

Dutch Civil Code

Book 2 Legal Persons

Title 2.1 General provisions

Article 2:1 Public legal persons

- **1.** The State, the Provinces, the Municipalities, the Water Boards and all other bodies to which legislative power has been granted under the Dutch Constitution have legal personality.
- **2.** Other bodies charged with governmental duties only have legal personality if this results from what has been specified by or pursuant to law.
- **3.** The below listed Articles of the present Title (Title 2.1), except Article 2:5, do not apply to public legal persons as meant in the previous paragraphs.

Article 2:2 Churches and other religious communities

- **1.** Religious communities and their independent subdivisions and bodies in which they are united, have legal personality.
- **2.** They are governed by their own charter insofar the rules thereof are not in conflict with law. With the exception of Article 2:5, the below listed Articles of the present Title (Title 2.1) do not apply to them. Nevertheless, these Articles may be applied accordingly as far as this is in agreement with the charter of the religious community and the nature of the mutual relationships within that community.

Article 2:3 Private legal persons

Associations ('verenigingen'), Cooperatives ('coöperaties'), Mutual Insurance Societies ('onderlinge waarborgmaatschappijen'), Open Corporations*) ('naamloze vennootschappen'), Closed Corporations**) ('besloten vennootschappen') and Foundations ('stichtingen') have legal personality.

*) Open Corporations are the equivalent of public limited companies under English law, i.e. companies with free tradable shares

**) Closed Corporations are the equivalent of private limited companies under English law, i.e. companies with restricted tradable shares.

Article 2:4 Defective formation and (property of) non-existing legal persons

- **1.** A legal person cannot come to existence in the absence of a deed signed by a notary insofar the law requires such a deed for the formation of this type of legal person. A deed signed by a notary, which is not authentic, shall only prevent the formation of the intended legal person if this legal person would have been called into existence on the basis of a testamentary disposition (last will) laid down in that deed.

- **2.** The nullification of a voidable juridical act through which a legal person has been formed, does not affect the existence of that legal person. The invalidity of the participation of one or more founders of the legal person does in itself not affect the validity of the participation of the remaining founders.
- **3.** Where property has been created in the name of a non-existing legal person, the court shall appoint, upon the request of an interested party or of the Public Prosecution Service, one or more liquidators. Article 2:22 shall apply accordingly.
- **4.** Property created in the name of a non-existing legal person shall be liquidated (wound up) in the same way as that of a dissolved legal person of the intended type. The persons who have acted as Directors of the non-existing legal person are joint and several liable for all debts belonging to the before mentioned property as far as these debts have become due and demandable during the period in which these persons acted as Director. These persons are also liable for debts arisen from juridical acts which have been performed [by themselves or others] during that period on behalf of that property, as far as no other person is liable for these debts on the basis of the previous sentence. When no person can be made liable for a debt on the basis of one of the two previous sentences, the persons who have performed the act which caused the debt are joint and several liable for it.
- **5.** If a valid legal person has been formed in order to make it the legal successor of the property created in the name of a non-existing legal person, then the court may order, upon request, that this property does not need to be liquidated (wound up), but may be brought into the validly formed legal person.

Article 2:5 Equalisation of legal persons with natural persons

As far as it concerns the law of property, a legal person is tantamount (equal) to a natural person, unless the contrary results from law.

Article 2:6 Publication of information and consequences of a lack of publication

- **1.** Changes made to the articles of incorporation or the internal regulations (by-laws) of a legal person, that have to be published by virtue of the present Book (Book 2 of the Civil Code), cannot be invoked against counterparties and third persons who were unaware of these changes as long as that publication has not been made and, in the event of a change of the articles of incorporation, as long as the legally required publication of the changed articles of incorporation has not been made. The same applies in respect of an appeal to the fact that a legal person is dissolved as long as its dissolution has not been published in the legally required way.
- **2.** Where the articles of incorporation indicate that the Board of Directors or a Director has no power to represent the legal person in performing a juridical act, an appeal to such lack of power, that normally would be permitted according to law, has no effect towards a counterparty who was unaware of the lack of power if the limitation or exclusion of that power was not published in the legally required way at the moment on which that juridical act was performed. The same applies to an appeal to a limitation of the power of representation of others than Directors to whom such power has been granted under the articles of incorporation.
- **3.** The legal person cannot invoke the incorrectness or incompleteness of the data registered at the commercial register against a counterparty who was unaware of this incorrectness or incompleteness. A correct and complete registration elsewhere or a publication of the articles of incorporation [in the commercial register] is in itself not sufficient evidence that the counterparty was aware of the incorrectness or incompleteness.

