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The Legal 500 Country Comparative Guides

The Netherlands

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in The Netherlands.

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THE NETHERLANDS
LITIGATION

1. What are the main methods of resolving commercial disputes?

The main methods of resolving commercial disputes in the Netherlands are state court litigation and arbitration. Other forms of ADR, such as mediation and adjudication (expert determination or binding advice), are available. It is not uncommon for parties to resolve commercial disputes in out-of-court settlements.

2. What are the main procedural rules governing commercial litigation?

The main procedural rules governing commercial litigation in the Netherlands are laid down in the Dutch Code of Civil Procedure ('DCCP'). The DCCP is complemented by rules of procedure issued by the courts. These regulations contain practice rules and more practical guidance on the conduct of litigation. International commercial disputes may, under certain conditions, be brought before the Netherlands Commercial Court ('NCC'). The NCC operates under Dutch procedural law complemented by the NCC Rules of Procedure. An English version of the NCC Rules of Procedure can be found at: https://www.rechtspraak.nl/SiteCollectionDocuments/ncc-procesreglement-en.pdf. See also question 3.

On 24 April 2020, an emergency act entered into force, containing temporary provisions in connection with the COVID-19 outbreak (the 'COVID-19 Emergency Act'). The COVID-19 Emergency Act allows, amongst others, for Dutch courts to hold hearings by video or telephone conference. The act has been extended several times and is applicable at least until 1 June 2021. In addition, the courts have issued temporary rules of procedure in derogation of the standard rules of procedure. The underlying principle of the current version of these rules is that a court hearing is held either physically or by video or telephone conference (or a combination thereof), unless a case can be dealt with in writing (also see question 23).

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

In first instance, civil disputes are brought before one of the eleven district courts (*rechtbanken*). The district courts have a subdistrict law sector which has exclusive jurisdiction over small claims (< EUR 25,000) and matters regarding employment contracts, tenancy, agency agreements, sale agreements with consumers and lease-purchase agreements (section 93 DCCP). Appeals against judgments from a district court (including subdistrict sector) are made to one of the four courts of appeal (*gerechtshoven*).

The Enterprise Chamber of the Amsterdam Court of Appeal is the court of first instance for disputes involving mismanagement and related corporate issues.

The Supreme Court (*Hoge Raad*) is the final court of appeal. The Supreme Court is a cassation court, which only deals with matters of law.

Since 2019, international commercial disputes may be brought before the NCC. The NCC is situated as separate chambers within the Amsterdam District Court and the Amsterdam Court of Appeal. The NCC is designed to meet the need for efficient dispute resolution of (complex) international commercial matters. The entire proceedings, including the judgments, are conducted in English before experienced judges. The NCC(A) may assume jurisdiction with regard to (i) civil or commercial cases within the parties' autonomy (ii) concerning an international dispute (iii) the Amsterdam District Court or the Amsterdam Court of Appeal having jurisdiction (iv) and the parties having expressly agreed in writing that proceedings shall be conducted in English before the NCC(A).

4. How long does it typically take from commencing proceedings to get to trial?

Dutch courts generally order an oral hearing after the

first round of written submissions (writ of summons and statement of defence). An oral hearing is held to attempt an out-of-court settlement and/or to obtain additional information. In straightforward cases, such hearings take place within six to twelve months after proceedings are commenced. In more complex cases and/or when parties submit incidental motions, the timing may be different. In preliminary relief proceedings, hearings usually take place within a couple of days (in case of emergency) or weeks.

Provisional judgments in interim relief proceedings are usually obtained within days (in case of extreme emergency) or a couple of weeks.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

As a matter of principle, court hearings are held in public. Only under special circumstances the court may decide to conduct court hearings behind closed doors, for instance if this would be in the interest of public policy or public morality, in the interest of state security, when the interest of minors or privacy of parties so requires, or when the proper administration of justice would be prejudiced by a public hearing (article 27 DCCP). A party may also request a closed hearing when confidential business trade information is to be discussed.

