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Ukraine

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Introduction

The principal source governing international arbitration in Ukraine is the Law on International Commercial Arbitration[1] adopted on 24 February 1994 (the "**ICAL**"), which is mostly based on the UNCITRAL Model Law 1985 with a few modifications. In particular, the ICAL is only applicable to disputes:

(i) arising out of contractual and other civil relationships in the course of foreign trade and other forms of international economic relations, provided that at least one of the parties is situated abroad; and

(ii) involving companies with foreign investments, international associations and organisations established in Ukraine, participants of such entities, and disputes between such entities and Ukrainian legal and natural persons.

Ukraine is a party to the New York Convention[2], notwithstanding a reservation on reciprocity[3]. It is also a party to the European Convention on International Commercial Arbitration[4], the Energy Charter Treaty[5] and the ICSID Convention[6]. The procedural aspects of the recognition and enforcement of arbitral awards in Ukraine are governed by the Civil Procedural Code of Ukraine[7].

Domestic arbitration in Ukraine is governed by a separate law differing from the ICAL, and is limited only to disputes between Ukrainian parties.

There are only two permanent arbitration institutions in Ukraine legally authorised to administer international arbitration under the ICAL: the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the "**ICAC**") and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (the "**MAC**"), each having its own arbitration rules[8].

Although Ukraine is a Model Law country, a party to a number of international conventions regarding arbitration and can be generally perceived as a "pro-arbitration" jurisdiction, still a number of issues, particularly cooperation with and support of the national courts, requires further development and the relevant amendments to Ukrainian legislation.

Arbitration agreement

The ICAL requires an arbitration agreement to be in writing, be it a clause in the contract or a separate agreement. The written form includes the exchange of letters with a signed document, telex, telegrams, other means of telecommunications, which provide a record of the agreement (such as fax) or the exchange of statements of claim and defence, in which the existence of the agreement is alleged by one party and not denied by another. The reference to another document containing an arbitration clause also constitutes an

arbitration agreement, provided that such contract is in writing and the reference makes the arbitration clause a part of the contract. In practice Ukrainian courts, while assessing the validity of arbitration agreements, are hesitant to accept agreements made only through the exchange of emails.

Regarding the substance, the arbitration agreement, as a rule, must contain: (i) an explicit reference to the arbitration; and (ii) define the scope of its application, *i.e.* types and nature of the disputes to be submitted to arbitration. Additionally, it must specify the exact name of the arbitration institute or the explicit mentioning of *ad hoc* arbitration; in bilingual contracts both arbitration clauses must be the same. Otherwise, any discrepancy, inconsistency or even minor *typo* can be a reason to recognise such arbitration agreement as invalid in Ukrainian courts due to its unenforceability, or may have a negative impact upon the enforcement procedure.

One should also bear in mind that the approach regarding validity and enforceability of the arbitration agreement taken by Ukrainian courts is quite formalistic and may differ from the one usually taken by the arbitral tribunals when assessing their own jurisdiction. This may lead to a situation where each arbitral tribunal and Ukrainian court confirms its jurisdiction and thus they render contradicting decisions[9].

Pre-arbitration or mediation clauses are rather voluntary and not obligatory, meaning that parties may skip pre-arbitration steps, even if the arbitration agreement requires so.

When dealing with Ukrainian companies, it is important to understand that, as a rule, any contract with a Ukrainian legal entity shall contain the stamp of this entity and be signed by an authorised representative. In order to avoid any doubts or abuse, particularly when contracting for the first time, it is advisable to examine the list of persons entitled to act on behalf of the company[10], and the presence of the company's stamp.

