



## Dutch Besloten Vennotschap (BV)

### FAQ

#### **What does a Dutch Besloten Vennotschap mean?**

The Netherlands offers two options for registering a company with limited liability (LLC) of the shareholders: a public LLC or Naamloze Venootschap abbreviated as NV, and a private LLC, Besloten Venootschap, abbreviated as BV. Both the NV and the BV represent separate legal entities.

#### **Are there any other differences between BVs and NVs, besides that one of them is private and the other public?**

The requirements for BVs are almost identical to the ones for NVs, but there are some differences between the entities. The main ones are outlined below:

- a) Bearer shares can be issued only by NVs.
- b) Only NVs are allowed to list shares on the Exchange Market.
- c) The minimum share capital that needs to be issued and deposited for NVs is 45 000 EUR. No minimum requirement is set for BVs.
- d) NVs can buy back one tenth of the issued share capital while BVs can buy back the whole capital, on the condition that a single share giving the right to vote is owned by another party.

#### **Are the applications for BV registration subject to approval by the government?**

According to the current Dutch legislation, no approval from the government is required for the official formation of a private LLC.

#### **Are there any requirements regarding BV structure?**

Dutch LLCs need to have a minimum of one Managing Director and a Shareholder. The assignment of Supervisors representing the Shareholders in the Managing Board of the company is optional.

#### **What role does the Managing Director play?**

The Director of a company with limited liability established in the Netherlands does not have to be a national or a resident of the country. Even other corporations can perform the functions of Managing Directors. The Managing Board (composed of a minimum of one Director) deals with the administration and management of the LLC, its daily routine and business operations. The Managing Board represents the LLC. In case the Board includes several members, the Articles / Memorandum of Association (AoA / MoA) must specify whether the Dutch LLC can be represented individually by each member, or joint action is required. Regardless of the distribution of obligations and tasks among the Directors, each of them can, generally, be held personally liable with regard to the company's debts.



### **What are the functions of the Supervisory Directors, if relevant?**

The Board of Supervisors does not have executive powers and cannot represent the LLC. Its purpose is to monitor the operations of the Managing Board and the main course of development of the business, to support the activities of the Management and to always act in agreement with the best interests of the LLC. In this respect the AoA can require the prior approval of the Board of Supervisors for particular transactions. The establishment of a Board of Supervisors is not mandatory for the incorporation of a Dutch LLC. It is rather an instrument that can be used by the Shareholders to monitor the operations of the Managing Board.

### **Does the incorporation of BV require the existence of Shareholders?**

Yes, at least one Shareholder is needed to establish a BV. The Shareholder is the actual owner of the company.

### **What does the Incorporation Deed represent?**

A [Dutch LLC](#) is established by a minimum of one incorporator through the execution of an Incorporation Deed before a Latin Notary. The Deed contains the new LLC's constitution that is considered as company law. It must cover all procedures of the entity and is relevant to all operations of the newly established company.

The Incorporation Deed includes the AoA that present the following information:

- Company name;
- Registered office,
- Purpose and range of activities;
- Amount of authorized capital, stated value and share class;
- Financial year;
- Managing directors' authority;
- Appointment of a Board of Supervisors;
- Any limitation on the transfer and issue of shares;
- Other relevant rules with respect to organization of meetings and adoption of resolutions.

The Incorporation Deed can be executed only when certified by the Latin Notary.



### **Who carries the liability with respect to the operations of the private LLC?**

The Managers and Supervisors are personally liable, either to the LLC or third parties, in any of the cases listed below:

- accounting errors;
- forced liquidation;
- losses;
- lack of compliance with the company's internal provisions;
- non-payment of taxes.

### **Is there a minimum capital required in order to incorporate a BV?**

In the beginning of October, 2012, a new Act on BVs was adopted in the Netherlands abolishing the requirement for minimum capital of 18 000 EUR. The waiver of this requirement means there is no need to present a bank statement during the procedure of incorporation. The new flexible legislation brings the obvious benefit of allowing entrepreneurs to establish Dutch LLCs without the need to sacrifice limited resources at the start of their new ventures.

### **What are the other advantages provided by the new and flexible Act on BVs?**

Another main benefit, that might prove to be even more significant than the previous one, is the flexible procedure for issue of shares. Now voting and distribution of rights related to profit are optional. Therefore the private LLC can manage more efficiently its Shareholders' interests and general social objectives. Shares can be separated into classes, depending on the rights and the level of the Shareholders. In addition, the BV Act allows the denomination of shares in currencies different from the Euro, which was restricted under the prior regulations. Other important characteristics of the new legislation are highlighted below.

### **Is the new BV Act applicable to all BVs in the Netherlands or to those registered after its entry into force?**

The new Act is relevant for both newly established and existing BVs, so it covers and includes all private LLCs in the Netherlands. Existing BVs may find it appropriate to amend their AoA in order to take advantage of all options provided by the new legislation.

