



2016 RUSSIAN ARBITRATION ASSOCIATION SURVEY:  
THE IMPACT OF SANCTIONS ON COMMERCIAL ARBITRATION



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In 2013 the Russian Arbitration Association conducted a study on the arbitration preferences of Russian users. Those findings indicated that the Russia-related market was dominated by four major arbitration centers, three of which are located in the EU.<sup>1</sup>

When a number of states imposed anti-Russia sanctions in 2014 it appeared that the findings of the 2013 Survey no longer reflected the actual situation. The sanctions imposed various restrictions towards the largest Russian companies. As a result, these companies were forced to reconsider their dispute resolution habits.

Most of the leading Russian companies thoroughly studied the sanctions regulations and reviewed their internal dispute resolution policies and strategies. More importantly, companies also revisited their dispute resolution policies in order to minimise the sanction-related risks. The companies started looking for the alternatives to the traditional arbitration centres, seats and applicable laws.

While various studies have been conducted on the impact of the economic sanctions, the RAA 2016 Study wished to investigate the effect of the sanctions on commercial arbitration. The objective of the 2016 Survey was to analyse the effect of the sanctions on the users' attitudes and strategies when it comes to resolving their international commercial disputes.

Interestingly, the sanctions also impacted the attitudes of arbitrators who frequently receive nominations to the Russian cases. Therefore, we also decided to study the arbitrators' views on the current situation and perhaps the future of arbitration practices.

As far as it can be seen, the effect of the sanctions goes beyond just the procedural rights of the parties, and impacted the preferences of the users of commercial arbitration, which may reshape the future of the Russia-related arbitration market.

The 2016 survey's research base comprised over 160 respondents from various jurisdictions. Responses of individuals from diverse professional groups and nationalities were collected and assessed in the hope that these results and findings will add to the global discussion on the subject.

The organisers of the 2016 RAA Survey thank all those who took part in the exercise and shared their knowledge and experience. We also thank Dr. Réka Agnes Papp, Mrs Kristina Furlet and Ms Karen Keung for their valuable contribution to the survey.

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<sup>1</sup> Legal Insight Journal No. 1 (27) 2014. P 16-27 (in Russian).

## Intro

- When a number of states imposed personal and sectorial sanctions (“**Sanctions**”) against Russian companies and individuals (“**Sanctioned Persons**”) it was debated whether the Russian users would change their attitudes towards arbitral institutions, seats and applicable laws they commonly use.
- Between February 29 and June 25, 2016 the Russian Arbitration Association conducted a survey to investigate the impact of Sanctions on the users’ choices in commercial arbitration.
- The research was conducted online and comprised two independent sets of questions; one addressed to users and a second for arbitrators.

## Users

- The first set of 22 questions were answered by **62 lawyers** (“**Users**”), 20 of whom are in-house lawyers and 42 are law firm practitioners. This group was further divided into two sub-groups.
- Sub-group 1 (68%) comprised of those lawyers with personal practical experience in commercial arbitration during the two-year period 2014-2015 (“**Active Users**”).
- Sub-group 2 (32%) consisted of those lawyers who were not involved in commercial arbitration cases although they did draft arbitration agreements and contracts over the period 2014-2015 (“**Potential Users**”).
- Approximately 70% of the Users practice in Moscow, 10% practice in other Russian regions and 20% practice in Geneva, London, Paris, Stockholm, Singapore, Zurich and The Hague.

## Arbitrators

- The second set of 9 questions were addressed to **99 arbitrators** (“**Arbitrators**”), 62% of whom are citizens of countries which have imposed sanctions against Russia (“**Sanctioning State**”).
- Arbitrators were asked whether the sanctions influenced their willingness to act as arbitrators in the proceeding involving Sanctioned Persons depending on the seat of arbitration. A hypothetical seat of arbitration was either in the Sanctioning State or outside such country.

## Conclusions

- The majority of the Active and Potential Users indicated that the rules, seat and law preferences remained unchanged compared to the pre-sanctions era.
- The majority of the Active users indicated that there have been no drastic difficulties in submitting a case to arbitration or difficulties in the case administration under the rules of the traditional arbitration centers, such as the ICC, SCC, LCIA and others.
- The majority of the Arbitrators found no obstacles to accepting nominations as arbitrators in the proceedings involving a Sanctioned Person.

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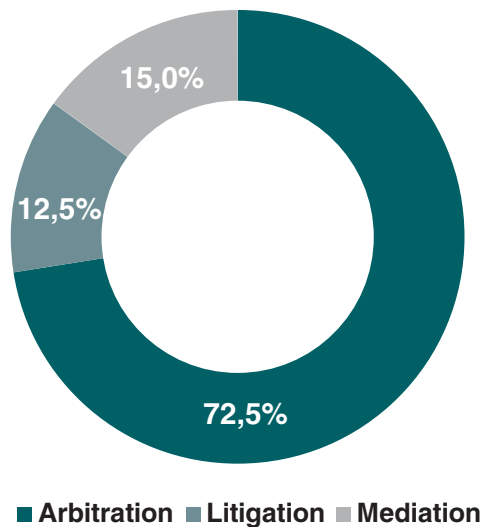
THE IMPACT OF SANCTIONS  
ON THE DRAFTING OF ARBITRATION AGREEMENTS:  
ACTIVE AND POTENTIAL USERS' ANSWERS

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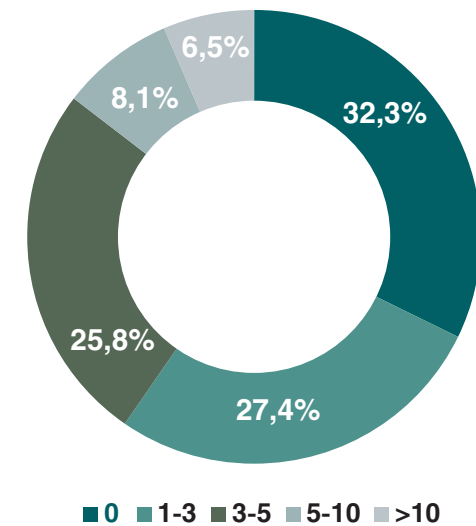
# 1. Experience of the Respondents

- Users were asked about their choice of a preferred dispute resolution mechanism without regard to their Sanctions' experience.
- 72,5% of the Users named arbitration as a preferable means of resolving their international commercial disputes. 12,5% chose litigation and 15% opted for mediation.
- We also asked the Users to describe their arbitration experience during the two-year period 2014-2015. 32,3% of the Users answered that though they preferred arbitration to other dispute resolution methods, they were not involved in arbitration during 2014-2015. However, the majority of the Users (67,7% in total) actively used arbitration during the reviewed period.
- During 2014-2015, 27,4% of the Active users were involved in 1-3 cases, 25,8% in 3-5 cases, 8,1% in 5-10 cases, 6,5% in more than 10 cases and 32,3% were not involved in any cases.

