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The Netherlands - New Developments in Dutch Company Law: The “Flexible” Close Corporation

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NEW DEVELOPMENTS IN DUTCH COMPANY LAW: THE "FLEXIBLE" CLOSE CORPORATION

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I. INTRODUCTION

In the Netherlands the close corporation (*besloten vennootschap*, BV) is one of the most important business forms for small and medium sized businesses, next to partnerships. Different from these partnerships, the BV has limited liability, meaning that in principle its directors and shareholders are not personally liable for the debts of the corporation.[1] Another important factor is that BVs underlie a different tax regime than partnerships.

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1. In a nutshell, the partnership as such is not taxed, while partners are subject to taxation. A BV, however, is indeed taxed.

On October 1, 2012 new legislation came into force which made the Dutch rules on BVs more flexible and attractive. Among other things, the minimum capital requirement was abolished. The new regime is often called the "flex BV." As a result of these changes, the BV, which developed out of the public company limited by shares (*naamloze vennootschap,* NV), differs more from the parent regime that applies to the NV, which remained unaffected by the changes. There was growing criticism on the rigid regime of the BV and the requirement of a minimum capital. A number of other European jurisdictions did not demand a minimum capital for close corporations. Moreover, under EU law it became possible to use corporations (e.g., BV) established in another EU Member State to do business in the Netherlands. Foreign corporations could be used to circumvent the stringent Dutch regime on BVs. This became the catalyst that made legislative changes even more urgent.[2]

In order to understand the position of the BV in Dutch law we will first have a look at the historical developments since the early seventeenth century. Paragraph III will discuss the abolition of prior governmental approval, a requirement which has recently been abolished for both the NV and the BV. Paragraph IV will give an overview of some of the most important changes in the legal regime of BVs. Paragraph V will discuss the use in the Netherlands of companies established in other EU Member States. Finally, the report will end with a very short note on the proposed EC Regulation on a European close corporation.

2. Kamerstukken II 2006/07, 31058, nr. 3, at 1; and HARM-JAN DE KLUIVER ET AL., VEREENVOUDIGING EN FLEXIBILISERING VAN HET NEDERLANDSE BV-RECHT, RAPPORT VAN DE EXPERTGROEP INGESTELD DOOR DE MINISTER VAN JUSTITIE EN DE STAATSSECRETARIS VAN ECONOMISCHE ZAKEN, 6-7, 88 (2004).

II. HISTORICAL OVERVIEW[3]

The Dutch East India Company and the later West India Company, both set up in the early seventeenth century, are often regarded as the earliest company type in modern history. The directors and shareholders were not personally liable for the debts of the company.[4] Yet, it would be misleading to see them as the earliest form of NV, in the strict sense of the word. It lacked an important feature of a modern company, which is a general shareholder meeting. Moreover, the government's influence on the company was so great that the company could be seen as half private law, half a public entity, with far-reaching public powers, such as police and military powers, and public administrative powers.[5] The States General (i.e., the Dutch government) used the company for the financing of their warfare against the Spanish and the Portuguese, and for governing the overseas settlements. The shareholders had only limited influence on the company, and their financial interests were not always the primary interests of the company. There is no straight clear line of development from these companies to the modern company types.

During the eighteenth century the Dutch company developed more and more in the direction of a modern company type. There was no legislation giving any structure to companies, enabling the company to develop freely. Next to the Dutch East India Company and the Dutch West India Company, which had strong governmental influence, a new type of company developed which had no governmental influence. It was set up purely for

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3. *See* JOHAN MATTHIJS DE JONGH, TUSSEN SOCIETAS EN UNIVERSITAS. DE BEURSVENNOOTSCHAP EN HAAR AANDEELHOUDERS IN HISTORISCH PERSPECTIEF (2014). Much of the historical information in this paragraph is based on this book. A summary of the book is available in English at http://ssrn.com/abstract=2368748 (Last visited August 20, 2014). *See also* HENDRIK MARTIJN PUNT, HET VENNOOTSCHAPSRECHT VAN HOLLAND, ZEELAND EN WEST-FRIESLAND IN DE RECHTSPRAAK VAN DE HOGE RAAD VAN HOLLAND, ZEELAND EN WEST-FRIESLAND (2010).

