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13th Edition

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

The Netherlands has a civil law tradition that is partially based on the French system and partially based on the German system. This tradition lays emphasis on codification in which case law is merely an interpretation of statutory law. The rules of civil procedure are laid down in the Dutch Code of Civil Procedure. The Code is complemented by litigation regulations of the courts. Belief in the rule of law and trust in legal institutions are relatively robust. International benchmark studies show that the Dutch legal system is generally fast, efficient, accessible and honest.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

There are three levels of judicial instances in the Dutch civil court system, all of which are national courts, and all judges are appointees. There are 11 courts of first instance. The courts have a *kanton* subdivision for small claims and labour, tenancy, agency and consumer sales and loans disputes. A party may file an appeal at one of the four appellate courts if the judgment of the district court proves unfavourable. Appeal cases are always dealt with by a full-bench panel of three judges. Judgments of a court of appeal may be challenged in cassation at the Supreme Court.

The Enterprise and Business Court of the Amsterdam Court of Appeal ("Enterprise Chamber") has exclusive competence to hear matters involving mismanagement and similar corporate issues, or as the appellate court in certain corporate litigation disputes. The Enterprise Court consists of a panel of five judges which includes three members of the judiciary and two lay persons with specialist expertise.

The Netherlands Commercial Court ("NCC") opened its doors in 2019 and adjudicates commercial disputes between international (as well as national) companies. The NCC consists of specialised judges and the proceedings, which are intended to have a quick time throughout, are conducted in English. The NCC (NCC District Court and NCC Court of Appeal) is located in Amsterdam.

In addition, certain district courts accommodate divisions that are specialised in certain areas of law, such as intellectual property (The Hague) and shipping and transport (Rotterdam).

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Claims lodged in ordinary civil proceedings are initiated by a writ of summons (statement of claim). Subsequently the defendant files a statement of defence within six to 12 weeks. Thereupon the court will order parties to appear before the court or (upon request in complex cases) to submit additional written statements (timeframe: 12–24 weeks). An interim or a final judgment will take another six to 24 weeks. In case of motions, interim judgments and the rendering of evidence, varying timeframes apply. A provisional judgment in preliminary relief proceedings is obtained considerably quicker; varying from the hearing or within one day (in cases of extreme urgency) to a couple of weeks.

Recent efforts to "digitalise" all civil proceedings have been reversed, except for proceedings before the Supreme Court. Consequently, the courts still require parties to file their court documents in hard copy. A new quality and innovation programme is intended to bring increased efficiency with a stronger case management role for the court and its judges. As of 1 October 2019, courts may order parties to be present at an early stage hearing, during which witnesses and experts may be heard.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Both the EU Regulation Brussels I (recast) and the Dutch Code for Civil Procedure allow for exclusive jurisdiction clauses, provided that they are agreed in writing. An exclusive jurisdiction clause is not allowed, or its application is limited, in certain cases, including cases relating to the validity of registrations at public registries and in labour cases.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

Both the claimant and the defendant have to pay, within four weeks after appearance, court fees that are contingent on the value of the claim. Parties pay for their own costs; the losing party is usually ordered to cover the litigation costs of the prevailing party (court fees, witness and expert fees and fixed legal fees, based on limited amounts for standard activities). The actual costs and attorney fees incurred by the prevailing party are seldom covered by the amount awarded (see also question 9.2).

Dutch attorneys are required under the Rules of Professional Conduct to discuss the financial consequences of their engagement and of any legal action. Because it is difficult to predict all eventualities, estimates are often used for well-defined procedural steps.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Litigation funding by third parties is permitted in the Netherlands, except for funding by law firms. There are no particular rules on civil procedure regulating such funding. When funders are involved in collective actions (see also question 10.1), courts usually require full transparency on the commercial terms. Lawyers in the Netherlands are prohibited under the Rules of Conduct from providing a 'no win, no fee' service. Alternative 'fee arrangements' that are dependent on the outcome of the case (such as basic fee and success fee) are permitted.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Claims can be assigned to third parties subject to the conditions stipulated in Dutch substantive law. The right to assign a claim may be limited by contract. Third-party financing is allowed except for law firms.

