PANORAMIC

DISPUTE RESOLUTION

Netherlands

LEXOLOGY

Dispute Resolution

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LITIGATION

Court system
What is the structure of the civil court system?

The court system in The Netherlands consists of 11 district courts which decide on civil claims on the merits in first instance. Each district court has a number of sub-district venues.

Each district court also has a limited jurisdiction sector, which hears cases on subjects such as consumer law, employment or rent, and civil cases involving claims of up to €25,000. For such cases, legal representation by an attorney is not mandatory.

The Netherlands has four courts of appeal, which decide on appeals lodged against judgments by district courts in their respective judicial districts.

Most judgments by courts of appeal can be appealed at the Dutch Supreme Court. Unlike district courts and courts of appeal, the Dutch Supreme Court does not assess the facts, but only argues regarding the comprehensibility of the judgments and matters of law. In addition, lower Dutch courts can refer prejudicial questions regarding Dutch law to the Dutch Supreme Court (subject to certain conditions).

Furthermore, there are a few Dutch courts with a special mandate:

- The Netherlands Commercial Court (NCC) is based in Amsterdam and facilitates English proceedings in international commercial disputes. Parties must agree in writing to the jurisdiction of this court.
- The Court of Appeals in Amsterdam has a dedicated 'Enterprise Chamber', which, among other things, receives corporate disputes in relation to (alleged) mismanagement and shareholder squeeze-out proceedings in first instance.
- The District Court of The Hague has exclusive jurisdiction in relation to certain IP related matters.
- The District Court of Rotterdam has exclusive jurisdiction in relation to maritime and transport law-related disputes.

Law stated - 17 June 2024

Judges and juries
What is the role of the judge and the jury in civil proceedings?

Cases are typically either heard by one (straightforward cases and summary proceedings) or three judges (complex cases) assisted by a court clerk.

Judges make decisions based on the facts brought forward by the parties. As to these facts, judges are typically inquisitive, especially during a hearing. Judges will also often actively investigate the possibility of a settlement during a hearing.

Judges must, in principle, supplement legal grounds ex officio.

Judges must have a degree in Dutch law from a recognised Dutch university. The duration of training as a judge is based on already acquired work experience, one's own learning needs and the needs of the court. Diversity on bench is actively promoted. Meanwhile, a substantial part of the bench is female. Ethnic diversity proves more difficult, although on the rise.

Law stated - 17 June 2024

Limitation issues

What are the time limits for bringing civil claims?

The general statutory period of limitation pursuant to Dutch law is 20 years. However, in most cases claims become time-barred after five years or an even shorter period.

For example, and among other exceptions, the right to claim specific performance of a contractual obligation and the right to claim damages under a contract become time-barred after five years. The right to claim the purchase price under a sales contract with a consumer becomes time-barred after two years. Incremental penalty payments that have become due based on violation of a court order become time-barred after six months. The applicable statutory period of limitation can be interrupted by (1) a letter in which a party unambiguously reserves its rights in relation to its claim and (2) by initiating legal proceedings.

Law stated - 17 June 2024

Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

For contractual claims, for breaches that can be remedied the counterparty must be (put) in default before initiating legal proceedings. Common practice, although not always required in this respect, is to send the counterparty a formal notice letter prior to initiating legal proceedings.

There are typically no other mandatory pre-litigations steps. Exceptions to this apply in the context of the filing of a collective action (section 3:305a of the Dutch Civil Code (DCC)) and cases of mismanagement brought before the Enterprise Court (Section 2:349 DCC).

Law stated - 17 June 2024

Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload? Do the courts charge a fee for starting proceedings or issuing a claim?

There are two main types of civil proceedings in The Netherlands. Proceedings for ordinary civil suits are initiated by serving summons onto the opposing party and subsequently providing these served summons to the court. In addition, there is a substantial category of

less formal proceedings (eg, in relation to employment, leases, family and certain corporate matters) that are initiated by an application to the court, which subsequently shares the application with any interested parties.

The Netherlands has a well-developed legal and court system. The capacity (and constraints thereof) depends on a court-by-court basis. Some (especially) appeal courts have quite a full (hearing) calendar, which can lead to delays when scheduling a hearing, and may suspend the scheduled judgment date.

The amount of court fees depends on, among other things, the stage of the proceedings (first instance, appeal, Supreme Court), whether the proceedings are initiated by summons or by application, the claim amount and whether the claimant is a natural person or a legal entity.

