

# Top Tips for Doing Capital Markets Deals (the Netherlands)

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A Practice Note setting out top tips from Dutch counsel for doing capital markets deals in the Netherlands. It highlights issues of which lawyers from outside the Netherlands should be aware when doing capital markets work in the Netherlands. This Note mainly focuses on equity transactions.

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The Netherlands is one of the founding members of the EU. It is a key economy in Europe and home to many major multinational companies active in global capital markets. Euronext Amsterdam, formerly known as the Amsterdam Stock Exchange, is one of Europe's oldest and most important securities exchanges. Therefore, capital markets lawyers from outside the Netherlands may often find themselves involved in capital markets deals in the Netherlands or involving Dutch companies.

Capital markets activities in the Netherlands are governed by a harmonised EU regulatory framework, supplemented by Dutch legislation. Key EU regulations include the [Prospectus Regulation \(EU\) 2017/1129](#) (Prospectus Regulation) and the [Market Abuse Regulation \(EU\) 596/2014](#). The [Financial Supervision Act \(Wet op het financieel toezicht\)](#) implements EU directives (such as the [Transparency Directive \(2004/109/EC\)](#)) and sets out Dutch domestic rules.

The principal regulatory agencies overseeing the Dutch capital markets are the Dutch Financial Markets Authority (*Stichting Autoriteit Financiële Markten*) (AFM) and the Dutch Central Bank (*De Nederlandsche Bank N.V.*) (DNB). For more information, see [Practice Note, Securities Regulatory Framework: Overview \(the Netherlands\)](#).

The best advice for foreign lawyers varies depending on the type of transaction. This Note aims to outline top tips that may apply to equity transactions in the Netherlands, although some information may apply to capital markets transactions generally (including debt transactions).

## Top General Tips

### IFRS Conversion of Financial Statements for Public Offerings

To offer securities to the public within the EU or have its securities admitted to trading on an [EU regulated market](#) (such as Euronext Amsterdam), an issuer must prepare a prospectus approved by a competent authority of an EU member state (such as the AFM). The prospectus generally must include financial statements prepared according to the [International Financial Reporting Standards](#) (IFRS). If an issuer has historically prepared its financial statements according to local generally accepted accounting principles (GAAP), it must convert these financial statements to comply with the IFRS (unless they are prepared according to a limited number of national accounting standards that are deemed equivalent to the IFRS, such as [US GAAP](#)). This conversion applies to foreign issuers as well as Dutch issuers, as most unlisted companies in the Netherlands prepare their financial statements according to local Dutch GAAP. The conversion can take a significant amount of time. Therefore, a prospective issuer should start this process well ahead of the contemplated transaction.

### Communications with Regulator

The AFM is a pragmatic, flexible, and thorough regulator. Instead of taking a tick-the-box approach, it reviews all information in a prospectus for consistency, comprehensibility, and relevance to investors. In advance of a public offering, an issuer should initiate communications with the AFM to discuss the proposed timing and scope of disclosure (particularly financial disclosure). Issuer's counsel typically takes the lead in these discussions. When the issuer and the AFM have agreed on a reasonable timetable, the AFM is generally cooperative, which reduces an important aspect of uncertainty in terms of transaction timing.

### Regulatory Scrutiny on Certain Financial Disclosure

When the AFM reviews prospectuses, it pays close attention to financial disclosure. In particular, financial projections and alternative performance measures (APMs) are often subject to heightened scrutiny.

#### Financial Projections

Projected financial results are often helpful to investors. If not prepared with proper care and diligence, however, they can be misleading and expose the issuer to potential liability. Additionally, certain financial targets may fall within the definition of profit forecasts under the Prospectus Regulation. The AFM thoroughly reviews medium- and long-term financial targets to determine if they qualify as profit forecasts. For example, the AFM may consider the combination of a medium-term margin target and a medium-term revenue target as a profit forecast. In that case, the prospectus must comply with additional disclosure requirements that apply to profit forecasts.

#### Alternative Performance Measures

APMs are metrics not defined in the IFRS (or another applicable reporting framework). An issuer must follow specific guidelines when using any APM in a prospectus. Specifically, the APM:

- Cannot be presented more prominently than IFRS measures.
- Must be clearly defined.
- Must be reconciled to its most directly comparable IFRS measure.

The AFM has a strong focus on APMs to ensure their compliance with these guidelines. Furthermore, the prospectus must explain why an APM is used. The AFM may become wary if the issuer uses too many APMs or provides only generic explanations for using APMs.

## Regulatory Scrutiny on Sustainability Disclosure

Public disclosure about environmental, social, and governance (ESG), particularly sustainability factors, has become increasingly widespread in many jurisdictions due to both investor demand and regulatory requirements (for more information on the regulation of ESG and sustainability in the EU, see [ESG and sustainability toolkit \(EU\)](#)). However, false or exaggerated statements about sustainability (known as [greenwashing](#)) can mislead investors and lead to liability.

