

Litigation and Enforcement in The Netherlands: Overview

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A Q&A guide to dispute resolution law in the Netherlands.

The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals.

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Main Dispute Resolution Methods

1. What are the main dispute resolution methods used to resolve large commercial disputes?

The main dispute resolution methods are court litigation and arbitration. Both methods are broadly adversarial. Court proceedings are regulated by the Dutch Code of Civil Procedure (DCCP), which is statutory law, and by court procedural rules.

Proceedings on the merits (as opposed to summary injunction proceedings) are placed on a cause list. The cause list judge takes decisions about the next step to be taken in litigation. The next step will usually depend on a request of one of the litigants or on an order in an interim judgment. The course of the proceedings will very much depend on the actions of the parties. In general, the course of the proceedings is very predictable and it is very unusual for a cause list judge to take an unexpected decision on their own initiative. The court procedural rules are more or less the same for all courts, but local differences still exist.

There are no fixed rules regarding the standard of proof to be met for a claim to succeed. Judges are free to assess the evidence as they see fit.

Arbitration is regulated in Book 4 of the DCCP, which contains the Arbitration Act. Further arbitration rules can also apply if parties have agreed on them. Under Dutch law, the arbitrators decide on procedure. The rules of evidence that apply in court proceedings do not apply in arbitration.

Online dispute resolution is not available within the court system.

Court Litigation

Limitation Periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

Rights of action are limited to 20 years, unless the law provides otherwise (Article 306, Book 3, Dutch Civil Code (DCC)). Title 11 of Book 3 of the DCC sets several different limitation periods, for example:

- The time limit for claims regarding contractual obligations to give or to do something is five years from the day following the day on which the debt became due and payable (Article 3:307, paragraph 1, DCC).
- The time period within which a claim for tort (*delict*) can be brought is:
 - five years from the day following the day on which the injured person became aware of both the damages and the identity of the person liable for those damages; and
 - in any event, 20 years from the day of the event that caused the damages.

(Article 3:310, DCC).

Court Structure

3. In which court are large commercial disputes usually brought? Are certain types of disputes allocated to particular divisions of this court?

There are 11 district courts that hear cases at first instance. Each district court covers a geographical area in The Netherlands. The courts each have a small claims division that hears claims of up to EUR25,000. All claims over EUR25,000 are litigated at first instance in one of the 11 district courts. The departments of the courts are administrative law, commercial law, family law, criminal law and immigration law.

All courts handle all types of cases, with the exception of certain specialist areas:

- The Amsterdam Court of Appeal has a specialist chamber for company law that decides certain specific disputes related to companies.
- The Arnhem District Court has a specialist chamber for land lease cases.
- The Rotterdam District Court has a specialist chamber for maritime cases.
- The Netherlands Enterprise Court at the Amsterdam Court of Appeal is dedicated to matters of enterprise law.
- The Arnhem-Leeuwarden Court of Appeal has an agricultural tenancy division.
- The Netherlands Commercial Court and The Netherlands Commercial Court of Appeal (Amsterdam) handle international commercial disputes in the English language. Parties can choose to bring their case before those courts.

Appeals are made to one of the four courts of appeal. Leave to appeal is not required and it is not unusual for larger commercial disputes to be appealed. The highest court is the Supreme Court of The Netherlands. The Supreme Court does not deal with facts, but only with matters of law.

In principle, at first instance a case is handled by one judge and one clerk. However, if a case is deemed to be very complex, three judges and a clerk will handle the case. On appeal the case is handled by three judges.

Rights of Audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of Audience/Requirements

The Netherlands does not distinguish between solicitors and barristers. A lawyer who has the right of audience to conduct cases in the courts is known as an advocate (*advocaat*). An advocate deals directly with clients, does all the fact-finding work, studies the law, issues legal opinions and handles cases in court.

The Supreme Court of The Netherlands is the only court in The Netherlands where not all advocates have the rights of audience. Only advocates from the court district of The Hague have rights of audience to conduct cases in the Supreme Court.

