ARTICLE

SANCTIONED PARTIES AS CLAIMANTS IN INTERNATIONAL ARBITRATION

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Abstract

The imposition of international sanctions has created significant challenges for the exercise of rights in international arbitration, particularly where designated individuals and entities seek to pursue claims against private parties or sanctioning States. Although sanctions regimes generally do not extinguish the legal personality, contractual capacity or standing of sanctioned parties, they substantially restrict their ability to finance proceedings, engage legal representatives, constitute arbitral tribunals and enforce favourable awards. This paper examines the evolving legal position of sanctioned parties as claimants in international arbitration through a comparative analysis of the sanctions frameworks of the European Union, the United Kingdom and the United States. It distinguishes between access to adjudication and the satisfaction of claims, arguing that the principal obstacles arise not at the stage of commencing arbitration but through restrictions on financial transactions, arbitral costs, available remedies and enforcement. The paper further examines developments in commercial and investment arbitration, including the implications of Reibel, Belaruskali and the investment claims brought by sanctioned Russian entities against sanctioning States. It analyses the growing tension between international arbitration agreements and anti-arbitration measures, particularly under Articles 248.1 and 248.2 of the Russian Arbitrazh Procedure Code, alongside the European Union's increasingly expansive countermeasures. The paper also considers the implications of sanctions for arbitral seats, public policy, recognition and enforcement, and the fundamental guarantees of access to justice and fair trial. It argues that the contemporary sanctions framework is producing a fragmented arbitral landscape in which the choice of seat increasingly determines the practical value of arbitral rights. Ultimately, the paper advocates a balanced approach that preserves the integrity of sanctions while ensuring that procedural access to arbitration is not rendered illusory through disproportionate restrictions on the pursuit and enforcement of legitimate claims.

Keywords - International Arbitration, Economic Sanctions, Sanctioned Parties, Investment Arbitration, Recognition and Enforcement of Arbitral Awards

I. INTRODUCTION

A sanctioned individual or entity may initiate international arbitration. None of the principal sanctions regimes deprives a designated person of legal personality, of the capacity to contract, or of standing to bring a claim. The English Court of Appeal has affirmed that the right of access to a

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court is a fundamental common law right, which designation does not displace in the absence of clear statutory authority.[1]

Whether a sanctioned party may file is, however, the least interesting form of the question. The more searching enquiry is whether such a claimant can fund the proceedings, retain counsel, constitute a tribunal, obtain an award that survives review, and then convert that award into money. At each of those stages the answer is increasingly conditional.

The law has settled upon a distinction between access and satisfaction: sanctioning States generally leave the door to adjudication open while keeping the till locked. The European Union has gone further. Since 2024 it has begun to treat the initiation of certain claims as itself a wrong, attracting liability in damages and, potentially, a transaction ban.[2] That shift is the most significant development in this field, and it remains underexamined in the commentary.

II. THREE DISTINCT QUESTIONS

A sanctioned claimant confronts three distinct legal questions, and conflating them is the most common analytical error in this area. The first concerns capacity and consent: whether designation affects the claimant's standing or the validity of the arbitration agreement. It almost never does. A designated person remains a legal person, and an arbitration agreement is not discharged merely because one of its parties has been listed. The Advocate General's recent Opinion in *Reibel* proceeds on precisely that footing: it treats recourse to arbitration as unaffected and locates the effect of sanctions at the stage of relief.[3]

The second question concerns arbitrability and public policy: whether a tribunal may determine a dispute whose subject matter is a sanctions-affected contract. Generally it may, but the tribunal may be precluded from granting certain relief, and its award will be reviewed against the public policy of the seat and of any enforcement forum.[4] The third question concerns logistics and payment: whether the claimant may lawfully pay its lawyers, the institution's fees and the advance on costs,

[1] *Mints v PJSC National Bank Trust* [2023] EWCA Civ 1132, [178]–[179], [210].
[2] Council Regulation (EU) 2024/1745 of 24 June 2024 amending Regulation (EU) No 833/2014 [2024] OJ L 2024/1745, inserting arts 5ab and 11a into Regulation 833/2014; Robert Bradshaw and Adam Grant, 'Russia Update: EU Strikes Back Against Russian Countersanctions' (*LALIVE*, 5 July 2024) <https://lalive.law/?p=10297> accessed 13 November 2026.
[3] Case C-802/24 *NV Reibel v JSC VO Stankoimport*, Opinion of AG Biondi delivered 26 February 2026, para 54.
[4] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention), art V(2)(b); UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006), art 34(2)(b)(ii).

and whether it may receive the proceeds of an award. It is at this third stage that most sanctioned claims are, in practice, won or lost.