- **4.** As far as the law does not provide otherwise, the counterparty of a legal person cannot appeal to his unawareness of a fact which has been published in the legally required way, unless this publication has not been made in each way required by law [when more registrations in the commercial register or a registration in another public register is required] or unless not the legally required notification of such publication has been made.
- **5.** The two preceding paragraphs do not apply to judicial decisions registered in the bankruptcy register or the register for official moratoriums on payment.

Article 2:7 Lack of power to act for the legal person itself (ultra vires doctrine)

A juridical act performed by a legal person is voidable if, due to this act, the purpose (objective) of the legal person, as described in its articles of incorporation, has been exceeded and the counterparty was aware or ought to have been aware of this without any research of his own; only the legal person may invoke this ground of voidability.

Article 2:8 Reasonableness and fairness within the organisation of the legal person

- **1.** The legal person and those who pursuant to law and the articles of incorporation are involved in its organization, must behave towards each other in accordance with what is required by standards of reasonableness and fairness.
- **2.** A rule applicable between them pursuant to law, common practice (usage), the articles of incorporation, the internal regulations (by-laws) or a resolution (decision of a body of the legal person) has no effect as far as this would be unacceptable in the given circumstances to standards of reasonableness and fairness.

Article 2:9 Performance of tasks and liability of Directors

- **1.** Each Director is responsible towards the legal person for a proper performance of the tasks assigned to him. All duties of Directors that have not been assigned by or pursuant to law or the articles of incorporation to one or more other Directors, shall belong to the duties (tasks) of a Director.
- **2.** Each Director is responsible for the general conduct of affairs. He is liable for the full consequences of an improper performance of duties, unless, also in regard of the tasks assigned to the other Directors, he is not gravely to blame for it and he neither has been negligent in taking measures to avert the consequences of that improper performance of duties.

Article 2:10 Bookkeeping

- **1.** The Board of Directors is obliged to keep accounting records of the assets and liabilities of the legal person and of everything regarding the activities of the legal person in accordance with the requirements arising from these activities, and it must store the books, documents and other data storage media in such a way that at all times the rights and obligations of the legal person can be known.
- **2.** Without prejudice to other Titles of this Book (Book 2 of the Civil Code), the Board of Directors must, within six months after the end of the accounting year, draw up the balance sheet and the profit and loss account (income statement) of the legal person.

- **3.** The Board of Directors is obliged to store the books, documents and other data storage media meant in paragraph 1 and 2 for a period of seven years.

- **4.** With the exception of the balance sheet and the profit and loss account (income statement), that have been put on paper, all written information and information placed on data storage media may be transferred to and stored on (other) data storage media, provided that the transfer results in a correct and complete reproduction of the information and that this information is available and can be made readable throughout the entire storage period within a reasonable time.

Article 2:10a Accounting year

The accounting year (financial year) of a legal person is a calendar year, if no other accounting year (financial year) has been designated in the articles of incorporation of that legal person.

Article 2:11 Liability of a legal person in its capacity as Director of another legal person

Where a legal person is liable in its capacity as Director of another legal person, also the persons who, at the moment on which this liability arose, are a Director of the first mentioned legal person, shall be joint and several liable.

Article 2:12 Denial of voting rights in the articles of incorporation

The right to vote on a resolution through which the legal person grants one or more rights to certain persons other than in their capacity as member, shareholder or member of a body, can be denied in the articles of incorporation to these persons and to their spouses, registered partners or blood relatives in the direct line; the same applies to the right to vote on a resolution through which the legal person gratuitously releases certain persons from a debt.

Article 2:13 Validity of votes; voting result

- **1.** A vote is null and void in the same situations as in which a one-sided (unilateral) juridical act is null and void; a vote is never voidable and it is therefore not possible to nullify it on a ground of voidability.

- **2.** Where a person without legal capacity is a member of an Association (*'vereniging'*), he may exercise his voting right himself insofar the articles of incorporation of that Association (*'vereniging'*) do not oppose to this; if the articles of incorporation do oppose, the right to exercise his voting right belongs to his legal representative.

- **3.** Unless the articles of incorporation provide otherwise, the chairman's decision on the voting result, expressed in the meeting of a body of the legal person, is decisive. The same applies with regard to the chairman's decision on the content of a resolution, expressed in the meeting of a body of the legal person, insofar votes are taken on an unwritten proposal.

- **4.** Where the correctness of the decision of the chairman is disputed immediately after this decision has been expressed, the votes are taken once again if this is requested by the majority of the meeting or, when the original voting did not take place by call or not in writing, by one of the persons present at the meeting who is entitled to vote. As a consequence of this new voting the legal effects of the original voting cease to exist.

