

THE NETHERLANDS COMMERCIAL COURT



A photograph of an office desk with a computer monitor and a desk lamp, looking out a large window at a cityscape of Amsterdam. The text is overlaid on the right side of the image.

WELCOME TO AMSTERDAM

**a city with a proud history
of commerce and justice**



Who are we?

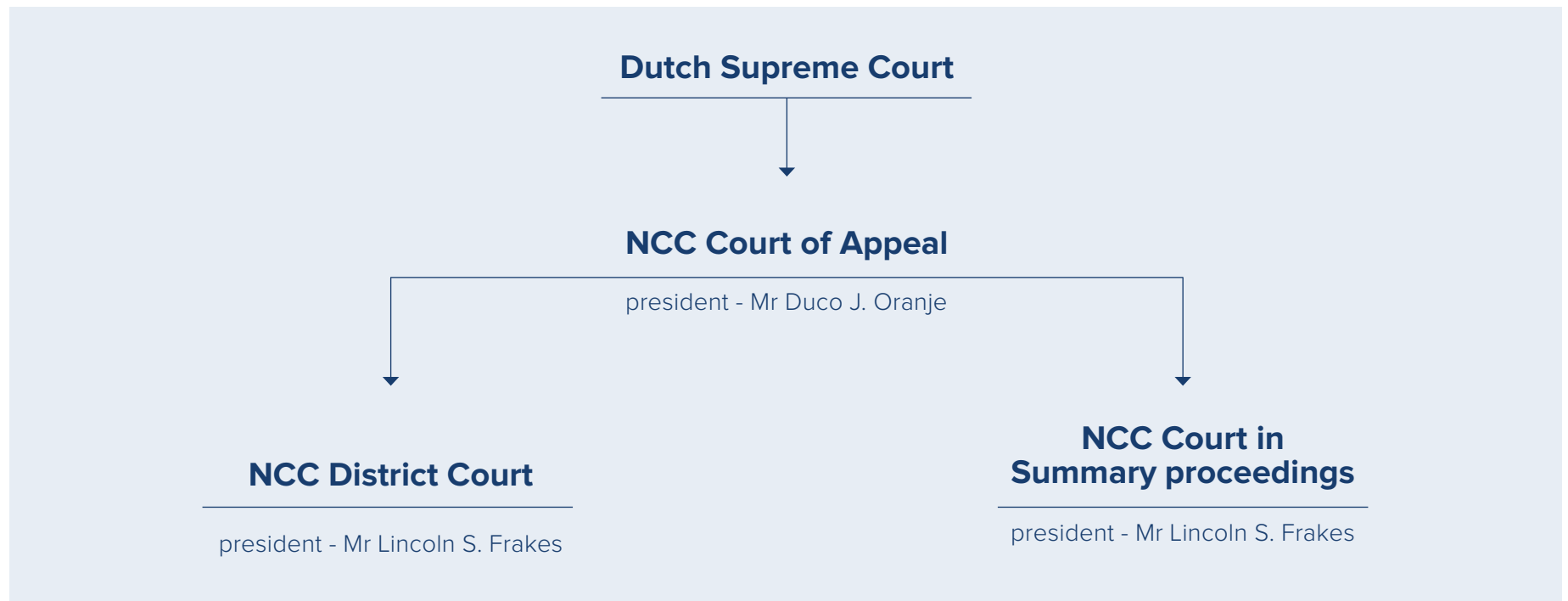
The Netherlands Commercial Court (NCC District Court and NCC Court of Appeal) is well positioned to swiftly and effectively resolve international business disputes. It is built on a solid foundation: the reputation of the Dutch judiciary, which is ranked among the most efficient, reliable and transparent worldwide. And the Netherlands – and Amsterdam in particular – are a prime location for business, and a gateway to Europe.

Proceedings are in English, so are the judgments. The NCC has the tools to communicate effectively and provide swift and firm guidance in complex litigation. The Netherlands Commercial Court was created on 1 January 2019.

NCC is:

- the NCC District Court: a chamber in the Amsterdam District Court
- the NCC Court in Summary Proceedings (CSP): a chamber in the Amsterdam District Court, which will deal with certain matters requiring an expedited procedure and decision, such as interim measures
- the NCC Court of Appeal: a chamber in the Amsterdam Court of Appeal.

NCC Court of Appeal judgments may be appealed to the Supreme Court.





Our Judges

The NCC has 23 judges: 14 in the NCC District Court and 9 in the NCC Court of Appeal. All judges are experienced in dealing with international commercial matters. There are several judges who focus on their field of expertise in competition law, intellectual property law, IT and restructuring. If appropriate in light of the caseload, other judges may join the court. Cases are assigned to judges in accordance with the NCC Case Assignment Rules.

Why NCC?

- NCC is situated in the Dutch courts, which are ranked among the most efficient, reliable and transparent worldwide worldwide: www.worldjusticeproject.org (civil justice)
- Speedy proceedings: the Dutch courts are among the fastest in the European Union with an average of 130 days from a notice to appear to a final judgment (EU Justice Scoreboard)
- Language of the entire proceedings is English (including judgment)
- NCC judges are impartial, independent and experienced in complex international business matters
- Cases are heard and disposed of by a three-judge panel
- Active case management in consultation with the parties: typically a conference will be scheduled to discuss issues, motions, fact-finding and a timetable
- Clear rules of procedure: the NCC Rules provide parties with reliable, transparent guidance on procedural matters
- Focus on global best practices (such as the IBA Rules): the NCC Rules provide flexibility



- Electronic communication: all documents are submitted electronically in eNCC, which is the NCC portal with secure access through the NCC site (www.ncc.gov.nl), allowing Dutch counsel to initiate an action, check the status and scheduled next steps, and submit and download documents
- 24/7 availability: in exceptionally urgent cases, the court is authorised to hear and decide cases anytime, anywhere
- Low costs: a flat court fee.

