

METHODS OF OPERATION IN BELGIUM AND THE NETHERLANDS

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In spite of labor shortages and inflationary pressures, both Belgium and the Netherlands continue to be attractive to American business.

Through its port of Rotterdam, largest in Europe, the Netherlands opens a major gateway to the Common Market. Within its own borders it offers a traditionally stable economic and political climate and a hospitable reception to foreign enterprise. The recent discovery of large natural gas reserves will create a substantial market for gas appliances and for production and transmission equipment, and will thus bring new opportunities to the foreign investor.

Belgium's port of Antwerp, third largest in Europe, opens another gateway to the Continent. American businessmen have continually been impressed by the modernity of Belgium's industrial facilities and by the progressiveness of its managers. The selection of Brussels as headquarters for the European Common Market has lent new attractiveness to Belgium as a location for American business overseas, and many United States firms have made Belgium the European headquarters for their own operations.

This paper seeks to set forth those aspects of Belgian and Dutch law which an American businessman should consider in deciding how to set up operations in these countries. It does not deal with the general question of what circumstances influence the initial decision to create an overseas base of operations. Such general questions are dealt with elsewhere in this symposium,¹ as are general questions related to anti-trust laws² and to United States tax laws.³

I. BELGIUM

A. *Distributorship Agreements*

One way in which the American businessman can do business in Belgium with a minimum of investment on his own part is through the use of a distributorship. Although Americans are usually well aware of the standard problems of distributorship operation, there is one key area in which they may well run into difficulty through lack of knowledge of Belgian law—the area of termination.

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¹ See article at p. 433, *supra*.

² See article at p. 561, *infra*.

³ See article at p. 509, *infra*.

In Belgium, under the Law of July 27, 1961, if a Belgian firm is selected as an "exclusive dealer,"⁴ and the distributorship is for an indefinite period of time,⁵ it cannot be terminated, in the absence of a serious breach by one of the parties, without a "reasonable notice" or a "fair indemnity." If the parties cannot agree on the amount of the indemnity, it will be fixed by the court. Furthermore, if the contract is terminated by the grantor of the concession for reasons other than a serious breach on the part of the dealer, or if the dealer terminates because of a serious breach on the part of the grantor, then the dealer is entitled to a much more specific indemnity. This indemnity is based (1) on the value to the dealership of the customers obtained by the dealer who remain customers after termination; (2) on the expenses which the dealer incurred in exploiting the concession and which will inure to the benefit of the grantor after termination, and (3) on the termination pay owed by the dealer to personnel he is required to dismiss by reason of the termination.⁶ Again, if the parties cannot agree, the amount of the indemnity will be fixed by the court.

The Law of July 27, 1961, by its terms, applies irrespective of any contractual provision to the contrary. Thus the American businessman must select his distributor with more than the usual care.

B. *Branch Operations*

The American concern desirous of setting up an actual base of operations within Belgium must first face the question—shall it establish a branch of the United States company or a locally incorporated subsidiary? Most American industrial concerns have chosen the latter alternative. A subsidiary has advantages in that it serves to insulate the United States parent from liabilities incurred in Belgium; it may also (depending on the type of income it generates) be able to retain and reinvest that income free from any immediate United States tax burden, and it is often considered to produce a better "image" abroad for the American enterprise. Furthermore, the advantages most often cited for a branch (ease of establishment and minimum exposure to local administrative burdens) are not as applicable in Belgium as in some other countries.

⁴ "Exclusive dealer" is defined in the statute as "one who has been given by another the exclusive right to sell articles or products made or distributed by the latter, and who sells such articles and products in his own name and for his own account." Law of July 27, 1961, art. 1, 1 Servais et Mechelynck, *Codes Belges* 766 (Supp. 1962). Article 1 further provides that the fact that the grantor of the concession reserves the right to sell a certain number of products or articles directly does not prevent the dealership from being "exclusive" under the statute.

