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Netherlands: Law & Practice
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Florent B.V.

NETHERLANDS

Law and Practice

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Florent B.V. is a leading corporate boutique in the Netherlands and works for 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 four 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 Rabobank, StandardAero, Mosadex, Renault, Steinhoff, Imtech, TradeWork 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 frauds. 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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1. General

1.1 General Characteristics of the Legal System

The Dutch legal system is based on civil law. The most important rules are laid down in the Dutch Civil Code (DCC). The Dutch Code of Civil Procedure (DCCP) sets out the rules governing civil procedure in the Netherlands.

The Dutch system follows an adversarial model. Typically, each party submits a written document, after which an oral hearing takes place. Subsequently, the court delivers a judgment.

The courts (except for the Supreme Court (*Hoge Raad*)) require parties to file their court documents in hard copy. Depending on the circumstances (ie, larger cases or cross-border matters, with foreign parties) and upon request, courts facilitate (foreign) parties to join physical court hearings by videoconference. The belief in the rule of law and trust in legal institutions are robust in the Netherlands. International benchmark studies show that the Dutch legal system is considered fast, efficient, accessible and fair. The Dutch legal system ranks amongst the highest in the world according to the World Justice Project.

1.2 Court System

There are three levels of judicial instances in the Dutch civil court system, being the district courts (*rechtbanken*), appellate courts (*gerechtshoven*) and the Supreme Court; all of which are national courts. The judges in each court are appointees. There is no jury system and bench trials are used for both civil and criminal cases.

District Courts

In the first instance, civil cases are brought before one of the 11 district courts and most cases are handled by a single judge; however, more complex cases are often referred to a full-bench panel of three judges. The district courts are made up of three sectors: administrative law, civil law and criminal law. The civil law sector of the district courts has a subdistrict law sector which has exclusive jurisdiction over small claims. Certain district courts have divisions that are specialised in certain areas of law, such as intellectual property (Hague District Court) and shipping and transport (Rotterdam District Court).

The Court of Appeal

Appeals against judgments rendered by the district court in civil and criminal cases can be lodged at one of the four appellate courts. Appeal cases are dealt with by a full-bench panel of three judges. Appeals against administrative law judgments are lodged at one of three specialised administrative law tribunals. Administrative and tax procedures provide for a mandatory initial internal complaints procedure prior to court procedures. The court of appeal is not bound by the facts established by the court of first instance (ie, the district courts).

The Enterprise Court at the Amsterdam Court of Appeal (*Ondernemingskamer*) serves as the court of first instance in matters involving shareholder governance disputes, mismanagement and similar corporate issues, or 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 laypersons with specialist expertise.

Netherlands Commercial Court

Since 2019, international commercial disputes may be brought before the Netherlands Commercial Court (NCC). The NCC is situated as separate chambers within the Amsterdam Dis-

trict 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 may assume jurisdiction when:

- the Amsterdam District Court or Amsterdam Court of Appeal has jurisdiction;
- the parties have expressly agreed in writing that proceedings will be in English before the NCC (the "NCC agreement");
- the action is a civil or commercial matter within the parties' autonomy; and
- the matter concerns an international dispute.

The Supreme Court

The Supreme Court is the final court of appeal. The Supreme Court is a cassation court, which only deals with matters of the application of the law and not with the facts of the specific case.

1.3 Court Filings and Proceedings

In principle, court hearings are public. The court may, under special circumstances, decide to conduct court hearings behind closed doors, for instance when the interests of minors or privacy of parties so requires. Court decisions in adversarial proceedings are, in general, public. Names of private individuals are generally made blank. Many judgments are made available online at the judiciary's website. Court records, exhibits and other documents belonging to the case file are not disclosed to third parties. This is further illuminated in **7. Trials and Hearings**.

1.4 Legal Representation in Court

In civil and commercial cases, parties must generally be represented by a lawyer admitted to the Dutch Bar Association. Parties may argue their own case in the subdistrict sector and in some other district court subject matters (eg, some family law matters). Under EU Law and in specific circumstances, foreign European lawyers can represent parties in Dutch courts.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Litigation funding by third parties is permitted in the Netherlands both in court and in arbitration procedures. The parties are free to agree on the fees and interest charged for funding. In general, limitations on funding are derived from principles of contract law such as contravention of public policy or the principles of reasonableness and fairness. In addition, 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 litigation funder and/or lack of transparency can be addressed by the court. Recent case law also shows the required degree of independence of the litigation funder. In various class actions, the court ordered such foundations to bring their funding agreements into the proceedings.

2.2 Third-Party Funding: Lawsuits

A variety of commercial claims and disputes with sufficient substantial interest lend themselves to litigation financing, such as collective actions and mass claims settlement, cartel damages, commercial claims and bankruptcy claims from receivers.

2.3 Third-Party Funding for Plaintiff and Defendant

Litigation funding is available to both claimants and defending parties. On the defence side there will be need for an "upside"; ie, in the form of a counterclaim. In the case of portfolio funding of

litigation, all litigation of the company concerned, whether claimant or defendant, is financed.

2.4 Minimum and Maximum Amounts of Third-Party Funding

The minimum for claims/disputes to be financed by litigation funders registered and operating in the Netherlands varies between EUR150,000 and EUR5 million. As a rule, a litigation funder asks on average 20–40% of the proceeds (with deviations depending on the rigidity of the claim and severity of the risks).

2.5 Types of Costs Considered Under Third-Party Funding

The costs to be financed by a third-party funder include lawyers' fees, bailiff fees, court fees, costs of expert witnesses and possible orders for costs.

2.6 Contingency Fees

Based on their professional rules, lawyers in the Netherlands are prohibited from providing a "no win, no fee" service. However, alternative fee arrangements dependent on the outcome of the case (such as basic fee plus success fee) are permitted.