**Chart 1: Preferred Dispute Resolution (DR) Mechanism**



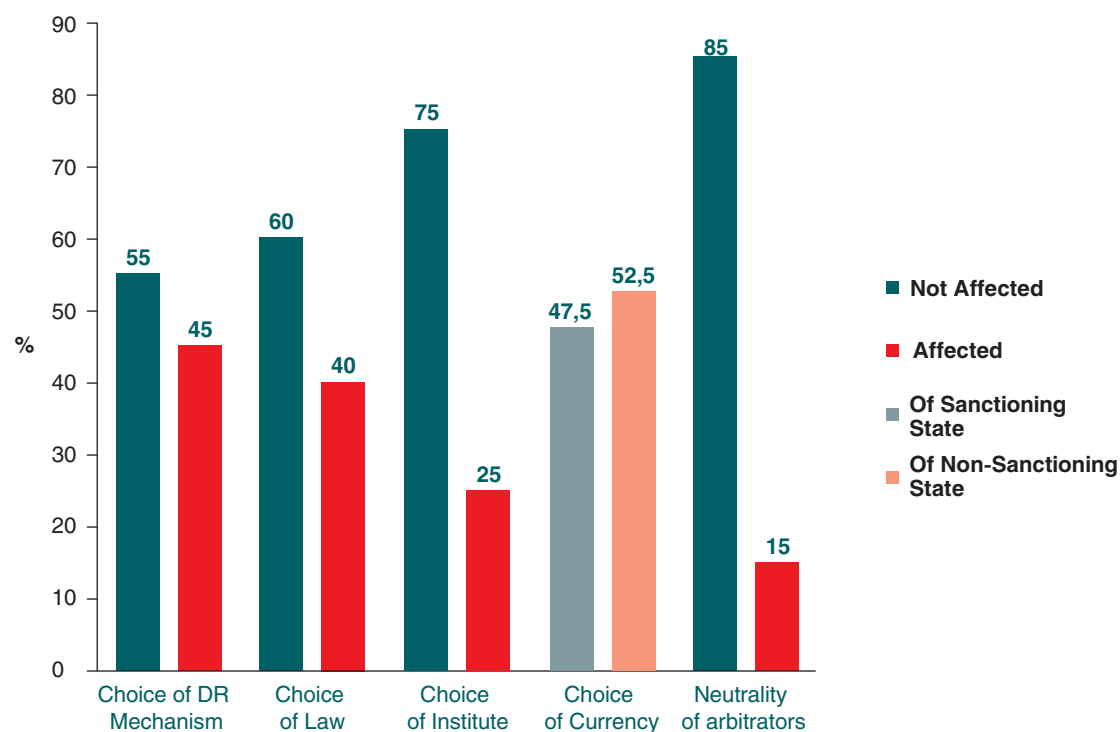
**Chart 2: Active users' Experience in Arbitration over 2014-2015**



## 2. General Observations on the Effect of Sanctions

- 55% of the Users noted that the sanctions did not affect their choice of the dispute resolution mechanism. Whereas, 45% of the Users noted that anti-Russia sanctions affected their choice.
- 60% of the Users indicated that the sanctions had no impact on the choice of applicable law to the contract. In contrast, 40% of the Users indicated that the sanctions have had an impact on their choice of applicable law.
- The survey reveals that 75% of the Users would prefer a well-known arbitral institution regardless of its location. However, 25% of the Users would prefer a less familiar arbitral institution provided that its location is not in a Sanctioning State.
- 47,5% of the Users indicated that the sanctions had no impact on their choice of the contract currency. 52,5% of the Users indicated that they reviewed the currency provisions in the contracts.
- 85% of the Users indicated that the seat in a Sanctioning state has no impact on the neutrality of arbitrators. However, 15% of the Users considered that the seat of arbitration might have an impact on the neutrality of arbitrators.

