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Ukraine: Recent Developments in Arbitration and Mediation

Arbitration and Mediation in
Russia and the CIS

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ARBITRATION

ARBITRATION REFORM 2017: MAJOR CHANGES



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- **Two court instances** for all arbitration-related matters;
- New **arbitrability** rules;
- Update of the **ICA Law**;
- **Pro-arbitration rules** for interpretation and enforcement of arbitration agreements;
- New tools for **judicial support** to arbitration
- Improvement of **judicial control** over arbitration



Arbitrability

- Now arbitrable: (1) **corporate disputes** arising out of contracts based on an arbitration agreement concluded by a respective legal entity and all of its shareholders; (2) civil law aspects of **competition disputes**, as well as of disputes arising out of **public procurement** or privatization contracts
- Now non-arbitrable: all other aspects of such disputes along with disputes regarding records in the register of **real estate**, **IP rights**, a **title to security instruments** and **bankruptcy disputes**, as well as disputes against a debtor being in bankruptcy proceedings

Update of the ICA Law



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- Electronic form of arbitration agreement (Art.7)
- “Security for arbitration costs” for interim measures of the arbitral tribunal (Art.17)
- Adverse inference (Art.25)
- Ukrainian language rule for documents supporting application on arbitral award enforcement (Art.35)

Enforcement of arbitration agreements



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- Identical rules on derogation effect of arbitration agreements
- Pro-arbitration rules for interpretation and enforcement of arbitration agreements:
 - *Any defects in an arbitration agreement and/or doubts as to its validity, operability and capability of being performed shall be interpreted in favour of its validity, operability and such capability*

New tools for judicial support to arbitration



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- Court ordered **interim measures** in support of international arbitration
- Court ordered **preservation of evidence** necessary for arbitral proceedings
- **Judicial assistance in taking of evidence:**
 - the examination of a witness
 - evidence production
 - evidence inspection at its location

Improvement of judicial control over arbitration



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- New procedures
- Grounds for refusal/setting aside
- New tools and opportunities:
 - Remittance procedure
 - Joint consideration of applications for setting aside and for enforcement of the same arbitral award
 - Voluntarily compliance with an arbitral award
 - Award currency issue
 - Penalties/interest issue