The issue of arbitrability in Ukraine has its particularities and limitations. Although the ICAL defines the disputes that can be referred to international arbitration as mentioned above, certain matters – due to their nature and by virtue of other applicable laws – are considered non-arbitrable. The Commercial Procedural Code and the International Private Law Act define the types of disputes which shall be referred exclusively to the national courts of Ukraine, and, consequently, prohibits them from being referred to arbitration. The Law on Domestic Arbitration also contains a list of non-arbitrable matters, which applies to international arbitration *mutatis mutandis*. As a result, the following types of disputes cannot be referred to arbitration:

(i) disputes arising out of the conclusion, amendment, termination and performance of public procurement contracts;
(ii) disputes arising out of corporate relations between a company and its participant (founder, shareholder, member), including a former participant, and between the participants (founders, shareholders, members) of the company in relation to the establishment, activity, management and winding-up of the company[11];
(iii) insolvency disputes in relation to Ukrainian companies;
(iv) family law and labour law disputes;
(v) disputes related to real estate, including land plots;
(vi) disputes involving state or municipal authorities, their officials, state institutions or organisations;
(vii) disputes concerning intellectual property rights, which require their registration or issuance of a certificate (patent) in Ukraine; and
(viii) disputes regarding unfair competition with the Anti-monopoly Committee of Ukraine.

Particular interest attaches to the non-arbitrability of corporate disputes, notwithstanding the exact wording of the ICAL's scope of application mentioned above. In February 2011 the Commercial Procedural Code of Ukraine was amended in order to limit the list of non-arbitrable disputes to domestic arbitration only, meaning that corporate disputes and disputes regarding public procurement contracts can be resolved by international arbitration. However, the attitude of Ukrainian courts is still controversial: on the one hand non-arbitrability of corporate disputes is confirmed for contracts concluded before the Commercial Procedural Code was amended[12], leaving the question open, on the other hand, whether an arbitration agreement may be invalid due to non-arbitrability of the corporate dispute even after the amendments were adopted[13].

The principles of competence-competence (*Kompetenz-Kompetenz*) and separability are recognised by the ICAL. Being part of the contract, the arbitration clause shall be treated as an agreement independently of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause. Moreover, the arbitral tribunal may rule on its own jurisdiction, including any objections regarding the existence or validity of the arbitration agreement. When such ruling has been made in the form of interim award, it can be subject to appeal in Ukrainian courts within 30 days following its receipt.

The involvement of third parties in arbitration proceedings, as well as consolidation, is not regulated by the ICAL. Provided that arbitration is administered by the ICAC or the MAC, according to their rules third parties can be joined only with the express consent of all involved parties (including the third party) and prior to submission of the statement of defence. Consolidation is possible only in limited circumstances and, in practice, is uncommon.

Arbitration procedure

Unless otherwise agreed by the parties, the arbitration proceedings commence on the date when the respondent receives a request for arbitration. However, in proceedings under the rules of the ICAC or the MAC, they are deemed to be commenced when the president of the ICAC or the MAC respectively issues an order following the receipt of the statement of claim and the confirmation of the payment of arbitration fee. Such statement shall be signed by the claimant or duly authorised representative and contain all formal requirements, like names and details of the parties, the claim's amount, prayer for relief, confirmation of the jurisdiction, reference to the relevant arbitration agreement, *etc*.

Ukrainian courts have a formalistic approach to assessing the fact, including whether the respondent in the case of default was duly notified about the commencement of the arbitration proceedings, failure of which constitutes a ground for setting aside an award. In order to ensure compliance with such requirement, the request for arbitration must be sent to the respondent's legal address and actual business address, if different[14], by means of registered mail or courier, unless parties expressly agreed in the contract on other appropriate means of communication.

According to the ICAL, the parties are free to agree on the procedure to be followed by the arbitral tribunal. Absence of such agreement empowers the tribunal to conduct arbitration in the manner it deems appropriate. The powers conferred upon the arbitral tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence.

The parties and the arbitral tribunal are flexible to conduct the hearings, procedural meetings or deliberations at any convenient place other than the seat of arbitration, provided that the

award nevertheless will be rendered at the seat. In case the parties fail to agree on the place of arbitration, the arbitral tribunal is entitled to determine the seat with due consideration of the circumstances of the case and convenience of the parties.

