

# Sanctions and International Arbitration

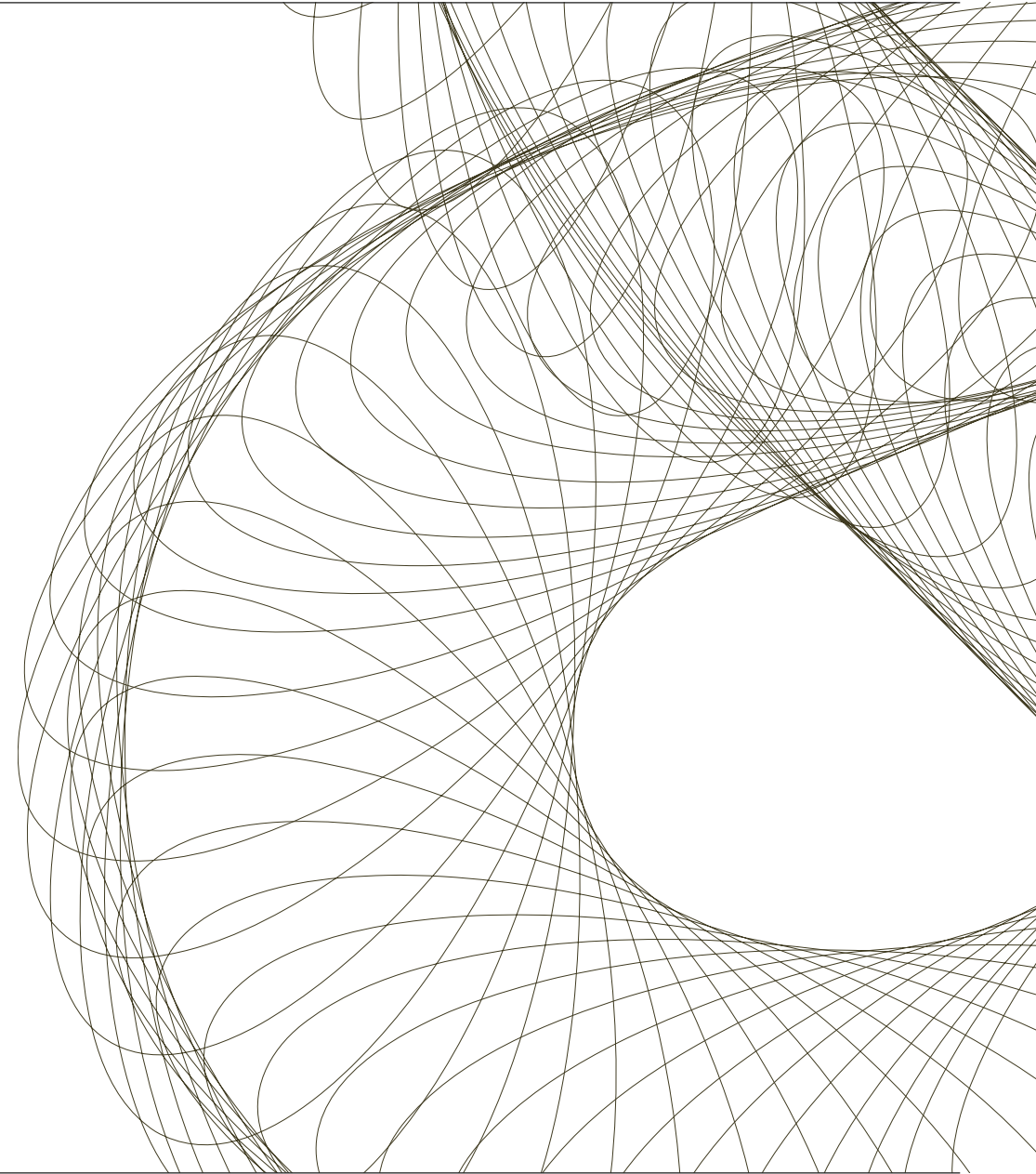
Dr Anna Bradshaw, Peters & Peters Solicitors LLP, United Kingdom

# Contents

The impact of sanctions on  
international arbitration in  
context

Procedural considerations

Substantive considerations



# The impact of sanctions on international arbitration in context

## **ICC, LCIA and SCC joint article of 17 June 2015 on the potential impact of the EU sanctions against Russia on international arbitration administered by EU-based institutions**

The sanctions do not impose a general prohibition for Russian parties to seek arbitration before European arbitral institutions, and Russian parties are not treated differently from other parties.

