

Arbitration or NCC litigation?



Who are we?

The Netherlands Commercial Court (which consists of 3 chambers: the NCC District Court, the NCC Court in Summary Proceedings and the NCC Court of Appeal) is a part of the Dutch Judiciary, which is ranked among the most efficient, reliable and transparent worldwide. The NCC is based in Amsterdam - a prime location for business and a gateway to Europe, with a long history of justice and global business. The NCC uses Dutch procedure, which is highly regarded for its pragmatic approach and efficient operation. Proceedings are in English. Judgments are in English.

Arbitration or court litigation?

Arbitration and court litigation are, obviously, options that practitioners should and do consider as they think about how to deal with international business disputes. This fact sheet provides a quick overview of key criteria, looking at arbitration in general and NCC procedure and examining efficiency, confidentiality, cost, language, appeal, electronic document submission and enforceability.

	Arbitration	NCC
Efficiency	–	+
Proceedings in English	+	+
Confidentiality	+	±
Costs	--	+
Digital	±	+
Appeal	–	+
Enforcement	+	+

Arbitration may offer real advantages. The parties stay out of court, keep their proceedings confidential, appoint the arbitrators they prefer, and tailor every detail of the proceedings to their individual needs. And arbitral awards are enforceable in more than 150 countries. But sometimes proceedings are time-consuming. Not just to design how the proceedings will work, but also to move through the process from the initial documents all the way through to a final decision (see the “2018 International Arbitration Survey” of the Queen Mary University in London).

- Confidentiality is an advantage, but not always guaranteed: if there is a setting aside procedure or enforcement procedure, the substance of the arbitral award may be disclosed. Also, there is a trend for arbitral tribunals to publish their awards more frequently than in the past.
- Arbitration proceedings are expensive. The ICC administration fee is approximately USD 400,000

(for a USD 10 million claim, dealt with by 3 arbitrators). Added to this are the lawyers’ fees, which may be a multiple of this amount.

- Relatively few arbitration institutes offer electronic systems for document submission.
- As a general rule, there is no appeal against an arbitral award.
- The benefit of enforceability is limited: in every or at least most jurisdictions where assets may be located, judicial consent is required to enforce an arbitral award. And a party may file an application in court to set aside the award. Either way, lengthy court proceedings may ensue.

The **Netherlands Commercial Court** is a forum experienced practitioners should consider in complex international business disputes.

- NCC is an English-language dispute resolution environment within a civil law jurisdiction. It is firmly embedded in the ordinary court system, and it is forward-looking and specially designed for complex international business disputes.
- The Netherlands is a world leader in the just and efficient disposition of civil cases (see www.worldjusticeproject.org).
- NCC is based in Amsterdam, which needs no introduction as a centre of global business. And just 20 minutes from Schiphol Airport with more than 5000 flights every week.
- The NCC Rules of Procedure (see www.ncc.gov.nl) reflect global best practices, such as the IBA Rules, and strike a balance: making a firm plan and timetable at the outset in a case-by-case approach, allowing enough latitude to do fact-finding or other work that needs to be done, but keeping things moving and avoiding unnecessary delay.
- eNCC, NCC’s electronic communication system, is a web 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 electronically. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

- Better communication and more active case management may be of great assistance to stay focused and eliminate unnecessary rounds of submissions. NCC judges can and will sanction dilatory tactics or other types of obstruction.
- NCC also has tools to bring third parties into the litigation where needed.
- Hearings are in public, but the case file is confidential.
- Judgments are published, creating a body of case law that helps everyone know what to expect.
- NCC's judgments are enforceable throughout the 27 EU Member States without the need of judicial consent in the country of enforceability. The winning party can without delay request the competent enforcement authority in another EU Member State to enforce the judgment. The Netherlands is also a party to several bilateral or other conventions that allow enforcement. And finally, courts all over the world facilitate the recognition and enforcement of judgments of other courts under the principles of comity.
- NCC charges low, upfront fixed court fees (ranging from € 7,500 to € 20,000), and absent agreement, the unsuccessful party is typically responsible for lawyers' fees that are assessed on the basis of fixed rates ranging from €1,000-€12,000 for each act of process.

How to make this happen: *make sure the Amsterdam courts have jurisdiction and expressly agree for the proceedings to be in English before the NCC. Use the NCC choice-of-court clause (see www.ncc.gov.nl under "Jurisdiction and NCC clause") where needed.*

What you get: *an English-language environment within a civil law jurisdiction, in a prime location for business.*

NCC litigation pending arbitration

But it need not be an either/or choice.

Parties who agree to arbitrate a dispute may designate the NCC District Court or NCC Court of Appeal, as the case may be, as the appropriate chamber for any court litigation needed before, during or after the arbitral proceedings. This will enable them, e.g., to file a setting-aside claim with the NCC Court of Appeal in English. Check out our fact-sheet "NCC litigation pending arbitration" on our website ("Docs" section).

Need to know more on NCC?

If you have any questions, please contact us at NCC@rechtspraak.nl. Or visit our website www.ncc.gov.nl. You can also follow us on Twitter (@NethComCourt) and/or LinkedIn.

NCC@rechtspraak.nl
www.ncc.gov.nl

Our courthouse address is:

Palace of Justice

IJdok 20

1013 MM

Amsterdam

The Netherlands