Speaking about the evidences, it is important to remember that Ukraine is a civil law jurisdiction with an inquisitorial manner of conducting litigation. Therefore, arbitration proceedings are based mostly on written submissions and documentary evidence; witness testimony is not commonly used. Unless the parties agree otherwise, the ICAL grants discretion to the arbitral tribunal to decide whether to hold oral hearings and examine witnesses or to decide on the basis of documents and other materials only. In addition, the arbitral tribunal may appoint an expert to report to it on specific issues to be determined by the arbitral tribunal, or to require a party to give the expert any relevant information or produce, or to provide access to any relevant documents, goods or other property for the expert's inspection. If necessary or upon the request of the party, the expert may be present during the hearings for questioning.

Although not directly prohibited, discovery and disclosure, typical for common law jurisdictions, as a rule, are not used in Ukraine. The same relates to the IBA Rules on the taking of evidence in international arbitration, which are not, in principle, employed by the arbitral tribunal, unless the parties expressly refer to them in the contract. Obviously, the way of taking evidence depends on the composition of the tribunal and the relevant legal background of the arbitrators nominated by the parties.

The issue of confidentiality of the arbitration proceedings and provided evidence is not reflected in the ICAL. The parties are free to determine the scope and consequences of violating confidentiality in the contract. In the proceedings under the ICAC or the MAC rules, all persons administering the case are obliged to keep confidential the existence of proceedings and all related documents. Hearings are also held *in camera*.

However, the existence of the arbitration proceedings, the names of the parties and, particularly, its outcome become available to the public once any of the parties refers to the national courts of Ukraine, be it for challenging an award or within the enforcement procedure. All court rulings and decisions, including the ones related to the international arbitration, are published on the website of the Unified State Registry of Court Decisions of Ukraine[15] and can be easily accessed and analysed by any third party.

Arbitrators

The ICAL does not provide any limitations in respect of a party's choice of arbitrator, requiring that he or she shall be impartial and independent. The parties are also free to determine the number of arbitrators, failure of which implies three arbitrators. As a part of the arbitration agreement the parties may impose additional requirements on arbitrators, such as nationality, years of experience or other qualifications, which is not considered as discrimination.

Institutional arbitration in Ukraine has its own additional qualification requirements and restrictions regarding arbitrators. Both the ICAC and the MAC have the list of 'recommended' arbitrators, including those who have the required expertise in resolving disputes within the jurisdiction of the ICAC or the MAC. Although the parties are not obliged to appoint an arbitrator only from the list, in practice appointment of other arbitrators can be simply not confirmed by the institution.

When parties agree to *ad hoc* proceedings, the nomination of the arbitrator will be performed by the President of the Ukrainian Chamber of Commerce and Industry (the "**UCCI**").

An arbitrator can be challenged if there are any circumstances giving rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess the qualifications agreed by the parties. Prior to the appointment and at any moment during the proceedings, the arbitrator must disclose without delay any circumstances that may influence his or her impartiality and independence.

The parties can separately agree on the challenging procedure of arbitrators. Otherwise, reasons for the challenge shall be submitted in writing to the arbitral tribunal within 15 days after constitution of the arbitral tribunal, or after the party becomes aware of the circumstances giving rise to such challenge. In the event of an unsuccessful challenge before the arbitral tribunal, the party is entitled to request the President of the UCCI to decide on the challenge; the President's decision is not subject to appeal.

Standards for assessing lack of impartiality or independence are not clear. Deciding bodies, including the ICAC Presidium, the MAC Presidium and the President of the UCCI, do not refer directly to the IBA Guidelines on conflict of interest, even when parties' representatives rely on them in their submissions. In practice, the challenge of arbitrators is rarely requested and more rarely accepted.

