

Dispute Resolution

ALERT | 15 May 2025



In this issue

SOUTH AFRICA

Sanctions-era arbitration:
Is South Africa the answer?



For more insight into our
expertise and services

Sanctions-era arbitration: Is South Africa the answer?

The conduct and resolution of international disputes are frequently influenced by geopolitical and economic forces – which have become more erratic in the current climate. Sanctions, in particular, can significantly affect dispute resolution where parties are based in, or connected to, sanctioned jurisdictions.

Since 2014, a broad array of financial and trade sanctions have been imposed on Russia by countries and international bodies including the European Union (EU), US, Australia and Japan. In the intervening years, these sanctions have expanded in scope, targeting a broad range of sectors, entities and individuals.

In response, the Russian Government has imposed its own countermeasures, including trade, finance and visa restrictions on countries that it has designated as “unfriendly” (unfriendly states). By contrast, in 2023 a list of neutral or friendly countries (friendly states) was published which includes former Soviet Republics and various African countries, including South Africa, Morocco and Algeria.

This article explores:

- The impact of sanctions on international arbitrations involving Russian parties.
- The implications of Russia’s Lugovoy Law for arbitrations seated in unfriendly states.
- The search for alternative options in friendly states, including South Africa.

The impact of sanctions on international arbitrations

The sanctions regimes imposed on Russia include specific carve outs and protections where sanctioned parties need to pursue or defend contentious legal proceedings. Leading European arbitral institutions have issued joint statements confirming that “*transactions which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings*” are exempt from sanctions (see the joint statement [here](#)).

However, despite these carve outs and assurances, in practice, the imposition of sanctions can still create significant obstacles that may hinder a party’s ability to freely pursue or defend proceedings. These obstacles include:

- Constraints on legal representation: Some countries, including the UK, have imposed restrictions on the circumstances in which lawyers can provide legal advisory services in connection with a sanctioned activity. Although carve outs exist for contentious matters, in reality parties may still face difficulties obtaining adequate representation of their choice, including at pre-dispute stages and where law firms decline instructions due to reputational concerns.
- Travel restrictions: The imposition of travel and entry restrictions may prevent in-person participation in proceedings or interfere with the collection of physical or witness evidence.
- Financial barriers: Asset freezes can restrict the ability of a sanctioned entity to fund legal or arbitration fees. The removal of some Russian banks from the SWIFT payment system can complicate the execution of payments, even where funds are available and accessible.



DISPUTE RESOLUTION
ALERTSanctions-era
arbitration:
Is South Africa
the answer?

CONTINUED



Many Russian parties have asserted that they have faced, and continue to face, restrictions on their ability to fully and freely participate in the arbitral process. In an *amicus curiae* brief submitted to the EU's Court of Justice (available [here](#)), the Russian Arbitration Association stated that:

"Russian parties continued to be discriminated [against] both in arbitration and in litigation in Europe – they were unable to instruct legal counsel, experts, interpreters, to appoint arbitrators, to pay arbitration and court fees, to hire hearing premises, even simply to enter Europe ... There have been multiple cases when Russian legal counsel who travelled to arbitration hearings were interviewed, and confidential arbitration bundles were copied by secret services at the EU borders against parties' objections."

The Lugovoy Law

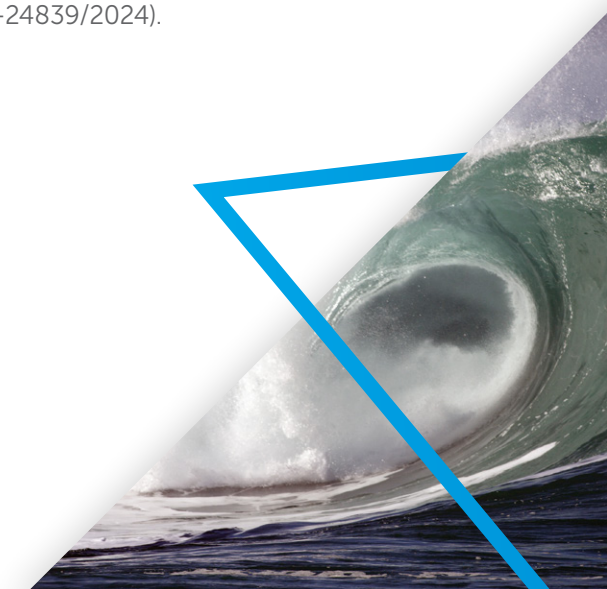
To counteract these issues, in June 2020 the Russian Federal Law 171-FZ was adopted (the "*Lugovoy Law*"). It amended Article 248 of the Russian Commercial (*Arbitrazh*) Procedure Code to enable the Russian commercial courts to assume jurisdiction over disputes that involved sanctioned entities, or otherwise related to the imposition of sanctions by unfriendly states. This gives jurisdiction to Russian courts even where parties had previously contracted to resolve disputes before a foreign court or arbitral tribunal.

