

## MACFARLANES

# Suited & booted: how will clashes between English and Russian courts over sanctions-related disputes impact western parties?

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Four years ago [we commented upon](#) the introduction of a Russian counter-sanction known as the "Lugovoy Law", which permitted Russian parties to seek to have disputes involving economic sanctions determined in Russia, regardless of the terms of the contractual agreement or international treaty in question.

Today, the provision is embedded into Russia's Arbitrazh Procedure Code as "Article 248". Whilst it was sparingly used when first introduced, the political climate has since resulted in far more attempts to rely on it and an increasingly expansive view by the Russian Court as to what entails a "sanctions-related" dispute. This has caused increasing tension in litigation and arbitral disputes involving Russian parties and is demonstrated in a series of recent English court decisions seeking to protect the contractual jurisdiction agreements which parties have agreed to. The ongoing battles have significant consequences for western businesses who have commercial arrangements with Russian parties, including how and where any disputes might proceed.

### The rise of Article 248

Derived from the Russian Government's assertion that sanctioned persons cannot receive impartial treatment from courts in "unfriendly countries", Article 248 permits Russian parties affected by "restrictive measures introduced by a foreign state" – i.e. sanctions – to petition the Russian courts to repatriate their disputes to Russia. In effect, it grants the Russian courts exclusive jurisdiction of disputes either involving sanctioned persons directly or, crucially, merely where sanctions form the basis for such disputes – an extremely broad category given the proliferation of western sanctions following the conflict in Ukraine and the concurrent vast increase in contractual disputes involving Russian persons.

As stated in the recent Court of Appeal judgment in *Unicredit Bank GmbH v RusChemAlliance LLC [2024] EWCA Civ 64* (which we previously [commented upon](#)) Article 248 has been "applied broadly by the Russian courts" impacting a number of active disputes before the English courts. When Article 248 is deemed to apply, the Russian courts have repeatedly allowed Russian parties to override jurisdiction clauses in commercial contracts to which they previously signed up, justified by purported access-to-justice concerns for Russian persons arising from the imposition of sanctions.

### The reaction

Where Russian parties have invoked Article 248 before the Russian courts, western parties have sought anti-suit injunctions from the English courts to nullify such invocations.

In April 2024, the UK Supreme Court upheld the Court of Appeal's granting of an anti-suit injunction in the *Unicredit* case, restraining RusChemAlliance LLC from pursuing the proceedings they had begun in Russia under Article 248 in order to demand payment of €448m in bonds issued by UniCredit, the payment of which Unicredit argued was impacted by EU sanctions.

Similarly, in June 2024 the High Court [granted](#) an anti-suit and an anti-enforcement <sup>1</sup> injunction in favour of Airbus Canada, amidst one of the many ongoing post-war disputes in the English courts concerning the supply of aircraft to and from Russia (*Airbus Canada Limited Partnership v Joint Stock Company Ilyushin Finance Co (No. 2) [2024] EWHC 790 (Comm)*). The court required the defendant – JSC Ilyushin Finance – to discontinue its Article 248 proceedings in Russia, concluding that the defendant could avoid any impact on its access-to-justice by applying for licences from the UK sanctions authority to cover its legal costs and engage in the arbitration.

Most recently in July 2024, the High Court [issued](#) an anti-suit and anti-enforcement injunction in favour of Barclays Bank Plc (Barclays), restraining PJSC Sovcombank (Sovcombank) from continuing its proceedings in Russia against Barclays for failure to make payments under a facility agreement following the imposition of sanctions on Sovcombank (*Barclays Bank PLC v PJSC Sovcombank & Anor [2024] EWHC 1338 (Comm)*).

As well as anti-suits, the English courts have also granted “anti-anti-suit” injunctions, which seek to counteract scenarios in which Russian parties have already applied to the Russian courts for an injunction preventing the case being heard in England. In April 2024 (*Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises [2024] 4 WLUK 486*) the High Court ordered an anti-suit injunction compelling the withdrawal of six sets of Russia proceedings brought contrary to the arbitration agreements, and an anti-anti-suit injunction to prevent the continuation of those same proceedings.

## **A way back?**

The concurrent increase in both the willingness of the Russian courts to use Article 248 and the willingness of the English courts to issue injunctions resisting it indicates an increasingly hazardous environment for western parties involved in contracts with Russian counterparties, severely impacting any subsequent cross-border disputes. The culmination of such trends would be an extremely cynical endpoint, in which Russian and western parties effectively bypass engaging with each other directly and seek redress from their respective national courts. In such a scenario, the key question would not necessarily be the relative merits of the case but the location of the assets held by the non-Russian party, as the [recent seizure](#) of Unicredit's Russian-located assets by the Commercial (Arbitrazh) Court of St Petersburg indicates - action undertaken whilst the concurrent English proceedings were ongoing.

Western parties who have ongoing commercial contracts with Russian parties (whether sanctioned or non-sanctioned) should take note, even if a dispute under the contract has not yet arisen. Forward planning will be vital to mitigate the risk of a Russian party seeking redress under the contract in Russia notwithstanding the presence of a non-Russian jurisdiction clause.

However, alternative paths remain, and there are still signs that the English court is open to engaging with assertions of Article 248 by Russian parties, where it believes such assertions have been made in good faith. Whilst an anti-suit judgment was granted by the High Court in the recent case of *Magomedov*

*& Ors v PJSC Transneft & Ors [2024] EWHC 1176 (Comm)*, Mr Justice Bright was also keen to stress that Article 248 “...was introduced with the intention of addressing a real juridical problem, namely that Russian parties cannot get access to justice because of the impact of sanctions”, whilst emphasising that Transneft’s invocation of the provision was entirely legitimate, as was the Russian court’s application of it in this instance.

It is worth noting that policymakers in the European Union (EU) are taking a much harder line. The EU’s fourteenth package of sanctions measures, unveiled in July 2024, explicitly includes a “[transaction ban](#)” prohibiting EU persons from engaging commercially with Russian parties that have initiated claims before Russian courts on the basis of Article 248, where the party has done so citing the restrictions imposed upon them by EU sanctions.

### **What can western parties do?**

The UK may yet seek to follow the EU’s line and take a more combative approach to Article 248. In the meantime, however, it is likely that the English courts will continue to deal pragmatically on a case-by-case basis, determining each invocation on its merits. Companies and individuals in active disputes with Russian parties will need to be extremely live to the possibility of Article 248 applications in Russia, and the need to consider anti-suit and anti-anti suit injunctions as early as possible.

Those in *potential* disputes will also need to be aware of such a prospect, and have a strategic legal approach in place to address it. Parties will need to clearly understand the location of the relevant assets, and be mindful of the range of Russian countermeasures that could impact them. Similarly, western companies still operating in Russia or transacting with Russian parties must be aware that contractual provisions on jurisdiction will be open to intense contestation, and build such an awareness into their contractual negotiations, wider business plans and day-to-day operations. For multinational operators, an assessment of sanctions risk is no longer distinct from an assessment of the risk of commercial disputes; in both Russia and the UK, the two are becoming increasingly intertwined.

<sup>1</sup> An extension of an anti-suit injunction, although issued more rarely, which prohibits existing lawsuits from being enforced by the English courts.