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# Chile as a Hub of International Arbitration?: the Dashed Hopes of Chile's Adoption of the UN Model Law

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**Reviving A Historic Economic Powerhouse: Dutch Private Equity**

*by Taylor Richards*

The Dutch pioneered "the first modern economy" by creating the first modern corporation, the Dutch East India Company (VOC), and, concurrently, the first stock exchange.[1] While the Golden Age of the Dutch economy ended with the economic collapse of 1810, the Netherlands remains a significant part of the worldwide market, with a GDP of $750 billion in 2015 that composed 1.2 percent of the global economy.[2] It is also home to some of the world's most successful companies, including Royal Dutch Shell, ING Group, and Unilever. The Dutch have a correspondingly robust private equity sector. In 2014, Dutch private equity firms managed €25.57 billion.[3] Last year, the Dutch private equity firm Waterland was ranked the top performing buyout fund by HEC-Dow Jones.[4] But as the pioneering Dutch economy of the pre-modern era faced both internal and external challenges that eventually caused it to struggle, the

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[1] Jan De. Vries and Ad Van Der. Woude, The first modern economy: success, failure, and perseverance of the Dutch economy, 1500-1815 (Cambridge: Cambridge University Press, 2010).

[2] Trading Economics. http://www.tradingeconomics.com/netherlands/gdp

[3] Kaarls, Alexander and Johan Kasper. "Private Equity 2016", International Comparative Legal Guides, https://iclg.com/practice-areas/private-equity/private-equity-2016/netherlands

[4] Darragh Riordan, "Waterland leads private equity performance rankings," Real Deals, January 18, 2017, https://realdeals.eu.com/news/2017/01/18/waterland-leads-private-equity-performance-rankings/.

modern Dutch economy's remarkable successes have been shadowed in recent years by controversial excesses.

**Dutch Economic History**

The private equity industry as we know it today was not invented till the mid-twentieth century, but the unique pressures of the Asian spice trade brought the world much closer in 1602 with the creation of the Dutch East India Company (VOC), the first publicly traded company.[5] The organization that would go on to become the VOC began as a common type of business organization, a form of a shipping company known as a partnernship, a "partenrederij". The partenrederij was "a device to bundle the investments of many people and reduce the risk to which any individual was exposed" and generally operated merchant ships and industrial windmills.[6] During the gap between the appointed times of profit disbursement to the partners, one of the partners (the "commisaris") was sometimes charged with investing the idle funds from the enterprise.[7] The enterprise might be limited to a single shipping contract and be dissolved on successful completion of the ship's journey.[8]

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[5] Jan De. Vries and Ad Van Der. Woude, The first modern economy: success, failure, and perseverance of the Dutch economy, 1500-1815 (Cambridge: Cambridge University Press, 2010), 151.

[6] *Id.* at 139, 247.

[7] *Id.* at 139.

[8] Parthesius, Robert, Dutch ships in tropical waters. The development of the Dutch East India Company (VOC) shipping network in Asia 1595-1660 (Amsterdam: Amsterdam University Press, 2008), 33.

The investors owned shares in the partenrederij, sharing in its profits and losses. But this business style was ill-suited to the complexities of multi-year voyages to the lucrative Asian spice market. In fact, the extreme profitability of this trade almost caused its downfall. The Dutch trading companies competed with both foreign traders and each other. This competition pushed prices down in Europe and significantly increased the prices of pepper and spices in Asia. This caused "a weak economic foundation for what was a risky and costly enterprise."[9] The Dutch Crown had already been encouraging shipping companies to cooperate more before this crisis, but now it became an economic imperative.

The Dutch trading companies combined together to form the VOC in 1602 with a charter from the Dutch monarchy granting a monopoly on the spice trade and some sovereign powers such as the ability to make treaties and undertake military operations.[10] Business was at such a scale that managing partners decided that they would not allow investors to withdraw their paid-in capital. Instead, they allowed investors to sell their shares on the Amsterdam Stock Exchange, which had long served as a commodity exchange. The pace of trading was far from the frenzied pace of trading today, as shares could only be legally transferred "when the books were opened for the payment of dividends"—at most twice a year—but the underlying pattern of trading shares at the exchange was established.[11] The VOC, the Dutch dominance of trade and other

[9] *Id.* at 34.

[10] Parthesius, Robert, Dutch ships in tropical waters. The development of the Dutch East India Company (VOC) shipping network in Asia 1595-1660 (Amsterdam: Amsterdam University Press, 2008), 35.

