Philippe SCHEPKENS
Anne VAN DEN BERGHE
Huissiers de Justice
courriel : info@plusavdb.be
Av. de la Couronne, 145 Bloc F 4ème ét.
B – 1050 Ixelles

SPRL Etude Schepkens Van den Berghe
BCE : 0823.116.957
TVA : 823.116.957

Tel : 02/648.44.15
Fax : 02/649.92.21
FORTIS:BE73001106000060-BIC : GEBABEBB
ING:BE81310177950024-BIC : BBRUBEBB
KBC:BE76734022376895-BIC : KREDDEBB
Etude ouverte du lu. au ve. de 08h30 à 12h00

reference applicant : 240881 cv
reference client :

our reference : FA51933

WRIT OF SUMMONS IN OPPOSITION TO EXECUTORY GARNISHMENT

I. SUBJECT OF THE OPPOSITION PROCEEDINGS

1. Through this writ of summons, the Republic of Kazakhstan ("**RoK**") files an opposition against the executory garnishment laid by the Stati Parties by a writ dated 12 June 2018 seeking to convert a conservatory attachment into an executory garnishment.

The Stati Parties have purported to convert the conservatory garnishment into an executory garnishment on the basis of the service of (i) an ex parte order of the French-speaking Court of First Instance of Brussels dated 11 December 2017 recognising and enforcing a foreign arbitral of 19 December 2013 (amended on 17 January 2014) rendered by the arbitral tribunal seated in Stockholm, Sweden, under the auspices of the Stockholm Chamber of Commerce (hereafter the "**SCC**"), in tha case numbered V1116/2010 (hereafter the "**Award**") and served on the RoK by a writ of service dated 2 January 2018 (2017/3560/B) (herafter the "**Ex Parte Exequatur Order**") and (ii) a decision of the Attachment Judge of the Dutch-speaking Court of First Instance of Brussels dated 25 May 2018 ruling on the RoK's third-party opposition against a conservatory garnishment, and served on the RoK by a writ of service dated 12 June 2018 (2017/4282/A) (hereafter the "**Judgment**" or "**Judgment of 25 May 2018**").

2. The executory garnishment has been laid in the hands of Bank of New York Mellon SA/NV in Brussels ("**BNYM**") by a writ of service dated 12 June 2018 stating that the conservatory attachment served on BNYM on 13 October 2017, which relates to all claims and assets of the RoK, including claims and assets related to the National Fund of the RoK ("**NFRK**"), is converted into an executory attachment, with the limitation of the garnishment to the amount of USD 530 million as decided in the Judgment.

3. By the present summons, the RoK raises an opposition to the executory attachment on the basis of the following **three grounds**:

- It has not been established that the garnishee, BNYM, owes a debt towards the seized debtor, the RoK, and the allegation (which is completely unfounded) according to which there could potentially exist such a debt is the subject of a dispute brought before the English courts acting on the merits, pursuant to the Judgment of 25 May 2018, consequently (i) pending the resolution of this dispute, no asset can be released by BNYM in the hands of the bailiff, (ii) the execution process in Belgium must be stayed, and, (iii) in so far as necessary, the executory garnishment must be lifted;

- There is a currently an unresolved dispute before the French-speaking Court of First Instance in Brussels about the RoK's challenge to the *Ex Parte* Exequatur Order of the Award, with the consequence that (1) the execution process must be stayed until the outcome of these proceedings and (2) the executory effect of the *Ex Parte* Exequatur Order must be suspended;

- The executory garnishment has been laid on non-seizable assets and, as such, must be lifted.

II. OVERVIEW OF THE RELEVANT FACTS

A. THE ARBITRAL AWARD AND THE DISPUTE RELATING TO ITS RECOGNITION AND ENFORCEMENT

4. On 26 July 2010, the Stati Parties instituted arbitration proceedings before the Arbitration Institute of the SCC under the terms of the Energy Charter Treaty (hereafter "**ECT**"), an international treaty signed on 17 December 1994 (and entered into force in April 1998) with the purpose of promoting and protecting foreign investments in the energy sector.

5. During the arbitration proceedings, the Stati Parties asserted that the RoK had breached certain provisions of the ECT, and requested compensation for their damages consisting of large sums that they had allegedly invested in the development of oil and gas fields in Kazakhstan, including with respect to the construction of a liquefied petroleum gas (LPG) plant.

6. The Arbitral Tribunal was composed of three arbitrators. One of them was chosen by the Stati Parties. The other two arbitrators have been designated by the SCC. The RoK's request to appoint its own co-arbitrator was denied, on the basis that the arbitral tribunal had already been fully constituted (less than seven weeks after the

institution of the proceedings) even before the RoK appointed its counsel in the arbitral proceedings.

7. On 19 December 2013, the Arbitral Tribunal rendered an award, which has been subsequently corrected on 17 January 2014 (collectively "**the Award**"). The Award ordered the RoK to pay the Stati Parties a total of USD 497,685,101.00, to be increased by interest charges and costs.

8. It appears from the signature page of the Award (page 414) that Professor Lebedev, the co-arbitrator appointed on behalf of the RoK despite its objection, is recorded as having dissented on the question of the jurisdiction of the Arbitral Tribunal., David R. Haigh, the co-arbitrator appointed by the Stati Parties, is also recorded as having dissented on parts of the quantum analysis. However, neither of them provided a separate dissenting opinion or otherwise explained the basis of their dissent.

9. There is an ongoing dispute between the Parties with respect to the recognition and enforcement of the Award in different states. The RoK challenges its recognition and execution on several serious grounds, including the fact that it has appeared, since the delivery of the Award, that it was obtained by fraud on behalf of the Stati Parties. The RoK also invokes the breach of several essential rules of procedure, including with respect to the constitution of the arbitration tribunal.

10. The dispute has given rise to diverging decisions in the various countries where the Stati Parties have sought to enforce the Award. Amongst other decisions, the Swedish courts have decided not to set aside the Award (issued under their own law by an arbitral institution established in their own country, the SCC). By contrast, the English courts have ruled that there is enough *prima facie* evidence of the existence of fraud on behalf of the Stati Parties, and ordered a full trial on the question of fraud, to start at the end of the month of October 2018.

B. THE EXEQUATUR PROCEEDINGS IN BELGIUM

11. On 13 November 2017, the Stati Parties filed an *ex parte* application with the French-speaking Court of First Instance of Brussels for the recognition and enforcement of the Award in Belgium.

12. On 11 December 2017, the French-speaking Court of First Instance of Brussels issued on an *ex parte* basis the Exequatur Order (the "***Ex Parte* Exequatur Order**").

