The Judiciary

NCC Netherlands Commercial Court

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

NCC Rules / NCCR
Second Edition, December 2020

Background

The first edition of these Rules was adopted by the Governing Councils of the Amsterdam District Court and the Amsterdam Court of Appeal in December 2018, after consultation with Dutch lawyers and courts and just before the creation of the Netherlands Commercial Court on 1 January 2019. At the same time, these Rules were amended by an Addendum. The reason for the addendum was that the Rules were drafted on the premise that the "KEI" legislation, as approved by Parliament in 2016, would apply to NCC. However, by late 2018, it was obvious that premise was outdated: the Dutch Code of Civil Procedure (DCCP), as amended in 2002 and after, governs NCC proceedings.

On 1 January 2021, the Digital Proceedings Decree (*Staatsblad* 2020, 410, DPD) enters into force. This Decree provides for fully digital proceedings on a voluntary basis. These Rules have been amended accordingly in this Second Edition.

A quick view of what we do

- *Initiation.* An action is initiated by submitting an originating document (writ of summons or application) in eNCC.
- Assignment. The case is assigned to three judges and a senior law clerk.
- *Defence.* The defendant/interested party submits its defence.
- Motions and evidence. Issues such as case management, procedural defences, document review and witness or expert testimony are addressed, before or after the defence, as appropriate at this stage.
- *Further written submissions.* As appropriate.
- *Hearing.* The parties present their arguments.
- *Judgment.* This may be a final judgment on the claims or an interim judgment. In an interim judgment, the court may allow the parties to take evidence, direct them to submit written submissions on certain aspects of the case, appoint one or more experts or give other directions.
- *As directed in an interim judgment.* Evidence or further written submissions, and where appropriate a hearing and a final judgment.

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DEFINITIONS

CC:	Civil Code (*Burgerlijk Wetboek*)
CCP:	Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*)
CSP:	Court in Summary Proceedings in the NCC District Court
DPD:	Digital Proceedings Decree (Stb. 2020, 410)
eNCC:	the NCC web portal
NCC:	NCC District Court (the Netherlands Commercial Court at first instance), or, in the context, NCC District Court and NCC Court of Appeal
NCCA:	NCC Court of Appeal
NCC law:	Law to Amend the Code of Civil Procedure and the Court Fees (Civil Cases) Act in connection with enabling proceedings in English at the international commercial chambers of the Amsterdam District Court and Amsterdam Court of Appeal (Stb. 2018, 474). This law enacted Article 30r CCP.
NCC website:	www.ncc.gov.nl
Stb:	the "Staatsblad", the official Journal of the Dutch Government

SECTION 1 SCOPE

Article 1.1 General provisions

1.1.1. These Rules govern proceedings in the NCC District Court and NCC Court of Appeal. The NCC District Court and the NCC Court of Appeal 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 Palace of Justice), these chambers deal with international commercial matters.

1.1.2. These Rules apply to proceedings in first instance in the NCC District Court. These Rules also apply to proceedings in the CSP and NCC Court of Appeal, except where the provision or the CCP or other legislation indicates otherwise, or the provision would not be appropriate in summary or appellate proceedings. Certain provisions, where indicated, apply specifically to proceedings in the CSP or the NCCA.

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

Article 1.2 The law and these Rules

1.2.1. The court applies Dutch procedure, including in particular the CCP. The applicable substantive law is determined by reference to the rules of Dutch private international law.

1.2.2. 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.

1.2.3. If warranted, except where these Rules express CCP or other binding provisions, the court may depart from any of these Rules. The court may issue an appropriate order in any circumstances not provided for by these Rules, taking their purpose into account.

Article 1.3 International commercial cases

1.3.1. An action may be initiated in the NCC District Court where:

(a) the action is a civil or commercial matter in connection with a particular legal relationship within the autonomy of the parties and is not subject to the jurisdiction of the Subdistrict Court or the exclusive jurisdiction of any other chamber or court;

(b) the matter concerns an international dispute;

(c) the parties to the proceedings have designated the Amsterdam District Court as the forum to hear their case or the Amsterdam District Court has jurisdiction to hear the action on other grounds; and

(d) the parties to the proceedings have expressly agreed in writing for proceedings to be before the NCC District Court in English.

1.3.2. An action may be initiated in the CSP where:
(a) an interim or protective measure is sought or another decision for which the court in summary proceedings is designated by law; and
(b) the conditions of Article 1.3.1 are satisfied.

1.3.3. An action may be initiated in the NCC Court of Appeal:
(a) on appeal against a judgment of the NCC District Court (including a judgment of the CSP);
(b) in first instance, if the matter is eligible for appeal and the conditions of Article 1.3.1 are satisfied, the parties having designated not the Amsterdam District Court but the Amsterdam Court of Appeal; or
(c) following an arbitration as set out in Article 1064a CCP, where the conditions of Article 1.3.1(b) and (d) are satisfied and the place of arbitration is in the appellate district of Amsterdam.

1.3.4. The NCC District Court and CSP will determine, of their own initiative, whether the conditions of Article 1.3.1(a) through (d) have been satisfied. Specific rules (Articles 5.2.2, 6.2 and 10.1) apply where a defendant appears solely to deny that the conditions of Article 1.3.1(a) through (d) have been satisfied.

1.3.5. The NCC Court of Appeal will determine, of its own initiative, whether the conditions of Article 1.3.3 have been satisfied.

Article 1.4 Sanctions

If a party fails to comply with any of the provisions of these Rules or any directions issued by the court that may depart from any 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.

SECTION 2 LANGUAGE

Article 2.1 English language

2.1.1. The language of the proceedings is English. The court may direct that Dutch will be the language of part or all of the proceedings, if the parties to the proceedings unanimously so request after the writ of summons is filed. The parties must notify the court of such request as soon as practicable. In the event of a dispute as referred to in Article 6.2, the provisions on language in that Article apply.

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 proceedings and may direct that this translation be certified. Dutch case law and scholarly analysis and documents in Dutch, English, German or French need not be translated, except where the court directs otherwise. It is recommended to state a Dutch legal term in Dutch and between brackets upon the first use of the term in an English translation.

2.1.3. In actions by application the NCC registry gives notice of the action to the interested parties, except where the court directs otherwise. If a translation of the application is required under a convention or European law, 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 Language and 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, by motion 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 under article 118 CCP, or where a third party has intervened. The court will only allow a party to be added to the action for contribution or indemnity, or under article 118 CCP, or as an intervening party, where the party to be added has consented in writing to English being the language of the proceedings, or where the other parties agree that the entire action will be dealt with in Dutch.