4. DE JONGH, *supra* note 3, at 69, 72.

5. *Id.* at 63-67, 102-10.

commercial reasons, but which in some cases retained some form of personal liability of directors and supervisors.[6] For that reason they had more similarity with partnerships than with companies. During this period only thirty-nine companies were set up, mainly insurance companies. Some of these companies were the first to issue bearer shares. Whereas the Dutch East India Company had already issued bearer bonds, its shares were not on bearer but registered in the name of its holder.[7]

A major change in Dutch legislation was caused by the annexation of the Netherlands by the French Empire in 1810. Not only the French *Code civil* of 1804, but also the *Code de commerce* of 1807, became applicable in the Netherlands from 1811 onwards. It introduced the French *société anonyme* into Dutch law, a company type based on contract[8] and called "anonymous" because the names of the participants were not mentioned in the company name.[9] Its structure hardly differed and was not any clearer than that of the Dutch private law companies of the late eighteenth century. Moreover, the *Code de commerce* introduced a form in between the *société en commandite* and the *société anonyme* by acknowledging the *société en commandite par actions*,[10] a company form that was not adopted in the Dutch Commercial Code (*Wetboek van Koophandel*) of 1838. The shares in this type of company could even be bearer shares, according to French case law.[11]

The Netherlands have had their own legislation on companies since the enactment of the Dutch Commercial Code in 1838. The relevant provisions on companies were updated in 1929, when new

6. *Id.* at 161-164.

7. EGIDIUS J. J. VAN DER HEIJDEN, HANDBOEK VOOR DE NAAMLOOZE VENNOOTSCHAP NAAR NEDERLANDSCH RECHT nr. 6-7 (3d ed. 1936); and PUNT, *supra* note 3, at 112, 212.

8. Article 18 Code de commerce (1807). *See also* FRANÇOIS MALEPEYRE & CHARLES JOURDAIN, TRAITÉ DES SOCIÉTÉS COMMERCIALES nr. 265 (1836).

9. Article 29 Code de commerce (1807).

10. *Id.* at art. 38.

11. *Cour Royale de Paris* (02.07.1832), XXIV JOURNAL DU PALAIS 682 (3d ed. 1841). *See also* MALEPEYRE & JOURDAIN, *supra* note 8, at nr. 235.

provisions on companies with a smaller number of shareholders were introduced, welcoming a more private form of company. In 1971, a separate regime for BVs was introduced into Dutch law. A few years later, in 1976, the provisions on limited companies were removed from the Commercial Code and were made part of a new Book 2 of the Civil Code (*Burgerlijk Wetboek*, BW).[12]

III. GOVERNMENTAL APPROVAL

Since the early nineteenth century, governmental approval for the incorporation of a company has been controversial. The French *Code de commerce*, which was introduced in the Netherlands in 1811, required royal (governmental) approval in order to protect the company's shareholders against misuse of the company.[13] At first the royal approval was little more than a formality,[14] but from around 1828 the requirements for royal approval became much stricter. The government actively demanded changes in various articles of association in order to protect creditors and to strengthen the position of minority shareholders against larger shareholders.[15] In the Dutch Commercial Code of 1838 the requirement of governmental approval was maintained, but the approval could only be withheld if the articles of association violated the law or were contrary to the public order or good morals (article 37). The

12. This was part of a trend that developed since the end of the nineteenth century to remove the differences between commercial law and civil law. It also aimed to eliminate the need for a separate commercial code. However, the commercial code is still partly in existence. Large parts have already been removed (*e.g.*, the law of bankruptcy, which since 1895 forms a separate bankruptcy statute). Some of the remaining parts of the commercial code, such as the law of commercial partnerships, will remain in existence for many years to come. Civil partnerships (*societas*) are still governed by provisions from the 1838 BW.

13. Michel Louis Étienne Regnaud, *Procès-verbal du Conseil d'État, Séance du 15 janvier 1807, nr. 4* in JEAN-GUILLAUME LOCRÉ, XI LÉGISLATION CIVILE, COMMERCIALE ET CRIMINELLE 99-100 (1837); Michel Louis Étienne Regnaud, *Exposé des motifs* in JEAN-GUILLAUME LOCRÉ, XI LÉGISLATION CIVILE, COMMERCIALE ET CRIMINELLE 163-66 (1837); and MALEPEYRE & JOURDAIN, *supra* note 8, at nr. 273, n. 1.

