
THE DISPUTE RESOLUTION REVIEW

FIFTH EDITION

EDITOR

RICHARD CLARK

LAW BUSINESS RESEARCH

THE DISPUTE RESOLUTION REVIEW

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THE DISPUTE RESOLUTION REVIEW

Fifth Edition

Editor
RICHARD CLARK

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CONTENTS

Editor's Prefacexi
	<i>Richard Clark</i>
Chapter 1	AUSTRALIA..... 1
	<i>Malcolm Quirey and Gordon Grieve</i>
Chapter 2	AUSTRIA..... 32
	<i>Helena Marko and Anna Zeitlinger</i>
Chapter 3	BAHRAIN 47
	<i>Haifa Khunji, Kaashif Basit and Jessica Lang Roth</i>
Chapter 4	BELGIUM 59
	<i>Geert Bogaert, Etienne Kairis, Aude Mabry and Stéphanie De Smedt</i>
Chapter 5	BRAZIL..... 80
	<i>Marcus Fontes, Max Fontes and Juliana Huang</i>
Chapter 6	BRITISH VIRGIN ISLANDS 99
	<i>Arabella di Iorio and Victoria Lord</i>
Chapter 7	CANADA..... 113
	<i>David Morrirt and Eric Morgan</i>
Chapter 8	CAYMAN ISLANDS 128
	<i>Aristos Galatopoulos and Caroline Moran</i>
Chapter 9	CHILE 141
	<i>Enrique Urrutia and José Manuel Bustamante</i>
Chapter 10	CHINA..... 152
	<i>Xiao Wei, Zou Weining and Stanley Xing Wan</i>
Chapter 11	COLOMBIA..... 162
	<i>Bernardo Salazar and Natalia Caroprese</i>

Chapter 12	CZECH REPUBLIC.....	174
	<i>Jan Tomaier and Matúš Hanuliak</i>	
Chapter 13	DELAWARE	190
	<i>Elena C Norman and Lakshmi A Muthu</i>	
Chapter 14	DENMARK	202
	<i>Peter Schradieck and Peter Fogh</i>	
Chapter 15	ENGLAND & WALES	214
	<i>Richard Clark and Damian Taylor</i>	
Chapter 16	FINLAND.....	234
	<i>Jussi Lehtinen and Heidi Yildiz</i>	
Chapter 17	FRANCE.....	246
	<i>Tim Portwood</i>	
Chapter 18	GERMANY.....	261
	<i>Henning Bälz and Carsten van de Sande</i>	
Chapter 19	GHANA.....	279
	<i>David A Asiedu and Joseph K Konadu</i>	
Chapter 20	GIBRALTAR	292
	<i>Stephen V Catania</i>	
Chapter 21	GREECE.....	301
	<i>Konstantinos P Papadiamantis</i>	
Chapter 22	GUERNSEY.....	312
	<i>Alasdair Davidson and Jon Barclay</i>	
Chapter 23	HONG KONG.....	323
	<i>Mark Hughes</i>	
Chapter 24	HUNGARY.....	345
	<i>Zoltán Balázs Kovács and Dávid Kerpel</i>	
Chapter 25	INDIA.....	360
	<i>Zia Mody and Shreyas Jayasimha</i>	

Chapter 26	INDONESIA..... 371 <i>Pheo M Hutabarat</i>
Chapter 27	IRELAND..... 392 <i>Andy Lenny, Claire McGrade, Gareth Murphy and Sara Carpendale</i>
Chapter 28	ISRAEL..... 406 <i>Shraga Schreck and Daniella Schoenker-Schreck</i>
Chapter 29	ITALY..... 432 <i>Monica Iacoviello, Vittorio Allavena and Paolo Di Giovanni</i>
Chapter 30	JAPAN..... 455 <i>Tatsuki Nakayama</i>
Chapter 31	JERSEY..... 469 <i>David Cadin and Dina El-Gazzar</i>
Chapter 32	KOREA..... 481 <i>Tae Yong Ahn, Nathan D McMurray and Rieu Kim</i>
Chapter 33	KUWAIT..... 492 <i>Kaashif Basit and Basem Al-Muthafer</i>
Chapter 34	LITHUANIA..... 504 <i>Ramūnas Audzevičius and Mantas Juozaitis</i>
Chapter 35	LUXEMBOURG..... 518 <i>Michel Molitor and Paulo Lopes Da Silva</i>
Chapter 36	MALTA..... 527 <i>Marisa Azzopardi and Kristina Rapa Manché</i>
Chapter 37	MAURITIUS..... 540 <i>Muhammad R C Uteem</i>
Chapter 38	MEXICO..... 553 <i>Miguel Angel Hernández-Romo Valencia</i>
Chapter 39	NETHERLANDS..... 567 <i>Ruud Hermans and Margriet de Boer</i>

Chapter 40	NIGERIA.....	586
	<i>Babajide Ogundipe and Lateef Omoyemi Akangbe</i>	
Chapter 41	NORWAY	601
	<i>Jan B Jansen and Sam E Harris</i>	
Chapter 42	PAKISTAN.....	615
	<i>Ashtar Ausaf Ali, Zoya Chaudary and Nida Aftab</i>	
Chapter 43	PERU	632
	<i>Claudio C Cajina and Marcello Croci G</i>	
Chapter 44	PHILIPPINES.....	643
	<i>Ben Dominic R Yap, Jesus Paolo U Protacio, Erdelyne C Go and Jess Raymund M Lopez</i>	
Chapter 45	POLAND.....	657
	<i>Justyna Szpara and Agnieszka Kocon</i>	
Chapter 46	PORTUGAL	672
	<i>Francisco Proença De Carvalho</i>	
Chapter 47	ROMANIA	683
	<i>Levana Zigmund</i>	
Chapter 48	SAUDI ARABIA	697
	<i>Mohammed Al-Ghamdi, John Lonsberg, Jonathan Sutcliffe and Sam Eversman</i>	
Chapter 49	SCOTLAND.....	717
	<i>Jim Cormack and David Eynon</i>	
Chapter 50	SINGAPORE.....	732
	<i>Thio Shen Yi, Karen Teo, Peter John Ladd and Adeline Chung</i>	
Chapter 51	SOUTH AFRICA	745
	<i>Gerhard Rudolph and Nikita Young</i>	
Chapter 52	SPAIN	766
	<i>Esteban Astarloa and Patricia Leandro Vieira da Costa</i>	

Chapter 53	SWEDEN	789
	<i>Jakob Ragnwaldh and Niklas Åstenius</i>	
Chapter 54	SWITZERLAND	800
	<i>Balz Gross, Claudio Bazzani and Julian Schwaller</i>	
Chapter 55	TURKEY.....	818
	<i>Noyan Göksu</i>	
Chapter 56	UKRAINE.....	840
	<i>Sergiy Shklyar and Markian Malskyy</i>	
Chapter 57	UNITED STATES	851
	<i>Nina M Dillon and Timothy G Cameron</i>	
Chapter 58	VIETNAM.....	869
	<i>Do Trong Hai</i>	
Appendix 1	ABOUT THE AUTHORS.....	885
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ..	925

EDITOR'S PREFACE

Richard Clark

Following the success of the first four editions of this work, the fifth edition now extends to some 58 jurisdictions and we are fortunate, once again, to have the benefit of incisive views and commentary from a distinguished legal practitioner in each jurisdiction. Each chapter has been extensively updated to reflect recent events and provide a snapshot of key developments expected in 2013.

