Over opinions: Een onderzoek naar de zorgplicht van de gever van een
Nederlandsrechtelijke legal opinion
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Bijlage 1 – Voorbeeldopinion

De voorbeeldopinion in deze bijlage is gebaseerd op de vorm waarin De Brauw Blackstone Westbroek opinions pleegt te geven. Het voorbeeld ziet op een overeenkomst (de “Agreement”) waarin een rechtskeuze is gemaakt voor buitenlands recht van een land van de Europese Unie met een forumkeuze voor de rechter van dat land. Het voorbeeld veronderstelt dat de opiniongever een advocaten- of notarissenkantoor is (en niet een individuele advocaat of notaris).

To [name of opinion addressee] (the “Addressee”)

[Date]

Dear Sir/Madam,

[name of company] (the “Company”)
[description of agreement] (the “Agreement”)

1 Introduction

I act as Dutch legal adviser (advocaat) to the Company in connection with the Agreement. Certain terms used in this opinion are defined in the Annex (Definitions).

2 Dutch Law

This opinion is limited to Dutch law in effect on the date of this opinion. It (including all terms used in it) is to be construed in accordance with Dutch law.

3 Scope of Inquiry

I have examined the following documents:

3.1 A copy of the Agreement signed by the Company.

3.2 A copy of:

(a) the Company’s deed of incorporation and its articles of association, as provided by the Chamber of Commerce (Kamer van Koophandel); and

(b) the Trade Register Extract.

3.3 A copy of:

(a) each Corporate Resolution; and

(b) the Works Council’s Advice.

3.4 A copy of the Power of Attorney.

In addition, I have obtained the following confirmations on the date of this opinion:

3.5 Confirmation by telephone from the Chamber of Commerce that the Trade Register Extract is up to date.

3.6 Confirmation through eases.europa.eu/cfsp/sanctions/consol-list_en.htm that the Company is not included on any Sanctions List.
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3.7 Confirmation:
(a) by telephone from the court registry of the District Court of the place where the Company has its seat, derived from that Court’s Insolvency Register; and
(b) through www.rechtspraak.nl, derived from the segment for EU registrations of the Central Insolvency Register;
in each case that the Company is not registered as being subject to Insolvency Proceedings.
My examination has been limited to the text of the documents and I have not investigated the meaning and effect of any document (or part of it) governed by a law other than Dutch law under that other law.

4 Assumptions
I have made the following assumptions:
4.1 (a) Each copy document conforms to the original and each original is genuine and complete.
(b) Each signature is the genuine signature of the individual concerned.
(c) Each confirmation referred to in paragraph 3 is true.
(d) The Agreement has been signed by all parties in the form referred to in this opinion.
4.2 (a) Each Corporate Resolution and the Works Council’s Advice have been duly adopted and remain in force without modification.
(b) The Company’s decision to enter into the Agreement conforms with the Works Council’s Advice.
4.3 Each party other than the Company has validly entered into the Agreement.
4.4 (a) The Power of Attorney:
(i) has been signed on behalf of the Company by [director] as one of its managing directors; and
(ii) remains in force without modification;
and no rule of law (other than Dutch law) that under the 1978 Hague Convention on the Law applicable to Agency applies or may be applied to the existence and extent of the authority of any person authorised to sign the Agreement on behalf of the Company under the Power of Attorney, adversely affects the existence and extent of that authority as expressed in the Power of Attorney.
(b) The Agreement has been signed on behalf of the Company by a person named as authorised representative in the Power of Attorney.
4.5 When validly signed by all parties, the Agreement is valid and binding on and enforceable against each party under [chosen foreign] law by which it is expressed to be governed.

5 Opinion
Based on the documents and confirmations referred to and assumptions made in paragraphs 3 and 4 and subject to the qualifications set out in paragraph 6 and any matters not disclosed to me, I am of the following opinion:

5.1 The Company has been incorporated and exists as a private company with limited liability (besloten vennootschap met beperkte aansprakelijkheid)
5.2 (a) The Company has the corporate power to enter into and perform the Agreement.
(b) The Company has taken all necessary corporate action to authorise its entry into and performance of the Agreement.
(c) The Company has validly signed the Agreement.

5.3 (a) The Company does not require any governmental licence, dispensation, recognition or other consent for its entry into and performance of the Agreement.
(b) There are no governmental registration, filing or similar formalities required to ensure the validity and binding effect on and enforceability against the Company of the Agreement.

5.4 The Company’s entry into and performance of the Agreement do not violate Dutch law or its articles of association.

5.5 (a) The choice of [chosen foreign] law as the governing law of the Agreement is recognised.
(b) Dutch law does not restrict the validity and binding effect on and enforceability against the Company of the Agreement.