13. On 2 January 2018, the Stati Parties initiated the process for the service, through diplomatic channels, of the *Ex Parte* Exequatur Order on the RoK.

14. On 2 February 2018, the RoK brought a third-party opposition in order to obtain the setting-aside of the *Ex Parte* Exequatur Order on the basis of the following reasons (and all others which will be developed in the course of the proceedings) (18/1312/A):

- The Court unilaterally seized by the Stati Parties to issue the Ex Parte Exequatur Order is not the competent court. Considering that the arbitral proceedings started in 2010, which is before the entry into force, on 1 September 2013, of the law of 24 June 2013 modifying the Sixth part of the Judicial Code regarding arbitration[1], the applicable provisions of the Sixth part of the Judicial Code are those that were applicable before their modification per the law of 24 June 2013. Pursuant to the old article 1719, §1, of the Judicial Code, the application for exequatur should have been sought with the President of the Court of First Instance, and not with the Court of First Instance. Consequently, the Stati Parties wrongly seized the Court, which rendered the Ex Parte Exequatur Order pursuant to the new articles 1680, §6 and 1719 to 1721 of the Judicial Code, while these rules are inapplicable to the case;

- the Award was obtained by fraudulent means committed by the Stati Parties before and during the arbitral proceedings. For that reason, the Award cannot validly receive the exequatur in Belgium as it violates public policy. Furthermore, the Award was rendered by an Arbitral Tribunal without jurisdiction based on an inapplicable arbitration clause;

- the Award was issued in arbitration proceedings during which several essential rules of procedure were manifestly violated, to the detriment of the rights of defence and to the right to a fair trial of the RoK.

15. On 13 March 2018, an introductory hearing in these proceedings took place. A procedural calendar for exchanging briefs will be determined by the French-speaking Court of First Instance of Brussels in due course.

C. THE CONSERVATORY GARNISHMENT

16. On 29 September 2017, namely several weeks prior to obtaining the *Ex Parte* Exequatur Order of 11 December 2017, the Stati Parties filed an *ex parte* application with the Attachment Judge of the Dutch-speaking Court of First Instance of Brussels in order to lay a conservatory garnishment in the hands of BNYM in Brussels, pursuant to Article 1412*quinquies*, §2, 3°, of the Judicial Code, on all claims and assets of the RoK, including claims and assets related to the Saving Fund of the NFRK.

The application seeks to obtain a garnishment solely "*Against: The Republic of Kazakhstan, including: the National Fund of the Republic of Kazakhstan (NFRK)"*.

17. On 11 October 2017, the Attachment Judge issued an order granting the Stati Parties the authorisation to lay the said conservatory garnishment **solely** against **the RoK** (hereafter the "**Order**" or "**Conservatory Garnishment Order**"):

[1] *M.B.*, 28 June 2013, p. 41263.

"(...) *authorize the applicants to proceed to a conservatory garnishment of the claims and assets that pertain to the "savings fund" in the hands of:*

- *The nv THE BANK OF NEW YORK MELLON, with registered office at 1000 Brussels, Montoyerstraat 46, registered with the CBE with number 806.743.159,*

against:

- *The REPUBLIC OF KAZAKHSTAN, Astana, Kazakhstan, with offices amongst others at the following addresses:*
    - *Ministry of Foreign Affairs* (...)
    - *Ministry of Finance* (...)
    - *Ministry of Justice, HOUSE OF MINISTRIES* (...)

Which includes the NATIONAL FUND OF THE REPUBLIC OF KAZAKHSTAN, with seat at Astana, Kazakhstan
for the amount of:
in principal, interests and costs: 515.822.966,35 USD
costs: 802.103,24 €".

18. On 13 October 2017, the Stati Parties served the Conservatory Garnishment Order on BNYM.

19. On 20 October 2017, the Stati Parties then initiated the process for the service, through diplomatic channels, of the Conservatory Garnishment Order on the RoK and of the disclosure of the garnishment to the RoK.

20. On or around 31 October 2017, BNYM issued an undated third-party debtor's declaration (hereafter the "**Garnishee Declaration**"). By the Garnishee Declaration, BNYM declared in substance that:

- (A legal predecessor of) BNYM has entered into a GCA dated 24 December 2001 with the National Bank of Kazakhstan ("**NBK**") as counterparty;

- On the basis of the GCA, BNYM holds "*certain securities of the National Fund and Cash on behalf of* [the NBK] *as custodian and banker respectively*";

- BNYM *"cannot fully exclude"* that the RoK (including the National Fund) has or will have claims on BNYM or that BNYM holds assets of or for the RoK which could be the subject of attachment, in view of its contractual relationship with the NBK and the uncertainties of the legal relationship existing between the RoK and NBK;

- In light of these uncertainties, BNYM has frozen cash and securities held on cash and securities accounts with its London branch (as listed in the Annex 1 of its declaration) for a total amount of approximately USD 22 billion (of which approximately USD 589 million in cash);

- BNYM considers that the "*potential rights of the Republic of Kazakhstan over these assets should be ascertained by the Creditors, the Republic of Kazakhstan and the NBK (either by agreement between these parties or in court proceedings)*".

21. On 20 November 2017, the RoK brought a third-party opposition against the Conservatory Garnishment Order to ask for its setting aside and the release of the assets frozen in the hands of BNYM, on the following grounds:

- a garnishment could not have been authorised by a Belgian Court since the assets are located, held and managed outside Belgium;

- a garnishment could not have been authorised as it is contrary to objections based on the *lex causae* (i.e. English law);

- the common conditions for a conservatory garnishment are not fulfilled;

- there is no legal relationship and no delivery obligation between BNYM and the RoK; and,

- the garnished assets enjoy immunity from enforcement.

22. On 28 November 2017, the NBK voluntarily intervened in the proceedings also for the purpose to seek the setting aside of the Conservatory Garnishment Order and the lifting of the conservatory garnishment.

23. On 30 November 2017, BNYM voluntarily intervened in the proceedings to seek a declaration that it had properly executed, through the issue of the Garnishee Declaration, the Conservatory Garnishment Order.

24. On 25 May 2018, the Attachment Judge handed down the judgment. The Attachment Judge decided that the arguments of the RoK and NBK are *"admissible but unfounded"*. The Attachment Judge made the same decision with respect to BNYM's request, which is also declared unfounded.

25. The Judgment of 25 May 2018 is subject to appeal, and the RoK does intend to bring an appeal with respect, inter alia, to the findings of the Attachment Judge relating to the territorial location of the assets, to the immunity from execution, and to the common conditions required for conservatory attachment.