Law stated - 17 June 2024

Timetable

What is the typical procedure and timetable for a civil claim?

The period between the service of summons in proceedings in first instance by the bailiff on a defendant and the date of formal court appearance by the defendant is at least one week for service in the Netherlands and up to three months for service abroad. Subsequently, a defendant in summons proceedings has six weeks to submit a written defence statement, which can include a counterclaim. Following this defence statement, the court will typically schedule a court hearing in which it will question the parties on the relevant facts and explore settlement options, followed by a judgment. All in all, proceedings in first instance typically take anywhere between six months and a year. This can be longer if evidence is provided through witness testimony at trial and/or the court issues interim judgments.

Law stated - 17 June 2024

Challenging the court's jurisdiction

Can the parties challenge the court's jurisdiction? If so, how can parties do this? Can parties apply for anti-suit orders and, if so, in what circumstances?

Parties can challenge the court's jurisdiction. Pursuant to rules of Dutch procedural law, such a challenge must be submitted before all other defences (ie, ultimately in the first written defence statement).

Law stated - 17 June 2024

Case management

Can the parties control the procedure and the timetable? Can they extend time limits?

Dutch courts do not schedule case management hearings as part of the ordinary course of civil proceedings. Courts in first instance or in appeal may, however, do so in exceptional (complex) cases at the request of the parties or ex officio.

An exception is the NCC, where active case management in typically organised in consultation with the parties through a conference, in which issues, motions and a timetable are discussed.

Law stated - 17 June 2024

Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There exists no general duty to preserve documents or other evidence pending trial. However, parties have a procedural duty to present the facts in a complete and truthful manner, meaning they cannot refrain from submitting documents if this would lead to an incomplete or untruthful overview of the facts.

Pursuant to new Dutch rules of civil evidence law, entering into force on 1 January 2025, parties will be obligated to collect and submit with the court all information that can reasonably be considered of interest for the decision in a case. This implies that relevant documents must be preserved and submitted.

Law stated - 17 June 2024

Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Dutch law recognises the concept of legal privilege for lawyers admitted to the Dutch Bar for lawyer-client communication and communication between lawyers and other lawyers. No distinction is made between legal advice privilege and litigation privilege. In-house lawyers are entitled to legal privilege if they are admitted to the bar (in The Netherlands or abroad) and have concluded a professional charter (or equivalent agreement, for a foreign in-house counsel) with their employer. Additional conditions apply for non-EU/EEA/Switzerland counsel.

Law stated - 17 June 2024

Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

This is not a requirement, nor standard practice pursuant to Dutch law. Pursuant to new Dutch rules of civil evidence law, entering into force on 1 January 2025, parties are obligated

to make a request for a court-ordered witness or expert testimony prior to the summons date.

Law stated - 17 June 2024

Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence can be provided by any means, unless otherwise provided by law.

If evidence by witnesses is permitted by law, the court shall order the examination of witnesses as often as one of the parties so requests and the facts offered by it are disputed and may be relevant for the decision of the case. He may also do so ex officio. Witnesses shall be examined in court. The court may order that the parties must be present in person during the examination of witnesses.

Experts can also play a role in civil cases. The court may appoint independent experts to provide an expert opinion. Parties are also free to submit their own expert reports to support their arguments.

When dealing with cross-border cases, practitioners need to consider international treaties, agreements, and regulations. Obtaining foreign evidence for use in Dutch civil proceedings or vice versa involves specific procedures.

Law stated - 17 June 2024

Interim remedies

What interim remedies are available?

Leave can be requested for a pre-judgment attachment of assets through ex parte proceedings. Such leave is generally provided on the condition that the attachment is followed by initiation of a corresponding claim in separate proceedings. It is also possible to request leave for the pre-judgment attachment of documentary evidence.

A preliminary examination of witnesses before proceedings are pending may also be ordered at the request of an interested party. Interested parties may be the person who is considering bringing proceedings before the civil court, the person who expects such proceedings to be brought against him or a third party who has an interest in such proceedings in some other way. A preliminary examination of witnesses, if the proceedings are already pending, may be ordered at the request of a party. The application shall be made to the court before which the case is pending. This can also be the court of appeal.

