Legal system and disputes

- The Netherlands has a legal system based on Napoleontic Law. The main areas for businesses to keep in mind are criminal law, civil law, tax law and administrative law. Commercial law, employer's liability and contract law are mostly found in the Civil Code (Burgerlijk Wetboek).

- The Netherlands is not litigation-minded, due to the culturally engrained consensus seeking known as the Rhineland Approach (also called "Polder Model"). This is the case in all sorts of relationships between "potential adversaries", such as employee-employer, manufacturer-consumer, insurer-insured etc. Consequently, the "lawyer density" is less than 20% of what it is in the United States.

- There is no jury system in The Netherlands. In civil courts there are three normal levels, plus a special system of local small claims courts. For the latter, it is not mandatory to appoint an attorney, and parties may plead themselves.

- The plaintiff who starts a court case will always incur initial costs (court, bailiff and levies), even if he/she starts the case as a private person. Such costs may be subsidized partly (low income) or covered by legal costs insurance or benefits from a trade union. The party that loses a court case, including the plaintiff (even if a private person) will have to pay the court costs as well as a part of the legal fees incurred by the winning party.

- **Our advice: Getting into a dispute in a very confrontational fashion ("Anglo-Saxon style") is usually considered as unnecessary, ineffective, and only good for the income of lawyers. Even courts may frown on it. It is often perceived as unreasonableness and it may close doors to negotiations before they even started. Always involve an experienced local, not necessarily a lawyer, in designing your strategy to resolve a dispute.**

Products and consumer protection

- European legislation and regulation is largely incorporated in national law. In connection with liability risk, please note that the European Guideline on Product Liability has almost completely been adopted, with the common exceptions such as unprocessed agriculture products.

- In practice, product liability law is almost a strict liability (no proof of guilt needed), placed primarily on the party that introduced and placed the product into the common European market. This is the manufacturer if the product has been produced into the EU, or the importer into the EU if the product comes from outside the EU. However, all parties in the supply chain within the EU run a product liability risk, at the very least theoretically. The main trigger of product liability is that the claimant has to establish (but not prove) that the product did not provide the safety that could reasonably be expected from it.

- Apart from pharmaceutical products and medical devices, product safety for consumer products, including food, feed and non-food, is monitored and enforced by the NVWA. Safety standards are in line with EFSA, CE and almost all other European standards.

- The Dutch NVWA is connected and an active contributor to the EU's safety alert systems for food and feed (RASF) and non-food (RAPEX) products. The agency is an accessible and rather pragmatic institution when it comes to discussing corrective actions such as product recall. Unlike its counterpart in some other countries (such as the German Länder), the agency takes the severity of safety risks into consideration in its requirements for corrective action. However, it is very adamant on not accepting unnecessary long periods of inactivity.

- Privacy law standards according to European privacy law have been fully incorporated into national law.

- Product liability insurance is usually part of general corporate and business liability policies, and relatively inexpensive. Insurance tax however is relatively high (21%).

Employer's liability

- Unlike other European countries, such as Belgium, employer's liability forms a substantial risk. In case of accidents at work and/or occupational disease, employees have a relatively easy hurdle to take in terms of burden of proof. Apart from unsafe working conditions, this employer's liability can also be triggered by the failure on the employer's side to provide sufficient protective gear and measures, the failure to instruct safety precautions and safe working methods, failure to enforce and supervise the adherence to precautions and use of safety gear, as well as the failure to exclude employees who have shown to not adhere.

- The employer usually has to pay full wages for the first year to sick or injured employees, also if the cause is not work related. This can be covered by special insurance (expensive).

- If the injury or disease has been caused by a third party, the employer has a subrogation right for its continued wage payments, as well as some other damage and costs, against this third party. However, this is only possible up to the extent that the employee him/herself would have had such recovery claim. For example, wages can only be reclaimed on net-of-tax basis. There are several loss adjusting companies that can carry out such recourse on basis of an attractive no-cure-no-pay fee structure. We strongly recommend the use of such services given the complexity of such recoveries.

- **Our advice: Such recovery against third parties is also possible on retroactive basis. Ask your HR department to check if in the last five years (statute of limitation) any disabilities have occurred due to the fault of others; however, be careful not to violate privacy laws when asking the injured employees about possible liable third parties.**

- The control on recovery and rehabilitation efforts, which are mandatory on both sides, can be outsourced to special organizations (such an organization is called "Arbodienst").

