Netherlands

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Litigation

1 Court system

What is the structure of the civil court system?

The Dutch civil court system provides provides that civil matters may be heard in three instances: district courts and courts of appeal rule on the facts, while the Supreme Court reviews judgments, but only with regard to matters of law.

There are 10 district courts. The district courts have general jurisdiction in all civil matters. Each district court has a cantonal division that has jurisdiction over all civil claims up to €25,000 and civil matters regarding employment contracts, commercial agency agreements, rental agreements and lease purchase agreements. Representation by an advocate is not mandatory in the cantonal division, which sits with a single judge only.

All other civil matters, including all commercial claims over €25,000, are heard by the civil division, which sits with a single judge or a panel of three judges, as the matter may require in the view of the district court. In these cases representation by an advocate is mandatory.

Additionally – and this is one of the best features of the Dutch civil court system – each district court has a chamber consisting of experienced single judges sitting in interim relief proceedings that are held at short notice, at a maximum within six weeks, but if necessary on the very same day. The interim relief judge will render an order within two weeks or much sooner if necessary. Although only interim relief can be ordered, monetary claims may be awarded without prejudice to the merits, which makes the interim relief very effective. Parties often accept the order without recourse to subsequent proceedings on the merits.

Barring civil claims for less than €1,750, decisions of the district court may be appealed against and brought before the court of appeal; there are four courts of appeal. All appellate cases are heard by three justices.

The Supreme Court reviews decisions of lower courts, but only with regard to matters of law as it is bound by the facts established by the lower courts. At the discretion of the Supreme Court cases will be heard by three or five justices. The decision will be taken by the appointed justices but only after plenary deliberation.

In addition, there are some specialised courts and chambers. The most well known is the Enterprise Chamber with the Court of Appeal in Amsterdam, vested with exclusive jurisdiction in all disputes concerning the corporate governance of Dutch legal entities and issues regarding their financial statements. It hears all cases sitting with three professional justices and two lay justices, who are specialists in the field of either finance, audit or management.

In the near future the Netherlands Commercial Court (NCC) will be established. The NCC will consist of a specialised chamber within the Amsterdam District Court, and, on appeal, with the Amsterdam Court of Appeal. Proceedings before the NCC will be heard and conducted in English and decisions will be rendered in English. A substantive link between the dispute and the Netherlands will not be required. The NCC only has jurisdiction on a voluntarily basis.

The Amsterdam Court of Appeal has exclusive jurisdiction to review collective settlements under the Collective Settlement of Mass Claims Act. The collective settlements do not necessarily need to have tangible Dutch elements. An approved collective settlement will automatically be recognised within the EU.

2 Judges and juries

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

The Dutch court system provides for professional, appointed judges. Judges are civil servants, but to safeguard independence from the executive, they are appointed for life, until mandatory retirement at the age of 70. Over 50 per cent of the judges are now female. The number of Dutch citizens with a non-western European cultural background is not yet reflected in the bench.

A fundamental principle of the Dutch Code of Civil Procedure (DCCP) is that judges have a merely passive role in court proceedings, especially with respect to fact-finding and establishing the boundaries of the dispute and the legal debate, which fall within party autonomy. Recent decades have seen a tendency towards judges taking a more active role.

3 Limitation issues

What are the time limits for bringing civil claims?

The default rule is that civil claims become time-barred after 20 years, but there are important exceptions. Most civil claims will become statute-barred after a period of five years, the inception of which will depend on the nature of the claim concerned. A claim for the performance under a contract, especially payment, must be pursued within five years after the performance fell due; a claim for damages must be pursued within five years after the aggrieved party becomes aware of both the damage and the liable person. A claim for the rescission of a contract based on non-performance must be made within five years after the creditor's becoming aware of the default.

These time limits may be extended by a written notice reserving the right to pursue the claim, or by the commencement of legal proceedings. Once the time limit has been extended, a new full period of equal duration will start running. Extension of time limitations may be repeated. Courts may only entertain a plea by a defendant and may not ex officio rule that a claim is time-barred.

