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Ref. No. RAA 1/21042025

Constitutional Court of the  
Russian Federation  
190000, St. Petersburg  
Senate Square, 1

Case No. 2269/15-01/2025

## **I. About this amicus curiae**

Dear Justices of the Constitutional Court of the Russian Federation,

1. The Constitutional Court of the Russian Federation (the "**Court**") is in receipt of the case **No. 2269/15-01/2025**. The parties to the case before the commercial courts of the Russian Federation have been **Ost-West Handelsbank SE i.l. (OWH SE former VTB Bank Europe)** and **PJSC VTB Bank**. We understand that the subject of the Court's consideration may be the issues of compliance of Articles 248.1 and 248.2 of the APC RF [Commercial Procedure Code of the Russian Federation] with of the Constitution of the Russian Federation.

2. The purpose of this letter is to provide the Court with additional information that may be helpful in interpreting the concepts of "access to justice" and "impartiality" against the backdrop of unprecedented and illegitimate unilateral restrictive measures imposed by third countries against Russian persons. In addition, the Association of Participants for the Promotion of Arbitration ("**Russian Arbitration Association**") considers it necessary to bring to the Court's attention the role of Hong Kong as a special administrative region of the People's Republic of China, Hong Kong law and the Hong Kong International Arbitration Centre ("**HKIAC**") in providing opportunities to protect the interests of Russian businesses in international markets.
3. The Russian Arbitration Association was established in 2013 and currently has a broad membership base including leading Russian law firms, lawyers, representatives of legal science engaged in the resolution of foreign economic disputes in arbitration courts (international arbitration). The objectives of the Arbitration Association are to promote the development of international arbitration and arbitration proceedings in Russia, increase the attractiveness of Russia as a place of arbitration, promote Russian arbitrators and protect the interests of Russian business abroad. For more information about the Association, please visit [www.arbitration.ru](http://www.arbitration.ru).
4. Each of the lawyers involved in the preparation of this letter (the authors are listed at the end of the letter) has confirmed that neither the lawyer nor the law firm with which he is associated represents or has represented the disputing parties in this case.
5. We realise that the legal provisions allowing for the filing of initiative scientific opinions (*amicus curiae*) has been removed from the Rules

of the Constitutional Court of the Russian Federation. Nevertheless, we hope that the distinguished judges will find this analysis useful.

## **II. Cases involving Russian parties and shift to alternative arbitration centers**

6. The entry of Russian business into international markets has created the need to ensure effective legal protection of its interests. International commercial arbitration is one of the most important instruments of legal defence. A significant advantage of international commercial arbitration is the possibility of enforcing arbitral awards in 172 countries that have ratified the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The USSR was one of the drafters of the Convention, and the Russian Federation participates in it as a successor. Unlike arbitral awards, the enforceability abroad of state court judgements is limited, which significantly reduces the possibility of recovering awarded amounts abroad. Therefore, most foreign economic contracts include an arbitration clause.
7. In addition, businesses resolve their disputes through international arbitration because they are able to choose independent and impartial arbitrators who are not subject to the politics or prohibitive rules of any state.
8. Since the early 1990s, arbitration clauses began to appear in Russian contracts, primarily in favour of the London Court of International Arbitration (LCIA), the International Court of Arbitration at the International Chamber of Commerce (ICC), the Arbitration Institute at the Stockholm Chamber of Commerce and Industry (SCC), the Vienna International Arbitration Centre (VIAC) and other European centres.

This was primarily due to the trade structure of Russian business, which is more oriented towards Western markets.

9. Meanwhile, with the growth of trade turnover with Asian counterparties, starting from the 2010s, some Russian disputes are gradually being transferred to Asian arbitration centres – the Hong Kong International Arbitration Centre (HKIAC), the China International Economic and Trade Arbitration Commission (CIETAC), the Singapore International Arbitration Centre (SIAC), the Asian International Arbitration Centre (AIAC) and others. Today, according to the Federal Customs Service for the first 10 months of 2024, Russia's main non-CIS trade partners are China (33.8%), India (8.8%), and Turkey (8.3%). This allows us to conclude that the number of contracts with reference to arbitration in Asia will continue to grow in the future.
10. It should be noted that the change of preferences of Russian companies in choosing arbitration institutions is also due to the desire to reduce risks associated with unilateral restrictive measures of Western countries.
11. In different years, the Arbitration Association has conducted a number of surveys on the preferences of Russian companies in international arbitration, which also noted the growing popularity of Asian arbitration centres. Thus, while in 2014 only 5% of Russian respondents chose the Hong Kong International Arbitration Centre,<sup>1</sup> already in 2021 28% of Russian respondents mentioned HKIAC as their preferred arbitration centre.<sup>2</sup>

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<sup>1</sup> "The Impact of Sanctions on Commercial Arbitration" [Electronic resource] // Arbitration Association website. - 2016. - URL: [https://arbitration.ru/upload/medialibrary/083/2016-russian-arbitration-association-survey\\_sanctions-and-arbitration.pdf.pdf](https://arbitration.ru/upload/medialibrary/083/2016-russian-arbitration-association-survey_sanctions-and-arbitration.pdf.pdf) (date of address: 16.04.2025).

<sup>2</sup> "The Impact of Sanctions on Commercial Arbitration" [Electronic resource] // Official website of the Arbitration Association. - 2022. - URL:

12. In 2024, a group of legal experts from leading Russian law firms conducted an independent study of M&A transactions of Russian companies concluded between March 2022 and August 2024.<sup>3</sup> According to this study, in 25% of corporate transactions the parties chose HKIAC as an arbitration institution for dispute resolution.
13. Independently conducted studies allow us to say that over the past years Russian companies have entered into hundreds of contracts with arbitration clauses referring disputes to Asian arbitration centres. As practice shows, a dispute usually arises within 3-5 years after a foreign trade contract is made. Consequently, the number of Russian disputes in Asian arbitration centres under those contracts that have already been entered into will continue to grow in the coming years.
14. In this regard, it seems important to maintain the validity of such arbitration clauses in order to ensure effective protection of Russian parties on international markets. Otherwise, Russian companies will not only be deprived of legal protection under existing contracts, but will also lose their negotiating position under future contracts. For example, if the parties to a contract realise that a Russian court may at any time recognise its exclusive jurisdiction despite the existence of a valid arbitration clause, foreign counterparties will demand from Russian buyers full prepayment for goods and services, provision of bank guarantees and additional insurance coverages and other instruments to mitigate the risk of non-performance of the contract. At the same time, Russian suppliers will be required to deliver goods on a

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[https://arbitration.ru/upload/iblock/810/mdfjvqag0hivjqynm2qgchm01iy2itaw/RAA-2022-Study-on-sanctions\\_rus.pdf](https://arbitration.ru/upload/iblock/810/mdfjvqag0hivjqynm2qgchm01iy2itaw/RAA-2022-Study-on-sanctions_rus.pdf) (date of address: 16.04.2025).

<sup>3</sup> Research of M&A deals in Russia for 2022-2024 [Electronic resource] // Website of the Arbitration Association. - 2024. - URL: [https://arbitration.ru/upload/iblock/7ba/0w7slvd0de3gdiz3al9a5d7chk1adyf5/Issledovanie-M\\_A-sdelok-v-Rossii-za-2022\\_2024-gody.pdf](https://arbitration.ru/upload/iblock/7ba/0w7slvd0de3gdiz3al9a5d7chk1adyf5/Issledovanie-M_A-sdelok-v-Rossii-za-2022_2024-gody.pdf) (date of address: 16.04.2025).

postpaid basis. As a result, this will reduce legal protection and increase transaction risks for Russian companies.

