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NFIA: Guiding the way



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With its excellent infrastructure, cutting edge financial services industry and strategic geographic location, the Netherlands has fast become the prime location for an increasing number of companies who are looking to expand operations into new markets. We spoke to Liesbeth Staps from the Netherlands Foreign Investment Agency (NFIA) to find out more about how the Netherlands cultivates growth.

The central geographical position of the Netherlands, accessibility and a world class infrastructure are only some of the reasons why numerous European, American and Asian companies set up in the Netherlands. Liesbeth Staps, Executive Director of the UK & Ireland division of the NFIA said the country's pro-business environment creates a gateway to Europe that helps international companies succeed throughout the continent. "An international outlook and openness to foreign investment is firmly engrained in the Dutch culture, and this has yielded a wealth of world-class business partners who know how to deal with the global business challenges inherent in today's economy."

In addition to being geographically fortunate, the Netherlands offers an inviting fiscal climate, a highly educated, multilingual and flexible workforce and a superior infrastructure comprising reliable transport links, both within the country and beyond. Mrs Staps said: "The Netherlands boasts an enviable rail infrastructure with fast internal routes and high speed international trains that can get you from Amsterdam to Brussels in less than two hours, Paris in a little over three hours and Berlin in six hours, as of end of this year. In addition, the country has the ports of Rotterdam and Amsterdam, the first and fourth largest ports in Europe (by weight of cargo handled each year) and Schiphol Airport, which is a major international hub with direct flights to more than 200 cities."

The Netherlands is also classified as one of the most 'wired' countries in the world; a dynamic force in electronic commerce, communications and outsourcing. "More than a decade of investment in

high-speed Internet, cable and digital communication systems, as well as the rapid adoption of state-of-the-art computer and mobile phone technology, have created an ideal base for companies seeking to take advantage of modern technology."

A Record 2008

The Netherlands is continually working to bolster its reputation as a prime location for trade and investment. These attempts are clearly working, as despite the global economic crisis, the NFIA posted record results in 2008 for the second straight year. Overall, the NFIA supported 182 investment projects of foreign companies, which is a remarkable increase of 27 projects over the previous record-setting year. These projects represented 3,299 jobs and planned investment of nearly \$850 million.

Investment projects from the United States made the strongest impression, with 67 projects representing more than 80% of the total investment value and half of the total number of new jobs created. More than half of the projects in 2008 were first establishments by foreign companies in the Netherlands.

In addition, there are a growing number of Asian companies who are looking to do business in the Netherlands. Many of these investments, which are primarily from China, India and Korea, form the basis of a long term investment process that involves the distribution of their products and services throughout Europe. For example, a growing number of Chinese companies are distributing food and other goods via the Port of Rotterdam.

Even though the Netherlands has a strong, well established financial sector, the country has not

escaped the global economic crisis. With its relatively small, open economy, the Netherlands is far more exposed to the vulnerabilities and fluctuations in world trade. However, according to Mrs Staps, 2009 looks set to be another good year for FDI in the Netherlands, especially for energy related activities and any investments aimed at the food and healthcare industries, all of which are still very strong. "One significant change we have seen is that companies are committing to more long term strategies and expansion models. In addition, many companies have had to consolidate their European footprint and restructure operations, and we have been tasked with convincing these companies to consolidate in the Netherlands and conduct their operations from here."

Leading the way

Netherlands Foreign Investment Agency (NFIA) has been set up for the specific purpose of helping and advising foreign companies who wish to take advantage of the Dutch business environment as a strategic base to cover Europe. Mrs Staps outlined the ways in which they do this. "We pride ourselves on providing a personal service, so we make it a priority to invite any potential investors to the Netherlands to see the country with their own eyes and answer any questions they may have in person," she said.

"As a government agency, we provide information and practical assistance free of charge and on a confidential basis. This includes providing insight and data with regard to site selection and logistics strategies and intensive, personal guidance on such matters as available incentives, permit procedures and tax structures."

The NFIA facilitates direct investments of foreign companies in the Netherlands through its network of offices in North America, China, Japan, Taiwan, Singapore, Malaysia, Korea, India, the Gulf Region and the United Kingdom. The NFIA has helped more than 5,300 foreign companies initiate or expand operations in the Netherlands, accounting for almost 550,000 jobs.

Banking & finance

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The economic downturn has led to a substantial decrease in the amount of M&A transactions being completed in the Netherlands, as leveraging deals has become problematic. As a result, the big ticket transactions that once dominated the deal landscape are now notably absent, and good quality SME deals are increasingly harder to come by.

