Chapter

Netherlands

Van Doorne N.V.

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of The Netherlands?

Arbitration agreements must provide for a clear and unequivocal choice of arbitration. Dutch law does not provide for specific requirements as to the form of an arbitration agreement. Arbitration agreements may be entered into verbally but, if contested, must be proven by a written instrument.

1.2 What other elements ought to be incorporated in an arbitration agreement?

Parties are free to agree on the various aspects of their arbitration agreement. These aspects could for instance concern, but are not limited to, a choice i) of the language of the arbitration, ii) to hold hearings outside the seat of arbitration and/or outside of the Netherlands, iii) to exclude a provision in the Dutch Arbitration Act ("DAA") that allows for the joinder of arbitral proceedings, and iv) of the composition of the arbitral tribunal.

In addition, parties may agree on multi-tier arbitration clauses. The negotiation and mediation stages of such a multi-tier clause are generally complied with. They do not provide a formal jurisdictional barrier to the commencement of arbitration or an issue of arbitrability.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in The Netherlands?

The DAA, which is incorporated in Book 4 of the Dutch Code of Civil Procedure ("DCCP"), is applicable to arbitrations that have the Netherlands as their formal seat.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

Yes, the DCCP provides for a so-called monistic system, i.e. it does in principle not distinguish between the rules applicable to national and to international arbitrations.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, the DAA is inspired by the UNCITRAL Model Law of 1985. There are, however, differences. For instance:

- Dutch law contains time limits (two or three months) for the appointment of arbitrators.
- Dutch law does not provide for the possibility to request interpretation of the arbitral award. Dutch law does, however, provide for correction of computing or clerical errors or specific errors of form, as well as the rendering of additional awards.
- Under Dutch law, a final award is to be deposited with the registry of the District Court at the place of arbitration.

Currently, legislation is pending to revise the DAA (see also question 15.1). The proposed amendments seek to bring the DAA even closer to the UNCITRAL Model Law.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in The Netherlands?

The DAA, including the mandatory provisions contained therein, applies to both national and international arbitrations (see also question 2.2). The number of mandatory provisions in the DAA is, however, limited. Consequently, parties enjoy considerable freedom to determine the rules of procedure.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of The Netherlands? What is the general approach used in determining whether or not a dispute is “arbitrable”?

Under Dutch law, parties are free to submit to arbitration any subject matter, unless a decision on such matter would lead to legal
consequences which parties may not freely dispose of. The types of disputes that may not be arbitrated relate to issues concerning public policy, such as (aspects of) family law, intellectual property law, bankruptcy law and matters with *erga omnes* effect (i.e., an effect on third parties). A debate is on-going in the Netherlands concerning the possibility of arbitrating disputes involving the validity of corporate decision-making.

### 3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Dutch law adheres to the principle of competence-competence (article 1052 DCCP). The control exercised on the tribunal’s decision takes the form of setting aside (annulment) proceedings in which a court may decide on this particular issue. The court will, for example, set aside an arbitral award in case it concludes that no arbitration agreement exists.

### 3.3 What is the approach of the national courts in The Netherlands towards a party who commences court proceedings in apparent breach of an arbitration agreement?

If a party in court proceedings invokes an arbitration agreement, the court will (subject to a decision that the agreement to arbitrate is valid, if validity is contested) decide that it does not have jurisdiction to decide upon the dispute. Dutch procedural law requires the party invoking arbitration to ultimately do so in the first written pleadings or, in the absence of written pleadings, the first oral argument.

### 3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?

A decision of the arbitral tribunal that it does not have jurisdiction is final. Unless parties have agreed otherwise, such decision leads to the ‘revival’ of the jurisdiction of the competent state court (section 1052(5) DCCP).

A decision of the arbitral tribunal that it does have jurisdiction may only be challenged after a (partly) final award is rendered (section 1052(4) DCCP). If an arbitration agreement is absent, the award may be set aside on the basis that a valid arbitration agreement is lacking. The lack of a valid arbitration agreement may also be forwarded as a defence in proceedings for obtaining leave for (recognition and) enforcement.