26. By the Judgment of 25 May 2018, the Attachment Judge decided to *"limit the object of the garnishment of 13 October 2017 to the sum of USD 530 million USD"*. This decision is made on the basis of the fact that Stati Parties had themselves declared (belatedly) their agreement to limit this garnishment to their claim. The Attachment Judge does not make a new authorisation for the attachment of this amount of USD 530 Million. The Attachment Judge merely decides that the

garnishment levied in the hands of BNYM on 13 October 2017, under the terms (and limitations) of the Conservatory Attachment Order of 11 October 2017, is itself further limited to the amount of USD 530 Million.

27. With respect to the RoK's argument based on the inexistence of a contractual relationship between itself and BNYM, the Attachment Judge ruled that the matter **must be resolved by the English court** acting as the competent trial court. The reasons for this decision are as follows:

- By the conservatory Order of 11 October 2017, the Attachment Judge *"did not grant an authorization to the Stati Parties for 'garnishment of the accounts that were opened in name of the National Bank of Kazakhstan at the London branch of [BNYM] and that are held there by the National Bank of Kazakhstan"*;

- The argument from the ROK that there exists no legal relationship between itself and BNYM *"is about the subject-matter and the consequences of the attachment"*, and the RoK's contention is *"that the garnishment could not have any subject-matter, and that [BNYM] wrongly froze the accounts"*;

- The fact that the garnishee, BNYM, is not the debtor of the seized-debtor, the RoK, is not a ground for the withdrawal of the Conservatory Order nor for the lifting of the attachment, as *"the absence of a debt from the garnishee towards the seized-debtor only leads to the conclusion that the garnishment has no subject-matter"*.

- The subject-matter of the garnishment follows from the declaration of the garnishee, and in this case BNYM has declared that it *"cannot exclude that [the RoK] (including the National Fund) has or will have claims on BNYM or that BNYM holds assets of or for* [ROK]*"*;

- While the RoK is entitled to challenge this garnishee declaration, *"this challenge relates to the debt of the third party [BNYM] and must be referred to the trial court in the proceedings on the merits, pursuant to Article 1456, §2, of the Judicial Code"*;

- *"The competent trial court is, as stated by Kazakhstan itself, the English court who must apply its own national substantive law"*; and

- The request from BNYM to declare that it has properly executed the Belgian Order cannot be upheld because it relates to the question *"whether or not a debt exists between BNYM towards* [ROK]*"*, and the Belgian Court (i.e. here the attachment judge) *"cannot and may not settle such dispute, but only the judge on the merits [namely] the English court who must apply its own law"*.

D. THE PROCEEDINGS ON THE MERITS BEFORE THE ENGLISH COURTS

28. As per the Attachment Judge's decision that the issue about the debt of BNYM must be determined by the English court, on 28 May 2018, the RoK and NBK initiated proceedings before the competent court pursuant to the GA, the Commercial Court in London (High Court of Justice, Queen's Bench Division)(the "**English Court**").

29. The claim before the English Court seeks to contest the (unfounded) allegation according to which BNYM would be debtor of the RoK pursuant to the GCA. In particular, the RoK and NBK seek declarations that:

- the contracting parties to the GCA are BNYM and NBK (and not the RoK);
- the obligations owed by BNYM under the GCA are owed solely to NBK (and not to the RoK); and,
- BNYM has no obligation to pay any debt due under the GCA to the RoK or to transfer to RoK any title held under the GCA.

30. The proceedings were brought against BNYM as the co-contracting party of NBK under the GCA. The Stati Parties have also been joined as co-defendants in these proceedings.

31. On 29 May 2018, namely the day following the bringing of the English proceedings on the merits, both BNYM and the Stati Parties were officially informed of the English proceedings by a non-confidential letter to their respective Belgian counsel.

32. The Stati Parties are therefore fully aware that proceedings have been initiated before the competent trial court, as per the decision of the Attachment Judge, to resolve the issue of the existence or inexistence of a debt of BNYM towards the RoK (which, as per the ruling of the Attachment Judge, is a condition for the garnishment to have a subject-matter).

E. THE EXECUTORY GARNISHMENT

33. In spite of these developments, on 12 June 2018, the Stati Parties have issued by bailiff the service of two writs with the stated purpose of converting the conservatory garnishment into an executory garnishment.

34. The two writs are as follows:

- The first writ, dated 12 June 2018, is entitled *"Service – Order to pay – Conversion of conservatory attachment into executory attachment"*, and was served on the RoK. By this writ, the Stati Parties declare (i) that by virtue of the *Ex Parte* Exequatur Order (served by writ dated 2 January 2018) and of

the Judgment of 25 May 2018, the RoK is mandated to pay a sum of about USD 530 Million, (ii) that through the service of the judgment of 25 May 2018, the conservatory garnishment is converted into an executory garnishment, with the limitation to the amount of USD 530 Million, and (iii) that the writ also operates as notification of the executory attachment on the RoK.

- The second writ, also dated 12 June 2018, is entitled *"Service – Denunciation"*, and was served on BNYM. By this writ, the Stati Parties seek to effect service on BNYM of the Judgment of 25 May 2018 and of the writ of the conversion of the conservatory garnishment in executory garnishment. It is mentioned in the writ that the object of the conservatory garnishment converted into executory garnishment is limited to the amount of USD 530 Million.

35. On 22 June 2018, the RoK received the writ of "*Service – Order to Pay – Conversion of conservatory attachment into executory attachment*".

36. It seems that the service of this writ was effectuated through three distinct processes for service:

- Service through the Central Authority of the RoK in the meaning of articles 2 to 7 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters (hereafter, the "Hague Convention".

- Service by postal channels pursuant to articlr 10, a) of the Hague Convention.

- Service through customary diplomatic channels.

37. The writ received by the RoK on 22 June 2018 is the writ served by postal channels to its Ministry of Foreign Affairs, Ministry of Finance and Ministry of Justice.

III. LEGAL GROUNDS FOR THE OPPOSITION

A. INTRODUCTION AND STRUCTURE OF THE GROUNDS

38. The present opposition is based on the following three legal grounds:

- It has not been established that the garnishee, BNYM, owes a debt towards the seized debtor, the RoK, and the allegation (which is completely unfounded) according to which there could potentially exist such a debt is the subject of a dispute brought before the English courts acting on the merits, pursuant to the Judgment of 25 May 2018, consequently (i) pending the resolution of this dispute, no asset can be released by BNYM in the hands of the bailiff, (ii) the execution process in Belgium must be stayed, and, (iii) in so far as necessary, the executory garnishment must be lifted (**first ground**);

- There is currently an unresolved dispute before the French-speaking Court of First Instance of Brussels regarding the RoK's challenge to the *Ex Parte* Exequatur Order of the Award, with the consequence that (1) the execution process must be stayed until the outcome of that procedure and (2) the executory effect of the *Ex Parte* Exequatur Order must be suspended (**second ground**);

- The executory garnishment has been laid on non-seizable assets, and, as such, must be lifted (**third ground**).

