismissal decision is made, the managing director has the right to be heard, ensuring they have the opportunity to present their case. If the dismissal does not comply with statutory provisions or the company's articles of association, it may be deemed void or voidable, potentially leading to legal consequences for the company.
If the director has an employment contract with the company, a (legally valid) dismissal as managing director will in principle automatically terminate the employment contract, unless a legal termination prohibition is applicable, or parties have agreed otherwise. A director is entitled to the notice period, a transition fee and, if dismissed without reasonable grounds or if the reassignment obligation is not taken into account, the director may also be entitled to a fair compensation.[7]

Managing directors have joint or sole authorisation to represent and legally bind the company, as set out in the articles of association. The articles of association may stipulate which acts of the managing directors require prior approval of another corporate body, such as the shareholders or the supervisory directors. Such provisions and limitations usually have only internal effect and may not be invoked against third parties unless they are aware of this provision and have not acted in good faith.

General Meeting of Shareholders

Under Dutch law, all corporate powers are granted by the General Meeting of Shareholders (*algemene vergadering van aandeelhouders*), unless such corporate powers are granted by law or by the articles of association to another corporate body of the company. Statutory regulations regarding the authority of the General Meeting of Shareholders exist. Certain matters must come under the authority of the General Meeting of Shareholders, such as appointing, suspending and removing managing directors and supervisory directors, amending the articles of association, adopting the annual accounts, merging or converting the company or creating a spin-off, issuing shares and liquidating (voluntarily) the company.[8]

General Meetings of Shareholders must be held at the office location (not limited to the Netherlands) specified in the articles of association or at the company's statutory seat or elsewhere. Executive and supervisory directors have the right to attend General Meetings of Shareholders and must be given the opportunity to cast their advisory vote before any resolutions are approved by the General Meeting of Shareholders. Notices convening a General Meeting of Shareholders must be given at least eight days before the day of the meeting. The articles of association may allow resolutions to be adopted in writing without holding a General Meeting of Shareholders, as long as those representing the

[7] For more information, see the section on Employment law.
[8] There are exemptions to the authority of the General Meeting of Shareholders with regard to companies to which the Large Company Regime is applicable.

entire share capital issued and outstanding at that time agree unanimously. At least one General Meeting of Shareholders each financial year is required.

Supervisory Board

The Supervisory Board is in its entirety appointed (and in its entirety dismissed) by the General Meeting of Shareholders (or members). According to Dutch law, a managing director may not serve concurrently as a supervisory director and vice versa. The Supervisory Board must act in the interests of the company, so its task is to advise and supervise the managing directors. However, it cannot participate in the day-today affairs of the company. Legal entities cannot act as supervisory directors.

One-tier board

A 'one-tier board system' within BVs and NVs comprises both executive and non-executive members, giving an alternative to the existing two-tier board system with managing directors and supervisory boards.

A one-tier board system allows tasks and duties to be shared among executive and non-executive directors, as long as non-executive directors remain responsible for supervising the (entire) board. Both executive and non-executive members are responsible for the company's general course of direction, and non-executive members may be involved in the decision-making process. Therefore, non-executive members of the Management Board are also subject to director's liability.

Companies that adopt a one-tier board system have both executive and non-executive directors appointed by the General Meeting of Shareholders, with the exception of companies subject to the Large Company Regime. Large companies have executive directors appointed by non-executive directors. The chair of all one-tier board companies must be a non-executive director.

Filing and publishing annual accounts

Dutch corporate law states that all BVs, NVs, co-operatives and foundations must file a financial report with the Trade Register of the Dutch Chamber of Commerce each financial year. Details and documents to be filed depend on the size of the company. Usually, the annual accounts consist of the balance sheet, the profit and loss account and explanatory notes, and the consolidated annual accounts if applicable. In the case of a co-operative, the profit and loss account is replaced by a statement of operating income and expenses.

There are four categories of companies regarding minimum reporting, auditing and publishing requirements: micro, small, medium and large companies. A company is not reclassified unless and until it meets at least two of the criteria of another category for two consecutive financial years:

	Micro	**Small**	**Medium**	**Large**
Total assets	< EUR 450.000	EUR 450.000 – EUR 7.5 million	EUR 7.5 million – EUR 25 million	> EUR 25 million
Net turnover	< EUR 900.000	EUR 900.000 - EUR 15 million	EUR 15 million – EUR 50 million	> EUR 50 million
Average number of employees	< 10	10 - 50	50 - 250	> 250

Companies with a financial year corresponding with the calendar year[9] are subject to the following deadlines for the filing of their annual accounts:

- The Management Board must draw up the annual accounts within five months of the end of the financial year and submit the annual accounts to the General Meeting of Shareholders for adoption. Shareholders may grant an extension of no more than five months in exceptional circumstances.
- The annual accounts must be signed by managing and supervisory directors. The shareholders must adopt the annual accounts within two months.[10]
- The adopted annual accounts must be filed with the Trade Register of the Chamber of Commerce within eight days of adoption.

In any event, the BV must publish the annual accounts no later than twelve months after the end of the financial year. If the prepared annual accounts have not (yet) been approved by the shareholders, the Management Board must file the accounts with the Chamber of Commerce within seven months of the balance sheet date (or 12 months if an exemption applies). There is no statutory requirement to notify the Chamber of Commerce of any extension approved by the shareholders.

Sanctions

The company may be fined when it exceeds the statutory time limit for filing the annual accounts with the Chamber of Commerce. If the company goes bankrupt and has failed

[9] The financial year always corresponds with the calendar year unless different regulations are laid down in the company's articles of association.
[10] If the financial year corresponds with the calendar year, the annual accounts must be approved by 31 July or, if the maximum postponement period has been authorised, by 31 January of the following year.

to comply (timely) with its filing obligations, the management of the company may be held liable for all of the company´s remaining debts.

Special regulations for large enterprises

Under Dutch law, the Large Company Regime (*structuurregeling*) applies to BVs, NVs and co-operatives if the company meets the following criteria[11] for three consecutive years:

- the issued capital of the company, together with reserves as stated on the balance sheet, amounts to at least EUR 16 million;[12]
- the company and/or an affiliated company have installed a Works Council;
- the company and its affiliate(s) employ collectively at least 100 employees in the Netherlands on average.

The Large Company Regime requires companies to install either a Supervisory Board or a Board of Executive and Non-executive Members.

Section 2:265 of the Dutch Civil Code states that a Mitigated Regime may apply to companies, provided certain criteria are met. The Mitigated Regime allows managing directors and executive directors to be appointed by the General Meeting of Shareholders instead of the Supervisory Board or non-executive members.
Exemptions to the Large Company Regime may apply to international holding companies which restrict their activities exclusively or almost exclusively to the management and financing of group companies and of its and their participations in other legal persons, provided that the majority of their employees work outside the Netherlands.

General obligations & liability

Director's liability

The liability of managing directors can be divided into three main categories:

- internal liability (i.e. managing director vs. the company);[13]
- liability in bankruptcy;
- tort against third parties.

The liability of supervisory directors is subject to Sections 2:9 and 2:248 of the Dutch Civil Code. More specific statutory regulations regarding the liability of managing directors are:

[11] Section 2:263 DCC.
[12] Stb. 2004, 370.
[13] Section 2:9 DCC. See HR 10 January 1997, NJ 1997, 360 (Staleman/Van de Ven).

- misleading annual accounts, interim figures or annual report;[14]
- the period prior to registering with Trade Register and paying up shares;
- not paying due debts after a distribution of profits.[25]

Statutory provisions state that every managing director (*bestuurder*) must perform his duties towards the company properly. If there is more than one managing director, each of them is jointly and severally liable for any shortcoming, unless a managing director can prove the improper performance of duties is not attributable to him and that he has tried to take measures to prevent the consequences of improper performance. Generally, any improper performance of duties will only lead to the liability of a managing director in the case of serious culpability (*ernstig verwijt*).[15]

If a company has to file for bankruptcy, a managing director can be held liable for the debts of the bankrupt estate. This happens if the Management Board clearly did not perform its duties properly and if the improper management was a significant reason for the bankruptcy. The claim against the managing director(s) can only be made by the trustee in the bankruptcy, but it is done on behalf of the creditors.

Dutch corporate law places statutory obligations on managing directors regarding the proper administration of the company[16] and the correct and timely publication of information[17]. If the Management Board did not meet those statutory obligations (in the three years leading up to the bankruptcy), it is irrefutably presumed that it did not perform its duties properly and it is refutably presumed that this improper performance was an important cause for the bankruptcy.

Managing directors can also be held jointly and severally liable for social security premiums, pension premiums, income tax and VAT owed by the company if they do not notify the competent authority of the company's financial difficulties.

The legal system of protecting capital is based on formal resolutions regarding the property of a company. If the Management Board acts in violation of these regulations (i.e. it distributes profits when the company cannot afford to pay its creditors), its capital is no longer protected and recovery options for creditors are no longer maintained. The sanction is that the managing director(s) will be liable to the company for the amount they distributed unlawfully.

[14] Sections 2:139 and 2:249 DCC for the NV and BV respectively.
[15] E.g. when a managing director acts contrary to the provisions of the articles of association, depending on the specific circumstances of the case.
[16] Section 2:10 DCC.
[17] Section 2:394 DCC.

Discharge from liability

Managing (and supervisory) directors can be granted discharge from liability towards the company for a specific period of their management. In other words, the directors are released from their obligation to repay (a part of) their debts. Note that the discharge may relate only to matters stated in the annual accounts or otherwise notified to the shareholders. In addition, directors cannot be discharged from liabilities towards third parties, such as company creditors or the tax authorities.

403 declarations

A parent company can assume (voluntarily) joint and several liability for any debts arising from the legal acts of its subsidiary/subsidiaries by filing a 403 declaration with the Trade Register (the term 403 comes from Section 403 of Book 2 of the Dutch Civil Code). This exempts subsidiaries from preparing and publishing their annual accounts in accordance with the normal provisions of the Dutch Civil Code. All they have to do is to prepare a summary balance sheet and summary profit and loss account. However, the parent company is obliged to prepare and publish a consolidated balance sheet. This means not only that the administrative financial burden within the group is decreased but also that subsidiary's creditors have to rely on the financial information and liability of the parent company.

The reporting exemption has far-reaching implications. To protect creditors of a company relying on the reporting exemption, the consolidating group entity must assume joint and several liability for all liabilities arising from legal acts of the dependent group entity. If the subsidiary leaves the group[18], liability of the consolidating parent company continues unless the 403 declaration is withdrawn for both future and past commitments[19]. In practice, the 403 declaration can be qualified by stipulating that the affiliation of the parent company continues as long as the dependent group company forms part of the group of the consolidating parent company.

Ultra vires

If a legal transaction entered into by a Dutch company is not in the company`s interest and if that legal transaction exceeds the corporate objectives as laid down in the articles of association (ultra vires), that transaction may be nullified under Dutch law by the company (or by its trustee in the event of bankruptcy). The Latin phrase ultra vires means 'beyond one's legal power or authority'.

[18] Section 2:24b DCC.
[19] Section 2:404 DCC.

Typically, the connection between the corporate objectives and the company's interest plays a role in group relationships, especially when it concerns group financing. According to Dutch case law, the objective as laid down in the articles of association is in itself not decisive. Instead, one must take into account all circumstances, such as group relations, reciprocity, continuity of the business and proportionality, to determine whether a legal transaction can be nullified on the basis of ultra vires.

Inquiry proceedings

The vast majority of shareholders disputes are brought before the Enterprise Chamber (*Ondernemingskamer*) in the context of inquiry proceedings (*enquêteprocedure*). The Enterprise Chamber is a special division of the Amsterdam Court of Appeal. It has exclusive jurisdiction in various corporate proceedings, the most important of which is the inquiry proceedings. The right of inquiry entitles shareholders[20] and trade unions to request the Enterprise Chamber (EC) to investigate the affairs of a company. These investigative proceedings are carried out in two separate phases:

1. The EC decides whether an investigation should take place. An investigation can be ordered if the EC believes that (i) there are ´well-founded reasons´ (*gegronde redenen*) for having doubts about the proper performance of the management and (ii) further investigation would reveal an ´incorrect policy´ (*onjuist beleid*) followed by the management.

The EC orders an investigation and appoints one or more investigators after considering the interests of the various parties, including the interests of the company. The company must bear the costs of the investigation. The investigation is completed by filing a report with the EC, which uses this report to decide if mismanagement (*wanbeleid*) exists within the company.

2. If the EC establishes mismanagement, it can take one or more measures[21] to end this mismanagement. Usually the Management Board and/or the Supervisory Board are held responsible for misconduct. These measures may include:
    - suspending or annulling a resolution of the managing directors, supervisory directors, the general meeting or any other (constitutional) body of the legal person/company;
    - suspending or dismissing one or more managing or supervisory directors;
    - appointing temporarily one or more managing or supervisory directors;

[20] Formal requirement regarding a Dutch BV/NV is a minimum of 10% of the shareholders in a BV or NV or holders of shares or depository receipts with a nominal value of at least EUR 225,000. There are other formal requirements in the case of an association and a co-operative.
[21] Pursuant to Section 2:356 DCC.

- permitting the temporary derogation from certain provisions in the articles of association as specified by the EC;
- transferring temporarily shares to a nominee;
- liquidating the company (last resort).

Both active companies and companies that have ceased trading can be the subject of an investigation. If mismanagement is established in a ´going concern´, the responsible parties – usually managing and supervisory directors – are dismissed. Any judgment the EC makes regarding mismanagement will have a major authority in (separate) proceedings regarding the (director´s) liability of responsible parties.

The EC can, at the request of those who applied for the inquiry, also order immediate relief measures. These are temporary in nature, such as suspending and appointing managing or supervisory directors and transferring shares temporarily.

Statutory Dispute Resolution Procedure (geschillenregeling)[22]

In the event of a court dispute between shareholders, a shareholder can expel another shareholder that prejudices the company's interests, buy out an aggrieved shareholder, or opt to have the dispute settled by the EC.

The EC provides a fast and efficient procedure for all parties involved. Judgments can be declared immediately enforceable, so it is not necessary to wait until a judgment becomes irrevocable to, for example, transfer the shares. Moreover, the EC can also determine the share price itself so it does not need to appoint experts to determine the price. This prevents a costly factor when it comes to the statutory dispute resolution procedure.

Liquidation of a Dutch legal entity

Dutch corporate law allows for two procedures to liquidate and windup a Dutch legal entity: the standard procedure and the fast-track procedure in the form of an 'accelerated' liquidation. The procedures regarding winding-up and liquidation contain strictly binding provisions. Any derogation from, say, a company´s articles of association is only permissible when expressly granted by law. Note that the bankruptcy of a legal entity is governed by a separate special procedure laid down in the Bankruptcy Act (*Faillissementswet*).

[22] 'SDRP'.

The procedure and the liquidator

The winding-up of a legal entity is usually a prerequisite for liquidation. A legal entity can be wound up by, for example, a resolution of the General Meeting of Shareholders. As previously mentioned, there are essentially two ways of winding-up a legal entity. Under the fast-track system, the liquidation precedes the winding-up of the legal entity.

Dutch law contains requirements concerning the liquidator. If the articles of association do not provide for a liquidator, this task is automatically appointed to the directors. A liquidator has the same rights, duties and liabilities as a director, unless this conflicts with the performance of his duties as a liquidator.