2.7 Time Limit for Obtaining Third-Party Funding

In principle, applications for litigation funding may be submitted at every stage of the legal proceedings – at the start, halfway through, or on appeal.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

There are no procedural prerequisites to filing a lawsuit, except in cases of mismanagement brought before the Enterprise Court (Section 2:349, DCC) and collective actions (Section 3:305a, DCC), and administrative and tax cases. A failure to comply with these prerequisites may result in the inadmissibility of a claimant's claim. The court may be reluctant to award costs of litigation if the claimant starts litigation without prior communication setting out its position.

3.2 Statutes of Limitations

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

- the right to claim specific performance becomes time-barred five years after 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 is time-barred after 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 for such damages;
- the right to nullify an agreement in the case of deception or error becomes time-barred three years after discovery thereof; and
- 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 notification or knowledge thereof.

3.3 Jurisdictional Requirements for a Defendant

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. The European Council Regulation EU No

1215/2012 of 12 December 2012 (Brussels I Recast) contains the most important set of rules regarding international jurisdiction. The Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters is in force between EU member states and Switzerland, Norway and Iceland. The Convention on choice of court agreements (the Hague, 2005) is applicable when it comes to exclusive choice of court agreements between parties to commercial transactions from EU member states and – amongst others – the United Kingdom. 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. These rules are very similar to the international jurisdiction rules of Brussels I Recast.

The basic rule is that the Dutch courts have jurisdiction if the defendant is domiciled in the Netherlands (Section 2, DCCP). The Dutch courts also have jurisdiction if the parties have agreed to elect a Dutch court to adjudicate disputes that have arisen or may arise from their legal relationship (Section 8, DCCP).

Furthermore, if an attachment is levied on assets located in the Netherlands, and there is no other way of obtaining an enforceable title, the Dutch court that granted permission to levy the attachment has jurisdiction over the claim in the principal action (Section 767, DCCP). Section 767 of the DCCP may not be invoked if the parties have agreed on the exclusive jurisdiction of a foreign court.

Pursuant to the forum necessitatis doctrine laid down in Section 9 of the DCCP, the Dutch courts may assume jurisdiction when legal proceedings outside the Netherlands are impossible or unacceptable for the claimant. This only applies in limited and exceptional circumstances such as war, natural disasters or discrimination in the foreign country. The forum non conveniens doctrine does not apply.

3.4 Initial Complaint

There are two main types of civil procedures in the Netherlands: procedures initiated by a summons (*dagvaarding*) and procedures initiated by an application (*verzoekschrift*). Summons are used for claims in ordinary civil suits; applications apply in disputes involving employment, leases, family matters and certain corporate matters, such as proceedings before the Enterprise Court. Proceedings initiated by summons are the most important in terms of numbers of cases and financial interests involved.

The summons must give a detailed description of the nature of the dispute giving all the relevant facts, the legal grounds on which the claim is based and the relief sought, as well as stating and refuting all arguments put forward by the defendant as far as these are known to the claimant. The claimant must also indicate what evidence is available to support the claim and provide names of possible witnesses.

Procedural errors or omissions in the summons which could lead to it being nullified may be amended by the claimant by issuing a recovery writ prior to the date of the formal court appearance stipulated in the original writ. The claimant can still amend or increase its claim or legal grounds by submitting a written conclusion or statement as long as the court has not rendered its final judgment. The defendant may object to any amendment or increase of claim on the grounds that it is contrary to the requirements of due process.

As per 1 April 2021, the national rules of procedure for proceedings before the courts of appeal were amended and now stipulate a maximum length of 15 to 25 pages for statements and other procedural documents. The Supreme Court has ruled that such page limit is allowed.

3.5 Rules of Service

The claimant is responsible for service of the summons. A bailiff serves the summons to the defendant with at least seven days' notice prior to the date of court appearance. Subsequently, the claimant must file the served summons with the Court Registrar at the latest on the last business day prior to the date of formal court appearance as stipulated in the summons.

The service of judicial documents across national borders is regulated primarily by the 1965 Hague Convention and the EU Regulation No 2020/1784 (the "Service Regulation").

If the defendant resides in either an EU member state, subject to the Service Regulation, or a contracting state to the 1965 Hague Convention, a minimum period of four weeks should be observed between service of a writ on a defendant and the date of formal court appearance. For defendants residing in other states, a minimum period of three months applies.

3.6 Failure to Respond

If the defendant fails to appear in court on the date of formal court appearance, a claimant may obtain a default judgment. In that case, the court first verifies whether the terms and formalities of service of process have been fulfilled and whether all requirements regarding the summons have been met. If this is the case, the court grants leave to proceed in default of the defendant's non-appearance and the claim is awarded unless the court considers the claim to be prima facie unlawful or unfounded (Section 139, DCCP).

As long as the final default judgment has not been rendered, the defendant may still appear in court and defend its case. A defendant may apply to set aside a default judgment within four weeks after the judgment has been pronounced (eight weeks if they are domiciled abroad).

3.7 Representative or Collective Actions

Collective (class) action procedures are well developed in Dutch law. Injured parties can bundle their claims by giving one person, which can also be an ad hoc foundation or association (*claimstichting*), power of attorney to act on behalf of all of them (the aggrieved parties could also assign their claim to one such person, which then brings the claim in its own name); alternatively, they can initiate a collective action based on Section 3:305a of the DCC (WCA).

The Section 3:305a of the DCC route enables a foundation or association with full legal capacity (a "representative interest group") 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 (group members) 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. As a prerequisite to lodge such action, the representative interest group must furnish proof that it has first attempted – in vain – to achieve its goal through dialogue with the defendant.

WAMCA

On 1 January 2020, the Settlement of Large-Scale Losses or Damage Act (also known

as WAMCA) came into effect. The WAMCA reshapes Dutch class actions, introducing the possibility for representative entities to also seek damages in a Dutch collective action procedure, for claims which relate to events occurring on or after 15 November 2016. This Act also introduces stricter requirements for ad hoc foundations (*claimstichting*) to have standing, as well as procedural changes to enhance the efficiency and effectiveness of the proceedings. Under the WAMCA a central (public) register is established in which all pending collective actions are recorded. The entry will trigger a period (in principle three months), during which other representative entities (*claimstichting*) may file collective actions in respect of the same event(s), and similar facts and legal points. In the case of multiple representative entities, the court will select the most suitable organisation as the "exclusive representative" for the group/class of aggrieved parties represented in the collective action. The Dutch class members have the opportunity to opt-out and foreign class members can opt-in.