The governing principle may be stated shortly. Sanctions regulate assets and transactions rather than access to adjudication. The difficulty is that almost every step in an arbitration involves a transaction.

III. WHAT THE PRINCIPAL REGIMES PROHIBIT

None of the three principal Western regimes forbids a designated person from commencing an arbitration; each instead regulates the money that must move around one. Under European Union law, commencement is not prohibited as such, but Article 11 of Regulation 833/2014 bars the satisfaction of claims made by listed or Russian persons in connection with contracts and transactions affected by the sanctions.[5] Under the law of the United Kingdom, the Court of Appeal held in *Mints* that the entry of a money judgment in favour of a designated person is not a prohibited act, because a court giving judgment is not 'making funds available' to anyone.[6] Under the United States' Russia programme, an OFAC general licence authorises the initiation and conduct of legal, arbitration or administrative proceedings, but only before United States federal, state or local courts or agencies; any other legal services to a blocked person require a specific licence.[7]

The position is similar as regards the claimant's own lawyers. European Union law permits national competent authorities to release frozen funds for reasonable professional fees and expenses associated with the provision of legal services.[8] The United Kingdom operates a succession of time-limited general licences for legal fees, subject to financial caps and reporting obligations.[9] The United States authorises payment for permitted legal services from funds originating outside the United States, and otherwise requires a specific licence.[10]

Payments to the tribunal and the administering institution raise the same difficulty in sharper form. Within the European Union a national licence is required, and the *Belaruskali* proceedings, discussed

[5] Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1, art 11.
[6] *Mints* (n 2) [201]–[202], [210].
[7] 31 CFR § 587.506(a)(3), (b).
[8] Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L78/6, art 4(1)(b).
[9] Office of Financial Sanctions Implementation, 'OFSI General Licences' (*GOV.UK*) <https://www.gov.uk/government/collections/ofsi-general-licences> accessed 13 November 2026.
[10] 31 CFR § 587.507(a).

below, show that obtaining one may take months.[11] The United Kingdom has issued a dedicated Arbitration Costs General Licence permitting payments to arbitrators and arbitral institutions, capped at £500,000 per arbitration, with any balance requiring a specific licence.[12] In the United States a specific licence is generally needed, although the official business of the International Centre for Settlement of Investment Disputes is separately authorised.[13]

Adverse costs and the collection of awards complete the picture. Since April 2026, a new Article 5c of Regulation 269/2014 has permitted the release of frozen funds to satisfy an award of arbitration costs against a listed person, but only where that person itself initiated the arbitration after its listing.[14] English law, after *Mints*, permits OFSI to license a designated person's payment of an adverse costs order.[15] As to collection, the satisfaction of claims caught by Article 11 is barred within the European Union, and certain investor-State awards rendered outside the Union are now denied recognition there.[16] In the United Kingdom, payment to a designated person requires a licence; and in the United States the enforcement of any arbitral award against blocked property is prohibited unless licensed.[17]

The structural lesson is consistent across all three regimes: adjudication is treated as a right, while the transfer of value is treated as a privilege. Two traps deserve emphasis. First, the United States general licence is drafted by reference to proceedings before United States courts or agencies. On its face it does not cover United States counsel commencing a Paris- or London-seated arbitration on behalf of a blocked person, and prudent practice is to seek a specific licence. Second, the European Union's new costs derogation is deliberately asymmetric. A listed person that commences an arbitration and loses may have frozen funds released to pay its opponent's costs, but not its own,

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[11] *OJSC Belaruskali v Republic of Lithuania*, PCA Case No 2024-03, Procedural Order No 3 (24 June 2024) paras 2.4–2.6, 2.10 <https://www.italaw.com/sites/default/files/case-html-files/italaw182462_Procedural-Order-No-3_2024-06-24.html> accessed 13 November 2026.

