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IBA ARBITRATION COMMITTEE

Arbitration Guide

UKRAINE

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

International arbitration is widely used for cross-border contracts in Ukraine. The confidentiality of arbitration, finality of the arbitral awards and their enforceability under the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), as well as party autonomy and a right to choose independent and impartial high-profile arbitrators are the most referred to advantages of international arbitration. At the same time, a relatively high cost and length of the proceedings, especially with regard to international arbitrations seated outside of Ukraine, are among the disadvantages of arbitration usually mentioned by Ukrainian companies.

Domestic arbitration is used for domestic disputes as an alternative to state courts. It is regulated by separate legislation that provides that domestic arbitration courts can decide only domestic disputes, that is, disputes between Ukrainian companies and/or individuals. However, legal regulation of domestic arbitration is still evolving and needs to be reformed.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitrations in Ukraine, either international or domestic, are institutional. Currently in Ukraine there are two international arbitration institutions (i) the International Commercial Arbitration Court (ICAC) at the Ukrainian Chamber of Commerce and Industry and (ii) the Ukrainian Maritime Arbitration Commission (UMAC) at the Ukrainian Chamber of Commerce and Industry.

ICAC is one of the leading international arbitration centres in Eastern Europe receiving approximately 300–500 new international cases per year within the last five years. Further information on the ICAC can be found at https://icac.org.ua. UMAC considers disputes arising in the field of merchant shipping between parties coming from 24 jurisdictions. Further information on the UMAC can be found at https://macom.org.ua.

According to the Unified Register of Public Organisations of the Ministry of Justice of Ukraine, more than 500 domestic arbitration courts are registered in Ukraine.

The UNCITRAL Arbitration Rules 2010 are used in the majority of ad hoc arbitration cases. The ICAC can provide administrative support for ad hoc proceedings if so agreed by the parties.

(iii) What types of disputes are typically arbitrated?

The following disputes may be referred to international commercial arbitration:

- disputes resulting from contractual and other civil law relations arising in the course of foreign trade and other forms of international economic relations, provided that the place of business of at least one of the parties is abroad;
- disputes arising between companies with foreign investment, international associations and organisations established in the territory of Ukraine, disputes between the shareholders (participants) of such entities and disputes between such entities and other subjects of the law of Ukraine; and
- disputes between a bond trustee acting in the interests of bondholders in accordance with the provisions of the Law of Ukraine 'On Capital Markets and Organised Commodity Markets' and a bond issuer and/or persons providing collateral for such bonds, if at least one of the parties to the dispute is a company with foreign investment.

According to the Commercial Code of Ukraine (Article 116), a legal entity has the status of a company with foreign investment when foreign investment constitutes at least 10 per cent of its authorised capital (equity). Such Ukrainian entities may choose between domestic and international arbitration when entering into contracts with other Ukrainian entities.

According to statistics of the ICAC for 2024, the disputes related to the following industries are most frequently resolved in arbitration: agribusiness (29.8 per cent), food industry (13.4 per cent), metallurgy (10.9 per cent), defence industry (9.3 per cent), chemical industry (7 per cent), mechanical engineering (7 per cent).

(iv) How long do arbitral proceedings usually last in your country?

In the prevailing majority of ICAC cases, arbitral proceedings last no longer than six months from the date of the constitution of the Arbitral Tribunal. The complicated cases, however, may last approximately nine to twelve months.

As for the UMAC, approximately 38.5 per cent of cases are heard within three months, and 69.3 per cent of cases are heard within six months.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There is no need for a foreign lawyer to obtain a work permit or an advocate certificate to participate in international arbitrations as an arbitrator or counsel. Duly certified powers of attorney are required from a foreign party (either with apostille or legalisation depending on the applicable international treaty) to be admitted as counsel in the ICAC and UMAC proceedings.

With regard to nomination of arbitrators, currently both the ICAC and the UMAC provide for closed lists of arbitrators. The appointment of persons outside the list (either Ukrainians or foreign nationals) is almost impossible.

In domestic institutional arbitration, only Ukrainian residents included on the list of a relevant domestic arbitration institution can be nominated as arbitrators. The list is registered with the Ministry of Justice of Ukraine.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

In Ukraine, international arbitration is governed by the Law of Ukraine 'On International Commercial Arbitration' of 24 February 1994 (LICA) which applies to international commercial arbitration if the place of arbitration is located within the territory of Ukraine. However, some provisions of the LICA also apply in cases where the place of arbitration is abroad.

Domestic arbitrations are regulated by the Law of Ukraine 'On Domestic Arbitration Courts' of 11 May 2004 (LDAC) which specifies (i) the procedure for the establishment and operation of domestic arbitration courts in Ukraine and (ii) the requirements for arbitration proceedings. LDAC is not based on the UNCITRAL Model Law.

The Civil Procedure Code of Ukraine (CPC) governs, inter alia, (i) setting aside proceedings of the domestic and international arbitral awards where the place of arbitration is in Ukraine (Section VIII), (ii) recognition and enforcement of domestic and international arbitral awards (Section IX), (iii) court assistance in support of arbitration.

The Code of Commercial Procedure of Ukraine (CCP) sets out certain restrictions as to the types of disputes which may be referred to domestic arbitration courts and international commercial arbitration, as well as governs setting aside proceedings of the domestic arbitral awards where the place of arbitration is in Ukraine and proceedings for issuing writs of execution for their enforcement (in the event that both parties to domestic arbitration are commercial entities).

The Law of Ukraine 'On International Private Law' of 23 June 2005 (IPL) regulates certain issues related to arbitration, such as the choice of applicable substantive law. The Law of Ukraine 'On Enforcement Proceedings' of 2 June 2016 governs certain procedural aspects of (i) enforcement of domestic arbitral awards and (ii) recognition and enforcement of arbitral awards rendered by arbitral tribunals in international commercial arbitration.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

There are multiple differences between the regulation of international and domestic arbitration. Areas where the differences between international and domestic arbitrations are especially apparent include the qualification of the arbitrators and the manner of the proceedings.

The LICA is based on the principles accepted by the international arbitration community and follows the UNCITRAL Model Law. The LICA was drastically improved after the 2017 procedural reform and adoption of the Law of Ukraine No. 2147-VIII 'On Amendments to the Code of Commercial Procedure of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts' dated 3 October 2017 (Law No. 2147).

On the other hand, domestic arbitration for a long time has been seriously criticised for certain unlawful awards that also failed to observe due process requirements rendered in disputes involving registration of title to immovable property, as well as fast-track collection of consumer debts by banks in 2009-2010. However, the practices of the domestic arbitration courts are currently improving.

The principal distinctions between the law applicable to domestic and international arbitration in Ukraine also include the following:

- In domestic arbitration, parties to the domestic arbitration agreement, third parties, as well as persons who did not participate in the case, if the arbitral tribunal has decided on their rights and obligations, have the right to apply to the court to set aside a domestic arbitral award. In international arbitration, the CPC vests only parties to an international arbitration agreement with such right.
- The grounds for setting aside and refusing enforcement of domestic arbitration awards under the LDAC are wider than those specified in the LICA, which is based on the UNCITRAL Model Law.
- The international arbitral tribunal may at its own discretion adjourn the hearing of a case for a settlement of the dispute by the parties, while the LDAC imposes an obligation on the domestic arbitration courts to find out from the parties whether it is possible to finish the case by an amicable agreement.
- The domestic arbitration procedure is regulated in more detail which limits the scope of the discretion of the arbitral tribunal.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Ukraine has been a party to the New York Convention since 1960. In 2000, Ukraine ratified the 1965 Washington Convention.

The application of the 1961 European Convention on International Commercial Arbitration is limited mostly to ad hoc arbitrations conducted in Ukraine. However, this Convention was also referred to in several ICAC awards with regard to the matters of jurisdiction.

Following the outbreak of the full-scale Russian invasion of Ukraine, Ukraine withdrew from the 1992 Commonwealth of Independent States (CIS) Treaty on Settling of Disputes Related to Commercial Activity.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

In domestic arbitration, the LDAC and related Ukrainian legislation do not broadly provide for a possibility for the parties to agree on the application of foreign substantive law since such agreement can be entered into only if there is a foreign element in the respective relationship between the parties. Thus, as a rule Ukrainian law is applicable in domestic arbitration.

At the same time, in international arbitration, the LICA provides that the arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Failing

any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

The legal requirements relating to the form and content of an arbitration agreement are provided in Article 7 of the LICA, which is based on the UNCITRAL Model Law.

The following are required for a valid arbitration agreement:

- there must be a binding commitment of the parties to resolve their disputes in the arbitration;
- the parties must have the legal capacity to create the arbitration agreement;
- the parties' representatives must be duly authorised to sign any agreements on behalf of the respective party;
- the parties must determine in the arbitration agreement specific legal relations, disputes in respect of which the parties will resolve in arbitration;
- the matter referred to arbitration must be arbitrable;
- the arbitration agreement must be in writing in the main agreement; in a document that the latter refers to; or in an exchange of letters, faxes, telegrams, etc.

Under Ukrainian law, the arbitration agreement is separate and autonomous. Therefore avoidance, rescission or termination of the main contract, as well as statute of limitations and novation arguments applicable to the main contract, do not affect the arbitration agreement. The arbitration agreement can be terminated either upon the agreement of the parties or if found to be defective (and therefore void or invalid).

It should be noted, however, that there is a position of the Ukrainian Supreme Court that if an agreement containing an arbitration clause is fraudulent (and, therefore, not valid), this automatically means that the arbitration clause in such agreement is also not valid. In this case, the principle of autonomy of the arbitration clause does not apply since the entire transaction is fraudulent.

The arbitration clause recommended by the ICAC reads as follows:

'Any dispute, controversy or claim arising out of or relating to this contract, including the conclusion, interpretation, execution, breach, termination or invalidity thereof, shall be settled by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules.