Court records, exhibits and other documents belonging to the case file are not disclosed to third parties (journalists sometimes inspect the docket register of summary proceedings).

6. What, if any, are the relevant limitation periods?

Unless otherwise provided by law, a claim becomes time-barred after 20 years (section 3:306 Dutch Civil Code ('DCC')). In many cases, the DCC provides for shorter limitation periods:

- The right to claim specific performance of a contractual obligation to do or to give something becomes time-barred five years after the date on which the claim became exigible (section 3:307 DCC) (two years in consumer sale, section 7:23 DCC);
- The right to claim damages or a contractual penalty becomes time-barred five years from the day after the injured person became aware of (a) the damage inflicted and (b) the identity and liability of the person liable (section 3:310 DCC);
- The right to nullify an agreement in case of deception or error becomes time-barred three years after discovery thereof (section 3:52 DCC);
- The right to demand the annulment of a resolution of a constituent body of a legal entity becomes time-barred after one year following the publication or notification thereof (section 2:15 subsection 5 DCC).

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In principle, there are no pre-action conduct requirements in the Netherlands, although a notice of default will often be required in order to enforce one's rights with regard to breach of contract. Pre-trial correspondence is required in cases of mismanagement brought before the Enterprise Chamber (*Ondernemingskamer*) (section 2:349 DCC) and collective actions (section 3:305a DCC). Failing to comply with these requirements can result in the claimant not having cause of action. Further, courts may be reluctant to award costs of litigation if the claimant starts litigation without first having communicated with the defendant on its position.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Commercial proceedings are initiated by a writ of summons (statement of claim), which is served on the defendant by a bailiff upon the claimant's instructions.

The summons contain a statement of the facts, the claim(s) and the legal basis for the claim(s), the defences of the defendant which are known to the claimant and a list of the relevant evidence on which the claimant intends to rely.

The claimant must file the summons with the court registrar after they are served.

9. How does the court determine whether it has jurisdiction over a claim?

Dutch courts have international jurisdiction if there are legal provisions to this effect or if the parties have

selected a Dutch court as the forum for hearing any disputes arising between them. Regulation (EU) No 1215/2012 ('Brussels I Recast') contains the most important set of rules regarding international jurisdiction. We note that following Brexit, Brussels I Recast ceased to apply between the UK and EU Member States at the end of the UK-EU transition period on 31 December 2020 (also see question 18). Pursuant to the UK-EU Withdrawal Agreement, transitional provisions apply to proceedings commenced before the end of said transitional period.

If no international treaty (including Brussels I Recast) applies, the national rules laid down in the DCCP determine whether the Dutch courts have international jurisdiction and accordingly, whether a defendant can be made subject to a lawsuit in the Netherlands. These rules are very similar to the international jurisdiction rules of Brussels I Recast.

The rules of international jurisdiction have, in contrast to the rules on conflict of laws, a public policy nature. This means not only that the court must *ex officio* determine whether it has international jurisdiction, but also that the court must conduct its assessment regardless of whether it relies on facts other than those on which the parties based their claim or defence.

The defendant that appears in court can lodge a motion to dismiss for lack of jurisdiction to prevent that the Dutch court accepts jurisdiction on the basis of a tacit choice of forum. This motion must be lodged prior to the statement of defence on the merits or ultimately together with the statement of defence.

10. How does the court determine what law will apply to the claims?

Dutch courts are obliged to apply the rules on conflict of laws *ex officio*. This means that in a cross-border matter it will have to apply the rules on conflict of laws, even though the parties have been silent about the question of applicable law.

