

THE LAW IN THE NETHERLANDS AND YOU

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Opening hours of the Netherlands Law Center

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INTRODUCTION

Why Learn about Dutch law?

Living in a foreign country can be an exciting experience: a different culture, interesting places to visit and new people to meet. It can also be scary at times since it also means you may be confronted with rules and laws possibly as foreign to you as the language you hear. For historical, cultural and other reasons, different countries have different legal systems. Fortunately, learning the legal rules for everyday situations is not hard and can save yourself some major headaches and money. Some people erroneously believe that since they are overseas and covered by the NATO Status of Forces Agreement (NATO SOFA), they are **IMMUNE** to the laws of the host nation. **THIS IS NOT SO!!** This is a myth possibly created by “barracks” lawyers. The legal system of your host nation can have a tremendous impact on your daily life. Ignoring this fact can ruin your tour overseas and make your stay in the Netherlands an unpleasant one. Try to anticipate possible problems and do not wait to get help until it is too late!!! **One rule to never forget: do not ignore official or normal looking mail just because you cannot read it! It is usually sent to you for a reason. The sender likely wants an answer or payment and will not give up on the matter.**

This booklet covers some Dutch legal issues which may appear in your day-to-day life. We have selected topics that address issues that many clients have brought to our office throughout the years.

These topics will be discussed on a general level. The information provided may not answer all questions arising in your specific case or cover all the circumstances that make each case so unique. **CONTACT YOUR SERVICING LEGAL OFFICE TO ENSURE YOU UNDERSTAND THE RULES AS THEY APPLY TO YOUR PARTICULAR SITUATION!!!**

The Netherlands Law Center is the only U.S. military legal office in the Netherlands with a Dutch attorney to assist you with Dutch legal matters. So please visit our office, located at the U.S. Army Garrison Schinnen, building 37, Borgerweg 10, in Schinnen, Telephone: DSN 360-7688, CML 046-4437688, FAX 360-7687, CML 046-4437687. You can also obtain helpful information from our website at <http://www.usagschinnen.eur.army.mil/sites/installation/NELC>.

We encourage you to contact our office before your issues become real legal problems. There are no “stupid” questions and we are happy to help. If possible, please make an appointment, unless you have an emergency that requires immediate assistance. We do not want you to arrive and not be able to assist you because an attorney is unavailable. If you believe this pamphlet should address other issues of importance to you, let us know and we will attempt to cover them in our next issue of “The Law in the Netherlands and You.”

An Overview of the Netherlands

To begin, let's take a quick look at your new country of residence, the Netherlands, by giving you a little taste of Dutch society. Historically, North and South Holland, two of the current twelve provinces that consist of the Netherlands, have been fairly dominant both politically and economically in this "alliance" of provinces. As a result, the Netherlands was and is still often referred to as "Holland." However, those that reside in the other provinces of the Netherlands may feel somewhat offended by referring to their country solely as "Holland." Therefore, it is better to refer to the country as the Netherlands.

Languages

The generally used language is Dutch. However, there is a second official language called "Fries" (Frisian), which is mainly used in the northern province of Friesland. You will also find numerous regional or local dialects that may sound like entirely different languages by themselves. Generally, English is spoken and understood throughout the country. In most tourist areas, you can also communicate in German.

Government organization

Type: Parliamentary democracy under a constitutional monarch.

Constitution: 1814 and 1848, regularly updated since.

Branches:

Executive: Monarch (chief of state), in coordination with prime minister (head of government) and his or her cabinet (board of ministers).

Legislative: Bicameral parliament (First and Second Chamber), which is comparable to the U.S. congress and senate.

Judicial: One Supreme Court, 5 appellate courts and 19 district courts.

Subdivisions: 12 provinces and 443 municipalities

Main political parties: Christian Democratic Appeal (CDA), Labor Party (PvdA), Liberal Party (VVD), Democrats '66 (D'66), Socialist Party (SP), PVV (Party for Freedom), Groen Links (Environmental Party) and other minor parties.

Suffrage: Universal at 18.

Government and Political Conditions:

The present constitution dates from 1848 and has been amended several times. Its provisions protect individual and political freedoms, including freedom of religion. Although church and state are separate, a few historical ties remain; the royal family belongs to the Dutch Reformed Church (Protestant). Freedom of speech is also protected, when it is not specifically restricted by law. Therefore, there is no absolute freedom of speech. The Netherlands has some insult and libel laws that can have civil and criminal law implications. For example, it is a criminal violation to insult the Dutch public authorities, a civil servant in the performance of his duties or even the head of state of a befriended nation.

Government Structure:

The country's government is based on the principles of ministerial responsibility and parliamentary government. The national government is comprised of three main institutions: the Monarch, the Council of Ministers, and the States General. Additionally, there are local provincial and municipal governments.

The Monarch:

The Queen is the symbolic head of state. Her function is largely ceremonial, but she does have some influence deriving from the traditional connection with the House of Orange – from which Dutch monarchs for more than three centuries have been chosen, the personal qualities of the Queen; and her power to appoint the “formateur,” who forms the Council of Ministers (Cabinet) following elections.

The Council of Ministers plans and implements government policy. The Monarch and the Council of Ministers together are called the Crown. The ministers also control government ministries, although ministers-without-portfolio have existed. The ministers, collectively and individually, are responsible to the States General. Unlike the British system, Dutch ministers cannot simultaneously be members of parliament.

The Council of State is a constitutionally established advisory body to the government which consists of members of the royal family and Crown-appointed members generally having political, commercial, diplomatic or military experience. The Council of State must be consulted by the cabinet on proposed legislation before a law is submitted to the parliament. The Council of State also serves as a channel of appeal for citizens against executive branch decisions.

States General (parliament):

The Dutch parliament consists of two houses, the First Chamber and the Second Chamber. Historically, Dutch governments have been based on the support of a majority in both houses of parliament. The Second Chamber is by far the more important of the two houses. It alone has the right to initiate legislation and amend bills submitted by the Council of Ministers. It shares with the First Chamber the right to question ministers and state secretaries.

The Second Chamber consists of 150 members, elected directly for a four year term on the basis of a nationwide system of proportional representation. This system means that members represent the whole country (rather than individual districts as in the United States) and are normally elected on a party slate, not on an individual basis. There is no threshold for small-party representation. Campaigns usually last between six to ten weeks, and the election budgets are very limited. The electoral system makes a coalition government almost inevitable. The most recent election in 2006 resulted in a CDA, PvdA and Christenunie (Christian Union) coalition government.

The First Chamber is composed of 75 members elected for four year terms by the 12 provincial legislatures. It cannot initiate or amend legislation, but its approval of bills passed by the Second Chamber is required before bills can become law. The First Chamber meets only once a week and its members usually have other full-time jobs. The current First Chamber was elected following provincial elections in March 2007 (next provincial elections to be held in March 2011).

Courts:

The judiciary is comprised of 62 cantonal courts, 19 district courts, five courts of appeal and a Supreme Court which has 24 justices. All judicial appointments are made by the Crown. Judges are appointed for life but many retire at age 70. There is no division between state and federal courts. (See the section on litigation for more information.)

Local government:

The first-level administrative divisions are the 12 provinces, each governed by a locally elected provincial council and a provincial executive appointed by members of the provincial council. Elections were held in March 2007. A queen's commissioner appointed by the Crown formally heads the province. The current 458 municipalities are controlled by the mayor (appointed by the Crown) and the aldermen. The aldermen are elected, but do not necessarily have to be picked from the city council. The municipal council is elected every four years by the residents of the municipality and has control over the mayor and aldermen. This control is similar to the control the parliament has over the central government. Recent municipal elections were in 2006.

Economy:

The Netherlands has a prosperous and open economy, which depends heavily on foreign trade. The economy is noted for stable industrial relations, moderate unemployment and inflation, a sizable current account surplus, and an important role as a European transportation hub. Industrial activity is predominantly focused on food processing, chemicals, petroleum refining, and electrical machinery. A highly mechanized agricultural sector employs no more than 3% of the labor force, but provides large surpluses for the food-processing industry and for exports. The Netherlands, along with 11 of its EU partners, began circulating the euro currency on 1 January 2002. The country has been one of the leading European nations for attracting foreign direct investment and is one of the four largest investors in the United States. The pace of job

growth reached 10-year highs in 2007, but economic growth fell sharply in 2008 as fallout from the world financial crisis constricted demand and raised the specter of a recession in 2009.

Government Role:

Although the private sector is the cornerstone of the economy, the Netherlands has an important and vibrant public sector. The government plays a significant role through the permit requirements and regulations pertaining to almost every aspect of economic activity. The government combines a rigorous and stable microeconomic policy with wide-ranging structural and regulatory reforms. The government has gradually reduced its role in the economy since the 1980s, and privatization and deregulation continue unabated.

Environmental Policy:

The Netherlands is a small and densely populated country. Its economy depends on industry, particularly chemicals and metal processing, intensive agriculture and horticulture, and on its infrastructure, which takes advantage of the country's geographical position at the heart of Europe's transportation network. These factors have placed major pressure on the environment.

The National Environmental Policy Plan (NMP) sets out Dutch environmental policy. Under NMP-4, published in 2001, the government seeks to cut back on all forms of pollution by 80 to 90% within one generation, meaning that by 2030, the present generation should be able to pass on a clean environment to the next one.

Although the environmental quality in the Netherlands has improved significantly, some important targets, particularly with respect to nitrogen oxide and ammonia emissions, climate change and noise reduction, will be difficult to reach.

The Dutch Government works closely with industry and non-governmental organizations to reach environmental targets. In order to meet the Kyoto target of reducing greenhouse gas emissions by 6% in the 2008-2012 period from 1990 levels, the government reached an agreement with industry and the energy sector on emission rights trading. The current government's policy is to achieve a 30% reduction in greenhouse gas emissions by 2020 from 1990 levels.

Foreign relations:

The Netherlands abandoned its traditional policy of neutrality after World War II. The Dutch have since become engaged participants in international affairs. Dutch foreign policy is geared towards promoting a variety of goals: transatlanticism; European integration; Third World development; and respect for international law, human rights and democracy.

As a relatively small country, the Netherlands generally pursues its foreign policy interests within the framework of multilateral organizations. The Netherlands is an active and responsible participant in the United Nations system, as well as other multilateral organizations such as the Organization for Security and Cooperation in Europe, Organization for Economic Cooperation

and Development (OECD), World Trade Organization (WTO), and International Monetary Fund. A centuries-old tradition of legal scholarship has made the Netherlands the home of the International Court of Justice; the Iran Claims Tribunal; the Yugoslavia War Crime Tribunals; the European police organization, Europol; the Organization for the Prevention of Chemical Weapons; and the newly established International Criminal Court.

Dutch security policy is based primarily on membership in NATO, which the Netherlands joined in 1949. The Dutch also pursue defense cooperation within Europe, as part of the European Union's Rapid Reaction Force, which became effective in 2004. In recent years, the Dutch have become significant contributors to UN peacekeeping efforts around the world, as well as to the Stabilization Force in Bosnia and Herzegovina (SFOR) in Bosnia and Kosovo. Most recently, they have been participating in security operations in Iraq and Afghanistan.

The Dutch have been strong advocates of European integration, and most aspects of their foreign, economic and trade policies are coordinated through the European Union (EU). The Netherlands' post-war customs union with Belgium and Luxembourg (the Benelux group) paved the way for the formation of the European Community (a precursor to the EU), of which the Netherlands was a founding member. Likewise, the Benelux abolition of internal border controls was a model for the Schengen Accord, which today has ten European signatories – including the Netherlands – pledged to common visa policies and free movement of people across common borders.

The Dutch stood at the cradle of the 1992 Maastricht Treaty and have been the architects of the Treaty of Amsterdam concluded in 1998 to enhance the development of the European Union. Thus, the Dutch have been playing an important role in European political and monetary integration.

U.S. relations:

The United States' partnership with the Netherlands is one of its oldest continuous relationships and dates back to the American Revolution. This excellent bilateral relationship is based on close historical and cultural ties and a common dedication to individual freedom and human rights. The United States attaches great value to its strong economic and commercial ties with the Dutch. The Netherlands is one of the largest direct investors in the United States and the United States is the largest direct foreign investor in the Netherlands.

The United States and the Netherlands often take similar positions on issues and often work together on matters concerning NATO through their bilateral relationship, the UN or other multilateral organizations. The Dutch play a decisive role in European political and monetary integration.

Now let's dig into some regular day-to-day Dutch law issues!

This information is for a large part derived from the Netherlands' Country Background Notes prepared by the U.S. State Department. The full version can be viewed at <http://www.state.gov>.

II

ARRIVAL AND REGISTRATION

Arrival in the Netherlands

WARNING: Servicemembers and civilians assigned to THE NETHERLANDS who have a non-U.S. or non-EU spouse must check with their servicing personnel office and the State Department regarding visa or other entry requirements. The Netherlands, as many other European Union Member States, require a visa for citizens of certain countries. Failure to comply with visa requirements can prevent a Family member from initially entering Europe or residing in the Netherlands.

Military members of NATO Forces in the Netherlands are not required to register as aliens. However, civilian personnel and all spouses and dependents must obtain an alien registration. For this purpose, personnel in the JFC Brunssum region must report and register with the permits office at the Royal Marechaussee Office (RMR) at JFC in Brunssum within **8 DAYS** after their arrival.

For personnel stationed in the Netherlands, registration with the local city is optional.

III

DUTCH CONTRACT LAW

In General

Buy a car or a loaf of bread and you have entered into a contract. Usually, unless we sign a piece of paper expressing the mutual wishes and understanding of the parties (as we should when for example ordering and buying a new car), we do not consciously think that we are making a contract. However, a contract is a “meeting of the minds” to exchange goods or services: I offer to mow your lawn and you to pay me five dollars. Being an American stationed in the Netherlands does not give you any privileged status, except for situations that are specifically covered by specific NATO or United States – Netherlands agreements. When signing a private lease for a house, you are treated as any normal Dutch resident renting a home.

In the Netherlands, no special formalities are needed to form a binding contract. Contracts can be made orally, as in the lawn mowing example above, and will be binding. When everyone acts as agreed upon in the contract, there is usually no problem. Sometimes, things don’t work out that way. Please be advised that there may not always be a remedy if someone does not comply with his or her obligations. (Even attorneys cannot make water burn if you are in a no-win situation.) For example, the car you ordered and signed for comes in and the dealer wishes to be paid upon delivery of the car, but you just changed your mind and refuse to accept delivery and to pay for the vehicle. This contract is binding and you have to pay for the car. (However, most dealers will then charge you a fine for not accepting the car and release you from the contract. Be sure to read the small print of the purchase order.) Sometimes the matter is just too trivial to pursue. For example, the window cleaner arrives in the afternoon to clean the outside windows instead of the morning as promised. He was already paid to provide the service and now you want your money back.

Sometimes, however, the matter is sufficiently significant to warrant assertion of your rights. A written contract is usually essential to support your position. If you have to take the matter to court, proving oral contracts can be quite difficult. In general, the claimant must prove the existence of the contract and its exact terms. That is why a written contract is vital. For example, you ordered a three-seat couch and the store attempts to deliver a two-seater. Your invoice will show exactly what you ordered. Therefore, when you refuse delivery because the store did not honor its obligations, you don’t have to pay.

If you do business with a store as a consumer, it is wise, especially when buying high-value items or asking for costly services, to know the exact conditions of the purchase or the service that will be provided to you. The best way to ensure that there is no misunderstanding between the parties? **A Written Contract!**

If you plan to enter into a contract (Dutch or even English) and you are unsure of the conditions and its ramifications, save yourself some headaches by contacting your servicing legal office for assistance. Be sure to take the contract for the attorney’s review.

General terms and conditions (Algemene Voorwaarden):

Many business entities use so-called general terms and conditions when conducting business-to-business or consumer contracts/transactions. These conditions set-out the rules applicable to the contract. By signing the contract you generally accept the applicability of the rules to your particular contract. These rules can vary extensively depending on what type of contract you have entered into. The general terms and conditions that may come with the lease you signed for your house will likely be very different from the ones that come with the contract to buy your new car.

The law provides certain rules that business entities must comply with when using general conditions in a contract. To apply these general conditions to your contract, you must have some form of notice. They should initially give you a copy of the general conditions or they must provide it to you upon your request. These conditions apply unless they are considered unfair.

The fact that the contract is in Dutch and you do not read Dutch is not considered unfair!

Consider having your servicing legal office review the contract with you. Most conditions are spelled out on the back of the contract or referred to in the contract.

