

**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.*

*(Re-)publication, by whatever media or means or in whatever format, is prohibited.*

## **SALE AND PURCHASE OF SHARES IN A DUTCH B.V.**

A “B.V.” is a Dutch company and is the abbreviated form of “*besloten vennootschap met beperkte aansprakelijkheid*”. It is similar to a UK “private limited liability company”, “Ltd.”, or to a German and an Austrian “Gesellschaft mit beschränkter Haftung”, “GmbH”. However, there are major differences between these three entities, and the laws and rules governing them.

If one is considering the sale and purchase of shares in a Dutch B.V., it is best to instruct a solicitor (“*advocaat*”), who is able to provide guidance in respect of the various legal requirements that have to be observed and who is also able to advise on and negotiate all aspects of the Sale and Purchase Agreement.

It is important to take expert legal advice in each situation especially if areas of personnel, IP-rights, contractual relations with third parties etc. are involved. A solicitor should be instructed when first considering an acquisition or disposal, so that preparatory work can be carried out and the relevant issues addressed. In doing so, much trouble and unnecessary expense later on can easily be avoided.

During this process the solicitor consults with the civil law notary (“*notaris*”) who by law is the person who has to effect the transfer of title of the shares (“*levering*”) of the target company.

### **0. Intention to Dispose of or Acquire Shares**

Request for advice by the Works Council (“*ondernemingsraad*”) (might be required / also inspect the SER Merger Code “*SER fusiegedragsregels*”) as soon as the intention to sell or purchase the shares of the target company exists.

### **1. Negotiations**

The seller and the purchaser negotiate the transaction and its conditions.

### **2. Sale and Purchase Agreement**

This agreement between the parties is the basis for the transfer of title / legal delivery of the ownership of the shares of the target company against payment of the purchase price.

### **3. Share Transfer Restrictions / Blocking Provisions**

The requirements laid down in the articles of association of the target company, regarding

approval/non-opposition in respect of the transfer of the shares by the shareholders, have to be observed carefully and met in full.

#### 4. Transfer of Title (Transfer of Ownership)

Transfer of title of the shares “*levering*” can in general only be achieved through a deed, issued by a Dutch civil law notary “*notaris*”.

- Generally at the same time, the purchase price has to be paid. This is usually effected by the purchaser in advance paying the purchase price into the trust account “*kwaliteitsrekening*” of the civil law notary, who then transfers the purchase price to the seller after the share transfer document has been issued.
- (However, the parties may agree a different *modus operandi* to effect payment, e.g. earlier, direct payment by the purchaser to the seller, or not paying the purchase price but being indebted to the seller.)

#### 5. Recognition of the Transfer of Title

The transfer of title of the shares is only perfect in all aspects (i.e. especially regarding the exercising of shareholders rights), after the target company has recognised the transfer of the shares to the new shareholder.

#### 6. Updating of the shareholders register

Change with regard to the shareholder(s) in the company and/or the number of shares owned by a shareholder, have to be entered into the shareholders register of the target company.

#### 7. Disclosing of Sole Shareholding

If only one shareholder eventually holds all of the shares in a company, this sole shareholding has to be disclosed through registration in the Trade Register of the Chamber of Commerce (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.)

#### 8. Anti-Money Laundering and Anti-Terrorism Act (“Wwft”)

The civil law notary can only issue the deed regarding the transfer of title if the requirements of the Dutch Anti-Money Laundering and Anti-Terrorism Act have been met.

**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.**

24<sup>th</sup> January, 2012

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