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Overview

The Netherlands is widely recognised as a leading international financial centre and has a mature investment funds industry with an attractive investment environment due to, amongst others, flexible corporate legislation, various tax structuring options, and an extensive network of bilateral investment treaties and tax treaties.

The most recent research conducted by the *Nederlandse Vereniging van Participatiemaatschappijen* (the Dutch Association of Private Equity Firms)[1] shows that in 2024, Dutch private equity firms raised around €8.6 billion in new funds. A total of 278 Dutch private equity and venture capital firms managed approximately €55.3 billion (committed capital) in 725 funds, and over €7.7 billion was invested by national and international private equity and venture capital firms in Dutch companies.

In the last year we have seen an increase in the number of fundraisings, investor appetite and fund financings in the Netherlands as compared to the previous year. We believe that this is due to, amongst others, global, macroeconomic drivers and the stabilising interest rate environment, which are not specific to the Dutch market.

On the fund financing side, the increase in fundraisings and stabilised interest rates (including key reference rates such as EURIBOR) also led to an increase in the demand for capital call and hybrid facilities. Additionally, there has been an increased demand from Dutch fund managers for alternative financing products, such as GP (or co-investment) facilities and net asset value (**NAV**) facilities, as an additional source of capital during the fund's lifecycle.

The evolving fund finance market has proven to be of increasing interest to both Dutch and foreign lenders over the past couple of years, and market participants are more actively exploring other (including more structural) fund finance solutions on top of the traditional capital call facilities.

Consequently, we are looking forward to an exciting 2026, which will provide new opportunities and challenges for fund managers and fund finance lenders.

This chapter seeks to provide further background on the following aspects: (a) fund formation and the most commonly used Dutch fund vehicles; (b) regulation of fundraising and fund managers; (c) fund finance in the Netherlands; (d) structuring the security package; and (e) the year ahead.

Fund formation and the most commonly used Dutch fund vehicles

A Dutch alternative investment fund (an **AIF**)[2] may be structured in various ways, both as corporate and contractual entities. Corporate entities have legal personality (*rechtspersoonlijkheid*), enabling them to hold legal title to assets, and are governed by mandatory corporate law, whereas contractual entities lack such legal personality and are unable to hold legal title, but enjoy the benefit of more contractual freedom. Frequently used corporate investment vehicles are the private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) and the cooperative with excluded liability (*coöperatie met uitgesloten aansprakelijkheid*). Contractual investment vehicles are commonly established in the form of a limited partnership (*commanditaire vennootschap*) or a Dutch fund for joint account (*fonds voor gemene rekening*).[3] The ultimate selection strongly depends on the outcome of relevant tax and legal structuring analyses, but the majority of Dutch AIFs are structured either as cooperatives with excluded liability or limited partnerships.

Regardless of whether a contractual or legal entity is selected, an AIF established in the Netherlands should consider that the European Alternative Investment Fund Managers Directive 2011/61/EU (the **AIFMD**) is applicable and has been implemented into the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*, or the **AFS**). Consequently, the AIFMD and all rules and regulations promulgated thereunder (including Delegated Regulation (EU) 231/2013, the **Delegated Regulation**) must be complied with in the Netherlands by any alternative investment fund manager (an **AIFM**), unless an AIFM can benefit from exemptions (such as AIFMs managing AIFs below the Threshold (as defined below)).

If a Dutch licensed AIFM establishes an AIF as a contractual investment vehicle (lacking legal personality), it is – in principle – required under the AFS to also establish a single-purpose corporate entity to hold the assets of one or more of such AIFs set up by the licensed AIFM.

Regulation of fundraising and fund managers

The management or marketing of AIFs in the Netherlands by 'large' AIFMs triggers the obligation to obtain a licence in the Netherlands, subject to certain exemptions. AIFMs are considered 'large' if they, directly or indirectly, manage portfolios of AIFs whose assets under management (in the aggregate) amount to €500 million or more, or – when open-ended or leveraged – €100 million or more (together, the **Threshold**). An AIFM is deemed to manage an AIF in the Netherlands if such AIFM is established in the Netherlands, or if the AIF managed by it is established in the Netherlands.

