

NCC Update Nr. 2

September 2018

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

Dear Sir/Madam

This is the second Update on the Netherlands Commercial Court (NCC) and progress toward its creation. The NCC (NCC District Court and NCC Court of Appeal) is being set up in Amsterdam to deal with international business disputes. The NCC will hear cases in English and its judgments will be in English. The NCC is well positioned to swiftly and effectively resolve international business disputes.



Legislation

Let's start with the bad news. A firm launch date in 2018 is unlikely. Before the summer break, several members of the Senate Justice and Security Committee asked for clarification on certain issues in the pending NCC legislation. The Ministry of Justice and Security's response will take some time.

But fortunately that's not all. The good news is the senators expressed broad interest in creating English-language business dispute resolution facilities within the Dutch court system. They expressed concern that the project currently does not go far enough and suggested adjusting the court fees to make these facilities available to small and medium-sized businesses.

So where does this leave us?

In a nutshell: we won't be opening our doors in 2018, but we are confident there is a bright future for English-language dispute resolution in this jurisdiction. See below. In the next few weeks, events may clarify whether a January 2019 launch date is realistic.

Revised draft NCC Rules available

In other news that illustrates the progress we are making: the revised draft NCC Rules (June 2018) has been approved by the national judicial conference committees ("LOVs"). They are now available online (www.ncc.gov.nl). The updated text incorporates comments from experienced lawyers and has been thoroughly checked for consistency.

Code of Civil Procedure in English



A related and truly innovative project is moving forward rapidly. The NCC team is preparing an English-language glossary of procedural terms as well as an English-language version of the Code of Civil Procedure. The First Edition of our work ("Code of Civil Procedure - Selected Sections and the NCC Rules") is now available for purchase at www.elevenpub.com.

[Flyer Code of Civil Procedure](#)

To illustrate how this can have an impact on how judges and lawyers do their work, here are a few examples from the glossary:

- 'motions' are used to raise procedural defences or to address case management issues (in Dutch: *incidentele vordering* or *procedureel verzoek*);
- 'directions' are given by the court to keep things moving and provide the structure that is needed for fair process (in Dutch: *aanwijzingen* or *rolbeslissingen*)
- 'adverse inferences' may be drawn by the court where a party fails to comply with a direction or other rule (in Dutch: *gevolgtrekking die de rechter geraden voorkomt*);
- 'prima facie evidence' or a 'prima facie showing' is sufficient to make a party's case, as long as there is no 'rebuttal' by the adverse party (in Dutch: *stelplicht, dwingend bewijs behoudens tegenbewijs*).

Focus: written witness statements

In this jurisdiction, witnesses are usually examined at a hearing scheduled for that purpose. Only on fairly rare occasions do witnesses submit a written statement prior to their examination. This may be about to change. The NCC would like to use written witness statements more often, as this will help to avoid surprises, save time and enable the court and the parties to prepare more thoroughly. In this vein, the NCC Rules have this provision (8.5.2):

After conferring with the parties, the court may direct that a party calling a witness submit a written statement by this witness no later than 14 days before the witness examination, or within a different time limit as appropriate for sound case management.

Questions?

We'll keep you posted. The next Update is scheduled for November-December.



If you have any questions, please contact us at NCC@rechtspraak.nl. Or visit our website www.ncc.gov.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.

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