The court hearing the application for interim measures may grant leave to take interim measures to protect evidence to an applicant who has made it sufficiently plausible that his intellectual property rights have been infringed or are likely to be infringed. These measures for the protection of evidence may include, in addition to those already provided for by law, the seizure of evidence, detailed description and sampling of allegedly infringing

movable property, materials and tools used in its production and documents relating to the infringement.

Any person having a legitimate interest in doing so may, at their own expense, request inspection, copies or extracts of certain documents relating to a legal relationship to which they or their legal predecessors are parties from the person who has those documents at their disposal or in his custody. Documents include information placed on a data carrier. If necessary, the court shall determine the manner in which inspection, copies or extracts shall be provided.

Law stated - 17 June 2024

Remedies

What substantive remedies are available?

Dutch law provides various remedies, including specific performance, damages, rescission, declaratory judgments and injunctions. Dutch law does not recognise the concept of punitive damages. Interest is typically awarded on monetary awards.

Law stated - 17 June 2024

Settlement

Are there any rules governing the settlement process? Can parties keep settlement discussions confidential from the court?

Parties are encouraged to explore settlement options before proceeding to trial. Settlements can be reached at any stage of the proceedings, even during trial.

Settlement discussions are not confidential by default. An important exception to this is that the contents of settlement negotiations conducted between lawyers may not be disclosed to the court or body to whose judgment the case is submitted without the consent of the opposing party's lawyer. Parties can also agree to confidentiality.

Law stated - 17 June 2024

Enforcement

What means of enforcement are available?

Judgments can be enforced through a bailiff. The bailiff serves the judgment on the debtor, giving them a final opportunity to pay voluntarily. If the debtor fails to adhere to a judgment, further enforcement measures can be taken by seizing the assets of the debtor. If requested by the claimant, a court order may also include penalty payments to be borne by a non-compliant party. Such penalty payments are immediately enforceable.

Law stated - 17 June 2024

Public access

Are court hearings held in public? Are court documents available to the public? Are there circumstances in which hearings can be held in private? Is there a mechanism to preserve documents disclosed as part of the court process?

Court hearings are generally public, and case details are accessible. However, mechanisms such as confidentiality clubs exist to protect sensitive information, especially in trade secret cases. The Netherlands emphasises transparency while balancing the need for confidentiality.

Law stated - 17 June 2024

Costs

Does the court have power to order costs? Are there any steps a party can take to protect their position on costs both before the start of proceedings and while proceedings are in progress?

Under Dutch law the losing party will be obligated to pay the procedural costs of the other party. However, the court determines costs based on fixed tables. These costs include court fees and legal fees. Claimants are typically not strictly required to provide security for the defendant's costs, and protective measures can be taken both before and during proceedings.

Law stated - 17 June 2024

Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

'No cure no pay' agreements between lawyers and clients are not permitted in a strict sense. However, a lawyer may charge an initial lower fee that increases retroactively when the case is won. The lower fee must cover the lawyers' costs and provide for at least a modest salary for the lawyer.

Third-party funding is permitted in the Netherlands for both state court litigation and arbitration. A claimant may, for example, sell a portion of any recovery to investors in exchange for an upfront payment or a defendant might pay a fixed sum to offset a proportion of its potential liability.

The 2019 Claim Code provides additional rules in relation to associations and foundations that act as claimant in collective actions (claim organisations). Founders and – after incorporation – the board (associations) or supervisory body (foundations) of such claim organisations must ensure compliance with the Claim Code. This entails, inter alia, that

individual directors and members of the supervisory board, as well as the lawyers or other service providers engaged by the claim organisation, are self-sufficient and independent of the external funder and the (legal) persons directly or indirectly affiliated with it, and that the external funder and others directly or indirectly associated with it are independent of the defendant in the collective action. The board must also ensure that the funding conditions (including the size of the agreed compensation and its method of calculation) are not in conflict with the collective interest of the injured parties.

Law stated - 17 June 2024

Insurance

Is insurance available to cover all or part of a party's legal costs?

Legal expenses insurance in the Netherlands provides coverage for legal costs, including both the insured party's own costs and potential liability for opponent's costs.

Law stated - 17 June 2024

Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

In the Netherlands, several mechanisms allow for collective redress.

Section 3:305a of the Dutch Civil Code stipulates that a foundation or association with full legal capacity may institute a legal action aimed at protecting similar interests of other persons. Collective actions can be divided into group actions and actions in the public interest. It can therefore concern both interests of victims that can be individualised, and interests of a general nature.

