

# Netherlands Commercial Court: English proceedings in The Netherlands

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The international demand for English language dispute resolution is increasing as the English language is commonly used in international trade and contracts as well as correspondence, not only between the trading partners themselves, but also by international parties, their legal departments and their advisors. Use of the English language in legal proceedings is expected to save time and money for translations and language barriers in general.

We would like to note that Dutch courts tend to allow parties to provide exhibits in the English language and often allow parties to conduct hearings in English, at least in part. Moreover, the district courts in Rotterdam and The Hague offer the possibility for proceedings in certain types of cases to be held in English: maritime, transportation and international trade cases in Rotterdam and intellectual property rights cases in The Hague. The courts render their judgments in the Dutch language with an English summary.

In order for the Dutch courts to be able to render valid and binding judgments in the English language, the Dutch code of civil procedure needs to be amended.

## **Netherlands Commercial Court: draft legislation**

As mentioned in earlier posts on this blog (see [here](#)) in the Netherlands, legislation is on its way for the introduction of English language courts for the settlement of commercial disputes: the Netherlands Commercial Court (“NCC”) and the Netherlands Commercial Court of Appeal (“NCCA”).

On 8 March 2018, the Dutch parliament adopted the draft legislation, following which it was expected to be approved by the Dutch senate soon. However, to date, despite earlier optimism, the legislation has not yet been passed. The (draft) rules of procedures are ready though (see [here](#)) and the judges have been selected as well. The courts are now expected to open their doors in 2019.

In anticipation to the adoption and effectiveness of the draft legislation, the below blog offers an overview of the key characteristics of the proceedings with the NCC and NCCA.

### **The NCC and NCCA: structure and location**

The NCC and NCCA will be imbedded in the ordinary judiciary. The NCC will thus be a chamber of the Amsterdam district court and the NCCA will be a chamber at the Amsterdam court of appeals. Any appeal from a judgment by the NCC will go to the NCCA. An appeal (cassation) from the NCCA to the highest court of the Netherlands (*Hoge Raad*) will take place in the Dutch language.

The judges of the NCC and NCCA who have already been selected, will be from the ordinary judiciary. No lay judges will be appointed. The selected judges (six for each instance) are judges who have vast experience in commercial disputes and excellent language skills.

Situating the chambers with the courts of Amsterdam has mostly practical reasons: Amsterdam is the financial capital of the Netherlands and a lot of international companies have their corporate seats there. Also, practical reasons have been mentioned: Amsterdam is easy to reach and internationally active law firms have their offices in Amsterdam.

### **The NCC procedure**

Proceedings with the NCC and NCCA will in principle be held in the English language. All legal documents will be in English. Evidence may be handed in in the French, German or Dutch language, without a translation being required. The court hearing will be held in English and the judgment will be rendered in English.

In addition to the NCC's rules of procedure, the NCC will apply Dutch procedural law and the substantive rules of Dutch private international law. The proceedings will be paperless and legal documents will be submitted electronically.

According to article 1.2.1 of the NCC's draft rules of procedure, an action may be initiated in the NCC in case the following three requirements have been met:

1. the action is a civil or commercial matter within the autonomy of the parties and is not subject to the jurisdiction of the cantonal court (*kantongerecht*, the court for small claims) or the exclusive jurisdiction of

- any other chamber or court;
- 2. the matter has an international aspect;
- 3. 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
- 4. the parties to the proceedings have expressly agreed that the proceedings will be in English and will be governed by the NCC's rules.

The NCC has jurisdiction in any commercial case, regardless the legal ground. So it may hear both contractual disputes – claims for performance or breach of contract, rescission of a contract, termination or damages – as well as claims for unlawful acts.

In line with the case law of the Court of Justice of the EU, the internationality requirement is to be interpreted broadly. Only if all relevant aspects of a case refer to one case, it will thus be considered an internal dispute. An international aspect can e.g. be that one of the parties has its seat outside of the Netherlands or was incorporated under foreign law, that the contract language is not Dutch or a foreign law applies to the contract, that more than 50% of the employees works outside of the Netherlands, etcetera.

The NCC is only competent if the Parties have agreed to settle their dispute under the procedural rules of the NCC. Such agreement may be done in a procedural agreement, before or after a dispute has arisen. The NCC's rules of procedure contain a template clause for a forum choice reflecting such procedural agreement in Annex I:

*“All disputes arising out of or in connection with this agreement will be resolved by the Amsterdam District Court following proceedings in English under that Court's Rules of Procedure of the Chamber for International Commercial Matters (“Netherlands Commercial Court” or “NCC”). Application for provisional measures, including protective measures, available under Dutch law may be made to the NCC's Preliminary Relief Judge in proceedings in English in accordance with the Rules of Procedure of the NCC.”*

The choice of parties to conduct proceedings with the NCC is thus not a forum choice but rather a procedural agreement between the parties.

## **Court fees**

The court fees for proceedings with the NCC will amount to EUR 15,000.- for substantive proceedings and EUR 7,500.- for summary proceedings. The court fees for proceedings with the NCCA will amount to EUR 20,000.- for substantive proceedings and EUR 10,000.- for summary proceedings.

When compared to other courts in the Netherlands, the court fees for the NCC and NCCA are relatively high. In comparison: the highest court fee for cases in first instance currently amount to EUR 3,946.- and for appeal cases to EUR 5,270.-. Within the international playing field, the NCC and NCCA courts fees are however relatively low, especially when compared to arbitration.