Litigants are not obliged to be represented by an advocate in:

- The small claims divisions of the district courts.
- Summary injunction proceedings.

Litigants can litigate in person in these proceedings.

To become and advocate a person must:

- Achieve an LLM degree in Dutch law.
- Be admitted to the Dutch Law Society. To be admitted to the Dutch Law Society, a trainee advocate must find an advocate with a minimum of seven years' experience to agree to be their "patron." In practice, this usually means that they must find a law firm willing to employ them. The "patron" is responsible for training the trainee advocate over a three-year period. During that three-year period, the trainee advocate must also attend out of office training courses and pass exams.

Foreign Lawyers

Under EU law, foreign European advocates can conduct cases in the Dutch courts in specific circumstances. After fulfilling certain requirements, foreign European advocates can become members of the Dutch Bar Association.

Fees and Funding

5. What legal fee structures can be used? Are fees fixed by law?

Fees are not fixed by law. However, Dutch lawyers must charge fees that at least cover their costs. No win, no fee agreements are not allowed, except in personal injury cases. Lawyers can agree to fixed fee prices, hourly fees or contingency fees with a minimum payment requirement to cover costs.

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

Large commercial cases are usually funded by the client. Litigation can be funded by third parties if a litigant can find someone interested in doing so.

Insurance

It is possible to insure litigation costs and the costs of legal assistance in general.

Court Proceedings

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

In principle, court proceedings are public. In exceptional circumstances, proceedings can be kept confidential (for example, where questions of public order, interests of state security or protection of privacy are raised). However, this is very much the exception.

Pre-action Conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

There are no rules governing pre-action conduct. However, pre-action conduct can influence the court's opinion.

Main Stages

9. What are the main stages of typical court proceedings?

Starting Proceedings

A claim is usually started by the advocate drafting a writ of summons. When the writ of summons is ready, the advocate sends it to the court bailiff who serves it on the defendant at its place of domicile. An attempt to introduce a method of commencing proceedings online failed and was abolished on 1 October 2019.

Notice to the Defendant and Defence

In the writ of summons, the defendant is summoned to appear in court on a stated court date. After the writ has been served, the advocate files it at the court. The court date, which is chosen by the advocate, depends on the place of domicile of the defendant. The time limits between the date of service of the writ and the first court date are:

- One week for defendants domiciled in The Netherlands.
- Four weeks for defendants domiciled in countries that are party to the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention).
- Three months for other defendants.

The advocate sends the writ of summons with the bailiff's remarks and stamps proving service has taken place to the court before the date on which the defendant is summoned to appear in court. The court then places the case on the case list (which is a computer system) and gives the defendant six weeks to respond to the claim with a statement of defence.

In The Netherlands, proceedings are largely paper based. The claimant files a writ of summons, after which the defendant files a statement of defence. The statement of defence must set out the party's full case and must be supported by evidence, including any witness statements and expert opinions. The same applies to the writ of summons containing the statement of claim. However, the grounds for the claim can be amended until the case is scheduled for judgment. A hearing takes place after these documents have been exchanged.

Subsequent Stages

Usually, after the statement of defence has been filed, the court schedules the hearing a few months later. At that hearing, the judge asks the parties any questions they may have and investigates any possibilities for a settlement. Typically, a hearing does not last more than 90 minutes. Judgment is scheduled for six weeks after the hearing but can be, and often is, postponed. This might be a final judgment or an interim judgment.

The concept of a trial is not known in Dutch civil proceedings.

Interim Remedies

10. What steps can a party take for a case to be dismissed before a full trial? On what grounds can such applications be brought? What is the applicable procedure?

The main way in which a case can be dismissed before the defendant files the statement of defence (see [Question 9](#)) is for the defendant to dispute the jurisdiction of the court. This is done in "incidental" proceedings. For example, the defendant may argue that the court has no jurisdiction because of an arbitration agreement or agreement for the jurisdiction of a different court. In these cases, the court asks the claimant to file a statement responding to the defendant's arguments regarding the lack of jurisdiction. The claimant has six weeks to file that response. In principle, the court hands down an interim judgment on jurisdiction six weeks after that. If the court holds that it lacks jurisdiction, the case is dismissed.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant can apply for an order for the claimant to provide security for its costs, but generally only in cases where the claimant is domiciled in a country outside the EU. If so, the defendant can request security for any costs the claimant may be ordered to pay.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and Grounds

Interim injunctions can be obtained in separate legal proceedings before an interim injunction judge. The party requesting an injunction must show that it has an urgent interest in obtaining the injunction.

