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Rules of Procedure for the International Commercial Chambers of the Amsterdam District Court (Netherlands Commercial Court) and the Amsterdam Court of Appeal (Netherlands Commercial Court of Appeal) (The NCC Rules)

CONCEPT

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de Rechtspraak

Index

SECTION 1: SCOPE 5
Article 1.1: General provisions 5
Article 1.2: International commercial cases 5
Article 1.3: Application of these Rules and the law 6
SECTION 2: LANGUAGE 6
Article 2.1: English language 6
Article 2.2: Implications of the language of the action for third parties 7
SECTION 3: MODE OF PROCEDURE AND TIME LIMITS 7
Article 3.1:Representation 7
Article 3.2:Communicating with the court and submitting documents 7
Article 3.3: Fair process 8
Article 3.4: Due process and time limits 8
Article 3.5: Judicial panel 9
SECTION 4: INITIATING AN ACTION 9
Article 4.1: Submitting a claim 9
Article 4.2: Amendment of a claim 10
SECTION 5: DEFAULT AND DEFENCE 10
Article 5.1: Default 10
Article 5.2: Appearance and defence 10
Article 5.3: Submission and amendment of a counterclaim 11
SECTION 6: PROCEDURAL AND INTERIM MEASURES 11
Article 6.1: General provisions 11
Article 6.2: Motions on jurisdiction, venue or applicability of these Rules 11
Article 6.3: Interim measures 11
Article 6.4: Third parties 12
Article 6.5: Consolidation 12
SECTION 7: HEARINGS AND CONFERENCES 12
Article 7.1: Scheduling 12
Article 7.2: Notice 12
Article 7.3: Order of business 12
Article 7.4: Acts of process and exhibits introduced at the hearing 12
Article 7.5: Public hearing 13

Article 7.6: The hearing 13
Article 7.7: Court record 14
SECTION 8: EVIDENCE 14
Article 8.1: Determination of the facts 14
Article 8.2: Allocation of the burden of proof 15
Article 8.3: Assessment of evidence 15
Article 8.4: Order to produce documents and confidentiality 15
Article 8.5: Witnesses 16
Article 8.6: Experts 17
Article 8.7: Judicial on-site inspection 17
Article 8.8: Preparatory testimony by witnesses, investigations by experts and on-site inspections 17
SECTION 9: JUDGMENT 18
Article 9.1: Date of judgment 18
Article 9.2: Judgment in public 18
Article 9.3: Substance of the judgment 18
Article 9.4: Reasoning in the judgment 18
Article 9.5: Form of judgment and issuing copies 18
Article 9.6: Oral pronouncement of judgment 18
Article 9.7: Enforceability 18
Article 9.8: Correction and additional judgment 19
SECTION 10: COSTS 19
Article 10.1: Court fee 19
Article 10.2: Agreement on costs 19
Article 10.3: Allocation of costs absent agreement 19
SECTION 11:DISCONTINUANCE, WITHDRAWAL AND RESTART 20
Article 11.1: Discontinuance 20
Article 11.2: Withdrawal 20
SECTION 12: FINAL PROVISIONS 20
Article 12.1: Adoption and effective date 20
Article 12.2: Applicability 20
Article 12.3: Authentic version 21
ANNEX I: Choice of forum clause 22
ANNEX II: Costs for legal representation as awarded to the succesful party in cases at the NCC, CSP or NCCA 23

ANNEX III: EXPLANATORY NOTES TO THESE RULES OF PROCEDURE 24
GENERAL 24
SECTION 1 24
Article 1.2.1(1)(a) 24
Article 1.2.1(1)(b) 24
Article 1.2.1(1) (c) and (d) 25
Article 1.2.2 25
Article 1.2.3 26
Article 1.2.4 26
Article 1.3.3 26
SECTION 2 26
Article 2.1 26
SECTION 3 27
Article 3.1.1 27
Article 3.2.1 27
Article 3.4.2 27
Article 3.5.2 27
SECTION 4 27
Article 4.1.2 27
Article 4.1.4 27
Article 4.2.1 28
SECTION 7 28
Article 7.4 28
Article 7.7.3 28
SECTION 8 28
Article 8.4.6 28
SECTION 10 28
Article 10.1 28
Article 10.3 28

SECTION 1: SCOPE

Article 1.1: General provisions

1.1.1. These rules of procedure (Rules) govern proceedings in the Netherlands Commercial Court (NCC) and the Netherlands Commercial Court of Appeal (NCCA). The NCC and the NCCA are chambers of the Amsterdam District Court and the Amsterdam Court of Appeal respectively. Based in the Palace of Justice at IJdok 20 in Amsterdam (the court building), these chambers deal with international commercial matters.

1.1.2. Certain provisions in these Rules apply specifically to proceedings in the Court in Summary Proceedings in the NCC (CSP) or the NCCA. Otherwise, these Rules focus on proceedings in first instance in the NCC. These Rules also apply to proceedings in the CSP 1 and NCCA, except where the provision indicates otherwise or would not be appropriate in summary or appellate proceedings.

1.1.3. These Rules focus on actions by claim, but also apply, where appropriate, to actions by application.

Article 1.2: International commercial cases

1.2.1. An action may be initiated in the NCC where:

a) the action is a civil or commercial matter within the autonomy of theparties and is not subject to the jurisdiction of the Cantonal Court or theexclusive jurisdiction of any other chamber or court;
b) the matter has an international aspect;
c) the parties to the proceedings have designated the AmsterdamDistrict Court as the forum to hear their case or the Amsterdam DistrictCourt has jurisdiction to hear the action on other grounds; and
d) the parties to the proceedings have expressly agreed that theproceedings will be in English and will be governed by these Rules.

1.2.2. An action may be initiated in the CSP where:

a) a provisional or protective measure is sought or another decision forwhich the court in summary proceedings is designated by law; and
b) the conditions of Article 1.2.1 are satisfied.

1.2.3. An action may be initiated in the NCCA:

a) on appeal against a decision by the NCC (including decisions by theCSP);
b) in first instance, if the matter is eligible for appeal and therequirements set out under Article 1.2.1 are satisfied, the parties havingdesignated not the Amsterdam District Court but the Amsterdam Courtof Appeal; or
c) following an arbitration as set out in article 1064a of the Dutch Codeof Civil Procedure (Wetboek van Burgerlijke Rechtsvordering; DCCP)where the requirements of Article 1.2.1(b) and (d) are satisfied and theplace of arbitration is in the appellate district of Amsterdam.

