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The Tale of Two Cities: The Impact of Sanctions on Arbitration in London and Hong Kong

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I. Introduction

The 2022 invasion of Ukraine by Russia prompted an expansion of unilateral sanctions against Russian entities, particularly from by the European Union. In response, Russia introduced counter-legislation enabling sanctioned entities to turn to domestic courts to challenge the enforcement of those sanctions or to seek alternative pathways for redress. The sanctions, aimed at exerting political and economic pressure, and the counter-responses thereto are not only affecting sanctioned states but also critical hubs for international arbitration world-wide. This situation presents complex challenges for courts especially in leading arbitration hubs like London and Hong Kong (“**HK**”) including concerning the enforceability of arbitration agreements.

What follows is the tale of the challenges faced by the courts in these two cities as a result of EU sanctions prohibiting (i) Linde and Renaissance from complying with the terms of the EPC Contracts they had entered into with RusChemAlliance (“**RCA**”) to construct the gas processing plant in Russia¹⁾ and (ii) UniCreditBank GmbH (“**UniCredit**”) from paying out pursuant to the performance bonds²⁾ and the attempts by Russia to shield RCA from such

^{*}) Mr Chan would like to thank Letty Lam for her assistance.

¹⁾ Article 3(b) of Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilizing the situation in Ukraine as amended by Council Regulation (EU) 2022/576 of 8 April 2022 (“**Regulation**”) provides that it “shall be prohibited to sell, supply, transfer, or export, directly or indirectly, goods and technology suited for use in oil refining and liquefaction of natural gas, as listed in Annex X, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia. Text of the consolidated Regulation as it is in force today is available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:02014R0833-20250720#tit_1.

²⁾ Article 3(b)(2)(b) states that it is prohibited to provide financing or financial assistance related to the goods and technology referred to in paragraph 1 for any sale, supply, transfer or export of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any person, entity or body in Russia or for use in Russia. In addition, Article 11 (1)(b) provides that “[n]o claims in connection with any contract or transaction the performance

sanctions. The tale of another city, that of Moscow, will not be told expect as it impacted on the proceedings in London and Hong Kong.

II. Background

In 2021 RCA entered into an Engineering Procurement and Construction (“EPC”) contracts with Linde and Renaissance to construct liquefied natural gas (LNG) and gas processing plant facilities in Russia (the “EPC Contracts”). Under the EPC Contracts, RCA was obliged to pay the contractors approximately EUR 10 billion. The contractors were entitled to advance payment of EUR 2 billion, which RCA made. UniCredit issued seven on-demand performance bonds (the “Bonds”) in favor of the RCA to a total value of approximately EUR 420 million, four of which were to guarantee the performance of the EPC Contracts and three of which were to secure repayment of the advance payment. Both the EPC Contracts and the Bonds were governed by English law. Both agreements provided for arbitration as a mechanism for resolving disputes, the former provided for arbitration seated in Hong Kong under the arbitration rules of the HK International Arbitration Centre (“HKIAC”) and the latter in Paris under the arbitration rules of the International Chamber of Commerce (“ICC”).

On 8 April 2022 the EU extended the sanctions regime to “the sale, supply, transfer, or export, directly or indirectly, of goods and technology suited for use ... in the liquefaction of natural gas” pursuant to Article 3(b) of the Regulation. Shortly thereafter Linde wrote to the RCA advising that it was no longer able to perform the EPC Contracts and was also not able to return the advance payment. RCA terminated the EPC Contracts and also demanded payment under the Bonds issued by UniCredit. UniCredit, invoking Article 11 of the Regulation, asserted that it was prohibited from making any payment under the Bonds.

