



New Dutch Arbitration Act

On Jan 1, 2015, the revised Dutch Arbitration Act (Act) entered into force, replacing the 1986 version of the Act.¹ The new Act is intended to make the Netherlands' commercial arbitration procedures more attractive to international parties, as well as improve the national arbitration system by modernizing provisions. Like its predecessor, the new Act's provisions apply equally to domestic and international commercial arbitration proceedings.

It is too soon to tell whether and to what extent the revised Act will be successful, but at first blush the revised Act appears to be a substantial improvement over the old Act. While there remains room for improvement, the revised Act modernizes some of the outdated portions of its predecessor, which should make Dutch arbitration more efficient, flexible, and user-friendly.

First, the new Act creates a framework for e-arbitration, allowing procedural documents and awards to be rendered in electronic formats with electronic signatures. This will permit quick and efficient communication during arbitration proceedings and will also reduce costs.

Second, the new Act makes various procedural improvements that are a direct result of the codification of international best practices. For example, it is no longer a requirement to file an arbitral award before Dutch court in order to end arbitration proceedings. The new Act furthermore allows an arbitral tribunal to hear objections against arbitrators, instead of requiring a separate Dutch court procedure to adjudicate these objections. Additionally, regular Dutch courts are no longer involved in challenging proceedings, meaning the Court of Appeal is the only institution capable of ruling on the annulment of awards. Overall, the procedural improvements of the new Act aim to make arbitration less reliant on Dutch national courts.

¹ Note that all arbitration proceedings commenced prior to Jan. 1, 2015, remain governed by the old version of the Act.

Moreover, the new Act is in line with European Unfair Terms in Consumer Contracts Directive 93/13/EE. It aims to be more consumer-friendly with various amendments to the provisions regarding arbitration agreements. For example, an arbitration clause contained in a company's general terms and conditions is not binding on the consumer if it does not provide the consumer with an option to choose to have the dispute decided by the courts (although this does not apply if the consumer and company have explicitly agreed to settle their dispute through arbitration).

The new Act is also much more flexible than its predecessor. Parties are provided with increased autonomy to determine the procedure that is followed by the arbitral tribunal conducting the proceedings. Parties are provided with more freedom to determine procedures regarding availability of appeal, evidence taking, written procedures, oral rounds, and preliminary measures, among others.

As a whole, the new Act maximizes party autonomy and allows parties to shape arbitration procedures to meet their mutual needs and interests.

Despite various improvements, some may argue that the new Act may not have gone far enough, as it remains silent on a number of issues. These include, for example, the confidentiality of arbitration and the qualification requirements for arbitrators. However, practically speaking, parties may fill any gaps left by the new Act directly in their arbitration clauses or by referring to international arbitration frameworks (e.g., UNICITRAL Model Law on International Arbitration).

Although the jury is still out on the success of the new Dutch Arbitration Act, it appears that it will enhance the efficiency and flexibility of the arbitration process in the Netherlands by reducing administrative burdens and maximizing party autonomy. This will likely boost the position of the Netherlands as a leading arbitration venue for both domestic and international disputes.

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