In the latter event, the court may direct that a party submit a certified translation in Dutch of the documents in the main action.

Where a third party submits a claim in the CSP for an order lifting a pre-judgment attachment, the third party is bound by the language that applied to the application for leave for the respective attachment.

SECTION 3 MODE OF PROCEDURE AND TIME LIMITS

Article 3.1 Representation

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

3.1.2. Acts of process, such as the submission of a claim or defence, must be carried out 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 carry out acts of process, but they may act for a party in other ways in accordance with Article 16e of the Advocates Act (in 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, eNCC is the only means of communication with the court and must be used for all purposes, including the submission of statements, exhibits and correspondence with the court. Original documents or objects that may be relied on as evidence but are not suitable for submission via eNCC may be deposited with the clerk. Any other mode of submission requires the advance permission of the court.

3.2.2. The parties to the proceedings are not permitted to speak with the judge except at a hearing. 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 communication be done by telephone, video conferencing or any other suitable means.

3.2.3. For further rules on electronic communications, reference is made to the NCC website (www.ncc.gov.nl), the eNCC Rules (Annex IV) and the Digital Proceedings Decree (*Besluit elektronisch procederen*).

3.2.4. All time limits in the law or these rules or in directions based on these rules are subject to the General Extension of Time Limits Act (*Algemene Termijnenwet*).

3.2.5. If a party wishes to restrict access by one or more parties to its documents the party may make a motion for separation.

3.2.6. If access to eNCC is interrupted on the last day of a time limit, for reasons not imputable to the submitting party, a time limit violation caused by the interruption can be remedied. To remedy the violation, the

party must submit the respective document or message no later than the first day following the day on which the party should have known that access was restored. At the time of submission or immediately thereafter, the party must state that it wishes to remedy a time limit violation, listing the times at which it attempted to access eNCC and explaining why the interruption is not imputable. If an interruption lasts longer than 24 hours, the court will announce within two business days after the interruption began how documents and messages can be submitted.

3.2.7. 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.

3.2.8. Documents must be organised so as to facilitate easy access by the court and the parties. Any document to which exhibits are attached must for each exhibit state the exhibit number and specify the relevant passages in the document and the reasons why each passage is relevant. If more than one exhibit is submitted, a table of exhibits must be supplied. If an exhibit is attached in a language other than the language of the action, this must be clearly stated as well as whether it is accompanied by a translation. Any exhibits submitted may not contain comments or additions that do not appear in the original.

Exhibits may be submitted as:

- separate digital files, submitted in such manner that they can be consulted in the order as numbered; or
- a single digital file, provided this file is structured so that each exhibit can be properly and individually searched and it is clear where each exhibit begins and ends.

3.2.9. The court will disregard any communication (such as documents or correspondence) received after the court 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 the communication;
(c) a party submits a complaint that the court has wrongly scheduled a date for giving judgment in the matter;
(d) the court has requested the communication;
(e) the parties provide comments on a court record not prepared in their presence; or
(f) the communication serves to withdraw the claim or application.

3.2.10. The electronic case file will be available in eNCC for six months after the case is closed.

Article 3.3 Fair process

Except where the law provides otherwise, the court gives 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 material facts. In the event of non-compliance, the court 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 gives all such directions as may facilitate the just, fair and speedy disposition of the action. Wherever possible, the court prevents any unreasonable delay and, at a party's request or of its own initiative, give any appropriate directions, as needed, for work to be done efficiently. The parties have a duty to each other to prevent any unreasonable delay.

3.4.2. The court sets the time limit for carrying out any acts of process as appropriate to each case, taking into account any wishes the parties may have expressed.

A party may request an extension. The court grants a unanimous request by the parties, unless this would cause unreasonable delay. Otherwise, extensions are only granted for compelling reasons. At a party's request or of its own initiative, the court may direct that any time limit be extended or shortened as may be required with a view to due process. If a party fails to comply with a time limit and no extension is granted, its right to carry out the act of process is waived.

Article 3.5 Assignment of the case

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

3.5.2. After the claim is submitted, the president of the NCC District Court or NCC Court of Appeal, respectively, assigns the designated judge or judges and one designated clerk to the case who will be dealing with the case for its duration. If a panel of three judges is assigned to the case, one of these designated judges will be assigned as president and will be in charge of case management. The judges may appoint one judge from amongst themselves, or another judge, to serve as a delegate judge for the work defined in the notice of delegation.

3.5.3. The president of the NCC District Court 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 writ of summons. In addition to the other particulars required by law, the writ of summons must specify:

(a) the claim and its grounds;
(b) the defences asserted by the defendant, the grounds of those defences 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 (NCC District Court)" or "the Amsterdam Court of Appeal (NCC Court of Appeal)";
(e) the confirmation that the conditions of Article 1.3.1 have been satisfied and in particular that the parties have agreed for proceedings to be before the NCC District Court or NCC Court of Appeal in English;
(f) the business address and the e-mail address of the claimant's lawyer;
(g) if available, the name and the e-mail address of the lawyer of each defendant; and.
(h) where applicable: the name, office address and e-mail address of a party's foreign counsel.

4.1.2. The writ of summons must where appropriate include the following exhibits:

(a) documents demonstrating that the matter concerns an international dispute as meant in Article 1.3.1(b), or that this was the case when the agreement as meant in Article 1.3.1(d) was made;
(b) the agreement or other evidence demonstrating that the conditions of Article 1.3.1(c) and (d) are satisfied; a clause contained in general terms and conditions does not in itself satisfy Article 1.3.1(d);
(c) if applicable and available, proof of the timely and proper service of the writ of summons in a foreign jurisdiction;
(d) all available exhibits to substantiate the claim;
(e) any agreements made with respect to the mode of procedure and cost.

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

4.1.4. The action is pending from the day on which the writ of summons is served.

4.1.5. Where a case is referred to the NCC within the Dutch courts, the claimant must submit the referral decision, the writ of summons, any documents

already exchanged, the confirmation of service , 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. A surcharge will be applied to increase the court fee to the CSP, NCC District Court or NCC Court of Appeal rate. The case will be heard by the NCC and move from the current status.

Article 4.2 Amendment of a claim

4.2.1. Until the court gives the final judgment, the claimant may increase, amend or reduce its claim or the grounds of its claim.