### 3.5 Under what, if any, circumstances does the national law of The Netherlands allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

In principle, third parties (i.e. those who are not a party to the arbitration agreement) are not bound to an arbitration agreement. A range of nuanced exceptions exist, relating to (amongst others) co-debtors, parties to specific agreements providing for surety and bankruptcy administrators.

### 3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in The Netherlands and what is the typical length of such periods? Do the national courts of The Netherlands consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The DAA does not provide for rules on time limitations for the commencement of arbitral proceedings. Under Dutch law these rules are considered to be substantive rules. Consequently, they are governed by the law applicable to the merits of the dispute. Under Dutch substantive law, a contractual claim is (subject to interruption) generally barred after five years.

### 3.7 What is the effect in The Netherlands of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

It is assumed that, in general, the insolvency of a party has the same effects on pending arbitration proceedings as on pending court proceedings. The arbitral proceedings are therefore generally stayed by operation of law if (i) it is the defendant that became insolvent during the proceedings, and (ii) the subject of the proceedings is an action for payment or for any other performance of an obligation (as opposed to an action under property law). In most other cases, the opposing party has the possibility to request a stay of the proceedings to allow the trustee to take over the proceedings.

### 4 Choice of Law Rules

#### 4.1 How is the law applicable to the substance of a dispute determined?

In the absence of a choice of law by the parties, the tribunal decides on the basis of the law that it deems appropriate (section 1054 DCCP).

#### 4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The tribunal is obliged to apply any mandatory rule that constitutes public policy.

#### 4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

There is currently no clear choice of law rule that governs the arbitration agreement (as opposed to the substance of the dispute). Under the proposed amendments for the DAA (see question 15.1), an arbitration agreement is valid if it is valid under the law applicable to it by virtue of a choice of the parties or, in the absence of such choice, under Dutch substantive law.

### 5 Selection of Arbitral Tribunal

#### 5.1 Are there any limits to the parties’ autonomy to select arbitrators?

The DAA does not provide for limitations on the nature and
As follows from the answer to question 6.1, sections 1036-1048 DCCP are of a default nature and provide for freedom of the parties to determine the rules of procedure.

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By law?

An arbitrator who is or becomes aware of a real or apparent basis for a challenge is obliged to disclose a (potential) conflict. This obligation to disclose applies before the appointment, as well as thereafter (section 1034(1) DCCP).

Subject to specific arrangements agreed on by the parties, under the DAA, arbitrators have a broad variety of powers and duties. A tribunal, for instance, is obliged to hold a hearing if so requested by either party, decide on the merits of the challenge (section 1026 DCCP); and/or a challenged arbitrator does not withdraw within two weeks of the day of receipt of the notification of the challenge. In that case, the Interim Provisions Judge shall, at the request of either party, decide on the merits of the challenge (section 1035(3) DCCP).

There are no specific rules regarding the conduct of a hearing in arbitration. However, rules of procedure such as equal treatment and the right for a party to present its case do apply. An arbitral tribunal acting under the DAA does in principle have the authority to take measures to safeguard the integrity of the proceedings. These measures may for instance consist of unfavourable cost awards or drawing adverse inferences.

In addition, members of the Dutch Bar are bound by a code of ethics. This code provides for general rules of counsel conduct and applies to Dutch counsel acting in arbitrations seated in- and outside of The Netherlands. The code of ethics of the Dutch Bar does not apply to members of foreign bars, irrespective of whether the arbitration is located in The Netherlands.

There are no formal requirements as to legal representation. A party may be represented in arbitral proceedings by a lawyer from any jurisdiction. This is only different with respect to applications made before state courts. It is perfectly acceptable to conduct arbitral proceedings in English (or any other language).

The DCCP contains no rules on arbitral immunity. However, the Dutch Supreme Court ruled that arbitrators may only be held liable in connection with an annulled award if they acted with intent or wilful recklessness, or clearly and grossly neglected to perform their duties properly. Also, immunity (or a far-reaching limitation of liability) for arbitrators is generally the subject of applicable arbitration rules (see for instance article 66 of the Arbitration Rules of the Netherlands Arbitration Institute).

As a general rule, state courts have no jurisdiction to deal with
procedural issues arising during the arbitration. Exceptions to this rule are to be found in sections 1027 (relating to the constitution of the arbitral tribunal, see questions 5.1-5.3), 1041 (assistance in obtaining testimony from uncooperative witnesses) and 1046 DCCP (consolidation of arbitral proceedings).