Article 2:14 Null and void resolutions; ratification

- **1.** A resolution (decision) of a body of a legal person that is contrary to law or the articles of incorporation is null and void, unless the law indicates otherwise.
- **2.** Where a resolution is null and void because it was passed by a body of a legal person without an act of or notification to another body of that legal person, as required pursuant to law or the articles of incorporation, it may be ratified by that other body. Where a requirement (form) is set for the absent act, this requirement (form) shall apply as well to the ratification of the resolution.
- **3.** A ratification is no longer possible after the expiration of a reasonable period which set for this purpose by the body that had passed the resolution or by the counterparty to whom the resolution was addressed.

Article 2:15 Voidable resolutions

- **1.** Without prejudice to what has been specified elsewhere in law with regard to the possibility of a nullification of a resolution (decision) on a ground of voidability, a resolution of a body of a legal person is voidable:
 - a.** if it has been passed in conflict with the provisions of law or the articles of incorporation that regulate the making of resolutions;
 - b.** if it is in conflict with the standards of reasonableness and fairness imposed by Article 2:8;
 - c.** if it is in conflict with an internal regulation (by-law) of the legal person.
- **2.** The provisions containing the requirements to which Article 14, paragraph 2, refers, are not among those meant in the previous paragraph under point (a).
- **3.** A voidable resolution is nullified by a judicial decision of the District Court in whose district the legal person has its domicile:
 - a.** upon a request submitted against the legal person by someone who has a legitimate interest in the compliance with the requirement which has not been observed, or;
 - b.** upon a request of the legal person submitted, by virtue of a resolution of the Board of Directors, against the person who is pointed out by the provisional relief judge of the District Court upon a request made for this purpose of the legal person; in that case the costs of proceedings will be borne by the legal person.
- **4.** When a Director submits a request in his own name, the legal person shall request the provisional relief judge of the District Court to appoint someone who shall act instead of the Board of Directors in respect of the dispute.
- **5.** The right to claim the nullification of a voidable resolution ceases to exist one year after the day on which either sufficient publicity has been given to the resolution or the interested party has become aware of the resolution or has been given sufficient notice thereof.
- **6.** A resolution voidable on the ground mentioned in paragraph 1, under point (a), may be ratified by a later resolution passed to this effect [as a result the voidable resolution will be repaired with retroactive effect to the day on which it was passed]; that later resolution is subject to the same requirements as the to be ratified resolution. The ratification has no effect as long as an earlier submitted request for nullification of the to be ratified resolution is pending. If the legal claim is awarded, then the voidable resolution, which is nullified by the court, is regarded to be taken once again by means of the later resolution in which it was ratified [as a result the voidable

resolution is repaired from the day on which the later resolution was passed], unless the contrary results from the necessary implications of that later resolution.

Article 2:16 Effect of the nullity or nullification of a resolution; protection of third persons

- **1.** When the legal person has been a party to the proceedings, the final and binding judicial decision establishing the nullity of a null and void resolution of a legal person or nullifying a voidable resolution of a legal person is binding for every one, except that the extraordinary legal actions (legal revocation and third party objection) remain applicable. Each member or shareholder is entitled to file a request for a legal revocation.
- **2.** Where the resolution of a legal person is a juridical act of that legal person addressed to a counterparty, or where it is a requirement for the validity of such a juridical act, the nullity or nullification of that resolution cannot be invoked against that counterparty if he was not aware nor ought to have been aware of the defect in the resolution. The nullity or nullification of a resolution in which a Director or Supervisory Director has been appointed, may nevertheless be invoked against the appointed person; the legal person must, however, compensate the damage which the appointed person suffers as a result thereof, yet only if this person was not aware nor ought to have been aware of the defect in the resolution.

Article 2:17 Duration of the existence of a legal person

A legal person is formed (established) for an indefinite period of time.

Article 2:18 Conversion of legal persons

- **1.** A legal person may convert itself into a legal person of another type, subject to the following paragraphs.
- **2.** For a conversion is required:
 - a.** a resolution passed for this purpose in accordance with the requirements for a resolution to amend the articles of incorporation and, unless a Foundation (*'stichting'*) is converted, passed with at least nine tenths of the votes cast;
 - b.** a resolution to amend the articles of incorporation, and;
 - c.** a notarial deed of conversion that includes the new articles of incorporation.
- **3.** A majority of votes as meant in the previous paragraph, under point (a), is not required for a conversion of an Open Corporation (*'naamloze vennootschap'*) into a Closed Corporation (*'besloten vennootschap'*), or vice versa.
- **4.** Where it concerns a conversion of or into a Foundation (*'stichting'*) or a conversion of an Open or Closed Corporation (*'naamloze of besloten vennootschap'*) into an Association (*'vereniging'*) also the authorization of the court is required.
- **5.** Only the to be converted legal person may request the District Court to authorise the conversion, under submission of a notarial draft of the notarial deed of conversion. The request is denied if a required resolution is null and void or if a legal claim for the nullification of such a resolution is pending. It is denied also when the interests of the persons entitled to vote who have not given their consent or of others of whom at least one person has turned to court, have been

