

De Brauw's International Newsletter

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Foreign Direct Investment

Netherlands best location in Europe for overseas companies

KPMG's 'Competitive Alternatives' study shows that the Netherlands is an attractive location for non-European companies' overseas operations

According to KPMG: "Canada and the Netherlands are the cost leaders among the nine established industrialized countries examined with business costs 5.0 and 3.5 percent below the US, respectively."

Overall operation costs in the Netherlands are lower than in Germany (6.1%), UK (1.7%), France (1.8%), and Italy (3.5%). The main reasons are the favourable tax regime, low office lease costs, and limited costs for employee dismissal in the Netherlands.

Click [here](#) to view the full report.

Shift of power to conclude Bilateral Investment Treaties (BITs) from member states to EU

New EU Investment package set to boost trade and underpin investor rights – individual member states no longer allowed to conclude BITs

Before the Lisbon Treaty came into force each EU country concluded its own BITs in order to protect the foreign direct investments (FDI) of their own nationals. Now the competence to conclude BITs has shifted to the EU. In July the European Union issued draft regulation to guarantee the almost 1,200 existing and pending BITs, and to provide for a transitional regime.

The EU also published a comprehensive foreign investment policy, in which BITs play an important role. As a market leader in both in- and outbound FDI, the EU's goal is to increase its competitiveness and to create smart and sustainable growth. China, Russia and India are considered to be candidates for a stand-alone EU-wide BIT in the near future.

Click [here](#) for the regulation and investment policy.

M&A / Corporate

Court rules during Canon's USD 1bn public offer for Dutch company Océ

Bidder may replace supervisory board members after successful public offer, says the Court

Japanese company [Canon](#) made a USD 1bn public offer for Dutch copier producer [Océ](#), and announced it would replace four out of Océ's six supervisory directors if the bid was successful. Some of Océ's shareholders refused to sell, and they opposed in court the majority of the supervisory directors being affiliated with Canon.

A Dutch court recently ruled there was no violation of good corporate governance, as the four supervisory directors are required in their dealings to be guided by the company's interest and may not, when conflicted between the company's and Canon's interest, take part in the decision-making.

Click [here](#) for a summary of the case in English.

De Brauw continues to lead the M&A league tables in the Netherlands

De Brauw has maintained its leading position in the Dutch M&A market, advising on more major deals than any other law firm in the Netherlands

Although M&A activity in the Netherlands remained relatively low from 1 July 2009 to 30 June 2010, De Brauw advised on 4 out of the 9 deals with a value greater than EUR 1 billion, and 8 out of the 21 deals with a value greater than EUR 500 million. 9 deals with a value greater than EUR 500 million were announced in the first half of 2010, with De Brauw involved in 5 of those deals.

Source: [mergermarket](#).

Capital Markets / Banking

Upcoming European legislation on short selling and credit default swaps

EU Commission proposal expected by summer's end on potential risks arising from short selling and credit default swaps

Many countries took different measures during the financial crisis regarding naked short selling and naked credit default swaps (CDS). The EU Commission wishes to harmonise those measures, and to reduce systemic risks, risks to financial stability and market integrity arising from short selling and CDS. It also wants to create more transparency about who is holding such short positions.

The EU Commission held a consultation for market participants, national regulators and other stakeholders in July. This consultation should result in a proposal for legislation from the EU Commission by summer's end.

Click [here](#) to view the press release.

International Tax

Treaty between Netherlands and Hong Kong expected to enter into force on 1 January 2011

The recently signed tax treaty between the Netherlands and Hong Kong provides new tax planning opportunities for China-related investments

The treaty features 0% withholding tax on interest payments, and provides for 0% withholding tax on dividends paid to Hong Kong companies, such as banks, insurance companies, headquarters, and

certain others. Hong Kong is allowed to levy 3% withholding tax on royalty payments. In line with international practice, this treaty generally protects the residents of one country against taxation in the other country.

The treaty is expected to enhance mutual investment between the Netherlands, Hong Kong, and mainland China. Combined with the favorable Dutch holding regime and the extensive Dutch tax treaty network, this treaty offers many interesting opportunities to efficiently structure international investments in or through the Netherlands.

Click [here](#) to view the treaty.

Corporate Recovery & Insolvency

De Brauw plays key role in Almatris financial restructuring under U.S. Chapter 11

De Brauw advises Almatris in one of the world's largest and most complex financial restructurings seen in the market so far

De Brauw has been closely involved for the past 1.5 years in the billion dollar financial restructuring under U.S. Chapter 11 of the [Almatris group](#) (global leader in premium alumina products).

As the group's core corporate structure is located in the Netherlands, De Brauw has played a key role in designing the structural underpinning of Almatris' plan of reorganisation and its implementation. The matter has been noted for its size and complexity, amongst others, caused by its multi-jurisdictional nature.

Click [here](#) and [here](#) for further information.

Competition / Anti-trust

Cartels: European Commission urges consumers to claim damages at national courts

High-ranking EU competition official states that cartel victims could claim EUR 20 billion of compensation per year, and that current obstacles for such claims should be removed

The European Commission has already imposed EUR 1,669 million in fines for cartel behaviour so far this year. With each fine, the EU urges customers to claim damages before national courts, to deter companies even more from anti-competitive behaviour. EU case law confirms that in national civil cases a EU Commission decision is binding proof that the behaviour took place and was illegal.

In a recent speech the highest ranking EU competition official stressed it may currently be too difficult for cartel victims to recover their damages under national laws and that action is needed. These victims are foregoing up to EUR 20 billion of compensation per year due to obstacles they face under national rules governing actions for damages. The EU is currently holding a consultation on how to remove these obstacles.

Click [here](#) for the full speech.

Litigation & Arbitration

Recognition of a U.S. class action settlement in the Netherlands

The Netherlands as an alternative for settling international mass claims in Europe, after the U.S. Supreme Court ruling in Morrison v NAB

A Dutch court recognised the judgment by a U.S. court approving a worldwide class action settlement under U.S. law, thereby barring class members who did not opt out from ever bringing a claim against the defendants anywhere in the world.

The principal reason for recognition was that the Netherlands itself has a similar system for collective settlements. The Dutch system is unique in Europe, and makes the Netherlands an attractive jurisdiction for settling international mass claims.

This is reinforced by the recent U.S. Supreme Court decision blocking security class actions by non-US investors related to securities in companies not listed in the U.S. and traded outside the U.S. (see: [Morrison v National Australia Bank](#)).

Click [here](#) for our Legal Alert on this topic.

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