[12] Office of Financial Sanctions Implementation, 'General Licence INT/2025/5787748: Arbitration Costs' (publication notice, 16 July 2026) <https://www.gov.uk/government/publications/ofsi-general-licence-int20255787748> accessed 13 November 2026.

[13] 31 CFR § 587.510(b).

[14] Council Regulation (EU) 2026/511 of 23 April 2026 amending Regulation (EU) No 269/2014 [2026] OJ L 2026/511, inserting art 5c; Markus Burgstaller and Iris Sauvagnac, 'EU's 20th Sanctions Package: Sharpening the EU's Arbitration Toolkit against Retaliatory Russian Litigation' (*Hogan Lovells Cadwalader*, 28 April 2026) <https://www.hlc.com/en/publications/-eus-sanctions-package-sharpening-the-eus-arbitration-toolkit-against-retaliatory-russian-litigation> accessed 13 November 2026.

[15] *Mints* (n 2) [215].

[16] Council Regulation (EU) 2025/1494 of 18 July 2025 amending Regulation (EU) No 833/2014 [2025] OJ L 2025/1494, inserting art 11(2); Hogan Lovells, 'EU's 18th Sanctions Package Takes Aim at Investor-State Dispute Settlement: Another Layer to the EU's Sanctions Toolkit' (*JD Supra*) <https://production.jdsupra.com/legalnews/eu-s-18th-sanctions-package-takes-aim-7976824> accessed 13 November 2026.

[17] 31 CFR § 587.506(d).

and the derogation does not extend to damages or interest. Recital 6 of Regulation 2026/511 states the purpose plainly: to discourage listed persons from initiating arbitral proceedings after their designation.[18]

IV. COMMERCIAL ARBITRATION: HEARD, BUT NOT NECESSARILY PAID

Standing is not the obstacle. Designation does not extinguish a party's right to be heard, and a tribunal that fails to afford a sanctioned party a full opportunity to present its case exposes its award to annulment and to refusal of recognition.[19] Procedurally, the sanctioned claimant is an ordinary claimant.

Nor, at least within the European Union, is arbitrability the obstacle. The leading authority is the Opinion of Advocate General Biondi in *Reibel*. JSC VO Stankoimport, a Russian buyer, had commenced a Stockholm-seated UNCITRAL arbitration against NV Reibel, a Belgian supplier whose export licence had been refused by the Belgian authorities. The tribunal dismissed the claim for damages under Article 11 of Regulation 833/2014, but ordered repayment of the advance with interest, reasoning that restitution merely restored the parties to their pre-contractual position.[20]

The Advocate General drew a sharp line between hearing a claim and satisfying it. In his view, Article 11(1) does not preclude parties from having recourse to arbitration in respect of a claim that it catches, but no satisfaction may be granted on that claim.[21] Article 11(1) forms part of European Union public policy, and a national court reviewing the award must examine compliance with it, of its own motion where appropriate, and set aside an award that offends it.[22] On his reading, the claim for repayment of the advance, together with interest, was itself a 'claim' that must not be satisfied, so that the award should fall.[23] The Court's judgment remains awaited at the time of writing; the Opinion is not binding, but it is the best available guide.

