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Incorporating a Dutch private company

A private company with limited liability under the laws of The Netherlands (a "B.V.") is incorporated by one or more persons, or legal entities by notarial deed of incorporation, which includes the articles of association.

The deed is drawn up in Dutch and is executed before a civil law notary in the Netherlands. The deed of incorporation may only be executed after a draft thereof has been provided to the Netherlands' Ministry of Justice and the Ministry has verified that there have appeared to be no objections to the incorporation.

The review of the Ministry of Justice is aimed at securing that the articles of association do not violate the provisions of Netherlands law.

Furthermore, it enables the Ministry to check the background of the incorporators, members of the board of directors and possible members of the supervisory board of the company to be incorporated.

Currently, a certificate of no objection may be obtained from the Ministry within 3 or 4 weeks after application.

In case of extreme urgency the procedure may be shortened.

For the incorporation of a B.V. the following information and documents are required:

1. The proposed name and official address of the company to be incorporated and at least two alternative names, in case the name is rejected by the trade register of the Chamber of Commerce of the district in which the company is to be situated.

2. The authorized and issued capital (minimum Euro 18,000), as well as the nominal value of each share. Payment on shares may be made either in cash or in kind. The issued capital should amount to at least 20% of the authorized capital and at least 25% of the issued capital must be paid up (with a minimum of Euro 18,000).

If payment on the shares is made in cash, a statement thereof must be provided to the civil law notary by a registered banking institution (which is subject to governmental control in one of the member states of the European Economic Area) and attached to the deed of incorporation. The statement must state that the amount:

- will be at the disposal of the company immediately after its incorporation; or
- was in a separate account on a fixed date, no earlier than 5 months prior to the incorporation, which, after the corporation, shall be exclusively at the disposal of the company.

If a contribution in kind is made on the shares, the incorporator has to prepare a description of the contribution, stating the value attributed thereto and the valuation method applied.

A Dutch certified public accountant is to provide a statement on the value of the contribution.

This statement must be appended to the deed of incorporation.

However, a description and a auditor's statement are not required if the incorporator has waived the same and if the

incorporator or an affiliate thereof which has subscribed for the shares meets the following requirements:

- the incorporator or an affiliate has deposited with its Trade Register a certificate to the effect that it assumes joint and several liability for the debts arising from any legal acts of the company;
- its last balance sheet with explanatory notes has been adopted and audited in accordance with the applicable law and in accordance with the Fourth Directive on Company Law of the European Communities and a copy thereof and of the auditor's statement in the Dutch, French or German or English language is deposited in accordance with the law at the office of the Trade Register and no more than eighteen months have elapsed since the balance sheet date;
- the shareholders' equity of the incorporator or its affiliate shown in the balance sheet as here above referred to exceeds the paid-up nominal value of the shares on which a contribution is made after the balance sheet date.

3. The articles of association of the company to be incorporated need to contain at least the following information:

- name and registered seat;
- the object of the company's business;
- a provision regarding limitation or transferability of the shares (either a right of first refusal for the other shareholders if shares are offered for sale or prior approval from a corporate body, or any proposed share transfer, or for a combination of both);

- sole or joint signatory powers for members of the board of directors;
- whether the company will have a board of supervisory directors;
- financial years and first reporting date.

4. The incorporating company needs to provide the following:

- its full name, registered seat and office address;
- a copy of its articles of association;
- a certificate of its registration at the Chamber of Commerce or a similar institute;
- a copy of its latest annual accounts;
- a bank reference of good standing.

The Ministry of Justice may also ask for the names of the shareholders of the incorporating company.

5. In case one or more of the managing directors of the new company is an individual, the following is to be provided with respect to each of them:

- full name and home address;
- date and place of birth;
- nationality;
- marital status;

- copy of the pages of the passport containing his personal data and signature.

For any managing director who is a Dutch citizen, a completed questionnaire, issued by the Ministry of Justice, is required. A director who is not a Dutch citizen requires a bank reference of good standing, unless it can be proven that such a person is an employee of the incorporator, in which case no bank reference is required.

6. In case one of the managing directors of the company to be incorporated is a legal entity, the following is required:

- full name, registered seat and office address;
- a copy of its articles of association;
- a certificate of registration of the incorporator, issued by the local Chamber of Commerce or a similar institute;
- latest annual accounts;
- if the director is a Netherlands company a completed questionnaire issued by the Ministry of Justice.

7. A statement of the incorporator confirming that the incorporator does not intend to transfer the shares of the B.V. or to appoint new directors within 1 year after incorporation.

8. A duly signed, certified, legalized and apostillized copy of a power of attorney.

This document requires special attention, as we will need to prove to the civil law notary that: (i) the signature on this

document indeed belongs to the person named thereon and (ii) such person is duly authorized to grant the power of attorney on behalf of the incorporator. In the U.S. (and possibly also in other countries) the former is usually evidenced by a legalization of the signature by an notary public.

The signature from the notary public should be certified by an apostille.

The authority of the signatory to represent the incorporator can be evidenced either by an opinion to that effect by a law firm or by a recent certificate by the appropriate state authority from which the authority of the signatory appears.

While waiting for the certificate of no objection to be issued, the B.V. in the process of incorporation may be registered as such at the Trade Register of the Chamber of Commerce. For such registration the following information is required:

- the name of the company (with the addition "i.o.", indicating that the company is in the process of incorporation);
- a certificate of registration of the incorporator;
- a short description of the business operated by the company;
- the number of people working for the company;
- statutory seat and office address;
- personal data, such as name, address and nationality of the company's directors;
- a letter from the notary public entrusted with the incorporation, in which is stated that the company is in the process of incorporation;

- personal data of all persons (if any) other than the directors, granted with powers of attorney to represent the company.

Prior to the incorporation any person of entity may enter into contractual agreements on behalf of the B.V. in the process of incorporation, which has been registered as such.

Upon incorporation, the company's board of managing directors may ratify all legal acts performed on behalf of the company prior to its incorporation.

Upon such ratification the company is bound with retroactive effect. Prior to such ratification, any person who acted on behalf of the company is personally liable for those acts. Upon ratification such personal liability ceases to exist.

A B.V. in the process of incorporation is not able to incorporate legal entities.