

IBA ARBITRATION COMMITTEE

Subcommittee on Recognition and Enforcement of Arbitral Awards

COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

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In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.

Ukraine		
I. General	(Yes/ No /NA)	Comments, if any.
I.1	Yes	Law of Ukraine On International Commercial Arbitration (“ICA Law”), Article 7.
I.2	-	Article 7 of the ICA Law provides that an arbitration agreement must be in <i>writing</i> , whether in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement is considered to be in writing if it is contained in a document signed by the parties, or in a prospect of securities issuance that foresee appointment of

			<p>administrator of bonds issuance, or in an exchange of letters, electronic messages (if the information contained therein is accessible for further use), telegrams or other means that provide for recording of such agreement. The requirement of the written form of an arbitration agreement is also met if such agreement is contained in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause also constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract.</p>
I.3	<p>In the country for which you are reporting, do courts/arbitral tribunals generally decide the issue of the scope rationae personae of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?</p>	-	<p>The issue is decided on the basis of both the factual analysis of the case (holistic approach) as well as under the applicable law. Article 1 (2) of the ICA Law while providing for the list of disputes which may be referred to international arbitration, precludes the disputes between Ukrainian nationals and/or Ukrainian legal entities (100% owned by Ukrainian nationals) from being referred to international arbitration.</p>

<p>I.3a</p>	<p>If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue?</p> <p>[For example, the applicable law could be:</p> <ul style="list-style-type: none"> • The law of the seat of arbitration. • The governing law of the contract. • The law of the place where the award might ultimately be sought to be enforced. • Transnational norms/international law. • The law reached at through a conflict of laws analysis.] <p>[Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]</p>	<p>-</p>	<p>Ukrainian national courts apply the governing law of the underlying contract and/or arbitration agreement, if different. Even if the seat of arbitration is outside Ukraine, national courts would nevertheless apply Article 8 of the ICA Law governing a court's right to check validity, effectiveness and enforceability of the arbitration agreement.¹ If the national court is not able to establish rules / scope of the governing law of the contract, it will apply Ukrainian law.</p> <p>Arbitral tribunals with the seat in Ukraine tend to apply a holistic approach, so as a rule, they apply the law of the seat and the governing law of the contract, as well as a special attention is made to the law of the place where the award most likely would be enforced in order to ensure enforceability of the award (although there is no such obligation found in the applicable law).</p> <p>If the governing law is not defined in the contract, national courts/arbitral tribunals would determine it through a conflict of laws analysis (private international law).</p>
<p>I.3b</p>	<p>Does the legislation of your jurisdiction contain any directive in this respect?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Yes</p>	<p>According to Article 1 (2) of the ICA Law, in case a dispute arises from contractual or other civil legal relations in the course of external economic</p>

¹ ICA Law, Article 1.

			<p>relations and other international commercial relations, at least one of the parties to such arbitration agreement shall be a foreign entity. Therefore, national courts/arbitral tribunals with the seat in Ukraine are guided by this provision when considering the issue of the scope <i>rationae personae</i> of the arbitration agreement.</p>
<p>I.4</p>	<p>Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the country for which you are reporting? Please cite the relevant legislative, regulatory, or jurisprudential basis for your answer.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>N/A</p>	<p>Pursuant to Article 16 (1) of the ICA Law, an arbitral tribunal with the seat in Ukraine may rule on its own jurisdiction, including any objections as to the existence or validity of an arbitration agreement. Arbitral tribunals may do so both in partial award on jurisdiction (in case of bifurcation) as well as in final award.</p> <p>Ukrainian courts, in their turn, may address this issue in terms of:</p> <p>(1) appeal on a partial award of an arbitral tribunal that it has jurisdiction to an appellate general court at the place of arbitration, which shall finally decide on the issue of jurisdiction, and such decision is not subject to any further appeal (Article 16 (3) of the ICA Law);</p> <p>(2) if an action is initiated before the national court that is covered by an arbitration agreement, such national court shall, upon the request of either party, stay the proceedings and refer the parties to arbitration having ensured that such arbitration</p>

