

KLUWER LAW INTERNATIONAL

A Guide to the NAI Arbitration Rules

Including a Commentary on Dutch Arbitration Law

Editors:

Bommel van der Bend

Marnix Leijten

Marc Ynzonides



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

CONTENTS

Foreword	vii
Contributors	xi
Abbreviations	xvii
Note on References	xix

PART I

GENERAL INTRODUCTION	1
-----------------------------	---

Chapter 1 General Introduction to the NAI Rules	3
--	---

1. The Netherlands Arbitration Institute	3
2. The NAI Arbitration Rules	5
3. The NAI Rules and Other Means of Dispute Resolution	6
4. Interpretation of the Arbitration Agreement and the NAI Rules	7
4.1. Interpretation of the Arbitration Agreement	7
4.2. Interpretation of the NAI Rules	9
5. Main Characteristics of NAI Arbitration	10
6. Contractual Relationships under the NAI Rules	13

Chapter 2 Arbitration in the Netherlands	17
---	----

1. The Dutch Law of Arbitration	17
2. Arbitrability of the Subject Matter	18
3. 'Ad hoc' versus Institutional Arbitration	19
4. Mandatory versus Supplementary Rules of Law	22
5. Role of the Dutch State Courts	22
6. Arbitration Law as a Necessary Supplement to the NAI Rules	23
7. Plans for Reform	27

CONTENTS

PART II	
A COMMENTARY TO THE NAI RULES	31
Section 1 General Provisions (Articles 1-5)	33
Article 1 Definitions	33
Article 2 Field of Application (Arbitration)	44
Article 3 Field of Application (Binding Advice)	45
Article 4 Notices	50
Article 5 Periods of Time	53
Section 2 Commencement of Arbitration (Articles 6-9)	57
Article 6 Request for Arbitration	57
Article 7 Short Answer	67
Article 8 Purpose of Request for Arbitration and Short Answer	73
Article 9 Plea as to Lack of Arbitration Agreement	74
Section 3 Appointment of Arbitrators (Articles 10-19)	81
Article 10 Impartiality and Independence of Arbitrators	81
Article 11 Disclosure in Case of Doubt as to Impartiality and Independence	88
Article 12 Number of Arbitrators	90
Article 13 Method of Appointment as Agreed by the Parties	92
Article 14 List-Procedure	95
Article 15 Letter of Appointment; Acceptance of Mandate; Notice of Appointment to Parties	98
Article 16 Nationality of Arbitrator	99
Article 17 Release from Mandate	101
Article 18 Replacement of Arbitrator	103
Article 19 Challenge of Arbitrator	105
Section 4 Procedure (Articles 20-42)	113
Article 20 Arbitration File and Communications	113
Article 21 Representation of and Assistance for Parties	115
Article 22 Place of Arbitration	117
Article 23 Procedure in General	121
Article 24 Exchange of Memorials	127
Article 25 Counterclaim	131
Article 26 Hearing	133
Article 27 Evidence in General	137
Article 28 Production of Documents	139
Article 29 Witnesses	142
Article 30 Experts (Party-Appointed)	149
Article 31 Experts (Tribunal-Appointed)	150
Article 32 Site Inspection	155

CONTENTS

Article 33	Order for Appearance in Person of Parties	155
Article 34	Amendment of Claim	157
Article 35	Withdrawal of Request for Arbitration	161
Article 36	Default	163
Article 37	Summary Arbitral Proceedings after the Appointment of the Arbitral Tribunal on the Merits	168
Article 38	Provisional Measures Other than in Summary Arbitral Proceedings	172
Article 39	Tribunal Secretary; Technical Assistance	174
Article 40	Language	177
Article 41	Third Parties	181
Article 42	Non-Compliance of a Party with Provisions Contained in Section Four	187
Section 4A	Summary Arbitral Proceedings (Articles 42a-42o)	189
Article 42a	In General, Relationship with Article 37 Procedure	196
Article 42b	Commencement	201
Article 42c	Contents of the Request	202
Article 42d	Notification of Request to Respondent	203
Article 42e	Confirmation of Receipt of Request	204
Article 42f	Appointment of Arbitral Tribunal	204
Article 42g	Hearing	206
Article 42h	Plea as to Lack of Jurisdiction	208
Article 42i	Counterclaim	209
Article 42j	Procedure	210
Article 42k	Referral to Arbitration on the Merits	211
Article 42l	Nature of the Decision; Security	212
Article 42m	Relationship with the Case on the Merits	214
Article 42n	Administration Costs and Deposit for Costs	215
Article 42o	Interim Measures of Protection	216
Section 5	Award (Articles 43-55)	217
Article 43	Period of Time	217
Article 44	Types of Awards	218
Article 45	Decision According to Rules of Law or as Amiable Compositeur	220
Article 46	Applicable Law	222
Article 47	Trade Usages	223
Article 48	Decision-Making; Signing of Award	223
Article 49	Form and Contents of Award	225
Article 50	Notification and Deposit of Award	230
Article 51	Res Judicata of Award	232
Article 52	Rectification or Correction of Award	233
Article 53	Additional Award	237

CONTENTS

Article 54	Arbitral Award on Agreed Terms	239
Article 55	Publication of Award	240
Section 6	Costs (Articles 56-62)	241
Article 56	Costs in General	241
Article 57	Administration Costs	243
Article 58	Fees and Disbursements of Arbitrators	245
Article 59	Deposit for Costs	247
Article 60	Costs of Legal Assistance	250
Article 61	Determination and Award of Costs	254
Article 62	Costs in Case of Premature Termination	256
Section 7	Final Provisions (Articles 63-67)	259
Article 63	Violation of Rules	259
Article 64	District Court President having Jurisdiction	263
Article 65	Unforeseen Matters	265
Article 66	Exclusion of Liability	267
Article 67	Amendment of Rules	270
PART III		
POST-ARBITRATION COURT PROCEEDINGS		275
Chapter 1	Setting Aside	277
Article 1064 DCCP	Setting Aside, in General	277
Article 1065 DCCP	Grounds for Setting Aside	283
Article 1066 DCCP	Suspension of Enforcement	293
Article 1067 DCCP	Consequences of Setting Aside	295
Chapter 2	Revocation	297
Article 1068 DCCP	Revocation of the Award in Case of Fraud, Forgery or New Documents	298
Chapter 3	Recognition and Enforcement	303
Article 1062 DCCP	Granting Leave for Enforcement	304
Article 1063 DCCP	Refusal of Leave for Enforcement	306
Article 1075 DCCP	Recognition and Enforcement of Foreign Award under Treaties	307
Article 1076 DCCP	Recognition and Enforcement of Foreign Award without Treaties	307
ANNEX		
THE NETHERLANDS ARBITRATION ACT		315
INDEX		341