



Judicial
reform

Reform of Ukrainian arbitration law

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INTRODUCTION

Judicial Reform in Ukraine (2014-Pending)

- Law On Ensuring the Right to a Fair Trial (since 29 March 2015)
- Amendments to the Constitution of Ukraine (since 30 September 2016)
- Law on the Judiciary and Status of Judges (since 30 September 2016)
- Law on the High Council of Justice (since 5 January 2017)
- New Supreme Court (since 15 December 2017)
- Procedural Reform Law (since 15 December 2017)
- Draft Law on the Bar (September 2018)

ARBITRATION REFORM

- Strengthening enforceability of arbitration agreement
- New arbitrability rules
- Broader powers of arbitral tribunals
- New rules for judicial support to arbitration
- Shortened court track for challenge and enforcement
- New procedures for judicial control over arbitration



- Via amendments of the:
 - Commercial Procedure Code of Ukraine (ComPC)
 - Civil Procedure Code of Ukraine (CivPC)
 - Law of Ukraine on International Commercial Arbitration Law ("ICA Law")

ARBITRATION AGREEMENT

Strengthening enforceability of arbitration agreement

- “Legalized” e-evidence/ e-mail exchange (Art. 7 ICA Law)
- Any inaccuracies in favor of its validity, operability and enforceability (Art. 22 ComPC)
- Valid, operable and enforceable arbitration agreement:
 - court stays the case without consideration (Art. 226.1.7 ComPC)
 - or
 - terminates proceedings if open (Art. 231.1.5 ComPC)

EXTENDED ARBITRABILITY OF DISPUTES (1)

Now arbitrable:

- Corporate disputes based on an arbitration agreement between legal entity and all of its shareholders
- Civil law aspects of competition and privatization disputes
- Civil law aspects of disputes arising out of public procurement contracts

(Arts. 20, 22 ComPC)

EXTENDED ARBITRABILITY OF DISPUTES (2)

Clarified non-arbitrable disputes

- Non-civil aspects of competition and privatization disputes
- Non-civil aspects of disputes arising out of public procurement contracts
- Disputes regarding records in real estate register, IP rights, title to security instruments
- Bankruptcy cases and claims against a debtor in bankruptcy proceedings

(Arts. 20, 22 ComPC)

BROADER POWERS OF ARBITRAL TRIBUNALS

- Order a party/parties to provide security for arbitration costs (Art. 17.2 ICA Law)
- Draw an adverse inference if a party fails to produce evidence ordered by tribunal (Art. 25.1.4 ICA Law)

MEASURES IN SUPPORT OF INTERNATIONAL ARBITRATION

Courts are entitled to:

- Order production of evidence (Art. 84 CivPC)
- Inspect evidence at its location (Art. 85 CivPC)
- Interrogate witnesses (Art. 94 CivPC)
- Order interim measures
 - Securing evidence (Art. 116 CivPC)
 - Securing the claim (Art. 149 CivPC)
- Order counter-security to compensate debtor's potential damages (Arts. 477.3 & 150-159 CivPC)

JURISDICTION

Shortened court track for challenge and enforcement

- Courts of Appeals as first instance
- Supreme Court as the sole and final appeal instance

(Arts.23,24 CivPC, Art. 6.2. ICA Law)

CHALLENGE OF ARBITRAL AWARD

- Specific procedures for challenge (Sec. VIII CivPC)
- Court may suspend the setting aside proceedings in order to give the arbitral tribunal an opportunity to eliminate the grounds for setting aside
- Motions for setting aside and enforcement of an arbitral award rendered in Ukraine may be considered as a single case (Arts 457, 482 CivPC)

RECOGNITION & ENFORCEMENT OF ARBITRAL AWARDS

- Specific procedures for recognition and enforcement (Chap. 3, Sec. IX CivPC)
- Simplified procedure of a “voluntary” enforcement of arbitral award (Art. 480 CivPC)
- Interim measures (ex parte) at the recognition & enforcement stage (Art. 477.3 CivPC)
- No obligation to convert the awarded amount into Ukrainian currency (Art. 479.6 CivPC)
- Interest/penalties until full payment (Art. 479.4-5 CivPC)



Thank you!

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