

Corporate Law

Legal Alert

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Simplification and Increased Flexibility of Dutch BV Legislation

Recently the Dutch government proposed new legislation regarding private limited liability companies ("BV"). If approved by Parliament, the new legislation will result in a simplification and increased flexibility of the laws that apply to BVs. It is anticipated that the new legislation will come into force around late 2007 or early 2008. Its aim is to cancel ineffective, unnecessary, and complicated provisions, and to make it easier for shareholders to set up and operate a BV. The new legislation will make the BV even more attractive for multinationals and private investors alike.

In this Law Alert, we briefly discuss the most notable changes in the proposed legislation.

No Minimum Capital

The current laws require a minimum capital of 18,000 euros for BVs. This requirement will be cancelled in the proposed legislation. Consequently, it will be possible to incorporate a BV with one share having a par value of 0.01 euro.

No Auditor's Statement Required for Contributions In Kind

Currently, a contribution in kind to a BV whereby shares are issued requires a statement by a Dutch auditor regarding the value of the contributed assets. The issuance of such a statement can be time consuming and relatively costly.

When a BV acquires assets from an incorporator or shareholder within two years of its incorporation and registration with the Trade Register, an auditor's statement is required with regard to the value of the acquired assets and the consideration due by the BV. The proposed legislation provides that in both cases an auditor's statement will no longer be required.

Cancellation of Financial Assistance Provisions

Pursuant to the prevailing legislation, a BV and its subsidiaries are not allowed to provide any form of security for the purpose of acquiring shares in the BV's capital by third parties. The granting of loans by a BV for the same purpose is subject to strict limitations. Both requirements will be cancelled in the proposed

BV legislation, which will greatly increase the possibilities of financing takeovers of BVs.

More Flexibility for Repurchase and Redemption of Shares

Currently, the repurchase by a BV of shares in its own capital is limited to a maximum of fifty percent of the issued share capital of the BV. In the draft bill, this limitation is cancelled.

The current laws contain restrictions regarding the redemption of BV shares. Only all shares of a certain type or class of shares held by a BV in its own capital are redeemable. The new BV legislation will result in a much more flexible system that allows for the redemption of individual shares, as long as the BV continues to have at least one shareholder holding at least one share.

Introduction of Distribution Test

The proposed legislation provides for a test to be applied in all situations whereby assets of a BV are distributed, or shares are repurchased or redeemed. This test implies that the directors of a BV will have to assess whether the BV can fulfill all its obligations that are due and payable after making the respective distribution or effectuating a stock repurchase or redemption, failing which the directors may be personally held liable for resulting damages.

Shares and Voting Rights

Currently, Dutch law states that each share carries one vote. The possibilities to have other voting arrangements are very limited. The draft legislation provides for a much more flexible regime. It will be possible to attach more than one vote to certain types of shares. Also, a situation may be created in which a shareholder, who is a major investor in the BV, will have minimum voting rights, and vice versa. Other important changes are that shares may be created without voting rights but with retention of all other shareholders' rights, or shares that are excluded from profit sharing.

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Summary

This Law Alert has briefly summarized some of the most important anticipated changes to Dutch BV legislation. The new regime will make the BV even more attractive for multinationals and private investors as a corporate vehicle for a variety of purposes.

It is expected that additional new legislation will be announced which will simplify and accelerate the incorporation procedure for BVs and will do away with the preventive supervision of the Ministry of Justice.

We will keep you informed about the new laws with regard to the BV and of any other connected, relevant developments.