1.2.4. The NCC will determine whether it has jurisdiction and is the proper venue in the action and whether the requirements set out in Article 1.2.1(a) through (d) have been satisfied. The court must test the satisfaction of Article 1.2.1(b) and (c) of its own initiative.

1.2.5. Where a defendant appears solely to deny that the action is within the NCC's authority to deal with, the defendant will be charged a lower court fee (see Article 10.1). Additionally, the defendant may request that this issue be dealt with in Dutch. The NCC will honour that request, unless the defendant does not have a sufficient interest.

Article 1.3: Application of these Rules and the law

1.3.1. If a party fails to comply with any of the provisions of these Rules, the court may impose an appropriate sanction, taking into account the nature of the specific provision and the severity of the violation. If warranted, except where these Rules express statutes in force, the court may depart from any of these Rules or issue an appropriate order in any circumstances not provided for by these Rules, taking their purpose into account.

1.3.2. The court applies Dutch procedural law, including in particular the DCCP, and the substantive law as designated by the rules of Dutch private international law. For ease of reference, these Rules reflect certain relevant rules of Dutch civil procedure, but are without prejudice to the law's meaning and effect.

SECTION 2: LANGUAGE

Article 2.1: English language

2.1.1. The language of the proceedings is English. The court may permit the parties to proceed in Dutch, on certain issues or all issues, if the parties to the proceedings unanimously so request after the originating document is filed. The parties must notify the court of such request as soon as practicable.

2.1.2. The court may order a party to submit a translation of a document that is in a language other than the language of the action and may direct that this translation be certified. Dutch case law and scholarly analysis and documents in Dutch, German or French need not be translated, except where the court directs otherwise. However, parties are recommended to upon the first use of a Dutch legal term in an English translation to also mention the term in Dutch (in brackets).

2.1.3. In actions by application the court office gives notice of the action to the interested parties, having regard to the other statutory rules. If the interested party resides outside the Netherlands and a translation of the application is required under a convention or European regulation, the applicant must promptly submit that translation to the court.

2.1.4. A party that does not have a sufficient command of English and desires the assistance of an interpreter at a hearing may hire an interpreter at its own expense. If a party wishes to examine a witness or expert who does not have a sufficient command of English, that party must arrange for assistance by an interpreter at its own expense.

Article 2.2: Implications of the language of the action for third parties

2.2.1. Where a third party is added in an action pending in the NCC or is involved in a closely connected action, the court will give appropriate directions with regard to the language of the action, taking into account the requirements set out at Article 2.2.2 as well as due process.

2.2.2. If a third party, on its own application and with the court's permission, is added in the action as a claimant or a defendant, the third party is bound by the other parties' agreement in respect of the language of the proceedings.
This does not apply in the event of a claim for contribution or indemnity, or where a third party is given notice on the basis of article 118 DCCP, or where a third party has intervened. In those events, the proceedings then may be in Dutch, unless the third party agrees in writing to proceed in English or has no legally relevant interest in the action being conducted in Dutch. The court may direct that the claimant seeking addition for indemnification or contribution submits a sworn translation into Dutch of the documents in the main action. The same rule applies where a third party submits an application for an order lifting a pre-judgment attachment.

SECTION 3: MODE OF PROCEDURE AND TIME LIMITS

Article 3.1:Representation

3.1.1. A party may not act pro se, but must be represented by its lawyer who must be a member of the Dutch Bar (advocaat), except where the law provides otherwise.

3.1.2. Acts of process, such as the submission of a claim or defence, must be done by a member of the Dutch Bar. Visiting lawyers as referred to in article 16b Advocates Act (Advocatenwet) (members of the bars in Member States of the European Union, the European Economic Area or Switzerland) may not do acts of process, but they may act for a party in other ways in accordance with article 16e of the Advocates Act (cooperation with a member of the Dutch Bar). Other visiting lawyers may not act for a party, but the court may allow them to speak at any hearing.

Article 3.2:Communicating with the court and submitting documents

3.2.1. Except where the court directs otherwise, the NCC/NCCA portal is the only means of communication with the court and must be used for all submissions, including a claim or defence, exhibits, applications, requests and notifications to the court. Original documents or objects that may be relied on as evidence but are not suitable for submission via the NCC/NCCA portal may be deposited with the clerk. Any other mode of submission requires the advance permission of the court. For further rules on electronic communications, reference is made to the NCC website, the Rules regarding the access to and use of the digital system for data processing of the NCC and NCCA (Reglement inzake de toegang tot en het gebruik van het digitaal systeem voor gegevensverwerking van de NCC en NCCA) and the Decree on digitalisation of civil and administrative law (Besluit digitalisering burgerlijk procesrecht en bestuursprocesrecht).

3.2.2. The parties to the proceedings are not permitted to speak with the judge except at a hearing or conference. The parties may contact the clerk at any time on matters of a practical or procedural nature, but they must promptly inform the other parties of what

they discuss with the clerk. The court may direct that oral communication be done by telephone, video conferencing or any other suitable means.

3.2.3. Wherever possible, exhibits must be submitted with the document (such as a claim or defence) in which reference is made to the exhibit. Exhibits submitted after the related document or documents have been submitted are subject to Article 7.4.

3.2.4. Exhibits must be organised so as to facilitate easy access by the court and the parties. Exhibits must be numbered (the numbering to be continued in each consecutive document), but each party may use its own numbering system. Exhibits must be submitted with a document that references each exhibit, indicates the relevance to the proceedings, and specifies any relevant passages. Where a party submits an exhibit in a language that is not the language of the action, the party must clearly raise this point and state whether a translation is enclosed. Exhibits must not contain any comments or markings that are not included in the original.

3.2.5. The court will disregard any document, request or notification it receives after it has set the date for giving judgment, except where:

a) the defendant (who initially failed to appear) enters an appearance;
b) evidence is supplied of the counterparty's consent to thecommunication;
c) the court has requested the communication;
d) the parties provide comments on a court record not prepared in theirpresence; or
e) the communication serves to withdraw the claim or application.

Article 3.3: Fair process

Except where a statute provides otherwise, the court must give the parties the opportunity to present their arguments, respond to the other party’s arguments, and express their views on all documents and other information in the action. The parties must make a full and truthful presentation of the relevant facts. In the event of non-compliance, the court, if warranted, may draw adverse inferences as it considers appropriate. A party that relies on any document must submit a copy, except where a copy has already been submitted in the same action.