The fast-track procedure

The fast-track procedure only applies to legal entities that do not have any assets to liquidate at the time of its winding-up. In that case, the legal entity ceases to exist as soon as the General Meeting of Shareholder has rendered the decision to wind up the company. The liquidator (normally the Management Board) then files notice of the winding-up with the Trade Register of the appropriate Chamber of Commerce. Accordingly, the fast-track procedure is based on the assumption that no liquidation is necessary. This can be achieved if the Management Board liquidates all remaining assets prior to the winding-up of the legal entity, i.e. settling outstanding debts and transferring any surplus to those entitled.

Note that this might have fiscal consequences. If the fast-track procedure can be followed, liquidation upon winding-up is not required. Currently, the obligations to adopt and publish the liquidation accounts and distribution plans only apply to the standard winding up procedure (as explained below). However, a legislative proposal is pending to also apply these obligations to the fast-track winding up procedure. The books, records and other data have to be kept for seven years (see below under 'The Standard Procedure'), unless otherwise provided for in the articles of association.

The standard procedure

If the fast-track procedure is not available and when it is unnecessary to file for bankruptcy, the standard procedure has to be followed. If the legal entity is wound up due to a resolution passed by the General Meeting of Shareholder but liquidation is still necessary, the legal entity continues to exist only to the extent that its existence is required for liquidation. If the legal entity issues documents and announcements, it must add the words '*in liquidatie*' (in liquidation) to its name. Obligations relating to the legal entity's accounts remain applicable. In other words, the annual accounts must still be adopted and published.

The liquidator prepares liquidation accounts containing the amount and composition of the surplus. If there are two or more persons entitled to the surplus, the liquidator prepares a plan of distribution, stating the grounds for the apportionment. The liquidator files the accounts rendered (as well as the plan for distribution if applicable) with the Trade Register and at the place where the legal entity has its office to enable public inspection. Public inspection must be enabled within two months, and the place and duration of the public display must be announced in a newspaper.

Creditors and other entitled people can appeal against the accounts (and distribution plan) by going to the District Court (*rechtbank*) within two months of publication. The liquidator must publish such appeals, as well as the decisions on such appeals, in the same way the liquidation accounts (and distribution plan) were published. The liquidator may, where financially justified, distribute the legal entity's assets to those entitled in advance. However, this is not possible during the appeal period without court authorisation.

The liquidation ends when the liquidator is not aware of any further existing assets of the legal entity. Upon completion of liquidation, the legal entity ceases to exist and a notice is filed with the Chamber of Commerce. The end of the liquidation is somewhat relative, however: if, after the legal entity has ceased to exist, a further creditor or party entitled to the surplus comes forward or the existence of an asset is ascertained, the court may, on the application of any interested party, reopen the liquidation and, if necessary, appoint a liquidator. Thus, the legal entity could be revived solely for the purpose of reopened liquidation.

Note that, in this case, the liquidator may demand repayment from the former shareholders or other entitles individuals of whatever amount they received in excess of the amount to which they would have been entitled under the liquidation, had all parties entitled to the surplus been known at that time. During the period in which the legal entity ceased to exist, the prescription period for action by or against the legal entity is prolonged for six months.

Once the legal entity has been wound up, its books, records and other data are retained with a depositary for seven years from the date the legal entity ceased to exist, unless otherwise provided for in the articles of association. The depositary is the person designated by the articles of association. If there is no depositary and the liquidator is not able or willing to keep these documents, a depositary is appointed by the District Court located in the district where the legal entity had its seat. If possible, the depositary is chosen from among the persons involved with the legal entity.

The selected depositary cannot appeal against the court's order. The depositary must give his name and address to the registries at which the wound up legal entity was registered within eight days of the custody obligation taking effect. The court may, upon application, authorise the inspection of the books, records and other data by any person proving a reasonable interest in such inspection. This includes former members or shareholders of the legal entity, holders of depositary receipts issued for its shares or assignees of such persons.

Act on the Confirmation of Private Plans (Wet homologatie onderhands akkoord)

On the January 1st 2021, the Act on the Confirmation of Private Plans, known in Dutch as the Wet Homologatie Onderhands Akkoord (hereafter: WHOA), entered in to force

Under the WHOA, a company can offer its creditors to pay a part of their claims and request the court to ratify the arrangement. If a company is still (partly) viable and the restructuring plan is ratified, the court can declare the arrangement binding to all creditors of the company against discharge in full, even to the ones who refuse to cooperate. Creditors may benefit from this procedure, since they have a better chance of receiving a part of their claim than in the event of bankruptcy.

The goal of the WHOA is to prevent bankruptcies of successful yet almost insolvent business entities. The WHOA enables businesses that are in financial distress, but nevertheless can survive after a debt restructuring, to offer a reorganization scheme to its creditors and shareholders in order to avoid an impending bankruptcy. It is comparable to a US Chapter 11 or British Scheme of arrangement procedure. Not only the debtor, but also creditors, shareholders and works councils can take the initiative to start a WHOA procedure.

Private Mergers and Acquisitions

Acquisition structures

Private companies are typically acquired through the acquisition of share capital, the acquisition of all or part of the assets of the target company, or via a legal merger.

Share transactions

Registered shares in private companies are transferred via a notarial deed of transfer, executed by both the seller and purchaser in the presence of a Dutch civil law notary. The notary has a duty to verify the seller's ownership and title to the shares. In a share purchase, the target company retains its assets, liabilities, and obligations. A due diligence investigation (as described below) is conducted to assess these factors. Generally, a change in ownership does not affect the target company's operations, and employees remain employed by the target company.

Asset transactions

For purchasers concerned with potential claims, liabilities, or obligations of the target company, an asset transaction may be the preferred structure. This allows the purchaser to limit its risk by acquiring only selected assets and liabilities. Except for registered property and shares, a notarial deed is not required for the transfer of assets. All assets must be transferred in compliance with applicable transfer requirements. For example, tangible assets can be transferred through delivery of possession. The transfer of contracts or debts requires a tripartite agreement involving the seller, purchaser, and the relevant contract party, or notification to that party. This process can be time-consuming. If an asset acquisition qualifies as a "transfer of undertaking" under Dutch law (Sections 7:662 et seq. of the Dutch Civil Code), the employees of the seller's business will automatically transfer to the buyer on their current terms and conditions of employment, subject to certain exceptions (e.g. pensions).

Legal mergers

A legal merger is a transaction in which one legal entity acquires all the assets and liabilities of another through universal transfer of title. Typically, shareholders of the 'disappearing' entity receive shares in the acquiring entity.

The merging companies are required to publish a merger proposal. Creditors have one month from the publication date to file objections to the merger and may request adequate security for their claims.

Mergers can take various forms, including mergers between sister companies, mergers with parent companies, and cross-border mergers. Another option is the establishment of a new legal entity by the merging companies. A legal merger is formalized through a notarial deed.

M&A transaction process, legal documents and conditions

Depending on the type of transaction, either share or asset acquisitions typically involve several legal documents, including:

- Non-Disclosure Agreement (NDA) or confidentiality letter
- Letter of Intent (LOI) or term sheet
- Purchase agreement
- Disclosure letter
- Notarial Deed of Transfer (in share transactions)

Non-disclosure agreement or confidentiality letter

NDAs and confidentiality letters prevent the disclosure of confidential information exchanged during the transaction process and negotiations. These documents often contain penalty clauses, stipulating that the breaching party forfeits penalties in the event of unauthorized disclosure.

Letter of intent or term sheet

Letters of intent and term sheets are generally executed after the parties are introduced and an initial offer is made, marking the early stages of negotiations. They typically address matters such as exclusivity, deal structure, the initial purchase price, due diligence, conditions precedent, timeline, confidentiality, costs, and governing law and jurisdiction.

Certain clauses, such as confidentiality, exclusivity, and governing law, may be binding, while others, such as the initial purchase price, may be non-binding.

Conditions precedent

The obligation to complete the transaction is typically contingent on the fulfillment of certain conditions precedent, which must be satisfied before the deal is finalized. Examples of such conditions include:

- Obtaining corporate approvals (e.g. supervisory board approvals)
- Obtaining advice from the works council
- Satisfactory results from the due diligence review

- Financing arrangements
- Merger clearance (if applicable)
- No material adverse changes or breaches of warranties between signing and closing

For transactions involving companies in regulated sectors such as energy, healthcare, telecommunications, or finance, additional regulatory clearances may be required. These should be expressly included as conditions precedent.

Due diligence

In a share transaction, the purchaser typically conducts a review of the target company through a digital data room. The legal review generally covers areas such as commercial contracts, compliance with employment and pension laws, litigation, and financing. Depending on the scope, it may also include environmental, tax, real estate, anti-bribery, governance, and financial matters. Identified issues help the purchaser decide whether to proceed with the transaction or renegotiate terms (such as the purchase price). The review may also lead the purchaser to request warranties and indemnities or require the seller to address identified issues before closing. The seller can disclose actual matters in a disclosure letter, which would otherwise be a breach of warranty.

Warranties and indemnities

A key purpose of due diligence is to identify issues the purchaser wants to include in the purchase agreement. Warranties typically cover areas such as the seller's capacity to transfer shares or assets, business and contracts, assets, employment, intellectual property, tax, privacy, litigation, and financial statements. For known risks, such as environmental or tax liabilities, the purchaser may seek specific indemnities.

Limitations of liability

In the purchase agreement, the seller often seeks to limit liability through time limitations and caps on the amounts payable in case of breaches of warranties. A longer limitation period typically applies to fundamental warranties, such as the existence of shares or the seller's capacity to transfer them. Other limitations may include thresholds for minimum claims, baskets, and caps. The inclusion of such limitations is negotiable. Limitations of liability generally do not apply to indemnities.

Restrictive covenants

A purchase agreement may include post-closing obligations for the seller. Typically, the purchaser requires the seller to refrain from competing with the target company’s business. Under Dutch law, non-compete clauses must be limited in both geographical scope and duration, with a three-year period being deemed reasonable. Additionally, the

agreement often prohibits the seller from soliciting or enticing employees, customers, or other business relationships of the target company. Breaching restrictive covenants may result in penalties.

Termination

Termination may be possible if conditions precedent are not met or if specific obligations are not fulfilled before closing. Due to the practical challenges of reversing a transaction, parties often exclude the possibility of partial termination after a breach. Consequently, parties typically waive the right to seek alterations to the purchase agreement.

Shareholders' agreement

In private equity transactions, it is common for the seller to retain part of the shares and remain actively involved for a specified period after the transaction. A shareholders' agreement governs the relationship between shareholders and often includes restrictions on share transfers, pre-emptive rights for current shareholders to purchase shares, and provisions regarding company sales. The agreement may address the purchase price for departing shareholders, distinguishing between "good" and "bad" leavers. A good leaver leaves the company under positive or neutral circumstances, such as retirement or amicable termination. A bad leaver exits under negative circumstances, such as fraud, bankruptcy, or termination for urgent cause.

Good leavers typically receive the fair market value of their shares, while bad leavers receive a reduced percentage of that value.

Employment law

Applicable law

In cases where parties to an employment contract did not agree upon a choice of law clause in which foreign law has been declared applicable, Dutch law will be applicable to the employment contract depending on whether:

- the employee habitually carries out his or her work from the Netherlands; or if this cannot be determined,
- the employer is located in the Netherlands;
- the employment contract is most closely connected to the Netherlands.

Both employer and employee are free to jointly agree upon application of foreign law. But which law applies if a Dutch employer enters into an employment contract with a foreign employee who carries out his duties in a third country? Or if a foreign employer signs an employment contract with a Dutch employee who carries out his or her duties in the Netherlands?

Nevertheless, it is not always possible to fully exclude all Dutch labour legislation when choosing foreign law to be applicable to an employment contract. In cases where Dutch law would have been applicable according to the factors listed in the above, the employee is still protected by the binding provisions in Dutch law aiming to protect employees.

An example of this is section 7:671 of the Dutch Civil Code (DCC). This section seeks to protect (foreign) employees in the Netherlands against (unfair) dismissal by inter alia prohibiting in certain events the termination of an employment contract without prior consent from the governmental body Employee Insurance Agency (UWV), the district court or the employee himself. In such cases that parties included the law of another country as being applicable to their employment contract, section 7:671 DCC is applicable: the employer must therefore apply for the necessary consent prior to the termination of the employment contract.

The Employment contract

Definition

The employment contract is defined in Section 7:610 DCC as: *The employment contract is the agreement whereby one party, the employee, undertakes to serve the other party, the employer, by carrying out duties in a certain period for pay.*

Not all duties performed for payment are covered by employment contract law. For instance, in case of a services agreement, the contractor performs work and receives a payment without the relationship being qualified as an employment contract.

The contractor who puts in a new kitchen carries out work under a building contract. The accountant who audits books carries out work under a contract for professional services.

The employment contract is differentiated by the relationship of authority between employer and employee. A relationship of authority exists between employer and employee if the employer is entitled unilaterally to give instructions to the employee. Whether there is a relationship of authority depends on the actual circumstances of the case. For example, the degree of economic dependence of the employee, the obligation to work at set times, not having the possibility to be replaced by a third party, the amount of the payment is not decided by the worker, the degree of responsibility of the employee, the requirement to use company belongings, the work performed concerns the core business of the company, the number of regulations drawn up (in the contract) and the degree of supervision of the employer over the employee.

The elements that determine whether an employment contract exists can be summarised as follows:

- labour;
- pay;
- relationship of authority

Even if parties thought they were entering into another agreement than an employment contract, their agreement could still be qualified as an employment contract based on what parties agreed to and the factual circumstances. This could have both employment law related as well as tax related consequences. With respect to the latter, the Tax and Custom Administration increased its re-enforcement of 'false self-employment' as per 1 January 2025.

In order to assess whether parties are in an employment relationship, it first has to be determined what parties agreed upon in the contract in terms of rights and obligations (the explanation phase). Subsequently it must be assessed if these rights and obligations meet the definition of an employment contract (the qualification phase), whereby it is assessed if the abovementioned elements are present.

The following 9 aspects could help in determining whether there is an employment contract:

- The nature and duration of the work performed.
- The manner in which the work and working hours are determined.
- The level of integration of the worker and the work into the organization and business operations of the client (e.g. core business of the client).
- Whether there is an obligation to personally perform the work.
- How the compensation paid to the worker is determined (e.g. negotiated) and the manner in which it is paid.
- The level of compensation paid to the worker.
- Whether the worker bears any commercial risk in performing the work.
- Whether the worker externally behaves, or can behave, like an entrepreneur (e.g. multiple clients).

Whether or not parties intended to enter into an employment contract is not relevant for the qualification of an employment contract. The actual performance of the agreement by the parties is decisive.

Legal presumption of employment contract and working hours

An employment contract is not required to be entered into in writing; verbal agreements are also valid. However, the risk of verbal agreements is that the employee and the employer have different ideas about the terms of the employment contract. This may occur if, for example, the scope of the employment contract is ambiguous. In such a case, Sections 7:610a and 7:610b DCC could help, which state the legal presumption of the existence of the employment contract and its extent. If during a period of three consecutive months the employee has carried out work for another party for payment either weekly or in average at least 20 weeks per month, it is presumed that an employment contract has been concluded between the employer and the employee.

