

Outline of main changes	Existing law: Book 2 Dutch Civil Code	Draft Bill introducing simpler and more flexible BV law
<b>Minimum and authorised capital</b>	<ul style="list-style-type: none"> <li>• Mandatory minimum capital of EUR 18,000 at incorporation.</li> <li>• Obligation to include authorised capital in the articles; at least 20% must be issued and 25% of the issued capital must be paid up at the incorporation.</li> <li>• Joint and several liability of managing directors linked to non-compliance with the obligation to pay up within the requisite period.</li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to raise minimum capital at incorporation is abolished. The incorporators may determine the amount of capital to be paid up.</li> <li>• Provision in the articles of association specifying authorised capital becomes optional.</li> <li>• Liability of managing directors linked to obligation to pay up shares is abolished.</li> </ul>
<b>Shares</b>	<ul style="list-style-type: none"> <li>• The articles state the number and par value of the shares in euro up to two digits after the decimal point.</li> </ul>	<ul style="list-style-type: none"> <li>• Obligation to state the number of shares in the articles is removed. The par value may contain more than two digits after the decimal point.</li> <li>• The par value of the shares may be denominated in another currency than euro.</li> </ul>
<b>Duty to pay up shares</b>	<ul style="list-style-type: none"> <li>• Payment on shares may only be postponed in respect of 75% of the nominal amount.</li> </ul>	<ul style="list-style-type: none"> <li>• Parties may agree to postpone payment of the entire nominal amount for a fixed period.</li> </ul>
<b>Bank's statement</b>	<ul style="list-style-type: none"> <li>• Obligation to have a bank's statement in the case of payment on shares in cash, and in the case of a contribution in foreign currency after the incorporation.</li> </ul>	<ul style="list-style-type: none"> <li>• The mandatory bank's statement is abolished.</li> </ul>
<b>Accountant's statement and description</b>	<ul style="list-style-type: none"> <li>• Obligation to have an accountant's statement in the case of a contribution in kind and in the case of a conversion from an NV to a BV.</li> </ul>	<ul style="list-style-type: none"> <li>• An accountant's statement for contributions in kind is no longer required.</li> <li>• The description of the contribution does have to be made available to the shareholders and holders of depository receipts for inspection. The period during which the description will remain valid has been extended to 6 months.</li> <li>• Accountant's statement is also abolished for conversions of NVs to BVs and for divisions where a BV is the acquiring company.</li> </ul>
<b>Nachgründung</b>	<ul style="list-style-type: none"> <li>• "<i>Nachgründung</i>" provisions apply, which require certain formalities to be met when the company acquires assets from an incorporator or shareholder within two years after the registration in the Trade Register.</li> </ul>	<ul style="list-style-type: none"> <li>• These <i>Nachgründung</i> provisions are completely removed.</li> </ul>
<b>Prohibition against financial assistance</b>	<ul style="list-style-type: none"> <li>• Prohibition against providing financial assistance to a third party, in the form of security or loans, for the purpose of subscribing for shares in the BV.</li> </ul>	<ul style="list-style-type: none"> <li>• The prohibition is abolished. The general rules on the proper fulfilment of duties and on conflicts of interest will apply to the company's management.</li> </ul>
<b>Capital reduction</b>	<ul style="list-style-type: none"> <li>• Creditors may oppose a resolution to reduce capital by filing an application to that effect with the District Court.</li> </ul>	<ul style="list-style-type: none"> <li>• The provisions regarding opposition by creditors are abolished where it concerns a capital reduction combined with a repurchase of shares. The distribution test and liability of managing directors (see below) apply.</li> <li>• After cancellation of shares, at least one share with voting rights should remain with a party other than the BV.</li> </ul>
<b>Repurchase</b>	<ul style="list-style-type: none"> <li>• Repurchase of own shares limited to 50% of the issued share capital.</li> <li>• The articles must allow repurchase.</li> <li>• Repurchase must be authorised by the general meeting or another designated body.</li> <li>• Repurchase is only possible against the freely distributable reserves.</li> </ul>	<ul style="list-style-type: none"> <li>• Limit of 50% of issued shares is abolished.</li> <li>• After repurchase, at least one share with voting rights should be held by a party other than the BV.</li> <li>• The managing board decides on the repurchase.</li> <li>• Articles may exclude or limit repurchase.</li> <li>• A subsidiary BV may only acquire shares in the parent BV with the consent of the parent BV's managing board; a purchase in breach of this rule is void.</li> <li>• The distribution test and the liability provisions (see below) apply.</li> </ul>
<b>Obligations of shareholders</b>	<ul style="list-style-type: none"> <li>• A shareholder may not be made subject against his will to any obligations beyond payment of the nominal amount of the share.</li> </ul>	<ul style="list-style-type: none"> <li>• Option to attach to shareholding certain contractual obligations vis-a-vis the BV, third parties or other shareholders.</li> <li>• No unanimity is required for an amendment of the articles, but contractual obligations may not be imposed on shareholders against their will. New</li> </ul>

		shareholders, however, will be bound. A "cornered" shareholder may transfer his shares to the company.