Article 3.4: Due process and time limits

3.4.1. At a party’s request or of its own initiative, the court must give all such directions as may facilitate the just, fair and speedy disposition of the action. The court must wherever possible prevent any unreasonable delay. The parties have a duty to each other to prevent any unreasonable delay.

3.4.2. The time limit for any act of process is to be set by the court. Absent special circumstances, the following time limits apply:

a) for a claim or defence or similar statement: six weeks;
b) for an extensive brief: four weeks; and
c) for a simple brief: two weeks.

A party may request an extension. The court must grant a unanimousrequest by the parties, unless this would cause unreasonable delay.Otherwise, extensions are only granted for compelling reasons. At aparty’s request or of its own initiative, the court may

direct that anytime limit be extended or shortened as may be required for due process.If a party fails to comply with a time limit and no extension is granted,its right to do the act of process is waived.

Article 3.5: Judicial panel

3.5.1. Cases are heard and disposed of by a three-judge panel, with the exception of cases brought before the CSP.

3.5.3 The president of the NCC will assign cases submitted to the CSP to a single judge.

SECTION 4: INITIATING AN ACTION

Article 4.1: Submitting a claim

4.1.1. An action is initiated by submitting an originating document that states the claim. In addition to the other particulars required by law, the originating document must specify:

a) the claim and its grounds;
b) the defences asserted by the defendant, the grounds of thosedefences and the claimant's reply;
c) the exhibits available to the claimant and the witnesses whose testimony it relies on to substantiate the disputed grounds;
d) the designation of the court hearing the matter: "the Amsterdam District Court (Netherlands Commercial Court)" or "the Amsterdam Court of Appeal (Netherlands Commercial Court of Appeal)";
e) the confirmation that parties have agreed to proceed in accordance with these rules of procedure;
f) the e-mail address of the claimant's lawyer; and
g) if available, the name and the e-mail address of the lawyer of each defendant.

4.1.2. The originating document must include the following exhibits:

a) documents demonstrating that the matter has an international aspect as meant in Article 1.2.1(b), or that the matter had an international aspect at the time the parties designated the Amsterdam District Court to hear their disputes and agreed that these Rules would govern the proceedings;
b) the agreement or other evidence demonstrating that the conditions of Article 1.2.1(c) and (d) are satisfied; a clause contained in general terms and conditions does not satisfy this provision;
c) any agreements made with respect to the costs of litigation; and
d) all available exhibits to substantiate the claim.

4.1.3. Where the claimant fails to comply with the rules in the previous two Articles but compliance is feasible, the court will grant a two-week time limit for compliance.

4.1.4. The action is pending from the day on which the originating document is submitted or, as the case may be, the day on which the summons is served.

4.1.5. Where a case is referred to the NCC by another Dutch court, the claimant must submit the referral decision, the originating document, the notice to the defendant and

the particulars and exhibits referred to in Article 4.1.2(a) through (d). The court may direct that a translation of each document in the proceedings up to the referral be submitted by the party that submitted that document. A surcharge will be applied to increase the court fee to the NCC, CSP, or NCCA rate [link to NCC/NCCA website]. The case will be heard by the NCC, unless the case fails to satisfy the conditions set out in Article 1.2.1, in which event the case will be heard by another chamber of the Amsterdam District Court or the Amsterdam Court of Appeal.

Article 4.2: Amendment of a claim

4.2.1. Until the court has set the date for giving the final judgment (or as the case may be the final judgment has been given), the claimant may increase, reduce or otherwise amend its claim or the grounds of its claim.

4.2.2. The court may disallow, on the defendant's objection or of its own initiative, any increase or other amendment (which is not a reduction), taking into account due process.

SECTION 5: DEFAULT AND DEFENCE

Article 5.1: Default

If the defendant fails to enter an appearance or to provide notification of its lawyer on time, or to pay the court fee on time, and the notice periods and formalities have been complied with, the court will record the defendant's default for failure to appear and the court will give a default judgment for the claimant, except where the court determines that the claim is unlawful or unsubstantiated. Until the final judgment is given, a defendant who is in default may enter an appearance, provide notification of its lawyer and pay the court fee, in which case the consequences of its default status will lapse, except in respect of costs. After the final judgment has been given, the defendant may apply for it to be set aside in accordance with the statutory rules and time limits.

Article 5.2: Appearance and defence

5.2.1. To enter an appearance, a defendant must:

a) attend court for a hearing, in cases in the CSP and other caseswhere the law allows; or
b) provide timely notification of its lawyer, in all other cases..

Where (b) obtains, when the defendant enters its appearance, it must state the name, business address and email address of its lawyer.

5.2.2. The defendant must submit a defence within the applicable time limit. Except where the defendant raises a motion contesting the court's authority in accordance with Article 6.2, the defence must state the defendant's procedural defences and its defences on the merits, unless the court directs otherwise. If the defendant fails to comply, the court may direct that the defendant's right to submit a defence on the merits is waived. The defence must state the names of witnesses and other evidence that may substantiate the grounds of the defence. The court may order the defendant to supply any missing particulars.

Article 5.3: Submission and amendment of a counterclaim

5.3.1. The defendant may submit a counterclaim, except where contrary to due process. The counterclaim must be submitted by the defendant in the defence statement and must state the grounds of the counterclaim, the opposing party's defences and the counterclaimant's response as well as the witnesses and other evidence available for substantiation.

The claim and the counterclaim will be dealt with simultaneously and disposed of in the same final judgment, except where the court determines that either the claim or the counterclaim can be disposed of at an earlier stage.

5.3.2. A counterclaim may be amended subject to Article 4.2.

5.3.3. The respondent to the counterclaim may submit a defence to the counterclaim subject to Article 5.2.2.

SECTION 6: PROCEDURAL AND INTERIM MEASURES

Article 6.1: General provisions

Applications for procedural or interim decisions or other measures (motions) may be made either in the originating document or in a separate subsequent document. All such motions must be made concurrently, if at all practicable. The court may, if appropriate, rule on the motions prior to the judgment on the main action.
In such cases the court may set the date for the hearing on the main action in its ruling on the motions.

If there are no adequate grounds for immediate disposition of the motion prior to the judgment in the main action, and a party failed to issue a statement on the merits, the court may direct that the party's right to issue such statement is waived.