Sometimes it is unclear what the number of working hours is. For instance, if the employee regularly works more than the number of working hours mentioned in the employment contract, then the payment that he or she is entitled to is unclear as well. To determine the scope of the employment relationship, Section 7:610b DCC provides a presumption according to which the number of working hours under the employment contract is presumed to be equal to the average in the three previous months.

These legal presumptions can be refuted by the employer by, for example, proving there is no relationship of authority between the employer and the employee and, therefore, no contract of employment or by arguing that the peak in working hours was just temporary. However, it is better to avoid such a discussion and to conclude a contract with the individual (either a contract for services or an employment contract) in which

the extent of the contract is defined and to amend the number of working hours if the employee regularly works more hours than included in the employment contract.

Types of employment contracts

Fixed-term employment contract

A fixed-term employment contract states the end of the employment contract. The fixed term must be expressly agreed between the parties. If not, an employment contract for an indefinite period is created. Parties may agree that the contract is concluded for a specific period (end date is fixed), for the duration of a specific project or to replace another employee for as long as this person is ill (fixed period which can be determined objectively).

A dismissal permit from the UWV or a dissolution of the employment contract by the district court (as explained in the section 'Termination of an employment contract'), which is in principle needed in case of termination of employment contracts for an indefinite period of time, is not necessary in order to terminate a fixed-term employment contract. This can simply be achieved by not extending the fixed-term employment contract.

The correct application of fixed-term employment contracts can be an excellent instrument for the flexibilization of labour potential within the company. Besides, both parties have the opportunity to get familiar with each other's qualities and personalities before entering into an employment contract for an indefinite period. That is why the fixed-term employment contract can be legally used as an extensive 'trial period'.

At the end of the fixed-term, the employment contract ends by operation of law. However, if the employee continues to work after the termination date the employment contract will continue tacitly under the same conditions and for the same duration, up to a period of one year.

Employers cannot provide their workers with an unlimited succession of fixed-term contracts. Over time, employees are entitled to security and employment protection. Therefore, Dutch law states that a maximum number of 3 fixed-term contracts may be entered into. The fourth employment contract parties enter into will be regarded entered into for an indefinite period.

Besides the maximum number of contracts, there is a maximum total duration of the contracts. If the total duration of 36 months has been exceeded, the employment contract will be regarded as entered into for an indefinite period of time.

The maximum pause between fixed-term contract is 6 months. Should this maximum be exceeded, then the maximum sequence of 3 fixed-term contracts, during a maximum period of three years, starts again.

To prevent an employment contract for an indefinite period of time and to ensure that a fixed-term employment contract ends automatically, it is advisable to monitor end dates properly by recording them in your (computerised) calendar.

In this context it is also important to note that the employer is under the obligation to notify the employee in writing at least one month before the end date mentioned in the fixed-term contract (if it has a duration of at least six months), whether the contract will be renewed, and, if it will be continued, which employment conditions will apply. If the employer fails to do so, the employer is required to pay a compensation to the employee equal to one month' salary. In the same way, if the employer fails to notify the employee in time the employee is entitled to the salary proportional to the overdue period.

Please note: an employment contract is subject to a three-quarter mandatory law with respect to, amongst others, fixed-term employment contracts (7:668a DCC). This means that deviation from certain legislative rules is possible only under a collective labour agreement (CLA) or public law regulation. Therefore, it is advisable to consult the CLA if one exists.

Employment contract for an indefinite period of time

The main difference between a fixed-term employment contract and an employment contract for an indefinite period of time is that the latter does not end automatically. In addition, the employee enjoys more employment protection.

The employee may terminate the employment contract at any time. However, when the employer wishes to terminate an employment contract for an indefinite period, conditions apply. The employer is not free to terminate the employment contract unilaterally without a permit to give notice from the UWV or without going through the district court. This topic is covered in more detail in paragraph (Termination of an employment contract).

Characteristics of an employment contract

Statutory minimum wage and holiday allowance

An important obligation of the employer is paying wages to the employee. The obligation to pay at least the minimum wage is laid down in the Minimum Wage and Minimum

Holiday Allowance Act. The minimum wage level is increased every six months. The legal minimum gross monthly wage was €2,437.07 on 1 January 2025.

The employee is in principle entitled to an annual holiday allowance equal to at least 8% of the gross annual salary. The holiday allowance is usually paid in the month May or June of each calendar year.

Holiday leave

Under Dutch law an employee is entitled to annual holiday leave amounting to at least four times the number of weekly working days. Consequently, an employee who works five days a week has a right to 20 vacation days.

This number of days is the employee's minimum entitlement to annual leave, but the employer may offer the employee additional vacation days. These extra days are known officially as excess of statutory vacation days, but we will refer to them as 'additional days'.

The distinction between additional days and the minimum number of vacation days is important in deciding when those days has to be taken. Vacation days cannot be carried forward indefinitely – at some point, the employee will lose his or her vacation days if they are not taken. In principle, the minimum number of vacation days lapse six months after the calendar year in which they were accrued. However, additional days have a longer expiry date. These lapse within five years after the end of the calendar year in which they were accrued.

> Example: the minimum number of vacation days granted on 1 January 2023 should be taken by the employee no later than 30 June 2023. However, the employee has up until 31 December 2028 to take additional days granted on 1 January 2023.

The employee retains the right to be paid while on holiday leave. Paying the employee in lieu of the minimum number of vacation days is only possible at the end of employment. However, additional days may be paid out during the course of the employment contract if agreed upon.

The employer must allow the employee to take his or her vacation days. The employer fixes the dates in accordance with the wishes of the employee. The employer may turn down the employee's request *solely* for important business reasons. If this is the case, the employee must be allowed to take two consecutive or separate weeks off shortly afterwards.

Please note: if the employee does not receive a reply to his or her holiday request within two weeks, the law considers the holiday to be agreed in accordance with the employee's wishes.

Trial period

Dutch law (Section 7:652 DCC) allows both parties to agree to a trial period. During the trial period, both the employer and employee can terminate the employment contract unilaterally without giving notice. Likewise, prohibition of dismissal does not apply during the trial period. The legal requirements for a legal trial period are:

1. the fixed-term employment contract must be entered into for a period of more than six months or if the contract is entered into for an indefinite period of time;
2. the trial period must be agreed in writing;
3. the trial period for both parties must be of the same duration;
4. the duration of the trial period is no more than one or two months.

The trial period is agreed in writing when this is stipulated in the employment contract signed by both parties or included in the applicable collective labour agreement. If there is a trial period clause in the collective labour agreement, it is highly recommended to hand over a copy of the collective labour agreement to the employee before the trial period begins. Some (district) judges consider the employer has not complied with the requirement to put the trial period in writing if no collective labour agreement is handed over. This means that no valid trial period clause has been agreed on.

The maximum duration of the trial period depends on whether the employment contract entered into concerns less or more than two years. If the contract regards less than two years and at least six months, the maximum trial period is one month; if it regards more than two years or if it is included in an employment contract for an indefinite period of time, the maximum trial period is two months. A longer trial period can only be agreed upon in a collective labour agreement.

Please note: a trial period longer than the legal maximum leads to the trial period being null and void. Invalid trial periods cannot be legally shortened and converted into a valid trial period. Furthermore, it is not possible to extend a trial period because the employee was ill. An invalid trial period means no trial period.

Non-competition clause (including relationship clause)

To protect the expertise and goodwill of the company, the employer may agree to a non-competition clause with the employee. The non-competition clause can be agreed either before employment commences or during the period of employment. The non-

competition clause prohibits the employee from working for a competitor of his or her employer or from working as a self-employed person in the same market as his or her employer for a certain period. Under Dutch law a relationship clause, pursuant to which an employee is prohibited to work for a relation of the (former) employer, is also considered to constitute a non-competition clause. The legal requirements for a legal non-competition clause (Section 7:653 DCC) are:

1. The employee must have reached the age of majority.
2. The competition clause must be agreed in writing.

Please note: a non-competition clause is generally not valid in a fixed-term employment contract, unless the employer is able to justify its necessity, in writing, due to important operation or commercial reasons. Such written justification is not required in case of an employment contract for an indefinite period of time.

The requirement for agreeing to a non-competition clause in writing is stricter than for a trial period. A non-competition clause laid down in a collective labour agreement or operating regulations is not a legally valid agreement and is, therefore, invalid. To avoid any misunderstanding when renewing the employment contract, the non-competition clause should be included in the extended employment contract and be signed by the employee.

Even if a valid non-competition clause has been agreed upon, the employee has the possibility to (partly) limit its scope by initiating a court procedure. The court will then weight the interests of the employer to hold the employee to the non-competition clause against the interest of the employee to work for a competitor and/or relation of the employer. The non-competition clause could then be limited by the court in terms of geographic scope or duration. Generally it is considered to be unreasonable if a non-competition clause has a longer duration than one year.

It is recommended to enter again into a non-competition clause if the employee is promoted or demoted. A career move can result in a more stringent non-competition clause, meaning the old non-competition clause may lose its validity.

The formulation of the non-competition clause is also crucial. Case law shows that the employer is held responsible for correctly drawing up the clause. Even if the employer's intention is plain, the courts will generally base their decisions on the literal text. This has resulted in a few cases in which a non-competition clause was considered invalid because that little word "not" was missed. Therefore, having the non-competition clause drawn up by an expert is highly recommended.

Ancillary activities clause

With such a clause, the employee is prohibited to perform ancillary activities for him- or herself or a third party, unless the employer has granted permission to do so. The employer may only derive rights from such clause if there is an objective justification for holding the employee to this obligation. To determine whether this is the case it should be assessed if the interests of the employer to hold the employee to this obligation are such that the interests of the employee to perform secondary employment should give way. This justification does not have to be included in the employment contract but needs to be present if the employer invokes such a clause.

Collective labour agreements

In the Netherlands, collective labour agreements (CLAs) are common. A CLA is arranged by one or more employers (or an organisation that looks after the interests of employers) and by one or more trade unions. The employees' and employers' representatives negotiate the working conditions that apply within a particular industry (CLA industry) or a specific company (CLA company). Collective labour agreements can deviate from certain legal provisions (for example, a longer notice period) or supplement laws and regulations (for example, a collective agreement pay rise) if all parties agree.

If the employer is a member of the employers' organisation that has concluded the CLA, the employer must comply with the provisions of the CLA. Note that CLA provisions apply to *all* employees, whether or not members of the trade union that negotiated the collective labour agreement. Employers may also be subject to a CLA if the Minister of Social Affairs and Employment declared the relevant CLA general binding.

In conclusion: to comply with Dutch labour law, it is important to consider not only what the law states but also if a collective labour agreement applies and, if so, what it includes.

Incapacity for work (sickness)

When an employee becomes sick, there are three significant consequences:

1. Reintegration obligations arise for both the employer and the employee.
2. The employer is obliged to continue paying the employee during the first two years of incapacity (see 'salary during incapacity' below).
3. In principle the prohibition of dismissal during the first two years applies.

Reintegration obligations

Both the employer and the employee should make every effort to re-integrate the employee into working life as soon as possible. If the employer believes the employee's

illness is going to last more than a few days, he must engage a company doctor or a health and safety expert (Article 25 of the Work and Income (Capacity for Work) Act or WIA).

The employer has to keep a record of incapacity/reintegration. Together with the employee, every effort must be made to ensure the employee can return to full employment. What it takes to get the employee back to work and how the employee is re-integrated is laid out in an action plan. This action plan should be drawn up and evaluated by both the employer and the employee no later than the eighth week of incapacity.

Reintegration uses a two-track, three-platform system. These platforms have to be approached in sequence.

Platform 1a: The employer must allow the employee – if possible – to carry out his/her own duties, possibly with adjustments to the work or the duration of the work.

Platform 1b: If the employee cannot perform his/her usual duties, the employer must offer alternative, suitable work.

Together these two platforms sit on the first track of the reintegration process. Only when it appears that no suitable work can be offered within the employer's business the reintegration process can be run on the second track:

Platform 2: The employer must try to find suitable employment for the employee with another company.

Even if work is carried out for another company, the employer is obliged to continue paying the employee's salary during the full two years of incapacity for work. The employer is also required to act constructively and help the employee return to work. However, if the employee does not accept an offer of suitable work, the employer may take measures such as imposing a wage penalty.

The employee must also commit to reintegration by accepting any reasonable proposals made by the employer and by co-operating with drawing up an action plan and with measures promoting recovery or the resumption of work. Additionally, the employee is expected to carry out suitable duties as far as the (partial) incapacity allows. In other words, the employee is also expected to adopt a positive attitude towards these duties.

Salary during incapacity

An employee is entitled to receive wage payment when incapacitated for work (7:629(1) DCC), in principle during the first two years of incapacity:

First year of incapacity: the employee is entitled to at least 70% of the contracted wage, and the payment should not fall below the statutory minimum wage. A maximum limit also applies during this period, which is 70% of the maximum daily wage.

On 1 January 2025, the maximum daily wage premium was €290.67, equivalent to a monthly gross salary of €6,322.07. On this basis, the employer is not obliged to pay an incapacitated employee more than €4,425.45 gross a month. Nevertheless, most employers agree to pay 70% (or sometimes even 100%) of the usual salary. If an employer wishes to apply the legal maximum, it is convenient to put that in writing to avoid any misunderstandings.

Second year of incapacity: the employer must continue to pay at least 70% of the usual wage (or 70% of the maximum daily wage), but the lower limit of the minimum wage no longer applies. As a result, in the second year the worker may be paid less than the legal minimum.

The employer does not necessarily need to pay salary during incapacity for work from day one. The law permits employers to operate what is known as waiting days (Section 7:629(9) DCC). Waiting days are the first two days of sickness, when no wage is paid to the employee. However, waiting days should only be applied if the employer and the employee have agreed to this before the employee becomes incapacitated for work. In addition, some collective labour agreements state that the employee loses one vacation day with the first notification of sickness. Furthermore, it is common to agree on a higher percentage of payment during incapacity than the legal minimum (i.e. 100% during the first year and 70% during the second year).

In the following events the employee is not entitled to payment during incapacity for work:

- The employee has intentionally caused his illness.
- The incapacity is the result of an impediment which the employee does not disclose during the medical examination, resulting in the regulatory assessment not being correctly carried out.
- As long as the employee hampers or slows down his or her own recovery.
- As long as the employee does not carry out appropriate work offered.

- As long as the employee refuses to co-operate in devising an action plan.
- The employee is too late with requesting a Work and Income (Capacity for Work) Act (WIA) benefit, which can in principle be requested after two years of incapacity for work, for reasons which cannot be blamed on the employer.

Prohibition of dismissal

A prohibition of dismissal applies during the first two years of illness, meaning the employer cannot dismiss an employee while he or she is off sick. However, if the employee calls in sick the day after the employer has submitted an application for a dismissal permit from the UWV, the prohibition does not apply. This prevents the employee taking refuge in sickness once dismissal seems likely. Moreover, an employee's illness needs not automatically prevent the subdistrict court from dissolving the employment contract as long as the reason for the requested dissolution has nothing to do with the illness or the employee calls in sick after the court received the employer's request to dissolve the employment contract.

Employee participation

Works Council

Employee consultation is a constitutional right in the Netherlands and as a result works councils are common in the Netherlands. Any organisation with at least 50 employees is obligated to set up a works council (*ondernemingsraad* or *OR*). The legal duties and powers of works councils are laid down in the Works Councils Act (WOR).