B. FIRST GROUND: THE DISPUTE CONCERING THE GARNISHEE'S DEBT TOWARDS THE SEIZED DEBTOR

39. The first ground invoked in opposition relates to the unresolved dispute as to whether the garnishee (BNYM) owes a debt that is capable of garnishment towards the seized-debtor (the RoK).

40. Under the system of the Judicial Code, the garnishee cannot release assets into the hands of the bailiff as long as there is a dispute about the debt of the garnishee, as any such release is strictly conditional on the existence of a *"liquid and payable debt"* (*infra*, 1). The dispute about the existence of the garnishee's debt can only be resolved by the competent trial court, which in the present case is the English court which was effectively seized on the matter (*infra*, 2). There are several legal consequences, namely that BNYM cannot release any assets into the hands of the bailiff, that the proceedings before the attachment court must be stayed until the final resolution of the matter by the English courts and that the executory garnishment should be lifted to the extent that it concerns a debt owed by the garnishee to a third party (*infra*, 3).

1. The requirement of a liquid and payable debt

41. Pursuant to article 1543, al. 1, of the Judicial Code, in order to validly release assets in the hands of the bailiff, the garnishee must be the debtor of a "*liquid and payable debt*".[2]

42. The notion of a *"liquid and payable debt"* of the garnishee towards the seized debtor must be construed by reference to the general law. It is well established in the case law that as long as there is an ongoing issue about the debt of the garnishee, the condition of article 1543, al. 1, is not satisfied and the garnishee is not compelled and cannot release the assets:

- In a matter relating to the liquidation of a succession, the spouse of the deceased had laid an executory garnishment in the hands of the notary in charge of the liquidation of the succession, against her only son in order to recover arrears of maintenance payments fixed in a project of liquidation deed. The Attachment Judge ruled that the debt of the third-party debtor (the notary) was neither liquid nor payable since the liquidation deed had not yet been confirmed by the Justice of the peace[3].

- In a matter relating to the liquidation of a matrimonial regime, the husband had laid an executory garnishment in the hands of the notary in charge of the liquidation of the matrimonial regime, against his ex-wife to recover rental arrears. The Attachment Judge ruled that the debt of the third-party debtor (the notary) was neither liquid nor payable since the process of judicial liquidation of the matrimonial regime was not completed[4].

43. In the present case, there is no *"liquid and payable debt"* on the part of BNYM towards the RoK that can constitute the ground for the release of the assets held by BNYM on behalf of the NBK under the GCA for the following reasons:

- First, in the Judgment of 25 May 2018, the Attachment Judge ruled that by the Conservatory Garnishment Order of 11 October 2017, the Attachment Judge *"did not grant an authorization to the Stati Parties for 'garnishment of the accounts that were opened in name of the National Bank of Kazakhstan at the London branch* of [BNYM] *and that are held there by the National Bank of Kazakhstan"*.

---

[2] D. CHABOT-LÉONARD, *Ibid.*, p. 293 ; . DE LEVAL, *La saisie-arrêt, op. cit.*, p. 299 ; *Le Code judiciaire et son annexe. Loi du 10 octobre 1967*, *op. cit.*, p. 774 ; A.-M. STRANART, G. BLOCK and O. CLEVENBERGH, « La saisie-arrêt bancaire », in *Réalités et fictions du droit des garanties. Hommage à la rigueur créative d'Anne-Marie Stranart*, Brussels, Larcier, 2011, p. 454.

[3] Civ. Liège, 25 July 1979, R.G. n° 38.411/79, in G. DE LEVAL, « Saisies conservatoires et voies d'exécution. synthèse critique de 73 décisions inédites rendues par le juge des saisies de Liège », *Jur. Liège*, 1979, pp. 370-371.

[4] Civ. Liège, 9 May 2012, *J.L.M.B.*, 2013, p. 356.

- Second, in the Garnishee Declaration, BNYM has declared that there are *"uncertainties"* about its debt under the GCA, and that BNYM "*cannot fully exclude*" that the RoK has or will have claims on BNYM or that BNYM holds assets of or for the RoK. In other words, BNYM did not affirm that it was the debtor of the RoK, only that (according to her) there were uncertainties in that respect.

- Third, still in its Garnishee Declaration, BNYM indicated that the "*potential rights"* (emphasis added) of the RoK against BNYM *"should be ascertained by the Creditors, the Republic of Kazakhstan and the NBK (either by agreement between these parties or in court proceedings)*".

- Fourth, in the Judgment of 25 May 2018, the Attachment Judge ruled that the RoK is entitled to challenge the Garnishee Declaration and as this challenge relates to the debt, it must be referred to the competent trial court, namely the English court applying English law.

- Fifth, proceedings have been initiated by the RoK and NBK on 28 May 2018 before the competent trial court in England to confirm that BNYM is not the debtor of the RoK, and that its obligations under the GCA are solely due to NBK.

44. Based on the foregoing, there is currently no *"liquid and payable debt"* of the garnishee (BNYM) towards the seized-debtor (RoK). The basic condition spelled out by article 1543, al. 1, of the Judicial Code is not satisfied.

45. In practice, while the executory garnishment procedure can result in the payment of the creditor fairly quickly since in principle, the release of the garnished assets takes place 17 days from the date of the writ of denunciation (or of conversion), various procedural and legal incidents can and must delay its normal course. In addition to the opposition of the seized-debtor, this is the case when there is a dispute about the garnishee declaration[5].

The dispute about the garnishee declaration sometimes relates to the very principle of the existence of the debt, sometimes to its amount or to its terms. As long as the dispute has not been resolved (by the judge acting on the merits[6]), the process of execution cannot be pursued.

46. In the present case, there is precisely a challenge relating to the Garnishee Declaration by the seized debtor. Indeed, in its Garnishee Declaration, BNYM has raised issues as to both the principle and terms of its debt, in particular regarding the creditor of the debt. The RoK and NBK have also challenged the Garnishee Declaration of BNYM, by invoking that the debt of BNYM under the GCA is not due to

[5] D. CHABOT-LÉONARD, *op. cit.*, p. 294 and 297.
[6] *Ibid.* ; *Le Code judiciaire et son annexe. Loi du 10 octobre 1967*, Brussels, Bruylant, 1967, p. 894.

RoK but only to NBK. These challenges must be resolved by the competent trial court, and not the attachment court. This is the next point.

