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The ALLIURIS GROUP is organised as an international association under Belgian Law with its seat in Brussels. www.alliuris.org, info@alliuris.org

Alliuris Academy

The success of the first Alliuris Summer School, which took place in Hannover, Germany in July 2006, paved the way for the second Summer School to take place in Holland from 26 to 29 July this year. Our Dutch partner law firm, Marree en Dijkhoorn organised the Summer School at its office in Amersfoort.

In the course of the Summer School, a total of almost 20 participants from various countries throughout Europe attended seminars on the Dutch legal system, legal steps of a merger or acquisition process and negotiation in international contracts. The seminars on negotiation was conducted by Michael Hertz from Alliuris's Danish member firm, Hertz Burton Jakobsen.

The attendants enjoyed many opportunities to learn about the similarities and differences in their respective national legal systems through the seminars during the day as well as through the social events in the evening. In light of the fact that the courses took place in the conference rooms at Marree en Dijkhoorn Lawyers and that the welcome cocktail was organised at the roof garden on the 9th and top floor of the office building, the attendants had the opportunity to meet many of the Dutch lawyers working at Marree en Dijkhoorn.

The Alliuris Summer School was recognised as an official educational institution by the Dutch Bar Association. This recognition enabled the attendants to obtain a certificate, through which they were granted 6 "permanent educational points" by the Dutch Bar Association.

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Introduction to the Dutch legal system

The Dutch legal system originates from Canonical and Roman law and is compatible to the legal system in other continental European countries.

The Dutch legal system is traditionally divided into public law and civil law. Civil law regulates the relationship between citizens and between natural persons and legal persons, for example, companies and institutions. Civil law includes inter alia corporate and company law, labour law, property law, merges and acquisitions, commercial law and intellectual property law. Public law, on the other hand, regulates general state social interests, and the legal relationship between the citizen and the state. Public law includes inter alia constitutional law, international law, administrative law and criminal law.

The 1838 Civil Code stands at the top of the Dutch legal hierarchy. This code is a direct result of the Napoleon Code, which was implemented in Netherlands at that time. The Civil Code was fully revised after World War II.

Justice is administrated within the Netherlands through various authorities. These authorities are spread across the various provincial borders. The Netherlands is divided into 19 districts, each with its own court. Each court has a number of sub-district venues. It is relatively simple for ordinary citizens to have their case heard in the sub-district sector. This means that they have the right to argue their own case and do not need a lawyer to represent them in court. In terms of civil law, the sub-district judge deals with all cases relating to tenancy, hire purchase and employment. He also deals with all conflicts involving an amount under 5,000 euros.

The 19 Dutch districts are further divided into five regions, over which a Court of Appeal precedes. With regard to criminal and civil law, the jurisdiction of the Court of Appeal can only be invoked in cases where an appeal has been filed against a judgement made by a district court. The Court of Appeal has the right to re-examine the facts of the case and to reach its own conclusions. In most cases it is possible to contest the Court of Appeal's decision by appealing in cassation to the Supreme Court of the Netherlands. In addition to criminal and civil cases, the Court of Appeal also deals with all appeals against tax assessments in its capacity as an administrative court.

Disputes may also be referred to arbitration before the Dutch Institute of Arbitration or other arbitration boards or alternatively to mediation. The Dutch government currently places much effort into advocating alternative methods of dispute resolution due to the time and legal costs expanded normal legal proceedings.

The Netherlands' approximately 16,5 million inhabitants are served by 13.500 lawyers. This leads to an average quota of 1 lawyer per 1,220 inhabitants (the EU-average is 1: 1,160). Most large international law firms maintain a branch in the Netherlands. The tenancy at present is for such law firms to continue to grow in size and for niche players to consequently focus on a specific area of the law. The cooperation between lawyers and bookkeepers is a returning trend.

The legal qualification in the Netherlands requires a masters degree in law, which takes at least 4 years to complete. Upon receipt of a "Confirmation of (good) Behaviour" from the government, one can receive admittance into 1 of the 19 bar associations within the Netherlands. A lawyer can commence practice upon the completion of a 3-year practical traineeship and upon the passing of the bar examinations. A fully certified lawyer is required to complete several courses each year in order to remain fully qualified.





Merger and acquisitions and the process from Information memorandum to closing

The seminar held in the afternoon of the first day of the Alliuris Summer School revolved around the topic of Mergers & Acquisitions. Mr. Judith Anema introduced the young lawyers to the mergers and acquisitions process by providing an interesting overview of the different types of mergers, in particular, of the so called “legal” mergers and “economical” mergers (share/asset purchases).



After a brief introduction to the takeover process and its typical steps (Information Memorandum, Non-disclosure Agreements, Letter of Intent, Due Diligence, Share/Asset Purchase Agreements and Transfer of Title), the participants discussed some of the legal issues related to the possible liabilities of the parties involved in a M&A process.

Mr. Anema ended her seminar with a discussion on a case involving Schneider Electric SA vs. Commission

of the European Communities. This case is based on the recent Judgement by the European Court of First Instance providing for said company to be partially compensated for the loss sustained as a result of the illegal prohibition of its merger with another company.

At the end of the seminar, the lawyers were given useful documentation for their further study and evaluation.



Co-operation or Take-over?

The final day of the summer school saw the participants participating in negotiations between Danish Plastic Moulding A/S and Dutch Sweets Dispensers BV for the execution of a manufacturing agreement. Michael Hertz had prepared a contractual negotiation between the 2 companies and had forwarded basic information relating to both of the companies as well as draft manufacturing agreement to the participants in advance.

Grouped into teams of 4 or 5, the young lawyers plunged enthusiastically into the task set for them and took great efforts to protect the interests of their “client”. There were 4 negotiation groups, 2 of which represented Danish Plastic Moulding A/S and 2 of which represented Dutch Sweets Dispensers BV. Each group did not know the private interests of the other negotiating party, which had been set out in private instructions for each group.

The first challenge which the lawyers faced was to find a consensus within its own group on issues such as bargaining power. The next challenge was to come to an agreement with the other party. The negotiations workshop revolved primarily around techniques and strategies involved in handling a negotiation and had very little to do with actual legal rights or obligations.



It proved to be challenging to come to an agreement, which would contain the best possible enforceable outcome for one's own client. Michael Hertz sprung various surprises on the participants in the form of sudden e-mails from the client as well as changes or amendments to the required or relevant information on the negotiation partner. It was necessary for the participants to react spontaneously and immediately to the e-mails in the course of the negotiations. The participants sought to come to an agreement with the added assistance of breaks in negotiation as well as internal consultation. Eventually, the teams eventually presented the outcome of their negotiations on Friday afternoon. The agreements achieved by the 2 negotiating groups were somewhat different. The negotiation workshop allowed the participants to experience the need to react to clients' instructions on an almost immediate basis. The participants also learned that negotiation is crucial to ensure that an outcome, which is acceptable to both parties, is reached.

The stress and excitement caused by the negotiation workshop was balanced by a comforting herring dinner and it was not long before the participants forgot whether they were protecting the interests of the Dutch or the Danish...



The Dutch Experience

No Alliuris event would be complete without the element of inter-cultural exchange and experience. The Summer School in Amersfoort was no exception. Alexander Steenaert and his team at Marree & Dijkhoorn put in much effort to ensure that the participants had as much fun after the seminars as they had learning during the day.

All the Summer School participants stayed at the same hotel in the middle of Amersfoort. This served to be an ideal central location for a visit to the University City of Utrecht as well as to Amsterdam. The participants particularly enjoyed the boat tour through the numerous canals in Amsterdam.



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