observed insufficiently. When the conversion is subject to an authorisation of the court, the notary will confirm in the notarial deed of conversion that this authorisation has been given on the basis of the draft of the notarial deed.

- **6.** After the conversion of a Foundation (*'stichting'*) the articles of incorporation must show that the Foundation's property, as it was on the moment of conversion, and the fruits (benefits) thereof may only with authorisation of the court be used in another way than as required prior to the conversion. The same applies to the articles of incorporation of a legal person who has acquired the property of a Foundation (*'stichting'*) and the fruits (benefits) thereof through a merger or split up (demerger).
- **7.** The legal person asks the keeper of the public registers where this legal person was registered prior to the conversion and where it must be registered thereafter, or, in case of an Association (*'vereniging'*), where it had been registered voluntarily, to register the conversion.
- **8.** A conversion does not end the existence of the legal person.

Article 2:19 Dissolution of a legal person

- **1.** A legal person becomes dissolved:
 - a.** when its General Meeting has passed a resolution for this purpose or, if the legal person is a Foundation (*'stichting'*), when its Board of Directors has passed such a resolution unless the articles of incorporation of the Foundation (*'stichting'*) provide otherwise;
 - b.** when an event occurs which, according to the legal person's articles of incorporation, leads to its dissolution, and which is not a resolution, nor an act aiming at its dissolution;
 - c.** when it has been declared bankrupt and either its bankruptcy ends because of the state of the insolvency estate as meant in Article 16(1) of the Dutch Bankruptcy Act or it is declared insolvent as referred to in Article 173(1) of the Dutch Bankruptcy Act;
 - d.** when there are no members at all if it is an Association (*'vereniging'*), a Cooperative (*'coöperatie'*) or a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*);
 - e.** when the Chamber of Commerce has taken a decision as meant in Article 2:19a;
 - f.** when the court has dissolved it in situations set for this purpose by law.
- **2.** In a situation as referred to in paragraph 1, under point (b) or (d), the District Court shall declare, upon the request of the Board of Directors, an interested person or the Public Prosecution Service, whether the legal person is dissolved and when (what date) this has occurred. This court order is final and binding for everyone. Where the legal person is registered in a public register, the clerk of the court shall ensure that the final and binding court order, holding the earlier meant declaration, will be registered there.
- **3.** The dissolution is reported to the keeper of the public registers where the legal person is registered:
 - in the situations referred to in paragraph 1, under point (a), (b) and (d): by the liquidator, if there is one present, and otherwise by the Board of Directors;
 - in the situation referred to in paragraph 1, under point (c): by the bankruptcy liquidator;
 - in the situation referred to in paragraph 1, under point (e): by the Chamber of Commerce;
 - in the situation referred to in paragraph 1, under point (f): by the clerk of the court.

- **4.** If the legal person no longer has any assets at the time of its dissolution, it will cease to exist as of that moment. In that event the Board of Directors or, where Article 2:19a is applicable, the Chamber of Commerce reports its ending to the keeper of the public registers where the legal person is registered.
- **5.** After its dissolution the legal person continues to exist insofar this is necessary for the liquidation (winding up) of its property. In documents and announcements that are released by the legal person, the words 'in liquidation' must be added to the name of the legal person.
- **6.** In the event of a winding up (liquidation) the legal person ceases to exist at the moment on which the winding up (liquidation) ends. The liquidator or the bankruptcy liquidator reports to the keeper of the public registers where the legal person is registered that it has ceased to exist.
- **7.** The data and information registered in the public registers with regard to the legal person at the moment on which it ceases to exist, are kept there for at least ten years after that moment.