15. In this regard, it is extremely important that Russian courts carefully analyse the factual circumstances in each specific case and apply Articles 248.1 and 248.2 of the APC RF selectively and only as an exclusive remedy.

### III. Legal criteria for determining access to justice and impartiality

16. The Constitution of the Russian Federation guarantees the right to refer disputes to an arbitration court, including an international one, as the relevant mechanism is "*among the ways of settling civil law disputes generally recognised in a democratic society*"<sup>4</sup> and is aimed at ensuring the impartial resolution of disputes. This right is based on Articles 8 and 45 of the Constitution of the Russian Federation<sup>5</sup>. Accordingly, any interference with the realisation of this right must be "*exhaustively motivated by a state court*"<sup>6</sup>.
17. First of all, it should be noted that **impartiality** is an individual trait of an arbitrator and not of a legal system or the arbitral institution where

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<sup>4</sup> Resolution of the Constitutional Court of the Russian Federation of 16 April 2024 № 18-P "On the case of verification of the constitutionality of paragraph 2 of part four of Article 426 of the Civil Procedure Code of the Russian Federation in connection with the complaint of citizen I.Y. Kolosov" // Collection of Legislation of the Russian Federation. - 2024. - № 18. - Art. 2512. - P. 2. ("**Resolution 18-P**"); see also the Resolution of the Constitutional Court of the Russian Federation of 3 October 2023, No. 46-P "On the case of verifying the constitutionality of paragraph 1 of Article 131 of the Civil Code of the Russian Federation and paragraph 5 of Part 2 of Article 14 of the Federal Law "On State Registration of Real Estate" in connection with the complaint of citizen T.V. Solodovnikova" // Collected Legislation of the Russian Federation. - 2023. - № 42. - Art. 7596. - P. 2. ("**Resolution 46-P**").

<sup>5</sup> Resolution of the Constitutional Court of the Russian Federation of 18 November 2014, No. 30-P "On the case of verification of the constitutionality of the provisions of Article 18 of the Federal Law "On Arbitration Courts in the Russian Federation", paragraph 2 of Part 3 of Article 239 of the Arbitration Procedural Code of the Russian Federation and paragraph 3 of Article 10 of the Federal Law "On Non-Profit Organisations" in connection with the complaint of the Open Joint Stock Company "Sberbank of Russia" // Collection of Legislation of the Russian Federation. - 2014. - № 48. - Art. 6882. - II. 3.

<sup>6</sup> Regulation 18-P. - II. 2.

the dispute is considered. As a result, unlike state courts, the arbitral tribunal within a single arbitration centre is not permanent and is formed to a greater or lesser extent in accordance with the will of the parties in each particular dispute.<sup>7</sup> The choice of arbitration centre cannot in any way prejudice questions of impartiality.

18. The parties' right to a fair hearing is exercised by establishing the impartiality of arbitrators as a criterion for their appointment, as well as by allowing parties to challenge an arbitrator for lack of impartiality.<sup>8</sup>
19. The laws applicable to arbitration proceedings in most jurisdictions, including Hong Kong, as well as the rules of most international arbitration centres, including HKIAC, require that an arbitrator must be impartial.<sup>9</sup> This requirement is interpreted as precluding an arbitrator, who has a negative attitude towards one of the parties for political reasons, from participating in the arbitration.<sup>10</sup>
20. It should be noted that the arbitration community has developed fairly strict rules for determining impartiality and the obligation of arbitrators to disclose any information that may raise doubts as to their lack of impartiality. In recent years, the number of applications for challenge of arbitrators has increased, and HKIAC, like other leading arbitration centres, pays great attention to maintaining high standards of impartiality of arbitrators hearing disputes under HKIAC rules.

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<sup>7</sup> For example, under the HKIAC Arbitration Rules for administered arbitrations, the default arbitral panel of three arbitrators is formed as follows: the claimant and the respondent each appoint one arbitrator, and the two arbitrators so appointed appoint the third arbitrator, who is the chairperson of the arbitral panel.

<sup>8</sup> Regulation 30-P. - II. 3.1.

<sup>9</sup> See, e.g., HKIAC Arbitration Rules Articles 11.1 and 11.4.

<sup>10</sup> E.g., Decision of the Permanent Court of Arbitration of 08.12.2009 in Case No. IR-2009/1 "Perenco Ecuador Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador" [Electronic resource] // Official website of the Permanent Court of Arbitration. - URL: <https://pca-cpa.org> (date of reference: 16.04.2025). - Decision on the challenge of the arbitrator dated 08.12.2009.

21. In the practice of applying Articles 248.1-248.2 of the APC RF, Russian courts conclude that the impartiality of an arbitrator is questioned when (1) the dispute was caused by the imposition of restrictive measures by the state in which the dispute was to be heard, and (2) when the arbitrators are citizens of unfriendly states.
22. Even assuming that these factors are relevant in assessing the impartiality of arbitrators, it is important to note that the People's Republic of China, to which the Hong Kong Special Administrative Region is a part, as well as the Hong Kong Special Administrative Region itself, have not imposed any sanctions against the Russian Federation. In addition, arbitrators appointed by or for the Russian parties, as well as presiding arbitrators appointed by HKIAC, in Hong Kong arbitrations involving Russian parties are mostly nationals of the states that are not included in the list of unfriendly states towards the Russian Federation. HKIAC maintains a list of arbitrators, which includes 22 Russian nationals.<sup>11</sup> The parties are also free to choose Russian arbitrators who are not on the list of arbitrators of HKIAC, which has happened multiple times in practice.
23. Another important constitutional right is **access to justice**. A party's consent to arbitration, especially when it comes to international arbitration, is by definition linked to the party's choice to make the extra effort necessary to protect its interests in the agreed forum. Examples include the desirability of engaging legal advisors on applicable law and/or sending party representatives to attend hearings held in another state. These factors are a consequence of exercising one's own constitutional rights and are not considered a violation or limitation thereof.

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<sup>11</sup> See, for more details, paragraph **Error! Reference source not found.** of this Opinion.



24. In the practice of application of Articles 248.1-248.2 of the APC RF, Russian courts draw attention to the following factors which, in their opinion, indicate difficulties in access to justice: "difficulty in paying arbitration fee or state duty for consideration of the dispute, lack of financial or other actual possibility to engage a foreign procedural representative, restriction of physical presence in the place of consideration of the dispute due to difficulty in crossing the state border, etc."<sup>12</sup>
25. In this regard, the following should be noted:
- 25.1 Firstly, "difficulties" in accessing a forum cannot be a criterion for restricting the constitutional right to submit disputes to arbitration. By agreeing to submit disputes to arbitration, especially in the case of international arbitration, [not only] each party receives the advantages of choosing such a forum (including the conclusion of a contract with a foreign counterparty), but also assumes corresponding difficulties and risks associated with the examination of the dispute in another state, and with the related issues of engaging a foreign counsel, with the possibility of holding a hearing in another state and with international payments.
- 25.2 Secondly, as will be described in more detail below, in relation to arbitration in Hong Kong:
- Russian citizens have visa-free entry to Hong Kong;
  - Russian citizens can enter Hong Kong without any restrictions on importing documents and electronics;

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<sup>12</sup> Definition of Judicial board on economic disputes of the Supreme Court of the Russian Federation from 28 November 2024 № 305-ES24-13398 on case № A40-214726/2023 [Electronic resource] // JPS "ConsultantPlus". URL: <https://cloud.consultant.ru/cloud/cgi/online.cgi?req=doc&base=ARB&n=841547> (date of address: 15.04.2025).

