New Dutch company law

Introduction Flex BV
as of October 1, 2012

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Short history

• Origin of NV goes back to start of 17th century: trade with Dutch East Indies (VOC)
• BVs since 1971 to avoid publication of annual accounts
• 1976: also BVs had to publish
• Since then, BVs (more or less) copy of NVs

Key elements of new legislation

• Adaptation to international developments
• Accessibility
• Internal structure
• Protection of creditors

JUST ONE BV!
NL vs. abroad

- Dutch company law too rigid
- Not attractive for foreign investors
- Increased flexibility in other European countries e.g. England, France, Germany and Curaçao

Compare highlights (I)

<table>
<thead>
<tr>
<th>Old</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>€ 18,000 minimum capital; bank or auditors statement</td>
<td>No minimum capital; no statements</td>
</tr>
<tr>
<td>Capital in euro</td>
<td>Capital in any currency</td>
</tr>
<tr>
<td>Only limited financial assistance</td>
<td>Financial assistance allowed</td>
</tr>
</tbody>
</table>

Compare highlights (II)

<table>
<thead>
<tr>
<th>Old</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of MB and SB directors by GM</td>
<td>Appointment of MB and SB directors by any corporate body (max 1/3 of SB directors by others)</td>
</tr>
<tr>
<td>Binding nomination with two nominees</td>
<td>Binding nomination with one nominee</td>
</tr>
<tr>
<td>Profit allocation by GM</td>
<td>Profit allocation by any corporate body</td>
</tr>
</tbody>
</table>

Compare highlights (III)

<table>
<thead>
<tr>
<th>Old</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital protection by law</td>
<td>Capital protection by directors</td>
</tr>
<tr>
<td>(Financial) liability of directors confirmed in court decisions</td>
<td>(Financial) liability of directors laid down in law</td>
</tr>
<tr>
<td>Only general instructions by GM</td>
<td>Specific instructions by any corporate body (refusal only if not in interest of company)</td>
</tr>
</tbody>
</table>
Protection of capital and creditors

- MB has to judge payments (*uitkeringstest*) by BV >> dividends, repurchase of shares and repayment of capital
- No distribution of dividends without approval MB
- No longer payment of due debts >> MB is liable against the BV for deficit

Flexible voting rights

- Articles may provide for shares without voting or profit sharing rights, but not combined
- Minimum of one outstanding voting share
- Non-voting shareholders may attend and address GM
- Meeting of holders of non-voting shares may have approval and election rights
- With non-voting shares, need for certification?

Certification (certificering)

- Division between voting rights (StAK) and profit sharing rights (depositary receipt holder)
- Old: if DR's were issued without 'cooperation' of BV, the holders not allowed to attend and address GM
- New: Articles may (i) award GM meeting rights (*vergaderrechten*) to DR holders, with entry in share register, and (ii) designate corporate body to grant/deprive of meeting rights

Transfer restrictions

- Articles may provide for a share transfer without any restrictions
- Protection of minority shareholders: transfer may not impossible or highly difficult
- Lock-up period (for a reasonable period of time, maximum of 5 years?), to be approved by all shareholders
Obligations (formerly (?) part of SSA, SHA etc.)

- Obligations to BV, third parties or between shareholders may be included in Articles (cannot be imposed against will of shareholders)
- Quality requirements
- Obligation to offer shares (plus irrevocable power of attorney + suspension shareholders rights)

‘Incorporation by reference’

- Reference in Articles to contents of side agreements still not allowed
- OK ! >> “Only signatories of the SSA/SHA may hold shares in the company”

General Meeting

- No longer need for an annual meeting
- 1% of the issued capital may request a meeting
- Notice period at least 8 in stead of 15 days
- Meeting place may be abroad (approved by all shareholders)
- No longer unanimity for resolutions outside a meeting