The AFM carefully scrutinises sustainability claims and targets. Issuers must quantify and substantiate these claims as much as possible and should not present themselves as more sustainable than they are.

## Regulatory Review of Investor Presentations

When an issuer conducts meetings with investors or analysts to market an offering, it should ensure that the presentation materials are accurate and consistent with the prospectus. Although the AFM does not have any formal authority to approve presentation materials, it almost always asks to review them, preferably before the meetings. The AFM may comment on these materials. For example, it may request adding risk factors (if they are not sufficiently included in the presentation materials) to provide a more balanced view of the issuer.

## Complexity Related to M&A Transactions

If an issuer has made any acquisition exceeding 25% of certain financial metrics of the issuer during the year before a public offering, it may need to prepare additional financial statements related to the acquired business. The issuer may also need to prepare *pro forma* financial information to illustrate the impact of the transaction as if the transaction had been completed at the start of the last financial period. The additional disclosure may significantly increase auditing workloads, and potentially delay the offering timetable. Therefore, issuers are typically advised to avoid substantial M&A transactions during the public offering process.

## Flexible Corporate Law Permitting Multi-Class Share Structures

Dutch corporate law is relatively flexible compared with the corporate law in many other jurisdictions. A company can choose to deviate from the provisions in the Dutch Corporate Governance Code as long as it provides a valid explanation.

For example, a Dutch company can freely implement multi-class share structures that provide unequal voting rights. Euronext Amsterdam does not impose any additional restrictions related to unequal voting rights on listed companies. This flexibility has attracted issuers from more restrictive jurisdictions to list and offer securities in the Netherlands.

## Compliance with Dutch Law Regarding Board Structure

Under Dutch law, a company can have a one-tier board consisting of both executive and non-executive directors, but it is more common for a listed company to set up a separate supervisory board consisting of non-executive directors only.

An issuer preparing for listing on Euronext Amsterdam may need to adjust its corporate governance structure to comply with applicable law or market practice. For example, a company that does not already have non-executive directors or a supervisory board needs to appoint non-executive directors or supervisory board members.

In addition, a Dutch company listed on Euronext Amsterdam (or unlisted but exceeding certain size thresholds) must comply with gender diversity rules. Specifically, at least one third of the company's supervisory board members (or non-executive directors in the case of a one-tier board) must be men and at least one third must be women. A Dutch company must also set gender diversity targets for executive directors, but there are no specific numerical requirements for these targets. These gender diversity rules do not apply to non-Dutch companies even if they are listed on Euronext Amsterdam.

## Other Points to Note

## Regulatory Review and Approval

In addition to the top tips discussed above, international counsel should be aware of the following issues in relation to review by the relevant regulators and obtaining approvals in the Netherlands:

- An issuer must publish a prospectus approved by the AFM for a listing on Euronext Amsterdam or a public offering of securities in the Netherlands. For an initial public offering (IPO), the AFM review process usually takes two to three months.
- In addition to financial disclosure (see [Regulatory Scrutiny on Certain Financial Disclosure](#)) and sustainability disclosure (see [Regulatory Scrutiny on Sustainability Disclosure](#)), the AFM also focuses on risk factors, conflicts of interest, and related party transactions when reviewing a prospectus.
- Prospectus exemptions may be available to certain follow-on offerings. For more information, see Practice Note, [Securities Regulatory Framework: Overview \(the Netherlands\): Exemptions](#).

## Disclosure and Transaction Documents

In addition to the top tips discussed above, international counsel should be aware of the following issues in relation to disclosure and transaction documents:

- In the Netherlands, a prospectus must be prepared in English. In the case of a retail offering, the issuer typically also includes a prospectus summary in Dutch (in addition to the English summary).
- Due diligence reports are not required. However, underwriters typically require issuer's counsel and underwriters' counsel to issue customary legal opinions and, in the case of [Rule 144A offerings](#) to US [qualified institutional buyers](#), [10b-5 letters](#).
- The shares to be listed on Euronext Amsterdam must be included in the book-entry systems of Euroclear. For a non-Dutch issuer, Euroclear requires a legal opinion regarding the transferability of the shares.

## Other Legal or Regulatory Issues

In addition to the top tips discussed above, international counsel should be aware of the following legal or regulatory issues:

- Shares of Dutch listed companies must be registered shares (*aandelen op naam*), which require the keeping of a shareholders register. In practice, Euroclear Netherlands or another central securities depository is registered in the shareholders register as the sole holder of the shares included in the book-entry systems.
- Restrictions on foreign investments are typically not relevant to securities offerings in the Netherlands, except when the issuer operates in certain specified sectors, such as defence, vital services (such as telecommunications and data centers), or business campuses.
- Shareholder approval is generally required for a public offering, listing, and the associated corporate actions. By default, a simple majority is sufficient to approve the actions (unless the pre-IPO articles of association require a greater majority).

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