In practice, the new procedure applies to various causes of action, including antitrust infringements, those based on contraventions of consumer law, ideologically motivated class actions, breaches of environmental legislation, ESG matters, climate change litigation and violations of the GDPR. In complex cases, the district court determines several litigation stages.

Under the WAMCA, the collective action must have a sufficiently close connection to the Dutch jurisdiction. This is generally the case if:

- the ad hoc foundation can make a plausible claim that the majority of persons whose interests the legal action aims to protect, have their habitual residence in the Netherlands;
- the defendant against whom the legal action is directed is domiciled in the Netherlands and additional circumstances suggest a sufficient connection with the Netherlands; or
- event(s) or circumstance(s) giving rise to the collective action took place in the Netherlands.

Insofar as collective (class) actions relate to events that took place before 15 November 2016, the previous regime will apply (and damages cannot be claimed under Article 3:305a of the DCC). Once the representative interest group obtains a declaratory judgment, it is up to the individual group members to claim monetary compensation in individual proceedings. However, upon a positive judgment the representative interest group will typically enter into settlement negotiations with the defendant. Dutch law (after the introduction of the WAMCA) provides for court certification of damages in mass claim settlements (Collective Mass Claims Settlement Act, also known as WCAM), as further illuminated in **8. Settlement**.

Directive 2020/1828

The EU Directive 2020/1828 on representative actions for the protection of the collective interests of consumers has been implemented in Dutch law in the form of the Representative Actions Directive Implementation Act, which entered into force on 25 June 2023.

A legislative proposal in relation to certain implementation measures of Regulation EU 2019/1150 (P2B Regulation) was submitted to the House of Representatives (*Tweede Kamer*) on 22 December 2022. This legislative proposal provides a basis for supervision by the Netherlands Authority for Consumers and Markets (ACM) and aims to fit the provisions of the P2B

Regulation regarding collective claims within the Dutch legal framework.

3.8 Requirements for Cost Estimate

Dutch attorneys are required, under the Rules of Professional Conduct of the Dutch Bar Association, to discuss the financial consequences of their engagement and of any legal action. Fee estimates are often used for well-defined procedural steps.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

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.

The Dutch legal system does allow parties to initiate interim actions and apply for injunctive relief once the dispute is brought before the court. Some interim actions must be put forward prior to all other (substantive) defences. Examples of interim actions are:

- motions contesting jurisdiction;
- requests to implead a third party;
- requests for joinder and intervention;
- referral;
- consolidation of cases; and
- provision of security for litigation costs.

4.2 Early Judgment Applications

It is possible to request the court, via an appearance of the parties (which can be ordered at every stage of the proceedings, Sections 87, DCCP) or by a procedural motion, to first render a decision regarding preliminary issues such as the period of prescription, the competence of the court, the production of (copies of) exhibits, or the applicable law. This is increasingly common in more complex cases. However, the court is not obliged to comply with such a request.

4.3 Dispositive Motions

There are no dispositive motions under Dutch law.

4.4 Requirements for Interested Parties to Join a Lawsuit

Anyone who has an interest in a case before the court that is between other parties may apply for permission to join the lawsuit or to intervene in it (Section 217, DCCP).

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. Both in the cases of a joinder and an intervention, an interested third party voluntarily intervenes in a dispute which is already pending before the court.

A motion to request the court to allow a joinder or an intervention can be submitted ultimately on the day the last written statement is due to be filed. A joinder or intervention will be allowed when the interested party can demonstrate that it has (sufficient) interest to join or intervene (eg, if its position is affected by the main proceedings).

4.5 Applications for Security for Defendant's Costs

Defendants against whom a claim is brought by a claimant with no domicile or residence in the Netherlands may request the court to order that the claimant provides security for the litigation costs (Section 224, DCCP). The practical relevance of the obligation to provide security is limited as a result of several exceptions (eg, no such obligation exists when this follows from a treaty or EU regulation).

4.6 Costs of Interim Applications/Motions

In addition to the order to pay costs in the main proceedings, the court may separately order payment of costs in its decision on the procedural issues. The losing party is generally ordered to pay the costs (see **11.1 Responsibility for Paying the Costs of Litigation**).

4.7 Application/Motion Timeframe

To the extent deemed required, the court decides first and in advance upon any preliminary applications. 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, there is a timeframe of two weeks for a statement of defence in a procedural issue, and four weeks for a ruling.

5. Discovery

5.1 Discovery and Civil Cases

Dutch procedural law does not provide for discovery or disclosure procedures comparable to common law systems. The following instruments are available for obtaining information.

Parties with a legitimate interest may request the production of (copies of) exhibits (Section 843a, DCCP). See **5.3 Discovery in This Jurisdiction**. This request may be made in preliminary relief proceedings, as an interim action in ongoing proceedings or in (separate) proceedings on the merits.

Interested parties may request the court for a provisional examination of witnesses or order a provisional expert report (Sections 186 and 202, DCCP). These requests can be made prior to or during main proceedings.

The aforementioned ways of acquiring information or gathering evidence are administered by the court.

5.2 Discovery and Third Parties

An application for the production of (copies of) exhibits may, under certain circumstances, be extended to a third party.

5.3 Discovery in This Jurisdiction

For the requests for the production of (copies of) exhibits to be granted on the basis of Section 843a, DCCP, three cumulative conditions must be satisfied:

- the requesting party must have a legitimate interest in obtaining the information;
- it must concern specific documents (this includes pictures, audio and video tapes, computer files, etc), the existence of which has been established to a sufficient extent, which are defined at any rate in terms of subject matter and persons involved (to prevent fishing expeditions) and which are situated in the domain of the respondent; and
- these records must concern a legal relationship (eg, contractual or tort) to which the requesting party or its predecessor is a party.

