

Presentation by Willem Claassen
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The position in the Netherlands
with respect to

- A. Core Duties
- B. Alternative Business Structures (ABS)

A. **Core Duties**

1.01 **Justice and the rule of law**

You must uphold the rule of law and the proper administration of justice.

1.02 **Integrity**

You must act with integrity.

1.03 **Independence**

You must not allow your independence to be compromised.

1.04 **Best interests of clients**

You must act in the best interests of each client

1.05 **Standard of service**

You must provide a good standard of service to your clients.

1.06 **Public confidence**

You must not behave in a way that is likely to diminish the trust the public places in you or the profession.

With respect to the aforementioned core duties the legal profession in the Netherlands recognizes the following:

- Ad 1.01 There is a draft law to incorporate in the Act on the legal profession (Advocatenwet) as core duty (kernwaarde) that the lawyer shall take into account

the general interest of the proper administration of justice. This draft has not been accepted and has been the subject of a firm debate within the profession, whether or not this is to be considered as a separate core duty and also whether it is not in contradiction with the generally accepted core duty of partiality.

Ad 1.02 Integrity is accepted as a core duty.

Ad 1.03 Independence is accepted as a core duty, with respect to the lawyer's own clients as well as third parties.

Ad 1.04 Best interests of clients: partiality in protecting the interests of his clients is accepted as a core duty.

Ad 1.05 Standard of service: the expertise of the lawyer with respect to the services required by the client is accepted as a core duty (vakbekwaamheid).

Ad 1.06 Public confidence: this is not considered as a core duty, however in the Code of Conduct of the Bar, the first rule relates to public confidence in that it stipulates that a lawyer should behave in such a way that the confidence in the legal profession is not damaged.

2. In the Bar there is no distinction between trial lawyers and other lawyers with respect to the recognition of core duties.

3. The training of core duties in the profession:

3.01 This training is not provided by the university.

3.02 There is no formal professional training school for these core duties.

3.03 the core duties are subject of training in the first three years of practice of any lawyer, which training is organized and taught by the national bar and followed by an exam.

4. The core duties are taught by experienced lawyers.

5. The core duties are respected by lawyers in practice, these are guidelines in their conduct.

6.1 The enforcement of core duties is in the hands of the Deans of the local Bars, who may advise lawyers in this respect and if necessary take formal steps like complaints, which are submitted to the Disciplinary Tribunals, which exist of a combination of professional judges and lawyers.

6.2 Sanctions for breach of the rules of conduct, including core duties, may be imposed by the Disciplinary Tribunal in formal complaint proceedings. These sanctions consist of:

- a. a formal warning
- b. a reprimand
- c. a temporary suspension from the bar
- d. disbarment

Furthermore the Tribunal may declare that the lawyer has not acted in accordance with the diligence, which is required for proper legal service. Such declaration may be used as basis for a civil claim of compensation of damages and costs.

7. The Dutch Bar does indeed support a resolution that core duties are incorporated in the legal profession. The government is preparing a bill to incorporate core duties in the Act of Lawyers (Advocatenwet). The precise wording of the core duties is however still under consideration.

B. Alternative business structure (ABS)

A.

1. Sole practitioners have always been and of course still are permitted in the jurisdiction of the Netherlands.
2. Partnerships between lawyers are permitted.
3. These partnerships are entitled to employ lawyers rendering legal services and legal and non-legal staff to support these services.

B.

- 1.1 A lawyer is permitted to limit his liability in accordance with a Regulation of the National Bar dated 1991. Art. 7 of this Regulation allows a lawyer to limit his liability, provided he has complied with art. 3 of the Regulation, which stipulates that a lawyer must have a

liability insurance.

1.2 That insurance should cover at least an amount of € 453.780,-- per case up to a total of at least twice this amount per year.

The liability of the partnership may be limited in accordance with the aforementioned Regulation and its stipulations.

The individual lawyer has the benefit of the limitation of liability of the partnership, which should stipulate that the limitation of liability extends to all lawyers and other persons working for the partnership.

The individual lawyer remains responsible and personally liable to his client for his services, even though he is an employee of the partnership. As an employee he also has a liability to his employer, the partnership, however such liability is very much restricted under the laws of employment and will apply only in case of wilful misconduct or gross negligence on the part of the employee.

Liability is strictly limited to legal liability. Commercial liability may be a factor in resolving disputes commercially out of court.

C.

The rules and structures with respect to the business structures in the legal profession are regulated in uniform rules adopted by the National Bar Association.

D.

The National Bar is entitled to issue rules on the basis of the Act on the legal profession (Advocatenwet) and is entitled to prescribe binding rules for all lawyers, who are legally bound to be a member of the Bar.

E.

The position in the Netherlands is that all members of the Bar are subject to the rules of the Bar and the supervision by the administrative bodies of the Bar, including the Dean. Non-lawyers are excluded from these rules, as they are not a member. However, as employee or otherwise subject to their legal relation with the lawyer, who is a member of the Bar, they will be indirectly subject to the material rules, even though the formal rules with respect to disciplinary supervision and sanctions are not applicable to them. It has not been an issue in

the Bar to bring the non-lawyers under the supervision of the Bar and it is questionable whether the bar would endorse a resolution to that effect.

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