1.8 Can a party obtain security for/a guarantee over its legal costs?

A security deposit can only be required from non-EU plaintiffs that reside in a country without a treaty with the Netherlands prohibiting the action for a security deposit. Treaties prohibiting such an action include the Hague Convention on Civil Procedure and the Hague Treaty on International Access to Justice.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Dutch law does not require any particular formality that the claimant must comply with before he initiates proceedings. A notice of default will often be required in order to enforce one's rights. Pre-trial correspondence about the underlying complaints is required in cases of mismanagement brought before the Enterprise Chamber (Section 2:349 DCC) and collective actions (Section 3:305a DCC).

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The right to claim specific performance or payment of consideration becomes time-barred after five years, after the claim became due and exigible (two years in a consumer sale). The right to claim damages or a contractual penalty becomes time-barred after five years from the day after the injured person became aware of (a) the damage inflicted, and (b) the identity of the person liable. The right to demand the annulment of a resolution of a constituent body of a legal entity becomes time-barred after one year following the publication or notification thereof. Unless otherwise provided by law, a claim becomes time-barred after 20 years. Time limits are treated as a substantive law issue.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

There are two main types of civil proceedings in the Netherlands: initiated by summons ("*dagvaarding*"); or by an application ("*verzoekschrift*"). The proceedings by summons is used for ordinary civil suits, and the proceedings by application is used in disputes involving employment, leases, family, and certain corporate matters.

The claimant is responsible for ensuring that service takes place. A bailiff serves the summons on the defendant, thereby formally notifying the defendant of the lawsuit. Subsequently, the claimant must file the summons with the Court Registrar before the last business day prior to the date of formal court appearance as stipulated in the summons.

A party can also be sued outside the jurisdiction of the court. The service of judicial documents abroad is regulated primarily by the 1965 Hague Convention and the Service Regulation.

The minimum period of time between service of a writ within the Netherlands and the date of the formal court appearance is one week. If the defendant resides in either an EU Member State, subject to the Service Regulation, or a contracting State to the 1965 Hague Convention, a minimum period of four weeks should be observed. For defendants residing in other states, a minimum period of three months between service and formal appearance in court applies.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Once a dispute is pending before the court, each party has the possibility of initiating an interim action or applying for injunctive relief. Examples of interim actions are: motion contesting jurisdiction; inspection of documents or copies thereof; third-party claims; request for joinder and intervention; referral and consolidation of cases; and provision of security for litigation costs. It is also possible to claim interim relief (a measure of a provisional nature) for the duration of the dispute and/or to claim an advance payment. Interim remedies can also be lodged in summary proceedings.

In addition, a claimant can apply for prejudgment at the district court in an *ex parte* proceeding. A prejudgment attachment can be allowed for to prevent the removal of assets or documentary evidence. The relative ease to apply for prejudgment attachment is regarded by foreign parties as characteristic.

3.3 What are the main elements of the claimant's pleadings?

Besides fulfilment of formalities and statutory-required notifications, the pleadings must provide for a detailed description of

the nature of the dispute describing the relevant facts, the legal grounds on which the claim is based and the relief sought, as well as setting out and refuting all arguments put forward by the defendant, unless these are unknown to the claimant. Evidence should be submitted together with the relevant court document as much as possible, together with a clarification as to what (further) evidence is available to support the claim, like possible witnesses.

A bill proposing for the modernisation of law of evidence is pending. This bill aims to provide evidence prior to trial and establish a form of dispute resolution that leads to more effective solutions and earlier settlement of disputes. If the proposal enters into effect, all applications for evidence must be bundled together in one set of preliminary proceedings.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Pleadings can be amended at any stage. The claim can be unilaterally decreased up to the moment the court is about to render judgment. The claim and its merits can be amended, adjusted or increased at any stage, unless opposed by the other parties, in which case the court will rule whether the adjustment is contrary to due process of law and not allowed.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings can be withdrawn at any stage with the consent of all parties. Generally, the claimant can unilaterally withdraw his pleadings, bearing the costs of the proceedings, unless judgment is scheduled.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The statement of defence contains all reasoned formal and substantive defences as to the alleged facts, rights and points of law. It has to state all available evidence to the defendant, including witnesses. Any alleged fact of right that the defendant does not deny will be assumed to be correct. The defendant may forfeit the right to bring forward formal or substantive defences if he fails to do so in the statement of defence.

Motions for an impleader to join cases and for referral to a different court have to be filed ultimately with the statement of defence. The statement of defence may contain a motion for an interim judgment and counterclaims.

