

New Dutch company law

Introduction Flex BV
as of October 1, 2012

Ernst Rozelaar

Schut van Os
notarissen

- BV<< >> Flex BV?

- **JUST ONE BV!**

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

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)

Old	New
<ul style="list-style-type: none"> • € 18,000 minimum capital; bank or auditors statement • Capital in euro • Only limited financial assistance 	<ul style="list-style-type: none"> • No minimum capital; no statements • Capital in any currency • Financial assistance allowed

Compare highlights (II)

Old	New
<ul style="list-style-type: none"> • Appointment of MB and SB directors by GM • Binding nomination with two nominees • Profit allocation by GM 	<ul style="list-style-type: none"> • Appointment of MB and SB directors by any corporate body (max $\frac{1}{3}$ of SB directors by others) • Binding nomination with one nominee • Profit allocation by any corporate body

Compare highlights (III)

Old	New
<ul style="list-style-type: none"> • Capital protection by law • (Financial) liability of directors confirmed in court decisions • Only general instructions by GM 	<ul style="list-style-type: none"> • Capital protection by directors • (Financial) liability of directors laid down in law • Specific instructions by any corporate body (refusal only if not in interest of company)

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 (depository 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

Schut|van Os Notarissen N.V.
Houtboersstraat 3
1071 DC Amsterdam
tel. (020) 305 79 79
roschaar@schutvanos.nl



Schut|van Os
notarissen