⁵ If a contract for a short period of time is regularly renewed, it may be held to be a contract for an "indefinite" period of time by the court.

⁶ This item is no small matter. See notes 51 and 52 and accompanying text, *infra*.

If a branch is established in Belgium, the American parent must publish its charter and annual financial statements in the official gazette, the *Moniteur Belge*.⁷ It must register with the Registry of Commerce, paying a fee of 0.1% or more of its total capital.⁸

In addition to the foregoing, a foreign company with a branch in Belgium must have at least one "responsible representative" in Belgium who can offer "necessary guarantees of solvency" for tax purposes.⁹ A branch is subject to Belgian income taxes if it constitutes a "permanent establishment" in Belgium within Article II(f) of the Belgian-United States Income Tax Treaty.

C. *Subsidiary Operations*

As indicated above, most American industrial concerns operating in Belgium have chosen to operate through a subsidiary organized under Belgian law.

Six types of business organization beyond the individual proprietorship are recognized by the Belgian Commercial Code:

Simple partnership (*société en nom collectif*) C.L. arts. 15-17; limited partnership (*société en commandité simple*) C.L. arts. 18-25; corporation (*société anonyme*) C.L. arts. 26-104; limited partnership with shares (*société en commandité par actions*) C.L. arts. 105-115; private company¹⁰ (*société de personnes à responsabilité limitée*) C.L. arts. 116-140; and cooperative (*société coopérative*) C.L. arts. 141-164. Of these six, only two are of substantial interest to the American businessman—the corporation and the private company. Both are discussed below. Reference will also be made to the joint venture and the headquarters company. The latter do not constitute separate categories of business enterprise under Belgian law since they can take the form either of the corporation or of the private company. But they do raise special problems which merit separate consideration.

⁷ Code de Commerce, bk. I, tit. IX, art. 198, 1 Servais et Mechelynck, Codes Belges 556 (30th ed. 1961). (Book I, title IX constitutes the general company laws and will hereinafter be referred to as "C.L.").

⁸ Code des Droits d'Enregistrement, art. 122, 5 Servais et Mechelynck, Codes Belges 54 (30th ed. 1961). The impact of the requirement can be softened by setting up a subsidiary under American law with a lesser capitalization than that of the parent and having the subsidiary establish the branch.

⁹ Lois coordonnées du 15 janvier 1948, art. 70, 5 Servais et Mechelynck, Codes Belges 307 (30th ed. 1961).

¹⁰ Problems always arise in translating the term *société de personnes à responsabilité limitée* (SPRL) since this form of corporate organization is not found in American law. The term "private company" is adopted here because of the similarity of the Belgian SPRL to the institution known as the private company under British law.

1. THE CORPORATION (*société anonyme*)

The corporation has been almost universally favored over the private company by American businessmen as a means of business organization under Belgian law.

Organization: The corporation must have at least seven stockholders¹¹ who may be either individuals or corporations,¹² Belgian nationals or foreigners. The corporation's existence is limited to a period of thirty years, but the charter may be renewed.¹³ No minimum capital is required and shares can be either with or without par value,¹⁴ in bearer form or registered.¹⁵ The corporation is formed by notarial deed, the parties appearing either personally or by power of attorney.¹⁶ No approval or license of any governmental official is required.

All authorized stock must be subscribed for. The Commercial Code does not permit authorized but unsubscribed stock. However, only 20% need be paid on each share at the time of incorporation.¹⁷ After the corporation is organized by the notary, the Articles of Incorporation must be published in the official gazette, the *Moniteur Belge*,¹⁸ and the corporation must be registered at the Registry of Commerce. Annual balance sheets and profit and loss statements must also be published in the *Moniteur*.¹⁹

Directors and Officers: Directors (*administrateurs*), of which there must be at least three, are elected by the stockholders.²⁰ There is no requirement that the directors or officers be Belgian nationals.²¹ Indeed, corporations can serve as directors.²² The directors are elected for the period specified in the charter (which can be as long as six years), can be re-elected in the absence of a contrary charter provision, and are always removable by the stockholders.²³ The directors may delegate the daily running of the business to one or more officers or agents, but cannot delegate their general powers.²⁴ One or more *commissaires* are also elected by the stockholders. The function of

¹¹ C.L. art. 29. If the number of stockholders becomes less than seven for a period of six months or longer, the corporation may be liquidated on petition of any interested party. C.L. art. 104.