4 Pre-action behaviour

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

There is no requirement for a 'letter before action', for example, but rules of conduct of Dutch advocates may imply that civil proceedings may not be commenced without prior notice.

For strategical purposes a pretrial witness hearing may be conducted and/or a pretrial expert report may be obtained beforehand, as evidence in later proceedings. Dutch law does not provide for standard pre-action disclosure of documents.

To safeguard successful enforcement of a subsequent court decision a creditor may apply for an order authorising a pre-judgment attachment on property of the debtor. In certain instances documents or other evidence can also be made subject to an attachment so as to ensure that evidence is preserved. Any such order will be obtained ex parte: the interim relief judge will grant the order within one or two

days provided the alleged claim is plausible and the formalities have been met. The same court will quickly arrange for a hearing if the defendant applies for the lifting of the attachment but a full review of the claim will only take place in proceedings on the merits. If in the latter proceedings the creditor's claim is subsequently rejected, the attachor will be liable for damages incurred by the defendant.

5 Starting proceedings

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Claims of an adversarial nature must be commenced with the service by a bailiff of a writ of summons upon the defendant. Such proceedings are considered pending as of the date of the service, notwithstanding the later introduction of the case with the court. In the writ of summons the defendant is summoned to appear in court, but the defendant or his or her counsel will only need to enter appearance electronically.

The writ of summons must set forth the relief sought and the grounds. The plaintiff must mention the known defences of the defendant and must present all relevant facts and available evidence.

Civil matters that will have a direct impact on the legal status of third parties are commenced by the filing with the court of an application for a court order. The structure of the petition is essentially equal to that of a writ of summons. The court will inform all interested parties, as identified by the petitioner and set a schedule for the filing of responses. If proceedings are commenced with the wrong document, the court will afford a possibility for rectification.

In a pilot initially limited to two out of the 10 district courts, the writ of summons and the petition have been replaced by one single document called 'case introduction', which may be filed in electronic form only, as will all other submissions and communications during the proceedings. The court will inform the defendant or the respondent about the commencement of the proceedings. Service of the case introduction by a bailiff remains possible, either before or after its filing with the court. The pilot has raised concerns as to the technical capabilities and major budget issues, both of which may impact the integrity of the judicial process. It is currently uncertain whether civil proceedings will really become wholly 'automated' in the near future. In addition, courts at present struggle with their caseloads, productivity requirements and budgetary restraints. Capacity issues do not affect the listing of disputes, but do affect the time period it takes for the courts to schedule hearings and to render decisions. However, except for one or two appellate courts where delays are more problematic, delays due to capacity issues are limited to a few months.

6 Timetable

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

Under the DCCP and regulations by the Dutch judiciary the exchange of submissions in an adversarial trial will normally take three to six months. A hearing will be then scheduled at which the parties will argue the case and discuss such matters as further evidence, the continuation of the case and settlement possibilities. The court will either render a decision or allow for reply and rejoinder. Deviations occur in the event of, for example, motions for lack of jurisdiction, joinder, intervention, impleader or if witness or expert evidence is ordered.

In some 60 per cent of all civil matters the first instance trial before the district court is decided in less than 12 months; approximately 85 per cent of all commercial claims are decided within 24 months.

Between 10 and 15 per cent of all first instance judgments involving commercial claims are appealed. Less than 50 per cent of these appeals are decided within 12 months. Approximately 80 per cent of all appeals are decided within 24 months. Cases before the Supreme Court last on average 24 months.

7 Case management

Can the parties control the procedure and the timetable?

The parties can control the procedure to some extent, in that they may agree on deviating from established time periods or the normal order of proceedings. Although increasingly common in high-profile cases, this remains exceptional and subject to prior discussion with the court. Regular deadlines for submissions are applied strictly; any second extension will be granted only in the event of force majeure or compelling reasons.

8 Evidence – documents

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

Parties are under an obligation to truthfully submit all relevant facts and evidence supporting or disqualifying their position. Such obligation is, however, not comparable to disclosure obligations that exist in common law jurisdictions.