If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, if he withdraws from his office, or if both parties agree on the termination of his mandate, his mandate terminates. Any controversies in this regard can be finally settled by the President of the UCCI.

The replacement of the arbitrator who withdraws from his or her appointment, or whose appointment has been terminated for any other reason, has been successfully challenged, and is conducted under the same rules that were applicable to the appointment of the arbitrator being replaced.

Ukrainian courts cannot intervene in the process of challenge or removal of arbitrators, though composition of the tribunal not in accordance with the parties' agreement is a ground for setting aside an arbitral award.

The ICAL is silent on the issues of liability or immunity of arbitrators regarding the performance of their duty. Although the Law on Domestic Arbitration provides for liability of the arbitrators for negligence or non-fulfilment of their duties, its application in this regard to the international arbitration is vague.

Interim relief

According to the ICAL, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. Additionally, during arbitration proceedings under the ICAC or the MAC rules, the President of the relevant institution or the arbitral tribunal, if already composed, upon the party's request may determine the amount and the form of the security for the claim, which shall be binding for the parties and shall be in force until the final award is made.

However, at the moment Ukrainian legislation does not provide for a mechanism of enforcement of interim relief in Ukraine within arbitration proceedings. In other words, even if the arbitral tribunal confirms interim measures against the party, their enforcement would depend on the good will of such party and would be obeyed voluntarily (which is not always effective). Such a controversial approach by Ukrainian courts is caused by the absence of procedural regulations on how and by which court interim measures should be

enforced. Paradoxically, this relates to the Ukrainian parties only, or to the actions to be performed in Ukraine: enforcement of such interim measures abroad would be regulated by local arbitration law and, thus, could be possible.

The same relates to the national courts: although the ICAL provides for the possibility to apply to national courts for interim measures in support of arbitration irrespective of the place of arbitration, Ukrainian courts would likely reject such motion due to the absence of any specific procedural provisions in this regard. Moreover, Ukrainian courts may deal with interim measures only within the context of pending litigation proceedings, which in the case of arbitration would be absent.

At the same time, relatively recent amendments to the procedural legislation has enabled the provision and enforcement by Ukrainian competent authorities of interim measures at the stage of recognition and enforcement of the foreign court decisions or international arbitral awards in Ukraine.

Ukrainian courts do not deal directly with anti-suit and anti-arbitration injunctions, particularly in the form of interim measures, but rather within the context of validity and enforceability of the arbitration agreement. Pursuant to the New York Convention and the ICAL, the Ukrainian court shall refer the parties to arbitration and terminate litigation proceedings in a matter which is the subject of an arbitration agreement, provided that: (i) one of the parties requests the same prior to submitting its first statement on the substance of the dispute; and (ii) a court does not find that the respective arbitration agreement is void, inoperative or incapable of being performed.

Consequently, when an opposing party during litigation proceedings at a Ukrainian court objects to its jurisdiction due to the valid arbitration clause, the court shall establish whether the respective arbitration agreement is void, inoperative or incapable of being performed. Pursuant to the recent practice[16], Ukrainian courts are not reluctant to decline their jurisdiction in favour of arbitration, provided that a valid arbitration agreement exists between the parties.

The same relates to anti-arbitration injunctions: any party willing to oppose the arbitration proceedings is able to file a claim to Ukrainian courts requesting the arbitration agreement to be recognised as void, inoperative or incapable of being performed. Any such decision, when final, is binding on the whole territory of Ukraine. In the future it will give rise to setting aside an arbitral award, and/or enable the enforcement of such award in Ukraine.

The possibility for the respondent to request the security of costs is neither prohibited nor excluded from the competence of the arbitration tribunal. However, such measures are not common for Ukrainian jurisdiction and are not employed by the national courts.

Arbitration award

The ICAL requires any arbitral award to be in writing and signed by the arbitrator or arbitrators. In proceedings with more than one arbitrator, the signature of the majority of the arbitral tribunal shall suffice; in such case the reason for any omitted signature must be also stated.