Although the Dutch government has taken several measures to stimulate lending by the banks, many are still hesitant to actually provide credit to companies. This situation is exacerbated by the fact that many Dutch banks are continuing to implement measures aimed at streamlining operations and cutting costs.

The problems in the banking sector have meant that private equity houses are gradually taking the role of the banks. In addition to this, asset based lending (ABL), such as factoring and secured lending are being more widely used. In fact, many international banks and factoring houses now conduct asset based lending activities in the Netherlands. These Anglo-American financing techniques fit well with Dutch civil law and are often applied in international finance transactions with Dutch borrowers and/or guarantors.

The fundamental cause of the financial crisis is

inadequate risk management. As a result, there has been an ongoing emphasis on compliance and risk management in the Netherlands. More intensive supervision will play a vital role here, along with the tightening of existing regulation in order to better maintain the existing rules and principles. In addition, increased and better international cooperation is required between the national supervisors. In the long run, a substantial increase in capital requirements seems to be inevitable. However, this should not be aimed for in the short run, as this could aggravate the current economic situation.

Kennedy Van der Laan's Banking and Finance team is a major focus of our corporate department. We support international and national banks and other financial institutions as well as other lenders, borrowers and guarantors in (cross-border) finance and debt security transactions, often in conjunction with corporate transactions.

The banking and finance practice is closely supported by our corporate litigation team, which handles litigation matters on behalf of banks, financial institutions, investors and other companies. Our team is especially valued for its expertise, creativity and short lines. Clients like to work with the people from Kennedy Van der Laan. The banking and finance team also advises on all aspects of the Financial Supervision Act and other regulatory matters.

Just recently, the Payment Services Directive (PSD) has been incorporated in the Dutch Financial Supervision Act, which will come into effect on 1 November 2009. The PSD aims at establishing a set of rules applicable to all payment services in the European Union. At the request of the Dutch Banking Association, Kennedy Van der Laan's banking and finance team has drafted a handbook detailing all the relevant changes for banks doing business in The Netherlands, which was presented to all national banks. Consequently, we have redrafted the banking conditions for several banks in the Netherlands in order to make them PSD compliant.

Outsourcing

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The initial analyses of the economic crisis indicated that outsourcing would increase significantly as businesses rushed to save costs. However, this prediction has proven to be false in the Netherlands. In the current economy, cash is king and therefore all forms of costs are placed under heavy scrutiny. The long-term cost savings to be generated by outsourcing simply do not weigh up against the immediate costs.

It is, however, very much the question as to whether costs should be the primary driver behind any outsourcing. Risk management is a more valid litmus test, assessing a company's internal ability to provide the necessary levels of functionality (now and in the future) against the alternatives available on the market. A good example of this risk-oriented approach is an airport that had a large department responsible for a range of non-core activities, all of which happened to be heavily-regulated in the Netherlands. The risk of regulatory non-compliance was deemed to overshadow any benefit of maintaining these activities in-house and therefore led to the decision to outsource. Kennedy Van der Laan advised the airport in its outsourcing of these activities to a consortium of parties specialised in each of these regulatory areas.

The distinction between core and non-core activities is also driving the emergence of integrated facility services (FS) as a field of outsourcing. FS is the bundling of various non-core activities such as catering, cleaning and security into an integrated package to be managed by a single provider. Since it is virtually impossible to define the term facility services, as this can encompass activities as diverse as grounds maintenance to the printing of internal newsletters, providers can therefore also range

from caterers to construction companies or cleaning crews to security firms. The key legal issue however is always the same: how to ensure that business-critical processes will continue without interruption, despite the outsourcing. The answer lies in a thorough understanding of those business processes and how they impact each other.

Kennedy Van der Laan prides itself on its knowledge of the real world impact of outsourcing and utter pragmatism. The combination enables us to achieve the best possible negotiated result in a quick and cost-efficient manner. One approach we favour for businesses seeking to outsource an activity is the use of simultaneous negotiations. That is to say, two to three providers are short-listed and each required to engage in parallel negotiations with the customer. This competitive setting has enabled us to generate price savings for the client well in excess of our legal fees.

The short-term win however must be balanced off against the long-term cost. One such cost typical for the Netherlands is in the relations between management and the works council of the company seeking to outsource an activity. A successful outsourcing transaction demands expertise in a wide number of areas such as co-governance, corporate, contracting, IPR and employment law, all of which are available at Kennedy Van der Laan.