The defendant may bring a counterclaim, to be filed together with the statement of defence, provided that the defendant in the counterclaim is sued in the same capacity as it appears in the initial claim. The defence of set-off can be brought forward at any stage of the proceedings.

4.2 What is the time limit within which the statement of defence has to be served?

The statement of defence has to be filed with the court within six weeks after the pleadings have been lodged. In ordinary standard proceedings, postponement for another six weeks will be allowed with the consent of all parties, for compelling reasons or in case of a *force majeure*. In the latter cases and also in complex proceedings, further postponements are normally granted.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The defendant may implead a third party in indemnification proceedings. A request to this extent is granted if it is conceivable that there is a legal relationship with this third party based on which this party has a duty to indemnify the impleading party. No substantive connection between the claim in the main proceedings and the claim in the indemnification proceedings is required. The main proceedings and indemnification proceedings remain separate proceedings.

4.4 What happens if the defendant does not defend the claim?

A claimant may obtain a default judgment if the defendant fails to appear in court on the date of the formal court appearance. As long as the default judgment has not been rendered, the defendant may still appear in court and defend its case. The court will issue a default judgment awarding the claims of the claimant unless: (i) the claimant did not comply with the formalities; or (ii) the claim is considered to be *prima facie* unlawful or unfounded.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant can lodge a motion to dismiss for lack of jurisdiction. This motion must be lodged prior to the statement of defence on the merits or ultimately together with the statement of defence.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

By impleader, a third party can be involuntarily summoned by one of the parties in a separate third-party proceeding which is dealt with concurrently with the ongoing proceedings (see question 4.3).

A third party who has an interest in the ongoing proceedings may apply for permission to join the lawsuit or to intervene in it. In a joinder, the interested third party supports the position of one of the parties. In the case of an intervention, the interested third party takes up its own position in respect of both the claimant and the defendant.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Proceedings between the same parties can be joined (consolidated) if they are about the same subject matter. The same applies in the event of a close connection between proceedings, whether or not the same parties are involved. For consolidation, the proceedings need to be pending before the same court. If different courts are involved, the case may be referred to the other court. Such request for reference may be succeeded by a request for consolidation.

5.3 Do you have split trials/bifurcation of proceedings?

Although this possibility is not frequently utilised, bifurcation of proceedings has been developed in case law. Matters may be split for reasons of efficiency. Parties may decide – and courts facilitate – continuing sub proceedings in court, and to settle parts of the initial dispute outside court (mediation, binding advice, etc.).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

As a general rule, cases are allocated in first instance to one of the 11 courts by geographical competence (derived from the defendant's residence). Within the court, there is an allocation between the *kanton* division for small claims and particular disputes (see question 1.2) and the commercial division. Cases that fall within the competence of a specialised chamber are allocated to these divisions.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Dutch courts have extensive management powers. Courts can instruct for a hearing at any stage of the proceedings.

In proceedings on the merits, the court may set a case management hearing ("*regie zitting*") at the request of the parties or *ex officio*. This occurs mainly in complex and extensive civil disputes involving multiple litigants. Issues which may be discussed are, for example: the order of the procedural actions; partial rulings regarding preliminary questions; and continuing legal proceedings on parts of issues where additional investigation/taking of evidence such as witness examinations is desired.

The court is not bound to party applications except for the request of a plea, which has to be granted when parties did not forward a plea earlier in the proceedings.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

Every substantive order, other than payment, can be reinforced by penalty payments, which are forfeited to the claimant if the order is not performed (on time). Procedural orders cannot be reinforced by penalty payments. The court is allowed to draw the conclusions that it deems appropriate as to the merits of the case if a party disobeys such an order.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

The courts may dismiss a case or strike out part of a statement of case if the claim is inadmissible; for example, if the plaintiff does not have a cause of action. As a general rule, the court will dismiss a case in its final judgment after having followed the entire proceeding.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

The summary judges can render summary judgments providing injunctive relief. Moreover, an injunction for the duration of the dispute may be requested in proceedings on the merits that is already pending (see question 3.2).

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The courts are obliged to render a judgment in all cases that are brought before them. The court can stay a proceeding in the interest of proper administration of justice. It can discontinue a case that has been stayed for over half a year. Discontinued cases can be reopened by the motion of one of the parties.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

There are no discovery or disclosure procedures comparable to common law systems in the Dutch judicial system. However, there are instruments available for obtaining further information aimed at establishing the truth.