Dissenting opinions, if any, do not form the part of the final award, and generally are not acceptable, particularly in arbitrations under the rules of the ICAC or the MAC.

The award shall contain the reasons upon which it is based, determine whether the claim was satisfied or rejected, specify the amount of arbitration fee and costs with their allocation between the parties, the date and the place of arbitration. In addition, the award must obviously contain the names of the parties, the arbitrators, the rules under which the proceedings were conducted and the administering institution, if any. Although the ICAL does not require

addressing the issue of jurisdiction in the final award, nevertheless the arbitral tribunal must establish on which grounds they were empowered to resolve the relevant dispute. The rules of the ICAC or the MAC impose additional requirements for the award, including the name of the arbitration institution, case number, full names of the arbitrators, other persons participating in the proceedings and brief factual background.

A time frame for rendering an award is not specified in the ICAL. However, when arbitration is conducted under the rules of the ICAC or the MAC, the duration of the proceedings shall not exceed six months from the date of composition of the tribunal. This time limit is subject to extension upon the reasoned request. Statistically[17], more than 80% of all resolved cases by the ICAC in 2013 met this deadline.

Unless otherwise agreed, any party within 30 days after the receipt of the award may request the arbitral tribunal, previously notifying the other party, to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. Within the same time framework, a party may also request the arbitral tribunal to give an interpretation of a specific point or part of the award, provided that the parties agreed thereon. Correction of the award can also be done by the arbitral tribunal on its own initiative.

When any claims were presented in the arbitration proceedings, but were omitted from the award, an additional award may be requested from the arbitral tribunal within 30 days of its receipt.

Although the ICAL requires it to be stated in the arbitral award the costs of arbitration and their allocation, it is silent on the criteria to be applied. For the most part parties are free to determine this issue in the arbitration agreement, failure of which entitles the arbitral tribunal to decide on a discretionary basis. When rules of the ICAC or the MAC apply, the payment of the arbitration fee is usually borne by the losing party or, in the case the claims were upheld partially, by both parties proportionally to the outcome of the dispute. Reimbursement of the parties' costs (legal fees, travelling expenses, translator, *etc*.) is not common and they are usually borne by each party itself. However, according to the recent practice at the ICAC, reasonable and confirmed legal fees and expenses can be also granted for the winning party.

Awarding interest on the outstanding amounts is not regulated by the arbitration procedure and is subject to the applicable substantive law. In any case, the arbitral tribunal can award interest only in the form of the fixed amount due on the moment of rendering an award. Post-award interest, even when mentioned, cannot be procedurally reimbursed in Ukraine.

Challenge of the arbitration award

The grounds for appeal in international arbitration seated in Ukraine are very limited and are applied restrictively. Grounds for setting aside the awards are similar to those for refusal of their enforcement set out in the New York Convention. As a rule, arbitrators' findings on the merits of the case cannot be challenged, unless the findings suggest a violation of the public policy.

A party challenging the award shall file its application within three months after receipt of the award or, if the party has requested arbitral tribunal for correction or interpretation of the award, within three months of the date on which such request has been disposed of by the arbitral tribunal.

Pursuant to the ICAL, Ukrainian courts may set aside an arbitral award only if the party challenging it provides evidence that:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement is not valid under the law to which the parties have subjected

it or, failing any indication, under the law of Ukraine;
- the party was not given a proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
- the award concerns a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a mandatory provision of the ICAL, or, failing such agreement, was not in accordance with the ICAL.

Additionally, an arbitral award may be annulled if Ukrainian courts find that:
- the subject-matter of the dispute is not capable of settlement by arbitration under the law of Ukraine; or
- the award is in conflict with the public policy of Ukraine.

Modification of the final award, either within setting aside proceedings by the court, or *post factum* by the arbitral tribunal itself, is not allowed. As mentioned above, the arbitral tribunal may only correct errors in the award or render an additional award if any of the claims were omitted.