Relying on Article 248.1 of the Russian Arbitration Procedural Code (“APC”), RCA commenced proceedings against (i) Linde seeking repayment of the advance payment and (ii) UniCredit to recover the EUR 448 million under the Bonds in St Petersburg court in March 2023 and August 2023 respectively. Article 248.1 had been adopted by the Russian Parliament on 8 June 2020 in order to “*protect the rights of natural and legal persons in connection with*

of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by” any “Russian person, entity or body”.

restrictive measures introduced by foreign states or unions”.³⁾ In particular, it grants Russian Arbitrazh Courts exclusive jurisdiction in respect of disputes arising from foreign sanctions and overriding contractually agreed arbitration if such sanctions “*obstruct such party’s access to justice*” rendering arbitration no longer feasible.⁴⁾ Article 248.2 also empowers these courts to issue anti-suit injunctions prohibiting the initiation or continuation of proceedings in foreign courts or international arbitration and to impose fines for breach thereof.

III. The Tale of Hong Kong

In response to the proceedings brought in Russia, Linde initiated on 4 March 2023 arbitration before HKIAC, and obtained on 17 March 2023 an *ex parte* interim anti-suit injunction (“ASI”) from the HK Court of First Instance (“HKCFI”) seeking to restrain RCA from continuing the case before the court in St Petersburg.

On 31 March 2023, RCA applied by summons to discharge the ASI on the following grounds: (i) that the Russian courts had exclusive jurisdiction over the dispute pursuant to Article 248.1; (ii) that the arbitration agreement was invalid as a result of the operation of such mandatory rule; and (iii) that as a result of EU sanctions HK would be biased against RCA as a Russian entity as HK has a close connection to the UK which is unfriendly towards Russia and in similar way denies RCA’s access to justice.

In *Linde GMBH v. Ruschemalliance LLC* [2023] HKCFI 2409⁵⁾ Mimmie Chan J rejected RCA’s application to discharge the ASI for the following reasons. First, she affirmed the basic principle that HK is ready to grant an injunction to restrain proceedings brought in breach of an agreement to arbitrate [relying on *Donohue v Armco Inc* [2002] CLC 440; *Angelic Grace* [1995] 1 Lloyd’s Rep 87], unless RCA can show that there is a strong reason to the contrary. She further noted that when considering whether to grant an ASI there is no need for parties to prove that arbitration in HK is the more convenient forum as the court is not comparing *forum conveniens* but deciding whether or not to enforce the agreement to arbitrate. Given that the parties had agreed to arbitration in HK, she concluded that Russian law lacked jurisdiction over the matter. She rejected the expert evidence that as a matter of Russian law the dispute between the parties under the EPC Contracts gives rise to matters of public law, rather than private law. Noting that a question

³⁾ See Federal Law N 171-FZ, <http://publication.pravo.gov.ru/Document/View/0001202006080017?index=1>. English translation <https://www.acerislaw.com/wp-content/uploads/2020/07/Anti-Russian-Sanctions-Law-English.pdf>.

⁴⁾ Article 248.1(4).

⁵⁾ *Linde GMBH v. Ruschemalliance LLC* [2023] HKCFI 2409, https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=155389&QS=%2B&TP=JU.

of foreign law is a question of fact she noted that “on the plain reading of Article 248.1, the exclusive jurisdiction of the Russian Court may not apply if there is an agreement between the parties to submit their dispute to international arbitration”.⁶⁾ Second, in response of RCA’s claims that granting the ASI was neither just nor convenient given (i) the exclusive jurisdiction of Russian courts, and (ii) the invalidity of the arbitration agreement under Russian law, which renders any arbitral award unenforceable in Russia, she noted that the claim that Russian courts had exclusive jurisdiction is unfounded. Based on the evidence presented, she found that Article 248.1(4) applied only if foreign sanctions create obstacles to justice for a party in the dispute. The judge found RCA’s arguments to be “*grossly exaggerated, if not totally based on false premises*” as (i) EU sanctions have no legal effect in HK and (ii) RCA clearly had access to lawyers in HK which represented it from the time of the initial *ex parte* application for the ASI until the case before her and (iii) its choice of arbitrator, the former Chief Justice of HK, Geoffrey Ma, was confirmed by the HKIAC. Accordingly, she concluded that there was no indication that RCA faced any difficulties in relation to its dealings with the HKIAC as a result of the sanctions nor before courts in HK. Third, that there was no “strong” reason to discontinue the ASI, noting existing case law that if an arbitration agreement is valid and enforceable under the law chosen by the parties (in this case, HK law), the mere fact that a foreign court might assert jurisdiction under its own law should not, as a general rule, prevent courts in HK to grant an ASI. She found that the present case there was no “strong reasons” for suing in a non-contractual forum as the effect of EU sanctions was foreseeable at the time of contracting and arbitration in HK, as stipulated in the EPC Contracts, would provide a fair trial to RCA. Fourth, that Article 284.1 was inapplicable to the present case, and that there was, in fact, a valid arbitration agreement covering the dispute between the parties. Accordingly, Mimmie Chan J issued an enforcement order requiring RCA to take all necessary steps to seek a stay of and take no further steps in the Russian courts.