The premise was that a fair and impartial forum could not be guaranteed in unfriendly states, or before arbitrators who are citizens of those countries, and so litigating before the Russian courts would avoid these perceived difficulties, which could otherwise deprive Russian parties of their legitimate rights and interests.

Impact on non-Russian parties

The introduction of the Lugovoy Law has significant detrimental effects for non-Russian parties. These include:

- **Dual proceedings:** Since its introduction, the scope and application of the Lugovoy Law has expanded considerably. Russian courts have frequently invoked the Lugovoy Law to issue anti-suit injunctions to restrain the pursuit of foreign court or arbitration proceedings, even where the Russian party is not sanctioned and the agreed forum is in a friendly state. Many non-Russian entities have consequently faced the cost and uncertainty of dual arbitral and Russian court proceedings.
- **Enforcement challenges:** Non-Russian entities who succeed in arbitration in unfriendly states face considerable difficulties in enforcing awards in Russia. In August 2024 a Russian court cited the "*legal aggression*" of unfriendly states and the Polish and Swedish nationality of two of the arbitrators in refusing to enforce a Stockholm Chamber of Commerce award (Case No A60-24839/2024).



DISPUTE RESOLUTION
ALERTSanctions-era
arbitration:
Is South Africa
the answer?

CONTINUED

- Excessive penalties: The Russian courts are empowered to issue heavy fines for non-compliance with court orders. In *Google LLC and Google Ireland Limited v NAO Tsargrad Media and Others* [2025] EWHC 94, it was stated that a fine issued against various Google entities by the Russian Arbitrazh Court stood in January 2025 at an astonishing GBP 1,020,000,000,000,000,000,000,000,000 – an amount considerably greater than the world's GDP. Some non-Russian parties have even requested that foreign courts revoke anti-suit injunctions they previously requested and were granted to avoid the imposition of stratospheric penalties (as in *UniCredit Bank GmbH v RusChemAlliance LLC* [2025] EWCA Civ 99).

Impact on Russian parties

It is notable that the Lugovoy Law can also have detrimental commercial and legal consequences for Russian parties.

- Dual proceedings: Despite the Lugovoy Law, arbitral tribunals (relying on the principle of *Kompetenz-Kompetenz* which allows them to determine their jurisdiction) continue to assert jurisdiction over disputes involving Russian parties. Many national courts have supported this stance, with the result that Russian entities face concurrent proceedings and potential anti-suit injunctions. For instance, in *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30, the UK Supreme Court upheld an anti-suit injunction restraining court proceedings in favour of a Paris-seated arbitration governed by English law.

- Enforcement challenges: It can be difficult to enforce judgments issued pursuant to the Lugovoy Law where national courts instead recognise the original dispute resolution clause. In particular, the EU's fifteenth sanctions package in December 2024 prohibited European courts from enforcing decisions derived from the Lugovoy Law.
- Commercial consequences: Amid concerns about the Russian courts assuming jurisdiction and an inability to enforce international awards or judgments in Russia, some non-Russian parties are requesting additional contractual protections such as guarantees and deferred payment obligations until post-delivery of goods. This increases cost, commercial risk and uncertainty for Russian parties. Additionally, Russian parties may face transactional obstacles as the EU's fourteenth package of sanctions included provisions to prohibit transactions with Russian entities that seek to rely on the Lugovoy Law in violation of previous arbitration agreements.

The search for an alternative seat

European seats and established arbitral centres in London, Paris and Stockholm have traditionally been popular with Russian parties and in 2022, 20.8% of the Stockholm Chamber of Commerce's cases involved a Russian party. However, all of these jurisdictions have been designated as unfriendly states and the Russian Arbitration Association has concluded that there is a perception that "*EU arbitration is no longer a neutral and reliable forum for disputes involving Russian parties*".

DISPUTE RESOLUTION
ALERTSanctions-era
arbitration:
Is South Africa
the answer?

CONTINUED



The Russian Association of Arbitrators has similarly concluded that:

"The EU restrictions and discriminatory practices against Russian parties made them look for viable alternatives outside Europe, which can ensure access to justice and neutrality ... In arbitrations already in progress with a legal seat in the EU, parties and tribunals may be inclined to relocate the legal seat to non-EU jurisdictions."

It is therefore clear that parties are considering whether some of the negative implications and risks associated with the imposition of sanctions by unfriendly states and the Lugovoy Law could be mitigated by instead choosing to arbitrate in a friendly state.

Arbitrating in a friendly state could benefit non-Russian parties, because although the Russian courts have assumed jurisdiction in the vast majority of Lugovoy Law cases, there have been instances where they have upheld arbitration clauses where the arbitration is seated in friendly states. For example, in May 2024 the Arbitrazh Court of Saint Petersburg enforced a Hong Kong seated arbitration agreement, emphasising that China is a friendly state and neither Hong Kong nor China had imposed sanctions on Russia. Similarly, in an *amicus curie* brief to the Russian constitutional court, the Russian Arbitration Association asserted that the Lugovoy Law should not preclude Russian parties arbitrating in Hong Kong, noting impartial arbitrators, access to fair and impartial proceedings, unrestricted entry for Russian citizens and the ability to pay fees through Chinese banks. Although the Russian courts'

approach has been inconsistent, where clauses in friendly states are upheld, it offers non-Russian parties a potential route to avoid the cost and risk of the Russian courts assuming jurisdiction and imposing astronomical non-compliance fines.

