

MAJOR CHANGES IN DUTCH CORPORATE STATUTE GOVERNING ‘BV’-COMPANIES

On October 1, 2012, major changes to Dutch corporate statute governing Dutch companies with limited liability (the so-called ‘*besloten vennootschap*’ or ‘*BV*’), have taken effect. The changes concerned are intended to simplify current corporate statute, to reinforce the protection of creditors, to eliminate requirements which are considered as unnecessary, to provide more flexibility in the structuring of internal corporate relations, and to thus create a more pragmatic and competitive corporate entity.

The *BV*-company is the legal entity most frequently used by foreign corporations doing business in The Netherlands or who, for reasons of international tax optimization, own one or more corporate entities established in The Netherlands. We will therefore hereinafter summarize some of the most important changes as compared to the corporate regime applicable to *BV*-companies prior to October 1, 2012:

- The minimum issued share capital of a *BV* has become 0.01 Euro instead of Euro 18,000;
- A bank statement confirming that the amount of capital to be paid up is available at incorporation is no longer be required;
- The *BV*’s capital may be expressed in other currencies than the Euro;
- The *BV*’s Articles of Association no longer need to express the amount of social capital, and it will no longer be required that a minimum of 20% of the social capital is paid up;
- The obligation to pay up shares will remain completely suspended until the *BV* requests payment;
- Incorporation into the Articles of Association by reference of certain types of shareholders agreements will become possible;
- The Articles of Association may impose specific obligations on shareholders, such as the making available of funds or assets in case of a joint-venture;
- The Articles of Association may allow the issuing of non-voting shares or shares which are not entitled to dividend;

- The Articles of Association no longer need to contain a share blocking clause or similar clauses;
- Shareholders may be required to transfer shares under specific circumstances defined in the Articles of Association, or in case they no longer possess specific qualifications. The right to vote or to appear at shareholders meetings, or the entitlement to dividend, may be suspended until the shares have been transferred;
- The Articles of Association may grant specific rights to holders of non-voting certificates of shares in the BV, such as the right to attend shareholders' meetings;
- In case of contribution in kind in return for new shares, a valuation by a certified public accountant is no longer required;
- Distributions or similar payments to shareholders in case of purchase by the BV of shares in its own capital, reduction of its share capital, (interim) dividend or distribution of reserves will be permitted subject to authorization by the Board of Management. The Board must refuse its authorization in case it knows or should be aware that the BV, after the distribution, will no longer be able to continue payment of its outstanding debts;
- In case the BV, as a result of such distribution, is no longer able to pay its outstanding debts, those members of the Board of Management that were aware or should have been aware of this will become severally liable for the amount of such distribution;
- It will no longer be prohibited that the BV provides financial support in connection with the purchase of shares in the BV;
- In case the BV is declared bankrupt within one year from a distribution, those shareholders that knew or should have been aware that the BV as a result of such distribution would no longer be able to pay its outstanding debt may be required to repay such distribution;
- The Articles of Association may provide that the members of the Board of Management or of the Board of Supervisory Directors will be appointed or dismissed by the meeting of holders of shares of a specific type or denomination;
- The General Meeting of Shareholders may be held outside of The Netherlands;
- The owners of 1% of the issued share capital will be entitled to call for a general meeting of shareholders;

- Resolutions of the General Meeting of Shareholders taken outside of a meeting no longer require a unanimous vote, provided all parties entitled to participate in the meeting have accepted this procedure.

Due to the entering into effect of the changes summarized above, certain clauses in a BV-company's current Articles of Association may have become redundant, while the company may consider to add certain new statutory clauses in order to make their governance structure more flexible. It is therefore recommended that BV companies that wish to fully benefit from the changes concerned review their Articles of Association.

Please note that the above is a resume and does not constitute legal advice in any individual case. We recommend that you obtain advice from a lawyer specialized in Dutch law in case you wish to be informed in detail of the possibilities of debt recovery in The Netherlands.

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