In contractual and tort matters, Dutch courts are bound to apply the Rome I and Rome II Regulations (i.e. Regulation (EC) No 593/2008 and Regulation (EC) No 864/2007, respectively). We note that as a result of Brexit, the Rome I and Rome II Regulations ceased to apply between the UK and EU Member States at the end of the UK-EU transition period on 31 December 2020. Pursuant to the UK-EU Withdrawal Agreement, transitional provisions apply to contracts concluded, or events giving rise to damage before the end of said transition period. If, in general, the case at hand falls outside the scope of Rome I and no other convention applies, the provisions of the Rome I and Rome II Regulations are declared analogously applicable by Dutch domestic rules on conflict of laws.

11. In what circumstances, if any, can claims be disposed of without a full trial?

There are a several circumstances in which claims are disposed of without a full trial.

- Parties may settle their disputes amicably, in whole or in part, during the proceedings. There is an increasing degree of case management by judges, on the grounds of efficiency and to explore whether, e.g. with the aid of an out-of-court settlement, the parties can be dissuaded from continuing legal proceedings (section 89 DCCP).
- A judgment by default may be rendered when the defendant does not appear in court. The court will in principle award the claim, unless the court considers the claim to be prima facie unlawful or unfounded (section 139 DCCP).
- It is not possible to apply for a substantive (partial) ruling prior to the actual proceedings. It is possible, however, to request the court by a hearing (which can be ordered at every stage of the proceedings, sections 87 and 88 DCCP) or by a procedural motion, to first render a decision regarding preliminary issues such as the competence of the court, applicable law or limitation periods, before dealing with the merits of the case. This may result into a premature end of the proceedings, or parts thereof.
- The court may dismiss claims, without a full trial, if it appears that the statement of claim discloses no reasonable grounds for bringing the claim (*gebrek aan belang*, section 3:303 DCC) or is an abuse of procedural law (*misbruik van procesrecht*, section 3:13 DCC).

12. What, if any, are the main types of interim remedies available?

An interim relief judge may order any type of interim relief a party requires in urgent matters (section 254 DCCP). Interim relief may be requested pending proceedings on the merits or before such proceedings are initiated. Although interim relief is of a provisional nature, proceedings on the merits may not be necessary after a decision in preliminary relief proceedings has been rendered.

Examples of interim remedies are:

- protective measures, such as a prejudgment attachment;
- orders to do or abstain from doing something at a penalty; and
- the order to produce documents.

In case of a prejudgment attachment, proceedings on the merits must be initiated within two weeks after the attachment was made, if no such proceedings were already pending.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

In ordinary standard commercial proceedings, the defendant is granted a period of six weeks to submit a statement of defence, after the writ if summons is registered with the court registrar, and a lawyer has presented itself to the court as the defendant's counsel. Extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons (including cases of force majeure). In subdistrict sector cases, a term of four weeks to file a statement of defence is granted to the defendant. A first extension of four weeks is granted upon the request of the defendant.

The statement of defence may include a counterclaim. If an oral hearing is ordered, a statement of defence in counterclaim may be submitted prior to the hearing. The court decides when such statement is to be submitted.

Incidental motions, often with regard to procedural issues, may also be raised in de statement of defence, prior to all other (substantive) defences. Examples are motions to inspect documents or copies thereof, third-party (impleader) claims, requests for joinder and intervention, and the provision of security for litigation costs. Some motions, e.g. motions contesting jurisdiction, may be raised in a separate submission, instead of in the statement of defence. The court may decide that an incidental motion is dealt with prior to handling the case on the merits. This is assessed in accordance with the nature and the contents of the claim, the interests of the parties and the interest of an efficient litigation process. In principle, the claimant is granted a two week period to submit a written reply to an incidental motion. Two week extensions may be granted with the other party's consent or by the court for compelling reasons.

Particularly in more complex disputes, the court may decide on further written submissions instead of or after an oral hearing. In that case, the claimant is granted a six week period to file a statement of reply (section 132 DCCP). Extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons. The defendant is subsequently allowed to submit a statement of rejoinder (section 132 DCCP). The same timetable applies.