In August 2025, RCA lodged an application before Anthony Chan J in HKCFI to discontinue and set aside the ASI order made by Mimmie Chan J on the ground that RCA was not able to comply with it. In ***RusChemAlliance LLC v Linde GMBH [2025] HKCF 13720***⁷⁾ the learned judge rejected the application for the following reasons: (i) that this was not a case where RCA was unable to comply with the ASI order, but of compliance disadvantaging it; and (ii) that compliance with a court order is strict.

⁶⁾ *Ibid.*, paragraph 45.

⁷⁾ https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=171513&QS=%26%2340%3B%7BRusChemAlliance%C2%A0%7D+%25parties%26%2341%3B&ID=AAATwKAAAAADpbz A1&TP=JU.

The above rulings were confirmed in *Bank A v Bank B* [2024] HKCFI 2529.⁸⁾ In particular, in that case HKCFI affirmed that sanctions *per se* do not impede access to justice and granted an ASI together with an anti-enforcement injunction in favor of a German bank against a Russian bank, that was subjected to EU sanction.

Both cases illustrate the growing complexity at the intersection of EU sanctions and jurisdictional challenges in international arbitration. In both cases, HKCFI took a decisive stand by upholding an ASI restraining court proceedings initiated in Russia. The HK Court's rulings exemplify how the judiciary in HK is willing to protect the rights of parties who choose arbitration as their preferred mechanism of dispute resolution, affirming the sanctity of arbitration agreements in the face of conflicting legal actions.

IV. The Tale of London

With a hearing before the Russian Arbitrazh Court scheduled against it for 27 September 2023, UniCredit obtained from the English High Court an interim ASI to restrain them on an *ex parte* basis on 22 August 2023. It had applied to the English High Court to do so even though the seat of arbitration was in Paris.

Since RCA is not domiciled in England or Wales and has no presence there, the ability of the English court to grant an ASI depended on whether service could be effected on RCA out of the jurisdiction. This required three tests to be satisfied: (i) that there is a serious issue to be tried, (ii) that there is a good arguable case that the claim falls within one of the relevant gateways in Practice Direction 6B, and in particular, that the contract was governed by English Law (the “**Contract Gateway Test**”); and (iii) that England is the proper place in which to bring the claim (the “**Appropriate Forum Test**”). The first point was not disputed as between the parties.

The hearing with regard to the final relief was held on 22 September 2023 at which in an *extempore* judgement Sir Nigel Teare held that English courts did not have jurisdiction over RCA on the following two grounds.⁹⁾ First, that the starting point under *Enka v Chubb* [2020] UKSC 38,¹⁰⁾ in which the UK Supreme Court found that in the absence of a choice of law governing the arbitration agreement the parties' choice of English law as the governing law of the main contract generally governs the arbitration agreement, is negated by

⁸⁾ *Bank A v Bank B* [2024] HKCFI 2529, https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=163107&QS=%2B&TP=JU.

⁹⁾ *Unicredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30. <https://www.supremecourt.uk/cases/judgments/uksc-2024-0015>.