<b>Distributions</b>	<ul style="list-style-type: none"> <li>When the BV makes distributions, creditors are protected by a system based on capital protection, which includes minimum and authorised capital.</li> <li>Distributions to shareholders are only allowed insofar as the shareholders' equity exceeds the sum of the paid-up and called-up part of the capital reserves plus the statutory reserves and the reserves kept pursuant to the articles.</li> <li>The profit will be for the benefit of the shareholders, unless the articles provide otherwise.</li> <li>Non-compliance with the statutory capital protection rules results in an invalid resolution. The distribution will be regarded as an undue payment, which must be repaid to the company. There is no requirement of bad faith in respect of this rule.</li> </ul>	<ul style="list-style-type: none"> <li>For all types of distributions to shareholders (distribution, repurchase against payment, and capital reduction) creditors' protection is based on a distribution test by the managing board combined with liability provisions for managing directors and shareholders.</li> <li>The distribution test means that the managing board must assess whether the BV will be able to continue paying its payable debts after the distribution has been made. Depending on the specific characteristics of the BV, elements like its liquidity, solvency and profitability should be taken into account.</li> <li>A managing director is jointly and severally liable for distributions wrongly made, unless he can prove that he was not culpable or negligent. Persons who (co-) determine policy will be subject to the same liability.</li> <li>A person receiving the distribution in bad faith must repay it if the BV goes bankrupt within one year after the distribution.</li> <li>The general meeting may decide on the allocation of profit, but the articles may confer this right on a different body.</li> <li>Distributions may not be paid out of the mandatory reserves kept pursuant to the law or the articles (balance sheet test).</li> </ul>
<b>Share transfer restrictions</b>	<ul style="list-style-type: none"> <li>The right to freely transfer shares is limited to certain persons, as specified in the statutory provisions. For transfers to any other persons, the articles must provide for transfer restrictions, either in the form of approval by a corporate body or in the form of a right of first refusal or a combination of the two.</li> </ul>	<ul style="list-style-type: none"> <li>The mandatory transfer restrictions are abolished. Instead, there is a choice between a statutory right of first refusal combined with provisions on the determination of the price, or a provision in the articles limiting or excluding transfers of shares, or the option to provide in the articles that transfers are not subject to any restrictions. BVs are free in the way they structure share transfer restrictions in the articles.</li> <li>Inclusion of share transfer restrictions in the articles may only be decided on by an absolute majority in the general meeting. Minority shareholders are protected by (1) the provisions in the articles on determination of the price; (2) statutory right of first refusal; and (3) a general right to sell their shares following the dispute settlement procedure.</li> <li>Exclusion of or restrictions on the right to transfer shares may be set out in the articles or in an agreement between shareholders.</li> <li>Provisions in the articles on determination of the price which deviate from the statutory principle that the price is determined by independent experts may not be imposed against the will of a shareholder.</li> <li>Including a provision in the articles which excludes transfer of shares for a fixed period requires a unanimous vote.</li> </ul>
<b>Depositary receipts for shares</b>	<ul style="list-style-type: none"> <li>There is a distinction between depositary receipts issued with the BV's cooperation and those issued without.</li> <li>Right to attend meetings is attached to depositary receipts issued with the BV's cooperation.</li> </ul>	<ul style="list-style-type: none"> <li>Distinction between issue with and issue without cooperation is removed.</li> <li>Possibility to attach the right to attend meetings to depositary receipts. The articles must show whether meeting rights have been granted to depositary receipts.</li> <li>The shareholders register must set out the details of depositary receipt holders who have meeting rights.</li> <li>The delivery of depositary receipts must be acknowledged by the BV or be notified to the BV. If meetings rights have been granted to a depositary receipt, the shareholders register must state this.</li> </ul>
<b>General meeting</b>	<ul style="list-style-type: none"> <li>One or more shareholders who jointly represent at least 10% of the issued share capital may seek court permission to convene a general meeting.</li> <li>Shareholders are called to the meeting by a notice sent to the</li> </ul>	<ul style="list-style-type: none"> <li>The right to convene meetings is extended. One or more shareholders representing at least 1% of the issued share capital may submit a written request to convene a meeting to the managing or supervisory board, specifying the items that they wish to discuss. Such request can be made without court intervention and may only be rejected if there is a compelling</li> </ul>

