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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

The Netherlands has a civil law tradition. The rules of civil procedure are laid down in the Dutch Code of Civil Procedure ("DCCP"). The Code is complemented by litigation regulations of the courts. Belief in the rule of law and trust in legal institutions are relatively robust. International benchmark studies show that the Dutch legal system is generally fast, efficient, accessible and honest.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

There are three levels of judicial instances in the Dutch civil court system, the: district courts ("*rechtbanken*"), appellate courts ("*gerechtshoven*") and the Supreme Court. There are 11 district courts. All judges are appointees. Cases are generally handled by a single judge; complex cases are referred to a full-bench panel of three judges. The civil law sector of district courts has a subdistrict law sector for small claims and labour, tenancy, agency as well as consumer sales and consumer loan disputes. A party may file an appeal against judgments rendered by the district court at one of the four appellate courts. Appeal cases are dealt with by a full-bench panel of three judges. Judgments of a court of appeal may be challenged in cassation at the Supreme Court.

The Enterprise Court of the Amsterdam Court of Appeal ("Enterprise Court") has exclusive competence to hear matters involving mismanagement and (shareholder) corporate governance issues. It also serves as the appellate court in certain corporate litigation disputes. The Enterprise Court consists of a panel of five judges which includes three members of the judiciary and two lay persons with specialist expertise.

The Netherlands Commercial Court ("NCC") adjudicates international commercial disputes. The NCC consists of specialised judges and the proceedings are conducted in English.

In addition, certain district courts accommodate divisions that are specialised in certain areas of law, such as intellectual property (The Hague) and shipping and transport (Rotterdam).

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Claims lodged in ordinary civil proceedings are usually initiated by a writ of summons (statement of claim). Subsequently, the defendant files a statement of defence within six weeks; this timeframe can be extended upon the parties' request or for compelling reasons. Thereupon the court will order parties to appear before the court or (upon request in complex cases) to submit additional written statements (timeframe: generally, 12 to 24 weeks). An interim or a final judgment will typically take another six to 24 weeks. Varying timeframes apply in case of motions, interim judgments and the rendering of evidence.

A provisional judgment in preliminary relief proceedings is obtained considerably quicker, varying from the day of the hearing (in cases of extreme urgency) to a couple of weeks thereafter (see question 6.6).

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

Both the Brussels I Regulation (recast) and the DCCP allow for exclusive jurisdiction clauses. An exclusive jurisdiction clause is not permitted or can be limited in certain cases, including those relating to the validity of registrations at public registries, labour cases and consumer cases.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

Both the claimant and the defendant are required to pay court fees that are contingent on the value of the claim within four weeks of appearance. Parties pay for their own costs; the losing party is usually ordered to cover the procedural costs of the prevailing party (court fees, witness and expert fees and fixed legal fees, based on limited amounts for standard activities). The actual costs and attorney fees incurred by the prevailing party are seldom covered by the amount awarded (see also question 9.3).

Dutch attorneys are required under the professional conduct rules to discuss the financial consequences of their engagement and of any legal action with their clients.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?

Litigation funding by third parties is permitted in the Netherlands, except in the case of funding by law firms. There are no particular rules on civil procedure regulating such funding; limitations are derived from public policy or the principles of reasonableness and fairness. The Dutch Claim Code, a self-regulatory instrument, provides for best practices in collective redress actions (including use of third-party funding). In such cases, excessive (cost) compensation charged by the funder and/or lack of transparency can be addressed by the court. Based on their professional conduct rules, lawyers in the Netherlands are prohibited from providing a "no win no fee" service, with the exception of a pilot in personal injury cases. Alternative fee arrangements that are dependent on the outcome of the case (such as basic fee and success fee) are permitted within limits.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Claims can be assigned to third parties subject to the conditions stipulated in Dutch substantive law. The right to assign a claim may be limited by contract. Third-party financing is permitted, except for law firms.