		<p>agreement is enforceable. Such determination by the national court directly affects the tribunal's competence and jurisdiction (Article 8 (1) of the ICA Law);</p> <p>(3) national courts also deal with the issue where a party argues that an arbitral tribunal lacked competence and jurisdiction as a basis for setting aside or refusal in enforcement of the final award in Ukraine.</p>
<p>I.5</p>	<p>Is there anything in the <u>legislation</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]</p>	<p>Under the Ukrainian legislation, extension of an arbitration agreement to non-signatories is only possible through incorporation by reference and/or assignment.</p> <p>Other than that, there is nothing in the Ukrainian legislation that in general permits the extension of an arbitration clause to non-signatories. As regards the Ukrainian law provision precluding such extension, Article 1 (2) of the ICA Law while providing for the list of disputes which may be referred to international arbitration, precludes the disputes between Ukrainian nationals and/or Ukrainian legal entities (100% owned by Ukrainian nationals) from being referred to international arbitration.</p> <p>There are only general requirements to the written form of an arbitration agreement (please see above) and specific regulation of the assignment of a contract and incorporation of an</p> <p>Yes</p>

		arbitration agreement by reference (please see below).
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<p>I.5a</p>	<p>If your answer to question <u>I.5</u> is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Article 514 of the Civil Code of Ukraine prescribes that a new creditor under contract acquires all rights of an initial creditor in scope and on terms that existed at the moment of transfer of these rights, unless otherwise prescribed in the agreement or in law.</p> <p>According to Article 207 (1) of the Civil Code of Ukraine, if the content of an agreement is provided for in several documents, such content may be established by reference in one of documents to other documents, unless otherwise provided for in the law.</p> <p>According to Article 7 (2) of the ICA Law, a reference in a contract to a document containing an arbitration clause is considered to be an arbitration agreement, provided that the contract is in writing and that reference is such that it makes the said clause part of the contract.</p>
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<p>I.6</p>	<p>Is there anything in the <u>jurisprudence</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]</p>	<p>The Ukrainian courts confirmed the possibility to extend arbitration agreement to non-signatories through assignment of a contract and incorporation of arbitration agreement by reference (e.g. Resolution of the Supreme Court dated 20 June 2018 in case No. 910/13770/17, Resolution of the Supreme Court dated 23 May 2018 in case No. 910/21409/16, Resolution of the Western Commercial Court of Appeal dated 9 November 2021 in case No. 914/2136/21).</p> <p>Apart from that, the Ukrainian courts take a formalistic approach and interpret legislation quite literally, while being reluctant to apply legal theories not provided for in the legislation.</p> <p>Yes</p>
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I.6a	<p>If your answer to question <u>I.6</u> is yes, please cite and describe the applicable tests or rules applied by the courts of the country for which you are reporting.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	<p>In case of assignment, the Ukrainian courts consider the assignment under Article 514 of the Civil Code of Ukraine, with due regard given to the scope of the rights transferred under the assignment (by scrutinizing the content of the assignment agreement on the basis of the applicable law), as well as to the fact whether the assignment did not worsen the position of the debtor and the creditor.</p> <p>In case of incorporation by reference, the Ukrainian courts consider whether it is expressly stated in the incorporated agreement, that an arbitration agreement contained therein, is indeed a part of the main contract (e.g. Resolution of the Supreme Court dated 28 May 2020 in case No. 824/99/19, Ruling of the Court of Appeal of Lviv Region dated 13 January 2014 in case No. 462/5328/13).</p>
II. Specific Legal Theories Concerning Non-Signatories		(Yes/ No /NA)	Additional comments, if any.
II.1	<p>Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	N/A
II.1.a	<p>If your answer to question <u>II.1</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. 	-	<p>Article 514 of the Civil Code of Ukraine prescribes that a new creditor under contract acquires all rights of an initial creditor in scope and on terms that</p>

- Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.

[Please provide your response in the comments column and limit it to one paragraph.]

existed at the moment of transfer of these rights, unless otherwise prescribed in the agreement or in law.

