Dutch CVs
Frequently Asked Questions

1. What is a Dutch CV?

A commanditaire vennootschap (hereinafter referred to as a CV) under Netherlands law is not a legal entity but is constituted by execution of a Partnership Agreement between parties, of which at least one (1) is a General Partner and at least one (1) is a Limited Partner. Due to the nature of a CV, in that it is only a Partnership, it is does not have its own separate legal personality.

2. What legislation regulates the creation of CVs?

A number of specific statutory provisions regarding the CV and other partnerships are included in the Netherlands Commercial Code (Wetboek van Koophandel) and the Netherlands Civil Code (Burgerlijk Wetboek).

3. Does the creation of CVs require governmental approval?

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

4. What is the structure of a CV?

The Dutch CV is composed of at least one (1) General Partner and one (1) Limited Partner.

5. What is the role of a General Partner?

The General Partner(s) are responsible for the management of the CV and for the day-to-day affairs of the CV. Each General Partner shall have the power and authority to individually represent and bind the CV, unless the Partnership Agreement provides otherwise. Notwithstanding a division of tasks and duties among the General Partners, each such General Partner shall, in principle, be held severally liable for any liabilities of the CV.

6. What is the role of a Limited Partner?

The Limited Partner(s) are only allowed to interfere with the internal policy of the CV. It is strictly forbidden for Limited Partner(s) to perform any act which may be considered to be an act of (external) management. If Limited Partner(s) act within such boundaries, their liability is
restricted up to their (capital) contribution. If they fail to do so, they will become liable on an equal basis as the General Partner(s).

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

No. To a certain extent the figure of a shareholder in a legal entity can be compared to the position of the Limited Partner. The General Partner in return can at best be compared to the position of a Trustee acting on behalf of the CV.

8. What is the Partnership Agreement?

This is the document signed by all the proposed CV’s Partners, establishing the nature of the Partnership, its activities and aims, and other relevant information.

9. How do I set up a CV?

CVs must be formally registered before a Civil Public Notary. In the event that the Partners are unable to do so in person, they may appoint Proxies by means of an Apostilled Power of Attorney, or Mandate. When appearing before the Civil Public Notary, the Partners or their Proxies must bring with them the executed Partnership Agreement.

10. What does the registration of the CV with the Trade Register consist of?

Within one (1) week after the date of the execution and submission of the Partnership Agreement to the Civil Public Notary, the CV must be registered with the Trade Register of the Chamber of Commerce and Industry at the place where it has its registered office. Only a limited number of items are to be registered; the Partnership Agreement itself and the identity of the Limited Partners of the CV need not be filed.

11. Are there any rules with respect to the objects of a CV?

The objects of a CV may be very broad, as long as they are not contrary to good morals or Dutch law. The objects of the CV will also be filed with the Trade Register of the Chamber of Commerce in order to enable any third party to determine whether a General Partner acts within the scope of the objects of the CV.

12. Can a CV own assets?

No. It has been mentioned above that the CV does not qualify as a legal entity. Therefore, a CV may not own assets. Assets of the CV are considered to be legally and jointly owned by the General Partners. The same applies for the liabilities of a CV, which are considered to be joint liabilities of the General Partners.
13. Are there any accounting requirements for CVs?

In the case that a General Partner is a non-Dutch entity, with a capital divided into shares, the CV must file its annual accounts at the Trade Register of the Chamber of Commerce and Industry. The Dutch accounting and reporting rules, which may even include consolidation and mandatory audit, then also apply to the scope and format of these annual accounts.

14. How is a CV terminated?

The CV ceases to exist through the termination of the Partnership Agreement by all Partners, and liquidation of the assets in accordance with the Partnership Agreement. Without a provision to the contrary in the Partnership Agreement, the termination of the Partnership Agreement by an individual Partner also results in the automatic dissolution and liquidation of the CV.

15. What is a closed CV?

A CV is regarded as “closed” when any Partner cannot be replaced unless unanimously agreed upon by all Partners. A closed CV is considered to be transparent from the Dutch fiscal point of view. This means that in the event that the CV conducts no activities in the Netherlands and has no assets in the Netherlands, nothing will happen. There are also hardly any tax compliance conditions that have to be met in that case. Contrary to this, in the event that the CV conducts activities in the Netherlands or holds Dutch assets the Partners of the CV will become taxable in the Netherlands for corporate or personal income tax. In some cases the levying of taxation is prohibited by treaty law.

16. What is an open CV?

A CV is automatically considered an open CV if it does not meet the closed CV criteria mentioned above. An open CV is treated in the Netherlands as a non-transparent entity. This means that the CV is not only a fully taxable entity for the levying of corporate income tax in the Netherlands, but is also taxable, in principle, on its worldwide income. In practice, tax treaties and unilateral agreements normally prohibit taxation on worldwide income. Also, dividend payments made by an open CV to its partners are taxable with Dutch withholding tax (except where the EU Parent–Subsidiary Directive or certain treaties apply).

In principle, the Partners of the open CV are not taxable for their interest in the CV. For the Partners that do not reside in the Netherlands, any capital gains generated by them -because of their interest in the CV – should not be taxed in the Netherlands. There is, however, one exemption to this rule, which is based on anti-abuse legislation, but the cases where this rule is applicable are very rare. Furthermore, this rule can never be applicable in treaty cases.
17. Why are closed CVs considered hybrid entities?

The closed CV is often used in tax planning structures as a hybrid entity. A hybrid entity is an entity whose legal status is qualified differently in various countries. For instance, although the Netherlands disregards the closed CV for tax purposes, other countries treat the closed CV as a regular legal entity. As a consequence, many kinds of tax planning opportunities arise.

In practice, many Latin American clients make use of the possibilities of a closed CV (not only for tax purposes, but also in order to shield their assets). As mentioned before, the closed CV has no tax filing obligation in the Netherlands. If not structured properly, it may have, however, an obligation to prepare and file annual accounts, according to Dutch GAAP (Generally Accepted Accounting Standards). It is therefore always recommended to review the purpose of the Dutch CV being set up, and to verify the legal and tax consequences attached to the selection of its Partners. The importance of selecting the right Partners is particularly evident when a Dutch CV owns shares in a Dutch BV, or is set up for sheltering purposes.

A trust company that can create and support a Dutch CV always requires strict compliance information that, in all cases, involves receipt of annual financial statements, reflecting the assets and liabilities that can be allocated to the Dutch CV.