**Chart 3: General Observations on the Effect of Sanctions**



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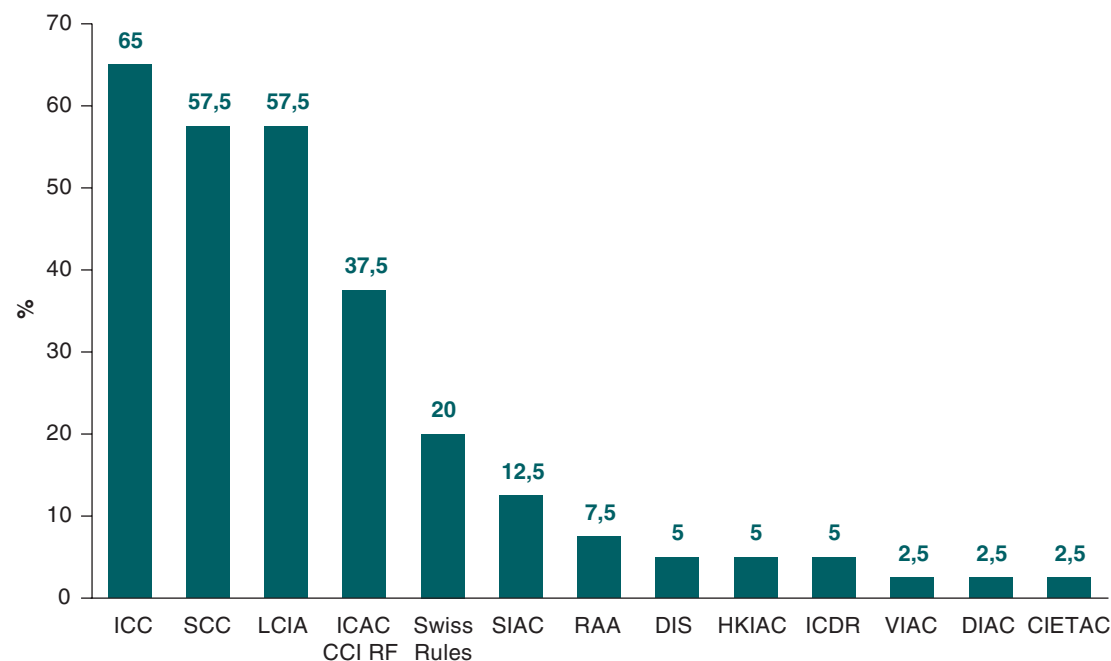
One of the main objectives of this Survey was to understand whether the Sanctions influenced the Users' preferences for arbitration. We asked the respondents to choose the arbitration rules, applicable law and seat which they were including in the international commercial contracts during 2014-2015. The respondents were not restricted with their choices. They, could however, select not more than 5 arbitration rules, not more than 5 preferred seats of arbitration and only up to 5 applicable laws.

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### 3. Choice of Arbitration Rules in the Contracts drafted in 2014-2015

- Prior to 2014, the annual statistics of the ICC, SCC, LCIA and ICAC CCI RF reflected a steady growth in the requests for arbitration in those cases involving Russian parties.
- The Survey shows that the Users still view these arbitration institutes as their top choice for the contracts drafted in 2014-2015.
- This data suggests that the ICC, SCC, LCIA and ICAC CCI RF will likely continue to dominate in the coming years.
- Although there has been no significant change in the attitudes towards the “traditional” European arbitration institutions, Asian centers have appeared on the Russian Users’ maps. The effect of the Sanctions accompanied by active marketing, made the Users view the SIAC, HKIAC, CIETAC and DIAC as alternative jurisdictions for trying their disputes.
- We also acknowledge that the Users included the Arbitration Rules of the Russian Arbitration Association in their commercial contracts.

**Chart 4: Choice of Arbitration Rules in the Contracts Drafted over 2014-2015**



## 4. Choice of the Seat in the Contracts drafted in 2014-2015

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- London, Stockholm, Moscow, Geneva and Paris remain the most preferable seats included in the arbitration agreements by the Users in 2014-2015.
- Similar to the results on the choice of arbitration rules, two Asian jurisdictions, namely Singapore and Hong Kong, appear to be a possible choice for 22,5% of the Users.
- Over a short period of time Singapore, Hong Kong and Dubai have gained popularity as the seats.
- As the seat of arbitration, Moscow remains popular for the Russian cases. It can be argued, that Moscow might now prove to be increasingly attractive given the changes to existing and implementation of new Russian arbitration legislation.

**Chart 5: Choice of the Seat in the Contracts Drafted in 2014-2015**

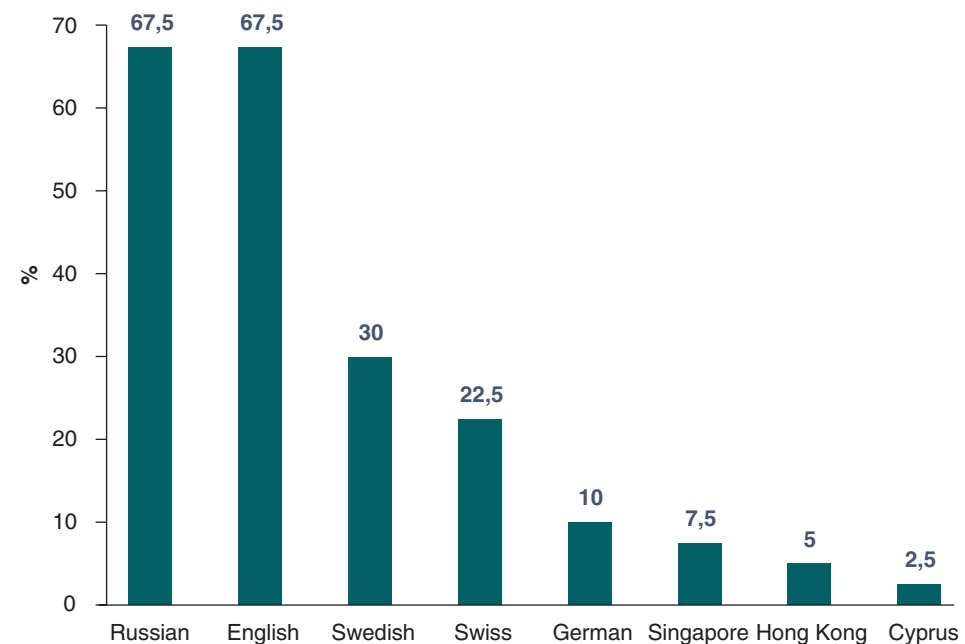


## 5. Choice of Law in the Contracts Drafted in 2014-2015

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- In Section 2 of the Survey results we noted that 40% of the Users indicated that they considered the Sanctions when selecting the law applicable to the contracts. This might be one of the reasons why Russian law was regarded among the most popular choices.
- While the Sanctions certainly played their role, the recent positive changes in the Russian civil and corporate legislation and case law, as well as the “de-offshorization” policy introduced by the Government might be two far more important factors contributing to such result.
- Although English law remains a top choice, the preference for Swedish and Swiss law is very noticeable.
- Similar to the results on the choice of arbitration rules and the seat, two Asian jurisdictions, namely Singapore and Hong Kong, appear to be in demand among the Russian users.

**Chart 6: Choice of law in the Contracts Drafted in 2014-2015**



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The merged data from the Arbitration rules, Applicable law and Seat of Arbitration charts illustrates the Users' preferences at large.