Dutch AIFMs that fall below the Threshold may manage and market their AIFs without an AIFMD licence in the Netherlands, provided that either:

a) the AIF's units or shares are exclusively offered to professional investors within the meaning of the AFS (*e.g.* banks, insurers, pension funds, brokers, AIFMs, AIFs, or qualifying large corporates); or

b) the AIF's units or shares are offered to fewer than 150 persons, or have a nominal value of, or are offered for a consideration payable per investor of, at least €100,000, provided that a banner or selling legend as to the AIFM's unregulated status (in a predefined size and layout) is printed on the AIF's offering documents,

and in each case, the relevant AIFM is registered with the Dutch authority for the financial markets to monitor compliance with the sub-Threshold regime, and to effectively monitor any build-up of systemic risks. Dutch AIFMs are furthermore required to disclose to the Dutch Central Bank (*De Nederlandsche Bank*), amongst others, information on the main instruments in which the AIFs are trading, the principal exposures, and the most important concentration of the AIFs managed.

Dutch AIFMs that do not require a licence for managing and marketing their AIFs in the Netherlands may voluntarily apply for such licence, provided such AIFM complies with all applicable AIFMD requirements (as implemented into Dutch law). Not many Dutch AIFMs have chosen to apply for an AIFMD licence voluntarily.

Additionally, considering that AIFs making private equity investments are in scope of the venture capital regulation (Regulation 345/2013/EC, or **EuVECA**), EU-based managers of (EU) AIFs that comply with the conditions of EuVECA may benefit from an EU marketing passport as introduced therein. In the Netherlands, a lot of AIFMs use such passport as it allows for the marketing of units or shares to potential investors investing at least €100,000 or to investors that are treated as professional clients (within the meaning of Directive 2014/65/EU), in each case provided that they have confirmed their awareness of the risks associated with their investment. An EuVECA labelled AIF cannot use any method by which the exposure of the AIF will be increased beyond the level of its undrawn capital commitments, whether through borrowings (such as NAV financings) or securities, derivative positions or by any other means.

Finally, the amendments to the Alternative Investment Fund Managers Directive (**AIFMD2**) were published in the Official Journal of the European Union on 13 March 2024. AIFMD2 should therefore be implemented into Dutch legislation prior to 16 April 2026. AIFMD2 includes, *inter alia*, a number of provisions that apply to AIFs engaging in loan origination. An AIF will be subject to a 300% leverage cap (where the AIF is closed-ended) and a 175% leverage cap (where the AIF is open-ended), if its strategy is mainly loan origination or where the nominal value of the loans originated represents at least 50% of the NAV. Sublines secured by capital commitments will not count towards exposure. Exceptions apply for AIFs if they solely originate shareholder loans, the notional value of which is not exceeding, in aggregate, 150% of the AIF's capital.

Fund finance in the Netherlands

The demand for alternative financing solutions by Dutch AIFMs and AIFs is expected to continue its upturn. Depending on the type of AIF, the need for financing can vary, but is typically focused on (i) traditional capital call facilities, and (ii) credit facilities to provide structural leverage or liquidity for the AIF (based on the net asset value of its investments).

There is limited data publicly available on the use of the various types of fund financing in the Netherlands, which makes it difficult to assess the size of the Dutch fund finance market. In our experience, secured capital call facilities continue to be the main type of financing selected by AIFMs and are commonly used by a large proportion of Dutch AIFMs. It has become customary to explicitly refer in the relevant fund documentation to the possibility to take out this type of financing and the creation of security by the AIF on its assets (including receivables that investors owe to the fund). The purpose and use of traditional capital call financings are expected to further expand. In addition to bridging capital calls, capital call facilities are also being used to 'bridge' the third-party financing to be arranged for at the level of the portfolio company (*i.e.* at bidco level) and thus speed up acquisition processes. Utilising a capital call facility during the period between first and final closing of a fundraising has also allowed AIFMs to invest prior to final closing without having to process and charge incoming investors equalisation fees.

