

Court of Appeal in The Hague upholds award ordering capital contribution into Dutch life insurance company

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

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In *Mr Lindberg and others v Mr Van Anandel and others* (ECLI:NL:GHDHA:2022:570), the Court of Appeal in The Hague rejected an application to set aside an award ordering the applicants to provide a capital contribution into Dutch life insurance company, Conservatrix, which was later declared bankrupt.

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The Court of Appeal in The Hague rejected an application to set aside an award ordering the applicants to provide a capital contribution into Dutch life insurance company, Conservatrix, following an intervention by the Dutch Central Bank to improve the insurance company's solvability. Conservatrix was later declared bankrupt. A recapitalisation commitment had been entered into by the applicants and the Dutch Central Bank, containing an arbitration agreement.

First, the court addressed if there was a valid arbitration agreement. The court agreed with the tribunal's analysis that the obligations of the applicants under the recapitalisation commitment signed by them and the Dutch Central Bank qualified as a third-party clause that Conservatrix could also invoke. After all, recapitalisation of Conservatrix's solvability as agreed to in the recapitalisation commitment was in the interest of Conservatrix and its policyholders. The fact that the Dutch Central Bank did not act as a claimant alongside Conservatrix, did not mean that the Dutch Central Bank assumed a different position than Conservatrix. On the contrary, the Dutch Central Bank also had an interest in the recapitalisation commitment being performed. Therefore, the court ruled that Conservatrix could also invoke the arbitration clause in the recapitalisation commitment.

The court then turned to the allegations that the tribunal was composed irregularly. The applicants argued that the arbitration clause in a submission protocol signed by the Dutch Central Bank and one of the applicants should apply rather than the arbitration clause in the recapitalisation commitment. The court considered that the two agreements had different dispute resolution clauses, so that it made sense to follow the respective dispute resolution clauses in each agreement for claims under that agreement. Here, the court found that the tribunal had been correctly constituted under the correct agreement. Moreover, the parties had obtained legal advice when entering into the agreements.

Lastly, the court dismissed the applicants' claims that the tribunal violated its mandate and its duty to substantiate the award by ignoring its defences, finding that the applicants' assertions lacked merit.

Case: *Mr Lindberg and others v Mr Van Anandel and others* (ECLI:NL:GHDHA:2022:570) (29 March 2022).

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