

# Partnership law in the Netherlands

## New proposals for a liability regime

Prof. mr. drs. I.S. Wuisman | Nottingham 5 April 2018



**Universiteit  
Leiden**  
The Netherlands

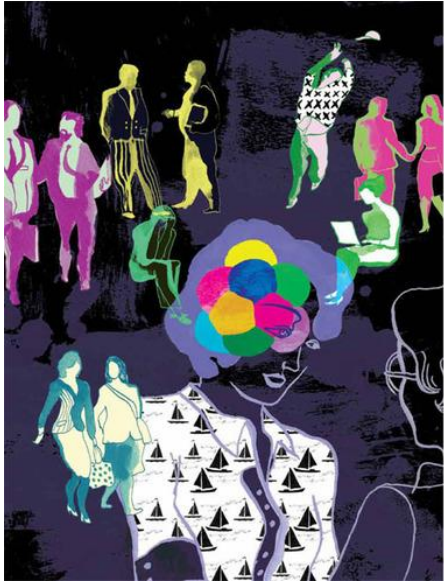
# Partnership law in the Netherlands



# Informal working group - proposal



# Three elements of the proposal



## The Perfect Legal Personality

BY MARKUS HARTMANN, BILL MORDAK, TOM SCHÖNENFELDER AND PATRICK SHEENEY

We should not be friends, much less coworkers.

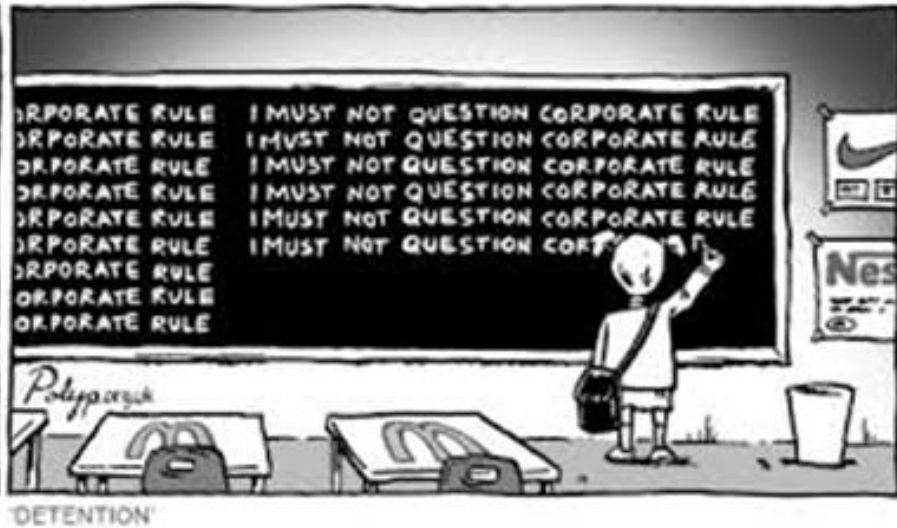
Markus is a US Marine and a colonel in the reserve JAG (US Navy judge Advocate General) corps. He is ordered, disciplined and fit. And as the US general counsel for a large consumer products company, he has retained his love of military precision and focused planning. Meanwhile, Bill was an intern with the Peace Corps. Then he became a teacher in rural Bolivia, living in a monastery. Now, as the global general counsel for the same consumer products company, he has retained a management style that is contemplative and holistic. Markus and Bill are polar opposites. We are the master and anti-master of human personalities. If you were choosing teams, you would never put us on the same side, worried that one of us wouldn't survive. But since we first met 14 years ago, we have worked together and found where others predicted conflict and chaos.

Part of the reason that we do work well together is because our differences are so stark and obvious. Subtle discrepancies can be irritating but ignored. Big differences have to be acknowledged and addressed. Our differences, and ability to work well together despite them, got us thinking about the ideal personality for an in-house lawyer. Is the perfect attorney someone who is less structured and empathetic? Or is the better counsel one who appreciates rules and order? Or is there some other ideal combination? To try and find out, we took a test. In fact, we asked every attorney in our global legal department to take an extensive personality assessment. Then we carefully plotted and analyzed the results, looking for trends. The results of the evaluation showed which personality traits make up the best in-house lawyer. And the outcome may surprise you.

