International
Comparative
Legal Guides

Outsourcing 2020

A practical cross-border insight into outsourcing law

Fifth Edition

Featuring contributions from:

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)
Arioli Law
ASC Law Office
Astrea
Bird & Bird LLP
Bryan Cave Leighton Paisner LLP
BSN Bufete Sánchez Navarro, S.C.
Centre for Outsourcing Research and Education (Core)
Dana Avocats
Goodmans LLP
Ikeyi Shittu & Co.
Lee and Li, Attorneys-at-Law
Maddocks
SHUSAKU·YAMAMOTO
SIQUEIRA CASTRO ADVOGADOS
Stibbe
Waldeck Rechtsanwälte PartmbB

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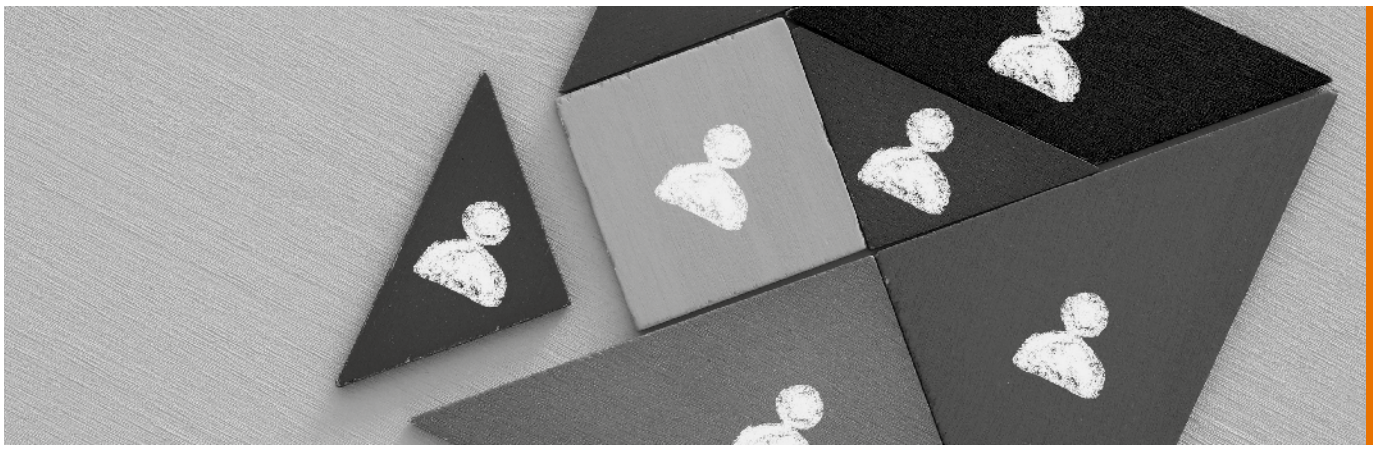

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info@glgroup.co.uk
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Group Publisher
Rory Smith

Publisher
James Strode

Editor
Jane Simmons

Senior Editor
Sam Friend

Head of Production
Suzie Levy

Chief Media Officer
Fraser Allan

CEO
Jason Byles

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Contributing Editor:
Mark Leach
Bird & Bird LLP

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Marc Spuijbroek

Stibbe

1 Regulatory Framework

1.1 Are there any national laws or regulations that specifically regulate outsourcing transactions, either generally or in relation to particular types of outsourcing transactions (e.g. business process outsourcings, IT outsourcings, telecommunications outsourcings)?

No, there are no national laws or regulations regulating outsourcing as such. If regulated services (such as telecommunication services) are outsourced, the supplier will be subject to the applicable regulatory provisions. If the customer operates in a regulated sector (such as the financial sector), an outsourcing may be subject to additional legal or regulatory requirements (see question 1.3 below).

1.2 Are there any additional legal or regulatory requirements for outsourcing transactions undertaken by government or public sector bodies?

Yes, outsourcing transactions undertaken by government or (semi) public sector bodies are subject to EU and national procurement law. If the estimated value of the contract meets certain financial thresholds, it is mandatory to follow the EU procurement procedure, unless specific exceptions apply.