SPECIFIC CONTRACTS YOU MIGHT BE CONFRONTED WITH:

A. LEASING A HOUSE OR APARTMENT

Perhaps the most important contract you may sign in the Netherlands is your lease. The Housing Referral Office (HRO) uses standard lease contracts in English (translated into Dutch for your landlord). The standard lease used by HRO contains a format that favors the tenant more than the normal Dutch lease. The landlord may prefer another format. There is nothing illegal or “fishy” about a landlord preferring another format. However, if the lease the landlord prefers is in Dutch and you are not fluent in Dutch, you may not understand your rights and obligations. Consider how hard it is to read some English-language standard format leases back in the United States! Also, it is crucial to make sure that your lease contains a specific provision (the so-called “military cause”) that allows you to terminate your lease if you are reassigned. Without this termination clause, you might end-up owing the landlord rent for the remaining time on the lease. At a minimum, take your lease to the HRO for review. We strongly suggest you see your servicing legal office as well if the HRO cannot provide with you sufficient information.

Rental Payments

Your most important obligation to your landlord is the timely payment of your rent. The best way to pay your rent is by electronic bank transfer. Normally, Dutch banks provide this service free of charge if you have a checking account with them. If not, they take a fee for processing your payment. If you have an account with them, the bank provides you a periodic statement showing that you have made your payments and when. You can also make cash deposits to your landlord’s bank account at his or her bank, or you can pay your landlord in cash. When making cash payments, **ask for a DATED and SIGNED RECEIPT!** However you choose to pay, keep your receipts or bank transfer records for several months after you leave the Netherlands. If your landlord claims you missed one or more payments, you can then easily dispense with that

accusation by providing a copy of that payment or bank receipt. You are normally required to pay by the first day of the month. Bank payments will always take several days before it shows on the landlord's account. To get the money to your landlord in time, give the bank timely notice to make the money transfer; this is normally at least five working days. To ensure timely bank transfer, consider **automatic transfer** of your rent payment through your bank. Be sure there is sufficient money in the account when the transfer will be made; if there is an insufficient balance, the bank **might not** make the transfer. Orders for automatic transfers can be recalled by your bank at any time. However, some time is needed for the automatic transfer recall to become effective. So do this in a timely matter! Ask your bank for the length of time necessary to recall a transfer.

Now some rules pertaining to the **RENT** itself.

In general, when opening the negotiations with the landlord, the amount of rent you pay is negotiable. For rent that is likely more than €621.78 (as of 1 July 2007, the figure is adjusted every year), the so-called market value rent must be determined. This is not easy. It depends on what rent is charged for similar houses, in similar locations. It normally takes a real estate agency to determine the real market value. However, the HRO normally has a pretty good idea of what rental price your landlord should charge for your home.

Once set, rent is pretty much permanent, except for possible rent increases and the situation discussed in paragraph five below.

Rent Increases

1. The Dutch Government has changed the system of rental increases considerably for leases beginning on and after 1 July 1994. For leases prior to this date the old mandatory rent increase and protection system still applies, resulting in rent increase percentages that are set by the Dutch Government each year. Rent can be increased every 12 months.
2. If your lease is concluded on or after 1 July 1994 and your basic rent (rental payment less costs for services or carpeting/curtains) exceeds €621.78 a month (see above), your rent normally can be increased every 12 months by a percentage or amount that brings your house to a commercially reasonable rent level. This means that the normal governmental **rental price protection** as stated in the Dutch Residential Tenancies Rent Act is **no longer applicable**. This system is referred to as "**liberalization**." Your rent increase is set by commercial standards and not by the Dutch central government annual rent increase percentages. However, this also means that you can now negotiate contracts that state specifically how much the landlord can increase your rent every year (if at all).
3. If you disagree with a suggested "liberalized" rent increase, you should inform your landlord who can then petition for the Magistrate Court (part of the District Court) to rule on the matter. An appraisal of the rent by a realtor is strongly recommended for this situation.
4. Rent less than €621.78 still falls under the Dutch Residential Tenancies Rent Act. This means that, generally speaking, the landlord can only increase your rent once every 12 months

by a percentage set annually by the Dutch Government, usually to become effective 1 July. This also means that even if your contract states that your landlord may not increase the rent, the landlord can legally still do so. The rental legislation cannot be overturned by an individual contract. However, if a no increase clause is incorporated in the lease, most landlords will adhere to the contract.

5. After having signed the lease, you might be of the opinion that the landlord is **overcharging** you. What can you do? You can submit a request to the so called “Huurcommissie” (rent assessment committee), within six months after the lease began, to determine whether the rent should be under €615.01 (the line between “liberalization” and rental protection). If so, the rent will be adjusted and fall under the Residential Tenancies Rent Act. If not, the rent that you agreed upon will still be binding, unless the landlord voluntarily agrees to a rent decrease – a situation that is very unlikely to happen.

Termination by the Tenant

You may desire to terminate the lease for all kinds of reasons: You leave the Netherlands, your home becomes too expensive, the landlord does not properly maintain your home, your home is burglarized all the time, your neighbors annoy you, etc. Termination can be confusing because of some of the Dutch legal requirements. These requirements may apply, even if the lease contract states otherwise!

Dutch law basically distinguishes between leases for a definite period (i.e., for one or two years) and an indefinite period (i.e., no set period).

1. A lease for a definite period normally cannot be terminated before the end of the designated period, unless conditions in the contract state differently. For example, the standard Housing Referral Office (HRO) lease contains a so-called “military clause” that enables you to terminate your lease if you have orders reassigning you to another duty location outside the South Limburg region or if you are assigned to Government quarters.
2. If you do not have a “military clause” in your lease for a definite period, the only other way to get out of your lease before the end date of the contract is if your landlord consents to let you go. Many landlords will only agree if you can find a suitable substitute tenant to take over the lease. Ask the HRO for assistance. Also, if your landlord agrees to break the lease, always get his or her agreement in writing, or have witnesses available who can confirm the existence of the agreement.
3. Clearly, a long-term lease (two to three years) is not easy to break. Since Dutch rental law provides good protections for tenants, your best course is to enter into a short-term lease, (i.e., one **year**). This is also a time period generally acceptable for landlords. After one year, as is often the case in the United States, the lease becomes a lease for an indefinite period of time. Then, you must generally give one full calendar month’s notice to the landlord of your intent terminate the indefinite lease. However, the notice period for an indefinite lease can be a maximum of three months, but this must be specified in the lease.

4. **Termination notice** of one month actually means one full calendar month. The consequences are explained in the example below.

Example:

Let's assume that on 12 July, you send out your registered letter terminating your lease. Let's also assume that your termination notice period is one month. This means that the earliest date your lease will end is 31 August. There must be one full calendar month between the date the landlord receives your notice and the end of the lease.

5. By law the **termination notice** must be sent by **registered mail or bailiff's notice**.

Termination by the Landlord

According to Dutch law, the landlord can only terminate the lease if at least one out of five limited situations exists. At least one of these reasons must be explicitly stated in the landlord's termination notice. If that is not the case, the termination is invalid. Also, a termination notice, even if valid, does not mean that you automatically have to leave the house. You can only be forced to leave the house once the landlord has obtained a **court order** telling you to evacuate the house by a certain date.

The five **termination reasons** are:

1. The lease states explicitly that the house must be vacated after a definite period has lapsed because the landlord himself wants to move in again. This could occur if he or she was assigned abroad and expects to return after a certain period. This reason is not valid if the landlord does not have an actual interest in returning (i.e., he or she decides to live somewhere else).
2. The tenant does not wish to accept a new reasonable offer for a new lease for the property. The offer cannot pertain to a new rental price.
3. The landlord needs the house for **personal** use. This is one of the reasons most **commonly** used by landlords. In this situation, the interests of both parties must be considered first. If the tenant's interest in remaining in the home outweighs the landlord's interest in moving into the home, the tenant can stay. If the landlord's interests are more meritorious, it must be clear that similar housing is available for the tenant (i.e., the tenant as well as the landlord has an obligation to look for new quarters). If the parties cannot agree, a court must decide (see above). Also, if the landlord is allowed to move in and other suitable housing is available, the court will usually rule that the landlord pays the tenant compensation for moving expenses and certain other costs due to the move, such as curtains, floor covering that will not fit the new quarters, reconnecting the telephone, etc.

If your landlord tells you he or she wants to move into the quarters him or herself, we suggest you contact your servicing legal office to find out your rights. If you decide to move voluntarily and you can come to an agreement with the landlord on how to handle the move and the expenses involved, a court order is obviously not required. However, be sure any **agreement**

you make is in **writing and signed by the landlord** so later on there is no argument or disagreement about what you agreed upon.

4. Another reason for a landlord to terminate is when the tenant does not comply with his or her contractual obligations, such as not paying rent in a timely matter, or greatly damaging the property.

5. The last legitimate reason for termination by the landlord is when you rent a *dependent* part of a house in which the landlord him/herself also lives, and the landlord proves that his or her interests for terminating the lease outweigh your interests to continue the lease. Clearly, this reason for termination is very case specific.

Sale of Your House by the Landlord

What if your landlord wants to sell the house you are renting? **Selling** the house is **not a valid reason** for the landlord to terminate the lease. The new owner must take over the current tenant and the lease. What if the new owner wants the house for his/her personal use? That is a valid reason for termination by your landlord, right? By law, the **new landlord** must wait three years before he or she can start this action. The landlord must inform you of the sale of the property. Obviously, you must also be notified to whom the rental payments must be paid to and when to start making payments to the new landlord.

During the process of selling the house, the owner may ask that you allow potential buyers into the house to inspect the interior of the home. The times and possible number of days per week should be mutually agreed upon and should be reasonable. Two days per week is generally considered reasonable. You should be notified of the visits. Sometimes these visiting rights are specified in your lease.

Obviously, you still may voluntarily agree to move out of the house. We advise you to make this agreement in writing, with the stipulation that the landlord will pay for all expenses related to your move. Also, allow yourself sufficient time to find a new suitable house. You should also make that a condition of your agreement.

B. CONSUMER CONTRACTS AND WARRANTY

Consumer Law in the Netherlands does not provide as much consumer protections as consumer laws in the United States. This is particularly true if you intend to make large purchases such as furniture on the economy. To prevent future problems, you should be aware of your “limited” rights. The rules below apply to you as a consumer contracting with commercial partners.

1. **Once you buy an item, you are pretty much stuck with it.** Stores do not need to accept a returned item simply because you decide you do not want it anymore. **Check before you buy.** Some stores may give you a credit for the money you spent on a returned item to enable you to buy something else in the store. Some stores may even have very liberal return policies.

2. As of 1 May 2003, the “Purchases and Warranties Act” is in force, which implements a EU Product Warranty directive to provide extra protection for consumers. These laws apply to movable goods but not services, buying real estate, or travel and insurances.

They will be discussed below. We tried to interpret this legislation for you in a more understandable matter, but at times legalese cannot be avoided.

Obligations of the seller:

1. The product should have the specifications you may expect with normal use. For example, you should be able to use a car with working brakes.
2. The buyer may expect the product to have the specifications that were promised by the seller.
3. The seller is not only bound by his promises. If the manufacturer promises specifications in commercial publications, such as advertisements or TV commercials, the buyer can normally hold the seller to the manufacturer’s promises as well.
4. If the seller defectively installs the product, this fact can also affect the contract specifications.

Obligations of the buyer:

1. Unless otherwise agreed, **payment of the purchase price** is due upon receipt of the product. If the product is delivered later or cannot be obtained immediately, the buyer will never have to pay more than half the purchase price in advance.
2. If the **buyer does not pay or does not pay in a timely manner**, the seller can
 - require payment;
 - charge the expenses necessary to collect the payment (*i.e.*, collection fees);
 - charge the legal interest which becomes due starting the day the payment should have been made; (Legal interest is an interest on the payment due. This interest becomes due automatically if payment was not made in time. The level of this interest is adjusted almost every year by the Netherlands government.)
 - demand that the contract is dissolved and damages are paid by the buyer.

What to do about a defective product:

This concerns defects that existed or are presumed to have existed at the time of the delivery.

- a. If the defect manifests itself within six months after the purchase, the law presumes that the defect existed at the moment of the delivery. The seller bears the responsibility to prove otherwise. This rule does not apply to products of a perishable nature, such as food items that will likely expire within six months.
- b. The seller is also liable when he or she guaranteed that the defect would not occur.

- c. Without such a warranty, the liability for a defective product largely depends on matters such as the type of product, its price, the intensity of use, the way it is used by the consumer, etc.

What can the consumer demand next?

When the product does not meet the specifications the consumer should have expected from the product, he or she can demand the following:

1. Demand that the **missing** part(s) be delivered (*for further details, see Sub 1*)
2. Demand that the product be repaired or replaced (*for further details, see Sub 2*)
3. Demand that the seller reimburses a portion of the purchase price (*for further details, see Sub 3*)
4. Demand that the contract be dissolved (*i.e., held invalid*) (*for further details, see Sub 4*)

Sub 1: If there is a part missing to make the product complete.

Sub 2: Repair/replacement. A choice between repair or replacement is not always possible. A broken mirror cannot be repaired, but should be replaced. Sometimes the repair costs exceed the cost of a replacement product. At times, replacement cannot be considered reasonable. For example, a car with a scratch on its door should not be replaced, but can be repaired.

The replacement or repair must be done within a reasonable time with minimum inconvenience to the buyer. No costs should be charged to the buyer, unless the buyer has used the product for a substantial time period in relation to the product's life expectancy. If repair/replacement of the product takes too long, the buyer can dissolve the contract (in writing) and request reimbursement of the purchase price. If repair/replacement is accomplished within a reasonable time-frame, the buyer can request partial reimbursement of the purchase price.

Sub 3: Reimbursement. When repair/replacement is impossible or cannot be reasonably demanded from the seller.

Sub 4: If repair/replacement is not possible because the product was a one-time item and the repair costs are too high compared to the value of the product. The buyer should dissolve the contract by sending a written notification to the seller and return the product to the seller.

Warranties:

The seller can provide additional warranties beyond the legal guarantees discussed above. However, the seller may not limit the warranties provided by law. A seller may provide the possibility of purchasing an additional warranty (*i.e., a warranty period may be extended from one year to three years*). The value of these types of warranty insurances is questionable depending on the product. Durable products may be covered by the law anyway, making an extended warranty useless to the consumer.

The warranty must clearly and understandably explain the rights and obligations for the consumer. It must contain the names and address of the seller or the producer and the duration and scope of the warranty.

When to contact the vendor:

After discovering the defect, the consumer should notify the vendor within two months under the statute of limitations. The consumer must also take appropriate action within two years after the vendor has been notified. It is best to send the vendor any demands to resolve the matter by registered mail. This will give you proof of your notice in case you have to take legal action later.

Receiving unsolicited products:

At times, a vendor may send a product to your home in the hopes that you will actually buy the product. In that case, the recipient may keep the product and does not have to pay for it. He or she could also send the product back and the vendor bears the shipping costs.

Deposits:

For some major purchases, vendors may ask for a **deposit**; try to avoid this, or try a different vendor. If you absolutely must make a deposit, try to keep it as small as possible. If the store or manufacturer of the item goes bankrupt before delivery, you may never see your money again.

The Dutch seldom pay a deposit because penalties for not completing the sale (not accepting delivery) are often spelled out in the contract (for example, 10 % of the sales price). Americans are more likely to be asked to pay a deposit (we are more likely to leave the country and will not be available should matters have to go to court), but you can still try to order a car on the economy without having to pay a deposit.

If you have a dispute with a vendor, you may have to settle it in court, such as the Dutch Small Claims Court. The Netherlands does not have consumer protection agencies or Better Business Bureaus. However, for an increasing number of problems (including Dutch mail, telephone (KPN), travel (ANVR), laundry, recreation, furniture, utilities and the Postbank (post office/bank), and moving companies, arbitration within the Dutch system may be possible. There is usually a €50.00 filing fee, which will be reimbursed to you if you win your claim. This system is handled by an agency called “Stichting Geschillencommissie Consumentenzaken” (Agency disputes consumer affairs) and is situated in The Hague. Usually, the store you have a problem with must be a member of a professional organization that has voluntarily agreed to submit itself to the decisions of this agency. Your servicing legal office can help you with the paperwork.

Your servicing legal office can also offer a free arbitration program, but vendors are not obligated to use it, although you could suggest it as an alternative to going to court.

C. SERVICE/REPAIR CONTRACTS

As in the United States, if you bring your car to a garage for repairs and you still have problems, the garage's obligation towards you depends on the situation. Basically, the garage has to fix the problem if it created the problem when they worked on your car (*i.e.*, they cut your fuel line so now it must be replaced). Immediately report problems back to the garage. In many cases, the problem is a matter of proof. The longer the period between the repair and your reporting the problem to the garage, the more difficult it will be to prove the connection between the repair and the new problem. Some authorized car dealers give "life-long" warranties for repairs they have made on cars of the brand with which they work.

If you run into a major problem with a garage, it is recommended to get a second opinion. The best way to get such an opinion is to take your car to the Technical Center of the ANWB (the Dutch version of AAA) and have them inspect your vehicle. They will provide you with a report for a fee. If you are a member, they will charge you less. With that report, you have better evidence against the garage in case litigation becomes necessary.