- Russian companies may pay arbitration fees and other costs in arbitration in Hong Kong through branches of PRC banks that have correspondent relations with all major Russian banks;
- Russian companies can choose from a wide range of law firms and lawyers practising in Hong Kong and under Hong Kong law who are not nationals of "unfriendly" states. As noted above, neither the People's Republic of China nor the Hong Kong Special Administrative Region has imposed any sanctions against the Russian Federation. It should be noted that several citizens of the Russian Federation are admitted to practice in Hong Kong who can advise on Hong Kong law and represent parties in local courts.<sup>13</sup>

#### **IV. Hong Kong is an administrative region of the PRC, the largest political and economic partner of the Russian Federation**

26. As noted above, Hong Kong is a special administrative region of the People's Republic of China (PRC), which operates under the principle of "one country, two systems" and on the basis of its own Constitution (the Hong Kong Basic Law), which maintains its case law system based on common law, and which has an executive, legislative and independent judiciary in accordance with the Hong Kong Basic Law.
27. In addition to its high level of autonomy from China and its own common law legal system, Hong Kong is entitled to enter into its own foreign investment protection agreements as well as tax and other international agreements. In the recent past, Hong Kong has concluded a bilateral agreement with Russia on the avoidance of double taxation

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<sup>13</sup> <https://www.hklawsoc.org.hk/en/Serve-the-Public/The-Law-List/Members-with-Practising-Certificate?name=&jur=RUSSIA> and <https://www.hkba.org/Bar-List>

and is currently negotiating a bilateral mutual investment protection agreement.

28. Hong Kong's judicial system operates independently of the PRC's judicial system (with rare exceptions relating to foreign policy) and is independent of the judicial systems of third countries. Due to peculiarities of its legal and foreign policy status, Hong Kong maintains political neutrality in the international arena. Hong Kong law does not provide for direct legal, administrative or other restrictive measures directed against Russian persons.
29. The Hong Kong High Court of Appeal is the highest court in Hong Kong.

**V. Hong Kong law is an alternative to English law, but in a neutral country**

30. Hong Kong is currently the only jurisdiction in the world that operates on the basis of common law principles with a high level of judicial expertise and legal profession, that does not apply unilateral sanctions (both in relation to the Russian Federation and to other countries) and that is part of Russia's major trading partner, the PRC.
31. The Application of English Law Ordinance 1966 (Cap 88)<sup>14</sup>, which provided for the direct application of English law in Hong Kong under certain conditions, remained in force only until 1 July 1997. After 1 July 1997, in developing its enforcement practice, the Hong Kong judiciary has established a significant number of independent and unique judicial precedents. Under article 84 of the Basic Law, Hong Kong courts are entitled to refer to the precedents of other common law

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<sup>14</sup> English Law Enforcement Act 1966 (Ch. 88). Available at: <https://www.elegislation.gov.hk/hk/cap88!en@1997-06-30T00:00:00>

jurisdictions but are not obliged to follow them, indicating that Hong Kong law has developed independently of other common law systems, in particular from English law, and may differ from those systems in certain aspects.

32. Article 18 of the Basic Law of Hong Kong establishes the following hierarchy of sources of law:
  - The Basic Law of Hong Kong;
  - International agreements and conventions ratified by Hong Kong (Bill of Rights Ordinance);
  - The laws (statutes) of Hong Kong;
  - Laws enforced by the National People's Committee regarding security and international relations;
  - Common law and equity law (e.g. civil law governing trusts, land law, etc.);
  - Chinese customary law.
33. Hong Kong's law of commerce and obligations is similar to earlier common law systems, but is unique and is one of the most developed commercial law systems in the world, given Hong Kong's status as a global commercial, financial, investment, and legal centre.
34. In addition to Chinese, English is the official language in Hong Kong. Accordingly, Hong Kong law, including jurisprudence and regulations, is available in English (and for the most part is in the public domain). This allows Russian international lawyers to research Hong Kong law independently, without the involvement of local lawyers.
35. The legal profession in Hong Kong consists of two categories of lawyers: barristers and solicitors.
36. Solicitors have limited rights to appear in state courts, while barristers have unlimited rights to appear in courts at all levels. Solicitors who

have been assessed by the Hong Kong Supreme Evaluation Council can become solicitor advocates and are eligible to appear before the Competition Tribunal, the High Court and the Hong Kong Court of Final Appeal.

37. The organisations that regulate the professional standards of solicitors and barristers are the Law Society of Hong Kong and the Hong Kong Bar Association.
38. There are currently over 11,000 solicitors practising in Hong Kong, most of whom are Hong Kong citizens and, as noted above, are not considered to be from "unfriendly jurisdictions".
39. Barristers are regulated by the Hong Kong Barristers Association and a list of them is also publicly available. There are currently around 1,600 barristers practising in Hong Kong and, as with the solicitors' profession, the majority are Hong Kong citizens who are not considered to be from "unfriendly jurisdictions"
40. Thus, a significant number of accredited barristers and solicitors who are nationals of friendly jurisdictions practise in Hong Kong.
41. It should also be noted that the presence of foreigners in the legal profession is not an indicator of dependence or partiality of the legal community. For example, in the Register of foreign lawyers of the Ministry of Justice of the Russian Federation there are 25 British citizens, 9 US citizens, 37 citizens of EU countries. There are also several dozen citizens from other states among Russian lawyers. However, it is difficult to imagine that this could have any impact on the Russian legal system or justice.

## **VI. Hong Kong has a modern arbitration law**

42. The Hong Kong Arbitration Ordinance, like the Russian Federation Law No. 5338-I of 7 July 1993, is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law of 2006 and is therefore familiar to the Russian legal community. The Hong Kong Arbitration Law is regularly supplemented and updated to improve the efficiency of arbitration.
43. Recent developments include allowing intellectual property disputes to be referred to arbitration, regulating success fees in arbitration and others. In addition, it is worth noting the right of the parties to agree on the possibility of appealing arbitral awards to the Hong Kong courts for "error in the application of law".

## **VII. Hong Kong has neither imposed nor supported unilateral sanctions on Russia**

44. Hong Kong does not apply unilateral sanctions regimes similar to those of the US or other so-called "unfriendly jurisdictions".
45. The only sanctions to which Hong Kong adheres are international sanctions adopted by the UN Security Council. Such sanctions are subject to the Hong Kong United Nations Sanctions Ordinance (Cap. 537) ("UNSO") as well as United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).
46. The Hong Kong Department of Trade and Industry is responsible for the list of jurisdictions subject to UN sanctions. These jurisdictions include Afghanistan, Central African Republic, Democratic Republic of the Congo, Democratic People's Republic of Korea, Haiti, Iran, Iraq, Lebanon, Libya, Somalia, South Sudan, Sudan, Yemen and the banned in Russia terrorist organisations ISIS and Al-Qaeda.

47. Sanctions applied unilaterally by foreign jurisdictions do not form part of Hong Kong's legal system and are not enforceable in Hong Kong.

