

# NCC and Arbitration

**This document contains the alternate text of the original. This document is intended for people with a visual impairment, such as the blind.**

## 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. Under the proposed legislation, the NCC District Court and NCC Court of Appeal will be based in Amsterdam at the Palace of Justice, which is also home to the Amsterdam Court of Appeal. Amsterdam is a prime location for business, and a gateway to Europe, with a long history of justice and global business.

The NCC District Court and the NCC Court of Appeal will use Dutch procedure, which is highly regarded for its pragmatic approach and efficient operation. All work will be 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.

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, and there's a price tag. Time and cost may be an issue. 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. And the benefit of enforceability is relative: still judicial consent in the country of enforcement is required. And a party may apply for the setting aside of the arbitral award in court. Both options can lead to lengthy court proceedings.

The NCC 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](http://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](http://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](http://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.
- Judgments will be 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, 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 Appendix 2 of the NCC Rules) where needed.

#### **What you get:**

an English-language environment within a civil law jurisdiction, in a prime location for business.

#### **Enforcement of an arbitral award**

It may also be important for practitioners to consider the NCC in the context of enforcement of an arbitral award.

The NCC environment may help make enforcement smoother and less expensive, following an English language arbitration. Even if Amsterdam is not the seat of arbitration, the NCC may be an option to apply for judicial consent for enforcement of the award, if the debtor's domicile is in Amsterdam or if the debtor has assets there.

#### **Setting aside an arbitral award**

The NCC Court of Appeal is poised to be a pioneering forum that arbitration practitioners need to be familiar with. It will be one of the few places in the world where a setting-aside action can be brought in an English language environment within a civil law jurisdiction.

NCC's electronic communication system (eNCC) gives the NCC Court of Appeal the tools to communicate effectively and provide swift and firm guidance throughout the process. As a result, the NCC Court of Appeal should be on the menu of options that practitioners consider as they draft an arbitration clause and discuss what the seat of arbitration will be. The arbitration institute or tribunal may of course be located anywhere, and the hearings may be held anywhere, but as long as Amsterdam is the seat of arbitration and an express agreement is in place for the setting-aside proceedings to be in English before the NCC, the NCC Court of Appeal will be available to deal with setting-aside actions.

**How to make this happen:**

make Amsterdam the seat of arbitration and expressly agree for setting-aside or enforcement proceedings to be in English before the NCC.

**What you get:**

an English-language environment within a civil law jurisdiction, in a prime location for business.

**Need to know more?**

If you have any questions, please contact us at

[NCC@rechtspraak.nl](mailto:NCC@rechtspraak.nl)

Or visit our website [www.ncc.gov.nl](http://www.ncc.gov.nl)

[NCC@rechtspraak.nl](mailto:NCC@rechtspraak.nl)

[www.ncc.gov.nl](http://www.ncc.gov.nl)

Our courthouse address is:

Palace of Justice

IJdok 20

1013 MM

Amsterdam

The Netherlands