- Laying off a sick or injured employee is possible only after two years of sick leave, unless it was a temporary employment contract.

- The damages that employees can claim under employer's liability are all damages and costs that exceed the medical and wage compensations provided by the social security system. Therefore such claims can be very expensive, especially if the claimant is a young person, at the beginning of a promising career. The most common items in employer's liability claims are the following:
    - past, current and future earning loss, including future loss of career opportunities,
    - loss of build-up of old age pension in excess of the basic national old age pension,
    - pain and suffering; in the Netherlands mostly for the victim him/herself, very rarely for relatives,
    - cost of medically needed assistance in personal and household care,
    - medically necessary costs of adaptation to house and means of transportation
    - cost of reschooling and reintegration,
    - costs and fees connected with pursuing the claim, including legal fees, fees for occupational health and reintegration experts, fees for assessors, litigation costs etc.

- The government agencies and health insurers usually do not take recovery against the employer for their payments, except in case of intent or gross recklessness on the side of the employer. Their burden of proof is rather steep. Nevertheless, there are instances where they give it a try without a valid cause, especially if the case handler is inexperienced.

- **Our advice: employers should not give in to recovery claims from social and medical insurers without a fight, unless it is clear from the onset that the recovery claim is justified.**

- General business liability insurance usually covers the employer's liability risk, including the cost of defense against such claims. Deductibles and exceptions may apply. The policy time trigger (nowadays) is usually the claims-made principle. This means that the claim against the insured company must have been made during the validity period of the policy. Often it is required that also the occurrence to which the claim relates actually happened during the validity period, or only became known to the Insured during the validity. After the end of the validity period, there is sometimes an "extended reporting period" of one year, for claims that still should be covered. This claims-made time trigger makes it impossible to report claims with a cause in the far past under a modern policy.

- **Our urgent advice: Do not put potential money through the paper shredder! If your company exists already long time (i.e. 20+ years), secure all your old liability policies TODAY! Old policies, that may have expired long ago, probably had different time triggers. They may still be open to so-called "long tail" risks, such as old environmental damage (with a sudden cause) or occupational diseases with a long latency time (i.e. asbestos related diseases). We offer Insurance Archaeology, a service to research all your old liability policies and related documents, and to identify which policies may still be open to such claims and who are the insurers that can be approached.**

Some important statutes of limitation and repose in The Netherlands

- The Netherlands has a diverse system of time limitations. Most common examples are:

Subject	Limitation	Starting after	Remarks
General	**5 years**, a specific act by claimant is needed to extend	The time that the claimant knew or should have known to have sustained loss or damages and could have known who to claim against. Period starts again after the defending party denied or contested claim.	Absolute period (statute of repose) is **20 years** after the causation of the occurrence
Environmental damage	**5 years**, a specific act by claimant is needed to extend	The time that the claimant knew or should have known to have sustained loss or damages and could have known who to claim against. Period starts again after the defending party denied or contested claim.	Absolute period (statute of repose) is **30 years** after the causation of the occurrence
Employer's liability	**5 years**, a specific act by claimant is needed to extend	The time that the claimant knew or should have known to have sustained loss or damages and could have known who to claim against. Period starts again after the defending party denied or contested claim.	Absolute period (statute of repose) is normally **20 years** after the causation of the occurrence, **30 years** if caused by a dangerous substance. **This period can be overridden** if certain criteria are met, which may be the case in claims related to **asbestos**.
Automobile and motorist strict liability	**5 years, but only 3 years for a direct claim against the insure**r. A specific act by claimant is needed to extend	The date of the fact from which the damage was the result. Period starts again after the defending party denied or contested claim.	Absolute period (statute of repose) is **20 years** after the occurrence. This is theory because in case of a hit and run or uninsured motorist, the claim should be made against the Guarantee Institute **within 3 years.**
Product liability (strict)	**3 years**, a specific act by claimant is needed to extend. If expired, tort claim is still an option.	The time that the claimant knew or should have known to have sustained loss or damages and could have known who to claim against. Period starts again after the defending party denied or contested claim.	Absolute period (statute of repose) is **10 years** after the product was placed in the stream of commerce. If expired, claimant can fall back on **general liability** (tort/negligence) with a heavier burden of proof.

- Some sector-specific statutes of limitation and repose exist, for example in construction.