

# GOLAW

**HANDBOOK**

International Arbitration

# General information

**Ukraine is pro-arbitration country since signing and ratification of the New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.**

The Law of Ukraine '**On international commercial arbitration**', which is based on the UNCITRAL Model Law, regulates international commercial arbitration proceedings with the seat of arbitration in the territory of Ukraine.

There are only two permanent international arbitration institutions in Ukraine:

- the International Commercial Arbitration Court (ICAC);
- the Maritime Arbitration Commission (MAC).

## ARBITRATION AGREEMENTS

An enforceable arbitration agreement must be in writing and contain a reference to an arbitral institution selected by the parties or contain a reference to ad hoc arbitration.

## ARBITRAL PROCEDURE

Ukrainian legislation allows the parties to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Notwithstanding this, the parties shall be treated equally and each party shall be given a full opportunity to present his or her case.

## DISPUTES CONSIDERED BY ARBITRATION

- disputes over contractual and other civil law relations arising from the foreign trade and international economic ties, if at least one commercial enterprise is abroad;
- disputes between enterprises with foreign investments and international organizations established in Ukraine.

# I Choice of arbitrator

If the parties fail to determine the number of arbitrators, the case shall be considered by three arbitrators. In such case each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator.

If a party fails to appoint an arbitrator or if the two arbitrators fail to agree on the third arbitrator, the appointment shall be made by the President of the Ukrainian Chamber of Commerce and Industry. The decision of the President of the Ukrainian Chamber of Commerce and Industry on the appointment of an arbitrator is not subject to appeal.

The law states that the arbitrator may be challenged only if there exist justifiable doubts as to their impartiality or independence, or if he or she does not possess the qualifications required by the agreement of the parties. A party may challenge an arbitrator appointed by itself only for reasons of which the party becomes aware after the appointment has been made.

# I Arbitrator options

The law does not provide for any specific requirements for the qualifications or other characteristics of arbitrators, except the requirement for independence and impartiality. The law also states that no person shall be precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties.

Moreover, the parties are not prohibited to specify additional qualification requirements for the arbitrators in the arbitration agreement.

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry has its list of recommended arbitrators, which includes

**122** arbitrators from **35** countries.

# Court intervention during an arbitration

Generally, in matters governed by the Law of Ukraine 'On international commercial Arbitration' no court shall intervene, with the exception of:

## EXCEPTIONS

Considering the issue of the arbitration agreement being null and void, inoperative or incapable of being performed

Issuing interim measures

Assisting in taking evidence

Considering the application for setting aside the arbitration award or

Recognition and enforcement of the arbitration award



### INTERIM RELIEF

At the request of a party the arbitral tribunal may order any party to take interim measures that it may consider necessary in respect of the subject matter of the dispute.



### DELIVERY OF THE AWARD

No time limits are prescribed by the Ukrainian Law 'On international commercial Arbitration' for the delivery of the award. The award shall be made in writing and signed by the arbitrators. The text of the award shall include the reasoning, a resolution regarding satisfaction or rejection of the claim, the amount of the arbitration fee and costs and their apportioning. The award shall contain its date and the place of arbitration.



# I Appeal

**An arbitration award may be set aside by the court only if there exists proof that:**

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement is invalid;
- the party was not duly notified of the arbitrators' appointment or of the arbitral proceedings;
- the party was unable to present his or her case for a valid reason;
- the award was made regarding 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; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.

An arbitration award may also be set aside by the court if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the law of Ukraine or the award contradicts the public policy of Ukraine.

The application for the award to be set aside shall be submitted to the Ukrainian appellate court at the place of the arbitration hearing.

## ENFORCEMENT OF FOREIGN AND DOMESTIC AWARDS

Foreign arbitration awards are recognised and enforced in Ukraine on the basis of the New York Convention

**1958** on the Recognition and Enforcement of Foreign Arbitral Awards.

Domestic arbitration awards are enforced after the relevant Ukrainian court has issued a writ of enforcement of an arbitration award.

## COSTS

A successful party can recover its costs. The arbitration award shall state the amount of the arbitration fee and costs and their apportioning. Arbitration awards are enforced in Ukraine, including the element of costs.



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GOLAW Partner Kateryna Manoylenko heads the Litigation and Dispute Resolution practice. She has a proven track record of complex clients' disputes settlement. Such experience includes not only the complete lead of cases in the courts of all instances and jurisdictions, but also the pretentious settlement of disputes and the lead of the court decisions execution.

Kateryna successfully protects her clients' interests in labour disputes, as well as disputes arising from contractual relationships and in the area of property rights protection. In addition, Kateryna has a significant experience in maintaining bankruptcy procedures, both on the owner's decision and on the creditors' initiative.



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Kateryna has an impressive track record of successful representation of clients in complex litigation projects in courts of all levels and jurisdictions. Kateryna's competence includes support in commercial, civil and administrative disputes across a variety of sectors including banking, energy, real estate, pharmaceutical and other industries.

Relying on her more than 10 year professional experience, Kateryna advises and effectively represents clients in contractual litigations, disputes with state authorities, labor litigations, debt collection, real estate disputes, enforcement proceedings and bankruptcy.



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Anastasiia Klian is an Associate at GOLAW Litigation and Dispute Resolution practice. She has considerable experience in advising clients on resolving disputes in the fields of administrative and commercial law, international economic activity and bankruptcy proceedings. Anastasiia provides comprehensive legal advice on the issues of both Ukrainian and international law. Lawyer represents clients' interests at the stage of pre-trial dispute settlement as well as at the litigation stage before the courts of all instances and jurisdictions.

Ms. Klian successfully deals with matters of debt collection, disputes with foreign element and provides clients with consultations regarding the recognition and enforcement of court decisions.

### RECOGNITIONS:



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