PANORAMIC

CREDIT FUNDS

Netherlands

LEXOLOGY

Credit Funds

Contributing Editor

David Williams

Simmons & Simmons

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Contributors

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Simmons & Simmons

Iris Dingemans Iris.Dingemans@simmons-simmons.com

MARKET AND POLICY CLIMATE

Market snapshot

How would you generally describe the state of the market for private credit funds in your jurisdiction?

During the past few years, the number of private credit funds in the Netherlands has increased steadily. Traditionally, the Netherlands has always had a relatively large number of mortgage funds backed by financial institutions, such as insurers or pension funds. Over the past few years, we have also seen an increase in private credit funds predominantly aimed at the financing of small and medium-sized businesses. Furthermore, a number of Dutch financial institutions have launched micro-finance funds for the provision of credit to businesses in emerging markets. Some of these funds are also open for non-professional investors. In terms of investment strategy, Dutch private debt funds can, in principle, both originate loans and purchase existing debts.

Law stated - 8 July 2025

Government and regulatory policy

How would you describe the general government and regulatory policy towards credit funds in your jurisdiction?

The Netherlands does not have any specific fund regimes for (private) credit funds. Private credit funds typically qualify as alternative investment funds (AIFs) within the meaning of the Alternative Investment Fund Managers Directive 2011/EU/61 (AIFMD, as amended) as transposed into Dutch national law.

In principle, any credit strategy can be pursued. However, the activities of the private credit fund may not lead to a fund qualifying as a 'bank' or 'credit union' within the meaning of the Dutch Financial Supervision Act. The AIFMD restricts AIFs and their (authorised) AIFMD fund manager in the activities that they may perform. As a consequence they may not engage in any regulated finance activities, such as the provision of (mortgage) credit to consumers in the Netherlands.

Corporate lending itself is not a regulated activity in the Netherlands and, therefore, private credit funds that originate loans are predominantly aimed at the financing of small and medium-sized businesses in the Netherlands.

Law stated - 8 July 2025

FORMATION AND MANAGEMENT

Forms of vehicle

What legal form of vehicle is typically used for credit funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? Is it possible to create umbrella structures that permit the creation of sub-funds? What are the

legal consequences for investors, managers and investment advisers in respect of each of these structures?

This predominantly depends on the legal form and structure of the fund. Unincorporated vehicles, such as a limited partnership or a fund for a joint account (FGR), are contractual arrangements. Where the fund is structured as a legal entity, the relevant legal entity is incorporated by means of the execution of a notarial deed of incorporation before a Dutch civil law notary. Currently, most private credit funds in the Netherlands are structured as either an FGR or a public company with limited liability.

A key feature of an FGR is the separation between the legal ownership of the investments (mostly held by a separate legal title holder) and the entitlement to the proceeds or returns realised on the investments made by the FGR. The participants provide the capital used for the investments. In return, the participants receive participation in the FGR. The fund manager shall invest the FGR's capital and shall manage the assets and liabilities of the FGR, in accordance with a predefined investment strategy.

Due to its contractual nature, an FGR has no legal personality and it cannot hold the legal ownership of assets, enter into obligations or assume liabilities. From a legal perspective, an FGR qualifies as a contractual arrangement ***sui generis*** between each individual participant, the fund manager and the legal title holder (where applicable). If the FGR qualifies as an AIF within the full scope of the AIFMD, the legal title to the assets must be held by a separate legal entity whose sole statutory purpose is holding legal title to the assets of one or more AIFs, whether or not together with the safekeeping and administration of the assets. Often a separate foundation is used for this purpose.

The legal relationship between each participant, the fund manager and the legal title holder (if separate) is governed by the terms and conditions of custody and administration (T&Cs). The T&Cs contain the agreed principles with respect to, for instance, the investment strategy of the FGR, the duties and responsibilities of the fund manager and the legal title holder, the distribution of proceeds as well as the admission of new participants and the transfer or redemption of participation. The establishment of an FGR takes place by the adoption of, and in the case of the participants, adherence to, the T&Cs.

Typically, the fund manager is charged with the overall management of the FGR, including investment management, the exercise of any voting rights attached to its assets, organisational affairs, governance, administration, valuation and reporting. These duties and responsibilities are described in the T&Cs. In addition, most T&Cs also contain a power of attorney, giving the manager the necessary powers to fulfil its managerial duties and responsibilities. The legal title holder acquires and holds legal title to all rights and other assets of the FGR. All accounts and contracts of an FGR are entered into in the name of the legal title holder acting in its capacity as legal title holder of the FGR. The legal title holder enters into such obligations for the account and risk of the investors; however, the legal title holder cannot represent or bind investors concerning third parties. In most cases, the T&Cs determine that the legal title holder will not act on its own initiative but solely at the instruction of the fund manager.

It is possible to create umbrella structures with separate sub-funds. In principle, each sub-fund falling within the full scope of the AIFMD, will qualify as a separate AIF with assets segregated exclusively for the settlement of claims arising from debts that are related to the management and custody of, and holding of legal title to, the assets belonging to that sub-fund, as well as claims in connection with the participation or shares of the relevant AIF

issued to investors. As separate AIFs, each sub-fund will technically have to appoint a fund manager, depositary and other service providers where appropriate.