The documents must be relevant for the adjudication of the dispute in the context of which the information was requested. The request for production of (copies of) documents may be refused pursuant to compelling reasons or if a proper administration of justice can be guaranteed without furnishing the requested information.

5.4 Alternatives to Discovery Mechanisms

Under the Dutch judicial system, parties must sufficiently substantiate and, where necessary, prove their positions whereby legal consequences are invoked (Section 150, DCCP). Providing evidence can take place by any legal means, including hearing witnesses, input from expert reports and the production of documents, whether or not obtained on the basis of an application for the production of exhibits (see **5.1 Discovery and Civil Cases**). The evidentiary value of evidence is further illuminated in **7. Trials and Hearings**.

5.5 Legal Privilege

Legal professional privilege applies to every lawyer who is a member of the Netherlands Bar Association. Insofar as the law does not provide otherwise, lawyers are obliged to maintain confidentiality regarding everything that comes to their attention by virtue of their professional practice. This obligation also applies (in a derivative form) to their employees and colleagues, as well as to other persons involved in the professional practice, such as advisers who are directly instructed by the lawyer. Legal proceedings are regularly conducted with regard to the extent to which the latter may or may not maintain confidentiality.

5.6 Rules Disallowing Disclosure of a Document

The request for the production of documents (exhibits) may be refused if there are compelling reasons not to provide them (see **5.3 Discovery in This Jurisdiction**), which may apply to trade secrets or certain confidential information. The party that has the documents at its disposal may propose to provide the documents to the judge only, to assess the nature of the documents first, or to blackline the sensitive parts in the documents before providing them to the applicant. The judge will, on a case-by-case basis, balance the interests of the claimant against the interests of the refusing party and decide the way in which the documents, if any, are to be disclosed.

Furthermore, a party in a “functional privileged” position, capacity or relationship bound by confidentiality (ie, medical professionals, religious leaders, lawyers and civil law notaries) may be discharged from the obligation to produce documents.

Correspondence between lawyers may be disclosed, unless at least one of the involved lawyers has indicated otherwise before sending the first correspondence and the other involved lawyer has accepted such confidentiality obligations. Correspondence between lawyers on settlement negotiations cannot be disclosed without the other party’s consent.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

In urgent matters, a party may request injunctive relief in summary proceedings (Section 254, DCCP). Summary proceedings are not aimed at providing a final decision (eg, the annulment of an agreement cannot be provided in summary

proceedings). The most common remedies are orders to do something (eg, specific performance), orders to refrain from something and the order to pay a sum of money owed. The system of injunctive relief is an open one and, in principle, any injunction can be requested from the court insofar as it is temporary in nature, such as suspension of the execution of a court ruling, imposing a ban and ordering the performance of an agreement (Section 3:296, DCC).

Alternatively, a party may file a motion for injunctive relief at any stage of the pending proceedings on the merits (Section 223, DCCP). The injunction applies until a decision is reached in any proceedings on the merits of the case.

As regards business law disputes, the Enterprise Court of the Amsterdam Court of Appeal may order far-reaching immediate relief if there are well-founded reasons to doubt a sound policy or a proper course of affairs within a company, or if immediate relief is required in connection thereto (eg, the temporary suspension of directors, appointment of interim directors, or transfer of shares to a nominee).

6.2 Arrangements for Obtaining Urgent Injunctive Relief

A preliminary injunction hearing can take place every day – including Sundays – and at any hour, either inside or outside the courthouse. The court in preliminary relief proceedings determines the place, date and time of the hearing. If the urgency of the case so warrants, an oral hearing can take place within a few hours, followed by an oral judgment. The courts usually provide a decision within two to four weeks.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Ex parte applications under Dutch law are limited to pre-judgment attachments and the enforcement of intellectual property rights.

An ex parte application for pre-judgment attachment can result in permission to arrest shares, claims (including bank accounts), movable and immovable property, ships, aircraft and other assets (Sections 711–729e, DCCP), but also evidence (Section 730 in conjunction with Section 843a, DCCP). These applications aim to prevent the removal of assets or documentary evidence. Applications for pre-judgment attachments on wages and several other periodic payments (eg, pensions) are not administered on an ex parte basis.

The court may, as immediate relief for the benefit of a holder of intellectual property rights, issue an injunction against an infringing party so that imminent infringement is prevented, or incurred infringement is ended (Section 1019e, DCCP).

6.4 Liability for Damages for the Applicant

Due to its preliminary nature, enforcement of judgments in preliminary relief proceedings might be unlawful if the executor does not succeed in proceedings on the merits. The executor is then liable for the damages suffered by the opposing party as a consequence of the enforcement. The same applies to the party that has levied a pre-judgment attachment. For this reason, the court can allow the enforcement of a judgment or the levy of a pre-judgment attachment on the condition that security is furnished (Section 233(3) DCCP and Section 701, DCCP, respectively).

6.5 Respondent's Worldwide Assets and Injunctive Relief

The Dutch legal system does not as such provide for injunctive relief against worldwide assets of the respondent.

However, under the Brussels I Regulation Recast a party can apply to the Dutch court for a cross-border provisional or protective measure, provided that this measure would also be within the jurisdiction of the proceedings on the merits of the case. If this concerns an ex parte order, this can only be enforced in other EU member states after the decision has been pronounced. Accordingly, the practical relevance of this possibility is limited.

Additionally, a European pre-judgment attachment can be levied on bank accounts pursuant to the European Account Preservation Order (EAPO).

6.6 Third Parties and Injunctive Relief

Provisional and protective measures may only be obtained in respect of parties that are involved in proceedings. If they have sufficient interest, third parties who fear the violation of their rights may join or intervene in proceedings between other parties to protect their rights (see **4.4 Requirements for Interested Parties to Join a Lawsuit**).

