

The Civil Code of the Netherlands

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Hans Warendorf and Richard Thomas began translating Dutch Law into English together in 1983 when they translated the original Dutch securities markets legislation. They followed this with translations of Dutch Company Law (Book 2 of the Civil Code) in 1988, Belgian Company Law (with E. Wymeersch, ed.) in 1996 and the Company Law of the Netherlands Antilles in 2005.

In addition, Warendorf and Thomas, jointly with Professors P.P.C.Haanappel and Ejan Mackaay, updated the latter's translation of Dutch law of property, proprietary rights and interests and the law on specific contracts and this was published in 1999 in a loose-leaf edition, Netherlands Business Legislation, which was replaced in 2006 by a two-volume loose-leaf edition, Company and Business Legislation of the Netherlands, which is regularly updated with, currently, 11 supplements.

Warendorf and Dr Curry-Sumner began translating together in 2003 when they translated Dutch Family Law legislation (Book 1 of the Civil Code) and again in 2005 with a translation of Dutch Inheritance Law (Book 4 of the Civil Code).

The three translators collaborated together for the first time in 2009 when they combined, updated and supplemented their various earlier translations and produced the first English translation of the complete Civil Code of the Netherlands. Most recently they have collaborated on the translation of the draft of the new Civil Code of Suriname.

All the translators' works have been published by Kluwer Law International or Intersentia.

Preface to the Second Edition

Since the publication in 2009 of *The Civil Code of the Netherlands*, which contained a translation of the Civil Code as in effect on 1 October 2008, significant new statutory provisions have been enacted in the field of civil law. Possibly the most important is the addition of a Book 10, which entered into force on 1 January 2012.

Book 10 (Private International Law) contains 15 Titles covering many areas of private international law. This codification represents the final step in a process of partial codification dating back to 1981 with the enactment of Private International Law (Divorce) Act. Book 10 now covers private international law with regard to family law (Titles 1-7), corporations (Title 8), the law of agency (Title 9), the law of property (Title 10), the law of trusts (Title 11), inheritance law (Title 12), the law of contractual obligations (Title 13), the law of extra-contractual obligations (Title 14) and maritime law, the law of inland shipping and aviation law (Title 15).

The translation of Book 1 contains all the relevant statutory changes to the laws on matrimonial property, as well as the introduction of the compulsory parenting plan.

In the Introduction to *The Civil Code of the Netherlands* some of the proposed changes in Dutch company law, Book 2 of the Civil Code, were mentioned. These included, *inter alia*, firstly the long-awaited provisions known as the “Flex-BV”, aimed at simplifying the incorporation of, and the internal procedural provisions for, private companies with limited liability, secondly for allowing both B.V.’s and N.V.’s to have executive and non-executive board members, and thirdly for limiting the number of directorships that a member of the supervisory board or a non-executive board member of large companies and foundations could have. In addition, a 70:30 balance was proposed between men and women serving as supervisory board member or non-executive director of large companies. All of these proposed changes have since entered into force, the latter ones as from 1 January 2013.

In Book 6 (General Part of the Law of Obligations) in its Title 3 on Torts, a new Section 3A on Unfair Commercial Practices was introduced, in force since 15 October 2008, and a new Section 2A, Information on Service Providers and User Services on account of the Directive on Services, in force since 28 December 2009.

In Book 7 (Specific Contracts), three new Titles have been enacted:

1. Title 1A (Articles 50a-50i) Contracts in respect of Timeshare Use, Long-term Holiday Products, Assistance and Exchange, in force since 23 February 2011,
2. Title 2A (Articles 57-73) Agreements covering Credit for Consumers, in force since 25 May 2011, and
3. Title 7B Payment Transactions, with 4 Sections (Articles 514- 551), in force since 1 November 2009.

Since 2008 there have been numerous smaller changes, mostly relating to employment law.

The main changes in Book 8 (The Law of Carriage and Means of Transportation) are to be found in Title 5, 'Contracts of carriage of persons by sea', where Articles 500 *et seq* implement The Athens Convention relating to Carriage of Passengers and their Luggage by Sea, in force from 21 February 2009, and in Title 6, 'Accidents', in which there is now a new Section 5, 'Liability in respect of Damage caused by Bunker Oil Pollution' (Articles 639-653), in force from 31 December 2012.

A change in the translation of some terms used in the first edition has been made. For instance, '*Ondernemingskamer*' is now translated as Netherlands Enterprise Court at the Amsterdam Court of Appeal, replacing 'Enterprises Division of the Amsterdam Court of Appeal'. This serves to make clear that the court functions on a national level and is not an appellate division, even though it may in some instances hear a case on appeal, while it also indicates that the link with the Amsterdam Court of Appeal is of an organisational nature. The term '*financiële zekerheidsvereenkomst*' is now translated as financial collateral arrangement, instead of financial security agreement, as the provisions were enacted in order to implement the European Parliament and Council Directive on financial collateral arrangements.

The translators, who are continually striving to improve the translation of certain terminology, will carefully consider any comments and proposed corrections that are brought to their notice.

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This edition contains a translation of the Netherlands Civil Code, as last amended and in force on 1 March 2013.

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No reader should act or refrain from acting on the basis of any matter contained in this Book without first obtaining professional advice regarding the particular facts and circumstances at issue.

While every effort has been made to ensure that this Book contains a correct and complete English translation of the original Dutch text, only the original Dutch text of the law can be relied on.

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

* The Introduction is part of the first edition.

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.



Amsterdam	London	Utrecht
December 2008		
Hans Warendorf	Richard Thomas	Ian Curry-Sumner

This edition contains a translation of the Civil Code as in effect on 1 October 2008, as last amended by Act of [1 September 2008], *Staatsblad* 2008 [100]

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