5.6 (a) To the extent that the submission to the jurisdiction of the [chosen foreign] court in the Agreement:
   (i) is governed by the Brussels I Regulation, it is valid and binding on and enforceable against the Company; and
   (ii) is also governed by the law designated by [country of the chosen court] private international law, Dutch law does not restrict its validity and binding effect on and enforceability against the Company.
(b) An enforceable judgment in a civil or commercial matter rendered by a [chosen foreign] court can be enforced in the Netherlands in accordance with any applicable Enforcement Regulation.

6 Qualifications
This opinion is subject to the following qualifications:

6.1 This opinion is subject to any limitations arising from (a) rules relating to bankruptcy, suspension of payments or emergency measures, (b) rules relating to foreign insolvency proceedings (including foreign Insolvency Proceedings), (c) other rules regulating conflicts between rights of creditors, or (d) intervention measures in relation to financial enterprises or their affiliated entities.

6.2 The recognition of [chosen foreign] law as the governing law of the Agreement:
   (a) (i) will not restrict the application of the overriding provisions of Dutch law; and
   (ii) will not prevent effect being given to the overriding provisions of the law of a jurisdiction with which the situation has a close connection;
   (and for this purpose “overriding provisions” are provisions the respect for which is regarded as crucial by a jurisdiction for safeguarding its public interests to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to an agreement);
   (b) will not prevent the application of [chosen foreign] law being refused if it is manifestly incompatible with Dutch public policy (ordre public); and
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(c) will not prevent regard being had to the law of the jurisdiction in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance.

6.3 (a) The binding effect and enforceability of the submission to the jurisdiction of the [chosen foreign] court in the Agreement; and
(b) enforcement of a judgment rendered by a [chosen foreign] court;
are subject to any applicable exceptions under the Brussels I Regulation, the relevant other Enforcement Regulation (in the case of enforcement of a judgment) and the Lugano Convention.

6.4 Enforcement in the Netherlands of the Agreement is subject to Dutch rules of civil procedure.

6.5 Enforceability of the Agreement may be limited under the Sanction Act 1977 (Sanctiewet 1977) or otherwise by international sanctions.

6.6 (a) An extract from the Trade Register does not provide conclusive evidence that the facts set out in it are correct. However, under the 2007 Trade Register Act (Handelsregisterwet 2007), subject to limited exceptions, a legal entity or partnership cannot invoke the incorrectness or incompleteness of its Trade Register registration against third parties who were unaware of the incorrectness or incompleteness.
(b) A confirmation from an Insolvency Register does not provide conclusive evidence that an entity is not subject to Insolvency Proceedings.

6.7 I do not express an opinion on tax matters.

7 Reliance

7.1 This opinion may be relied upon by the Addressee for the purpose of the Agreement and not by any other person or for any other purpose.

7.2 By accepting this opinion, the Addressee agrees that:
(a) (except as set out in paragraph 7.3) it shall not supply this opinion, or disclose its contents or existence, to any person for any purpose; and
(b) only [name of opinion giver] will have any liability in connection with this opinion, the agreement in this paragraph 7.2 and all liability and other matters relating to this opinion will be governed exclusively by Dutch law and the Dutch courts will have exclusive jurisdiction to settle any dispute relating to this opinion.

7.3 The Addressee may supply a copy of this opinion to [name of legal adviser Addressee] but solely for their information in their capacity as the Addressee’s legal advisers for its entry into the Agreement and subject to the restrictions set out in paragraph 7.2.

Yours faithfully,

[Name of opinion giver]

Annex – Definitions

In this opinion:
“Addressee” means [name of opinion addressee].


"Company" means [name of company], with seat in [place].

"Corporate Resolution" means each of:
(a) a written resolution of the Company’s management board (directie) dated [date]; and
(b) a written resolution of the Company’s stated sole shareholder [name] dated [date].

"Dutch law" means the law directly applicable in the Netherlands.

"Enforcement Regulation" means each of:
(a) the Brussels I Regulation;
(c) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure; and


"Lugano Convention" means the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

"Power of Attorney" means a power of attorney granted by the Company to [name or names] and dated [date].

"Sanctions List" means each list referred to in:
(a) Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism;
(b) Article 2 of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan; or
(c) Article (1)(1) of the Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism.

"the Netherlands" means the European part of the Kingdom of the Netherlands.

"Trade Register Extract" means a Trade Register extract relating to the Company provided by the Chamber of Commerce and dated [date].

"Works Council" means the Company’s works council (ondernemingsraad).

"Works Council’s Advice" means the Works Council’s advice on the Company’s proposed decision to enter into the Agreement as set out in a letter of the Works Council dated [date].