¹⁰⁾ *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, (“**Enka**”), <https://www.bailii.org/uk/cases/UKSC/2020/38.html>.

the non-statutory principle of French law (as the *lex arbitri*) whereby the existence and effectiveness of an arbitration agreement is determined in accordance with parties' common intention, which since the parties had chosen Paris as the seat of arbitration, was to be taken to be French law. Accordingly, the judge found that UniCredit did not satisfy the Contract Gateway Test as the arbitration agreement was governed by French law. Second, Sir Nigel Teare found that the ICC arbitration was the appropriate forum for UniCredit to seek damages for breach of the arbitration agreement. He, thus, found that the Appropriate Forum Test was also not satisfied albeit acknowledging that an ASI could not be obtained from a French court and an award of damages may be difficult to enforce.

As UniCredit appealed the decision, the interim ASI stayed in place. The Arbitrazh Court in St Petersburg suspended proceedings pending the appeal to the Court of Appeal and subsequently the appeal to the Supreme Court. Both the Court of Appeal¹¹⁾ and the Supreme Court held that the English court had jurisdiction and that both tests were satisfied. In particular, in ***UniCredit Bank GmbH v RusChemAlliance LLC [2024] UKSC 30***¹²⁾ the Supreme Court in an unanimous decision held that English law governed the arbitration agreement confirming its ruling in *Enka* noting that the fact that the courts of France as the seat of arbitration may take the view that French law is the governing law was not a good reason to depart from *Enka*. With reference to the Appropriate Court Test the court clarified, as had the HK court, that the case before it did not concern the issue of whether England is *forum conveniens* but whether or not England was the proper place to enforce the parties' agreement to arbitrate. Noting that “*where the contractually agreed forum is arbitration, the policy of securing compliance with the parties’ contractual bargain is further reinforced by the strong international policy of giving effect to agreements to arbitrate disputes. The main pillar on which international arbitration rests is the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention, which now has more than 170 state parties and has been implemented through national legislation in almost all contracting states*”.¹³⁾ It then went on to find that RCA had not sought to argue that Article 248.1 was a mandatory principle of foreign law (*lois de police*) which overrode English law by rendering the arbitration agreement null and void. It, therefore, held that (i) the power to grant injunctive relief does not derive from or require supervisory jurisdiction and is able to be exercised by courts other than the courts of the seat and in any event, on the evidence before it French courts would not have jurisdiction over RCA and

¹¹⁾ *Unicredit Bank GmbH v RusChemAlliance LLC [2024] EWCA Civ 64*, <https://www.bailii.org/ew/cases/EWCA/Civ/2024/64.html>.

¹²⁾ *Unicredit*, [2024] UKSC 30, [https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2024/30.html&query=\(2024\)+AND+\(UKSC\)+AND+\(30\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2024/30.html&query=(2024)+AND+(UKSC)+AND+(30)).

¹³⁾ *Ibid.*, at [68].

(ii) England was the proper place to seek an ASI due to the arbitral tribunal having no coercive power and the undisputed evidence that as a matter of French law French courts have no power to enforce an arbitral order prohibiting the continuation of court proceedings in Russia.

In a further twist, revealing the complexities sanctions and measures introduced to counter-sanctions have introduced in arbitration, UniCredit applied to the English Court of Appeal to revoke the anti-suit injunction in February 2025. It did so after RCA obtained a ruling from the St Petersburg court (i) prohibiting UniCredit from initiating arbitrations or court proceedings against RSA except in the Russian courts in respect of the Bonds; (ii) prohibiting UniCredit from continuing any proceedings or enforcing any judgments against RCA, except in Russian courts; (iii) obliging UniCredit to take all measures within its control to cancel the effect of the ASI by the UK Supreme Court within two weeks of its decision; and (iv) ordering UniCredit to pay RCA €250 million should it fail to comply with its decision. Weighing, on the one hand, that pursuing contempt of court proceedings in England would have little practical effect since RCA had no assets outside of Russia and its officers did not travel outside Russia and on the other hand the fact that it still had significant assets in Russia, UniCredit told the Supreme Court that it wished to have the ASI lifted and would proceed to have the dispute resolved before the court in St Petersburg. The Supreme Court obliged by finding that (i) UniCredit could not be considered as having been coerced in making this request and (ii) there were no public policy reasons which would militate against refusing the application since “UniCredit is a commercial party acting in its own interest and is entitled to tell the court that it no longer needs or wants the anti-suit injunction”.¹⁴⁾ The Court clarified that Article 11 (c) of the Regulation which was inserted in December 2024 prohibits EU Member States giving effect to any order made by the Russia Court pursuant to Article 248 of the APC did not have legal effect in UK and that no equivalent measures were adopted in the UK.