Law stated - 8 July 2025

Unregulated fund vehicles

Can the fund vehicle be unregulated? If so, does this affect the ability to originate loans or otherwise execute its investment strategy?

The Netherlands does not have separately regulated fund vehicles. If a fund vehicle qualifies as an AIF, the fund manager will be regulated, unless the relevant fund manager is eligible to register under the sub-threshold regime.

Law stated - 8 July 2025

Formation process

What is the process for forming a credit fund vehicle in your jurisdiction? Are there any practical impediments to speed to market, such as account opening or banking and regulatory permissions?

Corporate process

The formation process predominantly depends on the legal form and structure of the fund. Unincorporated vehicles, such as a limited partnership or a fund for a joint account, are contractual arrangements. Where the fund or part of the fund structure is structured as a legal entity, the relevant legal entity is incorporated by means of the execution of a notarial deed of incorporation before a Dutch civil law notary. The notarial deed of incorporation contains the articles of association of the relevant entity. In principle, the articles of association of a legal entity must be drawn up in Dutch and are available for the public at the trade register of the Chamber of Commerce. On 1 January 2024, the Act on Online Incorporation of Private Companies has become effective. Subject to the conditions set out therein, this act allows for a full online incorporation process of a private company with limited liability, whereby the articles of association may be drawn up in English.

Types of legal entities often used in fund structuring are:

- a private company with limited liability, which mostly functions as the fund manager or the general partner, but sometimes as a the fund vehicle;
- a foundation, which acts as the holder of the legal title to the relevant fund's assets (and liabilities) in case of unincorporated funds;
- a cooperative with excluded liability, which is used as the fund vehicle; and
- a public company with limited liability, which is used as the fund vehicle especially for listed funds and when the fund benefits from a special tax regime.

Registration at the trade register and the UBO register

All Dutch legal entities, and limited partnerships to the extent that they conduct a commercial business, must be registered with the trade register of the Chamber of Commerce in the Netherlands. This registration should take place within eight days of the incorporation of the relevant legal entity. In practice, the civil law notary responsible for the incorporation will arrange the registration. For the sake of completeness, an FGR is not registered at the trade register.

Furthermore, Dutch legal entities and limited partnerships are required to register their ultimate beneficial owners at the UBO register maintained by the Chamber of Commerce. An ultimate beneficial owner is any individual that (in)directly holds an interest of 25 per cent or more or can exercise 25 per cent or more of the voting rights.

In line with EU legislation, special rules apply if the fund qualifies as a 'trust' or legal structure similar thereto. Currently, an FGR falls under the latter designation meaning that in principle all investors in an FGR will have to be registered as an ultimate beneficial owner at the UBO register. FGRs that qualify as an AIF managed by an AIFMD authorised fund manager and that are offered to at least 150 persons are exempt from this registration requirement. For these FGRs, it suffices to register the group of individuals for whose benefit the FGR has been set up as a whole.

Regulatory process

Where the fund manager is an AIFMD authorised fund manager, it will have to notify the regulator of its home member state of its intention to manage a new AIF. If the fund manager is authorised in the Netherlands, the Netherlands Authority for the Financial Markets (AFM) needs to be notified. Where the relevant fund manager is already authorised to manage funds for the same investment strategy, the AFM will have one month to inform the fund manager if the AFM rejects the notification or whether the AFM will impose any restrictions. This term may be extended by the AFM with one additional month through notification to the fund manager. If the relevant fund will have a new investment strategy for which the fund manager is not yet authorised, the notification will be treated as an extension of the authorisation of the fund manager. As part of this extension process, the AFM will assess whether the internal procedures and policies and the experience of the policymakers supports the new investment strategy. This process may take up to more than 26 weeks.

As part of the notification to the AFM of a new fund, the details of the depositary will also have to be submitted.

Private credit funds can also be managed by a sub-threshold manager. If the relevant fund will be managed by a new sub-threshold manager, then such sub-threshold manager may start with the management of the fund and marketing of the pending its registration with the AFM. Where the fund will be managed by an existing registered sub-threshold manager, the registered sub-threshold manager should notify the AFM of its intention to market the new fund at least two weeks prior to the start of the marketing activities.

Law stated - 8 July 2025

Substance requirements

Is a credit fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, a corporate secretary, employees, professional anti-money laundering (AML) officers or other substance? If so, how is that requirement typically satisfied?

Typically, Dutch funds have a registered office in the Netherlands where they keep their books and records. Dutch law does not have the equivalent of a corporate secretary. For legal entities, the day-to-day management is the responsibility of the management board. The management board can comprise of one or more individuals or legal entities. If the fund is structured as a limited partnership, then the general partner is responsible for the day-to-day management. In the case of an FGR, the day-to-day management resides with the appointed fund manager.

If the Dutch fund is being managed by an AIFMD authorised manager, such fund manager must appoint a depositary based in the Netherlands, in accordance with the relevant provisions AIFMD implemented in the Netherlands.