Proceedings before the interim injunction judge are very quick. The claimant applies for a hearing date by sending a draft writ to the court. The court then schedules a date for a hearing. Depending on how urgent the court considers the case, the court hearing can be scheduled for anything from the next day to a few weeks later.

After the claimant has received the date of the hearing from the court, it serves the writ on the defendant.

A lot of delay can occur if the time limits for serving writs must be applied (see [Question 9](#)). Some courts (for example, the Court of Rotterdam) are quite pragmatic in very urgent matters (for example, an application to have a ship arrest lifted) and deem that the writ has been served in accordance with the law if the claimant can prove that the defendant has received the writ or is represented by a Dutch lawyer. Other courts are not flexible and require the statutory time limits to be adhered to.

Standard of Proof

The person requesting an injunction must convince the judge that they have an urgent interest in obtaining the injunction. The standard of proof required is convincing the judge that the injunction is urgently required and that there are sufficient grounds for the injunction. Complete proof is not required in interim injunction proceedings. Judges are free to assess the evidence as they see fit, and they will balance the interests of the parties. The party who loses the injunction proceedings is ordered to pay the costs of the other party. Those costs are not the actual costs but are calculated according to a tariff system. The amount awarded depends on the complexity of the case and is determined by the judge. Costs awarded are usually only a fraction of actually incurred costs. In principle, the applicant is not required to provide any sort of undertaking to the court to compensate the respondent if it is subsequently determined that the applicant was not entitled to the relief granted by the court. However, under certain conditions applicants not domiciled in The Netherlands or in a state which is not party to the Brussels I Regulation may be ordered to put up security for possible costs owed to the respondent (Article 224, DCCP).

Prior Notice/Same-Day

Interim injunctions cannot be obtained without prior notice to the defendant. In theory, it is possible to obtain an injunction on the same day but in practice that is very rare as the courts would need to have available capacity to hear the case. In theory, it is possible to obtain an injunction one day after the application. However, that would require the co-operation of the opponent, as the opponent would have to agree to appear in court voluntarily, without a writ of summons being served. A judge would also need to be available to hear the case.

Prohibitory and Mandatory Injunctions

The main types of interim injunctions that can be requested are orders to a party to do something or to refrain from doing something.

Right to Vary or Discharge Order and Appeals

Interim orders are appealable. An appeal must be filed at the court of appeal within one month after the date of the judgment at first instance.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and Grounds

Dutch law relating to interim attachment orders is based on the principle that a creditor should be able to obtain security for its claim before that claim has been awarded in the principal proceedings on the merits. The Dutch legislation takes into account that it can take a long time before a decision on the merits is obtained and that during that time a debtor could dissipate its assets and reduce or extinguish the creditor's chances of recovery of its claim. For this reason, compared to some other legal systems, Dutch law on interim attachment orders is considered to be very liberal.

Interim attachment orders are used for three main reasons:

- Obtaining sufficient security for a claim.
- Freezing an asset, the ownership of which is in dispute.
- Securing evidence, in intellectual property cases.

Standard of Proof

The standard of proof required is to demonstrate a prima facie case that justifies the order, in relation to both liability and quantum. The prima facie case is made based on what it is possible to prove in the context of short proceedings. This means that the proof does not have to be complete proof.

Prior Notice/Same-Day

An attachment order can be, and usually is, obtained the same day without prior notice to the defendant. In very urgent cases, an attachment order can be obtained within hours of the papers having been filed at the court.

Main Proceedings

It does not matter where the substantive proceedings are brought for attachment proceedings before the Dutch courts. Attachment orders can be (and often are) given in support of proceedings in other jurisdictions.