The parties to a contract may wish to consider adding:

This contract shall be regulated by the substantive law of _____. / country /

The number of arbitrators shall be _____. / one or three /

The place of arbitration shall be _____. / city /

The language(s) to be used in the arbitral proceedings shall be _____. / Ukrainian, Russian or other /'

The arbitration clause recommended by the UMAC reads as follows:

'Any dispute, controversy or claim arising out of or relating to this contract, including the conclusion, interpretation, execution, breach, termination or invalidity thereof, shall be settled by the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules.

The parties to a contract may wish to consider adding:

This contract shall be regulated by the substantive law of _____. / countries /

The number of arbitrators shall be _____. / one or three /

The place of arbitration shall be _____. / city /

The language(s) to be used in the arbitral proceedings shall be _____. / Ukrainian, Russian or other /'.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Until the 2017 procedural reform, the practice of the Ukrainian state courts towards the enforcement of agreements to arbitrate was controversial and not fully arbitration-friendly, which was manifested, in particular, in a too-formalistic approach to establishing the validity of an arbitration agreement. After the 2017 procedural reform, there was a significant shift in the practice of Ukrainian state courts towards a pro-arbitration approach in assessing the validity of arbitration agreements. Although this approach is prevailing now, Ukrainian state courts still sometimes tend to be too formalistic. It is, thus, advisable to ensure a clear wording of the arbitration clause and correctness of the name of the arbitral institution referred therein.

Following the 2017 procedural reform, a helpful provision was also introduced into both the CPC and CCP stating that any inconsistences in the text of the arbitration agreement referring disputes to domestic arbitration or international arbitration and/or any doubts regarding its validity, effectiveness and enforceability shall be interpreted by the state courts in favour of its validity, effectiveness and enforceability. Ukrainian state courts now consistently rely on this provision in deciding on enforcement of the agreements to arbitrate.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

The so-called multi-tier clauses which provide for negotiations as a pre-arbitration stage are quite common and enforceable.

There are also no legal obstacles or limitations to providing for mediation or conciliation as a prerequisite to arbitration. It should be noted, however, that enforcement of such clauses could be sometimes difficult. The legal regulation of the mediation was introduced only recently meanwhile there is basically no legal regulation of conciliation procedures in Ukraine. Hence, there is a certain lack of established practice and legal culture connected with their implementation by the Ukrainian parties.

The ICAC constantly promotes the use of mediation and provides on its website the relevant model multi-tier clauses and clauses for different combined proceedings.

If a party commences an arbitration in disregard of any agreement on specific pre-arbitration settlement of the dispute and another party objects thereto, the arbitration court can decide to terminate the arbitration and refer the parties to follow the pre-arbitration negotiations or other agreed procedures. If the party which applies to arbitration can prove that it duly attempted to follow the pre-arbitration steps but failed because of the other party's refusal or obstruction to cooperate, the arbitration court will proceed with arbitration.

(iv) What are the requirements for a valid multi-party arbitration agreement?

The LICA contains no provisions on multiparty arbitration.

The requirements for a valid multiparty arbitration agreement are the same as those for a two-party arbitration agreement. Difficulties may occur regarding the joint appointment of an arbitrator. In practice, when the claimants or respondents fail to agree on a sole arbitrator or panel, they shall be appointed by the relevant authority or institution.

The ICAC Rules and UMAC Rules provide for an appointment procedure in multiparty arbitration, according to which claimants or respondents must jointly appoint one arbitrator from each side. If multiple claimants or respondents fail to agree jointly on the arbitrator, the arbitrator will be appointed by the UCCI president.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Such agreements are quite rare in Ukrainian legal practice and are mostly used in finance transactions conferring an optional right on the lender to choose between courts and arbitration. When asymmetrical arbitration agreements are included into the contracts, the parties more often agree to provide for arbitration as a default dispute resolution method and then confer to only one party the right to choose an option to commence litigation. Although there is no established legal position of the Ukrainian Supreme Court as to the validity and enforceability of the asymmetrical arbitration agreements, generally lower-level Ukrainian courts uphold the validity and enforceability of such agreements.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Generally, only signatories are bound by an arbitration agreement. Third parties may be or become bound by an arbitration agreement through universal succession (such as bankruptcy or mergers). Third parties may also become bound by an arbitration agreement through singular succession, such as through agency or an assignment or subrogation under an agreement containing an arbitration clause.

It is necessary to ensure that all necessary formalities are met in the agreement as the state courts may be formalistic if they are asked to evaluate whether an arbitration agreement is binding on a third party.

There is, however, a tendency in Ukrainian court practice to follow a more liberal approach to the issue of non-signatories. The Ukrainian Supreme Court recently has stated in obiter that, in principle, in some cases, third parties who did not sign the arbitration agreement may be bound by it based on, inter alia, the 'group of companies' doctrine, the 'alter ego' doctrine, the 'piercing the corporate veil' doctrine and that the effect of the arbitration agreement vis-à-vis non-signatories should be assessed on a case-by-case basis.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Generally, the Ukrainian courts abide by the principle of separability of arbitration agreement stating that the main contract and the arbitration agreement may be governed by different laws. The basic rule is that the courts apply to the arbitration agreement the law that the parties chose as the law governing the arbitration agreement. In the absence of such agreement, Articles 34(1)(2) and 36(1)(1) of the LICA provide the following rules for determining the law governing the arbitration agreement: (i) should a party apply for setting aside of the arbitral award rendered in Ukraine, the law governing the arbitration agreement is Ukrainian law (ie the law of the seat), (ii) should a party apply for recognition and enforcement of the arbitral award rendered outside Ukraine, the law governing arbitration agreement is the law of the state where the award was made (ie the law of the seat).

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Ukrainian courts distinguish between the seat of the arbitration and the venue of meetings/hearings. The Ukrainian Supreme Court clearly stated that the place of arbitration should be distinguished from the venue of the hearing, which the parties may expressly agree to be held outside the location of the arbitral institution.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Ukrainian law does not expressly prohibit referring blockchain- and NFT-related disputes to arbitration. A list of non-arbitrable disputes is described below in Section IV(i), and the blockchain- and NFT-related disputes are not included therein. The court practice on blockchain- and NFT-related disputes is yet to be established.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

In general, the CPC and the CCP prescribe that the Ukrainian courts should interpret any ambiguities in the text of the arbitration agreement and resolve doubts as to its validity, effectiveness, and enforceability in favour of its validity, effectiveness, and enforceability, ensuring the principle of autonomy of the arbitration agreement.

However, there are circumstances in which the Ukrainian courts may find a valid arbitration agreement inoperable. Thus, the valid arbitration agreement may be found to become inoperable (i) due to a material mistake of the parties in the name of the arbitral tribunal to which the dispute is referred (ie reference to a non-existent arbitral institution), (ii) if the arbitration agreement does not specify the place of arbitration, or (iii) if there are no other provisions that would allow establishing the true intentions of the parties to choose a particular arbitral institution or the rules under which the arbitration proceedings shall be conducted.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

A list of disputes which may not be arbitrated is envisaged in Article 22 of the CCP. The parties cannot arbitrate disputes on invalidation of regulatory acts, disputes on state registration or recording of rights to immovable property, intellectual property rights, rights to financial instruments. The following disputes are also not arbitrable:

- disputes arising from the conclusion, amendment, termination and execution of public procurement contracts (except for civil law aspects of such disputes);
- disputes concerning the privatisation of property (except for civil law aspects of such disputes and disputes regarding sale of shares belonging to the state in the share capital of banks);
- disputes on the protection of economic competition, restriction of monopoly in economic activity (except for civil law aspects of such disputes);
- disputes arising out of corporate relations (corporate disputes), including disputes between participants (founders, shareholders, members) of a company or between a company and its participant (founder, shareholder, member), including a former participant, related to incorporation, operation, management or liquidation of such company (except as provided for below);
- bankruptcy cases and disputes with pecuniary claims against a bankrupt, including disputes on challenge of previous transactions entered into by a bankrupt;
- disputes regarding challenges of acts (decisions) of business entities and their bodies, officials, and employees in the field of organisation and conduct of commercial activities;
- cases on setting aside of arbitral awards of domestic arbitration courts and on issuing a writ of execution for enforcement of arbitral awards of domestic arbitration courts;
- derivative claims filed by shareholders (participants) of a company on behalf of a company against an officer of a company for losses caused to a company by acts (omission) of this officer;

- disputes relating to unfair competition, including on unlawful use of trademarks, disclosure of commercial secrets (except for civil law aspects of such disputes).

In respect of corporate disputes, such disputes may be submitted to international commercial arbitration only pursuant to an arbitration agreement concluded between a company and all of its shareholders (participants).

Ukrainian courts have a duty to establish the arbitrability of a dispute when considering an application for setting aside of the arbitral award or recognition and enforcement of the arbitral award, even if the other party / debtor under the award does not raise the question of arbitrability of the dispute.

Article 6 of the LDAC also establishes a broad list of exceptions for disputes which may be submitted to domestic arbitration courts. For example, a list of disputes which parties cannot resolve in domestic arbitration includes disputes arising out of family legal relations, labour disputes, consumer rights disputes, disputes relating to immovable property and land, disputes where at least one of the parties to the dispute is a non-resident of Ukraine etc.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

A valid arbitration agreement excludes the jurisdiction of the state courts. A court faced with a matter that is the subject of an arbitration agreement shall stay the court proceedings and refer the parties to arbitration if any of the parties so requests not later than the commencement of the hearing of the case on the merits, but before submitting its first statement on the merits of the dispute. However, if the court finds that the agreement is null and void, inoperative or incapable of being performed, then it may exercise jurisdiction. The parties and the arbitral tribunal are bound by any court judgment holding the arbitration agreement null or void. Nevertheless, the arbitral proceedings may be commenced or continued, and an award may be made, while the issue of jurisdiction is pending before the court.

Under Article 4 of the LICA, a party which failed to make objections as to the jurisdiction of the arbitral tribunal during in the arbitral proceedings without undue delay, shall be deemed to have waived its right to object. This provision of the LICA is upheld in Ukrainian court practice, however, only when the seat of arbitration is in Ukraine.

In case a party to the court proceedings made a timely motion to dismiss the claim and refer parties to the arbitration and subsequently filed a statement of defence and a counterclaim with a commercial court, that does not constitute either a waiver of the party's right to arbitrate or a basis for the court to hear the merits of the case.