1.3 Are there any additional legal or regulatory requirements for outsourcing transactions undertaken in particular industry sectors, such as for example the financial services sector?

i) **Financial services**: Within the financial services, insurance and pension industries in the Netherlands outsourcing transactions are subject to specific EU and Dutch laws, regulations, guidance and recommendations, such as the EU MIFID II, AIFMD and Solvency II Directives and the EU delegated regulations thereunder, the Dutch Financial Services Act and regulations issued thereunder, such as the Decree on the Market Conduct Supervision of Financial Enterprises and the Decree on Prudential Rules for Financial Undertakings, the Dutch Pension Act, and Guidelines by the EU and Dutch financial supervisory authorities such as the EBA Guidelines on outsourcing, the EIOPA Guidelines on System of Governance, the EIOPA Guidelines on outsourcing to cloud service, DNB's 'Good Practice – Outsourcing Insurers' and DNB's Guidance on outsourcing pensions.

ii) **Other industry sectors**: Additional legal and regulatory requirements may apply for other regulated sectors and industries. It is beyond the scope of this chapter to identify all of these sector-specific requirements.

1.4 Is there a requirement for an outsourcing transaction to be governed by local law? If it is not to be local law, is there any generally accepted norm relating to the choice of governing law?

No, the parties are free to choose the applicable law and jurisdiction. It is market practice, however, that the governing law is based on the place of business of the customer. Governments and public bodies prescribe Dutch law as a requirement in public tenders.

2 Legal Structure

2.1 What are the most common types of legal structure used for an outsourcing transaction?

The most common structures are:

- **single vendor outsourcing**, where the services are outsourced by the customer to a single vendor (which vendor in turn may sub-contract services to other vendors); and
- **multi-vendor outsourcing**, where multiple vendors are contracted by the customer to provide the combined services required.

In these multi-vendor scenarios, the customer tends to assign one of these vendors with the role of service integrator. Thus, while the customer contracts these multiple vendors, the service integrator acts as a single point of contact for the customer.

3 Procurement Process

3.1 What is the most common type of procurement process that is used to select a supplier?

Public sector

Public sector bodies are required to follow public procurement regulations. The most common procurement processes used are the open tender and the limited tender.

Private sector

There are no specific rules regarding the procurement process in the private sector. It is common to follow a request-for-quote ("**RfQ**") process, to which a selection of suppliers are invited.

From the RfQ submissions, usually one or two suppliers are selected and invited to enter into further negotiations.

There is some risk that private tenders become subject to public procurement regulations under certain circumstances. There are methods to limit this risk.

4 Term of an Outsourcing Agreement

4.1 Does national or local law impose any maximum or minimum term for an outsourcing contract?

No, under Dutch law parties are free to determine the duration of an outsourcing agreement. In the public sector, restrictions on the duration may apply pursuant to public procurement regulations.

4.2 Does national or local law regulate the length of the notice period that is required to terminate an outsourcing contract?

No, in principle, the parties are free to agree upon the notice period. However, an extremely short or long notice period may sometimes be difficult to enforce, e.g. based on the principle of reasonableness and fairness (see question 17.1).

5 Charging

5.1 What are the most common charging methods used in outsourcing transactions?

The following charging methods are common. Usually a combination of these mechanisms are used:

- flat fee per month (e.g. one predefined fee for the governance of the services);
- p*q (price*quantity) pricing, usually based on a pre-agreed rate card (including rates for specific services as well as hourly rates); or
- cost plus (e.g. where certain elements of the services are to be provided by sub-contractors).

5.2 What other key terms are used in relation to costs in outsourcing transactions?

Other key concepts used in relation to costs in outsourcing transactions include:

- Indexation (often based on HICP/HICP-CT rates).
- Service credits (or similar) mechanisms.
- Volume discounts (usually combined with p*q pricing).
- Benchmarking (and associated price adjustment mechanisms).
- Continuous improvement obligations.
- Late payment interests.
- Pre-defined tariffs for exit-assistance.

6 Transfer of Assets

6.1 What formalities are required to transfer, lease or license assets on an outsourcing transaction?

Transfer of assets

The transfer of assets requires (i) delivery, (ii) pursuant to a valid title (e.g. a purchase agreement), (iii) by the person who has power of disposal of the relevant asset.

The legal requirements for delivery vary depending on the type of asset that is transferred. Intangible assets are delivered by executing an appropriate deed. Whilst movable assets can also be delivered via execution of a deed, they are typically delivered by physical delivery (bringing the asset under the physical control of the acquirer). For the delivery of immovable assets, see question 6.2 below.