As foreshadowed in the preface to the previous editions, the fallout from the credit crunch and the ensuing new world economic order has accelerated the political will for greater international consistency, accountability and solidarity between states. Governments' increasing emphasis on national and cross-border regulation – particularly in the financial sector – has contributed to the proliferation of legislation and, while some regulators have gained more freedom through extra powers and duties, others have disappeared or had their powers limited. This in turn has sparked growth in the number of disputes as regulators and the regulated take their first steps in the new environment in which they find themselves. As is often the case, the challenge facing the practitioner is to keep abreast of the rapidly evolving legal landscape and fashion his or her practice to the needs of his or her client to ensure that he or she remains effective, competitive and highly responsive to client objectives while maintaining quality.

The challenging economic climate of the last few years has also led clients to look increasingly outside the traditional methods of settling disputes and consider more carefully whether the alternative methods outlined in each chapter in this book may offer a more economical solution. This trend is, in part, responsible for the decisions by some governments and non-governmental bodies to invest in new centres for alternative dispute resolution, particularly in emerging markets across Eastern Europe and in the Middle East and Asia.

The past year has once again seen a steady stream of work in the areas of insurance, tax, pensions and regulatory disputes. 2012 saw regulators flex their muscles when they handed out massive fines to a number of global banks in relation to alleged breaches of UN sanctions, manipulation of the LIBOR and EURIBOR rates and money-laundering

offences. The dark clouds hanging over the EU at the time of the last edition have lifted to some degree after the international efforts in 2012 saved the euro from immediate and catastrophic collapse, although the region continues to prepare for a period of uncertainty and challenging circumstances. It is too early to tell what, if any, fundamental changes will occur in the region or to the single currency, but it is clear that the current climate has the potential to change the political and legal landscape across the EU for the foreseeable future and that businesses will be more reliant on their legal advisers than ever before to provide timely, effective and high-quality legal advice to help steer them through the uncertain times ahead.

Richard Clark
Slaughter and May
London
February 2013

Chapter 39

NETHERLANDS

Ruud Hermans and Margriet de Boer¹

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

In the Netherlands, disputes may be adjudicated privately (e.g., in arbitration) or litigated publicly in the courts. There are three distinct courts in the Netherlands for civil and commercial matters: district courts, of which the cantonal courts form part; courts of appeal; and the Supreme Court.

District courts have jurisdiction as court of first instance over all civil and commercial matters. Some matters are specifically referred to the cantonal courts, which have jurisdiction over certain specialised matters such as employment and agency agreements and lease issues and general matters in which the amount of the claim does not exceed €25,000.² In addition, certain matters fall within the jurisdiction of a specific district court or court of appeal (as court of first instance). For example, Dutch law provides for inquiry proceedings that consist of an inquiry into the policy of a company and the conduct of its business, and which may ultimately result in the court establishing ‘mismanagement’. The competent court in inquiry proceedings is the Enterprise Chamber of the Amsterdam Court of Appeal. The Enterprise Chamber is also the competent court in proceedings under the Dutch Works Councils Act.

Courts of appeal rule on appeals against decisions of district courts (including decisions of the cantonal court).

Appeals against court of appeal decisions may be lodged with the Supreme Court. The Supreme Court hears every case brought before it; there is no requirement to obtain the court’s leave before lodging an appeal against a decision of a court of appeal. Since 1

1 Ruud Hermans is a partner and Margriet de Boer is a senior associate at De Brauw Blackstone Westbroek.

2 This threshold amount was increased from €5,000 to €25,000 by a law that entered into force on 1 July 2011 (Stb. 2011, 255 and Stb. 2011, 324).

July 2012, the Supreme Court does, however, have the authority to declare cases that are manifestly unfit to be decided by the Supreme Court inadmissible at an early stage of the Supreme Court proceedings (see also Section II, (ii), *infra*).³ Supreme Court appeals may only be based on misapplication of the law or non-compliance with essential procedural requirements.

Appeals lodged with the court of appeal or the Supreme Court will suspend the execution of a judgment, unless the judgment under review has been declared provisionally enforceable (which is often the case).

II THE YEAR IN REVIEW

i Position of debtors under pre-judgment attachments strengthened

In the Netherlands, a party may seek to secure its claim during or even before legal proceedings by making a pre-judgment attachment, in order to prevent that upon execution of a judgment there be no recourse. As set out in Section III, ii, *infra*, it is fairly easy for any party with a claim that seems *prima facie* justified to obtain leave for a pre-judgment attachment from the president of the district court. However, as we mentioned in last year's edition, the requirements for obtaining leave for pre-judgment attachment were recently tightened by the entry into force of a new regulation on 1 July 2011, laid down in the Attachment Syllabus,⁴ which explicitly stipulates, *inter alia*, that creditors, in their request for leave to make pre-judgment attachments, should properly inform the court of the merits of the claim and the dispute with the debtor. This obligation to inform, also referred to as the full disclosure principle, is very important, as a decision on a request for leave to make pre-judgment attachments is given *ex parte* (i.e., without the debtor being heard) and the leave, if granted, can have far-reaching negative consequences for the debtor.

Recent case law marks the latest trend in Dutch law to strengthen the position of the debtor in the context of pre-judgment attachments by attaching importance to the full disclosure principle when deciding upon requests to lift a pre-judgment attachment. In its decision of 10 January 2012, the Amsterdam Court of Appeal in summary proceedings decided that it must lift the attachments made by the creditor if the creditor has violated the full disclosure principle in the request for leave to make the pre-judgment attachments.⁵

In the case at hand, the debtor, the foreign top holding of a multinational, was involved in foreign arbitral proceedings with the creditor concerning an alleged monetary claim. The creditor won the arbitration, but the arbitral award was set aside

3 Wet versterking cassatierechtspraak, Staatsblad 2012, 116.

4 The Attachment Syllabus (Beslagsyllabus) is a manual for courts to assess requests for leave to make pre-judgment attachments. The Attachment Syllabus was updated in August 2012, see www.rechtspraak.nl/Procedures/Landelijke-regelingen/Sector-civiel-recht/Pages/default.aspx, under Beslagsyllabus 2012.

5 The decision can be found at www.rechtspraak.nl. Search for Amsterdam Court of Appeal 10 January 2012, LJN: BV0477.

by the competent foreign state court. The creditor pursued its claim, initiated a second arbitration and won again. Before the debtor had filed its request with the competent foreign state court to have the second arbitral award also set aside, the creditor requested leave from the Amsterdam District Court to make several pre-judgment attachments on assets of the debtor in the Netherlands. The leave was granted, following which the creditor made pre-judgment attachments on shares in a Dutch intermediate holding company held by the debtor and under several (indirect) Dutch subsidiaries of the debtor on monies owed by these subsidiaries to the debtor. The pre-judgment attachments had serious negative consequences for the debtor. Therefore, the debtor initiated summary proceedings before the Amsterdam District Court to have the attachments lifted. The District Court rendered an unfavourable decision, after which the debtor initiated summary appeal proceedings before the Amsterdam Court of Appeal. The debtor argued that the creditor, in violation of the rules in the Attachment Syllabus, had not informed the court of the first arbitration and of the fact that the award that resulted from that arbitration had been set aside by the competent foreign state court. The Amsterdam Court of Appeal held that this information would have been relevant for the decision of the president of the district court whether or not to grant leave to make the pre-judgment attachments. For this reason, the Court of Appeal held that it was obliged to lift all attachments, thus applying the full disclosure principle and strengthening the position of the debtor in the context of pre-judgment attachments. We note that it is possible for the creditor to file a new request for leave to make pre-judgment attachments. However, the full disclosure principle will then require the creditor to mention in the request that the attachments were previously lifted by the court.