In general, it is better to deal with a "BOVAG" licensed garage. This means the garage has agreed to submit itself to a complaints procedure if you are dissatisfied with the services provided. The BOVAG organization (an organization of garages) will take your claim and decide on the merits of the case. The garage accepts their rulings. The "BOVAG" sign is usually prominently displayed at the garage.

The same principles apply with other kinds of repairs, such as for appliances. To prevent miscommunications with the mechanic or technician, you might consider using the **repair/service agreement** in Appendix A, to determine what you would like to have repaired and how much it may cost. Both parties must sign this and one copy is to be provided to the mechanic or technician.

"Purchase over distance"

Using communications such as phone, fax, internet or even a mail order catalogue permit people to buy products or services without actually seeing or inspecting them. Buying a product or a service in this manner causes some problems. As a result, the Dutch legislature has implemented additional contract rules to better protect the consumer's interest. Most of these rules are provided for by the EU Distance Selling Directive. These rules apply for suppliers/vendors who are in the business of selling products "over distance."

These rules do not apply to financial services, construction and real estate transactions, vending machines (automated sales), auctions (such as internet auctions), and the use of public pay phones. Some rules do not apply to products for daily domestic use, such as food and drinks. These vendors do not have to provide prior information about the products and a written confirmation. Also, the rules of rescinding a contract and the time periods within which a contract must be fulfilled do not apply.

Before a “purchase over distance” is concluded, the consumer must be receiving sufficient, clear and understandable information in a timely manner. The commercial purpose of the supplier must be clear during this process. The merchant must be clear about the fact that this is a commercial transaction. The type of information the merchant must provide is:

- the identity of the supplier
- the most important features of the service or good
- the price
- the means of payment and delivery
- any possible shipping costs
- the expiration date of the offer or the price
- the right of the consumer to break the contract within a certain time of reflection (rescind/withdraw)
- the minimum duration of the contract, such as in cases of periodic services or subscriptions, etc.

The consumer is entitled to a timely and written confirmation of the contract, at the latest upon delivery. This can be provided by e-mail, mail or fax. This confirmation must contain information about:

- the manner that the consumer can rescind the contract and under what conditions
- the physical address of the supplier where the consumer can visit to submit any complaints
- post sale services and warranties
- the conditions of terminating the contract in case it lasts longer than one (1) year

The right to rescind:

In every “purchase over distance” contract, the consumer has a period of seven business days within which he or she can rescind the contract, without having to pay a fine or giving a specific reason. At the most, the consumer may have to pay shipping costs back to the vendor. The period of seven days begins upon receipt of the goods. For services, the seven day period begins the day the contract is concluded or whenever written confirmation has been provided. If the vendor does not provide a written confirmation, the period to rescind a contract extends to three months.

RESCISSION IS NOT POSSIBLE:

- if with consent of the consumer, the performance of the service is started before the end of the seven day period;
- for goods and services with prices subject to changes in the financial markets that the seller/vendor cannot control;
- for goods produced to the specifications of the consumer;
- for goods that are personal in nature;
- for goods and services which by their nature cannot be returned, or quickly age or decay;

- for video and/or audio recordings and computer software of which the consumer has broken the seal;
- for the delivery of newspapers and magazines;
- for services involving games of chance and lotteries;

If a loan is used to purchase the item or service, then upon rescission of the contract, the law provides the consumer with the possibility to rescind the loan as well.

The vendor must make a delivery within 30 days, unless agreed otherwise. If this is not possible, the consumer must be informed and the vendor should return payments already made within 30 days.

Special rules apply for using a **credit card**. In cases of fraud, the consumer may not be held responsible to pay for the goods or service if it is established that he or she has diligently used the card.

Electronic signatures:

Many contracts require the contracting parties' signatures. When making purchases over the internet, a physical signature is rather difficult. As of 21 May 2003, Dutch law provides rules for electronic signatures. An electronic signature contains information added to other electronic information. It is a means of authentication to verify the identity of the signatory. The use of an electronic signature has the same legal effect and enforceability as a written signature.

There are a number of electronic signature providers who can certify that you are the correct individual connected to the electronic signature. They provide a certificate which verifies your identity and signature.

Two types of electronic signatures currently exist: advanced and non-advanced.

The advanced electronic signature carries more security:

- It is uniquely connected to the signatory
- The signatory can be identified
- Only the signatory has control over this signature
- The signature is closely connected to the document and any later change to the document can be discovered

Unsolicited deliveries:

Unsolicited delivery of goods and services with a request for payment is prohibited. The consumer is not required to pay and may keep the product. If the consumer wishes to return the item, the sender must pay the shipping costs.

D. TRAVEL CONTRACTS

During your tour in the Netherlands, you may procure a Dutch travel agency's services to book your travel. The law provides some specific rules that are important to know in your contacts with a travel agency/operator.

The rules for package travels, package holidays and package tours are provided by EU Directive, and are implemented in Book 7 of the Dutch Civil Code. Regarding air flights, rules are provided for by the EU Regulation on establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay flights. EU Regulations have a direct effect and do not have to be implemented in local (Dutch) law.

Generally, the traveler must be informed in writing **or** in an understandable way (such as a briefing) of at least the price of the travel arrangement. Upon completion of the contract, the travel agency/operator must provide the traveler a copy of the applicable contract conditions.

You can always terminate the contract. **HOWEVER**, if the reason for cancellation is due to circumstances attributable to the traveler, he or she will have to compensate the travel agency/operator for its damages. This is not more than the maximum of the contract price for the travel. If cancellation is not attributable to the traveler, he or she does not have to pay the agency/operator and/or will be reimbursed for any money already paid.

When have you established a travel contract?

A travel contract is established when you accept the offer by the travel agency. This can be accomplished at the agency or over the phone. So if you only inquire about a trip over the phone, ensure that the travel agent understands that the conversation was only to get information. Do not provide any personal information such as address until you actually want to book a trip. If you book a trip for others, you are also responsible for their payments. You can request a **down payment** of 15-30% from the other travelers.

Cancellation by tour operator:

A tour operator can only cancel a travel agreement because of serious circumstances and must inform the traveler without delay.

In the event the tour operator cancels because of a circumstance not attributable to the traveler, he or she will offer a trip of equal or higher quality. The traveler, who does not accept this offer, is entitled to the reimbursement or discharge of the travel price. If the trip has already begun, the traveler is only entitled to reimbursement for the proportionate part of the trip not used.

In the event of cancellation, the tour operator shall reimburse the traveler for the financial loss he or she has suffered and for the amount of the loss of travel enjoyment, **unless:**

- a. the tour operator cancels the agreement because the number of participants is smaller than the required minimum number and notifies the traveler in writing of the cancellation within the time period specified in the agreement, or
- b. the cancellation is due to circumstances beyond anyone's control, which does not include overbooking. (Circumstances beyond anyone's control are abnormal and unforeseeable circumstances that are independent of the will of the person that claims the circumstances and the results of which, despite all precautionary measures, could not have been avoided).

Can the tour operator change the travel agreement?

The tour operator may change the travel agreement because of serious circumstances if the traveler was informed without delay. The traveler may only reject the amendment if the change is more than a minor inconvenience to him or her.

Also, the tour operator may insist that up to 20 days before the trip begins he or she may **increase the travel price** in connection with changes in the costs of transportation, to include fuel costs, the fees owed or the applicable exchange rates. In applying this rule, the tour operator must inform the traveler how this increase is calculated. The traveler may reject the increase. After a rejection, the tour operator may cancel the travel agreement. The traveler is entitled to a refund or remittance of the travel amount or if the tour has begun a proportional refund for the trip.

Transfer of legal relationship by traveler:

Within a reasonable time (usually seven days) before the trip starts, the traveler may transfer his or her legal relationship with the tour operator to a third party who must adhere to all of the conditions in the travel agreement. The transfer occurs through an agreement between the traveler and the third party. The traveler must notify the tour operator of the transfer in writing. The transferring traveler and the third party are both independently obligated to pay the travel price and the costs connected to the transfer. A one-time payment is sufficient.

Main Obligation of the Tour Operator:

The tour operator is obligated to perform the travel agreement in accordance with the traveler's reasonable expectations of the travel agreement.

If the trip does not meet these expectations, the tour operator will have to reimburse the damages to the traveler unless the shortcoming in performance was not the tour operator's responsibility or the responsibility of any person/agency that assisted the tour operator in performing the agreement. This can occur because:

- a. the shortcoming in performance is attributable to the traveler;

- b. the shortcoming in performance of the travel agreement could not have been foreseen; or could not have been remedied; is the fault of a third party that was not involved in the delivery of the services included in the travel; or
- c. the shortcoming in performance of the agreement is the result of circumstances beyond anyone's control (*see described in the above paragraph under cancellation tour operator*) or circumstances that the tour operator or a person assisting the tour operator despite observing all due care could not have been foreseen or remedied.

Depending on the circumstances, the tour operator is obligated to help the traveler in the event the travel does not go according to the expectations he or she could reasonably have on the basis of the travel agreement. If the cause of this is a result of the traveler's behavior, the tour operator is only obligated to provide aid and assistance in so far as could reasonably be required of him or her. Then the traveler shall be liable for the costs of the help and assistance provided to him or her. The tour operator shall be liable for the costs of the help and assistance provided if the shortcoming in the performance is attributable to him or her or the person whose help he or she used to perform the agreement.

Liability for death or injury:

The tour operator cannot exclude or limit his or her liability in the event of death or injury of the traveler. Only in the event a treaty is applicable to a service provided under the travel agreement, the tour operator can claim an exclusion or limitation of liability that the treaty allocates or allows to a service provider.

Limited liability:

The tour operator cannot limit or exclude his or her liability for damages arising from his or her own actions or omissions if they were intended to cause the damage. Also, no limitation and exclusion is possible if the action or omission occurs recklessly and with the knowledge that this is likely to result in such damage.

In so far as the tour operator does not provide the services included in the travel agreement himself or herself, he or she can limit his or her liability as to damages to three times the price that was paid for the travel.

Immaterial Damages:

A shortcoming in the performance of a contract that can be attributed to the tour operator requires the tour operator to provide compensation of losses other than financial, in so far as these shortcomings cause loss of travel enjoyment

Maximum compensation for immaterial damages:

Compensation for loss of travel enjoyment can be no higher than double the amount of the travel sum.

Tour Operator's financial inability to meet obligations:

The tour operator will take the necessary measures to ensure that, in the event he or she is financially unable or no longer able to meet his or her obligations towards the traveler, the tour operator has made arrangements either for his or her obligations to be taken over by another party, or for reimbursement of the travel sum, or if the travel has already enjoyed in part, a proportionate part thereof. If the traveler has already arrived at the travel destination, arrangements must be made in any case for the return trip in so far as the travel agreement includes such transportation.

The tour operator will publish the measures as described in this paragraph in the prospectus that is generally available, by other publication, or by other understandable and accessible means.

Imperative Law:

These obligations for a tour operator are mandatory and cannot be deviated from to the disadvantage of the traveler.

Termination of the Travel Contract by the traveler:

When you book a travel, you normally plan to go on this travel. However, at times this turns out to be impossible, because of work, family circumstances or sickness, etc. What happens next? All travel agencies can offer so called **cancellation insurance**. In cases of sickness, death and other circumstances specified in the insurance conditions, the insurance will pay for the costs involved in canceling a specific travel. The insurer will normally require you to provide some kind of substantiation that the circumstance that you claim actually exists. So in case you break a leg, they would like to receive a doctor's statement substantiating. Cancellation insurance will not cover all type of circumstances. Just because you don't feel like going anymore, or the travel is actually cheaper at another travel agency, is not a valid reason to cancel under such insurance. Always inquire into what exactly is covered by such insurance.

So what if you don't have cancellation insurance?

All travel agencies use general conditions to outline the mutual obligations of agency and traveler. The one most commonly used are from the ANVR, a national association for travel agencies. The general conditions are established after coordination with consumer organizations.

Generally, you will have to pay cancellation costs as follows:

- Cancellation more than 42 days before the departure day: the down payment
- Cancellation 42 until 28 days before the departure day: 35% of the cost of the travel
- Cancellation 28 until 21 days before the departure day: 40% of the cost of the travel.
- Cancellation 21 until 14 days before the day of departure: 50% of the cost of the trip
- Cancellation 14 until 5 days before the day of departure: 75% of the cost of the trip
- Cancellation 5 days before until the actual day of departure: 90% of the cost of the trip

- Cancellation on the actual day of departure or later: full payment.

Claims procedures:

Report any complaint directly to the travel agency or its representatives on location. If not handled correctly, you must file a written complaint. If not handled to your satisfaction, you should submit a written, well substantiated complaint to the travel agency within one month after return in the Netherlands. If you are still not happy with their solution, you can file an appeal with the Arbitration Agency for Travel within three months after the end of the travel. This appeal should be sent to:

Geschillencommissie Reizen
Postbus 90600
2509 LP Den Haag.

Overbooking in air transport:

As a user of air transport, you may already have been affected by the consequences of overbooking on certain flights.

Pursuant to the EU Regulation on establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay flights, there is a specific compensation system that entitles you to certain rights when an airline overbooks a scheduled flight.

The application of the compensation system:

To benefit from this system, a passenger who is denied boarding on an overbooked flight must:

- Travel on a scheduled flight (this does not include charter flights, etc.) departing from an airport located on the territory of a Member State of the European Union and governed by the provisions of the European Union Treaty.
- Have a valid ticket indicating a confirmed reservation for that flight. (This usually takes the form of the letters "OK" in the relevant box.)
- Presented him or herself for check-in for that flight by the time limit stipulated by the air carrier.

The forms of compensation to which passengers are entitled:

Under the compensation system, a passenger who is denied boarding on an overbooked flight is entitled:

- To choose among (1) reimbursement without penalty of the cost of the ticket for the part of the journey not made; (2) re-routing to his or her final destination at the earliest

opportunity; or (3) re-routing at a later date at his or her convenience. If the passenger chooses to be re-routed at the earliest opportunity and this re-routing takes place from another airport, the air carrier must pay the cost of travel to this other airport;

- Irrespective of the passenger's choice under the previous paragraph, he or she is entitled to immediate payment by the air carrier of minimum financial compensation amounting to:
 - €150 for flights of up to 3,500 km;
 - €300 for flights of more than 3,500 km, depending on the final destination specified on the ticket.

This flat-rate compensation may be reduced by 50% when the passenger chooses re-routing to his or her final destination at the earliest opportunity and if the arrival time does not exceed the originally scheduled arrival time by two hours for flights of up to 3,500 km, and by four hours for flights of more than 3,500 km. In any event, this compensation may not exceed the price of the ticket to the final destination:

- to the costs of a telephone call and/or telex/fax or email message to the point of destination;
- to sufficient meals and refreshments appropriate for the waiting time;
- to hotel accommodations when an additional stay of one or more nights is necessary.

Regardless of the form of compensation, a passenger who is denied boarding on an overbooked flight is entitled to take any further action in the courts of jurisdiction to obtaining additional compensation, unless if he or she has waived his or her reservation in exchange for concession.

All passengers who are denied boarding must be given a form by the air carrier discussing the compensation rules for those who are denied boarding. In addition, the air carrier must explain the rules which it follows in the event of an overbooked flight and make these rules available to the public (in agencies and at its check-in desks).

If boarding is denied on a flight sold as part of a package holiday, the air carrier must compensate the operator with whom the passenger has the contract. The tour operator must forward the reimbursement to the passenger.

All these provisions are contained in the “Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.” This Regulation is directly applicable in all Member States of the European Union, which means that ALL private individuals may refer to it directly to assert their rights.

E. BUYING A HOME IN THE NETHERLANDS

Although a contract to buy a home in the Netherlands is not something everybody is likely to need, this issue frequently arises. **Do not commit yourself until** you are absolutely certain that this is what you want and can afford! Even an oral commitment may be binding! While the law states that sales contracts for homes beginning on 1 September 2003 are only binding when done in writing, there is case law with different interpretations on whether you can be legally forced to sign a contract once you have reached an initial verbal agreement. To best safeguard against committing to any obligation you may later regret, it is of the utmost importance that you **ALWAYS** emphasize that you do not wish to commit to any legal obligations **UNTIL** you actually sign the contract.

Real property prices in the Netherlands is at an all time high and the development of the real estate market and dollar to Euro conversion can have a tremendous impact on the affordability of housing. Building equity in such property may become difficult if you are only willing to spend your housing allowance on property. Ownership of real property also entails tax, maintenance and insurance obligations that you do not face when renting.

Buying a home requires a number of official documents that normally will be in Dutch. Make sure you know what you are signing. Below you will find helpful tips.

When buying a home you are dealing with several parties, such as the seller, a Dutch notary, possibly a mortgage broker and a realtor. The **price** you and the seller agree upon is not the total price you will eventually pay for the home. You must add approximately **10% for closing costs**. Some mortgage companies will also finance the closing costs. While the seller can request a down payment of the purchase price, it can be no more than 10% of the purchase price.