Lease of assets

A lease is a contract that contains the following elements: (i) the lessor provides the lessee with the use of its assets; and (ii) the lessee pays a fee for that use. A lease contract is usually made up in written form. It does not require a notarial deed.

License of assets

Licence contracts with regard to intangible assets are made up in written form. Exclusive licence agreements with regard to certain intellectual property rights must be written deeds.

6.2 What are the formalities for the transfer of land?

Transfer of immovable property, such as land, requires (i) delivery, (ii) pursuant to a valid title (e.g. purchase), (iii) by the person who has power of disposal of the relevant property. The delivery of land takes place by means of the execution of notarial deed for that purpose by or on behalf of the parties in front of a civil law notary and the registration of this notarial deed with the public registers.

6.3 What post-completion matters must be attended to?

In case of transfer of immovable property, such as land, the purchase price is usually paid into the third-party account of the civil law notary that will execute the deed of transfer. Pursuant to rules governing professional ethics and conduct, the civil law notary can only pay out the purchase price to the seller on the business day after the day of registration of the notarial deed in relation to the transfer, after certain post-completion checks have been completed to the satisfaction of the notary.

6.4 How is the transfer registered?

The transfer of movable property does not require registration.

Registration is not a constitutional requirement for legal transfer of an intangible asset. However, for the transfer of registered intellectual property rights (e.g. patents, registered trademarks) to have an effect on third parties, such transfer must be registered in the relevant register(s).

The transfer of immovable property, such as land, cannot be completed without registration of the notarial deed of transfer with the public registers, which are held by the Dutch land registry. The civil law notary executing the notarial deed arranges for this registration.

7 Employment Law

7.1 When are employees transferred by operation of law?

Employees transfer automatically and by operation of mandatory law, without their consent being required, when a transfer of undertaking takes place.

Dutch employment legislation regarding transfer of undertaking is an implementation of the European Acquired Rights Directive (hereinafter collectively: the "**transfer rules**"). Whether a business decision will trigger a transfer of business is determined by the transfer rules and relevant (EU and Dutch) case law.

The key test to establish a transfer of business within the meaning of the transfer rules, is whether there is a transfer of an economic entity (a stable, organised grouping of resources which has the objective of pursuing an economic activity) which maintains its identity. Whether that activity is the main activity is irrelevant. Whether the economic entity maintains its identity is to be assessed on the basis of all aspects of the transfer.

Temporary workers, self-employed workers and other external staff not employed, but whose roles and responsibilities lie exclusively or substantially within the affected (part of the) company, are not transferred by operation of law. Their activities will need to be transferred by way of an amendment to their contracts.

7.2 On what terms would a transfer by operation of law take place?

As a result of the transfer rules, employees transfer automatically with the business. All rights and obligations arising from the employment agreements (such as wages, holiday entitlements etc.) will pass on by operation of law. Rights and obligations resulting from applicable collective labour agreements in principle transfer as well.

The transferee is liable for all obligations and claims pertaining to the employees' employment agreements, regardless of whether they arise and/or become due before or after the transfer. This liability extends to all outstanding claims. Until one year after the transfer of business, the transferor is jointly and severally liable with the transferee for all claims pertaining to the affected employees' employment agreements that arose and were due prior to the transfer.

7.3 What employee information should the parties provide to each other?

The transfer rules do not prescribe which information parties should provide to each other. However, the transferee should be able to follow up the rights and obligations arising from the employment agreements. In the event of a transfer of undertaking, employee data may be provided to the transferee. Data protection legislation must be taken into account.

7.4 Is a customer/supplier allowed to dismiss an employee for a reason connected to the outsourcing?

No, a customer/supplier cannot unilaterally terminate employment of the employees in connection with the transfer of business.

If an employee is duly informed and unambiguously objects to the transfer, the employment will end at the date of transfer. The employee will in principle not be entitled to any compensation. Dutch law only provides for a statutory severance payment (a so-called "**transition payment**") if the employment ends on the employer's initiative, e.g. for reasons of redundancy, underperformance, etc. If an employee refuses to transfer, the employment would be considered to be terminated at the initiative of the employee, meaning no severance payment would be required.

Conversely, if an employee refuses to transfer because this would result in an unreasonable deterioration of working conditions (for instance concerning the place of work, travel time, etc.), the employee can in principle not be blamed for the termination, thus implying that the employee is entitled to a statutory transition payment by way of severance.

