



Name of Country and Jurisdiction:

The Netherlands¹

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to the Netherlands, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to the Netherlands for an authority to grant a divorce/dissolution?

¹ Information is provided regarding the Country of the Netherlands in Europe only and does not extend to any other countries within the Kingdom of the Netherlands.

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1. What forms of legally recognized relationships are available?

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	The Netherlands	Dutch Civil Law (DCL), Book 1, Title 1.5	Yes
Partnership, registered	The Netherlands	DCL, Book 1, Title 1.5A	Yes
Cohabitation contract laid down in a (notarial) deed, unregistered	The Netherlands	<ul style="list-style-type: none"> No specific provisions about the entering into/ form and contents of this contract are available under Dutch law; however, the general principles of contract in DCL apply. Furthermore, reference is made to such contract in various (mostly tax-related) legislation, pursuant to which various rights are provided, although most of these statutory provisions prescribe that the contract should have been laid down in a notarial deed. 	Yes

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2. What are the requirements to be able to enter into the above relationships?

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(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> • If at least one of the partners lives in the Netherlands, there are no requirements with regard to nationality. However, one or both partners must have a legal right to reside in the Netherlands, either through Dutch or EU/EEA nationality or through a legal title to reside. • If both partners live outside the Netherlands, at least one of the partners must be a Dutch national. • In all cases mentioned above, the Immigration and Naturalisation Service and the Aliens Police must issue an M46 declaration for non-Dutch nationals (excluding EU/EEA nationals); the necessary paperwork must be obtained by the prospective spouses from Dutch municipal authorities or from Dutch embassies abroad. This declaration states that there is no reason to suspect that the marriage is being undertaken in order to enable an illegal immigrant to reside legally in the Netherlands.
Registered partnership	<ul style="list-style-type: none"> • If at least one of the partners lives in the Netherlands, there are no requirements with regard to nationality. However, one or both partners must have a legal right to reside in the Netherlands, either through Dutch or EU/EEA nationality or through a legal title to reside. • If both partners live outside the Netherlands, at least one of the partners must be a Dutch national. • In all cases mentioned above, the Immigration and Naturalisation Service and the Aliens Police must issue an M46 declaration for non-Dutch nationals (excluding EU/EEA nationals); the necessary paperwork must be obtained by the prospective partners from Dutch municipal authorities or from Dutch embassies abroad. This declaration states that there is no reason to suspect that the registered partnership is being undertaken in order to enable an illegal immigrant to reside legally in the Netherlands.
Cohabitation contract laid down in a (notarial) deed	No nationality requirement.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> • There is a minimum age of 18 years, unless: (i) both partners have reached the age of 16 years and the woman submits a medical declaration that she either is pregnant or already gave birth to a child; or (ii) the Minister of Justice grants dispensation. • A person whose mental capacity is disturbed in such a manner that he/she is not able to determine his/her will or to understand the significance of his/her declaration may not enter into a marriage. • Both partners may be united in only one marriage. • A person who is placed under guardianship on account of alcohol or drug addiction may not enter into a marriage without the prior approval of his/her legal guardian (or substitute approval by the Subdistrict Court). • A person who is placed under guardianship on account of his/her physical or mental condition may not enter into a marriage without the prior approval of the Subdistrict Court. • Marriage partners may not, either by birth or otherwise, have a legal family relationship with each other in the ascending or descending line or as siblings.
Registered partnership	<ul style="list-style-type: none"> • There is a minimum age of 18 years, unless: (i) both partners have reached the age of 16 years and the woman submits a medical declaration that she either is pregnant or already gave birth to a child; or (ii) the Minister of Justice grants dispensation. • A person whose mental capacity is disturbed in such a manner that he/she is not able to determine his/her will or to understand the significance of his/her declaration may not enter into a registered partnership. • Both partners may be united in only one registered partnership. • A person who is placed under guardianship on account of alcohol or drug addiction may not enter into a registered partnership without the prior approval of his/her legal guardian (or substitute approval by the Subdistrict Court). • A person who is placed under guardianship on account of his/her physical or mental condition may not enter into a registered partnership without the prior approval of the Subdistrict Court. • Persons in a registered partnership may not, either by birth or otherwise, have a legal family relationship with each other in the ascending or descending line or as siblings.
Cohabitation contract laid down in a (notarial) deed	Not applicable.

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3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriages and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

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(a)	<ul style="list-style-type: none"> • There are no legal differences in eligibility for marriage and registered partnerships. • Cohabitation agreements can be entered into by more than two adults.
(b)	<ul style="list-style-type: none"> • Marriages and registered partnerships are mutually exclusive. Registered partnerships can be converted into marriages. • A new marriage or registered partnership cannot be contracted until a previous marriage or registered partnership has been dissolved. • Married or registered partners can conclude cohabitation contracts with other adult person(s).
(c)	<ul style="list-style-type: none"> • There are minor differences between a marriage and registered partnership, <i>i.e.</i>, with respect to the actual formalities for entering into such legal relationships and for dissolving them. (For information on dissolution, see Question 6 below.) • One major legal difference between a marriage or a registered partnership between same-sex couples and opposite-sex couples concerns the legal relationship with children born of a marriage or registered partnership. For instance, in the case of a male same-sex marriage, the (male) partner of the father of the child will obtain the rights of fatherhood only if he officially recognizes the paternity of or adopts the child, or has his legal paternity over the child established, while in the case of an opposite-sex marriage, the (male) partner of the mother of the child will automatically be considered the juridical father (even if he is not the biological father). Similarly, in the case of two female partners, the co-mother automatically becomes the child's legal parent if the child is conceived through an anonymous sperm donation. However, if the child is conceived through a donation by a known donor, the co-mother must become the child's legal parent through acknowledgment. • Cohabitation contracts are mainly acts of private law between individuals. Obligations and rights are agreed between parties and do not in principle bind third parties. A cohabitation contract laid down in a notarial deed does, however, entitle the cohabitants to some tax deduction and the surviving cohabitant to the pension scheme under the General Surviving Relatives Act.