**VIII. The Hong Kong International Arbitration Centre is one of the world's leading arbitration centres**

48. The Hong Kong International Arbitration Centre is one of the world's leading arbitration centres, has a strong reputation and has been active in the Russian Federation for many years. For example, in 2019, HKIAC was the first foreign arbitration institution to be granted permanent arbitration institution status by the Ministry of Justice of the Russian Federation. HKIAC actively participates in bilateral educational initiatives and events and administers a large number of disputes related to Russia.
49. For the convenience of the Russian parties, HKIAC has prepared the Arbitration Rules in Russian. Also, for the convenience of the Russian parties, the HKIAC Secretariat employs Russian-speaking employees who are involved in dispute administration and counselling of the Russian parties on HKIAC administrative matters.
50. HKIAC has published a special protocol that guarantees equal and impartial treatment of parties, regardless of any third country sanctions restrictions.<sup>15</sup>
51. In HKIAC arbitrations, the payment of arbitration fees can be made in a neutral currency, such as Chinese RMB, which is a unique advantage of HKIAC over other foreign arbitration centres.
52. HKIAC is a qualified institution under the Immigration Facilitation Scheme, which allows parties, their representatives, witnesses, and

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<sup>15</sup> Sanctions Policy of the Hong Kong International Arbitration Centre [Electronic resource] // HKIAC. - URL: <https://www.hkiac.org/arbitration/sanctions-policy> (date of address: 15.04.2025).

experts from the Russian Federation to participate in arbitration proceedings in Hong Kong without the need to obtain work visas. Moreover, Russian citizens are also not required to obtain a visa in advance to enter Hong Kong. Even non-dispute litigants with Russian citizenship enjoy visa-free travel to Hong Kong, automatically obtaining a visa on arrival for a fortnight. This visa regime is even more liberal for Russians than the visa regime in the PRC.

## **IX. Analysis of the HKIAC's Activity in Russia and the Trend of Russian Companies Choosing the HKIAC as Their Preferred Arbitral Institution**

53. Over the past decade, the popularity of the HKIAC among Russian companies has steadily increased, becoming even more pronounced after 2022. This preference is driven by several key advantages, including its official recognition by the Russian Ministry of Justice, its alignment with the needs of Russian businesses, and Hong Kong's neutral jurisdiction. Against the backdrop of Russian companies reorienting their foreign economic activity from West to East, the HKIAC has objectively strengthened its role as a neutral, efficiently operating, and institutionally stable dispute resolution center.
54. As previously reported, since 2019, the HKIAC has been included in the list of permanent arbitration institutions recognized in the Russian Federation under the Decree No. 110 of the Russian Ministry of Justice dated 27 May 2019.<sup>16</sup> This means that the HKIAC holds official accreditation to administer arbitration with a seat in Russia, in

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<sup>16</sup> List of permanent arbitration institutions recognized in the Russian Federation [Electronic resource] // Russian Ministry of Justice. – 2019. – URL: <https://minjust.gov.ru/ru/activity/directions/961/#section-description> (accessed: 11.04.2025).



accordance with Article 44 of the Federal Law No. 382-FZ of 29 December 2015 “On Arbitration (Arbitral Proceedings) in the Russian Federation”. Consequently, this has enabled Russian market participants to refer disputes to the HKIAC with Russia as the seat of arbitration, including corporate disputes.

55. Specifically, the HKIAC is authorized to administer: (a) international commercial arbitrations with the seat of arbitration in Russia; (b) a range of corporate disputes, whether heard in Russia or abroad, including: disputes over ownership of shares (interests) in Russian companies, including those arising from share purchase agreements; disputes stemming from shareholder agreements (management arrangements); disputes related to the registration and record-keeping of share rights of Russian issuers.
56. Another key factor enhancing the HKIAC’s appeal for Russian companies, as mentioned earlier, is Hong Kong’s common law-based legal system. This provides a high degree of legal certainty, because the choice of common law as applicable law for international contracts remains traditional for Russian businesses, particularly in matters of corporate relations, insurance, transportation, financial agreements, and others. Another important feature of HKIAC is its financial attractiveness. The institution maintains relatively low arbitration fees, features a flexible payment system, and presents fewer transaction-related challenges (such as payment of arbitration fees) for Russian parties compared to many other foreign arbitration institutions
57. Notably, HKIAC has also published an official Russian-language version of its Arbitration Rules<sup>17</sup> which not only demonstrates the

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<sup>17</sup> Administered Arbitration Rules [Electronic resource] // Hong Kong International Arbitration Centre (HKIAC). – 2023. – URL: <https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018> (accessed: 11.04.2025).

institution's strategic commitment to the Russian market but also provides Russian users with direct access to the HKIAC's procedural framework, eliminates language barriers when drafting arbitration clauses and strengthens confidence among Russian legal professionals and businesses.

58. The HKIAC consistently and systematically demonstrates its commitment to arbitration involving Russian parties. Specifically, (a) in accordance with Article 15 of the HKIAC Arbitration Rules parties are permitted to select Russian as the arbitration language by mutual agreement. This reduces both language barriers and translation costs; (b) while Hong Kong remains the default seat of arbitration,<sup>18</sup> parties may designate other seat including Russia when HKIAC serves as administering arbitration institution (which is made possible through its inclusion in the Russian Ministry of Justice's list of permanent arbitration institutions); (c) for lower-value disputes or by party agreement, HKIAC offers expedited arbitration with streamlined timelines, requiring award issuance within six months.<sup>19</sup>
59. These features represent more than just formal gestures – they demonstrate meaningful adaptation of the institution's procedures to Russian-speaking parties' needs, particularly regarding rules accessibility and procedural predictability. Furthermore, the HKIAC's Council, Secretariat, and arbitrator roster include Russian-qualified lawyers, reinforcing confidence in the center's understanding of the legal environment in which Russian companies operate. Moreover, the HKIAC's Council, Secretariat, and arbitrator database include Russian-qualified lawyers, which strengthens trust in the institution by ensuring

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<sup>18</sup> See HKIAC Arbitration Rules 2023, Article 14.

<sup>19</sup> See HKIAC Arbitration Rules 2023, Article 42.

a deeper understanding of the legal landscape in which Russian companies operate.<sup>20</sup>

60. HKIAC statistics demonstrate steady growth in the number of cases involving Russian parties. According to the center's official data, the trend in recent years has been as follows:
61. From 2009 to 2024, the HKIAC heard 59 arbitration cases arising from 100 Russia-related contracts. Of these:
  - in 36 cases, Russia-connected parties acted as claimants (18 directly, while 16 cases involved Russian parties' legal interests, for example through ownership structures);
  - in 23 cases as respondents (20 directly, while 3 cases involved Russian parties' legal interests for example through ownership structures).
62. Notably, 59% of all Russia-related cases were filed in the last four years following the HKIAC's recognition as a permanent arbitration institution under Russian law.<sup>21</sup>
63. In Russia-related cases, based on party-agreed applicable law, English law applied in 24 cases, and Hong Kong law in 21 cases. Other jurisdictions' laws were also used, including Russian law. The most frequent seat of arbitration was Hong Kong (54 cases), Moscow and Dubai were selected in several instances as the seat of arbitration.

