



Russian legislator introduces measures to re-balance the procedural rights of persons under foreign sanctions

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Alisa Pestryakova

An amendment to the Russian Arbitrazh (i.e. Commercial) Procedure Code (Federal Law no.171-FZ “On amendments to the Russian Arbitrazh Procedure Code aimed at protecting the rights of natural persons and legal entities in connection with sanctions imposed by foreign countries, unions of countries, state or inter-state institutions”) was adopted by the Russian Parliament and signed by the President on 08 June 2020 laying down special rules of exclusive competence of the Russian commercial courts over cases involving persons and entities falling under foreign sanctions. The amendment introduces new articles numbers 248.1 and 248.2 to the Arbitrazh Procedure Code, which came into force starting from 19 June 2020.

The newly added articles of the Arbitrazh Procedure Code provide for the exclusive Russian exclusive jurisdiction over the following disputes:

- disputes where one of parties is a person or legal entity placed under sanctions by a foreign state, state union or institution, or
- disputes between Russian or foreign entities that are based on or concern foreign sanctions implemented against Russian citizens or Russian legal entities.

The scope of the new provisions is very broad.

First, the amendment specifies the persons deemed placed under foreign sanctions, not only as the Russian persons and entities listed in the foreign sanctioning measures, but also foreign



legal entities placed under restrictions imposed on the ground of foreign sanctions against Russian citizens or legal entities. An example of this category is that of sanctions imposed on natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine by EU Council Decision 2014/145/CFSP of 17 March 2014 ([https://eur-lex.europa.eu/eli/dec/2014/145\(1\)/](https://eur-lex.europa.eu/eli/dec/2014/145(1)/)) or imposed on specified persons operating in sectors of the Russian economy identified by the Secretary of the Treasury under the Executive Order 13694 of April 1, 2015 of the President of the United States of America (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cyber_eo.pdf).

Interestingly, the explanatory note to the draft law specified that the purpose of the amendment is to strengthen the protection of the interests of Russian citizens and legal entities, but the final text does not include such characterization, and foreign entities which have property in the Russian Federation fall under the scope of the special provisions.

Second, the new legislation does not supply any definition or further elaboration of the notion or temporal characterization of sanctions. As a result, the new provisions are applicable to all already existing sanctions, persons affected by such sanctions and disputes already arisen before the adoption of the amendment, and not only those that may materialize in the future.

Third, there is no limit other than those recalled above as to the kind of disputes falling under the new provisions. For example, a Russian person placed under foreign sanctions may claim exclusive Russian jurisdiction for all disputes that involve him, even with respect to agreements, obligations or actions not connected with sanctions. Even a dispute between two foreign persons based on or presupposing foreign sanctions against Russian citizens or Russian legal entities

may fall under Russian exclusive jurisdiction.

Fourth, the exclusive jurisdiction rule is not applicable in the following cases:

- (i) where otherwise prescribed by an international treaty signed by the Russian Federation, or
- (ii) where the parties expressly agreed on a foreign jurisdiction for the resolution of disputes.

However, exclusion (ii) could be disregarded and the person or entity concerned could claim the exclusive Russian jurisdiction where the resort to an agreed foreign jurisdiction is not feasible, because the imposed restrictions impede access to justice. In such a case, the plaintiff will need to state in its claim the circumstances proving that the resort to the jurisdiction of the foreign court or international arbitration outside of Russia agreed between the parties could not be practically put in place.

Fifth, the amendment provides two procedural options to protect the rights of natural persons and legal entities in connection with sanctions, namely,

- (i) in case of legal actions instituted before the Russian commercial court having venue for the place of registration or domicile in Russia of the person under restrictions;
- (ii) in case of injunctive measures of the kind envisaged by article 248.2 of the Code that are sought in order to prohibit the filing a lawsuit in a foreign court or an international arbitration, or the continuation of such foreign court or arbitration proceedings, taking place outside of Russia.

The first option is rather straightforward way and results in bringing the dispute within the general rules of the Arbitrazh Procedure Code. The claimant should be registered or live in Russia and turn to the Russian court at the place of

domicile. Besides, the resort to this option entails that no case handled by a foreign court or international arbitration outside of Russia could be instituted between the same parties on the same matter and grounds.

The second option is more delicate, and applies in situations where a claim is already filed before the foreign court or international arbitration outside of Russia, and allows the party to such lawsuit to claim an anti-suit injunction from the Russian court. When proceedings against the person are not yet instituted, but there is evidence that such proceedings could be filed, the person could seek a judicial order prohibiting its filing with foreign court or arbitration outside of Russia.

Article 248.2 furthermore provides for a list of information and documents that need to be included to and produced with the anti-suit injunction application. The list mentions amongst others:

- details of the claims or expected claims that are the object of the foreign lawsuit or international arbitration;
- details of the circumstances proving the exclusive Russian jurisdiction, including proof that the claimant could not comply with the dispute resolution agreement indicating the jurisdiction of the foreign court or international arbitration outside of Russia;
- copies of documents proving the intent to file a claim with the foreign court or international arbitration outside of Russia or copies of the writ, statement of claim or request for arbitration.

The second item in the above list is not further explained or clarified and is left in

substance to the full discretion of the court adjudging the application.

In addition, the applicant may provide contact details of the plaintiff/claimant in the foreign lawsuit or potential lawsuit.

In case the person prohibited from filing or continuing a lawsuit in a foreign court or arbitration proceedings taking place outside of Russia has failed to comply therewith, the new provisions entitle the Russian court to adjudge the case in favor of the claimant, to the extent of the same sum, which was awarded to the person or entity having infringed the prohibition. In such connection, the new legislation contains reference to justice, maintaining the balance of the parties' rights and interests and the impermissibility of profiting from unlawful actions or misconduct, as the rationale for this special provision.

At the same time, the new amendment to the Russian Arbitrazh Procedure Code does not prevent the recognition and enforcement of judgements resulting from a lawsuit filed by a person or entity deemed fallen under foreign sanctions and having entered appearance in the foreign court or international arbitration outside of the Russian Federation. The judgement of the foreign court or foreign arbitral award may also be recognized and enforced, where the person placed under foreign sanctions has not objected to the jurisdiction of the foreign court or arbitration, and has failed to file an application for an anti-suit injunction before the Russian court.



Alisa Pestryakova
ASSOCIATE



a.pestryakova@dejalex.com



+7 495 792 54 92



Ulitsa Bolshaya Ordynka 37/4
119017 – Moscow

MILANO

Via San Paolo, 7 · 20121 Milano, Italia
T. +39 02 72554.1 · F. +39 02 72554.400
milan@dejalex.com

ROMA

Via Vincenzo Bellini, 24 · 00198 Roma, Italia
T. +39 06 809154.1 · F. +39 06 809154.44
rome@dejalex.com

BRUXELLES

Chaussée de La Hulpe 187 · 1170 Bruxelles, Belgique
T. +32 (0)26455670 · F. +32 (0)27420138
brussels@dejalex.com

MOSCOW

Ulitsa Bolshaya Ordynka 37/4 · 119017, Moscow, Russia
T. +7 495 792 54 92 · F. +7 495 792 54 93
moscow@dejalex.com