Article 2:19a Dissolution of a legal person by the Chamber of Commerce

- **1.** An Open Corporation (*'naamloze vennootschap'*), a Closed Corporation (*'besloten vennootschap'*), a Cooperative (*'coöperatie'*) or a Mutual Insurance Society (*'onderlinge waarborgmaatschappij'*), registered at the commercial register, shall be dissolved by a decision of the Chamber of Commerce, if the Chamber of Commerce has evidence that at least two of the following circumstances are applicable:
 - a.** no Directors of the legal person are registered in the commercial register for a period of at least one year, whereas neither a report for such a registration has been made, or, if Directors are registered, one of the following events is applicable to all of the registered Directors:
 - 1°. the Directors are deceased;
 - 2°. the Directors appear to be unreachable for at least one year at the addresses mentioned in the commercial register and also at the addresses mentioned in the Personal Records Data Base or the person involved is not registered at the Personal Records Data Base;
 - b.** the legal person has failed for at least one year to comply with its obligation to disclose its annual accounting records or the balance sheet and notes in accordance with Articles 2:394, 2:396 or 2:397;
 - c.** the legal person has not responded properly for at least one year to a letter of formal notice as referred to in Article 9, paragraph 3, of the General State Act on Taxation, to file a tax declaration (tax return) for company (corporation) tax.
- **2.** An Association (*'vereniging'*) or Foundation (*'stichting'*) which itself is registered in the commercial register, but which does not conduct an enterprise that is registered as such in the commercial register, shall be dissolved by a decision of the Chamber of Commerce, if the Chamber of Commerce has evidence that the event mentioned in paragraph 1, under point (a), is applicable, and that the legal person is in default for at least one year of paying the sum due for its registration in the commercial register.
- **3.** If the Chamber of Commerce has knowledge of facts indicating that a legal person is eligible for a dissolution as meant in paragraph 1 or 2, it will notify the legal person and its Directors of the intention to dissolve the legal person; this notification is made by registered letter, send to the last known addresses of the legal person and its Directors, mentioning not only the intention to dissolve the legal person, but as well the grounds on which this intention is based. The Chamber of Commerce registers this notification in the commercial register. Where an event as meant in paragraph 1, under point (a), applies, the Chamber of Commerce ensures that the notification is

published as well in the Dutch Gazette. As far as the costs of this publication cannot be recovered from the property of the legal person, they are borne by the Minister of Justice.

- **4.** Eight weeks after the date of the registered letter the Chamber of Commerce will dissolve the legal person by decision, unless the Chamber prior to this moment has received evidence that the event mentioned in the notification meant in paragraph 3 is not or no longer applicable.
- **5.** The decision of the Chamber of Commerce will be announced to the legal person and its registered Directors.
- **6.** The Chamber of Commerce ensures that the dissolution is published in the Dutch Gazette. Paragraph 3, last sentence, applies accordingly.
- **7.** If it is not possible to appoint one or more liquidators on the basis of Article 2:23, paragraph 1, the Chamber of Commerce shall operate as liquidator of the property of the dissolved legal person, subject to the provisions of Article 2:19, paragraph 4. Upon the request of the Chamber of Commerce, the District Court shall appoint one or more other liquidators.
- **8.** If an appeal is lodged with the Board of Appeal for Trade and Industry (*'College van Beroep voor het Bedrijfsleven'*) against a decision of the Chamber of Commerce as referred to in paragraph 4, the Chamber of Commerce will make a registration thereof in the commercial register. The decision on appeal will be registered there as well. If the decision on appeal leads to the annulment (revision) of the decision of the Chamber of Commerce, the Chamber of Commerce ensures that it is published in the Dutch Gazette. During the period that the legal person had ceased to exist in consequence of the decision to dissolve it, there are grounds as meant in Article 3:320 of the Civil Code for the extension of the prescription period of rights of actions available to or against the legal person.

Article 2:20 Prohibited legal persons

- **1.** Where the activities of a legal person are contrary to public order, the District Court shall prohibit and dissolve that legal person upon the request of the Public Prosecution Service.
- **2.** Where the purpose (objective) of a legal person, as defined in its articles of incorporation, is contrary to public order, the District Court shall dissolve that legal person upon the request of the Public Prosecution Service. Before the dissolution, the District Court may grant the legal person for a specific period of time the opportunity to adjust its purpose (objective) in such a way that it no longer is contrary to public order.
- **3.** A legal person that is mentioned on the list referred to in Article 2, third paragraph, of Regulation (EC) No 2580/2001 of the European Council of 27 December 2001 (OJEC L 344), in Annex I of Regulation (EC) No 881/2002 of the European Council of 27 May 2002 (OJEC L 139), or that is mentioned and marked with a star in the Annex to the Common Position No. 2001/931 of the European Council of 27 December 2001 (OJEC L 344), is prohibited by law and not authorized to perform juridical acts.

Article 2:21 Dissolution of a legal person by the court

- **1.** The District Court dissolves a legal person if:
 - a.** defects (imperfections) are attached to its formation;
 - b.** its articles of incorporation do not meet the statutory requirements;

c. it does not fall under the statutory definition of its legal type.