[11] Jan De. Vries and Ad Van Der. Woude, The first modern economy: success, failure, and perseverance of the Dutch economy, 1500-1815 (Cambridge: Cambridge University Press, 2010), 152.

economic successes made the Netherlands "the first country to achieved sustained economic growth".[12]

By the late 17th century, the Dutch economy lagged as advantages in trade and industry were chipped away by foreign competitors. Wealthy investors looked abroad for new opportunities throughout Europe, especially in Great Britain.There, they invested in British public debt and infrastructure as part of the agricultural revolution and later as part of the industrial revolution.[13] This class of investors, who simply lived off the income from their financial investments, were widely criticized for their lack of industry, foreshadowing some modern criticisms of Dutch investors.

After nearly 200 years, the VOC itself succumbed to the pressures of poor management, increased international competition, and depleted military resources after the Fourth Anglo-Dutch War and dissolved in 1799, not long before a general Dutch economic decline in the 1810s.[14]

**The Modern Dutch Private Equity Market**

Currently the Netherlands is one of the largest players in European private equity, and in the vein of its pre-modern economic history, has seen both significant successes and troubling setbacks. Dutch financial buyers acquired 133 companies in 2016. Much of this investment is

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[12] *Id.* at 2

[13] Jan De. Vries and Ad Van Der. Woude, The first modern economy: success, failure, and perseverance of the Dutch economy, 1500-1815 (Cambridge: Cambridge University Press, 2010).

[14] Jan L. van Zanden and Arthur Van. Riel, The strictures of inheritance: the Dutch economy in the nineteenth century (Princeton, NJ: Princeton Univ. Press, 2012), 72, 74.

internal. In 2016, "[a]lmost 80% of the entry investments concerned a Dutch financial investor acquiring a Dutch target company".[15]

As of 2014, NVP, the Dutch private equity association, listed 70 active Dutch private equity firms. The market also attracts firms representing the wider Benelux region (Belgium, the Netherlands, and Luxembourg), British firms and other international players.[16] Many Dutch firms operate throughout the Benelux region as well. Between 2007 and 2014, NVP reported that 2,529 Dutch companies received private equity investment totaling €20 billion, half of which was from Dutch private equity firms. These firms had €25.57 billion under management in 2014. In 2014, the 1,457 Dutch PE-held companies represented 14% of the GDP of the Netherlands and employed 350,000 people in the Netherlands.[17]

The Dutch private equity industry has matured enough that secondary buyouts, in which one a firm sells one of its acquisitions to another firm, are becoming more common. The market still primarily centers on "the acquisition of privately held businesses, including innovative (tech and life science) businesses and family-owned businesses."[18] Most Dutch investments are in small and medium enterprises. Larger deals in the Dutch private equity market are almost entirely done by non-Dutch private equity firms.[19]

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[15] Kaarls, Alexander and Johan Kasper. "Private Equity 2016", International Comparative Legal Guides, https://iclg.com/practice-areas/private-equity/private-equity-2016/netherlands

[16] Kaarls, Alexander and Johan Kasper. "Private Equity 2016", International Comparative Legal Guides, https://iclg.com/practice-areas/private-equity/private-equity-2016/netherlands

[17] *Id.*

[18] *Id.*

[19] *Id.*

It might be expected that the smaller markets of many European nations, the Netherlands included, would limit how well private equity firms perform there, especially given recent regional challenges. The Bain & Company 2017 *Global Private Equity Report* noted that the past decade has seen a flood of alarming headlines from Europe, including fallout the financial crisis, the migrant crisis, and terrorism.[20] The British exit from the European Union is the recent high point of European turmoil, reflecting populist discontent throughout the Western world. However, returns on private equity investment throughout Europe have historically matched or outpaced returns in the U.S. and have consistently beaten Europe's public equity markets.[21] Western Europe also has "lower levels of deal value as a share of GDP" than the United States, meaning it likely has more room to grow.[22] Furthermore, while 46% of exits in the Dutch private equity sector were acquired by Dutch organizations, the fact that "[t]he remaining 54% were acquired by foreign players illustrating the attractiveness of Dutch assets".[23]

IPO exits are uncommon in the Netherlands, though sometimes private equity firms will initiate "dual-track processes", concurrently working on an IPO and seeking a private buyer to pressure potential buyers. This strategy most often ends with a private deal. These deals and

