



Embassy Newsletter

Russell Advocaten

In this issue:

June 2017

Embassies and Consulates enjoy a special status, because they are considered to rule under their own flag. But on occasion you do have to deal with Dutch law. Russell Advocaten has been a trusted advisor to Embassies and Consulates for decades. Our services are focused on preventing procedures and staying out of court.

In this newsletter we will discuss how to prevent problems when Dutch law will apply, for example in:

- **Employment law**
- **Real estate: zoning plan**
- **Commercial contracts**



Employment law: include 6 clauses

Under Dutch law, the employer can in principle determine, in consultation with his employees, what is included in the employment contract. However, the law imposes a number of requirements on certain

clauses. Which clauses are useful in an employment contract, what do they imply and what do you have to look out for? This newsletter discusses various clauses that may be included in an employment contract: the probationary period clause, the outside activities clause, the changes clause, the confidentiality clause, the incorporation clause, and the penalty clause.

Probationary period clause

With this clause, an employer and employee agree upon a period in which both parties can terminate the contract at any time. It is not allowed to include a probationary period clause in a fixed-term employment contract that does not exceed six months. If an employment contract is entered into for a period exceeding six months, it may be agreed upon a maximum probationary period of one month. A maximum probationary period of two months may be included in employment contracts for an indefinite period. A probationary period only applies if (1) has been agreed upon in writing and (2) is the same for both parties.

Outside activities clause

This clause means that the employee is not allowed to perform other work than for his employer, unless he has received approval to do so. The prohibition of other paid activities is limited to the duration of the employment contract.

An outside activities clause may prevent that an employee performs competitive work or that he will get overburdened by having several jobs. If an employment contract



Embassy Newsletter

Russell Advocaten

contains a changes clause in writing, it may be a little easier for the employer to unilaterally modify the employment conditions. Employees may be protected by employment law and vested rights cannot be taken away, but by means of a changes clause the option to modify employment conditions, such as the entitlement to reimbursement of travel expenses, in particular circumstances will remain.

Confidentiality clause

When performing their work, employees will get familiar with confidential information of the Embassy or Consulate and their relations. To provide that employees will treat this kind of information carefully, a confidentiality clause can be included in the employment contract. A confidentiality clause determines that the employee will observe secrecy towards confidential information, both during and after the employment.

Incorporation clause

With this clause, a staff handbook containing employment conditions and internal regulations will be declared applicable. The staff handbook will then be incorporated in the employment contract, so employer and employee have to adhere to these conditions and regulations. Furthermore, other internal documents, such as a declaration of secrecy, can also be incorporated in the employment contract this way.

Penalty clause

The employment contract may include that the employee owes a penalty if he violates the agreed-upon conditions. It may, for example,

be determined that an employee who breaches the confidentiality obligation has to pay a certain amount in penalties for each violation. The amount of the penalty can be reduced by a judge.



Real Estate: zoning plan

Is it allowed to establish business premises at a certain location or is it just a residential area? What is the permissible height of a building and are there any more conditions regarding construction or use? In the Netherlands, all these things can be found in a zoning plan. In a zoning plan, a certain purpose is assigned to plots of land and rules are set regarding the use of buildings on these plots.

Use

The zoning plan determines the function of a plot of land. The function determines what can be done with the ground. For instance, a building can be attributed the function residential, or a number of plots of land can be labelled as shopping or catering area.



Embassy Newsletter

Russell Advocaten

Elements of the zoning plan

A zoning plan consists of three different elements, namely:

1. Image: a map of the zoning plan.
The map displays the different functions of the plots of lands and buildings, whether building is allowed or not, the location of special security zones, etc.
2. Rules: specified regulations regarding the function, the development potential, the building (specifications of the main building, but also other buildings such as security fences) and use of each plot.
3. Explanation: explanations of the image and rules and the justification of the choices made by the municipality. This explanation is not legally binding.

Would you like to know whether you are allowed to build on a certain plot, what conditions the buildings have to meet or whether your type of company is allowed on the plot that you prefer? This can be found in the zoning plan at the municipality. Zoning plans are drafted in the Dutch language. We can assist you in finding the applicable zoning plan and will gladly provide you with an explanation of the included rules.