#	Rules	%	Seat	%	Law	%
1	ICC	65	London	52.5	Russian	67.5
2	SCC	57.5	Stockholm	50	English	67.5
3	LCIA	57.5	Moscow	47.5	Swedish	30
4	ICAC CCI RF	37.5	Switzerland	47.5	Swiss	22.5
5	Swiss Rules	20	Paris	47.5	German	10
6	SIAC	12.5	Singapore	22.5	Singapore	7.5
7	RAA	7.5	Hong Kong	22.5	Hong Kong	5

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THE IMPACT OF SANCTIONS  
ON ARBITRATION:  
ACTIVE USERS' ANSWERS

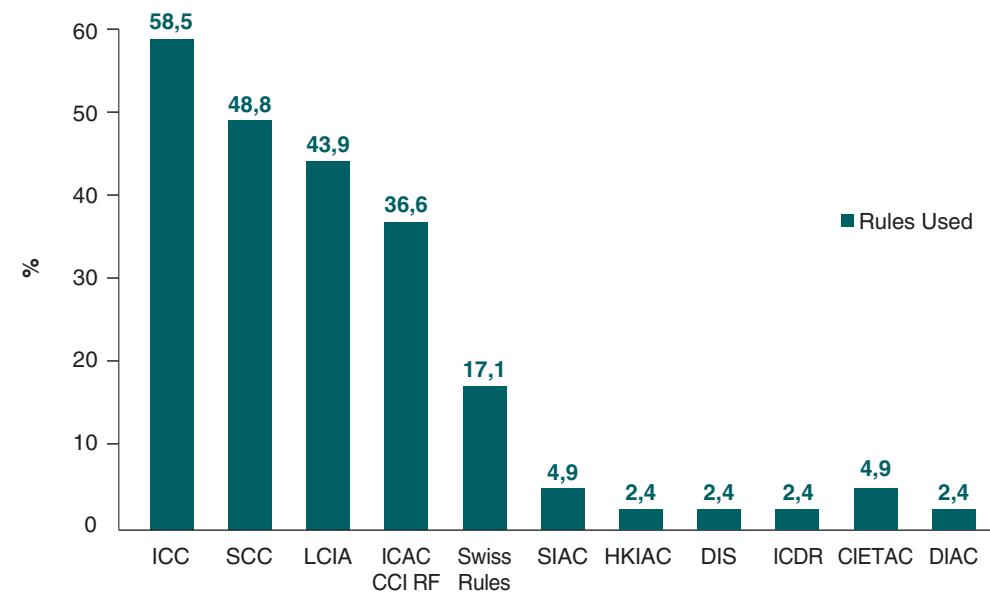
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## 6. Most Used Arbitration Rules in 2014-2015

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- The respondents of the 2016 RAA Survey marked a number of arbitration rules which were applicable to the majority of their cases initiated and/or pending during the two-year period 2014-2015.

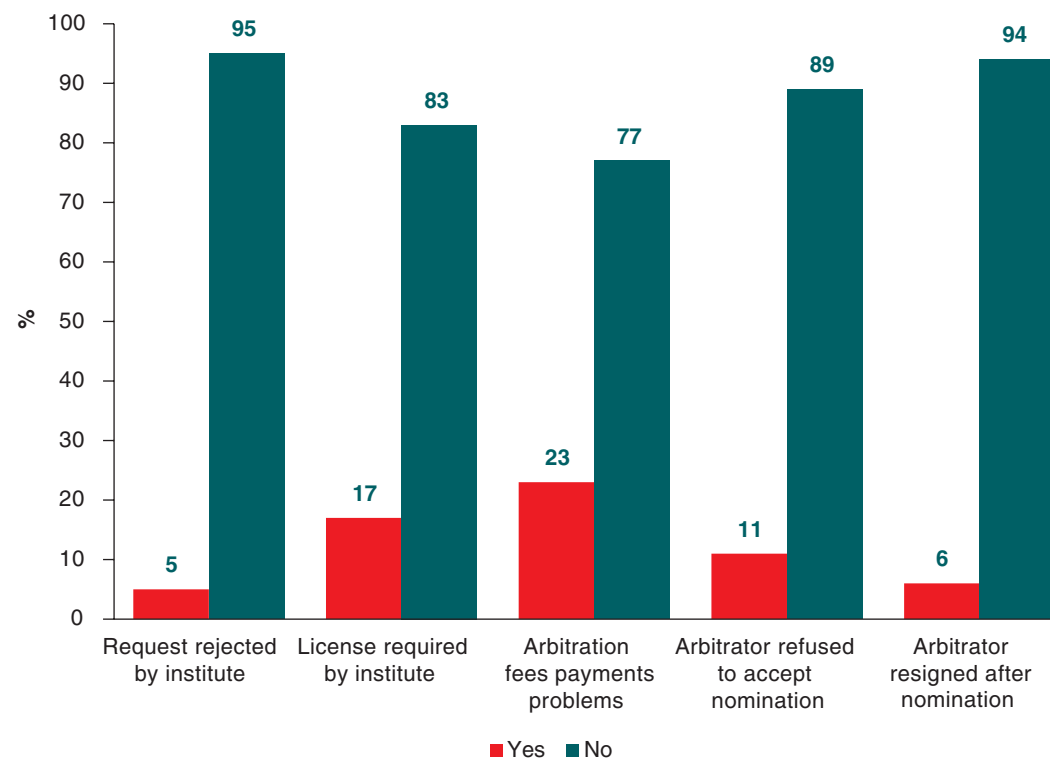
**Chart 7: Most Used Arbitration Rules**



## 7. Difficulties when Commencing the Arbitration

- The Active Users were asked to indicate the number of procedural difficulties they encountered when commencing or entering arbitrations involving Sanctioned Persons.
- 5% of the Active Users indicated that the arbitral institutions rejected their requests for arbitration due to sanctions, however, no further information about the arbitral institutions were provided. 95% of the respondents noted that they did not experience any problems in this respect.
- 17% of the Active Users pointed out that they had temporary difficulties at the commencement stage due to the participation of a Sanctioned Person. For example, additional time was required by an institute to obtain permission from a state authority.
- 23% of the Active Users had problems with arbitration-related payments due to bank delays in processing payments or simply refusals to process payments.
- 11% of the Active Users indicated that they have had a case when a potential arbitrator refused to accept a nomination in the proceeding involving a Sanctioned Person.
- 6% of the Active Users indicated that they have had a case in which an arbitrator resigned when they realized that one of the parties was a Sanctioned Person.
- In the comments section, some of the Active Users indicated that the difficulties arose in connection with the arbitral proceedings administered by the ICC, LCIA, Geneva Chamber of Commerce, Industry and Service as well as in an ad hoc arbitration.

