

Are we all off to Russia? The Lugovoy Law and its impact on cross-border disputes involving sanctioned entities

– 19.5.2020



Steven Barrett

Call: 2003

Barrister

Steven Barrett read law at Oxford and taught law at Cambridge. He has a strong commercial and financial services practice, and regularly works on banking, company, partnership and shareholder disputes. He is frequently praised for his commercial approach.

I sometimes find it hard to explain my practice, working as I do for both corporate and private clients tied up in disputes involving trusts, commercial and jurisdictional issues. Many of us working in this sphere are aware of the sanction scheme operated by the US, UK and EU against Russia which impact both individuals and commercial entities. But dispute work with Russian clients has largely remained unaffected, with only the potential travel restrictions for the individual involved needing to be address in practice – perhaps until now.

On 8 June 2020 the Arbitrazh Procedure Code of the Russian Federation was amended by Federal Law No. 171-FZ - known as the "Lugovoy Law". That entered in to force on 19 June. It granted exclusive jurisdiction over disputes involving a relevant entity to the Russian Commercial Court.

The definition of sanctioned entity is:

- disputes where one of the parties is subject to foreign sanctions against Russia; and
- disputes between a Russian and a foreign party, if the claim arises from the foreign sanctions imposed on Russian individuals and entities.

That is a very broad definition and it is likely to impact parties who conduct business with or in Russia. The powers under the new law all lie with the sanctioned entity and it is not immediately clear how they are consistent with Russia's signing of the New York Convention or in recognising enforcement of foreign judgments. That is because in practice, foreign decisions (court or arbitration) are now only valid if the sanctioned entity agrees to enforcement. A dissatisfied sanctioned entity faced with an award or court decision against it can apply for a straightforward injunction in the Russia Court.

Arbitration practitioners will have noted for several years the growing practical problems enforcing an arbitral award in Russia. In

the A40-149566/2019 case, the court granted exclusive jurisdiction to the Russian Commercial Court over an ICC arbitration that found against the Russian entity.

But sometimes it can feel as though there is a wall between commercial litigation practitioners and arbitration practitioners which is at least as stout as that separating commercial from private wealth. Now all three worlds share a common problem. If you practice in private wealth, commercial contracts or arbitration and your case involves a sanctioned entity then it is very likely that there will be an anti-suit injunction in the Russian Court and that injunction will assume jurisdiction to the Russian Commercial Court. One of the oddities of the law is that while seizing venue, the Russian Courts will leave the parties free to argue the case using their chosen law.

This publication and its contents are not intended to provide legal or other advice and you must not treat them or rely on them as such. Any views expressed are those of the author and not of Radcliffe Chambers, its members or staff, or any of them and the contents do not necessarily deal with all aspects of the subject matter to which they pertain.

Radcliffe Chambers is a barristers' chambers specialising in commercial, insolvency, pensions, banking and finance, private client, property and charity law.

Radcliffe Chambers and its barristers are regulated by the Bar Standards Board of England and Wales ("BSB"). When practising as barristers, they are self-employed. They are registered with and regulated by the BSB, and they are required to practise in accordance with the Code of Conduct contained in the BSB Handbook.

If you do not wish to receive further marketing communications from Radcliffe Chambers, please email events@radcliffechambers.com.