

# District Court in The Hague assumes jurisdiction where state-owned company could not prove government approval to enter into arbitration agreement

by *Practical Law Arbitration*, with *Van Oosten Schulz De Korte Advocaten*

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In *Brumby v Bariven and others* (ECLI:NL:RBDHA:2022:5314), the District Court in The Hague assumed jurisdiction over a EUR32 million claim by Panamanian company Brumby against PDVSA-owned company Bariven and others, because Bariven failed to demonstrate that it had obtained the required approval from the Venezuelan government to enter into an arbitration agreement.

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The District Court in The Hague has ruled that it had jurisdiction to rule on a claim by Brumby against Bariven and others following asset attachments effected in the Netherlands, despite the presence of an ICC arbitration clause in the underlying purchase agreement.

The court ruled that Bariven's authority to enter into a valid arbitration agreement was governed by Venezuelan law, which does not permit Venezuelan state-owned companies to enter into an arbitration agreement, on penalty of nullity. An exception applies if the Venezuelan government provides an approval to the state-owned company to enter into an arbitration agreement. The court ruled that Bariven had failed to demonstrate that it had obtained the required approval. Also, as the proceedings were pending since 2020, and in order to avoid unreasonable delay, the court did not allow Bariven additional time to submit documents concerning the required approval.

The court did not address whether the purchase agreement between Brumby and Bariven was not subject to arbitration at all by reason of Venezuelan public policy, because it had already accepted jurisdiction.

Lastly, the court held that, as it had jurisdiction to rule on the claim against Bariven, it also had jurisdiction to rule on the claims against the other PDVSA defendants, because there was sufficient nexus between the claim against Bariven and the claims against the other defendants, which was undisputed.

Case: *Brumby v Bariven and others* (ECLI:NL:RBDHA:2022:5314) (18 May 2022).

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