To the extent the court deems this necessary, the court may allow the parties to file further submissions (section 132 subsection 3 and section 19 DCCP).

In multi-party complex litigation cases, often parties themselves negotiate time tables, structuring procedural statements and timing of submission, to be approved by the court (case-management).

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

There are no discovery or disclosure procedures comparable to common law systems in the Dutch judicial systems. There are, however, instruments available for obtaining information / documents from third parties.

Interested parties may request inspection of (or copies or extracts from) documents, including electronic documents, from those who have these documents at their disposal. This action may be instituted in summary or ordinary proceedings, as an interim action in ongoing proceedings, or by application (e.g. combined with an application to order a provisional examination of witnesses). A request can be granted if:

- the requesting party has a legitimate interest in obtaining the information;
- the existence of the requested specific documents has been established to a sufficient extent (in order to prevent fishing expeditions); and
- the records concern a legal relationship to which the requesting party is a party.

The rules on disclosure of documents acknowledge professional privilege. A request for inspection of documents may also be refused on the ground of serious reasons, which may for instance apply to certain confidential information, medical data or sensative financial information. Whether a request for inspection is denied based on such serious reason, will be determined by a judge on a case-by-case basis, with due consideration of all interests involved . A request may

further be refused if the proper administration of justice is also guaranteed without the requested information.

This current regime for exhibition claims may be amended as a bill proposing the modernisation of law of evidence is pending (as described in more detail under question 15 below). In addition to this potential amendment, the bill introduces a pre-trial information-gathering duty meaning that the parties will be required to collect and submit any information that they "reasonably" have at their disposal and that, in the given circumstances, can "reasonably be expected" to be relevant for the court's decision.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witness evidence is fairly common in litigation, although documentary evidence is often (far) more reliable. Most of the time, witness statements are given orally. It is becoming more and more common for witnesses to submit a written statement. An (oral) witness testimony of a party testifying on its own behalf is only accorded very limited evidentiary force; it needs to be substantiated with supplementary evidence (which is, as part of modernisation of law of evidence, under review).

Cross-examination does not exist in Dutch litigation. The court is in charge of the examination of the witness. In practice, the court usually allows the parties and is obligated (upon request) to allow their counsel to put additional questions directly to the witness, subject to the condition that the questions are limited to the evidential issue upon which the witness is examined.

Witnesses have a duty to appear and render their truthful testimony. Witnesses may, however, refuse to testify in court on personal grounds as well as for factual reasons (section 165 DCCP), e.g. in cases where their testimony could entail prosecution for a criminal offence or disclose technical or trade secrets.

On 18 June 2020, an (improved) legislative bill for the modernisation of the law of evidence was submitted to the Dutch House of Representatives. This proposal's aim is to simplify the obtaining of relevant information and evidence both during and prior to civil proceedings and to establish a form of dispute resolution that leads to more effective solutions and earlier settlement of disputes. Amongst other important changes (see question 14), the proposal provides that all applications for preliminary evidence (such as an application for preliminary examination of witnesses or a provisional expert opinion) must be bundled together prior to trial. Further, the bill allows the courts to summon a witness who has not been put forward by the parties. It is not clear if and when this proposal will be adopted and in what form (also given that the bill has been criticised by both practitioners and scholars).

Depositions are not admitted in Dutch commercial litigation.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

In the Dutch jurisdiction expert evidence is permitted and widely used. For example, parties often engage experts to calculate damages. Expert evidence may be furnished by submitting written expert evidence by one of the litigants or by having an expert examined as a witness. There are no specific rules regarding concurrent expert evidence. Parties are free to instruct their own party-appointed expert and they usually affect the expert's report. The opposing party may produce their own party-appointed expert report to contest the findings of the other expert.

The court may, at the request of the parties or *ex officio*, order an (independent) expert to provide an expert report or to be heard. A court appointed expert has the duty to fulfil his appointment impartially and to the best of his abilities. He must allow parties to comment on the draft report and to make requests. The comments and requests have to be included in the report. The report needs to be reasoned. Parties have the duty to cooperate with the investigation of the expert.