7.5 Is a supplier allowed to harmonise the employment terms of a transferring employee with those of its existing workforce?

According to case law, employment terms cannot be amended for reasons related to the transfer of business. This means that any such amendments are null and void, even if employees would agree with a waiving of their individual rights. As an exception, the employees' employment terms could be amended for economic, technical or organisational reasons ("**ETO reasons**"), but these reasons are subject to a strict assessment. Amendments made for harmonisation purposes are usually deemed to have occurred in connection with the transfer of business, and will thus not qualify as amendments made for ETO Reasons.

7.6 Are there any pensions considerations?

Pension obligations will pass on to the transferee as part of the transfer of business. An exception may apply in case: (i) the transferee offers its own pension scheme to the transferring employees; (ii) the transferee is held to participate in a mandatory industry-wide pension fund; or (iii) a collective labour agreement applies that contains pension-specific provisions. In any case, review of the pension schemes and assessment of the pension-related consequences of the transfer of business will be necessary.

7.7 Are there any offshore outsourcing considerations?

Offshore outsourcing could qualify as a transfer of undertaking. Employees are more likely to protest to their transfer. Furthermore, an objection to transfer might not automatically result in a termination of employment, as described under question 7.4 above. Approval of the Dutch Employee Insurance Agency, the "**UWV**", may be required for termination of the employment agreement. The UWV is often critical when it comes to offshore outsourcing.

8 Data Protection Issues and Information Security

8.1 What are the most material legal or regulatory requirements and issues concerning data security and data protection that may arise on an outsourcing transaction?

The key legal framework for the protection of personal data consists of Regulation (EU) 2019/679 (General Data Protection Regulation, "**GDPR**") and the Dutch GDPR Implementation Act, which deviates from the GDPR in certain aspects.

For government or public bodies active in law enforcement, Directive (EU) 2016/680 – as implemented in the Dutch Police Data Act and the Dutch Judicial Data and Criminal Records Act – applies to the processing of personal data for purposes of prevention, investigation, detection or prosecution of criminal offences or execution of criminal penalties.

Relevant topics to consider in the context of data protection law and outsourcing notably include the following:

Applicable law: The GDPR applies to (1) controllers and/or processors established in the EU or, (2) controllers and/or processors *not* established in the EU, but that (a) offer goods or services to data subjects in the EU, or (b) monitor their behaviour in the EU. The applicable scope of the Dutch GDPR Implementation Act follows the same conditions, but is limited to the Netherlands.

Data processing arrangements: If personal data are processed by the supplier as part of the outsourcing, appropriate data processing arrangements should be put in place.

Controller/processor role: Assessment of the relevant roles of the parties, and the risk of the supplier to qualify as a controller when it uses personal data for its own purposes.

International transfer of personal data: A transfer of personal data (including access from) outside the European Economic Area is subject to additional measures to ensure an adequate level of protection of the personal data abroad. Measures can be taken to legitimise the international transfer, such as reliance on adequacy decisions (including Privacy Shield for transfers to the United States) or the execution of Standard Contractual Clauses ("**SCCs**").

With regard to privacy, other relevant laws and regulations include Directive 2002/58/EC ("**e-Privacy Directive**") as implemented in the Dutch Telecommunications Act.

8.2 Are there independent legal and/or regulatory requirements concerning information security?

Directive (EU) 2016/1148 on security of network and information systems ("**NIS Directive**") provides legal measures to govern cybersecurity in the EU. In the Netherlands, it is implemented in the Network and Information Systems Security Act.

This legal framework applies to "operators of essential services" identified by the government in various industry sectors, including; for example: energy; transport; and banking, as well as certain "digital service providers". These providers are required to take appropriate security measures and flag incidents that could have a significant or substantial impact on the provision and/or continuity of the service.

Specific industry sectors may require adherence to additional information security requirements (such as the additional security requirements for the healthcare sector pursuant to the Decree on Electronic Data Processing by Care Providers, or PCI-requirements for certain organisations processing card data).

9 Tax Issues

9.1 What are the tax issues on transferring the outsourced business – either on entering into or terminating the contract?