1.8 Can a party obtain security for/a guarantee over its legal costs?

A security deposit can only be required from non-EU claimants that reside in a country without a treaty with the Netherlands prohibiting the action for a security deposit. Treaties prohibiting such an action include the Hague Convention on Civil Procedure and the Hague Treaty on International Access to Justice.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

In general, there are no procedural prerequisites to filing a lawsuit. A notice of default will often be required in order to enforce one's rights. Pre-trial correspondence about the underlying complaints is required in cases of mismanagement brought before the Enterprise Chamber (Article 2:349 Dutch Civil Code, "DCC") and collective actions (Article 3:305a DCC/the Act on collective damage claims ("WAMCA")).

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The right to claim specific performance becomes time-barred five years after the date on which the claim became due and payable (in cases of non-conformance on the basis of a sales agreement, the seller's rights of action and defences are time-barred two years after the buyer's complaint towards the seller). The right to claim damages or a contractual penalty becomes time-barred five years from the day the injured person became aware of (i) the damage inflicted, and (ii) the identity of the person liable. The right to nullify an agreement in the case of deception or error becomes time-barred three years from discovery thereof. The right to demand the annulment of a resolution of a constituent body of a legal entity becomes time-barred one year from the notification or knowledge thereof. Unless otherwise provided by law, a claim becomes time-barred after 20 years. Time limits are treated as a substantive law issue.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

There are two main types of civil proceedings in the Netherlands: initiated by summons ("*dagvaarding*"); or by an application ("*verzoekschrift*"). Proceedings by summons is used for ordinary civil suits, and proceedings by application is used in disputes involving employment, leases, family, and certain corporate matters, including proceedings before the Enterprise Court.

A bailiff serves the summons on the defendant, thereby formally notifying the defendant of the lawsuit. Subsequently, the claimant must file the summons with the Court Registrar before the last business day prior to the date of formal court appearance as stipulated in the summons.

The service of judicial documents abroad is regulated primarily by the 1965 Hague Service Convention and Council Regulation No. 1393/2007 (the "Service Regulation").

The minimum period of time between service of a writ within the Netherlands and the date of the formal court appearance is at least one week. If the defendant resides in either an EU Member State that is subject to the Service Regulation or a contracting state to the 1965 Hague Convention, a minimum period of four weeks should be observed. For defendants residing in other states, a minimum period of three months between service and formal appearance in court applies.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

The Netherlands does not provide for pre-trial proceedings as such. In a pre-trial setting, parties may gather or secure evidence prior to proceedings by, for example, demanding inspection of or levying an attachment on documents or copies of documents, or by submitting a request for a provisional examination of witnesses or an expert report. The courts may also order parties to be present at a preliminary hearing, during which witnesses and experts may be heard.

Once a dispute is pending before the court, each party can initiate interim actions or apply for injunctive relief, provided that the relevant criteria are met. Examples of interim actions are: motions contesting jurisdiction; requests to implead a third party; requests for joinder and intervention; referral and consolidation of cases; and provision of security for litigation costs. It is also possible to claim interim relief (a measure of a provisional nature) for the duration of the dispute and/or to claim an advance payment.

In addition, a claimant can apply for a prejudgment attachment in *ex parte* proceedings, to prevent the removal of assets. The relative ease of applying for a prejudgment attachment is regarded by foreign parties as characteristic of the Dutch legal system.

3.3 What are the main elements of the claimant's pleadings?

Besides fulfilment of formalities and notifications, the pleadings must provide for a detailed description of the nature of the dispute describing the relevant facts, the legal grounds on which the claim is based and the relief sought, as well as setting out and refuting all known defences. Evidence should be submitted with the pleadings as much as possible, together with a clarification as to what (further) evidence is available to support the claim, such as possible witnesses.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The claim can be unilaterally decreased until the judgment has been provided. The claim and its merits can be amended, adjusted or increased at any stage, unless opposed by the other party, in which case the court will rule whether the adjustment is contrary to due process of law and therefore not permitted.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings can be withdrawn at any stage with the consent of all parties. Generally, the claimant can unilaterally withdraw his pleadings, bearing the costs of the proceedings, until judgment is rendered.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The statement of defence contains all formal and substantive defences as to the alleged facts, rights and points of law. This statement has to mention available evidence to the defendant, including witnesses. Any alleged fact or right that the defendant does not deny (with reasons) may be assumed to be true. The defendant may forfeit the right to bring forward formal or substantive defences if he fails to do so in the statement of defence.