6.7 Consequences of a Respondent's Non-compliance

A respondent that fails to comply with the terms of an injunction may face the same consequences as those suffered for not complying with a regular judgment. It is common to demand that the requested interim relief is subject to a penalty.

7. Trials and Hearings

7.1 Trial Proceedings

The Dutch legal system distinguishes between civil proceedings that are initiated by a summons (*dagvaarding*) and by an application (*verzoekschrift*). The law dictates which type of proceedings will be applicable. Both proceedings are largely conducted in writing.

In proceedings commenced by a summons, a claimant sets out its claim in a summons which is consequently served to the defendant by a bailiff (see **3.5 Rules of Service**). The defendant responds in a statement of defence within six weeks. A defendant may lodge a counterclaim in its statement of defence after which the original claimant has six weeks to respond to the counterclaim in a statement of defence in counterclaim. After the written round of arguments, the court will usually order an oral hearing (Section 131, DCCP). Alternatively, the court can proceed to a second written round (reply and rejoinder). An oral hearing can then be ordered upon the request of (one of) the parties (Section 87(8), DCCP).

In proceedings commenced by an application, a petitioner files an application with a district court. The court will usually order an oral hearing (Section 279 DCCP). Any interested party may submit a statement of response to the court prior to the hearing (Section 282 DCCP). In both proceedings the court may request information, allow parties to substantiate their claims and applications, attempt an out-of-court settlement or discuss case management during the hearing.

7.2 Case Management Hearings

In preliminary relief proceedings, the oral hearing is generally the first opportunity for the defend-

ant to present a rebuttal of the claim brought against it.

In proceedings on the merits, the court may set 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.

7.3 Jury Trials in Civil Cases

There are no jury trials in the Netherlands.

7.4 Rules That Govern Admission of Evidence

All forms of evidence are admissible in civil lawsuits, unless the law provides otherwise. Unlawfully obtained evidence may usually be admitted and considered. The court may disregard evidentiary material when it is submitted too late.

The court has great discretionary power in the assessment of evidence. There are some exceptions to this rule. Legally valid deeds and criminal judgments deliver conclusive evidence, subject to evidence to the contrary from the other party.

Parties are allowed to testify on their own behalf. However, such testimony by a party is only granted limited evidentiary value; it cannot serve as proof of statements in respect of which the burden of proof lies with the testifying party, unless it supplements incomplete evidence.

Evidence should, as much as possible, be submitted together with the relevant court document. Parties can, however, submit additional written documentary evidence to the proceedings. Evidence submitted after a certain time prior to the oral hearing will, in principle, not be considered by the court (Section 87(6) DCCP).

Practice is likely to change as a bill proposing the modernisation of law of evidence is pending (see **14.1 Proposals for Dispute Resolution Reform**).

7.5 Expert Testimony

Expert evidence is permitted and may be furnished by submitting written expert evidence by one of the litigants or by having an expert examined as a witness. 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.

7.6 Extent to Which Hearings Are Open to the Public

In principle, court hearings in civil cases are open to the public. Under special circumstances, the court may decide to conduct court hearings behind closed doors (see **1.3 Court Filings and Proceedings**). Depending on the circumstances (ie, larger cases or cross-border matters, with foreign parties) and upon request, courts facilitate (foreign) parties to join physical court hearings by videoconference. Through live streaming facilities (if available), other interested parties, including press, can attend court hearings as well.

7.7 Level of Intervention by a Judge

In the Dutch legal system, the scope of a civil law dispute is determined by the parties. In principle, the judge may not grant or dismiss a claim that is outside of the debate between the parties. During hearings, the judge may play an active role. Some judges leave the debate mostly to the parties, while others keep a firm hold on the reins and pose questions during the hearing to the parties present. There is an increasing degree of case management by judges, which allows a more active approach on the grounds of establishing the truth. Dutch courts have recent-

ly adopted an almost, some would say, "activist" approach in climate litigation cases such as Milieudefensie v Royal Dutch Shell and Urgenda v the Dutch State.

In principle, a written judgment is given six weeks after the oral hearing. This date tends to be extended repeatedly.

A judge may, in urgent matters, give an oral judgment at the end of a hearing in preliminary relief proceedings or proceedings to obtain immediate relief measures before the Enterprise Court. An oral judgment immediately after the hearing is also possible in proceedings on the merits, albeit rare.

7.8 General Timeframes for Proceedings

In ordinary commercial disputes, it may take 12–18 months from the moment a writ of summons is issued to obtain a final judgment. This period may be considerably longer in complex cases, if motions or procedural issues are raised, or if further evidence (eg, by means of witness hearings or an expert opinion) must be taken.

A judgment in preliminary relief proceedings may be obtained immediately at the hearing, within a day (both in cases of extreme urgency) or within a few weeks.

8. Settlement

8.1 Court Approval

In general, settlements agreed between parties to a lawsuit do not require court approval. Settlements are generally incorporated in a settlement agreement (*vaststellingsovereenkomst*) (Section 7:900, DCC). A settlement reached during a hearing may be recorded in an enforceable court record. The court facilitates this but does not grant approval.

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), contained in Sections 7:907-910 of the DCC and Sections 1013-1018 of the DCCP. 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 be, and have been, also used for global settlements with relatively little connection to the Netherlands. Reference is made to the recent WAMCA legislation, which aims to facilitate out-of-court settlements (see **3.7 Representative or Collective Actions**).

8.2 Settlement of Lawsuits and Confidentiality

Settlement agreements often contain confidentiality clauses. Parties may nevertheless be obliged to disclose the contents of the agreement by law, or court order.

A collective WCAM settlement qualifies as a court judgment and is made public. The parties involved, and any other interested party, may inspect it and obtain a transcript thereof (Section 29(2), DCCP). This right may be restricted in view of certain interests of the parties (eg, privacy, company secrets).