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<sup>20</sup>. For instance, the HKIAC Council includes Anton Vladimirovich Asoskov, Doctor of Law, Professor of Civil Law at the Faculty of Law of Lomonosov Moscow State University. Victoria Alexandrovna Khandrimaylo, a Russian attorney-at-law, serves as Special Counsel in the HKIAC. Among the arbitrators are 22 Russian lawyers <https://www.hkiac.org/arbitration/arbitrators/panel-and-list-of-arbitrators>).

<sup>21</sup> The data was provided by the HKIAC Secretariat via email dated 15 April 2025 from Victoria Khandrimaylo (HKIAC Counsel) to Roman Zykov (Secretary-General of the Arbitration Association) in response to the Arbitration Association's request dated 03 April 2025.

64. Since 2024, the appointment of Russian arbitrators has increased: parties or co-arbitrators selected them in five cases, the HKIAC directly appointed them in 2 cases. Presiding arbitrators appointed during 2023 – 2024 included citizens of Chile, Portugal, Brazil, Argentina, and Egypt. The HKIAC Panel and List of Arbitrators<sup>22</sup> includes 58 Russian-speaking arbitrators, 22 of whom are Russian citizens.
65. With regards to sanctions policy, the HKIAC administers arbitration in compliance with Hong Kong's sanctions regime (which currently imposes no restrictions concerning Russia) and does not apply third-country sanctions. As confirmed by the Hong Kong Monetary Authority's notice dated 8 August 2020, unilateral foreign sanctions lacking international consensus carry no legal force in Hong Kong.<sup>23</sup>
66. Furthermore, sanctioned individuals face no discrimination in Hong Kong arbitration proceedings, enjoying full access to justice and equal and unbiased treatment. This principle is enshrined in the HKIAC Policy on Proceedings Affected by Sanctions,<sup>24</sup> which confirms the institution's impartiality towards all parties of the proceedings regardless of their sanctions status. This framework directly explains the growing volume of Russian cases in Hong Kong as a response to Western countries' systematic escalation of sanctions regimes.
67. HKIAC's popularity among Russian parties stems not only from its high-quality arbitration model but also from its longstanding institutional presence within Russia's arbitration community. The HKIAC has demonstrated consistent engagement with Russian legal professionals and actively participates in Russian legal forums. The

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<sup>22</sup> List of Arbitrators [Electronic resource] // Hong Kong International Arbitration Centre. – URL: <https://www.hkiac.org/arbitration/arbitrators/panel-and-list-of-arbitrators> (accessed: 15.04.2025).

<sup>23</sup> <https://brdr.hkma.gov.hk/eng/doc-ldg/docId/getPdf/20200808-1-EN/20200808-1-EN.pdf>

<sup>24</sup> <https://www.hkiac.org/arbitration/sanctions-policy>

HKIAC is systematically involved in educational, expert, and practical activities connected with the development of arbitration in Russia. Below is a partial list of HKIAC-supported events held in Russia:

- 15 May 2025 – Russian International Arbitration Congress “HKIAC – 40 Years of Connecting Across Jurisdictions” (Moscow);
- 23 April 2025 – Russian Megaprojects and their Legal Aspects, Contract Management and Dispute Resolution – featuring HKIAC Counsel Victoria Khandrimaylo;
- 15 October 2024 – ICC Russia Seminar “Instruments of Trade Finance. Doing Business with Global South: Peculiarities and Main Trends”, the Secretary-General of HKIAC Joanne Lau;
- 29 May 2024 – Expert Seminar “Law and Arbitration in Hong Kong” hosted by Moscow Chamber of Commerce and Industry<sup>25</sup>;
- 29 September 2023 – Webinar “HKIAC: The New Silk Road in Arbitration” co-organized by the Arbitration Association (Russia) and HKIAC. Featuring Secretary-General Mariel Dimsey and HKIAC Counsel Victoria Khandrimaylo<sup>26</sup>;
- 5 September 2023 – Webinar “New Opportunities for Russian Business: Hong Kong Law and HKIAC Arbitration” co-organized by ALRUD with HKIAC and Fangda Partners<sup>27</sup>;
- 19 April 2023 – Public talk with HKIAC Counsel Victoria Khandrimaylo conducted by BIRCH LEGAL<sup>28</sup>;

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<sup>25</sup> Law and Arbitration in Hong Kong [Electronic resource] // Moscow and St. Petersburg Bar Association. – URL: <https://mostpp.info/lawandarbitration> (accessed: 11.04.2025).

<sup>26</sup> Webinar "HKIAC: The New Silk Road in Arbitration" [Electronic resource] // Arbitration.ru. – URL: <https://events.arbitration.ru/conference/webinar-hkiac-novyy-shelkovyy-put-v-arbitrazh/> (accessed: 11.04.2025).

<sup>27</sup> Webinar "New Opportunities for Russian Business: Hong Kong Law and HKIAC Arbitration" [Electronic resource] // Alrud. – URL: <https://www.alrud.ru/event/64dcbb22b07914a390081947/#> (accessed: 11.04.2025).

<sup>28</sup> Public talk with HKIAC Counsel [Electronic resource] // Birch Legal. – URL: <https://birchlegal.ru/events/1096/> (accessed: 11.04.2025).

- 9 September 2022 – Seminar “Arbitration in Hong Kong and Mainland China: Trends, Legal Framework and HKIAC” co-organized by KIAP and HKIAC<sup>29</sup>;
- 28 July 2021 – Webinar “Optimizing Arbitration Clauses in Contracts involving Russian parties” hosted by Dechert LLP<sup>30</sup>;
- 26 June 2019 – HKIAC Moscow Conference “Permanent Arbitration Institutions in Russia: Implications and Plans”<sup>31</sup>;
- 11 October 2019 – Signing of Cooperation Agreement between HKIAC and the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs (RSPP)<sup>32</sup>;
- 25 April 2019 – VI Annual Conference of the Arbitration Association (Russia) featuring HKIAC presentation (Moscow)
- 13 September 2018 – (HKIAC) Pre-Dispute Strategy Seminar at the Eastern Economic Forum (Vladivostok)<sup>33</sup>;
- 6 March 2018 – HKIAC and the Institute of Modern Arbitration Sign Agreement of Cooperation (Moscow), establishing joint events and publications<sup>34</sup>;

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<sup>29</sup> Arbitration in Hong Kong and Mainland China: Trends, Legal Framework and HKIAC [Electronic resource] // HKIAC GlueUp. – URL: <https://hkiac.glueup.com/event/62454/> (accessed: 11.04.2025).

<sup>30</sup> Optimizing Arbitration Clauses in Contracts Involving Russian Parties [Electronic resource] // Dechert LLP. – URL: <https://www.dechert.com/knowledge/event-and-webinar/2021/7/optimizing-arbitration-clauses-in-contracts-involving-russian-pa.html> (accessed: 11.04.2025).

<sup>31</sup> Hong Kong International Arbitration Centre. Permanent Arbitration Institutions in Russia: Implications and Plans [Electronic resource] // The Russian Federal Bar Association. – URL: <https://fparf.ru/events/gonkongskiy-mezhdunarodnyy-arbitrazhnyy-tsentr-02/> (accessed: 11.04.2025).

<sup>32</sup> The Arbitration Centre at the RSPP and the Hong Kong International Arbitration Center (HKIAC) have signed a Cooperation Agreement [Electronic resource] // Arbitration Centre at RSPP. – URL: <https://arbitration-rspp.ru/news/11-10-2019/> (accessed: 11.04.2025).