Preferential Right or Lien

An attachment creates a preferential right in favour of the claimant. This means that if the debtor passes the property of the frozen asset to a third party, the passing of property cannot be invoked against the claimant that attached the asset.

Damages as a Result

If the claim for which an asset is attached is rejected by the court, the attachment becomes unlawful and the claimant will be liable for damages suffered as a result of the attachment. This is a strict liability.

Security

The claimant cannot be forced to provide security. However, the attachment must be lifted if the defendant puts up sufficient security to cover the claim, interest and costs, so as to allow the creditor to obtain payment without difficulty. There is a considerable amount of case law concerning the precise definition of sufficient security. There are two forms of bank guarantee in The Netherlands that are typically considered to constitute sufficient security (if the guarantor is sufficiently solvent). They are the Rotterdam guarantee form and the attachment guarantee of the Dutch Association of Banks.

14. Are any other interim remedies commonly available and obtained?

It is possible and common to obtain an injunction ordering an opponent to do something or to refrain from doing something. For example, it is possible to obtain an injunction ordering an opponent to refrain from entering a specified area or to hand over or secure certain evidence.

An injunction to freeze goods and/or property is not required. To freeze assets, an application is made to the injunction judge. In most cases, the injunction judge gives the requested permission to freeze the specified assets within 24 hours without hearing the other party (see [Question 13](#)). The assets are frozen by the court bailiff.

Final Remedies

15. What remedies are available at the full trial stage? Are damages only compensatory or can they also be punitive?

The remedies available under Dutch law are:

- Compensatory damages.
- Declarations.

- Specific performance.

If the defendant is obliged to enter into any form of agreement with the claimant, the judge can rule that their judgment takes the place of that agreement.

Punitive damages do not exist under Dutch law. However, penalty clauses in contracts are valid and enforceable. Agreed penalties can be claimed in addition to damages.

Where possible the amount of the claim must be proven. However, if it is not possible to prove the amount of damages because, for example, the claim is an immaterial claim, then the judge must assess the quantum of damages in the manner that is most appropriate for the type of damages (Article 6:96, DCC). If it is not possible to accurately assess the quantum of damages, the amount can be estimated.

Evidence

Document Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

There is no obligation to disclose all relevant documents under Dutch law. Parties are obliged to fully and fairly disclose all relevant facts (Article 21, DCCP). In practice, this rule is not always adhered to by litigants. The court can order a party to further elaborate its position or to disclose relevant documents (Article 22, DCCP). Under the DCCP, judges can draw any conclusions that they see fit if a party is in breach of Article 21 of the DCCP, for example, by giving less value to evidence submitted by the party who is found to be in breach of Article 21 of the DCCP. However, in practice, the judge does not tend to impose any sanctions for violation of Article 21 of the DCCP.

Privileged Documents

17. Are any documents or communications privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged Documents

There are no rules relating to disclosure of privileged documents in legal proceedings under the DCCP. However, lawyers must keep communications with their clients confidential. A breach of this duty of confidentiality is a criminal offence. Therefore, a court will not order communications between a lawyer and client to be disclosed in legal proceedings lightly.

As there is no duty to disclose documents, correspondence between a lawyer and third parties (for example a foreign lawyer advising on foreign law, or an expert) does not need to be disclosed in legal proceedings.

As there is no duty to disclose documents the without prejudice principle is not relevant.

Other Non-Disclosure Situations

There are no rules relating to disclosure in the DCCP.

Witnesses

18. Do witnesses of fact give oral evidence or do they only submit written evidence? Is there a right to cross-examine witnesses of fact?

Probatory Value of Different Types of Evidence

Written witness statements are often submitted with the writ of summons and the statement of defence. A litigant should bring key witnesses with them to a hearing. The judge will often ask a key witness some questions in a rather informal way.

In bigger cases, hearings to hear witnesses can be scheduled. The witness takes an oath or promises to tell the truth. However, it is always at the judge's discretion whether to attach more or less weight to a sworn oral statement.