The initial (binding) sales contract you sign with the seller is not the official transfer of the home. By law, transfer of real property can only be made through a Dutch notary. Since you are buying and paying for the closing costs, you can decide which notary to use. He or she normally provides purchase advice and conducts the title search, etc. (if you hire him or her). He or she also processes the mortgage deed. Arranging financing can take some time, so be sure that you always add a condition in the initial purchase contract that states that you will only buy under specified financing conditions. Do not hesitate to specify the maximum interest rate that you are willing to accept. This is to prevent you from contracting to buy a home you cannot finance. This condition will then enable you to cancel the contract without having to pay a large termination fee (normally 10% of the purchase price).

Contemplation or opt-out period:

The Dutch government has recently adopted legislation to give you the chance to reconsider your commitment to the purchase contract and opt-out if you elect, after you have signed the initial contract. You will have three days after you signed the contract to change your mind and notify the seller.

Mortgages:

Most individuals require a mortgage to afford buying a home. It can be an ordeal to find a proper mortgage for your situation. Shop around. Get offers from different brokers or banks and compare not only the interest rates but also all other conditions of the contract, such as the duration an interest rate is set, when payments are due, whether you can pay on the principal and how much, etc. There are literally hundreds of ways these mortgages can be construed. Some of them are directly linked to the way the Dutch income tax system is structured and may not be very beneficial to you. **Be aware** that one of the standard conditions in your mortgage will be that you cannot **rent the home out** to someone else without the written consent of the mortgage bank. This might become a problem if you only intend to stay in the Netherlands for a short period of time and then rent out the house after you leave. Most mortgage banks will not consent unless a sufficient amount has been paid on the principal. This is to ensure that if there is a foreclosure, the price of the house at the auction will be sufficient to pay off the rest of the principal. Non-compliance with this provision could potentially result in the mortgage contract being terminated, with the subsequent requirement to fully reimburse the mortgage company for the money borrowed.

House and taxes:

Owning a home in the Netherlands also has **tax consequences**. As strange as it may sound, by owning a home you are considered to have made income in the Netherlands. This results in having to file taxes with the Dutch IRS every year, a Dutch “federal” tax requirement. This requires you to report your worldwide income to the Dutch IRS. However, you only have to pay tax on the income you earned by owning the house. The interest you pay on your mortgage is deductible from this income. Also, the **municipality** you live in will charge taxes, such as the owner’s part of the real property tax (onroerend zaakbelasting) and sewage rights (rioolrechten). Ask the owner of the home how much municipal taxes he or she pays. The municipality provides owners an overview of the taxes due once a year and the individual listed as owner on 1 January of the year receives the bill and is responsible for payment of that tax for the entire year.

F. HOTEL RESERVATIONS

One frequent problem with contracts pertains to the cancellation of hotel reservations. You may be charged with the total bill if you do not cancel in time and the hotel could not replace your reservations with new guests. Ask for the Hotel’s **cancellation policies** whenever you make reservations. Note that a hotel is required by law to mitigate their damages by trying to replace your reservations with alternate guests. However, if this is not successful they may send you the entire bill. It is also wise not to make reservations for other personnel visiting your area for work. If you made the reservation and they do not arrive, the hotel will turn to you for payment. Provide visitors with the names, phone numbers and addresses of the hotels and let them make reservations directly with the hotel.

G. EMPLOYMENT

For many, getting a job is critical. For most individuals affiliated with the U.S. Armed Forces, the NATO Status of Forces Agreement (NATO SOFA) and the additional arrangements with the Dutch Government determine who is entitled to NATO status and subsequent employment with the U.S. Armed Forces in the Netherlands. The NATO SOFA recognizes three categories of personnel utilized by a Sending State, such as the United States, to fulfill the need for labor:

- Military Servicemembers
- Members of the U.S. civilian work force
- Dutch local national work force.

You can only receive NATO SOFA status through the U.S. military if you are assigned to perform your duty in the Netherlands as military or civilian personnel, or under certain conditions as contractor personnel. Once the “sponsor” receives this status, it also provides special privileges to his or her spouse and other dependents. According to Dutch authorities, a person can only have NATO SOFA status if the individual has been assigned and sent to the Netherlands to fill a U.S. Armed Forces position in the Netherlands. This is also applicable to dependents. If the dependent, individually, is sent to the Netherlands to fill a position, he or she likely has his or her own separate “self-sponsored” NATO SOFA status, which will continue even if the rest of the family departs the Netherlands and the dependent chooses to remain.

Unless the **dependent** has obtained this self-sponsored status, he or she is considered an **ordinary resident** by the Dutch authorities when entering the Netherlands. Given this, the dependent who already resides in the Netherlands cannot later independently obtain his or her own NATO SOFA status or self-sponsorship later by starting to work for a U.S. military agency or one of its instrumentalities (*i.e.*, AAFES or the Commissary) as a Family member. This means a dependent who is an ordinary resident with a job loses his or her status under the NATO SOFA in the Netherlands when the dependent’s sponsor loses his or her status under the NATO SOFA. Subsequently, his or her position with the U.S. Armed Forces organization must be terminated.

Although not part of the civilian component, special arrangements have been made for Contractors and their U.S. personnel. They have even more specific requirements. Check Army in Europe Regulation 550-35 or contact the Netherlands Law Center for more information.

Civilian employment is based on the definition of **CIVILIAN COMPONENT as provided in Article I, paragraph 1b, of the NATO SOFA**, which determines who is a member of the civilian work force. Some of the requirements pertain to nationality and residency. You cannot be a national of the host nation and you must be a national of one of the Sending State NATO countries. If you have dual nationality (*e.g.*, you have stayed in the Netherlands for a sufficient time frame to qualify for Dutch citizenship and can keep your nationality of origin), the Dutch authorities have ruled that your Dutch citizenship will disqualify you for continuous status under the NATO SOFA.

A requirement that also causes a lot of confusion is the “ordinary residency” restriction in this definition. You cannot become a member of the civilian component and get NATO SOFA status

if you are considered to be an ordinary resident in the Netherlands. Once a person has become an ordinary resident in the Netherlands, he or she must physically and **officially leave the Netherlands for at least one (1) year, and establish residency in another country** to lose the ordinary resident status in the Netherlands (and be able to prove this) before he or she can be considered again for a job in the Netherlands that grants NATO SOFA status and enjoy the accompanying privileges. Establishing residency in another country means physically moving your household goods and family. Simply changing your mailing address will not work.

Transition from the Military to a Civilian Position

Over the years, many Servicemembers have decided to remain in the Netherlands and obtain a civilian job with the U.S. Armed Forces. To make this work, the individual will have to comply with certain requirements. The transition from the military to civilian must be continuous. For example, if your last official day in the military is 31 March, you must have a civilian job on 1 April. There is only one exception to this requirement. If you placed an application for an **existing, available civilian vacancy** with the U.S. Armed Forces before you get out of the military, you have a three month period for the hiring action to be completed. In the above example, if a vacancy is announced on 1 April or you wait to file your application until 1 April you cannot be considered for the position.

Employment on the Dutch economy requires a Dutch work permit. Since U.S. nationals have a low priority (European Union residents have first priority), it might be difficult to get a work permit. Obtaining a permit depends on the need of the labor market and the individual's skills and qualifications. The request for a working permit is a joint effort by the employer and his or her potential future employee.

IV

DOMESTIC LAW (FAMILY LAW)

A. Marriage in the Netherlands

A legally valid Dutch marriage can only be performed by a specially appointed city or town official, usually located in the city/town hall. The couple files the necessary papers in the city where one of them resides. The actual ceremony can be done in a different city. A religious ceremony has no legal effect; those desiring a religious ceremony must do so after the civil ceremony. For U.S. military purposes, you are considered married after the civil ceremony, regardless of whether or when the religious ceremony follows. Same sex marriages are possible in the Netherlands. However, bigamy is not allowed.

To marry in the Netherlands, the following conditions must be met and documents must be presented:

1. You must be at least 18 years of age or older. There are two exceptions: 1) both parties are at least 16, and the woman can prove that she is pregnant, or has already had a child; or 2) a minor under 18 years of age must have his or her parents' consent.
2. A certified copy of your birth certificate stating the names of both parents. The certified copy must not be older than six (6) months. (see also *** below)
3. A statement that you are free to marry. If you are divorced, you must provide a certified copy of your final divorce decree and, again, the certification must not be older than six (6) months. Some municipalities, especially in the South Limburg area, may require you to get a certification from your servicing military legal office.
4. At least one of the parties must reside in the city or town where you file for marriage. However, you can request to have the actual civil ceremony **performed** in a different municipality.
5. The official at the town hall will issue a so-called "filing of marriage certificate." The marriage can be performed fourteen days after this certificate is completed.
6. A document is required stating the names and addresses of the individuals invited to be present as witnesses to the wedding ceremony. There is a minimum of two and a maximum of four.
7. If the couple are not Dutch citizens, they must obtain a statement from the immigration service that they legally reside in the Netherlands or that they do not intend to stay in the Netherlands. For those whose registration in the Netherlands is handled by the Royal Marechaussee Representative's office at JFC Brunssum, seek assistance from this office.

*** All legal documents to be presented at the city/town hall such as birth & death certificates and divorce decrees must have been certified by the issuing authority (e.g., Department of Health and Human Services/Bureau of Vital Statistics, or by the clerk of the applicable court) within the last six (6) months. They must also be “authenticated” by the Secretary of State for the State in which the documents were issued. This authentication is called an “Apostille Authentication.” For further information, call your servicing military legal office.

B. Divorce

In the unfortunate case that your marriage does not work out, you may be considering divorce through a Dutch court. You need a local Dutch attorney to handle the case for you to arrange a divorce in your local district court.

You may want to talk with the Dutch Legal Assistance attorney at the Netherlands Law Center, who can explain the general requirements for divorce, such as residency requirements to help you find a private Dutch attorney. For general guidance on retaining a Dutch attorney, please see the section titled “Legal Representation in the Netherlands.”

When considering a divorce, ask the attorney about how much it will cost to process your case.

It is important to note that a divorce is **simplest** (and cheapest) if both parties agree to it in the Dutch court, and have already agreed on matters such as custody of the children and property division. In a case like this, **only one attorney** is needed for both parties. Dutch courts generally accept a U.S. separation agreement prepared through the military Legal Assistance Office; however, a translation may be required. There is always a court fee.

If parties cannot agree on the divorce terms, they both need individual attorneys to represent their respective interests (a so-called contested divorce). This will require more time and money before the divorce is processed.

Dutch divorces are recognized in the United States, assuming no fraud was involved. You may have to validate the Dutch divorce decree in a U.S. court. To make this easier, you should get your divorce decree translated into English before you leave the Netherlands.

As in many of the States in the U.S., a divorce is not final until it has been registered and the waiting period has passed (the period in which an appeal can still be made). To be sure that your ex-spouse will not appeal the divorce, the attorney will likely send your ex-spouse a document for him/her to sign, stating that he/she will waive the right to appeal the divorce. You should make sure that your attorney explains to you when your divorce is final, and obtain (and have translated) the documents showing that your divorce is in fact final. Knowing when your divorce is final will affect, among other things, your ability to remarry, and your income tax filing status.

If you are a Servicemember, do not forget to have your official records amended to reflect that you are no longer married and to subsequently verify your pay statement (LES). Your entitlement to certain allowances, such as BAH, may change when your marriage ends.

How long it will take to get a divorce depends upon the complexity of the case, what law the Dutch court will apply, and last but not least, the backlog in the courts. However, two to three months duration to complete the divorce is possible.

In the divorce procedure, you can also request settlement of other divorce related issues such as:

- custody and visitation with children
- child and spousal support
- division of property
- the lease or use of the marital home

C. Registration of Birth

Regardless of the nationality of the parents, if your child is born in the Netherlands, you must follow the Dutch requirements stated below. If one (or both) of the parents is a U.S. citizen, you must also follow the U.S. requirements explained below. If one (or both) of the parents is neither Dutch or U.S., you should contact your consulate or the immigration service for your country to determine what else, if anything, you must do to preserve your child's citizenship rights. If one spouse is non-U.S. military, your servicing personnel office may also have information.

Births **must be registered in the municipality where the child was born (not where you live) within three working days** (not counting Saturdays, Sundays and official Dutch holidays). This can be done by the father, mother or anyone who was present at the birth or by the person on whose premises the child was born (e.g., the hospital).

You will be issued a birth certificate. To register the birth, the following information is required for children of a married couple:

a. A statement from the doctor or midwife who assisted at the delivery. Such statement must mention:

1. Place, date and preferably hour of birth;
2. Last name, first and middle name(s), place of residency, date of birth of mother and father;
3. Sex of the child.

b. For children born out of wedlock not recognized by the father, only the mother's information is required.

c. Parents who are not in the military must bring their passports, and Servicemembers must bring a U.S. birth certificate with a raised seal or a certified copy.

Bring the documents to the city/town hall. They will normally also issue two free copies of an international birth certificate. If not, ask for them!!

If you need information on where to get copies of your own documents (e.g., your own birth certificate or divorce decree), contact your servicing legal assistance office. Since obtaining these can sometimes take two months or more, send away for them as soon as possible. These documents may require a certification of authenticity, the so-called “apostille.”

In special circumstances, if you and your spouse are expecting to have a child prior to your marriage, you may want to consult your servicing legal assistance attorney prior to the birth.

United States Requirements

In addition to the Dutch procedures, you must do the following if one or both parents are U.S. citizens and you want to preserve your child’s right to claim U.S. citizenship.

1. Contact your local U.S. Armed Forces medical facility (Geilenkirchen or SHAPE) so that you can be issued a U.S. birth certificate as well. Take both the Dutch and U.S. documents to your servicing personnel office, along with an application for a certificate of birth abroad. Your personnel office will forward these documents to the U.S. Consulate (State Department) which, in turn, will issue you a certificate of birth abroad. This certificate is your child’s official birth certificate and shows that he or she is a U.S. citizen.
2. At this point, you may also apply for a passport and Social Security Number for the child. Your servicing personnel office can assist you. The Social Security Number is important for tax purposes. The U.S. IRS requires the number for any child being claimed as a dependent born before 1 November of the relevant tax year. If you want to open a savings account for the child at an American bank, you will also need the number.
3. Review your military records, SGLI and DEERS paperwork, and update wherever necessary.

D. Adoption

The adoption procedures and rules in the Netherlands are, as in many countries, written primarily to protect the interests of the children involved. At the end of 1995, however, the Dutch Ministry of Justice decided that a military Servicemember or civilian stationed with the U.S. Armed Forces in the Netherlands does not have to comply with the stringent Dutch adoption law if the individual starts and completes an adoption procedure in a U.S. court, or through a legitimate adoption agency in the United States **before** bringing the child into the Netherlands.

Step-Parental Adoption

If you marry someone who already has children of his or her own, you may decide to adopt the children. This procedure is far less difficult than a regular adoption. If the other parent is still living, he or she must agree to the adoption; this can be the most difficult part. However, under certain circumstances, a refusal of the natural parent to consent to the adoption can be set-aside, (e.g., when the child has never or barely lived with the refusing parent). A step-parent adoption in the Netherlands must be filed in the district court where the child lives. To pursue this action, you need a local Dutch attorney. Your servicing legal assistance office can help you find one

and can explain how your legal obligations to the step-child will change once you have adopted him or her.

VEHICLES

Private Transportation for many Americans means the freedom to go where you want when you want. Depending on where you are, private transportation may be the only practical way to get to your place of duty, or to take care of personal business.

A. Vehicle Registration

Many of you will bring your privately owned vehicle (POV) to the Netherlands. A POV (including recreational vehicles and trailers) for personal use can be imported into the Netherlands on a temporary tax-free status. "Temporary Tax-Free Status" means that your vehicle will only be in the Netherlands temporarily, and that it will leave the country with you when your tour ends. If the vehicle was to be imported permanently (i.e., the United States made cars that are shipped by the manufacturer for sale to local nationals, or to be permanently retained when you retire in the Netherlands), import and other taxes must be paid.

All Servicemembers and civilian component members of the U.S. Force stationed in the Netherlands can register their vehicle with the Vehicle Registration Office at Allied JFC Brunssum. You will be issued a regular Dutch license plate.

Also, drivers license requirements for the AF and GN/BN system are different. Check with your Provost Marshal. Since **you** have registered the vehicles, **only you and your Family members** may drive them. **Under special circumstances, other individuals may be authorized to drive your vehicle.** For JFC Brunssum registered vehicles, you need to give a **special power of attorney prepared at JFC Brunssum Vehicle Registration** to the individual in question. Individuals who drive a tax-exempt vehicle they are not authorized to drive in, may, when caught, be required by the Dutch Customs Office to pay the full amount of import duties and taxes on the vehicle. This could become an expensive little drive.

