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Legislative Proposal to Modernize Dutch Arbitration Law Submitted to Parliament

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A legislative proposal to modernize Dutch arbitration law has been submitted to Dutch parliament on 16 April 2013. For an informal English translation of a comparison between the legislative proposal with the current Dutch arbitration law, see **here**. It is anticipated that the Second Chamber of Dutch Parliament will submit a report on the proposal and a debate on the proposal will follow at the end of 2013/early 2014.

Important proposed amendments relate to, e.g.:

i. limitation of the length of annulment proceedings;
ii. revival of the jurisdiction of the state court;
iii. option for parties to elect institutional challenge proceedings;
iv. assistance of the Dutch state court in foreign arbitration proceedings;
v. provisional measures in pending arbitration proceedings; and
vi. a more detailed procedure for arbitral appeal.

Of said proposed amendments, all but the proposed introduction of the institutional challenge proceedings were also part of the consultation document circulated by the Dutch Ministry of Justice and Security in March 2012. The contents of the consultation have been discussed **here**. The introduction of institutional challenge proceedings will be applauded by international arbitration institutions like ICC and PCA. Some regarded it unhelpful for Netherlands based arbitrations that the consultation proposal did not allow for institutional challenge proceedings.

Some of the proposals included in the consultation document have not surfaced in the legislative proposal submitted today. For instance, the proposed provision that arbitral proceedings are confidential has been deleted. It will now be up to the parties to include a confidentiality provision in their arbitration agreement, or to opt for a set of arbitration rules that include such provision. Also the idea to have enforcement proceedings heard by the court of appeal rather than the district court has been abandoned. Interestingly, the idea to abolish the so-called asymmetrical recourse system in enforcement proceedings has been abandoned. As a result, a judgment granting an exequatur cannot be appealed, whereas a judgment denying an exequatur can be appealed up to the Supreme Court.

The proposed revision of the Dutch 1986 arbitration law is intended to fully reflect the most important provisions of the UNCITRAL Model Law, as revised in 2006. The proposed

amendments are also intended to improve certain aspects of the current law, i.e., to modernize the law. The aim is to strengthen the position of the Netherlands as a leading arbitration friendly country for domestic and international disputes and to facilitate arbitration as a full-fledged form of dispute resolution besides the available recourse to the state court.

The legislative proposal will be the theme for the inaugural conference of the Dutch Arbitration Association ("DAA") that will take place in The Hague in September 2013. The DAA was recently founded with the support of representatives of the most important arbitration institutions in the Netherlands, as well as prominent arbitration practitioners in the Netherlands. See **here** and **here**. The purpose of the DAA is to promote the use of, and knowledge about, arbitration as a preferred dispute resolution method, both at a national and international level. It also aims to promote the Netherlands as a venue for international arbitration, being the home of *inter alia* the Permanent Court of Arbitration, the Iran-US Claims Tribunal, P.R.I.M.E. Finance (see **here**), the Netherlands Arbitration Institute ("NAI"), Maritime arbitration institute TAMARA and numerous other private arbitration institutions.

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