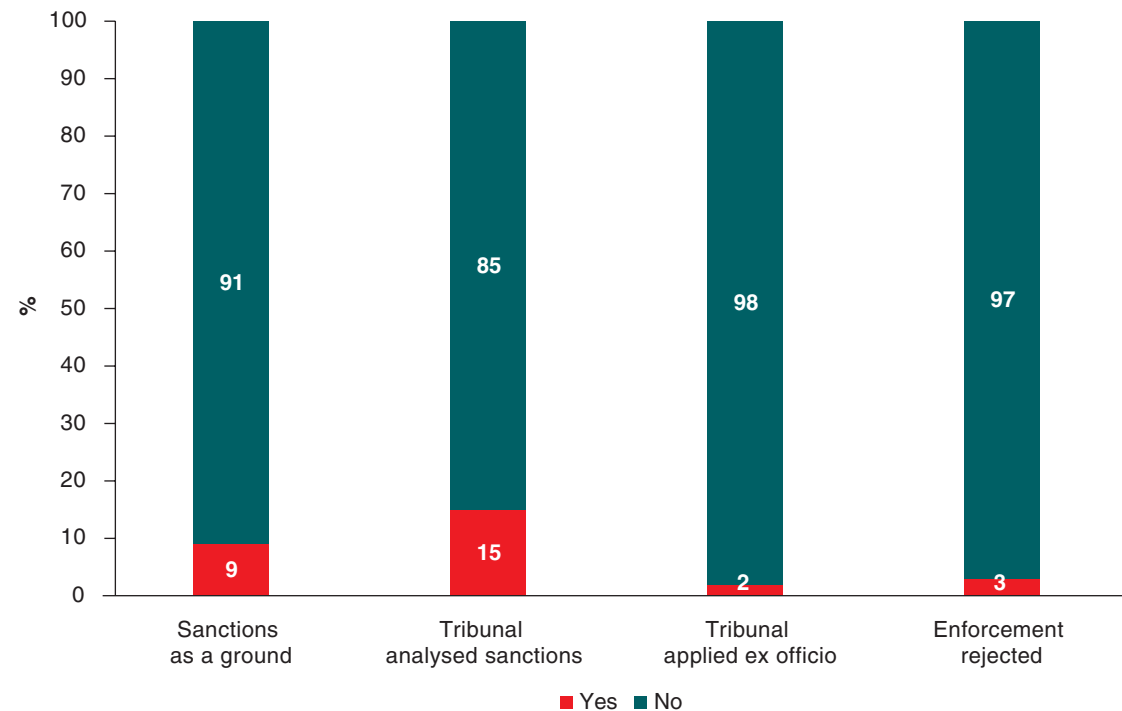
**Chart 8: Difficulties at the Commencement Stage**



## 8. Sanctions Regulation and Applicable Law

- 91% of the Active Users indicated that the sanctions as force majeure/material change of circumstances/frustration of contract arguments were not applied by the tribunal when requested by the party to declare the contract unenforceable.
- 85% of the Active Users indicated that the arbitral tribunals did not discuss the application of the sanctions regulations *ex officio*. 15% of the Active Users indicated that arbitral tribunals reviewed the applicability of the sanctions in particular cases.
- 2% of the Active Users indicated that arbitral tribunals in their cases applied the sanctions regulations *ex officio*.
- 3% of the respondents indicated that they have had a case in which a state court rejected the recognition and enforcement of an arbitral award due to the sanctions regulations.

**Chart 9: Sanctions and Applicable Law**



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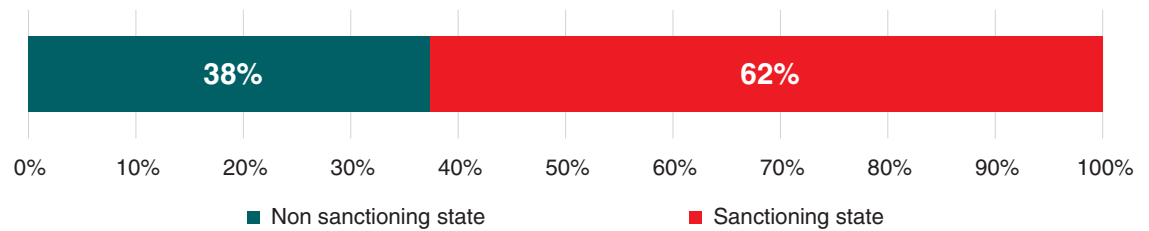
# THE IMPACT OF SANCTIONS ON ATTITUDES OF ARBITRATORS

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## 9. Arbitrators' Background

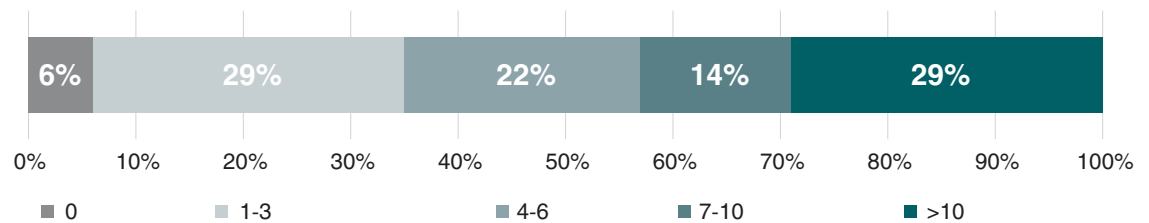
- 99 Arbitrators completed the online questionnaire. 62% of these arbitrators were located in countries that have imposed sanctions against Russia.