B. Buying a Used Vehicle in the Netherlands

For many people, a used vehicle fits their needs and/or their budget. If you are authorized JFC Brunssum registration privileges and JFC Brunssum registration for a used POV purchased locally, you have three options:

1. Buy a vehicle that already has **temporary tax-free status** from another NATO Forces member. Check with JFC Brunssum Vehicle Registration to ensure you complete the paperwork properly.
2. Buy the vehicle **on the Dutch economy** and register it with JFC Brunssum. You don't have to pay road tax; however, the vehicle will not be placed in an official tax-free status. The original Dutch license plates stay on the vehicle, so JFC Brunssum will not issue you new plates.

To buy a regular vehicle on the Dutch economy, you need to comply with specific requirements. The vehicle must be in your name. To place the vehicle in your name, take the Dutch vehicle registration to one of the larger Dutch Post Offices and change the vehicle registration to your name. Here are the requirements:

- You must be at least 18 years of age and reside in the Netherlands
- Bring an identification document accepted in the Netherlands
- Bring Part II of the Dutch registration
- Bring the “overschrijvingsbewijs” or “kopie deel III” of the registration

3. Before you buy a used vehicle located **outside the Netherlands**, check with JFC Brunssum Vehicle Registration and Dutch Customs to find out what documentation is required to import the vehicle tax-free into the Netherlands.

Whenever you are considering the purchase of a used vehicle, check with JFC Brunssum Vehicle Registration first to ensure you know what procedures and documents are required.

C. Vehicle Theft, Tax Liabilities and Insurance

Vehicle theft/break-ins occur not only in the United States, but also in the Netherlands. For many of us, our vehicles are our hobbies and an extension of ourselves. We want nice cars with nice options. Besides protecting your vehicle by locking it and keeping it in your garage at night, you must also ensure you have the right insurance coverage in case you fall victim to a car thief.

If you have a vehicle loan, full insurance coverage may be a required by your loan provider. Even if you owe no money on your car, full insurance coverage is a good idea, while you are in the Netherlands. Remember, liability insurance (the minimum insurance required to register your POV) only covers damage to other persons and property, but not the loss or damage to your own POV due to an accident or theft.

Besides the relatively high rate of car theft and break-ins in some areas, there is another reason, unique to the Netherlands, for having comprehensive insurance on your POV.

As pointed out above, vehicles imported into the Netherlands are on a temporary tax-free status. If your vehicle is stolen, Dutch tax authorities will hold you **responsible** for all **import duties and taxes** on the vehicle as if you had imported the vehicle into the Netherlands. The cost can be significant. Taxes and duties can be up to about 40% of the new value of the car. This may seem ridiculous, but the Dutch Tax Appeals Court has upheld this rule.

Your insurance will most likely pay these costs if you have comprehensive insurance. You should get this in writing from your insurer, or ensure it is clearly stated in your insurance policy. For car theft, the current policy is that you will not be able to register another car until these taxes and duties are paid. A standard provision in Dutch car insurance policies is that the insurance will not pay for a car theft until 30 days have passed. JFC Brunssum will not permit

you to register a new car until after the 20 day period or taxes are paid. Be prepared to lose your own transportation for at least 30 days, unless you **already** had a second vehicle registered. If you can pay the taxes and duties out of your own pocket in advance until reimbursement by the insurance company, you can register a replacement car.

D. Vehicle Accidents

AE Reg 550-35, paragraph 29, tells you what to do if you have an accident:

The operator of a motor vehicle involved in an accident that causes injury to or the death of any person, or damage to property, will—

- (1) Immediately stop the vehicle and render reasonable assistance to any person injured in the accident. This includes taking the injured person to a physician for medical treatment if it is apparent that treatment is necessary or the injured person requests it.
- (2) Give his or her full name, address, and vehicle-registration number to any police officer who may be present, to the person injured, or to the driver or occupants of any vehicle involved in the accident.
- (3) Obtain from the driver of the other vehicle, the driver's full name, address, and the vehicle registration number. If, due to language difficulties, the operator cannot communicate with the driver of the other vehicle, the operator will obtain the vehicle-registration number of the other vehicle involved.
- (4) Report the following information to the agencies in (5)(a) through (d) below:
 - (a) The date, time, and place of the accident.
 - (b) The names of other vehicle occupants, if any.
 - (c) The extent of vehicle damage or injuries sustained by any person involved.
 - (d) The name and address of the operator of the other vehicle or the vehicle-registration number.
 - (e) The names of other witnesses if another vehicle was involved.
 - (f) The name of the local police agency where the accident was reported.
- (5) Report the information in (4) above to the following agencies:
 - (a) The nearest Dutch law-enforcement office. Local law-enforcement authorities will be notified first if possible. The operator will remain at the scene of the accident until released by local police at the scene unless physical injuries sustained in the accident require removal to a hospital or other place for medical treatment. If an officer does not

appear at the scene within a reasonable time (for the purpose of this regulation, one hour is a reasonable time), the POV operator involved will contact the nearest U.S. military law-enforcement desk sergeant for instructions.

(b) The nearest U.S. military law-enforcement officer. Generally, this will be the Provost Marshal, USAG Schinnen. If the operator knows there is a U.S. military law-enforcement office closer to the scene of the accident, the report will be made to that office.

(c) The unit or base military police station. The operator must make this report within 24 hours after returning if the accident occurred outside the Netherlands. Vehicle operators not stationed in the Netherlands will report the accident when they return to their unit.

(d) The vehicle owner's insurance company or agent. The operator must make this report within the time limit specified in the insurance policy.

Accidents and criminal law:

Accidents generally result in damage claims for the property/vehicle or personal damage by one or more parties involved in the incident. The damage is assessed and possibly paid by your insurance company, depending on who is considered responsible for the accident and what type of insurance coverage you have. However, accidents usually do not happen unless someone breaks a traffic rule. The police or Royal Marechaussee will usually make a police report of the accident that is sent to the public prosecutor's office for further processing. As a result, anyone who has violated a traffic rule in the accident might receive a fine/penalty imposed by the prosecutor's office as well. The catchall traffic rule is that, "you will not endanger or hinder traffic" (Article 5 Traffic Act 1994) generally applies in these type of situations. This is a matter completely separate from any insurance claim settlement for your damages. The matter of having violated a traffic rule is a public/government issue; your damage claims are a civil issue, between parties only. Your insurance company will not cover payments for fines or penalties.

INSURANCES (OTHER THAN VEHICLE)

In General

Insurance can be a good investment. Below, you will find some commonly used insurances in the Netherlands. The types of insurance mentioned are not mandatory. However, we suggest you consider them.

A. Glass Insurance

Damage to the sometimes large windows in your house is usually not your landlord's responsibility. Whether caused by an accident or a storm, you are responsible for the repairs (unless the damage resulted from your landlord failing to maintain). Insurance is available to cover this damage.

B. Household Goods

In cases of burglary or fire, or even a small accident in your home, your precious household goods could be damaged or even lost completely. Sometimes, you can file a claim for loss with the U.S. Government. However, the U.S. Government does not usually pay for all of your damages, or it may not be the type of loss that can be reimbursed through the claims program. Private insurance can be a sensible alternative. A combined glass and household insurance policy is normally cheaper than two separate policies. Whatever your insurance needs are, make sure that you are not underinsured. FOR EXAMPLE: If your household goods are valued at \$40,000.00 – but you only obtain insurance coverage for \$20,000.00 – you are underinsured by 50%!!! For a theft or burglary costing you \$10,000.00, you will only recover half of the costs (i.e., \$5,000.00)

C. Personal Liability Insurance

Under Dutch law, you can be held liable for not only your own actions, but also for those of your **children** and **pets**. If your child breaks the neighbor's window or your dog bites the mail carrier, the claim (i.e., costs to you) can be significant! Personal liability insurance covers these types of problems, similar to the liability insurance you are required to have on your car. **Please note:** Your automobile insurance does not cover the kind of liability discussed here.

D. Legal Aid Insurance

Separate legal aid insurance exists for accidents resulting from a car accident or for incidents happening in your daily life. Legal aid for traffic offenses is very often offered to you when obtaining your car insurance. Regular daily legal aid insurance may not be a bad idea. Your servicing legal assistance office can only offer limited services and generally will not be able to

assist in litigation. If you must litigate, you might not receive compensation for all your legal costs. Legal aid insurance can cover these expenses.

E. Termination of Insurance Policies

Some types of insurance last for one year or even longer. Unlike some of the U.S. insurances, to end any Dutch insurance you must **notify** the insurance company of **termination**. **It does not automatically end at a specified period!!!** If you do not timely notify the insurance company of the termination (most termination notification periods are three months before the insurance period ends), the insurance will automatically extended for another period, (e.g., one year). Always send a termination notice through registered mail. You will generally be able to terminate most insurance policies upon reassignment from the Netherlands (normally, a notification **period** is not required). Again, don't forget to **notify** the insurance company of **your departure**, otherwise your coverage continues, as will the premiums.

Also note, if you do not pay your premium in a timely manner, normally you will have 30 days before your insurance coverage will be terminated. However, your requirement to pay the outstanding premiums will continue. So, **PAY ON TIME**.

VII

BILLS AND NOTICES, AND OTHER OFFICIAL-LOOKING DUTCH MAIL

The various documents you may receive from your city or utility companies or any Dutch government agency may seem quite confusing. Obviously, we all want to do what is lawfully required of us, but some of the official-looking mail you may receive will be hard to understand. This is the basic rule: **DO NOT IGNORE OFFICIAL-LOOKING MAIL!** Get a Dutch neighbor who speaks English or a Dutch co-worker to explain to you what you received, or contact your installation housing office or servicing legal office for help. The correspondence may be bills, notices of changed rates for utilities, letters requiring your presence at your home for your meter to be read, or that you have to pay that traffic ticket!!

VIII

TAXES AND EXEMPTIONS

A. TAXES YOU NORMALLY DO NOT HAVE TO PAY

Income Tax (Inkomstenbelasting):

Your salary and allowances as a Servicemember or member of the civilian component of the U.S. Armed Forces are exempt from income tax in the Netherlands pursuant to the NATO Status of Forces Agreement (NATO SOFA). All other earnings in the Netherlands are normally subject to Dutch income tax. Even **owning** a house in the Netherlands has Dutch income tax consequences. Also, Dutch social security premiums could be required when you are employed on the Dutch economy. This includes businesses you run out of your home. Also, any interest on bank accounts in the Netherlands is technically subject to Dutch tax. A U.S. retiree income is, in principle, not taxed for Dutch income tax, but may be taxed for Dutch social security purposes. This is a rather complicated matter, so check your servicing law office for more information.

Immovable Property Tax (Onroerendzaakbelasting):

This tax is imposed by municipalities to partly finance their budgets. In previous years, this real property tax consisted of two parts: one part for the owner, the other for the occupant/tenant of the property. Recently, this division was abolished and the tax is now levied as an owner's tax. There is no exemption from it.

Road Tax (Wegenbelasting):

Up to two cars registered under the temporary tax-free registration system with JFC Brunssum are exempt from Dutch Road Tax.

Dog Tax (Hondenbelasting):

The Supreme Court of the Netherlands has ruled that you do not have to pay this municipal tax.

B. TAXES YOU NORMALLY DO HAVE TO PAY

Government Services:

In general, you have to pay for services provided to you by a Dutch governmental agency. These include garbage collection, sewer cleaning and maintenance, and water purification (Water Board Taxes). These charges are normally included in your utility bill. In some municipalities, they are collected through separate bills from each agency. Check with your Housing Office to find out how this is done in your municipality.

Turnover Tax/Purchase Tax/Sales Tax/VAT (Omzetbelasting/BTW):

Whenever you purchase an item or service on the Dutch economy, you pay a purchase tax called (BTW) “belasting toegevoegde waarde.” Essential, items such as food or water are taxed at six percent. All other purchases are taxed at 19 percent.

There is a military “Tax Relief” Program to help you with your tax-free purchases from Dutch businesses only. This program is quite different from what you may have encountered elsewhere in Europe. The Dutch government has agreed that individual members of the U.S. Armed Forces can purchase goods (but not services) free of BTW from merchants who have a **license** to sell tax-free. These goods include your utilities, which there is a special program that you can enroll in through your Tax Relief Office to obtain relief (the Utility Tax Avoidance Program). **Before you make a purchase, make sure that the merchant does in fact have a license to sell tax-free!!** The price of the item you purchase must be over €45.00, including BTW. For more details on this program, contact the Tax Relief Office at USAG Schinnen.

IX

BORDERS, CUSTOMS, AND TAX-FREE PRIVILEGES

Americans are used to traveling hundreds of miles in the United States without crossing any international borders. Even here in South Limburg, we cross borders into Germany and Belgium so routinely and without being stopped that it sometimes seems as if there are no borders. This is particularly true when compared with the sometimes lengthy procedure of trying to reenter the U.S., through customs checks and passport control.

However, borders do exist!! Anytime you bring something into the Netherlands from another country, you are importing it and customs rules apply. READ THE FOLLOWING CAREFULLY!!

MAIL

A. Importing through the APO System

When you have ordered goods from a stateside catalogue, or your family sends you gifts or things you requested, you are importing goods. Although they have not done so for years, Dutch Customs may inspect incoming APO mail. Nowhere in the Agreements with the Dutch Government is it stated that goods brought into the Netherlands through the APO system do not have to comply with regular Dutch importation rules. Currently, it is not a system that is taxed by the Dutch customs authorities.

B. Importing through the Dutch Mail System

Although most DOD personnel in the Netherlands use the APO system to get their mail or packages from all over the world, occasionally you may be required to use the commercial mail system or package delivery services. One reason to use commercial mail might be that your package is too large for the APO system.

Be aware that if you use commercial mail or package delivery services for shipments coming from the United States, you may be taxed by the Dutch Customs officials when the package is delivered to your home address in the Netherlands. If the sender is a business, you will not be taxed if the value of the shipment is less than €22.00. If the sender is a private individual, and it is not a business shipment, there will be no tax if the value of the shipment is less than €45.00. Actually, the transportation company is required to levy these taxes on behalf of Dutch Customs. You will be charged import duties and BTW (purchase tax) on the value of the package, as well as on the value of the shipping expenses if the value of the shipment exceeds the amounts listed above.

Exceptions:

- The shipment was already part of your household goods and was shipped to you within six months after your arrival in the Netherlands.
- The item was to replace a part of your household goods that got damaged during shipment to the Netherlands.

In both cases, contact your servicing legal office since you require some special Customs documents!!!

TRANSFER OF GOODS

A. Selling Goods to another U.S. Member of the Force/Family Member

The current Dutch Customs regulation “American Armed Forces Directive, the Netherlands” states that you must report any sale of tax-free imported goods (including items bought at AAFES or the Commissary) to another U.S. Armed Forces person who is authorized tax-free privileges, within five days, if the value of the item exceeds \$25.00. Such sales must be reported to the Dutch Customs office for your district. Your servicing legal office can provide you the address.

For more information on tax-free purchases in the Netherlands, you are encouraged to read Army in Europe Regulation (AER) 550-35. This regulation also provides information on currency control, firearms, and operation and registration of privately owned vehicles.

B. Giving and Selling Tax-Free Goods to Persons without Tax-Free Privileges

Tax-free purchases at AAFES and the Commissary are a privilege. Items purchased tax-free must not be re-sold to those without tax-free privileges unless cleared by your local Dutch Customs office. See AER 550-35 for additional requirements. Illegal sales of tax-free goods is considered black marketing, and may subject you to criminal penalties, along with having to pay the taxes due.

Gifts of small value at appropriate times (i.e., a \$10.00 bottle of California wine for your Dutch neighbor or landlord at Christmas) are permissible. “Gift” means just that: The item cannot be in exchange for services already performed or to be performed in the future. See paragraph 14 of AER 550-35. The limit for gifts is \$ 25.00 in value.

THE NETHERLANDS CUSTOMS OFFICIALS

Entering the Netherlands by car or on foot is easy. As a result of the Schengen Agreement, border crossing checkpoints have disappeared. Occasionally, the Royal Marechaussee (Dutch military police) and Customs officers conduct spot checks and have roving patrols.

The day may come, however, when Customs officials will stop you. What are they allowed to do? What are your responsibilities?

The **duty of the Customs Officer** is to ensure that goods enter the Netherlands legally, and that illegal goods do not. For these purposes, they have been granted a fairly broad authority:

1. To prevent smuggling and to deter larcenies, they can demand to see documents showing what you are transporting to ensure that what you are carrying matches the documents.
2. Customs officials are the only officials in the Netherlands with the authority to search your vehicle, wherever it may be located in the Netherlands without “probable cause.” This means they do not need any information that leads them to believe that you may have violated the law. Their search may be for any valid Customs purpose.
3. Further, the Customs official has the right to do a strip search on your person if they deem it necessary. A strip search is only done in very special cases and must be done by a Customs official of the same sex. If they suspect drug trafficking, these searches can happen.
4. They have the right to go through your books and documents, if necessary.
5. They have the right to confiscate goods.
6. In short, Customs officials have far-reaching authority. Illegal importation of goods can result in forfeiting the items, imposition of administrative fines and possibly criminal prosecution by the Dutch or the U.S. military authorities.
7. If you object to your treatment by Customs officials, do not resist or provoke them. Allow them to take the actions they deem necessary and then report the incident to your chain of command or Customs Office.