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

SECTION 5 DEFAULT AND DEFENCE

Article 5.1 Appearance

To enter an appearance, a defendant must:

(a) attend court for a hearing, in cases in the CSP and other cases where the law so allows; or

(b) provide timely notification of its lawyer ("notice of representation" in eNCC), 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.

Article 5.2 Default

If the defendant fails to enter an appearance or to submit a notice of representation 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 without merit. Until the final judgment is given, a defendant who is in default may enter an appearance or 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 in an action by claim, the defendant may oppose the judgment in accordance with the statutory rules and time limits.

Article 5.3 Defence

The defendant must submit a defence within the applicable time limit. The defence must state the defendant's motions and its defence on the merits, unless (i) the court, at the defendant's request and having heard the counterparty, directs otherwise or (ii) a motion is made in the meaning of Article 6.2. 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 5.4 Counterclaim

5.4.1. The defendant may submit a counterclaim, provided (i) the counterclaim satisfies Article 1.3 and (ii) filing a counterclaim is not contrary to due process. The counterclaim must be made in the statement of defence, stating the grounds of the counterclaim, the other party's defences and

the counterclaimant's reply as well as the available witnesses and other evidence.

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.

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

5.4.3. The respondent to the counterclaim may submit a defence to the counterclaim subject to Article 5.3.

SECTION 6 MOTIONS AND INTERIM MEASURES

Article 6.1 General provisions

Motions may be used to assert procedural defences or to submit demands or similar requests of a procedural nature, such as a demand for interim measures. Motions may be made either in the writ of summons or in a separate subsequent document. All such motions must be made concurrently, if at all practicable. The court will, if appropriate, rule on the motions prior to the judgment on the main action.

In such cases the court will set the date for the hearing on the main action in its ruling on the motion.

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 submit a statement on the merits, the court may direct that the party's right to submit such statement is waived.

Article 6.2 Motions on jurisdiction and agreement designating the NCC District Court / NCC Court of Appeal

6.2.1. Where the defendant intends to challenge the jurisdiction of the Amsterdam District Court or the Amsterdam Court of Appeal, as the case may be, or the alleged agreement for proceedings to be before the NCC District Court or NCC Court of Appeal in English, the defendant must make its motion to this end prior to any defences on the merits. If the defendant does not comply, the court may direct that the defendant's respective right is waived. If the defendant makes such a motion, it does not need to file its defence on the merits. The motion may be made in Dutch, in which event the further proceedings and the decision on this point will be in Dutch.

6.2.2. If the court grants a motion challenging the alleged agreement for proceedings to be before the NCC District Court or NCC Court of Appeal in English, the court will refer the case to the ordinary commercial chambers of the Amsterdam District Court or Amsterdam Court of Appeal, as the case may be, applying these rules (by analogy to Article 71 DCCP):

- the court will set a calendar date for an appearance in the ordinary commercial chambers and send a referral notice to the clerk of those chambers,
- the court will state the claimant's revised court fee (the defendant's court fee having been reduced as set out in Article 10.1) and the time limit for payment (if payment has not been made), and direct the clerk to refund any excess amount (if payment has been made),

- if the court has recorded the defendant's default for failure to appear, the court will direct the claimant to serve notice of the calendar date on the defendant, with a copy of the referral,
- the clerk of those chambers will create a new case number (HA ZA, in the Amsterdam District Court) and administer the case in the "*roljournaal*" system,
- the ordinary commercial chambers will move the case forward from its current status in accordance with their rules and practices,
- the parties may wish to consider special procedures currently offered by the ordinary commercial chambers with a view to an expedited disposition of the matter,
- the ordinary commercial chambers will determine whether eNCC will be used in the subsequent proceedings and give any other appropriate directions for the just and expeditious administration of the case.

The same rules, where relevant, apply in summary proceedings cases, except that the referral will be to the ordinary summary proceedings chambers (in District Court cases).

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 1.3.2 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. In eNCC, the claimant must submit an writ of summons marked "draft" in the PDF file to explain why no date for an appearance is stated at this stage, and the claimant must submit a cover letter including the appropriate Scheduling Request Form. If the matter is so urgent that a response from the court is required outside of its business hours, the claimant may refer to the "duty roster" of the Amsterdam District Court.

The CSP will schedule a hearing and may direct that the hearing be held at any time, whether before, during or after business hours, and at any location, whether at the Palace of Justice or anywhere else. The claimant must comply with any terms that the CSP may impose in the scheduling order. The writ of summons must state those terms and how they have been complied with. The claim will be denied if the CSP determines that it would not be appropriate to rule on the matter 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, under article 118 CCP or for 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. Article 2.2 applies with regard to the language of the case.

The court will grant the motion if it determines that there are adequate grounds, taking into account the interests of all parties concerned, except in circumstances as referred to in Article 2.2.2.

Article 6.5 Consolidation

Any party may make a motion for consolidation where cases are pending before the same court and are (i) between the same parties and on the same subject, or (ii) closely connected. The court may also order consolidation of its own initiative. If such a case is pending elsewhere within the Dutch courts at first or second instance, the relevant cases may be consolidated after referral to the NCC District Court or NCC Court of Appeal, respectively. Where there is a closely connected case in a foreign court, the NCC case may be stayed pending the outcome of the foreign case. The NCC may also direct that a combined hearing be held in the NCC case and the foreign case (see Article 7.8).

SECTION 7 HEARING

Article 7.1 Scheduling

The court may order a hearing at any stage of the proceedings for case management, debate on the merits, settlement and/or any other purpose. The court will schedule a hearing, as appropriate in the case, after the writ of summons or the defence is submitted. At the parties' request or with their consent, the court may direct that no hearing will be held.

The court may direct that the hearing be held via video conferencing or any other suitable means, taking into account due process.

If the parties wish to have a case management conference, they must notify the court at the latest in their respective first written submissions. They must specify the topics for the case management conference, including procedural logistics, debate on motions, certain issues or parts of the substantive dispute, and/or settlement.

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;
(d) what the time limit is for submitting exhibits;
(e) the speaking time allocated to parties and whether parties may submit speaking notes.

Article 7.3 Order of business

The clerk may provide in advance a 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 on which a party intends to rely at a hearing, and which have not been submitted previously, must 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 will disallow the exhibits, except where the court

determines that the party's conduct was reasonably justified 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 carrying out 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 in the interest of public policy, good morals or national security, or to protect the interests of minors or the parties' privacy, or to prevent a substantial adverse impact on the sound administration of justice.

The parties must not disclose to any person outside the case 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.