Upon request or at its own motion the court may order a party to submit (further) documents that are in the possession of such party. Such party may refuse to provide such documents or evidence on account of compelling reasons, for which a high threshold applies. There exists no general obligation to preserve documents or other evidence pending trial. The submission of evidence remains the responsibility of each party; discovery by the opposing party is not available. There is no notion of 'contempt of court', but the court may draw negative inferences in the event of non-compliance with the obligation to fully and truthfully submit relevant facts, in the event of destruction of evidence or if evidence is withheld. The burden of proof of evidence having been available earlier will generally lie with the party advancing such position. A viable alternative for expensive discovery is an ex parte order authorising a pretrial attachment on documents or other evidence, a copy of which will be made and kept by a court appointed bailiff. Documents in English, French and German may be submitted in evidence without translation.

9 Evidence – privilege

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

Under Dutch law, privilege lies with a lawyer rather than with the client. Privilege implies that the advocate cannot be compelled to share information or documents obtained from his or her client with any (judicial) authority. Privilege does not extend to advice by an in-house lawyer, unless such lawyer is an advocate. Privilege does thus not attach to certain documents but to the question of whether an advocate has rendered advice in such capacity. The party itself will be able to invoke the confidentiality of advice as one of the 'compelling reasons' that bar disclosure as set forth in question 8. Correspondence between lawyers that is not concerned with settlement negotiations or subject to a confidentiality agreement may be produced in civil proceedings.

10 Evidence – pretrial

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

The parties will generally not exchange written evidence from witnesses and experts prior to trial. Exceptions apply in certain industries such as insurance or certain maritime disputes.

11 Evidence – trial

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

The emphasis in civil proceedings is on written submissions. Parties must submit the available relevant evidence in their first possible submission. Most cases, including high-profile disputes, are decided based on written submissions only. The parties may submit reports by party-appointed experts. Witness statements are becoming more common but do not have the same evidentiary value as the transcript of a court hearing where witnesses are heard under oath. Such hearing will take place only following an order by the court that a party or both parties bears the onus of proof as to certain factual matters and that (further) evidence is to be submitted. Especially in disputes involving technical aspects the court may appoint an expert; it is at the discretion of the court whether an oral hearing regarding the expert opinion ordered. In

any event the parties must be afforded an opportunity to comment on such evidence. Often this will be in a written brief only.

12 Interim remedies

What interim remedies are available?

Many different interim remedies exist. Parties may seek an order for the ex parte pre-judgment conservatory attachments discussed in question 4, a preliminary witness hearing, the production of documents, the posting of a bond to cover the liquidated costs and disbursements of the action. Interim remedies may be sought both prior to the commencement of proceedings on the merits and as provisional relief while proceedings on the merits are pending. Several interim remedies, notably the pre-judgment conservatory attachments discussed in question 4 or the production of documents, can be obtained in support of any foreign proceeding.

13 Remedies

What substantive remedies are available?

In addition to declaratory judgments a party may seek specific performance, rescission or annulment of a contract, in both cases together with damages, or damages alone. In certain cases involving the performance of a legal act the court's decision may substitute the performance by the defaulting party. Damages must generally be proven and do not include punitive damages. Court decisions other than money judgments can be reinforced with penalties in the event of non-compliance. Interest at a contractual or statutory rate must be claimed but can be awarded as of the date the payment obligation arose.

14 Enforcement

What means of enforcement are available?

A judgment may be enforced immediately after service of the bailiff's copy thereof. It is not necessary for the judgment to be final and conclusive. However, once the losing party lodges an appeal against the decision, its enforceability is suspended until the conclusion of the appellate instance, that is unless the appealed judgment has been or is declared enforceable notwithstanding an appeal. The prevailing party should realise that such enforcement will trigger liability for damages in the event the decision is quashed by an appellate court.

In the event of non-compliance with the judgment, the prevailing party may proceed to levying executory attachments on the debtor's assets and may claim penalties, if the decision so provides.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Court hearings are public, save for a number of statutory exceptions. Submissions by the parties in either an adversarial proceeding or in proceedings introduced by a petition are not public. Court decisions in adversarial proceedings are public, but will be anonymised as regards the names of private individuals mentioned therein. Many judgments are made available online at the courts' website, www.rechtspraak.nl.