TAX AND CUSTOMS EXEMPTIONS WHEN CROSSING THE NETHERLANDS BORDER

Rule #1 - If you are stopped at any border and asked whether you have anything to declare and you are not sure, tell the official that. If you say “No”, and you guess wrong, you may be in for some headaches.

All items (except the initial shipment of household goods) imported into the Netherlands for the personal use of a U.S. Armed Forces member (military or civilian) or dependent are subject to duty or tax if they exceed certain limits. For an overview of tax exemption see “LIABILITY FOR TAX/IMPORT DUTIES,” below:

A. Replacement Goods

In general, except for the values listed below and goods as described in the preceding paragraph, there is no NATO SOFA entitlement to tax exemption on goods personally imported by personnel working for the U.S. Armed Forces. The only exception that exists is when you have to replace household goods. In the South Limburg tax district, this can only be done if the household goods were damaged or lost during your move to the Netherlands. You must prepare

a written statement verifying your loss, authenticated through your command and/or servicing legal office, and provide to the South Limburg tax district to claim tax exemption. If you are not stationed within the South Limburg tax district, these restrictions (meaning within six months after arrival and the goods must have been damaged in the move) may not be applicable.

To import the replacement item tax-free into the Netherlands, it must be substantiated that the item was damaged or lost during the move (i.e., by some claims forms listing the damaged or lost goods). You also need a “Paragraph 44” form which is provided by your servicing legal office. To make the shipment go smoothly, it is wise to have this form completed before your goods arrive in the Netherlands. Otherwise, you might be required to pay the taxes first and receive the reimbursement later.

B. Liability for Tax/Import Duties

1 January 1993 brought many changes in the Tax and Customs rules for crossing European Union (EU) borders. “Europe 1992” created a new system of taxes and import duties. Internal Customs borders between EU member states have, for practical purposes, disappeared. Airports, harbors and the EU external borders (with non-EU states) have become the new EU borders. Consequently, your requirement to pay taxes and import duties upon importing an item bought outside the Netherlands usually depends on where you bought them.

1. Items Purchased in an EU Country

If an item is bought on the economy in an EU country, you will pay the local purchase tax and may bring that item **PERSONALLY** into the Netherlands without any additional tax requirements. Officially, there are no other limitations. However, if requested, you must provide proof that the items are for personal use and not for business purposes. If you are checked by Customs at a border, you may be asked to provide proof that your items are for personal use. These rules equally apply in all EU countries, although some member states have different rules pertaining to alcohol, cigarettes and perfume.

For the Netherlands, the following goods and quantities bought in another EU country can be imported without an additional tax, per trip:

Tobacco

Cigarettes	800 ea
Cigarillos	400 ea
Cigars	400 ea
Smoking tobacco	1000 grams

Alcohol

Beverages with an alcohol percentage greater than 22%	10 liters
Effervescent wines, liqueur wines (port, sherry)	20 liters

Non-effervescent wines	90 liters
Beer	110 liters

There are no more Tax-Free Purchases at European Airports for Inner-European Union Flights.

2. Items Purchased Outside an EU Country

You can import your personal luggage without having to pay taxes. However, Customs officials can request proof that you already owned this item before leaving the Netherlands. Especially for high value items, it is wise to be able to show a purchase receipt or a warranty certificate. Also, before leaving the Netherlands you can request that the Customs office give you a Customs certificate on these items, but you must still show purchase receipts or warranty certificates.

1. There is a tax-free limit of 430 Euro for one person (age 17 and up) when entering the European Union. If the items you bring into the Netherlands exceed this amount, you are officially required to report them to Customs officials and pay taxes and duties. Be aware that if the value of an item is more than permitted, you can be taxed for the full amount if the item, within reason, cannot be split up (if you buy a tax-free video camera costing \$1200.00, you will be taxed on the full amount, not just the part that exceeds €430.00). However, assuming you arrive from the U.S. bringing 50 video tapes costing €430.00, you will only be taxed for the 51st tape.
2. There are separate limitations on some types of goods, such as alcoholic beverages, tobacco products, plants, animals and meat. If you import more than your entitlement, you can only be taxed for the quantity exceeding the limit. Note that these limitations apply to each individual of your traveling group. Persons under the age of 17 do not enjoy an exemption on tobacco and alcoholic beverages, coffee, coffee extracts and coffee essences.

Maximum Quantities of Goods Purchased in a non-EU Country which are Exempted from Import Tax:

Tobacco Products

Cigarettes	200 ea or
Cigarillos	100 ea or
Cigars	50 ea or
Smoking Tobacco	250 grams

Alcoholic Beverages

Beverages with an alcohol percentage greater than 22%	1 liter or
Beverages with an alcohol percentage less than 22%	2 liters or
Effervescent wines, liqueur-wines (port, sherry)	or 2 liters

Non-effervescent wines	2 liters
<u>Perfume</u>	50 grams
<u>Cologne</u>	and ¼ liter
<u>Coffee</u>	500 grams or
<u>Coffee Extracts and Essences</u>	or 200 grams
<u>Tea</u>	100 grams or
<u>Tea Extracts and Essences</u>	or 40 grams

Plants

Plants, including parts of plants and fruits imported into the Netherlands, must have a health (fyto-sanitair) certificate issued by the department of agriculture of the country of origin. A health certificate is not required for small amounts of **non-protected** fresh fruit, house plants and flower bulbs, which are brought into the country by travelers for their personal use. The amounts allowed are five kilos of fruit, five kilos of flowers and five kilos of flower bulbs without leaves and flowers.

Food (Meat, Fish and Dairy Products)

As of 1 January 2003, the importation of food from animal origin is prohibited. What is **allowed** is (1) food for personal use up to one kilogram that does not contain meat and dairy products, packed baby milk, special nutrition for medicinal purposes and food from Greenland, Faroer Islands, Iceland, Andorra, San Marino, Lichtenstein and Switzerland.

Animals

To prevent the spread of contagious diseases, the importation of living animals is not permitted in most cases. Pets can be imported with a valid veterinarian's certificate stating that the animal has been vaccinated for rabies not more recent than 30 days and not older than one year. For this purpose, the veterinarian should issue a so-called "animal passport" for the animal. This also generally applies to dogs and cats taken from the Netherlands to another country on vacation.

The importation of **protected animals** (alive, dead or stuffed) is generally prohibited. Under certain circumstances, protected animals can be imported if a prior license is obtained under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Before departing the Netherlands, ask border officials what animal products cannot be imported. Information can also be obtained from the Dutch Customs information phone line at 0800-0143 (From abroad: +31-45-5743031). For information on importation licenses for animals covered

by the CITES treaty, contact the Ministry of Agriculture, Nature and Food Quality Service Desk (LNV-loket) at 0800-2233322 (from abroad: +31-592-332958).

Imitation/knock-off Product

Importation of imitation or knock-off products is prohibited. These products will be confiscated and you may receive a fine as well.

Purchases at AAFES or Navy Exchange in Other Countries in Europe

Items bought at AAFES or Navy Exchange outside the Netherlands, but within the European Union, are regulated by the rules in the country of actual purchase. If that EU country allows you to shop there, you can legally bring these goods into the EU market and take it any place within the EU, as long as it is for personal use.

Another way is to order the product through the AAFES or Navy Exchange on-line catalogues and have it delivered to your nearest installation or base store.

Tax-Free Buying on the Belgian and German Economy

As of 2007, the Dutch authorities allow U.S. personnel stationed in the Netherlands to purchase consumer goods intended for personal use in the Netherlands tax-free and import these goods to the Netherlands without having to pay VAT. To do so, you must obtain a European VAT Form at the Schinnen VAT Office, which is located in Building 46 (USAG Schinnen). They are open every Mo-Fri from 8 AM to 4 PM. If there is any question as to whether an item is eligible for VAT exemption, it is the responsibility of the buyer to obtain information from the VAT Office **BEFORE** purchasing the item.

Weapons

Importation of personal weapons (i.e., firearms, knives) is generally prohibited. Under certain circumstances, importation is possible if licensed. For members of NATO Forces supported through JFC Brunssum, there are some special procedures that apply. See AE Regulation 550-35, Section IV, and/or contact the USAG Schinnen Provost Marshal's Office or Transportation Office for additional information.

Transit of Goods through the Netherlands

As indicated above, transfer of goods through other EU countries is not a problem as long as the quantities bought remain within the aforementioned limits.

X

LITIGATION

Anyone living in the Netherlands has the right to take a matter to court. When making its decision, the court will base its reasoning on various sources of law, such as statutes and treaties.

A court may base its decisions on:

A. SOURCES OF LAW

1. Laws

Laws are made by the central government and by lower legislative bodies such as the provincial executives and local councils. Because the Netherlands has a parliamentary democracy, our elected Parliament (the Upper and the Lower House) always must approve these laws. In addition to these laws we also have by-laws, which are made by central government but are fleshed out by a local or provincial authority.

2. Case law

We refer to the decisions of the courts as case law. During legal proceedings, a judge can consult case law to see what colleagues have said in similar cases. The judge can use these decisions as a guideline, but he can also depart from them and give an entirely different decision. That is how new case law is created and how the law is updated.

3. Local custom and conventional usage

Different parts of the country will often have their own local customs and usages and particular occupations or professions will have different usages. The conventional usages in banking, for example, differ from those in the ports. A court will take these customs and usages into consideration when making its decisions.

4. International treaties

International treaties are agreements between two or more countries. When countries sign a given treaty, they must make sure their national laws comply with that treaty. So, national laws must not conflict with international treaties. If a court nevertheless discovers a conflict, the rules of the treaty always take precedence. A well-known treaty is the European Convention for the Protection of Human Rights (the ECHR convention).

B. TYPES OF LAW

1. CIVIL LAW

Civil law is also known as private law. It sets out the rules governing relationships between people. Examples of civil law are the law of persons, family law, commercial law, landlord/tenant law and employment law.

2. CRIMINAL LAW

Criminal law applies to everyone. If a person breaks these rules, he or she is committing a punishable offence (a misdemeanor or a criminal offence) and the public prosecutor may charge this person, who will have to appear in court.

3. ADMINISTRATIVE LAW

Administrative law describes the rules that prescribe how government agencies are required to make decisions. Examples of government agencies are the local and provincial authorities and central government.

C. THE COURTS

1. District courts

There are 19 district courts in the Netherlands, each with its own jurisdiction, known as a district. The district courts deal with matters pertaining to criminal law, administrative law and civil law. For smaller cases or special types of cases, the district court employs the “*kanton*” judges. They are normally located in some major cities in their district. They used to be independent, but are now a part of the district courts.

Sections

Each district court contains sections. The civil section handles actions under civil law. The criminal section deals with criminal cases. The administrative section handles administrative cases. At the smaller district courts, judges occasionally work in two sections simultaneously (the criminal and the civil sections). If a judge sits only in one section, as is the case at most courts, he can do so for a number of years. He then has to “circulate” to a different section of the court.

Single judge or several judges

One of the features of the district court is that a party may face three judges, who will together advocate the case before them. This is in contrast to the proceedings at the *kanton* court where only one judge conducts the hearing and renders a decision. Therefore, proceedings in the *kantongerecht* are held before a single judge, whereas those in the district courts are held before

several judges if the case is complex. If it is a relatively simple case, a district court judge may sit alone.

2. Appeal

A person lodging an appeal against a district court decision must go to the court of appeal. There are five courts of appeal in the Netherlands: 1) in Amsterdam, 2) The Hague, 3) Arnhem, 4) Leeuwarden and 5) Den Bosch. Matters that fall under the jurisdiction of a court of appeal are appeals in civil and criminal cases. A court of appeal also handles appeals relating to tax matters. Some courts of appeal have divisions that administer justice in particular matters, for instance the enterprise division, military division and agricultural tenancies division.

Two special appeal tribunals

In addition to the five courts of appeal, there are two special appeal tribunals: the Central Appeals Tribunal, which handles matters involving public servants and social security matters; and the Trade and Industry Appeals Tribunal, which handles matters involving industrial insurance boards. Also, the Administrative Law Division of the Council of State passes judgments in appeal, but this body is not a part of the judiciary system.

3. Supreme Court

The highest court of law in the Netherlands is the Supreme Court and is referred to accordingly. The Supreme Court deals with appeals in cassation. It does not look at the facts, but whether the law has been properly applied by subordinate courts. Like the judges at the courts of appeal, the judges of the Supreme Court are known as “justices.” The Supreme Court is organized in divisions: “Division 1,” for example, deals with civil actions and “Division 2,” with criminal cases. At the Supreme Court, cases are adjudicated by three or five justices, depending on the degree of difficulty and the importance of the case to society. So, contrary to the district court and the court of appeal, a case may be decided by five judges instead of the usual three.

4. Appeal in administrative matters

Appeals in civil or criminal matters can be lodged with the court of appeal. Appeals in administrative matters are dealt with by the Central Appeals Tribunal or by the Administrative Law Division of the Council of State.

5. Arbitration Programs

For an increasing number of problems (including Dutch mail, telephone, travel, laundry, recreation, furniture, utilities, the Postbank (post office bank) and moving companies), arbitration within the Dutch system may be possible. Arbitration is normally less complicated and usually faster than regular court proceedings. There is usually a €50.00 filing fee, which will be reimbursed to you if you win your claim. This system is run by an agency called “Stichting Geschillencommissie Consumentenzaken” (Agency disputes consumer affairs) and is situated in The Hague (<http://www.sgc.nl/>). Generally, the establishment you have a problem

with must be a member of a professional organization that has voluntarily agreed to submit itself to the decisions of this agency.

If you cannot come to a favorable agreement with the establishment you are contesting, please contact your servicing legal office.

C. COSTS OF LITIGATION

For most litigation, you will require a local attorney to assist you. There are no standard attorney fees. Although under discussion at the moment, Dutch attorneys cannot use the “no cure no pay” system. Rather, they will charge you by the hour. More experienced and/or successful attorneys charge more than young attorneys starting their own office. Usually the initial consultation is free. You should inquire about fees and retainers (money to pay up front). You are entitled to a bill detailing the time spent and actions taken in your case.

1. Court fees

Most litigation will require a filing fee. The amount differs from case to case and can range from €28 up to several hundreds or thousands of euros. No court fee is required in criminal cases.

2. Dutch Legal Aid

The Netherlands has a government program for free or reduced-rate legal assistance. The extent of financial help depends on your income and property. Normally, to receive the benefit, you must obtain a statement from your town hall verifying how much you earn. As member of the U.S. Armed Forces, you may be required to get a statement from your commander instead. Your attorney will assist you further in requesting this benefit, if it appears that you qualify for it.

3. Help at the Law Center

The Army Legal Assistance Program provided by the Netherlands Law Center is governed by AR 27-3. It outlines who is entitled to assistance and what may be provided. As in the United States, there are many types of legal cases where you must have a private lawyer to represent you, such as divorce or adoption procedures. Although military legal assistance attorneys will normally be able to give you initial information, they cannot normally represent you in court. In some cases, such as family law matters, you must be aware of the so-called “***conflict of interest***” situations where only one of the spouses can be assisted by an attorney working at the same legal office. This means that the other spouse will have to consult a legal assistance attorney in another legal office. Some legal problems will require consultation with a Dutch attorney on the economy.

Your servicing legal assistance office can assist you in finding a lawyer.

XI

CRIMINAL LAW IN THE NETHERLANDS

Military and civilian personnel and their family members are subject to Dutch law. The Dutch always have authority, called jurisdiction, over civilians (civilian personnel and dependents). Cases involving military personnel usually will be handled under the U.S. military justice system. However, some minor matters (for example, off-post traffic tickets for parking or speeding) and some serious crimes can be handled by the Dutch authorities in accordance with the NATO Status of Forces Agreement, regardless of your status.

Investigations

The Dutch police and the Royal Marechaussee (Dutch military police) have certain prerogatives that are unknown in the U.S. criminal system.

Whenever a Servicemember of the U.S. military commits a crime in the Netherlands, the NATO Status of Forces Agreement (Article VII, NATO SOFA), the United States-Netherlands implementation agreement (Soesterberg Agreement), and Dutch and U.S. military law apply to investigation and possible prosecution against the Servicemember.

Investigations against NATO military in the Netherlands are primarily conducted by the Dutch military police (Koninklijke Marechaussee/Royal Marechaussee). If necessary, an investigation is done in cooperation with the U.S. military investigators to ensure that the investigation is conducted in a way that permits U.S. military punitive actions at a later date.