2. The competent trial court to resolve the dispute about the debt

47. When there is a dispute about the debt of the garnishee, this dispute must be resolved by the **competent trial court** ("*le juge du fond compétent*"), and not by the Attachment Court.

48. This fundamental principle is upheld in various provisions of the Judicial Code, applicable both at the stage of the conservatory attachment as at the stage of the executory attachment:

- Article 1456, §2, of the Judicial Code (in the section dedicated to conservatory attachments), provides that: "*If the garnishee disputes the debt claimed by the creditor, the case is brought before the competent trial judge or, as the case may be, the case is deferred to the competent trial court by the attachment judge*" (emphasis added).

- Article 1540, §2, of the Judicial Code (in the section dedicated to executory attachments) provides that: "*The obligation of the garnishee is determined by his declaration or, if this declaration is contested, by the competent judge"*. (emphasis added)

- Finally, similarly to Article 1456, §2 of the Judicial Code, Article 1542, §2 of the same Code (in the section on executory attachments) provides that: "*If the garnishee contests the debt claimed by the creditor, the case is brought before the competent trial judge or, as the case may be, the case is referred to the competent trial judge by the attachment judge*". (emphasis added)

49. By application to the present case, these provisions entail that whenever there is a dispute relating to the debt of the garnishee, this dispute must be resolved by the court having jurisdiction over the substance of this dispute. In other words, the attachment judge does not have jurisdiction to rule on disputes about the substance of the relationship between the garnishee and the seized-debtor. Such disputes fall within the exclusive subject-matter jurisdiction of the "*competent trial court*".

50. The exclusive jurisdiction of the competent trial court has been construed as covering any situation where there is a "*discussion on the debt*" which is the subject-matter of the garnishment, and this is because the enforcement court "*cannot rule on the merits of a substantive law issue*"[7].

[7] C. HOUSSA, « La saisie-arrêt en matière bancaire », in *Droit de l'exécution*, CUP, 1997, p. 101 ; G. DE LEVAL, *La saisie-arrêt*, University of Liège, 1976, pp. 231-232, para. 154 ; see also D. CHABOT-LÉONARD, *Saisies conservatoires et saisies exécutions*, Brussels, Bruylant, 1979, pp. 297-298 ; L. FRANKIGNOUL, « La saisie-arrêt », in *Droit Judiciaire. Commentaire pratique,* Title XII, Chapter 4, Kluwer, 2011, para. 175.

51. There is no requirement that court having jurisdiction over the substance of the dispute be a Belgian court. If a foreign court has jurisdiction over the relevant contract between the garnishee and the seized-debtor, this court must, according to the rules of private international law, be considered as the "*competent trial court*".

52. This is precisely what the Attachment Judge decided in the Judgment of 25 May 2018, where she ruled that the issue of the debt of the garnishee must be resolved by the English court as the competent trial court (and by application of English law).

53. The English court has jurisdiction over the substance of the debt under the GCA, as it includes a non-exclusive jurisdiction clause designating the English court. As explained, proceedings have been brought before the English court to resolve the dispute regarding the nature of the debt of BNYM under the GCA, in particular the identity of the creditor of this debt.

3. Legal and procedural consequences in the present proceedings

54. The consequences of the foregoing rules and principles are as follows.

55. First, in accordance with article 1543, al. 1 of the Judicial Code, as there is no liquid and payable debt of the BNYM towards the RoK, BNYM cannot release any assets in the hands of the bailiff.

56. Second, as per article 1540, §2 and 1542, §2, of the Judicial Code, as the debt of the garnishee (BNYM) towards the seized debtor (the RoK) is contested, the matter must be resolved by the competent trial court, and not by the attachment court.

57. Third, as the matter has now been brought before the English courts, the attachment court must stay the execution process until the matter has been finally resolved by the English court. This court will resolve the substantive law issues related to the debt of BNYM, including the identity of the creditor of this debt and, consequently, confirm the lack of subject-matter of the garnishment.

58. Fourth, considering the existence of the dispute on the debt of BNYM, the Stati Parties have wrongfully proceeded with the conversion of the garnishment, without awaiting the result of the English proceedings. To the extent that the executory garnishment encompasses the sum of 530 million USD owed by BNYM under the GCA to NBK, it concerns a debt owed to a third party that cannot be the subject-matter of an executory garnishment on behalf of the RoK. This justifies the lifting of the executory garnishment.

C. SECOND GROUND: THE UNRESOLVED CHALLENGE TO THE EXEQUATUR ORDER OF THE ARBITRAL AWARD

59. As explained, third-party opposition proceedings against the *Ex Parte* Exequatur Order are currently pending before the French-speaking Court of First Instance of Brussels. Considering that the attachment court itself lacks jurisdiction to rule on the validity of the *Ex Parte* Exequatur Order (*infra,* 1), the proper course is to order a stay of judgment pending the outcome of the third-party opposition porceedings (*infra*, 2). In addition, and in any event, it is appropriate in this case for the attachment court to suspend the executory effect of the *Ex Parte* Exequatur Order (3).

1. The Attachment Judge lacks jurisdiction to rule on the validity of the Ex Parte Exequatur Order

60. Enforcement measures are conditional on the creditor holding an enforceable title that is and remains valid and in force (*"titre actuel"*).

61. The Attachment Judge has jurisdiction to review the validity and existence of the title of which enforcement is pursued[8]. Nevertheless, the review of the validity and existence of the title by the Attachment Judge does not constitute an exception to the general principle that the Attachment Judge has no jurisdiction to review the merits of the disputes under which the decisions constituting the enforceable titles are handed down. Therefore, if there is a proper, valid and effective enforceable title, the Attachment Judge has no jurisdiction to act as an appeal court or, in the context of arbitration, as a setting aside judge[9].

62. The Court of Cassation held that "*the attachment judge has jurisdiction to review whether the claim appearing in the enforceable title was not extinguished after the title arose* (...). *The validity of the title cannot be jeopardized by allegations of facts or circumstances submitted to the review of the court which rendered the judgment whose enforcement is pursued*" (emphasis added)[10]. This is particularly true when the allegations raised on the validity of the title are also subject to proceedings on the merits.

63. As a result, the Attachment Judge has no jurisdiction to rule on the validity of the *Ex Parte* Exequatur Order, without taking the risk of prejudging the proceedings on the merits currently pending before the French-speaking Court of First Instance of Brussels.

