

# Russian Supreme Court clarifies how sanctioned companies can obtain anti-suit injunctions

Russia · 20.12.2021

Available languages: [RU](#)

---

The Russian Supreme Court has clarified for the first time the procedure and grounds for applying the ban on carrying proceedings outside of Russian jurisdiction for court or arbitral proceedings against Russian legal entities and individuals subject to foreign sanctions (anti-suit injunctions). This mechanism was introduced in the summer of 2020 in the Russian Commercial Procedure Code.

This clarification was made in a ruling by the Judicial Board for Economic Disputes of the Russian Supreme Court (dated 9 December 2021) in response to a dispute between a Russian company and a Polish counterparty.

## Background

In 2013, the Russian company and its Polish counterparty concluded a supply contract containing a dispute resolution clause at the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

In 2014, sanctions were imposed against the Russian company.

In 2018, the Polish counterparty filed a claim with the SCC to recover a debt from the Russian company under the supply contract.

In June 2020, Articles 248.1 and 248.2 were added to the Russian Commercial Procedure Code (as we previously [reported](#)). These articles contain additional judicial protection in Russian courts for those under foreign sanctions when the sanctions impede access to justice for these entities or persons. In particular, under the new rules, Russian courts are entitled to adopt anti-suit injunctions preventing foreign persons from commencing or continuing proceedings against sanctioned Russian companies in courts and arbitral tribunals outside Russia.

Taking advantage of the new rules, in July 2020, the Russian company applied to the Commercial Court of the Sverdlovsk Region to prohibit its Polish counterparty from continuing proceedings before the SCC. It also asked to recover damages from the Polish counterparty in the amount of the latter's claims before the SCC if the prohibition was not complied with. In support of the request, the Russian company referred to the adoption of sanctions against it by the EU and the US in 2014.

## Review by Russian courts

When reviewing the Russian company's application in the first, appellate and cassation instances, the courts' decisions were unanimous: the applicant had not proved that it had encountered any obstacles in access to justice in a foreign jurisdiction and, in particular, before the SCC in connection with foreign sanctions. Moreover, the courts found that the Russian company had actively participated in the arbitration before the SCC.

## Supreme Court opinion

However, the Russian Supreme Court held that the courts had improperly refused to apply the anti-suit injunction based on the Russian company's application.

In its view, the fact that sanctions have been imposed on the Russian company is presumed to be sufficient in itself to conclude that access to justice has been restricted.

The Supreme Court noted that the application of sanctions against Russian entities or persons "affects their rights at least reputationally and thereby deliberately places them in an unequal position with other entities or persons. In such circumstances, it is justified to have doubts as to whether a dispute involving an entity or person situated in a state which has applied restrictive measures will be heard on the territory of a foreign state that has also applied restrictive measures with guarantees of a fair trial (including those concerning the impartiality of the court, which constitutes an element of access to justice)".

The Supreme Court also stated that the Polish counterparty's rights in the situation were not prejudiced because it had the possibility of “applying for judicial protection in a Russian court”.

## Conclusions and recommendations

The position of the Supreme Court applies to any foreign judicial or arbitral proceedings involving sanctioned Russian individuals or entities.

As the Supreme Court pointed out, the mere existence of sanctions is sufficient to enable a Russian party to seek termination of a foreign dispute involving it with the possibility of the further “transfer” of the dispute to the Russian jurisdiction.

Foreign counterparties should take this risk into account when negotiating and performing agreements with Russian counterparties, which have been or might be the target of foreign sanctions.

For further information, please email the authors or your usual contact at CMS Russia.

## KEY CONTACTS

---



**Sergey Yuryev**

Partner | Head of Dispute Resolution, Moscow



**Igor Sokolov**

Senior Associate | Dispute Resolution, Moscow