Article 6.2: Motions on jurisdiction, venue or applicability of these Rules

Where the defendant intends to argue that the Amsterdam District Court or the Amsterdam Court of Appeal, as the case may be, does not have jurisdiction or is not the proper venue or that there is no valid agreement to apply these Rules, the defendant must raise this defence prior to any defences on the merits. If the defendant does not comply, the court may direct that the defendant's right to raise such defence is waived.

Article 6.3: Interim measures

6.3.1. While a main action is pending, any party may make a motion for an interim measure for the duration of the proceedings, provided that there is a sufficient connection between the interim measure and the main claim.

6.3.2. If Article 1.2.2 is satisfied, the matter is urgent and interim measures prior to the judgment on the main action are appropriate, the CSP may, taking into account the parties' interests, grant interim measures. The applicant must submit the appropriate form [hyperlink to website NCC/NCCA] enclosing a draft originating document. If the matter is so urgent that a response from the court is required outside of its business

hours, the applicant may refer to the "duty roster" published on the Amsterdam District Court's website [hyperlink to website Amsterdam District Court].

The CSP will schedule a hearing and may direct that the hearing be held outside of court hours and/or at a location other than the court building. The applicant must comply with any terms that the CSP may impose in the scheduling order. The originating document must state those terms and how they have been complied with. The application will be denied if the CSP determines that it would not be appropriate to rule on the application in summary proceedings. Any decision in summary proceedings is without prejudice to the main action.

Article 6.4: Third parties

Any party may make a motion to add third parties to the action for contribution, indemnity or any other purpose allowed by law.
A third party may make a motion to be added to the action on the claimant's side, on the defendant's side or as a third party.
The court may grant the motion if it determines that there are adequate grounds, taking into account the interests of all parties concerned.

Article 6.5: Consolidation

Any party may make a motion for consolidation where cases are pending before the same court between the same parties and on the same subject, or where cases are pending before the same court and there is a sufficient connection between them.

SECTION 7: HEARINGS AND CONFERENCES

Article 7.1: Scheduling

The court may order a hearing or a case management conference at any stage of the proceedings. At the parties' request or with their consent, the court may give its judgment without a hearing.

Article 7.2: Notice

The notice of the hearing must specify the following particulars with regard to the hearing:

a) the date and time;
b) how much time is available;
c) the name or names of the judge or panel who will be dealing with the case; and
d) what the time limit is for submitting exhibit.

Article 7.3: Order of business

The clerk may provide in advance a non-exhaustive list of topics that the court intends to discuss at the hearing.

Article 7.4: Acts of process and exhibits introduced at the hearing

Except where the law provides otherwise, exhibits may be submitted no later than 10 days before the hearing, or, if the hearing is in the CSP, 24 hours before the hearing. If a

party submits exhibits after the time limit has expired, including submission at the hearing, the court must disallow the exhibits, except where the court determines that the party was reasonably justified in not complying or that, taking into account due process, the exhibits should be admitted. Where the court orders the production of exhibits for use at a hearing, these exhibits must be submitted no later than the date set by the court and must be available to every party at that time.

A party that envisages doing an act of process at the hearing must notify the court and every other party, providing a copy of the document to be submitted, no later than 10 days, or, in the CSP, 24 hours before the hearing.

Article 7.5: Public hearing

The hearing is in public. However, the court may direct that the hearing in whole or in part be held in private or that only certain persons be allowed to attend the hearing if necessary to protect the parties' privacy, or to prevent substantial harm to the sound administration of justice.

The parties must not disclose anything that is said or done at a hearing that is held in private or that only certain persons are allowed to attend. At a party's request, the court may lift this obligation in whole or in part.

Article 7.6: The hearing

7.6.1. At the hearing, the parties must be represented by their lawyer, unless the law provides otherwise. The court may order a party to attend the hearing in person. A legal entity must be represented by someone who is authorised to represent the entity or someone else who is aware of the matter and is specially authorised to make binding agreements on behalf of the entity. The court may direct that the parties submit a written statement or brief that sets out their arguments in full ("conclusie") or on specific topics ("akte") on a date in advance of the hearing.

At the hearing, the court will examine the parties and allow them to present their arguments. Parties may may make use of written notes of pleading. Taking into account due process, the court may:

a) request that the parties provide information;
b) allow the parties to further substantiate their arguments;
c) discuss preliminary matters, motions or issues that may, in the interest of the administration of justice, require resolution prior to the judgment on the merits;
d) review the issues of fact or law and discuss a timetable or other case management plan to address and resolve these issues, including where necessary the taking of evidence;
e) enquire whether the dispute could be resolved amicably and, where appropriate, assist the parties in a settlement process;
f) give such other directions as it may consider appropriate to deal with the matter justly, expeditiously and fairly.

The court will allow the parties to ask each other questions, but the court may direct that a question need not be answered. With the court's advance permission, witnesses and party-appointed experts may be heard at the hearing.

7.6.2. At the end of the hearing, the court will discuss with the parties and their lawyers what the next steps should be, with a view to due process and proper case management. The court may, at a party's request or of its own initiative, direct that:

a) the parties may submit a written response to any exhibits that may have been submitted prior to, during or after the hearing;
b) the parties may make a further written submission to respond to each other's arguments;
c) the proceedings be stayed, to be resumed at a later time to be determined;
d) a subsequent hearing or conference will be held; or
e) judgment will be given.

Article 7.7: Court record

7.7.1. Any settlement that may be agreed during the hearing will be recorded in the court record at the hearing and in the form required for enforcement.

7.7.2. The court may direct that a record be drawn up of the hearing. The record will be read aloud and signed by the court, the clerk and the parties. The record is a concise summary of what was said and done at the hearing. The court may direct that a party's statement be recorded in its entirety in the record. The court may also direct that the record be drawn up after the hearing. The court may then direct that the parties be allowed a 14-day time limit after receipt to comment on the record made available to them.

7.7.3. The court may direct that an audio or video recording made by or on behalf of the court substitutes for the record.

7.7.4. A party must notify the court and the other parties, no later than 10 days before the hearing, if it has instructed a court reporter to prepare a verbatim transcript of what is said at the hearing. The court reporter's involvement in the proceedings is at the party's expense. In this notification, the party must submit the court reporter's qualifications to the court and the other parties. After the hearing, the party must submit a copy of the verbatim transcript to the court and the other parties (except for parties who have not entered an appearance) as soon as practicable. Where a verbatim transcript is prepared, the court may direct that in the court record reference will be made to the transcript without any further details on what was said and done at the hearing. These rules apply to all hearings, including hearings for the examination of witnesses or experts.