If the private credit fund qualifies as an AIF, it will be subject to the provisions of the Act on prevention of Money Laundering and Terrorist Financing (the AML Act). For externally managed funds, the compliance with this act is the responsibility of the fund manager. The fund manager should charge one of its daily policymakers with the responsibility to comply with the provisions of the AML Act.

From a Dutch tax perspective, private credit fund entities formed in the Netherlands and qualifying as an alternative investment fund as defined in the Dutch Financial Supervision Act should generally qualify as (deemed) Dutch tax residents without any further specific substance (or residency) requirements. Other (non-transparent) private credit fund entities will qualify as Dutch tax residents if their place of effective management is in the Netherlands.

Law stated - 8 July 2025

Access to information

What access to information about a private credit fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available? What information (in addition to that available to the general public) are shareholders and limited partners able to see? Is it possible to reduce access rights as a matter of contract?

Trade register of the Chamber of Commerce

All Dutch legal entities, and limited partnerships to the extent that they conduct a commercial business, must be registered with the trade register of the Chamber of Commerce. The registration shows, inter alia, the name and address of the relevant entity, its aggregate (issued) share capital, as well as the names and powers of the members of the management

board (and supervisory board, if any) and registered proxy holders. Unless there is a sole shareholder, no details of shareholders are registered with the trade register. However, the articles of association are registered and available for the public on request. In practice, given the public nature and the fact that in most cases the official version of the articles of association must be in Dutch, the articles are often a framework document setting out the mandatory statutory requirements, while the more specific and personal arrangements are set out in a private shareholders' or members' agreement (as the case may be), which does not have to be registered.

In the case of a registered limited partnership, the details of the general partner are included in the registration, as well as the number of limited partners and the aggregated capital. For the sake of completeness, an FGR cannot be registered at the trade register.

Failure to comply with the registration requirements is an economic offence and punishable by detention, with a maximum of six months in the case of an offence and two years in the case of a crime or a fine of the fourth category (current maximum of €25,750).

UBO register

Dutch legal entities and limited partnerships are required to register their ultimate beneficial owners at the UBO register maintained by the Chamber of Commerce. An ultimate beneficial owner is any individual that (in)directly holds an interest of 25 per cent or more, or can exercise 25 per cent or more of the voting rights. In line with EU legislation, special rules apply in the event that the fund qualifies as a 'trust' or legal structure similar thereto. Currently, an FGR falls under the latter designation, meaning that in principle all investors will have to be registered as an ultimate beneficial owner at the UBO register. FGRs that qualify as an AIF managed by an AIFMD authorised fund manager and that are offered to at least 150 persons are exempt from this registration requirement. For these FGRs, it suffices to register the group of individuals for whose benefit the FGR has been set up as a whole. At present the UBO register is not available to the general public.

Failure to comply with the registration requirements is an economic offence and punishable by detention, with a maximum of six months in the case of an offence and two years in the case of a crime or a fine of the fourth category (current maximum of €25,750).

Corporate registers

As a matter of Dutch mandatory corporate law, the management boards of a private company or public company (with registered shares) must maintain a shareholders' register. This register contains the names and addresses of the shareholders, as well as the date on which they acquired the shares, the class of shares and the amount contributed on the shares. Upon request of a shareholder, the management board must provide an extract showing the relevant shareholder's entry in the shareholders' register. The shareholders' register must also be made available for inspection by,interalia,shareholders and pledgees at the offices of the company.

A limited partnership and a cooperative with excluded liability are not obliged to keep a list of limited partners or members as a matter of law. However, mostly the constitutional documents of these vehicles do provide for a list of limited partners or members to be drawn up and often attached as a schedule to either the limited partnership agreement or

the members' agreement. Typically, details included are the name of the investors, as well as the subscribed and committed amount. There are no statutory requirements for FGRs in this regard and, given that an FGR is basically an agreement between the fund manager, the legal title holder and each individual investor, it is not uncommon to not include a list with investors in the fund documentation.

Law stated - 8 July 2025

Investor liability

In what circumstances would the limited liability of investors in a credit fund formed in your jurisdiction not be respected as a matter of local law? Is there a list of actions in which investors can participate without losing their limited liability?

In accordance with mandatory provisions of Dutch corporate law, shareholders of a private or public limited company are in principle only liable for the amount of their contributions made. This may be different in cases where shareholders are held liable for tort concerning the company or act as de facto shadow directors. The same would apply to members of a cooperative with excluded liability.

In the case of a limited partnership, the liability of a limited partner is limited to its contribution or commitment, provided that the limited partner did not participate in the day-to-day management of the limited partnership and the name of the limited partner does not form a part of the limited partnership. It is permissible to include certain veto rights for the limited partners into the partnership documentation or to form an advisory committee that comprises limited partner representatives, provided that this advisory committee will not be able to legally bind the limited partnership or conduct the day-to-day management. Similar to shareholders in a private or public company, a limited partner could be held liable for tort concerning the limited partnership or a third party depending on the circumstances.

The fund documents of an FGR typically provide that investors are, in principle, only liable for the amount of their contribution or commitment. Similar to shareholders in a private or public company, an investor in an FGR could be held liable for tort concerning the FGR or a third party depending on the circumstances.

