**Dutch BVs**

Frequently Asked Questions

1. **What is a Dutch BV?**

There are two types of Dutch limited liability companies: a Naamloze Vennootschap, or public limited liability company (hereinafter referred to as an NV), or Besloten Vennootschap, or private limited liability company (hereinafter referred to as a BV). Due to the nature of NVs and BVS, in that they are both types of companies, they do have their own separate legal personality.

2. **What is the difference between a BV and an NV, besides the former being private, and the latter being public?**

Most rules applying to NVs are identical to those applying to BVS, but the main differences between these two types are as follows:

1) Only an NV can issue bearer shares.
2) Only shares of an NV can be listed on the Stock Exchange.
3) The minimum issued and paid up share capital for an NV is EUR 45,000 and there is no minimum for a BV.
4) An NV may buy back 10% of its issued capital, whilst a BV may buy back all of its issued share capital provided that one share with voting rights is in the hands of a third party.

3. **Does the creation of BVS require governmental approval?**

No. Under current Netherlands legislation it is not required to obtain governmental approvals for the valid establishment of a BV.

4. **What is the structure of a BV?**

Dutch Limited Liability Companies are composed of at least one (1) Managing Director and one (1) Shareholder. The appointment of Supervisory Directors to represent the Shareholders in the supervision of the BV’s management is optional.
5. What is the role of a Managing Director?

The Managing Director of a Dutch limited liability company needs not be a Dutch resident or national, and even a corporate entity may act as Managing Director. The Board of Management (at least one (1) Managing Director) is responsible for the management and administration of the Dutch limited liability company, its day-to-day affairs, and the operations of its business. The Board of Management represents the Dutch limited liability company. If the Board of Management consists of more than one (1) member, the Articles of Association ought to regulate whether or not each member can represent the Dutch limited liability company individually, or only by acting jointly. Notwithstanding a division of tasks and duties among the Managing Directors, each can, in principle, be held severally liable for liabilities of the Dutch limited liability company.

6. What is the role of a Supervisory Director, if applicable?

The Supervisory Board is a non-executive body which has no authority to represent the Dutch limited liability company. Its duties are to supervise the Board of Management, the general course of business, to assist the Managing Director(s) and, at all times, to act in the interest of the company. Consequently, the Articles of Association can provide that, for certain transactions, prior approval from the Supervisory Board is required. The appointment of a Supervisory Board is not obligatory for the creation of a BV, it is simply a mechanism available to the Shareholders in order to oversee the activities of the Board of Management.

7. Does the figure of the Shareholder exist in a BV?

Yes, this constitutes the ownership of the BV, and a minimum of one (1) Shareholder is required for its constitution.

8. What is the Deed of Incorporation?

A Dutch limited liability company is formed by one (1) or more incorporators by means of executing a Deed of Incorporation before a Civil Law Notary. This document represents the official constitution of the new limited liability company, and its full contents are considered to be company law. All procedures are to be included in this document, as this Deed affects all of the new company’s affairs.

The Deed of Incorporation comprises the Articles of Association whose provisions reflect:

- The name of the company,
- The registered office,
- The objects of the company,
- The authorized capital, par value and class of shares,
- The financial year of the company,
• The authority of the managing directors,
• The introduction of a Supervisory Board,
• The limitation on transfer and issuance of shares,
• Other provisions dealing with meetings and adopting resolutions.

The Deed of Incorporation can only be executed when the Civil Law Notary.

9. Who is liable for the activities of a BV?

The Managing and Supervisory Directors can be held personally liable to the Dutch limited liability company or to third parties for the following events:

1) Incorrect accounts,
2) Involuntary liquidation of the company,
3) Losses,
4) Non-compliance with internal limitations,
5) Failure to pay taxes.

10. Are there any capital requirements for the BV?

Thanks to the new Flex-BV Act, effective October 1, 2012, the minimum capital requirement of EUR 18,000, has been abolished. The elimination of such a requirement brings, by consequence, the elimination of the bank statement that needs to be presented at the moment of incorporation. The most evident benefit of this increased flexibility is the entrepreneur’s newfound ability to incorporate a Dutch BV without having to sacrifice its resources, which may be limited when starting its new venture.

11. Are there any other advantages due to the Flex-BV Act?

The other main advantage, which may result even more important the first, is the flexibility that now exists when issuing shares. Shares may now be issued with or without voting and/or profit-related rights. This allows for the Dutch BV to better manage the interests of its Shareholders and the social aims of the company in general. This is achieved by permitting the separation of shares into classes, according to the level or type of rights being granted to the Shareholders. Also, the new Act allows for shares to be denominated in any currency other than the Euro, a restriction that existed prior to this legislation. Other key features of this new Act are listed below.