Although the Supreme Court’s decision granting ASI was welcomed by many in the international arbitration community as pro-arbitration, others noted that it was at odds with the approach taken in other leading arbitration hubs. In most jurisdictions around the world (including in HK) the default rule in absence of express parties’ choice is that the law governing the arbitration agreement is the law of the seat. As part of the modernization of the English Arbitration Act and on the recommendation of the Law Commission, which found that the principles in *Enka* to be “complex and unpredictable”¹⁵⁾ Section 6A(1)(b) of the English Arbitration Act 2025 provides that the law

¹⁴⁾ *Ibid.*, at [43].

¹⁵⁾ Law Commission, *Review of the Arbitration Act 1996: Final report and Bill* (Law Com No 413), published on 5 September 2023, paragraph 12.20, https://webarchive.nationalarchives.gov.uk/ukgwa/20250109103833mp_/https://cloud-platform-e218f50a

applicable to an arbitration agreement is the absence of an express agreement is the law of the seat of arbitration. The English Arbitration Act entered into force on 1 August 2025. Accordingly, going forward the English court will not be in a position to grant ASI in support of arbitrations in other jurisdictions as it did in the case of UniCredit.

As at the time of writing this article, the dispute under the Bonds is being heard by the St Petersburg Court and the dispute under the EPC Contracts in HK.

V. Conclusion

The tale of the two cities illustrates the growing complexity at the intersection of EU sanctions and jurisdictional challenges in international arbitration. The use of sanctions as a way to exert political and economic pressure is not new. However, the sanctions introduced against Russia after its invasion of Ukraine by the EU, in particular, have been much more extensive both in depth, sectors of the economy covered as well as breadth, for example sanctioning access to the SWIFT financial system. Secondary sanctions have also been adopted in recent sanctions packages by the EU sanctioning third parties including from China and India for doing business with Russian companies. In fact, in today's interconnected economy, no company is immune to the disruptions caused by the imposition of sanctions. In response to the broad-based sanctions introduced against Russian individuals and entities, Russia, as well as other countries subject to sanctions, have increased efforts to assert jurisdiction over disputes involving sanctioned parties by according jurisdiction to local courts.

The courts in jurisdictions outside the EU have found themselves in the cross-fire of these measures. The tale of the two cities illustrates how the courts in HK and UK have dealt with the challenges of sanctions as concerns the enforcement of arbitration agreements. It is clear from the HK and UK decisions that unilateral sanctions imposed by EU are not binding on their courts. The HK decision also makes clear that the introduction of sanctions does not *per se* automatically invalidate an arbitration agreement. The readiness of both courts to issue ASI to uphold arbitration agreements is also important in promoting trust in arbitration as a reliable mechanism for resolving cross border disputes.

Looking ahead, as the legal landscape continues to evolve, the principles established in these cases are likely to shape future arbitration practice. They reinforce the notion that parties should be able to rely on their chosen dispute resolution mechanisms, even in the face of external legal and political chal-

lenges. Preserving arbitration as an effective avenue for resolving international disputes contributes meaningfully to a resilient international and depoliticized legal framework that supports global trade and investment in an increasingly complex geopolitical environment. It contributes also to keeping and fostering peace.