Interim actions (see question 3.2) must be filed before or ultimately with the statement of defence.

The defendant may bring a counterclaim, to be filed together with the statement of defence, against the defendant.

The defence of set-off can be brought forward at any stage of the proceedings. The court may, however, disregard such defence if its merits cannot be easily determined.

4.2 What is the time limit within which the statement of defence has to be served?

The statement of defence has to be filed with the court within six weeks of the lodging of the summons. In standard proceedings, postponement for another six weeks will be allowed with the consent of all parties, for compelling reasons or in case of *force majeure*. Also in complex proceedings, either based on a procedural order proposed by the parties or not, further postponements are normally granted.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The defendant may implead a third party in indemnification proceedings. A request to this extent is granted if it is conceivable that there is a legal relationship with this third party based on which this party has a duty to indemnify the impleading party. The main proceedings and indemnification proceedings remain separate proceedings.

4.4 What happens if the defendant does not defend the claim?

A claimant may obtain a default judgment if the defendant fails to appear in court on the date of the formal court appearance. As long as the default judgment has not been rendered, the defendant may still appear in court and defend its case. The court will issue a default judgment awarding the claims of the claimant unless: (i) the claimant did not comply with the provided formalities; or (ii) the claim is considered to be *prima facie* unlawful or unfounded.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant can lodge a motion to dismiss for lack of jurisdiction. This motion must be lodged either prior to the statement of defence on the merits, or ultimately together with the statement of defence.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

By impleader, a third party can be involuntarily summoned by one of the parties in a separate third-party proceeding, which is dealt with alongside the ongoing proceedings (see question 4.3).

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. In the case of an intervention, the interested third party takes up its own position in respect of both the claimant and the defendant.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Proceedings between the same parties can be joined (consolidated) if they share the same subject matter. In the event of a close connection between proceedings, whether or not the same parties are involved, cases can be joined on the cause list. 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.

5.3 Do you have split trials/bifurcation of proceedings?

The court can (either at the request of a party or on its own initiative) refer a case to follow-up proceedings for the determination of damages. In that case, the court initially only renders a decision on the liability of the defendant.

Additionally, the court can render interim judgments in which it gives a decision on certain aspects of the case and, typically, can order a party to produce proof or allow parties to comment on remaining aspects of the case that the court has not yet decided on.

Although this power is not frequently utilised, bifurcation of proceedings has been developed in case law. Matters may be split for reasons of efficiency. With the court facilitating, parties may decide to continue sub-proceedings in court, and to settle parts of the initial dispute outside court (mediation, binding advice, etc.).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

As a general rule, cases are allocated in the first instance to one of the 11 district courts by geographical competence (derived from the defendant's residence in absence of a choice of forum). Within the court, there is an allocation between the subdistrict law sector for small claims and other issues (see question 1.2), and the commercial sector. Cases that fall within the competence of a specialised chamber (see question 1.2) are allocated to these divisions.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Dutch courts have extensive management powers. Courts can instruct for a hearing at any stage of the proceedings.

In proceedings on the merits, the court may issue a case management hearing ("*regiezitting*") at the request of the parties or *ex officio*. This occurs mainly in complex and extensive civil disputes involving multiple litigants. Issues that may be discussed are the order of the procedural actions, partial rulings regarding preliminary questions, and continuing legal proceedings on parts of issues where additional investigation/taking of evidence such as witness examinations is desired.

The court is not bound to party applications except for the request of an oral hearing, which must be granted when such a hearing has not taken place earlier in the proceedings.

6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

In light of the COVID-19 pandemic, the courts introduced the temporary possibility for (fully or partially) remote (hybrid) hearings through telephone or video conferencing, at the discretion of the courts. These restrictions on physical hearings were lifted; hearings now take place physically. If requested in a timely manner, depending on the type of case and availability of technical resources, courts may facilitate parties being abroad by allowing attendance via video conferencing. Parties can submit documents either by post or through an online portal. Parties may not record hearings without the prior approval of the courts. The court may *ex officio* decide to livestream the hearings.