Speaking about the court procedure, there are at least three levels of appeal for international arbitral awards in Ukraine. In general, the proceedings at the first two instances may last up to six months. It is unlikely that Ukrainian courts would consider the request for recognition and enforcement of the arbitral award, while the setting aside proceedings are pending.

Statistically, Ukraine may be considered as a pro-arbitration jurisdiction. Within the period of 2013-2014 only a limited number of applications for setting aside of arbitral awards were upheld by Ukrainian courts (approximately 11%)[18]. The grounds for challenging the awards invoked by the parties usually relate to alleged violation of the due process of the proceedings and the award's contradiction to the public policy.

The courts also confirm that the party alleging a violation by the tribunal of the due process, shall invoke this argument within the proceedings. Otherwise it cannot rely on such violation as a ground for challenging the award, as such right had been waived[19].

Enforcement of the arbitration award

Being a party to the New York Convention and the European Convention on International Commercial Arbitration, Ukraine provides parties from more than 150 jurisdictions with a possibility to recognise and enforce arbitral awards in Ukraine. In addition, recognition and enforcement shall be also granted based on the *reciprocity principle*, which is presumed to exist, unless proven otherwise.

A party seeking recognition and enforcement must submit a written application to the local court at the place where the debtor resides or is located[20]. Statute of limitation constitutes three years from the date when the award had entered into force. The written application, which must contain information about the parties and reasons for its filing, shall be accompanied by the duly certified copy of the award, duly certified copy of the arbitration agreement and the power of attorney for representatives. All documents shall be officially translated into Ukrainian.

Together with an application, the party may also request interim measures to secure the enforcement.

Grounds for refusal of the recognition or enforcement of the award, set forth in the ICAL, are almost identical to those stipulated in the New York Convention (art. V), and to the grounds for challenging the award in Ukraine, which were mentioned above. Ukrainian courts shall not review the merits of the award, although to some extent establishing the conflict with public policy requires such revision. These grounds are exhaustive.

Enforceability of the awards, which has been set aside at the courts of the seat of arbitration, is not regulated by Ukrainian legislation and any court practice is absent so far. To ensure unenforceability of such award in Ukraine, the party should apply for recognition of such foreign court decision at Ukrainian courts[21], by which its effect would be extended to the territory of Ukraine, as if such decision annulling arbitral award was rendered by the local courts.

Statistically, the amount of refusals to grant recognition or enforcement of the international arbitral awards by Ukrainian courts is relatively low. For the period from 1 January 2013 till 1 September 2014 the number equalled approximately 14%[22], while the most common grounds for such refusal were the absence of proper notice of the party about the appointment of the arbitrator or the arbitral proceedings, the invalidity of the arbitration agreement, or when the arbitral procedure was not in accordance with the agreement of the parties.

Unfortunately, obtaining a favourable arbitral award does not definitely mean the party will be compensated or such award will be fully performed. When a Ukrainian court grants permission for enforcement of the award, the party obtains the enforcement order *(exequatur)*, which must be submitted to the State Enforcement Service of Ukraine. This Service, in turn, opens separate enforcement proceedings, which may last in practice from a few months to one year, depending on the behaviour of the debtor, the availability of the debtor's assets and the diligence of the enforcement officer. Within this stage there is no difference, whether an arbitral award or ordinary court decision is enforced.

From the moment of initiation of the arbitration proceedings until the actual enforcement, including possible delaying tactics invoked by the respondent, may span a few years. Moreover, Ukrainian legislation does not provide effective mechanisms for the enforcement of interim measures against Ukrainian parties. Therefore, sometimes the possibility for recovery of the debt owed by a dishonest Ukrainian party may be doubtful. It is not uncommon for companies to disappear, transferring all their assets to affiliated companies before the arbitral ruling, and obstructing or even disabling effective enforcement of the arbitral award. Due to the imperfection of the legal system of Ukraine, recovery of the debt from third parties or annulment of the sham transactions, even when possible, requires substantial expenses and time, and still does not guarantee the desired outcome at the end.