A works council is set up to ensure employee participation in the business by improving and systematising communication channels. Employees are involved in certain business decisions, which means that employees can influence company policy and working conditions. This enables better decision-making processes because management can see and understand what is happening in the workplace through the works council. It is important to understand that a works council is not a trade union, which serves only the interest of its members. The works council serves the interest of both the employees and the company.

Composition of the works council

The works council is formed by workers, who are elected by the workforce. The size of the OR is based on the number of people working in the organisation. For instance, in organisations with fewer than 50 employees, a works council has three members. In organisations with more than 50 but fewer than 100 employees, the works council has five members. If there are between 100 and 200 employees, seven members take place in the works council. The maximum number of members is 25. To be eligible for

membership, generally the employee must have worked for the company for at least a year. To be eligible to vote, generally the employee must have worked for the company for at least six months.

Right of advice of the works council

Management cannot make a final decision on a number of topics before it consults the works council and before it obtains the advice of the works council. The company is required to ask the advice of the works council on major decisions relating to financial-economic and business-organisational issues, such as closing or relocating a business establishment or a reorganisation. An exhaustive list of topics is governed by Article 25 of the Works Councils Act (WOR).

Management must request the advice of the works council, in writing, at a time when it is still able to affect the decision significantly. Management must explain the reasons for the intended decision, the expected consequences of the intended decision for the employees, and the proposed measures for dealing with these consequences. Exclusively after the works council has given its advice management is allowed to make its decision.

If the decision by management is not in accordance with the OR's advice, management has to explain the reasons for this and postpone implementing its decision until one month after the day on which the works council was notified of the decision. This gives the works council the opportunity to lodge an appeal against the decision by going to the Enterprise Section of the Amsterdam Court of Appeal and to argue that the decision is unreasonable. The appeal should be submitted within a month of the works council being notified of the management's decision. In other words, the appeal period is the same as the period that management has to wait before implementing its decision.

Right of consent of the works council

Management cannot make final decisions on certain topics without the endorsement of the works council. This relates to certain decisions on the company’s social policy. Therefore, management needs the works council's endorsement for any decision it takes on, for example, adopting, amending or revoking rules and regulations relating to pensions, working hours, job evaluation system, working conditions and the protection of employees' personal data. An exhaustive list of topics is governed by section 27 of the Works Councils Act (WOR).

Management must request the consent of the works council in writing and explain the reasons for the intended decision and the expected consequences of this decision for the employees. The intended decision must be discussed at least once in a consultation meeting and the works council must respond to the request for consent in writing,

including an explanation. Management should then inform the works council as quickly as possible, in writing, of the decision it has taken and of the date it will carry out that decision.

If management does not obtain consent from the works council, it can go to the district court and ask permission to take the decision. A decision taken without the consent of the works council or without the permission of a subdistrict court is void. The works council can appeal in writing against the validity of the decision, but this must be done quickly (that is, within one month of the management informing the works council of the decision to be taken). The works council can also start legal proceedings requesting the court to prohibit the entrepreneur from executing the decision that was taken without consent of the works council.

Protection of works council members

Management should ensure that works council members are not disadvantaged by their works council membership. The same goes for former works council members and candidates for the works council. Also, management may not terminate the employment contract of an employee who is a member of the works council if the desired termination is related to the works council membership. This also applies to employees who have been placed on the works council candidate list or were part of the works council in the previous two years.

Termination of an employment contract

Methods of termination

An employment contract may end to a number of ways:
1. termination by operation of law;
2. termination by mutual consent;
3. termination based on a reasonable ground by either giving notice after permission from the UWV or through dissolution by the district court;
4. instant dismissal for an urgent cause.

Notice periods

When terminating an employment contract, the employer and the employee are required to take the applicable notice period into account.

The statutory notice period for the employee is one month. The notice period to be observed by the employer depends on the duration of employment:
- if the employment has lasted less than 5 years: 1 month;
- if the employment has lasted 5 years or more, but less than 10 years: 2 months;

- if the employment has lasted 10 years or more, but less than 15 years: 3 months;
- if the employment has lasted 15 years of more: 4 months.

The employer's notice period may be extended in writing and the employee's notice period may be extended or shortened in writing. The employee's notice period may be extended up to a maximum of 6 months and the employer's notice period may not be shorter than twice the employee's notice period.

Termination by operation of law

A fixed-term employment contract ends by operation of law (automatically) on the end date or on the occasion which determines the end of the employment contract. For instance, the completion of a project. To ensure the employment contract ends by operation of law, the end date must be objectively determinable. That is, the end of the employment contract must be concluded independent of the will of the employer or employee. By operation of law means that prior notice is not necessary. A dismissal permit from the UWV or a request to the district court to dissolve the employment contract is not necessary either, since neither the prohibition of dismissal nor the notice period applies.

An employment contract could also end automatically when the contract's resolutive condition (*ontbindende voorwaarde*), if such a condition exists, is fulfilled. Including a resolutive condition in an employment contract is strictly regulated. After all, it could be used to circumvent statutory safeguards against unfair dismissal. Case law states that a resolutive condition may be allowed under the following conditions only:

1. The resolutive condition must be objectively determinable and, therefore, not dependent on the will or subjective assessment of the employer or the employee.
2. The resolutive condition may not conflict with the framework of the law on dismissal.
3. The resolutive condition depends on an uncertain event.

Termination with mutual consent

The employer and the employee may decide, with mutual consent, to terminate the employment contract, by entering into a termination agreement, which is a settlement agreement. To help protect any claim the employee may make for social security benefits, the agreement must be set out in writing to determine the legal relationship between the two parties. In that regard the termination agreement must include at least the following:

1. the employer has taken the initiative to terminate the contract;
2. the reason for the termination;

3. there is no urgent cause (*dringende reden*) for termination of the employment contract nor is the employee to blame for the termination
4. the termination date which is calculated by applying the notice period.

Apart from that the employer and the employee can fully determine under what conditions they are to part company. In case of a written termination agreement, the employee does not have right to the statutory transition compensation (Section 7:673 DCC). The parties can therefore deviate from this amount in the agreement.

In drawing up the termination agreement, thought must be given to the pressure that an employer may put on the employee to accept the offer of termination. This is particularly important if the employee accepts the termination offer reluctantly. Does the employee fully understand the consequences of termination? For example, immediate termination means the employee cannot claim unemployment benefits for at least one month. An employee often realises too late that he or she did not really want the employment to end. Therefore, the employer must always ensure the employee understands the consequences of termination and suggest consulting a legal employment expert.

Please note: after signing the termination agreement, the employee will have the right to cancel the agreement within 14 days after the date on which the agreement was concluded, without stating reasons, by means of a written statement addressed to the employer. The employer must draw the employee's attention to this possibility in the termination agreement. If the employer fails to do so, then the reflection period will be extended to three weeks.

Reasonable ground for dismissal and redeployment

The employee may terminate at any time an employment contract for an indefinite period or a fixed-term employment contract with an interim termination clause, as long as it complies with the notice period. However, the employer is in principle bound by the preventive dismissal test, except in case of instant dismissal for an urgent cause (as described). This means either requesting a dismissal permit from the UWV or asking the district court to dissolve the employment contract. If the employer terminates the contract without a dismissal permit or without going through court, the employee could request the district court to annul the termination. The employee will then remain employed and retains the right to be paid. Alternatively, the employee could request for a fair compensation.

If an employer wishes to unilaterally terminate an employment contract, the employer must have a reasonable ground for dismissal. Furthermore, the employer needs to take into account the so-called reassignment obligation. This means that the employer should

assess whether reassignment of the employee within a reasonable period, whether or not with the aid of training, to another suitable job is possible. If such is the case the employer is obliged to reassign the employee. If not, assuming that there is a reasonable ground for dismissal, the employment contract may be terminated at the initiative of the employer.

The reasonable grounds for dismissal are listed exhaustively. These grounds determine which route should be chosen for dismissal: termination of the employment contract via the UWV or dissolution by the district court.

The reasonable grounds are the following:

a. Redundancies as a result of discontinuation of the company's operations or the necessary cutting of jobs as a result of measures for efficient operations taken as a consequence of business economic circumstances.
b. Long-term employee illness or disability (longer than two years) due to which the employee is no longer able to perform the stipulated work.
c. The employee is regularly unable to perform the stipulated work as a result of illness or disability with unacceptable consequences for the business operations.
d. Unsuitability of the employee for performing the stipulated work (inadequate performance).
e. Imputable acts or omissions on the part of the employee.
f. Refusal by the employee to perform the stipulated work due to serious conscientious objections.
g. A disrupted employment relationship.
h. Circumstances other than those mentioned above of such a nature that the employer cannot reasonable be required to allow the employment to continue.
i. A termination based on a combination of grounds. Should a dissolution take place on this cumulation ground, the court may award the employee an extra compensation (in addition to the statutory transition fee) of a maximum of half of the statutory transition fee.

If an a or b ground is involved, a request to terminate the employment contract must be submitted to the UWV. In case of a c to i ground, the district court must be requested to dissolve the employment contract. The employee and employer can appeal the UWV's or district court's decision.

Termination via the UWV

In case of redundancy or long-term incapacity for work the UWV should be requested for permission to terminate the employment contract. However, the employment

contract does not end simply because the employer has been granted permission by the UWV. The employer must still terminate the employment contract (preferably in writing), paying due consideration to the notice period.

The employer may deduct the duration of the UWV procedure (following a complete request) from the applicable notice period, provided that at least one month notice period is taken into account.

Business economic reasons (redundancies)
Headcount reduction for business reasons (redundancies) is a reasonable ground for dismissal. In case of redundancies, employees are dismissed (made redundant) because their jobs no longer exist as a result of a reorganisation. This reasonable ground for dismissal can be distinguished into the following six sub-reasons:

- bad or worse financial situation;
- decrease in work;
- organizational or technological changes;
- business relocation;
- termination of business activities; and
- loss of wage costs subsidy.

An employer must comply with additional rules before terminating an employment contract. First, the employer must consult the works council. Article 25 of the Works Council Act requires the employer to ask the works council for advice on issues such as plans to downsize the company or make significant changes to the workforce. If there is no works council, this does not release the employer from the obligation to consult the employees, which is usually done through an employee representative.

The employer should also check whether a collective labour agreement (CLA) applies. Most CLAs have provisions stating the way in which trade unions must be consulted before the employer decides to implement a reorganisation.

Reorganisations that result in the loss of 20 or more jobs within a period of three months, within one UWV working area (*UWV werkgebied*) are subject to the Collective Redundancy (Notification) Act (WMCO). This means that the employer must consult the trade unions concerned about the proposed reorganisation as well as report the proposed reorganisation to the UWV. The employer must discuss with the trade unions not only the need for the reorganisation but also the consequences for employees. The aim of this consultation is to assess whether it is possible to prevent the collective dismissals, whether the number of dismissals can be reduced or whether the impact of

the dismissals can be softened by, amongst other things, reassigning the employees affected. In most cases, the trade unions, the works council and the employer will agree on a social plan, which describes the efforts the employer will make to re-deploy employees and the measures the employer will take to soften somewhat the (financial) consequences for affected employees.

During a reorganisation, the employer is in principle not free in determining which employees should be made redundant and which employees should be retained, in the event that the positions that will be made redundant are interchangeable with positions that will remain. In such case this is determined by using the reflection principle (*afspiegelingsbeginsel*). The reflection principle is a complex matter. Forced redundancies are now allocated to each exchangeable position across five age groups of the relevant employees: 15-24 years, 25-34 years, 35-44 years, 45-54 years and 55 years and older.

Distributing redundancies among the age categories retains more or less the relative age structure that existed before the reorganisation. In other words, each age group bears a proportional part of the redundancies. However, the last-in-first-out principle is applied within each age group. Since the redundancies affect the entire workforce for each exchangeable position, the company is left with a greater diversity of ages after the reorganisation. Naturally the principle of proportionality is not applied if the business is closing.

In order to terminate an employment contract based on business economic reasons, the employer must request the UWV for permission to give notice. To substantiate its request, the employer must provide the UWV with information. Permission to terminate is solely given if the substantiation is well founded, no other solutions are possible and not until certain flexible contacts (fixed-term contract and temporary employment contract) have been terminated. In addition to the presence of a reasonable ground, the employer should take the reassignment obligation into account.

Long-term employee illness

If an employee has been incapacitated for work due to long-term illness, for more than two years, this will constitute a reasonable ground for termination of the employment contract. In order to obtain permission to give notice from the UWV, it must be plausible that the employee will not recover within 26 weeks or has the possibility to be placed in an adapted job within that period. Moreover, in principle the reassignment obligation should be taken into account.

From 1 April 2020, employers can apply to the UWV for compensation of the transition fee they paid to their employees in the event of dismissal due to long-term incapacity

for work, using the Compensation of Severance Pay Scheme. This will accommodate employers and should reduce the number of dormant employment contracts. If an employer only dismisses the employee after dormant employment, the accrued transition compensation during the period of dormant employment will not be compensated. The scheme only applies to transitional compensation paid on or after 1 July 2015.

Dissolution by the district court

If the employer wishes to unilaterally terminate an employment contract on abovementioned reasonable grounds c to h, then it must submit an application to the district court to dissolve the employment contract. Besides the presence of a reasonable ground for dismissal the employer should take the reassignment obligation into account.

Frequent illness
If an employee is regularly incapable to perform the stipulated work due to illness or disability, then the employer can ask the court to dissolve the employment contract. However, the employer must show that the employee's frequent absence has unacceptable consequences for the business operations. Furthermore, the illness/incapacity may not be due to the employer taking insufficient care of the employee's working conditions.

Bad performance
This ground concerns the situation in which the employee does not meet the job requirements due to inability or incompetence. The employer must be able to demonstrate that it has done enough and offered the employee sufficient possibilities to improve his or her performance. The employee should be offered a proper performance improvent plan (PIP) which clearly describes what should be improved and in which manner. The employer needs to offer the employee assistance in order to meet the goals of the PIP, for instance training, mentoring and/or guidance. The time limit for improvements should be clear to the employee beforehand and should be sufficient to meet the goals. Periodic evaluations should be part of the PIP. Furthermore, the employee should be forewarned that the employment will be terminated if the employee fails to show the improvement needed. .

Imputable acts or omissions on the part of the employee
When applicable, it should be clear to the employee that his or her acts or omissions are not acceptable within the company. It is advisable to have a code of conduct showing what is considered unacceptable. It is important that such a code of conduct is being observed in practice. In most cases the employee should be warned one or more times that certain behaviour is unacceptable before filing a request for dissolution. In case of

this reasonable ground for dismissal, the employer does not have to take the reassignment obligation into account.

Serious conscientious objections
If an employee has an insurmountable objection to performing the stipulated work based on religious, generally accepted ethnic or political grounds, then the employee may ask the district court to dissolve the employment contract. The employer must then make it plausible that the work is not suitable to be performed in an adapted way.

Disrupted employment relationship
In order for this to constitute a reasonable ground for termination, the employment relationship must be disrupted to the extent that the employer cannot reasonably be required to allow the employment contract to continue. The disruption must be serious and long lasting. Please be aware that district courts often rule that a mediation process should first be attempted before actually dissolving the employment contract on this particular ground.

Other circumstances
These should be of such a nature that the employer cannot reasonably be required to allow the employment contract to continue. This is not intended as an open residual category. According to legal history this ground pertains to special cases such as detention, illegality of the employee and not having a work permit when required.