The court is free to assess the expert report(s). It is our experience that Dutch courts rely heavily on expert reports (also partisan expert reports), especially when they concern issues that require specific knowledge which a court lacks (e.g. technical features of certain products, complex financial products or business practices in certain industries).

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Almost all final decisions of the district court can be appealed at the court of appeal. An appeal must be lodged within three months from the day the decision

was rendered (section 339 subsection 1 DCCP). Shorter appeal periods exist for certain cases; for instance a four week appeal period applies for interim relief judgments (section 339 subsection 2 DCCP).

Objections against interim decisions that do not contain final decisions must be included in the appeal against the final judgment, unless the court grants permission to lodge an interim appeal against the interim judgment.

Appeal in cassation can be lodged with the Supreme Court against most decisions of the court of appeals. Decisions of the Enterprise Chamber can only be appealed with the Supreme Court. Appeal in cassation must also be filed within three months from the day the decision was rendered (section 402 DCCP).

18. What are the rules governing enforcement of foreign judgments?

In civil and commercial matters, the rules regarding recognition and enforcement of judgments from EU Member States (except for Denmark) in the Netherlands are laid down by Brussels I Recast and some other EU regulations. Brussels I Recast provides for enforcement without any special procedure being required. Due to Brexit, Brussels I Recast stopped applying between the UK and EU Member States at the end of the UK-EU transition period on 31 December 2020. Pursuant to the UK-EU Withdrawal Agreement, transitional provisions apply where proceedings commenced before the end of the transitional period.

If there is a convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, permission of the court must be obtained first (section 431 jo. 985 DCCP). Upon request for an exequatur the court does not investigate the case itself, but verifies whether all formalities – including, but not limited to, the review criteria of the applicable convention regulations – have been observed. The exequatur proceedings may be overruled by special convention or statutory regulations.

If there is no convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, such decision cannot be enforced in the Netherlands, even if it is susceptible of being recognised in the Netherlands. In that case, new proceedings shall have to be initiated before a Dutch court in order to obtain a judgment that is eligible for enforcement in the Netherlands. In practice, however, the Dutch court will not review the case on the merits again. If the foreign decision meets four recognition conditions developed in Dutch case law, the Dutch courts will generally follow the foreign decision.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

The unsuccessful party is usually ordered to cover the litigation costs of the prevailing party. This includes court registration fees, witness and expert fees and legal fees. Legal fees are based on fixed amounts for certain standard activities (such as submitting a written statement, attending an oral hearing or imposing a prejudgment attachment), but are also contingent on the value of the claim. The actual costs and lawyer's fees are seldom covered by the amount awarded. Recovery of the remaining costs from the losing party is only possible in case of a frivolous suit and – under certain conditions – in cases concerning intellectual property, where the prevailing party can be awarded full costs, including lawyer's fees.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

Dutch procedural law provides for two specific options for collective redress actions.

Injured parties can bundle their claims by giving one person (which can also be an ad hoc foundation or association, also called *claimstichting*) a power of attorney to act on behalf of all of them; alternatively, they can initiate a collective action based on section 3:305a DCC.

The section 3:305a DCC route enables a foundation or association with full legal capacity (a claim vehicle) to institute an action aimed at protecting similar interests of other individual persons to the extent that the promotion of these interests is set down in its articles of association. The interests of those – both Dutch and foreign – individuals should be of such a nature that they are capable of being bundled, thus expediting the efficient and effective legal protection of the interested parties.