In spite of the above, Ukrainian legislation in relation to the international arbitration is constantly developing in a pro-arbitration direction, making the whole process more predictable.

Investment arbitration

As of 1 October 2014 Ukraine has signed 71[23] Bilateral Investment Treaties[24]. Moreover, Ukraine is a party to the Energy Charter Treaty (since 27 January 1999) and the ICSID Convention (since 7 July 2000).

All BITs signed by Ukraine provide for investment arbitration as a dispute resolution mechanism. Although the majority of arbitration clauses refer to the ICSID or *ad hoc* arbitration under

UNCITRAL Arbitration Rules, some treaties foresee arbitration before the Arbitration Institute of the Stockholm Chamber of Commerce and the ICC International Court of Arbitration.

Since being a party to ICSID Convention, Ukraine has been involved in 12 disputes, two of which are pending[25]. Additionally, Ukraine is currently a party to at least one *ad hoc*[26] and one ICC investment arbitration[27].

Based on the publicly available information, Ukraine accepted all the awards in which it lost and has paid all investors[28], though some of them at first had to apply for the enforcement.

Among the latest investment arbitration cases, two recently initiated ICSID cases[29] deserve particular attention. In *City-State N.V. and others vs. Ukraine*, filed in April 2014, a Dutch-incorporated company is seeking around US$35m based on an alleged failure of the Ukrainian authorities to protect investments made at a Ukrainian bank, which was subsequently taken over by another financial institution, leading to a five-fold decrease of the assets' value. In *Krederi Ltd. vs. Ukraine*, initiated in July 2014, UK investors are claiming US$120m for damages caused by alleged forfeiture of land plots in Kyiv.

Specific provisions governing the enforcement of investment arbitral awards by Ukrainian courts are absent. Therefore, they are treated as ordinary international awards.

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Endnotes

1. English text is available on the website of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (http://www.ucci.org.ua/en/legalbase/zua944002.html).
2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "**New York Convention**"). For Ukraine it entered into force on 8 January 1961.
3. Ukraine will apply the New York Convention for awards made in the territory of non-contracting states only to the extent to which those states grant reciprocal treatment.
4. European Convention on International Commercial Arbitration (Geneva, 1961). In force in Ukraine since 7 January 1964.
5. The Energy Charter Treaty (Lisbon, 1994). For Ukraine it has been in force since 27 January 1999.
6. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 1965) ("**ICSID Convention**"). Ukraine has been a party since 7 July 2000.
7. Unofficial translation of the Chapter VIII of the Civil Procedural Code of Ukraine (http://goldengate-law.com/documents/CPC.pdf).
8. For understanding the activity of both arbitration institutions and the number of resolved cases please see the annual report for 2013 (http://www.ucci.org.ua/arb/icac/en/ICA_Report2013e.pdf).
9. Last year the authors of this chapter were involved in a dispute where Ukrainian courts finally confirmed invalidity of an arbitration clause and rendered the final decision on merits, while the arbitration tribunal, conducting concurrent proceedings, came to a different conclusion and had taken an award, contradicting the court decision. At the end, such award was not enforceable on the territory of Ukraine due to the binding court decision.
10. List of persons authorised to sign the documents and act on behalf of the relevant company can be obtained either by taking an official excerpt from the Ukrainian companies' registry (United State Register of Legal Entities and Individual Entrepreneurs of Ukraine) or through a free online database of Ukrainian companies (http://www.irc.gov.ua/en/Poshuk-v-YeDR.html).

