

NCC Update Nr. 1

March 2018

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Dear Sir/Madam

This is the inaugural Update on the Netherlands Commercial Court (NCC) and progress toward its creation. The NCC is being set up in Amsterdam to deal with international business disputes. The NCC will hear cases in English and its judgments will be issued in English. NCC procedures are specially designed to facilitate the expeditious and just resolution of complex disputes.

Legislation

On 8 March 2018 in The Hague, the Lower Chamber of Parliament approved legislation allowing court judgments to be issued in English. The bill is now before the Upper Chamber, which has scheduled the next step in its work on 10 April 2018. If the Upper Chamber votes by mid-April, the legislation could have an effective date as early as 1 July 2018.



NCC Rules

In June 2017, the NCC team organised a public consultation on the NCC Rules (which set out the Rules of Procedure at the NCC). The team is grateful for the helpful comments that numerous legal professionals provided. The NCC team has now completed the updated NCC Rules (see www.rechtspraak.nl). The amended version has been submitted to the national judicial conference committees ("LOVs"). The committees will discuss the Rules in their meetings in early April 2018.

Presentations to law firms

In recent weeks, NCC judges have met with delegations from law firms to discuss opportunities and potential pitfalls, to explain the features of NCC litigation and to

introduce the electronic web portal that the NCC will use once it is established (eNCC). If your law firm has an international business practice and would like to schedule a meeting on the NCC, please contact Willem Visser (NCC Project Manager) or Beatrice Dunnink (NCC Management Assistant) at ncc@rechtspraak.nl.

Focus: Evidentiary agreement

Global and cross-border businesses may require rules of evidence that are specifically tailored to their operations. Dutch law is an excellent fit. The Dutch Code of Civil Procedure (article 153 DCCP) allows the parties in an NCC case to enter into an evidentiary agreement which, for purposes of their dispute, will replace the ordinary law of evidence. Such an agreement is enforceable except where by law the parties are not allowed to make their own arrangements (e.g., certain corporate or insolvency issues), or where the ordinary Civil Code rules provide otherwise. Two of these rules are article 6:248 (reliance on a clause is unacceptable in the specific circumstances) and article 6:233 et seq. (a clause in general terms and conditions is unreasonably onerous). Article 8.3 of the NCC Rules deals with evidentiary agreements.

NCC clause

The NCC Rules provide a standard clause:

Jurisdiction clause and election of proceedings in English before the NCC

All disputes arising out of or in connection with this agreement will be resolved by the Amsterdam District Court following proceedings in English under that Court's Rules of Procedure of the Chamber for International Commercial Matters ("Netherlands Commercial Court" or "NCC"). Application for interim measures, including protective measures, available under Dutch law may be made to the NCC's Court in Summary Proceedings ("CSP") in proceedings in English in accordance with the Rules of Procedure of the NCC.

Questions?

If you have any questions, please contact us at NCC@rechtspraak.nl.

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This update was sent to you because you have expressed interest in the NCC. If you would prefer not to receive further updates, please unsubscribe by sending an email to NCC@rechtspraak.nl.

Best regards,
Willem Visser (NCC Project Manager)
Beatrice Dunnink (NCC Management Assistant)