

# Commercial Court of Moscow accepts jurisdiction over dispute on a contract containing arbitration agreement due to sanctions against one party

by *Practical Law Arbitration*, with *Kulkov, Kolotilov and partners*

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In *Case No A40-264063/22*, the Commercial Court of Moscow considered a claim relating to the termination of a contract containing an arbitration agreement. The court established that it had exclusive jurisdiction, despite the arbitration agreement, due to the existence of sanctions imposed against a Russian party to the dispute.

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The Commercial Court of Moscow has determined a claim concerning the termination of a contract containing an arbitration agreement. The court found that it had exclusive jurisdiction despite the arbitration agreement, due to the sanctions imposed against one of the parties. Having established jurisdiction, the court went on to find that a unilateral termination of the contract was illegal.

In 2019, Russian Railways and Siemens executed a contract for the delivery of 13 high-speed electric trains, which included an arbitration agreement providing for arbitration at the Vienna International Arbitration Centre (VIAC). German law governed the contract.

In October 2022, Siemens served Russian Railways with a notice of termination of the contract due to the sanctions imposed against Russian companies.

Despite the arbitration agreement, Russian Railways filed a claim with the Moscow state court, referring to article 248.1 of the Commercial Procedure Code (CPC), which allows Russian courts to establish exclusive jurisdiction over a dispute involving Russian sanctioned entities.

Siemens contested the jurisdiction of the state court and raised a motion to leave the claim without consideration due to the arbitration agreement.

The Commercial Court of Moscow determined that it had jurisdiction under article 248.1 of the CPC. The court referred to EU sanctions against Russian Railways and applied the approach formulated by the Russian Supreme Court in *JSC Uraltransmash v PESA (Case No #60-36897/2020)*, in which it was held that the mere fact of sanctions against a Russian party is sufficient basis to conclude that the foreign forum could not objectively determine a dispute involving that party (see [Legal update, Russian courts to have exclusive jurisdiction in disputes involving sanctioned entities \(Russian Supreme Court\)](#)).

Having established its jurisdiction, the court considered the case on the merits. Notably, the court analysed relevant provisions of German law and found the unilateral termination of the contract to be invalid. According to articles 313-314 of the German Civil Code (Bürgerliches Gesetzbuch) termination is only allowed if adaptation or modification of the contract is not possible or is unacceptable. The court also indicated that the EU sanctions against Russian Railways are temporary and should continue only for six months.

The court also ordered Siemens to deliver the trains specified in the contract.

Siemens has until 21 March 2023 to file an appeal.

Case: *Case No. #40-264063/22 (21 February 2023)*.

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