

## LEGAL UPDATE

### **Supreme Court: an employment contract with a general partnership is to be regarded as an employment contract with the joint partners**

Date: 25 April 2019

In a [ruling](#) dated 19 April 2019, the Supreme Court answered preliminary questions on, among other things, the legal nature of the general partnership (hereinafter referred with the Dutch acronym 'VOF') and the employment relationship of an employee of a VOF. One of these preliminary questions was whether the partners of a VOF qualify as employers by operation of law and in all cases – each individually – if a VOF enters into an employment contract with an employee. Another preliminary question raised in this context was whether the VOF, besides the partners, also qualifies as a (separate) employer. This ruling of the Supreme Court also addresses preliminary questions concerning the qualification of certain claims (estate, unsecured or preferential) in the bankruptcy of the VOF and the partners, but the latter aspect is disregarded in this Legal Update.

#### **Legal nature of the VOF**

The Supreme Court begins its judgment with an explanation of the general principles concerning the legal nature of the VOF, which can be summed up as follows:

- A VOF lacks legal personality, which means that it is not (or cannot be) an independent bearer of subjective rights and obligations.
- The assets intended for the VOF's business are separated from the partners' private assets. Debts entered into as part of the business conducted by the VOF can be recovered from these separate assets.
- A partner who acts in the name of the joint venture acts on behalf of the joint partners, thereby binding the joint partners.
- In view of the above, a contract with a VOF is to be regarded as a contract with the joint partners in their capacity as partners.

#### **Joint and several liability**

The Supreme Court also discusses the (joint and several) commitment of the partners and the VOF, stating that each of the partners is jointly and severally liable for the VOF's obligations, which means that each partner is fully liable for the obligations of the joint partners in their capacity as partners. As a consequence, a creditor of the joint partners can enforce their claim both against the joint partners ('against the VOF'), which can be recovered from the separate assets of the VOF, and against each partner personally, which can be recovered from the private assets of the partner in question.

#### **Who qualifies as employer?**

By applying the general principles concerning the legal nature of the VOF, the Supreme Court ruled that an employment contract 'with a VOF' should be regarded as an employment contract with the joint partners. The joint partners therefore qualify as employer within the meaning of the Civil Code. As the VOF does not have legal personality, the VOF does not independently qualify as employer. An employee 'of the VOF' can assert their claims under the employment contract against the joint partners ('against the VOF'), with the possibility of recovery from the separate assets of the VOF, as well as against each individual partner for the whole claim, with the possibility of recovery from the private assets of that partner.

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