

Sanctions and private law: contracts, force majeure and disputes

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Beyond public law, sanctions disrupt contracts. A sale or financing contract concluded before a sanction and rendered unperformable after it raises questions of force majeure, impossibility, termination and compensation that Geneva courts and arbitrators have had to decide in large numbers since 2022.¹ Sanctions clauses, which provide for the consequences of a new designation or prohibition, have become standard clauses in trading contracts and credit agreements. Their drafting is one of the fields in which Geneva's commodity trading lawyers, described in Part G, have developed particular expertise.

These disputes have a dimension specific to Geneva: contracts governed by Swiss law and subject to arbitration in Geneva, which are numerous in trade with Eastern Europe and Central Asia, have made the financial centre one of the places where the private-law consequences of Western sanctions are settled, including for Russian parties who find there a neutral jurisdiction that nonetheless applies the sanctions. This litigation, described in Part F, is a reminder that sanctions are, for Geneva as a legal centre, a source of activity as much as a constraint.

1 Notes

1. United Kingdom Supreme Court, RTI Ltd v MUR Shipping BV [2024] UKSC 18, 15 May 2024: charterparty for bauxite payable in dollars, US sanctions imposed on RTI's parent company in April 2018, offer of payment in euros refused; the reasonable endeavours wording of a force majeure clause does not oblige the affected party to accept performance that does not conform to the contract (payment in euros cannot be imposed in place of the stipulated payment in dollars); Art. 119 para. 1 of the Code of Obligations (CO) (droit-bilingue.ch): "An obligation is extinguished where its performance becomes impossible as a result of circumstances not attributable to the debtor". ↩

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