The Court of Appeal also strengthened the position of debtors with respect to pre-judgment attachments on shares. Leave to make such attachments is only granted if a creditor demonstrates a 'well-founded fear of embezzlement' with respect to the shares. The same applies to attachments on certain other assets, such as moveable property in the possession of the debtor as well as real estate. Generally, courts allow some latitude for fulfilment of this requirement. In the summary appeal proceedings, however, the debtor substantiated its arguments of why there was no 'well-founded fear of embezzlement' with respect to the multibillion-dollar shares in the Dutch intermediate holding company. The Court of Appeal ruled that the creditor had not or had insufficiently refuted this argument and decided that, as a result, it was under an obligation to lift the attachment on the shares. As such, the case demonstrates that the 'well-founded fear of embezzlement' requirement for pre-judgment attachments is much more than just a formality.

ii Developments in the field of Supreme Court litigation

The year in review has seen the entry into force, on 1 July 2012, of two acts concerning the administration of justice by the Dutch Supreme Court.

The first Act is aimed at strengthening the administration of justice by the Supreme Court and the quality of Supreme Court appeals.⁶ In order to reduce the ever-increasing caseload of the Supreme Court in civil matters, a new Article 80a was introduced in

6 Wet versterking cassatierechtspraak, Staatsblad 2012, 116.

the Dutch Code of Civil Procedure ('the CCP'), which gives the Supreme Court the authority to declare cases that are manifestly unfit to be decided by the Supreme Court inadmissible at an early stage of the Supreme Court proceedings. Also, the Act lays the foundation for a new Supreme Court Bar. The Supreme Court Bar used to consist of all lawyers admitted to the Bar in The Hague. The new Supreme Court Bar consists of members who have to fulfil specific professional requirements. This should significantly improve the quality of Supreme Court appeals in civil matters.

The second act results from an evaluation of the Act on the Collective Settlement of Mass Claims ('the WCAM') by the Ministries of Justice and of Economic Affairs in 2008 and provides for the possibility of referring questions to the Supreme Court for a preliminary ruling on specific legal issues.⁷ A lower court (in the first instance or on appeal) may ask the Supreme Court for advice on legal matters in a particular case. This enables the lower court to decide the case taking into account the Supreme Court's opinion. Although at the outset, the possibility of referring questions to the Supreme Court was limited to mass claim cases, that restriction was cancelled in the legislative process. At the time of this publication, two questions had been referred to the Supreme Court for a preliminary ruling.⁸ The questions relate to the scope of a mortgage deed and to the admissibility of attachments for the purpose of preserving evidence in matters that are not related to intellectual property.

iii The proposal for a substantial increase in court fees is cancelled

In last year's edition, we reported on the draft bill then pending before the Dutch parliament that intended to substantially increase court fees in civil and administrative matters for both claimants and defendants, in order to make the judicial system (nearly) self-financing. The draft bill has caused broad public debate and was generally considered inconsistent with a democracy based on the rule of law and the right of access to the courts. The proposed increases were expected to cause a fall in demand for court cases, forcing the judiciary to make drastic cuts in staffing. We are very happy to report that the bill did not prevail. The bill was part of a whole package of economic measures and was cancelled immediately after the Rutte I government fell in April 2012. The Rutte II government definitively withdrew the draft bill in November 2012.

iv Implementation of EU Directive 2008/52 on mediation

In last year's edition, we reported that the Netherlands was late in implementing EU Directive 2008/52 on certain aspects of mediation in civil and commercial matters, as a result of which the European Commission began legal proceedings by sending a letter of formal notice in July 2011 and took further measures in November 2011. At the time, the draft bill was pending before the Dutch First Chamber. It turned out that the draft bill did not have sufficient support in the First Chamber. As a result, an amended draft bill was submitted to the Dutch parliament in June 2012. In November 2012,

7 Wet prejudiciële vragen aan de Hoge Raad, Staatsblad 2012, 65.

8 President Utrecht District Court 3 August 2012, LJN BX3391, President Amsterdam District Court 1 November 2012, LJN BY6209.

this amended bill was adopted by the Dutch First Chamber. The Act implementing the Directive finally entered into force on 21 November 2012.⁹ Its scope is limited to cross-border matters and therefore the Act does not apply in a purely national setting.

v Revision of the judiciary's geographical layout in the Netherlands

On 1 January 2013, the Act regarding the revision of the judiciary's geographical layout in the Netherlands entered into force.¹⁰ This Act changes the division into geographical areas of the district courts and courts of appeal. The district courts have been reduced in number from 19 to (eventually) 11, the courts of appeal from five to four. As a result, the names of some courts have changed to reflect the fact that the court districts cover a larger region. The revision is prompted by the necessity of increased scale, to allow the courts to specialise by acquiring substantial experience in certain matters, as well as to create room for flexibility and tailor-made proceedings.

III COURT PROCEDURE

i Overview of court procedure

Civil procedure in the Netherlands is governed by the Code of Civil Procedure. Practical rules as to how civil proceedings are to be conducted are also laid down in rules of procedure issued by the courts.

Dutch civil proceedings may have two basic formats. The first is litigation that is initiated by a writ of summons to be served on the defendant. The second format is litigation that is initiated by a petition made to the court. The commentary below is based on proceedings initiated by a writ of summons, as this format is most common in commercial cases.

ii Procedures and time frames

Proceedings initiated by a writ of summons focus, particularly during the initial phase, on the exchange of written briefs between parties, accompanied by written evidence. During this initial phase, the task of the court is confined to establishing deadlines for the submission of briefs. The regular extension granted by the courts for the submission of written briefs is six weeks. Further extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons. However, since the launch of a pilot project for innovation in civil proceedings in mid-2012, some district courts and courts of appeal apply stricter rules for extensions in order to improve processing times.

9 Wet van 15 november 2012 tot implementatie van de richtlijn betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken (Wet implementatie richtlijn nr. 2008/52/EG betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken), Staatsblad 2012, 570.

10 Wet herziening gerechtelijke kaart, Staatsblad 2012, 313.

Proceedings are commenced by a writ of summons, drafted by plaintiff's counsel, which is served on the defendant by a bailiff. The writ should contain a description of the relevant facts, the claim and the legal grounds for it, any arguments raised by the defendant before proceedings were initiated (in as far as these are known to the plaintiff) and a listing of the evidence the plaintiff may provide with respect to its statements and the witnesses it may wish to examine in that regard. It is the plaintiff's responsibility to register the writ with the relevant court after it has been served on the defendant.