12. Does this new Act apply to all existing BVs, or only those incorporated after its enactment?

The Flex-BV Act applies to all new BVs, as well as existing ones, so the new legislation is all-encompassing and inclusive. To benefit of all possibilities existing BV’s may require to amendment their articles of association first.
13. In sum, what are the features of this Act?
In sum, the new Flex-BV Act brings about the following changes, among others:

- EUR 18,000 capitalization requirement is abolished.
- Bank or auditor’s statement requirement is abolished
- One share with voting rights, held by a party besides the BV, will suffice.
- Share capital may now be denominated in any currency.
- Share transfer restrictions no longer mandatory in the Articles of Association.
- New freedom to allocate voting and/or profit rights through shares.
- Restriction from providing any form of security or loans, relating to the acquisition of shares in the BV’s capital, by third parties, is abolished.
- Shareholders’ resolutions may now be adopted outside a meeting, and Shareholders may directly appoint or dismiss one (1) or more Directors.
- New possibility to incorporate the provisions of a Shareholders’ Agreement in the Articles of Association of a BV.
- Any distribution to shareholders is subject to the approval of the Board of Management of the BV.

14. How are BVs incorporated?

BVs must be formally registered before a Civil Public Notary. In the event that the Shareholders are unable to do so in person, they may appoint Proxies by means of an Apostilled Power of Attorney, or Mandate. The Proxies will act as Incorporators of the BV, subscribing its shares initially, and then transferring these shares to the actual Shareholders.

When appearing before the Civil Public Notary, the Shareholders or their Proxies must bring with them the executed Deed of Incorporation, and the requirement to bring a bank statement confirming the deposit of the initial share capital is no longer obligatory, due to the new Flex-BV Act.

15. What does the registration of the BV with the Trade Register consist of?

Within one (1) week after the date of the execution and submission of the Deed of Incorporation to the Civil Public Notary, the BV must be registered with the Trade Register of the Chamber of Commerce and Industry at the place where it has its registered office.

Until registration with the Trade Register of the Chamber of Commerce takes place, the Managing Directors are liable, jointly and severally with the company for transactions binding the company and performed during their management.

It is important to note that the Dutch limited liability company must register, inter alia, its trade name, place and date of establishment, a description of the business conducted, number of employees, information on management and relevant information on signatories and branches.
16. Are there any rules with respect to the objects of a BV?

The objects of a Dutch limited liability company can be very broad as long as the objects are not contrary to good morals or any provisions of Dutch law. The objects of the company will also be filed with the Trade Register of the Chamber of Commerce. For certain activities to be conducted in the Netherlands it is required to possess over a license.

17. Can a BV own assets?

Yes, since the BV qualifies as a legal entity, it may own assets.

18. How are a BV’s corporate documents amended?

The Articles may be amended, in full or in part, by means of a General Shareholders’ Meeting. Such amendments need to be effected by means of execution of a Notarial Deed of Amendment and are to be made up in Dutch. Any rights granted to third parties (outside Shareholder capacity) in the Deed of Incorporation, may only be amended with said third party’s consent.

19. Is a BV subject to corporate taxation?

Yes. A Dutch limited liability company will be taxed on its worldwide income. The corporate tax rate, at present, is 20-to 25%. Dividends received by Dutch limited liability companies from qualifying interests (“participation exemption”) are exempt from Dutch corporate income tax. This exemption is based on the principle that proceeds paid on profits that have already been taxed with corporate income tax, should not be taxed again.

20. Do BVs pay withholding taxes on dividends, interest and royalties?

Dividends and other profit distributions (including liquidation payments in excess of the paid-up capital) paid by a Dutch limited liability company are subject to a 15% dividend withholding tax in the Netherlands. This rate can be reduced when Dutch non-residents, entitled to such proceeds, qualify under a tax treaty signed by the Netherlands or pursuant to the EU Parent-Subsidiary Directive. By using a Dutch cooperative, it is, under certain conditions, possible to avoid Dutch dividend withholding tax.

There is no Dutch withholding tax on interest, royalties and rentals paid by Dutch limited liability companies resident in the Netherlands to non-residents.

21. What accounting requirements do BVs have?

Dutch limited liability companies are obligated to annually report on their activities and transactions, according to specific rules reflected in the Dutch Commercial Code. This Code stipulates that each Dutch limited liability company must prepare an annual report, in a defined
format, and to have it signed by the members of the Board of Management of the Dutch limited liability company and, if appropriate, by the Supervisory Board as well.

The Code contains specific rules and regulations with respect to the reporting, auditing and filing requirements that vary according to the classification of the Dutch limited liability company.

All Dutch limited liability companies, except those that qualify as small companies must appoint an auditor to examine the annual report and to express an opinion. Annual tax returns must be filed electronically within five (5) months from the closing date of the financial year. An extension for the filing period with a maximum of eleven (11) months can be applied for, if needed. Tax losses may be carried back one (1) year and carried forward for nine (9) years.

22. Must BVs hold Annual General Meetings (AGM)?

Yes. It is required for every BV to hold its AGM once every calendar year. The Annual General Shareholders’ Meeting must adopt the annual report, which must then be filed at the Trade Register of the Chamber of Commerce.

23. What are the advantages of using a BV?

A Dutch limited liability company is often used in tax-planning structures as an intermediate holding and/or finance entity. The combination of the participation exemption with the broad range of tax treaties concluded by the Netherlands makes it possible to benefit from tax savings on profit distributions made by investments ultimately owned by the non-Dutch resident shareholders of the Dutch limited liability company.