Linklaters

Interim Remedies: Commonalities and Differences in Common Law and Civil Law

Arbitration

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Introduction

Emergency Arbitration

- Numbers?

Differences Court Litigation & Arbitration

- Expertise / Nationalities
- Language
- Confidentiality
- Recognition & Enforcement

- How shaped?
  - Depends on the Arbitration Rules
    - Statement of Defence
    - Hearing

Terminology

Interim Measures / Provisional Measures / Protective Measures

- Emergency Arbitration
  - Orders or Awards?
    - Emergency Measures (cf. Article 31 ICC Arbitration Rules 2026)
      - The emergency arbitrator's decision shall take the form of an order (the "**Order**") (Article 6(1) Appendix IV ICC Arbitration Rules 2026)
    - Emergency Award (cf. Article 8 Appendix C NAI Arbitration Rules 2024)

Jurisdiction

Arbitral Tribunal

- Arbitration Agreement (Arbitration Clause)
- Arbitration Act (cf. Article 1043b DCCP; short circuit provision)
- Arbitration Rules (cf. Article 41 NAI Arbitration Rules 2024; Article 31 ICC Arbitration Rules 2026)

National Courts

- Juge d'appui (Articles 1022a-c DCCP; Articles 1074a-d DCCP)
  - Leave for pre-judgment attachment (Articles 700 et seq. DCCP)
  - preliminary evidentiary measures (Articles 196-205 DCCP)
  - Challenge of Arbitrators (Article 1035(7) DCCP)
- Supervising Role: setting aside (Articles 1064-1068 DCCP)
- Jurisdiction? Articles 1072-1073(1) DCCP; Choice of forum? Other bases? Brussels I-bis Regulation? Articles 1-13 DCCP
- Arbitration Rules do not (fully) exclude the jurisdiction of the national courts (cf. Article 29 ICC Arbitration Rules 2026; Article 9 Appendix IV ICC Arbitration Rules)

NCC Model Clause (Arbitration)

Article 1064a DCCP:

“The claim to set aside is brought at the court of appeal in the district where the place of arbitration is located. If the place of arbitration is located in the Amsterdam appellate district and the parties have expressly agreed so, a claim for setting aside may be brought before the International Commercial Chamber of the Amsterdam Court of Appeal ("Netherlands Commercial Court of Appeal"). Article 32a applies mutatis mutandis.”

NCC Model Clause (Arbitration)

"All disputes arising in connection with the present agreement, or further agreements resulting therefrom, shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). The place of arbitration shall be Amsterdam (the Netherlands). The proceedings shall be conducted in English.

Any court proceedings in the Netherlands before, during or after the arbitration will - to the extent allowed by law - exclusively be dealt with by the Amsterdam District Court or the Amsterdam Court of Appeal, whichever has jurisdiction, following proceedings in English before the Chambers for International Commercial Matters (Netherlands Commercial Court, which consists of the NCC District Court, the NCC Court in Summary Proceedings and the NCC Court of Appeal). The NCC Rules of Procedure (see www.ncc.gov.nl) apply to these proceedings. This clause is not intended to exclude Supreme Court appeal.“

Thank you! Questions?