Once the writ is registered on the court's case list, the defendant, if intending to put forward a defence, will have the opportunity to submit a statement of defence, which should contain a description of the relevant facts, any defences the defendant wishes to raise and a listing of the evidence the defendant may provide with respect to its statements and the witnesses it may wish to examine in that regard. The statement of defence may include a counterclaim, which, in principle, will be dealt with by the court at the same time as the original claim.

After the statement of defence has been filed, the court may order a personal appearance of the parties in court where they may provide further information and where the court may examine whether a settlement can be reached. In straightforward matters, the court may render its judgment after that session, assuming that a settlement has not been reached. In more complex matters, the court will usually decide not to order a personal appearance, but to continue the proceedings by further exchange of written briefs. In such matters, the court may, however, also decide to order a personal appearance and to allow the parties an opportunity for further written submissions. The plaintiff will then have the opportunity to submit a statement of reply and thereafter the defendant will have the opportunity to submit a statement of rejoinder.

After the exchange of all written statements, either party may request a hearing where both parties may deliver their oral arguments. Unless the parties have already had sufficient opportunity to present oral arguments to the court, the court must allow such request. The hearing is not a trial where evidence is presented to the court. At this stage, the hearing is limited to an oral elaboration on the parties' contentions. There is no opportunity for the examination of witnesses or experts.

After the exchange of all written statements or, as the case may be, after the hearing, the court will render its judgment. A judgment may be a final judgment or an interim judgment. In an interim judgment, the parties may be ordered to provide further evidence on certain issues, for example by witness examination.

The completion of proceedings in a court of first instance usually takes between six months and two years. An appeal against the final judgment, combined with an appeal against any preceding interim judgment, would need to be lodged within three months after the date of the final judgment. A separate appeal against an interim judgment is only allowed if the court has indicated the same in its interim judgment, or has granted leave afterwards on the basis of a request by one of the parties. Both such request and any appeal would need to be lodged within three months after the date of the interim judgment.

The availability of urgent or interim relief

A plaintiff may apply to the president of the district court in summary proceedings to obtain provisional measures against the other party if it is able to demonstrate that,

considering the interest of the parties, an immediate provisional measure is urgently required. This form of litigation may, for example, be appropriate in obtaining an order obliging the defendant to resume performance of a continuing contractual obligation or to obtain an injunction against infringement of an intellectual property right. Also, Dutch courts award advance payments as provisional measures, provided that the claim is undisputed or at least easy to establish. A judgment in summary proceedings can usually be obtained within a couple of weeks. Summary proceedings may be initiated regardless of whether proceedings on the merits have been or will be initiated. Hence, proceedings on the merits may become redundant once there is a judgment in summary proceedings. A judgment in summary proceedings does not prejudice the outcome of proceedings on the merits.

Another form of urgent remedy that may be requested from the court is a pre-judgment attachment. A party may seek to secure its claim during or even before legal proceedings to prevent that upon execution of a judgment there will be no recourse. For that purpose, any party with a claim that seems *prima facie* justified may request leave for a pre-judgment attachment from the president of the district court. Although the requirements were tightened by the entry into force of a new regulation on 1 July 2011, laid down in the Attachment Syllabus,¹¹ such leave is still relatively easy to obtain. As a rule, the decision on a request for leave to make pre-judgment attachment is given *ex parte* (i.e., without the debtor being heard before the president decides on the application for leave). Against this background, the new Attachment Syllabus stipulates that creditors, in their request for leave to make pre-judgment attachments, should properly and fully inform the court of the merits of the claim and the dispute with the debtor and, depending on the nature of their claim, should also submit certain documents (e.g., the relevant contract and notice of default in case the claim is based on breach of contract). If the president grants leave for a pre-judgment attachment, he or she will set a date before which the claimant must have initiated proceedings on the merits to verify the existence of the alleged claim. If assets of the debtor have been attached and the debtor wants to object to the attachment, the debtor should initiate summary proceedings aimed at lifting the attachment. It is only in these summary proceedings that the president of the district court will effectively assess the need and reasonableness of the attachment already made. The attachment will be lifted if the alleged claim appears to be *prima facie* unjustified. The attachment may also be lifted if the debtor provides sufficient security (normally in the form of a bank guarantee) or if the interests of the creditor in maintaining the attachment do not outweigh the interests of the debtor in getting it lifted. Further developments in the field of pre-judgment attachments might be expected from the proposal of the European Commission for a European Account Preservation Order, which would make it possible to attach bank accounts for European cross-border claims.¹²

11 See also Section II, (i), *supra*, and footnote 4.

12 Proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil matters, COM(2011) 445/F of 25 July 2011.

iii Class actions

Dutch law does not provide for a 'US-style' class action in the sense that a large group of individuals can collectively bring a claim for damages to court. Article 3:305a of the Civil Code, however, does provide for a collective action to protect common or similar interests of parties whose rights or interests are affected, although there are specific limitations on the use of this collective action. First, a collective action can only be instituted by an association or foundation whose articles of association promote the interests that the collective action aims to protect. Second, in a collective action only a 'declaratory' judgment can be obtained as to the liability of the defendant. Monetary claims or claims for damages cannot be instituted by the collective organisation, but must be brought by the individual interested parties. The reason for this is that the assessment of a claim for damages necessarily requires an assessment of the specific circumstances of each individual case.

Nevertheless, there have been initiatives in the Netherlands where similar claims for damages of individual injured parties were bundled and instituted by organisations protecting specific interests (e.g., of shareholders). In the absence of a statutory provision allowing such collective claims for damages, the way to achieve this is to ask the individual parties to assign their claims to a special purpose foundation, which then tries to collect the damages for all individuals collectively. However, this legal construct still requires the disclosure of the names of the actual injured parties and an assessment of each individual case to assess the damages.

Finally, mass settlements have evolved under Dutch law over the past two decades. This has resulted in the WCAM, which entered into force on 27 July 2005 and is incorporated in Articles 7:907 to 7:910 of the Civil Code. The WCAM provides for a mechanism that facilitates the implementation of collective settlements. Pursuant to the WCAM, the parties to a settlement agreement may request the Court of Appeal in Amsterdam to declare the settlement agreement binding on all persons to whom it applies according to its terms (the interested persons). The settlement agreement must have been entered into between one or more potentially liable persons and one or more foundations or associations that, pursuant to their articles of association, promote the interests of the interested persons. If the court declares the settlement agreement binding, all interested persons are bound by its terms. There is an exception for interested persons who timely submit an 'opt-out' notice, which can only be submitted after the binding declaration has been issued. Being bound by the terms of the settlement agreement basically means that the interested persons who do not 'opt out' have a claim for settlement relief and are bound by the release, all in accordance with the terms of the settlement agreement. The court may refuse to declare the settlement agreement binding if, *inter alia*, the amount of settlement relief provided for in the settlement agreement is unreasonable or the petitioners jointly are insufficiently representative of the interests of the interested persons. The Dutch legislature has proposed amendments to the WCAM to improve this Act. The draft bill was submitted to the Parliament in December 2011 and is still pending (see also Section VII, *infra*).

