

## COMPANY FORMATIONS

# Frictionless Formations: Establishing a new base in The Netherlands

The Netherlands has an open economy and an international business climate. Many globally-oriented businesses have decided to create operational hubs in The Netherlands and have established Dutch companies.

Fast-growing sectors such as IT are driving this, since The Netherlands scores high in all innovation rankings and is therefore a popular location. Operational subsidiaries are also common in the Netherlands, especially within businesses that are active in import and export. The Rotterdam harbour and Amsterdam airport are ideal gateways to the densely populated areas of Western Europe.

The country is also home to a range of holding companies because of its attractive holding regime, which, in combination, with a favourable VAT regime (with import VAT deferral until moment of filing and no Dutch VAT in case of intra-community supply) makes The Netherlands an enticing prospect. Brexit is also accelerating the number of businesses that are opened in the Netherlands.

## Choosing a legal form

Most new businesses, both holding and operational, make use of the private limited liability company (besloten vennootschap or abbreviated to 'BV'). The BV offers a high level of flexibility in respect of amount of capital, composition of the board and issuance of shares without voting rights or profit sharing. Since a recent amendment of Dutch dividend tax legislation, coops (coöperaties) are not popular anymore for holding purposes.

## Details on the incorporation and registration process

The incorporation and registration process of a BV are straight forward processes. A notary drafts incorporation documents, consisting of draft articles in the Dutch language and including an English office translation and a power of attorney to be signed by the incorporator.

Under Dutch law the beneficiary, incorporator and director(s) of the new company shall be identified by the notary and, in case of a legal person acting as incorporator, the authority of its signee shall be confirmed. It is not necessary for the parties involved to be present in the Netherlands.

Before the company is incorporated, a registered address is arranged, which can be both a virtual and real office. This incorporation takes place by means of the execution of the deed of incorporation by a Dutch notary. The notary also arranges the registration at the trade register and incorporation and registration can take place in a day.

The listing at the trade register triggers issuance of a fiscal number and, if applicable, a VAT-number by the tax authorities.

## Additional requirements

In case of any legal acts on behalf of a BV under incorporation, it is important to have these ratified by the company after its incorporation by means of a board resolution. Until ratification, the person who represented the company under incorporation will remain severally liable for any liabilities related to these acts. This liability remains if the representative knew, or should have known, at execution of the legal acts that the BV would not be able to fulfil its obligations. This is presumed when the BV will be declared bankrupt within one year of its incorporation.

It is also advisable to have the capital paid up by the shareholders and have this registered with the trade register as soon as possible. Under Dutch law paying up of shares can be relevant for the following reasons:

- the Dutch participation exemption will not be applicable in case not minimally 5 per cent of the shares have been paid up
- a Dutch fiscal unity can only be established if 95 per cent or more of the shares have been paid up
- article 2:216 section 6 Dutch Civil Code ('DCC') stipulates that distributions shall be based on the mandatory deposits on the shares and not their nominal value
- under article 2:199 section 1 DCC the seller remains severally liable against the company for the unpaid amount at transfer of non-paid up shares.



THE NETHERLANDS

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Robert Bron, co-owner and founder of ABiLiTieS Trust based in Amsterdam. He is a strongly client-oriented legal counsel and manager with affinity for corporate law, tax and accounting.

Robert is skilled in setting up companies, maintenance of special purpose companies, international structuring and corporate law. Before co-founding ABiLiTieS Trust, he had a major role in the successful set up of 10+ employees trust office from scratch based on organic growth.

Robert is a trouble shooter with a Master in corporate law from Utrecht University. He is always available for clients or other IR Global members to answer questions on the Dutch jurisdiction.

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*The team is committed, experienced and knowledgeable and is able to assist you with any aspect of company formation. If urgent, a new company can be set up and registered within 48 hours.*

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