Interested parties may request inspection of (or copies or extracts from) documents, including electronic documents, from those who have these documents at their disposal. This action may be instituted in summary proceedings or as an interim action in ongoing proceedings. A request can be granted provided: (i) the requesting party has a legitimate interest in obtaining the information; (ii) the existence of the requested specific documents has been established to a sufficient extent (in order to prevent fishing expeditions); and (iii) the records concern a legal relationship to which the requesting party is a party.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

The rules on disclosure acknowledge professional (legal, medicinal and religious) privilege. In addition, the request for an inspection of documents may be refused pursuant to weighty reasons, which could, in a particular case, result in a privilege based on a statutory duty of confidentiality.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

By way of exception, the application for the production of exhibits may also be extended to a third party provided that the requirements as set out in question 7.1 are met.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The court will assess fulfilment of the requirements set forth

in question 7.1. It may order additional conditions for certain disclosures, e.g. to protect confidential information, like depositing documents at the court registry, blacklining of documents and penalty clauses in case of breach of confidentiality, etc.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

The court may, on the basis of substantial grounds brought forward by the opposing party, order certain conditions for disclosure (see question 7.5). If no such specific conditions apply, in general, the disclosed and obtained documents can be used in the proceedings without restrictions.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

A party relying on legal consequences of facts or rights asserted by it will bear the burden of proving these facts or rights, unless a particular rule or the requirements of reasonableness and fairness entail a different division of the burden of proof. Provided that the opposing party has challenged stated facts or rights, the claimant needs to provide evidence to substantiate its statements and bears the risk that its evidence is not conclusive to prove the existence of that fact or right. The opposing party has the right to provide refuting evidence. The procedural timing of sufficiently prompt and specific offers of proof (or refuting evidence) is extremely precise. The court has great discretionary power in the assessment of the evidence. For some kinds of evidence, exceptional statutory rules apply.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

In principle, all forms of evidence are admittable in civil lawsuits, even if these have been obtained unlawfully. Expert evidence may be furnished by submitting written expert evidence by one of the parties or by having an expert examined as a witness. The court may, at the request of the parties or on its own motion, order an expert to provide an expert report or to be heard.

8.3 Are there any particular rules regarding the calling of witnesses of fact, or the making of witness statements or depositions?

Witnesses have a duty to appear and render their truthful testimony. If a witness fails to appear, the court can issue a warrant for their arrest. Witnesses enjoy several privileges, including professional privilege and the privilege from self-incrimination and incrimination of relatives. Witnesses are inquired under oath by the presiding judge and by the parties. The court will draw up an official report of the questioning and a summary of the relevant statements, which are to be signed by the witness.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

A court-appointed expert has the duty to fulfil his appointment impartially and to the best of his abilities. He must allow parties to comment on the draft report and to make requests. The comments and requests have to be included in the report. The report needs to be reasoned. Parties have a duty to cooperate with the investigation of the expert. The court is free to weigh the expert report(s). There are no specific rules regarding concurrent expert evidence.

Parties are free to instruct their own party-appointed expert and they usually affect the expert's report. The opposing party may produce their own party-appointed expert report to contest the findings of the other expert.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The courts are empowered to issue a wide range of judgments and orders, provided that the claimant has pleaded for its award and has legitimate interest. The most common awards are:

- payment orders, including the payment of consideration, (liquidated) damages and contractual penalties;
- injunction orders, including specific performance, prohibitory orders and mandatory orders;
- declaratory relief; and
- the authorisation for the claimant to procure performance from the counterparty, on the latter's expense.

The courts may issue summary and default judgments as well as interim and final judgments.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Only compensatory damages are available; punitive damages cannot be granted. The parties may mutually agree to a penalty clause, which can also be enforced via the court. Damages are in the form of money. At the request of the injured party, the court may rule compensation in another form, including restoration ("*restitutio in integrum*"). The court can reduce damages if fairness so requires, but never to an amount lower than the amount of insurance coverage of the party against whom the order has been given.

Interest is, generally speaking, owed from the date that the legal obligation ought to have been fulfilled, even if that date was (long) before the judgment of the court. The statutory rate of interest applies unless the parties have agreed to a different rate of interest.

The court may order the losing party to cover the litigation costs of the prevailing party, such as court fees, witness and expert fees and fixed compensation for legal fees (see question 1.5).