A list of hearings scheduled in the upcoming week and the names of the parties will be published on www.ncc.gov.nl.

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 has general authority to represent the entity or someone who is aware of the matter and is has a power of attorney to make binding agreements on behalf of the entity. The court may direct that the parties submit a statement or brief to set out their arguments on a date in advance of the hearing.

7.6.2. At the hearing, the court will examine the parties and allow them to present their arguments. 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 other directions or order acts of process, where appropriate.

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.

7.6.3. If appropriate, the court may discuss with the parties whether it would be advisable to submit part or all of the dispute to a mediator. If the parties agree to mediation, the court will determine, in consultation with the parties, who the mediator will be, and the court will stay the proceedings pending the outcome of the mediation. The parties may also ask the court to rule on part of the dispute and stay the rest of the proceedings pending the outcome of the mediation. The substance of what is discussed during the mediation is confidential and will not be communicated to the court. The parties and the mediator will enter into a mediation agreement that includes a confidentiality clause reflecting the above. Any party may request that the proceedings be restarted. If the mediation results in a settlement, the parties may ask that the settlement be recorded in a court record. Article 7.7.4 applies.

7.6.4. At the end of the hearing, the court will discuss with the parties what the next steps should be.

7.6.5. With a view to fair process, due process and sound case management, the court may, at a party's request or of its own initiative, direct that:
(a) the parties may make a written submission to respond to each other's arguments;
(b) a hearing be held for any purpose;
(c) exhibits be submitted prior to, during or after the hearing, and the parties may submit a written response;
(d) judgment will be given.

The court will give directions on time limits.

Article 7.7 Court record

7.7.1. The court may direct that a record be drawn up of the hearing. 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. In that event the court will allow the parties a 14-day time limit after receipt to submit comments on the record. The record will be signed by the court.

7.7.2. The court may direct that an audio or video recording be made by or on behalf of the court .

7.7.3. 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. The parties may also jointly instruct a court reporter with regard to a transcript.

Alternatively, the parties may agree that the court will select a court reporter from a list supplied by the parties, stating the qualifications of these persons, and specifying that the costs of the court reporter will be divided among the parties and in what proportion. The court will decide on the person who will act as court reporter in the case as soon as possible. The parties will then jointly retain this court reporter and pay the court reporter's fees directly.

After the hearing, the court reporter must submit a copy of the verbatim transcript to the court and the 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. This provision applies to all hearings, including hearings for the examination of witnesses or experts.

7.7.4. If a settlement is reached on all points in dispute, this will terminate the proceedings. The hearing at which the settlement is reached will be recorded in a court record. A copy of this record will be issued in the form required for enforcement. The court may adjourn the hearing to give parties the opportunity to reach a settlement. If a full settlement is reached after the hearing, a court record stating the settlement may be prepared at a subsequent hearing, and the court record will be issued in the form required for enforcement.

Article 7.8 Combined hearing with a closely connected foreign case

The court may direct that a combined hearing in an NCC case and a closely connected foreign case be held via video conferencing or any other suitable means, taking into account due process, at the request of or after consultation with the foreign court. The court and the foreign court will as appropriate agree on the rules of procedure that apply to this hearing.

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 have been imparted to the court in the proceedings or alleged, and which have been established in accordance with the rules of evidence of the CCP. Facts or rights alleged by a party and not disputed or not adequately disputed by the other party, will be accepted by the court, except where acceptance of such an allegation 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 – including such substantive law as may apply – or the requirements of reasonableness and fairness provide otherwise.

Article 8.3 Evidentiary agreement

If parties have entered into an agreement by which they elect to depart from the statutory rules of evidence, they must notify the court in their first written submission and submit the agreement.

The court will disregard an evidentiary agreement where the agreement concerns proof of facts to which the law attaches consequences that are beyond the autonomy of parties to agree, or where the agreement is unenforceable under the CC or applicable foreign law.

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 (article 22 CCP). To this end, the party must make a confidentiality motion in eNCC ("motion: confidentiality") and state that the matter is confidential in the meaning of article 22 CCP. A chamber ('Article 22 Chamber') other than the designated judge or judges will decide as soon as possible whether this position is justified. If

the Article 22 Chamber determines that the party's position is not justified, the court may draw such adverse inferences as it considers appropriate. If the Article 22 Chamber determines that the party's position is justified, the obligation to explain or to disclose will lapse. If the Article 22 Chamber 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 such consent is denied, the court will not review the explanation or disclosure. If such consent is given, review will be limited to the court only and the court may rely on the explanation or disclosure for purposes of judgment. The parties may make an evidentiary agreement on access to confidential documents. For example, such an agreement may create a confidentiality ring, permitting review of certain materials only by the parties' lawyers.

8.4.3. If disclosure of documents to a party would cause a disproportionate adverse impact on 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 explain which assertion the information or documents are intended to explain or 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 the sound administration of justice is also assured without the inspection or production of the documents. A person who has a duty of confidentiality based on an office, profession or work is not obligated to comply if the documents are in the person's custody or control solely on that basis. 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. At a party's request or of its own initiative, the court directs 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.

8.5.2 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.

8.5.3. Anyone duly summoned in accordance with the law is obligated to give testimony in court, except where a witness has a right to be excused based on a duty of confidentiality or family life. 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". If testimony is given in Dutch, the witness must give this confirmation by stating the equivalent in Dutch.

8.5.4. The court will examine each witness, but the 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. 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 other witnesses or with one or more parties. The court may direct that the parties respond to questions relating to testimony. 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 will generally allow specific modes of witness examination where the parties have so agreed, provided the agreement satisfies the provisions under Article 8.3 and there is no adverse impact on due process or sound case management.

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. 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.

8.5.6. 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 7.7.2 and 7.7.3 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, or that an expert give testimony. The court's directions will include the topics for the investigation. The court will appoint one or more experts, having heard the parties' views, and will instruct the expert to submit a written report to the court or to attend a hearing to present an oral report. The appointment is not subject to any remedy.

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 draw such adverse inferences as it considers appropriate.

8.6.4. At a party's request or of its own initiative, the court may order the experts to provide a further written explanation or an additional report, or to attend a hearing to that end. The court may also appoint one or more other experts, after consultation with the parties.

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. In actions by application and in proceedings before the CSP, the court will generally give its judgment within two weeks after the hearing. Decisions on motions will generally be given within a period of four weeks. The time for giving judgment in the main action will be determined by the court based on the scope and complexity of the case.

The court will postpone giving judgment if the parties who have entered an appearance unanimously so request.

