



**British Institute of
International and
Comparative Law**

MOJ/BIICL PROJECT UNLOCKING INVESTMENT IN UKRAINE

OVERVIEW OF PROJECT RECOMMENDATIONS

BIICL, 6 June 2024

Purpose of the Research Project

- Ascertain how Ukraine can encourage international commercial investment by creating confidence in its legal system among investors
- Engage with International and Ukrainian businesses to understand their main concerns about investing in Ukraine and what steps Ukraine can take to create a more favourable business environment in the short term while the war is still ongoing and long term to assist with post-war recovery
- Identify areas for a long-term partnership between Ukraine



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Project Outputs

- Review of justice sector reforms in Ukraine
- Review of current dispute resolution options available to investors in Ukraine
- Review of international practice in the setting up of international commercial courts
- Business stakeholder survey
- Ukrainian judiciary survey
- Interviews with experts and stakeholders
- Project report summarising findings and key recommendations on steps that Ukraine can take to advance its commercial dispute resolution system, including completing reforms that are already underway, capacity-building measures and creating new institutions



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Main findings and remaining challenges

Strengths

- Resilience of the judicial system in the face of war
- Developed specialisation of commercial jurisdiction in courts that consider investment disputes
- Developed arbitration system (including ICAC)

Remaining challenges

- Ongoing judicial reform resulting in staff shortages, significant backlog of disciplinary procedures against judges, difficulties in filling vacancies with qualified personnel, excessive workload for judges in post
- Cases of corruption in the judiciary and legal services sector
- Issues with enforcing court decisions and implementation of arbitral awards



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Stakeholder Feedback: Business Perspective

- Currently prefers using international arbitration or foreign courts to bringing legal cases in Ukraine and using foreign law rather than Ukrainian law
- Finds that enforcing arbitration awards in Ukraine has improved over recent years
- Has concerns about the lack of independence of and corruption that can be found in Ukrainian courts
- Over half is interested in the idea of establishing a new stand-alone commercial court and over half is in favour of the international financial centre court model

Stakeholder Feedback:

Judiciary

- Believe that the ability of Ukrainian courts to adjudicate complex commercial is good, improving and adapting to international standards, although lack of knowledge of foreign law and language among the judiciary is a drawback as well as issues with enforcement of the awards
- There is some support among judges for the creation of a stand-alone court that may specifically cater to commercial/investment disputes; however, judges do not support the model of international financial centre courts and would like to see dedicated commercial courts remain part of the overall Ukraine justice system
- Judges are open to working with foreign judges and would like to advance to the use of foreign language and laws



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Recommendations: Enhancing Solutions

Enhancing solutions focuses on what can be done to enhance the existing justice system in Ukraine and addresses topics such as:

- fortifying support for arbitration
- enhancing Ukrainian court practice and procedure including digitisation;
- improving enforcement
- capacity building for judges
- conducting a gap analysis of existing law

Recommendations: Innovative Ideas

International Financial Centre Court (based on DIFC/AIFC/ADGM model)

International financial centre regulated by independent regulator exclusive to a special economic zone, with an independent court (separate from the domestic system)

Specialised International Commercial Court within the Ukrainian judicial system

Hybrid model of a specialised international commercial court within the Ukrainian judicial system with the participation of foreign judges and specially selected Ukrainian judges hearing cases under Ukrainian and foreign laws (Singapore model)

Specialised National Investment Court

Model of specialised commercial court within the Ukrainian judicial system (as used in the High Anti-Corruption and European models such as in the Netherlands / Frankfurt/ Paris)

Kyiv International Arbitration Centre

International arbitration centre based in Ukraine composed by foreign and Ukrainian arbitrators who sit together on mixed panels. One of the features may be a digital approach, as seen in many modern international arbitration centres with the potential for the entire arbitration process to be online



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Thank you and please do
not hesitate to get in touch

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