

How to set up in Netherlands

Alternative Investment Fund Manager (AIFM)

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

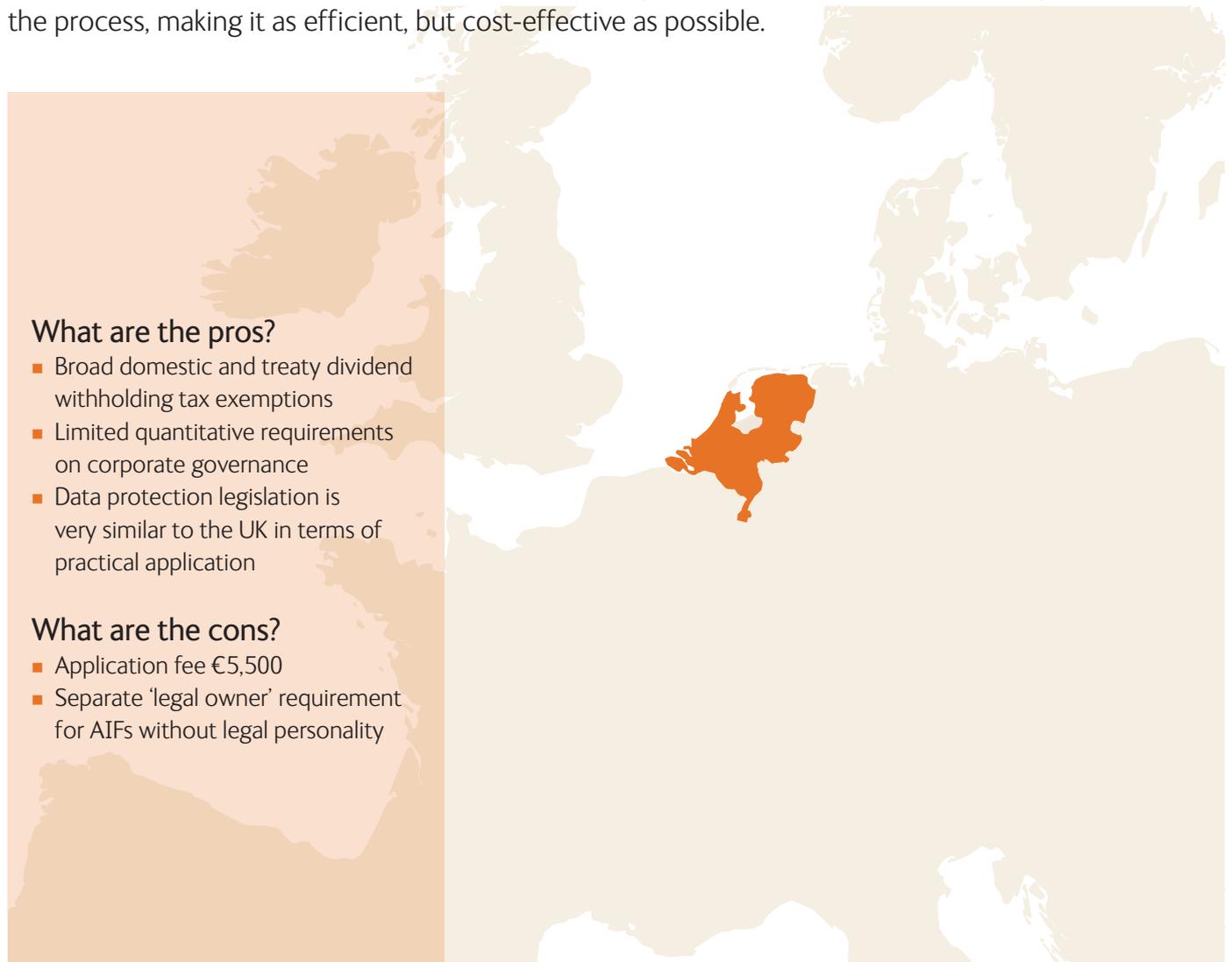
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- Broad domestic and treaty dividend withholding tax exemptions
- Limited quantitative requirements on corporate governance
- Data protection legislation is very similar to the UK in terms of practical application

What are the cons?