Law stated - 8 July 2025

Fund manager's fiduciary duties

What are the fiduciary duties owed to a credit fund formed in your jurisdiction and its third-party investors by that fund's manager, investment adviser or other similar control party or fiduciary? To what extent can those fiduciary duties be modified by agreement of the parties?

Under Dutch law, the fiduciary duties owed by a fund manager, investment adviser or similar control party to a private credit fund and its third-party investors typically include the duty of loyalty, duty of care and duty of good faith. The duty of loyalty requires the fiduciary to act in the best interests of the fund and its investors, avoiding conflicts of interest and not exploiting their position for personal gain. The duty of care requires the fiduciary to act with the level

of care and skill that a reasonably prudent person would exercise in a similar position. The duty of good faith requires the fiduciary to act honestly and with integrity. To some extent, these fiduciary duties can be modified by agreement of the parties. For instance, the fund's governing documents may specify certain actions that do not constitute a breach of fiduciary duty, or they may set out procedures for managing conflicts of interest. However, under Dutch law, certain core fiduciary duties cannot be entirely waived or limited by agreement. For instance, a fiduciary cannot contract out of the duty to act in good faith. To the extent that the Dutch private credit fund is managed by an AIFMD authorised fund manager, the relevant manager will also have to comply with the requirements under AIFMD.

Law stated - 8 July 2025

Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'simple negligence') standard of liability applicable to the management of a credit fund? If so, how does this standard differ from a simple negligence standard?

Under Dutch law, both gross negligence and simple negligence refer to the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. However, they differ in the degree of carelessness involved. Simple negligence refers to a lack of due care or a failure to act reasonably, often unintentionally, which results in harm or damage. It is a lapse in judgement or a momentary lack of attention. On the other hand, gross negligence is a much more serious form of negligence. It involves a conscious and voluntary disregard for the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property or both. For fund managers, this could mean a severe deviation from the standard practices and duties expected in fund management, such as a reckless investment decision that leads to significant financial loss.

Law stated - 8 July 2025

Other special issues or requirements

Are there any other special issues or requirements particular to credit fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling vehicles formed in other jurisdictions into vehicles in your jurisdiction, what are the most material terms that typically must be modified and how common is this process? How long does it typically take?

There are no special issues or requirements particular to credit fund vehicles. In principle re-domiciliation and conversion of fund vehicles is permitted. The process will depend on the actual legal form of the fund vehicle and generally takes place in accordance with the relevant provisions of Dutch corporate and contract law.

Law stated - 8 July 2025

Fund sponsor insolvency or change of control

With respect to institutional sponsors of credit funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the credit fund and its general partner and investment manager or adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the credit fund's sponsor?

Sponsorship is not a legal concept under Dutch law.

Law stated - 8 July 2025

REGULATION, LICENSING AND REGISTRATION

Principal legislation and regulatory bodies

What principal legislation governs credit funds in your jurisdiction? Which regulatory bodies have authority over credit funds and its managers and investment advisers in your jurisdiction? What are the regulators' audit and inspection rights?

The Netherlands does not have any specific fund regime for private credit funds. Private credit funds typically qualify as alternative investment funds (AIFs) within the meaning of the AIFMD as transposed into the Dutch Financial Supervision Act and the decrees promulgated thereunder.

Where the private credit fund does not invest in financial instruments within the meaning of the Markets in Financial Instruments Directive (MiFID) as transposed into the Dutch Financial Supervision Act and the decrees promulgated thereunder, the investment adviser will not require a licence within the scope of MiFID. Bilateral or direct loans typically do not qualify as financial instruments. If the activities of an investment adviser qualify as investment advice, RTO or portfolio management in respect of financial instruments, then the investment adviser should apply for an investment firm licence with the AFM (or foreign equivalent).

The supervisory model in the Netherlands, is a twin-peak model. The AFM is the primary regulator for fund managers and investment advisers (if regulated) and the Netherlands Central Bank is charged with the prudential oversight.

Law stated - 8 July 2025

Reporting and disclosure requirements

What ongoing reporting and disclosure requirements apply to credit fund managers and investment advisers in your jurisdiction?

The Netherlands does not have any specific fund regime for private credit funds. Where the fund qualifies as an AIF under the AIFMD and is managed by an AIFMD authorised fund manager, the initial and ongoing reporting requirements under the AIFMD apply to the fund

manager and, therefore, the fund. If the fund is offered to non-professional investors in the Netherlands, the additional requirements of the Dutch retail top-up regime apply. This regime provides, inter alia, for additional disclosure of information to (prospective) investors in the prospectus. The AFM must be notified in advance in respect of any change to the daily (co-)policymakers and the holders of a qualified participation in the fund manager. For this purpose, a qualified participation means a direct or indirect interest of at least 10 per cent of the issued capital of a company or the ability to directly or indirectly exercise at least 10 per cent of the voting rights in a company, or the ability to directly or indirectly exercise comparable control in a company, whereby when determining the number of voting rights that a person has in a company, his or her voting rights include the votes he or she has or is deemed to have on the basis of article 5:45 of the Dutch Financial Supervision Act.