Over the years and in particular in the last two years, there has been an increasing interest in NAV and hybrid facilities at (or just below) fund level. For existing funds, it is a point of attention that the ability to incur structural leverage is not yet always catered for in fund documents. Dutch fund managers are using NAV facilities particularly when the undrawn investors' commitments are relatively low and/or when the fund investment period has ended and the fund seeks liquidity for add-on investments or investor distributions. For continuation funds, NAV facilities are used to finance the initial investment and/or the exit of limited partners not rolling over.

An important consequence of incurring such leverage at the level of a Dutch AIF is that, depending on the details of the financing, the relevant AIFM managing such AIF may be required to obtain (i) an AIFMD licence, or (ii) an additional authorisation on its existing AIFMD licence in the Netherlands, as further discussed below. As an alternative for incurring fund-level leverage (with the aforementioned regulatory consequences), Dutch AIFs have been implementing NAV facilities at the level of an intermediate holding structured as a wholly owned subsidiary of the AIF. The structuring of these facilities depends on a range of legal, tax and regulatory requirements, and the applicable structure may vary per financing solution.

Whether or not an AIF incurs leverage may affect the relevant AIFM's regulatory status, *i.e.* it may lead to a lower Threshold being applied for purposes of determining whether an AIFMD licence is required in the Netherlands. Also, incurring leverage is not allowed for EuVECA labelled funds if such borrowings exceed the undrawn capital commitments. Additionally, if AIFs deploy leverage, the AIFMD (and rules and regulations promulgated thereunder) imposes additional obligations on an AIFM managing such AIF.

The term 'leverage' is defined by the AIFMD as any method by which an AIFM increases the exposure of an AIF it manages, whether through borrowing of cash or securities, or leverage embedded in derivative positions, or by any other means.

While determining whether an AIF deploys leverage within the meaning of the AIFMD and when calculating exposure, the Delegated Regulation dictates that AIFs should 'look through' corporate structures. Therefore, exposure that is included in any financial and/or legal structures involving third parties controlled by the relevant AIF, where those structures are specifically set up to increase, directly or indirectly, the exposure at the level of the AIF, should be included in the calculation. However, for AIFs whose core investment policy is to acquire control of non-listed companies or issuers, AIFMs should not include in the calculation any leverage that exists at the level of those non-listed companies and issuers, provided that the relevant AIF does not have to bear potential losses beyond its capital share in the respective company or issuer.

On the other hand, borrowing arrangements entered into by the AIF are excluded under any of the abovementioned methods if these are:

a) temporary in nature; and
b) fully covered by 'capital commitments' from investors (*i.e.* the contractual commitment of an investor to provide the AIF with an agreed amount of investment on demand by the AIFM).

Even though the Delegated Regulation considers in its recitals that revolving credit facilities (**RCFs**) should *not* be considered as being temporary in nature, it is the prevailing view that capital call facilities (by way of an RCF or otherwise) can be structured as temporary in nature if certain requirements otherwise applicable to non-RCFs are similarly complied with. In order to structure these facilities as temporary in nature, certain features can be implemented, such as: (i) a mandatory clean down to occur once every 12 months (followed by a period during which the facility is not used); and/or (ii) an obligation to repay each loan, with the proceeds of capital contributions, within 12 months of drawing such loan.

Structuring these capital call facilities as temporary in nature fits their purpose, as these facilities are typically utilised to bridge the liquidity gap at the level of the AIF to be funded ultimately out of the proceeds of capital contributions. Such a time gap between inflowing money from investors and outflowing money for investments can be caused by: (a) the period, often 10 business days, it takes before requested capital is actually contributed to the AIF; (b) the desire of the AIFM to bundle capital calls (so as not to burden the investors with drawdowns of smaller amounts); (c) a defaulting investor not contributing; and (d) the AIFM delaying certain capital calls, as this may boost the internal rate of return for investments in and by the AIF.