In domestic arbitration, a similar rule exists as provided for under Article 8 of the LICA.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The arbitrators can decide on their own jurisdiction based on the competence-competence principle prescribed in both the LDAC and the LICA.

In domestic arbitration, if there is a timely challenge to the jurisdiction, an arbitral tribunal shall postpone or suspend the hearing of the case on the merits until it has decided whether it has jurisdiction.

An international arbitration tribunal may rule on its own jurisdiction either as a preliminary question or in an award on the merits. If the tribunal in a Ukraine-seated arbitration rules as a preliminary question that it has jurisdiction, any party may request the Kyiv Court of Appeal to decide the matter within 30 days of receiving notice of that ruling. Such a decision shall not be subject to appeal. While such request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Article 10 of the LICA follows the UNCITRAL Model Law principle and provides that parties are free to decide on the number of arbitrators. Article 30 of the ICAC Rules and Article 30 of the UMAC Rules further clarify that the arbitral tribunal should consist of an odd number of arbitrators, including one arbitrator. Thus, a panel consisting of an even number (eg two or four) is not permissible.

Under the ICAC an UMAC Rules, three arbitrators shall be appointed should the parties fail to determine a number, unless the ICAC/UMAC Presidium or, on its behalf, the ICAC/UMAC President decides that the dispute shall be resolved by a sole arbitrator.

The parties in international arbitration are free to agree on the procedure for appointing the arbitrators. Failing such an agreement, each party shall appoint one arbitrator, and these two arbitrators shall appoint the third arbitrator to act as a presiding arbitrator. If a party fails to appoint an arbitrator within 30 days of receipt of a notification to do so, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the third arbitrator shall be appointed by the President of the UCCI.

The UCCI President also has the power to appoint a sole arbitrator where the parties fail to agree. The UCCI President must give due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In the case of a sole arbitrator or president of the arbitral tribunal, the UCCI President shall also take into account the advisability of appointing an arbitrator of a nationality other than that of the parties. These decisions of the UCCI President are final and are not subject to appeal.

Under the ICAC an UMAC Rules, the arbitrators shall be selected from the ICAC Recommended List of Arbitrators and the UMAC Recommended List of Arbitrators (the Recommended Lists), approved by the UCCI Presidium, which includes Ukrainian nationals and persons of other nationalities. The ICAC Rules and the UMAC Rules do not directly address whether it is permissible to nominate arbitrators who are not on the Recommended Lists. However, the wording of Articles 6 of the ICAC Rules and the UMAC Rules, as well as the relevant practice, shows that it is not permissible, and the Recommended Lists are closed. They are updated every five years, and applications of candidates submitted during the validity of the current Recommended Lists are considered by the ICAC and UMAC Presidium only during the period of preparation of the new list.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

In Ukraine, there are no specific rules on the disclosure of conflicts in arbitration. Each of the ICAC and UMAC arbitrators shall, upon receipt of the appointment, complete a statement of acceptance and of their impartiality and independence from the parties. This statement contains both a declaration of refusal to accept the appointment and a declaration of acceptance, subject to the disclosure of certain circumstances which, however, in the opinion of the arbitrator do not preclude him or her from accepting the appointment.

The LICA reiterates the UNCITRAL Model Law provision that prior to accepting the appointment an arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. The ICAC Rules and the UMAC Rules do not contain the list of such circumstances, but it is understood that these circumstances include any professional contacts with either party, such as any past performance of tasks or duties on their behalf; financial or private interests in the outcome of the case; or any kind of familial or other relations with either party.

A party may challenge an arbitrator, should any issues or information arise subsequent to the appointment that gives rise to justifiable doubts as to the arbitrator's impartiality or independence or his/her necessary qualification.

Under the LICA, the parties are free to agree on the procedure for challenges, but after the constitution of the arbitral tribunal, any challenge must be lodged in writing with the arbitral tribunal within 15 days of becoming aware of the circumstance that gives rise to the challenge. Unless the challenged arbitrator withdraws from his or her office, or the other party agrees to the challenge, the arbitral tribunal itself shall decide on the challenge. If the challenge is dismissed, the challenging party may request within 30 days of receiving the dismissal of the challenge of the arbitrator the UCCI

President to make a final decision on the challenge. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue with the arbitral proceedings and make an award. The ICAC Rules state that the ICAC Secretariat must give the other party an opportunity to comment on the challenge. A similar procedure for the challenge of the arbitrator is prescribed in the UMAC Rules.

Under the ICAC Rules, the ICAC Presidium is empowered to decide on the challenge if the challenged arbitrator does not withdraw from office or if the other party does not agree to the challenge. The ICAC Presidium can also decide the challenge on its own if circumstances exist that may give rise to justifiable doubts as to arbitrator's impartiality or independence. The ICAC Presidium is not obliged to give reasons for its decision on the challenge but in practice provides such reasons. In any case, the final decision is taken by the UCCI President. The state courts have no authority to deal with challenges to an arbitrator.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

In general, any person who has full legal capacity can act as an arbitrator. No person shall be precluded by reason of nationality from acting as an arbitrator unless otherwise agreed by the parties.

There are no direct requirements regarding domicile, age, experience or education of the arbitrators in the ICAC Rules and UMAC Rules. However, there are requirements for those applying to be included in the Recommended Lists, namely: (i) at least 10 years of experience in the field of dispute resolution within the competence of the ICAC, legal or research work; (ii) higher professional education corresponding to arbitrator's field of expertise; (iii) age between 30 and 80 years; and (iv) compliance with high moral and ethical requirements. Considering that only arbitrators from the Recommended Lists can serve as the arbitrators in ICAC and UMAC, these are de facto requirements imposed on the arbitrators in ICAC and UMAC arbitrations.

In addition, in 2022, condemning the aggression of the Russian Federation against Ukraine with the support of the latter from the side of the Republic of Belarus, the Presidiums of the ICAC and the UMAC decided to exclude from the ICAC and the UMAC Arbitrators' Recommended Lists the citizens of these countries.

Former judges or civil servants act as arbitrators in international arbitration under the ICAC Rules. However, certain categories of public officials (such as the prime minister, ministers), civil servants, acting judges, members of the Parliament of Ukraine etc cannot act as arbitrators in view of specific legislation regarding their particular status.

In domestic arbitration, the sole arbitrator or the presiding arbitrator must have a higher legal education.

There are no specific codes or rules of ethics for arbitrators acting in arbitration. The ICAC Rules and UMAC Rules provide the general rule for all participants in the arbitral proceedings, including the arbitral tribunal, to act at all times in good faith, respecting the spirit of the ICAC Rules. The LICA reiterates the provisions of the UNCITRAL Model Law that the arbitrators shall be independent and impartial in fulfilling their duties and none shall be a representative of either party to the dispute.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules or codes of conduct concerning conflicts of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are followed by the Ukrainian arbitrators, who are mostly scholars, former judges or state officials on an individual basis. At the same time, in considering the challenges raised by the parties against the arbitrators the ICAC Board applies the IBA Guidelines, the ECHR case law and local standards.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Considering that LICA has not yet been aligned with the revised version of the UNCITRAL Model Law adopted in 2006, it provides a very limited framework for interim measures ordered by the arbitral tribunals. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order the other party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require a party to provide appropriate security in connection with such measure. Usually, an arbitral tribunal issues an order in which it provides the respondent with instructions to refrain from using money in its accounts in the amount of the claim. There are no requirements as to the form of the tribunal's decision (order or award) in the LICA.

According to Article 25 of the ICAC Rules and Article 25 of the UMAC Rules, the ICAC/UMAC President and the arbitral tribunal after it was formed may, at the request of a party, determine the amount and the form of the security for the claim. The decision on the size and form of the security of claim should be made in the form of the order, be binding on the parties, executed immediately and shall, in principle, be in force until the final arbitral award is made. The granted interim measures may be modified or terminated by the ICAC/UMAC President (before the constitution of the arbitral tribunal) or the arbitral tribunal on its own initiative or upon a reasoned request of either party after consideration of the relevant circumstances and evidence. The arbitral tribunal is not bound by the rationale of the decision of the ICAC/UMAC President on the security for the claim.

The ICAC/UMAC President (before the constitution of the arbitral tribunal) or the arbitral tribunal may require a party requesting the interim measures to provide countersecurity for the reimbursement for possible damages (i) by depositing funds to deposit an account of the UCCI or (ii) by providing a bank guarantee, (iii) pledge or (iv) any other financial security. The decision on countersecurity should be made also in the form of an order.

As of now, there is no procedure in the Ukrainian legislation for the enforcement by the Ukrainian courts of interim measures ordered by an arbitral tribunal seated in Ukraine.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

The LICA reiterates the provision of the UNCITRAL Model Law that it is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, a court to order interim protection measures and for a court to grant such measures.

Following the 2017 procedural reform, Ukrainian legislation on the court ordered interim measures in support of arbitration (both domestic and international) was significantly developed. The court may grant interim measure any time after the commencement of the arbitral proceedings upon the request of one of the parties to such arbitral proceedings.

The court may require the party applying for the interim measures to provide a countersecurity. The countersecurity is mandatory if (i) the party applying for the interim measures does not have a residence (location) in Ukraine and does not have assets located in Ukraine in an amount sufficient to compensate for possible losses that may be caused by the security if the claim is dismissed, (ii) the court has been provided with evidence that the claimant's financial position or actions to alienate assets or other actions may complicate or make it impossible to enforce the court's decision to compensate the respondent for the losses that may be caused by the interim relief if the claim is dismissed.