Right to Cross-Examine

If a party wants to hear witnesses formally under oath, they can make an application to the court to be allowed to do so. Witnesses can be heard before proceedings are commenced or afterwards. The judge usually starts the questioning. After that, the parties

are allowed to ask the witness questions. It is very unusual for detailed cross-examinations to take place. The court usually only reserves 90 minutes to hear a witness.

Third Party Experts

19. What are the rules in relation to third-party experts?

Appointment Procedure

Experts are usually instructed by the parties. However, the court can appoint an expert witness at the request of the parties, or can take the initiative to do so itself. In principle, there is no obligation to disclose draft reports or any other reports. Apart from the general rules of Articles 21 and 22 of the DCCP (see [Question 16](#)), Dutch civil procedure does not have disclosure rules and does not oblige parties to disclose documents.

Role of Experts

In principle, experts are independent and advise the court. They are not supposed to argue one of the parties' cases and must be objective.

Cross-Examination of Experts

Dutch proceedings are mainly conducted in writing. If the claimant files an expert opinion as an exhibit with the writ of summons, the defendant can respond in its statement of defence. If a defendant files an expert opinion in the statement of defence, the claimant can respond with its own expert opinion up until two weeks before the hearing that usually follows the statement of defence.

Fees

The person appointing an expert pays their fees. If the court appoints a witness, the court decides which party must advance the expert's fees.

Appeals

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Appellate Courts

Appeals are made to one of the four courts of appeal. Each court of appeal has a jurisdiction that covers the geographical region of various courts of first instance. The appellant does not need permission to bring an appeal. The only restrictions to appeal are if the:

- Law states that an appeal against a certain decision is not allowed (for example, there is no appeal allowed against a decision of the judge not to award permission to attach assets (Article 700(2), DCCP)).
- Claim is lower than EUR1,750 (Article 332, DCCP).

Grounds for Appeal

The grounds of appeal can be either the:

- Court's assessment of the facts and/or evidence.
- Court's application of the law.
- Grounds the court gave for its decision.

A party can argue a completely different case in appeal proceedings than at first instance.

Time Limit

The time limit for bringing an appeal is three months after the date of the judgment at first instance.

Class Actions

21. Are there any mechanisms available for collective redress or class actions?

Class actions in the US sense do not exist in The Netherlands. The DCC regulates "collective actions" (Article 3:305a, DCC). A collective action can be brought by a foundation or an association of claimants. The claim cannot be a claim for damages. It can only be a request for a declaratory judgment, for example, a judgment in which the court states that the defendant is liable.

Collective actions can be funded by subscriptions paid by the participants or by a litigation funder.

Costs

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Costs are awarded to the successful party under a points system. Each point is worth a certain amount of money in accordance with a table of tariffs. The tariff depends on the amount of the claim. The higher the claim, the higher the tariff. The highest tariff is worth EUR3,856 per point and applies in claims over EUR1 million. One point is awarded for each written substantive submission and for each hearing. Half a point is awarded for less labour-intensive submissions and for the hearing of witnesses.

The point system is intended to cover the legal fees. Court fees are also awarded, in addition to the legal fees. There are four levels of court fees in the first instance. A distinction is made between court fees to be paid by natural persons and court fees to be paid by legal entities. The court fees are increased every year and can be found online (see [de Rechtspraak](#)).

Costs to cover witness expenses are recoverable. If the court has appointed an expert, the fees paid to the expert are also recoverable.

The court does not take any settlement negotiations or offers into account. The point/tariff system is strictly adhered to.

The court does not have powers to manage, limit or otherwise control costs during the proceedings.

23. Is interest awarded on costs? If yes, how is it calculated?

Interest on costs can be awarded if requested. The interest is calculated in accordance with the rules governing statutory interest.

Enforcement of a Local Judgment

24. What are the procedures to enforce a domestic judgment in the local courts?

To commence enforcement proceedings, a party must instruct the court bailiff to serve the judgment on the losing party. The court bailiff gives the debtor two days in which to pay. If payment is not made voluntarily, the judgment is enforced by the court bailiff against the debtor's assets. In principle, after an enforceable judgment has been rendered, the court is not involved in its enforcement. The party that is enforcing the judgment must identify the debtor's assets and instruct the bailiff to freeze those assets.