2. The Attachment Judge should stay the execution process pending the outcome of the third-party opposition to the *Ex Parte* Exequatur Order

64. Insofar as the French-speaking Court of First Instance of Brussels has been seized to rule on the third-party opposition of the RoK against the *Ex Parte* Exequatur

[8] Antwerp, 11 January 2011, *R.D.J.P.*, 2012, p. 35.
[9] Civ. Brussels, 14 August 1985, *Rev. gén. dr.*, 1985, p. 372.
[10] Cass., 17 September 2010, *R.W.*, 2010-2011, p. 806.

Order, which is the basis of the executory garnishment challenged by the present writ of summons writ, the Attachment Judge should stay the proceedings pending the decision of the French-language Court of First Instance of Brussels.

65. In that regard, Article 1126 of the Judicial Code provides that "*on the submission of the parties, the court before which the challenged decision is invoked may, depending on the circumstances, overrule or stay the proceedings*" (emphasis added).

66. This provision allows a court before which a decision (which is subject to a third-party opposition) is invoked, to stay the proceedings referred to it pending the decision of another court called upon to rule on the said third-party opposition[11].

67. In the present case, the validity of the disputed executory garnishment is specifically subject to the validity of the exequatur currently challenged by way of a third-party opposition. Hence, it would be appropriate for the Attachment Judge to wait for the outcome of this third-party opposition before deciding on the present case.

68. Such a stay would clearly be in the interest of a proper administration of justice. The close link between the present proceedings and the proceedings pending before the French-speaking Court of First Instance of Brussels concerning the validity of the *Ex Parte* Exequatur Order – the title on the basis of which the disputed garnishment was converted – justifies the Attachment Judge ordering a stay of his decision on the present proceedings pending the decision of the French-speaking Court of First Instance of Brussels on the third-party opposition of the RoK against the *Ex Parte* Exequatur Order.

3. Suspension of the executory effect of the *Ex Parte* Exequatur Order

69. Pursuant to Article 1127 of the Judicial Code, *"the attachment judge, can on the summons of the party who has made a third-party opposition and all other parties having been called to the proceedings, suspend provisionally, in all or in part, the executory effect of the decision which is being challenged"*.

70. Thus, this provision allows the party who has filed a third-party opposition against a decision to ask the Attachment Judge for a suspension of the enforceability of the said challenged decision[12].

71. This competence of the Attachment Judge is justified in light of his task of monitoring enforcement proceedings. It allows the Attachment Judge to temper the effects of provisional enforcement and thus to take into consideration the impact that

[11] *R.P.D.B.*, v° Saisies – Généralités, Compl. Vol. VIII, Brussels, Bruylant, 1995, p. 596.
[12] H. BOULARBAH and C. MARQUET, *Tierce opposition*, Brussels, Bruylant, 2012, pp. 114-123 and the references therein.

the decision challenged by a third-party opposition may have on the admissibility and/or validity of enforcement measures.

72. It is generally accepted that the competence of the attachment judge pursuant to article 1127 of the Judicial Code must be exercised taking into consideration the seriousness of the arguments invoked in the third-party opposition and the risk of a damage difficult to remedy.

73. These two conditions are satisfied in the present case.

74. As to first condition, the RoK invokes serious grounds in support of its third-party opposition against the *Ex Parte* Exequatur Order.

75. As explained above, amongst the various grounds that are raised to challenge the *Ex Parte* Exequatur Order, the RoK invokes that the Arbitral Award has been obtained by fraud on behalf of the Stati Parties. The validity of this ground, as well as other arguments developed in the context of the third-party opposition, will be determined by the French-speaking Court of First Instance of Brussels after the parties will have exchanged their written submissions and oral evidence on the matter.

76. At this stage, it can already be noted that the ground of fraud is a very serious ground of non-recognition of the Award. This is what the English court has found following a careful preliminary analysis of the matter. By a judgment of 6 June 2017, the English court found, that there are *"sufficient prima facie evidence that the Award was obtained by fraud"*. The London High Court ordered that a full trial of the fraud be held at the end of the month of October 2018.

77. Furthermore, in his *Ex Parte* Exequatur Order of 11 December 2017, the President of the French-speaking Court of First Instance of Brussels considered that there was no ground to refuse the *ex parte* exequatur *"at this stage"*. He also stressed specifically that the RoK was **free to file a third-party opposition** against the *Ex Parte* Exequatur Order. Thus, the Judge was clearly of the view that the RoK should have its day in court, and should have the opportunity to develop its arguments in open debate to challenge the enforcement of the Award, including in respect of the fraud.

78. In these circumstances, and taking into account the serious nature of the grounds invoked has already been recognized by another judge (in England), it is warranted to suspend the executory effect of the *Ex Parte* Exequatur Order pending the decision by the French-speaking Court of First Instance of Brussels on its validity.

79. As to the second condition, it is manifest that the continuation of enforcement measures against the RoK would bring the risk of serious damage that would be difficult to repair.

80. Indeed, if BNYM would have to give the seized assets away into the hands of the bailiff and that the *Ex Parte* Exequatur Order would subsequently be annulled, it is

illusory to hope that that any asset could be recovered by the RoK from the Stati Parties, which is incidentally not contested by the latter.

81. Indeed, some of the Stati Parties, including Anatolie Stati, have been the subject, over the course of the years, of various judicial measures as a consequence of their actions to evade their obligations and to place their assets outside of the reach of their creditors. For instance,

- on 27 September 2011, a Court in the Caribbean issued a freezing order of assets worth USD 90 million against, *inter alia*, Anatolie Stati and Ascom (respectively the first and third claimants for the execution). This freezing order was issued on the basis of an affidavit explaining that Anatolie Stati committed various breaches of his obligations and organized his affairs to dissimulate his assets and place them out of the reach of his creditors.

- on 29 August 2014, the London High Court ordered a freezing injunction against Anatolie Stati at the request of the opposing party (Vitol) in the parallel arbitration proceedings which led to the Award. The judgment of the London High Court discusses the web of offshore companies used by Anatolie Stati to organize his affairs, and records that Anatolie Stati failed to pay his debts and took steps to conceal his assets and those of his companies from creditors.

82. Besides, the Stati Parties and their companies are reported in various media outlets to have been involved over the years in a number of controversies and legal troubles, which include the issue of a judicial request for extradition of Anatolie Stati in relation to an accusation of involvement in the organization and financing of civil unrest, the setting up of more than 50 offshore companies reported in the Panama Papers, said to be used to evade taxes, the use of fictitious salary wage schemes, and allegations of briberies in projects in Africa.

83. For all the above reasons, it is submitted that all the conditions are satisfied to order a suspension of the executory effect of the *Ex Parte* Attachment Order pending the decision of the French-speaking Court of First Instance of Brussels on the third-party opposition by the RoK against the above-mentioned *Ex Parte* Exequatur Order.