The ruling of the court granting interim relief is an enforcement document which shall be sent by the court for immediate execution to all persons affected by the interim measures, as well as to the relevant authorities for taking appropriate measures. The court ordered provisional relief remains in force following the constitution of the arbitral tribunal. The court may cancel interim measures on its own initiative or upon a reasoned motion of a party to the arbitral proceedings in the following instances: (i) the arbitral tribunal refuses to consider a case or terminates the proceedings, (ii) the arbitral tribunal decides to dismiss the claim on the merits, (iii) the party who requested interim measures fails to participate in the case, (iv) on other grounds indicating the loss of the need to secure a claim.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

Under Article 52(5) of the ICAC Rules and Article 52(5) of the UMAC Rules, the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request a competent court to assist in taking of evidence or examination of witnesses. Following the 2017 procedural reform, Ukrainian procedural legislation was expanded by the procedural rules related to carrying out the examination of witnesses and assisting in taking of evidence.

The court may secure evidence at the request of the arbitral tribunal or at the request of a party to the case submitted to arbitration (both domestic and international) if there are grounds to assume that the evidence may be lost or that the collection or presentation of relevant evidence will become impossible or difficult in the future. This assistance is also possible only after the commencement of the arbitral proceedings.

The means of securing evidence by the court are (i) the examination of witnesses, (ii) appointment of an expert to prepare an expert report, (iii) request and/or inspection of evidence, including at its location, (iv) prohibition to perform certain actions with respect to evidence and (v) obligation to perform certain actions with respect to evidence. Where necessary, the court may apply other methods of securing evidence at the discretion of the court.

As to the examination of witnesses, the court may interrogate the witness, including repeatedly, about the facts known to him/her regarding the case considered by the arbitral tribunal, in accordance with the list of questions determined by the arbitral tribunal. The parties to the arbitration proceedings may participate in the interrogation of the witness and ask questions to clarify witness' answers.

(iv) Are decisions by emergency arbitrators enforceable in your country?

There were several cases in which Ukrainian courts considered the enforcement of the decisions of the emergency arbitrators. The enforcement was ultimately refused in those cases. In doing so the courts, however, relied on the grounds contained in the New York Convention and the provisions of Ukrainian procedural legislation on the recognition and enforcement of the arbitral awards. The courts did not elaborate as to whether the decisions of the emergency arbitrators more generally should be considered final and enforceable awards under the New York Convention or not. Thus, the question of the requirement of finality of interim awards is de facto open for Ukrainian courts.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

Ukraine has not yet developed an approach to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings. There are also no recorded cases that such applications have been ever submitted by the parties in the ICAC and UMAC arbitrations.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Ukrainian courts generally assist foreign-seated arbitrations based on the provisions of Ukrainian legislation on the court ordered interim measures.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

In international arbitration proceedings, document production is possible under both the ICAC Rules and the UMAC Rules. Article 52(4) of the ICAC Rules prescribes that the arbitral tribunal may at its discretion request the parties to produce other documents apart from those which have already been submitted by the parties and/or to produce evidence, request a third party to produce evidence that the arbitral tribunal considers appropriate for dispute order. The UMAC Rules contain corresponding provisions.

Article 24 of the ICAC Rules stipulates that the Secretary-General may request additional documents or information from the parties concerning any written statements submitted by them. If the requested information, (in particular, the Respondent's correct postal address, or any requested documents) is not provided, the President may terminate the arbitration proceedings. It appears that this provision is applicable only in respect to arbitration proceedings before the composition of an arbitral tribunal. Similar provisions are contained in the UMAC Rules.

Additionally, the arbitral tribunal or a party with the consent of the arbitral tribunal may apply to the general court of appeal at the location of the evidence (the witness's place of residence) to request the evidence to be produced at its location. The court may fulfil this request within its jurisdiction and in accordance with its rules for obtaining evidence.

The LDAC regulating domestic arbitration provides for a general provision that the domestic arbitration court shall have the right to require the parties to provide the evidence necessary for the full, comprehensive and objective resolution of the dispute.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Neither the ICAC Rules nor UMAC Rules clearly state the scope of acceptable production of documents. However, an arbitral tribunal acting within the ICAC or the UMAC is likely to establish a limited disclosure/production process marked by the selective provision of helpful documents. The LDAC does not set the permissive scope of disclosure/production either.

(iii) Are there special rules for handling electronically stored information?

For domestic arbitration, special rules for handling electronically stored information are not prescribed. However, both the ICAC Rules and UMAC Rules contain provisions governing the handling of electronic evidence.

Under both Rules, electronic evidence is defined as information in electronic form which includes electronic documents, websites, text and multimedia messaging, voice messaging, databases, and other data in electronic form, stored on portable devices, servers and backup systems. The parties shall ensure that (i) electronic copies correspond to the originals, (ii) electronic copies of evidence must be certified by an electronic digital signature, and (iii) if submitted in hard copies, the electronic evidence must be duly certified by a submitting party.

Additionally, on 25 October 2022, the UMAC and the ICAC Presidium approved the Recommendations for the execution of documents submitted in electronic form, which must be followed by the parties to the arbitration proceedings. According to the ICAC Report, this is the first of a series of Recommendations on the organisation of arbitration proceedings, which will be provided as part of the course towards full digitalisation of arbitration proceedings.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Arbitrations are confidential. However, there are no direct provisions regarding confidentiality in the LICA. Under the ICAC Rules and UMAC Rules (Article 68), unless otherwise agreed by the parties, the consideration of cases and other related activities of the ICAC are confidential, and the arbitral tribunal and the parties shall observe the confidentiality of any document submitted by a party or a person being not a party to the arbitration and not available in public sources. The arbitrators, reporters, tribunal-appointed experts, as well as the ICAC, the UCCI and their respective employees, must not disclose any information obtained in connection with ICAC cases if such disclosure may harm the legitimate interests of the parties or the ICAC. The principle of confidentiality applies to all aspects of arbitration including the dispute, the proceedings, the evidence submitted, the information disclosed and the award.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

There are no specific provisions except as referred to above.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

No.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The Ukrainian arbitration laws or the ICAC/UMAC Rules do not refer to the IBA Rules on the Taking of Evidence in International Commercial Arbitration. The parties themselves do not often agree on their application in the ICAC/UMAC arbitration proceedings. However, arbitral tribunals often lean towards using the IBA Rules.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

The LICA sets out that the parties are free to agree on the procedure governing the arbitration proceedings. If the parties did not determine such procedure in their arbitration agreement, the arbitral tribunal may conduct arbitration proceedings in such a manner as it considers appropriate. Especially, the power conferred upon the arbitration tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 43 of the ICAC Rules adds that the arbitral tribunal is empowered to establish the procedure for conducting oral hearings, including the date, duration, form, content, procedure, deadlines, place as well as regarding the form of oral hearings. Similar provisions are contained in the UMAC Rules.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

For Ukrainian parties and their in-house lawyers, witness testimony does not constitute essential part of the evidentiary procedure as, historically, Ukrainian legal doctrine provides for principal importance of documentary evidence in commercial disputes between businesses. Usually in-house lawyers, as well as legal advisors, prefer to include on the list of party's representatives managers and employees of a company engaged in the performance of the contract.

The ICAC Rules specify that a party or an arbitral tribunal may order witnesses to appear for participation in the arbitral proceedings. Testimony of witnesses may be presented in written form or in a form of oral testimony – it is decided by the arbitral tribunal. Also, the arbitral tribunal as a rule prescribes the procedure for examining a witness, including direct and cross examination. At the same time, the arbitral tribunal usually takes an active part in the examination of the witnesses.

Moreover, either party may request that a witness whose written testimony the other party relies on shall appear for oral examination at an oral hearing before the arbitral tribunal. If a witness whose attendance was determined as mandatory by the arbitral tribunal fails to attend this oral hearing for oral testimony without good cause, the arbitral tribunal may not consider his/her written testimony. Similar provisions are contained in the UMAC Rules. Cross examination of the witnesses is not common, as arbitrators prefer to question witnesses directly.

In domestic arbitration, the procedure of witness examination and testimony is not regulated.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

Article 53 of the ICAC Rules provides that a witness could be any individual who is aware of any significant information and evidence relating to the facts of the case notwithstanding that the said individual is or was a party of the arbitral proceedings or its officer or representative. The UMAC Rules contain similar provisions.

The LDAC implies that witnesses can appear before the arbitral tribunal in domestic arbitration, however, it does not prescribe any requirements on who can or cannot appear as a witness.

The provisions of Ukrainian legislation do not require witnesses to testify under oath before the arbitral tribunal in both international and domestic arbitration.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

There is no difference between the testimony of a witness specially connected with one of the parties and the testimony of unrelated witnesses.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

According to the LICA, the arbitration tribunal may (i) appoint one or more experts to report to it on specific issues to be determined by the arbitration tribunal and (ii) require a party to give the expert any information relevant to the case or to produce, or to provide access to, any relevant documents, goods, or other property for inspection.

Upon the request of the parties or the arbitral tribunal, after submission of their written or oral report, the expert should participate in a hearing where the parties can question him/her and present expert witnesses to testify on the points at issue.

Identically, Article 54 of the ICAC Rules provides that the party may request for involvement of a party-appointed expert to clarify specific issues during the arbitral proceedings. Here, the initiative lies with the party only. Upon approval of a petition for involvement of an expert by the arbitral tribunal, the expert shall submit his/her expert report.

The ICAC Rules specify that the parties may request the expert to appear before the arbitral tribunal for oral examination. To this end, the arbitral tribunal sets out the date, time and the way the expert will be examined. The UMAC Rules contain similar provisions.

In domestic arbitration, the domestic arbitral tribunal has the right to request the parties to order an expert examination. The grounds and procedure for challenging an expert are determined either by the arbitration rules of a specific domestic arbitration court or by the arbitration agreement.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

No, it is not common for arbitral tribunals to appoint experts in such situations. However, in case it becomes necessary to appoint an expert in the course of arbitration, usually the arbitral tribunals prefer to appoint their own independent expert to decide on specific issues. There are also no requirements that experts be selected from a particular list.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

No.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

A relevant individual in the ICAC arbitrations with functions akin to arbitral secretary is the 'reporter', whose involvement is governed by Article 10 of the ICAC Rules.

In any case considered by the ICAC, the President of the ICAC may appoint at the request of the presiding arbitrator or the sole arbitrator a reporter from the List of Reporters which is approved by the ICAC Presidium. To be eligible for inclusion in the List of Reporters, a person is required to have the requisite knowledge and practical skills in the field of arbitral proceedings.