When a Dutch taxpayer enters into an outsourcing arrangement, there may be a transfer of assets/business to the supplier. The main tax issues of such a transfer are as follows:

CIT

Any gain realised on the transferred business may be subject to Dutch corporate income tax ("**CIT**"). The CIT rate in the Netherlands currently is set at 16.5% for Dutch taxable income of up to EUR 200,000 and 25% for the excess (2020).

An intra-group transfer must be executed at arm's length. A taxpayer can apply for an advance pricing agreement ("**APA**") with the Dutch Tax Administration to get advance clearance on transfer pricing. Roll-over facilities may be available in case of intra-group transfers.

VAT

An asset transfer by an entrepreneur for VAT purposes is generally subject to VAT. However, in case of transfer of a going concern; such a transfer is out of scope for VAT purposes.

From the transferor's perspective, similar considerations as the above would apply when an outsourcing arrangement is terminated and the corresponding business is transferred back.

9.2 Is there any VAT leakage on the supply of services under the outsourcing contract?

VAT is, in principle, payable in the Netherlands if (i) the provider of the service qualifies as a VAT entrepreneur, and (ii) the recipient of the service is located in the Netherlands and also qualifies as a VAT entrepreneur. The Dutch general VAT rate is set at 21%; a reduced rate or exemption may, however, apply in certain cases. In case of intra-group outsourcing within the Netherlands, the service may be disregarded for VAT purposes if the provider of the services and the recipient of the services are included in a fiscal unity for VAT purposes.

VAT leakage arises in case the provider of the services is subject to VAT, while the recipient of the services is unable to claim a full refund of VAT (generally, because the recipient of the services performs VAT-exempt activities or because the recipient of the services does not itself qualify as an entrepreneur for VAT purposes). Businesses in, *inter alia*, the financial, insurance, health and education sector often perform VAT-exempt activities.

9.3 What other tax issues may arise?

Remuneration for outsourced services

Non-arm's length remunerations are adjusted for Dutch tax purposes. Under certain conditions, a Dutch taxpayer can apply for an APA with the Dutch Tax Administration to obtain upfront assurance regarding the pricing of the remuneration.

Dutch innovation box regime may no longer be applicable

Under the Dutch innovation box regime, qualifying income in relation to intangible assets is taxed at a lower effective CIT rate. In order to apply the innovation box regime a taxpayer must meet certain criteria. In any case, the taxpayer must have developed intangible assets on the basis of qualifying R&D activities for which a so-called R&D certificate was issued. Furthermore, the intangible assets must have been developed by the Dutch taxpayer itself (the object and purpose of the regime is to stimulate R&D activities in the Netherlands). If R&D activities are outsourced, the taxpayer may no longer qualify for application of the Dutch innovation box regime.

Withholding tax on interest and royalty payments

Interest and royalty payments to related entities in "**blacklisted**" jurisdictions made by Dutch entities are, as from 2021 onwards, subject to a withholding tax. The withholding tax will be levied at a rate equal to the highest rate of CIT in the current year.

Recipients' liability

In case employees are outsourced, the supplier, as the formal employer, is required to pay payroll taxes. However, the recipient of the services can be held liable for the payment of the payroll taxes. The liability risk can be mitigated by taking certain measures.

10 Service Levels

10.1 What is the usual approach with regard to service levels and service credits?

Service levels are typically agreed in a separate Service Level Agreement ("**SLA**"), incorporated as an annex to the master outsourcing agreement. In the SLA, parties lay down the minimum quality level of the services to be provided.

In order to measure the supplier's actual performance, Key Performance Indicators ("**KPIs**") are often agreed. Through these KPIs, parties agree on a method to measure performance for certain individual aspects of the services. When chosen properly, the combined results of the KPIs can serve as a means to measure overall service performance.

In SLA negotiations, suppliers tend to try to agree that the supplier's obligations are limited to achieving the agreed minimum results for the KPIs. The customer tends to aim for an arrangement under which the KPI results only serve as an indication of the supplier's success in achieving the agreed service levels, but leave the supplier's obligation to provide the services as agreed unaffected.

It is common to agree upon the supplier becoming due service credits upon not achieving the agreed minimum KPI results. The value of these credits tend to be either (i) a pre-agreed fixed amount, or (ii) a percentage of the fees for the overall services or the services with which the KPI is associated.

The maximum amount of service credits that can be forfeited by the supplier is usually capped. Mechanisms that raise the service credit cap in case of continued poor performance are common.