9.3 How can a domestic/foreign judgment be recognised and enforced?

In civil and commercial matters, the recognition and enforcement of judgments from EU Member States (except for Denmark) is laid down by the Brussels I recast and some other EU regulations. The Brussels I recast provides for enforcement without any declaration of enforceability being required.

If there is a convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, permission of the court must be obtained first. Upon request for an *exequatur*, the court does not investigate the case itself, but verifies whether

all formalities – including, but not limited to, the review criteria of the applicable convention regulations – have been observed. The *exequatur* proceedings may be overruled by special convention or statutory regulations.

If there is no convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, a foreign judgment cannot be enforced in the Netherlands, even if the decision is susceptible of being recognised in the Netherlands. New proceedings have to be initiated before a Dutch court in order to obtain powers to enforce its judgment in the Netherlands. In practice, the case will not be reviewed on the merits again. If the foreign decision meets the four recognition requirements established in Dutch case law, the Dutch courts will generally follow the foreign decision.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Appeals are lodged by the complainant by serving a notice of appeal to the other party within three months, calculated from the date of the judgment. The appeal period in preliminary relief proceedings is four weeks. The notice of appeal is not required to already contain the reasons for the appeal ("grounds for appeal"), except for appeals in cassation. The defendants may lodge a cross-appeal, irrespective of whether the appeal period has already lapsed.

The appeal may be used by complainants both to complain about inaccuracies in the judgment of the lower court, and to rectify their own failings in the previous legal proceedings. Both parties may put forward new facts and new arguments on appeal unless this has been explicitly waived in the previous proceedings.

The only complaint that can be raised on appeals in cassation at the Supreme Court is that the appellate court interpreted or applied the rules of law incorrectly in its judgment, or that the judgment of the appellate court is incomprehensible in view of what the parties advanced at this court. There is therefore no place for new arguments or a discussion of the facts in cassation.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Judges are expected to encourage a settlement. The court regularly orders a hearing to inquire about possible settlement at any stage of the proceedings. An out-of-court settlement can also be recorded in an enforceable court record. The court facilitates parties in this, but does not grant any approval.

In addition, the Dutch legal system provides for a specific collective arrangement for the settlement of large-scale loss on the condition of court approval ("WCAM"). Agreements between collective interest groups and the party causing the large-scale loss can be declared generally binding at the Amsterdam Court of Appeal. This (published) generally binding declaration binds the entire group of injured parties, both in the Netherlands and abroad, and enables a settlement with an undetermined number of injured parties. WCAM proceedings have been used for global settlements with relatively little connection to the Netherlands.

New legislation regarding collective action for damages, effective as per 1 January 2020, allows a representative entity to claim monetary damages. The new bill is likely to put increased pressure on settlement claims.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Most arbitration cases are administered and facilitated by well-organised arbitration institutes, such as the Netherlands Arbitration Institute ("NAI"), ICC or one of the many specialised arbitration institutes, or those aimed at certain market segments such as the Court of Arbitration for the Building Industry ("RvA"), for the Metal Industry and Trade, for Transport and Maritime cases ("TAMARA") and for complex financial disputes ("PRIME Finance").

The procedure of binding opinions is organised in a similar manner and is facilitated by many of the aforesaid institutes. In addition, there are registers of advisers charged with giving a binding opinion with a specific background and expertise, such as, for example, the Register Valuators (affiliated with "NIVR").

Various initiatives have been developed to further organise the (unregulated) procedure of mediation and to provide it with quality assurances. There are various providers of commercial mediation services, including specialised law firms. In business dispute resolution, accredited (certified) mediators are used, such as mediators registered with the Netherlands Mediation Federation, who meet certain training requirements.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Aforementioned arbitration institutes apply regulations, provide options and advocate contract clauses to be used by the parties. In addition, the parties can opt for an international arbitral tribunal.

The NAI can also be requested by parties to administer and facilitate regulated binding opinions and mediation procedures.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

In case of a legal relationship which can be determined solely by the parties, they are in principle at liberty to opt for a form of extrajudicial (alternative) dispute resolution. In certain branches and in the area of consumer disputes, alternative dispute resolution – e.g. via the general terms and conditions – is regularly prescribed. An example of the area that is exclusively the province of the ordinary courts is the enquiry proceedings before the Enterprise Chamber. Enquiry law concerns an exceptional process in law that may result in a direct intervention in the structure of a company. The powers granted exclusively to the Enterprise Chamber may therefore not be placed in the hands of an arbitrator.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Since 2007, the Netherlands has fulfilled a pioneering role in the area of court-annexed mediation and incorporates on a regular basis a provision permitting reference to mediation that applies to nearly all courts.

