



# A GUIDE TO CREATE A PRIVATE COMPANY IN THE NETHERLANDS

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**BUREN**

LEGAL | TAX | NOTARY

Do you consider to open a private company in the Netherlands? What are the first steps to take and what are the rules? Here you will find the answers to your questions. In case you might have more questions, we're happy to guide you further. See contact details at the end of the document.

### The first steps

A private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*, hereinafter: "BV") is a legal entity (and therefore being an independent carrier of rights and obligations) which is the most common legal entity in the Netherlands. A BV is established by a notarial deed, to be executed in front of a Dutch civil law notary, and can be incorporated by 1 incorporator/shareholder or more. Both natural persons and legal entities can be incorporator/shareholder. Foreign natural persons and legal entities can also be incorporator/shareholder.

The name of a BV must contain the word 'B.V.' and must be registered with the Dutch trade register of the Chamber of Commerce. The corporate seat of the BV must be located in the Netherlands. The BV is mostly used as legal entity to carry out business and, in case there are multiple shareholders, to cooperate in the share capital of the BV with the purpose of making profits. Additionally a BV is often used a holding vehicle.

The objects of a BV can actually include anything, as far as the objects are not in contrary with the public order and/or morality. Profits can be realized with the objects of the BV by carrying out business, such as the entering into agreements, contracts, partnerships, joint ventures, etc.

### Shares

The BV has a (share) capital divided into one or more shares. By the incorporation of the BV a minimum share capital is no longer required; therefore the minimum capital could be EUR 0.01. Furthermore it is not required to pay-up the share capital of the BV by incorporation, it can also be paid-up later such upon request of the BV. Generally it has to be noted that a shareholder who has not paid-up the shares, the obligation to pay up these shares remain.

The rights attached to the shares, such as voting rights and profit rights can be excluded or limited, taking into consideration that a share cannot be excluded from both the voting rights and profit rights. The liability (for shareholder(s)) in a BV is limited to the funds invested by the shareholder(s).

The transfer of shares in a BV is in principle free and not restricted, however it is common to include in the articles of association of a BV a so called blocking provision (*blokkeringsregeling*). This can either be the obligation to acquire the prior approval of the general meeting (approval procedure; *goedkeuringsregeling*) or the obligation to first offer the shares to the other shareholders (offer procedure; *aanbiedingsregeling*). For a transfer of shares in a BV a notarial deed of transfer, to be executed in front of a Dutch civil law notary, is required.





### The board

The board represents the BV and is appointed by the general meeting. The board shall consist of at least 1 director who can either be a natural person or a legal entity. Also foreign persons and/or legal entities can be appointed as director.

In case a supervising body is desired for a BV there are 2 options to structure the governance of the board and the supervising body. The first option is a one-tier board. In that case the board of directors consists of executive (*uitvoerende*) directors and non-executive (*niet-uitvoerende*) directors. The executive directors carry out the daily business of the BV and the non-executive directors control the executive directors. The non-executive directors always have to be natural persons. The second option is a two-tier board. In that case a supervisory board is installed and this supervisory board controls the board of directors. The members of the supervisory board always have to be natural persons.

### Profits

The profits shall be at the disposal of the general meeting (of shareholders). The BV may make distributions to the shareholders and other persons entitled to distributable profits only to the extent its equity exceeds the reserves which must be maintained under the law or the articles of association of the BV.

Before the profits can be distributed to the shareholder(s) the board has to perform a so called balance test (*balanstest*) and distribution test (*uitkeringstest*). These tests practically mean that the board should refrain its consent to a distribution if the board knows or could reasonably foresee that as a result of the distribution the BV will not be able to continue to pay its due and payable debts. In this perspective it should also be noted that the board of the BV can be held liable (jointly and severally) in case the BV will not be able to continue to pay its due and payable debts.



## Tax

Upon the incorporation of a BV and during its existence, Dutch tax consequences should be carefully monitored. For instance, the place of effective management and control may be decisive with respect to the tax residency. Dividend distributions may lead to Dutch dividend withholding tax. For each Dutch B.V. in principle a Dutch corporate income tax return should be filed each year. The BV may also be an entrepreneur for Dutch VAT purposes. We would also be happy to assist with the tax aspects.

In case you have more questions according creating

a private company, or you need information on other expertise, don't hesitate to contact us.

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### Key contacts



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