

## 8. NETHERLANDS

### 8.1. Civil Law Framework

#### General

Foundations (*stichting*) are set up in many fields of society, not only in non-profit areas but also in connection with enterprises (a foundation may own a company, e.g. in the case of pension funds). Foundations may also be part of corporate structures or other forms of organisation including public and private elements. Foundations have always been regarded as special-purpose funds. The first legal provisions for foundations under private law date from 1956. These rules could however not be applied to all types of foundations.

In 1976, the then existing law was replaced by the *Burgerlijk Wetboek* (Civil Code), Book 2, in which a foundation is defined as a legal person. As a legal person, the foundation has no members and intends to use the funds endowed to it to pursue the foundation purpose as set out in the foundation statutes. The purpose may not consist in the execution of payments to founders or foundation bodies. In the Netherlands, foundations are comparatively flexible; they are not subject to any government supervision. However, there are current considerations to subject foundations to stronger supervision and to require publication of annual balance sheets. Foundations must be entered in the commercial register; in March 2006, there were a total of 153,641 foundations in the Netherlands<sup>41</sup>.

#### Establishment

As a general rule, a foundation is established with a notarial deed. Legal persons, thus also foundations, are in principle established for an unlimited period of time; a time limit may however be laid down in the foundation statutes. Any person having capacity to contract may establish a foundation, also foreign legal or natural persons.

In the Netherlands, establishing a foundation is very simple due to a lack of public supervision; it only requires entry in the commercial register. After publication, an annual fee has to be paid to the chamber of commerce. The founder is not required to endow the foundation with a particular amount of assets.

A foundation may also be established *causa mortis* (in the event of the founder's death) on the basis of a public testament. In this case, the foundation becomes the heir or legatee. In practice, however, a foundation is usually established *inter vivos* (during the founder's lifetime).

---

<sup>41</sup> Cf. Volders/de Vries (2007), p. 1164 et seq.

The rules, governing bodies and registered office are set out in the foundation statutes. Another important element in the foundation statutes is the purpose and a detailed description of the main activities. The purpose is subject to some restrictions in that it may not consist in the execution of payments to the founders or members of the foundation's executive bodies (benefits which are immaterial or social in nature are however permissible).

A foundation is allowed to make profits and may operate a commercial enterprise<sup>42</sup>. In many cases, foundations have a supervisory board comparable to the supervisory board of a capital company. If a foundation has 50 or more employees, a workers' council has to be set up.

In principle, there are no mandatory rules as to the capital formation, which means that no capital contribution is required upon establishing a foundation. However, the regional court (*Rechtbank*) can file to have the foundation wound up if the assets are insufficient to achieve the purpose. Within the foundation, capital is accumulated through grants, donations, legacies, as well as through subsidies and profits from a company.

## **8.2. Foundation Forms**

### **General**

There are no specific regulations in the Netherlands concerning the management of foundation assets or their taxation. The Foundation for Cultural and Social Initiatives was established by the Dutch Foundation for the Promotion of Notarial Science (*Stichting tot Bevordering der Notariële Wetenschap*), the *Prins Bernhard Cultuurfonds*, the Royal Trade Association of Notaries (*Koninklijke Notariële Beroepsorganisatie*) and the Dutch Bar Association (*Nederlandse Orde Van Advocaten*) to ensure that certain provisions regarding the social or cultural nature of foundations be adhered to. In addition, the *Centraal Bureau Fondsenwerving* establishes guidelines and makes relevant information available to the public. Foundations established in accordance with these guidelines and which are active in the charitable, cultural, scientific, and other public utility areas receive a quality label.

As other legal persons, foundations are generally required to keep books and to prepare balance sheets and a profit and loss statement.

### **Special Foundation Forms**

#### **▪ Dependend Foundations**

Assets can be placed in more than one foundation, which means that activities associated with risk are placed in a separate foundation which is also called a support foundation or a cooperation foundation.

---

<sup>42</sup> Cf. *ibid*, p. 1170.