

Arbitration as the forum of the Eastern trade

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Contracts between Western traders and producers from the former Soviet Union seldom had reason to provide for the jurisdiction of Russian or Kazakh courts. The traders distrusted those courts, and the producers often distrusted the courts of the traders' home countries. Arbitration offered a neutral forum. Switzerland was one of the obvious seats for it, alongside London, Stockholm and Paris. Tribunals seated in Zurich and Geneva under the rules of the Swiss Chambers' Arbitration Institution or of the International Chamber of Commerce were available for disputes over deliveries, prices and prepayment contracts. Swiss arbitration law, which grants arbitral tribunals broad autonomy and limits the grounds for setting aside awards, contributed to this choice.

Swiss courts also played a part in the enforcement of arbitral awards against Eastern parties and in the recognition of Russian and Kazakh judgments. The Federal Supreme Court developed a substantial body of case law on the setting aside of awards in disputes with parties from the region. The Swiss seat has remained important after 2022, although Russian legislation now allows Russian parties to bring disputes involving sanctions before Russian courts, notwithstanding an arbitration clause.¹ Arbitrations between Western traders and Russian parties have multiplied since 2022, many of them concerning contracts that could not be performed because of the sanctions.

1 Notes

1. Cleary Gottlieb, "Amendments to the Russian Arbitrazh Procedure Code on Sanctions Related Disputes", 2020, clearygottlieb.com: Federal Law No. 171-FZ of 8 June 2020, in force 19 June 2020; Art. 248.1 gives Russian arbitrazh courts exclusive jurisdiction over disputes involving sanctioned persons, and Art. 248.2 allows injunctions against foreign court or arbitration proceedings. ↩

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