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The Netherlands
Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in The Netherlands.

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The Netherlands: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

The main methods of resolving commercial disputes in the Netherlands are state court litigation and arbitration. Other forms of ADR, such as mediation and adjudication (expert determination or binding advice), are also available. It is not uncommon for parties to resolve commercial disputes through out-of-court settlements.

2. What are the main procedural rules governing litigation in your jurisdiction?

The main procedural rules governing commercial litigation in the Netherlands are laid down in the Dutch Code of Civil Procedure ('DCCP'). The DCCP is complemented by rules of procedure issued by the courts. These regulations contain practice rules and more practical guidance on the conduct of litigation.

International commercial disputes may, under certain conditions, be brought before the Netherlands Commercial Court ('NCC'). The NCC operates under Dutch procedural law, complemented by the NCC Rules of Procedure. An English version of the NCC Rules of Procedure can be found at: https://www.rechtspraak.nl/English/NCC/Pages/rules.aspx . See also question 3.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

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 eleven district courts of first instance. Cases are generally handled by a single judge, but more complex cases are often referred to a full-bench panel of three judges. The courts have a subdistrict law sector for small claims (less than EUR 25,000) and labour, tenancy, agency, consumer sales and consumer loan disputes. A party may file an appeal at one of the four courts of appeal. Appeal cases are always dealt with by a full-bench panel of three judges. The Supreme Court ('*Hoge Raad*') is the final court of appeal. The Supreme Court generally consists of five judges and is a cassation court, which only deals with matters of law.

The Enterprise Chamber of the Amsterdam Court of Appeal ('Enterprise Court') is the court of first instance for disputes involving mismanagement and related corporate issues. It also serves as the court of appeal in certain corporate litigation disputes. The Enterprise Court consists of a panel of five judges, including three members of the judiciary and two lay persons with specialist expertise (e.g. accountants).

Since 2019, international commercial disputes may be brought before the NCC. The NCC is situated as separate chambers within the Amsterdam District Court and the Amsterdam Court of Appeal. The NCC is designed to meet the need for efficient dispute resolution of (complex) international commercial matters. The entire proceedings, including the judgments, are conducted in English before experienced judges. Appeals are lodged before the Netherlands Commercial Court of Appeals ('NCCA'). The NCC(A) may assume jurisdiction with regard to (i) civil or commercial cases within the parties' autonomy (ii) concerning an international dispute (iii) the Amsterdam District Court or the Amsterdam Court of Appeal having jurisdiction (iv) and the parties having expressly agreed in writing that proceedings shall be conducted in English before the NCC.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

In ordinary civil proceedings, claims are initiated by a writ of summons (statement of claim). Subsequently, the defendant files a statement of defence within six weeks; this timeframe can be extended upon parties' joint request or by unilateral request for compelling reasons. Dutch courts generally order an oral hearing after the first round of written submissions. Parties may also file a unilateral request for such an hearing. This request may only be rejected in exceptional circumstances. An oral hearing is held to attempt an out-of-court settlement and/or to obtain additional information. In straightforward cases, such hearings usually take place within six to twelve months after proceedings are commenced. In more complex cases and/or when parties submit incidental motions, the timing may vary. In preliminary relief proceedings, hearings usually take place within a couple of days (in case of urgency) or weeks after commencement of proceedings. Provisional

judgments in interim relief proceedings are usually obtained within days in case of extreme urgency, or within a couple of weeks in other cases.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

As a matter of principle, court hearings are held in public. Only under special circumstances may the court decide to conduct court hearings behind closed doors, for instance if this were in the interest of public policy or public morality, in the interest of state security, when the interest of minors or privacy of parties so requires, or when the proper administration of justice would be prejudiced by a public hearing. A party may also request a non-public hearing when confidential business trade information is to be discussed. Court records, exhibits and other documents belonging to the case file are not disclosed to third parties. However, journalists can inspect the docket register of summary proceedings, which provides limited access to certain information.

The current regime for ensuring a transparent judicial process is under review to ensure that information regarding the time and place of hearings, an indication of the cases at hand and the names of the judges is more readily available (online).