6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

Every substantive order, other than payment, can be reinforced by penalty payments, which are forfeited to the claimant if the order is not performed (on time). Procedural orders cannot be reinforced by penalty payments. The court may draw the conclusions that it deems appropriate as to the merits of the case if a party disobeys such an order.

6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

The courts may dismiss a case or strike out part of a statement of case if the claim is inadmissible; for example, if the claimant does not have a cause of action. As a general rule, the court will dismiss a case in its final judgment, after going through the entire proceeding.

6.6 Can the civil courts in your jurisdiction enter summary judgment?

The preliminary relief judge can render summary judgments providing injunctive relief. Unless extremely urgent (in which case a summary judgment can even be rendered on the hearing), summary judgments generally take two weeks. Moreover, an injunction for the duration of the dispute may be requested in proceedings on the merits that are already pending (see question 3.2).

6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The courts are obliged to render a judgment in all cases that are brought before them. The court can stay a proceeding in the interest of proper administration of justice. It can discontinue a case that has been stayed for over half a year. Discontinued cases can be reopened by the motion of one of the parties.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

There are no discovery or disclosure procedures comparable to common law systems in the Dutch judicial system. However, interested parties may request inspection of (or copies or extracts from) documents, including electronic documents, from those

who have these documents at their disposal (either the other party or a third party). This action may be instituted in summary proceedings or as an interim action in ongoing proceedings. A request can be granted provided: (i) the requesting party has a legitimate interest in obtaining the information; (ii) the existence of the requested specific documents has been established to a sufficient extent (in order to prevent fishing expeditions); and (iii) the records concern a legal relationship to which the requesting party is a party.

Additionally, parties can, provided that the relevant criteria are met, secure evidence by levying an attachment on documents or copies of documents. Guidelines apply for independent process bailiffs, in charge of securing analogue and digital investigating evidence (often assisted by an IT expert) outside the view of the applicant. A judgment is required for the release of such evidence.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

The rules on disclosure acknowledge professional (legal, medicinal and religious) privilege. Additionally, the request for the production of exhibits may be countered on the basis of compelling reasons, which can result in privilege to not disclose such documents (i.e. a statutory duty of confidentiality).

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

A request for the production of exhibits may also be extended to a third party, provided that the requirements as set out in question 7.1 are met.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The court will assess the fulfilment of the requirements set forth in question 7.1. It may order additional conditions for certain disclosures, e.g. to protect confidential information, like depositing documents at the court registry, blacklining documents as well as penalty clauses in case of breach of confidentiality, etc. The court may also find that there are compelling reasons not to disclose specific documents (see question 7.2). The court may also order the production of exhibits *ex officio*.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

The court may, on the basis of compelling reasons brought forward by the opposing party, order certain conditions for disclosure. If no such specific conditions apply, in general, the disclosed and obtained documents can be used in the proceedings without restrictions.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

A party relying on the legal consequences of facts or rights asserted by it has the burden of proof, unless a particular rule or the requirements of reasonableness and fairness entail a different distribution of the burden of proof.

Provided that the opposing party has challenged facts or rights asserted by the claimant, then the claimant needs to provide evidence to substantiate its statements. The claimant bears the risk that its evidence is inadequate in proving the existence of that fact or right. The opposing party has the right to provide refuting evidence. Dutch law requires that any offers of proof have to be sufficiently prompt and specific to be granted. The court has great discretionary power in the assessment of the evidence. Exceptional statutory rules apply for some types of evidence, such as a notarial deed or an official report ("*proces-verbaal*").

On 18 June 2020, an improved legislative proposal for the modernisation of the law of evidence was submitted to the Dutch House of Representatives. A major subject matter regards the obligation of parties to collect and gather information and evidence as much as possible prior to initiating a lawsuit.

The proposal was met with criticism from practitioners and academics, and various amendments have been proposed. The proposal is still pending in the House of Representatives.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

In principle, all forms of evidence (even unlawfully obtained) are admissible in civil lawsuits. Expert evidence may be furnished by submitting written expert evidence by one of the parties or by having an expert examined as a witness. The court may, at the request of the parties or on its own motion, order an expert to provide an expert report or to be heard.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Witnesses have a duty to appear and render their truthful testimony. If a witness fails to appear, the court can issue a warrant for their arrest. Certain witnesses enjoy several privileges, including professional privilege (e.g. attorneys and notaries) and the privilege from self-incrimination and incrimination of relatives. Witnesses are questioned under oath by the presiding judge and by the parties (which differs from cross examination). The court will draw up an official report of the questioning and a summary of the relevant statements, which are to be signed by the witness. Depositions as such are not admissible.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

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 make requests. There are no specific rules regarding concurrent expert evidence.

