

Corporate Law

Legal Alert

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The Netherlands Introducing Three Important Pieces of Corporate Legislation

The Dutch Government and Dutch Parliament are working on the introduction of three important pieces of legislation that may enhance the use of Dutch limited liability companies and partnerships in international transactions and reorganizations. This Legal Alert provides a brief overview of the proposed legislation. More detailed information with respect to each piece of the new legislation will follow in the near future.

Simplification and More Flexibility of Dutch BV Rules

The Dutch government has proposed new legislation regarding private limited liability companies ("BVs"). If approved in its current form by Parliament, the new legislation will result in a simplification of the rules that apply to BVs, and, at the same time, make the applicable rules more flexible than they already are. It is anticipated that the new legislation will come into force before 2008.

The aim of the new legislation is to remove ineffective and unnecessary, complicated rules and to make it easier for shareholders to organize a BV in line with their interests. The new legislation will make the BV an even more attractive company than it already is. For example, no minimum issued share capital will be

required and it will be possible to have shares without voting rights (although one share with voting rights must be issued) and shares without profit sharing.

Other important changes are (i) a simplification of the procedures to make informal capital contributions to (newly incorporated) BVs, including elimination of the auditor's statement requirement; and (ii) lifting the limitation of BVs to finance or provide security for the acquisition of shares in their own capital by third parties.

Introduction of Cross-Border Legislation

In 2005, the European Commission adopted the Cross-Border Merger Directive, which deals with the cross-border merger between limited liability companies from different member states of the European Union. However, the member states must have implemented the Directive before 15 December 2007.

In line with the Directive, the Dutch government has proposed legislation to facilitate legal mergers between Dutch limited liability companies and entities of other member states. In addition, the proposed legislation makes it possible for Dutch limited liability companies to legally merge with limited liability companies from non-EU member

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states, as long as the surviving entity is the Dutch limited liability company.

The main advantage of the introduction of cross-border mergers is that it allows for the transfer of assets and liabilities of the disappearing entity to the surviving entity by universal title, while in the event of liquidation, all assets and liabilities must be transferred individually.

Introducing New Legislation Regarding Partnerships

Other important new legislation is a proposal regarding partnerships. If the proposed legislation is adopted in its present form, it will create more flexibility in Dutch partnership law. The most striking feature of the proposed legislation is allowing certain types of partnerships, including limited partnerships, to become legal entities and hold legal title to assets. Currently, partnerships do not have legal personality and cannot hold legal title to assets. In addition, the introduction of partnerships with legal personality will make the transfer of a partnership's interest easier as there will no longer be a need to separately transfer the underlying assets.

The proposed legislation is expected to take effect during the course of 2008.