Kluwer Arbitration Blog

The New Dutch Arbitration Act 2015

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1. Introduction

In this overview, the highlights of the New Dutch Arbitration Act will be discussed. The New Act entered into force on 1 January 2015 in relation to arbitrations commenced on or after 1 January 2015. The New Act is an amendment to the former Dutch Arbitration Act, which dates back to 1986 , many aspects of which remain unchanged in the New Act. Although the Act is not based on the UNCITRAL Model Law (2006), the Dutch legislator, in its preparation for the New Act, did look to the Model Law (2006).

The New Act still forms part of the Dutch Code of Civil Procedure ("DCCP") (Articles 1020-1076 DCCP). Apart from the provisions regarding the recognition and enforcement of foreign arbitral awards, Title One (*Arbitration in the Netherlands*) of the New Act is applicable if the place of arbitration is located within the Netherlands. Title One has a monistic basis, i.e., in principle, no distinction is made between national and international arbitrations.

Overall, in the New Act, the legislator has granted the parties more autonomy to shape the arbitration as they deem fit. In fact, only a few provisions in the New Act, all relating to due process, are of a mandatory nature.

2. Highlights of the New Dutch Arbitration Act

A full unofficial English translation of the text of the New Act is available on the website of the Netherlands Arbitration Institute (http:/www.nai-nl.org/en/). The below summarizes the highlights of the amendments incorporated into the New Act.

Arbitration agreement: The provisions regarding arbitration agreements contain several noteworthy amendments. Firstly, *consumer* protection is extended by way of an amendment to the Dutch Civil Code ("DCC"); an arbitration clause contained in general terms and conditions is voidable if it does not provide the consumer with the option to submit the dispute to state courts. Secondly, several arbitration-related changes were implemented in Dutch private international law (Book 10 DCC). Inspired by the Swiss Private International Law Act, Dutch private international law now includes (i) the rule that a State cannot invoke its internal law in order to dispute the validity of the

arbitration agreement in case the other party was neither aware nor should have been aware of such internal law, and (ii) the so-called *favor*-principle providing that an arbitration agreement is valid, if it is valid according to the law chosen by the parties with regard to the arbitration agreement itself, or to the law of the place of arbitration, or absent the aforementioned choice of law, to the law that applies to the legal relationship to which the arbitration agreement relates.

Emergency arbitration: The possibility of emergency arbitration as already contained in the former Act is maintained in the New Act. Firstly, the emergency arbitrator may render a decision in the form of an award. Secondly, Dutch law does not oblige any of the parties to commence arbitral proceedings on the merits within a certain time limit after having instituted arbitral emergency proceedings. Of course, if a party does commence arbitral proceedings on the merits, the arbitral tribunal is not bound by the findings of the emergency arbitrator.

Procedural matters: The New Act introduces several provisions on procedural issues. For example, the New Act specifically allows that parties agree to institutional challenges exclusively, as opposed to challenge proceedings before the Dutch courts. Also, the New Act explicitly includes the principles of due process and prevention of unreasonable delay. In addition, the New Act provides a statutory framework for e-Arbitration, including a provision on electronic arbitral awards.

Consolidation of arbitrations: The New Act slightly amended the provision on consolidation of arbitral proceedings. In respect of arbitral proceedings pending *in the Netherlands*, a party may request that a third party, typically but not limited to an arbitration institute, designated to that end by the parties, order consolidation with other arbitral proceedings pending *within or outside* the Netherlands, if the parties agreed on such a third party. Absent a third party designated to that end by the parties, the provisional relief judge of the district court of Amsterdam may be requested to order consolidation of arbitral proceedings pending *in the Netherlands*, unless the parties have agreed otherwise.

Arbitral awards: The New Act also contains several practical – but important – amendments that relate to the final stages of the arbitration. Firstly, the New Act allows the parties to agree, after the arbitration has commenced, that arbitrators need not reason the award. Secondly, the New Act abandons the requirement that the tribunal deposit the award with the registry of the relevant court, unless the parties agree to such requirement.

Limited/streamlined court involvement: The Dutch legislator sought to limit and streamline the Dutch courts' involvement in arbitrations, while increasing the support provided by courts. Under the New Act the Dutch courts' assistance to arbitrators is explicitly limited to what arbitrators are not able to timely do themselves. Court assistance, such as the examination of witnesses, is also available with regard to arbitrations that take place outside the Netherlands.

Setting aside proceedings and enforcement proceedings regarding foreign arbitral awards are streamlined to one factual instance only, before the Courts of Appeal (in total four). More importantly, an opt-out possibility is introduced with regard to appeal to the Supreme Court in setting aside proceedings (unless one of the parties is a consumer). In addition, the New Act states that only a *serious* non-compliance by a tribunal with its mandate can provide a ground to set aside an award. In addition, in case an award is set aside – other than on the basis of a lack of a valid arbitration agreement – the New Act abandons the rule that the relevant national court's competence revives, and confirms that the arbitration agreement remains in force.

Remission: Finally, the New Act introduces the possibility of remission of a case to the arbitral tribunal by the Court of Appeal in setting aside proceedings. The Court of Appeal may suspend the setting aside proceedings in order to allow the arbitral tribunal to rectify a ground for setting aside by reopening the arbitration and, after having heard both parties, rendering a new award that replaces the award in relation to which these setting aside proceedings were instituted. Subsequently, the Court of Appeal will render its judgment in the setting aside proceedings, taking into account the amended award.

3. Conclusion

The New Act contains considerable improvements that favour international arbitration and the role of arbitration institutions. This reflects the Dutch legislator's aim to promote the Netherlands as a neutral venue for international arbitrations, especially in view of the international arbitration institutions present in the Netherlands, such as the Permanent Court of Arbitration and P.R.I.M.E. Finance, both located in The Hague. These improvements – combined with the arbitration friendly policy of Dutch courts – will certainly contribute to promote Dutch arbitration practice and to make the Netherlands an even more attractive venue for international arbitrations.

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