

# **Procedure Rules<sup>1</sup> when opting to conduct legal proceedings in English (amended procedure as referred to in Clause 1.4 of the National Procedural Regulations<sup>2</sup>).**

**(to be adapted in due course to the Quality and Innovation Programme<sup>3</sup>)**

1. These Procedure Rules address the usage of English as the working language in proceedings on the merits<sup>4</sup> initiated by means of a writ of summons<sup>5</sup> in the areas of maritime and transport law or international sale of goods conducted (exclusively) between professional parties and brought before the Rotterdam District Court - Private Law Division, on the Civil Calendar for Trade Cases<sup>6</sup> - in the period from 1 January 2016 to 1 July 2017.
2. When all parties to the proceedings, represented by members of the Netherlands Bar, have agreed in writing to the application of these Procedure Rules to the settlement of their dispute, the plaintiff's Counsel shall indicate this on the B-form when bringing the case before the Court and shall submit evidence of the agreement made with each defendant. The Court will follow the parties' choice and confirm this to the parties in writing.
3. After the Court has thus approved the request for application of these Procedure Rules, the case shall be dealt with as set out in herein. Application of these Procedure Rules does not in any way affect the Court's application of Dutch procedural law. The National Procedural Regulations remain in force insofar as they are not deviated from in these Procedure Rules.
4. A choice to apply these Procedure Rules does not imply acceptance of the jurisdiction or competence of the Rotterdam District Court.

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<sup>1</sup> In Dutch: Procesafspraken

<sup>2</sup> Landelijk Procesreglement

<sup>3</sup> Programma Kwaliteit en Innovatie (KEI)

<sup>4</sup> bodemprocedures

<sup>5</sup> dagvaarding

<sup>6</sup> civiele handelsrol

5. The parties shall submit their procedural documents in the English language, with the following exceptions.

If application of these Procedure Rules has been agreed upon before the writ of summons has been served, the claim<sup>7</sup> and the grounds for the claim in the writ of summons shall be in the English language while the Dutch language shall be used in the heading (date, parties' names, formal notices etc.) and in the concluding section (the claim, signature and costs). The claim shall therefore be included in both Dutch and English.

If application of these Procedure Rules has been agreed upon after the Writ of summons has been served (in Dutch), a statement of claim<sup>8</sup> shall be filed on the first day on which the case is on the Civil Calendar for Trade Cases, in which the claim and the grounds for the claim shall be in the English language. If any matters therein deviate from the contents of the writ of summons, this must be clearly indicated.

The Court will base its judgment of the case on the English texts of the claim and the grounds for the claim.

If a Counterclaim<sup>9</sup> is filed or an Amendment of Claim<sup>10</sup> is submitted, these shall be both in Dutch and English.

6. Where statutes or other rules and regulations are quoted, these quotes shall always be in the English language followed, if felt to be required, by the quote in the original language of the statutes or rules and regulations concerned<sup>11</sup>. Case law and legal doctrine drawn up in the Dutch language may be submitted without translation.
7. At hearings and in correspondence with the Court, the working language shall be English.
8. If a party witness, a witness or an expert has insufficient command of English, the party who calls the (party) witness or expert shall provide the assistance of an interpreter at the hearing. The costs involved shall initially be borne by this party but compensation thereof may be claimed as part of an award of costs.

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<sup>7</sup> petitum

<sup>8</sup> conclusie van eis

<sup>9</sup> vordering in reconventie

<sup>10</sup> wijziging van eis

<sup>11</sup> In referring to and applying the Dutch Civil Code, the Court will follow as far as possible the English terminology and wording as used in The Civil Code of the Netherlands (H. Warendorf, R. Thomas, I. Curry-Sumner), Kluwer, latest version, or in Dutch Civil and Commercial Law Legislation by the same authors.

9. However, notwithstanding the provisions of (7) and (8) above, the parties may agree that certain or all Dutch-speaking witnesses or experts shall be heard in the Dutch language and shall notify the Court thereof at least seven days prior to the hearing concerned. The Court will follow the parties' decision in this regard. The (witness) statements shall be included in the official record of the Court hearing<sup>12</sup> in the Dutch language<sup>13</sup>.

10. Any person who is required by law to take an oath or make an affirmation is entitled to do so in the English language rather than using the words prescribed by Dutch law.

Where an oath is taken, the Dutch words: "Zo waarlijk helpe mij God Almachtig" shall be replaced by: "So help me God Almighty".

Where an affirmation is made, the Dutch words: "Dat beloof ik" shall be replaced by: "This I promise".

11. If an official record is made of a hearing, it will be written in English.

However, if an official record is required in enforceable form because it contains a settlement agreement, the official record will be made in Dutch, but the settlement agreement shall be included both in English and in Dutch. Between the parties, the English-language version will be the definitive version.

12. Decisions will always be rendered in Dutch.

13. In the event that other parties take part in the proceedings after the case has been brought before the Court, for example in connection with a third-party action<sup>14</sup>, joinder<sup>15</sup> or third-party intervention<sup>16</sup>, the Court shall, after consultation with Counsel of all parties and taking into account the following guidelines, determine the language in which the proceedings and any related proceedings shall be conducted.

If in the event of a third-party action, the third party agrees thereto in writing, these Procedure Rules shall apply also to the third-party action and no translation of the procedural documents from the principal action shall be required. If the third party does not agree in writing to the application of these Procedure Rules, the proceedings against the third party shall be conducted in the Dutch language, the party bringing the claim against the third party shall provide the third party with a certified Dutch translation of the procedural documents from the principal action, and the proceedings against the third party shall be conducted on the basis of that translation.

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<sup>12</sup> proces-verbaal

<sup>13</sup> The remainder of the official record of the court hearing will be written in English, as set out in (11).

<sup>14</sup> vrijwaring

<sup>15</sup> voeging

<sup>16</sup> tussenkomst



In the event of a joinder, the party who has joined the proceedings is bound by the application of these Procedure Rules as agreed upon by the party on whose side he joins the proceedings. After the joinder, the proceedings shall be continued in the English language.

In the event of third-party intervention, the intervening party is not bound by the Procedure Rules agreed by the original parties.

14. These Procedure Rules cover only the proceedings in the first instance. Decisions rendered under these Procedure Rules may be appealed in the usual manner provided in the Dutch Code of Civil Procedure<sup>17</sup>.

Without prejudice to their ultimate legal judgment on the usage of English as the working language in Dutch legal proceedings, the Court of Appeal in The Hague and the Supreme Court have declared to be willing to adjudicate with due observance of the English-language procedural documents from the first instance which came about in conformity with these Procedure Rules.

The Court of Appeal and the Supreme Court may nevertheless request that one or more of the English-language procedural documents from the first instance is translated into Dutch.

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<sup>17</sup> Wetboek van Burgerlijke Rechtsvordering