

Case Note

ENKA V. CHUBB RUSSIA: THE LAW OF THE ARBITRATION AGREEMENT – AN END TO THE CONTINUOUS BATTLE BETWEEN THE LAW OF THE SEAT AND THE LAW OF THE UNDERLYING CONTRACT?

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ABSTRACT

It is a well-established principle that an arbitration agreement is presumptively separable from the underlying contract. As such, it is possible (albeit not necessary) for an arbitration agreement to be governed by a law that is different from the law of the underlying contract. Identifying the law governing the arbitration agreement is important as it will govern certain issues such as the validity, formation, existence and scope of an arbitration agreement as well as its interpretation. This case note analyses the recent landmark decision of Enka Insaat ve Sanayi A.S. v. OOO Insurance Company Chubb, where the U.K. Supreme Court set out the approach to be adopted in future cases when ascertaining the law governing the arbitration agreement.

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