

KLUWER LAW INTERNATIONAL

A Guide to the NAI Arbitration Rules

Including a Commentary
on Dutch Arbitration Law

**Editors: Bommel van der Bend,
Marnix Leijten and Marc Ynzonides**



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Law & Business

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FOREWORD

We, members of the arbitration team of the Dutch law firm De Brauw Blackstone Westbroek N.V., herewith present our Guide to the NAI Arbitration Rules, including a commentary on Dutch arbitration law, with great pride and gratitude.

As Dutch lawyers specialized in acting as counsel for corporate clients and public entities in domestic and international arbitration proceedings, we were regularly confronted with the fact that no handbook exists on arbitration under the rules of the Netherlands Arbitration Institute that is accessible to those that do not master the Dutch language. In fact, hardly any comprehensive commentary on the NAI Rules seemed to exist except for the short explanatory notes that are part of the introduction to the NAI Rules. This while NAI Arbitration is the dispute resolution mechanism of choice of many Dutch corporations and public entities. NAI Arbitration is also surprisingly often agreed on by foreign parties selecting the Netherlands as a neutral venue for their potential disputes. The city of The Hague, for example, regards itself as 'The Legal Capital of the World', with noticeable success also in the sphere of commercial dispute resolution. Moreover, the NAI Arbitration Rules include a highly successful mechanism for parties to seek interim relief in summary arbitration proceedings. This mechanism has been inspired on the Dutch Code of Civil Procedure's provisions on summary proceedings before the President of the District Court, which provisions are almost exclusively known to Dutch lawyers. The broad sphere of application of such NAI summary arbitral proceedings is often an element of surprise to foreign parties that have opted for NAI Arbitration in their contracts. Writings on this mechanism in English are scarce. Having been confronted with this existing gap in literature on the NAI Arbitration Rules, our project was born. Against all odds, and despite extensive pressure from client work, we have managed to finalize this project, the result of which now lies in front of you.

FOREWORD

This book has been written for those in-house counsel and practitioners that contemplate agreeing on NAI Arbitration in their contracts, as well as for in-house counsel, practitioners and arbitrators that get involved in NAI arbitration proceedings. Collectively, the writers of this book have been involved in numerous arbitrations over the last decade, including many NAI arbitrations. We have been involved as counsel to parties in such proceedings, as secretary to tribunals, as arbitrators and as counsel in court proceedings related to arbitration. In this context we have faced many questions on the NAI Arbitration Rules, advised on the interpretation and correct application of those Rules and defended such interpretation before tribunals and courts. We have attempted to lay down our experience in this book, and hope to trigger readers to comment on our views and supplement on our commentaries. We thus welcome any suggestions readers may have to make a future version of this guide more complete and better.

We have chosen to focus on the NAI Arbitration Rules, and to include references to and commentaries on rules of the Dutch arbitration act only where relevant. This guide thus does not provide a detailed and comprehensive overview of Dutch arbitration law. It consists of three parts. In Part I, we introduce the NAI, the Dutch arbitration act and the NAI Arbitration Rules. In Part II, a commentary is given on each provision of the NAI Arbitration Rules. In Part III, we address arbitration related court proceedings in the Netherlands under the Dutch arbitration act. Apart from our personal experience, we have drawn on case law from arbitral tribunals and state courts. Where relevant, we have also compared the NAI Arbitration Rules to the arbitration rules of other institutions, *inter alia* the ICC Rules of Arbitration and the UNCITRAL Arbitration Rules, and to the practice under such other Rules.

We owe a great deal of gratitude to many that have contributed to this book and that have supported our work on it. A special word of thanks is due to Wouter den Hollander, who as a student associate of our arbitration department has been an invaluable contributor to this book. We are also grateful to our firm, De Brauw Blackstone Westbroek N.V., not only for allowing us to devote the time and attention required to write this book, but also for motivating us to seek and fulfil many functions within the domestic and international arbitration scene. Although such functions are often not rewarded financially, they have contributed to our experience and thus to our practice and this book. We are also especially fortunate to have found Fredy von Hombracht-Brinkman, the current Administrator of the NAI, prepared to read a draft of this book. We have been able to make several improvements with her help. Finally, and most importantly, we thank our clients for trusting us to handle their arbitration disputes. We greatly enjoy the field of arbitration, and realize that it is only because of our clients that we get to work in this field every day.

FOREWORD

The authors most appreciate receiving any comments and/or suggestions on guide.nairules@debrauw.com.

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Marc Ynzonides

Margriet de Boer
Leupien Giacometti–Vermeer
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Eelco Meerdink joined De Brauw Blackstone Westbroek in 2000. He graduated at the University of Utrecht and attended University College London Law School and Columbia Law School (LL.M.). Eelco publishes and lectures regularly in the field of arbitration. For several years, he held a position on the editorial board of *Tijdschrift voor Arbitrage*, the main publication on arbitration in the Netherlands.