¹² 1 Van Ryn, *Principes de droit commercial* § 493 (1954).

¹³ C.L. art. 102.

¹⁴ C.L. art. 41.

¹⁵ C.L. arts. 43, 44.

¹⁶ C.L. arts. 29-31.

¹⁷ C.L. art. 29.

¹⁸ C.L. art. 9.

¹⁹ C.L. art. 80.

²⁰ C.L. art. 55.

²¹ 1 Van Ryn, *supra* note 12, § 579.

²² 5 Frédéricq, *Traité de droit commercial Belge* § 417 (1950).

²³ C.L. art. 55.

²⁴ C.L. art. 63; 1 Van Ryn, *supra* note 12, §§ 583, 643.

these officers is to supervise the keeping of the corporate accounts on the stockholders' behalf.²⁵ Both the directors and the *commissaires* must deposit with the corporation, or have deposited on their behalf, one or more shares of the corporation's stock as security for the faithful performance of their duties.²⁶

Stock:²⁷ Stock may be issued either for cash or for property (e.g., machinery and equipment).²⁸ The contribution of machinery and equipment is a rather complex procedure involving the valuation of the property first by the board of directors of the corporation and then by a specially appointed *reviseur d'entreprise*.

2. THE PRIVATE COMPANY (*société de personnes à responsabilité limitée* or SPRL)

The private company is often used in Belgium for small, closely held enterprises.²⁹ The form is infrequently used by American companies. The principal reason is that a corporation cannot be a stockholder in an SPRL—all shares must be held by individuals.³⁰

The duration of a private company, like a *société anonyme*, is limited to thirty years, but can be extended.³¹ The stockholders may number as few as two or as many as fifty.³² A minimum corporate capital of 50,000 Belgian francs (\$1,000) is required.³³ All shares must be registered and are subject to statutory restrictions on transfer.³⁴ There is no requirement for publication of annual balance sheets and profit and loss statements in the *Moniteur Belge* although they must be filed with the Clerk of the Court of Commerce.³⁵

The SPRL has no board of directors. Its business is conducted by managers (*gérants*) elected by the stockholders for a term which can be either fixed or indefinite.³⁶ *Commissaires* must also be elected unless the stockholders number five or less.³⁷

D. Joint Ventures

A joint venture with a local business enterprise has been a popular method of establishing overseas operations. In this way the American

²⁵ C.L. art. 64.

²⁶ C.L. arts. 57, 58, 69.

²⁷ See also the material on corporate organization, *supra*, and on joint ventures, *infra*.

²⁸ C.L. art. 29.

²⁹ For a recent general treatment of the subject, see Colens, *Les sociétés de personnes à responsabilité limitée* (1960).

³⁰ C.L. art. 119.

³¹ C.L. art. 139.

³² C.L. art. 119.

³³ C.L. art. 120.

³⁴ C.L. arts. 124-28.

³⁵ C.L. art. 137.

³⁶ C.L. arts. 129-30.

³⁷ C.L. art. 134.

businessman can take advantage of the experience and knowledge of an associate who is a national of and located in the country where operations are to be established. A local co-venturer may offer plant and equipment or assistance in market penetration.

In Belgium as elsewhere, the joint venture frequently takes the form of a corporation established under the laws of the country where it is located, with the stock ownership being divided between the local and foreign participants. The use of such a vehicle raises the usual problems of a close corporation—problems of control and of relationships between majority and minority stockholders.