14. DE JONGH, *supra* note 3, at 181.

15. *Id.* at 185.

requirement survived the 1929 changes in the Commercial Code, the introduction of the BV into Dutch law in 1971, and the renewal of both the regime on public companies limited by shares and on BVs in 1976, when the current Book 2 of the Civil Code was enacted. Gradually, the reason for governmental approval had changed into the prevention of defrauding creditors (bankruptcy fraud), more recently also money laundering and, very recently, the financing of terrorist activities.

As a result of continued criticism, the system of governmental approval was finally abolished on July 1, 2011. It was replaced with a system of permanent supervision by the Ministry of Safety and Justice.[16] The new supervision system is based on linking information from various electronic databases. At the time of drafting this report the system still did not function adequately as a result of technical problems.

IV. New Regime for Close Corporations[17]

A. Capital Requirements

Minimum capital requirements for NVs and for BVs were introduced in 1978.[18] As a result of the second EEC Directive on company law of 1976,[19] the introduction of minimum capital requirements had become necessary for public companies limited by shares, but the Dutch legislator voluntarily also introduced a

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16. *Wet controle op rechtspersonen* (Statute on Supervision of Legal Persons).

17. *See also* for a recent overview of the new Dutch regime on BVs: Stephan Rammeloo, *The Law of Close Corporations* in NETHERLANDS REPORTS TO THE NINETEENTH INTERNATIONAL CONGRESS OF COMPARATIVE LAW (Lars van Vliet ed. 2014).

18. As from June 1, 1978, a BV or NV could only be set up with a minimum capital of 35.000 guilders. As from September 1, 1981, the minimum capital for the NV was raised to 100.000 guilders. The minimum capital for the BV was raised to 40.000 guilders on January 20, 1986. Before 1978, there was indeed no minimum capital requirement, yet directors of the company could be held personally liable for all acts taken place before at least 10% of the share capital had been contributed to the company (art. 36g Dutch Commercial Code).

19. Second Council Directive 77/91/EEC of December 13, 1976, as amended by EU Directive 2012/30.

minimum capital requirement for BVs. The main reason for introducing such a requirement was to protect creditors of the company.[20] However, it appears that a minimum capital requirement is not a very effective way of protecting creditors, because it only demands a certain minimum for setting up a company. It does not guarantee that after incorporation the minimum capital will be maintained.[21] Moreover, it does not require corporations to file for bankruptcy once the capital sinks below the minimum threshold.

Until the 2012 amendment, a minimum capital of €18,000 was needed for the incorporation of a BV. Under the new regime, that minimum capital requirement has been abolished. The legislature preserved the requirement of a minimum capital of €45,000 for NVs because EU law[22] requires all Member States to set a minimum capital requirement for public companies limited by shares, such as the NV.

B. Capital Controls

To compensate for the abolition of the minimum capital requirement for BVs, the new regime introduced two capital controls. The first one is a balance-sheet test: according to article 2:216(1) BW, the general meeting of shareholders can only agree on paying out the profits exceeding the reserves prescribed by law and by the articles of incorporation.

The second capital control is called the payment test. Article 2:216(2) BW provides that a decision of the general meeting of shareholders to pay out profits has no consequences unless the

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20. *See* the preamble of the Directive. *See also, generally,* PAUL L. DAVIES, INTRODUCTION TO COMPANY LAW 75 (2d ed. 2010); and PETRI MÄNTYSAARI, III THE LAW OF CORPORATE FINANCE: GENERAL PRINCIPLES AND EU LAW 145-47 (2010).

21. DE KLUIVER ET AL., *supra* note 2, at 88; and REINIER H. KRAAKMAN ET AL., THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH §5.2.2 (2d ed. 2009).

22. Article 6 of Second Council Directive 77/91/EEC of December 13, 1976.

board of directors has given its permission. The next sentence of the provision adds that this permission shall only be withheld if the board of directors knows or reasonably can foresee that after the payment the corporation will no longer be able to pay the debts that are due.

Article 2:216(3) BW adds a severe sanction to this. If, after a payment, the corporation is no longer able to pay its debts that are due, and at the time of payment the directors knew or should reasonably have foreseen that consequence, the directors are personally and jointly liable. A director, however, who proves that he cannot be blamed for the payment and that he has tried to counteract the consequences of the payment, will not be held liable. The persons who accepted the payment, and who at the time of payment knew or should reasonably have foreseen that the corporation would no longer be able to pay its debts that are due, should pay the shortage of the corporation's capital to a maximum of the amount received by them. If the directors already paid the shortage, the recipients of the payment should make this payment to these directors.