- **2.** The District Court does not dissolve the legal person if the court has granted the legal person for a specific period of time the opportunity to comply with the necessary statutory requirements and the legal person has fulfilled these requirements within that period.
- **3.** The District Court may dissolve a legal person if it violates the legal prohibitions set in Book 2 of the Civil Code for this type of legal person or if it acts to a serious degree in breach of its articles of incorporation.
- **4.** The dissolution is ordered by the District Court upon a request to this end of an interested party or of the Public Prosecution Service.

Article 2:22 Fiduciary administration of property

- **1.** The court where a request for the dissolution of a legal person is pending, may upon request place the property of that legal person under a fiduciary administration; the court order mentions the date as of which it will take effect.
- **2.** The court appoints in its court order one or more legal administrators and regulates their powers and remuneration.
- **3.** As far as the court does not provide otherwise, the bodies of the legal person cannot pass any resolution without the prior consent of the legal administrator, and the legal representatives of the legal person cannot perform any juridical act in the name of the legal person without the cooperation of the legal administrator.
- **4.** The court may at any time change or withdraw a court order as meant in the previous paragraphs; the fiduciary administration ends in any event once the judicial decision on the request for the dissolution of the legal person has become final and binding.
- **5.** The legal administrator sends to the keeper of the public registers where the legal person is registered, the court order in which the fiduciary administration and his appointment are ordered and also the necessary data about himself that must be registered for Directors.
- **6.** When a legal person, as a result of a fiduciary administration of its property, has no power to perform a juridical act, but it performs such an act anyway prior to a registration as meant in the previous paragraph, then this juridical act will be valid if the counterparty was not aware nor ought to have been aware of the fiduciary administration.

Article 2:22a Court order temporarily taking away the shareholder's power to alienate or encumber shares

- **1.** Before or when the Public Prosecution Service lodges a request for the dissolution of an Open Corporation (*'naamloze vennootschap'*) or a Closed Corporation (*'besloten vennootschap'*), it may ask the court by petition (application) to order that the shareholders, until the judicial decision on the before meant request becomes final and binding, shall miss the power to dispose of the shares or to encumber them with a pledge or usufruct.
- **2.** The court decides after a brief examination. The court order is given under the condition that the request for a dissolution is lodged within a period of time to be set by court. Against this court order no appeal is available.

- **3.** The court order is served without delay, if possible on the same day, by bailiff's writ on the shareholders and the Open or Closed Corporation ('naamloze' or 'besloten vennootschap'). The clerk of the court ensures that the court order is registered in the commercial register.
- **4.** The shareholders may file an objection against the court order within eight days after it has been served on them by bailiff's writ as referred to in the previous paragraph. Such an objection does not suspend the court order, except for the right of the shareholders to request the provisional relief judge for a judicial decision on the matter in summary proceedings. An objection against the court order cannot be based on the statement that the shareholder wishes or has the intention to transfer his shares.
- **5.** The request for a dissolution of the Open or Closed Corporation ('naamloze' or 'besloten vennootschap') must be served by bailiff's writ on the shareholder within eight days after it has been lodged.

Article 2:23 Liquidator

- **1.** To the extent that the District Court or the articles of incorporation have not appointed any other liquidators, the Directors will act as liquidators of the property of the dissolved legal person. With regard to liquidators who are not appointed by the court, the provisions for the appointment, suspension and discharge (dismissal) of Directors and the provisions for exercising supervision over Directors shall apply, insofar the articles of incorporation do not provide otherwise. The property of a legal person which has been dissolved by the court, is wound up by one or more liquidators appointed by that court.
- **2.** Where the court discharges a liquidator, it may appoint one or more other liquidators. In the absence of any liquidator, the District Court shall appoint one or more liquidators upon the request of an interested party or the Public Prosecution Service. A liquidator appointed by the court is entitled to a remuneration granted by that court.
- **3.** The appointment of a liquidator by the court takes effect on the day following the one on which the clerk of the court has notified the liquidator of his appointment; the clerk of the court makes this notification instantly if the court order of the appointment is enforceable immediately and, otherwise, as soon as it has become final and binding.
- **4.** Every liquidator reports to the keeper of the public registers where the legal person is registered, his appointment as liquidator and the data about himself that must be registered for Directors.
- **5.** The District Court may discharge a liquidator as of a particular day, either upon the request of the liquidator himself or, on account of compelling reasons, upon the request of a co-liquidator, the Public Prosecution Service, or of its own motion (ex officio).
- **6.** The discharged liquidator shall render account to the ones who continue the winding up of the property of the dissolved legal person. Where his successor has been appointed by the court, account shall be rendered in front of the court.