The Supreme Court (e.g., resolution of the Supreme Court dated 20 June 2018 in case No. 910/13770/17, Resolution of the Supreme Court dated 23 May 2018 in case No. 910/21409/16) and the ICAC at the UCCI (e.g. Arbitral Award of the ICAC at the UCCI dated 17 May 2012 in case No. 71) have confirmed this approach with respect to the assignment of contract containing an arbitration agreement. According to jurisprudence in such cases, the assignment in question shall not worsen the position of the debtor or the creditor. Therefore, there is a risk that refusal to assign an arbitration agreement, while the rest of the contract is being assigned, may worsen the position of the debtor or the creditor, and, therefore, contradict Article 514 of the Civil Code of Ukraine.

At the same time, in view of Article 1 (2) of the ICA Law (*See answer to question I.3.b above*), the Ukrainian courts and arbitral tribunals with the seat in Ukraine consider whether, as a result of an assignment, at least one party to an arbitration agreement remains a foreign entity or an entity with a foreign element (e.g. Ukrainian legal entity owned by a foreign national/company). For example, if, as a result of assignment, both parties

			<p>turn out to be residents of Ukraine or none of them is an enterprise with foreign investments, such arbitration agreement between them is not valid. In particular, in a Resolution (decision) dated 16 February 2018 in case No. 910/13318/16, the Supreme Court refused to give effect to an arbitration agreement noting that <i>“Although a new obligation does not arise and only the replacement of the creditor in the existing obligation occurs, the new creditor does not acquire in this regard the peculiarities of the legal status of the primary creditor, respectively, in such an obligation the foreign element has disappeared [as required under Article 1 (2) of the ICA Law].”</i></p>
II.1.b	<p>If your answer to question <u>II.1</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. 	-	N/A
II.2	<p>Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	N/A
II.2.a	<p>If your answer to question <u>II.2</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. 	-	<p>According to Article 207 (1) of the Civil Code of Ukraine, if the content of an agreement is provided for in several documents, such content</p>

	<ul style="list-style-type: none"> Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		<p>may be established by reference in one of documents to other documents, unless otherwise provided for in the law.</p> <p>According to Article 7 (2) of the ICA Law, a reference in a contract to a document containing an arbitration clause is considered to be an arbitration agreement, provided that the contract is in writing and that reference is such that it makes the said clause part of the contract.</p>
II.2.b	<p>If your answer to question <u>II.2</u> is no, please:</p> <ul style="list-style-type: none"> Cite and describe the applicable rules contained in any relevant legislation or regulations. Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
II.3	<p>Can an arbitration clause commit a non-signatory third-party beneficiary of a contract to international arbitration in the country in which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	N/A
II.3.a	<p>If your answer to question <u>II.3</u> is yes, please:</p> <ul style="list-style-type: none"> Cite and describe the applicable rules contained in any relevant legislation or regulations. Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
II.3.b	<p>If your answer to question <u>II.3</u> is no, please:</p>	-	Ukrainian legislation and jurisprudence do not provide for committing a

	<ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>		non-signatory third-party beneficiary of a contract to international arbitration.
II.4	<p>Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	Yes	N/A
II.4.a	<p>If your answer to question <u>II.4</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	<p>According to Article 203 (2) of the Civil Code of Ukraine, a person concluding an agreement shall have the required amount of civil legal capacity.</p> <p>Pursuant to the Ukrainian jurisprudence, in order to avoid risks, it is recommended, that the representative's power to sign an arbitration agreement is expressly authorized by the principal. Otherwise, the courts are likely to deny the extension of arbitration agreement to a such non-signatory, even if it was authorized to conclude the contract.</p>

II.4.b	<p>If your answer to question <u>II.4</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
II.5	<p>Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	N/A
II.5.a	<p>If your answer to question <u>II.5</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
II.5.b	<p>If your answer to question <u>II.5</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	Ukrainian legislation and jurisprudence do not provide for committing a non-signatory third-party to international arbitration through a theory of estoppel, good faith, or abuse of right.

