

Article 2 Legal proceedings initiated by a writ of summons

Where legal proceedings are to be initiated by a writ of summons, Dutch courts have jurisdiction if the defendant has his domicile or habitual residence in the Netherlands.

Article 3 Legal proceedings initiated by a petition

Where legal proceedings are to be initiated by a petition of the petitioner or his solicitor and it concerns other legal proceedings than those meant in Article 4 and 5, Dutch courts have jurisdiction:

- a.** if either the petitioner or, where there are more petitioners, one of them, or one of the interested parties mentioned in the petition has his domicile or habitual residence in the Netherlands;
- b.** if the petition relates to proceedings which are or have to be initiated by a writ of summons and which fall under the jurisdiction of the Dutch courts;
- c.** if the legal proceedings are otherwise sufficiently connected with the Dutch legal sphere.

Article 4 Jurisdiction over matrimonial matters

- **1.** When Regulation (EC) no. 2201/2003 of the Council of the European Union of 27 November 2003 (Brussels II Regulation 2003), that concerns the jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, is not applicable, then the jurisdiction of the Dutch courts over matters of divorce, legal separation, the dissolution of a marriage after a legal separation and the nullity, annulment or validity of a marriage has to be determined exclusively in accordance with Article 3, 4 and 5 of this European Regulation.
- **2.** Where a Dutch court has jurisdiction over matters of divorce, legal separation, the dissolution of a marriage after a legal separation and the nullity, annulment or validity of a marriage, it also has jurisdiction, as far as the European Regulation referred to in paragraph 1 does not apply and without prejudice to Article 1 of the Dutch Code of Civil Procedure, to order provisional and protective measures to the extent that these are related to a divorce, legal separation, the dissolution of a marriage after a legal separation or the nullity, annulment or validity of a marriage.
- **3.** Where a Dutch court has jurisdiction over the principal subject-matter concerning a divorce, legal separation, the dissolution of a marriage after a legal separation and the nullity, annulment or validity of a marriage, it also has jurisdiction, as far as the European Regulation referred to in paragraph 1 does not apply and without prejudice to Article 1 of the Code of Civil Procedure, to rule on subsidiary matters that are introduced simultaneously with the principal subject-matter, on the understanding that:
 - a.** with regard to provisional measures as meant in Article 827, paragraph 1, under point (d) and (e) of the Code of Civil Procedure, the Dutch court only has jurisdiction if the dwelling (home) is located in The Netherlands, and;
 - b.** the Dutch court shall not consider petitions and applications requesting for a court arrangement on parental responsibility or parental access if the court finds itself to be unable to consider the interests of the involved child properly because the case is only to a minor degree connected with the Dutch

legal sphere.

- **4.** The first three paragraphs of the present Article apply accordingly to matters related to a registered partnership, on the understanding that Dutch courts at all times have jurisdiction if the registered partnership was entered into in the Netherlands.

Article 5 Jurisdiction over matters of parental responsibility

Without prejudice to Article 1, Dutch courts have no jurisdiction over matters concerning parental responsibility if the child's habitual residence is not situated in the Netherlands, unless – in exceptional circumstances – a Dutch court finds itself to be able to consider the interests of the involved child properly because the case is to a sufficient degree connected with the Dutch legal sphere.

Article 6 Jurisdiction over other civil and commercial matters

Dutch courts have jurisdiction as well in matters concerning:

- a.** obligations from an agreement, if the obligation which forms the basis for the right of action or petition, has been performed or must be performed in the Netherlands;
- b.** an individual employment agreement or an agency agreement, if the work is usually performed in the Netherlands or if the work, prior to the end of the agreement, in general was performed in the Netherlands;
- c.** an individual employment contract, if the work is performed temporarily in the Netherlands, insofar it concerns a right of action with regard to conditions of employment and labour conditions based on one of the following statutory provisions: Article 1 of the Act on Employment Conditions Transgressing Labour, Article 7 or 15 of the Act on Minimum Wages and Minimum Holiday Allowances, Article 2 paragraph 6 of the Act on the Declaration of the Universally Binding and Non-binding Status of Collective Labour Agreements, Article 8 or 11 of the Act Allocation of Employees by Intermediaries or Article 5, paragraph 1, under point (b), point (d), point (e), or point (f), of the General Equal Treatment Act;
- d.** an agreement entered into by a party who, when entering into this agreement, pursued commercial or professional activities (entrepreneur) and a natural person who, when entering into this agreement, did not pursue commercial or professional activities (consumer), provided that this natural person (consumer) has his domicile or habitual residence in the Netherlands and that the party pursuing commercial or professional activities (entrepreneur) develops his commercial activities or his trade of profession in the Netherlands or, by any means, directs such activities to the Netherlands, while the contract falls within the scope of such activities;
- e.** obligations arisen from a tortious act, if the event that has caused the damage has occurred or may occur in the Netherlands;
- f.** real property rights in immovable things located in the Netherlands and lease and farm lease agreements with regard to such immovable things located in the Netherlands;
- g.** estates of a deceased natural person, if the last domicile or last habitual residence of the deceased