SECTION 8: EVIDENCE

Article 8.1: Determination of the facts

Except where the law provides otherwise, any decision by the court must be based only on facts and rights which of been imparted to the court in the proceedings or which have been asserted and established in accordance with the rules of evidence of the DCCP. Facts or rights asserted by a party and not adequately disputed will be accepted by the court. The court may, however, allow evidence to be taken except where acceptance of

such an assertion would entail legal consequences that are outside of the autonomy of the parties.

Article 8.2: Allocation of the burden of proof

The court will allocate the burden of proving certain facts or rights to the party that relies on a legal basis supported by those facts or rights for a claim or defence, except where the law or the requirements of reasonableness and fairness provide otherwise.

Article 8.3: Assessment of evidence

Except where the law provides otherwise, the assessment of evidence is at the court's discretion.

Article 8.4: Order to produce documents and confidentiality

8.4.1. In any action and at any stage of the action, the court may order a party to explain certain assertions or to disclose certain documents pertaining to the case.

8.4.2. For compelling reasons, a party may withhold explanation or disclosure or notify the court that the explanation or disclosure it was ordered to give may be reviewed only by the court. If the court determines that the party's position is not justified, the court may draw such adverse inferences as it considers appropriate. If the court determines that the party's position is justified, the obligation to explain or to disclose will lapse. If the court determines that the party's position on review only by the court is justified, the court may only rely on the explanation or disclosure for purposes of judgment if the other parties agree that review will be limited to the court only. If the other parties do not so agree, the case will be assigned to a different judge or panel, as the case may be.

8.4.3. If disclosure of documents to a party would cause disproportionate harm to another person's privacy, the court may direct that disclosure be made only to a lawyer or a person who has obtained special permission from the court for this purpose.

8.4.4. Where the court has given directions to this effect, the parties must not disclose any information from the case to any person outside the case. The court may lift this obligation in full or in part at a party's request.

8.4.5. The court may disregard any information or documents submitted by a party if that party fails to comply with the court's request to explain which assertions the information or documents are intended to substantiate and which parts of the information or documents are relevant to that end.

8.4.6. Where a party has a legitimate interest, it may make a motion seeking the inspection or production of a copy or extract of specific documents that pertain to a legal relationship which involves that party or its legal predecessors. The order may be given to a person or an entity which has custody or control of the documents, but such person or entity is not required to comply with the order if justified by compelling reasons or if the court determines that it can be reasonably assumed that sound administration of justice is also assured without the inspection or production of the documents. The party making the motion will bear the costs of inspection or production.

8.4.7. While an action is pending, at a party's request or of its own initiative, the court may order one or more parties to disclose the books, records and documents that the party is required by law to keep, prepare or retain. If this order is not complied with, the court may draw any adverse inference it considers appropriate.

Article 8.5: Witnesses

8.5.1. Testimony by a witness may only be used as evidence where the witness has personal knowledge of the facts that are the subject of the testimony. The parties may give testimony. Testimony by a witness who is a party has no probative value in this party's favour in respect of the facts that this party must prove, except where the testimony is corroborative evidence that supplements other evidence. Where a party who is obligated to testify does not appear in court, or fails to answer a question, or refuses to sign the record of the testimony, the court may draw any adverse inference it considers appropriate.

8.5.2. At a party's request or of its own initiative, the court must direct that an evidentiary hearing be held for the purpose of giving testimony where the law permits testimony by witnesses and the facts that the party has offered to prove are in dispute and may be material in the disposition of the case. Testimony by witnesses for purposes of rebuttal evidence is permitted as a matter of law.

8.5.3. Anyone duly summoned in accordance with the law is obligated to give testimony. Before giving testimony, the witness must swear an oath, make a solemn affirmation or make a solemn declaration to tell the truth as follows: "So help me God", "I so promise" or "I so declare". Each witness's testimony must not be taken in the presence of other witnesses who have not yet given testimony, except where such other witnesses are a party.

8.5.4. The parties and their lawyers may examine the witnesses, but the court may direct that a question not be answered. At a party's request or of its own initiative, the court may confront a witness with testimony given by other witnesses or with positions taken by one or more parties. The court may direct that the parties respond to questions relating to the witness statements. Where the witness is not a party, the parties may ask each other questions, directly or through their lawyers, but the court may direct that a question need not be answered. The court may draw any adverse inference it considers appropriate from a party's statement with regard to testimony, or a party's failure to appear at the evidentiary hearing, or a party's failure to answer a question or sign the record.

8.5.5. The court will prepare a record of testimony given by the witnesses. Each witness's testimony will be read aloud to this witness, and each witness may make amendments or additions in the record. Each witness must sign the record of the witness's own testimony. Where a witness refuses to sign, or makes a declaration of incapacity to sign, the refusal or declaration will be noted in the record along with the cause of the incapacity. Articles 7.7.3 and 7.7.4 apply.

Article 8.6: Experts

8.6.1. At a party's request or of its own initiative, the court may direct that one or more experts be appointed to carry out an investigation and prepare a report for the court, or that an expert give testimony. The court's directions will include the topics for the investigation. The court will appoint the expert, having heard the parties' views, and will instruct the expert to submit a written report to the court or to attend a hearing to make an oral report. The appointment is not subject to appeal.

8.6.2. The court will fix an amount that must be deposited in advance to cover the expert's fee and expenses and the court will order one or more parties to pay the deposit.

8.6.3. The expert must allow the parties to submit comments and requests as part of the investigation. The parties must cooperate with the investigation. If a party fails to comply, the court may make such adverse inferences as it considers appropriate.

8.6.4. The court will prepare a record of testimony given by an expert at an evidentiary hearing. Articles 7.7.3 and 7.7.4 apply.

Article 8.7: Judicial on-site inspection

At a party's request or of its own initiative, the court may inspect a site or view an object on location if its presentation at an evidentiary hearing is impossible or would impose an undue burden. The court will allow the parties to submit comments or requests. The court will prepare a record. Articles 7.7.3 and 7.7.4 apply wherever practicable.

Article 8.8: Preparatory testimony by witnesses, investigations by experts and on-site inspections

8.8.1. Before proceedings are initiated, anyone who has a sufficient interest may make an application and the court may direct that preparatory testimony by witnesses will be taken, if such testimony is permitted by law, that a preparatory investigation by an expert will be carried out or that a site will be inspected.

