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## Arbitration - Netherlands

### Validity of Corporate Resolutions Cannot Be Arbitrated

Contributed by [NautaDutilh](#)

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#### Decision Comment

As in many other countries, Dutch law prescribes that arbitration cannot be used as a means to determine legal consequences which the parties are not free to determine. Issues which cannot be settled by arbitration include family law matters, patent rights and bankruptcy cases. The Supreme Court has now ruled that disputes over the validity of corporate resolutions cannot be settled by arbitration.<sup>(1)</sup>

#### Decision

In the case at hand the principal legal issue was whether the nullification of a corporate resolution was a matter that the parties could freely determine. The Supreme Court answered this question in the negative, reasoning as follows:

*"First, it must be assumed that the nullification of a resolution of a legal entity, having regard to the (often far-reaching) legal consequences thereof both for the legal entity and for third parties, and bearing in mind the question of legal certainty, is not a matter which the parties can freely determine. Second, a judicial decision that determines whether a resolution of a legal entity is null and void or that nullifies such a resolution must - whether the resolution has internal or external effects - apply generally and not only towards the party requesting nullification. In order to ensure general applicability, the intervention of the civil courts is required."*

#### Comment

Therefore, it seems that disputes over the validity of corporate resolutions cannot be settled by means of arbitration.

However, similar claims can still be settled by arbitration if they are presented differently. As the procurator-general to the Supreme Court explained in his advisory opinion,<sup>(2)</sup> there are other ways to "dispose of" unfavourable corporate resolutions. The procurator-general stated that the nullification of a corporate resolution should be distinguished from withdrawal, which can be done only by the corporate body that adopted the resolution. The procurator-general expressed the opinion that not only state courts, but also arbitration tribunals can order a corporate body to withdraw a resolution that it has adopted. However, in the case at hand he concluded that the appellants' claim could not be interpreted as a request for an order that the general shareholders' meeting withdraw the resolution; it was clearly a claim for nullification of the resolution. Accordingly, the procurator-general argued that the claim could not be settled by arbitration.

In view of the distinction between a direct request for the nullification of a corporate resolution on the one hand, and an indirect request that the relevant corporate body be ordered to withdraw and/or neutralize a resolution (which can be backed by penalties for non-compliance) on the other, the Supreme Court decision seems to restrict arbitration mainly on the level of wording, but not in substance. Nevertheless, the ruling has not been welcomed by Dutch arbitration practitioners.

*For further information on this topic please contact [Isabelle van den Nieuwendijk](#) or [Max van Leyenhorst](#) at [NautaDutilh](#) by telephone (+31 10 224 00 00) or by fax (+31 10 414 84 44) or by email ([isabelle.vandennieuwendijk@nautadutilh.com](mailto:isabelle.vandennieuwendijk@nautadutilh.com) or [max.vanleyenhorst@nautadutilh.com](mailto:max.vanleyenhorst@nautadutilh.com)).*

## Endnotes

- (1) Supreme Court, November 10 2006, LJM: AY4033.
- (2) Advisory opinions are rendered before the court's decision; while not binding, they have a certain degree of authority.

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