The Collective Redress of Mass Damages Act (WAMCA), which came into force on 1 January 2020, is widely applied in The Netherlands and allows for collective redress in cases related to events occurring on or after 15 November 2016. A central public register records all pending collective actions.

Among other things, the WAMCA has provided for an amendment to section 3:305a of the Dutch Civil Code. An interest group can – still – bring legal proceedings on behalf of its constituency if it represents the interests of its constituency in accordance with its articles of association and these interests are sufficiently safeguarded. The interest group must be sufficiently representative, taking into account the constituency and the size of the claims represented. An interest group must also meet certain requirements. This includes a supervisory body, an internet page, sufficient resources to pay for the procedure and sufficient experience and expertise with regard to the initiation and conduct of the procedure. The interest group must also demonstrate that it has sufficient relevant expertise or has access to it.

An interest group is only admissible if it is non-profitmaking and the legal action brought has a sufficiently close connection with the Dutch legal sphere. Finally, an interest group must

consult with the defendant before bringing legal proceedings. It is then up to the court to assess whether the interest group in question meets the admissibility requirements.

The Collective Settlements of Mass Claims Act (WCAM) enables collective settlements of mass claims. The WCAM provides for the possibility of having a settlement agreement concluded between a collective representative and a party that is subjected to claims on the settlement of a large number of similar claims for damages declared binding by the court on the entire group of injured parties. After the declaration of universal application, the settlement agreement also applies to the injured parties who were not parties to this agreement, unless they opt out.

Law stated - 17 June 2024

Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Generally, all first-instance judgments are subject to appeal, which must be submitted through a pro-forma summons document ultimately within three months after the decision in first instance (four weeks in the case of summary proceedings).

Appeal proceedings can be used to obtain a comprehensive re-assessment of both the factual and the legal elements of a case. This means parties can, generally speaking, introduce new factual and legal arguments and defences. The court of appeals will decide on the case based on the scope of the appeal as stated in the written statement of grounds for appeal and the written statement of defence.

Any subsequent appeals (review) to the Supreme Court must also be filed within three months of the court of appeal's judgment. The Dutch Supreme Court does not assess the facts, but only arguments regarding the comprehensibility of the judgments and matters of law.

Law stated - 17 June 2024

Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

A distinction can be made in this regard between judgments from other EU member states, judgments from non-EU member states that have entered into an enforcement treaty with the Netherlands, and judgments from non-EU member states that have not entered into an enforcement treaty with the Netherlands.

The general principle for the recognition and enforcement of foreign judgments within the EU is the free movement of judgments. This means that judicial decisions between member states are freely recognised and enforced (without the need for an exequatur).

If a non-EU foreign judgment is enforceable in the Netherlands as a result of a treaty, the party seeking enforcement must obtain a declaration of enforceability before the foreign judgment

can be enforced. This can be obtained through application proceedings, in which the case is not re-examined on the merits.

Finally, pursuant to article 431(1) of the Code of Civil Procedure and case law by the Dutch Supreme Court, in cases where no regulation or treaty is applicable, the foreign judgment cannot be enforced in the Netherlands. However, article 431(2) of the Code of Civil Procedure does offer the possibility to have the case heard again before the Dutch court. In such cases, a substantive reassessment can however be omitted if the foreign judgment meets certain formal conditions. These criteria are that: (1) the jurisdiction of the court that delivered the judgment shall be based on a ground of jurisdiction generally acceptable by international standards; (2) the foreign judgment was given in the context of judicial proceedings that comply with the requirements of due process and with adequate safeguards; (3) the recognition of the foreign judgment is not contrary to Netherlands public policy; and (4) the foreign judgment is not irreconcilable with a judgment given between the same parties of the Dutch court, or with a previous decision of a foreign court between the same parties in a dispute involving the same subject matter and the same provided that the earlier decision is capable of recognition in the Netherlands. If these criteria are all fulfilled, the foreign judgment will be recognised in the Netherlands. The new Dutch judgment can then be rendered in accordance with the foreign judgment without a new investigation.

Law stated - 17 June 2024

Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

For foreign proceedings within the EU, the Taking of Evidence Regulation allows for courts from another member state to request a Dutch court to obtain evidence in the Netherlands or to be permitted to directly obtain evidence in the Netherlands itself.