**Chart 10: Origin of Arbitrators**



- 29% of the Arbitrators were involved in 1-3 cases, 22% in 4-6 cases, 14% in 7-10 cases, 29% in more than 10 cases and 6% were not involved in any cases during the two-year period 2014-2015.

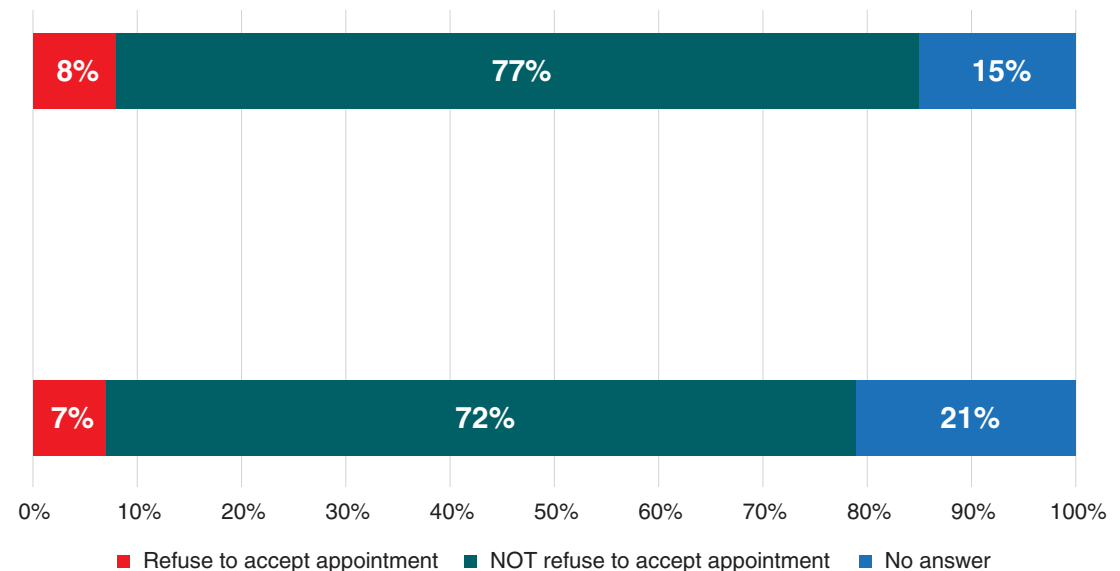
**Chart 11: Number of Arbitration Cases in 2014-2015**



## 10. Willingness to Serve as a Sanctioned Party-appointed Arbitrator

- If the seat of arbitration is **in the Sanctioning State**.
- 77% of the Arbitrators would not refuse to accept nomination as arbitrator if they knew that a nomination is made by a Sanctioned Person. 8% of the Arbitrators indicated that they would refuse to accept a nomination in such circumstance. 15% of the Arbitrators left the question unanswered.
- If the seat of arbitration **is outside the Sanctioning State**.
- 72% of the Arbitrators would not refuse to accept nomination as arbitrator if they knew that a nomination was made by a Sanctioned Person. In contrast, 7% of the Arbitrators indicated that they would refuse to accept a nomination in such circumstance. 21% of the Arbitrators left the question unanswered.

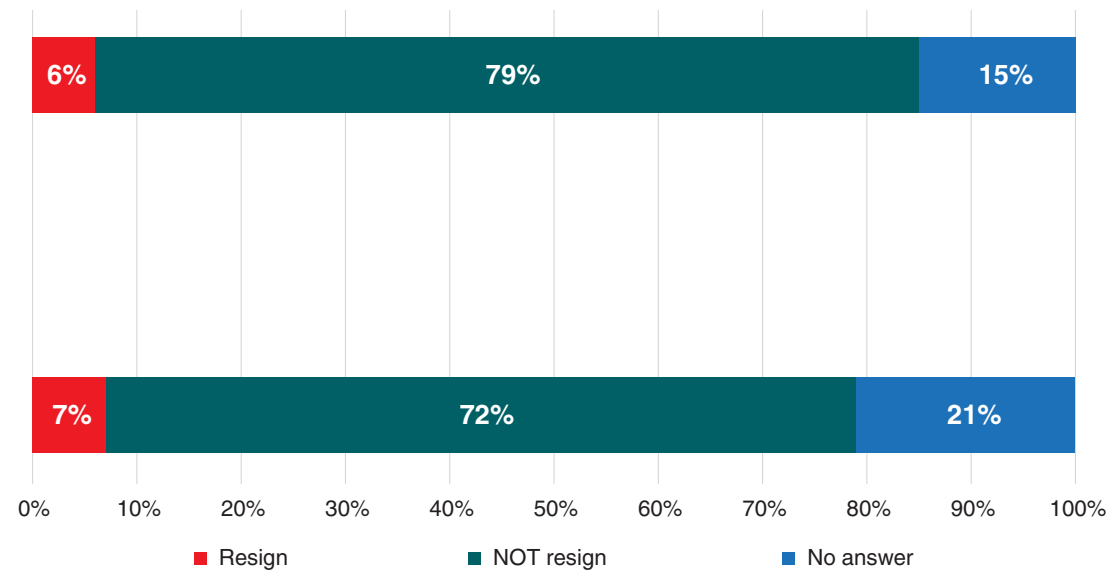
**Chart 12: Willingness to Serve as a Sanctioned Party-Appointed Arbitrator**



## 11. Willingness to Continue Acting as a Sanctioned Party-appointed Arbitrator

- If the seat of arbitration is **in the Sanctioning State**.
- 79% of the Arbitrators would not resign if during the arbitration they realised that the appointment was made by a Sanctioned Person. In contrast, 6% of the Arbitrators indicated that they would resign if such was the case. 15% of the Arbitrators left the question unanswered.
- If the seat of arbitration **is outside the Sanctioning State**.
- 72% of the Arbitrators indicated that they would not resign if during arbitration they realised the appointment was made by a Sanctioned Person. In contrast, 7% of the Arbitrators indicated that they would resign if such was the case. Moreover, 21% of the Arbitrators left the question unanswered.

