

HOW TO INCORPORATE A LIMITED LIABILITY COMPANY IN THE NETHERLANDS

(A) Who can set up a company in the Netherlands?

A Dutch limited liability company (a *besloten vennootschap* or *BV*) can be incorporated by any (Dutch or foreign) natural person or legal entity. The BV's incorporators usually become its first (founding) shareholders, and are identified as such in the BV's deed of incorporation. A Dutch Company must have at least one Shareholder. Shareholders of a Company in the Netherlands can be either (Dutch or foreign) natural persons or legal entities.

A BV is directed by one or more directors who can be jointly or independently authorised to represent the BV. Directors can be (Dutch or foreign) natural persons and/or legal entities. It is possible for the same natural person or legal entity to become both shareholder and director of a BV. Although there is no legal requirement for a BV to have a certain number or percentage of Dutch directors, many BVs have a board of directors which is made up of at least 50% residents of the Netherlands or legal entities located in the Netherlands. This way, BVs can benefit from the Netherlands' business-friendly tax climate.

(B) How to set up a company in the Netherlands?

A BV is incorporated by passing a notarial deed of incorporation before a civil-law notary residing in the Netherlands, followed by registration of the newly incorporated BV (by the civil law notary) at the commercial register of the Chamber of Commerce. Before the notarial deed of incorporation is passed, the civil-law notary will draw up the BV's articles of association, which are included in the deed of incorporation.

Dutch law no longer requires (depositing) a minimum share capital amount, so a BV can have a share capital of € 1.-. As there is no legal obligation for a BV to have a bank account at the time of its incorporation, it is common to open a bank account (immediately) after incorporation.

(C) Which documents are needed?

Before passing the deed of incorporation, a civil-law notary needs to receive information and documents necessary for verifying the identity of the BV's directors, founding shareholders, authorised representatives and UBOs, which includes at least:

- A valid copy of the passport or European national identity card of each natural person representing the founding shareholder(s) of the BV;
- A valid copy of the passport or European national identity card of each natural person who will become a director, founding shareholder, authorised representative or UBO of the BV;
- A certified trade registry extract for each legal entity that will become a director or founding shareholder of the BV;

- Proof that the BV is authorised to use its intended registered address as its registered address (such as a lease agreement).
- If the natural person that will become the BV's UBO is not its founding shareholder and/or director: a structure chart of the corporate structure of the BV, in order to identify and register the BV's UBO(s).

(D) Main obligations for the board of directors

From the moment of incorporation of a BV, its directors are subject to several obligations under Dutch law. The most important of these obligations are:

- Keeping accounting records of the assets and liabilities of the BV, and storing the BV's books, documents and other data storage media for 7 years and in such a way that at all times the rights and obligations of the BV can be known.
- Drawing up the BV's annual accounts, which should be adopted by the BV's shareholder(s) and filed with the Chamber of Commerce within one year after the end of the BV's accounting year.

Of course there are many more obligations, but these obligations are particularly important since not meeting them can lead to personal liability of the BV's directors if the BV is later declared bankrupt.

(E) Articles of association

Many provisions in Dutch corporate law are so called 'directory law', which means that it is possible to deviate from these provisions in a BV's articles of association (which are part of the deed of incorporation). It is possible (and very common) to include, for example, the following instruments in a BV's articles of association at the time of its incorporation:

- Limitations to the directors' powers to (independently) represent the BV.
- Limitations to the directors' powers to take certain (board) decisions without prior approval of the BV's shareholders.
- Requirements for being a director (e.g.: only residents of the Netherlands, only natural persons, etc.).
- Transfer restrictions which limit the shareholders' possibility to sell and transfer their shares to third parties (rather than the other shareholders).

(F) Incorporation timing and costs

The timing depends on how soon the necessary information and documents are provided to the civil-law notary and on how long the civil-law notary needs to draw up the BV's articles of incorporation. A civil-law notary can usually incorporate a BV in a few days.

The average costs for incorporating and registering a BV amount to approximately € 2,500.-.

(G) Concluding remarks

The above information only applies to BVs incorporated in the European territory of the Netherlands, but the process for incorporating a BV in the Dutch Caribbean is not very different. If necessary, a Dutch lawyer or civil-law notary can refer clients to a civil-law notary in the Dutch Caribbean.

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