

SCC tribunal's refusal to adjourn or suspend arbitration proceedings restricted sanctioned entity's access to justice (Commercial Court of the Tyumen Region)

by *Practical Law Arbitration*, with *Kulkov, Kolotilov & Partners*

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In *Case No A70-26488/2022*, the Commercial Court of the Tyumen Region in Russia prohibited arbitration proceedings at the SCC Arbitration Institute from continuing where one of the parties was a Russian sanctioned legal entity. The court held that the tribunal's refusal to adjourn or suspend the proceeding while the sanctioned party experienced difficulty engaging foreign lawyers and experts was a restriction on the sanctioned entity's access to justice.

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The Commercial Court of the Tyumen Region in Russia has prohibited the continuation of arbitration proceedings at the SCC Arbitration Institute involving a Russian sanctioned legal entity.

In 1992, an affiliate of Rosneft, JSC Tyumenneftegas (Tyumenneftegas) and the First National Petroleum Corporation (FNPC) executed a Swedish law contract to establish the enterprise "Tyumtex". The contract contained an arbitration agreement providing for SCC arbitration.

In 2018, the SCC tribunal issued an award worth USD70 million in favour of FNPC for the unlawful liquidation of the enterprise plus interest on that amount. The award was partially annulled by a Swedish state court in respect of penalty interest. In consequence, the FNPC reapplied to the SCC in 2021 and Tyumenneftegas requested the Russian court to prohibit the SCC proceedings from continuing under article 248.2 of the Commercial Procedure Code (CPC), which allows Russian courts to establish exclusive jurisdiction over a dispute involving Russian sanctioned entities.

The court upheld Tyumenneftegas' request.

The court stated that the EU sanctions imposed against Tyumenneftegas created "an obstacle to access to justice", referring to the Russian Supreme Court decision in *JSC Uraltransmash v PESA (Case No. #60-36897/2020)* (see [Legal update, Russian courts to have exclusive jurisdiction in disputes involving sanctioned entities \(Russian Supreme Court\)](#)).

The court referred to the fact that the English and Swedish lawyers that had originally been engaged, now refused to represent Tyumenneftegas. Moreover, the contract was governed by Swedish law, which necessitated the engagement of Russian lawyers. Tyumenneftegas' multiple attempts to engage other Swedish lawyers had been unsuccessful. The same logic was applied by the court with respect to the experts instructed by Tyumenneftegas, who had refused to continue providing services.

The court pointed out that the restriction on access to justice was demonstrated by the SCC's refusal to adjourn or suspend the proceedings while Tyumenneftegas sought new lawyers and experts.

Moreover, the court imposed a USD148 million penalty (equal to FNPC's claim), to be paid by FNPC to Tyumenneftegas in the event of FNPC's non-compliance with the prohibition against continuing the SCC proceedings.

Since the adoption of article 248.2 of the CPC in 2020, Russian courts have frequently prohibited foreign claimants from continuing arbitration or litigation proceedings against sanctioned Russian companies. However, this is the first example of the imposition of a penalty in such a significant amount.

FNPC has until 1 April 2023 to file an appeal.

Case: [Case No. A70-26488/2022](#) (1 March 2023).

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