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4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> A previous marriage or registered partnership makes a new marriage impossible unless the previous relationship has been terminated. (See Question 6 below.) A registered partnership can be converted into a marriage.
Registered partnership	<ul style="list-style-type: none"> A previous marriage or registered partnership makes a new registered partnership impossible unless the previous relationship has been terminated. (See Question 6 below.) A registered partnership can be converted into a marriage.
Cohabitation contract laid down in a (notarial) deed	<ul style="list-style-type: none"> Several cohabitation contracts can be agreed upon between several persons, regardless of their marital status. However, please note that, between married/registered partners, most of the rights associated with their status will supersede rights procured by the status of legal cohabitation.

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5. When a couple comes to the Netherlands, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> A marriage contracted outside the Netherlands is not automatically recognized. In order to obtain recognition and registration of the foreign act of marriage, the marriage should first be legalized in the country of origin. The act must be established in Dutch, English, French, or German or must otherwise be translated by an official translator. If one or both partners are not Dutch nationals, the above-mentioned M46 declaration will be required.
Registered partnership	<ul style="list-style-type: none"> A registered partnership contracted outside the Netherlands is not automatically recognized. In order to obtain recognition and registration of the foreign act of registered partnership, the partnership should first be legalized in the country of origin. The act must be established in Dutch, English, French, or German or must otherwise be translated by an official translator. Moreover, the law under which the registered partnership has been concluded must: <ul style="list-style-type: none"> Exclude the ability to conclude one or several other marriages and/or other forms of regulated relationships (no polygamy); and Result in obligations between the parties that are mainly equivalent to the obligations arising from marriage. If one or both partners are not Dutch nationals, the above-mentioned M46 declaration will be required.

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Cohabitation contract laid down in a (notarial) deed	<ul style="list-style-type: none"> A contract concluded outside the Netherlands will be valid between the parties. However, in order to benefit from the rights described above, notarial registration is required.

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6. How can each form of relationship be dissolved? What is the residency requirement or other link to the Netherlands for an authority to grant a divorce/dissolution?

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<ul style="list-style-type: none"> There are three possible paths to the dissolution of a marriage under Dutch law. All these procedures are judicial and must be introduced to the court by a lawyer. First, divorce can bring the marriage to an end. Second, judicial separation allows the married partners to live separately. However, both partners remain bound by the obligations of the marriage, including financial obligations. Finally, legal separation can be followed by dissolution. Dutch nationals can request divorce, judicial separation, or dissolution, regardless of residency. In the case of nonnationals, at least one of the partners must legally reside in the Netherlands. A marriage contracted outside the Netherlands but registered in the Netherlands will be considered a Dutch marriage for the purpose of divorce, judicial separation, or dissolution.
Registered partnership	<ul style="list-style-type: none"> A registered partnership can be dissolved without intervention of a judge, provided that both partners consent and have no children younger than 18 years old. In other cases, dissolution of the registered partnership will follow the above-described procedure for the dissolution of marriage.
Cohabitation contract laid down in a (notarial) deed	<ul style="list-style-type: none"> General principles of contract law apply with regard to termination. Parties often agree that the cohabitation contract ends or can be terminated if the factual cohabitation ends.

■ Sources:

Primary

- Dutch Civil Law (Civil Code of the Netherlands), Book 1, Title 1.5, <http://www.dutchcivillaw.com/civilcodebook01.htm>.
- Dutch Civil Law (Civil Code of the Netherlands), Book 1, Title 1.5A, <http://www.dutchcivillaw.com/civilcodebook01.htm>.
- Act Conflict of Law Rules for Marriages, Treaty Series 1987, 137 (7 Sept. 1989), <http://www.dutchcivillaw.com/legislation/actconflictmarriage.htm> (regarding a regulation for conflicts of laws in respect of a marriage in connection with the ratification of the Hague Convention of 14 March 1978 on the ceremony and recognition of the validity of marriages).
- Act Conflict of Law Rules for Registered Partnerships, Stb. 2004, 334 (6 July 2004), <http://www.dutchcivillaw.com/legislation/actconflictregpartner.htm>.

Secondary

- *Legal Matters Regarding Key Life Events*, Access, http://www.access-nl.org/media/84667/guide_legal_matters_regarding_key_life_events.pdf.
- Government of the Netherlands, *Marriage, Cohabitation Agreement, Registered Partnership: Question and Answer*, <https://www.government.nl/topics/marriage-cohabitation-agreement-registered-partnership/question-and-answer/marrying-a-foreign-national-in-the-netherlands>.
- *National Report: The Netherlands*, <http://ceflonline.net/wp-content/uploads/The-Netherlands-IR.pdf>.