6. What, if any, are the relevant limitation periods in your jurisdiction?

Unless otherwise provided by law, a claim becomes time-barred after twenty years. In many cases, Dutch law provides for shorter limitation periods, for example:

- the right to claim a specific performance of a contractual obligation to do or to give something becomes time-barred five years after the date on which the claim became eligible. (or two years in case of consumer sale);
- the right to claim damages or a contractual penalty becomes time-barred five years from the day after the injured party became aware of (a) the damage inflicted and (b) the identity and liability of the person liable;
- the right to nullify an agreement in case of deception or error becomes time-barred three years after discovery thereof; and
- 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.

Time limits are treated as a substantive issue of law.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In principle, there are no pre-action conduct requirements in the Netherlands, although a notice of default is often required to enforce one's rights with regard to breach of contract. Pre-trial correspondence is required in cases of mismanagement brought before the Enterprise Court and collective actions. Failure to comply with these requirements can result in the claimant not having cause of action. Further, courts may be reluctant to award costs of litigation if the claimant initiates litigation without first communicating their position to the defendant.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

There are two main types of civil proceedings in the Netherlands: proceedings initiated by summons ('*dagvaarding*'); and proceedings initiated by an application ('*verzoekschrift*'). Proceedings initiated by summons are used for ordinary civil suits, while proceedings initiated by application are used in disputes involving employment, leases, family matters, preliminary hearing of witnesses, attachments and certain corporate matters, including proceedings before the Enterprise Court.

The summons contains a statement of the facts, the claim(s) and the legal basis for the claim(s), the known defences of the defendant and a list of the relevant evidence on which the claimant intends to rely. A bailiff serves the summons onto the defendant, thereby formally notifying the defendant of the lawsuit. Subsequently, the claimant must file the summons with the Court Registrar on the last business day prior to the date of formal court appearance as stipulated in the summons (see also question 13).

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Dutch courts have international jurisdiction if there are legal provisions to this effect or if the parties have

selected a Dutch court as the forum for hearing any disputes arising between them. Regulation (EU) No 1215/2012 ("Brussels I Recast") contains the most important set of rules regarding international jurisdiction. If no international treaty or European regulation (including Brussels I Recast) applies, the national rules laid down in the DCCP determine whether the Dutch courts have international jurisdiction and accordingly, whether a defendant can be made subject to a lawsuit in the Netherlands. These rules are very similar to the international jurisdiction rules of Brussels I Recast. The rules of international jurisdiction have a public policy nature. This means not only that the court must determine *ex officio* whether it has international jurisdiction, but also that the court must conduct its assessment regardless of whether it relies on facts other than those on which the parties based their claim or defence. A defendant that appears in court can lodge a motion to dismiss for lack of jurisdiction to prevent the Dutch court from accepting jurisdiction on the basis of a tacit choice of forum. This motion must be lodged prior to the statement of defence on the merits or ultimately together with the statement of defence.

10. How does the court determine which law governs the claims in your jurisdiction?

Dutch courts are obliged to apply the rules on conflict of laws *ex officio*. This means that, in a cross-border matter, they must apply the rules on conflict of laws, even if the parties have not addressed the question of applicable law. In contractual and tort matters, Dutch courts are bound to apply the Rome I and Rome II Regulations (i.e. Regulation (EC) No 593/2008 and Regulation (EC) No 864/2007, respectively). If a case falls outside the scope of Rome I and Rome II and no other convention applies, the provisions of the Rome I and Rome II Regulations are declared analogously applicable by Dutch domestic rules on conflict of laws.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

There are a myriad of circumstances in which claims are disposed of without a full trial. Parties may settle their disputes amicably, in whole or in part, during the proceedings. There is an increasing degree of case management by judges, on the grounds of efficiency and to explore whether, e.g., with the aid of an out-of-court settlement, the parties can be dissuaded from continuing legal proceedings.