Parties are free to instruct their own party-appointed expert. The opposing party may produce its own party-appointed expert report to contest the findings of the other expert. The court is free to determine the evidentiary value of the expert report(s).

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The courts are empowered to issue a wide range of judgments and orders, provided that the claimant has pleaded for its award and has legitimate interest. The most common awards are:

- payment orders, including the payment of consideration, (liquidated) damages and contractual penalties;
- injunction orders, including specific performance, prohibitory orders and mandatory orders;
- declaratory judgment; and
- authorisation for the claimant to procure performance from the counterparty, at the latter's expense.

The courts may issue summary and default judgments, as well as interim and final judgments.

9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties' contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

Dutch civil courts can render declaratory judgments, confirming or determining the rights of the parties or defining the legal relationship between the parties, without actually ordering anything to be done or without awarding damages. For example, a party may seek whether alleged behaviour constitutes a tort. Depending on the outcome, damages can be claimed in follow-up proceedings.

Also, parties who seek a declaratory judgment need to have a cause of action. Without sufficient interest, no one is entitled to a legal claim (Article 3:303 DCC) and will not be admissible. Legal scholars note a trend towards a relaxation of the interest requirement, where courts have an eye for the non-compensatory objectives of civil law and the developments in which not only liability law but also civil procedural law is seeking forms of redress other than through judgment to an achievement or damages. Purely declaratory judgments (as well as constitutive judgments or judgments dismissing a claim) are outside the scope of Article 430 DCCP and in principle not directly enforceable (apart from cost orders included, which are enforceable).

9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Only compensatory damages are available; punitive damages cannot be granted. The parties may mutually agree to a penalty clause, which can also be enforced by the court. Damages are usually in the form of financial compensation. At the request of the injured party, the court may rule compensation in another form, including restoration ("*restitutio in integrum*") and rectification. The court can reduce damages if fairness so requires, though not less than the amount of insurance coverage of the party against whom the order has been given.

Interest is, generally speaking, owed from the date that the legal obligation ought to have been fulfilled, even if that date was long before the judgment of the court. The statutory rate of interest applies unless the parties have agreed to a different rate of interest.

The court may order the losing party to cover the litigation costs of the prevailing party, such as court fees, witness and expert fees and fixed compensation for legal fees (see question 1.5).

9.4 How can a domestic/foreign judgment be recognised and enforced?

In civil and commercial matters, the recognition and enforcement of judgments from EU Member States (except for Denmark) is laid down in the Brussels I Regulation (recast) and certain other EU regulations. The Brussels I Regulation (recast) provides for enforcement without any declaration of enforceability required.

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. 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, a foreign judgment cannot be enforced in the Netherlands, even if the decision can be recognised in the Netherlands. New proceedings would have to be initiated before a Dutch court in order to obtain powers to enforce its judgment in the Netherlands. In practice, the case will not be reviewed on the merits again. If the foreign decision meets the recognition requirements established in Dutch case law, the Dutch courts will generally follow the foreign decision.

9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Appeals are lodged by serving a notice of appeal to the other party within three months of the date of the judgment. The appeal period in preliminary relief proceedings is four weeks. The notice of appeal is not required to already contain the reasons for the appeal, except for appeals in cassation. The defendants may lodge a cross-appeal, irrespective of whether the appeal period has already lapsed.

The appeal may be used both to complain about inaccuracies in the judgment of the lower court, and to rectify a party's own failings in the previous legal proceedings. Both parties may put forward new facts and new arguments on appeal, unless this has been explicitly waived in the previous proceedings.