Structuring the security package

Credit facilities to be granted to AIFs can be secured in a variety of ways depending on the purpose of the facility. The below provides an overview of the typical security structure per type of facility followed by a description of general topics relevant to the majority of the facilities, such as in relation to a pledge over bank accounts, which comes into play in a wide variety of fund finance facilities.

Capital call facilities – investor receivables

Where the fund borrows against the investor receivables, *i.e.* enters into capital call facilities, security is typically granted over (i) the bank account (which is considered a receivable on the account bank under Dutch law) on which capital contributions are made by the AIF's investors, and (ii) all receivables or contractual obligations that the investors owe to the AIF, such as the obligation to make capital contributions to the fund following a drawdown notice. Pursuant to Dutch law, security over receivables can be established by way of a disclosed right of pledge, or by way of an undisclosed right of pledge. A disclosed right of pledge is created by way of a security agreement (or notarial deed) and notification of the right of pledge to the relevant debtors of the receivables that are being pledged. An undisclosed right of pledge is created either by way of a notarial deed or by way of a security agreement that is registered with the Dutch tax authorities for date-stamping purposes. A disclosed right of pledge can be created over present and future receivables, whilst an undisclosed right of pledge can only be created over present receivables and future receivables directly arising from legal relationships existing at the time of creation of such undisclosed right of pledge. Therefore, for an undisclosed right of pledge, it is common practice to file supplemental security agreements with the Dutch tax authorities periodically and at any time a new investor accedes to the fund to also secure present and future receivables resulting from legal relationships that have been entered into after the date of the initial security agreement.

Both the disclosed and undisclosed right of pledge over receivables of the AIF on its investors are used in practice; choosing one form of pledge over the other depends, to some extent, on whether it is commercially desirable to disclose the right of pledge to the relevant investors and whether an undisclosed right of pledge is acceptable to the lender. As it is customary to send pledge notices to investors in key jurisdictions such as Luxembourg, the United Kingdom and the United States, it has become common over the last few years to notify investors of a right of pledge over the investor receivables in the Netherlands as well. Dutch law allows for sufficient flexibility as to the form of such notification to be made; consequently, such notification can be made by uploading the notice to the AIF's investor portal or referencing the right of pledge in any investor reporting document, making the process of serving notice a fairly effortless procedure. When granting a disclosed right of pledge over investor receivables, it is common to notify the investors not by separate pledge notices but via the investor portal of periodic investor reports.

The qualification of the receivable owed by the investor to the AIF as either an existing claim that is conditionally payable or a future claim whose existence is conditional (in both cases, conditional upon a capital call notice being served) is important for determining whether the receivable can be made subject to a bankruptcy proof right of pledge. If the claim is considered a future claim, any right of pledge that is created in advance will only take effect if such claim comes into existence prior to the pledgor being bankrupt; any claim that comes into existence after bankruptcy will fall within the bankruptcy estate of the pledgor.

In Dutch legal literature and case law, the prevailing view is that the receivable owed by the investor to the AIF qualifies as a future receivable arising from an existing legal relationship, which receivable comes into existence once the AIFM sends the relevant capital call notice to the relevant investor and therefore can also be made subject to an undisclosed right of pledge as of the date of the capital call notice (without periodical supplemental security being required, unless the investor base changes as that will be considered a new legal relationship between the fund and the new investor – in case of a disclosed right of pledge, a change to the investor base will typically require notification to be served on the new investor). However, if the AIFM sends the capital call notice after the pledgor's (the AIF's) bankruptcy, then the receivable comes into existence after such pledgor's bankruptcy and therefore forms part of the pledgor's bankruptcy estate unencumbered by any right of pledge. It is, however, the prevailing view in Dutch legal literature that the parties to the fund agreement may agree on the qualification of a receivable as an existing claim (that becomes payable under condition of a capital call being made) – as such, fund documentation will typically contain a clause that explicitly states that any receivable owed by the investor to the AIF is considered an existing claim, conditionally payable upon the capital call notice being served. A right of pledge created over an existing receivable that is conditionally payable is also valid if the condition (the capital call) is met after the pledgor's bankruptcy.