A settlement reached during a hearing may be recorded in an enforceable court record. A judgment by default may be rendered when the defendant does not appear in court. The court will generally award the claim, unless it considers the claim to be *prima facie* unlawful or unfounded. It is not possible to apply for a substantive (partial) ruling prior to the actual proceedings. However, it remains possible to request the court by a hearing (which may be ordered at any stage of the proceedings) or by a procedural motion, to first render a decision regarding preliminary issues – including the competence of the court, applicable law or limitation periods – before dealing with the merits of the case. This may result into a premature end of the proceedings, or parts thereof. The court may dismiss claims without a full trial if it appears that the statement of claim discloses no reasonable grounds for bringing the claim or is an abuse of procedural law.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

An interim relief judge may order any type of interim relief a party requires in urgent matters. Interim relief may be requested pending proceedings on the merits or before such proceedings are initiated. Although interim relief is of a provisional nature, proceedings on the merits may not be necessary after a decision in preliminary relief proceedings has been rendered. Examples of interim remedies include: protective measures, such as a prejudgment attachment; orders to do or abstain from doing something at a penalty; and the order to produce documents. In the case of a prejudgment attachment, proceedings on the merits must in principle be initiated within two weeks after the attachment was made, if no such proceedings were already pending.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

In ordinary commercial proceedings, the defendant is granted a period of six weeks to submit a statement of defence, after the writ if summons is registered with the court registrar, and a lawyer has presented him/herself to the court as the defendant's counsel. Extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons, including cases of *force majeure*. In subdistrict sector cases, the defendant is granted a term of four weeks to file a statement of defence. An initial extension of four weeks is granted

upon the defendant's request.

The statement of defence may include a counterclaim. If an oral hearing is ordered, a statement of defence in counterclaim may be submitted prior to the hearing. The court decides when such statement is to be submitted. Incidental motions, often regarding procedural issues, may also be raised in the statement of defence before all other (substantive) defences. Examples include motions to inspect documents or copies thereof, third-party (impleader) claims, requests for joinder and intervention, and the provision of security for litigation costs. Some motions, such as those contesting jurisdiction, may be raised in a separate submission instead of in the statement of defence. The court may decide that an incidental motion is dealt with prior to handling the case on the merits. This decision is based on the nature and the contents of the claim, the interests of the parties and the interest of an efficient litigation process. In principle, the claimant is granted a two-week period to submit a written reply to an incidental motion. Two-week extensions may be granted with the other party's consent or by the court for compelling reasons. Particularly in more complex disputes, the court may decide on further written submissions instead of, or after, an oral hearing. In that case, the claimant is granted a six-week period to file a statement of reply. Extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons. The defendant is subsequently allowed to submit a statement of rejoinder, following the same timetable. If the court deems it necessary, it may allow the parties to file further submissions. In multi-party complex litigation cases, parties often negotiate timetables themselves, structuring procedural statements and timing of submission, subject to court approval (case-management).

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

There are no discovery or disclosure procedures comparable to common law systems in the Dutch judicial systems. There are, however, instruments available for obtaining information / documents from third parties.

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 or ordinary proceedings, as an interim action in ongoing proceedings, or by application (e.g., combined with an application to order a provisional examination of witnesses). A request can be granted provided that: (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 (to prevent fishing expeditions); and (iii) the records concern a legal relationship to which the requesting party is a party. The rules on disclosure of documents acknowledge professional privilege.

A request for inspection of documents may be refused on the ground of serious reasons, which may, for instance, apply to certain confidential information, medical data or sensitive financial information. Whether a request for inspection is denied based on such serious reason, will be determined by a judge on a case-by-case basis, with due consideration of all interests involved . A request may further be refused if the proper administration of justice is also guaranteed without the requested information. This current regime for exhibition claims will be amended. The Act on simplification and modernization of evidence law (“*Wet vereenvoudiging en modernisering bewijsrecht*”) enters into force from January 1, 2025 (as described in more detail under question 15 below).

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witness evidence is fairly common in litigation. Usually, witness statements are given orally. However, it is becoming increasingly common for witnesses to submit a written statement. An (oral) witness testimony of a party testifying on its own behalf is only accorded very limited evidentiary force; it needs to be substantiated with supplementary evidence Cross-examination does not exist in Dutch litigation. The court is in charge of the examination of the witness. In practice, the court usually allows the parties and is obligated (upon request) to allow their counsel to ask additional questions directly to the witness, provided that the questions are limited to the evidential issue upon which the witness is examined. Witnesses have a duty to appear and provide truthful testimony. Witnesses may, however, refuse to testify in court on personal grounds as well as for factual reasons, such as cases where their testimony could entail prosecution for a criminal offence or disclose technical or trade secrets. The new Act on simplification and modernization of evidence law takes effect from January 1, 2025 and applies to all proceedings initiated thereafter. This Act aims to simplify the obtaining of relevant