A combination of grounds
The combination of unsubstantiated reasonable grounds for dismissal must be such that the employer cannot reasonably be required to maintain the employment contract any longer. At least one reasonable ground for dismissal should be almost substantiated. Other relevant circumstances invoked in this respect may also lead to that opinion. However, if the subdistrict court subsequently dissolves the employment contract based on the cumulative ground for dismissal, it may award the employee additional compensation of up to 50% of the transition fee in addition to the statutory transition fee (Section 7:671b (8) DCC).

Instant dismissal

Both the employer and the employee can have compelling reasons to terminate the employment contract instantly. If that is the case, the employer can dismiss the employee immediately or the employee can hand in his or her notice with immediate effect. Provisions in force for termination, such as compliance with the notice period, requesting the UWV for a dismissal permit or initiating a legal procedure at the district court, do not

apply if the employment contract is terminated due to a compelling reason which is communicated without delay to the other party (Section 7:677 DCC).

Section 7:678(2) DCC lists a number of employee actions and attributes that present a compelling reason for dismissal. This list includes theft, severe incompetence and the refusal to perform a reasonable command. This list has solely an illustrative value, that is, the examples given do not automatically give compelling reasons for instant dismissal. In addition, the list is not exhaustive. Instant dismissal is justified in many unlisted scenarios. Whether instant dismissal is justified or not will always depend on the circumstances of the case. For example: Has the employee previously received a warning for unacceptable conduct? What is the company culture? Have other (similar) undesirable situations been previously tolerated? How likely is it that the employee can find another job, especially after a period of long service?

The employee can hand in his or her notice with immediate effect if, for example, the employer has stopped paying wages or is late in paying wages. Note that an unexpected and sometimes unfortunate side effect for the employer might be that, if liable for damages, the employer can derive no more rights from a non-competition clause.

For instant dismissal to be valid, the following must be done:

1. Act immediately: the employer must dismiss the employee immediately and the employee must cease work immediately.
2. Give a compelling reason at the same time as terminating the contract.
3. The employer should allow the employee to give his or her version of events prior to dismissal.

After dismissal, the employee is often forced to start a procedure to invoke the invalidity of the dismissal (due to the absence of a compelling reason). In that procedure, he or she will demand re-employment and continued payment of salary or could claim a fair compensation instead. After all, instant dismissal is a sign of dishonourable character and has far-reaching financial implications for the employee, who not only has a loss of earnings but also runs the risk of no unemployment benefits.

In order to avoid lengthy procedures, it may be wise to suspend the employee and ask the district court to dissolve the employment contract. However, in some situations, it may be advisable to dismiss the employee immediately, thereby strengthening the negotiating position. It is essential to have credible evidence and to carry out carefully the directions listed above. If the employer is unsure whether instant dismissal will withstand such a procedure, the employer is strongly recommended to take steps to limit

any wage claim. The employer can do this by submitting to the district court a conditional petition to dissolve the employment contract.

Statutory severance payment: transition fee

If an employment contract is terminated, dissolved or not extended at the employer's initiative, the employee is entitled to a statutory compensation, the so-called transition fee (*transitievergoeding*). Employees will therefore be entitled to a transition fee from day one of their employment (including during a probationary period). The transition fee is calculated to the day of employment and not rounded off. This fee is not due in case of serious imputable acts or omissions on the part of the employee (gross misconduct) or if the employee retires. It is also not due in case of termination with mutual consent, although in practice the employee will not agree to a termination agreement if the transition fee is not offered at the very least.

The transition fee amounts to 1/3 monthly salary per year of service. For any remaining part of the employment, or if the employment lasted less than a year, the transition compensation is calculated proportionally. The calculation of the compensation goes to the day and is no longer rounded to the nearest half years' service.

The monthly salary does not only include the base salary but also, amongst other things, 1/12th of the holiday allowance and 1/36th of the average bonuses received in the last three years.

The transition fee is capped at €98,000 (in 2025) or a years (gross) salary, whichever is greater.

In cases of unfair dismissal or gross misconduct of the employer, the court may award an equitable amount of fair compensation (*billijke vergoeding*) to the employee. These damages are not capped.

Foreign employees

Work permit

The Netherlands has a restrictive policy on migrant workers. A work permit must be obtained for many migrant workers if they want to come work for a longer period of time (not on occasional basis). The permit must be requested before the migrant worker can start working. A work permit is not needed for employees from the EU, the EEA (the EU plus Iceland, Lichtenstein and Norway) or Switzerland. The work permit is generally requested by the employer from the UWV. An employer (not a private person) that hires an employee without a work permit could receive a fine up to €11,250 fine per illegal

employee. In case of recidivism within five years, this fine may be increased by 50, 100 or even twice this amount.

In order to obtain a work permit, an employer must comply with the following conditions:

1. The employer must have first tried for at least three months to find employees that do not require a work permit (in the Netherlands or the rest of the EEA). The employment permit is refused if there is prioritised supply on the labour market for the relevant work. The employer must show that all possible resources have been used to recruit a candidate from the Netherlands or another European country, such as the Internet, employment agencies and ads in (trade) publications. If an applicant from the Netherlands or another European country can fit the job profile with (re)training within a reasonable period, the UWV may refuse to issue a work permit for a migrant worker.
2. The employer must report the vacancy to the UWV at least five weeks before applying for the work permit.
3. The employer must comply with the applicable employment terms, working conditions and industrial relations that are subject to legislation or are common in the relevant business sector. For example, paying at least the minimum wage.
4. The employee for whom the work permit is sought must be at least 18 years old and no older than 45 years. If the employee will work for more than three months in the Netherlands, the employee must have a valid residence permit. If the employee does not have a residence permit, he or she may not be recruited.
5. The employer must help the employee in finding a suitable, safe and clean place to live.
6. The application for the work permit will be declined by the UWV if the employer has violated any employment laws in the five year prior to the application. For example, not paying at least the minimum wage to a foreign employee.

A work permit allows a foreign worker to be employed for a certain period for a specific employer. The work permit is valid for that employee only and the work for which the permit is requested. A work permit is valid for up to three years.

If the employer wishes to hire a foreign employee, it is also possible to apply for a combined work and residence permit (GVVA). The conditions for this permit are for the most part the same as for the work permit. However, the employee must also comply with the following conditions:

1. The employee must have a valid ID.
2. The employee does not have a criminal past and is able to prove that with a background statement.
3. Depending on the nationality the employee is obligated to undergo a medical test for tuberculosis.
4. The employer is registered at the Dutch Chamber of Commerce.

This GGVA permit is applied for at the Immigration and Naturalisation Service (IND). The work permit is applied for at the UWV.

International Group Scheme

A work permit must be applied for in case of foreigners (i.e. workers from outside the EU or the EEA) who are being transferred temporarily within a group of companies to the Netherlands by their employer. In order for the employee to receive a GGVA permit, the following additional conditions must be met:

1. At the time of application for the permit, the employee has his or her main residence outside the EU.
2. The employee will work in The Netherlands as key staff, trainee or specialist.
3. The employee will be transferred within the company from outside the EU to the entity of the employer in The Netherlands.
4. On the transfer date to The Netherlands, the employee will be employed at the company for at least three months.
5. The employee has a valid employment contract with a company established outside the EU or a letter of engagement from the employer. The letter of engagement contains the following information:
    a. details of the duration of the transfer and the location of the establishment in the Netherlands;
    b. data that shows that the employee will hold a position as a manager, specialist or trainee;
    c. the remuneration and other employment conditions during the transfer;
    d. information that shows that the employee can be transferred after the transfer has ended to a branch that belongs to the same company and is located in a third country.
6. The employee has the qualifications and experience required as a manager or specialist in the location to which he will be transferred. As a trainee, the employee must have a master's degree. If the employee has a regulated profession (such as an architect or doctor), he must have recognition of the foreign professional qualifications.

7. The employment and working conditions are at least at the level that is legally required and customary in the industry of the employer. The wage must therefore be in line with market conditions.
8. The office of the employer in The Netherlands is not set up to facilitate the admission of transferred workers to the EU.
9. During the transfer of the employee to the EU, The Netherlands must be the member state in which the employee will stay the longest.
10. The employer or branch in The Netherlands carries out economic activities.
11. The employee did not stay in The Netherlands for an earlier transfer within the company during the 6-month period immediately prior to the application.
12. The Dutch employer did not receive any sanction in the 5 years immediately preceding the application for violation of section 2 of the Aliens Employment Act or for non-payment or insufficient payment of wage tax, employee insurance premiums or national insurance schemes.
13. If the employee is trainee, the employee is required to follow a trainee program and not be employed as a regular employee.

Knowledge migrant

Foreigners (i.e. workers from a country other than a Member State of the EU or an EEA country) who are highly trained and contribute to the Dutch knowledge economy, can be subject to the exemption scheme for knowledge migrants. Neither a work permit not a labour market test is required. However, the employer does have to request a residence permit for a skilled migrant. To make such an application, the employer must first be admitted to the knowledge migrant scheme as a recognized sponsor by IND. To join this scheme, the employer must pay the employee a salary that is appropriate to the specialist position. As of 1 January 2022 the minimum income thresholds (excluding holiday pay) are as follows:

- gross salary of €5,688 per month for knowledge migrants 30 years of age and older;
- gross salary of €4,171 per month for knowledge migrants under 30 years;
- gross salary of €2,989 per month for knowledge migrants who graduated in The Netherlands and enter the labour market no more than three years after graduation;
- gross salary of €5,688 per month for those eligible for the EU Blue Card (a residence and work permit for highly skilled non-EU/EER nationals, so-called third-country nationals).

Moreover, a knowledge migrant must have a valid passport, pose no danger to public order or security and take out health insurance.

The Foreign Nationals (Employment) Act

Under this act (*Wet arbeid vreemdelingen* or *WAV*) the Dutch Labour Authority (*Arbeidsinspectie*) can fine an employer if it has foreign employees in service without the necessary work- and or residence permits. Moreover, the employer is obligated to:

- notify the Inspectorate within two days after the work begins that a foreigner is going to work for the employer;
- identify the foreigner and store his identification for at least five years.

If the employer is in breach of the Foreign Nationals (Employment) Act, a fine can be imposed of up to €11,250 per illegal employee. This fine will rise exponentially if the employer has been in breach of the act within the past five years.

Limitation of 30% rule for expats

To retain valuable temporary employees from abroad (such as knowledge workers), employers are allowed to leave (up to) 30% of their wages untaxed. In this manner, employees receive more net wages as a compensation for the extra costs they have to incur in order to work in the Netherlands, such as travel costs and housing and living expenses.

The maximum duration of the 30% rule is a maximum of five years from 1 January 2019 onward. This tax benefit will remain 30% in 2025 and 2026. In 2027 however, a flat rate of 27% will be applicable instead of the 30%. For existing cases transitional law may apply.

Foreign employees who obtained the 30% ruling on or before 31 December 2023: 30% and current salary standard for entire duration of decision. Foreign employees who obtained the 30% ruling on or after 1 January 2024: 30% and then from 1 January 2027 onwards 27%, but current salary standard for entire duration of decision.

Liability for wage claims

If a (foreign) worker is hired through a recruitment agency, secondment company or payroll organisation, the worker is paid by them and not the hiring company. The hiring company has no employment contract with the worker and thereby no obligation to pay wages to that worker. However, this may not be the case if the direct employer does not pay the worker or does not pay at least the minimum wage. According to the Foreign Nationals (Employment) Act, the hiring company is jointly liable for paying wages to the foreign worker.

Commercial contracts

Commercial agency

A commercial agency is a form of collaboration in which one party (the principal) authorises the other party (the commercial agent) to act on behalf of the principal for payment and for a definite or indefinite period. The law defines a commercial agent as a 'self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of the principal or to negotiate and conclude such transactions on behalf of and in the name of that principal'. One of the key characteristics of a commercial agent is their independence. Unlike an employee, such as a sales representative, a commercial agent operates autonomously and is not subordinate to the principal. This distinction has significant legal and practical implications, particularly in areas such as liability, contractual obligations, and termination rights. Understanding these differences is essential for businesses considering a commercial agency arrangement.

In the Netherlands, this relationship is governed specifically by the law of agency. The agency agreement is a contract for professional services, which is also a feature of an intermediary agreement, so regulations governing intermediary agreements apply to agency agreements as well. In practice, it is not always easy to establish whether there is an agency or simply a form of collaboration that resembles an agency.

Partly due to the economically weaker position of the commercial agent, certain legal provisions of (semi) mandatory law have been passed by the legislature. Commercial agents enjoy substantial legal protections which are unlike those given to employees. Parties cannot make agreements that derogate from these provisions because this would make the agreements void or voidable.

There is a duty of care between parties in an agency relationship, owing to the fact that the principal is dependent on the efforts of the commercial agent to achieve its sales and the commercial agent is dependent on the principal to carry out its duties. A commercial agent should demonstrate the care and due diligence of a good agent and the principal must do everything possible to assist the commercial agent in carrying out its duties. Any shortcoming in that duty of care can result in (one of) parties becoming liable for damages.

If one of the parties terminates the agency contract without observing the legal or agreed notice period, that party usually becomes liable for damages unless there was a compelling reason to terminate the contract. Compensation is equal to the payment for the remaining period of the agency contract (i.e. from the unauthorised termination date

to the contracted termination date). Actual damages arising from the termination can also be claimed; therefore, it is important to terminate the agency contract properly and in accordance with the law.

In certain cases, a commercial agent is entitled to what is known as client compensation. The law determines the level of this compensation. A commercial agent should claim client compensation within one year of the agency agreement being terminated.

An agency agreement is exempt from the provisions of competition law. In short, this means that certain (European) legal provisions concerning competition do not apply to a commercial agent and the principal. However, it is crucial to draw up a genuine agency agreement. In some constructions (e.g. a franchise-based collaboration), an 'improper' agency sometimes arises. In such cases, the provisions of competition law do apply.

If a dispute between a commercial agent and principal cannot be amicably resolved and must be settled by a court, this procedure – regardless of the importance of the case – is brought to the subdistrict division of the court and not to the civil division. The advantage of this is that the subdistrict division, as the only competent sector of the law courts dealing with such matters, has a lot of agency knowledge. What is more, procedures in the subdistrict division cost less.

Franchise

Franchising is a solid form of legal and actual collaboration between economically independent parties. In franchising, the franchisor (the company that allows an individual to run one of its business locations) and the franchisee (the one who purchases a franchise) work closely together under a common name to exploit the franchise formula. All parties should benefit. Since the franchisee has to set up and maintain the look of, among other things, the establishment (shop, office) in line with the franchisor's guidelines, it is not immediately obvious to a customer whether he is entering a franchise or a private store (branch).

Since 2021, the Netherlands has specific laws on franchising. These laws contain the rights and obligations of both franchisor and franchisee, for example concerning the exchange of (financial) information between the franchisor and franchisee before the franchise agreement is signed and concerning the termination of the agreement. Furthermore, there are several relevant judicial rulings by Dutch judges supplementing the law. There is also the 'European Code of Ethics for Franchising', but this has no legal basis in the Netherlands.