Also, the Interim Relief Judge may, at the request of either party, terminate the mandate of the arbitral tribunal if, despite repeated reminders, the tribunal carries out its mandate in an unacceptably slow manner (section 1031(1) DCCP).

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in The Netherlands permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Tribunals may order interim measures and offer preliminary relief. The power to enter interim measures is typically provided for in applicable arbitration rules. No requirements exist regarding the form of a tribunal’s decision thereon. Interim measures are not enforceable in Dutch courts if they are cast in the form of an order or interim award. In addition, the parties may empower the tribunal to grant an award in arbitral summary proceedings; such award is, in principle, enforceable.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party’s request to a court for relief have any effect on the jurisdiction of the arbitral tribunal?

The competent Interim Relief Judge may grant provisional relief in support of arbitrations in case of urgency and, typically, in matters outside the remit of tribunals (such as seizures and prejudgment witness and expert hearings). He may, in principle, also do so after the constitution of an arbitral tribunal.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The Interim Relief Judge has exclusive jurisdiction to grant leave for attachment or seizure of assets within its territory. The applicable standard for such grant in relation to (main) proceedings to be brought before an arbitral tribunal equals the standard applied in cases where a state court has jurisdiction to hear the case on the merits.

As to jurisdiction to hear a request for an interim measure, the Interim Relief Judge will base such a decision, amongst other factors, on the question of whether the arbitral summary proceedings could lead swiftly enough to interim relief.

A request to the court for interim relief does not have any effect on the jurisdiction of the arbitral tribunal.

7.4 Under what circumstances will a national court of The Netherlands issue an anti-suit injunction in aid of an arbitration?

It would be highly exceptional for a Dutch court to issue an anti-suit injunction. As concerns matters governed by the EUR Brussels I Regulation specifically, the ECJ decided in the Allianz v. West Tinkers case that a court cannot make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State of the European Union, on the grounds that such proceedings would be contrary to an arbitration agreement.

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

The DAA does not bar a party from seeking security for costs in summary proceedings before arbitrators or the Interim Relief Judge.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in The Netherlands?

The arbitral tribunal is not bound by (formal) rules of evidence which apply in court proceedings, unless parties have agreed otherwise.

8.2 Are there limits on the scope of an arbitrator’s authority to order the disclosure of documents and other disclosure (including third party disclosure)?

Tribunals are not bound by rules on the taking of evidence provided for in the DCCP. These provisions may, however, be used in order to obtain evidence from a third party (see also question 8.3).

In international arbitrations, the IBA Rules on the Taking of Evidence in International Arbitration 1999 and 2010 are often applied (be it directly or as guidance). Disclosure/discovery will typically relate to documents and may include information stored electronically.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

A party may request a court to order disclosure of certain documents under section 843a DCCP (if i) the court has jurisdiction in respect of the person or entity that has the documents under its control, ii) the requesting person or entity has a legitimate interest in obtaining specific documents concerning a legal relationship to which the person or entity, and iii) the person or entity from which the documents are requested has the documents under its control. A request under section 843a of the DCCP is not precluded by the fact that the dispute in connection with which the documents are requested is subject to arbitration.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

As is the general approach of the DAA to procedural matters, its rules on production of evidence in general leave plenty of room for the parties to agree on specific arrangements. If the parties do not agree on any specific rules, the production of written evidence is at the discretion of the arbitral tribunal.

The arbitral tribunal has discretionary power to allow parties to hear/cross-examine witnesses and/or experts, and will generally allow a request to that effect. It is assumed that the arbitral tribunal may also, on its own initiative, decide to hear witnesses. However, if arbitrators wish to conduct their own investigation instead of...
appointing an expert to do so, the arbitrators need explicit and unambiguous approval of the parties.

If the arbitral tribunal deems it appropriate, witnesses will be sworn in before giving testimony. This is, however, uncommon. The procedure for questioning witnesses is left to the arrangements made by the parties, or in the absence of such arrangements, the discretion of the arbitral tribunal. In arbitrations involving Dutch arbitrators, it is common for arbitrators to question witnesses after which the parties are allowed to pose questions. In conformity with the approach in the Dutch state courts, in domestic arbitrations, cross-examination is rare. In international arbitrations, common law approaches to procedure (such as cross-examination and discovery) are less uncommon and accepted.