information and evidence both during, and prior, to civil proceedings, as well as clarify the judge's latitude during a hearing to prevent that certain facts are underexposed or misinterpreted. Amongst other key changes (see question 14), the legislation provides that all applications for preliminary evidence (such as an application for preliminary examination of witnesses or a provisional expert opinion) can be bundled together prior to trial. Further, the Act broadens the parties' right of inspection, allowing them to gain access to documents that are relevant to the dispute but are in the possession of third parties. In addition, the Act provides the possibility of securing evidence by having it seized by a bailiff, as well as the option to request the bailiff to objectively describe a certain factual situation in a record of findings. Depositions are not admitted in Dutch commercial litigation.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

In the Dutch jurisdiction, expert evidence is permitted and widely used. For example, parties often engage experts to calculate damages. Expert evidence may be furnished by submitting written expert evidence by one of the litigants or by having an expert examined as a witness. There are no specific rules regarding concurrent expert evidence. Parties are free to instruct their own party-appointed expert, and they usually communicate with the expert regarding the contents of the expert's report. The opposing party may produce their own party-appointed expert report to contest the findings of the other expert. The court may, at the request of the parties or ex officio, order an (independent) expert to provide an expert report or to be heard. A court appointed expert has the duty to fulfil his appointment impartially and to the best of his or her abilities. He/she must allow parties to comment on the draft report and to make requests, which must 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 assess the expert report(s). In our experience, Dutch courts rely heavily on expert reports (also partisan expert reports), especially when they concern issues that require specific knowledge which a court lacks (e.g., technical features of certain products, complex financial products or business practices in certain industries).

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Almost all final decisions of the district court can be appealed to the court of appeal. An appeal must be lodged within three months from the day the decision was rendered. Shorter appeal periods exist for certain cases; for instance, a four-week appeal period applies for interim relief judgments. Objections against interim decisions that do not contain final decisions must be included in the appeal against the final judgment, unless the court grants permission to lodge an interim appeal against the interim judgment. Appeal in cassation can be lodged with the Supreme Court against most decisions of the court of appeals. Decisions of the Enterprise Chamber can only be appealed to the Supreme Court. Appeal in cassation must also be filed within three months from the day the decision was rendered.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

In civil and commercial matters, the rules regarding recognition and enforcement of judgments from EU Member States (except for Denmark) in the Netherlands are laid down by Brussels I Recast and some other EU regulations. Brussels I Recast provides for enforcement without any special procedure 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, such decision cannot be enforced in the Netherlands, even if it is susceptible of being recognised in the Netherlands. In that case, new proceedings shall have to be initiated before a Dutch court in order to obtain a judgment that is eligible for enforcement in the Netherlands. In practice, however, the Dutch court will not review the case on the merits again. If the foreign decision meets the four recognition conditions developed in Dutch case law, the Dutch courts will generally follow the foreign decision.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing

lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The unsuccessful party is usually ordered to cover the litigation costs of the prevailing party. This includes court registration fees, witness and expert fees and legal fees. Legal fees are based on fixed amounts (which also depend on the value of the claim) for certain standard activities, such as submitting a written statement, attending an oral hearing or imposing a prejudgment attachment. The actual costs and lawyer's fees are seldom covered by the amount awarded. Recovery of the remaining costs from the losing party is only possible in case of a frivolous suit and, under certain conditions, in cases concerning intellectual property, where the prevailing party can be awarded full costs, including lawyer's fees.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Dutch procedural law provides for two specific options for collective redress actions. Injured parties can bundle their claims by giving one person (which can also be an ad hoc foundation or association) a power of attorney or exclusive mandate to act on behalf of all of them or by assignment of their claims to this one person. Alternatively, they can initiate a collective action based on section 3:305a Dutch Civil Code ('DCC').

