

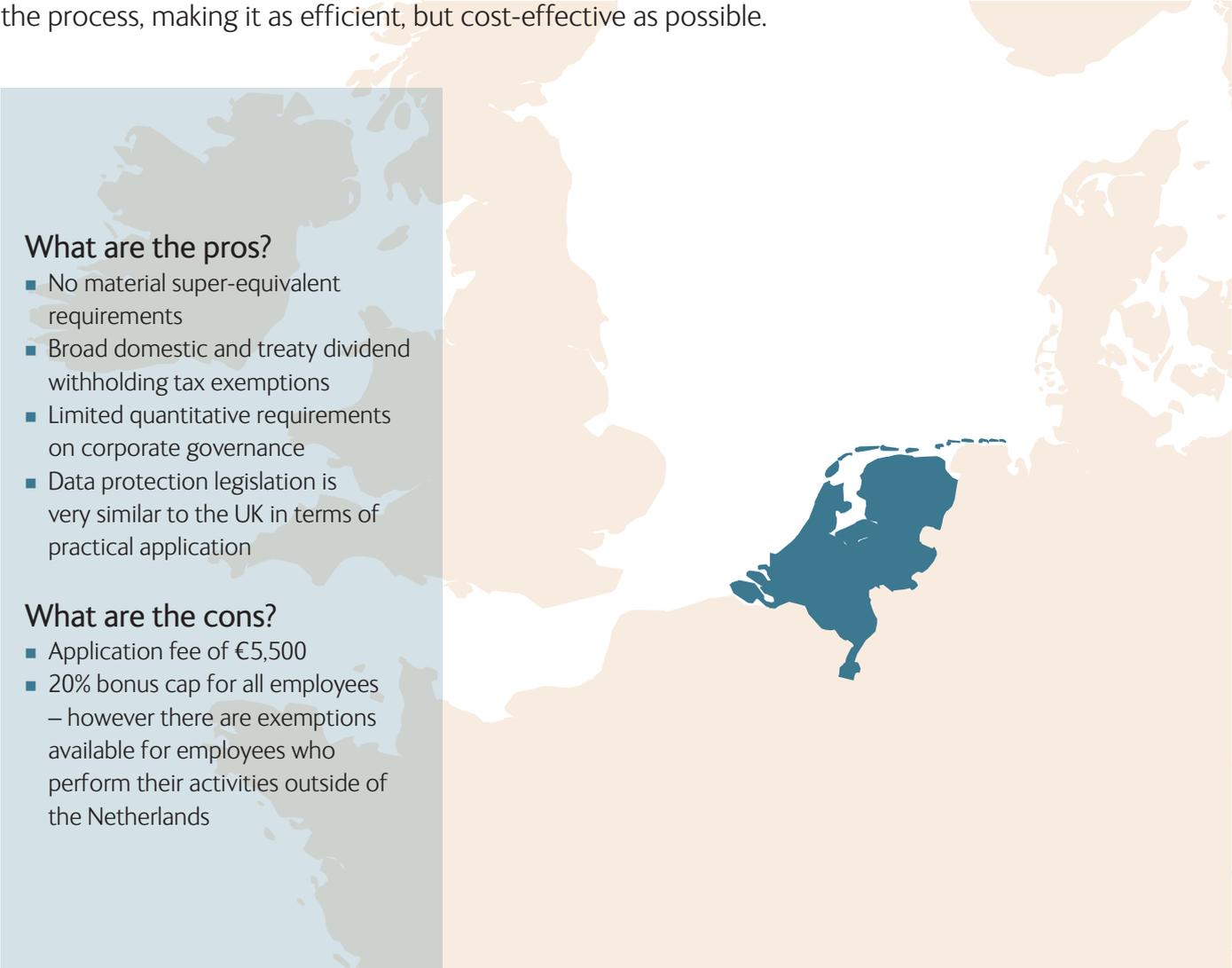


How to set up in the Netherlands

MIFID Firm

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in the Netherlands.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.



What are the pros?

- No material super-equivalent requirements
- Broad domestic and treaty dividend withholding tax exemptions
- Limited quantitative requirements on corporate governance
- Data protection legislation is very similar to the UK in terms of practical application

What are the cons?

- Application fee of €5,500
- 20% bonus cap for all employees – however there are exemptions available for employees who perform their activities outside of the Netherlands

Subsidiary (MiFID Investment Firm)

Licence/Passport Process

- Information on the application process is available here: [MiFID Application Guidance](#)
- The process involves submission of a template application form plus numerous supporting documents to the [Netherlands Authority for Financial Markets](#) (“AFM”) for review. As part of the application board members and supervisory board members will need to be tested on fitness and probity
- AFM will decide within 13 weeks, however, the practical timetable is around 6-9 months (including preparation time)
- The AFM charges an application fee of €5,500, and additional fees for the fitness and probity tests
- The AFM does not allow any outsourcing that would involve the delegation of functions to the extent that would be considered to the investment firm being a “letter-box entity” (as set out in MiFID). The AFM has taken a particular interest in outsourcing arrangements recently.