As to the enforceability of mediation and other types of mediation/negotiation clauses, these clauses have the status of a "gentlemen's agreement" to be observed in good faith.

If an arbitration clause has been agreed, the civil court declares that it lacks jurisdiction. An agreement for arbitration does not prevent access to the civil court in order, for example, to impose a prejudgment attachment or to initiate a provisional hearing of witnesses or experts.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

In respect of dispute resolution clauses that have been declared applicable or that have been agreed on, there is tension between the *pacta sunt servanda* principle (parties must do what they agreed to do) and Article 17 of the Dutch Constitution and Article 6 of the ECHR that guarantee the right of recourse to the ordinary courts.

In the event of an arbitration clause, the sanction for a party addressing a court directly is clear: in principle, the court must declare itself to lack competence to hear the dispute (Article 1022(1) DCCP).

It is established case law that where a court is, directly or indirectly, approached in a situation where a binding advice clause operates, this results in the claimant being disqualified from presenting his claims.

Complications may arise where a party finds itself obliged to take protective or urgent measures for which the alternative dispute resolution scheme makes no provision. In such a case, cutting across the scheme, recourse to a court (if need be, to a court in summary proceedings) must remain open to a party.

A clause stipulating the route to an amicable settlement/a mediator is generally seen as an 'additional' form of dispute treatment and not as an interim exclusion of the regular legal approaches to law that are available. Although legislation is pending to enhance the use of mediation as a dispute resolution tool, any such use is based on voluntariness.

In general, settlements agreed on between parties do not require the approval of the court. As a rule, the agreements between parties are incorporated in a settlement agreement (*vaststellingsovereenkomst*) (Section 7:900 DCC). An out-of-court settlement can, incidentally, also be reached before the court and recorded in an enforceable court record. The court facilitates parties by doing this but does not grant any approval (except for WCAM settlements, see question 10.1).

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

See section II, question 1.1 on the Netherlands Arbitration Institute ("NAI"), ICC and specialised arbitration institutes such as Court of Arbitration for the Building Industry ("RvA"), for the Metal Industry and Trade, for Transport and Maritime cases ("TAMARA") and for complex financial disputes ("PRIME Finance"). Accredited (certified) mediators are registered with the Netherlands Mediation Federation, to mediate business disputes.

Yvette Borrius co-heads the dispute resolution department of Florent. With over 25 years' experience she specialises in (cross-border) corporate dispute resolution and commercial litigation, arbitration, directors' liability and governance matters, including Enterprise Chamber inquiries. Yvette appears regularly before the courts, representing companies, shareholders, directors, financial institutions and other key stakeholders. Clients say she is creative in her approach, thoroughly professional and persuasive in reaching solutions.
Yvette is engaged as vice chair with the IBA Litigation Committee, board member of the Corporate Litigation Association and a member of the Corporate Law Committee of the Dutch Bar Council. She frequently publishes in her field of expertise, both on case law and in manuals. Yvette is a lecturer and speaker at universities and conferences in the Netherlands and abroad. She speaks English, French and German.
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Florent is a leading corporate boutique in the Netherlands and works for national and international clients including corporates, banks, investors and governments. Dispute resolution is one of the main practice areas of the firm; the team comprises four partners and 12 lawyers and handles high-value, complex corporate and commercial litigation, particularly in the financial sector, semi-public organisations and industrial engineering – matters including Rabobank, StandardAero, Mosadex, Volkswagen, Steinhoff, Imtech, TradeWork and DAF. Many cases, such as major class action litigation, gain (international) press attention.
The fraud team is specialised in cases of cross-border asset recovery, fraud litigation (prosecuting civil claims for fraud) and investigations, representing trustees in fraud related bankruptcies in order to recover stolen assets and representing victims of boiler room frauds.
Florent's lawyers enjoy excellent reputations with the courts and among top-tier law firms. Clients tout the firm's integrated, goal-oriented, hands-on approach, excellent quality, integrity, personal commitment and flexible attitude. Based in Amsterdam, the firm is actively involved in cross-border matters and organisations such as IBA Committees, ICC's FraudNet, INSOL and INSOL Europe, and Lexwork.

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