Arbitrating in a friendly state could also benefit Russian parties as an award issued in a friendly state pursuant to a valid and binding arbitration agreement is likely to have better prospects of being enforced internationally than a Russian court judgment issued pursuant to the Lugovoy Law.

The South African solution

As both Russian and non-Russian parties seek alternatives, South Africa, like China, presents a compelling option to mitigate against the impact of sanctions and the Lugovoy Law.

South Africa is a BRICS member and has not imposed any sanctions on Russia and has been designated by the Russian Government as a friendly state. South Africa has not imposed any restrictions on the entry of Russian nationals or the provision of legal advice.



DISPUTE RESOLUTION
ALERTSanctions-era
arbitration:
Is South Africa
the answer?

CONTINUED

South Africa has modern international arbitration legislation based on the UNCITRAL Model Law, is a signatory to the New York Convention on the Recognition and Enforcement of Arbitral Awards, and has an independent and arbitration-friendly judiciary and the ability to appoint impartial arbitrators. Its principal commercial arbitration institute, the Arbitration Foundation of Southern Africa, was founded almost 30 years ago and has administered over 170 international cases.

When reviewing existing arbitration agreements or choosing a forum for future contracts, instead of the traditional arbitral centres for Russian disputes, parties should consider alternatives which may offer greater certainty, enforceability and practicality, like South Africa.

Veronica Connolly



Chambers Global 2025 Results

Dispute Resolution

Chambers Global 2022–2025 ranked our

Dispute Resolution practice in:

Band 2: Dispute Resolution.

Chambers Global 2018–2025 ranked us in:

Band 2: Restructuring/Insolvency.

Tim Fletcher ranked by Chambers Global 2025 as an “Eminent Practitioner”, a category in which lawyers are ranked as highly influential lawyers and exceptional individuals.

Lucinde Rhoodie ranked by Chambers Global 2023–2025 in **Band 4:** Dispute Resolution.

Natascha Harduth ranked by Chambers Global 2025 in **Band 4:** Restructuring/Insolvency.

Clive Rumsey ranked by Chambers Global 2025 in **Band 5:** Dispute Resolution.

Anja Hofmeyr ranked by Chambers Global 2025 in **Band 5:** Dispute Resolution.

Jackwell Feris ranked by Chambers Global 2023–2025 as an “Up & Coming” dispute resolution lawyer.

OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa, Kenya and Namibia, please contact:



Rishaban Moodley

Practice Head & Director:
Dispute Resolution
Sector Head:
Gambling & Regulatory Compliance
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com



Tim Fletcher

Chairperson
Director: Dispute Resolution
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com

Imraan Abdullah

Director:
Dispute Resolution
T +27 (0)11 562 1177
E imraan.abdullah@cdhlegal.com

Timothy Baker

Director:
Dispute Resolution
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester

Director:
Dispute Resolution
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Neha Dhana

Director:
Dispute Resolution
T +27 (0)11 562 1267
E neha.dhana@cdhlegal.com

Denise Durand

Director:
Dispute Resolution
T +27 (0)11 562 1835
E denise.durand@cdhlegal.com

Claudette Dutilleux

Director:
Dispute Resolution
T +27 (0)11 562 1073
E claudette.dutilleux@cdhlegal.com

Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Nastascha Harduth

Sector Head: Corporate Debt,
Turnaround & Restructuring
Director: Dispute Resolution
T +27 (0)11 562 1453
E n.harduth@cdhlegal.com

Anja Hofmeyr

Director:
Dispute Resolution
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Corné Lewis

Director:
Dispute Resolution
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Nomlayo Mabhena-Mlilo

Director:
Dispute Resolution
T +27 (0)11 562 1743
E nomlayo.mabhena@cdhlegal.com

Sentebale Makara

Director:
Dispute Resolution
T +27 (0)11 562 1181
E sentebale.makara@cdhlegal.com

Vincent Manko

Director:
Dispute Resolution
T +27 (0)11 562 1660
E vincent.manko@cdhlegal.com

Khaya Mantengu

Director:
Dispute Resolution
T +27 (0)11 562 1312
E khaya.mantengu@cdhlegal.com

Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey

Sector Head: Construction & Engineering
Director: Dispute Resolution
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit

Sector Head:
Consumer Goods, Services & Retail
Director: Dispute Resolution
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Marelise van der Westhuizen

Director:
Dispute Resolution
T +27 (0)11 562 1208
E marelise.vanderwesthuizen@cdhlegal.com

Joe Whittle

Director:
Dispute Resolution
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia

PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020

T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2025 14662/MAY