What kind of cases can be brought before the NCC?

A matter may be submitted to NCC where the following requirements are met:

- (a)** the Amsterdam District Court or Amsterdam Court of Appeal has jurisdiction
- (b)** the parties have expressly agreed in writing that proceedings will be in English before the NCC
- (c)** the action is a civil or commercial matter within the parties' autonomy
- (d)** the matter concerns an international dispute.

Jurisdiction and NCC agreement

The ordinary private international law rules apply. The jurisdiction of the Amsterdam District Court or the Amsterdam Court of Appeal may be based on a choice-of-court clause or such other rules as the defendant's domicile. Next, parties agree to take the case to the NCC (a chamber within the Amsterdam District Court or the Amsterdam Court of Appeal) and to make English the language of the proceedings.

This is the "NCC agreement". The NCC agreement can be recorded in a clause to that effect, either before or after the dispute arises. A model clause is available at ncc.gov.nl.

Civil or commercial matters

The "civil or commercial matter" test is met where the dispute is related to civil law in a broad sense. These matters may be contractual disputes, claims in tort, property disputes, or intellectual property, technology, construction or corporate matters, as opposed to criminal charges or administrative proceedings.

The following special types of cases may be appropriate for NCC proceedings:

- A claim in a collective action action, provided that the Amsterdam District Court has jurisdiction based on criteria such as the domicile of one of the parties, or the place where the harmful event occurred.
- An application seeking a declaration that a collective settlement is universally binding (including third parties), provided the agreement is connected to the Netherlands, so that the Amsterdam Court of Appeal has jurisdiction.
- A claim to set aside an arbitral award, provided that the 'place of arbitration' is Amsterdam and there the proceedings will be in English before the NCC Court of Appeal. A model clause is available at ncc.gov.nl.

International disputes

The "international" test is broad in scope. It is met not only where one or more of the parties have their domicile in a foreign jurisdiction, but also where the dispute otherwise involves a relevant cross-border interest, such as shareholders, employees or revenue located in or linked to a foreign jurisdiction.

How can I initiate an action before the NCC?

An action is initiated by submitting an originating document in the NCC portal: eNCC. Members of the Dutch Bar can access this portal and submit or download documents. Lawyers who are a member of the Bar in an EU or EEA Member State or Switzerland may act for a party in conjunction with a member of the Dutch Bar. The court may allow other lawyers to speak at any hearing.

The next steps in the proceedings typically will be:

- Assignment: the case is assigned to three judges and a senior law clerk.
- Defence: the defendant submits its defence in eNCC.
- Case management conference or motion hearing: if the claimant or the defendant makes a motion on procedural or other matters (such as jurisdiction or the production of documents) or for other reasons, a case management conference or motion hearing may be scheduled. Parties may present their arguments.
- Judgment on motions: the court rules on the motions. Testimony may be taken, or an expert may be appointed, at this stage or earlier or later.
- Further written submissions: the court may allow the parties to submit further written statements.
- Hearing: a hearing is held in the action. The court interviews the parties and allows them to present their arguments. The court may enquire whether the dispute could be resolved amicably and, where appropriate, assist the parties in a

settlement process. If appropriate, the court may discuss with the parties whether it would be advisable to submit part or all of the dispute to a mediator. At the end of the hearing, the court will discuss with the parties what the next steps should be.

- Judgment: if so ordered, judgment is given in the action. This may be a final judgment on the claims or an interim judgment ordering one or more parties to produce evidence, allowing the parties to submit written submissions on certain aspects of the case, appointing one or more experts or taking other steps.

What rules apply?

The NCC applies Dutch procedure, and this means mainly the Code of Civil Procedure. Proceedings before the NCC are governed by the NCC's Rules of Procedure (see our website www.ncc.gov.nl). The NCC Rules, in authentic English and Dutch versions, outline the main procedure and practice rules and reflect global best practices (such as the IBA Rules) and many Civil Procedure Code provisions, to create a baseline that judges, lawyers and parties can easily refer to. The applicable substantive law is determined by the ordinary private international law rules.





How much does it cost?

The NCC charges an upfront flat fee depending on where the action is initiated:

| | |
|-------------------------------------------|--------------------|
| NCC District Court | € 15,000 per party |
| NCC Court in Summary Proceedings | € 7,500 per party |
| NCC Court of Appeal | € 20,000 per party |
| NCC Court of Appeal (Summary Proceedings) | € 10,000 per party |

These fees are not related to what the case is about or how much money is claimed.

Special rules apply where more than one party is represented by the same lawyer and submits the same arguments.

Our fees are subject to annual indexation. For the current fees see www.ncc.gov.nl.

The unsuccessful party will bear the costs of the proceedings (both its own and the successful party's costs).

The parties may make agreements they consider appropriate in respect of costs. Where no agreement is made, the court will, as a rule, apply rates to assess lawyers' fees and expenses, ranging from € 1,000 to € 12,000 for each act of process.

See Annex III to the NCC Rules (available on www.ncc.gov.nl).

Contact

If you have any questions or would like more information, please don't hesitate to contact us by email at ncc@rechtspraak.nl.

If you wish to be updated on NCC news subscribe to our Newsletter or visit our website: www.ncc.gov.nl
You can also follow us on Twitter (@NethComCourt) and/or LinkedIn.

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