C. New Types of Shares

Since 2012, the BV may have shares without voting rights and shares with multiple or limited voting rights, and shares that give no right or only a limited right to the profits and reserves of the company (e.g., right to payment of dividends), as prescribed in articles 2:228(4)-(5) and 2:216(7) BW. The new law introduces, for example, the possibility of issuing non-voting shares,[23] conditional voting shares and preferred non-voting shares. It allows, for instance, founders of businesses to issue and transfer

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23. The need for introducing non-voting shares had already been demonstrated a long time before by Schwarz. *See* CHRISTIAAN ANTON SCHWARZ, AANDELEN ZONDER STEMRECHT (1990). Whereas he advocated non-voting shares for both the NV and the BV, it has now been introduced only for the BV.

shares to members of their families without giving them voting rights at the same time. To give another example: if two companies, A and B, set up a joint venture with equal voting rights, but A invests more capital into the joint venture than B, the joint venture corporation can issue non-voting rights to A to reflect the larger investment by A.[24] A similar result can be achieved by issuing to A and B an equal amount of shares with equal voting rights, and by attaching to the A-shares a larger right to profits and reserves.

In addition, the new legislation allows the company to stipulate in the articles of incorporation that the shareholder is subjected to a duty in his capacity as a shareholder in such a way that the duty passes on to a new shareholder in the case of sale and transfer of the share. For example, the articles of incorporation may oblige the shareholder to make an additional contribution to the corporation's capital when the capital sinks under a certain threshold of solvability,[25] or a duty to buy goods or supply goods to the company, a duty to buy shares in the company from another shareholder or a non-competition clause.[26] It is also possible to stipulate, for example, that if the shares are inherited, the heirs should sell and transfer their shares to the other shareholders (article 2:192(1)(c) BW). That article reads as follows:

The articles of incorporation may as to all shares or as to shares of a certain sort or denomination:

a) stipulate that obligations, as against the company or third parties or between shareholders, are connected to the status of shareholder;

b) subject the status of shareholder to certain requirements;

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24. For practical examples *see* Najat Rachak, *Het stemrechtloze aandeel: een interessant instrument*, 5 VENNOOTSCHAP & ONDERNEMING 79-82 (2013).

25. CHRISTIAAN ANTON SCHWARZ, INLEIDING TOT HET NIEUWE BV-RECHT 13 (2012).

26. DE KLUIVER ET AL., *supra* note 2, at 49-50.

c) stipulate that the shareholder is in certain cases, mentioned in the articles of incorporation, under a duty to offer and transfer his shares or a part thereof.

The Minister of Justice indicates that the obligations mentioned in article 2:192 BW are not connected to the shares but rather to the status of shareholder. The reason for the remark is as follows: if the obligation is introduced into the articles of incorporation already in existence and the shareholder voted against the change of the articles of incorporation, or at least did not agree to the change, the shareholder is not bound by the obligation, even if afterwards the shareholder acquires additional shares in the company. For that reason the Minister regards the freedom of this obligation personal.[27] If, however, this free shareholder transfers his or her shares to a bound shareholder or a third party (who is not yet a shareholder) the transferee will be bound by the obligation. We can, therefore, conclude that the obligation burdens and runs with the share.[28] Yet, in that case, the Minister's remark that the obligation is not linked to the share but rather to the status of shareholder is misleading.

In property law it is sometimes said that owners of property are bound in their quality of owners of that property. For example, in the case of servitudes, the owners of servient tenements are bound to an obligation in their quality of owners. Another way of expressing the same situation is saying that the obligation burdens the servient tenement. Both expressions are regarded as equivalent. In the law of servitudes, often only negative duties are permitted (duties to tolerate or not to act) and positive duties cannot run with

27. GERARD VAN SOLINGE & MARCO NIEUWE WEME, 2-IIa ASSER'S HANDLEIDING TOT DE BEOEFENING VAN HET NEDERLANDS BURGERLIJK RECHT nr. 298 (2013).

28. Kamerstukken II 2008/2009, 31058, nr. 6, at 38; Kamerstukken II 2006–2007, 31 058, nr. 3, at 4 and 47. It also follows from art. 2:192a BW, which mentions exceptional cases in which the third party, like the transferor, is not bound to the obligation.

the land. This Roman law principle[29] is still valid in many modern jurisdictions, although Dutch law recognizes a few minor exceptions. However, the new regime for the flexible BV allows positive duties to run with the shares in the company, something which historically has been regarded as unacceptable in property law.