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[20] "Global Private Equity Report 2017", Bain & Company, http://go.bain.com/rs/545-OFW-044/images/BAIN_REPORT_Global_Private_Equity_Report_2017.pdf

[21] "Global Private Equity Report 2017", Bain & Company, http://go.bain.com/rs/545-OFW-044/images/BAIN_REPORT_Global_Private_Equity_Report_2017.pdf

[22] *Id.*

[23] "KPMG Deal Activity Update: 2016 Full Year Analysis", KPMG Advisory N.V., 2017, https://assets.kpmg.com/content/dam/kpmg/nl/pdf/2017/advisory/kpmg-deal-activity-update.pdf

auction processes are the more common Dutch divestment avenues. When IPOs do occur, the companies generally list on Euronext Amsterdam. [24]

The structures and mechanics of Dutch private equity are similar to their American counterparts. There are four general types of Dutch private equity funds: limited partnerships, private limited liability companies, public limited liability companies, and cooperatives (commonly known as mutual accounts). There may also be combinations of those structures. The private limited liability company is most common, though for international investments a cooperative will often be used to avoid a 15% dividend withholding tax.[25]

## Major Dutch Private Equity Players

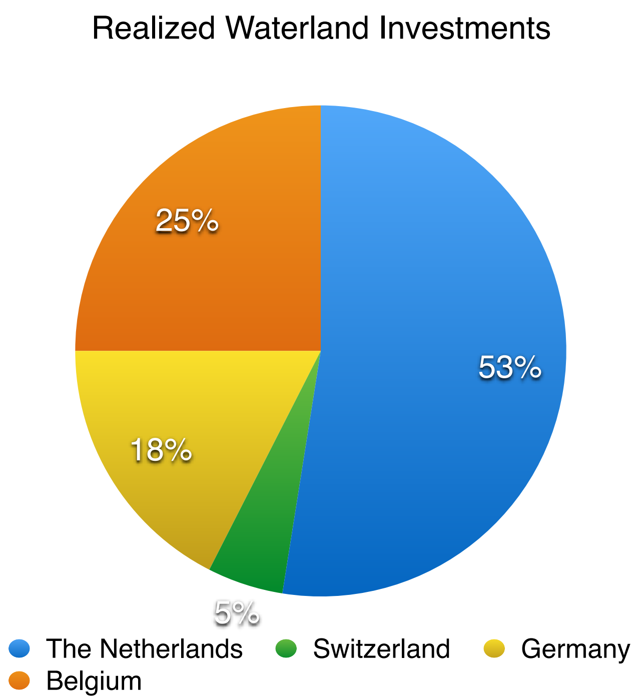
### *Waterland*

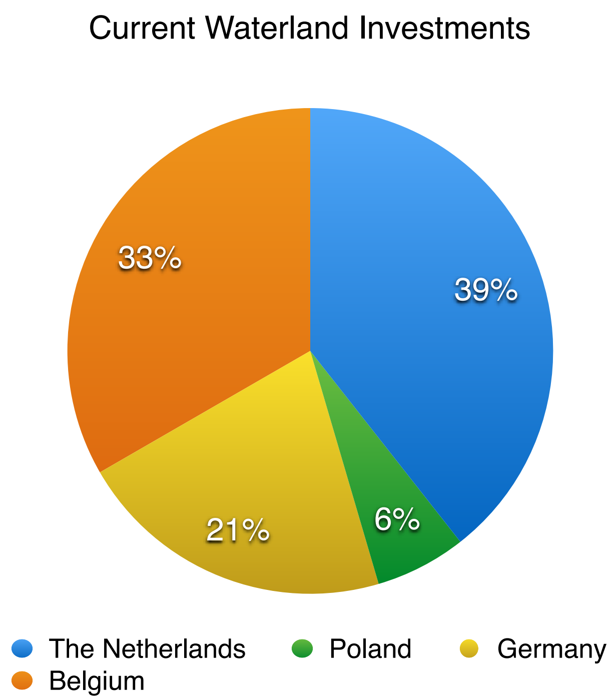
Waterland was founded in 1999 and is an excellent example of how a well-managed fund in a smaller economy such as the Netherlands can post remarkable returns. Waterland was named the top performing buyout fund in 2016 worldwide by HEC-Dow Jones[26] , and also listed by Preqin, a data provider for alternative assets, as a "consistent top performing buyout fund manager". That wining record has helped it has raise $5.08 billion in the last 10 years. "Since the firm was founded by Dutch entrepreneur Rob Thielen in 1999, investors in its funds have

