Kluwer Arbitration Blog

Importing the “negative effect” of the principle of competence-competence into Swiss law?

Georg von Segesser (von Segesser Law Offices) · Thursday, April 14th, 2011

According to article 7 of the Swiss Private International Law (PILA), if the parties have entered into an arbitration agreement, the Swiss Court before which the action is brought shall decline its jurisdiction unless it finds that the agreement is null and void, inoperative or incapable of being performed. An initiative to amend article 7 of the PILA statute in the sense that in international matters the arbitrators should decide themselves on their competence, is pending already for some time in the Swiss Parliament and in the last month discussions and diverging opinions have increased. The topic has only just been debated at a meeting of arbitrators and arbitration practitioners at the ASA Group Mittelland in Berne. Bernhard Berger has also very recently published an article on the issue in ASA Bulletin Volume 29 2011 page 33 et seq on the issue. Those in favor of the amendment point out that it would strengthen the position of Switzerland as an arbitration venue. Those holding the opposite view question whether the amendment would be in the best interest of the Swiss economy. Referring to a recent decision of the Swiss Federal Supreme Court (BGer 4A_279 210), Berger in particular argues that the possibility for a respondent to delay proceedings before a state court in Switzerland by invoking that parties had agreed on arbitration with a venue elsewhere, could become very cumbersome Based only on the plausibility that such an arbitration agreement exists, a state court would have to stay proceedings. Berger suggests that instead of amending a national statute, an international solution should be explored, e.g., UNCITRAL could prepare an interpretation of article M (3) of the New York Convention.
The issue is apparently to be discussed at the Parliament at the session of 12/13 May.

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uncover potential conflicts of interest.

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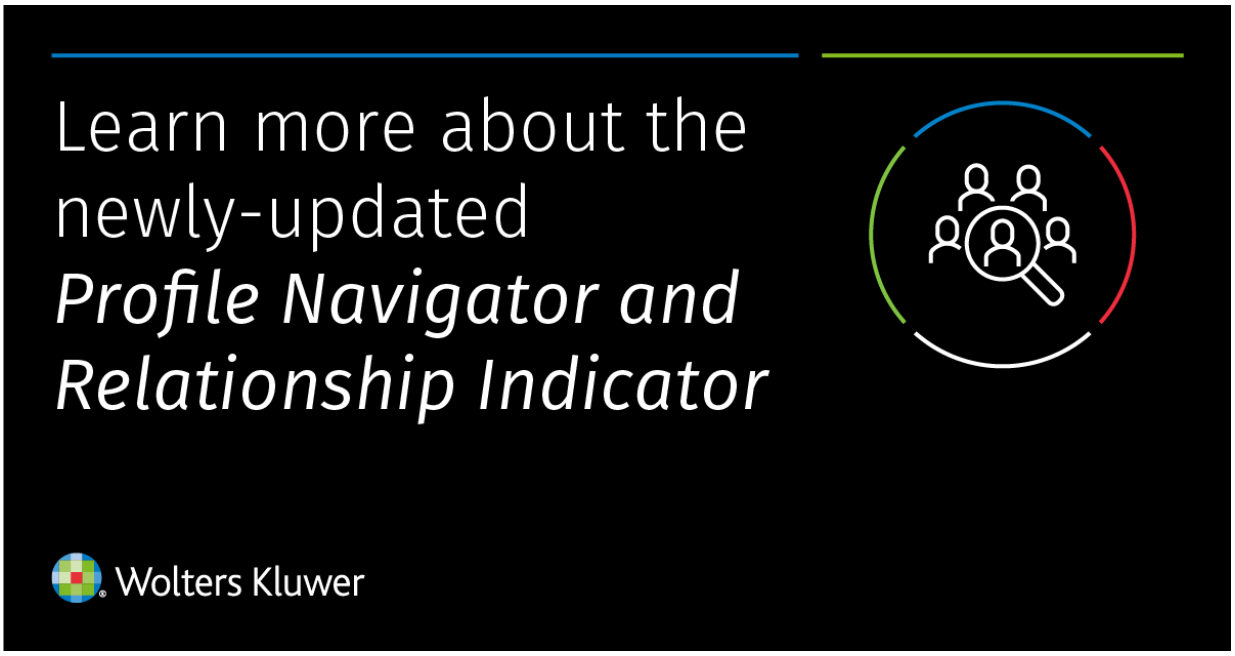

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