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## Dispute resolution

The basic principles of the judicial system of Ukraine are defined in the Constitution of Ukraine. The judicial system of Ukraine consists of general courts and the Constitutional Court of Ukraine. At that, the Constitutional Court of Ukraine is the sole body of constitutional jurisdiction. In 2016, the extensive process of restructuring the judicial system of Ukraine began, targeted to improve the efficiency of the courts, renewing the judicial staff, and perform control over judges' activities. Besides resolution of disputes in courts, their resolution can be transferred to arbitration or mediation institutions.

### 14.1. General courts

The system of general courts consists of local courts (trial courts), courts of appeal (courts of the second instance) and high specialized courts (courts of the third instance). The Supreme Court of Ukraine is the highest judicial body in the system of general courts. The appropriate high specialized courts are the highest judicial bodies of specialized courts.

The general courts specialize in civil, criminal, commercial, administrative cases and cases of administrative offenses.

Both private individuals and legal entities (via their authorized representatives) can participate in hearings in the general courts. Protection of rights and interests of individuals is performed by virtue of claim. The defendant, in turn, may file objections to the claim.

Commercial courts are the most important from the perspective of foreign investors doing business in Ukraine. Enterprises, institutions, organizations and other legal entities, including foreign ones, and also private entrepreneurs are eligible to apply to the commercial court for protection of their violated or disputed rights and interests protected by the law, and for provision of measures targeted at prevention of violations.

### 14.1.1. Measures for securing a claim

The commercial court at the request of the party or on its own initiative is entitled to take actions to secure the claim, including:

- to seize property or assets belonging to the defendant;
- to forbid the defendant to perform certain actions;
- to forbid other persons to perform any acts relating to the subject of the dispute;
- to stop penalties on the basis of the enforcement document or any other document by which the penalty is carried out in an undisputable order.

### 14.1.2. Case hearing in the trial court

Disputes are resolved by commercial courts within the period of two months from the date of the claim receipt. In exceptional cases, at the request of the party and taking into account special aspects of the dispute, the commercial court may extend the period of case examination.

The proceedings in commercial courts begin with filing the claim. The court automatic documenting system provides distribution of cases among judges. A legal claim is filed to the commercial court in writing. A legal claim should contain certain information and documents, which may be extended for the proper dispute resolution, namely:

- information on the court to which the claim is filed;
- information (the name of a legal entity, ID of a private individual, location, domicile, identification code of a legal entity or the registration number of the taxpayer's registration card) about the parties in the case;
- information about the amount of the claim, if the claim is subjected to monetary valuation or about the contract disputes arising at conclusion, modification and termination of commercial contracts;
- content of the claim and circumstances, on which the claim is based; indication of evidence supporting the claim; reasonable calculation of the amounts withheld or disputed; the legislation under which the claim is filed;
- information about measures on out-of-court dispute resolution;
- document, which confirms sending the claim copy and documents attached thereto to the defendant;
- document confirming the court fees payment in the prescribed manner and amount;
- the list of documents and other evidence attached to the application.

When filing a claim, the plaintiff is obliged to provide the parties with a copy of the claim and

attached documents according to the number of defendants and third parties by registered mail with an inventory.

The defendant is entitled, having received the decision on proceedings institution, to send to the commercial court a statement of defence and all documents that confirm defensive pleading and file a counterclaim for a joint review with the initial claim prior to examination of the case on its merits.

The commercial procedural legislation of Ukraine defines a number of grounds, on which the court may refuse to accept the plaintiff's claim and to consider the case. Thus, the judge refuses to accept a claim if:

- the dispute cannot be considered in commercial courts of Ukraine;
- a commercial court or another body which, within its competence, solves commercial disputes, has proceedings on the case between the same parties on the same subject and of the same reasons, or there is a decision of these bodies concerning that dispute;
- a legal entity, having applied with a claim or to whom an action has been brought, suspended its business activity.

In resolving a commercial dispute on the merits (whether satisfaction of the claim or its full or partial rejection), the commercial court takes decisions according to evaluation of the evidence submitted by the parties and other participants in the commercial process, and the evidence, demanded by the commercial court.

The adopted decision is announced by the commercial court in the courtroom after the hearing. The commercial court decision comes into force after the expiration of appeal submission period, which is 10 days.

