Over opinions: Een onderzoek naar de zorgplicht van de gever van een Nederlandsrechtelijke legal opinion
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Bijlage 2 – Beknopte opinion

De voorbeeldopinion in deze bijlage is zo veel mogelijk bekort. De no licences opinion, die opgaat in de no violation of law opinion, is niet opgenomen. Hetzelfde geldt voor de no registration opinion, die in haar gebruikelijke vorm opgaat in de remedies opinion. Implied assumptions en implied qualifications zijn weggelaten.

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.

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

[Date]

Dear Sir/Madam,

I act as Dutch legal adviser (advocaat) to [name of company], with seat in [place], (the “Company”). I have examined a copy of the [description of Agreement] dated [date] between the Company and the Addressee (the “Agreement”) and such other documents, and have performed such other investigations, as are customary.

I am of the following opinion:

(a) The Company exists as a legal entity. It has the power, and has taken all necessary action, to enter into and perform the Agreement.

(b) When signed by [name], the Agreement has been validly signed on the Company’s behalf. Then, the Agreement (including the choice of law in it) is enforceable against the Company according and subject to Regulation (EC) No 593/2008 (Rome I) or, in relation to the choice of forum in the Agreement, according to Regulation (EU) No 2115/2012 (Brussels I) and subject to that regulation and the 2007 Lugano Convention.

(c) A judgment of the forum chosen in the Agreement will be enforced in the Netherlands according to Regulation (EU) No 2115/2012 and subject to that regulation and the 2007 Lugano Convention.

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

[Clauses [numbers] of the Agreement may not be enforceable in all circumstances.]

This opinion is limited to Dutch law as applicable in the European part of the Netherlands, excluding Dutch tax law.

You may rely on this opinion but solely for the purpose of the Agreement. This opinion may be not be disclosed to, or relied upon by, anyone else, except that it may be disclosed to your legal advisers. Only [name of opinion giver] will have any liability in connection with this opinion and
any liability and other matters in relation to this opinion will be governed by Dutch law and will be settled exclusively by the Dutch courts.

Yours faithfully,

[Name of opinion giver]