Thus far, the Amsterdam Court of Appeal has rendered six decisions within the framework of the WCAM, namely in (1) DES (concerning personal injury allegedly caused by a harmful drug); (2) Dexia (concerning financial damage caused by failure

to warn about the risks of certain retail investment products); (3) Vie d'Or (relating to financial damage allegedly suffered by life insurance policyholders as a result of the bankruptcy of the insurance company); (4) Shell (concerning financial damage suffered by Shell's shareholders as a result of the recategorisation of certain of its oil and gas reserves in 2004); (5) Vedior (concerning financial damage allegedly caused by insider trading) and (6) Converium (concerning financial damage suffered by Converium's shareholders as a result of the announcement of increases to Converium's loss reserves in the period from 2002 through 2004). In DES, 17,000 persons were covered by the settlement and the settlement amount was €34 million. The Dexia collective settlement covered 300,000 persons and involved a settlement amount of more than €1 billion. Shell and Converium are particularly interesting for their international scope. The Shell settlement concerned a worldwide settlement between a Dutch and a British Shell entity and the worldwide group of Shell's shareholders, excluding all US shareholders, who purchased their shares during the relevant period in relation to Shell's recategorisation of certain of its oil and gas reserves in 2004. The settlement amount involved was approximately US\$350 million. The most recent decision under the WCAM, Converium, concerns the international collective settlement of financial damage suffered by purchasers of Converium shares as a result of an increase of Converium's loss reserves. In this case, the Court delivered an important provisional decision regarding international jurisdiction in November 2010 and declared the international collective settlement binding in January 2012. Although in the Converium settlement none of the potentially liable parties and only a limited number of the interested persons were domiciled in the Netherlands, the Court assumed jurisdiction to declare the Converium settlement binding.¹³

iv Representation in proceedings

Legal representation is mandatory before Dutch courts. Hence, litigants (including legal entities other than natural persons) need to have professional representation and can only appear in court by means of a lawyer (*advocaat*). An exception applies to proceedings before the cantonal court, where litigants may also appear in person.

The costs of legal representation incurred in court proceedings are for the greater part at the parties' own expense. Although the losing party will be ordered to pay the legal costs of the winning party, the order for costs only covers a small percentage of the actual costs incurred. Owing to the implementation of EU Directive 2004/48 in Article 1019h of the CCP, an exception applies to cases relating to the enforcement of intellectual property rights, in which the reasonable and proportionate legal costs incurred by the successful party should be borne by the unsuccessful party.

13 For more information on the WCAM, see Ruud Hermans and Jan de Bie Leuveling Tjeenk, *International Class Action Settlements in the Netherlands since Converium*, in *The International Comparative Legal Guide to Class & Group Actions 2013*, which can be downloaded from <http://www.debrauw.com/News/Publications/Pages/InternationalClassActionSettlementsintheNetherlandsinceConverium.aspx>.

v Service out of the jurisdiction

Under Dutch law, no restrictions apply as to the service of legal documents on a party having no known domicile or residence in the Netherlands (whether a natural person or another legal entity). There is no requirement to obtain the court's prior permission for service out of the jurisdiction of documents initiating proceedings in the Netherlands.

The procedure by which documents should be served abroad to have effect in the Netherlands will depend on the country in which service takes place. The Netherlands is bound by the EU Council Regulation of 13 November 2007 on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters. This Regulation applies to the service of documents in the signatory EU Member States. In addition, the Netherlands is a party to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. This Convention provides for mutual judicial assistance between the signatory states to ensure that judicial or extrajudicial documents that must be served abroad shall be brought to the notice of the addressee in a timely manner. Insofar as the service of documents between EU Member States is concerned, the EU Regulation prevails over the Hague Convention on the Service Abroad.

vi Enforcement of foreign judgments

Under Dutch law, judgments in civil matters rendered by a court in a foreign state are in principle not enforceable in the Netherlands, unless the Netherlands and such foreign state have concluded a treaty for the recognition and enforcement of judgments. As a result, the procedure by which a foreign judgment may be enforced in the Netherlands will depend upon the state in which it has been obtained.

Judgments made in most European countries may be enforced in the Netherlands pursuant to the EU Council Regulation of 22 December 2000 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 16 September 1988 (the Lugano Convention). This usually involves making an application for a declaration of enforceability (*exequatur*) with the president of the district court.

If the Netherlands has not entered into a treaty on the recognition and the enforcement of foreign judgments with the state in which the judgment was made, Article 431 of the CCP does not allow the enforcement of the foreign judgments in the Netherlands. This entails that the substantive claim will have to be submitted to a Dutch court, which will have to decide on the merits of the case. However, Article 431 of the CCP has been interpreted in both case law and academic literature as merely prohibiting the enforcement of foreign judgments, and not their recognition. For a foreign judgment to be recognised in the Netherlands, Dutch courts will consider four distinct requirements:

- a* the foreign court's jurisdiction is based on internationally accepted grounds;
- b* the foreign judgment is the result of a proper judicial procedure (fair trial);
- c* the foreign judgment does not violate Dutch public policy; and
- d* the foreign judgment is final.

If the foreign judgment satisfies these conditions, it may be recognised in the Netherlands. In that event, the Dutch court will generally not review the foreign judgment as to its merits and will render a (Dutch) judgment, which in fact incorporates the reasoning and the decisions of the foreign judgment. This judgment may be enforced in the Netherlands.

vii Assistance to foreign courts

Courts of EU Member States can request assistance directly from Dutch courts under EU Council Regulation No. 1206/2001 of 28 May 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters. This Regulation governs the relationship between the Netherlands and all other Member States of the EU, with the exception of Denmark. Requesting courts can ask other Member States' courts to take evidence on their behalf or ask that they be permitted to take evidence themselves. In the Netherlands, a request from a foreign court for the performance of the taking of evidence must be sent to the district court within whose jurisdiction the request has to be executed. If the request relates to the examination of witnesses, this is the district court within the jurisdiction of which the witnesses (or most of them) reside. Pursuant to the act implementing the Regulation, requests to Dutch courts may be made in Dutch or in English. The requested court must execute the request without delay and in any event within 90 days of receipt of the request.

The Netherlands is also a party to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. This Convention provides for several formal methods of obtaining evidence abroad, such as letters of request and the taking of evidence by diplomatic officers and consular agents. The Netherlands has made a reservation pursuant to Article 23 that Dutch courts will not execute letters of request issued for the purpose of obtaining pretrial discovery of documents as known in common law countries.

viii Access to court files

Under the CCP, members of the public do not have the right to access information or files related to civil proceedings, whether ongoing or completed. Exceptions apply only for court sessions and the pronouncement of the judgment. Article 27(1) of the CCP provides that court sessions are held in public. In some circumstances, the court may, however, order that a hearing be held in closed session. These circumstances include *inter alia* the interests of public policy and state security and the interests of minors or the importance of respect for the parties' privacy. Pursuant to Article 28(1) of the CCP, the judgment is pronounced publicly. In practice, this is limited to the pronouncement of the operative part of the judgment. Therefore, Article 28(2) of the CCP provides that anyone may request the clerk of the court for a copy of a court decision. The clerk of the court will provide a copy of the decision, unless compelling interests of others (including the parties in the proceedings) prevent the provision of a copy to members of the public. In that event, the clerk of the court may provide a copy of the decision in anonymous form. In anonymous form, a selection of decisions of Dutch courts can also be found on www.rechtspraak.nl.