The reporter must be impartial and independent and fulfil his/her functions in good faith. He/she must not inform or advise either party on the dispute or the outcome of the arbitral proceedings and also shall not disclose details on the deliberations of the arbitral tribunal. The reporter shall not be involved in the arbitral tribunal decision-making process. Similar regulations on the involvement of the reporter are provided in Article 10 of the UMAC Rules.

Technically, the reporter's only functions are to assist the arbitral tribunals in communications with the parties, take part in the hearings and meetings of the arbitral tribunal and carry out the instructions of the arbitrators related to the arbitral proceedings. But in many cases, it will no doubt be the reporter who records the facts and the law of a case together, communicates with the parties and makes many contributions to the progress of a dispute to the final award. For instance, the reporter not only takes care of the case file and proper exchange of documents presented by the parties, but also, according to the tribunal's instructions, drafts procedural documents, including the procedural part of the final award.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no specific ethical codes or other professional standards applicable to counsel and arbitrators participating in arbitral proceedings in Ukraine. At the same time, in case the counsel is an attorney admitted to a bar in Ukraine, the Rules of Professional Conduct approved by the Ukrainian Bar Association may apply to him/her. Although these Rules do not expressly state that they apply to the representation in the arbitration, a systematic interpretation of these Rules, in particular Articles 2 and 25, suggests that they also apply to the representation of the client's interests before adjudicative bodies other than the state court, including before the arbitral tribunals (both domestic and international).

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No rules are empowering the arbitral tribunal to exclude the counsel. The right of the parties to appoint the counsel of their choice is prescribed by paragraph 1 of Article 36(2) of the ICAC Rules and Article 36(2) of the UMAC Rules. At the same time, paragraph 2 of Article 36(2) of the ICAC Rules and Article 36(2) of the UMAC Rules provide that the arbitral tribunal may refuse the replacement of the counsel (ie admission of a new counsel) if such replacement creates grounds for challenging an arbitrator or for setting aside or refusing to recognise and enforce the arbitral award.

If during the arbitral proceedings, the party and/or its representative behaved in bad faith, violating the provisions of the procedural Rules or abusing procedural rights, the arbitral tribunal may, inter alia, invite a party to appoint a different representative.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

Under Article 47 of the ICAC Rules, a party, no later than five days before the date of the oral hearing, has the right to file to the ICAC an application for its participation in the oral hearing via video conference. Risks of the technical impossibility of participating in a video conference outside the premises of the ICAC, interruption of communication, etc shall be borne by the party who has submitted the relevant application. The arbitral tribunal itself has the right to take part in a hearing via video conference outside the premises of the ICAC. The arbitral tribunal also has the right to hear witnesses or experts via the video-conferencing systems, in which case the arbitral tribunal issues a ruling. Similar provisions on remote hearings are contained in Article 47 of the UMAC Rules.

The majority of hearings at the ICAC and UMAC currently take place remotely or in a hybrid format. Case law on remote arbitral hearings in Ukraine is limited. A notable decision is the ruling of the Kyiv Court of Appeal dated 8 December 2023 in Case No. 824/85/23, where the court set aside an ICAC arbitral award. The applicant's representative attended the hearing remotely, but when an air raid alert delayed the proceeding, he was not informed of the resumption of the hearing and thus could not present the respondent's arguments. The court held that, in emergency conditions, the tribunal was required to observe procedural fairness and assist parties in exercising their rights. This ruling emphasises the importance of procedural guarantees in remote hearings, especially amid disruptions like the Covid-19 pandemic and wartime conditions.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

For an arbitral award in international commercial arbitration to be valid under Ukrainian law, it shall be made in writing and signed by the sole arbitrator or arbitrators. In case of a panel of arbitrators, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reasons for any omitted signature are stated.

The award must state (i) the date and the place of arbitration, (ii) the reasons upon which it is based, (iii) a dispositive part regarding granting or rejecting of the claim, (iv) the amount of the arbitration fee and costs and (v) their distribution between the parties.

Ukrainian law establishes more formal requirements to an award rendered by a domestic arbitration court. Article 46 of the LDAC prescribes that the following information should be included in such an award:

- the date of the award,
- composition of the domestic arbitral tribunal court and the procedure for its formation,
- place of arbitration,

- the parties, their representatives and other participants of the arbitration proceedings who participated in the arbitration proceedings,
- a conclusion on the jurisdiction of the domestic arbitral tribunal and the scope of its powers under the arbitration agreement,
- a brief summary of all submissions of the parties and other participants in the arbitration proceedings,
- the established facts of the case, the grounds for the dispute, the evidence on which the decision was based, motions of the parties filed during the arbitration proceedings,
- conclusion on granting of the claim or dismissal of the claim in whole or in part for each of the stated claims,
- the provisions of law that the domestic arbitral tribunal was guided when making its award.

Should the claim be granted by the domestic arbitral tribunal, the dispositive part of an award should contain information regarding the compensation, inter alia, an award should indicate (i) a party in whose favour the dispute is resolved, (ii) a party from whom payment is recovered and/or who is required to perform certain actions or refrain from performing certain actions, (iii) the amount of payment to be recovered and/or actions to be performed or refrained from by the party under the award of the arbitral tribunal, (iv) the term for payment of funds and/or the term and manner of performing such actions and (v) the procedure for allocating the costs between the parties.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

The rules of Ukrainian law, including the LICA, place no specific limitations on the arbitral tribunal regarding the scope of remedies it can award. Arbitral tribunals seated in Ukraine have the authority to provide identical remedies as those prescribed for Ukrainian courts in the Civil Code of Ukraine and the Commercial Code of Ukraine.

Generally, Ukrainian law prohibits punitive or exemplary damages. It does not mean, however, that parties may not agree in their contract for a fine or penalty fee as the latter are considered to have a compensatory nature under Ukrainian law. Arbitrators can also award interest. Interest as a rule can be awarded only in a lump sum as part of the monetary claim covered by the arbitration fee. The interest may not be claimed for arbitration costs. There are no provisions as to charging interest on unpaid interest and there is no direct regulation of compound interest under Ukrainian law.

(iii) Are interim or partial awards enforceable?

The Ukrainian legislation does not specifically address the process of enforcement of partial or interim awards. In essence, the recognition and enforcement of such awards is possible, provided that (i) they have become binding upon the parties and (ii) there are no other legitimate reasons to reject their recognition and enforcement.

In recent Case No. 519/15/17, the Ukrainian Supreme Court dealt with the enforcement of the SCC partial award in *Ostchem Holding Limited v. Odesa Portside Plant (SCC Case No. V2016/065).* In that case, the arguments of the award debtor, Odesa Portside Plant, that the partial award did not enter into force and therefore cannot be enforced in Ukraine were rejected by the Supreme Court, which observed that the fact that the award was partial did not affect its binding nature.

Additionally, in the proceedings relating to recognition and enforcement emergency awards in the cases of *JKX Oil and Gas et al. v. Ukraine (SCC Case No. EA 2015/002)* and *VEB.RF v. Ukraine (SCC Case No. EA 2019/113),* the Ukrainian courts finally did not allow enforcement of either of these awards. However, it is worth noting that the reasons for refusing enforcement were unrelated to the fact that these awards were interim in view of the Ukrainian courts.

Hence, even though Ukrainian arbitration laws do not explicitly address the issue of enforcing interim or partial awards, the fact that an award is interim or partial so far did not impede its enforcement in Ukraine.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Article 60(2) of both the ICAC Rules and the UMAC Rules provide for the possibility for an arbitrator to disagree with an arbitral award and write a dissenting opinion which should be attached to the award. The ICAC Rules and the UMAC Rules do not set out any other specific rules regarding dissenting opinions.

Likewise, the LDAC allows arbitrators in domestic arbitrations to issue a dissenting opinion to an award in writing and prescribes that such dissenting opinion should be attached to the award.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Article 61 of both the ICAC Rules and the UMAC Rules, as well as Article 30 of the LICA, provide for a possibility to render an award by consent at the request of the parties and in the absence of their objections. This approach is possible if the parties settle their dispute by the conclusion of a settlement agreement or an agreement based on the results of mediation.

Additionally, arbitration can be terminated by an order for the termination of the arbitral proceedings under certain circumstances, for instance, if:

- the claimant withdraws its claim, unless the respondent objects to the termination of the proceedings,
- the parties agree to terminate the proceedings,
- the arbitral tribunal finds that the continuation of the proceedings has become unnecessary or impossible for some reason.

After the constitution of the tribunal, the arbitration can be terminated only by such an order issued by the arbitral tribunal.

In domestic arbitration, the parties have the right to settle the dispute through mediation, to end the case by concluding a settlement agreement both before the commencement of the arbitral proceedings and at any stage of the arbitral proceedings before an award is rendered. It is worth noting that the settlement agreement may concern only the rights and obligations of the parties with respect to the subject matter of the dispute. Moreover, the LDAC imposes an obligation on domestic arbitral tribunals to terminate arbitration proceedings if:

- the dispute is not subject to domestic arbitration,
- there is a decision of a competent court between the same parties, on the same subject matter and on the same grounds,
- the claimant has withdrawn the claim,
- the parties have entered into an agreement to terminate the arbitration proceedings,
- a company, institution or organisation that is a party to the arbitration proceedings has been liquidated,
- the domestic arbitration court does not have jurisdiction to consider the dispute submitted to it,
- in the event of the death of an individual who was a party to the case if the disputed legal relationship does not allow for legal succession.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Either party may request the arbitral tribunal (i) to correct any error of calculation, clerical or typographical error or other errors of a similar nature made in the award and (ii) to explain any particular clause or part of the award. The arbitral tribunal may, on its own initiative, correct any errors or give an explanation of any particular clause or part of the award.

