

**NETHERLANDS ARBITRATION
INSTITUTE**

**NAI RULES FOR THE APPOINTMENT OF
AN ARBITRAL TRIBUNAL IN AD HOC
ARBITRATIONS**

in force as of 1 October 2015

NAI RULES FOR THE APPOINTMENT OF AN ARBITRAL TRIBUNAL IN AD HOC ARBITRATIONS

SECTION ONE – GENERAL

Article 1 – Definitions

In these Rules, the following terms and expressions shall have the following meanings:

- (a) “administrator”: the director of the NAI as provided for in the NAI’s articles of association and, in the director’s absence, the member of the executive board designated by the executive board to that end, or an acting administrator appointed as such by the executive board;
- (b) “Executive Board”: the executive board of the NAI;
- (c) “NAI”: the Netherlands Arbitration Institute (*Stichting Nederlands Arbitrage Instituut*);
- (d) “arbitration agreement”: an agreement by which the parties bind themselves to subject to arbitration any disputes that have arisen or may arise between them from a particular legal relationship, ensuing from an agreement or otherwise, and/or the determination only of the quality or condition of goods, and/or the determination only of the quantum of damages or monetary debt, and/or the filling of gaps or modification of the aforementioned legal relationship;
- (e) “Rules”: the rules of the NAI for the appointment of an arbitral tribunal in ad hoc arbitrations;
- (f) “arbitral tribunal”: an arbitral tribunal consisting of one or more arbitrators that has been composed in accordance with the provisions of the Rules;
- (g) “documents”: procedural and other documents, including data on a data carrier as well as data presented by electronic means;
- (h) “applicant”: one or more parties in the arbitration that file a request for appointment;
- (i) “chair”: the chair of the arbitral tribunal appointed in accordance with Article 13 and, in the event of an arbitral tribunal consisting of one arbitrator, the arbitrator where permitted by the context of the provision; and
- (j) “other party”: the parties in the arbitration, with the exception of the applicant.

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Article 2 – Scope

1. The Rules shall apply if the parties only have agreed the appointment of an arbitrator, or arbitrators, or of an arbitral tribunal by the NAI, or the Executive Board, the chair of the NAI or the administrator of the NAI without having referred to arbitration by or before the NAI or in accordance with the Rules of the NAI.
2. The Rules shall not apply to the NAI if it acts as Appointing Authority under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Article 3 – Communications

1. Requests and communications shall be made or confirmed in writing in the manner provided for in this article.
2. Unless the sender is unable to do so, all requests, communications and other documents to the administrator and/or the NAI shall only be sent electronically by e-mail to the address secretariaat@nai-nl.org or to any other address to be specified by the NAI.
3. The time at which a request or communication is received electronically by the administrator and/or the NAI shall be the time at which the request or communication has reached a data processing system for which the NAI is responsible.
4. The NAI shall send a request or communication addressed to one or more addressees electronically by e-mail if the addressee, by providing its e-mail address, has communicated that it may be reached for these purposes by such means.
5. The time at which a request, communication or other document is sent electronically by the administrator and/or the NAI shall be the time at which the message has reached a data processing system for which the NAI is not responsible.

Article 4 – Time limits

1. For the purposes of the Rules, a time limit shall commence on the day a request or communication is sent or, if not sent in electronic form as provided for in Article 3, on the day of receipt of a request or communication, unless explicitly provided otherwise in the Rules.
2. In special events, the administrator shall be authorised to extend or to shorten the time limits mentioned in Articles 8(3),

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13(1), 13(3), 14, and 17(3) at the request of a party or of his own motion.

Article 5 – Language

1. If any request, communication or other document is written in a language in which the administrator is not proficient, the administrator may require the party making the request or the communication or submitting the document to provide a translation in a language, in a form and within a time limit determined by the administrator..

2. The administrator may require, at the request of a party or on its own motion, a party to provide translations of its submitted requests, communications and other documents in a language in which the other party is proficient and in a form and within a time limit determined by the administrator.

Article 6 – Confidentiality

Proceedings of appointment are confidential and all persons involved either directly or indirectly shall be bound to secrecy, except and insofar as disclosure ensues from the law or the parties' agreement.

SECTION TWO – REQUEST FOR APPOINTMENT

Article 7 – Request for appointment

1. A request for appointment shall be submitted to the administrator. The request shall be deemed to have been made on the day of receipt of the request by the administrator.

