

AN ASSOCIATION WITH FULL LEGAL CAPACITY UNDER DUTCH LAW

Memo of the ICHTH President

6 November 2023

RECOMMENDATION

I advise the Executive Committee of the ICHTH Board to postpone the transition to an association with full legal capacity under Dutch law until a better balance is reached between the advantages and disadvantages of achieving legal status.

BACKGROUND

The ICHTH Executive Committee meeting of 6 December 2022, item 14, and the ICHTH Board meeting of 25 February 2023, [item 11](#), discussed an exploratory memo, *Toward a Legal Status for ICHTH*, written by the President. The Board concluded: “Continued investigation of the procedures for conversion to association status to be undertaken by the President in consultation with the Executive Committee, and to update Board as needed.” The following is a second exploratory memo.

IDENTIFYING THE LEGAL STRUCTURE

The mandate given to the President consists of exploring possibilities for giving ICHTH a solid footing by achieving legal status. To that aim, three preliminary decisions are needed.

- The first decision is to choose a country. Preliminary discussions showed that currently the best option is the Netherlands.
- The second decision is to choose a structure from two options: a foundation or an association. A foundation has no members and is set up to achieve an “idealistic” cause (e.g. nature conservation, cultural heritage) or to run a charity. An association has members and is set up to organize social activities with other like-minded individuals on a not-for-profit basis (e.g., improving a shopping street, participating in a sport, making music). The association structure fits ICHTH’s [constitutional objectives](#) best.
- The third decision is to choose between an association with limited or full legal capacity. In the limited variant, no notary is needed but the directors are liable with their private assets for possible debts; in the full variant, a notary is needed, the association has the same rights and duties as citizens under Dutch law, it can own property, it is eligible for subsidies, its directors are only liable for mismanagement, negligence, or failure to list the association in the Dutch Chamber of Commerce Register. The association with full legal capacity under Dutch law seems to be the best option.¹

ACHIEVING THE LEGAL STRUCTURE

The strategy that in our context (that is, a context with international membership) is recommended consists of two stages:

- *Stage 1*: Establish the association with full legal capacity with two directors who master Dutch. If non-Dutch speaking directors are involved in the establishment of the association, there will be huge translation costs and background checks for foreign directors.
- *Stage 2*: Once established, the association expands the board of directors via internal mechanisms not involving juridical oversight.

Stage 1: Establishing the association

- The notary draws up a notarial deed of the association with at least two founding directors (board members) who master Dutch. If all the documentation is available, this takes a few weeks.
- According to Book 2 of the [Dutch Civil Code](#), the notarial deed (Art. 27.1) contains the Statute (Art. 27.3) – the rules and regulations of the legal entity – in Dutch (Art. 27.2). The Statute must specify:
 - Name of the association and address in the Netherlands where it has its seat (Art. 27.4a);
 - Purpose of the association (Art. 27.4b);
 - Member requirements (Art. 27.4c);
 - Procedure for convening the General Assembly (Art. 27.4d);
 - Note:* the GA will probably have to convene annually.
 - Procedure for appointing and removing directors (Art. 27.4e);
 - Rules for dissolving an association and allocation of surplus in this event (Art. 27.4f) and see [source](#).

Amending the deed or statutes must always pass the notary.

- Identification requirement and background checks of the two founding directors.
- The notary arranges the registration of the association in:
 - the Dutch Chamber of Commerce Register
 - the UBO (Ultimate Beneficial Owner) Register.
- *Signing authority:* see [source](#).
- *Personnel:* see [source](#).
- *Social security and national insurance contributions:* see [source](#).
- *Tax:* Non-profit associations are exempt from corporate income tax if the taxable profit in any one year does not exceed €15,000.
- *Fiscal status* (optional): ANBI-status (algemeen nut beogende instelling = public benefit institution). At least three board members are required (e.g., president, secretary, and treasurer); these are no staff; only costs they incur can be reimbursed.
- *Business bank account:* Chamber of Commerce registration number entitles to open a business bank account for the association.
- *Cost* (estimate):
 - € 400 – € 800 for notary (one-time expense);
 - € 75 for registration (one-time expense);
 - € 600 – € 1,800 for obligatory administration (annually).
 - € 120 – € 267 (annually for business bank account).

Stage 2: Expanding the association

- *Board:* By formal decision, the Board appoints new members (no nationality requirement). These are registered (online) in the Dutch Chamber of Commerce after showing a valid identification.
- *By-laws or house rules* (= ICHTH Constitution): they do not pass the notary but they may not conflict with the Statute.

EVALUATING THE TRANSITION TO A LEGAL STRUCTURE

- *Advantages of achieving a legal structure are:*

It increases the trust of members, of CISH, and of third parties in ICHTH's professionalism.

It protects the ICHTH better against financial mismanagement.

It eliminates the current private account, the surplus of which is added to the taxable income of the account holder (the President/treasurer).

- *Disadvantages of achieving a legal structure are:*

It requires a financial investment which may structurally burden ICHTH's current budget which consists entirely of small membership fees.

It requires annual meetings which may structurally burden ICHTH's current limited organizational capacities.

It requires a permanent Board member of Dutch nationality as treasurer and official contact person.

It requires a widespread support base among ICHTH members, which currently does not exist.

Weighing these advantages and disadvantages leads to the conclusion that it is better to postpone the decision about a legal status for ICHTH until a better balance is achieved between its advantages and disadvantages.

Note

¹ *Sources consulted:*

(a) In English:

(1) "Association," <https://business.gov.nl/starting-your-business/choosing-a-business-structure/association/>

(2) "Foundation," <https://business.gov.nl/starting-your-business/choosing-a-business-structure/foundation/>

(b) In Dutch:

<https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/eu-rights-and-rules-in-the-netherlands/eu-businesses/corporate-income-tax-exemption/>

<https://business.gov.nl/regulation/vat-rates-exemptions/>

<https://www.juridischloket.nl/>

<https://www.kvk.nl/service-en-contact/afpraak-maken-en-langskomen/>

<https://www.kvk.nl/inschrijven-en-wijzigen/afpraak-maken-met-de-kvk/afpraak-vve-stichting-of-vereniging-inschrijven/>

<https://ondernemersplein.kvk.nl/de-vereniging/>

<https://www.doehetzelfnotaris.nl/product/huishoudelijk-reglement-vereniging/>

<https://www.doehetzelfnotaris.nl/oprichten-nederlandse-rechtspersoon-met-buitenlandse-bestuurders/>

<https://www.doehetzelfnotaris.nl/vereniging/vereniging-oprichten/>

<https://www.verenigingen.nl/>

<https://www.stichting.nl/how-to-start-a-foundation-in-the-netherlands/>

Useful addresses:

Juridisch loket, Coehoorsingel 4, 9711BS Groningen (Mon 9–11, Tue 14–16, Thur 9–11), tel. 0800–8020.

De Haan Advocaten & Notarissen, Van Elmpstraat 2, 9723 ZL Groningen.

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