Article 9.2 Substance of the judgment

The court's judgment includes a decision on every part of the claim or application. The court examines and decides 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 supplies alternative legal bases of its own initiative. The court may not refuse to issue a decision.

Article 9.3 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. Where the court relies on confidential documents as referred to in Article 8.4.2, the court will, as appropriate, take the confidential nature of the documents into account.

Article 9.4 Judgment in public

The judgment is given in public.

Article 9.5 Form of judgment and issuing copies

The judgment states the name of the judge or judges who gave the judgment.

The judgment is signed by the judge, or by the president of a three-judge chamber, 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 entered an appearance. The copy will be issued by uploading the judgment to eNCC. A hard copy will be issued in the form required for enforcement. The court may direct that the judgment be published on the website of the Dutch Courts (www.rechtspraak.nl).
In highly urgent cases, the court may issue a copy of an abbreviated judgment, but will issue a copy of the full judgment as soon as practicable.

Article 9.6 Judgment from the bench

The court may pronounce the judgment from the bench at the hearing if all of the parties are present. The judgment states 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. The court may impose the condition that security must be provided for an amount fixed by the court.

Conventions to which the Netherlands is a party, European Regulations and the general private international law in the jurisdiction where enforcement is sought govern the enforcement of the judgment in foreign jurisdictions.

Article 9.8 Correction and additional judgment

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

SECTION 10 COSTS

Article 10.1 Court fee

Every party is charged a court fee. Where a defendant/interested party intends to rely on a defence as referred to in Article 6.2, he must give notice of this defence in eNCC as soon as practicable and a court fee at the standard rate will be charged. This court fee will be increased to the NCC rate if the defence is rejected. Where the case is referred to the NCC, the court fee will also be increased to the NCC rate.

Any court fee previously charged or paid in the Dutch court system in the case which the matter pertains to will be deducted from the court fee.

The court fee must be paid within four weeks in accordance with the statutory time limit. Where a party fails to comply, the court will, having heard the respective party's view, impose a sanction, such as dismissal where the claimant has failed to pay the court fee on time, 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 delivery, translation or interpreting, and court reporters, and witnesses' expenses or experts' fees and expenses. These agreements should wherever possible be made in advance of the proceedings, but 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). As a rule, the court will apply the rates to assess lawyers' fees as stated in Annex III.

Article 10.3 Allocation of costs absent agreement

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 237 et seq. of the CCP.

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 move forward. The clerk will record the discontinuance.

11.1.2. Where an action has been discontinued, a party may submit a written request, referencing the case number, to restart the proceedings. 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.

The court will rule on costs if an award of costs was requested in the response and the respondent has not waived that request in writing.

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 will decide whether a hearing is to be held or whether the claim 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 views 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 17 and 16 December 2020, respectively.

These Rules take effect on 1 January 2021.

These Rules may be amended. An updated version will be published in the Staatscourant and on www.ncc.gov.nl.

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 referred to the NCC District Court within the Dutch courts, including the CSP, or to the NCC Court of Appeal after the Rules take effect.

Effective 1 January 2021, this edition replaces all previous editions, including the 2018 Addendum,

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: Explanatory notes to these rules of procedure

GENERAL

The NCC applies the same laws as any other Dutch court. The proceedings are not that different from other courts in the Netherlands. However, the NCC relies more on case management in complex civil litigation, and is focused on international practices. All is done in English. A digital portal, eNCC, is used for all communication.

SECTION 1

Article 1.1.3

Pursuant to Dutch procedural law, a party initiates an action either by claim or by application. An action is initiated by application where required by law; other actions are initiated by claim. A claim is governed by the procedural rules for claims (*dagvaardingsprocedure*); applications are governed by the procedural rules for applications (*verzoekschriftprocedure*).

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.

Article 1.3.1(a)

The term "civil or commercial matter" is used in Article 1 of the Brussels I Regulation (recast) (no. 1215/2012), but obviously is broader than the scope of this regulation. All matters dealt with by a commercial chamber of a Dutch court are in scope in Article 1.3.1(a). This provision requires that the dispute relate to civil law in a broad sense, such as contractual disputes, claims in tort, property law disputes and corporate law matters. Insurance, finance, intellectual property, public procurement, competition, telecommunications, transportation and government liability may be within the scope of civil or commercial matters. Insolvency-related matters such as director's liability in bankruptcy, or a trustee's annulment of legal acts, may also qualify. Family or inheritance disputes could also be in scope, although the NCC was not created mainly to focus on them; but such matters may not be within the parties' autonomy.

For the NCC Court of Appeal, several particular matters are noteworthy:

- a claim to set aside an arbitral award may also be heard in English before the NCC Court of Appeal, provided the Amsterdam Court of Appeal is competent, which is the case where Amsterdam has been designated as the place of arbitration (see Article 1064a CCP as amended by the NCC Law).
- The NCC Court of Appeal may hear claims to declare that a settlement agreement is universally binding, if the settlement is for compensation for damages and was made with foundations or associations that advocate for victims. The requirements of Articles 7:907-910 CC and Articles 1013-1018a CCP apply.

The NCC does not hear cases that are within 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, or the Maritime Chamber of the Rotterdam District Court. Nor does the NCC hear cases that are within the jurisdiction of the Subdistrict Court, such as cases related to employment, tenancy, hire purchase and consumer matters and cases where the claim is € 25,000 or less (see Article 93 CCP).

Article 1.3.1(b)

NCC proceedings are available for international disputes, so that it will not be appropriate for NCC to deal with a matter that is solely national in scope. A matter would typically concern an international dispute when:

(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 involves legal facts or legal acts outside the Netherlands; or
(g) the dispute otherwise involves a relevant cross-border interest.

If the above circumstances have changed after the NCC clause was agreed by the parties (subsequently parties to the action) but before the action was brought, the ruling on whether the criteria for an "international dispute" have been met will be based on the circumstances at the time the NCC clause was agreed.

Article 1.3.1(c) (claims)

The provision under (c) is satisfied if the Amsterdam District Court is competent to hear the case on the basis of the ordinary rules, such as the domicile of the defendant or a choice-of-court agreement. Such a choice-of-court agreement 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, for example, by a separate agreement. A choice-of-court agreement may also be made in proceedings pending at another Dutch court. A motion contesting jurisdiction before this court may also be made after the statement of defence is filed if the occasion for raising it only arose later (such as where a claim is amended; see *Tekst en Commentaar Burgerlijke Rechtsvordering*, note 4 on article 128 CCP and note 1d on article 95 CCP).