2. The request for appointment shall contain the following particulars:

(a) the name, the address, the place of residence, the telephone number, the e-mail address and, as applicable, the VAT number of each of the parties;

(b) the name, the address, the place of residence, the telephone number and the e-mail address of the person or persons representing the applicant in the proceedings of appointment;

(c) the e-mail address at which the applicant may be reached for electronic communication for the duration of the proceedings of appointment;

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- (d) a brief description of the dispute;
- (e) a clear specification of the claim along with, if possible, a specification of the monetary interest of each of the claims;
- (f) a reference to the arbitration agreement and any other agreement(s) to which the arbitration relates, along with copies of the relevant agreements;
- (g) the method of appointment of the arbitrator or arbitrators if the parties have agreed a method of appointment that deviates from Article 13;
- (h) the arrangements between the parties, or the applicant's preference, in respect of the number of arbitrators and the qualifications of arbitrators; and
- (i) insofar as applicable, any other particulars concerning the arbitral procedure.

3. The request for appointment shall be submitted in the manner provided for in Article 3(2). If the applicant is unable to do so, the request may be submitted in another manner. The administrator shall be authorised to suspend handling the request as long as it does not satisfy the requirements mentioned in paragraph 2. Suspension shall not prejudice the provisions of paragraph 1.

4. The administrator shall confirm receipt of its request to the applicant, stating the date of receipt.

Article 8 –Response

1. The administrator shall send a copy of the request for appointment to the other party, stating the date of receipt, and shall invite the other party to submit a response.

2. The response shall contain the following information:

- (a) the name, the address, the place of residence, the telephone number, the e-mail address and, as applicable, the VAT number of the other party;
- (b) the name, the address, the place of residence, the telephone number and the e-mail address of the person or persons representing the other party in the proceedings for appointment;
- (c) the e-mail address at which the other party can be reached for electronic communication for the duration of the proceedings for appointment;

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- (d) a reply to the information referred to in Article 7(2)(e), (f), (g) and (h) and, insofar as applicable, the other party's preference in respect of the number of arbitrators and the qualifications of arbitrators;
- (e) insofar as applicable, in respect of a counterclaim the information referred to in Article 7(2)(d), (e) and (f); and
- (f) insofar as applicable, any other particulars concerning the arbitral procedure.

3. The response shall be submitted within fourteen days of the invitation referred to in paragraph 1 in the manner provided for in Article 3(2), a copy of which shall be sent to the applicant at the same time. If it is not possible for the other party to send the response electronically, it may be submitted in another manner within this time limit, while sending a copy to the applicant at the same time. The administrator shall confirm receipt of the response to the parties.

Article 9 – Purport of the request for appointment and the response

The request for appointment and the response are exclusively intended for the administrator to derive the necessary information for determining the number of arbitrators and/or the appointment of the arbitrator or arbitrators and do not prejudice the parties' right to present a statement of claim and a statement of defence in the arbitration.

Article 10 – Plea as to the non-existence of an arbitration agreement

1. By cooperating in the appointment of the arbitrator or arbitrators in the manner provided for in the Rules, the parties shall not forfeit the right to challenge the jurisdiction of the arbitral tribunal on the ground of non-existence of a valid arbitration agreement.
2. A plea that the arbitral tribunal does not have jurisdiction shall not prevent the NAI from carrying out the appointment procedure as provided for in the Rules.

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SECTION THREE – THE ARBITRAL TRIBUNAL

Article 11 – The arbitrator

1. Any natural person of legal capacity may be appointed as arbitrator. Subject to the provisions of Article 13(4), no person shall be precluded from appointment by reason of their nationality.
2. An arbitrator shall perform his mandate independently, impartially and to the best of his knowledge and ability.
3. A person approached to be engaged as arbitrator who has reason to suspect that there could be justifiable doubts as to his impartiality or independence shall communicate the same in writing to the person who approached him, stating the suspected reason(s).
4. A person who intends to accept his mandate shall, prior to the confirmation of appointment as provided for in Article 15(1), sign a statement confirming his independence and impartiality, availability and acceptance of the mandate on condition of confirmation by the administrator and send this statement to the administrator. Any communication as referred to in paragraph 3 that has been sent shall be included in the statement. The administrator shall send a copy of the statement to the parties and, if the arbitral tribunal consists of multiple arbitrators, to the co-arbitrators.

Article 12 – Number of arbitrators

If the parties have not agreed the number of arbitrators, or if the agreed method of determining that number is not carried out and the parties cannot reach agreement on the number, the administrator shall set the number at one or three, taking account of the parties' preference, the scope of the dispute, the complexity of the case and the parties' interest in efficient proceedings.

Article 13 – List procedure

1. As soon as possible after receipt of the response referred to in Article 8 or, in the absence thereof, after expiry of the time limit for submitting the response, the administrator shall send each of the parties an identical list of names of persons. This list shall contain at least three names in the event that one arbitrator is to be appointed and at least nine names, three of which being prospective chairs, in the event that three arbitrators are to be appointed. A party may delete from the list the names of persons to whom this party has strong objections, and may number the remaining names in its order of preference. If the administrator has not received a list back from a party within fourteen days, it shall be assumed that all of the persons named on the list are equally acceptable to that party as arbitrator.

