

Netherlands courts to enhance international appeal

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NCC and NCCA Innovations of the Commercial Court of Appeal Comment

The generally favourable treatment received by international parties to commercial disputes when litigating in the Netherlands was strengthened in March 2018 when the House of Representatives accepted a legislative proposal to institute a Netherlands Commercial Court (NCC) and a Netherlands Commercial Court of Appeal (NCCA). For the first time in the Netherlands, it may now become possible for oral and written proceedings to be conducted, and court judgments to be delivered, entirely in English.

NCC and NCCA

Parties to international disputes brought before the NCC or the NCCA will be able to litigate in English, provided that they have explicitly agreed on the jurisdiction of the NCC or the NCCA through a choice-of-court agreement for the Amsterdam District Court or the Amsterdam Court of Appeal and their new divisions – the NCC and the NCCA, respectively. Judges from the Netherlands with experience of international cases and a good command of the English language will be eligible to sit in the NCC and the NCCA.

Cases heard by the NCC or the NCCA will be subject to higher court fees. The government has chosen a fixed-fee system and the court fees will amount to €15,000 in the first instance and €20,000 on appeal. The court fees for an interim injunction will be €7,500 in the first instance and €10,000 on appeal.

Innovations of the NCC and the NCCA

Not everything about the new divisions of the Amsterdam District Court and the Amsterdam Court of Appeal is new. In Dutch proceedings it is already possible to submit to the courts exhibits and evidence in English, German or French, although in such cases the courts can require a translation if deemed necessary. It is also already possible for professional parties to litigate in English before:

- the Rotterdam District Court in main proceedings in disputes involving maritime, transport or mercantile law; and
- the Joint Court of Justice of Aruba, Curacao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba.

What is new about the NCC and the NCCA is that the entirety of both oral and written proceedings can take place in English if the parties so desire. Even the judgment will be given in English, which could give rise to concerns. For example, translation issues may arise when ruling in English on Dutch law. Such issues are not only of concern to the parties to a dispute, but could also undermine the legal certainty of the Dutch jurisdiction as a whole. The Supreme Court will nevertheless have the final say on any such issues, as proceedings in the Supreme Court following proceedings before the NCC or the NCCA will have to be conducted in Dutch. In such cases, it is likely that the Supreme Court will accept all material from the preceding litigation in English.

Comment

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The NCC and NCCA proposal is not the first of its kind, nor will it be the last. Similar moves seeking to establish an international commercial court have been observed in Germany, France and Belgium. However, the Netherlands initiative appears likely to enter into force very soon. The legislative proposal is scheduled to undergo its first debate by the Senate on April 24 2018 and it is thought that the NCC and the NCCA could be ready to take on their first cases by July 2018.

It remains to be seen how the NCC and the NCCA will perform in practice and whether English language judgments will lead to difficulties. Such issues will determine whether the NCC and the NCCA will be deemed an international success. However, the courts' establishment is certainly a positive step for international parties wanting to receive favourable treatment when litigating in the Netherlands. This is especially relevant given the impending effects of Brexit.

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