If the fund qualifies as an AIF under the AIFMD, but is managed by a sub-threshold fund manager, limited reporting requirements apply.

Law stated - 8 July 2025

Fund licensing and registration

What governmental approval, licensing or registration requirements apply to credit funds in your jurisdiction?

There are no specific approval, licence or registration requirements that directly apply to credit funds. Where the credit fund qualifies as an AIF, the management and marketing of this fund will have to be notified to regulator of the home member state of the fund manager. For Dutch fund managers this would be the AFM.

Law stated - 8 July 2025

Registration of investment adviser

Is a credit fund's manager or investment adviser (or any of its officers, directors or control persons) required to register as an investment adviser in your jurisdiction? If so, is there a triggering activity for such registration?

Where the credit fund qualifies as an AIF, the fund manager managing and marketing the fund must be authorised in accordance with the AIFMD. In the case of a delegated portfolio management function, the delegated portfolio manager must be regulated as an investment firm. If the fund manager of the credit fund is eligible under the sub-threshold regime, then there is no formal authorisation required but a registration with the AFM instead.

Generally an investment adviser to a private credit fund will not require a licence within the scope of MiFID, since the advice does not relate to financial instruments within the meaning of MiFID as bilateral or direct loans typically do not qualify as financial instruments.

Law stated - 8 July 2025

Fund manager and investment adviser qualifications

Are there any specific qualifications or other requirements imposed on a credit fund's manager, investment adviser or any of its officers, directors or control persons in your jurisdiction?

Where the credit fund qualifies as an AIF, the fund manager managing and marketing the fund must be authorised in accordance with the AIFMD. The authorisation is made with the AFM. As part of the authorisation process, the applicant must submit information relating to, inter alia, its investment strategies and objectives, its policymakers, its internal organisation and various internal policies and its own funds, such in accordance with the requirements of AIFMD. Specific requirements for daily policymakers of the fund manager are set out in the Eligibility Policy 2012 published by the AFM. This policy document sets out the requirements both for individual policymakers as well as the collective. The Eligibility Policy 2012 as well as the other forms and information to be provided in connection with the AIFMD authorisation can be found on the website of the AFM.

If the fund manager of the credit fund is eligible under the sub-threshold regime, no formal authorisation is required. Instead, the fund manager must register with the AFM. No specific qualifications or requirements apply in this case.

Generally, an investment adviser to a private credit fund will not require a licence within the scope of MiFID, since the advice does not relate to financial instruments within the meaning of MiFID as bilateral or direct loans typically do not qualify as financial instruments.

Law stated - 8 July 2025

Political contributions

Are there any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a credit fund's manager or investment adviser or their employees?

There are no such rules.

Law stated - 8 July 2025

Use of intermediaries and lobbyist registration

Are there any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a credit fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities? Are there any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities?

There are no such rules.

Law stated - 8 July 2025

Bank participation

Are there any legal or regulatory requirements that specifically apply to banks with respect to investing in or sponsoring credit funds?

There are no such restrictions on the side of the credit fund, however, banks may potentially be subject to their own rules and regulations regarding investing.

Law stated - 8 July 2025

Anti-money laundering rules

What anti-money laundering (AML) rules and regulations apply to credit funds formed in your jurisdiction? Are there any requirements for due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a credit fund or the individual members of the sponsor? What AML requirements apply at the level of the fund? What level of scrutiny is required for AML checks regarding investments?

If the private credit fund qualifies as an AIF, it will be subject to the provisions of the AML Act, as well as the Sanctions Act. For externally managed funds, the compliance with this act is the responsibility of the fund manager. The fund manager will have to charge one of its daily policymakers with the responsibility of compliance with the provisions of the AML Act. The fund manager is responsible for identifying the investors and borrowers in accordance with the AML Act.

Law stated - 8 July 2025

TAXATION

Tax obligations and exemptions

Is a credit fund vehicle formed in your jurisdiction subject to taxation there with respect to its income or gains? Is the fund required to withhold taxes with respect to distributions to investors? Are there any applicable tax exemptions?

Generally, Dutch private credit funds are formed either as tax transparent vehicles (i.e. as tax transparent FGRs or limited partnerships), in which case income or gains are not taxable at the level of the private credit fund but instead attributable to its investors, or alternatively, formed as a legal entities eligible for a special tax regime.

Dutch private credit funds are most commonly formed as a tax transparent FGR. As of 1 January 2025, the tax transparency rules for Dutch private credit funds structured as FGRs and limited partnerships have changed. An FGR is now only tax transparent if it does not qualify as an 'investment fund' within the meaning of article 1:1 of the Dutch Financial Supervision Act (Wft) or if the participations in the fund can only be transferred to the fund itself (the 'buy-back alternative') and possibly be redeemed. An FGR that still applies the previously applicable consent alternative for tax transparency (ie, participations could only

be transferred with the prior unanimous consent of all participants) and qualifies as an 'investment fund', has become subject to Dutch corporate income tax as of 2025.