<sup>33</sup> Hong Kong International Arbitration Centre (HKIAC) Pre-Dispute Strategy Seminar [Electronic resource] // Roscongress. – URL: <https://roscongress.org/sessions/cef-2018-seminar-gonkongskogo-mezhdunarodnogo-arbitrazhnogo-tsentra-hkiac-po-predarbitrazhnoy-strategii/translation/> (accessed: 11.04.2025).

<sup>34</sup> HKIAC and the Institute of Modern Arbitration Sign Agreement of Cooperation [Электронный ресурс] // Russian Arbitration and Mediation Centre. – URL: <https://centerarbitr.ru/2018/03/06/hkiac-coop-ru/> (accessed: 11.04.2025).

- 11 May 2017 – Hong Kong Business Summit co-hosted in Hong Kong by the Arbitration Association (Russia) and HKIAC;
  - 18 May 2016 – Cooperation Agreement signed between the Arbitration Association (Russia) and HKIAC;
  - 25 April 2015 – II Annual Conference of the Arbitration Association (Russia) featuring HKIAC presentation (Moscow).
68. As evidenced, HKIAC maintains regular participation in Russia’s key events, partnering with and speaking at ICC Russia conferences,<sup>35</sup> St. Petersburg International Legal Forum,<sup>36</sup> Russian Arbitration Association events, and other.<sup>37</sup>
69. These events demonstrate HKIAC’s strategic engagement with Russia’s legal community through educational and expert spheres and its recognition as a permanent arbitral institution is not formal but confirmed by practice.
70. The above confirms that Russian parties should not face any material barriers to justice when conducting proceedings at the HKIAC. Selecting the HKIAC aligns with the principle of party autonomy and does not infringe upon Russian entities’ rights or legitimate interests. Consequently, where an arbitration agreement involving Russian parties designates the HKIAC, there exist no valid grounds for applying Articles 248.1 and 248.2 of the Russian Commercial Procedure Code to assert exclusive jurisdiction of Russian “arbitrazh” courts. Hong

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<sup>35</sup> Vladivostok hosts ICC Russia’s 24th International Arbitration Conference [Electronic resource] // International Chamber of Commerce Russia. – 2023. – URL: <https://iccwbo.ru/vladivostok-24-en> (accessed: 11.04.2025).

<sup>36</sup> St. Petersburg International Legal Forum 2019: Results and Trends [Electronic resource] // Russian Arbitration Centre. – 2019. – URL: <https://centerarbitr.ru/2019/05/17/петербургский-международный-юрид-2/> (accessed: 11.04.2025).

<sup>37</sup> HKIAC, arbitrator, consultant and inhouse new possibilities for Russian business [Electronic resource] // Arbitration.ru. – URL: <https://arbitration.ru/press-centr/news/hkiac-arbitr-konsultant-i-inkhaus/> (accessed: 11.04.2025).

Kong's legal system ensures minimal sanctions-related impact on Russian arbitration participants.

71. The HKIAC thus emerges as one of the few arbitration institutions combining: institutional flexibility, procedural accessibility, and professional recognition making it the preferred choice for Russian companies amid the global arbitration landscape's transformation. The HKIAC has objectively established itself as the optimal arbitration institution for Russian business under current geopolitical conditions. Statistic data reflects growing Russian company's preference for this institution as a reliable, neutral venue for international commercial disputes. In the immediate future, we can reasonably anticipate increased HKIAC case referrals from Russian entities and its consolidation as Eastern Asia's principal arbitration hub for Russian users.

**X. Interim measures in the PRC may be obtained to preserve assets, record evidence, and prohibit certain acts in the PRC in support of the HKIAC arbitration proceedings**

72. One of the reasons for the demand for HKIAC is the ability to seek interim measures from Mainland Chinese courts in support of Hong Kong arbitration where the arbitration may require the preservation of assets, evidence or an injunction against certain acts in the mainland China.
73. The legal basis for this is set out in the Agreement on Mutual Assistance in Granting Interim Measures in Support of Arbitration Proceedings by the Courts of the PRC and Hong Kong dated 2 April 2019 (the "**Agreement**"). Under Article 2 of the Agreement, parties to arbitration proceedings may seek interim measures from Mainland Chinese courts



if Hong Kong is the seat of the arbitration proceedings and such proceedings are administered by one of the accredited arbitration centers.<sup>38</sup>

74. Currently, eight arbitral institutions besides the HKIAC hold accreditation to assist parties in obtaining interim measures.<sup>39</sup> The HKIAC facilitates applications for such measures before Mainland Chinese courts<sup>40</sup>, by typically performing the following functions:

- issuing confirmation letters verifying arbitration commencement (when applications are filed after arbitration proceedings begin), and
- transmitting the applicant’s documentation alongside said letters to the competent Mainland Chinese court.

75. Parties in the HKIAC-administered cases actively seek interim measures from Mainland Chinese courts. According to the HKIAC statistics, in 2024, 40 applications for asset freezing were filed, for evidence preservation, and injunctions (in 2023 – 19 applications).<sup>41</sup>

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<sup>38</sup> List of accredited arbitration centers meeting the requirements of Article 2(1) of the Agreement [Electronic resource] // Official website of the Ministry of Justice of the Hong Kong Special Administrative Region. – URL: [https://www.doj.gov.hk/en/community\\_engagement/announcements/pdf/Interim\\_Measures\\_Arrangement\\_Contact\\_Details\\_of\\_Arbitral\\_Institutions\\_en.pdf](https://www.doj.gov.hk/en/community_engagement/announcements/pdf/Interim_Measures_Arrangement_Contact_Details_of_Arbitral_Institutions_en.pdf) (accessed: 16.04.2025).

<sup>39</sup> Other accredited Hong Kong arbitration institutions are either affiliated with Mainland Chinese or foreign arbitration centers (CIETAC, SHIAC, APIAC, AALCO, SCIAHK, ICC) or specialize in particular domains (Hong Kong Maritime Arbitration Group). Additionally, one institution operates primarily as an online dispute resolution platform (eBRAM International Online Dispute Resolution Centre) rather than a full-fledged arbitral institution.

<sup>40</sup> Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region: Frequently Asked Questions [Electronic resource] // Hong Kong International Arbitration Centre (HKIAC) Official Website. – URL: <https://www.hkiac.org/arbitration/IMA-FAQs> (accessed: 16.04.2025).

<sup>41</sup> Arbitration Proceedings Statistics [Electronic resource] // Hong Kong International Arbitration Centre (HKIAC) Official Website. – URL: <https://www.hkiac.org/about-us/statistics> (accessed: 16.04.2025).

Applicants predominantly comprise of foreign parties (78.6%), while respondents are mostly Mainland Chinese entities (58.5%). This data reveals a growing trend among foreign entities, including Russian parties to pursue interim measures against Chinese respondents.<sup>42</sup>

76. HKIAC statistics demonstrate the effectiveness of interim measures granted by Chinese courts. Since the Arrangement came into force in 2019, 152 applications for interim measures have been filed. Outcomes are known for 116 applications, with Mainland Chinese courts granting the requested measures in 110 cases. Notably, in 2024 alone, Chinese courts approved 31 interim measure applications, representing approximately one-third of all adjudicated applications since 2019.<sup>43</sup>
77. This statistic indicates two key findings, first, the strong demand for interim measures among parties to HKIAC-administered arbitration proceedings. Second, the willingness of Mainland Chinese courts to issue such measures in support of Hong Kong arbitration proceedings, thereby significantly enhancing the enforceability of arbitral awards.
78. Consequently, the possibility obtaining interim measures from Mainland Chinese courts and receiving procedural support from the HKIAC substantively influences Russian entities' institutional preference when selecting arbitration venues.

