

Trend report - Developments in the regulation of listed BVs

Historically, the Dutch NV legal form was used for Dutch listed companies and the BV legal form was intended for privately held companies. In recent years, however, an increasing number of Dutch BVs have been listed on stock exchanges both in the Netherlands and abroad. This has given rise to new legal issues and prompted the Expert Group to advise the Dutch legislator on the regulation of listed BVs. In this trend report, we share our views on these developments and the advice recently rendered by the Expert Group.

The rise of Dutch listed BVs

Dutch corporate law distinguishes between two types of companies: the public limited liability company (*naamloze vennootschap* or '**NV**') and the private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid* or '**BV**'). Historically, the NV is the legal form most commonly used for companies whose shares are listed on a stock exchange. Although the BV was intended for privately held companies, a change in the law in 2012 allowed for shares in the capital of BVs to be listed on a stock exchange. In 2016, Fastned BV became the first listed BV, when depositary receipts for its shares were listed on a stock exchange. Over the years, the number of listed BVs has increased, partly due to the fact that the BV is the legal form of choice for SPACs. While the NV remains the gold standard for Dutch listed companies, this has led to increased attention for the listed BV.

The regulatory differences between listed BVs and listed NVs appear to be limited. For instance, the Market Abuse Regulation (Regulation (EU) 596/2014), the Prospectus Regulation (Regulation (EU) 2017/1129) and the Regulation on Short Selling (Regulation (EU) 236/2012) apply to both NVs and BVs whose shares are listed on a regulated market. Furthermore, Dutch law expressly provides that certain NV provisions also apply to BVs whose shares are listed on a regulated market. In addition, the Dutch Corporate Governance Code applies to Dutch listed companies regardless of legal form and listing venue.

However, some material regulatory differences remain. For example, certain Dutch law provisions stemming from the implementation of European legislation for listed companies only applies to NVs whose shares are listed on a regulated market. Examples include the provisions imposed by the Shareholder Rights Directive

(Directive (EU) 2017/828), the Takeover Directive (Directive 2004/25/EC) and the Transparency Directive (Directive 2004/109/EC). In addition, the regulatory regime applicable to listed BVs is also more lenient with respect to shareholder approval rights for material board resolutions, share buybacks and issuances, and directors' remuneration. The BV also allows for greater protection, for instance through the issuance of non-voting shares and fewer opportunities for holders of depositary receipts for shares to attend shareholder meetings. Hence, listed BVs are generally subject to a lighter regulatory regime.

Regulatory developments: Expert Group advice

At the request of the Dutch Minister for Legal Protection, an Expert Group on the Modernisation of Dutch Company Law advises the Dutch legislator on certain aspects of company law. On 18 October 2024, the Dutch government published the Expert Group's advice on certain aspects of listed companies, including listed BVs. This advice covers a number of topics, including (i) the desirability of a separate regulatory company law regime for listed companies, (ii) the purpose of the listed BV and (iii) the extent to which the regulatory regime applicable to listed NVs should also apply to listed BVs.

In summary, the Expert Group found little reason to introduce a separate legal regime for listed companies. The Expert Group also recognised that there is a clear use case for listed BVs, acknowledging the importance of party freedom when it comes to structuring their company. Finally, the Expert Group recommended that certain statutory provisions that currently apply only to NVs whose shares are listed on a regulated market should also apply to BVs whose shares are listed on a regulated market.

For Dutch legal practice, the Expert Group's advice on legislative amendments is most relevant. The Expert Group recommends that certain aspects of the regulatory framework applicable to listed BVs should be amended to bring it more into line with that of listed NVs. These include:

- share buybacks;
- shareholder approval rights for certain material board resolutions;
- certain mechanics relating to the convening of a shareholders' meeting;

- the remuneration and legal position of directors;
- disclosure requirements on the positions held by major investors; and
- mandatory public bid mechanisms.

The Expert Group was unable to reach a clear conclusion on other matters, including the applicability to listed BVs of provisions on (i) share issuances, (ii) non-voting shares or non-profit shares, and (iii) the ability of holders of specific classes of shares to appoint, dismiss and suspend certain directors.

The future of listed BVs

The Expert Group's advice may be an indication that the listed BV is here to stay and that its regulatory framework will continue to mature and develop. We expect the Dutch legislator to implement at least some of the legislative amendments recommended by the Expert Group. This would arguably strengthen the protection of minority shareholders, address certain concerns raised in the Dutch legal literature and could increase investor appetite.

So what does this mean for the future of listed Dutch BVs? The lighter BV regime has been a factor influencing the choice of legal form for certain listings. If the Dutch legislator follows the Expert Group's advice, this will reduce the legal differences between listed BVs and listed NVs. Despite the converging standards, significant differences remain, and we therefore believe that the BV could be considered as an alternative to the NV for parties contemplating the listing of a Dutch company.

Want to know more? Please reach out to your Loyens & Loeff contacts.

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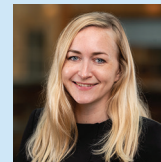
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