Rogier Schellaars joined De Brauw Blackstone Westbroek in 2005 after having worked in Freshfields Bruckhaus Deringer LLP's arbitration group since 2002. He has obtained a bachelors degree in English law from the University of London and a civil law degree from Leiden University. Rogier has lectured English law for six years at Leiden University and also publishes regularly on Dutch procedural law and arbitration. He holds a position on the editorial board of *Tijdschrift voor Arbitrage*, the main publication on arbitration in the Netherlands, and the board of the NAI's under 40 group of arbitration practitioners, *NAI Jong Oranje*.

Marc Ynzonides has been a partner in De Brauw Blackstone Westbroek's litigation & arbitration practice since 2002. He joined the firm in 1996 after obtaining his PhD from Rotterdam University. Marc specializes in litigation and arbitration. He acts on behalf of national and international companies in all kinds of litigation and in all courts of the Netherlands, including the Supreme Court. He represents clients in both contractual and non-contractual claims. In arbitration he appears as counsel in both national and international arbitrations. He also acts as arbitrator. In international litigation and arbitration he regularly works with other international law firms. Marc is a member of the Dutch State Advisory Committee on Procedural Law. He also serves as a substitute judge in the Court of Appeal in Arnhem. Marc has written numerous publications and lectures frequently on various aspects of Dutch procedural law and arbitration.

ABBREVIATIONS

| | |
|----------|---|
| BR | <i>Tijdschrift voor Bouwrecht</i> (Journal of Construction law) |
| DCC | Dutch Civil Code (<i>Burgerlijk Wetboek</i>) |
| DCCP | Dutch Code of Civil Procedure (<i>Wetboek van Burgerlijke Rechtsvordering</i>) |
| ECHR | European Convention on Human Rights |
| ECJ | European Court of Justice |
| HR | <i>Hoge Raad</i> (the Netherlands Supreme Court) |
| IBA | International Bar Association |
| ICC | International Chamber of Commerce |
| ICDR | International Centre for Dispute Resolution |
| ICSID | International Centre for Settlement of Investment Disputes |
| JBPR | <i>Jurisprudentie Burgerlijk Procesrecht</i> (Dutch Civil Procedure Case Law) |
| LCIA | London Court of International Arbitration |
| NAI | Netherlands Arbitration Institute |
| NJ | <i>Nederlandse Jurisprudentie</i> (Dutch Case Reports) |
| NJF | <i>Nederlandse Jurisprudentie Feitenrechtspraak</i> (Case Reports of Dutch Lower Courts) |
| RvdW | <i>Rechtspraak van de Week</i> (Dutch Case Law Weekly) |
| TK | Parliamentary Reports of the <i>Tweede Kamer</i> (Second Chamber of the Dutch Parliament) |
| TvA | <i>Tijdschrift voor Arbitrage</i> (Journal of Arbitration) |
| UNCITRAL | United Nations Commission on International Trade Law |
| WIPO | World Intellectual Property Organization |

NOTE ON REFERENCES

A number of publications are referred to repeatedly throughout this book. For convenience, we have used the following abbreviations.

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| Introduction to NAI Arbitration Rules | Enclosed in the official publication of the NAI Arbitration Rules |
| IBA Guidelines | IBA Guidelines on Conflicts of Interest in International Arbitration, approved by the Council of the International Bar Association on 22 May 2004 |
| IBA Rules of Ethics | IBA Rules of Ethics for International Arbitrators |
| IBA Rules of Evidence | IBA Rules on the Taking of Evidence in International Commercial Arbitration, adopted by the Council of the International Bar Association on 1 June 1999 |
| ICC Rules | ICC Rules of Arbitration, in force as of 1 January 1998 |
| ICDR Rules | ICDR International Dispute Resolution Procedures (including Mediation and Arbitration Rules), as of 1 March 2008 |
| ICSID Rules | ICSID Rules of Procedure for Arbitration Procedures |
| LCIA Rules | LCIA Arbitration Rules, in force as of 1 January 1998 |
| NAI Rules | NAI Arbitration Rules, in force as of 13 November 2001, as published on the NAI website <www.nai-nl.org> |
| New York Convention | United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958, United Nations, Treaty Series, Vol. 330, p. 38 No. 4739 (1959) |
| UNCITRAL Rules | The UNCITRAL Arbitration Rules, adopted on 15 December 1976 |
| UNCITRAL Model Law | 1985 UNCITRAL Model Law on International Commercial Arbitration, with amendments adopted in 2006 |
| WIPO Arbitration Rules | WIPO Arbitration Rules, effective from 1 October 2002 |

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PART I

GENERAL INTRODUCTION