[24] Kaarls, Alexander and Johan Kasper. "Private Equity 2016", International Comparative Legal Guides, https://iclg.com/practice-areas/private-equity/private-equity-2016/netherlands

[25] Kaarls, Alexander and Johan Kasper. "Private Equity 2016", International Comparative Legal Guides, https://iclg.com/practice-areas/private-equity/private-equity-2016/netherlands

[26] Darragh Riordan, "Waterland leads private equity performance rankings," Real Deals, January 18, 2017, https://realdeals.eu.com/news/2017/01/18/waterland-leads-private-equity-performance-rankings/.




**Source:* http://www.waterland.de/en/portfolio/companies

received nearly twice the amount of money back than they would have done if they'd invested in the average private equity firm over the same period," Peracs found.[27] Waterland focuses on four key industries related to aging population, outsourcing and efficiency, leisure and luxury, and sustainability.[28]

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[27] William Louch, "Top-ranked Dutch private equity firm to open UK office," Financial News, January 16, 2017, https://www.fnlondon.com/articles/top-ranked-dutch-private-equity-firm-to-open-uk-office-20170116.

[28] Waterland Private Equity Investments, "Our investment strategy," http://www.waterland.de/en/about-waterland/our-investment-strategy.

Waterland maintains offices in the Netherlands, Belgium (opened in 2005), Germany (Dusseldorf opened in 2006 and Munich opened in 2013) and Poland (opened in 2012).[29] Interestingly, it also recently opened an office in the United Kingdom, in Manchester. Waterland decided to open the Manchester office before Brexit, and after the vote felt that it would only help the firm's strategy to help lower mid-market firms expand throughout Europe. Hans Scheepers, a managing partner at the firm, said: "We believe that the Brexit vote will present significant investment opportunities in the UK. We can help UK companies pursue European growth strategies. By doing this, it will create a natural hedge for them so that they not only have revenues and acquisition financing in sterling but also in euros."

***AlpInvest Partners***

AlpInvest was founded in Amsterdam in 1999 to manage private equity investments of two of the world's largest pension funds, ABP and PFZW, both based in the Netherlands. It was spun off from the pension funds in 2004. In an interesting example of the cooperation (but also dominance) of firms from larger countries, AlpInvest was acquired by The Carlyle Group, one of the top private equity firms in the US, in 2011, and since then has operated as its subsidiary.

AlpInvest remains a major part of the Dutch private equity system because of its relationship with the two major Dutch pension funds, which remain the "cornerstone investors" of AlpInvest today.[30] AlpInvest holds 250 of the 1500 funds in the private equity market and

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[29] William Louch, "Top-ranked Dutch private equity firm to open UK office," Financial News, January 16, 2017, https://www.fnlondon.com/articles/top-ranked-dutch-private-equity-firm-to-open-uk-office-20170116.

[30] "News Release:The Carlyle Group's AlpInvest Partners Reaches $4.2 Billion for Secondaries Program |", The Carlyle Group, https://www.carlyle.com/media-room/news-release-archive/carlyle-group%E2%80%99s-alpinvest-partners-reaches-42-billion-secondaries.

raised $5.4 billion in secondary funds in the last 10 years.[31] AlpInvest currently has over €39 billion assets under management (as of December 31, 2016).[32]

**PFZW**

PFZW (formerly known as PGGM), one of the cornerstone investors in AlpInvest, is a €200 billion Dutch pension manager and one of the most influential private equity investors in Europe. PFZW has approximately €11 billion in private equity and keeps an in-house team to invest in private equity, often with co-investors.

The Dutch pension fund recently also decided to try managing private equity investments in-house "in an attempt to reduce costs."[33] In fact, PFZW illustrates a growing trend in recent years for pension funds across the globe. Pension funds have found that: "Calculated on the basis of investment cost, a CEM Benchmarking Inc. survey of 19 large pension funds showed an average expense of 46 basis points for external money management vs. eight basis points for internal management."[34] Shown those kind of numbers, PFZW is illustrative of a growing trend as more pension funds are building out their own private equity management.

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[31] Leleux, Benoit, Esmeralda Megally, and Hans van Swaay. 2015. Private Equity 4.0 : Reinventing Value Creation. Chichester, West Sussex, UK: Wiley, 2015. eBook Collection (EBSCOhost), EBSCOhost.