Some issues that parties might have to address in a franchise relationship are:

- Operating budget (forecast)
  When drawing up the franchise agreement, a (potential) franchisee will want to identify whether a sound business operation exists. Therefore, he or she will want the franchisor to state the expected turnover and profits of that particular franchise. The franchisee's banker will also want to have such information in advance, with a view to providing a loan to the franchisee.
  For these reasons, the franchisor often provides the potential franchisee with an operating budget (or forecast) for a given period, ranging from one to five years. Although the franchisor is not officially obliged to provide a forecast, the judicial system makes it clear that, if a forecast is provided by the franchisor, it must meet certain quality requirements. More specifically, a forecast presented by the franchisor should be based on thorough and carefully-conducted market and location research or another such study. If the presented forecast cannot be backed up by proper research, the franchisor is seen to have failed in executing his or her obligations and becomes liable for any resulting losses.

- Franchise & (sub) lease
  Part of the franchise formula's strength is in obtaining favourable points of sale (shops). In order to capitalise on this, franchises will often use a sublet construction. This means the franchisor arranges a head lease directly with the lessor/owner of the rented establishment. The franchisor will then arrange a sub-lease with the franchisee, making the franchisor in effect the lessor. The franchisee must settle with the franchisor all matters relating to the leased property, such as the payment of rent. As far as the franchisee is concerned, there are no dealings with the lessor/owner.

  Since the franchisor has sublet the establishment to the franchisee only for the purposes of the franchise, the usual intention is that the rental agreement with the franchisee ends as soon as the collaboration with the franchisee ends. To make that possible, a link should be made between the franchise agreement and the sub-lease agreement, namely that the sublet agreement ends automatically when the franchise agreement ends.

  However, it should be noted that, in the Netherlands, various semi-mandatory rules in tenancy law exist which parties cannot deviate from to the detriment of the lessee. The legislature has deemed it necessary to protect the interests of the tenant, seen as the dependent party. Some of these semi-mandatory rules concern the way in which a rental agreement can be terminated. In short, this means that, in the Netherlands, the rental of a business space can only 'really' be terminated once the

civil court has ruled on this. A rental agreement which states that the lease ends automatically, in other words without legal review, when the franchise agreement ends is in violation of the law.

- Franchise & competition
  The Netherlands has a Competitive Trading Act. This law aims to counter cartels and economic positions of power in particular, insofar as they lead to the noticeable prevention, restriction or distortion of free competition in the Dutch market. In addition, the Netherlands is subject to European regulations which pursue the same goal. Agreements in violation of the Competitive Trading Act are void.

  Although a franchisor and franchisee do not formally wish to influence competition, several elements in a franchise formula could, at some point, affect competition and thus flout the Competitive Trading Act. Examples are imposing minimum sales prices for goods or services, fixing exclusive purchasing terms, dividing the market area and including non-competition clauses.

If a dispute between a franchisor and franchisee is not amicably resolved and legal intervention is required, proceedings are brought to the subdistrict division for claims up to €25,000 and to the civil division for claims of more than €25,000. The subdistrict division is also competent if there is any tenancy law element involved regardless of the monetary amount of the claim.

Distributorship

Distribution is a form of collaboration in which one party (the supplier) supplies products to another party (the distributor). The distributor then sells on these products to third parties (customers) at his own risk and expense, being able to set independently the selling price. Unlike a commercial agent, a distributor does business with third parties under his own name and not under the name of the supplier.

The distribution agreement – a term contract – is not specifically governed by law. This turns the distribution agreement into an 'innominate agreement'; a contract which is not classifiable under any particular name. Since the contracting parties do not have to adhere to specific (semi) mandatory legal rules, they have great freedom in drawing up a contract in the way they see fit. This is, of course, as long as the agreements do not conflict with Dutch or European legislation.

The main point of attention with distribution agreements is the termination of the agreement. If the distribution agreement is for a certain period, this agreement cannot be terminated prematurely by either party unless stipulated otherwise in the distribution

agreement. A distribution agreement for an indefinite period may be terminated, unless the reasonableness and fairness (*redelijkheid en billijkheid*) require that certain criteria are met first. And with a notice period that is reasonable to the circumstances. Nevertheless, the terminating party can be obliged to pay compensation to the other party, despite giving a reasonable notice period, on the basis of reasonableness and fairness (*redelijkheid en billijkheid*).

If a dispute between a supplier and distributor is not amicably resolved and legal intervention is required, proceedings are brought to the subdistrict division for claims up to €25,000 and to the civil division for claims of more than €25,000.

Public Procurement

Dutch Public Procurement Act

The Dutch Public Procurement Act and the accompanying Public Procurement Decree are based on the European procurement directives (2014/23/EU, 2014/24/EU, and 2014/25/EU). However, the Dutch legislation predates these directives and therefore has its own structure. While the Dutch legislator has incorporated the European directives into national law, many provisions have been reformulated in the process, reflecting national policy choices and legal traditions.

The first chapter of the Dutch Public Procurement Act establishes the fundamental principles of procurement law: proportionality, transparency, equal treatment, and non-discrimination. These principles are further detailed in the Proportionality Guide (*Gids Proportionaliteit*), which operates under the 'comply or explain' principle. This means that contracting authorities must adhere to its provisions unless a well-substantiated justification for deviation is provided in the tender documents

The Proportionality Guide ensures that all tender requirements are appropriate and proportional to the nature and scope of the contract. For example, it stipulates that central government service contracts exceeding €20,000 must be awarded through a multiple private tender procedure, while contracts valued over €100,000 require a national tender procedure.

The Proportionality Guide further elaborates on the principle of proportionality and its application in procurement procedures. Its primary objective is to ensure that the requirements set in a tender process are proportionate to the scope and nature of the contract. In practice, this strengthens the position of small and medium-sized enterprises (SMEs) by promoting fair competition.

Contracting authorities are expected to follow the Proportionality Guide unless they provide a well-reasoned justification for deviation in the tender documents. This ensures that procurement requirements remain balanced and do not create unnecessary barriers for potential bidders.

Amending contracts after awarding?

Modifying a contract after it has been awarded is possible, but only within certain limits. The Dutch Public Procurement Act contains detailed regulations on contract amendments, and extensive case law has further clarified the scope of permissible modifications.

As a general rule, substantial changes that alter the essential terms of the contract—such as the overall scope, financial structure, or key obligations—may require a new procurement procedure. However, certain modifications are permitted, such as additional work due to unforeseen circumstances, provided they do not exceed predefined thresholds.

Interim relief?

Decisions in procurement procedures that violate the Dutch Public Procurement Act can be challenged through legal action. Many tender documents include provisions stating that failure to object within a specified timeframe may result in forfeiture of rights (*rechtsverwerking*), effectively barring later claims.

One of the key legal safeguards is the standstill period, which begins upon the announcement of the contract award decision and lasts for 20 days. This period allows unsuccessful bidders to challenge the award before the contract is finalized.

When objections arise, a proceeding for interim relief (*kort geding*) is often the preferred legal route. This expedited procedure provides an opportunity for the court to assess the legality of the procurement decision and, if necessary, issue injunctive relief to halt the award process. Additionally, complaints can be submitted to the Dutch Commission of Procurement Experts (*Commissie van Aanbestedingsexperts*). While its recommendations are authoritative, they are not legally binding and do not have suspensive effect.

Contracting authorities are generally not enthusiastic about legal challenges but are well-acquainted with procurement litigation, as tenderers frequently initiate interim relief proceedings. That said, Dutch contracting authorities are professional and typically do not hold grudges against bidders who have contested their decisions.

Intellectual property and trade secrets

For businesses it is advisable to delve into the possibilities that intellectual property (IP) law offers. IP-rights can provide protection for the ideas and objects that are important for the business model of a company. Therefore, these rights may guarantee the trading future of that company. For that reason this section discusses the various options in the field of IP.

Copyright

The Dutch Copyright law protects literary, scientific or artistic works. This includes works such as photographic and cinematographic works, user items (like toys) and decorative items (like tables and lamps), but also software. For the acquisition of copyright protection no registration is needed; it arises by law when the legal requirements are fulfilled. In short, these requirements entail that a work is protected by copyright if it has its own, original character and bears the personal stamp of the maker, which means – in other words – that the work must be the result of the author's own intellectual creation. This implies that the author is the first creator of that specific work, otherwise it cannot be regarded as being creative. Works that in any case have no copyright protection are works with a banal or trivial form or works that are technically or functionally defined. The reason for this is simply that such works do not demonstrate the creative mind of the author.

When the above requirements are met, the work enjoys protection for 70 years until after the death of the creator.[23] The person who is considered to be the author is in principle the actual maker of that work. However, there are some exceptions to this rule, of which – for the purpose of this book – the most important one is the copyright of the employer. This occurs when a work is produced under an employment contract and the production falls within the scope of the employee's normal work. The employer is then considered to be the creator and thus also as the copyright holder (like a fictional craftmanship). The parties can deviate from this by agreeing otherwise. Furthermore, copyright can also be assigned to another party by deed.

The copyright holder has the exclusive right to reproduce and publish the work. Nevertheless, there are some exceptions to this rule. For instance the quote and parody exception, the copy for private use and the use in education. For these exceptions we will suffice here with the reference to the Dutch Copyright law.

[23] In the case a legal entity is considered to be the author, the period of protection is shorter, namely 70 years from the first lawful disclosure. This rule does not apply to the 'natural' person who is mentioned in the publication.

Personal rights

The author of a work also has – regardless of whether he has transferred the copyright to another party – a few personal rights. This includes the right of mentioning the author's name, the right to object to unreasonable changes to the work and the right to oppose to deformation, alteration or other damage that affects the credits or name of the author. These personal rights are not transferable; the maker can only waive these rights, except for the right to object to any damage to the work which causes any disadvantage to the credits or name of the maker.

Neighbouring rights

Where copyright protects the work of authors, neighbouring rights protect the performances of artists. This includes performing artists (such as musicians, actors and dancers), music producers, film producers and broadcasters. The acquisition of the right is the same as applies to copyright, namely that it arises without any formalities. However, the scope of protection is different. Most rights have a protection period of 50 years; only the performances of musicians and music producers enjoy 70 years of protection.

Database rights

In addition to copyright, the data collection of a database can also be protected against the retrieval and reuse of substantial parts by third parties without the permission of the producer of that database. The protected data may therefore also contain materials that are not protected by copyright, such as facts and figures.

As with copyright, no registration is required for the protection by database law. The producer of the database acquires the right automatically once the requirements are fulfilled. For this, the producer must have made a substantial investment for a database that not only contains existing information from previous databases (also known as a 'spin-off'). Only the investment in obtaining, verifying and presenting the data in that database should be taken into account. In addition, the database must be organized in a structured way. If these requirements are met, the producer will receive protection for 15 years after the production. However, if the database has changed considerably over time, the 15-year period starts again.

Trademark law

A trademark is a sign that has a distinctive character and is not descriptive. This can either be an individual trademark (for example from a company) or a collective trademark (for example from an association). The most common trademarks are word marks, logos and figurative marks. Nevertheless it is also possible to register other types of trademarks,

like – among other things – colour, sound, pattern, 3D and movement. In the Netherlands there are two options for registration, namely protection within the Benelux[24] region or protection within the European Union. In both regions the registered trademark is valid for 10 years, which can be extended indefinitely with another 10-year period.

For the acquisition of a trademark within the Benelux, the trademark must be registered with the Benelux Office for Intellectual Property (BOIP). For an EU-trademark, this must be done at the European Union Intellectual Property Office (EUIPO). Both offices may refuse a sign which is corresponding, descriptive, misleading or contrary to public order. After the registration in the Benelux or the European Union, the trademark can also be registered as an international trademark with the World Intellectual Property Organisation (WIPO). This registration makes it possible to obtain a bundle of national trademarks from self-selected countries that are members of WIPO (which has more than 190 member states). However, because the international trademark is based on an earlier trademark (Benelux or EU), the application needs to go through the office of origin.

Trade names

The name under which a company conducts its activities is considered to be the trade name. No prior registration is required, as long as it meets the requirements. The name may be descriptive, but must differ to a certain extent from other trade names operating in the same industry. After all, there should not be any confusion on the part of the consumer by using the same or very similar name. This does not mean that no other company may use the same or similar trade name. It is possible that companies from other branches or other geographical areas use the name if the risk of confusion is considerably reduced. It should also be noted that a website on which services are offered under the trade name does not necessarily lead to national protection. For the scope of protection, the region of the consumer circle is leading.

Designs and drawings

The drawings and design law offers protection to the appearance of an object, which is in particular derived from the lines, perimeter, shape, texture, materials and/or decoration. In order to be eligible for protection, the product must be new and have its own character. Therefore the technical/functional features of a product are not protected.

A design is considered to be new if no identical design (read: another product that only differs in insignificant details) has been made publicly available before the date of registration. Furthermore, the design has its own character when it gives the informed user a different general impression than the impression created by earlier models. This is

[24] Belgium, The Netherlands and Luxembourg.

always an assessment based on the circumstances of the individual case, in which the design heritage is the central point of view.

For protection within the Benelux, the registration can be done at the BOIP. For the European Union this can be done at the EUIPO. Both registrations provide a protection period of 5 years, which can be renewed to a maximum of 25 years.

Patents

A patent is an exclusive right to a chemical substance or a technical solution, which can be both a product and a work method. However, the invention must satisfy three cumulative criteria, namely:

1. The invention must be 'new' to be eligible for a patent. Not new is the invention from which all elements can be traced to a single older source; that what is already been made publicly available before, including the activities of the inventor himself.
2. The invention must be based on an inventive step. Not inventive is the invention from which all elements can be derived from a few sources that can reasonably be combined; the invention should not stem from the state of the art in an obvious manner.
3. The invention must be applicable in the field of the industry.

If all criteria are met, the patent will in principle have a maximum duration of protection of 20 years, depending on the maintenance fees paid. Within this period it is prohibited for third parties to use the invention without the permission of the patent holder, even if that party has come to the invention independently. When the protection is stopped, the invention may be applied by anyone. Because of the idea of stimulating innovation, it is in principle not possible to renew a patent.[25]

The application for a Dutch patent can be submitted to the Dutch Patent Office (*Octrooicentrum Nederland*). For this application a registration-system is used. This is only an administrative procedure in which no substantive assessment is given; the patent is granted regardless of the outcome of the novelty research. In addition, the system has no opposition proceedings. Only a nullity action before the court is possible. These circumstances mean that a Dutch patent offers little legal certainty.

For a European patent, the application must be submitted to the European Patent Office (EPO). This office uses – contrary to the Dutch office – an examination-system. This systems first automatically performs a novelty test. After that test the applicant can also

[25] There are two strict exceptions with which an additional term of protection can be obtained, namely patents for pharmaceutical products and pesticides.

request an extension test, in which a thorough examination of the material requirements is done. This is advisable since a European patent is only granted when all the requirements are met and the opposition phase has been successfully completed. For this reason the European patent offers more legal certainty. However, the application is more expensive and takes longer in time.

Chips rights

The layout – also called topography – of semiconductor products (chips or microprocessors) can be protected by law. This is an exclusive right for the use of the specific layout, which third parties may not use without the permission of the holder of that right. These chips rights arise by law, just like copyright. However, in order to be able to enforce these rights against third parties, a registration with the Dutch Patent Office (*Octrooicentrum Nederland*) is mandatory. This registration provides a protection period of 10 years (after a depot or first use) or 15 years (after creation in case no depot or first use has yet taken place).