Even though there is limited case law, based on market practice and legal literature, the market is comfortable that such a provision, whereby the AIFM and investors agree on a specific qualification of the investor receivables, effectively works to cater for the aforementioned challenges. There is also some debate in literature on whether a pledgee may issue capital call notices solely based on its right of pledge. To mitigate those risks, the pledgee may request to be granted a direct, independent right to issue capital call notices in default situations. Often, a direct agreement to be entered into between the pledgee and the investors is not (commercially) feasible. Nowadays, we do see that fund documentation caters for the possibility for the pledgee (as an independent right) to make capital calls by submitting capital call notices (to avoid the need to arrange this at a later stage via direct agreements). Alternatively, the AIFM may grant a power of attorney or mandate to the pledgee to issue, in certain default situations, a capital call notice in the AIFM's name to the investors (again, this right is often acknowledged in the fund documentation). However, as a power of attorney or mandate is terminated, by operation of law, in the event of bankruptcy of the entity that has granted the power of attorney, the latter option is less favourable to the pledgee.

NAV facilities

Where the fund borrows against the net asset value of its investments, security may vary based on the commercial agreement between the AIF(M) and the lender, ranging from unsecured to fully secured NAV facilities. Security may be granted over: (i) the bank account in which (dividend) distributions by portfolio companies are received; and (ii) the interest in the underlying portfolio companies and/or any unpaid dividend claims. A pledge over equity interests (shares or otherwise) in portfolio companies is sometimes not pursued given the complexities it may trigger on the vesting and enforcement of the pledge (such as pledge and transfer restrictions in shareholders' agreements or articles of association or drag-along and tag-along rights) and given the limited risk of bankruptcy at fund or fund holding level. In certain structures and transactions, an intermediate holding is set up specifically for the purpose of structuring the NAV facility (also referred to as an aggregator), often to address certain regulatory and (foreign) tax challenges. Currently, aggregators are commonly used by Dutch AIFMs when structuring their NAV facilities. If such an aggregator is implemented during the lifetime of the AIF (as opposed to prior to commencement of the investment period), the equity interests that the AIF holds in the underlying portfolio companies are required to be transferred, on an asset-by-asset basis, from the fund to the aggregator. This may be a challenging exercise (from a timing and cost perspective).

In case of NAV financings, fund and constitutional documents of the fund entities should be reviewed with particular focus on (i) the possibility to use leverage and grant security interests, (ii) limitations on borrowing or incurrence of indebtedness, (iii) the permitted duration for borrowings and other indebtedness, and (iv) the permitted use of loan proceeds. If equity interests issued by one or more holding entities are part of the collateral securing the NAV financings, the constitutional documents, the shareholders' arrangements and the financial arrangements at the level of the holding and underlying entities have to be considered in order to assess whether there are any relevant change of control provisions or restrictions on pledging these equity interests.

GP facilities

In the recent past there has been an increase in activity around GP (co-investment) facilities. Consistent with other jurisdictions, Dutch AIFMs are looking for facilities to finance, amongst other things, the GP co-investment in the AIF. The typical structure for the team co-investment is for the AIFM to set up and control either a Dutch limited partnership or limited liability company (which will invest in the main fund, the **Team Co-Investment Vehicle**) in which only members of the investment team of the AIFM can participate.

These facilities may be secured by a combination of (i) a pledge over the relevant borrower's bank account, (ii) a pledge over management fee receivables, and/or (iii) a pledge over the direct or indirect co-investment interest (although less common). Depending on the borrowing entity of the GP facility, often being either the AIFM (or a related holding entity), the general partner (if applicable in that structure) or the Team Co-Investment Vehicle, there may be regulatory, tax and corporate benefit constraints to be taken into account when structuring the security package. There is currently no set structure or market standard on these facilities and each facility is tailor-made to the structure of the fund and commercial agreement between the lender and the borrower.