In domestic arbitration, the domestic arbitral tribunal in the same composition, on its own initiative or at the request of a party to the arbitration, may correct clerical errors, arithmetical errors, or any other inaccuracies in the award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The apportionment of the arbitration costs is established by the ICAC Rules' and UMAC Rules' Schedule on Arbitration Fees and Costs (the Costs Schedule). In general, the arbitration fees shall be borne by the unsuccessful party, subject to any other rules. Where the claim is awarded partially the arbitration fees shall be borne by the parties in the respective proportions. The parties are free to agree on an apportionment of the arbitration fee other than that provided in the Costs Schedule. In this respect, the ICAC has developed and adopted the Recommendations on certain aspects of the application of the schedule of arbitration fees and costs, which should also be taken into account by the parties and arbitrators.

(ii) What are the elements of costs that are typically awarded?

According to Section VII(2) of the Costs Schedule, expenses incurred by the successful party in connection with the protection of its interests may be charged to the other party to the extent that the arbitral tribunal determines that the amount of such costs is reasonable provided that these expenses are properly justified and confirmed by evidence. The following arbitration costs are typically awarded:

- arbitration fees (covering arbitrators' fees and administrative fees);
- expenses for engagement of experts, interpreters, witnesses;
- travelling expenses of the arbitrators relating to hearing of a case; and
- expenses of the parties incurred in defending their interests before the arbitral tribunal, such as travel expenses, legal costs, etc.

According to the ICAC Recommendations regarding compensation to parties for legal costs, the successful party's legal costs may be charged to the other party if the arbitral tribunal finds the amount reasonable and properly supported by evidence.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitral tribunal has jurisdiction to decide on its own costs and expenses.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The arbitral tribunal has the discretion to apportion the costs between the parties. In apportioning the costs, the arbitral tribunal may take into account the agreement of the parties on the distribution of costs (if any), the procedural behaviour of the parties, the outcome of the case, the reasonableness and justification of the costs.

In addition, under the ICAC Rules, the arbitral tribunals may order the apportionment of the arbitration fees, additional costs, and expenses of the parties other than that specified in the Costs Schedule, in particular, it may order one party to reimburse any additional expenses incurred by the other party through inappropriate or bad faith acts of such party, including acts causing unjustified delay in the arbitral proceedings. A similar rule is contained in the UMAC Rules.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

Ukrainian courts are not empowered to review the tribunal's decision on costs on the merits. At the same time, the court practice shows that a party may challenge the tribunal's decision on costs at the stage of setting aside or recognition and

enforcement of the arbitral award based on the grounds that such decision either does not comply with the arbitration agreement, arbitral procedure agreed by the parties, or violates the right to a fair trial, or is contrary to public policy. In such cases, the courts decide the challenge of the tribunal's decision on costs on a case-by-case basis.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

An arbitral award may be set aside only by filing a set-aside motion to the court of appeal at the place of arbitration (which will be the Kyiv Court of Appeal if the place of arbitration is in Kyiv). According to Article 34(3) of the LICA, a motion to set aside and arbitral award may not be made after three months have elapsed from the date on which the party making that application received the award. On average, the challenging proceedings usually take six months or more.

Ukrainian law repeats the corresponding wording of the UNCITRAL Model Law as to the grounds for setting aside arbitral awards. In the setting aside procedure, the Ukrainian courts must not check the substance of the dispute; therefore, the arbitral award cannot be challenged by reference to a mistake of fact or incorrect application of the substantive law.

Challenge proceedings do not necessarily result in a stay of enforcement proceedings. When a court reviews an application for recognition and enforcement of an award, it can suspend enforcement proceedings if there is a pending request to challenge an arbitral award before the appropriate court. This suspension would remain in effect until the court decides on the request for setting aside of an arbitral award. Therefore, the court handling the application for recognition and enforcement has the authority, but not an obligation, to suspend the proceedings until a decision is rendered on the request to set aside an arbitral award.

When a motion to set aside an arbitral award is filed with a Ukrainian court, any party may also file a motion on recognition and enforcement of the same arbitral award, which should then be heard in a single proceeding.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

The parties may not waive the right to challenge an arbitral award.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

Ukrainian law provides for setting aside of arbitral awards. Article 34(2) of the LICA reiterates the provisions of the UNCITRAL Model Law and sets an exhaustive list of grounds for setting aside of arbitral award, namely, if a party furnishes proof that (i) either party to the arbitration agreement was under some incapacity, (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, (iii) either party was not given proper notice of the appointment of an arbitrator or the arbitration proceedings, (iv) the award was made regarding a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, or (v) the composition of the arbitration tribunal or the arbitration procedure did not comply with the agreement of the parties.

Irrespective of whether a party invokes the following grounds in its application for setting aside an award, the court must ex officio assess the arbitrability of the award under Ukrainian law and its compliance with the public policy of Ukraine. Should the court find that either the award is non-arbitrable or contradicts the public policy of Ukraine, the award will be set aside by the Ukrainian courts.

Following the 2017 procedural reform, the levels of appeal were shortened from three instances to two. Applications for setting aside are firstly considered by the Kyiv Court of Appeal acting as a court of first instance and an appeal could only be filed to the Supreme Court acting as a court of appeal.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Under Ukrainian law, the courts can remand an award to the tribunal. According to the LICA, the court to which an application for setting aside an award has been filed may, 'if it considers it appropriate and if one of the parties so requests, suspend the proceedings on the setting aside for a period of time to enable the arbitral tribunal to resume the arbitral proceedings or to take other actions which, in the opinion of the arbitral tribunal, will remove the grounds for setting aside the award'.

However, the said possibility is not practically popular due to various unregulated procedural matters. There were only a couple of such cases in the early years after the ICAC's establishment.

(v) Is there a specialist arbitration court in your jurisdiction?

In Ukraine, two arbitration institutions are established by law under the auspices of the Ukrainian Chamber of Commerce and Industry: (i) the International Commercial Arbitration Court (ICAC) and (ii) the Ukrainian Maritime Arbitration Commission (UMAC).

Furthermore, the Ukrainian law prescribes that domestic arbitration courts may be organised under the auspices of (i) all-Ukrainian public organisations, (ii) all-Ukrainian employers' organisations, (iii) operators of organised markets, (iv) self-regulatory organisations of professional capital market participants; (v) chambers of commerce and industry; (vi) all-Ukrainian associations of credit unions; (vii) unions, associations of legal entities, including banks. As of now, there are more than 500 domestic arbitration courts in Ukraine.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

There is no position of Ukrainian courts on the iura novit arbiter principle. It is worth noting that although the LICA reflects the text of the UNCITRAL Model Law, there is some discrepancy in how it adopted Article 34(2)(a)(iii). The latter provision in the LICA states 'the award is made in a dispute not covered by the arbitration agreement or not subject to its terms or contains decisions on matters outside the scope of the arbitration agreement' instead of 'the award deals with 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'. It seems that referral to the 'scope of arbitration agreement' rather than '*scope of the submission to arbitration*' provides more favourable rules for setting aside, as well as recognition and enforcement of arbitral awards.

Considering that Ukrainian courts interpret the scope of the arbitration agreements in a broad manner, it seems unlikely that the invocation of the iura novit arbiter principle would be deemed by Ukrainian courts as being outside the scope of the arbitration agreement. However, this is very fact specific issue and should be assessed on a case-by-case basis.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

Article 69 of both the ICAC Rules and the UMAC Rules expressly state that the arbitrators, reporters, experts appointed by the arbitral tribunal, the ICAC and its employees, the Ukrainian Chamber of Commerce and Industry and its employees shall not be liable to the parties or any other persons for any act or omission in connection with the arbitral proceedings unless otherwise provided by Ukrainian arbitration laws.

The LICA is silent as to the civil liability of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings.

(ii) Does this immunity, if any, extend to criminal liability?

Under Ukrainian law, the criminality of any act as well as its punishability and other criminal consequences are determined exclusively by the Criminal Code of Ukraine. Arbitrators as persons providing public services are subject to criminal liability under the Criminal Code of Ukraine in case of (i) abuse of powers to obtain improper advantage, where it caused substantial damage to the legally protected rights or interests of natural or legal persons or state, (ii) acceptance of an offer, promise or receipt of improper advantage for themselves or a third party for committing acts or omission through abuse of power.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

Recognition and enforcement of foreign arbitral awards in Ukraine, as well as enforcement of international arbitral awards rendered in Ukraine, are governed by Section IX Chapter 3 of the CPC, the LICA and respective bilateral or multilateral international treaties in this respect (eg the New York Convention).

Pursuant to Article 474 of the CPC, Ukrainian courts shall grant enforcement of foreign arbitral awards provided that: (i) recognition and enforcement are permitted under an international treaty ratified by the Ukrainian Parliament; or (ii) on the basis of the reciprocity principle. The CPC expressly provides that where the recognition and enforcement of a foreign arbitral award depend on the reciprocity principle, it shall be presumed that reciprocity exists unless it is proved otherwise.

An application for the recognition and enforcement of a foreign arbitral award shall be submitted to the appellate court, the jurisdiction of which extends to the city of Kyiv (currently it is the Kyiv Court of Appeal) acting as a court of first instance, as per Article 475(3) CPC. The ruling of the Kyiv Court of Appeal can be appealed only to the Supreme Court acting as a court of appeal.

Article 478 CPC, Article 36 of the LICA and Article V of the New York Convention provide almost identical grounds for refusal of recognition or enforcement of an arbitral award. This list of grounds is exhaustive, and thus Ukrainian courts may not invoke any other provision of Ukrainian legislation to refuse enforcement. However, the ability to interpret the scope of these grounds, inter alia, the public policy, can give Ukrainian courts rather wide discretion to deny recognition and enforcement.

Under the CPC, at the request of either party and for good cause shown, the court may suspend consideration of the application for recognition and enforcement of the arbitral award and notify the parties thereof. If an application for

setting aside of an award has been made to a competent court, the court seized with recognition and enforcement of this award may suspend the proceedings until the ruling of a competent court on setting aside application comes into force. If an application for setting aside an award is filed in Ukraine, any party may request the court to also decide on the recognition and enforcement of the same award in a single proceeding.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

There is no separate procedure for obtaining an exequatur in Ukraine.