The application may be submitted to the NCC where there are reasonable grounds to expect that the main action if proceedings are initiated, will be within the NCC's authority to deal with.

8.8.2. Equally, after proceedings are initiated, at a party's request the court may, prior to a judgment on the allocation of the burden of proof, direct that preparatory testimony by witnesses will be taken.

8.8.3. Where all of the parties are present or represented at the evidentiary hearing, or wherever evidence is taken, the preparatory testimony by the witnesses or experts or the preparatory on-site inspection or viewing, given or executed on the basis of the previous Articles, will have the same probative value as where the evidence is taken in the ordinary manner in a pending action. Otherwise, the court may disregard such testimony or the findings of such an inspection or viewing.

SECTION 9: JUDGMENT

Article 9.1: Date of judgment

The court will set the date for giving judgment and notify the parties that have entered an appearance. The court must postpone giving judgment if the parties who have entered an appearance unanimously so request.

Article 9.2: Judgment in public

The judgment must be given in public.

Article 9.3: Substance of the judgment

The court's judgment must include a decision on every part of the claim or application. The court must examine and decide the case only on the grounds brought forward by the parties in support of their claim or application or defence, except where the law provides otherwise. Where a party has not had an adequate opportunity to express its view on certain documents or data, the court may not use those documents or data as the basis for a decision adverse to that party. The court must supply alternative legal bases of its own initiative, where appropriate. The court may not refuse to issue a decision.

Article 9.4: Reasoning in the judgment

The judgment must state the decision and the facts and reasons it is based on, except where the law provides otherwise.

Article 9.5: Form of judgment and issuing copies

The judgment must state the name of the judge or judges who gave the judgment.

In highly urgent cases, a copy of an abbreviated judgment may be issued, but a copy of the full judgment must be issued as soon as practicable.

The judgment must be signed by the judge, or by the president of a three-judge panel, and by the clerk. Alternatively, the judgment may be signed by the judge who issues the judgment.

The court will issue a copy of the judgment to the parties that appeared in court. The copy will be issued by uploading the judgment to the NCC/NCCA portal. The court may direct that the judgment be published on the website of the Dutch courts (www.rechtspraak.nl).

Article 9.6: Oral pronouncement of judgment

The court may pronounce the judgment at the hearing if all of the parties are present. The judgment must state the decision and the reasons for the decision. The court will prepare a record and send a copy to the parties within two weeks. Any party who may enforce the judgment will be issued a copy in the form required for that purpose.

Article 9.7: Enforceability

At a party's request, except where the law provides otherwise or where inappropriate given the nature of the case, the court may direct that the judgment will be enforceable

notwithstanding appeal or other legal action against it. The court may impose the condition that security must be provided for an amount fixed by the court.

Article 9.8: Correction and additional judgment

At a party's request or of its own initiative, at any stage, the court must correct any manifest error in a judgment, such as a typographical or calculation error, if the error is easy to rectify. At a party's request, where the judgment does not include a decision on every part of the claim or application, the court must give an additional judgment at any stage. Before making a correction or giving an additional judgment, the court must allow the parties to express their views. 21

SECTION 10: COSTS

Article 10.1: Court fee

The parties are charged a court fee [Link to NCC/NCCA website]. Where a defendant denies that the action is within the NCC's authority to deal with the case, the defendant must give notice of this defence in the NCC/NCCA portal as soon as practicable and a lower court fee at the standard non-NCC rate will be charged. This court fee will be increased to the NCC rate if the defence is rejected. Where the case is transferred by another court or chamber to the NCC, the court fee will also be increased to the NCC rate.

The court fee must be paid within four weeks in accordance with the statutory time limit. Where a party fails to comply, the court may impose a sanction, except where the court determines that a sanction would cause manifest injustice, taking into account the parties' interest in access to the court.

Article 10.2: Agreement on costs

The parties may make agreements they consider appropriate in respect of the costs of the proceedings, including the court fee and costs for lawyers, service or notice, translation or interpreting, and court reporters, and expenses for witnesses or experts. These agreements must be made in advance of the proceedings, or no later than the day the court determines when it will give judgment in the main action. The claimant must notify the court of the substance of these agreements as soon as practicable and send a copy of the notification to the defendant. Where no agreement is made or notified to the court on time, the court will apply Dutch law in respect of costs of proceedings in civil and commercial matters (Article 10.3)., subject to the rates to assess lawyers' costs and expenses as stated on the NCC/NCCA website (hyperlink to NCC/NCCA website).

Article 10.3: Allocation of costs absent agreement

In general, the unsuccessful party will bear the costs of the proceedings. However, no costs incurred by the successful party may be apportioned to the unsuccessful party other than the lawyer's fees and expenses that fall within the scope of articles 237et seq. of the DCCP. The court may order that each party must bear its own costs or that certain costs incurred by a party without sufficient cause must be borne by that party.

SECTION 11:DISCONTINUANCE, WITHDRAWAL AND RESTART

Article 11.1: Discontinuance

11.1.1. Any actions initiated by claim will be discontinued where the parties unanimously so request or where the parties have been allowed to express their views on the next steps in the case and the parties have not notified the court that they wish to proceed. The clerk will record the discontinuance.

11.1.2. Where an action has been discontinued, a party may submit a written request to restart the proceedings. In the request, the party must state the case number and explain what happened in the proceedings prior to discontinuance. The court will give directions as to whether the proceedings will be restarted and if so, how, and what documents must be submitted.

11.1.3. This Article does not apply to summary proceedings governed by Article 6.3.2.

Article 11.2: Withdrawal

11.2.1. In actions initiated by application, the applicant may withdraw the application except where a decision has been given in the first instance or an interested party has submitted a counter-application or counterclaim.

11.2.2. In summary proceedings governed by Article 6.3.2, the claimant may withdraw the claim at any time before the hearing starts. Where a claim is withdrawn, the defendant may request that the court schedule a hearing to discuss the defendant's claim as to costs. The court decides whether a hearing is to be held or whether the application may be dealt with in writing. In the first case the defendant must promptly notify the claimant of this date set by the court for the hearing. In the second case parties will be given the opportunity to present their arguments in writing.