Three consequences follow for a sanctioned claimant. First, it must plead to the gap: where Article 11 applies, the only recoverable heads are those that fall outside it, and after *Reibel* even restitution of an advance is exposed. Secondly, it must expect scrutiny rather than deference. An award in its

[18] Burgstaller and Sauvagnac (n 15).
[19] UNCITRAL Model Law (n 5) arts 18, 34(2)(a)(ii); New York Convention (n 5) art V(1)(b).
[20] Court of Justice of the European Union, 'Advocate General's Opinion in Case C-802/24 Reibel' (Press Release No 23/26, 26 February 2026) <https://curia.europa.eu/site/upload/docs/application/pdf/2026-02/cp260023en.pdf> accessed 13 November 2026.
[21] *Reibel* (n 4) para 54.
[22] Ibid paras 69, 76–78.
[23] Ibid paras 82, 90, 95.

favour rendered at a seat within the Union will be tested against public policy, and the eighteenth package has confirmed that Article 11 applies 'including in out-of-court settlement proceedings', closing the route of settlement.[24] Thirdly, it must choose its seat with the endgame in mind, since a seat within the Union guarantees an annulment forum that applies European Union public policy. That, rather than any doubt about judicial independence, is the real reason sanctioned parties contest the seat so vigorously.

Payment for the arbitration is the practical choke point. The clearest treatment arises in an investment case, although its reasoning is of general application. In *Belaruskali*, the claimant informed the tribunal that its assets were frozen under the regimes of the European Union, the United States, the United Kingdom, Switzerland and others, and that its bank required a licence from the Dutch Ministry of Finance before it could pay its €300,000 share of the deposit into the account held by the Permanent Court of Arbitration.[25] Lithuania sought termination of the proceedings under Article 41(4) of the 1976 UNCITRAL Arbitration Rules.[26]

The tribunal, presided over by Professor Gabrielle Kaufmann-Kohler, refused. It held that Article 41(4) does not justify termination where a party claims, on plausible grounds, that it is temporarily unable to pay, and makes all reasonable efforts to overcome that inability.[27] It equally declined an indefinite suspension, which would offend both the parties' interest in the timely resolution of the dispute and the tribunal's duty of efficiency, and instead suspended the proceedings for approximately ten weeks.[28] That balance is correct and is likely to be followed: sanctions excuse delay, but not inertia.

V. INVESTMENT ARBITRATION: SUING THE SANCTIONING STATE

The most consequential form of the question is whether a sanctioned investor may sue the State that has frozen its assets. It may, and several have done so. Mikhail Fridman has brought a claim against Luxembourg under the 1989 bilateral investment treaty between the Belgium-Luxembourg Economic Union and the Soviet Union, reportedly seeking approximately USD 16 billion for the freezing of his assets following his listing by the European Union.[29] He has brought a separate claim

[24] Hogan Lovells (n 17).
[25] *Belaruskali*, Procedural Order No 3 (n 12) paras 2.1–2.6.
[26] Ibid paras 3.4–3.5; UNCITRAL Arbitration Rules (1976), art 41(4).
[27] *Belaruskali*, Procedural Order No 3 (n 12) paras 4.5–4.10.
[28] Ibid paras 4.13–4.15.
[29] 'Mikhail Maratovich Fridman v. Luxembourg' (*IAReporter*) <https://www.iareporter.com/arbitration-cases/mikhail-maratovich-fridman-v-luxembourg/> accessed 13 November 2026; Güneş Ünüvar, 'Investment Arbitration as Ransom? The EU Sanctions Regime and "Administrative Chill"' (*EJIL: Talk!*, 15 October 2026)

against the Netherlands under the 1989 treaty between the Netherlands and the Soviet Union.[30] Belaruskali, the Belarusian potash producer, is pursuing Lithuania under the 1999 treaty between Belarus and Lithuania, claiming USD 12,090,167,971 in respect of its investments in the transportation, storage and transshipment of fertilisers.[31] All three claims are pending.

Jurisdiction is the first and largest obstacle. Many Soviet-era treaties confine investor-State arbitration to disputes concerning the amount or payment of compensation for expropriation, and tribunals have divided on whether such wording permits them to determine whether an expropriation occurred at all. The awkward precedent for Mr Fridman is *Berschader v Russian Federation*, in which the tribunal declined jurisdiction under the narrow clause of the very treaty between the Belgium-Luxembourg Economic Union and the Soviet Union that he now invokes.[32] Other tribunals have been more receptive. The *Renta 4* tribunal treated any dispute in which the State denies an expropriation as a dispute about whether compensation is 'due', while the *RosInvestCo* tribunal reached a similar result by importing a broader dispute clause through the most-favoured-nation provision.[33] The scope of the narrow clause is therefore likely to be the principal battleground.