For Dutch limited partnerships, the consent alternative has been abolished entirely as of 1 January 2025. All Dutch limited partnerships are now, in principle, tax transparent. However, a limited partnership may qualify as an FGR if it meets the criteria for an FGR, in which case the classification as an FGR takes precedence. This means that such a limited partnership would no longer be tax transparent and would instead be subject to Dutch corporate income tax under the rules applicable to FGRs. It is important to note that there are still some uncertainties with respect to the FGR and the tax transparency rules and possibly legislation may be introduced by the end of 2025 that should provide further clarification.

Distributions made by a tax transparent FGR or limited partnership to its participants are not subject to any Dutch withholding tax.

Alternatively, depending on the type of investors, fund structure and assets, private credit funds are sometimes formed under the tax exempt institution (VBI) regime or the fiscal investment institution regime (FBI). In this regard private credit funds are typically formed as an NV or, alternatively, as a non-transparent FGR. The activities of a VBI must exclusively consist of investing in financial instruments as defined within the Dutch Financial Supervision Act. This generally means that a VBI is not allowed to invest in non-tradeable loans. The activities of an FBI may in principle be broader provided that the activities do not exceed portfolio investment activities. A VBI is exempt from Dutch corporate income tax and distributions are in principle not subject to Dutch withholding tax. An FBI is subject to zero per cent Dutch corporate income tax and distributions (which an FBI is required to make annually) are in principle subject to 15 per cent Dutch withholding tax (unless reduced, for example under a double tax treaty).

Dividend distributions made by Dutch legal entities are subject to 25.8 per cent conditional withholding tax (rate for 2025) if, in short, distributions are made to participants with a controlling interest in the Dutch legal entity and based in a low taxed jurisdiction, or in case of abuse. However, entities without a controlling interest on a stand-alone basis may also fall within the scope of the conditional withholding tax if they are part of a 'qualifying unity' .

As of 1 January 2025, the concept of a 'collaborating group' in the Dutch Withholding Tax Act 2021, relevant for the controlling interest criterion, has been replaced by the new term 'qualifying unity'. This term defines entities that act as a group that operate collectively, with the main purpose or one of the main purposes of avoiding taxation by one of these entities. We expect that distributions made by Dutch private credit funds are generally not subject to Dutch conditional withholding tax.

Law stated - 8 July 2025

Tax structuring

What range of downstream tax structures are available and commonly used in your jurisdiction to mitigate any tax leakage?

There is no specific Dutch tax regime for securitisation structures. Although Dutch private credit funds will generally hold their assets directly, private credit funds may sometimes hold their assets through a debt financed Dutch special purpose vehicle (SPV). The SPV is

generally subject to the regular Dutch corporate income tax rates (19 per cent to 25.8 per cent) and its taxable profit should be equal to an arm's length remuneration for the functions it performs. The interest income from its assets is largely offset against the interest expenses under the debt financing.

The fund structure sometimes also includes separate entities to specifically perform loan origination activities.

In order for an SPV to benefit from reduced interest withholding tax rates under double tax treaties on its interest income, anti-abuse rules should be observed, including a 'beneficial owner test' and 'principal purpose test'. Generally this means that there should be a valid (non-tax) business motive for setting-up the SPV, substantiated with relevant substance in the Netherlands.

Law stated - 8 July 2025

Local taxation of non-resident investors

Are non-resident investors in a credit fund subject to taxation or return-filing requirements in your jurisdiction?

Non-Dutch resident investors in a tax transparent Dutch private credit fund should not be subject to Dutch corporate income tax, unless they conduct a business enterprise in the Netherlands through a permanent establishment to which the debt is attributable. The latter could be the case if the private credit fund would be engaged in loan origination activities. In these cases, the loan origination activities are typically separated from the portfolio investments activities of the private credit fund.

Non-Dutch Investors in a private credit fund formed as a corporate entity would only be subject to Dutch corporate income tax if they hold a 'substantial interest' (generally, an interest of 5 per cent or more) in the Dutch corporate entity and two cumulative tests are met: the substantial interest is held with the main purpose or one of the main purposes to avoid Dutch personal income tax of someone else (subjective test) and the structure is artificial,- ie, not put in place for valid business reasons (objective test). Practically speaking, in most private credit funds the subjective test will not be met as there are typically no individuals (natural persons) holding directly or indirectly a substantial interest in the private credit fund.

If a non-Dutch resident investor would be subject to Dutch corporate income tax, annually a Dutch corporate income tax return would need to be filed.

Law stated - 8 July 2025

Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a credit fund vehicle formed in your jurisdiction, or the services provided by the investment manager or investment adviser? Are there any special tax rules relating to investors that are residents of your jurisdiction?

In recent years, the Dutch tax authorities have tightened the conditions for granting tax rulings, particularly in relation to international structures that may be perceived as being aimed at tax avoidance. However, rulings are still being issued (and published on an anonymous basis). This happens for example in cases where the fund managers would engage in loan origination activities on behalf of the private credit fund. The fund manager may want to get a ruling to obtain certainty in advance on whether or not the non-Dutch corporate investors in the private credit fund are subject to Dutch corporate income tax.

Law stated - 8 July 2025

Special tax considerations for sponsors

Are there any special tax considerations for credit fund sponsors?