For each possibility, the use of technology for remote communication is enhanced. The Taking of Evidence Regulation also lays down detailed rules for the digital presence of a court of the member state where evidence is taken (in the case of direct taking of evidence) and of the court requesting the taking of evidence in another member state (in the case of the taking of evidence by the court of that other member state).

The competent court of a member state may also summon and hear a party domiciled in another member state as a witness in accordance with the law of the member state of that court. Expert evidence to be taken in the territory of another member state may also be obtained in accordance with the law of the member state of the court, unless the taking of evidence is likely to affect the official authority of the member state in which the investigation is to be conducted.

Evidence can also be obtained for legal proceedings outside the EU, particularly based on the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Members of this Convention include the US, Australia and Singapore, among many others. This collection of evidence is organised procedurally by submitting a Letter of Request to the Central Authority where the proceedings take place (the country of origin), which will check the fulfilment of the legal requirements and will forward the request to the Central Authority in the state where the evidence is sought to be obtained.

Law stated - 17 June 2024

ARBITRATION

UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Although the Dutch arbitration law is not directly based on the UNCITRAL Model Law, there are similarities and influences. The UNCITRAL Model Law lays down general principles that are also relevant to Dutch arbitration law. Both the Model Law and Dutch law contain provisions relating to the validity and enforceability of arbitration agreements and Dutch law has similar provisions to the Model Law guidelines for the recognition and enforcement of arbitral awards.

Law stated - 17 June 2024

Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

Although an arbitration agreement does not have to be in writing, it must be proven by an instrument in writing. For this purpose, any instrument in writing that provides for arbitration or that refers to standard conditions providing for arbitration is sufficient, provided that this instrument is expressly or impliedly accepted by or on behalf of the other party. The arbitration agreement may also be proven by electronic means.

Law stated - 17 June 2024

Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The arbitral tribunal must be composed of an uneven number of arbitrators and may also consist of a sole arbitrator. If the parties have not agreed on the number of arbitrators the number shall, at the request of either party, be determined by the Provisional Relief Judge of the District Court. An arbitrator may be challenged if justifiable doubts exist as to his impartiality or independence.

Law stated - 17 June 2024

Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

The arbitrators are appointed by any method agreed by the parties. The parties may entrust to a third person the appointment of the arbitrators or any of them. If no method of appointment is agreed upon, the arbitrators shall be appointed by consensus between the parties. If the appointment of the arbitrators is not made within two months after the commencement of the arbitration, the arbitrators shall, at the request of either party, be appointed by the Provisional Relief Judge of the District Court. The other party shall be given an opportunity to be heard. If the parties have agreed on an even number of arbitrators, the arbitrators shall appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal. Unless the parties have chosen for arbitration under the rules of an arbitration institute (eg, the Netherlands Arbitration Institute), no prescribed pool of arbitrators is available, and every expert may qualify for appointment as arbitrator.

Law stated - 17 June 2024

Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Dutch Arbitration Act governs both substantive and procedural aspects of arbitration within the country. Parties are allowed by agreement on, for example, the applicable law or rules of an arbitration institute to deviate from most of the substantive and procedural requirements.

Law stated - 17 June 2024

Court powers to support the arbitral process

What powers do national courts have to support the arbitral process before and during an arbitration?

National courts step in to support the arbitral process where needed. Their involvement respects the arbitration agreement executed by the parties and the decisions of the arbitral tribunal.

Law stated - 17 June 2024

Interim relief

Do arbitrators have powers to grant interim relief?

During pending arbitral proceedings on the merits, the arbitral tribunal may, at the request of either party, grant interim relief, including injunctions with a penalty payment in the case of a violation. However, seizure of property or documents is a privilege of the court and an order of the interim relief judge of the court is required for seizure.

Law stated - 17 June 2024

Award
When and in what form must the award be delivered?

The arbitral tribunal may render a final award, a partial final award, or an interim award. The award must be in writing and signed by the arbitrators. If a minority of the arbitrators refuses or is incapable to sign, the other arbitrators shall mention that beneath the award signed by them. This statement shall be signed by them. In addition to the decision, the award shall contain in any case: (1) the names and addresses of the arbitrator or arbitrators; (2) the names and addresses of the parties; (3) the date on which the award is made; (4) the place where the award is made; (5) the reasons for the decision.

Law stated - 17 June 2024

Appeal or challenge
On what grounds can an award be appealed or challenged in the courts?