The merits will turn on whether an asset freeze is a taking. A freeze is, in principle, temporary and reversible, and the respondent State will characterise it as a regulatory or security measure rather than a deprivation. Scholarship has already argued that even a successful claim of this kind should not normally lead to large sums of damages, and should be resolved primarily through non-pecuniary remedies.[34]

The seat has become a proxy contest over neutrality, and two procedural orders of 2026 now frame the field. In *Fridman v Netherlands*, the tribunal excluded Geneva on the ground that it would not

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<https://www.ejiltalk.org/investment-arbitration-as-ransom-the-eu-sanctions-regime-and-administrative-chill/> accessed 13 November 2026.

[30] *Mikhail Maratovich Fridman v Kingdom of the Netherlands*, PCA Case No 2026-30, Procedural Order No 2 (25 May 2026) <https://www.italaw.com/sites/default/files/case-html-files/italaw181138-Fridman-v-Netherlands-Procedural-Order-No-2-Seat-of-the-Arbitration-May-25-2026.html> accessed 13 November 2026.

[31] Permanent Court of Arbitration, 'PCA Case No 2024-03: OJSC Belaruskali v The Republic of Lithuania' (press releases, 16 September 2024 and 21 January 2025) <https://pca-cpa.org/en/news/pca-press-release-pca-case-no-2024-03-ojsc-belaruskali-v-the-republic-of-lithuania/> and <https://pcacases.com/web/sendAttach/67241> accessed 13 November 2026.

[32] *Vladimir Berschader and Moïse Berschader v Russian Federation*, SCC Case No 080/2004, Award (21 April 2006) para 155, as discussed in Elisabeth Tretthahn-Wolski and Marija Dobrić, 'Russia's Narrow Arbitration Clauses – Can Foreign Investors Bring BIT-Claims for Expropriation under MFN Clauses?' (*Kluwer Arbitration Blog*, 5 July 2022) <https://legalblogs.wolterskluwer.com/arbitration-blog/russias-narrow-arbitration-clauses-can-foreign-investors-bring-bit-claims-for-expropriation-under-mfn-clauses/> accessed 13 November 2026.

[33] Tretthahn-Wolski and Dobrić (n 33).

[34] Toni Marzal, 'Damages (and Non-Pecuniary Remedies) for Sanctions in Breach of International Investment Law' (2025) 52 Legal Issues of Economic Integration 393.

be appropriate to select a seat in a State that had adopted sanctions similar to those at issue in the dispute, specifically against the claimant.[35] It excluded Hong Kong in light of the Netherlands' firm and publicly voiced objection, fixed the seat in the Dubai International Financial Centre by reference to the neutral position of the United Arab Emirates on sanctions, and expressly reserved a power to move the seat as a measure of last resort.[36]

In *Belaruskali*, a differently constituted tribunal refused to move the seat from Geneva to the Dubai International Financial Centre or Singapore. It held that a change of seat may be ordered only where changed circumstances mean that maintaining the existing seat would significantly impair a party's right to a fair trial; that the prospect of further sanctions measures was speculative and did not meet that standard; and that the order in *Fridman* was distinguishable because it fixed a seat at the outset rather than reconsidering one already fixed.[37]

Read together, the two orders yield a workable rule. At the outset, a tribunal may avoid a seat in a State that has sanctioned the claimant in terms similar to the measures in dispute; once the seat has been fixed, however, it will be moved only if the claimant's right to a fair trial is actually jeopardised. Claimants should accordingly press their objections at the first procedural conference.

The European Union has also constructed a shield specific to investment arbitration. Regulation 2025/1494, adopted as part of the eighteenth package in July 2025, bars recognition within the Union of awards in investor-State proceedings conducted outside it that would satisfy sanctions-related claims of listed persons. It permits Member States and the Union itself to claim damages and costs from a sanctioned claimant that brought such proceedings, and obliges Member States to raise every available objection to recognition and enforcement.[38] A sanctioned investor that succeeds abroad may therefore face a damages claim in Europe for having brought the case at all.