8.3 Enforcement of Settlement Agreements

If the obligations ensuing from the settlement agreement or the legal validity thereof is not disputed, a title to enforce can be obtained fairly swiftly in summary proceedings by the party who requires performance. A settlement recorded in a court record generally includes an enforcement order. Such settlement can be enforced immediately.

8.4 Setting Aside Settlement Agreements

In a settlement agreement, parties undertake to end or prevent uncertainties or disputes in respect of their legal relationship, which may deviate from the previously existing legal situation. Such agreement is, in principle, valid even if it breaches mandatory law. The objective is to provide legal certainty. Therefore, more stringent demands apply to the setting aside or annulment of a settlement agreement than to regular agreements. A settlement recorded in a court record can only be reviewed under special circumstances, such as blatant errors, deception or fraud.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

Order for Specific Performance

Pursuant to Section 3:296 of the DCC, a court can order a party to fulfil its legal obligations (contractual or non-contractual) towards another party.

Damages

The court may order a party to pay damages to another party if it has breached a contractual obligation towards the other party or if it has acted unlawfully.

Declaratory Decision

The court may render a declaratory decision of a certain legal situation or right.

Application for an Order or Injunction

The court can order a party that acts unlawfully, or who is likely to act unlawfully, to perform certain actions (order) or to refrain from performing such actions (injunction). Most of these awards can be reinforced by penalty payments.

Setting Aside (Ontbinding)

The court may order the setting aside (partial or complete) of an agreement and award damages in the case of a breach. The setting aside has no retroactive effect.

Amendment

In the event of unforeseen circumstances and error, the court can partially or completely set aside or amend an agreement.

Annulment (Vernietiging)

A party that has concluded an agreement under duress, error, deception or misuse of circumstances may request the court to (partially) annul such an agreement. Annulment can also be requested in cases of fraudulent acts in respect of creditors (*actio pauliana*). Annulment has retroactive effect.

9.2 Rules Regarding Damages

In the Dutch legal system, damages are awarded to compensate the aggrieved party in full. The damages are intended to restore the financial position of the aggrieved party as if the event that caused the damage had not taken place. Dutch law does not provide for punitive damages.

In principle, damages are paid in monetary form. At the request of the aggrieved party, the court

may rule that compensation must take place in another form (Section 6:130, DCC); eg, by restoration (restitutio in integrum) or rectification (Section 6:167(1) DCC and 6:196(1), DCC). The court may, under certain circumstances, reduce a legal obligation to pay damages (Section 6:109, DCC).

Collateral benefits are deducted from the awarded damages (Section 6:100, DCC). If the liable party has derived profit from an unlawful act or a violation of a contractual obligation, the court may determine the compensation to be paid to the aggrieved party on the basis of its entire or partial profit (Section 6:104, DCC).

If a penalty clause applies, the agreed penalty replaces a claim for damages, unless the parties agreed that both a penalty and damages may be claimed simultaneously.

9.3 Pre-judgment and Post-judgment Interest

In principle, interest is owed as per the day after the legal obligation ought to have been fulfilled until the obligation has been fulfilled. The rate of statutory interest for both commercial and non-commercial transactions is determined by the Minister of Justice. The parties may agree on a different rate of interest.

9.4 Enforcement Mechanisms of a Domestic Judgment

Final judgments (with the force of res judicata) or judgments with immediate effect may be enforced after being served on the other party by the bailiff. If a pre-judgment attachment was imposed against the obligor to secure compliance, this becomes an attachment in execution. If payment is not forthcoming, recovery may take place on the assets of the debtor (including assets of the debtor held by third parties).

Specific rules may apply for other kinds of obligations. The entitled party can be authorised by the court to undertake certain activities itself, at the expense of the opposite party. In other cases, the court can decide that the judgment will supersede the juridical act that ought to have been performed by the party against whom the order was given.

9.5 Enforcement of a Judgment From a Foreign Country

Recognition and Enforcement of Judgments From Non-EU Member States

Pursuant to Section 431(1) of the DCCP, decisions from a foreign country cannot be enforced in the Netherlands, unless a law or convention determines otherwise.

Section 431(2) of the DCCP provides that, without a law or convention determining otherwise, new proceedings have to be initiated before a Dutch court to obtain a judgment that is eligible for enforcement in the Netherlands. In practice, however, most cases are not reviewed on the merits again. If the foreign decision meets certain recognition conditions developed in Dutch case law, and the decision is still enforceable in the country of origin, the Dutch court will award a claim corresponding with the foreign decision.

If there is a law or convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, permission of the court to enforce the decision in the Netherlands must be obtained. This permission, or warrant to enforce, is known as an “exequatur” (Sections 985–994, DCCP). Upon the exequatur application, the Dutch court verifies whether all formalities – including but not limited to the review criteria of the applicable convention regulations – have been observed. The exequatur proceedings of Sections 985–994 of the DCCP may be over-

ruled by special convention or statutory regulations.

The Netherlands is – amongst others – party (as member of the European Union) to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (The Hague, 2019).

Recognition and Enforcement of Judgments from EU Member States (Except Denmark)

In civil and commercial matters, the recognition and enforcement of judgments from EU member states (except Denmark) is provided for by the recast of the Brussels I Regulation and some other EU regulations.

The Brussels I Recast provides for enforcement of judgments rendered in another EU member state – which is enforceable in that state – without any special procedure being required. The relevant party may apply to the enforcing authority in the country of enforcement directly (in the Netherlands this is a bailiff).

The party against whom enforcement is requested may oppose enforcement in the Netherlands by invoking the grounds for refusal under Section 45(1) of Brussels I Recast, as well as the grounds that can be advanced under Dutch law for refusal or suspension of the execution (provided that these grounds are not incompatible with the grounds of Brussels I Recast). A decision upon such application is subject to appeal and appeal in cassation.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

It is possible to lodge an appeal against almost all final judgments of a district court at the courts of appeal. Objections against interim judgments 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. Most decisions of the courts of appeal can be appealed to the Supreme Court. Decisions of the Enterprise Court can only be appealed to the Supreme Court.