11. Disputes relating to share-purchase agreements are arbitrable and excluded from this list.
12. Final decision of the High Specialized Court of Ukraine for Civil and Criminal Cases (third instance) of 30 July 2014 (http://www.reyestr.court.gov.ua/Review/40098048 *in Ukrainian).*
13. Pending proceedings, interim decision of the High Specialized Court of Ukraine for Civil and Criminal Cases of 5 February 2014 (http://www.reyestr.court.gov.ua/Review/37018189 *in Ukrainian*).
14. Ukrainian companies can be legally registered with one address while having the main office that is reflected in the contract or on their website in another place, making confusion for the potential claimant. Legal address can also be changed without notice to the counterparty. To avoid the risk of the award being set aside on the ground that party was not duly informed about arbitration, it is reasonable to verify the respondent's legal address before filing the claim through a free online database of Ukrainian companies (http://www.irc.gov.ua/en/Poshuk-v-YeDR.html) or by taking an official excerpt from the Ukrainian state companies' registry.
15. http://www.reyestr.court.gov.ua.
16. See, *e.g.* final decision of the Supreme Economic Court of Ukraine (third instance) in case no. 910/9273/14 of 16 September 2014 (http://www.reyestr.court.gov.ua/Review/40523862 *in Ukrainian*).
17. Annual report of the ICAC for 2013 (http://www.ucci.org.ua/arb/icac/en/ICA_Report2013e.pdf).
18. This information is based on the court decisions published in the Unified State Registry of Court Decisions of Ukraine (http://www.reyestr.court.gov.ua).
19. Final decision of Kyiv Appeal Court (second instance) of 19 February 2014 (http://www.reyestr.court.gov.ua/Review/37397137 *in Ukrainian*).
20. The court procedure of the recognition and enforcement of arbitral awards is governed by the Civil Procedural Code of Ukraine (Chapter VIII). Unofficial translation of this chapter is available online (http://goldengate-law.com/documents/CPC.pdf).
21. Enforceability of the foreign court decisions is usually based on the *reciprocity principle* between Ukraine and the country where such decision was made, unless specific international agreements are in force between the states.
22. This information is based on the court decisions published in the Unified State Registry of Court Decisions of Ukraine (http://www.reyestr.court.gov.ua).
23. 71 BITs with 72 countries, having the one BIT with Belgium and Luxembourg.
24. For the full list of Ukrainian BITs, their status and available texts please see http://goldengate-law.com/en/bits/.
25. ICSID case ARB/14/9 *City-State N.V., Praktyka Asset Management Company LLC and others vs. Ukraine* (initiated on 24 April 2014); ICSID case ARB/14/17 *Krederi Ltd. (UK) vs. Ukraine* (initiated on 21 July 2014).
26. *OJSC "Tatneft" (Russian Federation) vs. Ukraine* (*ad hoc* arbitration, UNCITRAL Arbitration Rules 1976, US$2.4bn).
27. *Torno Global Contracting S.p.A. (Italy) and Beta Funding S.r.L. (Italy) vs. the Ministry of Transport and Communications of Ukraine and the State Automobile Road Service of Ukraine* (ICC arbitration; €47m).
28. Disputes in which Ukraine was ordered to pay the investors: *Alpha Projektholding GmbH (Austria) vs. Ukraine* (ICSID award of 8 November 2010, US$3m plus compound interest of 9% p.a. starting from 2004); *Inmaris Perestroika Sailing Maritime Services GmbH and others (Gemany) vs. Ukraine* (ICSID award of 1 March 2010, €3.2m), *Remington Worldwide Limited (UK) vs. Ukraine* (ECT dispute under SCC rules, award of 28 April 2011, US$4.7m), and *Joseph Charles Lemire (USA) v Ukraine* (ICSID award of 28 March 2011, US$9.5m).
29. ICSID case ARB/14/9 *City-State N.V., Praktyka Asset Management Company LLC and others vs. Ukraine* (initiated on 24 April 2014); ICSID case ARB/14/17 *Krederi Ltd. (UK) vs. Ukraine* (initiated on 21 July 2014).

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