### 8.5 What is the scope of the privilege rules under the law of The Netherlands? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Dutch arbitration law does not contain rules on privilege. It is left up to the discretion of arbitrators to decide whether a party should produce certain documents or not. In international arbitrations with a seat in The Netherlands, questions relating to disclosure (or even discovery) of documents tend to be answered in conformity with the provisions of the IBA Rules on the Taking of Evidence in International Commercial Arbitration, which include rules on privileged documents.

### 9 Making an Award

#### 9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of The Netherlands that the Award contain reasons or that the arbitrators sign every page?

Yes, awards must be in writing, should be signed by the tribunal’s members (albeit not on every page) and should include: i) the name and place of residence of each of the members of the tribunal and parties; ii) the date of the issuance of the award; iii) the place of issuance of the award; and iv) the grounds for the decision taken. There are some limitations on permissible relief, including that a tribunal is not empowered to offer leave to seize property or to lift attachments.

### 10 Challenge of an Award

#### 10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in The Netherlands?

The grounds for challenge of an arbitral award rendered under the DAA are limited to the following grounds:
- absence of an arbitration agreement;
- constitution of a tribunal in violation of the rules applicable thereto;
- breach of mandate;
- lack of signature and/or reasoning; and/or
- the award or the manner in which it was made is in violation of public policy.

Under the current DAA, setting aside proceedings are brought before the competent District Court, with appeal and Supreme Court appeal (the latter on very limited grounds) possible. Pending legislation on the revision of the DAA provides for setting aside proceedings to be brought at the Court of Appeals and, consequently, the limitation of setting aside proceedings to one factual instance.

Challenge proceedings do not stay enforcement proceedings per se. Parties may, however, request a stay of enforcement pending challenge proceedings.

Time limitations apply (see question 10.4).

#### 10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

It is often assumed that parties cannot exclude the possibility to set aside or revoke an arbitral award.

#### 10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

If parties have provided for the possibility of arbitral appeal, this may lead to a full reassessment of the case.

It has been debated whether parties can expand the grounds for setting aside or revocation of an arbitral award. However, parties could choose to make specific provisions in the mandate of the arbitral tribunal, thereby effectively expanding the grounds for setting aside an award based on non-compliance with that specific mandate.

#### 10.4 What is the procedure for appealing an arbitral award in The Netherlands?

Arbitral appeal is only available if parties have provided for this by agreement. If the parties have provided for the possibility of an appeal, any such proceedings must be brought within three months after the award in first instance is deposited with the registry of the District Court (see also question 2.3), unless the parties have stipulated a different time period.

If the award is not subject to appeal (or is the result of appeal proceedings), a party may request the competent court to set aside or revoke the arbitral award, also within three months after the award is deposited with the registry of the District Court. If leave for enforcement is obtained and the award is served on the other party, a new three-month period commences during which a request for setting aside or revocation of the award can be made. In addition, revocation is also possible during a period of three months after discovery of the grounds for revocation.

### 11 Enforcement of an Award

#### 11.1 Has The Netherlands signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

The Netherlands has signed and ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Netherlands (only) made the so-called ‘reciprocity reservation’. This implies that the Dutch courts will only apply the rules of the convention to awards made in the territory of another Member State to the Convention.

A party may also seek recognition and enforcement on the basis of
section 1076 DCCP. This would be an option if no convention on recognition and enforcement applies, but also if the rules of the DCCP are more favourable than the applicable convention. An _exequatur_ (a leave for recognition and enforcement) is requested at the District Court in the place of arbitration. The process is relatively simple. In respect of arbitrations with a seat in The Netherlands, an _exequatur_ may be granted without hearing the party against whom enforcement is sought.

If recognition and enforcement relates to a foreign arbitral award, the party against whom enforcement is sought will be called to appear for a hearing. Recognition and enforcement may be refused and/or opposed if:

- an arbitration agreement is lacking (under the applicable law);
- the tribunal is constituted in violation of rules applicable thereto;
- the tribunal has failed to comply with its mandate;
- the award is still open to appeal (i.e., not final); or
- the award has been set aside by a competent authority in the country in which the award was rendered.