There is a special procedure before an interim injunction judge if a party wishes to object against the enforcement of a judgment. The grounds on which an objection can be made are very limited and are that:

- The creditor is "abusing its authority."
- The judgment is based on an evident legal mistake.

Cross-Border Litigation

25. Do local courts respect the choice of governing law in a contract? If so, are there any national laws or rules that may modify or restrict the application of the law chosen by the parties in their contract? What are the rules for determining what law will apply in the absence of any agreement and/or to non-contractual claims?

Contractual Choice of Law

In principle, local courts must respect the choice of law governing a contract, whether it is foreign law or Dutch law. However, there are some specific mandatory national laws that override the law chosen by the parties. For example:

- In maritime cases, a carrier's right to exercise a lien on goods is governed by the law of the country where the goods are discharged, irrespective of the law that governs the contract (Article 10:163, DCC).
- The title to sue and who can be sued in claims under bills of lading is also governed by the law of the country where the goods are discharged, irrespective of the law that governs the contract (Article 10:162, DCC).

The courts will not take into account the law with which the contract has a close connection, if the parties have agreed that the Dutch law will apply to their contract (Article 3(1), Rome I Regulation ((EC) 593/2008)).

The Rome I Regulation will determine the court's approach to the question of the law applicable to the claim.

No Choice of Law and Non-Contractual Claims

The law governing non-contractual claims and claims in the absence of any agreement between parties is determined in accordance with the Rome II Regulation ((EC) 864/2007).

Contractual Choice of Forum

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

The Netherlands is a party to the Recast Brussels Regulation ((EU) 1215/2012) (regarding jurisdiction) and Rome I Regulation (regarding the law applicable to contracts). The regulations apply in international situations. In national situations the DCCP regulates jurisdiction and Book 10 of the DCC regulates the applicable law.

In principle, the courts must respect a jurisdiction clause if it is sufficiently clear and has been agreed between the parties (Article 3(I), Rome I Regulation). This applies to jurisdiction clauses designating foreign courts as well as jurisdiction clauses designating Dutch courts.

However, there are some exceptions. For example, a jurisdiction clause in an employment agreement does not prevent an employee from litigating their case before a Dutch court if that court has jurisdiction according to the law (Article 21, Rome I Regulation bis and Article 8(3), DCCP). In addition, jurisdiction clauses do not apply in cases concerning legal relationships that are not dependant on the free will of the parties, for example matters concerning family law (Article 1(e), Recast Brussels Regulation and Article 8(1), DCCP).

Service of Foreign Proceedings

27. If a party wishes to serve foreign proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction a party to any international agreements affecting this process?

The Netherlands are a party to the:

- Hague Service Convention.
- Service of Documents Regulation ((EC) 1393/2007).

Under the Service of Documents Regulation, the receiving agency in The Netherlands are the court bailiffs, who serve documents in accordance with Dutch law. The addressee can refuse service if the document is not translated in accordance with the regulation.

Under the Hague Service Convention, the central authority is the Public Prosecutor of the Hague District Court. Formal service is effected in accordance with Dutch law by a court bailiff. Informal service is effected by the police, who can send the document by post. There is no requirement for documents to be translated. However, a translation of the summary is desirable (Article 5, Hague Service Convention).

If the Hague Service Convention and the Service of Documents Regulation do not apply, service is effected by a court bailiff. There is no requirement for served documents to be translated.

If a defendant's address is unknown, service can be effected by "public service," which entails service at the offices of the public prosecutor of the court that will hear the case, and online publication in the state newspaper.

Service by a court bailiff is recommended. The copy of the served documents that the applicant receives from the court bailiff provides irrefutable evidence of service.