10.2 Rules Concerning Appeals of Judgments

The court of appeal may reconsider the case in full (eg, on the law and on the facts). The court of appeal is not bound by the facts established by the court of first instance (district court). On the basis of the acknowledged facts and of ascertained new facts, it will decide if the judgment of the court of first instance should be upheld. If the court of first instance misinterpreted the rules of law and/or the facts, the court of appeal may reverse the decision and provide judgment itself, covering all elements of the dispute.

The grounds for appeal in cassation are limited to questions regarding the application of the law and legal reasoning behind the appealed judgment. The Supreme Court does not (re)examine the facts.

10.3 Procedure for Taking an Appeal

Any party to the dispute in first instance may lodge an appeal within three months from the day the first instance decision was rendered by serving a notice of appeal to the other party (provided the value concerned exceeds EUR1,750). The notice of appeal may be filed pro-forma and

the grounds for appeal may be submitted in a separate statement of appeal. The other party may lodge a cross-appeal at the latest in its statement of defence in appeal.

Appeal in cassation must be filed within three months from the day the decision was rendered. It is required to include the reasons and arguments regarding the judgment of the court of appeal against which the objections are raised in the notice of appeal in cassation.

10.4 Issues Considered by the Appeal Court at an Appeal

The appeal may be used both to complain about inaccuracies in the judgment of the district court, and to correct errors made by the parties. It is possible to limit the appeal to complaints regarding specific, limited parts of the judgment by the court of first instance or to request the court of appeal to review the entire scope of the case on the basis of the objections put forward. In principle, both parties may put forward new facts and new arguments in appeal. Upon request of one of the parties, an oral hearing will be ordered.

The Supreme Court only deals with matters of law; the type of complaints that can be raised in appeal in cassation is that the court of appeal has incorrectly interpreted or applied the rules of law, or that the judgment of the court of appeal is incomprehensible in view of what the parties have advanced. There is no opportunity for new arguments or a discussion on the facts in cassation. Oral hearings are an exception. After cassation, the Supreme Court may refer the case to a court of appeal for further proceedings.

10.5 Court-Imposed Conditions on Granting an Appeal

The courts may not impose conditions on granting an appeal (other than standard DCCP regulations on admissibility of the appeal). Interim judgments may only be appealed at the court's discretion unless such interim judgment contains a final judgment on part of the dispute.

10.6 Powers of the Appellate Court After an Appeal Hearing

The court of appeal should assess the case and decide on the arguments raised by the party lodging the appeal. Decisions of the district court that were not argued by the parties in appeal, should be considered by the court of appeal as facts. However, if the court of appeal agrees on the arguments of the party lodging the appeal, the court of appeal also has to decide on all arguments that the other party has raised on that issue in the proceeding at the district court. The court of appeal can reverse the decision and provide judgment itself covering all elements of the dispute.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

Parties are obliged to pay their own litigation costs. The losing party is usually ordered to cover the litigation costs of the prevailing party. This includes court fees as well as witness and expert fees. The awarded legal fees are based on fixed amounts for certain standard activities (eg, submission of a written statement, attending an oral hearing or imposing a pre-judgment attachment), but are also contingent on the value of the claim.

The actual costs and attorney fees incurred by the prevailing party are seldom covered by the amount awarded. Recovery of the remaining costs of the losing party is not usually possible except in cases of a frivolous suit and – under

certain conditions – in cases concerning intellectual property, where the prevailing party can be awarded full costs, including its attorney's fees. The costs of litigation awarded can be challenged in ordinary appeal proceedings.

11.2 Factors Considered When Awarding Costs

See **11.1 Responsibility for Paying the Costs of Litigation**.

11.3 Interest Awarded on Costs

Statutory interest on costs should be explicitly claimed by the other party. Statutory interest is calculated as a compound interest from the day the party is in default. The interest rate is determined by the Minister of Justice.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

There is an increased interest among litigants for alternative dispute resolution (ADR), primarily in the form of arbitration, but also mediation and adjudication (expert determination or binding advice). The main reasons for this increased interest are efficiency, expertise and confidentiality. Compared to the governmental judicial system, the parties have more influence on the structure and processing time of the dispute resolution, the language and the applicable law, and the appointment of expert arbiters or advisers charged with giving a binding opinion. The hearings and the findings or awards are, in principle, not public. Arbitration institutes and expert arbitrators in the Netherlands are frequently used, both nationally and internationally.

The process of mediation, whereby the parties attempt to resolve a conflict assisted by a mediator who acts as an independent process manager, is beginning to gain traction as a form of ADR. Not all business disputes are suitable for mediation. The Mediation Directive (European Directive 2008/52/EC), implemented in the Netherlands in 2012, inter alia entails that enforcement is facilitated, limitation periods can be interrupted with mediation and mediators are granted a legal privilege. The implementation act only applies to cross-border cases, for the time being.

12.2 ADR Within the Legal System

As a general rule, the state court will not hear the case if the parties have agreed on arbitration. This does not apply when mediation has been agreed; mediation takes place on a voluntary basis. Courts encourage mediation and may ask the parties whether they agree to refer a pending case to mediation. There is no sanction for refusing such a mediation.

12.3 ADR Institutions

Most arbitration cases are administered and facilitated by well-organised arbitration institutes, such as the Netherlands Arbitration Institute (NAI), one of the specialised arbitration institutes or those aimed at certain market segments such as the Arbitration board for the building industry (RvA), the metal industry and trade, transport and maritime cases (UNUM), for complex financial disputes (PRIME Finance), and for technology disputes (TAMI). These institutes apply regulations and generally advocate contract clauses to be used by the parties.

The aforementioned institutions often facilitate binding advice proceedings. In addition, there are registers of advisers charged with giving binding opinions with a specific background and expertise such as, for example, the Register Valuators (affiliated with NiVR).