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2. With due observance of the preferences and/or objections expressed by the parties, the administrator shall invite persons named on the list to serve as arbitrators. If the returned lists show that there are an insufficient number of persons on those lists who are acceptable as arbitrators to each of the parties, or a person will not or cannot accept the administrator's invitation to serve as arbitrator or proves unable to serve as arbitrator for any other reasons and an insufficient number of persons remain on the returned lists that are acceptable as arbitrators to each of the parties, the administrator shall be authorised to directly appoint one or several other persons as arbitrators.

3. The appointment of the arbitrator or arbitrators in accordance with the provisions of this Article shall take place within three months after commencement of the arbitration.

4. If an arbitral tribunal must be appointed in arbitration proceedings between parties that do not have the same nationality in accordance with this article, each of the parties may require that, in the event of an arbitral tribunal consisting of one arbitrator, this arbitrator and, in the event of an arbitral tribunal consisting of three arbitrators, the chair will not have the same nationality as any of the parties by giving notice to the administrator in the request for appointment or the response, respectively.

Article 14 – Other method of appointment

If the parties have agreed a method of appointment of the arbitrator or arbitrators that deviates from the list procedure provided for in Article 13, the appointment shall take place in the manner as agreed by the parties. If this method of appointment is not, or not entirely, performed within the time limit agreed by the parties or, in the absence of such time limit, within four weeks after after the request for appointment has been filed, the appointment of the arbitrator or arbitrators shall take place in accordance with the list procedure provided for in Article 13. Article 13(3) shall apply mutatis mutandis.

Article 15 – Confirmation of appointment

1. The appointment of an arbitrator under the provisions of this section shall be confirmed by the administrator after receipt of the statement referred to in Article 11(4), unless in case of an appointment provided for in Article 14 the arbitrator, in the administrator's opinion, offers insufficient safeguards for sound arbitration.

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2. If the administrator does not confirm an appointment, he shall appoint a different arbitrator or chair in accordance with the list procedure provided for in Article 13.

Article 16 – End of the appointment procedure

After the appointment of all members of the arbitral tribunal has been confirmed, the administrator shall send the appointment file to the arbitral tribunal, by which the administration of the request for arbitration will have been completed.

SECTION FOUR – ADMINISTRATION COSTS

Article 17 – Administration costs

1. Upon filing a request for appointment, the applicant shall owe the NAI administration costs in accordance with the provisions of paragraph 2. The administrator shall notify the applicant of this amount as soon as possible after receipt of the request for appointment.

2. The administration costs shall be calculated on the basis of the total monetary interest of the claims, including contingent claims, using the scale determined by the Executive Board as included in Appendix A to the Rules. The Executive Board may make interim changes to this scale in accordance with the provisions of Article 22. In the event that the administration costs cannot be calculated on the basis of the scale, the administrator shall decide.

3. The administrator shall see to the collection of the administration costs owed. If, after a second reminder from the administrator, the administration costs owed by a party are not received by the NAI, the administrator is authorised to suspend the administration of the request for appointment until the administration costs owed have been paid in full. If, after a second reminder from the administrator, the administration costs owed are not received by the NAI within fourteen days, the request for appointment shall be deemed to have been withdrawn.

SECTION FIVE – FINAL PROVISIONS

Article 18 – Timely objection

A party that has participated in the appointment procedure shall make objection to the administrator without unreasonable delay, sending a copy thereof to the other party as soon as it knows or

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reasonably should know of any act contrary to, or failure to act in accordance with, any provision of the Rules or the arbitration agreement. If a party fails to do so, then the right to rely on this later, in the arbitral proceedings or before the ordinary court, shall be forfeited.

Article 19 – Competent provisional relief judge

If the place of arbitration is located in the Netherlands, the provisional relief judge of the Rotterdam district court shall have jurisdiction for the cases as referred to in Article 1027(3) (appointment of the arbitrator or arbitrators) and Article 1028 (privileged position of a party with regard to the appointment of the arbitrator or arbitrators) of the Dutch Code of Civil Procedure.

Article 20 – Contingencies

In all events not provided for in the Rules, action shall be taken in accordance with the spirit of the Rules.

Article 21 – Limitation of liability

The NAI, its board members and personnel, the members of its Advisory & Supervisory Board, the arbitrator or the arbitrators and any other persons involved in the case by any or all of them shall not be liable either by contract or otherwise for any damage caused by their own or any other person's acts or omissions or caused by the use of any aids in or involving arbitration, all this unless and insofar as mandatory Dutch law precludes exoneration.

Article 22 – Amendment of the Rules

1. The Executive Board may amend the Rules at any time. The amendments shall have no effect on appointment procedures already pending.
2. The Rules shall apply in the form they have at the time at which the request for arbitration is filed, unless the parties have agreed otherwise.