Carried interest earned by managers who are taxable in the Netherlands, is generally taxed with personal income tax at the ordinary rate (progressive up to 49.5 per cent).

The Netherlands does not provide for a special carried interest regime where there is a carried interest directly in a tax transparent private credit fund (ie, the carried interest income comprises income from debt instruments).

Management fees derived by a Dutch management company are subject to the regular Dutch corporate income tax rates. Management fees should be exempt from VAT provided that the conditions for the exemption for collective investment management are met.

Law stated - 8 July 2025

Tax treaties

Are there any relevant tax treaties to which your jurisdiction is a party? How do such treaties apply to the fund vehicle or any downstream structure?

The Netherlands has an extensive network of tax treaties with countries all around the globe. The application of these treaties to a private credit fund vehicle or any downstream structure largely depends on the specifics of the relevant treaty as well as of the fund and/or structure. In light of the implementation of the multilateral instrument ('MLI') to avoid treaty abuse as part of the OECD's Base Erosion and Profit Shifting Project, the Netherlands has opted for the inclusion of the principal purpose test in its tax treaties covered by the MLI.

A tax transparent Dutch private credit fund or a private credit fund formed as a VBI would not have access to the double tax treaties concluded by the Netherlands. An FBI should from a Dutch perspective have access to (the benefits of) double tax treaties.

Law stated - 8 July 2025

Other significant tax issues

Are there any other significant tax issues relating to credit funds organised in your jurisdiction?

The Netherlands has implemented the anti-hybrid mismatch rules under the EU Anti-Tax Avoidance Directives 2 (ATAD 2). Generally, if at least 50 per cent of the investors in a tax transparent Dutch private credit fund would treat the private credit fund as opaque, the Dutch private credit fund would classify as a 'reverse hybrid', with the result that the Dutch private credit fund would be subject to the regular Dutch corporate income tax rates.

Law stated - 8 July 2025

OFFERING, SELLING AND INVESTMENT RESTRICTIONS

Offer and sale

What principal legal and regulatory restrictions apply to offers and sales of interests in credit funds formed in your jurisdiction, including the type of investors to whom such funds may be offered without registration under applicable securities laws?

The marketing of alternative investment funds (AIFs) to professional investors in the Netherlands is governed by the provisions of the Alternative Investment Fund Managers Directive (AIFMD). Alternative investment fund managers (AIFMs) authorised in the European Economic Area (EEA) are permitted to market AIFs to professional investors in the Netherlands in reliance on the EEA 'passport regime', subject to the required marketing notifications.

EEA sub-threshold AIFMs that intend to market to Dutch professional investors can register with the AFM under the sub-threshold regime.

For non-EEA AIFMs the Netherlands has implemented the national private placement regime (NPPR) as set out in article 42 of the AIFMD. Non-EEA AIFMs that intend to market in the Netherlands under the NPPR is required to notify the AFM in advance. The NPPR is not available for the offering of interests in AIFs to non-professional investors.

In addition to the NPPR, the Netherlands currently has a separate regime available for non-EU AIFMD that are domiciled Guernsey, Jersey, Hong Kong (SFC registered if offered to non-professional investors) and the United States (provided registered with the SEC). This regime is generally referred to as the 'designated states regime'. A non-EEA AIFM that intends to offer interests in the Netherlands should notify the AFM of its intentions in advance. As part of such notification, the non-EEA AIFM should also provide a statement evidencing its supervised status. This statement must be issued by the supervisory authority of the designated state where the relevant non-EEA AIFM has its seat.

EEA AIFMs and non-EEA AIFMs relying on the designated states regime may offer AIFs to non-professional investors in the Netherlands, provided that they comply with the rules of the retail top-up regime. This regime provides, inter alia, for additional disclosure of information to (prospective) investors in the prospectus. In the event of an offering to non-professional investors in the Netherlands, the fund manager must also provide an additional key information document.

There is an exemption available to the retail top-up regime where the fund manager only offers fund interests for a minimum subscription amount or nominal value of more than €100,000 per investor.

Law stated - 8 July 2025

Types of investor and investment

Are there any restrictions on the types of investors that may participate in credit funds or the types of investments that may be held by credit funds formed in your jurisdiction?

Provided that the appropriate regulatory, AML and sanction requirements are complied with, there are no specific restrictions on the types of investors that may participate in credit funds. In terms of investments, if the private credit fund has obtained the VBI status, then it may only invest in financial instruments (eg, no non-tradeable loans).

Law stated - 8 July 2025

EXCHANGE LISTING AND SECONDARIES

Listing

Are credit funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing? Are there any restrictions on the type of vehicle or the terms of the credit fund that is seeking a listing?

Credit funds can be listed on the exchange of Euronext Amsterdam. Euronext has developed Euronext Fund Services, which is the primary market and NAV trading platform for investment funds. Though the vast majority of (credit) funds are not listed in the Netherlands, there are a few credit funds that are traded through Euronext Fund Services. Liquidity and ease of trading would be the main advantage of a listing. Listed funds must comply,inter alia, with the EU transparency requirements on reporting and disclosures to investors. As part of the admission to the Euronext exchange, the fund must be able to provide an approved prospectus and a key investor information document in Dutch. Typically, (credit) funds that are listed are structured as public companies. To be listed the securities should be freely transferable.