Techniques of sharing control of a corporation among two or more stockholders of diverse interests have been developing in Belgium.³⁸ Also, certain statutory protections are available to the minority stockholder although their effectiveness is open to question:

1. VOTING LIMITATIONS: Belgian law provides that no individual stockholder can vote more than 20% of all shares entitled to vote, nor more than 40% of the shares represented at a meeting, whichever is less.³⁹ This restriction is usually avoided through the use of straws.

2. CHARTER AMENDMENTS: No charter amendment can modify any essential element (*élément essentiel*) except the corporate purpose.⁴⁰ The latter can be amended, but only by a special procedure involving detailed notice, a quorum requirement of 50% (reduced to 25% if 50% is not obtained at the first meeting), and adoption by a four-fifths vote.⁴¹ Charter amendments not bearing on "essential elements" nevertheless require detailed notice, a quorum of 50% (dropped if it is not obtained at the first meeting) and adoption by a three-quarters vote.⁴² Stricter requirements may be established in the charter.

3. 20% RIGHTS: Holders of 20% of the capital stock can require a stockholders' meeting⁴³ or petition the Court of Commerce to investigate the affairs of the corporation.⁴⁴ However, neither of these rights guarantees any positive action by the corporation.

Probably more important to the American joint venturer than the above statutory provisions are the following protective techniques:

(1) RESTRICTIONS ON TRANSFER: Restrictions on transfer of stock (*e.g.*, requiring board of directors' approval for the transfer or

³⁸ See generally 5 Frédéricq, *supra* note 22, §§ 485-92.

³⁹ C.L. art. 76.

⁴⁰ C.L. art. 70.

⁴¹ C.L. art. 70 bis.

⁴² C.L. art. 70. The same requirements apply to increases and reductions of capital. C.L. art. 72.

⁴³ C.L. art. 73.

⁴⁴ C.L. art. 191.

giving the corporation or other stockholders a right of first refusal) are permitted if contained in the charter.⁴⁵

(2) VOTING AGREEMENTS: Agreements among stockholders to vote in particular ways were formerly considered a nullity under Belgian law. However, more recent decisions have upheld the voting agreement limited to a single meeting⁴⁶ or an irrevocable proxy given in connection with a pledge.⁴⁷ From these decisions one text writer has concluded that such agreements are now valid under Belgian law if limited in time and to a well defined object.⁴⁸

An arbitration clause may also be used to advantage in agreements between joint venturers.

E. Headquarters Company

Under rulings adopted recently by the Belgian tax authorities pursuant to the Belgian-United States Income Tax Treaty, a "headquarters office" can be established in Belgium without adverse tax consequences. The activities of the office must be limited to the supervision of the company's activities and interests in Europe, market studies and similar matters. It must not engage in sales activities or otherwise be directly productive of income. Under such circumstances no attempt will be made by the Belgian tax authorities to attribute income to the office or to assess a Belgian tax against its activities. Moreover, the normal requirements for registration of a branch are not applicable. This regulation is, of course, of great importance to companies wishing to set up European headquarters near the headquarters of the European Economic Community.

F. General Matters

The following general matters should be mentioned briefly. They do not aid in the selection of a particular method of operation in Belgium but are important regardless of the method selected.

1. REPATRIATION OF CAPITAL AND PROFITS

There are no limitations at present on entry of capital or withdrawal of capital or profits from Belgium. If desired, a foreign investor can obtain a guarantee of future repatriation at the time the investment is made.

⁴⁵ 1 Van Ryn, *supra* note 12, §§ 545-48.

⁴⁶ Comm. Bruxelles, July 11, 1950, 1951 Rev. de la Banque 278.

⁴⁷ Cass. January 13, 1938, 1938 Rev. Prac. Soc. 81.

⁴⁸ Coppens, *Les consortiums d'actionnaires et la protection des minorités en droit Belge*, 16 Ann. dr. & sc. pol. 253 (1956).