### **In summary, what does the new Act provide for?**

In summary the new Act on BVs adopts the changes listed below (among others):

- waiver of the requirement for a minimum capital of 18 000 EUR;
- waiver of the requirement for a bank / auditor statement;
- it is sufficient to have a single share giving voting rights owned by another party;
- denomination of share capital in different currencies is allowed;
- no mandatory restrictions on share transfer in the AoA;
- more flexibility in distribution of voting / profit rights by means of shares;



- no restriction in providing securities of loans to third parties willing to acquire BV shares;
- Shareholders are free to adopt resolutions without holding a special meeting and have the right to directly dismiss or appoint Directors (one or more).
- there is a possibility include the details of an Agreement between the Shareholders in the AoA of a private LLC.
- the Managing Board of the BV must approve the profit distribution among the Shareholders.

### **What is the procedure for BV incorporation?**

The BV needs to be officially registered in front of a notary public. If the Shareholders cannot be present in person, then they may assign Proxies through a certified Power of Attorney (PoA) with apostille or a Mandate. Then proxies can act in the capacity of Incorporators and initially subscribe the BV's shares, then transfer them to the Shareholders.

The Shareholders / Proxies must present the Incorporation Deed of the company to the notary public. The requirement for a bank financial statement to confirm that the minimum capital has been deposited not valid anymore, thanks to the BV Act of 2012.

### **How is the BV included in the Commercial Registry?**

Within 7 days after the presentation of the executed Incorporation Deed to the notary public the private LLC has to be included in the Registry at the Chamber of Commerce and Industry with its registered address.

Until inclusion in the Commercial Registry the Directors of the LLC are jointly and personally liable for any binding transactions concluded at the time of their management.

Importantly, among other things, the Dutch LLC needs to register its official name, date and place of formation, description of its business operations, number of staff, management details and information regarding the signatories and any existing branches.

### **What are the requirements regarding the purpose and range of activities of a private Dutch LLC?**

The range of activities of a private LLC is not subject to any restrictions, if they do not contradict the general ethics or the provisions of the law in the Netherlands. The purposes of the BV are also included in the Registry at the Chamber of Commerce. Some activities in the country require the issue of a license.

### **Is a BV eligible to own assets?**

The BV is a legal entity and therefore it can own assets.



### **What is the procedure for amendment of corporate documents of private LLCs?**

The Articles of Association can be fully or partially amended by holding a general meeting of the Shareholders. Any amendments enter into force upon the execution of an Amendment Deed before a notary and must be drafted in Dutch. Rights of third parties (that do not act in the capacity of Shareholders) granted by virtue of the Incorporation Deed can be amended only with the consent of the third parties.

### **Do BVs pay corporate tax?**

Yes. In the Netherlands LLCs are taxed with respect to their income generated worldwide. The current rate of corporate tax is 20 – 25%. Dividends from interests qualifying for exemption (the so called “participation exemption”) are not taxable as corporate income. The exemption is granted due to the assumption that the proceeds from profits already taxed as corporate income.

### **Are private LLCs subject to a withholding tax on royalties, interest and dividends?**

In the Netherlands profit distributions, such as dividends and liquidation payments exceeding the contributed equity, paid by Dutch LLCs are taxed with 15% withholding tax. The rate can decrease in cases when non-residents receiving dividends are eligible for tax reduction by virtue of a relevant treaty on taxes concluded by the country or the EU Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. Under particular conditions it is possible to circumvent the withholding tax on dividends in the Netherlands by using a local cooperative.

Interest, rentals and royalties paid by resident Dutch LLCs to non-resident entities are not subject to withholding taxes.

### **What are the accounting requirements for private Dutch LLCs?**

Dutch LLCs have to submit annual reports on their transactions and activities in line with specific requirements listed in the local Commercial Code. According to the Code each LLC has to prepare a yearly report using a specific format. The report must be signed by all Managing Board members and, if necessary, by the Board of Supervisors at the company.

The Commercial Code specifies a number of regulations and rules regarding the auditing, reporting and filing that depend on the Dutch LLC’s classification.

All Dutch LLCs, excluding the ones classified as small businesses, are required to use the services of an auditor who shall review their yearly report and prepare an opinion.

The annual declarations on tax liabilities need to be submitted electronically no later than five months after the financial year’s end. If necessary, companies can apply for an extension of this period (maximum eleven months). The period for fiscal carry-back of tax losses is one year and for carry-forward – nine years.



### **Are Dutch LLCs obliged to hold Yearly General Meetings (YGM)?**

Yes. All BVs are obliged to hold a YGM once per calendar year. The agenda of the YGM of the Shareholders includes the adoption of the yearly report that will be submitted at the Commercial Registry.

### **What advantages does a BV offer?**

Dutch LLCs are often preferred in terms of tax planning as intermediate finance and / or holding entities. The possibility for participation exemption in combination with the numerous tax treaties signed by the country allows entrepreneurs to save on taxes on distributions of profit by investments that are owned by shareholders of the LLC that do not reside in the Netherlands.

For further questions. Kindly contact us on [info@intercompanysolutions.com](mailto:info@intercompanysolutions.com) or visit our [website](#).