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Russia: interim seizure of Unicredit’s assets by Russian court

An interim seizure of Unicredit’s assets was issued by the Commercial (*Arbitrazh*) Court of St Petersburg and the Leningrad Region during proceedings commenced by RusChemAlliance OOO (RCA).

What is it about?

In August 2023, RCA sued UniCredit Bank AG in front of the Commercial (*Arbitrazh*) Court of St Petersburg and the Leningrad Region seeking the recovery of about EUR 450 million, plus interest, under certain bank guarantees issued by UniCredit Bank AG in favour of RCA.

RCA argues that, due to Russian procedural counter-sanctions, the arbitration clause contained in the guarantees, which provided for ICC arbitration in Paris, is unenforceable and the Commercial (*Arbitrazh*) Court should be considered as having exclusive jurisdiction over the dispute pursuant to Russian law.

UniCredit Bank AG alleges that the proceedings commenced by RCA in Russia are in breach of the said arbitration clause and applied for an anti-suit injunction to the High Court of Justice of England and Wales (and further to the England and Wales Court of Appeal) in order to compel RCA to discontinue the Russian proceedings (the background of the dispute is described in the judgment **[2024] EWCA Civ 64**).

At the same time, UniCredit Bank AG filed a motion to the Commercial (*Arbitrazh*) Court of St Petersburg and the Leningrad Region, *inter alia*, to stay the proceedings until the issuance of the decision by the English Courts.

The Russian Court decided that by virtue of the provisions of paragraph 2 of part 1 of Article 248.1 of the Commercial (*Arbitrazh*) Procedure Code of the Russian Federation, the dispute falls within the exclusive jurisdiction of commercial (*arbitrazhnye*) courts of the Russian Federation, as a result of which the arbitration clause cannot be enforced.

However, the Russian Court stayed the proceedings until the issuance of the anti-suit injunction has been considered by the English Courts.

In April 2024, the Supreme Court of the United Kingdom dismissed the appeal against the anti-suit injunction previously granted by the England and Wales Court of Appeal. The injunction prevents RCA from continuing its claim against UniCredit Bank AG in Russia. Although the full judgment is not yet publicly available, on the basis of the reasoning of the appellate decision, it might be inferred that the English Supreme Court found that English Courts have jurisdiction based on the principles laid down in Enka's precedent. In a few words: the arbitration clause is governed by English law, as English law is the law governing the underlying agreement, although the arbitration proceedings are not seated in England; consequently, the English Courts are the proper venue to issue an anti-suit injunction concerning an agreement, i.e. the arbitration clause, governed by English law. It is worth noting that the Law Commission proposal for the reform of the English Arbitration Act contains the opposite principle: in the wake of an express choice by the parties, the arbitration clause is governed by the law of the seat. Under that principle, it would be more difficult to obtain an English anti-suit injunction in favour of French-seated arbitration proceedings (as in the case we are discussing).

Despite the decision of Supreme Court of the United Kingdom, the Russian proceedings were reinstated in May 2024 (the next hearing is set for 17 June 2024).

In the meantime, the Commercial (*Arbitrazh*) Court of St Petersburg and the Leningrad Region granted RCA request for interim seizure of Unicredit's assets for a total amount of approximately EUR 462 million by imposing:

- prohibition to dispose of the 100% quota of the Russian subsidiaries, namely UniCredit Leasing OOO and UniCredit Garant OOO, and of assets having a value over 5% of the total assets of abovementioned companies according to their relevant financial statements;
- seizure of UniCredit Bank AO and UniCredit Bank AG real estate properties, credit securities and funds on banking accounts.

RCA's request for interim seizure was based on the fact that failure to grant such seizures would cause significant damage to RCA and could make it impossible to

enforce the court's decision. RCA referred to the fact that the defendants refused to fulfil their obligations towards Russian legal entities. Furthermore, the defendants were taking measures to withdraw their assets from the Russian Federation. To confirm that, RCA submitted printouts of relevant publications in the media.

The Russian court, granting the remedy requested by RCA, found that the interim measures were aimed at preserving the existing state of relations (status quo) in order to ensure the further enforcement of the court's decision and that RCA proved the existence of reasons to take interim measures.

The Commercial (*Arbitrazh*) Court of St Petersburg and the Leningrad Region specified that correspondent banking accounts opened in the name of the defendants also contain funds from their clients, therefore the seizure of funds deposited in the relevant accounts can only be made in relation to funds belonging to the defendants themselves, but not to their clients.

It should be noted that this is not the only claim made by RCA against foreign banks demanding execution of guarantees. Similar legal proceedings were commenced by RCA against Deutsche Bank Aktiengesellschaft, Landesbank Baden-Wurttemberg, Bayerische Landesbank, Commerzbank Aktiengesellschaft. In relation to Deutsche Bank Aktiengesellschaft and Commerzbank Aktiengesellschaft the Russian Court granted similar interim measures in the course of the proceedings.

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