



The Civil Code of the Netherlands

Hans Warendorf
Richard Thomas
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About the Authors/Translators

Hans Warendorf, a Member of the Amsterdam Bar (1960) and a sworn English translator, has translated legislation with Richard Thomas MA (Cantab), a solicitor (1980), since 1983. They first translated Dutch securities legislation, followed by a translation of Dutch company law, Belgian company law and the company law of the Netherlands Antilles.

Hans Warendorf and Richard Thomas jointly cooperated with Professors P.P.C. Haanappel and Ejan Mackaay in the publication by Kluwer Law International of an updated translation of the Dutch law of property, proprietary rights and interests and the law on specific contracts, which appeared in 1999 in a loose-leaf edition entitled Netherlands Business Legislation. This was followed by their joint translation of the Netherlands Antilles law of property, proprietary rights and interests.

Hans Warendorf and Richard Thomas subsequently produced a new two-volume loose-leaf edition entitled Company and Business Legislation of the Netherlands(2008).

Hans Warendorf and Dr. Ian Curry-Sumner MA (Cambridge), a senior university lecturer at the Utrecht Centre for European Research into Family Law (UCERF) at the Molengraaff Institute for Private Law, Utrecht School of Law, the Netherlands, jointly translated the books of the Civil Code on family law and inheritance law.

All three authors are now collaborating on a translation of the civil law of Suriname.

The joint publications of the authors are:

Warendorf, H. & R. Thomas. Company and Business Legislation of the Netherlands. Alphen aan den Rijn: Kluwer Law International, 2008.

Warendorf, H. & R. Thomas. Netherlands Antilles Civil Code Book 2: Companies and Other Legal Persons. The Hague: Kluwer Law International, 2005.

Warendorf, H. & R. Thomas. Companies and Other Legal Persons under Netherlands and Netherlands Antilles Law. *The Hague: Kluwer Law International, 1989.*

Warendorf, H., R. Thomas & E. Wymeersch (eds). Belgian Company Law. *The Hague: Kluwer Law International and Bruylant, Brussels, 1996.*

Warendorf, H. & R. Thomas. The Netherlands Securities Trading Act and Securities Trading Decree. *Deventer: Kluwer Law, 1986.*

Haanappel, P.P.C., E. Mackaay, H. Warendorf & R. Thomas. Netherlands Business Legislation. *The Hague: Kluwer Law International, 1999.*

Haanappel, P.P.C., E. Mackaay, H. Warendorf & R. Thomas. Books 3-7 of the Civil Code of the Netherlands Antilles and Aruba. *The Hague: Kluwer Law International, 2002.*

Sumner, I. & H. Warendorf. Inheritance Law Legislation of The Netherlands. *Antwerp: Intersentia, 2005.*

Sumner, I. & H. Warendorf. Family Law and the Law of Persons: Book 1 of the Netherlands Antilles Civil Code. *Antwerp: Intersentia, 2005.*

Sumner, I. & H. Warendorf. Family Law Legislation of The Netherlands. *Antwerp: Intersentia, 2003.*

Introduction

Around 1800 many European Continental nations codified their private law in Civil Codes based on the Code Napoléon, or the French Civil Code, of 1804. That very year a first English – unofficial – translation was published stating that it was made by an anonymous ‘barrister of the Inner Temple’, whose timely feat deserved at least the mention of his name.

In 1804 the Code Napoléon consisted of only three Books (I Of Persons, II Of Property and the different Modifications of Property and III Of the different Methods of Acquiring Property). The present French Civil Code contains five Books, the first three of which still have the same caption as in 1804 and two further Books (IV Of Securities and V Provisions Applicable in Mayotte). An English translation of the present consolidated French Civil Code is published on the French government’s website (<www.legifrance.gouv.fr>), which records that the translation, updated as at 4 April 2006, was made by Professor Georges Rouhette and Doctor Anne Rouhette-Berton.

Now for the first time a complete translation of the Civil Code of the Netherlands currently effective in the Netherlands is published, which Code is a re-codification of the Civil Code of 1 October 1838 based on the Code Napoléon. The new Civil Code entered into force on 1 January 1992 and was the outcome of a long, dynamic and still ongoing recodification process which commenced in 1947. Like the French Code Civil, the Dutch Civil Code is also composed of ‘Books’, each consisting of different ‘Titles’, namely Book 1: Family Law, Book 2: Company Law and the Law of Legal Persons, Book 3: Law of Property, Proprietary Rights and Interests, Book 4: Law of Inheritance, Book 5: Rights *in Rem*, Book 6: General Part of the Law of Obligations, Books 7 and 7A: Specific Contracts, and Book 8: the Law of Carriage and Means of Transportation.