ix Litigation funding

According to their professional rules of conduct, Dutch lawyers may not agree to a ‘no win, no fee’ arrangement or similar arrangements. Also, lawyers may not conclude *quota pars litis* agreements to the effect that their fee will be proportional to the value of the result obtained through their assistance (except where this is done in accordance with a customary and generally accepted collection rate). Except for lawyers, there are no rules as to litigation funding by third parties. Although not prohibited, litigation funding is not common in the Netherlands. It is seen mostly in cases of large-scale losses or damages, where for example long-established public interest groups or trade unions fund litigation for their members. In recent years, we have seen the emergence of companies operating for gain that canvass for large groups of injured parties and initiate legal proceedings on their behalf.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Conflicts of interest are governed by the rules of conduct for Dutch lawyers. Generally, lawyers may not represent the interests of more than one party if such interests are in conflict or if there is a real chance of such conflict. This rule does not prevent lawyers from acting for two or more clients if the clients share a common or similar interest, for example if they are both bidders participating in an auction. A lawyer who represents the interest of more than one party must withdraw from the case as soon as a conflict arises that is incapable of immediate resolution.

As a general rule, a lawyer is not allowed to act against a former or existing client of his or her own or of a colleague within the same firm. However, an exception to this rule applies if the following three conditions have been satisfied:

- a* the interests entrusted to the lawyer relate to a different issue than that for which the advocate or a colleague within the same firm represents or represented the existing or former client, and the interests entrusted are also unconnected with such issue;
- b* the lawyer or his or her colleague within the same firm does not possess confidential information of any nature originating from his or her former or existing client, nor business-related information or other information relating to the person or business of the former or existing client, which could be significant in the case against the former or existing client; and
- c* no reasonable objections have been put forward by the former or existing client or the party requesting the lawyer to represent his or her interests.

If the above conditions are not satisfied, an exception may still apply if the party requesting the lawyer to represent his or her interests, and the former or existing client against whom the lawyer is to act, both give prior consent on the basis of proper information being supplied to them. Conflicts of interest cannot be avoided by creating an artificial administrative separation of representation of interests and the relevant files, also known as ‘Chinese walls’.

ii Money laundering, proceeds of crime and funds related to terrorism

The responsibilities of lawyers in the Netherlands regarding anti-money laundering measures can broadly be divided into a prohibition and an obligation. The Dutch Criminal Code prohibits acts of money laundering. The Act on the Prevention of Money Laundering and the Financing of Terrorism ('the APML') obliges lawyers under certain circumstances to perform stringent client due diligence and to report unusual financial transactions, including those by clients, to the Dutch Financial Intelligence Unit. These obligations, which were first limited to financial institutions, were expanded to include lawyers in June 2003.

The scope of the general prohibition against money laundering (contained in Article 420bis of the Dutch Criminal Code) is broad. Most intentional acts with reference to assets that directly or indirectly are derived from a criminal act can be qualified as money laundering. The term 'intentional' does not mean that actual knowledge is required. The provision also applies if a party intentionally takes the risk that certain assets represent direct or indirect proceeds of crime. This intentional risk-taking can under certain circumstances be said to have taken place by lack of due diligence when such due diligence can reasonably be expected of a party.

The APML results from the implementation of EU Directive 2005/60 of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The APML applies to lawyers, briefly stated, when they participate in financial or corporate transactions, including providing tax advice. It does not apply to lawyers ascertaining the legal position of a client or representing a client in legal proceedings. The APML contains the obligation to report unusual transactions to the Dutch Financial Intelligence Unit.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Legal privilege in the Netherlands is a general principle of law. It is the right of certain professionals who have a duty of confidentiality by virtue of their office or profession to refuse to give testimony in front of a judge or to provide information that has been entrusted to them by the client in their professional capacity. The basis for legal privilege is that the interest of safeguarding the principle that any person must be able to consult such a professional without fear that any confidences that he or she imparts may subsequently be disclosed outweighs the interests of establishing the truth in legal proceedings. It is the professional who holds the privilege, not the client. The client only has a derived legal privilege. This means that the professional can invoke the privilege, even if the client would want to waive it. The professional, having a duty of confidentiality, cannot waive the privilege without the client's consent.

The professionals traditionally having legal privilege are lawyers admitted to the Bar, civil law notaries, doctors and clergymen. More recently, (limited) legal privilege has been accepted for medical workers and journalists (limited to their sources). However, the judiciary tends to exercise restraint in awarding legal privilege to other professionals. Bankers, accountants, tax advisers and police officers, for example, were denied legal privilege. Also, in-house legal counsel do not have legal privilege. Since 1996, a lawyer

can retain the registration as *advocaat* with the Bar when employed as in-house legal counsel. Under Dutch national rules, in-house counsel admitted to the Bar have legal privilege to the same extent as external lawyers. However, the European Court of Justice confirmed in its *Akzo* ruling of 14 September 2010 that communications between a company and its in-house lawyer are not protected by professional legal privilege in EU competition investigations. The State Secretary of Security and Justice has indicated that the *Akzo* ruling is food for thought in regard to the protection of legal privilege for communications with in-house counsel under the Dutch rules, and intends to consult *inter alia* the Netherlands Bar Association on this development. In its decision of 28 February 2012,¹⁴ the Groningen District Court referred to the *Akzo* ruling and held that in general (i.e., not restricted to competition cases as in the *Akzo* ruling) communications between an in-house lawyer and the company as his client are not protected by professional legal privilege. Appeal against this decision is pending.

Foreign lawyers who are admitted to the Dutch Bar have legal privilege. This will mostly concern lawyers from other EU Member States whose professional qualifications have to be recognised in the Netherlands pursuant to the implementation of Directive 2005/36/EC on the recognition of professional qualifications. However, as legal privilege in the Netherlands is relevant in a procedural context, there is no reason to assume that the rules of legal privilege should not apply to foreign lawyers who are not admitted to the Dutch Bar, but who have to give evidence in Dutch courts. We know of only one decision of the lower courts in which it was confirmed that a US lawyer could under the circumstances invoke legal privilege in the Netherlands.¹⁵

ii Production of documents

Dutch law does not provide for general discovery of documents, either pre-trial or during trial. However, there are disclosure obligations in certain situations.

First, Article 22 of the CCP provides that in civil proceedings, the court may order a litigant party to submit certain documents it deems relevant to the case at hand. A party may only refuse to do so for compelling reasons. The court will decide whether the reasons cited are justified and if not, it may draw conclusions from this refusal as it deems fit.

Second, on the basis of Article 162 of the CCP, during the proceedings the court may order, at the request of a party or *ex officio*, that a party submit the books and records that it is required to keep in accordance with the law (such as a company's accounts). If the relevant party refuses to do so, the court may draw conclusions from this refusal as it deems fit.