After an award creditor obtains a ruling of Ukrainian court on recognition and enforcement of an award (as described in more detail in item (i) above), it needs to obtain a writ of execution. Based on this document, an award creditor may initiate enforcement proceedings in Ukraine by applying to either state enforcement service or to private enforcement officers.

If there are any disputes in the course of enforcement, such disputes may be referred to the court which issued the writ of execution. However, the disputes at this stage relate to the enforcement process itself and a previous decision of the court allowing recognition and enforcement of an award in Ukraine cannot be reconsidered.

(iii) Are conservatory measures available pending enforcement of the award?

A person applying for recognition and enforcement of an award may request the court to grant interim measures provided for by the CPC. Interim measures can be granted at any stage of recognition and enforcement proceedings if failure to take interim measures may complicate or make it impossible to enforce the arbitral award in case of granting permission for its enforcement.

The court may order any of the interim measures envisaged by civil procedure legislation, for example, attachment of a debtor's assets or money, injunctions preventing certain debtor's actions, orders to the debtor to carry out certain actions, injunctions preventing transfers of money or assets to the debtor by third parties, orders to transfer the object in dispute to the custody of third parties, etc. Application for interim measures are heard and decided in accordance with the general provisions of the CPC on interim measures.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

According to the study by the Ukrainian Arbitration Association (UAA) made in 2021, from 2006 to 2020, the average success rate of enforcement proceedings was fairly high – over 90 per cent. The attitude of Ukrainian courts towards the enforcement of awards significantly shifted in the pro-enforcement direction after the 2017 procedural reform. The Supreme Court has recently released a digest of the case law in cases related to recognition of arbitration agreements, recognition and enforcement of international commercial arbitration awards covering January 2018 - June 2023, which also confirms the above conclusion.

The attitude of courts towards the enforcement of foreign awards set aside at the place of arbitration is negative. Such enforcement would not be granted.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

According to the study by the UAA made in 2021, the average duration of the recognition and enforcement cases in the majority of cases during the 2006 - 2020 period was less than a year.

An application for recognition and enforcement of an arbitral award shall be filed within three years from the date of the arbitral award. The court, at the applicant's request, may renew the missed deadline for filing an application for recognition and enforcement of an arbitral award if it finds that the deadline was missed for valid reasons.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

Yes. Generally, Article 79 of the IPL provides for absolute state immunity of foreign states against jurisdiction of Ukrainian courts, attachment of assets or other forms of interim measures, as well as enforcement against such assets. Article 79 of the IPL prescribes that Ukrainian courts shall not institute a court action against a foreign state or its assets unless such foreign state expressly gives its consent to the respective action. For instance, in the *Energoalliance v. Republic of Moldova* case, Ukrainian courts did not commence recognition and enforcement proceedings on the grounds that Energoalliance 'failed to provide consent of a competent body of the Republic of Moldova to consider a [an application for recognition and enforcement] against it by a court of Ukraine.'

However, in 2019, the Supreme Court applied the restrictive immunity concept and allowed the recognition and enforcement proceedings against Russia in the *Everest Estate LLC at al. v. Russian Federation* case. The Supreme Court for the first time stated, relying on the court practice of the ECHR, that despite Ukraine having not ratified the 2004 UN Convention on Jurisdictional Immunities of States and Their Property and the European Convention on State Immunity, the concept of limited jurisdictional immunity of the debtor state set forth therein still applied in accordance with customary international law. In this case, the Supreme Court relied on the 'arbitration exception' to allow recognition and enforcement or an investment treaty award against the Russian Federation.

In 2022, the Supreme Court concluded, with reference to its earlier position in the Everest case in 2019, that since the outbreak of the Russian war against Ukraine in 2014, the Ukrainian courts when considering a case where the Russian Federation is identified as the defendant, may ignore the immunity of Russia and hear cases on compensation for damage caused due to the armed aggression of the Russian Federation.

Ukrainian courts are currently actively considering such type of cases and often rule in favour of Ukrainian claimants (both individuals and corporate entities) who suffered damages due to the armed aggression of the Russian Federation. Usually, Ukrainian courts substantiate their jurisdiction in cases against the Russian Federation by the following: (i) the 'tort exception' under customary international law, (ii) the denial by the Russian Federation of the sovereignty of Ukraine, (iii) maintaining the immunity of the Russian Federation will deprive the claimants of effective access to justice, (iv) maintaining the immunity of the Russian Federation is incompatible with Ukraine's international legal obligations in the field of combating financing of terrorism, (v) the absence of an alternative state court compensation mechanism.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

As stated above, in Ukraine, any court action against a foreign state or its property is barred by the rule of state immunity, which includes (i) immunity from suit, (ii) immunity from interim relief, (iii) immunity from enforcement of a court judgement in the territory of Ukraine. Under Ukrainian law, a foreign state should expressly consent to waive its jurisdictional immunity for the enforcement of a specific award against it.

At the same time, these special rules have now been overridden by the recent court practice developed by the Supreme Court and the enforcement of an award against a state is allowed based on the exceptions contained in the customary international law (in particular, based on the provisions of the 2004 UN Convention on Jurisdictional Immunities of States and Their Property, which reflect the current customary international law).

Furthermore, starting in 2018, Article 81(2) of the IPL and Article 78(2) of the Law of Ukraine 'On Enforcement Proceedings' specify that decisions of foreign courts in cases of debt collection from a Ukrainian defence industry company in favour of a company of the aggressor and/or occupying state or a company with foreign investments or a foreign company of the aggressor and/or occupying state cannot be recognised and enforced in Ukraine. Ukrainian courts apply these provisions equally to the recognition and enforcement of foreign arbitral awards.

Apart from the above, there are no special rules that apply to the enforcement of an award against a state or state entity.

(iii) Are there any requirements for arbitrations involving sovereign entities?

There are no specific requirements for arbitrations involving sovereign entities.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Ukraine is a party to the 1965 Washington Convention and 1994 Energy Charter Treaty. Ukraine has also entered into the investment treaty with the Organisation of the Petroleum Exporting Countries (OPEC) Fund for International Development on 26 May 2017. This treaty was ratified by the Ukrainian Parliament on 5 December 2017 and entered into force on 27 June 2018.

(ii) Has your country entered into bilateral investment treaties with other countries?

According to the UNCTAD database, Ukraine has effective bilateral investment treaties with 65 states (as of November 2025).

Recently, the Ukrainian Parliament adopted a law on the termination of a bilateral treaty with Russia. The termination will be effective from 27 January 2025, but the treaty's 'sunset provision' ensures protection for investments made before 27 January 2025 and provides for a window for filing claims under this treaty by 27 January 2035.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The ICAC collects and systematises useful information to get to know key legal and disputed issues considered by the ICAC. For instance, the ICAC published several books on international commercial arbitration in Ukraine including compilation of its practice (in Ukrainian or Russian only). The ICAC also publishes some case summaries on its website: https://icac.org.ua/en/statystyka-ta-praktyka/praktyka/ (in English), https://icac.org.ua/statystyka-ta-praktyka/praktyka/ (in Ukrainian and Russian).

The Supreme Court regularly publishes short thematical summaries of its legal positions, some of these summaries relate to practice in cases related to international arbitration. Recently, the Supreme Court published a comprehensive and thorough digest of the case law of the Supreme Court in cases related to recognition of arbitration agreements, recognition and enforcement of international commercial arbitration awards covering January 2018 - June 2023: https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/ogliady/Supreme_Court_Digest_On_Arbitration_2023_UA.pdf (in Ukrainian).

UAA also prepares a range of materials about arbitration in Ukraine (in English or Ukrainian), namely: (i) summary of the relevant court decisions (see https://uaa.in.ua/uk-UA/Rishennya/#, https://uaa.in.ua/casedigests.aspx, https://uaa.in.ua/

uk-UA/Rishennya/Rozyasnennya-ta-rekomendacii-vyshhyh-sudiv-Ukrainy.aspx?ID=190), and (ii) publications of Ukrainian practitioners (https://uaa.in.ua/uk-UA/Biblioteka/Publications.aspx).

There are also a number of publications about the law and practice of international arbitration in Ukraine in different available online legal newspapers, including Yurydychna Gazeta (https://yur-gazeta.com/publications/practice/mizhnarodniy-arbitrazh-ta-adr/) and Yurydychna Praktyka (https://pravo.ua), as well as in other similar legal newspapers and/or journals.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Since 2011, the Ukrainian Bar Association has been hosting annual Kyiv Arbitration Days in November or December (https://kad.com.ua).

Since 2013, the ICAC and UMAC have been hosting annual International Arbitration Readings in Memory of the Academician Igor Pobirchenko in September-November (https://readings.icac.org.ua/#top).

Starting from 2020, there were also three Ukrainian Arbitration Forums of Yurydychna Praktyka publishing house. The dates of the Forum are not fixed.

The UAA and the ICC Ukraine also regularly arrange webinars related to hot topics of international arbitration with participation of practitioners from different jurisdictions (www.youtube.com/@uaaukrainianarbitrationass8742/featured).

During the past years, UAA held numerous iterations of the UAA Arbitration Schools for students and young practitioners, and recently launched UAA Arbitration Academy, which now also involves participation of in-house practitioners. The dates of the UAA Arbitration School and UAA Arbitration Academy are not fixed.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Yes, in respect of international arbitration, the number of cases has steadily increased, reflecting growing trust in Ukrainian arbitration institutions. For example, the ICAC accepted 373 cases in 2022 – a 25 per cent rise from 2021, and heard 202 cases that year. In 2023, the ICAC accepted 584 cases, marking a 56.6 per cent increase over 2022 and nearly doubling the 2021 total, with 407 cases resolved. In 2024, the ICAC accepted 453 cases, 69.3% of which arose from contracts concluded after 2022 full-scale invasion, according to the ICAC statistics. This demonstrates that the ICAC has successfully overcome the challenges of martial law and remained stable under challenging security and economic circumstances.

Moreover, despite the introduction of restrictions on free navigation in the Black Sea, the number of cases heard by the UMAC is also growing. As of 31 December 2024, the MAC had registered 21 cases, which is a record for the institution over the past five years.