There is, finally, a strategic paradox: a claim may achieve its object without ever reaching an award. On 22 September 2026 the Council removed Mr Fridman from the European Union's sanctions list. Commentators have linked Luxembourg's support for that delisting to the risk posed by a claim equivalent to roughly 16 per cent of the country's annual gross domestic product, and the claim has

[35] *Fridman v Netherlands* (n 31) para 30.
[36] Ibid paras 31, 40–41.
[37] *OJSC Belaruskali v Republic of Lithuania*, PCA Case No 2024-03, Procedural Order No 8 (16 September 2026) paras 33, 36, 41 <https://www.italaw.com/sites/default/files/case-documents/ca/N11108/italaw19600275%20-%20OJSC%20Belaruskali%20v.%20Lithuania%20-%20Procedural%20Order%20No.%208%20-%20September%2016%2C%202026.pdf> accessed 13 November 2026.
[38] Regulation 2025/1494 (n 17), inserting arts 11(2), 11e and 11f into Regulation 833/2014; Hogan Lovells (n 17).

not been withdrawn.[39] Whether that represents legitimate leverage or 'administrative chill' is the policy question that this field must now confront.

VI. THE ANTI-ARBITRATION TURN

Many sanctioned Russian parties have answered the question by declining to arbitrate at all. Since 2020, Articles 248.1 and 248.2 of the Arbitrazh Procedure Code of the Russian Federation have permitted a Russian party affected by foreign sanctions to bring its dispute before the Russian courts notwithstanding a foreign arbitration agreement, and to obtain an injunction restraining the foreign proceedings, backed by a penalty of up to the amount claimed abroad.[40]

The English courts have resisted. In *UniCredit Bank GmbH v RusChemAlliance LLC*, the Supreme Court upheld a final anti-suit injunction restraining Russian proceedings brought in breach of agreements providing for ICC arbitration in Paris, holding that the arbitration agreements were governed by English law and that England was the proper place in which to grant relief.[41] RusChemAlliance had sued in Russia after UniCredit refused, on the ground of sanctions, to pay under performance bonds.

The Russian response has since escalated. In the *Wintershall Dea* litigation, the Commercial Court of Moscow enjoined the claimant, its counsel and the arbitrators from continuing an Energy Charter Treaty arbitration against the Russian Federation. On 21 November 2025 it held the claimant, its counsel and the two remaining arbitrators jointly and severally liable for €7.5 billion for non-compliance.[42] In February 2026, a court in St Petersburg prohibited OMV from enforcing any arbitral or court decision against Gazprom outside Russia, including any award in a pending ICC arbitration.[43]

The European Union has responded package by package, moving progressively from defence to attack. The fourteenth package of June 2024 introduced a transaction ban for persons who invoke Article 248 against operators in the Union, together with damages claims in Member State courts for losses caused by third-country proceedings and by Russian seizures of assets.[44] The fifteenth

[39] Ünüvar (n 30).
[40] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30; Burgstaller and Sauvagnac (n 15).
[41] *UniCredit* (n 41).
[42] Case No A40-92702/2025 (Commercial Court of Moscow), as reported in Burgstaller and Sauvagnac (n 15) and Kulkov, Kolotilov & Partners, 'Russian Court Recovers EUR7.5 Billion Penalty for Anti-Arbitration Injunction Violation in ECT Arbitration' <https://kkplaw.ru/en/russian-court-recovers-eur7-5-billion-penalty-for-anti-arbitration-injunction-violation-in-ect-arbitration-commercial-court-of-moscow/> accessed 13 November 2026.
[43] Burgstaller and Sauvagnac (n 15).
[44] Regulation 2024/1745 (n 3) arts 5ab, 11a, 11b; Bradshaw and Grant (n 3).