### 11.2 Has The Netherlands signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

The Treaty between the Netherlands and Belgium concerning the Reciprocal Enforcement of Judgments (1925) includes rules governing the enforcement of arbitral awards.

### 11.3 What is the approach of the national courts in The Netherlands towards the recognition and enforcement of arbitral awards in practice? What steps are parties required to take?

Courts are generally inclined to easily grant leave to enforce. In highly exceptional circumstances (the so-called Yukos-matter, which has received extensive coverage in international arbitration journals), Dutch courts have also permitted enforcement of an award set aside at the place of arbitration. It should be stressed that this was a highly exceptional occurrence, relating to the finding by the Dutch court that the award at issue was set aside in proceedings which in the (Russian) court was not deemed impartial and independent.

### 11.4 What is the effect of an arbitration award in terms of _res judicata_ in The Netherlands? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

A (partly) final arbitral award which is not, or is no longer, subject to appeal, has the force of _res judicata_ from the day the award has been rendered. The scope of the force of _res judicata_ of arbitral awards is the same as that of court decisions. This implies that decisions made in the arbitral award regarding the dispute are binding in other disputes between the parties.

### 11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

In cases governed by the New York Convention, Dutch courts apply the public policy standard laid down in this Convention. As a rule, a Dutch court may only refuse enforcement of a Dutch arbitral award on grounds of public policy in cases of a clear violation. With respect to foreign arbitral awards, the Dutch courts will take into account the international nature of the award.

### 12 Confidentiality

#### 12.1 Are arbitral proceedings sited in The Netherlands confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

It is generally accepted that confidentiality of the arbitral proceedings is an important principle. Confidentiality of arbitral proceedings, however, is not laid down in the DCCP, nor is it in the rules of most recognised arbitration institutes. It is therefore unclear what effect is to be attributed to this principle. In case confidentiality is key, it is advisable to sign a confidentiality agreement setting out the exact obligations of the parties in this respect.

#### 12.2 Can information disclosed in arbitral proceedings be referred to or relied on in subsequent proceedings?

See question 12.1.

### 13 Remedies / Interests / Costs

#### 13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Arbitrators can only award damages that are claimed by a party, as otherwise the award will be subject to challenge on the grounds of a violation of the mandate. This may lead to a (partial) setting aside of the award.

A tribunal may award interest and costs and may issue injunctions sanctioned by penalty payments, if so requested by one of the parties. Dutch law does not provide for punitive damages. It is unclear whether parties can validly agree that arbitrators may award such damages.

#### 13.2 What, if any, interest is available, and how is the rate of interest determined?

What interest may be awarded depends on the applicable law and the contractual arrangements between the parties. Under Dutch law, a creditor may claim compound interest, which is calculated on the contractual arrangements between the parties. A tribunal may award interest and costs and may issue injunctions

#### 13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

This issue is not explicitly provided for in the DCCP. However, the losing party will usually be ordered to pay all costs of the arbitral tribunal. Moreover, it is common for the losing party to be ordered to pay some compensation for legal fees and costs of the winning party.
Unless parties have agreed on rules concerning this matter, it is at the discretion of the arbitrators how much compensation is awarded for legal fees and costs. The extent of compensation awarded varies considerably. However, generally speaking, in the absence of an agreement between the parties on this issue, arbitrators tend to be cautious in awarding full compensation for legal fees.

Under the Arbitration Rules of the Netherlands Arbitration Institute, arbitrators may award the winning party a reasonable compensation for legal fees, if and to the extent that such costs, in the opinion of the arbitrators, were necessary. The Netherlands Arbitration Institute has issued guidelines on this issue. These are to be used primarily in domestic arbitrations and set out a fixed compensation scheme based on the procedural actions performed and the value of the claim.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

The award itself is not subject to tax, but a small fee has to be paid for depositing the award with the District Court.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of The Netherlands? Are contingency fees legal under the law of The Netherlands? Are there any "professional" funders active in the market, either for litigation or arbitration?