The number of challenged or annulled arbitral awards of both institutions is rather low which proves the ICAC and the UMAC as reliable alternatives to state courts to protect interests of both Ukrainian and foreign businesses. Thus, Ukrainian and foreign businesses tend to refer their disputes to international arbitration rather than submit them to the Ukrainian courts.

However, domestic arbitration in Ukraine is less popular than international arbitration due to its previous ambiguous practice in consumer debt collection and real estate cases as well as lack of support from the state courts. Domestic arbitration is regaining its credibility and requires reassessment of legal framework, as well as development of court practice which would be favourable to domestic arbitration.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

In 2019, Ukraine signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention. Although the Singapore Convention has not yet been ratified by Ukraine, its implementation can help strengthen the role of mediation as an alternative way for resolving international commercial disputes.

Subsequently, on 15 December 2021, the Law of Ukraine 'On Mediation' (Mediation Law) came into force which finally set up legal framework for mediation and defined (i) the legal basis and procedure for mediation, (ii) the principles of mediation, (iii) the status of a mediator, (iv) requirements for their training and other related issues. The Mediation Law also amended a number of procedural codes in terms of the possibility of using mediation during the trial. Thus, the parties to a case may apply to the court with a motion for an out-of-court settlement of the dispute through mediation. In such case, the court may suspend the proceedings for the duration of the mediation, but not more than 30 days from the date of the relevant court ruling.

On 2 August and 7 December 2022, the Presidiums of the ICAC and UMAC approved the Mediation Rules along with (i) Regulations on Mediation Fees and Costs, (ii) Procedures for two types of hybrid dispute-resolution mechanisms, namely Arbitration-Mediation-Arbitration (AMA) and Mediation-Arbitration (Med-Arb), (iii) Codes of Ethics for the ICAC and UMAC Mediators and (iv) the Register of Mediators with 17 mediators from 5 countries. In this connection, the ICAC Working Group has also developed several standard procedural documents to be used in the mediation process.

The AMA procedure functions in the following way: in the course of the arbitration proceedings and before the arbitral tribunal reaches the stage of rendering the award, the parties may submit a petition to the Secretary General of the ICAC for leaving the case without action (if the arbitral tribunal has not been composed) or a petition to the arbitral tribunal for suspending the arbitration proceedings in order to settle the dispute through mediation (if the arbitral tribunal has been composed). The mediation procedure shall be conducted according to the ICAC Mediation Rules. After mediation, (i) if the dispute is fully settled, the arbitral tribunal may resume proceedings to issue an award on agreed terms or terminate the arbitration if the parties request termination, (ii) if settlement is only partial or unsuccessful, the arbitration resumes. The same individual cannot act as both arbitrator and mediator in the AMA procedure.

As to Med-Arb procedure, its application requires an explicit agreement of the parties to refer their dispute to the ICAC for resolution using this procedure. The procedure is conducted in two consecutive stages: (i) first, by an order of the ICAC President, mediation is initiated and conducted in accordance with the ICAC Mediation Rules, (ii) second, after the termination of such mediation, another order of the ICAC President initiates arbitration, which is conducted under the ICAC Rules.

If the parties settle the dispute through mediation and agree that the mediated settlement shall be approved in the form of an arbitral award on agreed terms, they shall file relevant petition. Such petition is considered under the expedited procedure without filing a Statement of Claim. If mediation is only partially successful or unsuccessful, arbitration proceeds in accordance with the standard ICAC Rules. In the Med-Arb procedure, the same individual may act as both mediator and arbitrator only if the parties expressly agree in writing.

In 2024, the ICAC and the UMAC approved the Compliance Policy Relating to Cases with a Sanctioned Element that brings clarity and transparency and is in line with best practice examples of similar compliance policies adopted by various international arbitration institutions in other jurisdictions.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

As shown above, the ADR procedures and arbitration regulations in Ukraine have significantly developed during the past few years.

With the entry into force in 2017 of the Civil Procedure Code and the Commercial Procedure Code as amended in 2016 by Law No. 2147, the regulation of support for arbitration proceedings has significantly improved, both through the unification of procedures and the provision of additional opportunities, in particular in terms of interim measures in support of arbitration and securing evidence.

The 2017 procedural reform effectively addressed numerous deficiencies within Ukraine's procedural legislation pertaining to international arbitration. This legislative action not only presented parties to arbitration with novel procedural avenues to secure judicial support during arbitration proceedings but also, in a broader context, has effectively transformed Ukraine into a more arbitration-friendly jurisdiction.

On 22 December 2022, the Presidium of the Ukrainian Chamber of Commerce and Industry approved amendments to the Rules of the ICAC and UMAC, which provide for the implementation of the above-mentioned combined AMA and Med-Arb procedures.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

Reforms to Ukraine's arbitration laws have been ongoing, leading to the landmark Law No. 2147 as described above.

On 27 - 28 March 2024, the Ukrainian Parliament's Committee on Legal Policy held public hearings on 'Pathways to Peace: Problems and Prospects for Alternative Dispute Resolution in the Current Situation'. The purpose of the said hearings was to identify priority steps and measures that would strengthen the role of alternative dispute resolution in Ukraine in the context of martial law and post-war economic recovery. The professional community discussed issues related not only to the analysis of the current state of application of alternative dispute resolution in Ukraine during the war, but also to the prospects for further development of such alternative dispute resolution methods as mediation, arbitration and international arbitration. Following the hearing, the Committee adopted recommendations with important conclusions and proposals.

Regarding international arbitration, among others the following recommendations deserve attention:

- proposed amendments to Article 1 of the LICA in order to expressly include disputes arising on the basis of an international treaty, Ukrainian law, act of a foreign state or agreement between the parties, investors and the State of Ukraine or other states in connection with the investment activities in the territory of Ukraine or other states;
- recommendation to the Cabinet of Ministers of Ukraine to include the ICAC as one of the options for the settlement of disputes between the state and the investor in new bilateral agreements on the promotion and mutual protection of investments or when revising existing agreements, as well as in free trade agreements containing provisions on the protection of investments;
- need of expanding the arbitrability of disputes, confirming transfer of arbitration agreements to assignees, enhancing the competence-competence principle, making arbitral awards recognised in Ukraine res judicata for other proceedings in Ukraine, allowing certain arbitration cases to reach the Supreme Court's Grand Chamber and extending confidentiality protections to arbitrators.

Currently, the Draft Law No. 12141 of 21 October 2024 on expanding the meaning of the concept of 'arbitration' to its established international understanding, which covers both international commercial and international investment arbitration, is under consideration in the second reading in the Ukrainian Parliament.

Furthermore, the LICA and related Ukrainian procedural codes still require further amendments to implement all new provisions from the 2006 UNCITRAL Model Law. To address the outstanding issues, in 2019, the UAA's Working Group developed proposals for legislative amendments to the LICA and procedural legislation of Ukraine (the UAA Draft Law) and referred them to the Legal Reform Commission of the Ukrainian Parliament.

The proposed changes include: (i) aligning terminology with international standards, such as changing 'arbitration court' to 'arbitral tribunal' in the LICA to avoid confusion with state courts and domestic arbitration courts, (ii) expanding the scope of arbitrable disputes, (iii) allowing arbitration agreements in non-written forms per the 2006 UNCITRAL Model Law, (iv) establishing procedures of state court enforcement, amendment and cancellation of interim measures ordered by arbitral tribunals. Although still under public discussion, the UAA Draft Law is expected to be registered and then approved by the Ukrainian Parliament's Legal Policy Committee soon.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

Third-party funding is not regulated in Ukraine. Accordingly, there are no limitations or prohibitions on funding the claims in the civil and commercial proceedings before the Ukrainian courts and in arbitration proceedings seated in Ukraine.

Although strictly not third-party funding, it is a rather common practice in Ukraine for lawyers to handle cases under conditional fee agreements. The Rules of Professional Conduct of the Ukrainian National Bar Association expressly

allow this way of structuring the payment to an attorney. There was a hostile position towards conditional fees in Ukrainian court practice, however, in 2020, the Supreme Court confirmed that a conditional fee is a part of an attorney's remuneration and constitutes a litigant's expenses and in principle may be reimbursed subject to requirements of necessity, reasonability, and proportionality. That approach was upheld in the subsequent court practice.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Yes, a sanctions regime was implemented by the Law of Ukraine 'On Sanctions' of 14 August 2014 (Sanctions Law) which was elaborated following a Russian full-scale invasion of Ukraine. The Sanctions Law provides for various types of sanctions, inter alia: (i) restrictions on trade operations, (ii) prevention of capital outflows from Ukraine, (iii) suspension of economic and financial obligations etc.

There have already been sanctions-related investment treaty claims brought by companies influenced by these measures against Ukraine, such as *EMIS v. Ukraine, AEROC v. Ukraine, Smart Energy v. Ukraine, Enwell Energy v. Ukraine, CTF Holdings v. Ukraine,* and *ABH Holdings v. Ukraine*. Based on public sources, the number of such claims is expected to continue increasing.

The Ukrainian courts consider that the sanctions regime of Ukraine is part of the public order of Ukraine, however, there were different approaches to the application of public policy defence in Ukrainian court practice. According to initial court practice developed by the Supreme Court, the issue of compliance with sanctions should be controlled after an arbitral award is already recognised in Ukraine at the stage of enforcement proceedings conducted by state enforcement service and private enforcement officers.

Subsequently, the Supreme Court changed its approach and refused to enforce awards in favour of sanctioned companies due to a violation of public policy if (i) the relevant award creditor was itself subject to Ukrainian sanctions, and (ii) the Ukrainian debtor was a company from the Ukrainian military-defence sector of 'strategic importance to the economy and security of the State' (as per requirements of Article 81(2) of the IPL and Article 78(2) of the Law of Ukraine 'On Enforcement Proceedings').

In 2021, the Supreme Court again deviated from its previous approach and applied a much wider public policy test, extending it also to recognition and enforcement of arbitral awards that may even indirectly benefit companies (in particular Russian companies), which are subject to Ukrainian sanctions, as well as abandoning a requirement that a Ukrainian debtor should be a company from the Ukrainian military-defence sector.