package of December 2024 required Member States to refuse recognition of Russian decisions made under Article 248.[45] The eighteenth package of July 2025 added the investment-specific measures described above. The twentieth package of April 2026 empowered Member State courts to grant anti-suit injunctions backed by penalties, safeguarded access to proceedings in Member States, and introduced the release of frozen funds for costs where a listed person initiates an arbitration.[46] Most recently, the twenty-first package of July 2026 introduced anti-enforcement orders backed by penalties, extended non-recognition to any Russian decision concerning a sanctions-affected contract whatever its legal basis, and extended damages claims to any counterparty involved in prohibited activity.[47]

The cumulative effect is a pincer. A sanctioned party that turns to the Russian courts risks a transaction ban, anti-suit and anti-enforcement orders, and liability in damages in Europe. A sanctioned party that initiates arbitration instead faces Article 11, exposure to costs under the new derogation and, in investor-State cases, compensation claims under Article 11e.

This raises a genuine question of access to justice. The position of the European Union is that sanctions would be hollow if listed persons could litigate around them. The counter-argument is that a right to arbitrate which may be exercised only at the risk of liability in damages is not much of a right. So far as the reported case law reveals, the Court of Justice has not yet tested these provisions against the right to an effective remedy and to a fair trial guaranteed by Article 47 of the Charter of Fundamental Rights.[48] When it does, that decision is likely to be the most important in this field.

VII. ENFORCEMENT: AN AWARD IN SUSPENDED ANIMATION

An award in favour of a sanctioned claimant is valid; in most sanctioning jurisdictions it is also, for the time being, uncollectable. The courts have converged upon a middle position, which may be summarised as recognising the debt while deferring its payment.

In the United States, the Ninth Circuit in *Ministry of Defense of Iran v Cubic Defense Systems* confirmed an ICC award in favour of a sanctioned Iranian ministry under the New York Convention.

[45] Peter Burrell and others, 'EU's 21st Russia Sanctions Package: Expanded Litigation and Arbitration Protections for EU Persons' (*Willkie Farr & Gallagher*, 18 August 2026) <https://www.willkie.com/publications/2026/08/eus-21st-russia-sanctions-package-expanded-litigation-and-arbitration-protections-for-eu-persons> accessed 13 November 2026.
[46] Council Regulation (EU) 2026/506 of 23 April 2026 amending Regulation (EU) No 833/2014 [2026] OJ L 2026/506, inserting arts 5aj and 11ca; Regulation 2026/511 (n 15) art 5c; Burgstaller and Sauvagnac (n 15).
[47] Council Regulation (EU) 2026/1848 of 23 July 2026 amending Regulation (EU) No 833/2014 [2026] OJ L 2026/1848, replacing arts 11a(1), 11c and 11ca; Burrell and others (n 46).
[48] Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 47.

Although the sanctions prohibited payment without an OFAC licence, they did not prohibit confirmation, and the possibility that a licence might be granted supported confirming the award.[49] The current Russia regulations state the same distinction expressly.[50] In England, *Mints* establishes that judgment may be entered for a designated person, leaving payment and execution as licensable steps.[51] Within the European Union, enforcement must respect Article 11 as a matter of public policy, and certain investor-State awards are now denied recognition altogether.[52]

The most considered treatment comes from Switzerland. In decision 4A_305/2025 of 13 March 2026, the Federal Supreme Court refused to enforce an LCIA costs award in favour of an Angolan company controlled by a sanctioned Russian shareholder. It did not, however, treat the claim as extinguished by impossibility, as the cantonal court had done. It characterised the sanctions instead as a statutory deferral of the claim: the debt survives, cannot be enforced while the sanctions remain in force, and the limitation period is tolled in the meantime.[53]

The Swiss model should be followed. It preserves both the integrity of the award and the policy of the sanctions, and it gives the sanctioned claimant a reason to keep its award alive rather than abandon it. That matters because sanctions end. Mr Fridman was delisted by the European Union in September 2026, and a creditor holding a deferred but unextinguished award is positioned to enforce as soon as the obstacle is removed. On the Swiss approach, an award becomes a dormant asset that revives upon delisting.

Outside the sanctioning bloc, the picture differs. In the dispute over the seat in *Fridman v Netherlands*, the claimant contended that foreign sanctions, including those of the European Union, form no part of the public policy of Hong Kong, and the tribunal relied upon the neutral stance of the United Arab Emirates on sanctions in selecting the Dubai International Financial Centre.[54] If such jurisdictions maintain that position, enforcement against assets located there may be possible.