Third, pursuant to Article 843a of the CCP, a party with a legitimate interest may request from another party a copy of certain documents with respect to a legal relationship to which it or a predecessor is a party. The objective of this provision is to allow a party that is familiar with the substance of certain evidence, but that has never had it or no longer has it, to request it from the party that has it in its possession. The

14 Groningen District Court 28 February 2012, LJN BV7149.

15 President of The Hague District Court 1 February 1995, KG 1995, 100.

request may be made both in and out of court. A claim by virtue of Article 843a of the CCP can be allowed if the four elements set forth in Article 843a(1) of the CCP are satisfied, provided that none of the three restriction grounds set forth in Article 843a(3) and (4) of the CCP apply. The elements set forth in Article 843a(1) of the CCP are (essentially): (1) the requesting party with a rightful interest may claim disclosure of (2) certain documents or records, (3) that are at the disposal of or held by the requested party, and (4) that relate to a legal relationship to which the requesting person is a party. The grounds for restriction are: (1) the person holding the documents is under the duty of confidentiality regarding such documents by virtue of his or her administrative position, profession or employment, (2) there are serious reasons why the holder of the documents should not comply with the claim for disclosure, or (3) there is a reason to believe that the proper administration of justice can also be guaranteed without the requested documents being disclosed. In the Netherlands, we have recently seen a tendency towards more possibilities for disclosure and discovery of documents in civil proceedings. In November 2011, a draft bill broadening the scope of Article 843a CCP was submitted to the Parliament (see also Section VII, *infra*).

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

In the Netherlands, the most important alternative to litigation by the courts is arbitration. Other forms of alternative dispute resolution mechanisms available are mediation and the Dutch concept of binding advice.

ii Arbitration

The Dutch legal framework for arbitration can be found in the Arbitration Act, which is incorporated in Articles 1022 to 1077 of the CCP. The greater part of these provisions¹⁶ is applicable if the seat of arbitration is in the Netherlands. Only a few provisions¹⁷ deal with arbitration outside the Netherlands. The provisions of the Arbitration Act are mostly of a regulatory nature, albeit with some mandatory provisions. The most recent fundamental review of the Arbitration Act as incorporated in the CCP dates from 1986. However, a draft bill for the revision of the Arbitration Act was presented for consultation in March 2012(see also Section VII, *infra*).

The best-known and the only general arbitration institution in the Netherlands is the Netherlands Arbitration Institute ('the NAI'). The NAI administers both national and international arbitral proceedings in a wide range of fields, and in principle has no restrictions as to the subject matter of the arbitration. In addition, there are a number of specialised arbitration institutions that focus on arbitrations related to specific industries. For example, the Board of Arbitration for the Construction Industry is often chosen as the preferred arbitration institution for (national) construction disputes. International

16 Articles 1022-1073 CCP.

17 Articles 1074-1076 CCP.

arbitrations with a seat of arbitration in the Netherlands are mostly conducted under the arbitration rules of the International Chamber of Commerce, UNCITRAL or the NAI.

Over the past decade, arbitration has become increasingly popular as an alternative to litigation by the courts. The general arbitration climate is characterised as friendly and benefits from consistent support by the Dutch government. Also, the Supreme Court is reluctant to approve or condone intervention in arbitral proceedings and awards.

Pursuant to Article 1050 of the CCP, appeal against an arbitral award is only possible if the parties have explicitly agreed upon a right of arbitral appeal (which is virtually never done in practice). Arbitral awards cannot be appealed in the courts.

Once a final arbitral award has been rendered, recourse to the courts is only possible in proceedings to set aside the arbitral award (provided for in Articles 1064-1067 of the CCP). In practice in the Netherlands, however, proceedings to set aside an arbitral award remain the exception rather than the rule and claims for setting aside are rarely successful. An arbitral award can only be set aside on a limited number of grounds. The Supreme Court has time and again held that the courts should act with restraint in setting aside arbitral awards. In addition, it has explicitly held that proceedings to set aside an award may not be used as an appeal in disguise and that the public interest in the effectiveness of arbitration requires that a court only sets aside an arbitral award in clear-cut cases.

iii Enforcement of foreign arbitral awards

An arbitral award only becomes enforceable after a leave for enforcement (*exequatur*) is granted by the president of the district court. Once the leave for enforcement has been granted, the arbitral award may be enforced in the Netherlands in the same way as a judgment by a Dutch state court. Articles 1075 and 1076 of the CCP contain the provisions concerning recognition and enforcement of foreign arbitral awards in the Netherlands. Article 1075 of the CCP provides that an arbitral award made in a foreign country to which a treaty concerning recognition and enforcement is applicable may be recognised and enforced in the Netherlands. The most important treaty for the recognition and enforcement of foreign arbitral awards, to which the Netherlands is a signatory, is the New York Convention. If there is no applicable treaty concerning recognition and enforcement of the award, the award made in a foreign state may be enforced in the Netherlands on the basis of Article 1076 of the CCP. This Article exhaustively lists a number of grounds that may lead to refusal of leave for enforcement of foreign arbitral awards. As these grounds are modelled on the New York Convention, there is in practice hardly any difference between application of Article 1075 of the CCP (i.e., the New York Convention) and Article 1076 of the CCP.

iv Mediation

In the Netherlands, there is no legal framework for mediation. Hence, there are no statutory provisions obliging parties to mediate or determining how mediations are conducted. In May 2008, however, the EU adopted Directive 2008/52 on certain aspects of mediation in civil and commercial matters. The Directive applies to civil and commercial matters in cross-border disputes. Its objective is to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes by

encouraging the use of mediation. This includes that the Member States ensure that the content of a written agreement resulting from mediation be made enforceable under local law at the request of the parties. Also, the Directive requires that the Member States take certain measures to ensure the confidentiality of mediation. The Directive should have been transposed into national law before 21 May 2011. The Netherlands was late in implementing the Directive, but the Implementation Act was eventually adopted by the Dutch First Chamber and entered into force on 21 November 2012 (see also Section II, iv, *supra*).¹⁸ Its scope is limited to cross-border matters and the Act therefore does not apply in a purely national setting.

A few years ago, a project encouraging the use of mediation was initiated by the Dutch courts. In the project, parties involved in civil proceedings were invited (but not obliged) to try to settle their disputes through mediation. However, mediation is still used primarily in family and employer–employee relationships and less frequently for the resolution of commercial disputes.

v Other forms of alternative dispute resolution

The Civil Code provides for an alternative way of resolving disputes by means of binding advice. This was first developed in practice as a type of informal private dispute resolution. It is only since 1993 that the Civil Code provides for binding advice as a species of settlement agreement. Binding advice is based on a contract between parties. By contract, parties agree in advance to be bound by the decision given by one or more third parties who have been appointed by the parties as binding advisers. Expert determinations may also take the form of binding advice. Once rendered, the binding advice is deemed part of the parties' agreement. As a consequence, the party that fails to comply with the advice is in breach of contract. Except for the requirements of due process that also apply to binding advice proceedings, neither the CCP nor the Civil Code contains any procedural rules regarding binding advice. An important difference between arbitration and binding advice is that arbitration results in an award by a tribunal that is enforceable at law. Decisions made by binding advisers are not enforceable at law as such, but are only contractually binding on the parties. That means that if a party does not comply with the binding advice, the only available remedy for the other party is to claim specific performance of the agreement by the party in breach in legal proceedings before a court. Parties who have agreed to refer a matter to binding advice cannot submit a claim before state courts or in arbitral proceedings. A binding advice agreement does not, however, preclude the possibility of requesting injunctive relief from the president of the district court in summary proceedings.