Until recently, section 3:305a DCC only allowed for a declaratory judgment determining that the defendant has breached his duties or committed a wrongful act against the injured parties. On 1 January 2020, new legislation entered into force, introducing the possibility for injured parties to claim damages in this kind of collective action (section 1018b – 1018m DCCP). This legislation further includes (i) the introduction of stricter admissibility requirements for representative entities (e.g. governance, funding and representation

requirements); (ii) the appointment of an exclusive representative for all claimants (in case of various representative parties); and (iii) a binding judgement on all Dutch residents in a class, with the exception of those having opted out. The opposite goes for non-Dutch residents: foreign claimants can voluntarily consent to their interests having been represented by the class action (i.e. opt in). Alternatively, the court can order that the opt out system applies to a precisely specified group of non-Dutch residents anyhow.

Dutch law also provides for court certification of damages in mass claim settlements (the Collective Mass Claims Settlement Act, 'WCAM'). The core of the WCAM is contained in sections 7:907 – 910 DCC and sections 1013-1018 DCCP. The WCAM enables collective interest groups to have an agreement that was concluded with another party (the party causing the loss), declared generally binding at the Amsterdam Court of Appeal in cases of large-scale loss. This (published) generally binding declaration consequently binds the entire group of injured parties, both in the Netherlands and abroad, and accordingly enables a settlement with an undetermined number of injured parties. The WCAM provides for a so-called opt-out option. This gives individual injured parties the option to withdraw (by written declaration, within a certain court-determined period) from the order declaring a collective agreement binding.

The Dutch WCAM proceedings can be and have been used for global settlements with relatively little connection to the Netherlands. The possibility to claim damages in collective action, is likely to put increased pressure to settlement claims. It is expected to have a significant impact on the litigation climate in the Netherlands (and possibly the rest of Europe).

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

A third party who has an interest in the ongoing proceedings may apply for permission to join the lawsuit or to intervene in it. In a joinder, the interested third party supports the position of one of the parties or may opt to take its own position. In the case of an intervention, the interested third party submits a claim on its own account.

Proceedings between the same parties can be joined (consolidated) if they are about the same subject matter. The same applies in the event of a close connection between proceedings, whether or not the same parties are involved. For consolidation, the proceedings need to be pending before the same court. If different courts are involved, the case may be referred to the other court. Such request for reference may be succeeded by a request for consolidation.

By impleader, a third party may be summoned by one of the parties to ongoing proceedings in third-party proceedings. Although the main proceedings and the third-party proceedings remain separate proceedings, they are generally dealt with concurrently.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Litigation funding by third parties is permitted in the Netherlands, except for funding by law firms. Common law obstacles such as 'maintenance' and 'champerty' do not arise. Third-party litigation funding is gaining in popularity in the Netherlands. Litigation funding is becoming increasingly common in multi-claimant disputes, such as class actions, cartel damages claims and securities litigation, commercial claims and bankruptcy claims from receivers.

In the Netherlands, third party-funding is in essence not regulated as of yet. In view of increasing collective or multi-claimant disputes, instigated with use of funding, it may be expected the courts will look at and demand transparency as to, among other things, the nature of the underlying funding relationship and the amount of profit the funder stands to make. Therefore, the way in which a litigation is funded, may affect the admissibility of a claim or the enforceability of a settlement.

There is no legal statute that would require the third party funders to reimburse the other party in case the funded party loses the trial. However, the funding agreement typically obliges the funder to cover the party's litigation costs to the extent that the court has imposed them upon that party (including fixed amounts for lawyers' fees; bailiff fees; court fees; costs of expert witnesses; and possible orders for costs). The actual costs and attorney fees incurred by the prevailing party are seldom covered by the amount awarded, and recovery of the remaining costs of the losing party is usually not possible (ref. question 19).

23. What has been the impact of the COVID-19 pandemic on litigation in your

jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

In general, the submission of written statements and the delivery of judgements by the courts have remained possible throughout the COVID-19 pandemic. Further, no substantive rules have been amended or suspended, and limitations still apply. That being said, the pandemic did impact the possibility to have court hearings, causing delay. A more detailed overview is provided below.