Under Dutch law, the Dutch criminal investigator can keep a suspect of a crime for 6 hours for interview purposes only. The time between 0000 and 0900 hrs does not count against the 6 hours. Legal representation by a defense counsel is only possible at this stage if the investigator believes it will not hinder the investigation and is authorized at the investigator's discretion. The suspect must be advised of his or her right not having to cooperate in the investigation and the right to remain silent. The legal rights statement does not include the right to an attorney being present at the initial interview.

If the crime is serious and further investigation is required, the assistant prosecutor can order investigative or police custody of the individual. The assistant prosecutor is usually a higher-ranking law enforcement officer. The investigative custody can last up to three days. Whenever the assistant prosecutor decides to put a suspect into investigative custody, he or she will also request that an on-call defense counsel be appointed to the suspect immediately. The Dutch government pays the appointed defense counsel. The location for the investigative custody is normally at the police station.

If, within the three-day period, the prosecutor believes that the suspect needs to remain in investigative custody, a court appointed investigative judge will look at the case and decide, based on the prosecutor's request, whether the suspect must be kept in investigative custody. No

later than three days and 15 hours after a suspect has been arrested, the investigative judge will have to hear the suspect and decide whether the suspect was rightly held in custody. If the investigating judge decides that the custody must be extended, a detention order will be issued. The extension can be for a maximum of 10 days. In serious cases, pre-trial custody can be ordered by the district court for up to 90 days, with a review by the court every 30 days.

Police authorities may enter a house only in cases where entry is required to **prevent serious and immediate danger** to the safety of persons and goods, **only** based on **written permission** from the assistant prosecutor. Entry of a house is only to be used to apprehend a person or good that is in plain view. To thoroughly search a house requires a separate action by the investigating judge. Although customary, the investigating judge does not necessarily have to conduct the search him or herself, but he or she must be available for consultation, if needed. An assistant prosecutor must be present during the search.

Custody and search are two separate measures to be taken, not necessarily connected to each other. However, the types of crimes for which they can be used are similar.

Even when the Dutch handle the case, U.S. military authorities may still take some administrative actions, such as assessing traffic points, revoking drivers' licenses, issuing Civilian Misconduct Action Authority sanctions, or revoking security clearances.

For minor matters such as traffic tickets, your servicing legal assistance office can explain your administrative options, but cannot advise you on what to do. In serious cases, we can only assist you in locating a Dutch attorney. When cases are to be handled under the Uniform Code of Military Justice (UCMJ), a U.S. military defense attorney is available to assist you with the UCMJ aspects of the case.

Criminal Attorneys paid by the U.S. Government

If the Dutch authorities decide to prosecute a U.S. Servicemember, civilian, or a dependent in Dutch court and there is a possibility of imprisonment, the U.S. Government will pay for your Dutch legal representation. However, check with your servicing legal office first before you hire a Dutch defense attorney.

U.S. Servicemembers not stationed in the Netherlands

U.S. Servicemembers not stationed in the Netherlands are, for matters of criminal jurisdiction, treated by the Dutch prosecuting authorities as regular civilians, unless they are on official duty (TDY/TAD) in the Netherlands. If not on TDY/TAD, they do not have NATO SOFA status in the Netherlands and the case may not be turned over to the U.S. Armed Forces for prosecution.

Some criminal offenses

It is impossible to discuss all the crimes in the Netherlands. However, ignorance is no excuse for violating. Because one is an American and stationed in the Netherlands does **not** mean that he or she has **immunity** from Dutch crimes. Criminal sanctions and prosecution may play a role

specific to your status and concern violations/abuse of tax/customs laws, environmental laws or even matters involving the freedom of speech. One may not just speak his or her mind anyway one likes. Discrimination or even inciting discrimination can be a criminal matter. Insulting certain officials, like public servants, the queen, the future king (and wife) or groups of people based on race, religion, philosophy of life, gender, sexual orientation or even libel/slander can result in criminal prosecution.

Punishment

Many people would like to know what type of punishment or fine they can expect from the Dutch authorities for a particular offense. The prosecutor's office in most cases will try to settle out of court ("Transactie"), unless the case is too serious. The justice system has also taken the step into the technological era and has come up with the BOS/Polaris system: Equal punishment for equal offenses.

As of 1 April 1999, penalties being demanded by Dutch public prosecutors for frequently occurring offenses and traffic violations have been more closely harmonized throughout the country. That is the result of the new Polaris guidelines, supported by a special computer program called BOS. Approximately eighty percent of all offenses that the Dutch Justice Department is being confronted will be settled using this system.

The Polaris guidelines work according to a set pattern. The system evaluates offenses by way of addition. Every offense in the Polaris guidelines stands for a number of penalty points. Polaris works with the term "basic offense," an offense in its most basic form. Each basic offense has a fixed number of penalty points. Bicycle theft, for instance, is 10 points; breaking into a house 60 points and breaking into a car 20.

Special circumstances can make for an offense to be considered for a lesser or higher penalty than this predetermined number of penalty points. Aggravating factors, such as use of a weapon in an assault or injury of a victim, will mean a number of extra penalty points. Also, where elements of discrimination are involved, this would mean a higher evaluation. On the other hand, an attempted burglary or an accessory thereto would constitute mitigating factors and would constitute fewer penalty points than a completed burglary. Finally, there are the repeat offenses: a one-time repeat increases penalty points by 10%; an additional 20% are added for two or more repeats.

Calculating penalty points to penalty is the last step for Polaris. The term "sanction point" is used here. In principal, each penalty point for an offense is equal to a sanction point. Each sanction point is equal to an out of court transaction/fine of 22 Euros, imprisonment for one day or if possible for the offense, two hours of community service. For example, in the case of a simple bicycle theft (basic evaluation: 10 penalty points), this is good for 10 sanction points: a transaction/fine of Euro 220, according to Polaris.

Up to and including 30 sanction points can be settled out of court by the Public Prosecutor's Office by way of a transaction or a fine. For 31 through 60 points, community service can be offered as an out of court settlement (Transactie). For more than 60 points, a subpoena to appear

in court will follow with a demand for imprisonment, possibly to be replaced by public service for cases with no more than 120 points. In cases exceeding 120 points, an imprisonment will be charged in court. In the event of a very high number of penalty points (over 180), a penalty point no longer counts as a full sanction point. In the event of 181 through 540 points, a penalty point counts as a half sanction point and over 541, a quarter sanction point.

Traffic Tickets

Violations of Dutch traffic laws can be a costly matter. A police officer does not have to stop you on the spot to confront you with your violation. In general, his or her statement (which is made under oath) is enough to charge you with the traffic violation. If, in a speeding situation, hand-held radar was used, this will be put in a report and become the legal basis for charging you with speeding. Most of the time, the police will have a picture from a camera registering the speeding offense or running the red light.

Speeding

Speeding cannot only cost a lot of money, but also cost you your car. If you speed over 30k an hour, the police will likely stop you on the spot and ask you to pay the fine right away. If you cannot pay, they can impound your car until you pay. If you go more than 50k over the speed limit, the police can confiscate your driver's license. If you go 100% over the allowed speed limit (say 100k in a 50k zone), they can impound your vehicle. Notorious speeders can even lose their car.

THE TRAFFIC TICKET PROCESS: Traffic tickets can be processed in one of two ways, depending on what the violation is.

If it is being handled through your Dutch local District Prosecutor's Office, they will normally send you a so-called "Transactie-voorstel" (out of court settlement), with an "accept-giro" bill for payment. If you disagree and don't pay, or forget to pay within the set time-frame, the prosecutor will take the case to court. You will receive a subpoena to show up in court at a certain date, time and location to defend yourself. The charged fine by the prosecutor then will generally be 25% higher than the original bill for an out of court settlement. You are not required to appear in court for it to pronounce a sentence (sentence in absentia). Obviously, the judge ultimately will decide what you are required to pay and will do so based on the information provided by the prosecutor and yourself if you decided to appear before the court. If the case is considered too serious, you will not receive an out-of-court settlement proposal, but a subpoena directly.

However, most traffic violations are centrally processed in Leeuwarden (province of Friesland) by the so-called Centraal Justitieel Incasso Bureau (CJIB). This has in practice become an administrative process with completely different rules. They will send you the bill for the fine. If you disagree, you must send an appeal to the prosecutor in the district in which the violation happened within six weeks. These six weeks are all you have time-wise to appeal their decision. If you forget and are too late, tough luck! If you **forget to appeal** or to pay, you will be sent a reminder with a 25% increase. If then you don't pay within four weeks of the sending date, the

bill is increased by 50%, and with the help of a bailiff, the prosecutor's office may then **impound** your **property** for payment.

If you *did appeal*, but it was denied by the prosecutor, you can request that the magistrate court in your own district review your case again. This magistrate appeal, again, must be filed within six weeks of the prosecutor's denial. However, now you must first pay the fine before they will start processing your case. This is done to prevent most of the frivolous appeals from just dragging on in the process. If you win, all monies will be reimbursed to you.

Speeding violation fines for vehicles

As of 1 January 2006, a new traffic fine system applies in the Netherlands. As of that date, fines are calculated per kilometer over the limit, instead of using a block rate. Moreover, the amount of the fine is linked to the extent of reckless and dangerous driving. The Justice Department wishes the caused risk in a traffic violation to determine the amount of the fine. Anyone speeding within a built-up area or at construction zones, in short, at places with increased traffic risks, is punished more severely than someone who speeds only a few kilometers over the limit in a sparsely populated area.

	Within a built-up area		Outside a built-up area on roads and 100k highways		On 120k highways	
	Cat 1	Cat 2	Cat 1	Cat 2	Cat 1	Cat 2
0-4 kph	€19	€31	€16	€25	€16	€22
5 kph	€24	€37	€21	€30	€20	€27
6 kph	€27	€42	€25	€34	€24	€32
7 kph	€32	€49	€28	€40	€27	€38
8 kph	€36	€55	€33	€46	€32	€43
9 kph	€40	€61	€38	€51	€37	€49
10 kph	€46	€68	€43	€58	€40	€55
11 kph	€51	€75	€48	€64	€45	€61
12 kph	€57	€84	€54	€72	€51	€68
13 kph	€63	€91	€60	€78	€56	€74
14 kph	€69	€99	€64	€85	€62	€81

	Within a built-up area		Outside a built-up area on roads and 100k highways		On 120k highways	
	Cat 1	Cat 2	Cat 1	Cat 2	Cat 1	Cat 2
15 kph	€75	€108	€72	€93	€67	€88
16 kph	€82	€116	€78	€100	€73	€96
17 kph	€90	€126	€84	€109	€79	€104
18 kph	€97	€134	€91	€117	€86	€111
19 kph	€104	€144	€98	€126	€92	€120
20 kph	€111	€153	€105	€134	€99	€128
21 kph	€120	€164	€112	€144	€106	€136
22 kph	€128	€175	€121	€153	€114	€146
23 kph	€136	€184	€128	€163	€121	€154
24 kph	€145	€196	€136	€172	€128	€164
25 kph	€154	€207	€145	€182	€136	€174
26 kph	€164	€219	€154	€193	€144	€183
27 kph	€174	€231	€163	€204	€152	€194
28 kph	€183	€243	€172	€214	€160	€204
29 kph	€193	€255	€182	€225	€170	€214
30 kph	€204	€268	€192	€237	€178	€225
31 kph or more	to be determined by DA					
31 kph					€188	
32 kph					€198	
33 kph					€207	
34 kph					€217	
35 kph					€226	
36 kph					€237	
37 kph					€247	
38 kph					€258	
39 kph					€268	
40 kph					€280	
41 kph or more					to be determined by DA	

Cat 1 = Category 1: motor vehicles, bikes, disabled motor vehicles, scooters, tractors and low speed motor vehicles

Cat 2 = Category 2: trucks, buses and motor vehicles with a trailer

Examples of fines for other traffic offenses

Paperwork violations

- | | |
|--|------|
| 1. No valid APK certificate | €90 |
| 2. Expired drivers license | €60 |
| 3. No being able to show drivers license | €60 |
| 4. Driving without a license | €220 |
| 5. No insurance | €380 |
| 6. Incorrect registration paper work | €220 |
| 7. Incorrect license plates | €90 |

Traffic behavior

- | | |
|--|------|
| 1. Illegal passing – sign F1 | €150 |
| 2. Crossing solid line | €150 |
| 3. Not keeping to the right | €90 |
| 4. Running red light | €150 |
| 5. Passing right before or on pedestrian passing (zebra stripes) | €240 |
| 6. Passing on the right | €150 |
| 7. Parking on invalid parking spot | €150 |
| 8. Standing still on the shoulder | €150 |
| 9. Driving on the shoulder | €240 |
| 10. Not using safety belts | €90 |
| 11. Holding mobile phone while driving | €150 |

Driving Under the Influence (DUI)

1. Driving Under the Influence (DUI) for most people means an alcohol-related incident, someone driving his/her vehicle while he/she was under the influence of alcohol. However, driving or riding your motor vehicle, motorized bike (bromfiets), or bicycle while you know, or should know, that you are intoxicated by any substance (i.e., **drugs**) that impair your operator abilities is also a criminal violation under Dutch law.

2. Since proving impairment can be difficult, legislature needed a tool that easily shows that a person is under the influence of alcohol or drugs. At first, the really successful tool for the police was the blood test. A medical doctor drew a blood sample from a suspect for testing. This blood alcohol test (BAT) is considered rather intrusive, and it takes a while to get the results. Although BAT is still possible under certain circumstances, nowadays, the breathalyzer test is the main

tool to test an individual for alcohol. If a person is suspected of having used drugs, a BAT will still be performed.

3. Do you violate the law if you are under the influence of alcohol and riding a “bromfiets” or bicycle? YES!! – although punishment is normally less severe.

4. Normally, you will be asked to submit to a **field breathalyzer** test at the location you are being stopped at. If this result is positive, you will be taken to the police/K-Mar headquarters for a more detailed breathalyzer test. You will normally be tested twice, to rule out any machine error.

5. The way the punishment for DUI is determined has changed quite a bit recently. There is no clear diagram that tells us what punishment to expect when caught driving intoxicated, as everything is based on the BOS/Polaris system. The police may now directly handle minor DUIs, without any prosecutor’s involvement. This exclusive authority for the Dutch police to handle the case does not apply to military suspects, only civilians and dependents.

a. The basic number of points for a DUI is 10 points. Depending on the level of alcohol found in your **breath** (equivalent blood alcohol level in brackets), points are added to your basic number of points as follows:

- Scale I:	235 – 350 ug/l	(BAT 0.054 – 0.08 %):	0 pts
- Scale II:	355 – 435 ug/l	(BAT 0.081 – 0.100%):	4 pts
- Scale III:	440 – 500 ug/l	(BAT 0.101 – 0.115%):	8 pts
- Scale IV:	505 – 570 ug/l	(BAT 0.116 – 0.13%):	12 pts
- Scale V:	575 – 650 ug/l	(BAT 0.131 – 0.15%):	16 pts
- Scale VI:	655 – 715 ug/l	(BAT 0.151 – 0.165%):	20 pts
- scale VII:	720 – 785 ug/l	(BAT 0.166 – 0.18%):	24 pts
- Scale VIII:	790 – 865 ug/l	(BAT 0.181 – 0.2%):	28 pts
- Scale IX:	870 – 945 ug/l	(BAT 0.201 – 0.215):	32 pts
- Scale X:	950 – 1020 ug/l	(BAT 0.216 – 0.235%):	36 pts
- Scale XI:	1025 – 1090 ug/l	(BAT 0.236 – 0.25%):	40 pts
- Scale XII:	1095 – 1195 ug/l	(BAT 0.251 – 0.275%):	44 pts
- Scale XIII:	1200 ug/l - higher	(BAT 0.276 - higher):	48 pts

If an out of court settlement (“transactie”) is possible, the prosecutor’s office will send you a letter stating the offense and a Euro amount that you will have to pay to stop further prosecution. If you don’t agree, you can refuse to pay and the case will be sent to court.

b. In case of non-payment of the settlement or if an out of court settlement is not possible, you will receive a subpoena to appear before a criminal court. It will take several months (about six) before you will get this subpoena. If you don’t show up in court, the judge will likely honor the charge entered by the prosecutor. The punishment is assessed as discussed

in the BOS/Polaris system above. In addition, the prosecutor can **revoke your driver's license** depending on how serious your offense is.

6. When you are stopped by the police for an alcohol test, you are obliged to cooperate. What if you just **refuse to participate in the test or try to beat the test**? First, the police will give you a warning. If you still refuse or continue to sabotage the testing, they will stop the testing and note this in the police report. Upon refusal to cooperate, your driver's license will be surrendered and an official report will be drawn up. The report will be sent to the Public Prosecutor who then decides about the proceedings (settlement by transaction or prosecution).

