



**ROADMAP:
DISPUTES WITH
RUSSIAN COUNTERPARTIES
DURING A CRISIS**

Introduction

At present numerous European companies (hereinafter the **European Companies**) are being sued by Russian companies affected by sanctions (hereinafter the **Russian Companies**) in Russian state courts, despite the existence of arbitration clauses or choice-of-courts clauses in contracts stipulating a place of arbitration or litigation outside Russia. In most cases the Russian courts reject the objections of European Companies and find themselves competent to hear the claim of the Russian Company, stating that sanctions might prevent the Russian Company from receiving a fair trial abroad. In such cases Russian state courts apply Article 248.1 of the Russian Code of Commercial Procedure (hereinafter the **Russian Code**) and override the choice-of-court and arbitration clauses stipulated in contracts. Further details regarding this judicial approach can be found in our latest [Arbitration Digest](#) and in our recent [Article](#) on the subject.

If the European Company starts its own arbitration or litigation against the Russian Company outside of Russia, the Russian court may issue an order (anti-suit or anti-arbitration injunction) demanding that the European Company cease these proceedings. Disobeying such injunctions can lead to significant fines, which often equal to the total value of the claim.

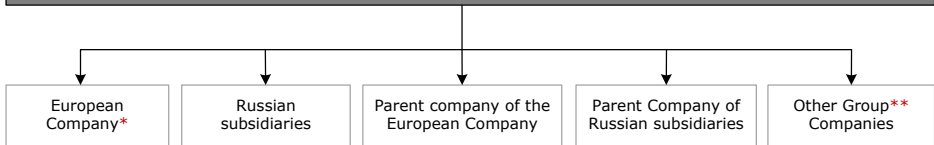
Choosing whether to follow these Russian injunctions and to take part in the litigation in a Russian state court or to fight such injunctions with counter-injunctions outside Russia is a strategic decision which demands risk assessment. Along with other issues such as insurance, management liability, and compliance, such an assessment should take into consideration the location of assets. Not only assets belonging to the European Company itself might be at stake, but also those of all other companies of the Group. Given the current approach of Russian state courts, the Russian Company may demand that the European Company and/or the Russian subsidiaries of the Group (if any) and/or the parent company of the European Company and/or the parent company of Russian subsidiaries be held “jointly liable” for any alleged debts, even if these legal entities never signed the initial contract and were not involved in its performance. You can find a detailed explanation of the Russian Supreme Court’s position on group liability in one of our [Newsletters](#).

In the roadmap we analyse the risks and legal remedies available to the European Company if the Russian Company initiates litigation against the European Company in Russia, as well as the possible steps to take if the European Company initiates proceedings against the Russian Company outside Russia.

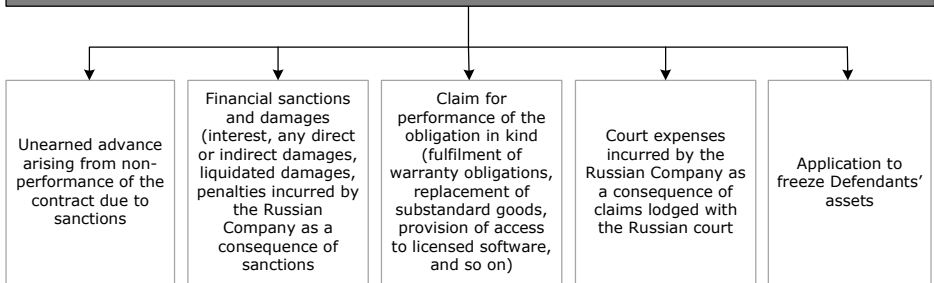
Step 1: Claim with a Russian state court

Claim of the Russian Company filed with a Russian state court under Article 248.1 of the Russian Code, ignoring the contractual choice-of-court or arbitration clause that prescribes a European arbitration institution or state court in the EU

Possible Defendants



Possible claims and applications



Russian court order to freeze the Defendant's assets

Is a Russian court order to freeze assets enforceable?

Russia:
Yes, it is enforceable.
Result: freezing of the Group's Russian assets

EU:
No, it is not enforceable

Third countries:
Freezing of the Defendants' assets might be possible (case by case review)

* The scenarios described apply not only to European Companies, but also to parties from other jurisdictions that the Russian Federation considers "unfriendly" (including, for example, Australia, Canada, Japan, Singapore, Switzerland, and the USA).

** The term "Group" includes all the legal entities which are part of the same corporate group, regardless of whether or not they previously had any contractual relationship with the Russian Company.

Step 2: Litigation in Russian state court

Court hearings on the merits

Is it worthwhile for the European Company to participate in the proceedings?