The only complaint that can be raised on appeals in cassation at the Supreme Court is that the appellate court interpreted or applied the rules of law incorrectly in its judgment, or that the judgment of the appellate court is incomprehensible in view of what the parties advanced at this court. There is therefore no place for new arguments or a discussion of the facts in cassation.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

In general, courts aim to encourage settlements. During hearings, the court may inquire about a possible settlement. A settlement reached during a hearing may be recorded in an enforceable court

record. Out-of-court settlements are generally incorporated in a settlement agreement (but may also be recorded in an enforceable court record).

Notwithstanding the above, court approval is required for a specific collective arrangement for the settlement of large-scale loss in accordance with the Collective Mass Claims Settlement Act ("WCAM"). The WCAM enables parties to mass claims settlements to jointly request the Amsterdam Court of Appeal to declare the settlement agreement generally binding. Such declaration binds all persons covered by the terms of the agreement (known and unknown, both in the Netherlands and abroad), unless such person opts out by written declaration within a court-determined period. WCAM proceedings can also be, and have been, used for global settlements with relatively little connection to the Netherlands. A collective WCAM settlement qualifies as a court judgment and is, accordingly, public. The parties involved, and any other interested party, may inspect it and obtain a transcript thereof. This right may be restricted in view of certain interests of the parties (e.g. privacy, company secrets).

On 1 January 2020, the WAMCA came into effect. The WAMCA reshapes Dutch class actions (applying to various causes of action, including antitrust infringements, contraventions of consumer law, ideologically motivated class actions, breaches of environmental legislation, ESG matters, climate change litigation and violations of the GDPR). The WAMCA contains the obligation for the parties to try to negotiate a settlement agreement after an exclusive representative has been appointed. Aggrieved parties – residing or established in the Netherlands – can make use of the "opt-out", and in principle foreign aggrieved parties are not bound by the outcome, unless they make use of the "opt-in" option.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Most arbitration cases are administered and facilitated by well-organised arbitration institutes, such as the Netherlands Arbitration Institute ("NAI"), the International Chamber of Commerce ("ICC") or one of the many specialised arbitration institutes, or those aimed at certain market segments such as the Arbitration board for the building industry ("RvA"), for transport and maritime cases ("UNUM"), for complex financial disputes ("PRIME Finance") and for technology disputes ("TAMI"). Each arbitration with its place of arbitration in the Netherlands is subject to the Dutch Arbitration Act ("DAA"), which is laid down in book four of the DCCP. The DAA contains mandatory and non-mandatory provisions.

The procedure of binding opinions is organised in a similar manner and is facilitated by many of the aforesaid institutes. In addition, there are registers of binding advisers with specific backgrounds and expertise, such as the Register Valuators (affiliated with the Netherlands Institute for Register Valuators ("NIRV")) who are financial experts specialising in valuating businesses.

Various initiatives have been developed to further organise the (unregulated) procedure of mediation and to provide it with quality assurances. There are various providers of commercial mediation services. In business dispute resolution, accredited (certified) mediators are used, such as mediators registered with the Netherlands Mediation Federation, who meet certain training requirements.

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The aforementioned arbitration institutes apply regulations, provide options and advocate for contract clauses to be used by the parties. In addition, the parties can opt for an international arbitral tribunal.

The NAI can also be requested by parties to administer and facilitate regulated binding opinions and mediation procedures.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

In case of a legal relationship that can be determined solely by the parties, they are in principle at liberty to opt for a form of extrajudicial (alternative) dispute resolution. Matters of public policy and other matters reserved by law for the Dutch civil courts cannot be referred to alternative dispute resolution. These include aspects of family law (divorce or adoption), intellectual property law, criminal law, insolvency law and corporate law (e.g. the status of a limited liability company, right of investigation, liquidation proceedings or the validity of corporate decision making).

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

The Netherlands has taken a pioneering role in the area of court-annexed mediation. The Dutch judiciary permits referral to mediation on a regular basis.

As to the enforceability of mediation and other types of mediation/negotiation clauses, these clauses have the status of a "gentlemen's agreement" to be observed in good faith.

If an arbitration clause has been agreed, the Dutch civil court will declare that it lacks jurisdiction. An agreement for arbitration does not prevent access to the civil court in order to, for example, impose a prejudgment attachment or to initiate a provisional hearing of witnesses or experts (see question 11.3).