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<sup>42</sup> Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region: Frequently Asked Questions [Electronic resource] // Hong Kong International Arbitration Centre (HKIAC) Official Website. – URL: <https://www.hkiac.org/arbitration/IMA-FAQs> (accessed: 16.04.2025).

<sup>43</sup> Ibid.

## **XI. Hong Kong arbitral awards are freely enforceable in China under a simplified procedure**

79. Arbitral awards rendered in Hong Kong are enforceable in Mainland China under two mutual recognition and enforcement agreements: followed by:
  - the Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region entered into force on 1 February 2020;
  - the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region was signed on 27 November 2020.
80. HKIAC awards maintain an excellent track record of recognition and enforcement in Mainland China under these Arrangements.
81. The recognition and enforcement procedure for Hong Kong awards in Mainland China requires direct application to the competent court of relevant jurisdiction, with no need for additional confirmation through letters rogatory or other preliminary procedural approvals.
82. Given both the active commercial engagement between Russian companies and Chinese counterparts in recent years and the anticipated growth in trade volumes, this effective mutual recognition framework between Mainland China and Hong Kong SAR provides Russian businesses with crucial legal protection and ensures the obtainment of enforceable arbitral awards.

## **XII. Selected Hong Kong Court Cases Involving Russian Parties**

83. As previously noted, Hong Kong serves as a global investment and trade hub which legal system remains highly sought-after for international commercial contracts, including those with no direct

Hong Kong connection. Given the recent expansion of Western sanctions regimes and the growing number of contracts affected by such measures, it was only a matter of time before sanction-related disputes reached Hong Kong courts. In these cases, Hong Kong judges have firmly established the principle that unilateral third-country sanctions hold no force in Hong Kong, while consistently upholding equal treatment of parties and guaranteed access to justice.

84. Several recent cases have addressed anti-suit injunction applications where foreign parties sought to compel compliance with arbitration agreements designating the HKIAC as the preferred arbitral institution in contracts with Russian entities.
85. For instance, the dispute between Russian company Ruskhimalians and Germany's Linde, where Hong Kong courts examined multiple sanction-related arguments. Ruskhimalians notably contended that Hong Kong's common law heritage and ties to the United Kingdom would prevent Russian parties from obtaining justice in Hong Kong, including in the HKIAC-administered arbitrations.
86. Having reviewed the case materials, Hong Kong High Court Judge Mimmie Chan noted the following:

*“the Defendant's claims of its inability to gain access to justice and to obtain a fair trial by arbitration in Hong Kong are grossly exaggerated, if not totally based on false premises. First and foremost, the Sanctions have no legal effect in Hong Kong. Secondly, it is patently clear that the Defendant was able to have access to lawyers in Hong Kong, who have represented them from the time of the initial ex parte application for the HK Injunction until now. Thirdly, as the Plaintiffs have sought to highlight, our former Chief Justice, Geoffrey Ma, has been*

*successfully appointed to the Tribunal upon the Defendant's nomination in the Arbitration. There is no suggestion, and no basis for any complaint, that the Defendant has encountered any difficulties with the HKIAC in connection with the Arbitration, or with its representation in or conduct of the Arbitration. The Arbitration in Hong Kong is subject to and governed by the Arbitration Ordinance, under which arbitrators have duties to act independently, fairly and impartially and to treat the parties with equality. As the Plaintiffs pointed out, and I agree, the Defendant's allegation that it will not be fairly represented or heard by the Tribunal, or that somehow it will be met with hostility were its claims to be pursued in Hong Kong, is highly fanciful. The Court cannot give credence to the Defendant's unsubstantiated assertion, that the mere existence of the EU Sanctions will create obstacles for the Defendant to gain access to justice in Hong Kong, to render the arbitration agreement contained in the Contract unenforceable, under the Procedural Code or otherwise”.*

87. In another dispute, the Russian party presented similar arguments, but they also lacked factual basis and were consequently rejected by the Hong Kong court. In the case of Bank A v. Bank B, a dispute arose between a German bank (which was a subsidiary of a Russian bank and absorbed by the German regulator) and its parent Russian bank. The parties concluded a settlement agreement containing an arbitration clause in favor of the HKIAC. As a result of the introduction of EU sanctions, the German party breached the terms of the settlement agreement, and the dispute was submitted to arbitration under the

HKIAC rules. Simultaneously, proceedings were initiated in the Hong Kong court to obtain an anti-suit injunction.

88. In this case, the Russian party referred to the Hong Kong Basic Law, arguing that the Hong Kong courts would require a certificate under Article 19 of the Basic Law to rule on the dispute under the settlement agreement, as this dispute is related to unilateral sanctions imposed by third countries and, accordingly, falls under the prerogative of the PRC as a matter of foreign policy.
89. Hong Kong High Court Judge Mimmie Chan disagreed with the Russian party's arguments:

*“The Respondent's arguments that the court lacks jurisdiction over the Claimant's claims in the absence of a PRC certificate under Article 19 of the Basic Law are unfounded. Articles 13 and 19 of the Basic Law are irrelevant to the issues raised for determination in this case.*

*The question for the court to determine in this case is whether there exists a valid and binding arbitration agreement between the Claimant and the Respondent that covers the scope of the dispute between the two parties. The arbitration agreement contained in the arbitration clause is autonomous from the main agreement between the parties. The alleged illegality of the settlement agreement claimed by the Claimant and the alleged impossibility of performing the settlement agreement cannot affect the validity and effect of the arbitration agreement. Similarly, the impossibility of enforcing any award obtained in Hong Kong arbitration does not affect the validity and enforceability of either the arbitration agreement, or the Hong Kong arbitration itself, or the award obtained.*

*The Court's decision on the matters specified in the preceding paragraph does not require the court to decide on the validity, legality, or fairness of the EU sanctions, nor does it require a decision on whether the EU sanctions are in effect in Hong Kong. The Claimant is not seeking to enforce EU sanctions in Hong Kong, as such sanctions have no legal force in Hong Kong and are not applied in Hong Kong. Whether the EU sanctions are a proper response to the Respondent's demand for payment under the settlement agreement, whether the Claimant can be exempted from payment, and the effect of EU sanctions on the settlement agreement – all these are questions that relate to the merits of the claims in Hong Kong arbitration and are to be decided by the arbitrators.”*

90. In practice, the question often arises of how Hong Kong courts approach the non-performance of a contract governed by Hong Kong law if such performance would violate unilateral economic sanctions of third countries. As the above example shows, Hong Kong courts consider that sanctions regulations are not decisive in resolving the question of whether a contract governed by Hong Kong law can be non-performed if performance violates third-country sanctions. In the courts' opinion, the legal norms on force majeure and/or the futility of the contract should be applied to issues of breach of contract, based on criteria established in Hong Kong law, and not in the sanctions law of third countries.
91. This is why, in the aforementioned cases of *Linde v. Ruskhimalians* and *Bank A v. Bank B*, the Hong Kong courts consistently demonstrate a neutral approach to resolving often politicized disputes related to unilateral sanctions of third countries, relying exclusively on Hong

Kong law, and not on political considerations. This approach strengthens Hong Kong's position as one of the most neutral centers for resolving international commercial disputes today.