- As of mid-March 2020, physical court hearings were only scheduled if the court deemed the physical presence of the parties absolutely necessary, for instance in very urgent summary proceedings. In very urgent cases, when the physical presence of the parties was not essential, hearings were held through video or telephone conference. Hearings in all other – not very urgent – cases were postponed, causing delays. To the extent possible, court hearings were replaced by written statements (reply and rejoinder).
- From early April 2020 to early May 2020, court hearings by video or telephone were scheduled for urgent cases (and not only very urgent cases). Still, court hearings were replaced by written statements if possible.
- Since early May 2020 onwards, *physical* courts hearings have been scheduled again, albeit that priority is given to criminal, juvenile and family cases. In other (commercial) cases, both physical hearings take place as hearings by video or telephone conference. Whether a physical hearing is scheduled by a court depends on the type of the case, the court's capacity and the availability of technical resources.
- As of 17 August 2020, court hearings are accessible by the public again provided that a reservation is made in advance. Wearing a face mask is mandatory as of 1 December 2020.
- In larger cases or cross border matters, with foreign parties, upon request courts facilitate (foreign) parties to join hearings that are held in court rooms, by videoscreen. Through life streaming facilities, interested other parties, including press, can attend court hearings as well.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The Dutch jurisdiction is an attractive location to litigate, due to various reasons:

- The Netherlands is the seat of many multinational corporations and a main port of entrance to continental Europe. Simply due to domicile or residence by the defendant, collective action plaintiff parties can often create jurisdiction for the Dutch courts (e.g., see section 4 of Brussel I Recast).
- International benchmark studies show that the Dutch judiciary is generally considered professional, predictable, honest, efficient and fast, making it an attractive venue for both plaintiff and defendant.
- Litigation in the Netherlands is relatively inexpensive, due in part to low rates of compensation for the costs of litigation the losing party must pay.
- The Dutch legislator deliberately promotes the Netherlands as a forum for resolving international disputes. A relatively recent example is the start of the NCC (The Netherlands Commercial Court) early 2019 (see questions 2 and 3). The NCC consists of specialised judges and the proceedings, with a quick throughput time, are conducted in English. Both the NCC District Court and Court of Appeal are set up in Amsterdam.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

Legal developments have encouraged law firms and litigation funders to become more adapt at gathering and funding groups of claimants. Also in light of the new legislation regarding redress of mass damages in a collective action, we expect this practice to increase, in a rather exponential way, in particular for investor related disputes, securities litigation and cartel follow-on damages. The NCC expects to play a role in class actions, facilitating both in court and out-of-court settlements.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

A digital litigation pilot for claim procedures, introduced in 2017, appeared not successful. An emergency act

(*Spoedwet KEI*) entered into force on 1 October 2019, revoking the pilot. It is expected that digital litigation will be introduced (in a simplified form) shortly. Digital litigation has been implemented for litigation at the Supreme Court and the NCC successfully. eNCC, an electronic communication system, allows Dutch counsel to initiate actions, check the status and scheduled next steps, and submit and download documents. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

As described under question 2, the COVID-19 crisis has prompted the legislator to issue the COVID-19 Emergency Act and the courts to issue temporary procedural regulations aiming to facilitate, amongst other things, digital court hearings and the electronic submission of court documents. Although these rules are only temporary and will expire when the pandemic abates, it may accelerate the digitalisation of procedural law.

More general, technology is likely to have a lasting impact on various aspects of commercial litigation in the next years. Sophisticated intelligent research tools allow analysing of vast quantities of data in a timely and cost-efficient manner. We expect that automated processes will enhance lawyers to focus on clients' specific needs, adding value to available technology.

27. What, if any, will be the long –term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

As described above (see questions 2 and 26), it can in our view reasonably be expected that the current practice of digital court hearings and electronic submission of court documents (as prompted by the COVID-19 pandemic) will accelerate the digitalisation of procedural law.

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