Service credits normally qualify as a fixed penalty under Dutch law. A fixed penalty replaces all rights to compensation, unless explicitly agreed otherwise. It is common to include a clause in the agreement pursuant to which the right to additional compensation (beyond the agreed credits) is reserved.

11 Customer Remedies

11.1 What remedies are available to the customer under general law if the supplier breaches the contract?

Remedies under general law available to the customer if the supplier breaches the contract include the following:

- Action for performance of the contract.
- Termination for cause.
- Claims for damages.

11.2 What additional protections could be included in the contract documentation to protect the customer?

Additional protections that could be included in the contract documentation include the following:

- Termination for convenience.
- Warranties and indemnities.
- Penalty clauses.
- Service credits.
- Limitation of the right to suspend services.
- Exit-arrangements.
- Limited right to replace key personnel.
- Audit rights.
- Insurance obligations.
- Parent company guarantee.
- Escrow arrangements.
- Step-in rights.

11.3 What are the typical warranties and/or indemnities that are included in an outsourcing contract?

Some common warranties:

- Supplier is fully competent and entitled to conclude the agreement and provide the services.
- Supplier is not aware of any circumstances that may adversely affect its ability to fulfil its obligations pursuant to the agreement.
- Supplier will only engage fully capable and qualified personnel in its service provision.
- Supplier shall ensure all required permits, permissions, etc. have been obtained and shall remain in place.
- Services will be in accordance with the requirements pursuant to the agreement.
- Services will not infringe third-party IP rights.

Some common indemnities:

- Supplier indemnity for all obligations relating to taxes and social security obligations relating to supplier-engaged personnel/third-party contractors.
- Mutual indemnity in case of third-party IP claims caused by the use of materials provided by the other party.

12 Insurance

12.1 What types of insurance should be considered in order to cover the risks involved in an outsourcing transaction?

Most common insurances in relation to outsourcing:

- Public liability insurance.
- Professional liability insurance.
- Employers' liability insurance.
- Cyber insurance.

Other insurances may be relevant depending on the specific outsourcing transaction.

13 Termination

13.1 How can a party to an outsourcing agreement terminate the agreement without giving rise to a claim for damages from the terminated party?

Following contractually agreed termination rights should allow for termination without giving rise to a claim for damages.

Apart from contractual termination arrangements:

- A fixed-term agreement cannot be unilaterally terminated, except in the case of unforeseen circumstances that are not the responsibility of the terminating party and that are of such a serious nature that the other party cannot reasonably hold the terminating party to maintenance of the agreement.
- The general rule is that an unlimited term agreement can be unilaterally terminated taking into account a reasonable notice period. Whether this general rule applies should be assessed on a case-by-case basis.

13.2 Can the parties exclude or agree additional termination rights?

Yes, in business-to-business relations, parties are free to exclude statutory termination rights, or agree upon additional termination rights.

Parties tend to use this freedom to agree on additional termination rights, such as a right to terminate in case of (i) insolvency

of the other party, (ii) persistent failure to meet service levels, (iii) service provision being obstructed as a result of *force majeure* that lasts a certain period, and (iv) a change in the control at the supplier's side.

13.3 Are there any mandatory local laws that might override the termination rights that one might expect to see in an outsourcing contract?

No. However, in certain regulated industries, supervisory authorities may be in a position to effectively stop an outsourcing (e.g. by prohibiting the processing of personal data, or withdrawing required permits).

14 Intellectual Property

14.1 How are the intellectual property rights of each party protected in an outsourcing transaction?

Outsourcing agreements often contain IP provisions that differentiate between (i) IP that belonged to the parties prior to the outsourcing transaction, and (ii) IP created during the outsourcing.

IP within the scope of the outsourcing agreement that belonged to the parties prior to the outsourcing is in most cases licensed from one party to the other. These licences specify the permitted use of the IP under the agreement and are usually limited in time, to the term of the agreement. In principle, intellectual property laws prohibit the use of the other parties' IP that goes beyond the use licensed under the agreement.

In some cases, the parties throughout the outsourcing transaction create IP rights. It is recommended to include a provision in agreement, so that it is clear who holds the rights to the IP and what use of the IP the other party permits. Without such arrangements, ownership of the IP in most cases defaults to the creator of the IP.