Bank accounts (for capital call, NAV and GP facilities)

Dutch fund structures are often set up with one single Dutch bank account per fund entity. With respect to creating a right of pledge over Dutch bank accounts, the applicable general terms and conditions are of relevance. The general terms and conditions used by most Dutch account banks create a first-ranking right of pledge over such bank account for the benefit of the account bank, and state that the bank account cannot be (further) pledged. Consequently, the cooperation of such account bank is required to create a (first-ranking) right of pledge over a Dutch bank account. It is becoming increasingly difficult to convince Dutch account banks to cooperate and consent to the creation of a right of pledge over bank accounts for the benefit of third-party lenders (*i.e.* if the account bank is not participating as a lender in the relevant facility).

Pledge restrictions

Traditionally, another element to take into consideration when structuring the security over the AIF(M)'s assets has been that receivables, including investor receivables and management fee receivables, and contractual rights may, through a clause in the contract from which such receivables or contractual rights arise (or in the general conditions thereto), be made non-assignable/transferable or 'non-pledgeable'. In the past, these restrictive clauses could have an effect *in rem*, in which case creating a right of pledge over such receivable or right was simply not possible.

On 1 July 2025, a new law that aims to *disable* non-pledgeability clauses included in certain agreements came into force. The new law ensures that non-pledgeability clauses applicable to investor receivables (however unlikely in fund documentation), management fee and dividend or other investee receivables are no longer effective. The non-pledgeability clauses applicable to bank account receivables will remain effective based on an explicit carve-out for those in the legislative proposal. The new law will affect certain receivables in a fund finance context, such as management fee receivables. This may simplify structuring certain types of GP facilities particularly where receivables that had been subject to non-pledgeability clauses should serve as collateral. In Dutch legal literature, authors argue that the scope of the new law is (unintentionally) too broad, but in absence of legislative guidance and case law to the contrary, the new law affects a wide range of non-pledgeability clauses, including those between fund entities or fund entities and investors.

Outlook

As emphasised, 2024 and 2025 were interesting years for Dutch fund formation and fund finance markets. Despite the current national and international geopolitical developments, the Netherlands' position as a mature and well-equipped jurisdiction for funds and investments remains unaffected. We expect that 2026 will bring a further increase in fundraising activity, including in sectors other than the impact and life sciences sectors. With the Dutch fund finance markets maturing, we expect to see an increase in the diversity and volume of the fund finance products offered in the Netherlands; for example, by an increase in the number of NAV facilities, hybrid facilities, GP solutions and co-investment facilities offered. We are seeing an increasing number of fund managers exploring and utilising NAV facilities as well and expect that trend to continue in 2026. We are also seeing an increasing number of non-Dutch lenders showing interest in the Dutch market. In view of, amongst other things, the evolving legislation (such as Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the **SFDR**)), a key development will likely be the further integration of ESG factors in fund facilities, whereby measurable ESG performance indicators can directly impact the applicable interest margin.

Endnotes

1 An interactive graphic providing an overview of the NVP's findings can be found on its website: https://nvp.nl/feiten-cijfers/marktcijfers (this reference is accurate on the date of this publication). At the date of this publication, the most recent dataset available is in relation to 2024.

2 We note that this chapter does not focus on collective investment undertakings that require a licence pursuant to Article 5 of Directive 2009/65/EC (UCITS).

3 Please note that under certain conditions, a contractual entity can also qualify as a Dutch limited partnership and a fund for joint account at the same time.

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Ruben worked in the firm's Investment Management practice group in 2016 and 2017 where he assisted managers with the formation of their funds and institutional investors in respect of their investments in funds. Ruben worked in the firm's New York office from 2020 to 2021 and was seconded to Mayer Brown (Banking & Finance) in New York in 2020. In 2024, Ruben was seconded to Nielen Schuman.

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Written by leading industry participants from across the industry, this is the definitive legal guide for the global fund finance industry in 2026.

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