The NAI can further be requested by the parties to administer and facilitate mediation proceedings. In the area of business mediation, two associations have been established to promote the use of mediation for the settlement of business and commercial disputes. In business dispute resolution, accredited (certified) mediators are used, such as mediators registered with the Mediators Federation Netherlands, who meet certain training requirements.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Every arbitration with its place of arbitration in the Netherlands is subject to the Dutch Arbitration Act (DAA), which is laid down in Sections 1020–1077, DCCP. The DAA contains mandatory and non-mandatory provisions.

13.2 Subject Matters Not Referred to Arbitration

Pursuant to Section 1020(3) of the DCCP, the arbitration agreement may not serve to determine legal consequences that cannot be freely determined by the parties. Matters of public policy, and other matters reserved by law to the civil courts, cannot be referred to arbitration, including aspects of family law (divorce or adoption), intellectual property law, criminal law, insolvency law and corporate law (eg, the status of a limited liability company, right of investigation, liquidation proceedings or the validity of corporate decision making).

13.3 Circumstances to Challenge an Arbitral Award

Arbitral awards may be set aside (*vernietigen*) or revoked (*herroepen*) by the court of appeal (Sections 1064a(1) and 1068, DCCP).

Revocation

An award can be revoked in specific cases of fraud, if the award is based on forged documents or if documents that would have had an influence on the decision were withheld by the other party (Section 1068, DCCP).

A request for revocation must be filed within three months after the date the ground for revocation was discovered.

Setting Aside

There are five grounds for setting aside an arbitral award (Section 1065, DCCP):

- absence of a valid arbitration agreement;
- the tribunal was composed in violation of the applicable rules;
- breach of mandate by the arbitral tribunal;
- lack of signature and/or reasoning; and
- the award, or the manner in which it was made, violates public policy.

A request for setting aside an award must be filed within three months of the date the arbitral award was sent to the parties (first period) or within three months after the arbitral award was served to the party against whom judgment had been given (second period). If the parties agreed to deposit the award, the request to set an award aside must be filed within three months after the deposit at the district court. After the expiration of this three-month period, an award can still be set aside if it contravenes public order.

The court of appeal may, at the request of a party or of its own motion, suspend setting aside proceedings, to put the arbitral tribunal in a position to reverse the ground for setting aside (Section 1065a, DCC).

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Domestic arbitral awards require leave for enforcement (exequatur) from the provisional relief judge of the competent district court before they can be enforced (Section 1062, DCCP). An exequatur is granted upon a request by one of the parties.

Enforcement of an arbitral award may only be refused if, after summary investigation, it seems likely that the award will be set aside or revoked, or if the enforcement concerns a penalty for non-compliance which has been imposed contrary to Section 1056 of the DCCP (Section 1063, DCCP).

The possibility to appeal is asymmetric; it is possible to appeal against a refusal of leave for enforcement, but it is not possible to appeal a decision granting leave for enforcement (Sections 1063(4) and (5), DCCP).

Recognition and Enforcement of Foreign Arbitral Awards

Foreign arbitral awards may be recognised and enforced in the Netherlands upon the request of a party on the basis of a convention (Section 1075, DCCP) or Dutch law (Section 1076, DCCP). Requests for an exequatur with regard to foreign arbitral awards are submitted to the court of appeal.

Treaty Based

If a convention or treaty for the recognition and enforcement of the arbitral award applies, leave for enforcement of a foreign arbitral award may be requested with the court of appeal on the basis of Section 1075 of the DCCP. The exequatur proceedings laid down in Sections 985–991 of the DCCP apply, in so far as the applicable convention does not contain provision in derogation thereof. The court of appeal verifies whether all formalities, including those of the applicable convention, have been observed.

The appeal possibilities are similar to those described for the enforcement of Dutch arbitral awards. This includes the asymmetric appeal rule, unless this rule leads to a violation of the rights of the defendant ex Article 6 of the European Convention on Human Rights.

The Netherlands is a party to the New York Convention and the ICSID Convention. Whereas the New York Convention prescribes a similar route as provided above, the ICSID Convention provides for a slightly different procedure.

Non-treaty Based

If no convention or treaty for the recognition and enforcement of the arbitral award applies, or if the party does not base its request upon an applicable treaty or convention, a request for leave of enforcement may be based on Section 1076 of the DCCP, to be submitted to the competent court of appeal.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

There are two noteworthy legislative proposals for the reform of dispute resolution pending in the Netherlands.

Modernisation and Simplification of the Law of Evidence

On 17 June 2020, a revised legislative proposal for the modernisation of the law of evidence was submitted to the House of Representatives (*Tweede Kamer*). The most important proposals/proposed changes are:

- parties will be obliged to collect and gather information and evidence as much as possible prior to initiating a lawsuit;
- filing separate applications for preliminary evidence (*voorlopige bewijsverrichtingen*) (eg, provisional examination of witnesses, provisional expert opinion, provisional judicial site visit or inspection and inspection prior to proceedings) will no longer be allowed – these requests should be bundled and filed in a single request;
- the rules regarding the right of inspection (*inzagerecht*) will be amended; and
- codification of the possibility to seize evidence in non-IP cases.

The proposal was met with criticism from practitioners and academics. It remains unclear whether, and if so, in what form, the proposal will be adopted.

Act on the Adjustment of the Dispute Settlement Proceedings and Clarification of Admissibility Requirements for Inquiry Proceedings

The preliminary bill aims:

- to improve the effectiveness of dispute settlement proceedings regarding shareholder disputes by relaxing the thresholds on which forced exit (*uitstootregeling*) or forced buy-out (*uittreedregeling*) claims can be granted; and
- to clarify the conditions of access to the inquiry proceedings for shareholders (and holders of depositary receipts for shares) of listed companies, in particular for shareholders (and depositary receipt holders) of listed companies with a subscribed capital of less than EUR22.5 million.

On 3 July 2023, the Council of State published its opinion on the draft bill. It is yet unknown when the bill will be submitted to the House of Representatives.

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