	<p>addresses as stated in the shareholders register.</p> <ul style="list-style-type: none"> <li>• Holders of depositary receipts for shares issued with the company's cooperation are called to meetings in the manner provided in the articles or by an announcement in a national newspaper.</li> <li>• Notice of a meeting must be given at least 15 days before the general meeting.</li> <li>• The meeting is held in the Netherlands.</li> <li>• Resolutions may be passed without holding a meeting, provided that the articles provide for this and the resolutions are passed by a unanimous vote. This option does not exist if depositary receipts have been issued with the company's cooperation.</li> </ul>	<p>reason to do so.</p> <ul style="list-style-type: none"> <li>• All shareholders and other persons entitled to attend meetings are called to meetings by a notice sent to the addresses as stated in the shareholders register.</li> <li>• Persons entitled to attend meetings are: shareholders, holders of a right of usufruct or a right of pledge, and depositary receipt holders with meeting rights.</li> <li>• The period for convening a meeting is reduced to 8 days.</li> <li>• General meetings may be held outside the Netherlands at a location stated in the articles.</li> <li>• It is no longer a requirement to include a provision in the articles on passing resolutions without holding a meeting. Unanimity is no longer required for such resolutions. All persons entitled to attend meetings must agree with the manner in which resolutions are passed.</li> </ul>
<b>Right to give instructions</b>	<ul style="list-style-type: none"> <li>• The articles may provide that the managing board should follow the instructions of another corporate body concerning the general principles of the policy to be pursued.</li> </ul>	<ul style="list-style-type: none"> <li>• The articles may provide that another body may give in addition to instructions regarding the general policy guidelines concrete instructions to the managing board. The right to give instructions is limited by what is in the company's interest.</li> </ul>
<b>Rights of shareholders</b>	<ul style="list-style-type: none"> <li>• There is a limited ability to introduce differentiation in voting rights.</li> </ul>	<ul style="list-style-type: none"> <li>• The articles may exclude certain shares from profit-sharing or voting rights. The company may decide that no vote may be cast on a share before it is issued. Holders of shares without voting rights do have the right to attend meetings and share in the profits.</li> <li>• If no vote can be cast on a share this must be stated in the shareholders register.</li> <li>• Shares without voting rights are not taken into account when: (1) determining the share capital represented; and (2) calculating thresholds for the exercise of certain powers of the general meeting.</li> <li>• Introduction of a more flexible distribution of the right to vote. The articles may deviate from the basic rule that the number of votes which a shareholder may cast is proportional to the nominal value of his shares.</li> <li>• An amendment of the articles to change the right to vote requires unanimity.</li> </ul>
<b>Appointment and dismissal of managing and supervisory directors</b>	<ul style="list-style-type: none"> <li>• An arrangement whereby a shareholder or certain group of shareholders can appoint its own managing director may only be made by formal agreement.</li> <li>• A binding nomination must include at least two persons for each vacancy.</li> <li>• The general meeting may resolve to remove the binding character of the nomination.</li> </ul>	<ul style="list-style-type: none"> <li>• The articles may provide that under certain circumstances a meeting of holders of shares of a certain class or designation may appoint one or more "own managing directors".</li> <li>• A similar arrangement may be made in respect of appointment of an "own supervisory director".</li> <li>• The requirement that a binding nomination include at least two persons per vacancy is abolished. Furthermore, if the general meeting removes the binding character of the nomination, it may make a recommendation for a new nomination.</li> <li>• The body which is entitled to make an appointment also has the power to suspend and dismiss.</li> <li>• The articles may provide that a managing director may also be dismissed by a different body, unless the director was appointed by the supervisory board.</li> </ul>
<b>Dispute settlement procedure</b>	<ul style="list-style-type: none"> <li>• The transfer of shares, following the exercise of the right to squeeze out other shareholders or the right to transfer shares to the company, takes place only after the court decision whereby the right was granted and the court decision determining the price of the shares to be transferred have both become irrevocable.</li> </ul>	<ul style="list-style-type: none"> <li>• The articles may deviate (completely or partly) from the statutory framework for dispute settlement. Both the court decision granting the right and the decision determining the price of the shares may be declared provisionally enforceable. In the meanwhile no appeal can be initiated against the decision granting the right, unless the court decides otherwise.</li> </ul>