

Advancing Arbitration in the Netherlands

The Netherlands' business culture has grown and diversified in recent years and the country has evolved to become a regional financial centre with an international character. In keeping with this, the country has acquired a reputation as a leading centre for international arbitration.

The Netherlands has historically been arbitration friendly and the courts in the region uphold arbitration as a valid and good form of dispute resolution. Besides the Netherlands Arbitration Institute (NAI), which administers domestic as well as international arbitrations, there are many specialised or industry-related arbitration institutes in the Netherlands that have their own rules (e.g. for construction disputes, for automation disputes, for the healthcare industry, for engineers, for maritime matters). The Netherlands is also home to a number of international courts and institutions, including the International Court of Justice and the Permanent Court of Arbitration.

Legal Framework

Arbitration in the Netherlands is governed by the Netherlands Arbitration Act (NAA) of 1986 which was influenced by the UNCITRAL Model Law and other texts, such as the UNCITRAL Arbitration Rules and national arbitration acts. However, there are some key differences between the NAA and the Model Law. For example, the Model Law requires an arbitration agreement to be in writing in order to be valid, whereas the NAA requires only that the agreement is proven through written evidence. In addition, the Model Law provides for a remission procedure, whereby a court may, pending a setting aside procedure and upon request of a party, refer the matter back to the arbitrators.

Nathan O'Malley, Partner at Conway & Partners, said the NAA is currently under review for revision in the legislature. "A proposed revision to the NAA was presented to the Dutch Ministry of Justice in December 2006, the purpose of which is to modernise the NAA by bringing it more in line with international trends and further enhancing the arbitration friendliness of the Netherlands," he said. "Unfortunately, it has been delayed in the legislative process and

has not been approved yet; therefore it's not yet clear what final form it will take."

Advantages of Arbitration

The global economic downturn has resulted in a swift increase in commercial disputes and the Netherlands has not escaped this phenomenon. Mr O'Malley said that while the firm is always involved in a steady flow of arbitration work, the last nine months have seen a vast increase in dispute work, especially rising out of the construction industry. He said: "All of the commercial disputes we have been involved in have either been brought under arbitration clauses or started off as litigation, which due to long timeframes have since resorted to arbitration for a swift and efficient resolution."

The Netherlands' judiciary, like most civil judiciaries throughout the world, suffers from a number of major challenges such as high costs and significant delays. Arbitration in the Netherlands can really reduce the time frames if it is used in such a way. According to Mr O'Malley, fast track arbitration cuts down the process massively. "Right now I am working on a case which will come to a final award in a time frame of eight months from the date of filing, which is light speed when compared to the courts."

He went on to outline some of the other benefits of arbitration as opposed to litigation: "An arbitral award can be enforced in numerous countries all around the world; the same cannot be generally said for court judgments. Also, the use of arbitrators that are specialised and experienced in a particular sector can often bring better judgement to a dispute/case than a standard court that handles a variety of disputes."

While the arbitration process in the Netherlands is largely a smooth one, there are some issues that can affect the process. For example, as Mr O'Malley noted, there is not always recognition amongst practitioners in the Netherlands

that international arbitration carries with it a different set of procedures than a normal court case would. He argues though that this is something that should improve with time as the perception and use of international arbitration grows.

Spreading the Word

This is where international organisations such as ICCA and AIA play a significant role in promoting and facilitating the use of arbitration and other forms of disputes resolution in countries all around the world. Mr O'Malley said: "These organisations are very useful for the purpose of bringing consistency to the way arbitration is handled. Another major advantage they bring to the industry is reporting on case law and legal developments, which inevitably helps to standardise the practice of arbitration, which is obviously useful."

Nathan O'Malley and other members of Conway & Partners are very involved in publishing and teaching on the topic of arbitration, which further promotes its use in and around the Netherlands. Mr. O'Malley also mentioned that in addition to their work as advocates, members of the firm often serve as arbitrators in international commercial disputes. Referring to fellow partner Shawn Conway, Mr. O'Malley mentioned, "The fact that Shawn and I are asked to regularly sit as arbitrators means that our firm is able to share with others a perspective on the arbitral process that comes from being on both sides of it. Because of that background, we have been able to confidently recommend arbitration to colleagues and client contacts when discussing various dispute resolution options."

CONWAY & PARTNERS
ADVOCATEN AND ATTORNEYS-AT-LAW

Nathan O'Malley
Partner
Conway & Partners
+31 (0) 1020 42200
omalley@conway-partners.com