D. THIRD GROUND: THE NON-SEIZABLE NATURE OF THE ASSETS

84. The assets which the Stati Parties aim to be paid by under the executory garnishment proceedings are, as a matter of fundamental principles of private and public international law, non-seizable for two reasons: first, they are located, held and managed outside the territory of Belgium (*infra*, 1), and second, they enjoy immunity from enforcement (*infra*, 2).

1. <u>The garnished assets are located, held and managed outside of Belgium</u>

85. In accordance with the principle of territoriality enshrined in both public and private international law, only goods located in Belgium can be the object of enforcement.

86. This principle of territoriality of enforcement measures is expressly confirmed in articles 1412*quater* and 1412*quinquies* of the Judicial Code, and bears in those two provisions a specific meaning, namely that assets of foreign national banks/foreign sovereign assets can only be attached (in the terms of the two provisions) when they are *"held or managed in Belgium"*.

87. Moreover, under the general principle of territoriality confirmed by the Court of cassation in a judgment of 26 September 2008, an attachment measure cannot be taken in relation to an asset which is *"located"* on the territory of a foreign State[13].

88. This judgment concerned the question of whether it is possible to attach a debt in the hands of the Belgian branch of a company established abroad. In this context, the Court of cassation held:

- firstly, that a claim is "*located in the State where the garnishee has its residence or, if the garnishee is a legal entity, in the State in which it has its registered office or principal establishment*".

- secondly, that "*claims which are related to activities of a Belgian branch of a foreign company are deemed to be located in Belgium*".

89. Accordingly, the Court of cassation ruled by applying these principles that: "*If the garnishee is a foreign legal entity which has a branch in Belgium, garnishment can be levied at the branch on the claims the garnishee has on that foreign legal entity <u>due to the activities of the branch</u>. This garnishment only leads to the unavailability of these claims and does not impact other claims the garnishee has on that foreign legal entity*" (emphasis added).

90. To date, the Court of cassation has never ruled on the location of a debt in the reverse situation, namely when the debt relates to the activities of a foreign branch of a Belgian company.

91. *In casu*, the assets garnished in the hands of BNYM flows from cash and securities accounts opened and held with the London branch of BNYM, and consequently relates to the activities of this London branch.

92. Moreover, pursuant to the GCA, the debt of BNYM is governed by English law. Under English law, the debt is payable at the London branch of BNYM. Indeed,

[13] Supreme Court (1st ch..) AR C.07.0519.N.

according to a well-established rule of English law, a debt due by a bank in respect of an account held at a branch is treated as payable at that branch only.

93. As a consequence, the debt of BNYM is deemed to be situated in England. Moreover, this debt is also held and managed there, at the London branch of BNYM.

94. It follows from the foregoing that the assets which the Stati Parties claim for payment are located, held and managed in England. They cannot be the object of enforcement measures in Belgium.

2. <u>The garnished assets enjoy immunity from enforcement</u>

95. The immunity regime applicable to the assets of which the Stati Parties claim payment is determined by the circumstance that the said assets are held and managed by NBK, which is the Central Bank of sovereign state Kazakhstan.

96. Yet, pursuant to customary international law, the immunity of central banks is absolute. Indeed, article 21 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (hereafter, the "**UN Immunity Convention of 2004**") – signed by Belgium on 22 April 2005 and which will soon be ratified by Belgium[14] – stipulates an irrefutable presumption that property of a central bank has sovereign/governmental purposes, and thus enjoys immunity. In other words, the UN Immunity Convention of 2004 does not allow demonstrating that the assets of a central bank have a private/commercial purpose.

97. Both the Court of cassation and the Constitutional Court have confirmed the customary law nature of the UN Immunity Convention of 2004[15].

98. Besides, under Article 1412*quater*, §2, of the Judicial Code, a creditor is only entitled to attach the assets held and managed by a foreign central banks in Belgium if it is demonstrated that the said assets are "*exclusively intended for an economic or commercial private activity*". In the case at hand, the governmental purpose is manifestly clear. The assets which the Stati Parties claim for payment are part of the NFRK, which purses two objectives: on the one hand, the stability of the revenues of the government and, on the other hand, the safeguard of funds for future generations. Both objectives are, *par excellence*, public purposes.

99. Moreover, even if the regime from enforcement of foreign States in general was applicable (*quod non*), the assets would still be covered by immunity.

---

[14] *Parliamentary doc.* Chamber 2014-15, n° 54K1241/001, Proposed law inserting in the Judicial Code an article 1412quinquies governing the attachment of goods belonging to a third State or an international organisation, 2 July 2015, p. 3: "*Furthermore, we can point to the forthcoming ratification by our country of the 2004 United Nations Convention on the Immunity of States and their Property"*.

[15] Court of cassation 11 December 2014, AR C.13.0537.F, *NML t. Argentinië*, *Pas*., 2014, n° 12, p. 2860; Constitutional Court, decision of 27 April 2017, n° 48/2017, B.13.3.

100. This immunity is indeed determined by the purpose of the seized assets. More specifically, assets of foreign States in principle enjoy immunity from execution, with the exception of the demonstration by the seizing creditor of the allocation of these goods to a private/commercial purpose.

101. In the case at hand, on the one hand, the investment of State revenues in the socio-economic development of future generations is a governmental activity *par excellence*. On the other hand, the NFRK is exclusively used for the purpose of financing governmental expenses in matters of infrastructure, lodging, education and science.

102. Although these arguments relating to the localisation of the goods and to the immunity of execution were rejected in the Judgment dated 25 May 2018 in the specific context of the conservatory garnishment (which is subject to appeal), the Attachment Judge is required to verify, at the stage of execution, whether the executory garnishment itself is valid and regular as "*executory attachments and conservatory attachments are governed by separate sets of rules and subject to different requirements*"[16].

[16] *R.P.D.B.*, v° Saisies – Généralités, Compl. VIII, Brussels, Bruylant, 1995, p. 602.

The year two thousand eighteen, the twenty-seventh of June

Upon the application of **THE REPUBLIC OF KAZAKHSTAN**, represented by its Minister of Justice, with the Ministry of Justice, with offices at 010000 Astana (Kazakhstan), Left Bank, Mangilik El Street 8, House of Ministries, 13;

Represented by its counsel **Arnaud NUYTS**, **Hakim BOULARBAH** and **Charlotte VAN THEMSCHE**, lawyers, with offices at 1000 Brussels, 3 Boulevard de l'Empereur (a.nuyts@liedekerke.com, h.boularbah@liedekerke.com and c.vanthemsche@liedekerke.com, T.: + 32 2 551 14 72).