18 Wet van 15 november 2012 tot implementatie van de richtlijn betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken (Wet implementatie richtlijn nr. 2008/52/EG betreffende bepaalde aspecten van bemiddeling/mediation in burgerlijke en handelszaken), Staatsblad 2012, 570.

VII OUTLOOK AND CONCLUSIONS

In the field of dispute resolution, there are quite a few subjects on the legislature's agenda for the coming years:

i Revision of the WCAM

As noted above, a draft bill amending and improving the WCAM was submitted to the Dutch parliament in December 2011. The amendments proposed should further facilitate the collective settlement of mass claims and include:

- a* the introduction of the possibility to order a personal appearance of the parties involved before proceedings under the WCAM are instituted, so that the Amsterdam Court of Appeal may provide guidance in settlement negotiations or may define relevant questions of law at an early stage;
- b* the introduction of requirements as to the representativeness of organisations instituting claims on behalf of other parties with similar rights or interests on the basis of Article 3:305a Civil Code (see also Section III, iii, *supra*);
- c* the introduction of the possibility to apply the WCAM to settlements reached in bankruptcy situations; and
- d* several technical improvements, for example, relating to the interruption of the limitation period of individual claims.

ii Draft bill broadening the scope of the obligation to produce documents (Article 843a CCP)

In last year's edition, we reported that a draft bill was submitted to the Dutch parliament in November 2011 that broadens the scope of Article 843a CCP. Article 843a CCP allows a party with a legitimate interest to request from another party a copy of certain documents with respect to a legal relationship to which it or a predecessor is a party (see also Section V, ii, *supra*). The proposed provisions would further facilitate the process of establishing the truth in civil proceedings and enhance the efficiency of the provision of factual evidence. At the time of this publication, the draft bill was still pending before the parliament.

iii Revision of the Arbitration Act

In 2005, a working party chaired by Professor Albert Jan van den Berg presented a draft proposal for amendments to the Dutch Arbitration Act. The proposal was published and presented at a symposium in 2005 and constitutes a complete draft bill with explanatory notes.¹⁹ The text was submitted to the Ministry of Justice on 21 December 2006. This reform process eventually led to the publication of a draft bill for the revision of the Arbitration Act in March 2012. Stakeholders were invited to comment on this draft bill before 1 June 2012. The draft bill, which is expected to be submitted to the parliament

19 'Tekst van de Voorstellen tot wijziging van het Vierde Boek (Arbitrage), artikelen 1020-1076 Rv', *Tijdschrift voor Arbitrage* 2005, 36. Detailed information (in Dutch) regarding the proposal can be found on www.arbitragewet.nl.

in the course of 2013, does not contain radical changes in Dutch arbitration law, but is aimed at reducing barriers to arbitration in general by enhancing the efficiency and flexibility of the arbitral process, by reducing state court intervention and by maximising party autonomy.

One of the proposals made to increase efficiency is to limit the proceedings for the setting aside and enforcement of arbitral awards to one fact-finding instance, which will be the Court of Appeal, after which Supreme Court appeal is only possible on limited grounds.

Another proposal aimed at limiting the intervention of state courts and making the arbitral process more efficient, is the introduction of a system of remission in which – unless the parties agree otherwise – the state court’s jurisdiction revives only if the arbitral award is set aside due to the absence of a valid arbitration agreement. The state courts’ jurisdiction will however no longer revive if and to the extent the arbitral award is set aside on another ground. In addition, the draft bill provides for the possibility for the Court of Appeal to suspend the setting-aside proceedings to allow the arbitral tribunal to right a wrong by resuming the arbitral proceedings or by taking another measure that the arbitral tribunal deems appropriate. Such a decision of the Court of Appeal cannot be appealed.

The draft bill also recommends codifying a principle already adopted in the NAI Arbitration Rules, that arbitral proceedings are confidential and all persons involved either directly or indirectly are bound to secrecy, save and insofar as disclosure ensues from the law or the agreement of the parties.

The proposed new features, of which the ones mentioned are some examples, should help to further enhance the competitive position of the Netherlands as a venue for both domestic and international arbitration. Given that the draft bill had not yet been submitted to the parliament at the time of this publication, we do not anticipate that the Minister of Justice will be able to pursue his original plan of bringing a new Arbitration Act into force by 1 January 2014.

iv Innovations in civil procedural law

Innovation in civil procedural law is high on the legislative agenda for the coming years. Key objectives of government policy in this respect are to further facilitate digital access to justice, to reduce the duration of proceedings and to simplify the rules of civil procedure. One of the proposals made in this respect is to cancel the current distinction between the two basic formats of proceedings initiated by a writ of summons served on the defendant and proceedings initiated by a petition made to the court (see also Section III, i, *supra*). Streamlining the appeal proceedings is also one of the items on the government’s action list. Legislative proposals aimed at implementing these changes are expected to be submitted to the Dutch parliament in the second half of 2013.

Appendix 1

ABOUT THE AUTHORS

RUUD HERMANS

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Ruud Hermans specialises in litigation and arbitration and restructuring and insolvency. Ruud heads De Brauw's corporate litigation practice. Ruud's litigation work includes corporate litigation, securities litigation, commercial litigation, Supreme Court litigation and arbitration. Ruud is admitted to the Dutch Supreme Court Bar. He has more than 25 years of experience in complex multiparty and cross-border litigation. Ruud regularly represents multinational companies in inquiry proceedings before the Enterprise Chamber of the Amsterdam Court of Appeal. These proceedings are often used to settle corporate governance disputes and takeover battles. Also, Ruud has advised several multinational companies on restructuring-related issues.

Ruud joined De Brauw Blackstone Westbroek in 1984 and became partner in 1991. He obtained his law degree from Leiden University and also obtained a degree in physics from the same university. He served on De Brauw's management committee as practice head from 2001 to 2005. He regularly publishes on procedural law and corporate litigation. Ruud is listed as a leading individual for Dispute Resolution in the Chambers Guides.

MARGRIET DE BOER

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Margriet de Boer is a senior associate in De Brauw's litigation and arbitration practice, where she specialises in complex commercial litigation and domestic and international arbitration. She has represented national and international companies before arbitral tribunals and the courts of the Netherlands, including the Supreme Court. She represents clients in cases covering a wide range of civil law subjects, including general commercial law, liability matters, both contractual and tortious, and issues of civil procedure.

Margriet joined De Brauw Blackstone Westbroek in 2001, after obtaining her law degree from Amsterdam University. She also obtained a degree in French language and literature and in translation studies from the same university.

Since 2006, Margriet has authored the annual chronicle on arbitration law for the Dutch Journal on Civil Litigation, *Tijdschrift voor Civiele Rechtspleging*. She is co-author of *A Guide to the NAI Arbitration Rules, Including a Commentary on Dutch Arbitration Law*, which was published by Kluwer Law International in 2009. Since 2011, Margriet is also co-author of the annual chronicle on civil procedural law for the Netherlands Law Journal, *Nederlands Juristenblad*.

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