

## **Alert** | International Arbitration & Litigation



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### **Netherlands Commercial Court Approved by Dutch Senate**

**On 11 December 2018 the Dutch Senate approved the bill for the establishment of the Netherlands Commercial Court (NCC). The NCC is a separate chamber of the District Court of Amsterdam, specializing in complex international commercial disputes. Proceedings before the NCC will be conducted in English, and judgments will be rendered in English. The NCC offers internationally operating companies the opportunity to conduct proceedings in the Netherlands before a specialized Dutch Court in the English language.**

With the NCC, the Dutch Judiciary aims to meet the needs of internationally operating companies with cross-border commercial disputes. A change in legislation was needed to allow a Dutch court to render a decision in English. The approval of the bill by the Dutch Senate is the last step in the legislative process, and paves the way for the NCC to open its doors in 2019. The official open date for the NCC is not yet known.

#### **Proceedings Before the NCC**

The Netherlands Commercial Court will consist of two chambers – the District Court of Amsterdam for cases in first instance, both on the merits and in preliminary relief proceedings, and the Amsterdam Court of Appeal for cases on appeal. The judges and clerks of the NCC will have specific experience with complex commercial issues and will be proficient in English. Proceedings will generally be conducted in English, but the court can decide to continue proceedings in Dutch at the parties' joint request. Hearings before the NCC will be conducted at the Court of Appeals building in Amsterdam.

Proceedings before the NCC will be conducted in accordance with the NCC procedural rules (*reglement*). The rules contain provisions on a wide range of procedural issues such as the submission of court documents, terms, evidence, and costs. The NCC will offer customized proceedings for each case, via a pretrial hearing in which parties can express their view on the procedure. The NCC will further offer video and audio recordings of the hearings, or documentation of the hearings by a court reporter.

The Dutch judicial system is generally regarded as comparatively stable, swift, and cost-efficient. In fact, the World Justice Project Rule of Law Index 2017-2018 ranked the Netherlands number one in the world for Civil Justice. However, internationally operating companies have been at a disadvantage because proceedings before Dutch courts are conducted in Dutch, and decisions are rendered in Dutch. As such, non-Dutch parties have had to translate court documents and use translators for hearings. With the establishment of the NCC, proceedings can now be conducted in English and tailored to the needs of internationally operating parties.

The court fees of the NCC are higher than those for regular Dutch court proceedings. The court fees for preliminary relief proceedings will be € 7.500, for cases in first instance on the merits € 15.000, and on appeal € 20.000.

### International Jurisdiction

Parties who wish to bring a case before the NCC will have to expressly agree to do so. The NCC can assume (international) jurisdiction in civil and commercial matters with an international element where no other court has (exclusive) subject matter competence, and parties have made a choice of forum for the Court of Amsterdam, or the Court of Amsterdam has jurisdiction based on law. Furthermore, parties will have to expressly choose the NCC in writing. A choice of forum clause for the NCC in a commercial contract is in that regard sufficient. The required international element of a case is easily assumed; for instance, if one of the parties is located or largely active abroad, if the contract is written in a different language than Dutch, or if foreign law or a treaty is applicable to the case.

An NCC decision is officially a decision by a Dutch court. Therefore, decisions of the NCC will automatically be recognized and are enforceable in the entire European Union under Regulation (EU) 1215/2012.

### Conclusion

The NCC builds on the Dutch judicial system and offers internationally operating companies a new and interesting possibility for dispute resolution in the Netherlands, in English, for international commercial disputes.

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