11.2.3. Proceedings may not be restarted following a withdrawal.

SECTION 12: FINAL PROVISIONS

Article 12.1: Adoption and effective date

These Rules were adopted by the governing councils of the Amsterdam District Court and the Amsterdam Court of Appeal on ... and ... respectively.

These Rules take effect on ... 2017.

These Rules may be amended. Any amendment will be published in the Staatscourant and on the NCC/NCCA website.

Article 12.2: Applicability

These Rules apply to cases that are initiated after the date on which the Rules take effect and to cases that are transferred by another court or chamber to the NCC, including the CSP, or to the NCCA after the Rules take effect.

Article 12.3: Authentic version

These Rules were adopted in Dutch and in English. The Dutch version and the English version are authentic.

ANNEX I: Choice of forum clause

The text below can be used to designate the NCC as choice of forum. The use of this text does not automatically imply that all the requirements for the adjudication of a case by the NCC have been satisfied.

English version

Jurisdiction clause and acceptance of the Rules of Procedure of the Chamber for International Commercial Matters for proceedings in English

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 provisional measures, including protective measures, available under Dutch law may be made to the NCC's Preliminary Relief Judge in proceedings in English in accordance with the Rules of Procedure of the NCC.

Dutch version

Forumkeuzebeding met toepasselijk verklaring procesreglement NCC voor een procedure in de Engelse taal

Alle geschillen die voortvloeien uit deze overeenkomst, of daarmee verband houden, worden beslecht door de Rechtbank Amsterdam in een procedure in de Engelse taal met toepassing van het Procesreglement voor de internationale handelskamer van deze rechtbank (Netherlands Commercial Court). De voorzieningenrechter van de NCC is bevoegd om – in een procedure in de Engels taal en met toepassing van hetzelfde procesreglement - voorlopige en bewarende maatregelen te treffen overeenkomstig het Nederlandse recht.

ANNEX II: Costs for legal representation as awarded to the succesful party in cases at the NCC, CSP or NCCA

Type of case	Costs awardable for each act of process NCC	Costs awardable for each act of process CSP	NCCA
simple (incl. motion practice in an average or complex matter)	€ 2.000,--	€ 1.000,--	€ 3.000,--
average	€ 4.000,--	€ 2.000,--	€ 6.000,--
complex	€ 8.000,--	€ 3.000,--	€ 12.000,--

intellectual property	See indicative rates (Indicatietarieven) in IP cases for district courts and courts of appeal

Acts of process

Originating document	1
Statement of defence	1
Motion statement	1
Supplementary statement	1
Extensive brief	0.5
Attending case management conference or motion hearing	1
Attending hearing in the main action	2
Attending subsequent hearing	1
Attending witness examination or site inspection	1

ANNEX III: EXPLANATORY NOTES TO THESE RULES OF PROCEDURE

GENERAL

A partial amendment of Dutch procedural law will come into force in 2017 pursuant to the "Acts amending the Code of Civil Procedure in connection with the rationalisation and digitalisation of procedural law" ("Wetten tot Wijziging van het Wetboek van Burgerlijke Rechtsvordering in verband met vereenvoudiging en digitalisering van het procesrecht") [link]. These Rules of Procedure (Rules) anticipate these changes. As a consequence, some provisions mention both current and new procedural law.

SECTION 1

Article 1.2.1(1)(a)

This provision requires that the dispute relate to civil law disputes in a broad sense, such as contractual disputes, claims in tort, property law disputes and corporate law matters. Additionally, a claim to set aside an arbitral award may also be heard in accordance with these Rules, provided the Amsterdam Court of Appeal is competent to do so, and Amsterdam has been elected as the place of arbitration. The NCC does not hear cases that belong to the exclusive jurisdiction of a different chamber, such as the Enterprise Chamber of the Amsterdam Court of Appeal, the Patent Chamber of the District Court of The Hague, the Maritime Chamber of the Rotterdam District Court. If the Amsterdam District Court is awarded exclusive jurisdiction on the basis of the Dutch Financial Supervision Act ("Wet financieel toezicht"; Wft) in, briefly stated, bank-related matters, the parties' rights remain unimpaired in those matters to opt for having matters heard in accordance with these Rules.

Article 1.2.1(1)(b).

A matter has an international aspect when, without being exhaustive:

a) at least one of the parties to the proceedings is resident outside the Netherlands or is a company established abroad or incorporated under foreign law, or is a subsidiary of such company;
b) a treaty or foreign law is applicable to the dispute or the dispute arises from an agreement prepared in a language other than Dutch;
c) at least one of the parties to the proceedings is a company, or belongs to a group of companies, of which the majority of its worldwide employees work outside the Netherlands;
d) at least one of the parties to the proceedings is a company, or belongs to a group of companies, of which more than one-half of the consolidated turnover is realised outside of the Netherlands;
e) at least one of the parties to the proceedings is a company, or belongs to a group of companies, the securities of which are traded on a regulated market, as defined in the Dutch Financial Supervision Act (Wft), outside the Netherlands;
f) the dispute contains legal facts or legal acts outside the Netherlands; or
g) the dispute otherwise involves a relevant cross-border interest.

Article 1.2.1(1) (c) and (d).

The provisions under (c) may be satisfied if the Amsterdam District Court is competent to hear the case on the basis of the rules of international or national procedural law. If that is not the case, a choice of forum is required. Such choice of forum clause may be made before the action is initiated in the contract that is the subject of the dispute or, in the event of a dispute arising from tort, by a separate agreement. Choice of forum may also be made in proceedings pending at another Dutch court. After all, a preliminary motion contesting jurisdiction may also be raised after the statement of defence is filed if the occasion for raising it only arose later (for instance, a change of claim; see "Tekst en Commentaar Burgerlijke Rechtsvordering, aantekening 4 bij artikel 128 Rv"). Therefore, if subsequent to the defence in a pending action the parties choose to have their dispute adjudicated by the NCC, it should also be possible to file a preliminary motion contesting jurisdiction and seek referral in that phase.

If the proceedings were initiated before a court other than the Amsterdam District Court, this court may (upon request or with the parties' consent) refer the case as is to the Amsterdam District Court for adjudication by the NCC.