Article 2:23a Powers, duties and liabilities of a liquidator

- **1.** Unless the articles of incorporation provide otherwise, a liquidator has the same powers, duties and liabilities as a Director, provided that these are compatible with his role as liquidator.
- **2.** In the event of two or more liquidators, each of them may perform all acts and activities, unless otherwise specified. In case of a disagreement between the liquidators, each of them may

request the involved court or, otherwise, the Subdistrict Court, to settle their dispute. The court referred to in the preceding sentence shall also establish the distribution of their remuneration.

- **3.** Both, the District Court and the magistrate (*'rechter-commissaris'*) appointed by that court in the winding up process, may issue instructions necessary for the winding up, whether or not through an order in executorial form. The liquidator is obliged to follow their directions. No appeal or other legal action is available against these instructions and directions.
- **4.** If it appears to the liquidator that the liabilities (debts) of the legal person probably will outweigh the assets (benefits) of the legal person, he shall file a request for bankruptcy, unless all known creditors, when asked, agree with the continuation of a winding up outside bankruptcy.
- **5.** The previous provisions of the present Article and the provisions of Articles 2:23b up to and including 2:23c do not apply to a winding up in bankruptcy.

Article 2:23b Surplus in case of a winding up

- **1.** What remains from the property of the dissolved legal person after all creditors are satisfied, shall be distributed by the liquidator, in proportion to every one's entitlement, to those who according to the articles of incorporation are entitled to it or, otherwise, to the members or shareholders. If no other person is entitled to the surplus, the liquidator shall distribute it to the State which shall use it as far as possible in accordance with the purpose (objective) of the dissolved legal person.
- **2.** The liquidator renders in writing account of the winding up; the amount and composition of the surplus must show from this written account. When there are two or more persons entitled to the surplus, the liquidator shall make a distribution plan that contains the bases for the distribution.
- **3.** Insofar the surplus consists of other assets than cash money and the articles of incorporation or court order do not provide any other indication, the following methods qualify as an appropriate way of distribution:
 - a.** apportionment of a portion of the surplus to each of the entitled persons;
 - b.** over-apportionment to one or more entitled persons against payment of the excess value to the other entitled persons;
 - c.** distribution of the net proceeds after sale.
- **4.** The written account of the winding up and the distribution plan shall be deposited for inspection by the liquidator at the office of the public registers where the legal person is registered, and in any event at the office of the legal person itself, if such an office is available, or at another place within the judicial district where the legal person has its domicile. These documents remain there for public inspection for a period of two months. The liquidator shall publish in a daily newspaper where and until what time these documents are available for inspection. The court may order an announcement in the Dutch Gazette.
- **5.** Within two months after the written account and the distribution plan have been deposited and the deposit for inspection has been published and announced in accordance with paragraph 4, any creditor or entitled person may file an objection against the account rendered by means of a petition (application) lodged with the District Court. The liquidator gives notice of such objections in the same way as he has done with regard to the written account and distribution plan.

- **6.** Whenever the financial situation of the property gives rise to it, the liquidator may make an advance distribution to the entitled persons. After the commencement of the objection period, he shall not make such advance distributions without authorization of the court.
- **7.** Once the withdrawal of or the judicial decisions on each objection has become irrevocable (final and binding), the liquidator gives notice thereof in the same way as he has done with regard to the objections filed. Where the judicial decision leads to a change in the distribution plan, the liquidator shall give notice of the changed distribution plan in the same way.
- **8.** Cash funds not disposed of within six months after the last payment was made available, will be kept in deposit for payment by the liquidator.
- **9.** The winding up ends at the moment on which no further assets (benefits) are known to the liquidator.
- **10.** If a court has been involved in the winding up, the liquidator shall render account of his administration to that court within one month after the ending of the winding up.

Article 2:23c Ending an reopening of the winding up

- **1.** If, after the legal person has ceased to exist, a creditor or entitled person presents himself with an entitlement to the surplus or there appear to be other assets (benefits) after all, then the District Court may, upon the request of an interested person, reopen the winding up and, if necessary, appoint a liquidator. In that event the legal person shall come to existence again, but exclusively for the completion of the reopened winding up. The liquidator has the power to claim back from each entitled person what he has received too much out of the surplus.
- **2.** During the period in which the legal person had ceased to exist, there are grounds as meant in Article 3:320 of the Civil Code for the extension of the prescription period of rights of actions available to or against the legal person.