16 Costs

Does the court have power to order costs?

As a rule, the court will order the losing party to pay the liquidated costs of the prevailing party consisting of the court fees and legal costs; the latter consist of fixed amounts that do not bear any relationship with the real cost incurred by the litigant. Court fees are very moderate in the Netherlands compared to other western European or common law jurisdictions. Although court fees for proceedings before the NCC will be related to the amount of the claim, these will be still modest by international standards.

Security for costs by the defendant must be claimed early on in the proceedings and is available only if the claimant resides in a jurisdiction that does not have an enforcement treaty with the Netherlands.

17 Funding arrangements

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

The rules of professional conduct disallow Dutch advocates from entering into conditional or contingency fee arrangements, except in case of personal injury claims where these are currently allowed subject to a number of conditions. Provided that at least the actual costs are covered, litigation lawyers may, however, conclude fee arrangements at a reduced hourly rate that is subject to a subsequent increase in the event of victory or successful settlement; the increase may consist of a percentage of the amount awarded. In addition, advocates may agree to provide services on the basis of commonly accepted debt collection fee rates.

Third-party litigation funding is allowed. It is common in mass claims, which are often litigated or settled by Dutch foundations as special claims vehicles. Third-party litigation funding is not very widespread with regard to individual claims, but the market seems to be emerging, both in litigation before the courts and in arbitration. There are, in principle, no limits to the fees and the interest third-party funders may charge, other than the general limits of enforceability of contracts and the powers of courts to mitigate the effect of or amend contract clauses that should qualify as wholly unreasonable. These powers are rarely exercised in practice.

18 Insurance

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

There are several insurance companies that offer insurance policies for legal assistance. These policies cover a party's own legal costs only and generally subject to a stated maximum.

19 Class action

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

Since 2005 a law on collective settlement has offered the possibility of efficiently settling 'mass claims'.

A foundation or an association may represent the interests of undisclosed claimants in bringing liability claims based on tort. Any such aggrieved party may seek a declaratory judgment regarding the defendant's liability. However, the object of such litigation may not include monetary compensation; once the liability of the defendant has been ascertained, separate litigation for the determination of any monetary liability toward individual plaintiffs is necessary, that is if the matter is not settled at that stage, as is often the case.

20 Appeal

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

The general rule is that a decision concluding the relevant instance may always be appealed. Interim and interlocutory decisions may not be appealed other than together with the decision that concludes the instance, unless leave for earlier appeal is expressly granted. As discussed in question 1, decisions of courts of appeal can be appealed before the Supreme Court that deals with issues of law only.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

With respect to judgments originating within the EU, Regulation 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast) allows for an automatic recognition and an easy enforcement of judgments.

Absent a multilateral or bilateral treaty on enforcement, a foreign judgment will in principle not be recognised and enforced. Dutch case

law provides, however, that a full retrial will not be necessary, provided that the foreign court properly had jurisdiction, that the procedure complied with principles of due process, and that the decision does not contravene Dutch public policy. If these conditions are met, the Dutch court will render a decision that reproduces to the extent possible the effect of the dispositive of the foreign decision.

22 Foreign proceedings

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

Within the EU, Regulation No. 1206/2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters provides that the foreign court wishing to obtain evidence, witness testimony, documents or the investigation of other objects may direct its request directly to the court within the Netherlands that has jurisdiction over the witness or in respect of the location where the documents or objects are to be found.

Assistance from the Dutch courts may also be sought pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence. Bilateral treaties can also provide access to the Netherlands courts' assistance.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Netherlands has not adopted the UNCITRAL Model Law (on International Commercial Arbitration), but Dutch law on arbitration does show similarities. This law has been enacted in book 4 of the DCCP and is commonly referred to as the Netherlands Arbitration Act. As of 1 January 2015 a new act came into force, replacing the 1986 act. Interestingly, the Netherlands Antilles and Aruba, territories that make up autonomous regions within the Kingdom of the Netherlands, have in fact adopted the UNCITRAL Model Law.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The DCCP does not provide for any specific requirements as to the form of an arbitration agreement. It thus is possible for parties to conclude an oral arbitration agreement.