If the proceedings were initiated before a court other than the Amsterdam District Court, the other court may (upon request or with the parties' consent) refer the case to the Amsterdam District Court for further proceedings and judgment by the NCC District

Court. The same applies - mutatis mutandis - to proceedings initiated before an ordinary commercial chamber in the Amsterdam District Court. The referral is binding on the NCC District Court (Articles 71(5), 74(3) and 110(3) CCP).

Article 1.3.1(c) (applications)

The NCC Rules also apply to proceedings initiated by application. In proceedings initiated by claim, parties may in principle choose a court (article 108 CCP); they may not do so in proceedings initiated by application.

Where proceedings by application have been initiated in the NCC and the Amsterdam District Court or the Amsterdam Court of Appeal is not competent on other grounds, parties can remain at the NCC, provided that they (including all interested parties) indicate they do not wish to refer the case (article 270(1) CCP). This will be interpreted as a choice-of-court agreement, as meant in Article 1.3.1(c), and as an agreement, as meant in Article 1.3.1(d), by all parties involved for proceedings to be before the NCC in English. However, the requirement that in proceedings initiated by application all interested parties must agree for (i) the Amsterdam District Court to be the competent court and (ii) proceedings to be before the NCC in English may be an issue, particularly if the number of interested parties is large.

Additionally, jurisdiction may be established where the application relates to proceedings initiated by claim that have been or will be brought before the NCC, unless the law provides otherwise or the Amsterdam District Court or the Amsterdam Court of Appeal, respectively, does not have subject matter jurisdiction (article 262 CCP).

Article 1.3.1(d) (claims and applications)

Parties must expressly agree in writing that proceedings will be before the NCC in English. An agreement in which the designation of the NCC was included in a party's general terms and conditions, and was accepted tacitly by the other party, does not satisfy this requirement. In such event, this designation has no legal effect, unless at the time the agreement was concluded, or at a later time, there is express acceptance in writing of the clause in the general terms and conditions, showing agreement for the proceedings to be before the NCC in English (see the Explanatory Memorandum ("*Memorie van Toelichting*") to article 30r(1) CCP of the NCC law, p. 11).

Article 1.3.2

This provision is intended to particularly refer to summary proceedings in the meaning of article 254 CCP. But it also concerns proceedings initiated by application where the Court in Summary Proceedings (CSP) has subject matter jurisdiction. If the CSP does not have personal jurisdiction under the other ordinary rules, the CSP will only have jurisdiction if all the interested parties agree to adjudication by (i) the CSP (ii) in English.

The CSP may decide on applications to grant leave for an attachment if (i) Amsterdam is the place where all or part of the goods attached are situated or where the debtor or third party has its domicile (article 700 CCP) and (ii) the provisions of Article 1.3.2 are satisfied. The CSP may also decide on an application to lift an attachment for which it granted leave. If this application is made by a third party, the third party is bound by the language that applied to the application for leave for the attachment. This is reasonable

since the third party could have decided to bring the action to lift the attachment before the ordinary CSP of the Amsterdam District Court.

Additionally, the CSP has the authority to hear an application for a European Account Preservation Order, where the provisions of Article 1.3.2 are satisfied, as long as (i) the Amsterdam District Court has jurisdiction to rule on the substance of the matter or (ii) the NCC has already issued a judgment on the substance of the matter (Regulation no. 655/2014, article 6).

Pursuant to Article 30r(3) CCP (the NCC Law) an NCC clause means the CSP is also designated. Accordingly, it is not strictly necessary for the NCC clause to specify that the CSP is designated.

Article 1.3.3

The provision under (c) constitutes a basis for the NCC Court of Appeal to hear and decide claims seeking to set aside arbitral awards issued in the Netherlands, provided the parties designated Amsterdam as the place of arbitration (cf. article 1064a CCP and as amended by the NCC law) and agreed that the proceedings would be before the NCC Court of Appeal in English. The place of arbitration is determined by agreement by the parties. It is the place where the award will be made. The arbitrators may of course decide to hold the hearing elsewhere (Article 1039 CCP).

Article 1.3.4 and 1.3.5

Whether the condition set in Article 1.3.1(b) is satisfied is reviewed by the court of its own initiative, as required by Article 30r CCP.

SECTION 2

Article 2.1

The Supreme Court, which hears appeals against the decisions of the NCC Court of Appeal, is not bound by the choice of English as the language of the proceedings, but has indicated that it will decide cases on the basis of the documents that are submitted to the NCC District Court or NCC Court of Appeal in English. Preliminary references to the Supreme Court under article 392 et seq CCP must, however, be submitted by the NCC District Court or NCC Court of Appeal in Dutch.

Article 2.1.2

In its judgment of 15 January 2016 (ECLI:NL:HR:2016:65) the Supreme Court ruled that translations are not required for documents in the specified languages. Where Dutch is the language of the proceedings, translations of English-language documents are not required.

Article 2.2.

Where a third party is added to the action on the side of a party, it is bound by this party's consent to the language of the proceedings.

This does not apply to other third parties wishing to participate in an action. Such a third party has the right for Dutch to be the language of the proceedings. However, the addition of a party for indemnity/contribution or as an intervention should not result in unreasonable delay in the main action. Such delay will generally obtain where the third party withholds its consent for English to be the language of the proceedings, as this will mean the main action will have to be dealt with in Dutch and all documents exchanged may need to be translated.

Accordingly, the Explanatory Memorandum to the NCC law (Second Chamber, session 2016-2017, 34761, no. 3) notes that – if the third party to be added for indemnity/contribution does not agree for English to be the language of the proceedings – the proceedings for indemnity/contribution will not be at the NCC District Court but will be a separate action before the ordinary commercial chamber of the Amsterdam District Court.

SECTION 3

Article 3.1.1

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

Article 3.2.1

The purpose of this Rule is to implement the requirement for designating an electronic data processing system for the electronic submission of requests, messages and documents (Article 33(1) CCP and Article 2(2) DPD).

The court may "direct otherwise" under this Article where:

- a party who is acting pro se and is not represented by a lawyer, wishes to litigate without the use of digital means. Acting pro se is generally not allowed at the NCC, but it is possible f.e. in summary proceedings. The court will allow this party to submit his documents on paper. This will require the clerk to upload into eNCC any documents submitted by this party. The other parties must submit their requests, messages and documents in eNCC, as well as send paper versions of these filings to the party who is acting pro se.
- the eNCC portal is unavailable over a longer period of time.