### **XIII. The Content of the Categories of “Friendliness” and “Impartiality” in Russian Judicial Practice**

92. Currently, in the application of Articles 248.1–248.2 of the Arbitrazh Procedure Code of the Russian Federation, there is a tendency for Russian courts to recognize arbitration clauses in favor of the HKIAC as unenforceable. This trend began to take root after the position of the Arbitrazh Court of St. Petersburg and Leningrad Oblast in case No. A56-129797/2022<sup>44</sup> (“the Ruskhimalians v. Linde case,” the “Hong Kong” part of this case is described above).
93. Within this case, the court recognized its exclusive jurisdiction, referring to Article 248.1 of the Arbitrazh Procedure Code of the Russian Federation, despite the fact that the claimant was simultaneously participating in HKIAC arbitration.<sup>45</sup> At the same time, the court considered the arbitration agreement in favor of HKIAC unenforceable and indicated that *“in the HKIAC, the Claimant will not have full access to justice for a fair and impartial resolution of the dispute”*.
94. Moreover, the Russian court considered Hong Kong an unfriendly jurisdiction, despite the fact that Hong Kong is not named as a

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<sup>44</sup> Decision of the Arbitration Court of St. Petersburg and Leningrad Oblast dated 8 June 2023, case No. A56-129797/2022 [Electronic resource] // ConsultantPlus legal information system. ». – URL: <https://cloud.consultant.ru/cloud/cgi/online.cgi?req=doc&base=OSZ&n=322353&cacheid=76887A027A4C30C2FCFCFD9ACFF7D699&mode=splus&rnd=2G9oLiUwfyDfUOVL3#pXwRWiUEVOKeuioK2> (accessed: 15.04.2025).

<sup>45</sup> This is known from another case of the Arbitration Court of St. Petersburg and Leningrad Oblast, No. A56-13299/2024.



jurisdiction carrying out unfriendly actions against Russia in the relevant Russian subordinate legislative acts.<sup>46</sup> In concluding that it was unfriendly, the Russian court relied, among other things, on the following, in our opinion, incorrect statements by one of the parties to the case:

- According to Ruskhimalians, Hong Kong exists within the framework of the PRC under the principle of “one country – two systems” which means that Hong Kong is an administrative unit with its own political and economic systems, “*largely based on similar systems of Great Britain*”. According to the Russian Arbitration Association, this statement is incorrect because Hong Kong has been a Special Administrative Region of the PRC for almost 30 years.
- Ruskhimalians argues that the Hong Kong legal system is based on the “Anglo-Saxon” system of law and is based on “English precedents”. The Russian Arbitration Association notes that this is an incorrect understanding of Hong Kong law. The fact that the Hong Kong legal system belongs to the common law system only indicates its membership in this legal family, and not its subordination to the sovereignty or law of another state with a common law system. It is important to understand that, given the independent judiciary enshrined in the Basic Law, Hong Kong forms its own judicial precedents. The Hong Kong Court of Final Appeal, being the highest instance, has the authority to finally adjudicate the case. Hong Kong is not part of the group of states (including the United Kingdom) which judicial systems are unified

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<sup>46</sup> Although the status of a state as unfriendly is not, in principle, a basis for applying Articles 248.1 and 248.2 of the Arbitration Procedure Code of the Russian Federation, courts take it into account in practice, which in itself leads to the incorrect application of these articles.

as the highest instance by the Judicial Committee of the Privy Council. This means that Hong Kong courts are not required to follow the judicial precedents of third countries. Thus, in making decisions, Hong Kong courts act independently of other common law systems, including English law.

- Ruskhimalians argues that “*British and European judges play an important role in the Hong Kong judicial system, ... which, due to their citizenship, obliges them to comply with the sanctions imposed by the United Kingdom and the European Union*”. The Russian Arbitration Association notes that in addition to permanent judges, the Hong Kong Court of Final Appeal has so-called “non-permanent” judges: Hong Kong lawyers and invited foreign lawyers (5 people). The main purpose of the institution of foreign “non-permanent” judges was to attract international business to the jurisdiction. It should be noted that, starting in 2020, there has been an exodus of foreign “non-permanent” judges, caused by their disagreement with a number of decisions of Hong Kong courts and the new Hong Kong national security legislation.<sup>47</sup>
- Ruskhimalians argues that “*English language is one of the official languages of Hong Kong*”. The Russian Arbitration Association points out that the use of English as an official language does not in itself affect the unfriendliness of a jurisdiction. For example, English is an official language of such economic and political partners of the Russian Federation as India, Pakistan, South Africa, Malaysia, the Philippines, Nigeria, Ghana, Uganda, Zambia, Zimbabwe, Liberia, and others.

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<sup>47</sup> Stepping down of overseas judges won't affect HK // RTHK News 05.10.2024  
<https://news.rthk.hk/rthk/en/component/k2/1773339-20241005.htm>.

95. In essence, the Russian court recognized Hong Kong as an unfriendly state based on the criteria that are not supported by either law or factual circumstances. However, the reality is that to date, Hong Kong is the most neutral jurisdiction for Russian companies. Despite this, the Russian court's position on Hong Kong's unfriendliness began to be mechanically reproduced in other cases without any independent analysis, which led to the recognition of HKIAC arbitration clauses as invalid.<sup>48</sup>
96. In the opinion of the Russian Arbitration Association, the legislator has established certain criteria for the application of Articles 248.1–248.2 of the Arbitrazh Procedure Code of the Russian Federation. First of all, it should be proceeded from the fact that the application of these articles is an extreme and exceptional measure. Secondly, the Russian court must investigate the validity and enforceability of the arbitration clause in each specific case. If the court finds that the arbitration clause is valid and enforceable, it is obliged to leave the claim without consideration and refer the parties to arbitration (Article 8 of the Federal Law dated 29.12.2015 No. 382-FZ (as amended on 08.08.2024) “On Arbitration (Arbitral Tribunal) in the Russian Federation” and Article 8 of the Law of the Russian Federation dated 07.07.1993 No. 5338-1 (as amended on 30.12.2021) “On International Commercial Arbitration”). Thirdly, to establish the exclusive jurisdiction of the Russian court, the claimant bears the burden of proving that it truly lacks access to justice.
97. A broader interpretation of Articles 248.1–248.2 of the Arbitrazh Procedure Code of the Russian Federation will worsen the position of Russian businesses in their foreign economic activity. As noted above,

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<sup>48</sup> Cases No. A56-26171/2024, A56-84760/2023, A51-7534/2024; on the implementation of the Article 248.2 of the Arbitration Procedure Code of the Russian Federation, cases No. A56-13299/2024, A56-103943/2023, A40-286249/2023.

the contractual conditions will significantly worsen for Russian parties, and transaction costs will increase.

98. In this sense, the decision of the Russian arbitrazh (commercial) court of first instance in the *Ruskhimalians v. Linde* case served as an alarming signal that even if the state has not imposed any restrictions on Russian individuals, the choice of arbitration venue in that state does not guarantee the enforceability of such a clause. In our opinion, this deprives Russian companies of an effective tool for legal protection in their foreign economic activity.

#### **XIV. Conclusion**

99. The authors of this letter hope that this analysis will be useful to the Court and will help it to make a balanced decision. Given the importance of this issue for the development of Russian arbitration and the protection of the interests of Russian parties in international markets, this document was prepared by a team of authors.

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