was located in the Netherlands;

h. the validity, nullity or dissolution of commercial partnerships and legal persons incorporated in the Netherlands; the validity, nullity or legal effects of their decisions or the decisions of their bodies or the rights and obligations of their members or associates as such;

i. bankruptcy, suspension of payment under a moratorium or the Debt Repayment Scheme for Natural Persons, if the bankruptcy, suspension of payment or the application of the Debt Repayment Scheme has been decreed or granted in the Netherlands.

Article 6a Place of performance of an obligation derived from a sale or service agreement

Unless agreed otherwise, the place of performance of the obligation is for the purpose of Article 6, under point (a) situated in the Netherlands:

a. where it concerns a purchase or sale agreement of goods, if – according to the agreement - the sold movable thing was delivered or should have been delivered in the Netherlands;

b. where it concerns a service agreement, if – according to the agreement - the services were supplied or should have been supplied in the Netherlands.

Article 7 Jurisdiction over counter actions, joinders and interventions

- **1.** If legal proceedings are to be initiated by a writ of summons and a Dutch court has jurisdiction with respect to one of the defendants, then it has jurisdiction as well with respect to the other defendants who are called to the same proceedings, provided that the rights of action against the different defendants are connected with each other in such a way that a joint consideration is justified for reasons of efficiency.

- **2.** If legal proceedings are to be initiated by a writ of summons and a Dutch court has jurisdiction over the legal claim, then it has jurisdiction as well over a counter action (counterclaim) and over a right of action against a third party who is called to the proceedings by a defendant as being the ultimate liable person, and over a right of action of a third party who has appeared in court for a consolidation of actions ('joinder') or an intervention, unless there is not enough connection between these other actions and the original action.

Article 8 Explicit choice of forum

- **1.** A Dutch court has jurisdiction if parties, with regard to a specific legal relationship that only affects their own interests, by agreement have empowered a Dutch judge or Dutch court to consider disputes that have arisen or may arise out of this legal relationship, unless there is no reasonable interest to make this choice of forum.

- **2.** Dutch courts have no jurisdiction if parties, with regard to a specific legal relationship that only affects their own interests, by agreement have exclusively empowered a specific judge or a foreign court to consider disputes that have arisen or may arise out of this legal relationship.

- **3.** An agreement as meant in the second paragraph does not effect the jurisdiction of Dutch courts if the matter concerns an individual employment agreement or an agreement as meant in Article 6, under point (d).
- **4.** The third paragraph finds no application if:
 - a.** the agreement referred to in the second paragraph has been entered into after the dispute has arisen, or;
 - b.** the employee or the natural person who was not acting in the conduct of a commercial profession or a business (consumer) calls upon the agreement himself in order to appeal to the foreign court.
- **5.** An agreement as meant in the first or second paragraph must be proved in writing. Sufficient for this furnishing of evidence is a document which contains the choice-of-jurisdiction clause (choice of forum clause) itself or which refers to general terms and conditions containing such a clause, provided that this document is accepted explicitly or tacitly by or in the name of the opposite party.
- **6.** An agreement as meant in the first or second paragraph must be regarded and evaluated as a separate agreement. The seized Dutch court is competent to assess the validity of the principal agreement of which an agreement as meant in the first or second paragraph forms a part or to which it is related.

Article 9 Tacit choice of forum ('forum necessitatis')

When Articles 2 up to and including 8 indicate that Dutch courts have no jurisdiction, then they nevertheless have if:

- a.** the case concerns a legal relationship that only affects the interests of the involved parties themselves and the defendant or a party with an interest in the legal proceedings has appeared in court, not exclusively or with the intention to dispute the jurisdiction of the Dutch court, unless there is no reasonable interest to conclude that the Dutch court has jurisdiction.
- b.** a civil case outside the Netherlands appears to be impossible, or;
- c.** the legal proceedings, which are to be initiated by a writ of summons, have sufficient connection with the Dutch legal sphere and it would be unacceptable to demand from the plaintiff that he submits the case to a judgment of a foreign court