Taking of Evidence for a Foreign Court Proceeding

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

The Netherlands is a party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention) and the Taking of Evidence Regulation ((EC) 1206/2001) applies. Under the latter, a state's requests for another member state to take evidence are transmitted by the court before which the proceedings are commenced or contemplated directly to the competent court of the other member state. In The Netherlands the competent court for the performance of the taking of evidence in accordance with the regulation is the District Court of The Hague (Article 3(2), Implementation Act for the EU Taking of Evidence Regulation).

Enforcement of a Foreign Judgment

29. How are foreign judgments enforced in your jurisdiction?

The Netherlands is a party to:

- Recast Brussels Regulation, which is directly applicable in The Netherlands. A judgment given in a member state that is enforceable in that member state is therefore also enforceable in The Netherlands without any declaration of enforceability being required.
- EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988 (Lugano Convention). A judgment given in a state bound by the Lugano Convention and enforceable in that state can therefore be enforced in The Netherlands when it has been declared enforceable there on the application of any interested party.
- HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 (Hague Foreign Judgments Convention). A decision rendered in one of the contracting states is entitled to recognition and enforcement in The Netherlands if the decision:
 - was given by a court considered to have jurisdiction under the convention;
 - is no longer subject to ordinary forms of review in the state of origin; and
 - is enforceable in the state of origin.

To have a foreign decision from a state that is party to a convention or subject to a regulation that also applies in The Netherlands declared enforceable in The Netherlands, an application must be made to the injunction judge of the district court of the place where the judgment is to be enforced. The procedure is ex parte and takes two weeks.

Alternative Dispute Resolution

30. What are the main alternative dispute resolution (ADR) methods used to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

The most common forms of ADR are arbitration and mediation. An arbitral award can be declared enforceable by the injunction judge of the district court. It is therefore binding. Mediation results in a settlement agreement that is also binding. The courts actively encourage mediation.

In The Netherlands, arbitration is mainly used in the following circumstances:

- In commercial disputes where special knowledge of the industry is required (for example, in shipping disputes).
- When parties wish to keep the dispute or the contract under which the dispute arose confidential.
- In construction disputes.

It is also possible for parties to arbitrate only about the quality or condition of certain goods (for example, the quality of fresh fruit). This type of arbitration is known as "quality arbitration" and is specifically governed by the provisions of Dutch statutory law.

Until 2015, arbitral awards had to be deposited at the court in the court district of the place of arbitration. Between 1997 and 2001, about 5,800 awards were deposited at the district courts in The Netherlands, which was an average of 1,160 deposited awards per year. In 2014, about 1,150 awards were deposited. This shows that there was little increase or decrease in the amount of deposited awards in the 17 years between 1997 and 2014. It is estimated that, taking into account awards that were not deposited at court, about 2,000 arbitral awards a year are handed down.

Dutch statutory law governing arbitration proceedings is contained in Book 4 (Articles 1020 to 1077) of the DCCP. This contains The Netherlands Arbitration Act, which was first enacted in 1986 and amended in 2015. The 2015 amendment was aimed at improving the efficiency of arbitration procedures and removing obstructions to opting for arbitration instead of litigation. The arbitration procedures have been simplified and the administrative costs have been reduced, for example by removing the obligation to deposit arbitration awards at court.

The possibility of having an arbitral award set aside by the national courts has now been limited. Since 2015, a party must apply to the court of appeal to have an award set aside. The court of first instance is no longer involved in setting aside proceedings. This is to reduce the amount of time and money that the parties must spend after arbitration proceedings if one of the parties attempts to have the arbitral award set aside by the court.

The amended Arbitration Act gives parties more freedom to make agreements in relation to arbitration procedures that deviate from the provisions of the DCCP (for example, provisions relating to the division of the burden of proof and appeals against awards).