D. Transfer Restriction

Under the old regime, every BV had to have a transfer restriction for the voluntary transfer of the shares (e.g., upon sale). The new regime, however, allows the articles of association to stipulate that there will be no transfer restriction (article 2:195(1) BW). Another innovation is that the articles of association may also provide that (a certain class of) shares in the corporation cannot be transferred for a certain time. In the past these lock-up rules were often laid down in shareholder agreements, but it was uncertain whether they were valid.[30] Similarly, it was uncertain whether a lock-up time could be validly laid down in the articles of association. A lock-up time is especially important for joint-ventures with large initial investments.[31]

Under the new regime, the default rule is still that there will be a transfer restriction. If the articles of association do not provide otherwise, there will be a transfer restriction demanding that shareholders who plan to transfer their shares should first offer these shares to the other shareholders (article 2:195(1) BW). The articles of association can also impose a different form of transfer restriction in which any transfer should be approved by a body mentioned in the articles of association, e.g., the general meeting

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29. D. 8.1.15.1. There was an exception to the rule in the form of the *servitus oneris ferendi*: the duty to maintain or rebuild a wall that gives support to a neighboring building (D.8.5.6.2).

30. SCHWARZ, *supra* note 25, at 35-36.

31. DE KLUIVER ET AL., *supra* note 2, at 54-56.

of shareholders. Any transfer in contravention of the transfer restriction will be void (article 2:195(4) BW).

It should be noted that the possibility to subject the status of the shareholder to certain requirements (article 2:192(1)(b) BW) may also restrict the transferability of the shares by limiting the number of parties to whom the shares may be offered. An example is a BV which owns an electricity plant and whose shareholders should all be certain public bodies, like city councils or provinces.[32] Another example, which is especially relevant for joint-ventures, is the requirement that all shareholders should be a party to a certain shareholder agreement. This ensures that the contractual rights and duties from the shareholder agreement, which do not run with the shares automatically, pass to any new shareholder.

A transfer of the shares to heirs does not fall within the scope of article 2:195 BW. A transfer restriction, therefore, cannot block a transfer to the heirs. However, as mentioned earlier, the articles of association may stipulate that heirs who inherit shares should offer them to the other shareholders (article 2:192(1)(c) BW). Indirectly, it has a somewhat similar effect of restricting the free transferability.

V. *NUMERUS CLAUSUS* AND THE USE OF FOREIGN COMPANY TYPES IN THE NETHERLANDS

Dutch company law as laid down in the BW has a *numerus clausus* of legal persons. This means that Dutch law only awards legal personality to those structures recognized in the civil code as legal persons. Similarly to the *numerus clausus* in Dutch property law, Dutch law not only limits the types of legal persons under national law but also made the rules applicable to these types, in principle, mandatory.

As a result of case law of the European Court of Justice, however, this *numerus clausus* has been watered down

32. HR January 21, 2011, NJ 2011/97; JOR 2011/112 (Essent v. Delta).

considerably. One can run a business in the Netherlands making use of a legal person established in another EU member state or one of the European Economic Area states according to the law of that other EU member state or EEA state. Dutch private international law applies the so-called incorporation principle, according to which corporations are governed by the law of the state in which the corporation was established (the seat mentioned in the contract of partnership or the articles of incorporation).[33] The Pro-Forma Foreign Companies Act[34] indeed does form a hurdle, but in the case *Inspire Art*, the European Court of Justice[35] held that this statute is contrary to the principle of freedom of establishment as laid down in articles 49 and 54 TFEU.[36] As a result, this hurdle has almost completely been removed for corporations with a registered seat in another EU or EEA member state. The ECJ held, among other things, that:

> The reasons for which the company was formed in that other Member State, and the fact that it carries on its activities exclusively or almost exclusively in the Member State of establishment, do not deprive it of the right to invoke the freedom of establishment guaranteed by the Treaty, save where abuse is established on a case-by-case basis.[37]

The Pro-Forma Foreign Companies Act has been changed so that, apart from article 6, it no longer applies to corporations from other EU and EEA member states (article 1(2)).[38]

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33. Paul Vlas, Groene Serie, Rechtspersonen, artikel 118 Boek 10 BW, note 1 (2013); and STEPHAN RAMMELOO, CORPORATIONS IN PRIVATE INTERNATIONAL LAW 96-127 (2001).