Article 3.2.3

The technical requirements for the electronic submission of documents are set out in the "eNCC Rules" (Annex IV to these Rules). Further requirements are specified by the Digital Proceedings Decree (Stb. 2020, 410).

Article 3.2.8

Special naming conventions apply when the "exhibits" button (after the "create a message" button) or the "upload case file from other court" button is used. For details, see the eNCC Rules (Annex IV to these Rules).

Article 3.4.2

The following standard time limits are applicable in proceedings before an ordinary commercial chamber of the Amsterdam District Court:

(a) for a statement: six weeks;
(b) for an extensive brief: four weeks;
(c) for a simple brief: two weeks.

Given the expected complexity of the matters brought before the NCC, these time limits will generally be too short and longer time limits will be directed. Parties may communicate their wishes with respect to the time limits in writing, orally (in the manner described in Article 3.2.2), or at a case management conference (see Article 7.1).

A brief is a document:

(a) setting out a concise point, such as a simple admission or denial or an offer to produce evidence;
(b) presenting a party's comments regarding specific issues as directed by the court;
(c) submitting an exhibit;
(d) responding to an exhibit submitted by another party.

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

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

Article 3.5.1

NCC District Court cases are generally heard by a three-judge chamber. Matters such as an application for preparatory witness hearings, or where the CSP has subject matter jurisdiction, may be assigned to a single-judge chamber. Cases in the NCC Court of Appeal are heard by a three-judge chamber.

Article 3.5.2

The president of the NCC District Court or NCC Court of Appeal, as the case may be, will assign each case to a single-judge panel or a three-judge panel. See the NCC Case Assignment Rules on the NCC website. A delegated judge may e.g. be appointed to preside over a case management hearing, an examination of witnesses or a site inspection, or to supervise an expert investigation.

SECTION 4

Article 4.1.2

Parties must "expressly" agree for the proceedings to be in English before the NCC. See Explanatory Notes Article 1.3.1(1) (c) and (d).

SECTION 5

Article 5.3

See the notes to Article 6.2.

SECTION 6

Article 6.2

Article 30r(2) of the NCC Bill provides that – as an exception to article 128 CCP – a party challenging jurisdiction or relying on other defences to the effect that the matter will not be dealt with by the NCC may assert these defences, without concurrently responding to the claims in the main action. This defence may be presented in Dutch and the court will issue a decision in Dutch (Article 30r(4)). Accordingly, the claimant's response to this defence should generally be in Dutch, which will typically be the language of any hearing on this point (Second Chamber, session 2016-2017, 34761, no. 3, p. 12).

Article 6.5

Cases may be consolidated by a motion to that end, or of the court's own initiative (articles 220 and 222 CCP). A matter is "closely connected" if the factual or legal points of dispute in one matter are identical to those in the other, or have such a connection that consistent judgments are desirable. The relevant provisions of Regulation no. 1215/2012 (Brussels I (recast)) apply where a closely connected case is pending in another EU Member State.

SECTION 7

Article 7.1

According to the Explanatory Memorandum to the CCP, the law does not impose restrictions with regard to a hearing by means of video conferencing (Second Chamber, session 2014–2015, 34 059, no. 3, p. 31). See *Tekst en Commentaar* on Article 174 CCP, Article 10(4) EU Evidence Regulation No 1206/2001 and Article 8(1) EU Regulation No 861/2007 establishing a European Small Claims Procedure.

Article 7.8

This Article reflects international practice and may be of assistance to avoid the risk of irreconcilable judgments.

SECTION 8

Article 8.3

This provision is derived from article 153 CCP. The limitation "within the autonomy of parties to decide" particularly relates to rules of evidence that also serve to protect the interests of third parties. An evidentiary agreement, or reliance on such an agreement, may be unenforceable under the CC for reasons including defects in its formation, it being unacceptable by standards of reasonableness and fairness (article 6:2 and 6:248 CC), or it being unreasonably onerous (when the evidentiary agreement has been incorporated in general terms and conditions; Articles 6:233 and 236 CC).

Article 8.4.6

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

Article 8.5

It is noteworthy that the CCP provides substantial flexibility to tailor the procedure during a hearing, such as an evidentiary hearing for the examination of witnesses or experts, to the parties' interests and preferences, wherever this is in the interest of fair process, due process and the sound administration of justice. The parties may make agreements on these topics, which the court will consider in case management decisions.

SECTION 9

Article 9.5

Judgments will be published on www.rechtspraak.nl, subject to redaction. The basic rule in the redaction guidance, as adopted by the Dutch Courts, is that all information that directly identifies a natural person will be redacted.

Article 9.6

The court may issue a final judgment from the bench at a hearing, where the action was initiated after 1 September 2017 (see Article 30p CCP, Stb. 2016, 288, and *Koninklijk Besluit* Stb. 2017, 174).

Article 9.7

Examples of European Regulations and international conventions to which the Netherlands is a party include:

- Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), (Brussels I (recast) (no. 1215/2012, OJ EU L 351)) on the basis of which judgments of Dutch courts can be enforced in other EU Member States (excluding Denmark) without requiring a declaration of enforceability in the other Member State concerned (Article 39);
- the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 30 October 2007 (OJ EU L 339) on the basis of which the same applies for Norway, Iceland and Switzerland;
- the Convention on choice of court agreements (Trb 2009, 31), on the basis of which the enforcement in a different contracting state can only be refused on the grounds listed in the Convention (Article 8);
- the Agreement between the Kingdom of the Netherlands and the Republic of Suriname regarding the mutual recognition and enforcement of judicial decisions and authentic instruments in civil matters (Trb 1976, 144).

SECTION 10

Article 10.1

The NCC Law inserted a new article 9a in the "Court Fees (Civil Cases) Act" ("*Wet griffierechten in burgerlijke zaken*"; "CFA"), with special rules on court fees for the NCC. If the defendant/interested party only wishes to argue that the conditions of Article 1.3.1 are not satisfied, and gives notice within the applicable time limit, the standard 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 an impact on 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 impact on the proceedings. However, the clerk will take action to collect the claim and will if necessary issue a collection order.

On the basis of article 11 CFA any court fee already paid is to be deducted from the court fee to be paid at a later stage in the same case. For example, the court fee paid for an application for leave for a pre-judgment attachment will be deducted from the court fee to be paid later by the claimant for the main action.

Article 10.3

The term "expenses" refers to the following cost categories: the costs of service of the writ of summons, the court fee paid, and the costs of witnesses who have been examined and of experts who have been appointed by the court.