If the existence of a valid arbitration agreement is disputed, proof of the agreement's existence must be provided in the form of documentary evidence (article 1021 DCCP). No other type of evidence is admissible.

If the existence of a valid arbitration agreement is not disputed, the tribunal must assume jurisdiction, unless the matter is not capable of settlement by arbitration.

25 Choice of arbitrator

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

If parties to an arbitration have failed to agree beforehand on the number of arbitrators to be appointed, the DCCP allows them to attempt to reach a consensus. If the parties cannot agree on the number, any party may approach the relevant district court to have the number of arbitrators determined.

In the absence of an agreement by the parties on the method of appointment, the parties shall jointly appoint the arbitrators. The appointment must take place within three months after commencement of the proceedings or within three months after the date on which the number of arbitrators has been determined by the court. The parties may extend or shorten this term. In the event the arbitrator or arbitrators are not appointed within this time frame, the most diligent party may request the competent district court to appoint one or more arbitrators.

If a party becomes aware of circumstances that give reason to question an arbitrator's impartiality or independence, it may lodge a challenge to the arbitrator's continued involvement in the arbitration. A party may only challenge an arbitrator appointed by that party for reasons of which that party became aware after the appointment was made. Arbitrators have a duty to disclose information that may give rise to a challenge of their impartiality and independence prior to their appointment and during the arbitration. The competent district court will decide on the challenge unless the parties have agreed on another third party to that effect, for instance, by agreeing to applicability of the (institutional) arbitration rules.

26 Arbitrator options

What are the options when choosing an arbitrator or arbitrators?

Under Dutch law every person that is legally competent can act as arbitrator. As the Netherlands is a relevant jurisdiction for international arbitration, a pool consisting of advocates, judges, academics and technical specialists serve as arbitrators.

27 Arbitral procedure

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

The DCCP supports the rights of the parties to agree on their own set of procedural rules for arbitrations taking place within the Netherlands. Basic norms of fairness, due process and the equal treatment of the parties must always be respected. As a general rule the parties are allowed to file a statement of claim and statement of defence. A tribunal shall, at the request of one of the parties or at its own motion, give the parties the opportunity to present their case orally at a hearing. Arbitrators are not bound by any procedural or substantive rule of evidence and shall be free to determine the rules of evidence, the admissibility of evidence and assessment of the evidence and the burden of proof, unless the parties have agreed otherwise.

28 Court intervention

On what grounds can the court intervene during an arbitration?

Dutch courts may generally not intervene in an arbitral proceeding if the parties have validly agreed to submit the dispute to arbitration. In certain limited circumstances, the District Court of Amsterdam is empowered to order the consolidation of separate arbitrations, while through the intervention of the District Court of The Hague a tribunal may make a request as referred to in article 3 of the European Convention on Information of Foreign Law of 7 June 1968. In addition, a district court in the Netherlands may, for instance, have a supporting role in determining the number of arbitrators of the tribunal, in appointing arbitrators or in ruling on challenges. Furthermore, the district court may also be requested to allow the examination of a witness who refuses to either appear in the arbitration or to make a statement. Dutch courts may also grant preliminary or injunctive relief to parties involved in arbitrations, also when the existence of arbitration agreement is invoked, if the requested relief cannot be obtained in arbitration or not in a timely fashion.

29 Interim relief

Do arbitrators have powers to grant interim relief?

Parties have the ability to empower a tribunal to grant an order or award in summary proceedings. A tribunal in proceedings on the merits can also grant interim relief. It is, however, still possible for a party to initiate summary proceedings before the interim relief judge if the required relief cannot be obtained in arbitration or not in a similarly timely fashion.

30 Award

When and in what form must the award be delivered?

The DCCP contemplates different types of awards that may be rendered by a tribunal. A tribunal may render a final award, a partial final award, an interim award, an award correcting an error in a previous

award, an additional award if the tribunal failed to decide a claim in the final award, and a new (final) award after the case has been remitted.