[32] AlpInvest. http://www.alpinvest.com/.

[33] Gert Jan Hobma, "The Power of Private Equity," Risk Magazine, October 06, 2016, https://www.riskmagazine.nl/article/2016-10-02-the-power-of-private-equity.

[34] Williamson, Christine, "More pension funds ponder going in-house", Pensions and Investments, June 29, 2015, http://www.pionline.com/article/20150629/PRINT/306299971/more-pension-funds-ponder-going-in-house

**Recent Controversies**

Just as the VOC often found itself facing a tide of public and shareholder criticism because of a lack of accountability and insider dealings by elites and company managers, modern Dutch private equity has provoked its own popular backlash. Joop Wijn, former Dutch Secretary of Finance, reflected the sentiment of many Dutch when he nicknamed private equity firms "grasshoppers" because they would exploit a company and then move on.[35] The bankruptcies of two prominent Dutch companies, V&D and Estro, were especially sobering incidents that fueled frustration with the private equity sector in the Netherlands.

V&D (Vroom & Dreesmann) was a landmark chain of Dutch department stores founded in 1887. It was acquired by American private equity giant KKR in 2004 and sold with great fanfare to another American private equity firm, SunCapital Partners, in 2010[36]. KKR had sold most of the immensely valuable commercial real estate V&D owned, netting €1.4 billion for the sales. When SunCapital acquired V&D, for a reported €70 million, the company was now leasing out space and losing €7 million a year. SunCapital's strategy centered on reducing labor costs, which were 6% above the industry standard, and trying to reduce the costs of real estate leases by as much as 23%. Ultimately, changing consumer expectations led to continuously decreasing

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[35] *Id.*

[36] "Sun Capital Partners Inc Private Equity Firm An Affiliate of Sun European Partners LLP Completes Acquisition of VD and La Place Comments," Sun Capital Partners, Inc., https://www.suncappart.com/an-affiliate-of-sun-european-partners-llp-completes-acquisition-of-vd-and-la-place/.

revenue that SunCapital was not able to overcome. By 2014, the company reported €49 million in losses and declared bankruptcy in December 2015.[37]

Estro was the largest Dutch childcare and elderly care provider, founded in 1975. Originally named Catalpa, it was renamed Estro by one of its many private equity owners upon acquisition in 2010. Waterland Capital, the top-performing Dutch private equity group, partially acquired what was then a non-profit foundation in 2001. Waterland financed its takeover through debt and turned Catalpa into a for-profit limited liability holding. In 2005, Catalpa was resold to Bencis Capital, another Dutch private equity company. Under Bencis, Catalpa became the largest childcare provider in the Netherlands, with 6% market share, €50 million profit, 6,600 employees and nearly 40,000 children in its care. Under stiff competition at auction, American private equity firm Providence Equity Partners paid €500 million for Catalpa and changed the name to Estro.[38]

In 2010, the Dutch government, under a new minority government coalition of neo-liberal conservatives and Christian Democrats, took austerity measures in response to the lingering effects of the financial crisis, dramatically cutting childcare subsidies. Meanwhile, many parents who had been laid off went without childcare while searching for new employment. Providence purchased Estro at the peak of its success, at a huge price for which it undertook a massive amount of debt. By 2012, Estro had lost 30% of its customers since its peak.

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37 Polak, Harold, "Appetite for destruction? Private Equity's role in the demise of V&D", LinkedIn, January 15, 2016, https://www.linkedin.com/pulse/appetite-destruction-private-equitys-role-demise-vd-harald-polak

38 Engelen, Ewald. "The Dutch Childcare Heist: the Financialization of State-Near Sectors", University of Amsterdam, June 2015, https://www.researchgate.net/profile/Ewald_Engelen/publication/279286233_The_Dutch_Childcare_Heist_the_Financialization_of_State-Near_Sectors/links/559162bd08ae1e1f9bafe9e3.pdf?origin=publication_list

They closed childcare centers and fired a third of their workforce. In 2014, Providence sold to a collection of Anglo-American private equity firms including Bayside Capital and KKR. They cut more jobs, raising the child-to-caretaker ratio, but by the summer of 2014 went into fast-track bankruptcy. HIG Capital eventually acquired the bankrupt company for €6 million, 1.2% of what its value had been at the time of Bencis's sale to Providence four years earlier.[39] The downfalls of V&D and Estro demonstrate how poorly managed private equity can affect much more than the returns of investors, but thousands of employees and the public at large.