The undersigned, Anne ***VAN DEN BERGHE***, bailiff, with office at 1050 Ixelles, Avenue de la Couronne, 145 Bloc F 4th floor,

Have **SERVED** and declared to:

1) Mr **STATI Anatolie**, entrepreneur, domiciled at MD-2008\Moldavia, 20 Dragomirna Street, Chisinau;
   Represented by counsel Stan BRIJS, Sophie JACMAIN and Jean-François VAN DROOGHENBROECK, lawyers, with offices at 1000 Brussels, 120 Chaussée de la Hulpe, where he has elected domicile in his writ of service dated 12 June 2018.

where was present and talking to [Karen Paridaen, lawyer]

declared as such, which has endorsed my original,

~~*O pursuant to article 38, §1 of the JC, not having been able to serve the present writ as is stated in art. 35 of the JC, I have served a copy under sealed envelope pursuant to ar. 44 of the JC at .....h .....min;*~~

2) Mr **STATI Gabriel**, entrepreneur, domiciled at MD-2008\Moldavia, 1A Ghioceilor Street, Chisinau;
   Represented by counsel Stan BRIJS, Sophie JACMAIN and Jean-François VAN DROOGHENBROECK, lawyers, with offices at 1000 Brussels, 120 Chaussée de la Hulpe, where he has elected domicile in his writ of service dated 12 June 2018.

where was present and talking to [Karen Paridaen, lawyer]

declared as such, which has endorsed my original,

~~*O pursuant to article 38, §1 of the JC, not having been able to serve the present writ as is stated in art. 35 of the JC, I have served a copy under sealed envelope pursuant to ar. 44 of the JC at .....h .....min;*~~

3) The company under foreign law **<u>ASCOM GROUP SA</u>**, with registered office in Moldavia, MD-2008 Chisniau, 75A Mateevici Street;
Represented by counsel Stan BRIJS, Sophie JACMAIN and Jean-François VAN DROOGHENBROECK, lawyers, with offices at 1000 Brussels, 120 Chaussée de la Hulpe, where he has elected domicile in his writ of service dated 12 June 2018.

where was present and talking to [Karen Paridaen, lawyer]

declared as such, which has endorsed my original,

~~*O pursuant to article 38, §1 of the JC, not having been able to serve the present writ as is stated in art. 35 of the JC, I have served a copy under sealed envelope pursuant to ar. 44 of the JC at .....h .....min;*~~

4) The company under foreign law **<u>TERRA RAF TRANS TRAIDING LTD</u>**, with registered office in Gibraltar, GI-13/1 Line Wall Road;
Represented by counsel Stan BRIJS, Sophie JACMAIN and Jean-François VAN DROOGHENBROECK, lawyers, with offices at 1000 Brussels, 120 Chaussée de la Hulpe, where he has elected domicile in his writ of service dated 12 June 2018.

where was present and talking to [Karen Paridaen, lawyer]

declared as such, which has endorsed my original,

~~*O pursuant to article 38, §1 of the JC, not having been able to serve the present writ as is stated in art. 35 of the JC, I have served a copy under sealed envelope pursuant to ar. 44 of the JC at .....h .....min;*~~

That the requesting party hereby formulates an OPPOSITION to the Ex Parte Exequatur Order executed in the hands of the S.A. THE BANK OF NEW YORK MELLON by writ of the bailiff Ben VAN SCHEL, deputy to Stefan SACRE, bailiff with offices at 1081 Koekelberg, Avenue de la Jette 32, dated 12 June 2018

In the same conte'xt, at parallel dates and request as above, I have, above-mentioned and undersigned Bailiff, served a WRIT OF SUMMONS to the pre-qualified notified party to appear **on Thursday sixteen August two thousand eioghteen at eight hours forty-five minutes in the morning, before the French-speaking Court of Attachment to the Court of First Instance of Brussels (sitting in vacation hearing, sitting at the ordinary room of its hearings, Room 3, at the Palace of Justice, extension, rue des Quatres-Bras, 13, audit Brussel**s.

IN ORDER TO:

- Find that it has in no way been established that the garnishee, Bank of New York Mellon SA/NV, owes any debt towards the seized debtor, the Republic of Kazakhstan, and that such allegation (which is completely unfounded) according to which there could potentially exist such a debt is the subject of a dispute pending before the competent trial court, namely the English courts;

- Declare that BNYM cannot release in the hands of the bailiff any assets that it would hold in name of a third party, in particular the assets that BNYM would hold in name of the National Bank of Kazakhstan under a Global Custody Agreement dated 24 December 2011 ("**GCA**");

- Order a stay of the execution process pending the final outcome of the English proceedings, before the competent trial court under the GCA, regarding the nature of the debt of BNYM under the GCA, and in particular the identity of the creditor of this debt;

- Order the lifting of the executory garnishment in so far as it concerns the sum of 530 million USD owed by BNYM to a third party, the National Bank of Kazakhstan, pursuant to the GCA;

- Order a stay of the execution process pending the final outcome of the proceedings before the French-speaking Court of First Instance of Brussels on the third-party opposition of the RoK against the *Ex Parte* Exequatur Order of an arbitral award;

- Order a suspension of the enforceability of the *Ex Parte* Exequatur Order pending a decision of the French-speaking Court of First Instance of Brussels on the third-party opposition of the RoK against this Order;

- Declare that the executory garnishment has been laid on non-seizable assets and, as a result, order the lifting of the executory garnishment;

- Order the Stati Parties to support the RoK's costs, including the costs of service and the procedural indemnity pursu estimated at its maximum amount for unquantifiable claims of EUR 12,000.00.

And at the same time and in the sam writ, I have, undersigned bailiff, DENUNCIATED the present writ to

the Limited Company THE BANK OF NEW YORK MELLON, with registered offices at the BCE under the number 0806.743.159, and headquarters at 1000 Brussels, Rue Montoyer, 46

where was present and talking to [Bart Van Look, employee]

declared as such, which has endorsed my original,

~~*O pursuant to article 38, §1 of the JC, not having been able to serve the present writ as is stated in art. 35 of the JC, I have served a copy under sealed envelope pursuant to ar. 44 of the JC at .....h .....min;*~~

And in order for the served party would be aware, I have left her, being and speaking as above, a copy of the present writ, under sealed envelope as required, pursuant to the law.

WHEREOF RECORD;

Cost: five hundred and forty euros and ninety cents

to be increased with the costs of port, which are 0,74- euros

The Bailiff.

[signature]

Pursuant to A.R. of 26 April 2017, 20,00 EUR will be included in the costs of this writ in order to cover the budgetary fund of second-line judicial aid.

Costs of registration – Application of article 7bis of the Code of Registration – Rights of registration: 50,00 EUR