An award must meet several formal requirements. Unless otherwise agreed upon, it must be based on a majority decision of the tribunal. An award must be in writing and signed by the arbitrators. The names and places of residence of the arbitrators must be mentioned, as well as the names and places of residence of all the parties involved. An award must also state the date on which it is made as well as the place thereof. Last but not least the arbitral award must have a reasoned decision, although the parties may waive this right under article 1057(5) DCCP. There are no statutory time limits within which a final award must be rendered.

31 Appeal

On what grounds can an award be appealed to the court?

The Netherlands Arbitration Act explicitly allows for the parties to agree on arbitral appeal proceedings. An award cannot, however, be appealed in the courts. The DCCP allows parties to apply to the court seeking the setting aside or revocation of an award. Such proceedings must be commenced before the court of appeals in whose judicial district the place of arbitration is located. Thereafter appeal may be lodged with the Supreme Court, unless the parties have validly waived that right. A natural person not acting in the conduct of a trade or business cannot waive this right.

An award can be set aside only on one of the following grounds set forth in article 1065 DCCP:

- the absence of a valid arbitration agreement;
- the constitution of an arbitral tribunal in violation of the applicable rules;
- breach by the tribunal of its mandate;
- failure to sign the award or provide a reasoned basis for the award; or
- the violation of public policy.

An award may be revoked if it was rendered on fraudulent grounds. In addition, a party may seek to revoke an award if it can demonstrate that the documentary evidence upon which the award is based, either partially or wholly, is later on found to have been forged, or if documents come to light after the rendering of the award that would have had an influence on the decision of the tribunal, and such documents were withheld due to acts of the opposing party.

The court of appeal may remit the case to the tribunal to reverse a ground for the setting aside or the revocation. Remission can also result in a substantially different decision. Remission is, however, not possible if it should be found that a valid arbitration agreement is lacking.

32 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Parties seeking to enforce arbitral awards must first obtain an exequatur from the competent district court. The DCCP distinguishes between domestic awards (articles 1062–1063 DCCP), awards that are rendered in countries that are party to the New York Convention or that are party to other treaties with the Netherlands (article 1075 DCCP) and awards that are rendered in countries that are not party to a relevant treaty with the Netherlands (article 1076 DCCP). Exequaturs for domestic awards will generally be rendered after ex parte proceedings; no appeal is in principle possible if an exequatur is granted. Leave for enforcement for foreign awards will, however, only be granted after proceedings in which the party against whom leave for enforcement is sought has been given the possibility to present its arguments against the requested exequatur. In practice, the grounds upon which a court may refuse enforcement are largely the same for awards rendered outside the ambit of the New York Convention as those where no treaty is applicable, but there are differences. If the New York Convention is applied and an exequatur is granted, the party against whom an exequatur was granted may in principle not appeal. Appeal is, however, possible for the party whose exequatur application was denied.

33 Costs

Can a successful party recover its costs?

There is no express provision in the Netherlands Arbitration Act concerning the recovery of the costs of the arbitral proceedings. The tribunal is free to award a party its costs unless the parties have agreed otherwise.

Alternative dispute resolution

34 Types of ADR

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

Mediation and adjudication (expert determination or binding advice proceedings) are popular ADR proceedings and have surpassed all other ADR in the Netherlands.

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35 Requirements for ADR

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

There is no legal requirement to attempt ADR before or during proceedings. However, judges sometimes actively encourage parties to try mediation. Many parties agree to mediation or other ADR procedures in their contracts. However, a mediation or conciliation clause in a contract does not prevent the parties from going to court even if mediation or conciliation has not been tried at all. If parties have agreed on binding advice, the court will, however, refuse to hear the case on account of inadmissibility if such agreement is invoked in a timely manner.

Miscellaneous

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

The World Justice Project ranks the Netherlands first on rule of law in civil matters(https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2016_Netherlands_eng%20%281%29.pdf). In spite of budgetary restraints affecting the Dutch judiciary as a whole, decisions rendered in international landmark cases such as the Yukos affair show that the Dutch courts are not afraid of doing justice in politically sensitive cases. This and the upcoming introduction of the NCC are viewed as increasing the attractiveness of the country as a forum for international dispute resolution in high-profile cases.