Commercial contracts

Even Embassies and Consulates do have to conclude contracts, for example when you

order lunch for a meeting in the Embassy.

According to Dutch law, you are free to concluding a contract. A contract is concluded by an offer and the acceptance of that offer. Many companies in the Netherlands use General Terms & Conditions ('algemene voorwaarden') as well. If you are going to conclude a large contract, please let us check the contract to prevent problems.



If you reside in the Netherlands, you will at some stage be confronted with Dutch law. When this leads to problems, Russell Advocaten will resolve them. With thorough knowledge and experience of the diplomatic world, we can provide good and swift solutions.

This newsletter provides some information on three subjects of Dutch law and the potential consequences for your Embassy or Consulate. Of course, the Embassy Desk of Russell Advocaten offers her services also on:

- **Investment / Doing business in the Netherlands**
- **Matrimonial issues**
- **Immunity issues**

We will gladly assist you!

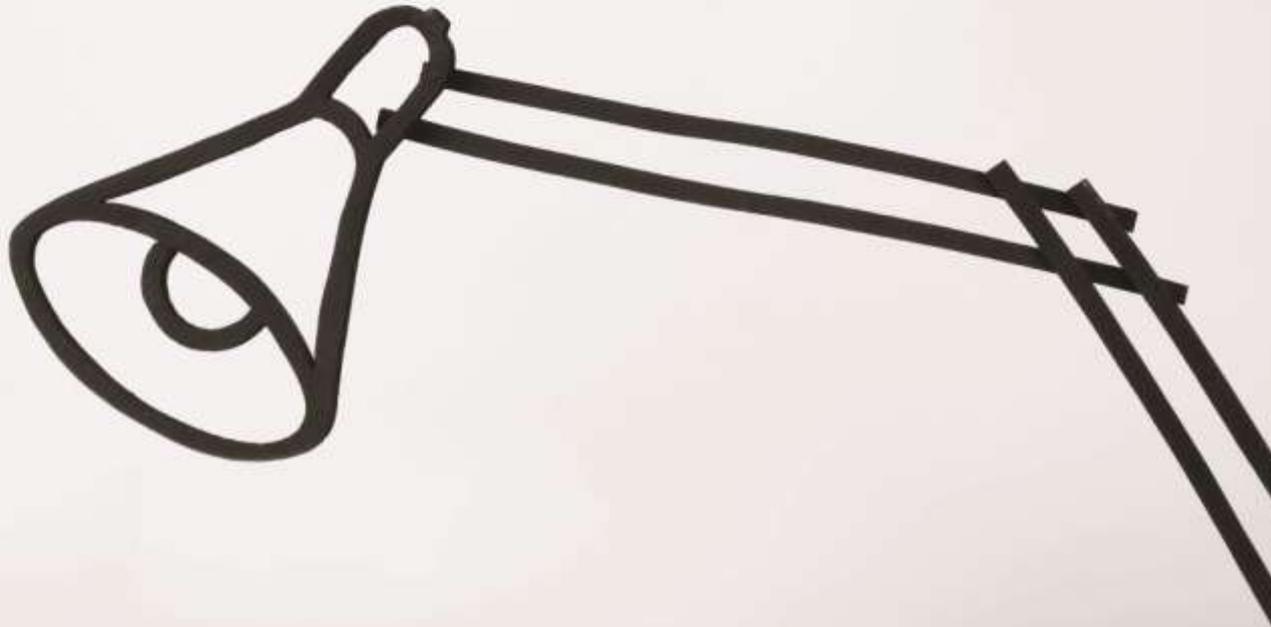
Yours sincerely,

Russell Advocaten

Jan Dop, Partner & Head of Embassy Desk

jan.dop@russell.nl

+31 20 301 55 55



Need us to shine a light on something?

Russell Advocaten is a full-service law firm for leading enterprises. We take care of a broad range of fields: corporate law, business formation and reorganization, real estate and lease law, labour and employment law and commercial litigation. You can contact us on all your legal issues.

russell.nl

RUSSELL ADVOCATEN®

Reimersbeek 2 • 1082 AG Amsterdam • The Netherlands
t +31 20 301 55 55 @ info@russell.nl

P Primerus
The World's Finest Law Firms