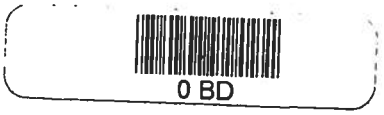
P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance



Mr. Ivo Opstelten

Minister of Security and Justice

Postbus 20301

2500 EH Den Haag

Subject: Consultation Proposal on the Amendment of the Netherlands Arbitration Act

The Hague, 29 June 2012

Excellency,

We write to you in our capacity as Chairman and Secretary General of the Panel of Recognised International Market Experts in Finance: P.R.I.M.E. Finance.

Conceived against the backdrop of the financial market crisis, P.R.I.M.E. Finance is a new and innovative initiative that is complementary to global regulatory reform. Based in The Hague, P.R.I.M.E. Finance has been established to both help resolve and assist judicial systems in resolving disputes about complex financial transactions. The organisation's core activities are arbitration and mediation, but its other services will include providing education and judicial training, expert opinions, early evaluations and risk assessment. It was officially opened on 16 January 2012 by Finance Minister Jan Kees de Jager at the Peace Palace in The Hague. We expect that the establishment of P.R.I.M.E Finance in The Hague will encourage parties to dispute resolution proceedings administered by that organisation to choose to have the seat of such proceedings in the Netherlands, and that it will attract cases to The Hague.

On 13 March 2012, your Ministry launched a consultation proposal on the amendment of the Netherlands Arbitration Act, which is part of the Dutch Code of Civil Procedure and dates back to 1986. P.R.I.M.E. Finance would like to take this opportunity to emphasise the importance it attaches to a robust, flexible and forward-looking new law. In this respect, we support the aim to modernise arbitration law and remove practical obstacles by reducing the administrative burden.

The use of arbitration as a method for resolving financial market disputes has increased in recent years, including disputes relating to privately-negotiated or over-the-counter derivative transactions entered into under master netting agreements such as the International Swaps and Derivatives Association (ISDA) Master Agreement. The type of disputes on which P.R.I.M.E. Finance intends to focus will primarily involve professional parties. In the case of an international arbitration, matters

www.primefinancedisputes.org

T: + 31 (0)70 8200 400 THE HAGUE THE NETHERLANDS
E: SECRETARY@PRIMEFINANCEDISPUTES.ORG

such as the appointment of arbitrators, jurisdictional issues and the international status of the awards could be the subject matter of the dispute.

Under the UNCITRAL Rules, as institutionalized and adapted by P.R.I.M.E. Finance, the Secretary General of the Permanent Court of Arbitration ("PCA"), also based in The Hague, has agreed to act as appointing authority for P.R.I.M.E. Finance in cases where the parties cannot agree on the experts to be assigned to the case. The Secretary General will then appoint arbitrators from P.R.I.M.E. Finance's Expert List.

In reviewing the proposed text ("Draft Text"), we have focused on the practical relevance of the proposed amendments to financial market disputes in particular and the role they can play in positioning the Netherlands as a more international marketplace and a preferred venue for the conduct of international arbitration in that regard.

Our comments, set out below, highlight some of the issues that P.R.I.M.E. Finance thinks important in relation to the envisaged amendments and the aim of strengthening the position of the Netherlands as a leading arbitration-friendly country for international disputes. We hope our comments will assist you in your further deliberations. We would also be keen to further explore with you possible steps to make these amendments work more effectively in the international arbitral arena, and in particular in future financial arbitration.

Yours sincerely,

Professor Jeffrey Golden
Chairman

Professor Gerard J. Meijer
Secretary General

Professional Requirements Arbitrators (Article 1023 (2))

Article 1023 (2) of the Draft Text states that at least one panel member should hold an LL.M. or a comparable degree, unless a secretary is assigned to the tribunal who has a similar degree. Even though we understand that it could be advisable to have legal expertise included in the arbitral tribunal, and taking note of the fact that under Article 1023 (2) parties may agree otherwise ("opt out"), we feel this provision unnecessarily restricts the ability of parties to compose the tribunal as they see fit. For instance, in financial market litigation high-quality expertise regarding complex financial products is often key and is currently often lacking within existing arbitration institutes. In particular, international arbitrators' understanding of derivative contracts tends to be limited. We feel that the parties themselves should be able to determine the specific expertise required for their case, rather than this being prescribed by law.

Moreover, it is very difficult indeed to compare law degrees internationally. For instance, whereas in the United Kingdom an LL.M. is the second professional degree, in the United States, it is the third degree: before obtaining the LL.M. American lawyers are obliged to obtain the Juris Doctor degree. In fact, most of the practicing lawyers in the United States and other countries do not possess, and are not required to possess, an LL.M. degree to practice law in their respective jurisdictions. In light of the proposed amendments they would be precluded from serving as arbitrators in the Netherlands.

Challenge of arbitrators (Article 1035 (2))

Article 1035 of the Draft Text does not provide for the possibility of challenging an arbitrator through a procedure administered by the arbitration institute itself. This means that in the case of a P.R.I.M.E. Finance arbitration, with the seat of arbitration in the Netherlands, the parties will have to address such a challenge to the competent Dutch court instead of being able to follow the institutionalised procedure set out in Articles 11 – 13 of the P.R.I.M.E. Finance Arbitration Rules. This is out of step with what practice has shown to be necessary, and causes unnecessary delays. The parties to a dispute wish to resolve challenges through the procedure on which they have agreed. Article 1035(2) of the Draft Text authorises the President of the competent district court to decide on the merits of any challenge to an arbitrator. In our view, this approach goes against international best practices. We believe, and experience has shown, that the arbitration institute administering a dispute is better placed to decide on a challenge, a process that may require specific or even specialist knowledge of the case at hand.

Deposit of Awards (Article 1058)

As regards the proposed Article 1058, we suggest that the obligation to deposit the award with the registry of the District Court within whose district the place of arbitration is situated be changed from an obligation from which the parties are entitled to "opt out" to one which is entirely voluntary ("opt in"). Practice has shown that parties to international disputes find this obligation to be burdensome and inconvenient, and have acted accordingly.

Language

Finally, given the strong international focus of the arbitration practice, we would welcome a pro-active approach by the Dutch courts, particularly in financial market litigation, so as to enable parties to present and argue their cases in English.