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[49] *Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v Cubic Defense Systems Inc* 665 F 3d 1091 (9th Cir 2011).
[50] 31 CFR § 587.506(d).
[51] *Mints* (n 2) [210], [215].
[52] *Reibel* (n 4) para 78; Regulation 2025/1494 (n 17).
[53] Swiss Federal Supreme Court, Decision 4A_305/2025 (13 March 2026), as summarised in Niklaus Zaugg and Marzia Schilleci, 'Swiss Federal Supreme Court Rules that Sanctions Suspend Enforcement of Arbitral Awards' (*CMS*, 19 May 2026) <https://cms.law/en/che/legal-updates/swiss-federal-supreme-court-rules-that-sanctions-suspend-enforcement-of-arbitral-awards> accessed 13 November 2026; see also *Belaruskali*, Procedural Order No 8 (n 38) para 39.
[54] *Fridman v Netherlands* (n 31) paras 13, 41.

The anti-enforcement orders introduced by the twenty-first package are, however, designed precisely to restrain such enforcement against operators in the Union, in any jurisdiction.[55]

VIII. PRACTICAL IMPLICATIONS

For the sanctioned claimant and its counsel, the first task is to map every regime that touches the claimant, its owners and controllers, its counsel, the institution's bank, the arbitrators and the hearing venue, bearing in mind that the tests of ownership and control differ between regimes. Licences for legal fees, the institution's deposit, and the costs of experts and hearings should be secured before filing, and every step should be documented, since *Belaruskali* shows that demonstrable diligence is what preserves the claim.[56] Where European Union law may apply, the heads of claim should be pleaded around Article 11 and kept separate, so that a public policy objection to one does not infect the award as a whole. Objections to the seat should be raised at the first procedural conference, since a later change requires proof that the right to a fair trial is actually impaired.[57] Exposure to costs under Article 5c should be priced in, and enforcement should be planned before filing, with any award treated as a dormant asset wherever delisting is realistic.

A respondent, whether an operator in the Union or a State, should not assume that the claim is barred. It is arbitrable, and the respondent's protection lies at the stages of satisfaction and enforcement. Faced with a claimant that cannot pay, a respondent should pay its own share of the deposit and press for a time-limited suspension rather than indefinite delay. It should preserve evidence of its costs with a view to a claim under Article 11a or Article 11e and, if the counterparty resorts to the Russian courts, consider seeking an anti-suit or anti-enforcement order from a Member State court under Article 11ca.

Arbitrators and institutions should treat delays caused by licensing as a matter of due process rather than of default. Arbitrators should confirm their own exposure to sanctions, including exposure to penalties under Article 248, before accepting an appointment. Awards, finally, should keep the heads of relief distinct, so that a reviewing court can sever any that offend public policy.

IX. CONCLUSION

A sanctioned person may initiate international arbitration, and the law of every major seat protects its right to be heard once it does so. What has changed since 2022 is the price of exercising that right.

[55] Burrell and others (n 46).
[56] *Belaruskali*, Procedural Order No 3 (n 12) para 4.6.
[57] *Belaruskali*, Procedural Order No 8 (n 38) para 33.

The United States and the United Kingdom continue to treat sanctioned claimants largely as a problem of licensing. The European Union has gone further and now deliberately shapes incentives: frozen funds are released for costs only against a listed claimant that initiated the arbitration and lost, sanctioned investors face compensation claims, and those who litigate elsewhere face anti-suit and anti-enforcement orders. Russia, for its part, has made participation in foreign arbitration a personal risk for counsel and arbitrators.

The result is a fragmented system in which the seat, rather than the treaty or the contract, increasingly determines the outcome. Three developments warrant close attention in 2027: the judgment of the Court of Justice in *Reibel*, the first jurisdictional decisions in the *Fridman* claims, and the first Member State judgment under Article 11e. Each will reveal whether the right to arbitrate survives sanctions in substance, or only in form.