

Newsletter

Russia Sanctions Litigation: risks and strategies

11 October 2024

Dear Ladies and Gentlemen,

Since 2020, Russian legislation contains certain procedural rules (Articles 248.1 and 248.2 of the Russian Commercial Procedure Code) that provide additional judicial protection for Russian companies in connection with foreign sanctions – so-called sanctions articles. The provisions are aimed at transferring disputes to the jurisdiction of Russian courts, notwithstanding any concluded jurisdiction clauses. We have addressed the [sanctions articles](#), [their initial application](#), the precedent-setting Russian Supreme Court ruling in the [Uraltransmash v. PESA](#) case and [their subsequent application](#) in our previous newsletters.

Over the past three years, we have seen a wave of claims against foreign banks, financial institutions and insurance companies based on these rules. Here we provide an overview of sanctions litigation in Russia and key strategy considerations.

1. Legal Overview

1.1 248.1 APC. The first sanctions article provides for, as a default rule, the exclusive jurisdiction of Russian courts over two categories of disputes: (i) involving sanctioned persons (subjective criterion); and (ii) concerning restrictive measures (objective criterion).

This article also stipulates that the exclusive jurisdiction of the Russian court may be recognised even if the parties have agreed on a foreign court or arbitration as a dispute resolution forum, if the access of a party to justice abroad is restricted.

1.2 248.2 APC. The second sanctions article allows a Russian party to obtain an anti-suit injunction that would prohibit a counterparty from bringing a lawsuit with a foreign court or arbitration and/or continuing foreign proceedings already commenced.

2. Key Trends

Based on our experience and the court practice on applying sanctions articles, the following tendencies may be distinguished:

2.1 Suing foreign banks. This includes bringing lawsuits against mostly foreign banks with Russian commercial courts in bypass of the jurisdiction clauses.

2.2 Reverse piercing of the corporate veil. This means that a foreign defendant and its Russian subsidiary can be held jointly liable for joint intentional and malicious inactions though the Russian subsidiary is not involved in the relationship.

2.3 Mechanisms of monetary enforcement. The enforcement of the decision of the Russian court may be effective if it touches upon assets of the foreign party in default. This could be implemented through (i) granting interim measures or (ii) imposing a court fine (astreinte) for (a) failure to comply with the specific performance granted by the court or (b) violation of the Russian anti-suit injunction.

2.4 Other existing trends are bringing tort claims instead of contractual claims to bypass jurisdiction and choice of law clauses; disregarding application of foreign 'unfriendly' law under the choice of law clause; applying simplified service procedures, etc.

3. Designing a Litigation Strategy

In terms of cross-border aspects, it is necessary to consider, *first*, the jurisdiction clause, *second*, enforcement in the context of the location of assets, subsidiaries and employees, and *finally*, several

procedural aspects, in particular, time limits, access to witnesses and documentation, and the possibility of challenging.

In terms of Russian commercial procedure aspects, the main rule is to challenge the jurisdiction before the first submission on the merits. At the same time, it is worth noting that contesting merits in some jurisdictions may be seen as submitting to the jurisdiction of the Russian court.

4. Key Risks Arising in Russian Litigation

In the context of Russia sanctions litigation, foreign parties are more likely to face the following risks:

- 4.1 Interim measures.** The interim measures granted in sanctions litigation can be very broad (*Goldman Sachs case*) and may only be grounded on the fact that the company is withdrawing from the Russian market (*Dell and H&M cases*). It usually takes one business day for the court to grant interim measures, and the standard of proof is quite low.
- 4.2 Piercing of corporate veil.** The court practice shows the permissibility of reverse piercing of veil and joint and several liability of subsidiaries for the debts of the holding company. However, due to the recent position of the Russian Supreme Court (*Julius Baer case*), which indicated that the existence of a corporate link cannot serve as a basis for joint and several liability, the practice of reverse piercing of the corporate veil may change.
- 4.3 Financial penalties.** Another negative factor that foreign defendants may face is the imposition of the disproportionate court fine in favour of the claimant for failure to comply with a decision imposing a non-monetary obligation (*Twitch and Amazon case*).

5. Enforcement of Judgment, in Russia or outside

5.1 Enforcement in Russia. The basis is the presence of assets of a foreign company in Russia. In case of their absence, it is possible to involve a Russian subsidiary by bringing it to joint liability.

5.2 Enforcement outside is regulated by several regimes under:

- (A) multilateral treaties in the CIS countries;
- (B) bilateral treaties (with China, Argentina, Czech Republic, etc.) and
- (C) principle of reciprocity.

Enforcement in the CIS countries will be less complicated than on all other routes. However, even in countries which Russia considers "unfriendly" the enforcement is still possible based on the principles of reciprocity. However, such enforcement cases do not concern application of sanctions articles.

6. Anti-suit Protection outside Russia

An anti-suit injunction may be obtained regardless of the presence of the jurisdiction clause.

At the same time, despite the non-compliance of Russian courts with a foreign anti-suit injunction, Russian claimants, due to the threat of liability and loss of assets, may waive from claims or ask for termination / suspension of the Russian court proceedings.

7. Horizon Scanning

We also note the following considerations for the Russia sanctions litigation:

- (A) Consideration of cases can be processed quite quickly, taking in total of 4-6 months in the trial court;
- (B) Since September 2024, court fees have increased significantly which may cool down Russia sanctions litigation;
- (C) However, there may be a new wave of lawsuits as the three-year limitation period for Russian companies affected by sanctions expires in the first quarter of 2025;
- (D) The trend of bringing Russian subsidiaries to liability may change which may have a positive impact on the situation with interim measures for Russian subsidiaries of foreign banks;

(E) Enforcement of Russian judgments abroad is possible, but we are not aware of any cases of enforcement of judgments rendered in Russia sanctions litigation.

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Sincerely,

ALRUD Law Firm