2. GOVERNMENTAL INCENTIVES

Special incentives are available in development areas within Belgium under the Law of July 18, 1959. In addition, the government may subsidize interest rates up to 4% on money borrowed in Belgium to finance industrial development and may also guarantee the repayment of loans in certain cases, regardless of whether or not the plant is located in a development area.⁴⁰

Equity financing is also available through the semi-official National Investment Corporation (*Société Nationale d'Investissement*). SNI has as its purpose the promotion of economic expansion and development in Belgium. It may participate in up to 80% of the capital of the enterprise in which it invests without assuming management responsibilities.

3. CORPORATE TAXES

Belgium adopted a new tax law on November 20, 1962⁵⁰ under which the standard corporate tax rate is 30%. Below 1,000,000 Belgian francs (\$20,000) the rate drops to 25%. In the case of retained earnings over 5,000,000 Belgian francs (\$100,000), there is an added tax of 5% which is refunded when the earnings are distributed. Profits distributed to a United States company would bear a total Belgian tax burden of 42.75% on account of the dividend withholding tax, which operates at an effective rate of 12.75% and is added to the base rate of 30%. An additional 15% tax is withheld on the dividend if the stockholder's identity is not reported to the Belgian tax authorities.

4. EMPLOYMENT REGULATIONS

As a rule a written employment contract is required for office workers. The Law of July 20, 1955⁵¹ provides for a trial period not to exceed three months. Thereafter if the employment contract is not for a specific period of time, the employer can terminate it only on the following notice: (a) Where the employee's annual salary is less than 120,000 Belgian francs (\$2400), the notice period is three months for each five-year period of employment or fraction thereof; (b) where the employee's annual salary exceeds 120,000 Belgian francs, the notice period is determined by the court if the parties cannot agree upon it. In no event can it be less than that provided for in (a).

⁴⁰ Law of July 17, 1959. See generally, on benefits available under both the Laws of July 17 and 18, 1959, Buisseret, *Les lois de relance économique* tits. IV, V (1960).

⁵⁰ See van Fraeyenhoven, *La réforme des impôts sur les revenus: Commentaire de la loi de 20 novembre 1962* (1963).

⁵¹ 4 Servais et Mechelynck, *Codes Belges* 119 (30th ed. 1961). See generally Colens, *Le contrat d'emploi* (1962).

For manual workers no written contract is required and the mandatory notice required for dismissal is considerably shorter, the maximum being 56 days where the employment period is longer than 20 years.⁵²

The foregoing requirements are fully applicable to American nationals employed in Belgium. It should also be noted that foreign employees at present are required to obtain work permits.

II. THE NETHERLANDS

In the Netherlands the basic form of business organization is the corporation (*naamloze vennootschap*). The Dutch Commercial Code also provides for individual proprietorships, general partnerships and limited partnerships, but these are not of sufficient interest to the foreign investor to warrant discussion here. The "private company" (corresponding to the Belgian SPRL) does not exist under Dutch law.

A. The Corporation (*naamloze vennootschap*)

ORGANIZATION: The corporation must be formed before a notary by at least two persons who may be either natural persons or corporations.⁵³ The founders may be present or represented by powers of attorney.⁵⁴ At least 20% of the authorized capital must be subscribed on organization, a certificate of approval must be secured from the Ministry of Justice, the Articles of Incorporation must be published in the official gazette (*Nederlandsche Staatscourant*), and the company must be registered with the Chamber of Commerce in the district where its registered office is located.⁵⁵ (The registered office of the corporation must be in the Netherlands.)⁵⁶ Existence is perpetual unless otherwise fixed in the Articles of Incorporation.⁵⁷

The Articles of Incorporation must state the amount of the authorized capital, the number of shares, the par value of each share, and the number of shares subscribed by each incorporator.⁵⁸ Shares without par value are thus not permitted.

MANAGEMENT: There are three groups involved in the management of a Dutch corporation: The stockholders, the managers and the directors.

⁵² 4 Servais et Mechelynck, Codes Belges 92 (30th ed. 1961).