### 14.1.3. Consideration of disputes on appeal

Within 10 days of the decision settlement by the trial court, the parties have the right to appeal it.

During the process of case revision, a commercial court of appeal, according to the available or supplementary evidence, reargues the case. Additional evidence is accepted by the court if the applicant has justified the impossibility of its submission to the trial court. The commercial court of appeal is not bound by the arguments of the appeal and verifies the legality and validity of the decision of the local commercial court in full.

Claims that were not considered by the trial court are not accepted in the court of appeal.

The commercial court of appeal further to appeal consideration has the right to take one of the following decisions:

- to leave the decision of the trial court unchanged and dismiss an appeal;
- to reverse the decision in whole or in part and make a new decision;

- to reverse the decision in whole or in part and terminate the proceedings or leave the claim without consideration in whole or in part;
- to change the decision.

As a result of an appeal, the commercial court adopts a resolution. The resolution comes into force from the date of its adoption.

#### 14.1.4. Resolution of disputes on cassation

Resolution of the commercial court of appeal can be appealed by each party of a lawsuit. A cassation appeal may be filed within 20 days following the date when the decision of the commercial court of appeal came into force.

During the decision review in cassation, the court of cassation, on the basis of the established facts of the case, verifies the application of the substantive and procedural law by the trial court or by the court of appeal.

The court of cassation has no right to determine or consider circumstances unproved, which were not established in the decision or resolution of the commercial court or rejected by it, to decide on the credibility of any evidence, on the superiority of one evidence over another, to collect new evidence or to verify evidence additionally.

The court of cassation is entitled to:

- leave the decision of the trial court or a resolution of the court of appeal unchanged and dismiss an appeal;
- reverse the decision of the trial court or a resolution of the court of appeal in full or in part and make a new decision;
- reverse the decision of the trial court or a resolution of the court of appeal and remand the case for a new trial;
- reverse the decision of the trial court, a resolution of the court of appeal in full or in part and terminate the proceedings or leave the claim without consideration in full or in part;
- change the decision of the trial court or a resolution of the court of appeal;
- uphold one of the previous decisions or resolutions.

#### 14.1.5. Dispute review in the Supreme Court of Ukraine

Parties and third parties are entitled to apply for review of decisions of commercial courts after their review on cassation. The commercial procedural legislation of Ukraine establishes an exclusive list of grounds under which an application may be filed to the Supreme Court of Ukraine for the decision review, namely:

- unequal application by the court of cassation of the same rules of the substantive law, having led to the adoption of court decisions of different content in similar legal relations;

- unequal application by the court of cassation of the same rules of the procedural law at the appeal, having prevented further proceedings or having been taken with violation of jurisdiction rules;
- inconsistencies of the decision of the court of cassation to the conclusion as to the application of the substantive law norms in similar legal relations, stated by the Supreme Court of Ukraine;
- establishment by the international judicial institution, whose jurisdiction is recognized by Ukraine, of Ukraine's violations of international obligations in this dispute resolution.

As a result of case review, by the majority of votes, the court adopts one of the following resolutions on:

- full or partial appeal allowance;
- appeal dismissal.

The decision of the Supreme Court of Ukraine is final.

## 14.2. Courts of arbitration

In order to resolve disputes arising from contractual and other civil law relations regarding implementation of foreign trade and other international economic relations, as well as disputes of enterprises with foreign investment, the parties may use the services of international commercial arbitration.

The application of this alternative dispute resolution mechanism is specified in the Law of Ukraine "On International Commercial Arbitration" and the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and European Convention on International Commercial Arbitration.

The arbitration court is a non-governmental institution, formed specifically for the particular case or cases review on a regular basis. Parties may transfer dispute to arbitration if they have concluded an arbitration agreement for submission to arbitration of all or certain disputes, which have arisen or may arise between them in connection with the legal relationship between them.

The arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement. In order to avoid future disputes on the arbitration agreement validity, the parties should pay special attention to the arbitration agreement specifying information on a specific arbitration institution that is to conduct the trial, to the law, which shall be applied to the agreement and to the place and date of the agreement execution.