The integrity of the process of our respective institutions remains the same, as does the impartiality and independence of the procedure. We have put in place procedures to address the sanctions and are engaging with relevant public authorities to facilitate an efficient procedure should exemptions under the regulations be required. This is a responsibility that arbitral institutions share with parties, and their counsel.

## **Joint Statement of 26 July 2022 SCC, VIAC, FAI, DIS, CAM and Swiss Arbitration Centre on the EU's 7<sup>th</sup> Sanctions Package**

As neutral fora for dispute resolution engrained in a well-functioning, safe and efficient system for international trade, we welcome this clarification which safeguards the rule of law and ensures access to justice for parties in these particularly challenging times

## **LCIA Rules, Article 24A.10**

The LCIA may refuse to act on any instruction and/or accept or make any payment if the LCIA determines (in its sole discretion and without the need to state any reasons) that doing so may involve Prohibited Activity [relating to bribery, corruption, terrorist financing, fraud, tax evasion, money laundering and/or economic or trade sanctions], or breach any law, regulation, or other legal duty which applies to it, or that doing so might otherwise expose the LCIA to enforcement action or censure from any regulator or law enforcement agency.

## **LCIA Guidance Note for Parties and Arbitrators**

# Procedural considerations

## Application of prohibitions / restrictions to parties to the proceedings

- Extraterritorial application based on nationality, place of incorporation/domicile (or residence)

## Payment of fees and costs by or on behalf of designated persons

- Asset freezes/blocks prohibiting dealings with funds and economic resources owned, held or controlled by a designated person and related prohibitions on directly or indirectly making funds or economic resources available to or for the benefit of a designated person without a licence
- Grounds for licences/derogations
  - **Legal fees**
    - UK Legal Services General Licence (Russia and Belarus sanctions regimes) INT/2024/5334756 (25 October 2024)
  - **Arbitration Costs**
    - UK LCIA Arbitration Costs General Licence (Russia and Belarus sanctions regimes) INT/2022/1552576 (last

amended 15 December 2023)

## • Prior decisions

- Extension of UK licensing ground by the Sanctions (EU Exit) (Miscellaneous Amendments) (No 2) Regulations 2024

## Professional and business services prohibitions including EU and UK legal services bans under the Russia sanctions regimes

- Regulation 54D of the Russia (Sanctions) (EU Exit) Regulations 2019
  - Exception for arbitral or mediation proceedings: Schedule 3J, para.8A(1)(b)(ii)
- Council Regulation (EU) No 833/2014 of 31 July 2014
  - Article 5aa(3)(g) exemption (22 July 2022)
  - Article 5n(2) (17 December 2022)

## Reporting obligations

- The Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024 (10 October 2024)

# Substantive considerations

Prohibitions and restrictions engaged by the subject matter of the proceedings

- Impact of sanctions on contracts
  - Compatibility of sanctions compliance clauses with EU and UK blocking legislation
  - Illegality, frustration and *force majeure*
- Circumvention, evasion, breach facilitation and frustration
  - Designation risk separate from enforcement risk
  - Guidance
- 'No claims' clauses
- Protection from civil liability
  - Section 44 of the Sanctions and Anti Money Laundering Act 2018
- Impact of Russian countersanctions on jurisdiction
  - Russian Federal Law No 171-FZ on exclusive jurisdiction over sanctions-related disputes
  - UK Supreme Court ruling in *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30 (18 September 2024)
  - EU compensation claims: Articles 11a and 11b of Regulation 833/2014
  - EU blocking of the enforcement of arbitral awards:: Article 11c of Regulation 833/2014

# Contacts



**Dr Anna Bradshaw**  
Partner

Tel: +44 (0)20 7822 7751

Email: [abradshaw@petersandpeters.com](mailto:abradshaw@petersandpeters.com)