From the outset the repeal of both Book 7A and the Commercial Code of the Netherlands was envisaged, parts of which would be incorporated in the Civil Code, but this has not yet been implemented. New Titles are planned for Book 7 with the

law on the various types of Partnership (*Personenvennootschappen*), for the Sale of Goods by Instalments and for Hire-Purchase Contracts. Future changes of the Civil Code will include an amendment of Company Law in Book 2 by the creation of so-called 'flex-BV's' consistent with the European policy of simplification of corporate laws and making private limited companies more user-friendly.

It is not expected that the planned Book 9 on Intellectual Property Rights and Book 10 on Private International Law will be enacted within the foreseeable future. Many areas of Dutch private international law are at present still enacted in separate Acts, which will be consolidated in Book 10. English translations of most of these Acts including the law governing conflicts of law have already been published, in 'Family Law Legislation in the Netherlands' and 'Inheritance Law Legislation of the Netherlands', both by Ian Curry-Sumner and Hans Warendorf, and in 'Company and Business Legislation of the Netherlands', by Hans Warendorf and Richard Thomas, with their translation of the Acts on conflicts of law in the areas of Company Law, the Law of Property and the Law of Torts.

In the Netherlands the recodification served to modernize and restate the private law as it had developed over the past centuries as a result of case law. Both Family and Inheritance Law as now in effect bear little resemblance to the law enacted in 1838! There is now legislation on registered partnerships and same-sex marriages, while Inheritance Law was completely overhauled. Over time the Directives and Regulations of the European Parliament and the Council were transposed into the Civil Code, and also other laws were introduced influenced by modern societal views, such as the need for more generous protection of the weaker party or for class actions.

The numerous changes in the law over the past decades have left their mark on the Civil Code and its system, making it so much more complex. For example, when the recodification process was initiated, it was planned to provide for a general three-year limitation period for claims relating to property, proprietary rights and interests which would replace the original thirty-year prescription period from the Code Napoléon. Due to the diverse statutory provisions, the Civil Code now provides in Books 4-7 for numerous different prescription periods, both absolute prescription periods and periods which may be interrupted. Even the originally planned three-year prescription period like all other prescription periods may no longer be relied on if, in the given circumstances, this would be contrary to reasonableness and fairness.

Another example of inconsistency can be found in Book 8 on the Law of Carriage and Means of Transportation which is based mainly on Conventions with terminology borrowed from international usage, and which varies from terminology used elsewhere in the Civil Code.

Over the years the Civil Code will continue to develop to reflect the general principles and objectives of European Law. Consideration will continue to be given to new case law and the principle of legal certainty, the principle that the law as stated may be relied upon and the principle of proportionality.

This publication benefited from the earlier translations of Books 1 and 4 in 'Family Law Legislation of the Netherlands' and 'Inheritance Law Legislation of the Netherlands' by Curry-Sumner and Warendorf; of Book 2 in 'Companies and other Legal Persons under Netherlands and Netherlands Antilles Law' by Warendorf and

Thomas; of Books 3, 5, 6 and 7, first published in 1990, under the title 'Patrimonial Law', by Professors P.P.C. Haanappel and Ejan Mackaay, which translation was updated from 1999 until 2007 by Haanappel, Mackaay, Warendorf and Thomas and published in 'Netherlands Business Legislation', a loose-leaf edition. This year an updated translation of Books 2, 3 and 5-7 was included in 'Companies and Business Legislation of the Netherlands', a loose-leaf edition, by Warendorf and Thomas.

Haanappel and Mackaay who translated Book 8 under the title 'Means of Traffic and Transport', published in 1995, kindly consented to the use of their translation for this present translation by Warendorf and Thomas of Book 8, as amended since 1995.

In the Netherlands the government has no established policy on the publication of English translations of Dutch legislation on its website, which is unfortunate and incomprehensible, considering the composition of its population, of which a substantial part does not understand Dutch. This remains the case even though the recodified Dutch Civil Code formed or forms the basis for the new Civil Code of the Netherlands Antilles and Aruba and for the planned new Civil Code for Suriname. In foreign States where a codification of private law is planned, like China and States which became independent on the dissolution of the USSR, the legislature is often guided by the present Dutch Civil Code, for which the available English translations are mainly used.

In this book terms like *Staatsblad*, the semi-official translation of which is Bulletin of Acts and Decrees, and *Staatscourant*, the Government Gazette, were not translated. The official Dutch language citation of Acts is stated in italics followed by an English translation.

We have opted to make this translation understandable to readers familiar with the Common Law which, having regard to its different heritage and system, required many difficult choices as so many Civil Law concepts have no direct comparison in the Common Law and vice-versa. Where possible we did not use Latin legal terms, except when widely accepted, or specific Civil Law terms where this would require the reader to consult dictionaries. A translation serves only to assist the reader to understand Dutch law, but the reader is cautioned that it in no way replaces the original law in the Dutch language.

We will be grateful for comments and will duly consider any corrections that are brought to our notice.

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