The benefits of resolving disputes by arbitration courts include:

- time saving and specialization of arbitrators. An appeal to the arbitration institution enables parties to save time, whereas rules of the institution establish clear deadlines for the proceedings. In addition, the case can be submitted to the arbi-

trators, who are highly specialized in specific cases;

- an arbitral award, irrespective of the country in which it was taken, is recognized as binding upon presentation of a written request to the competent court;
- the arbitral award is final.

Ukraine has the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.

The arbitral award, irrespective of the country in which it was taken, is recognized as binding and the party relying on award or applying for its execution shall submit the original of the decision, duly certified, or a duly certified copy thereof, and the original of the arbitration agreement. If the award or the agreement is in a foreign language, the party shall supply a duly certified translation of these documents.

The award can be refused in recognition or enforcement, regardless of the country in which it was taken, only if:

- one of the parties of the arbitration agreement was incompetent or this agreement is invalid under the law to which the parties have subjected it;
- the party, against which the award was taken, was not properly notified of the appointment of the arbitrator or arbitration;
- the decision was taken regarding a dispute not contemplated by the arbitration agreement;
- the composition of the arbitral tribunal or the arbitration procedure did not meet the requirements set out in the agreement between the parties;
- the decision has not yet become binding to the parties or has been cancelled or its execution was suspended by a court of the country, in which, or under the law of which it was taken;
- the object of the dispute cannot be subject to arbitration under the law of Ukraine or the recognition or enforcement of the award would be contrary to the public policy of Ukraine.

### 14.3. Enforcement of decisions

The State Enforcement Service of Ukraine is the body responsible for the enforcement of court decisions in Ukraine. In addition, in 2016 the institute of private enforcement officers was introduced in Ukraine, involvement of which can expedite the procedure of awards enforcement.

If the person, against whom the award was delivered, refuses to execute the decision voluntarily, then the measures of enforcement are taken. These measures include:

- seizure of the debtor's funds and property or property rights, including if they be-

long to others or belong to the debtor from others;

- seizure of the debtor's salary, income, pension, scholarship;
- removal from the debtor and transfer of certain items listed in the decision to the creditor;
- other measures stipulated by the decision.

Enforcement procedures are carried out by a state enforcement officer according to the debtor's place of residence, place of stay or place of work or the location of the property. If the debtor is a legal entity, the enforcement is carried out at the location of its permanent body or property. The plaintiff is entitled to choose the place of enforcement among several state enforcement services, authorized to take enforcement actions on implementing the decision on the territory covered by their function.

The state enforcement officer is obliged to take enforcement actions on implementing the decision within 6 months of the resolution on enforcement and in case of non-property decision – within 2 months. Duration of the enforcement procedure is calculated from the date of attachment of the last enforcement document to the title.

## 14.4. The recognition of foreign courts decisions in Ukraine

The civil procedural legislation of Ukraine defines the procedure for foreign awards recognition and enforcement in Ukraine. A foreign court decision is recognized and enforced in Ukraine, if its recognition and enforcement are foreseen with an international treaty or on the basis of the principle of reciprocity. If the recognition and enforcement of a foreign decision depends on the principle of reciprocity, it is considered to exist, if not proven otherwise.

The decision of a foreign court may be brought to execution in Ukraine within three years from the date of its entry into force, with some exceptions. Issue of permission for compulsory execution of a foreign court decision is reviewed by the court at the debtor's residence or location. If the debtor has no domicile or residence on the territory of Ukraine or his/her residence or stay is unknown, issue of permission for compulsory execution of a foreign court decision is reviewed by the court at the location of the debtor's property.

If international treaties, ratified by the Parliament of Ukraine, do not list the documents, which must accompany the claim, or if such a treaty is not available, the following documents should accompany the claim:

- a duly certified copy of the foreign court decision, the compulsory execution of which is applied for;
- the official document testifying to the fact that the foreign court decision has come into force;
- the document, which certifies that the party against whom the foreign decision was taken and who was not involved in the trial, was properly notified of the time and place of the hearing;

- the document defining in which part or from what period the foreign court decision is to be executed;
- the document certifying the authority of the representative;
- translation of the listed documents into the Ukrainian language or the language provided by the international treaties of Ukraine, certified according to the legislation.

Having examined the documents submitted and having heard the explanations of the parties, the court decides to grant the permission for compulsory execution of the foreign court decision. Pursuant to the decision of the foreign court and the decision on granting the permission for its enforcement, the court issues an enforcement title.