Option A

The European Company and/or the Group has assets only in the EU and does not plan to have assets in third countries that recognise Russian court decisions

It is highly unlikely that it would be advisable to participate in the proceedings

Anti-suit injunction outside Russia
(case by case review)

Option B

The European Company and/or the Group has assets in Russia and/or in third countries that recognise Russian court decisions

It is highly likely that it would be advisable to participate in the proceedings

What should the European Company keep in mind?

Defendants can file an application to set aside or reduce the amount of frozen assets

The Russian court will notify the Defendants under Russian law. Article 11c of Council Regulation (EU) No. 833/2014 will be of no relevance for the Russian court

Possible consideration of the dispute on the basis of Russian law instead of the choice-of-law clause

Sanctions are generally not recognised as a force majeure event

Contractual limitations of liability may not apply

Several Group companies could be held jointly and severally liable

A settlement agreement is possible if the following criteria are met:

The parties reach a financial compromise and are ready to settle

The European Company obtains a permit for the respective transaction from the competent authority under Article 11(4) of Council Regulation (EU) No. 833/2014

The settlement agreement complies with Russian law and is approved by a Russian court

The Russian Company has a bank account for receiving the payment in a non-sanctioned bank

Step 3: Initiation of parallel proceedings

Claim of the European Company filed with competent courts or arbitration tribunals outside Russia

Possible claims

Claims arising from non-performance of the contract (for example, payment for work performed, penalties, interest, and so on)

Any direct or indirect damages, including legal costs

Anti-suit injunction against litigation in Russia

Application of the Russian Company filed with a Russian court for an anti-arbitration or anti-suit injunction against litigation/arbitration outside Russia

Russian court order granting an anti-arbitration or anti-suit injunction (together with a judicial fine for failure to comply with an injunction). The amount of the fine equals the amount of the claim filed by the European Company outside Russia

What possible steps can the European Company take?

Option A

Stay of the litigation/arbitration

Claim with a Russian state court at the location of the Russian Company (case by case review)

Option B

Continuation of the litigation/arbitration

Anti-anti arbitration or anti-anti suit injunction outside Russia (case by case review)

Decision/Arbitration award

Is a Decision/Arbitration award enforceable?

Russia:
No, it is not enforceable

EU:
Yes, it is.
Execution against the assets of the Russian Company

Third countries:
Execution against the Defendants' assets might be possible (case by case review)

Fine imposed by Russian state court

Is a Russian court order imposing a fine enforceable?

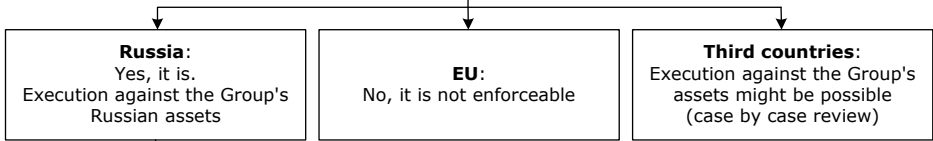
Russia:
Yes, it is.
Execution against the Group's Russian assets

EU:
No, it is not enforceable

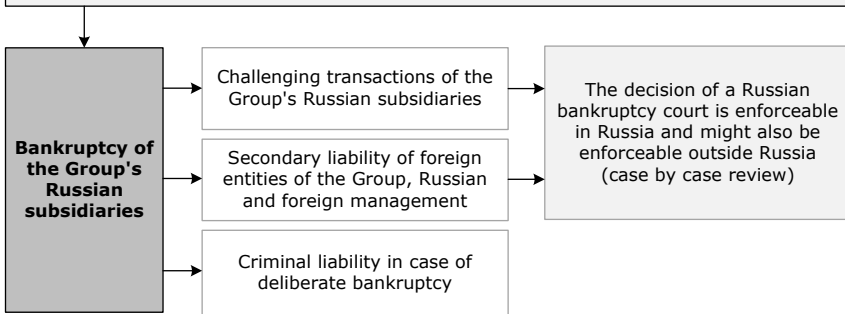
Third countries:
Execution against the Defendants' assets might be possible (case by case review)

Step 4: Decision of the Russian state court

Is the final decision of the Russian court enforceable?



What happens if the Russian subsidiaries of the Group have insufficient assets to pay the amount stipulated in the decision of the Russian court?

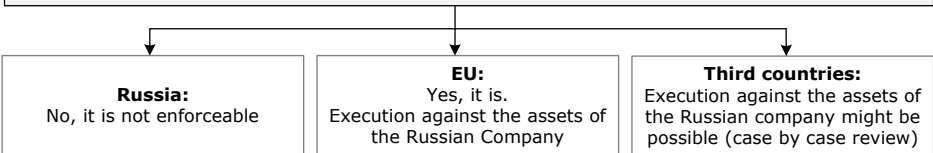


Step 5: Recovery from the Russian Company of the damages and court costs incurred by the Defendants due to litigation in Russia

Claim before competent courts or arbitration tribunals outside Russia

Decision/Arbitration award

Is a Decision/Arbitration award enforceable?



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