Arbitral appeal against an arbitral award is possible only if the parties have provided for it by agreement.

A party may, up to three months from the date of dispatch of the award, request the arbitral tribunal in writing to correct any manifest error that lends itself to simple correction or render a supplementary award if it failed to rule on one or more claims or counterclaims that were subject to its discretion.

Dutch law has an exhaustive list of grounds on the basis of which at the request of a party the Dutch courts may (partially) set aside an arbitral award: (1) if there is no valid arbitration agreement; (2) if the arbitral tribunal was constituted in violation of the rules applicable to it; (3) if the arbitral tribunal failed to comply with its mandate; (4) if the arbitral award was not signed or substantiated; or (5) the arbitral award, or the manner in which it was made, is contrary to public policy.

Law stated - 17 June 2024

Enforcement
What procedures exist for enforcement of foreign and domestic awards?

The Netherlands are a party to the New York Convention. A request for an exequatur must be filed with the competent Dutch Appeal Court. In the absence of a treaty on the recognition and enforcement of arbitral awards, or if an applicable treaty allows recourse to the law of the country in which recognition and enforcement is sought, an arbitral award made in a foreign state may be recognised and enforced in the Netherlands, upon filing the original or a certified copy of the arbitration agreement and the arbitral award, unless:

- the party against whom recognition or enforcement is sought asserts and proves that:
    - a valid arbitration agreement is lacking;
    - the arbitral tribunal was constituted in violation of the rules applicable thereto;

- the arbitral tribunal has not complied with its mandate;
- the arbitral award is open to appeal before arbitrators or the court in the country where the arbitral award was made;
- the arbitral award has been set aside by a competent authority of the country where that award was made; or

- the court finds that recognition or enforcement is contrary to public policy. Once an exequatur has been obtained, the bailiff can foreclose the award on the debtor's assets.

Law stated - 17 June 2024

Costs
Can a successful party recover its costs?

Dutch arbitration law does not deal with the recovery of legal fees or costs. The parties may in the arbitration agreement agree on the allocation of costs. In the absence of such agreement the arbitrators can decide this allocation. Normally, the arbitrators decide that the losing party bears the costs of arbitration, including the legal fees of the other party, provided that these are reasonable. The arbitrators may also award third-party funding costs.

Law stated - 17 June 2024

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR
What types of ADR process are commonly used? Is a particular ADR process popular?

In the Netherlands, mediation and binding advice are the most common ADR processes. Binding advice is a form of alternative dispute resolution based on article 7:900 of the Dutch Civil Code. This entails that Dutch law needs to be the law applicable to the contract. The parties agree to leave the determination of their undetermined or partially determined legal relationship to a third party to whose judgement they commit themselves in advance. A successful binding advice process results in an enforceable settlement agreement between the parties.

Law stated - 17 June 2024

Requirements for ADR
Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In the Netherlands, mediation or other ADR processes are not mandatory before starting legal proceedings. This leaves aside that the court may recommend, but not oblige, parties to try ADR first.

Law stated - 17 June 2024

MISCELLANEOUS

Interesting features

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

An attractive aspect typical for Dutch law is the possibility to levy a provisional attachment on the assets of a foreign party located in the Netherlands (***saisie foraine***). Since a large number of international companies have a holding, finance or operational company in the Netherlands, and since a lot of goods pass through the Dutch ports, it is often attractive to attach a foreign debtor's assets in the Netherlands. As an added advantage, a ***saisie foraine*** in the Netherlands gives the Dutch courts jurisdiction to resolve the dispute between the parties.

Law stated - 17 June 2024

UPDATE AND TRENDS

Recent developments and future reforms

What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for dispute resolution reform? When will any reforms take effect?

Starting from 6 May 2024, digital litigation in summary proceedings in trade and family matters is possible in all courts.

Revision of law of evidence in civil proceedings effective from 1 January 2025. The duty of truth and completeness in the Code of Civil Procedure is supplemented, putting more emphasis on information gathering prior to civil proceedings. It also clarifies the judge's role in ascertaining the truth, including the power to discuss the factual basis of the claim, application or defence with the parties. Furthermore, the right of inspection is included in the regulation of evidence, the preliminary evidence orders are merged into one request and the record of findings (***proces-verbaal van constateringen***) is added as evidence.

Law stated - 17 June 2024