Law stated - 8 July 2025

Restriction on transfers of interests

To what extent can a listed fund restrict transfers of its interests?

A key requirement for obtaining a listing is that the relevant securities are freely transferable. Any transfer to an unauthorised person and, therefore, in violation of restrictions set out in the fund documentation shall as a matter of law be effective. In practice, fund documentation usually contains compulsory redemption mechanisms that enable the fund to redeem any securities held in violation of the restrictions set out in the fund documentation.

Law stated - 8 July 2025

Secondary transactions

Can interests in a private credit fund established in your jurisdiction be transferred between investors? If so, are these typically subject to any contractual or regulatory conditions?

For non-listed closed-end funds, the fund documentation would typically provide for circumstances where a secondary transfer is permitted. Usually, a transfer is made subject to the prior consent of the fund manager. The actual transfer process depends on the legal form of the fund.

As of 1 January 2025, a secondary transfer of participation in a tax transparent fund for a joint account will only be possible if the conditions of a buy-back are met.

Law stated - 8 July 2025

PARTICIPATION IN PRIVATE CREDIT TRANSACTIONS

Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private credit transactions or otherwise affect the structuring of private credit transactions completed inside or outside your jurisdiction? Can a private credit fund hold non-loan or non-debt investments and, if so, are such holdings subject to any restrictions? Is a private credit fund established in your jurisdiction subject to any restrictions on participating in any creditor committees or taking other actions in respect of its credit investments or borrowers?

The Netherlands does not have any specific fund regime for private credit funds. In principle, any credit strategy can be pursued. There are no restrictions in respect of non-loan or non-debt investments. However, under the Alternative Investment Fund Managers Directive (AIFMD), fund managers of alternative investment funds (AIFs) are restricted in the activities that they may perform. As a consequence of that restriction, fund managers can, in principle, not engage in any regulated finance activities, such as for instance the provision of credit to consumers in the Netherlands. Corporate lending is not a regulated activity in the Netherlands and, therefore, private credit funds that originate loans are predominantly aimed at the financing of small and medium-sized businesses. In terms of investments, if the private credit fund has obtained tax-exempt institution (VBI) status, it may only invest in financial instruments (eg, no non-tradeable loans).

Law stated - 8 July 2025

Use of leverage

Are there any legal or practical restrictions on funds formed in your jurisdiction having a subscription line (and providing security over investor interests) or having true leverage (and asset level security) in the fund?

There are no specific legal or regulatory restrictions for private credit funds to have a subscription line and to provide security over investor interests, provided that the activities of the private credit fund may not lead to such fund qualifying as a 'bank' or 'credit union' within the meaning of the Dutch Financial Supervision Act.

In terms of leverage and asset-level security in a private credit fund, the AIFMD restricts AIFs and their (authorised) AIFMD fund manager in the activities that they may perform. As a consequence they may not engage in any regulated finance activities, such as the provision of (mortgage) credit to consumers in the Netherlands.

To be eligible under the sub-threshold regime, fund managers should take into account the leverage limits as set out in AIFMD. The sub-threshold regime is only available for fund managers that manage AIFs with aggregate assets under management, including leverage, that do not exceed €100 million or manage AIFs that are unleveraged and have no redemption rights for the period of five years following the initial investment in each AIF, with aggregate assets under management that do not exceed €500 million.

Law stated - 8 July 2025

Compensation and profit sharing

Are there any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund? Is there anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund?

There are no particular legal or regulatory issues that would affect the compensation and profit-sharing arrangements for the sponsor with respect to a private credit fund.

Law stated - 8 July 2025

UPDATE AND TRENDS

Key developments of the past year

What are the most significant recent trends and developments relating to credit funds in your jurisdiction? What impact do you expect such trends and developments will have on global credit fundraising and on credit funds generally?

On 15 April 2024, the proposed amendments to the Alternative Investment Fund Managers Directive (AIFMD) – also known as AIFMD II – entered into force following the publication in the Official Journal of the European Union on 26 March 2024. Individual member states, including the Netherlands, will have 24 months to transpose the provisions of the AIFMD II into national legislation. The AIFMD II provides for a new framework for EU AIFMs that manage alternative investment funds engaged in loan originating activities. The strict leverage provisions, broad definition of loan origination, as well as the fact that in principle loan originating funds should be closed-end, combined with the limited grand fathering

provisions, means that Dutch private credit funds will have to review their terms in order to ensure continued compliance.

From a Dutch tax perspective, the most significant developments relating to private credit funds are the legislative changes as of 1 January 2025 as described above, amending the transparency rules for private credit funds formed as a fund for a joint account, or limited partnership. In addition, as of 1 January 2025, the legislation with respect to tax-exempt institutions (VBI) has been amended to the extent that the VBI regime will only be available to entities that are an investment institution or Undertakings for Collective Investment in Transferable Securities as referred to in the Dutch Financial Supervision Act. This generally means that the VBI regime will no longer be available for 'family funds'.

Law stated - 8 July 2025