ACC Docket July/August 2011



# My students



## Rules that apply to partnerships

1. Book 6 DCC
2. Book 7 DCC
3. Book 7A DCC
4. Commercial Code
5. Rules relating to the commercial register



# Different types of Dutch partnerships

## **1. Maatschap** – (professional) partnership

- a. Silent: both professional and non-professional activities
- b. Public: professional activities

## **2. Vennootschap onder firma** – general partnership

- a. Public: non-professional activities

## **3. Commanditaire vennootschap** – limited partnership

- a. Public: non-professional activities

No legal personality.

# Professional partnership

## **Objective criteria**

1. Agreement
2. Two or more parties
3. Contribution by each of the parties (capital, goods, use of goods, labour)
4. Sharing of the benefits
5. Collaboration on the basis of an equivalent position

Intention to form a partnership is not important

## **Property committed to the partnership**

- Separate patrimony

# General partnership

## **Difference with the professional partnership**

1. Type of activities
2. Representation rules
3. Liability rules



# Proposal of the informal working group for new partnership law: legal personality

## **Legal personality**

- Simplified property regime
- Entry and exit less cumbersome
- Supports restructuring
- No notarial deed
- The day after the day of registration in the commercial register
- Registration not a constitutive act: possible public partnership without legal personality

Partners will be contracting parties in addition to the partnership when the partnership enters into contracts

# Current liability regime

## **Professional partnership**

- Two separate claims:
  1. vis-à-vis the partnership
  2. vis-à-vis the partners personally
- Free choice which claim to assert and in which order

## Personal liability of partners

1. Divisible or non-divisible: equal versus joint and several
2. Contractual breach or tort/obligation arising from law: partnership law
3. Service agreements: joint and several, exculpation (opt-out option)

Ad 2: partners at the time the partnership's liability for the obligation arose

Ad 3: partners at the time the partnership entered into the agreement

# Current liability regime

## **General partnership**

- Two separate claims:
  1. vis-à-vis the partnership
  2. vis-à-vis the partners personally
- Free choice which claim to assert and in which order

## Personal liability of partners

1. Divisible or non-divisible: both joint and several
2. Contractual breach or tort/obligation arising from law: partnership law
3. Service agreements: joint and several, exculpation (opt-out option)

Ad 2+3: partners at the time of the subpoena and exited partners that were partners at the time the obligation arose if the claim has not expired

# New proposed liability regime by informal working group

## **Two categories of obligations**

1. Obligations to perform
2. Obligations arising from law

Only the **first category** will involve partnership law liability

- Professional partnership: personal liability of partners for equal shares unless a service agreement
- General partnership: joint and several personal liability of partners

The **second category** is governed by the rules that govern the obligation:

- Contractual breach: partners are parties to the contract in addition to the partnership: personal liability
- Tort: partnership and the partners who acted

# New liability regime

## **Exemption for professional activities: limited liability**

- Agreement entered into by the partnership
- Professional activities under a service agreement
- Partnership liability
- Only partners who have been charged with the assignment: personally liable
- Lack of clarity about who has been charged: every partners is deemed to be charged
- Professional error: malpractice / misconduct / negligence
- Exculpation possibility

## **Other differences**

- Liability entry and exit

# Conclusion

- Unjustified distinction between professional and non-professional activities
- Difference in liability-regime of professional and general partnership when it concerns obligations to perform
- Complicated: several books in Dutch Civil Code to find liability rules
- More protection for voluntary creditors than involuntary creditors as a result of protection of partners that did not commit the tortious act that can be attributed to the partnership: no extra protection for creditors included in the proposal
- Exemption

Thank you!

[i.s.wuisman@law.leidenuniv.nl](mailto:i.s.wuisman@law.leidenuniv.nl)