**"An End to Excess": The Government's Reaction**

On 24 August 2015, two Dutch parliamentarians from the Dutch Labour Party ("Partij van de Arbeid"), Henk Nijboer and Ed Groot, called for "an end to excess" in the Dutch private equity sector, calling for the protection of Dutch companies against exploitive practices of private equity firms.[40] They presented the document to the government in an "initiative memorandum", which is not a formal bill but could become one depending on Government discretion.[41] They specifically named V&D and Estro, along with another target company that was a part of KKR's V&D acquisition, HEMA, as victims of these exploitive practices. They criticized the private equity firms for extracting assets from their acquisitions, paying large

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[39] *Id.*

[40] Robert Steeg, "Dutch MPs Henk Nijboer and Ed Groot (PvdA) present initiative policy document on "harmful" private equity," Stibbe, https://www.stibbe.com/en/news/2015/october/dutch-mps-henk-nijboer-and-ed-groot-pvda-present-initiative-policy-document-on-harmful-private-equi.

[41] M&A Matters Spring 2016, KPMG https://assets.kpmg.com/content/dam/kpmg/pdf/2016/04/mamatters.pdf#17

dividends to their shareholders, and spending company money on lavish, opaque management fees.[42] Specifically, Nijboer and Groot wanted to limit the "tax deductibility of interest on acquisition debt", bar target companies from creating security on their assets to serve as security for the acquisition debt, and bar target companies from providing shareholder loans that will simply be put towards repaying acquisition debt.[43]

The Government drafted a response to the memorandum throughout the rest of the year and presented it on December 21, 2015. The Government found that private equity was an important alternative to bank financing for Dutch businesses and pension funds, which use them to diversify investments beyond shares and bonds The Government did, however, indicate that it was open to tighten interest deduction limitation rules.[44] The government followed through on this openness, proposing the limits it contemplated in the response on Budget Day 2016, for the 2017 tax plan. These limits partially canceled the non-retroactivity of prior regulations on interest deduction limits and clarified that the prior regulations applied even to subsequent acquisitions within the allowed interest deduction period.[45]

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[42] Robert Steeg, "Dutch MPs Henk Nijboer and Ed Groot (PvdA) present initiative policy document on "harmful" private equity," Stibbe, https://www.stibbe.com/en/news/2015/october/dutch-mps-henk-nijboer-and-ed-groot-pvda-present-initiative-policy-document-on-harmful-private-equi.

[43] *Id.*

[44] M&A Matters Spring 2016, KPMG https://assets.kpmg.com/content/dam/kpmg/pdf/2016/04/mamatters.pdf#17

[45] Ruijschop, Michel "Limitation of interest deduction: acquisition holding companies", Deloitte, October 5, 2016 https://www2.deloitte.com/nl/nl/pages/tax/articles/2017-tax-plan-budget-day-limitation-interest-deduction-acquisition-holding-companies.html

While willing to curb the worst excesses of the private equity sector, the government has been generally supportive of the industry. In addition to the official response to the initiative memorandum, a debate on the memorandum between members of Parliament took place in March 2016, and was met with a majority of support for the private equity industry. [46]

**Conclusion**

The Netherlands has a successful and colorful financial present that shares some key patterns and risks of its financially pioneering past. The VOC and its listing as a publicly traded company was a revolution in commerce that brought a new degree of corporate power to bear on a complex and globalizing economy. Additionally, the democratic nature of its stock subjected its business management to public scrutiny and criticism in a way no other company had ever experienced. In the modern era, Dutch private equity firms continue to demonstrate the financial acumen of their forbearers as significant players in the global private equity market. Dutch investors also serve as a fascinating example of how investors can expand throughout Europe, leverage the British exit from the European Union, and learn from and try to prevent harmful practices in the private equity industry.

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[46] "PARLIAMENT AND CABINET PARTICULARLY HAPPY ABOUT PRIVATE EQUITY. REPORT OF NIJBOER MP'S PRIVATE EQUITY BILL FIRST READING", Nederlandse Vereniging van Participatiemaatschappijen, March 24, 2016, http://www.nvp.nl/nieuws_detail/kamer_en_kabinet_vooral_blij_met_private_equity/?lang=en#!lang=en