⁵³ Netherlands Commercial Code [hereinafter cited as N.C.C.] § 36. Thereafter one stockholder can transfer his shares to the other, thus permitting a wholly owned subsidiary if the American parent so desires.

⁵⁴ N.C.C. § 36(b).

⁵⁵ N.C.C. §§ 36(e) and 36(f).

⁵⁶ N.C.C. § 36(c).

⁵⁷ N.C.C. § 37(a).

⁵⁸ N.C.C. § 36(d).

Under the statute, the stockholders hold the fundamental power.⁵⁹ A stockholders' meeting must be held in the Netherlands at least once a year within nine months after the termination of the fiscal year.⁶⁰ The Code contains explicit provisions about the contents of the balance sheet and the profit and loss statement, which must be submitted to this meeting.⁶¹

The managers (*directeuren* or *bestuurden*) need not be of Dutch nationality. Although the Dutch term is *directeur*, they are not directors in the American sense. Nor are they organized in the typical American chain of corporate authority. They have the burden of the day-to-day management of the corporation. Any one of them may bind the corporation by his acts⁶² although it is usual for the Articles of Incorporation to provide that certain acts require the approval of one or more directors (*commissarissen*). The managers are elected by the stockholders and may be dismissed by them.⁶³

The election of directors (*commissarissen*) is not mandatory under Dutch law. Directors are elected by the stockholders⁶⁴ and have as their function the supervision of the managers. As a general rule they meet but few times each year and do not participate actively in the management of the business.

B. Branches

Branches are free from most of the formalities attendant on forming a new corporation, but nevertheless must register with the local Registry of Commerce. They are subject to Netherlands income taxes if they constitute "permanent establishments" within Article II(i) of the Netherlands-United States Income Tax Treaty. The lack of popularity of a branch operation as compared to a subsidiary is reflected by the fact that of almost 250 American industrial concerns which have set up operations in the Netherlands during the period 1947-1964, less than 5% chose the medium of a branch.⁶⁵

C. Joint Ventures

Many of the investments by American firms in Holland take the form of a joint venture with a Dutch firm. Where this is accomplished through the medium of a jointly-owned Dutch corporation and where

⁵⁹ N.C.C. § 43.

⁶⁰ N.C.C. §§ 43(a) and 44. Directors' meetings can be held anywhere unless otherwise provided in the charter.

⁶¹ N.C.C. § 42.

⁶² N.C.C. § 47(a).

⁶³ N.C.C. §§ 48 and 48(b).

⁶⁴ N.C.C. § 50(c).

⁶⁵ See Press Release, Dutch Ministry of Economic Affairs: Postwar Foreign Industrial Investments in the Netherlands (March 31, 1964).

the American co-venturer holds only a minority interest, the problem of protection for that interest arises.

The Dutch Commercial Code contains three special provisions which in theory would appear to protect the minority participant, but which in practice are of little effect.

(1) Stockholders holding in the aggregate at least 10% of the subscribed capital (or such lesser amount as may be fixed by the Articles of Incorporation) may call upon management and directors (if any) to convene a general meeting of stockholders. If the management and directors do not act, the court may authorize the petitioning stockholders to convene the meeting themselves.⁶⁶ This section, however, is of limited application to the closely held corporation situation since it can be negated by a charter provision in any company which has a provision prohibiting the issuance of bearer shares.⁶⁷

(2) Any stockholder or "interested third party" can challenge any stockholder action in court for failure to comply with the law or with the Articles of Incorporation of the company.⁶⁸ This section, in practice, offers little or no relief.