The section 3:305a DCC route enables a foundation or association with full legal capacity (a claim vehicle) to institute an action aimed at protecting similar interests of other individual persons to the extent that the promotion of these interests is set down in its articles of association. The interests of those – both Dutch and foreign – individuals should be of such a nature that they are capable of being bundled, thus expediting the efficient and effective legal protection of the interested parties. Until recently, section 3:305a DCC only allowed for a declaratory judgment determining that the defendant has breached his duties or committed a wrongful act against the injured parties. On 1 January 2020, new legislation entered into force, introducing the possibility for injured parties to claim damages in this kind of collective action. This legislation further includes (i) the introduction of stricter admissibility requirements for representative entities (e.g. governance, funding and representation requirements); (ii) the appointment of an exclusive representative for all claimants (in case of various representative parties); and (iii) a binding judgement on all Dutch residents in a class, with the exception of those having opted out. With regard to the third point the opposite goes for non-Dutch residents: foreign claimants can voluntarily consent to their interests having been represented by the class action (i.e. opt in). Alternatively, the court can order that the opt out system applies to a precisely specified group of non-Dutch residents anyhow.

Dutch law also provides for court certification of damages in mass claim settlements: the Collective Mass Claims Settlement Act ("*Wet afwikkeling massaschade in collectieve actie*" 'WCAM'). The WCAM enables collective interest groups to have an agreement that was concluded with another party (the party causing the loss), declared generally binding at the Amsterdam Court of Appeal in cases of large-scale loss. This (published) declaration consequently binds the entire group of injured parties, both in the Netherlands and abroad, and accordingly enables a settlement with an undetermined number of injured parties. The WCAM provide for an 'opt-out' option. This gives individual injured parties the option to withdraw (by written declaration, within a certain court-determined period) from the order declaring a collective agreement binding. The Dutch WCAM proceedings can be, and have been, used for global settlements with relatively little connection to the Netherlands. The possibility to claim damages in collective action is likely to put increased pressure on settlement claims. It is expected to have a significant impact on the litigation climate in the Netherlands (and possibly the rest of Europe).

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

A third party with an interest in 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 or may opt to take its own position. In the case of an intervention, the interested third party submits a claim on its own account. Proceedings between the same parties can be joined (consolidated) if they concern the same subject matter. The same applies if there is a close connection between proceedings, regardless of whether 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. Through impleader, a third party may be summoned by one of the parties to ongoing proceedings in third-party proceedings. Although the

main proceedings and the third-party proceedings remain separate, they are generally dealt with concurrently.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third parties are permitted in the Netherlands, with the exception of law firms. Common law obstacles such as 'maintenance' and 'champerty' do not arise. Third-party litigation funding is gaining popularity in the Netherlands. Litigation funding is becoming increasingly common in multi-claimant disputes, such as class actions, cartel damages claims and securities litigation, commercial claims and bankruptcy claims from receivers. In the Netherlands, third party-funding is not regulated as of yet. However, recent case law shows the required degree of independence of the litigation funder upon the ad hoc foundation ('*claimstichting*') is seriously assessed. In various class actions, the court ordered such foundations to bring their funding agreements into the proceedings. Therefore, the manner in which a litigation is funded may affect the admissibility of a claim or the enforceability of a settlement. There is no legal statute that would require the third-party funders to reimburse the other party in case the funded party loses the trial. However, the funding agreement typically obliges the funder to cover the party's litigation costs to the extent that the court has imposed them upon that party (including fixed amounts for lawyers' fees; bailiff fees; court fees; costs of expert witnesses; and possible orders for costs). The actual costs and attorney fees incurred by the prevailing party are seldom covered by the amount awarded, and recovery of the remaining costs of the losing party is usually not possible (ref. question 19).