Trade secrets

Since 2018, the law offers an alternative to some intellectual property rights, namely the protection of trade secrets. Know-how is only protected if it is secret, has commercial value and if reasonable measures have been taken to keep the know-how secret. Not all information present within a company is protected as a trade secret. For example, everyday information and experience and skills that employees acquire during the normal performance of their job are not protected as a trade secret. In addition, the trade secret holder must have taken reasonable steps to keep the information confidential. A number of technical and contractual measures to this effect are obvious: the inclusion of confidentiality clauses in commercial contracts, the inclusion of confidentiality provisions in employment contracts and work regulations, the explicit naming or registration of trade secrets, and the monitoring of the company premises or the installation concerned. In addition, digital protection measures such as encryption should also be considered.

Information, communication and technology

Legislation and contracts

ICT is an inseparable part of almost every business and, in many cases, it contributes to innovation and progress. Consequently, there's an ever-increasing dependency on ICT resources and ICT suppliers. This is why ICT legislation is drawing more and more attention and legal advice is increasingly being requested when starting and implementing ICT projects. Yet Dutch law does not currently provide a separate section for ICT. The different aspects of ICT law appear in various treaties, European regulations and directives as well as in national, Dutch legislation. Important laws and regulations are the General Data Protection Regulation (GDPR), the ePrivacy Directive (ePD), the Digital Services Act (DSA), the Network and Information Systems Security Directive (NIS2), the Copyright Act, the Databases (Legal Protection) Act, the Patent Act, the Telecommunications Act, et cetera.

When a business computerises, a myriad of decisions have to be made in advance. For example, do you prefer off-the-shelf or tailor-made software and should you use open source software and, if so, under what conditions? If you go for custom software, you need to consider whether to secure the intellectual property rights to this software. These rights may be transferred by deed only. The client may fully fund the development of custom software, but that does not automatically lead to obtaining the rights to this software. Unfortunately, this is a common misunderstanding. If you decide not to transfer the rights, safeguards should be made for the possibility of the supplier going bankrupt. The continuity of software use in this kind of situation can be ensured by making an escrow arrangement.

Specific IT contracts are often drawn up in the ICT sector, such as turnkey agreements, facilities management agreements and outsourcing agreements. In addition, large ICT projects based on Dutch and European public procurement laws and regulations must be put out to tender if the customer is a contracting authority. Vendors make regular use of the NLdigital Terms and Conditions; prepared by the ICT sector, in other words unilaterally, they often run into resistance among customers. When government bodies and quasi-governmental organisations make ICT purchases, they often use ARBIT conditions (State Terms & Conditions for IT Contracts). The opposite is true with these conditions; these are biased towards the (buying) government body.

In the majority of cases, it is preferable to draw up a customised contract. These contracts should set out clearly the arrangements and the rights and obligations of both parties. Incorrect expectations by either the supplier or the customer often result in delayed or

unsuccessful ICT projects. The question that rears its ugly head before any other is: who will foot the bill?

Cloud computing

The ICT legal framework is becoming more complex with the emergence of cloud computing. Cloud computing is the storage and sharing of user information on remote servers that are managed by third parties and that are accessed over the Internet. With cloud computing, data is processed via an Internet connection and not on your own computer or system. There are several types of cloud contracts, which are often complex in nature (SaaS, PaaS, IaaS). Given the risks that are inherent in cloud computing, it is important that these contracts give due consideration to topics such as confidentiality and privacy, location of data centres, access to data, service levels and continuity of the service.

Privacy

The fully or partly automated processing of personal data is subject to legal regulation since the 1970s and has over the years developed into an extensive body of law. Conditions for the lawful processing of personal data are laid down in treaties, EU regulations and directives as well as in national legislation. The most important rules for recording and using personal data have been laid out in the GDPR and the Dutch GDPR Implementation Act. Any data controller or processor either established in the Netherlands or targeting data subjects located in the Netherlands should comply with these conditions.

The GDPR applies only to information about individuals and relates to every use – the processing – of personal data, from the collection of this data up to and including the destruction of personal data. Personal data must be processed in line with certain principles, including those of lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation and integrity and confidentiality. The controller is under a 'duty of accountability'. In other words, the controller must be able at all times to demonstrate how the controller ensures personal data processing in line with these principles. Companies are to this end obligated to maintain a record of processing activities, a record of data breaches and (under circumstances) data protection policies.

When personal data is collected, the data controller must inform the data subjects concerned of the purposes for which the personal data will be used. Special attention is given to the processing of sensitive personal data, such as religion, race, sexual life, health data and criminal record. Sensitive personal data may be processed if specific stringent conditions for processing are met. Data subjects are entitled to a number of rights,

including access, rectification, erasure and data portability, which the controller must respect.

Pursuant to Article 32 of the GDPR, the controller and the processor should take 'appropriate technical and organisational measures' to protect personal data against loss or any form of unlawful processing. 'Appropriate' in this case means ensuring that security complies with current technological developments. It also means the level of security measures should reflect the nature of the data to be protected. There are different standards and criteria for digital recording and information exchange, such as the ISO/IEC 27000 series and the NEN 7510 standard. ISO and NEN standards should, however, be regarded as a set of 'best practices' since they describe generally accepted practices. In other words, those responsible for data security are in principle free to determine the extent to which they rely on these standards in introducing and enforcing these measures.

The GDPR contains specific provisions for the movement of data to countries outside the European Union, known as third countries. Third countries are all countries outside the European Union, with the exception of Norway, Liechtenstein and Iceland (these three have undertaken to implement the regulation in their own legislation). The primary rule is that personal data may only be transferred to a third country if the general requirements of the GDPR have been conformed to and the third country ensures an adequate level of protection.

The Dutch Data Protection Authority (*Autoriteit Persoonsgegevens* - AP) supervises compliance with personal data protection laws in the Netherlands. The AP is authorised to impose sanctions, including administrative fines up to EUR 20.000.000 or up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

Cybersecurity

Organizations considered part of the European Union's critical infrastructure are subject to the cybersecurity obligations contained in the NIS2 Directive. Compared to the previous NIS(1) Directive, the scope of the current NIS2 Directive has been substantially expanded and now also includes large portions of the manufacturing industry, government bodies and ICT companies.

Important and essential entities are required under the NIS2 Directive to take appropriate and proportionate technical, operational and organisational measures to manage cybersecurity risks. These measures should be based on an all-hazards approach, which aims to protect network and information systems, and their physical environment, against hackers and from events such as theft, fire, flood, telecommunication or power

failures, or unauthorised physical access. Cybersecurity risk-management measures should be in line with European and international standards, such as those included in the ISO/IEC 27000 series.

The NIS2 Directive had to be transposed into Member State law by 18 October 2024. To-date (February 2025) this has not been done in the Netherlands. The Dutch draft implementation act, the Cybersecurity Act (Cbw), is scheduled to go through parliament and enter into force in the course of 2025, most likely Q3. Until the Cybersecurity Act comes into effect, supervisory authorities in the Netherlands cannot monitor compliance with NIS2 and cannot impose sanctions for non-compliance.

Financial entities are held to even stricter cybersecurity requirements under the Digital Operational Resilience Act (DORA). Unlike NIS2, DORA is a regulation which does not require transposition into Member State legislation. As of 17 January 2025, financial entities must comply with DORA. The Union legislature is also working on the Cyber Resilience Act, a regulatory framework with security requirements for software and hardware products.

Data leaks

Data leaks cause major social unrest, especially when it comes to security leaks in government agencies or at medical practitioners. The loss and subsequent publication of data not only incurs a lot of inconvenience, it also results in exposure to administrative fines, legal claims and may lead to reputation damage. Many agencies that manage personal data are not fully able to secure their databases and websites, and many companies are (still) rather casual with the security of sensitive/confidential data. Often there is no information risk policy. It would appear, though, that things are changing, not least because of the introduction of various data breach reporting obligations in recent years.

A number of such reporting obligations exist under Dutch law. The most important of these is the obligation to report personal data breaches on the basis of the GDPR. These breaches must be reported without undue delay to the Dutch Personal Data Authority and in the event of a particularly high-risk breach, also to the data subjects involved. Similar reporting obligations exist for providers of public electronic communication services under the Telecommunications Act and will exist for providers of important or essential services once the Cybersecurity Act implementing NIS2 enters into force.

To conclude, when working with sensitive data or when large amounts of data are processed, it is important that proper arrangements are made between contractual parties to exclude where possible risks and liabilities.

The AI Act

Artificial Intelligence (AI) is increasingly shaping industries, from healthcare and finance to public administration and law enforcement. To regulate AI systems and mitigate potential risks, the European Union (EU) has introduced the AI Act, the first comprehensive legal framework for AI. As an EU member state, the Netherlands must fully implement and enforce this regulation, impacting businesses, government agencies, and AI developers across the country.

The Netherlands has a strong digital economy, and AI is widely used across various sectors. Dutch companies and government institutions must assess whether their AI systems fall under the high-risk category and implement necessary compliance measures, such as:

- Risk assessments and compliance frameworks for AI-driven decision-making in recruitment, healthcare, and financial services.
- Transparency obligations for businesses using AI in customer interactions.
- Human oversight mechanisms for automated decision-making in public administration.

Dutch regulatory authorities, such as the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) and sector-specific regulators, will play a key role in enforcing compliance.

Navigating the complexities of the AI Act requires a deep understanding of legal, technical, and ethical requirements. Our legal specialists can help you assess your AI systems, ensure compliance, and mitigate risks. Whether you need assistance with risk classification, transparency obligations, or regulatory compliance, we provide tailored legal advice to help your business operate confidently within the new AI framework.

Real estate law

No restrictions for non-residents

Dutch law does not restrict foreign companies, partnerships nor individuals from acquiring real estate (like commercial property or private property) or entering into tenancy agreements in the Netherlands. In addition, there is little exchange supervision on capital transfers by non-residents, except for specific restrictions related to war, terrorism and crime. That makes it (in general) easy to invest in real estate in The Netherlands.

Real estate law

Real estate law relates to the ownership rights over immoveable property, such as land and buildings.

Perhaps the most significant distinction is the one between 'rights in rem' (*zakelijke rechten*) and 'rights in personam' (*persoonlijke rechten*). Rights in rem regulate the legal relationship of a person towards a certain object with regard to the rest of the world, whereas rights in personam (entitlements) regulate the legal relationship between two persons and/or entities (the creditor and his debtor). This makes Dutch real estate law rather different to Anglo-American real estate law.

Ownership

Ownership is the most common right towards property in the Netherlands. It is the most comprehensive right in rem. In general, ownership of land comprises entitlement to the ground and the buildings and other structures on that ground.

The owner (*eigenaar*) can be a private individual or a legal entity. If the owner can prove full title in the form of absolute ownership *(eigendom*), he has the real property's sole right, title and interest. The owner has the right to transfer his property, subject to statutory restrictions (both by civil law and public law) and limitations such as a mortgage. There are, however, certain statutory provisions which may completely deprive the owner of his right of ownership.

Limited rights in rem

Real estate owners can create limited rights in rem on their plots. Such as the right of ground lease (*erfpacht),* which is very common in large cities in The Netherlands, for instance in Amsterdam, The Hague, Rotterdam and Leiden. Another examples are the building lease (*opstalrecht),* rights of servitude or easement (*erfdienstbaarheid*) and

apartment rights (*appartementsrechten).* These limited rights in rem can be established by an owner and transferred separately from the ownership to another party. These limited rights in rem are "attached" to the real estate and can be transferred along with the land to the next owner. Such rights are integral to Dutch property law and are meticulously documented in the national land registry, the Kadaster, which is renowned for its accuracy and reliability.

Restrictions to the transfer of real estate

In principle, real estate is transferable without restrictions in the Netherlands. However, restrictions can be imposed by legislation, contracts or the establishment of rights in rem.

The most important legislation on the restriction of the transfer of property was the Municipalities Preferential Rights Act (*Wet voorkeursrecht gemeenten*). Since 2024, this act is part of the of the Environment and Planning Act (Omgevingswet). This gives municipalities a right of preference when purchasing certain types of real property.

Acquiring real estate

The transfer of real estate ownership occurs through a purchase agreement, followed by the execution of a notarial deed of transfer. This deed must be registered with the Dutch Land Registry (Kadaster) to ensure legal recognition of the new ownership.

When dealing with commercial real estate transactions, it is crucial to note that even non-formal agreements can be legally binding. A verbal agreement or a brief email may suffice, provided it includes essential terms such as the purchase price and transfer date. However, the binding nature of such agreements depends on the precontractual phase and any prior arrangements between the parties. In certain cases, only a written and signed contract will be enforceable.

The aforementioned causes many disputes in the field of transfer of real estate. Acting with precaution in these matters is strongly advised.

In case of purchasing real estate for personal residence, other rules apply. The transfer of houses should always be in writing and signed by all parties. The buyer is granted a grace period of three days to dissolve the agreement in writing. In some cases, the seller also has the right to dissolve the agreement, especially in case the seller used the concerned real estate as his personal residence.

Purchase agreements usually contain suspensory conditions and a scheduled date of transfer. The deed of transfer must be signed in the presence of a civil-law notary. It is common that the purchase sum is transferred to the so-called client account of the civil-

law notary. After a check whether limited rights in rem are applicable and after signing the deed, the civil-law notary registers a copy of the deed of transfer at the Kadaster. After fulfilling these formal requirements, the purchase sum is paid out to the seller.

Please be aware that some major cities in the Netherlands have special regulations regarding 'buy to let' transfers.

Conflicts related to purchase

Different expectations by the parties involved in a transfer of real estate may lead to a dispute. According to Dutch legislation and jurisprudence, the seller has the obligation to disclose relevant information to a certain extent. On the other hand, the buyer has the obligation to research relevant facts of the object to a certain extent. Whether a party is a professional party or is being advised by a professional, for example a real estate agent, affects the aforementioned obligations.

The situation may occur that the purchaser has reasonable grounds to conclude that something is wrong after the purchase. In this case, the law provides several possibilities to terminate, annul or nullify the agreement. For example, the annulment based on deceit, abuse of circumstances or error *(vernietiging op basis van bedrog, misbruik van omstandigheden of dwalin*g). Another option is to terminate the contract due to breach of contract (*ontbinding vanwege wanprestatie*). Furthermore, there are legal possibilities to request the court to have the purchase sum reduced or the transfer agreement amended in court.

Real estate structures

When it comes to real estate transfers, sophisticated real estate structures are designed to maximise the advantages provided by tax treaties between the Netherlands and other countries. Tax exemptions may facilitate tax benefits as well in these structures.

In The Netherlands, real estate companies with limited liability (*vastgoed B.V.*) are established for the purpose of acquiring and owning real estate. By using the aforementioned company with limited liability, the risks related to acquiring and owning real estate are distanced from the shareholders of the company with limited liability. It is a structure to protect the interests of those involved.

Property itself is transferred by a notarial deed of transfer and then registered in the Kadaster. When it comes to a real estate company with limited liability, the owned real estate can be sold by the company in the aforementioned way. However, shares of the concerned company can be transferred by a notarial or private transfer agreement. In that case, registration in the Kadaster is not required.

Transfer to an Anglo-American trust

The Dutch legal system is based on civil law (also known as continental law) and, as such, does not recognize the trust as an independent legal entity, unlike common law jurisdictions such as the United Kingdom and the United States. In common law systems, a trust is a legal arrangement in which assets—such as real estate—are placed under the control of a trustee, who manages them as the legal owner for the benefit of one or more beneficiaries. A key characteristic of a trust is that the trust property is legally separated from the personal assets of the trustee, despite the trust itself not being a separate legal entity.