34. *Wet op de formeel buitenlandse vennootschappen.*

35. Case C-167/01, Inspire Art Ltd, 2003 E.C.R. I-10195. *See* Stephan Rammeloo, *Vrij verkeer van rechtspersonen in Europa na HvJ EG Inspire Art Ltd.: zetelleercontroverse beslecht!*, 3 NIPR 283-95 (2004).

36. Paul Vlas, Groene Serie, Rechtspersonen, regeling Wet op de formeel buitenlandse vennootschappen, note 3 (2013).

37. 2003 E.C.R. I-10226, § 105.

38. Via art. 6 (liability for annual account and report) some of the liability provisions from Book 2 of the BW are applicable.

One of the aims of the *numerus clausus* of legal persons is the protection of creditors. In some cases, the directors of a NV or BV can be held liable in person for the debts of the company.

In the area of liability the relaxation of the *numerus clausus* by EU law is compensated by the standardization of the liability regime in insolvency. Articles 2:138 and 2:149 BW—which deal respectively with liability of executive directors and liability of non-executive directors—apply via article 10:121 BW, and are applicable in the bankruptcy proceedings of a "corporation" that has been declared bankrupt in the Netherlands.[39] This article covers, among other things, NVs and BVs (article 10:117 BW). Moreover, creditors of a company seated in the Netherlands, but set-up in a foreign state, can hold the directors of the company liable in tort, according to article 6:162 BW, which applies via article 4(1) Rome II.[40]

The uniform regime of liability is not even pierced by the introduction of the European Company (*Societas Europaea*, SE). Article 51 of the EC Regulation 2157/2001 provides that internal liability (liability as against the legal person) is subject to national law. As the external liability (liability against creditors) is not covered by the EC Regulation, it is equally subject to national law under articles 9 and 10 of the EC Regulation.[41]

VI. THE EUROPEAN CLOSE CORPORATION

The recent changes in Dutch company law aim at making Dutch company forms, especially the BV, more attractive. As foreign company types can be used in the Netherlands, especially

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39. *See, for example,* Rb Dordrecht December 19, 2012, ECLI:NL:RBDOR:2012:BY7080 (Circus).

40. "Rome II" is the Regulation (EC) No 864/2007 of July 11, 2007 on the law applicable to non-contractual obligations. Paul Vlas and Marek Zilinsky, *Drie jaar Rome II in de rechtspraktijk*, 60 ONDERNEMINGSRECHT § 2 (2012).

41. Hylda Esther Boschma & Johanna Neeltje Schutte-Veenstra, Tekst & Commentaar, Ondernemingsrecht, artikel 51 SE-verordening, note 1 (2012); and Friedemann Eberspächer, *SE-VO Art 51 Haftung, Rn 1* in 2 AKTIENGESETZ (Gerald Spindler & Eberhard Stilz eds., 2d ed. 2010).

but not only company forms of other EU and of EEA member states, there is international competition of company forms. In 2008, the European Union proposed a Regulation introducing a European close corporation, called the European private company, also referred to as SPE (*Societas Privata Europaea*).[42] The aim is, among other things, to lower the costs of incorporating a close corporation and the costs of operating throughout the European single market. This new European close corporation should facilitate small and medium sized businesses. The proposed regulation should also complement the SE, which was already introduced in 2001.[43]

VII. CONCLUSIONS

One of the age-old problems of company law is the danger that companies are used to defraud creditors and the danger that large shareholders act against the interests of minority shareholders. In protecting the interests of creditors and minority shareholders the legislator often runs the risk of making the mandatory rules of company law too rigid. However, under EU law it is now possible to do business in the Netherlands with a corporation set up according to the laws of another EU or EEA member state and, by doing so, evade the Dutch regime on BVs. This scenario was the catalyst for the 2012 changes. In order to make the Dutch BV less rigid and thus more attractive to businesses, the Dutch legislator enacted a new regime which abolished the minimum capital requirement and instead introduced a different way of protecting the interests of creditors.

The changes also introduced new types of shares, such as shares without any voting rights and shares with multiple or limited voting rights, and also shares that give no right or only a limited right to the profits and reserves of the company (e.g., the

42. Proposal for a Regulation COM (2008) 396 on the Statute for a European Private Company.
43. Regulation 2157/2001 of October 8, 2001.

right to payment of dividends). Close corporations now have the possibility of issuing non-voting shares, conditional voting shares and preferred non-voting shares. In addition, it is now possible to link obligations to shares so that they run with the shares upon their sale and transfer.