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

The use of dispute resolution clauses creates tension between the principle of *pacta sunt servanda* (i.e. parties must do what they have agreed to do) and Section 17 of the Dutch Constitution in conjunction with Section 6 of the European Convention on Human Rights ("ECHR"), which guarantee the right of recourse to the ordinary courts.

In the event of an arbitration clause, the court must declare itself to lack jurisdiction to hear the dispute (Article 1022(1)

DCCP). It is established case law that where a court is, directly or indirectly, approached in a situation where a binding advice clause operates, this results in the claimant being disqualified from presenting his claims.

Complications may arise where a party finds itself obliged to take protective or urgent measures for which the alternative dispute resolution scheme makes no provision. In such a case, recourse to a court (if need be, to a court in summary proceedings) remains open to a party for certain measures such as, for example, in order to impose a prejudgment attachment and/or to initiate a provisional hearing of witnesses and/or experts.

A clause stipulating the route to an amicable settlement/a mediator is generally seen as an "additional" form of dispute treatment and not as an interim exclusion of the regular legal approaches that are available. Although various (legislative) proposals and initiatives to enhance the use of mediation as a dispute resolution tool pass, any such use is based on voluntariness.

In general, settlements do not require the approval of the court. As a rule, the agreements between parties are incorporated in a settlement agreement ("*vaststellingsovereenkomst*"). An out-of-court settlement can, incidentally, also be reached before the court and is recorded in an enforceable court record. The court facilitates parties by doing this, but does not grant any approval (except for WCAM settlements, see question 10.1).

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

See question 11.1 on the NAI, ICC and specialised arbitration institutes such as RvA, for the building industry, UNUM for transport and maritime cases, TAMI for technology matters and PRIME Finance for complex financial disputes. Accredited (certified) mediators are registered with the Netherlands Mediation Federation to mediate business disputes.

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Chris is a trusted advisor for a number of large corporates, and is a member of INSOLAD, INSOL Europe, INSOL International, the Netherlands Association for Comparative and International Insolvency ("NVRII"), the Association for Corporate Litigation, and the Dutch Association for Procedural Law ("NVvP"). He regularly publishes on subjects related to procedural law and insolvency. Chris regularly lectures on various topics, including directors' liability and insolvency law. He is recommended by, amongst others, *Chambers Europe*, *Chambers Global – Dispute Resolution*, and *The Legal 500*.

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After finishing her master's degree in Corporate Law in Groningen, Olga has worked at two law firms, Baker & McKenzie and Pogust Goodhead, also as a litigator. At these firms, she gained experience in the field of commercial contracts, corporate litigation, competition law, liability law and collective actions. Her cases often involve aspects of international law.

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Florent is a leading corporate boutique in the Netherlands. Florent advises national and international clients, including corporates, banks, investors and governments. Dispute resolution is one of the main practice areas of the firm; the team comprises three partners and 13 lawyers and handles high-value, complex corporate and commercial litigation, particularly in the financial sector, semi-public organisations, real estate and industrial engineering – matters including those related to Rabobank, StandardAero, Mosadex, Renault, Steinhoff, Imtech, Zurich and Hema. Many cases, such as major class-action litigation, gain (international) press attention. The fraud team is specialised in cases of cross-border asset recovery, fraud litigation (prosecuting civil claims) and investigations, representing trustees in fraud-related bankruptcies and victims of boiler room fraud.

Florent's lawyers enjoy excellent reputations with the courts and among top-tier law firms. Based in Amsterdam, the firm is actively involved in cross-border matters and organisations such as IBA Committees, ICC's FraudNet, INSOL and INSOL Europe, and Lexwork.

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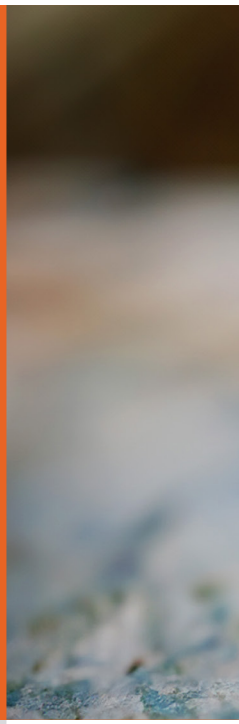

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