

Investors in Crimea unable to obtain Kroll report evidencing fraud at PrivatBank (Hague Court of Appeal)

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The Court of Appeal in The Hague has ruled that Crimean investors who had been ordered to obtain a Kroll report evidencing fraud at PrivatBank were unable to do so and dismissed Russia's further requests for disclosure.

The ruling relates to proceedings on Russia's request to set aside awards in favour of Ukrainian investors in Crimea following the expropriation of their Crimean properties (see [Legal update, Dutch court refuses Russia's request to suspend enforcement of BIT awards in favour of investors in Crimea \(Court of Appeal in The Hague\)](#)). The court had ordered the disclosure of parts of the report which related to one of the claimants and which was produced at the request of the National Bank of Ukraine (see [Legal update, Court of Appeal in The Hague orders disclosure of Kroll report into fraud at PrivatBank](#)).

Following the order for disclosure, Everest and others filed a submission supported by a written statement by the US counsel acting for Everest and others in the arbitration asserting that, insofar as the Kroll report even existed, they had failed to obtain a copy. Russia disputed the assertion and argued that at least digital, unsigned, uncertified (parts of) versions or drafts of the report should be disclosed.

The court ruled that, although it had been established that the Kroll report existed, Everest and others had made clear that they were unable to obtain a copy. A person identified as X, an indirect shareholder of Everest and former majority shareholder of PrivatBank, did not possess a copy of the report and was actually also trying to have the report disclosed in proceedings before the Ukrainian courts. The court also referred to a press release by the National Bank of Ukraine, stating that the report was confidential. The court further dismissed Russia's request for disclosure of documents relating to whether Everest received financing against normal business conditions, on the basis that it was insufficiently specific. It directed Everest and others to inform the court and Russia of the status of all proceedings in which a copy of the Kroll report is claimed if a hearing is held in the setting aside proceedings.

The court will rule whether or not any further disclosure is needed or assess the consequences of certain relevant documents not being disclosed in the main proceedings.

Case: *Russian Federation v Everest Estate LLC and others (ECLI:NL:GHDHA:2020:1341)* (7 July 2020) (in Dutch).

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