Arbitration plays an important role in the resolution of commercial disputes in The Netherlands. The reasons for parties to an international transaction to choose arbitration include:

- Expertise of the arbitrators in the field of the dispute.
- Confidentiality.
- Potential unenforceability of a court judgment in one of the jurisdictions involved, due to the absence of a treaty between the relevant countries for the enforcement of foreign judgments. Foreign arbitral awards are enforceable in the 156 member states of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

Courts encourage mediation in cases that they deem suitable for mediation. They cannot force parties to enter into mediation and the parties must agree to do so.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

In arbitration, evidence is given in accordance with the applicable law and the applicable arbitration rules. Although most parties assume that arbitration is confidential, that is only the case if parties agree to confidentiality, for example by agreeing to arbitration rules that contain a confidentiality clause. There is no general rule of law in The Netherlands providing that arbitration submissions are confidential.

33. How are costs dealt with in ADR?

Costs are dealt with in accordance with the rules of the arbitration. Some rules use a tariff system and some rules allow for the award of full costs. There are no rules regarding the costs of mediation. Costs will depend on what the mediator charges or agrees to. Often parties to mediation will share the costs.

34. What are the main bodies that offer ADR services in your jurisdiction?

Most arbitration proceedings are conducted at arbitration institutes, such as the:

- Netherlands Arbitration Institute (*Nederlandse Arbitrage Instituut*) (NAI).
- Arbitration Board for the Building Industry (*Raad van Arbitrage voor de Bouw*).
- Transport and Maritime Arbitration Rotterdam - Amsterdam foundation (TAMARA).
- International Chamber of Commerce (ICC).
- Permanent Court of Arbitration.

Some arbitrations are also conducted as ad hoc arbitrations, that is, in accordance with rules agreed between the parties without the involvement of an established arbitration institute.

Arbitration is also used by traders dealing in oils, fats and oilseeds who are members of The Netherlands Oils, Fats and Oilseeds Trade Association (NOFOTA). Lawyers are usually not involved in NOFOTA arbitrations. The same applies to traders dealing in nuts who are members of the Nut Association.

At the time of writing, the NAI in collaboration with Authentication in Art (AiA), a not-for-profit foundation that promotes best practice in art, was in the process of launching a new arbitration institute dedicated to resolving art-related disputes. The institute will be known as the Court of Arbitration for Art (CAfA). Its rules will primarily be based on the NAI rules of arbitration.

Proposals for Reform

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

There are no current proposals for reform in The Netherlands. The Dutch Rules of Civil Procedure were completely rewritten and modernised in 2012, and the Arbitration Act was completely rewritten in 2015.

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Professional and academic qualifications. *Advocaat*/Attorney with right of audience in the Dutch courts; Doctorate and LL.M degree in Dutch law; BSc hydrography, Amsterdam University of applied sciences

Areas of practice. Litigation and arbitration; commercial law; contract law; tort.

Recent litigation

- Acting for an employer in a dispute with a shipyard regarding late delivery of three vessel hulls and termination of contracts for 15 other hulls. Liquidated damages. Settlement achieved after the employer commenced interim injunction proceedings.
- Acting for a shipyard which had subcontracted the welding of spud cans onto the legs of a jack up rig. The welding was rejected by the vessel's classification society. This led to litigation regarding the question whether the sub-contractor had a right to receive payment or not.
- Legal proceedings against a bank for breach of its duty of care resulting in tens of millions of euros of damages for its client.

Languages. English and Dutch (native speaker), German (reading, understanding)

Professional associations/memberships. Member of the Dutch association for maritime law and transport law.

Publications

- *Glencore Energy UK Ltd and Glencore Ltd versus Freeport Holdings Ltd (Lady M), Court of Appeal (Civil Division), EJCCL 2019 p. 16-19.*
- *Arbitration procedure and practice in The Netherlands: overview, Arbitration Global Guide, Thomson Reuters, Practical Law.*

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Professional qualifications. *Advocaat*/Attorney with right of audience in the Dutch courts. LLM degree in Dutch law

Areas of practice. Offshore energy; shipping; commercial litigation.

Recent transactions

- Acting for an EPCI offshore contractor in various disputes with an international oil company in West Africa relating to pipe lay and offshore installation works.
- Negotiating a contract for a contractor with an international oil company for well intervention works in West Africa.
- Acting for a marine contractor in large disputes relating to variation claims and termination claims relating to works in the Black Sea.

Languages. English, Dutch

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