With respect to real estate it is to be noted that – although a trust established in a foreign country can be acknowledged in the Netherlands under the Hague Trust Convention – Dutch law does not have a title registration system to reflect ownership registration representation. This means that a trust validly established in a jurisdiction where trusts are recognized can, in principle, have legal effect in the Netherlands.

Given the absence of a domestic trust framework, Dutch law offers alternative legal structures that may serve similar purposes in certain cases, For example, a partnership called CV (*commanditaire vennootschap)* which looks a bit familiar to the concept of trust. This is a limited partnership that, in some aspects, resembles the trust concept, as it allows for a distinction between managing partners and silent investors. For more information, see also the section on Legal forms.

Finance and mortgage

A mortgage (*hypotheek*) is a limited right in rem created on real estate as security (pledge) for a debt. Often, the bank establishes a mortgage on real estate. Upon default towards the bank by the owner, the underlying mortgage right may be executed by the sale of the pledged real estate. The mortgage is established by a notarial deed, simultaneously with the loan agreement. The deed is then registered in the Kadaster.

In case of the mortgagor's bankruptcy, the mortgagee may exercise his right of foreclosure independently of the bankruptcy trustee. The mortgagee may exercise its rights within the specified time. The proceeds of any sale by way of foreclosure will not be subject to bankruptcy cost.

Transfer tax / VAT

A transfer tax of 10,4% is due when real estate is purchased. However, for residential real estate that is purchased for actual personal residence purposes (and not as an investment

object), the transfer tax is 2%. For residential starters, an exemption is applicable. The exemption applies to purchasers under 35 years who have bought their first residential property.

Please note that the sale of shares in a company that qualifies as a real estate company, as referred to in the Transfer Tax Act, is also subject to transfer tax. In some cases, especially when purchasing land to build on, 21% VAT may be applicable instead of transfer tax.

Tenancy agreements- in general

Different legal tenancy regimes exist, categorized according to the use of the concerned real estate.

Please note that (verbal) tenancy agreements are closed easily by Dutch law. One does not necessarily need a written and undersigned contract. Therefore, it is advised to include an disclaimer that states that no agreement has been established until both parties have signed.

Tenancy agreements - Shops and leisure

In case of commercial tenancy related to shops, hotels, restaurants, cafés, delivery services and craft enterprise (with an public area for services for consumers), Dutch legislation pertains a strict set of rules. The legislation prescribes a minimum period of tenancy of five years, to be prolonged by another five years. Furthermore, the maintenance costs, the rental increase, the termination (notice), the legal grounds for termination of the contract by the tenant and substitution of the tenant *(indeplaatsstelling*) are also laid down in the aforementioned legislation. The legislation mostly provides prerogatives and protection to the tenant.

It is of importance to ensure the right type of contract is chosen (applicable to this tenancy regime), compliance with legislation and to act according to the applicable legislation.

Under certain circumstances, and only if allowed by the law itself, it is possible to deviate from the rules as laid down in the legislation. For instance, a first tenancy term of two years can be allowed. In addition, a preferred, chosen term can be permitted as well, though the consent of the court is required.

Tenancy agreements - Office space and other use

Offices, industrial space, warehouses and other categories that are not shops nor leisure, are less regulated by legislation. A limited number of mandatory rules are applicable to this category. Parties have numerous possibilities to create a tenancy contract on their own terms and conditions, for instance with regard to the tenancy term, the use of the tenancy object, etc. A tenant is less protected by law under this tenancy regime than under the previous aforementioned regime. Therefore, it is advised to tenants to incorporate ample protective clauses in the contract. An example of such a clause is to arrange for substitution of the tenant. This emphasizes the importance of legal advice regarding tenancy agreements.

Another important issue regards eviction. According to the law, if a landlord has given notice to his tenant, the tenant is allowed to request the court to postpone the actual eviction. This delay of eviction (*ontruimingsbescherming*) can be granted upto a maximum of three years in total. After consideration of the interests of both the tenant and the landlord, a delay of maximum one year can be granted, which can prolonged twice by another year.

Tenancy agreements – Residency

Residential tenancy is highly regulated in The Netherlands. A strict set of rules applies to any form of residential tenancy. Prescribing an indefinite period of tenancy, regulating the termination notice, providing limited grounds for ending the tenancy contract by the landlord, limiting the rental increase and prescribing is responsible for which part of maintenance are some important examples.

The applicable legislation provides much protection and many prerogatives to the tenant. Problems may occur is the content of the tenancy agreement is non-compliant with legislation or if the tenancy is not executed as prescribed by legislation.

In 2023 and 2024, a lot of legislation has been altered and/or added to the legal regime of residential tenancy.
On July 1, 2023, the Good Landlordship Act (*Wet goed verhuurderschap*) came into effect. It sets the standard for good landlordship, thus providing tenants clarity on their rights and protection. Landlords must refrain from any form of discrimination when choosing a tenant. The tenancy agreement should be provided in writing. The landlord has the obligation to inform the tenant on his rights and obligations and also on the rental deposit, which is maximized to two months of rent. If service charges and advance payments are applicable, the landlord should provide clarity on this subject as well to the tenant. For migrant workers (i.e. EU-citizens living in another member state and residing in The Netherlands for work purposes), the tenancy contract and all related information

need to be provided in the language the tenant requests for or in a language the tenant at least is able to understand).

Please note that this obligation does not apply to non- EU tenants, for example American, British or Indian expats. Tenancy agreements established before July 1, 2023, have a grace period of one year, so the concerned landlords need to execute the aforementioned obligations before July 1, 2024.

The Affordable Rent Act (*Wet betaalbare huur)* came into effect on Juli 1, 2024. It uses a point system to categorize rental properties and by doing so, it determines the maximum allowed rent. Properties are awarded points mainly based on the WOZ-value, the number and size of rooms and the energy consumption label. Below the rent threshold of €1,184.82 (in 2025), residential real estate are placed in the middle and social tenancy sectors and restricted by the (rent) rules of those sectors. Above this threshold is the so-called "free" sector in which landlords and tenants are free to agree to any amount of rent.

The Indefinite Rental Contracts Act (*Wet vaste huurcontracten*) came into effect on Juli 1, 2024. As of this date, it is no longer possible to offer temporary tenancy contracts, with a few exceptions. Meeting certain legal criteria, it is possible to provide 'agreements for short-stay' (lodging contracts) or 'interim rental agreements' (for landlords who stay abroad for a certain period and will return to their home afterwards). Temporary tenancy agreements agreed upon before July 1, 2024, remain legally valid for the tenancy term stated in the contract. After expiration of this tenancy term, it is not allowed to enter into a new temporary tenancy contract. With permanent tenancy contracts, tenants have the security of residency. Landlords can only give notice in certain circumstances defined by law.

Furthermore, there are a lot of municipal rules that can restrict the tenancy of residential real estate. See the next chapter on land use planning.

It is important to get proper legal advice in an early stage of tenancy, when one wants to purchase real estate as an investment object or to rent out as residential real estate.

Purchase or tenancy of real estate – public law restrictions

Before purchasing or renting out real estate, it is highly advised to do research on the public restrictions regarding the use of the real estate and its surrounding area. It may turn out that the goal of purchase or of tenancy is restricted by law. This may cause significant legal issues. See the next chapter on land use planning.

Construction law

Construction agreements, i.e. agreements between a client (real estate owner) and the construction company are also regulated by Dutch legalislation.

If the real estate owner is a non-professional consumer, additional rules apply to the agreement in order to protect the consumer. In case of a commercial real estate owner, there are less strict rules applicable on the construction agreement. In both cases (professional and non-professional clients, a lot is involved when it comes to construction agreements, for instance the agreed price, possible additional work, possible additional costs, delivery deadlines, defects, risks and liability, insurances, securities and payment schedules. It is advised to legal advice in an early stage, i.e. before agreeing to a construction agreement, to prevent and minimize legal issues.

Spatial and environmental planning, land use planning

Framework

The Netherlands is a densely populated country and therefore, land use planning (i.e. spatial planning) is a complex matter.

Since January 1, 2024, the legal framework for land use and spatial planning is mostly laid down in the Environment and Planning Act (*Omgevingswet*). No less than 26 former acts on environmental law and land use planning are incorporated in this sizeable act.

Environmental matters and any related issues are regulated by the Environmental Management Act (*Wet milieubeheer*) and the Water Act (*Waterwet*), which are now part of the Environment and Planning Act.

Public housing and the use of residential real estate is regulated by the Housing Act (*Huisvestingswet*).

European Union legislation plays a significant role in land use planning as well. Directives, such as the European Habitats Directive and European Birds Directive have a direct impact on our national land use planning. Even legislation on air emission trading has been implemented in the Netherlands due to the European Greenhouse Gas Emissions Directive.

Public zoning plan

A public zoning plan (*Omgevingsplan)* is set by municipalities and forms the basis of the planning process. This single plan pertains all relevant aspects of land use, efficiently co-ordinated and brought together. It consists of not only the goal and design of the

allowed development, but sees to binding conditions on nature, building locations and other activities in the area. These binding conditions may include maximum building plot dimensions and environmental requirements. By this public zoning plan, the multiple municipal plans that existed before January 1, 2024, are unified in one plan. Since January 1, 2024, every municipality has a single public zoning plan for its entire municipal territory.

Environmental permit

The Environment and Planning Act (*Omgevingswet*) also prescribes the legal framework for environmental permits. Environmental permits are mandatory to be allowed to demolish, construct, establish or use real estate.

The environmental permit is a permit for the land use plan, but also to allow exemptions on the land use plan. It sees to planning, but also to modification or demolition of so-called protected real estate. Additionally, it may also see to a number of permits prescribed by provincial and municipal legislation, such as advertising display permits.

Soil and groundwater pollution

Since 2024, the former Soil Protection Act (*Wet bodembescherming*) is also part of the Environment and Planning Act. It pertains legislation to prevent, research and restore soil pollution. The provincial government or, in some cases, the municipal government have the authority to issue orders to research, to take temporary measures or to restore serious soil pollution.

Restoring can only take place after the provincial government has determined the seriousness and the necessity of the pollution and after approval of a soil restore plan.

The party that has been ordered by the authorities to research, restore or to take certain measures, in principle bears the costs for the aforementioned actions. Most of the time, it concerns the owner or the long-term lease holder of the polluted soil. Claim options towards either the party who has caused the pollution or towards one of the previous landowners are provided by civil law and/or by clauses in the purchase agreement.

Asbestos

Until 1993, a lot of buildings in The Netherlands were made using asbestos. Asbestos has several uses, such as insulation material. Due to its risks of causing cancer and other diseases, the use of asbestos has been prohibited.

Ample legislation restricts the demolition and removal of asbestos in buildings. In general, removal is only allowed with certain permits by specialized companies. Breaching the legislation may result in hefty fines.

Litigation

The Netherlands has a civil law system based on Roman law. In contrast with common law systems, judgments in the Dutch civil law system are made on the principles that are codified (arranged systematically) into a single civil code.

The Dutch court system

The court system of the Netherlands consists of three instances.

1. District Courts, divided into specialized divisions, including:
   1.1. Monetary claims up to €25,000 and claims concerning employment law or tenancy rights. There is no obligation to be represented by legal counsel.
   1.2. Monetary claims above €25,000. Legal representation is mandatory.

2. Courts of Appeal.
   In the event of an appeal, these courts fully reconsider the case on the presented elements. They may also review new evidence, allow fact finding and allow new legal argumentation, meaning the Court of Appeal qualifies as a complete second instance.

3. The Supreme Court
   This is the highest court in the Netherlands. The Supreme Court does not provide a full third instance. It only provides judgment if the lower courts have made a procedural or material mistake. The Supreme Court does not rule on new facts but bases its decision on the facts found by the lower courts.

The anatomy of a (general) lawsuit

Lawsuits in the Netherlands are governed by the Dutch Code of Civil Procedure. A lawsuit begins at the moment the bailiff serves a summons to the defendant. In this summons, the claimant presents his case and evidence to the court. The summons also contains a date on which the defendant must file his defence. Depending on the court, the defendant can request a prolonging of the term for filing the defence.

Once the defence has been filed, the court sets a date for a post-defence hearing. This is when the judge asks different questions to obtain any missing information required for the judgment. Usually, the judge asks both parties if there is any willingness to settle. Parties often reach a settlement after the judge has given his provisional thoughts on the matter. The average time frame for a lawsuit in the Netherlands until ruling is four to eight months.

Proceeding for interim relief

The Dutch system allows a proceeding for interim relief if the case has an urgent nature. The result of this proceeding can be a court order or a prohibition. However, any judgment given is only provisional. Either party can initiate a main action to obtain a final judgment. A proceeding for interim relief can be completed within three weeks or less. Depending on the reasons of urgency, this proceeding can – in exceptional cases – even be completed within two days.

Period of limitation of action

Actions concerning civil claims are limited in time. The general timeframe after which claims are barred is 20 years from the moment they arise. However, several situations are subject to shorter (or longer) time limits. Claims concerning contractual obligations or tort expire five years after the claims became due. Some situations have an even shorter time limit. Claims concerning consumer sales, for example, expire after two years. Limitation periods can be easily extended with a written notice in which the right to pursue a specific claim is unequivocally preserved. After a claim expires, the claimant can no longer commence any legal proceedings.

The Dutch system has time limits regarding an obligation to complain when buying goods and services. If the purchased item becomes defective, the creditor must complain within a reasonable period, otherwise the right to claim is lost. Which period is reasonable depends on what might reasonably be expected of proper performance.

Recovery of legal fees

Unlike in some countries, where the unsuccessful party must bear all the legal fees, the unsuccessful party in the Netherlands bears only a fixed amount of these fees. Apart from exceptional cases, the fixed amount of fees represents only a small percentage of the actual legal fees. In effect, each party pays their own legal fees.

Alternative dispute resolution

Arbitration

There are multiple independent institutes arranging arbitration, one of which is the Netherlands Arbitration Institute. These institutes usually have a complete set of rules which form the foundation of arbitration. The parties seeking arbitration usually select the arbiter(s) from a list. Registered arbitrators are chosen according to their expertise, experience, availability and language skills, so it is not only technicians that are registered but also people such as lawyers, judges and professors.

Mediation

The Netherlands has a well-institutionalised mediation practice. The Netherlands Mediation Institute (NMI), partner of the International Mediation Institute (IMI), keeps a register of qualified mediators. These mediators apply the NMI mediation rules and follow the Code of Conduct for NMI mediators.

The NMI monitors the quality of mediators and mediation training institutes. This is important as legislation on the subject of mediation is still being developed. Mediators specialise in issues such as labour disputes, business to business mediation, mediation involving public organs and family mediation.

There has been a practice of court-referred mediations: while in litigation, the judge can propose a side-path to mediation. The court procedure is adjourned during the mediation procedure. If the mediation ends successfully, the court procedure ends, if desired, with a verdict that incorporates the settlement agreement. If the mediation ends without settlement, the court procedure continues from where it was adjourned.

Mediation offers an approach to conflict resolution that can go beyond the borders of juridical matters. Characteristics of mediation are confidentiality, parties being responsible and in control, a rapid solution, limited costs, preserving or respectfully ending the relationship, and being directed by a professional and neutral third party.

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