

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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**THE EXECUTIVE AND THE NON-EXECUTIVE BOARD OF 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.

This also applies to the “*bestuurder*” or “*directeur*”, the Dutch legal term for an (executive) managing director of a B.V..

1. The (Executive) Managing Director of a B.V.

- The Managing Director of a B.V. in general is either a (non-)resident Dutch or foreign individual or body corporate, appointed by the general meeting of shareholders of the B.V. (This kind of director of a B.V. is in English often referred to as (Executive) Managing Director.)
- The power of individual Managing Directors may be limited by the articles of association (“*statuten*”) of the B.V. or in by-laws (“*reglementen*”). However, these limitations do not always provide full protection for the B.V. against the consequences of a Managing Director who has overstepped his powers.
- Basically, the Board of Managing Directors of a B.V. (“*bestuur*”) has full corporate power to represent and bind the B.V.. The Board of Managing Directors bears collective responsibility and its members are jointly and severally liable for the consequences of improper management of the B.V., save for a few very rare exceptions.

2. The Supervisory Director of a B.V.

- A Supervisory Director “*commissaris*”, is either a (non-)resident Dutch or a foreign individual who fulfills a non-executive, supervisory function. A Supervisory Director is not involved in day-to-day management, but advises and supports the Board of Managing Directors of the B.V..

3. Composition of the Board of Managing and the Board of Supervisory Directors

- By law a B.V. is required to have at least one Managing Director. However, if more than one Managing Director is appointed, the Board of Managing Directors acts as a board.
- It is not necessary to appoint one or more Supervisory Directors and indeed those can only be appointed if such is provided for in the articles of association of the B.V.. The individual

members of the Supervisory Board ("*raad van commissarissen*") are appointed by the General Meeting of Shareholders of the B.V.

4. Trade Register of the Chambers of Commerce

- The Appointment of a Managing or of a Supervisory Director as well as the resignation/dismissal of the same, has to be registered with and entered into the Trade Register. (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.)
- The Board of Managing Directors is also required to file the approved annual accounts of the B.V. duly and in time with the Trade Register.

5. Liability of Managing Directors of a B.V.

A Managing Director of a B.V. may be held liable to the B.V. or to a third party.

- Liability to the B.V. itself is mostly based on breach of contract by an individual Managing Director.
- Liability to third parties is mostly based on an act of tort, e.g. the entering into an agreement by the Managing Director (representing the B.V.) at such a point in time at which it is clear, that the B.V. will be unable to fulfill its obligations to the other party. In the latter case, all members of the Board of Managing Directors may be jointly and severally liable, unless one bears no personal blame.
- If a B.V. has been declared bankrupt ("*verklaard in staat van faillissement*") by court decision, and if the official receiver in bankruptcy ("*curator*") finds, that e.g. the Board of Managing Directors of the B.V. in the past has failed to duly comply with all requirements of filing of annual accounts, or is unable to present appropriately kept books, then the Board of Managing Directors is, by operation of law, liable for the debts accrued in the bankruptcy.

Large companies ("*structuurvennootschappen*")

Please note, that the above does not apply to "*structuurvennootschappen*", certain large companies and/or those that meet certain financial and other criteria.

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.

A newly introduced one-tier board has already been adopted but is also expected to come into force by mid 2012.

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