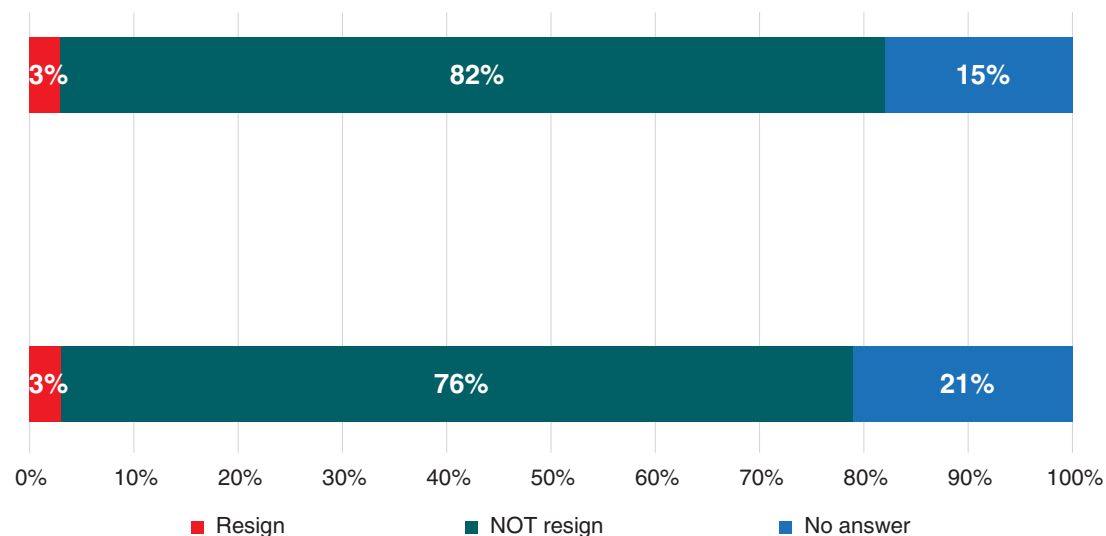
**Chart 13: Willingness to continue acting as a Sanctioned Party-Appointed Arbitrator**



## 12. Willingness to Continue Acting as Arbitrator if a Non-Appointing Party is a Sanctioned Person

- If the seat of arbitration is **in the Sanctioning State**.
- 82% of the Arbitrators indicated that they would not resign if it appeared that one of the parties is under the Sanctions. In contrast, only 3% of the Arbitrators indicated that they would do so. However, 15% of the Arbitrators left the question unanswered.
- If the seat of arbitration is **outside the Sanctioning State**.
- 76% of the Arbitrators would not resign if it appeared that one of the parties is a Sanctioned Person. In contrast, only 3% of the Arbitrators indicated that they would do so. Moreover, 21% of the Arbitrators did not respond to the question.

**Chart 14: Willingness to Continue Acting as Arbitrator if a Non-Appointing Party is a Sanctioned Person**



*In the comments, some of the Arbitrators have provided reasons against participation in arbitration involving a sanctioned person. In particular, some of European arbitrators noted that there might be difficulty in obtaining payment due to the freezing of assets of the Sanctioned Person.*

*Additionally, some of US arbitrators claimed that if the US has banned the provision of arbitration services to a Sanctioned Person, they would not violate US law by acting as arbitrator.*

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# Appendices

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## Edited version of web-based survey form (Users' questionnaire)

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1. What is your occupied position?

- ☐ In-house counsel
- ☐ Legal adviser

2. Please indicate the city in which your professional activity exercises:

3. What was your experience in international arbitration during 2014-2015 as a counsel in arbitration?

- ☐ 0 case;
- ☐ from 1 to 3 cases;
- ☐ from 3 to 5 cases;
- ☐ from 5 to 10 cases;
- ☐ More than 10 cases.

4. What arbitration rules were used in the arbitrations you took part in 2014-2015 (select maximum 5)?

- ☐ LCIA
- ☐ ICC
- ☐ SCC
- ☐ Swiss Rules
- ☐ RAA
- ☐ ICAC at the RF CCI
- ☐ HKIAC
- ☐ SIAC
- ☐ CIETAC
- ☐ DIAC
- ☐ DIS
- ☐ KLRCA
- ☐ JCAA
- ☐ ICDR/AAA
- ☐ Other (please, indicate)

5. Have you ever had a case when an arbitral institution rejected to administrate a case due to participation of a sanctioned party?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution:

6. Have you ever had a case when an arbitral institution had any difficulty in administering a case due to the fact that one of the parties was under sanction (f. ex., additional time was required by an institute to obtain a license from a state authority)?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution:

7. Have you ever had a case when a sanctioned company has (had) difficulty to make an arbitration-related payment due to bank delays or even was unable to process arbitration-related payments?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution:

8. Have you ever had a case when a nominated arbitrator refused appointment in a case involving a sanctioned party?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution:

9. Have you ever had a case when an arbitrator resigned after the commencement of arbitral proceedings because one of the parties was included in a sanction list?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution:

10. Have you ever had a case when a force majeure/ material change of circumstances/ frustration/ rendered the contract unenforceable due to sanctions regulations?

- ☐ Yes
- ☐ No
- ☐ If yes, which defence was used

11. Have you ever had a case when arbitrator[s] discussed with the parties a possibility to apply sanctions legislation?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution:

12. Have you ever had a case when arbitrators applied sanctions legislation ex officio?

- ☐ Yes
- ☐ No
- ☐ Please indicate the name of the arbitral institution and if possible the consequences of the such application:

13. Have you ever had a case when a court refused the recognition and enforcement of a foreign arbitral award due to the existence of the sanctions legislation?