- Application fee €5,500
- Separate 'legal owner' requirement for AIFs without legal personality



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Licence/Passport Process

- Information on the application process is available here: AIFM Application Guidance [hyperlink to be included]
- The process involves submission of a template application form plus numerous supporting documents to the the [Netherlands Authority for Financial Markets](#) (“AFM”) for review. Part of the application is a test of suitability and reliability of the board members and supervisory board members of the AIFM
- Additional forms must be provided along with the application form:
 - Notification form AIFs
 - Notification form AIFM depositary
 - Application form for suitability and reliability testing for each (supervisory) board member
- The AFM can decide within 13 weeks, however the AFM may use up to 26 weeks in which case the AFM will inform the applicant thereof. As such, the practical timetable is around 8 months (including preparation time)
- The AFM charges an application fee of €5,500, and additional fees for the suitability and reliability tests.

Conduct of business Prudential rules

- Initial capital of €125,000 required, unless an AIF is set up as an investment entity with legal personality without a separate AIFM in which case initial capital of €300,000 is required. Additional own funds required if the AIFM does not have a separate professional indemnity insurance
- Plus additional own funds equal to 0.02% of the amount by which the AIFM’s AUM exceeds €250 million. These additional own funds cannot be less than the “fixed overheads requirement” (one quarter of audited annual expenditure)
- In addition to AIFMD depositary, a ‘legal owner’ must be appointed if AIFM sets up AIFs without legal personality to hold the assets
- Conduct of business and/or organisational requirements (integrity, risk management, product approval and review process, conflicts of interest policy) implemented in line with AIFMD.

Corporate governance

- Four eyes principle is applied. AIFM should have at least two day-to-day policymakers
- AIFM with official seat in the Netherlands, head office must be in the Netherlands
- A suitability and reliability test will apply to certain functions, with persons in such “pre-approval controlled functions” requiring AFM approval before they may take office
- AIFM must provide overview of corporate structure (eg group structure chart) on application to ensure that the corporate structure does not form or may not form an impediment to adequate supervision
- A national top-up regime applies for offers to retail investors in the Netherlands, for which additional requirements need to be met.

Regulatory environment

- AFM annual base fee of €5,920 and depending on size and services an additional variable fee is added
- The AFM is relatively open to discussion on key issues in the licence application.

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Tax

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

Employment law

- Remuneration principles specified in AIFMD and further ESMA guidelines, which include pay-out related rules – the Dutch 20% bonus cap is **not** applicable to AIFMs
- ESMA recommends that a delegation must be either to appropriately regulated firm or pass-on contractually the compliance with remuneration rules
- Notice: the statutory notice period for the employer is one month for the first five years of service. For each subsequent five years of service, the notice period is increased by one month (up to a maximum of four months’ notice), parties can agree to a longer notice period as long as the notice period for the employer is at least double the notice period of the employee
- Termination: there must be reasonable grounds for dismissal (limited grounds included in the Dutch Civil Code), i.e. performance, business economic reasons conduct, etc. The employer will need the consent of the employee or the prior approval from the court or government to give notice of termination
- Termination Severance: in service for two years or more, 1/3 monthly salary for each year of service over the first ten years and ½ monthly salary for each year from ten years onwards (maximum: of €76,000 gross or one annual salary if this is more than €76,000 gross).

Data protection

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

Outsourcing

- Outsourcing is permitted in line with the requirements in AIFMD and the Delegated Regulation
- Portfolio management and risk management may only be outsourced to a party subject to financial regulatory supervision or with prior approval from the AFM
- For outsourced activities, the AIFM must be able to supervise and monitor the party to which the activity has been outsourced. This party should also comply with the relevant stipulations of Part 3 and Part 4 of the Dutch Act on financial supervision (“FSA”)
- The AIFM may not outsource such amount of functions to another party that it loses substance and becomes a “letter-box entity”.

Corporate

- An AIFM must have legal personality under Dutch corporate law (typically a Dutch private limited company is incorporated). Incorporation requires the assistance of a Dutch civil law notary
- Corporate considerations depending on actual structure, but in general Dutch corporate law (especially regarding Dutch private limited companies) is flexible
- The entity will need to be registered with the Dutch Chamber of Commerce.

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