7. Your blood alcohol level should not be higher than 0.5 per mille. The alcohol limit for beginning drivers is 0.2 per mille. More stringent rules apply to alcohol in traffic since 1 January 2006. The new alcohol limit of 0.2 per mille applies to all moped drivers up to 24 years of age and to everyone who received or will receive his/her driver's license since 30 March 2002. The 0.2 per mille limit operates the first five years after you passed your driving test. This rule only applies to motorized traffic.

8. If a blood alcohol level between 1.3 and 1.8 per mille (0.8 per mille for beginning drivers) has been established, you must also complete the 3 day mandatory EMA (Educational Measure Alcohol and Traffic) course, which may cost you more than €500.

Fines for driving under the influence of alcohol

1. Motor vehicles

Permillage	Fine	Fine "beginning driver"
0.22-0.53 ‰	N/A	€220.00
0.54-0.80 ‰	€220.00	€220.00
0.81-1.00 ‰	€300.00	€300.00 + 6 months DFD ss
1.01-1.15 ‰	€390.00	€390.00 + 6 months DFD ss
1.16-1.30 ‰	€480.00	€480.00 + 6 months DFD ss
1.31-1.50 ‰	€550.00 + 6 months DFD ss	€550.00 + 6 months DFD ns
1.51-1.65 ‰	€650.00 + 6 months DFD ns	€650.00 + 6 months DFD ns
1.66-1.80 ‰	€700.00 + 7 months DFD ns	€700.00 + 7 months DFD ns
1.81-2.00 ‰	€800.00 + 8 months DFD ns	€800.00 + 8 months DFD ns
2.01-2.15 ‰	€900.00 + 9 months DFD ns	€900.00 + 9 months DFD ns
2.16-2.35 ‰	€1,000.00 + 10 months DFD ns	€1,000.00 + 10 months DFD ns

Legend:

- DFD: Disqualification From Driving motor vehicles
- ss: suspended sentence
- ns: non-suspended sentence

2. Mopeds

Permillage	Fine	Fine 'beginning driver'
0.22-0.53 ‰	N/A	€110.00
0.54-1.00 ‰	€110.00	€110.00
1.01-1.50 ‰	€190.00	€190.00
1.51-2.00 ‰	€280.00 + 6 months DFD ss	€280.00 + 6 months DFD ss
2.01-2.50 ‰	€370.00 + 6 months DFD ns	€370.00 + 6 months DFD ns
≥ 2.51 ‰	€460.00 + 9 months DFD ns	€460.00 + 9 months DFD ns

Legend:

- DFD: Disqualification From Driving motor vehicles
- ss: suspended sentence
- ns: non-suspended sentence

Dangerous Dogs

Article 73 of the Dutch Health and Welfare Act for Animals states that the Dutch Government authorities can prohibit certain categories of animals from being bred, imported into the Netherlands, offered for sale, or sold.

Currently, only the **Pit Bull Terrier** has been specifically identified as a dangerous animal under this law. An owner or keeper of this dog currently residing in the Netherlands must comply with several restrictions before exposing the dog to the public:

- a muzzle complying with certain specifications must be put on
- the keeper/owner must have available an animal passport or similar document with an identity mark that shows that the animal belongs to this specific category of animals (which includes neutering)
- the animal must have a tattoo to reflect its status similar to the identity mark as stated in the documents
- if taken outside, the dog must be kept on a short leash, no longer than 1.5 meters

Relevant documents can only be obtained through proper Dutch authorities. The above requirements only apply to Pit Bull Terrier dogs currently in the Netherlands. These dogs may not be imported into the Netherlands, not even by U.S. personnel assigned to units in the Netherlands pursuant to the NATO SOFA.

U.S. personnel and their dependents keeping such a dog in the Netherlands must comply with the same requirements as Dutch citizens.

Self-Defense

The risk of being robbed, your house broken into, or possibly being threatened by some criminals on the street raises the question of what are you allowed to do to protect yourself under Dutch law. Obviously, generally using violence is a criminal offense, but under certain circumstances the use of violence may be excused. Article 41 of the Dutch Penal Code provides such an excuse in the face of an immediate and illegal assault for necessary protection of your body or someone else's body, property or chastity. Article 41 is a very broad, as is the legal definition of what is generally referred to as self-defense. It leaves many questions open such as what violence is necessary to defend yourself, what is an immediate assault, and what is illegal violence? The text of Article 41 really does not give an adequate answer to these questions.

Many of these issues have led to case law in which judges had to decide whether considering the given circumstances the use of violence was justified. This also makes it difficult to give you a clear cut guideline on how to act in a certain situation because every case has its own set of circumstances, which can change the way a prosecutor or a judge may look at your case.

However, there are some general rules that you will have to think about and that can give you some guidance. The first rule is whether, considering the circumstances, you could have prevented having to use violence. Was it more appropriate for you to just walk away instead of

having the situation escalate in which you had to defend yourself? Instead of waiting for that obnoxious person to start a fist fight, could you have just walked away? This requirement is called the “duty to retreat.” Generally, one must look to avoid physical violence if reasonably possible. In such a case, it is better to have the police deal with the combative person, as it is their duty to protect you and deal with such matters or alternatively, to avoid a confrontation outright.

Many situations obviously may require you to act (some 6.5 ft, 250 pound bully starts beating up your 10 year old daughter). In all cases, however, whatever violence you use must be proportionate and justified by the violation. That is, the court must ultimately agree that the degree and type of violence you used was necessary under the circumstances. Using a baseball bat to hit your neighbor’s child for trampling your precious tulips is obviously not in proportion to the violation of your property, and thus, such a means to defend your property is not appropriate under the circumstances.

The second rule is that there must be an imminent threat or an immediate assault that harms a person’s body before you initiate a violent act in defense. Generally, mere apprehension that another may attack you or another does not give you the right to attack first. This is too speculative. What is an “imminent threat” depends on the facts and circumstances. The court will look at many issues, such as the use of threatening language coupled with a present ability to follow through on the threats. We’ve all heard the childhood jingle, “Sticks and stones may break my bones, but words will never hurt me.” Well, this saying illustrates the legal principle. It really is true; words alone will never hurt you physically. For example, the words “I’m going to kill you” standing alone does not trigger your right to violently lash out in self-defense. However, these words spoken by a person holding a knife or pistol may trigger your right to strike first in defense. Understand that the law requires an immediate threat of an attack before you have reason to act. The law also requires that your reaction be immediate. After being attacked, you cannot wait an hour before striking back and then claim self-defense. Such an act, when there is a cooling period between the initial assault and your violent response, does not fall under self-defense anymore. Again, the law requires a proportionate and timely reaction in self-defense.

Defending your home, your property or your vehicle poses special problems. What do you do in a case of a break in? Is it actually a break in, or did you just leave the door open and someone entered to see whether everything was OK? But, let’s assume you hear that sound of breaking glass, etc., and you find someone in your living room going through your stuff. This is a criminal trespass and generally calls for a so-called “citizen’s arrest.” This means that you may forcibly detain the person and transfer him or her to a police officer as soon as possible. Holding the offender could be difficult because the burglar might resist. To effect an arrest, the law authorizes you to use only reasonable and proportionate force.

Harming the person, like hitting him or her with a bat, is generally not proportionate force nor a justified mean to effect a citizen’s arrest. The use of deadly force is never authorized to protect personal property. Likewise, threatening a burglar with deadly force, like brandishing a knife, holding a bat or pointing a pistol, to effect an arrest is generally not lawful. Remember that the person you threaten or attack still has the self-defense right to resist unlawful threats or acts of

violence against him or her. Generally, the use of deadly force is only reasonable to protect and save life. Rarely will startling a burglar or someone vandalizing your car trigger the right to use harmful or deadly force.

What if the burglar or vandal flees? May you pursue him or her and use force to stop the person? The law does allow you to pursue an offender to effect a lawful arrest, but you must chase him or her in a responsible manner and you may only use reasonable means and amount of force to bring the fleeing offender under arrest. High-speed vehicle chases are generally unlawful. Again, you may not use deadly force to stop the offender, and the threat of deadly force is risky because of the offender's self-defense right. Your appropriate reaction in these situations depends on the type of crime committed and anticipated force used to apprehend the offender. Again, in most cases, it is best to allow trained experts—the police—to deal with the situation.

Bottom line is that Dutch law provides broad guidelines for self-defense, defense of another and the protection of property, and any force against an offender must be reasonable and justified.

Self-defense and weapons

We previously addressed the self-defense rules in the Netherlands. Another question that may arise is whether I can use a weapon to defend myself? The initial question should be whether I am legally allowed to possess a weapon in the Netherlands and if so, under what circumstances?

The Dutch law is extremely strict on the possession of weapons. You are generally not allowed to own, possess or carry a weapon in the Netherlands. People that desire to have a weapon have to go through a license process. There are some exemptions for people who are members of hunting or shooting clubs. But also here licenses are required. So using a real weapon for defense purposes is not allowed.

There are five listings of weapons that are prohibited in the Netherlands. It would not be feasible to all list them here, but some that could be of interest are: weapons that spread substances that render people helpless (**i.e., pepper spray!!**); suffocating weapons; stun guns, tazers, cattle prods, gas pistols; paralyzers, tear gas devices, alarm pistols, brass knuckles, replicas of pistols and rifles, nunchakus, paint ball pistols or guns, toy guns, stilettos, most type of knives.

If you have any doubts about a certain weapon and if prohibited, you should check with your local Provost Marshal Office.

Generally, objects that are kept with the intent to use them as a weapon, such as a base ball bat or big wrench next to the driver's seat, or the golf club in the bedroom, are also considered weapons. Obviously, this will generally depend on the situation and intent in which these objects are being kept.

For U.S. personnel in the Netherlands, there are some special rules on firearms possession and which JFC Brunssum has designated registration procedures for personnel in the South Limburg region. For U.S. personnel not in the South Limburg area, the normal Dutch license

requirements must be complied with. Army in Europe Regulation 550-35 spells out the possession and registration requirements in paragraph 17, providing that:

- a. Privately owned shotguns, sporting rifles, combination rifle-shotguns, handguns, and ammunition may be retained in individual or family-type quarters if each firearm has been properly registered with U.S. and RMR officials. The local police have the authority to execute a no-notice inspection at the individual's residence to inspect the storage arrangements of a POF.
- b. Personnel are forbidden to take into a store, or to possess in an organizational billet, a POF or ammunition.
- c. Personnel who keep firearms and ammunition in quarters are responsible for safeguarding and securing them.
- d. In the event of loss or theft of a firearm, the owner will immediately report the loss to the RMR and local civilian police. If a firearm reported lost or stolen is found or recovered, the owner will report the return immediately to the RMR and local civilian police.
- e. Violations of the provisions in subparagraphs a through d above may be punished under Article 92, UCMJ.

Better be safe than sorry. Basically, most anything that remotely resembles a weapon is illegal in the Netherlands. If in doubt, check with the proper authorities to be certain.

Criminal Enforcement of Drugs Policy

Dutch policies on drugs have been subject to discussions world-wide and has led to a lot of confusion. Below is a summary of the current Dutch drug policy.

The new Opium Act guidelines issued by the College of Procurators-General, the national controlling body of the Public Prosecutions Service (PPS), specifies clear standards for the criminal enforcement of drugs policy.

Basic premise

Dutch drugs policy is aimed at discouraging the use of drugs and limiting harm with a view to protecting public health. One element of the policy is the distinction between narcotic drugs with an unacceptable risk (i.e., "hard" drugs) and drugs with a lower risk (i.e., "soft" drugs). This distinction also provides the point of departure for the guidelines. With a view towards establishing the appropriate punishment, the guidelines also draw a distinction between dealers and users. Lower penalties will be sought where the quantity of drugs discovered is small and the drugs are intended for personal use.

Coffee-shops, for example, are not permitted to have more than 500 grams of soft drugs in stock. Measures to combat the large-scale cultivation of homegrown cannabis are being given priority

and the manufacture of synthetic drugs such as Ecstasy, LSD and amphetamines, as well as trade in heroin and cocaine, are tackled vigorously.

The guidelines underline the importance of protecting juveniles. Dealers trading in the vicinity of schools and/or who sell drugs to children under 18 (juveniles) will face stiffer penalties. Action will also be taken against coffee-shops that admit under-age customers.

Coffee-shop policy

The sale of soft drugs is subject to a maximum of 5 grams per transaction per person per day. The maximum trading stocks of a coffee shop have been set at 500 grams.

Coffee-shops will remain subject to the "AHOJ-G" criteria, an acronym standing for no bills and posters, no hard drugs, no disturbance or nuisance to others, no access to coffee-shops by juveniles or any sales to juveniles or sales of large quantities - meaning no more than 5 grams.

Juveniles should not be admitted to coffee-shops. The sale of soft drugs other than in coffee-shops is not permitted. The guidelines specify clearly the undesirability of combining the sale of alcohol and soft drugs.

The coffee-shop policy is one of toleration, with the AHOJ-G criteria providing the framework. Municipalities are, however, at liberty to ban all coffee-shops - the so-called "zero option" - or to restrict their numbers. In addition, the local authorities may further reduce the maximum trading stocks under 500 grams.

Cannabis cultivation

The cultivation of homegrown cannabis has been tackled. Priority is being given to commercial cultivation. The guidelines lay down a number of criteria for assessing the commercial nature of cultivation, such as the use of customized facilities. The penalty for the unauthorized growing or cultivation (i.e., deliberate stocking) of cannabis will range from a police caution (in the case of exceeding limited quantities for personal use) to a prison sentence of two years and a fine.

Hard drugs

Measures to combat the trade in hard drugs, including Ecstasy, is one of the Ministry of Justice's top priorities. Sales to under-age persons and/or in the vicinity of schools are tackled with particular severity. Dealing in and the manufacture of synthetic drugs, such as Ecstasy and amphetamines, has increased in the Netherlands in recent years. Individuals guilty of such offences may count on the same treatment as the "traditional" dealers in heroin and cocaine.

The penalties called for under the guidelines range from a suspended sentence of several weeks for the possession of fewer than 5 grams or 10 tablets or doses (as in the case of Ecstasy and LSD) to prison terms of 3 to 12 years for the import and export of more than one kilo (or 2,000 tablets or doses) of hard drugs.

The latter punishment is wide ranging since the suspects may have played various roles within the organization, ranging from that of courier and transporting the commodity in return for a small reimbursement, to that of principal/organizer.

XII

RETIREES

a. Status

Retiring from the military or a civilian component job, or just leaving the military or that civilian component job in the Netherlands and residing here means that you lose your NATO SOFA status in the Netherlands. As a result, all logistic support privileges are terminated. You will become a regular resident in the Netherlands. As such, you will have to comply with immigration requirements and possibly officially import your vehicles and belongings bought tax-free under the so-called Tax Relief Program and pay considerable tax fees accordingly.

As a result of special permission from the Netherlands Ministry of Finance, military retirees residing in the Netherlands may purchase goods at AAFES and the Commissary at USAG Schinnen, although not tax-free. Retirees wanting to participate in this Tax Relief Program must be officially registered and follow proper administrative procedures. For further information, contact the Retiree Affairs Officer at HQ, USAG Schinnen, 046-4437320.

b. Dutch Taxes

In general, based on the U.S. – Dutch income tax treaty, U.S. retirees do not have to pay Dutch income tax on their U.S. retirement income. However, if a retiree works on the Dutch economy, the Dutch “IRS” can still use this U.S. income to compute the Dutch income tax liability. The Dutch income earned may be added to the U.S. income and taxed accordingly, which may put the Dutch income in a higher Dutch income tax bracket.

c. Dutch Social Security

The Netherlands has a very highly regulated social security system. Generally, anybody living in the Netherlands is part of that system and must pay social security premiums when receiving an income. When a U.S. retiree receives a U.S. pension/retirement income, this can be subject to Dutch social security withholdings. Under certain conditions, an exemption from these premiums are possible if all of the following are met:

- The individual only receives a U.S. or possibly Dutch social security income. If other income is received, normal Dutch premiums will be levied on your U.S. income.
- The income received must be at least 70% of the minimum wages as set by law. Currently (as of 1 January 2009), this amount is 70% of €1381.20 = €966.84. If the individual also receives a Dutch social security entitlement as well, the joint amount

- must meet the 70% limit as set above. The U.S. income must equal or be larger than the Dutch social security income.
- The individual must actively request this exemption from the Dutch “Sociale Verzekeringsbank.” Exemption is not possible for the so-called AWBZ (Exceptional Medical Expenses Act) premium, unless there is a bilateral treaty between the U.S. and the Netherlands covering such an exemption. Currently such provision in a U.S. – NL treaty does not exist.

XIII

IN CONCLUSION

We hope this booklet has been helpful to you. If you have suggestions on how to improve it or would like to see additional topics addressed, please contact the Chief, Host Nation Division or Dutch Paralegal/Translator-Interpreter at the Netherlands Law Center at +31(0)46-4437688 or DSN 360-7688. This booklet is also available at the Netherlands Law Center website at <http://www.usagschinnen.eur.army.mil/sites/installation/NELC.asp>.