

Court of Appeal in The Hague orders disclosure of Kroll report into fraud at PrivatBank

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Legal update: case report | Published on 31-Mar-2020 | The Netherlands

In *Russian Federation v Everest Estate LLC and others* (ECLI:NL:GHDHA:2020:544), the Court of Appeal in The Hague granted, in part, Russia's motion for disclosure of documents evidencing fraud at PrivatBank. The decision relates to Russia's request to set aside the awards in favour of Everest and others following the expropriation of their Crimean properties.

The Court of Appeal in The Hague has granted, in part, Russia's motion for disclosure of documents evidencing fraud at PrivatBank.

In March 2017, a tribunal of the Permanent Court of Arbitration found it had jurisdiction to hear the claims of Everest and 18 other Ukrainian claimants following the expropriation of their Crimean properties. The tribunal granted most of the claims in May 2018. In August 2018, Russia initiated proceedings before the Court of Appeal in The Hague, claiming that the awards should be set aside or revoked. The court had earlier refused Russia's request to suspend enforcement of the awards (see [Legal update, Dutch court refuses Russia's request to suspend enforcement of BIT awards in favour of investors in Crimea \(Court of Appeal in The Hague\)](#)).

Taking into account the criteria for disclosure of documents under Article 843a of the *Dutch Civil Procedural Code* (Wetboek van Burgerlijke Rechtsvordering), the court addressed the specific documents which Russia requested be disclosed. The court ordered Everest to produce parts of a report which related to Everest and which was produced by corporate investigation firm Kroll at the request of the National Bank of Ukraine. The report related to the solvability of banks in Ukraine and allegedly evidenced fraud at PrivatBank, a party indirectly related to Everest. The court ruled that Russia had a legitimate interest in receiving a copy of the report, as it could evidence that the investments in Everest's properties were illegitimate, causing the tribunal's jurisdiction to be at issue. As Everest had argued that the report was not in its possession, the court ordered it to make an effort to obtain a copy from a person identified as X, an indirect shareholder of Everest and former majority shareholder of PrivatBank. The court further reserved its decision on Russia's claim for disclosure of documents relating to whether Everest received financing against normal business conditions. The court dismissed the remainder of Russia's claims for disclosure of documents, relating to fraud at PrivatBank in countries other than Ukraine, and certain criminal investigations, as being irrelevant or insufficiently specific.

The court reserved its decision on the merits of Russia's setting aside and revocation claims until after the disclosure.

Case: *Russian Federation v Everest Estate LLC and others* (ECLI:NL:GHDHA:2020:544) (28 January 2020).

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