Kluwer Arbitration Blog

The Contents of b-Arbitra, Issue 2017-2

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We are pleased to present to you this second issue of b-Arbitra 2017, which is also the second issue of our new cooperation with Wolters Kluwer. As announced, our journal is now also accessible in digital form on Jura in Belgium and in the Kluwer Law Arbitration database.

In this issue you will find an in depth analysis by Olivier Caprasse and Maxime Malherbe of the Belgian Constitutional Court decision of 16 February 2017. This decision addresses the important issue of the effects of judicial and arbitral decisions and of their consequences on the recourse that is available to third parties against an award. A distinction is made between the current inability of a third party to resist enforcement of an award and the limited possibility recognized by the Cour de Cassation for a third party to request the annulment of an award, in case of fraud. The decision of the Constitutional Court is published in the Case law section of this issue.

We then publish two contributions dealing with third party funding mechanisms. These contributions complement, as announced in our previous issue, the articles and documents already published in that issue on this topic, following a CEPANI colloquium on Third Party Funding that took place on 9 March 2017. The first contribution is an article by Dirk Van Gerven and Arie Van Hoe published in the Doctrine section about the ethical and deontological issues related to third party funding. The authors first discuss the views as to the ethical or unethical character of third party funding as such. Then they comment on the various aspects and manifestations of the ethical issues, from the perspective of both the lawyer and the arbitrator. They end with a question: how will arbitration institutions deal in the future with third party funding in their rules? You will find a second contribution on third party funding in our Documents section, written by Christopher P. Bogart, co-founder and chief executive officer of Burford Capital LLC, a major actor in litigation and arbitration finance, publicly traded on the London Stock Exchange. His contribution offers the finance industry's point of view, as a primer of sorts, on the advantages that arbitration finance in general and third party funding in particular bring to both corporate clients and their lawyers. It also addresses two areas of concern that are frequently raised in regard to financing international arbitration: disclosure and security for costs.

In our Case law section, we publish a decision of the Brussels Court of First Instance, with a note by Stephanie Davidson. That decision deals with particular procedural aspects of a third party's objection to enforcement of an arbitral award. The first aspect is the time limit applicable to a third party for filing its objection to enforcement of an award, in combination with a simultaneous application to set aside the award. In a second aspect, the court confirms the position of the Cour

de Cassation as to the right of the third party to seek the annulment of an award that was obtained by fraud.

We also publish two **decisions of the Brussels Court of First Instance** rendered in the Yukos saga. In a first decision of 9 December 2016, the court has declared inadmissible the third party application ("*tierce opposition/derdenverzet*") filed by the Russian Federation seeking to withdraw its decision of 24 June 2015 that had granted the exequatur of two arbitral awards against the Russian Federation. By another decision of 8 June 2017, the judge of attachments ("*juge des saisies/beslagrechter*") lifted the seizures that had been obtained by Yukos on a number of assets in Belgium of the Russian Federation and of related entities. Both decisions raise interesting issues of international private law and of procedural law regarding the interaction between the enforcement and the annulment of awards, as well as the related seizures. A doctrinal comment on those decisions will be published in a next issue of our journal.

In the Documents section, after the contribution of Christopher Bogart, you will find the first Dutch translation of the rules of CIETAC (the China International Economic and Trade Arbitration Commission), made and commented upon by Jacques Herbots. International arbitration is today a hot topic in China and a priority of Chinese diplomacy under the presidency of Xi Jinping. No fewer than 387 international cases were dealt with under the auspices of CIETAC in 2016. This journal has previously published in 2014 a contribution by the same author on the characteristics of arbitration in China.[1)]

Herman Verbist then delivers a comprehensive presentation of the new ADR Rules of CEPANI that have just been revised, 5 years after the 2013 revision of its Arbitration Rules.

Finally, this issue contains a book review of the interesting and challenging reflections of Rémy Gerbay in his book on the Functions of Arbitral Institutions, as well as a brief presentation of the remarkable 1958 New York Convention Guide and Website launched in 2017 as a collaboration between UNCITRAL, Shearman & Sterling and the Columbia Law School.

We wish you excellent and stimulating reading and we always welcome further views, exchanges and suggestions from our readers.

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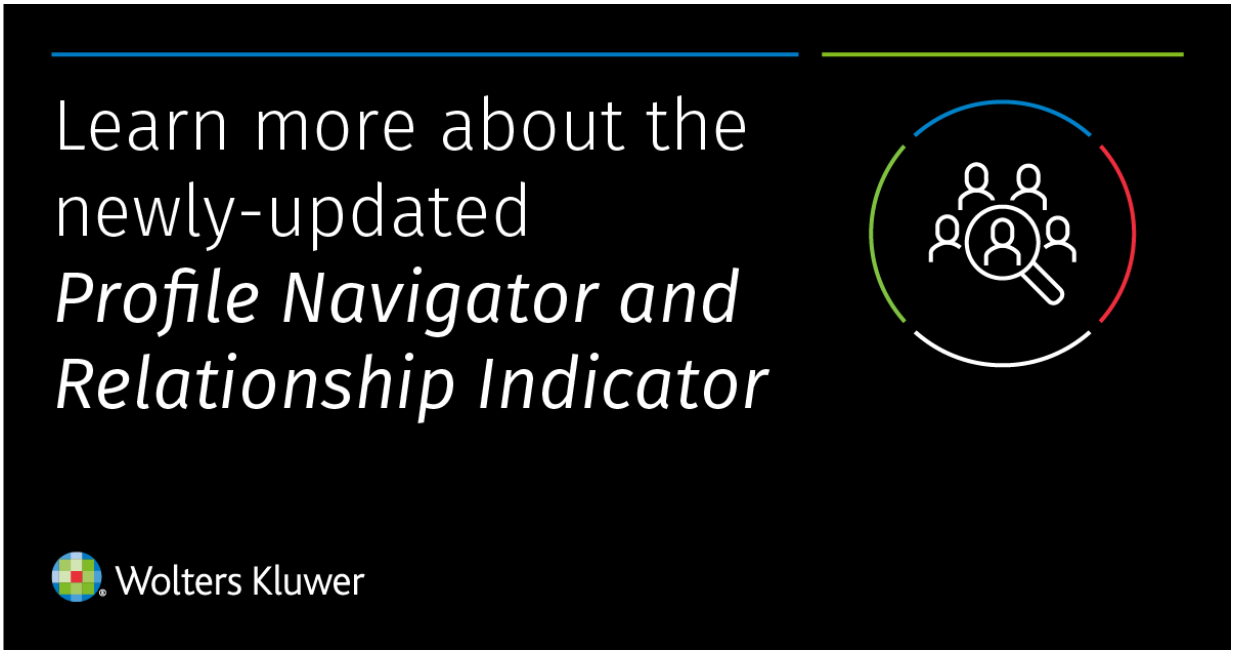

References

?1 Herbots J.H., "*Les caractéristiques propres au droit de l'arbitrage de la République populaire de Chine* », b-Arbitra, 2014/2, pp. 379-420.

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