Article 2:24 Duty to keep (store) the books, documents and other data storage media

- **1.** The books, documents and other data storage media of the dissolved legal person must be kept (stored) for seven years after the legal person has ceased to exist. Keeper is the person who has been appointed as such by or pursuant to the articles of incorporation or by the General Meeting or, where it concerns a Foundation (*'stichting'*), by the Board of Directors.
- **2.** Where a keeper as meant in the previous paragraph is absent and the last liquidator is not prepared to keep the involved books, documents and data storage media, a keeper shall be appointed, upon the request of an interested person, by the Subdistrict Court in whose subdistrict the legal person had its domicile; in that event the keeper will be appointed, if possible, from the persons who were involved in the legal person. No appeal or legal actions are available against such appointment.
- **3.** Within eight days after the commencement of his duty to keep the involved books, documents and data storage media, the keeper must report his name and address to the public registers where the dissolved legal person was registered.
- **4.** The Subdistrict Court referred to in paragraph 2 may, upon request, grant permission to any interested party to inspect the involved books, documents and data storage media, if the legal person was a Foundation (*'stichting'*), and otherwise to anyone who shows that he has a legitimate interest in such an inspection in his capacity as former member or shareholder of the legal person,

or as holder of certificates of its shares, or as legal successor of such a member, shareholder or holder of certificates.

Article 2:24a Definition of a 'subsidiary'

- **1.** A subsidiary of a legal person is:

a. a legal person in which another legal person or one or more of its subsidiaries, whether or not under a contract with other persons entitled to vote, is able to exercise, solely or jointly, more than one half of the voting rights at the General Meeting;

b. a legal person with regard to which another legal person or one or more of its subsidiaries, whether or not under a contract with other persons entitled to vote, is able to appoint or discharge, solely or jointly, more than one half of the members of the Board of Directors or the Supervisory Board, even if all persons entitled to vote would cast their vote.

- **2.** With a subsidiary is equated a commercial partnership acting in its own name in which the legal person or one or more of its subsidiaries participate as a partner who is fully liable towards the creditors of that commercial partnership for all debts.

- **3.** For the purpose of paragraph 1, rights attached to shares shall not be linked to a person who holds these shares on behalf of someone else. Rights attached to shares shall be linked to the person on whose behalf these shares are held, if this person has the power to decide how these rights are to be exercised or if he has the power to acquire these shares.

- **4.** For the purpose of paragraph 1, voting rights attached to pledged shares are linked to the pledgee (holder of the pledge) if he has the power to decide how these rights are to be exercised. If the shares, however, are encumbered with a pledge as security for a loan which the pledgee has provided in the ordinary course of his business, then the voting rights shall only be linked to him if he has exercised them in his own interest.

Article 24b Definition of a 'group'

A group is an economic unit in which legal persons and commercial partnerships are organizationally interconnected. Group companies are legal persons and commercial partnerships interconnected to each other in one group.

Article 24c Definition of a 'participating interest'

- **1.** A participating interest in a legal person is present when another legal person or a commercial partnership or one or more of its subsidiaries for their own account, either solely or jointly, have provided or have caused the provision of capital (recourses) to the first mentioned legal person in order to be interconnected with that legal person for a long-lasting period of time in support of their own activities. If one fifth or more of the issued share capital is paid up (is held), a participating interest is presumed to be present.

- **2.** A participating interest in a commercial partnership is present if a legal person or its subsidiary:

a. is fully liable as partner towards the creditors of the commercial partnership for all debts, or;

b. is otherwise a partner in that commercial partnership in order to be interconnected with that commercial partnership for a long-lasting period of time in support of its own activities.

Article 24d Assessment of appeared members shareholders, their representatives and cast votes

- **1.** In determining to what extent the members or shareholders have cast their votes or to what extent they are present or represented, or in determining to what extent share capital is paid up or represented, no account is taken of memberships or shares with regard to which the law or a provision in the articles of incorporation as meant in Article 2:228, paragraph 5, specifies that no vote may be cast.
- **2.** In derogation from paragraph 1, account is taken of shares with regard to which a provision in the articles of incorporation as meant in Article 2:228, paragraph 5, specifies that no vote may be cast, where it concerns the application in respect of a Closed Corporation ('besloten vennootschap') of Articles 2:24c, 2:63a, 2:152, 2:201a, 2:220, 2:224a, 2:262, 2:265a, 2:333a, paragraph 2, 2:334ii, paragraph 2, 2:336, paragraph 1, 2:346, 2:379, paragraph 1 and 2, 2:407, paragraph 2, 2:408, paragraph 1, and 2:414.

Article 25 Mandatory law

It is only possible to derogate from the statutory provisions of the present Book (Book 2) as far as the law allows a derogation.