Conduct of business Prudential rules

- Dutch requirements will apply - based on MiFID (copy-out)
- CRR/CRD IV requirements will apply
- No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States).

Corporate governance

- Systems and controls requirements are based on CRD IV/MiFID requirements
- At least two of the day-to-day policymakers (board members) must be located in the Netherlands
- A fitness and probity regime will apply to certain controlled functions, with persons in “pre-approval controlled functions” (eg directors, CEO, CFO, CRO, head of compliance, etc) requiring AFM approval before the role can be commenced (regime is similar to the UK approved persons regime)
- No set requirement on number of directors - but AFM will require at least two non-executive directors. Four eyes principle applies and directors must be able to devote sufficient time to the role
- No other specific quantitative requirements.

Regulatory environment

- The AFM is relatively open to discussion on key issues in the licence application
- There is a “light-touch” regime for firms from the US and Switzerland available
- Only the larger firms have a dedicated point of contact at the AFM.

Tax

- The standard corporate income tax rate on income is 20% (for profits up to €200,000) / 25% (for profits in excess of €200,000)
- No withholding tax on interest and royalty payments. Standard Dutch dividend withholding tax rate on outgoing dividends is 15%, however, a reduction or exemption may be applicable on the basis of EU Parent-Subsidiary Directive, a double tax treaty or by the use of a Dutch “cooperative”. So tax free repatriation to US, UK and a wide range of other jurisdictions is generally available
- The Dutch transfer pricing legislation is based on the OECD arm’s length principles
- Income from employment is subject to income tax at progressive rates up to 52%. However, certain qualifying foreign employees that move to the Netherlands may be able to apply for a “30% ruling”, which may result in an effective income tax rate of 36.4% (instead of 52%)
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up a financial services business.

Subsidiary (MiFID Investment Firm)

Employment law

- Stricter remuneration rules apply on top of CRD IV remuneration requirements
 - A cap of 200% for staff predominantly (at least 50% of their time) physically working outside the EEA, subject to shareholder approval and the procedure as determined in CRD IV
 - A cap of 100% is for staff predominantly (at least 50% of their time) physically working outside the Netherlands but within the EEA
 - A cap of 100% is for staff of a Dutch ultimate parent company only (thus not its subsidiaries) if at least 75% of all staff within the group of companies has predominantly worked outside the Netherlands during at least three out of the last five consecutive years
- In addition, individuals who are not solely remunerated, based on a collective labour agreement (collectieve arbeidsovereenkomst), may receive a higher variable remuneration (with a maximum of 100%) as long as the average bonus cap within the financial firm with regard to comparable individuals does not exceed 20%
- So, in case a financial firm would start a company in The Netherlands, with the majority of the activities of the employees located in the UK, Dutch law would allow higher bonuses. Since the UK will no longer be an EU Member State, the first exemption is applicable, implying that a bonus cap of 200% applies to these individuals if the procedure of Article 94 paragraph 1 subparagraph g sub ii of CRD IV is carried out
- Notice: the statutory notice period for the employer is one month for the first five years of service. For each subsequent five years of service, the notice period is increased by one month (up to a maximum of four months' notice)
- Termination: there must be reasonable grounds for dismissal (limited grounds in the Dutch Civil Code), ie performance, conduct, etc. The employer will need the prior approval from the court or government to give notice of termination
- Severance pay: in service for two years or more, 1/3 monthly salary for each year of service over the first ten years and 1/2 monthly salary for each year from ten years onwards (maximum: the higher of €75,000 or one annual salary).

Data protection

- Legislation is based on EU directives and regime is very similar to the UK in terms of practical application.

Outsourcing

- Many Dutch financial institutions have outsourcing arrangements
- Appropriate oversight will be required per MiFID requirements (including regular audits/reviews and MI provided on the outsourced activities, plus detailed outsourcing agreements)
- Firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing.

Corporate

- The subsidiary will need to be registered with the tax authority and the Chamber of Commerce.

Key contacts



Charlotte Stalin
Partner
London
T +44 20 7825 4180
E charlotte.stalin
@simmons-simmons.com



Rezah Stegeman
Partner
The Netherlands
T +3120 722 2333
E rezah.stegeman
@simmons-simmons.com



Ian Rogers
Partner
France
T +331 53 29 16 22
E ian.rogers
@simmons-simmons.com



Fionán Breathnach
Partner
Ireland
T +3531 266 2111
E fionan.breathnach
@simmons-simmons.com



Louis-Maël Cogis
Partner
Luxembourg
T +352 26 21 16 14
E louis-mael.cogis
@simmons-simmons.com



Jochen Kindermann
Partner
Germany
T +49 69 907454 43
E jochen.kindermann
@simmons-simmons.com



Romeo Battigaglia
Partner
Italy
T +3902 72505 471
E romeo.battigaglia
@simmons-simmons.com

simmons-simmons.com
elexica.com
[@SimmonsLLP](https://twitter.com/SimmonsLLP)

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