Lawyers in the Netherlands are prohibited under the Rules of Professional Conduct from providing a "no win no fee" service, with the exception of a pilot in personal injury cases. Alternative fee arrangements that are in part dependent on the outcome of the case (such as basic fee and success fee) are permitted with certain restrictions.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Since the COVID-19 pandemic, under circumstances courts facilitate (foreign) parties (in lager cases) to join hearings, held in court rooms, by video screens. Live streaming facilities have enabled interested other parties, including the press, to attend court hearings as well. An online platform for attending online sessions as well as legislation in that respect is expected in the near future.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The Dutch jurisdiction is an attractive location for litigation for several reasons. The Netherlands is the seat of many multinational corporations and a main port of entry to continental Europe. Simply due to domicile or residence by the defendant, collective action plaintiff parties can often create jurisdiction for the Dutch courts (e.g., see section 4 of Brussel I Recast). International benchmark studies show that the Dutch judiciary is generally considered professional, predictable, honest, efficient and fast, making it an attractive venue for both plaintiff and defendant. Litigation costs in the Netherlands are relatively low, in part due to low rates of compensation for the costs of litigation the losing party are required to pay. The Dutch legislator deliberately promotes the Netherlands as a forum for resolving international disputes. A relatively recent example is the establishment of the NCC in 2019 (see questions 2 and 3). The NCC, comprising specialised judges, conducts proceedings in English and offers swift resolution. The NCC District Court and Court of Appeal are both set up in Amsterdam. Another example is the introduction of the new legislation on collective redress action, as further explained under question 20, enabling fairly easy access for aggrieved parties to claim damages.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Legal developments have encouraged law firms and litigation funders to become more adapt at gathering and funding groups of claimants. Also in light of the new legislation regarding redress of mass damages in a collective action, we expect this practice to increase, in a rather exponential way. The NCC expects to play a role in class actions, facilitating both in court and out-of-court settlements. In particular, we note a significant rise in the volume of mass claims relating to privacy breaches, investor related disputes, securities litigation, cartel follow-on damages and Environmental, Social and Governance (ESG).

In addition, we expect ESG related litigation, also non-class action cases, to continue growing in the coming years. Claimants may attempt to rely on successful outcomes in previous ESG litigation in the Netherlands, most notably the Milieudefensie v. Shell case in first

instance and Urgenda v. the Dutch State case. Legislative developments with respect to ESG litigation, at both the European and national level, may also play an important role, particularly the EU Corporate Sustainability Reporting Directive (CSRD), the EU Corporate Sustainability Due Diligence Directive (CSDDD) and the revised Dutch Corporate Governance Code.

The CSRD requires in-scope companies to adhere to new reporting rules regarding social and environmental information starting from the 2024 financial year (i.e. reports to be published in 2025). By establishing clear reporting obligations, the Directive contributes to the overall transparency and accountability of companies, making it easier for affected parties to identify potential breaches and gather evidence for litigation purposes.

The CSDDD sets forth rules for in-scope companies to conduct thorough due diligence processes on human rights violations and environmental damage with respect to their own operations, those of their subsidiaries, and their global value chain operations, and provides for rules on liability for violations of these obligations.

In addition, the revised version of the Dutch Corporate Governance Code ("*Code*"), which applies to Dutch listed companies on a 'comply-or-explain' basis, implies that the board of directors of a Dutch listed company is responsible for creating long-term value in a sustainable manner, taking into account the consequences of the company's activities on people and the environment.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

A digital litigation pilot for claim procedures, introduced in 2017, appeared to be unsuccessful. Thus an emergency act ("*Spoedwet KEI*") entered into force on 1 October 2019, revoking the pilot. Nonetheless, digital litigation is gradually being introduced (in a simplified form). Digital litigation has been implemented for litigation at the Supreme Court and the NCC successfully. eNCC, an electronic communication system, allows Dutch counsel to initiate actions, check the status and scheduled next steps, and submit and download documents. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process. In addition, as of May 6, 2024, summary proceedings can be litigated digitally at any district court. Notwithstanding the above, oral hearings take place physically in the courtroom.

Although the COVID-19 Emergency Act has expired, which act allowed courts to facilitate, amongst other things, digital court hearings and the electronic submission of court documents, under circumstances and upon request, digital hearings and electronic document submission are to some extent still possible. More general, technology is likely to have a lasting impact on various aspects of commercial litigation in the following years. Sophisticated intelligent research tools allow practitioners to analyse vast quantities of data in a timely and cost-efficient manner. We expect that automated processes will enhance lawyers to focus on clients' specific needs, adding value to available technology.

Furthermore, the widespread adoption of new technologies, like artificial intelligence and machine learning, is also likely to give rise to legal disputes. These disputes may encompass questions regarding accountability for the actions of software and the ownership of intellectual property rights related to inventions generated by software.

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