(3) On petition of the holders of at least 20% of the subscribed capital (or such lesser amount as may be fixed by the Articles of Incorporation) the court may appoint one or more persons—apart from management—to examine the business of the company. A necessary prerequisite is an unsuccessful request to the management, the directors (if any) and to a stockholders' meeting for the same relief. An examination is then made and a report returned to the court.⁶⁹ However, if the court, after study of the report, finds the petition to be without merit, the petitioners may have to indemnify the company "for the loss it may have suffered through the petition having been submitted."⁷⁰ Furthermore, the expenses of the examination must be borne by the petitioners unless the court, after receiving the report, orders reimbursement by the company. Finally, the entire report procedure can be eliminated by an appropriate charter provision in the case of any company which has a charter prohibiting the issuance of bearer shares.⁷¹

More serious than protections which do not protect are various provisions in the Commercial Code which could affirmatively operate to harm the unwary joint venturer.

(1) Unless the Articles of Incorporation otherwise provide,

⁶⁶ N.C.C. § 43(c).

⁶⁷ N.C.C. § 46(b).

⁶⁸ N.C.C. § 46(a).

⁶⁹ N.C.C. §§ 53, 54(a).

⁷⁰ N.C.C. § 53(a).

⁷¹ N.C.C. § 54(c).

there is no quorum requirement whatsoever for a stockholders' meeting.⁷²

(2) Unless the Articles of Incorporation otherwise provide, the only notice required for a stockholders' meeting is five days' notice by a newspaper publication.⁷³

(3) Unless the Articles of Incorporation otherwise provide, all acts (including the amendment of the Articles of Incorporation) can take place by majority vote.⁷⁴

(4) Unless the Articles of Incorporation otherwise provide, each manager has full power to act for the company.⁷⁵ In a joint venture it might be well to provide that as to certain actions a majority of the board of managers (to include representatives of both joint venturers) would have to act or that director approval would have to be obtained.

As a means of protecting the interests of participants in a closely held corporation, resort may be had to stockholder voting agreements and restrictions on transfer of stock. Stockholder voting agreements, however, are subject to the drawback that suit for damages for breach of contract is the only remedy since specific performance is not available.⁷⁶

Restrictions on transfer of shares are also permitted under Dutch law, if the shares are registered and not bearer shares and if the restrictions do not unduly restrict transfer.⁷⁷ These restrictions must be put in the charter and hence are subject to Ministry of Justice approval. Typical acceptable provisions would be a right of first refusal in the company or in the other stockholders or a provision requiring the consent of management to the transfer.

D. *General Matters*

The following general matters may be mentioned briefly:

1. LICENSES

The issuance of an exchange license by the Netherlands Bank is still required before a foreign firm can make an investment in the Netherlands. However, there is generally no problem in obtaining it. A special license is also required under the Industrial License Act of 1954 in order to engage in a certain limited number of industrial activities. This requirement covers Dutch nationals as well as foreigners.

⁷² N.C.C. § 44(d).

⁷³ N.C.C. §§ 43(f), (g) and (h).

⁷⁴ N.C.C. § 44(d).

⁷⁵ N.C.C. § 47(a).

⁷⁶ Houink, *The American Close Corporation and Its Dutch Equivalent*, 14 Bus. Law. 250, 253 (1958).

⁷⁷ *Id.* at 251.

2. GOVERNMENTAL INCENTIVES

Special incentives are available in the special development areas of the country, *e.g.*, up to 50% subsidy to purchase an industrial site. Subsidies are also available to assist building costs in such areas.

3. CORPORATE TAXES

The tax rates on corporate income are as follows: On taxable income up to 40,000 guilders (\$11,040), the rate is 42%. For taxable income of 40,000 to 50,000 guilders, the tax rate is 42% plus 15% of the excess over 40,000 guilders. For taxable income in excess of 50,000 guilders (\$13,800), the tax rate is 45%.

Special accelerated depreciation rules which were formerly in effect to encourage capital investment were withdrawn in 1963. It is, however, still possible to take advantage of the investment credit. Provided the investor's capital expenditures amount to at least 3,000 guilders (\$828), he can deduct 5% of such expenditures from his profit each year for two years, making a total of 10%. This deduction does not reduce the depreciable value of the assets. In certain cases, however, the credit must be taken back into income when equipment is subsequently sold.