The Rules also apply to proceedings initiated by application. In proceedings initiated by claim, parties may in principle choose a forum (article 108 DCCP); they may not do so in proceedings initiated by application. Once a proceeding by application has been initiated in the NCC, while the Amsterdam District Court or the Amsterdam Court of Appeal is not otherwise competent, parties can proceed without referring the case to another court, provided that they (including all interested parties) indicate they do not wish a referral (article 270(1) DCCP). This will then be interpreted as a choice of forum as meant in Article 1.2.1(c) and as an acceptance by all parties involved of the these Rules. However, the requirement that in proceedings initiated by application all interested parties have to consent to (i) the Amsterdam District Court as the competent court (ii) acceptance of the NCC's rules of procedure will in many cases be an obstacle, particularly if the number of interested parties is large.

Additionally, jurisdiction may be derived from the fact that the application relates to proceedings initiated by claim that have or will be brought before the NCC, unless the law provides otherwise or the application does not belong to the absolute jurisdiction of the Amsterdam District Court or the Amsterdam Court of Appeal (article 262 DCCP).

Parties must expressly agree that their proceedings will be governed by these Rules. An agreement in which the designation of the NCC is included in the general terms and conditions of one of the parties is not sufficient. Such designation has no legal effect (see the Explanatory Memorandum ("*Memorie van Toelichting*") to article 30r(1) DCCP of the NCC bill).

Article 1.2.2

This provision is intended to particularly refer to summary proceedings in the meaning of article 254 DCCP. But it also concerns proceedings initiated by application that belong to the authority of the Court in Summary Proceedings (CSP). If the CSP does not have authority pursuant to the general rules of jurisdiction, the CSP will only have jurisdiction

if all the interested parties agree to adjudication by (i) the CSP and (ii) in accordance with these Rules.

The CSP may only decide on applications to lift an attachment order if (i) Amsterdam is the place where all or part of the goods attached or where the debtor or third party has its address (article 700 DCCP) and (ii) the respondent has accepted the application of these Rules. The CSP may also decide on an application to lift an attachment for which it has granted permission. If this application is made by a third party that does not agree to the proceedings being conducted in English, the proceedings will be conducted in Dutch (see article 2.2.2)

Pursuant to article 30r(2) DCCP of the NCC bill designation of the Amsterdam District Court as the competent court also implies designation of its CSP. Accordingly, it is not strictly necessary for the choice of forum clause designating the NCC as the competent court to also specify that the CSP is competent.

Article 1.2.3

This provision constitutes a basis for the NCCA to also hear and decide claims seeking to set aside arbitral awards rendered in the Netherlands in English, provided the parties designated Amsterdam as the place of arbitration (in accordance with article 1064a DCCP) and agreed that the proceedings would be governed by these Rules.

Article 1.2.4

The ex officio test of the condition set in Article 1.2.1(b) follows from the NCC bill.

Article 1.3.3

Pursuant to Dutch procedural law, a party initiates an action either by claim or by application. A claim is governed by the procedural rules for claims (“vorderingsprocedure”); applications are governed by the procedural rules for applications (“verzoekprocedure”). Before the new procedural law enters into force, these proceedings are still referred to as "proceedings initiated by writ of summons" (“dagvaardingsprocedure”) and "proceedings initiated by application". Claims and applications are both initiated by submitting an "originating document". Before the new procedural law enters into force, these are referred to as "writ of summons" and "application" respectively. The new procedural law determines whether claims and applications may also be combined in a single originating document.

In proceedings initiated by claim, parties are referred to as claimant and defendant; in proceedings initiated by application as applicant and interested party. An interested party is a party against whom an application is directed or whose rights and obligations are directly affected by an application, or a party with another interest in the proceedings.

SECTION 2

Article 2.1

The Dutch Supreme Court, which hears appeals against the decisions of the NCCA, is not bound to the choice of English as the language of process, but has in principle agreed to decide cases on the basis of the documents that are submitted to the NCC or NCCA in

English. Preliminary questions to the Dutch Supreme Court must, however, be submitted by the NCC and the NCCA in Dutch.

SECTION 3

Article 3.1.1

The exception to this provision is inter alia applicable to the defendant in proceedings before the CSP in the meaning of article 254 DCCP and in certain proceedings by application

Article 3.2.1

The technical requirements to be met when submitting documents digitally are set out in the "Rules regarding the access to and use of the digital system for data processing of the courts" ("Reglement inzake de toegang tot en het gebruik van het digitaal systeem voor gegevensverwerking van de gerechten").

Article 3.4.2

A brief is a document:

a) setting out a concise message, such as a simple admission or denial or an offer to produce evidence;
b) presenting a party's comments regarding specific elements of the dispute as indicated by the court;
c) submitting an exhibit ;
d) responding to an exhibit of another party.

A statement is a document containing more substance than a brief.

"Compelling reasons" means circumstances that prevent a party from reasonably performing the act of process within the set time limit or from appearing at the hearing.

Article 3.5.2

A delegated judge may e.g. be appointed to preside over a hearing, an examination of witnesses or a site inspection, or to supervise an expert investigation.

SECTION 4

Article 4.1.2

Parties must expressly choose to litigate in accordance with these Rules. See Explanatory Notes Article 1.2.1(1) (c) and (d).

Article 4.1.4

Until the new procedural law enters into force, the date on which the writ of summons is issued is the date on which the case is initiated; thereafter it is the date of submission of the originating document.

Article 4.2.1

Until the new procedural law enters into force, a claim can be amended until the date of judgment; thereafter amendments are only possible until the moment the date for judgment is set.

SECTION 7

Article 7.4

“Days” are taken to mean calendar days, subject to the further provisions of the General Computation of Time Periods Act (Algemene Termijnenwet)

Article 7.7.3

This possibility only exists in cases that are initiated after the new procedural law enters into force.

SECTION 8

Article 8.4.6

The term "documents" also includes data recorded to a data carrier.

SECTION 10

Article 10.1

The NCC bill seeks to introduce a new article 9a in the “Act for Court Fees in Civil Cases” (“Wet griffierechten in burgerlijke zaken”) which contains a supplementary regulation on court fees for the NCC. If the defendant only wishes to dispute the jurisdiction of the NCC, and gives notice of this within the applicable time limit, a lower (non-NCC) court fee will be charged. If the defence is rejected, the higher NCC fee will apply.

Failure to pay the court fee on time has consequences only for the proceedings where this is directed by law. If the court fee is increased at a later stage, failure to pay this increase within the time limit has no consequences for the proceedings. However, the clerk will in such case initiate a collection notice and if necessary issue a collection order.

Article 10.3

"Expenses" are limited to the following cost categories: the costs of service of the originating document, the court fee paid, the costs of witnesses examined and of experts appointed by the court.