II.6	<p>Can “implied consent” (i.e., where a party’s active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	N/A
II.6.a	<p>If your answer to question <u>II.6</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
II.6.b	<p>If your answer to question <u>II.6</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	Ukrainian legislation and jurisprudence do not provide for committing a non-signatory third-party to international arbitration through an “implied consent.”
II.7	<p>Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</p>	No	The doctrine of piercing the corporate veil is not recognized under the Ukrainian law.
II.7.a	<p>If your answer to question <u>II.7</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A

II.7.b	<p>If your answer to question <u>II.7</u> is no, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	Ukrainian legislation and jurisprudence do not provide for committing a non-signatory third-party to international arbitration through piercing of the corporate veil or the alter ego doctrine.
II.8	In the country for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?	No	N/A
II.8.a	<p>If your answer to question <u>II.8</u> is yes, please:</p> <ul style="list-style-type: none"> • Cite and describe the applicable rules contained in any relevant legislation or regulations. • Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound. <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
III. Enforcement of an Arbitral Award against a Non-Signatory		(Yes/No/NA)	Additional comments, if any.
III.1	Have there been court cases in the country for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?	Yes	According to the Ukrainian jurisprudence, debtors rarely invoke an argument that the an arbitral tribunal extended the arbitration clause to one or more non-signatories.
III.1.a	<p>If your answer to III.1 is <u>yes</u>, please explain which provision(s) of the New York Convention, or any other bilateral or multilateral convention on the enforcement of arbitral awards, was (were) relied upon as the basis for the application/objection.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	In such cases, the debtors usually rely on Article V (1) (c) of the New York Convention.

<p>III.1.b</p>	<p>If your answer to III.1 is <u>yes</u>, please explain whether set-aside/enforcement was finally granted or refused, and the court’s reasons for reaching this result.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>In case No. 824/99/19, the debtor objected to the enforcement of an arbitral award on the basis that the creditor assigned its rights under the contract and arbitration agreement. However, in its Resolution dated 28 May 2020, the Supreme Court granted enforcement of the arbitral award relying on the text of the partial award, by which it was expressly stated that the assignment of the contract did not take place.</p> <p>In case No. 824/181/19, the Supreme Court denied enforcement of the arbitral award, since the applicant was not assigned rights under the contract, and, hence, has never become a party to the arbitration agreement. According to the Supreme Court’s Resolution dated 21 May 2020, the parties to the arbitration agreement merely changed the procedure for making settlements (by stipulating that the debt owed by the debtor to the creditor shall be paid to a third party (applicant)), but did not assign the rights under the contract and arbitration agreement to the applicant as the new creditor. According to the Supreme Court “<i>the status of the [applicant] in the [additional agreement] is defined as “third party.” The terms of [additional agreement] do not provide that the applicant acquires the rights and obligations of a party (seller) under the Contract [...] or that is shall be the legal successor</i></p>
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			<i>of [original creditor] with respect to all rights and obligations of the seller arising from the [...] contract.”</i>
III.2	<p>Have there been court cases in the country for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a party to the arbitral proceedings/award)?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	No	N/A
III.2a	<p>If the answer to III.2 is <u>yes</u>, please explain on what legal basis the enforcement was requested.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
III.2b	<p>If the answer to III.2 is <u>yes</u>, please explain whether the enforcement was finally granted/refused and the court’s reasons for reaching this result.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	-	N/A
IV. Miscellaneous		(Yes/ No /NA)	Additional comments, if any.
IV.1	<p>Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should take into account with respect to the country for which you are reporting?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	Yes	<p>As seen from the above, the Ukrainian courts adopt a rather formalistic approach. Hence, at the moment of concluding an arbitration agreement a party shall take ensure the proper writing form of the agreement, as well as take into account whether other parties are covered, if desired, by the arbitration agreement through incorporation by reference.</p> <p>In case of extending arbitration agreement to non-signatories through the</p>

			<p>assignment of rights, a party shall also take into account the scope of such assignment with respect to an arbitration agreement, including the precise wording of such assignment.</p>
<p>IV.2</p>	<p>Is there anything else that a party considering trying to enforce a foreign arbitral award against a non-signatory should take into account with respect to the country for which you are reporting?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>	<p>Yes</p>	<p>Ukrainian courts adopt a formalistic approach, when the parties to the recognition and enforcement proceedings differ from the parties to the arbitration agreement (e.g. as a result of assignment) (e.g. Resolution of the Supreme Court dated 19 March 2020 in case No. 824/79/19). Therefore, a party seeking enforcement shall ensure the proper evidence that an arbitration agreement extended to a non-signatory (i.e. assignment agreement expressly providing for the assignment of <u>all</u> rights with respect to a contract containing an arbitration agreement).</p>

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