14.2 Are know-how, trade secrets and other business critical confidential information protected by local law?

The Dutch implementation of the Trade Secrets Directive (2016/943/EU) gives holders of undisclosed know-how and business information (trade secrets) various possibilities to take action against the unauthorised acquisition, use or disclosure of trade secrets. The definition of trade secrets is rather broad under the Trade Secrets Protection Act and relates to almost all information that is subject to a confidentiality obligation.

14.3 Are there any implied rights for the supplier to continue to use licensed IP rights post-termination and can these be excluded from the agreement?

Rights for the supplier to use licensed IP rights may be implied insofar as necessary for the fulfillment of post-termination obligations (such as exit arrangements). To avoid any risk of implied IP licensing, such implied rights can be excluded in the agreement.

14.4 To what extent can the customer gain access to the supplier's know-how post-termination and what use can it make of it?

Unless specific arrangements are in place, the general rule is that there is no right of access to such know-how. Thus, it is important to include arrangements for the transfer of relevant know-how in the agreement (for instance as part of the exit arrangements).

15 Liability

15.1 To what extent can a party limit or exclude liability under national law?

In a business-to-business relationship, any limitation or exclusion of liability may be agreed upon, however, exclusion of damages caused by intent or deliberate recklessness by a party or its management generally will not hold in court.

We note that under Dutch law the possibility to invoke a limitation/exclusion of liability may be affected by the principles of reasonableness and fairness (see question 17.1).

15.2 Are the parties free to agree a financial cap on liability?

Yes, parties may agree a financial cap on liability. However, depending on the cap and the circumstances, a cap may sometimes not be (fully) enforceable under Dutch law.

16 Dispute Resolution

16.1 What are the main methods of dispute resolution used?

In case of a dispute, the two main methods of dispute resolution are (i) court proceedings, and (ii) arbitration.

When opting for court proceedings as the means for dispute resolution, parties can choose the Netherlands Commercial Court as the competent court, which holds its proceedings and renders its judgments in English.

When agreeing upon arbitration as a method of dispute resolution, parties often agree that such arbitration will take place before the Dutch ICT arbitration institute ITDR (nationally known as SGOA), which is an ADR institute that exclusively offers services for IT, privacy and data disputes.

17 Good Faith

17.1 Is there any overriding requirement for a customer and supplier to act in good faith and to act fairly according to some objective test of fairness or reasonableness under general law?

Yes, there is. An important rule under Dutch law with regard to the interpretation and enforcement of an agreement is that the parties to such agreement have to act towards each other in accordance with the principles of reasonableness and fairness. These are general principles laid down in the Dutch Civil Code. These principles provide that agreements not only have the effects expressly agreed upon but also those which, according to the nature of the agreement, result from the law, common practice or the requirements of reasonableness and fairness. As a result, the parties to an agreement will have to take into consideration the reasonable interests of the other party. Furthermore, a provision applicable between the parties pursuant to an agreement shall not apply insofar as this would be unacceptable in the given circumstances according to the principles of reasonableness and fairness.

Judica Krikke leads Stibbe's IT, Data & IP team in Amsterdam. With over 20 years of experience, she is a recognised authority in the field with personal tier 1 rankings in *Chambers* and *The Legal 500*.
Judica acts as lead counsel in outsourcing and cloud sourcing, ICT procurement, ICT transactions, software licensing compliance and ICT disputes and all data-related matters. Her expert leadership and knowledge reinforces Stibbe's capacity as a full service firm to handle large transactions involving media and technology.
Judica is an arbitrator for the ITDR arbitration institute and head teacher of the Dutch postgraduate education programme for ICT lawyers (Grotius Academy).

Stibbe
Beethovenplein 10
1077 WM, Amsterdam
Netherlands

Tel: +31 205 460 606
Email: judica.krikke@stibbe.com
URL: www.stibbe.com

Marc Spuijbroek specialises in ICT and data protection with a focus on ICT law. Providing pragmatic solutions for his clients, Marc has a proven expertise in ICT procurement and ICT contracts. His experience includes the procurement and negotiation of ICT contracts regarding sourcing, development, licensing, maintenance/support and the various cloud-based solutions available. Furthermore, he advises on privacy-compliant solutions and mitigation of privacy compliance risks.

Stibbe
Beethovenplein 10
1077 WM, Amsterdam
Netherlands

Tel: +31 205 460 606
Email: marc.spuijbroek@stibbe.com
URL: www.stibbe.com

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