- ☐ Yes
- ☐ No
- ☐ Please indicate the country in which the recognition and enforcement of the arbitral award was sought, and if possible the name of the court and the number of the case

14. Have sanctions against Russia affected your choice of a dispute settlement mechanism of the international commercial disputes?

- ☐ Yes
- ☐ No
- ☐ Please indicate the reason (s)

15. Which of the dispute settlement mechanisms is preferable for you with foreign counterparties in view of the existing sanctions against Russia?

- ☐ Litigation
- ☐ Commercial Arbitration
- ☐ Mediation

16. If an arbitration clause were deal breaker, what would be your choice?

- ☐ A well-known arbitral institution regardless of its location (location in a country which imposed sanctions against Russia has no influence on my choice).
- ☐ I will prefer a less familiar arbitral institution if its location is not in a country which imposed sanctions against Russia.

17. Please indicate which arbitration rules have been more frequently included in contracts during 2014-2015 (select maximum 5).

- ☐ LCIA
- ☐ ICC
- ☐ SCC
- ☐ Swiss Rules
- ☐ RAA
- ☐ ICAC at the RF CCI
- ☐ HKIAC
- ☐ SIAC
- ☐ CIETAC
- ☐ DIAC
- ☐ DIS
- ☐ KLRCA
- ☐ JCAA
- ☐ ICDR/AAA
- ☐ Other (please, indicate)

18. What is the preferable for you seat of arbitration? (select maximum 5)?

- ☐ Moscow
- ☐ London
- ☐ Stockholm
- ☐ Paris
- ☐ Geneva
- ☐ Zurich
- ☐ New York
- ☐ Vienna
- ☐ Singapore
- ☐ Hong Kong
- ☐ Dubai
- ☐ Other (please, indicate)

19. Do sanctions affect the choice of the applicable law?

- ☐ Yes
- ☐ No

20. Which applicable law you preferred to use during 2014-2015? (select maximum 5)?

- ☐ Russian
- ☐ English
- ☐ Swiss
- ☐ German
- ☐ Swedish
- ☐ Singapore
- ☐ Hong Kong
- ☐ Other (please, indicate)

21. Do you agree with the statement that if the place of arbitration is in a country which imposed sanctions on Russia it has a priori affects the neutrality of a tribunal?

- ☐ Yes
- ☐ No

22. Do sanctions influence the choice of the contract currency?

- ☐ Yes
- ☐ No

## Edited version of web-based survey form (Arbitrators' questionnaire)

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### I. Respondent's information

1. Respondent name (for verification purposes only; will not be published)?

2. Please indicate the country (countries) of your citizenship?

3. Please indicate the number of cases in which you have been appointed as an arbitrator (a co-arbitrator / a chairman of a tribunal) during 2014-2015:

- ☐ 0 case;
- ☐ from 1 to 3 cases;
- ☐ from 4 to 6 cases;
- ☐ from 7 to 10 cases;
- ☐ More than 10 cases.

### II. The seat of the arbitration is in the country which imposed sanctions against Russia

4. Would you refuse nomination as arbitrator solely for the reason that your nomination is made by a sanctioned person?

- ☐ Yes
- ☐ No
- ☐ If possible please indicate reason(s):

5. If after the commencement of the arbitral proceedings you receive information that the party, which nominated you, is under sanctions, would you resign?

- ☐ Yes
- ☐ No
- ☐ If possible please indicate reason(s):

6. If after the commencement of the arbitral proceedings you have received information that the other party (not the one nominated you) is under sanctions, would you resign?

- ☐ Yes
- ☐ No
- ☐ If possible please indicate reason(s):

### III. The seat of the arbitration is outside the country, which imposed sanctions against Russia

7. Would you refuse nomination as arbitrator solely for the reason that your nomination is made by a sanctioned person?

- ☐ Yes
- ☐ No
- ☐ If possible please indicate reason(s):

8. If after the commencement of the arbitral proceedings you receive information that the party, which nominated you, is under sanctions, would you resign?

- ☐ Yes
- ☐ No
- ☐ If possible please indicate reason(s):

9. If after the commencement of the arbitral proceedings you have received information that the other party (not the one nominated you) is under sanctions, would you resign?

- ☐ Yes
- ☐ No
- ☐ If possible please indicate reason(s):

## Abbreviations

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<b>CIETAC</b>	China International Economic and Trade Arbitration Commission
<b>DIAC</b>	Dubai International Arbitration Centre
<b>DIS</b>	German Institution of Arbitration
<b>ICAC at the CCI RF</b>	International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation
<b>ICC</b>	International Chamber of Commerce
<b>ICDR/AAA</b>	International Centre for Dispute Resolution of the American Arbitration Association
<b>HKIAC</b>	Hong Kong Arbitration Center
<b>LCIA</b>	London Court of International Arbitration
<b>RAA</b>	Russian Arbitration Association
<b>SIAC</b>	Singapore International Arbitration Center
<b>SCC</b>	Arbitration Institute of the Stockholm Chamber of Commerce
<b>Swiss Rules</b>	Swiss Chambers of Commerce Association for Arbitration and Mediation
<b>VIAC</b>	Vienna International Arbitral Centre

## List of Charts

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Chart 1: Preferred Dispute Resolution (DR) Mechanism

Chart 2: Active Users' Experience in Arbitration over 2014-2015

Chart 3: General Observations on the Effect of Sanctions

Chart 4: Choice of Arbitration Rules in the Contracts Drafted over 2014-2015

Chart 5: Choice of the Seat in the Contracts drafted in 2014-2015

Chart 6: Choice of law in the Contracts drafted in 2014-2015

Chart 7: Most used Arbitration Rules

Chart 8: Difficulties at the Commencement Stage

Chart 9: Sanctions and Applicable Law

Chart 10: Origin of Arbitrators

Chart 11: Number of Arbitration Cases in 2014-2015

Chart 12: Willingness to Serve as a Sanctioned Party-Appointed Arbitrator

Chart 13: Willingness to continue acting as a Sanctioned Party-Appointed Arbitrator

Chart 14: Willingness to Continue Acting as Arbitrator if a Non-Appointing Party is a Sanctioned Person

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