

Scratching the Surface of Various Dutch Legal Issues

Important:

This publication is merely intended to provide an outline of the topic. It may never be regarded as a legal advice or relied upon in any way. A qualified legal professional should always be consulted on this issue for detailed legal advice.

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POWER OF ATTORNEY ISSUED BY OR ON BEHALF OF A DUTCH COMPANY

If a Dutch company is represented by a body corporate or an individual, holding a power of attorney, there are some issues that should be considered and addressed.

Verification of Data

A solicitor (“*advocaat*”) in the Netherlands should be instructed and provided with the name of the body corporate and the Dutch Trade Register Number (if available). The solicitor should be asked to verify the basic data with the Trade Register. Thus one will exactly know whom one is dealing with.

(The Trade Register or Commercial Register is the Dutch equivalent of the Register of Companies, Bodies Corporate and Businesses in other countries. It is available online to most solicitors, in order to allow the verification of all basic data of a body corporate or a business.)

- Online information can be obtained as to who has corporate power, or who holds a proxy to represent the company and eventual limitations of such power, as well as other information about the company.
- However, depending on the circumstances, it might also be necessary to examine the articles of association of the company and/or to ask the Trade Register to provide specific information from the company’s file which is not available online.

The Text of the Power of Attorney

The Power of Attorney should be inspected carefully by a solicitor. Aspects like the validity, the object of the Power, applicable law, jurisdiction etc. will have to taken into account, using the document to be signed as the reference.

A Power of Attorney should preferably be issued to (i) an individual as well as (for alternative use, if required), to (ii) all individuals employed by e.g. the solicitors who represent the company in the country where the signing has to take place.

Signing the Power of Attorney

If the text of the Power of Attorney is satisfactory, it should be signed not only by the granter, but preferably also by the individual(s) or body/ies corporate being appointed, as some jurisdictions might require such counter-signature.

- The signature of each signatory appearing on, as well as a copy of the passport and of another form of identification of each signatory attached to the Power of Attorney, should preferably all be certified for the same reason as indicated above.

- The certification may be issued by a civil law notary whose signature would in turn have to be verified by the Court through an apostil.
- Alternatively certification by a civil law notary or by a solicitor whom one personally knows and trusts is competent, or the certification may be issued by a Consulate of the state to which the document is to be sent, may be considered.
- Preferably a certified extract from the Trade Register concerning the body corporate should be attached as well.

Please note: in case of certification the signer will have to appear in person before the civil law notary or the consul, bearing proof of identity and sign before said official.

Using the Power of Attorney

The individual signing documents in the capacity of attorney on behalf of a company has to show proof of identity by presenting a valid passport (a copy of which, together with the original of the Power of Attorney, should be retained with the original of the document(s) signed).

- (The verification of the basic data of (i) the company granting Power of Attorney and (ii) the company in whose favour it is granted should be repeated by on-line inspection of the Trade Register, just before the attorney signs the documents.)

Jurisdiction

Please note that this topic has been addressed assuming that a foreign jurisdiction may be involved. If only the Dutch jurisdiction would be involved, many formal aspects could be disregarded.

Please note:

A major revision of the Company Law is pending and it is expected, that it will be adopted and subsequently come into force by mid 2012. Therefore major changes may be expected in the Company Law shortly.

24th January, 2012

Peter Fresacher