ANNEX II: NCC clause

The text below can be used in the context of Article 1.3.1. 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.

Choice-of-court clause and agreement for proceedings to be 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 before the Chamber for International Commercial Matters ("Netherlands Commercial Court" or "NCC"), to the exclusion of the jurisdiction of any other courts.
An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC's Court in Summary Proceedings ("CSP") in proceedings in English.
Any appeals against NCC or CSP judgments will be submitted to the Amsterdam Court of Appeal's Chamber for International Commercial Matters ("Netherlands Commercial Court of Appeal" or "NCCA").
The NCC Rules of Procedure apply.

For the Dutch version of this choice-of-court clause see the Dutch version of these Rules.

Parties can additionally (in the clause or during the proceedings) agree special arrangements on:

- the law applicable to the substantive dispute (see Article 1.2.1)
- the appointment of a court reporter for preparing records of hearings and the costs of preparing those records (see Article 7.7.3)
- an agreement on evidence that departs from the general rules (see Article 8.3)
- the disclosure of confidential documents (see Article 8.4.2)
- the submission of a written witness statement prior to the witness examination (see Article 8.5.2)
- the manner of taking witness testimony (see Article 8.5.4)
- the costs of the proceedings (see Article 10.2).

ANNEX III: **Lawyers' fees**

Type of case	Costs awardable for each act of process NCC	Costs awardable for each act of process CSP	Costs awardable for each act of process NCCA
simple (incl. motions 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	See indicative rates (indicatietarieven) in IP cases for district courts	See indicative rates (indicatietarieven) in IP cases for courts of appeal

This table is non-binding and each case will be reviewed on its merits.

Acts of process

Writ of summons/application	1
Statement of defence	1
Motion	1
Further written submission	1
Extensive brief	0.5
Attending case management conference or motion hearing	1
Attending hearing (main action)	2
Attending subsequent hearing	1
Attending witness examination or site inspection	1

ANNEX IV: eNCC Rules

Article 1 Scope

1. These Rules apply to proceedings in the Netherlands Commercial Court (NCC), including the NCC District Court and the NCC Court of Appeal.
2. These Rules set out how the electronic data processing system works and what conditions apply, as referred to in the Digital Proceedings Decree (Stb. 2020, 410).

Article 2 Definitions

Except where provided otherwise, these definitions apply:

a. Participant: a legal representative in proceedings before the NCC.
b. Legal representative: a lawyer.
c. Act of process: anything done by a lawyer in proceedings before the NCC under a statutory or other rule or directions given by the court.
d. eNCC: the secure electronic environment allowing participants to access the NCC electronic system.
e. Log-in tool: the lawyer's card issued by the Dutch Bar Association.
f. Identification number: identification linked to a log-in tool.
g. Website: www.ncc.gov.nl.
h. Electronic system: the NCC electronic data processing system, which registers case-related and personal data, posts and sends messages, does acts of process and sends documents.
i. Electronic case file: the complete set of case-related data, personal data and documents and messages submitted, posted and sent by participants and the NCC or its staff in a case.
j. Case data: case registration data.
k. Message: a communication in the electronic system.
l. Document: an electronic file that a participant includes as an attachment to a message to NCC or an electronic file uploaded by NCC into the electronic case file.

Article 3 Access

1. Except where the law provides otherwise, a party may not act pro se, but must be represented by its lawyer who must be a member of the Dutch Bar.

2.1 A participant must use the electronic system in proceedings before NCC. To that end, a participant must use eNCC.

2.2 Every lawyer who has a log-in tool has access to eNCC.

2.3 To carry out an act of process in eNCC, a lawyer must have a log-in tool.

2.4 If a lawyer has an identification number recognised by NCC, the lawyer has access to the electronic case file in a pending case in which the lawyer is a participant, except

where access is limited by or pursuant to a statutory rule, or under a rule of procedure or directions given by the court.

2.5 A lawyer who has access to eNCC has the responsibility to comply with the rules set by or pursuant to the General Data Protection Regulation (2016/679).

2.6 Lawyer's assistants have access to eNCC at any time the lawyer they assist has such access. Lawyer's assistants, using their log-in tool ("G-pas"), may access eNCC for any task that a lawyer may perform under the eNCC Rules.

Article 4 Use

1. A participant must take appropriate action to ensure that the participant's processes and systems are secure, so that the participant's use of the electronic system does not have any actual or potential adverse impact on, or result in any threat to, the electronic system's reliability, confidentiality, regular operation or availability, and does not create any risks of a security incident.

2. It is the participant's responsibility to enter data in the proper case.

3.1 All acts of process in eNCC must be done by a lawyer.

3.2 All messages and documents must be sent by a lawyer to NCC electronically in eNCC. Documents must be in PDF format. Documents uploaded as exhibits (the "exhibits" button) must comply with this naming convention: ABCD-1234 (four letters indicating the submitting party's name, dash, four numbers indicating the exhibit number). Documents uploaded as a case file from another court (the button "upload case file from other court") must comply with this naming convention: OCT123456-20180615-ABCD-STMT (the OCT code indicating other court, dash, six numbers indicating the national case number, dash, eight numbers indicating the submission date (yyyymmdd), dash, four letters indicating the party name, dash, four letters indicating the type of document). If the document is an exhibit, the naming convention is: OCT123456-20180615-LORE-EXHI1234 (as above, adding four numbers indicating the exhibit number). The four letters indicating the type of document may be: BRIE for a brief; FWSU for a further written submission; MOTN for a motion; NOTC for a notice; STMT for statement; or OTHR for another type of document. Documents must comply with any additional technical requirements as published on www.ncc.gov.nl.

3.3 Documents must be submitted by a lawyer in eNCC as separate electronic files.

3.4 NCC converts all uploaded documents to PDF/A format before the documents are posted to the electronic case file. Nothing is posted to the electronic case file except messages and converted documents.

3.5 A lawyer can access case-related data, messages and documents in the electronic case file.

3.6 A lawyer can download messages and documents in eNCC.

3.7 A lawyer who has sent a message can download a confirmation of receipt in eNCC, whether or not a document is attached to the message.

3.8 Where a case is referred to NCC, the documents a lawyer has submitted in eNCC will be displayed in the electronic case file. This applies to the NCC District Court case file in a case before the NCC Court of Appeal.

3.9 After the final judgment by the NCC District Court or the NCC Court of Appeal, the electronic case file is accessible in eNCC for six months.