Claim funding is not restricted in any way by Dutch law. Contingency fees are also legal under the law of the Netherlands. Dutch lawyers are not allowed to work on inter alia a strictly ‘no cure no pay’ basis due to regulations of the Dutch Bar Association. This restriction does not apply to foreign legal counsel acting before an arbitral tribunal in the Netherlands.

14 Investor State Arbitrations

14.1 Has The Netherlands signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as “ICSID”)?

The Netherlands has signed and ratified the Washington Convention of 1965.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is The Netherlands party to?

The Netherlands is party to approximately 100 BITs and is also a party to the Energy Charter Treaty. The Netherlands BITs are known for their open provisions on jurisdiction and their broad protections. Many investors structure investments through the Netherlands to take advantage of the favourable Netherlands BITs, in addition to the favourable tax regime in the Netherlands.

14.3 Does The Netherlands have any noteworthy language that it uses in its investment treaties (for example in relation to “most favoured nation” or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

The Netherlands uses standard terms for its investment treaties. The standard terms guarantee that no expropriation takes place without just compensation that represents the genuine value of the investment. Furthermore, foreign investors are guaranteed fair and equitable treatment and treatment that is at least as favourable as that of national investors or, if more favourable, investors of any third country. The standard terms also require that invested funds can be transferred freely. Finally, the standard terms require foreign investors the option to institute arbitration proceedings (ICSID) in respect of investment disputes with the state.

14.4 What is the approach of the national courts in The Netherlands towards the defence of state immunity regarding jurisdiction and execution?

A state that agrees to arbitration waives the right to challenge the jurisdiction of arbitrators on the basis of state immunity. The waiver probably does not cover the enforcement of the arbitral award. A party can, therefore, in principle, not attach state property that serves a public purpose. This generally includes tax claims of the state.

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in The Netherlands (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

In April 2013, the Ministry of Justice has sent to Parliament a proposal for the revision of the DAA. The proposal was revised by amendment in March 2014. The (amended) proposal provides for several amendments to the current legislation and is aimed at making Dutch arbitration proceedings more efficient and less costly. Measures proposed to this effect are for instance that depositing of the award at the registry of the District Court is no longer compulsory, setting aside proceedings have to be commenced directly at the Court of Appeals, and the Court of Appeals may remit an award to the arbitral tribunal in order to allow it to repair any defect in the award that could give rise to setting aside.

Furthermore, the proposed measures provide for assistance of Dutch courts in international arbitrations seated outside of The Netherlands, as well as for the codification of various best practices currently prevailing in (international) arbitration.

15.2 What, if any, recent steps have institutions in The Netherlands taken to address current issues in arbitration (such as time and costs)?

The Netherlands Arbitration Institute has adopted a number of changes in order to make arbitral proceedings under the rules of the Netherlands Arbitration Institute more efficient, inter alia, it has instructed its arbitrators to set short limits for all procedural steps. The Netherlands Arbitration Institute also provides for guidelines as to (reimbursement of) costs for legal assistance. Also, the Netherlands Arbitration Institute is working on rejuvenating its List of Arbitrators.
Jasper Leedekerken started working at Van Doorne in 2000. As a partner, Jasper is a member of Van Doorne’s arbitration team. His work includes securing recovery pre-trial (attachment proceedings), enforcement of judgments, professional liability and dispute resolution in general, including complex commercial and corporate arbitration and litigation.

In 2006, Jasper obtained a post-doctorate degree in corporate litigation (Grotius Corporate Litigation, cum laude). He has a special interest in, and experience with, cross-border conflicts. Jasper is a member of the Association for Corporate Litigation, the Association for Civil Procedure, and the Association for Sport & Law. Jasper regularly lectures on subject related topics.

Bas van Zelst is an associate in Van Doorne’s arbitration practice. His focus is on commercial arbitration. He has particular experience in advising on and arbitrating disputes over distribution agreements and a particular interest in (cross-border) enforcement proceedings, including pre-trial attachment proceedings. Bas has been involved in arbitrations under the ICC, NAI, LCIA, UNCITRAL and DIS rules.

Bas holds a PhD from the University of Amsterdam. In 2006/2007, he was a visiting researcher at Harvard law School. Bas teaches International Arbitration at Nijmegen University and publishes and lectures regularly on arbitration and related subjects.

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