MORE PRO-ARBITRATION COURT PRACTICE

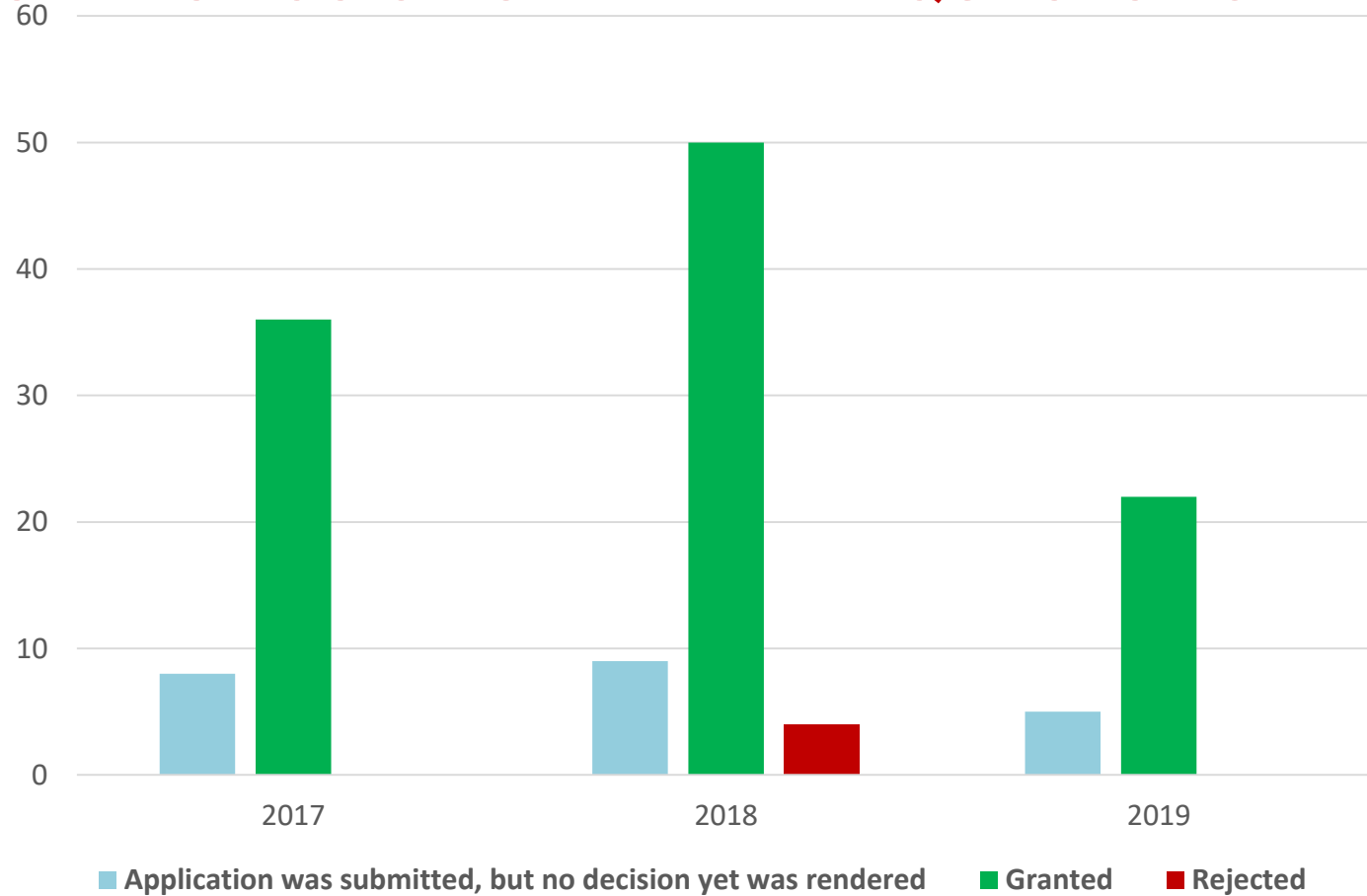


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- Ukrainian courts actively apply the new instruments launched by the reform;
- Ukrainian court practice in arbitration-related cases becomes more and more arbitration friendly;
- New Supreme Court launched on 15 December 2017, has started to apply some concepts and best practices of the foreign courts from arbitration friendly jurisdictions;



STATISTICS OF GRANTED REQUESTS FOR R&E

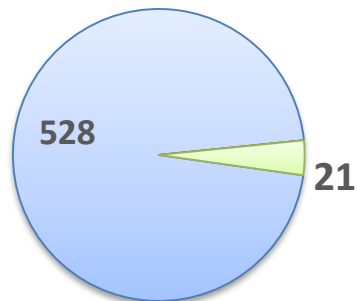


SETTING ASIDE ARBITRAL AWARDS IN 2015-2018

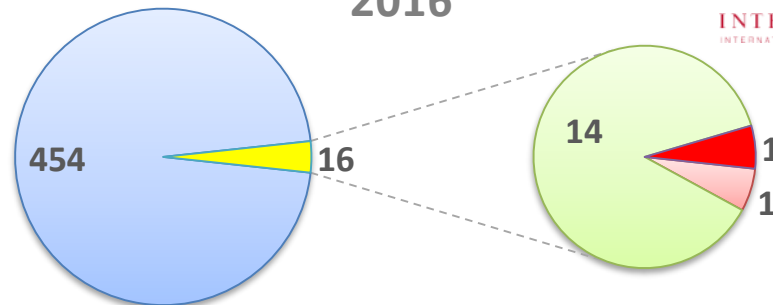


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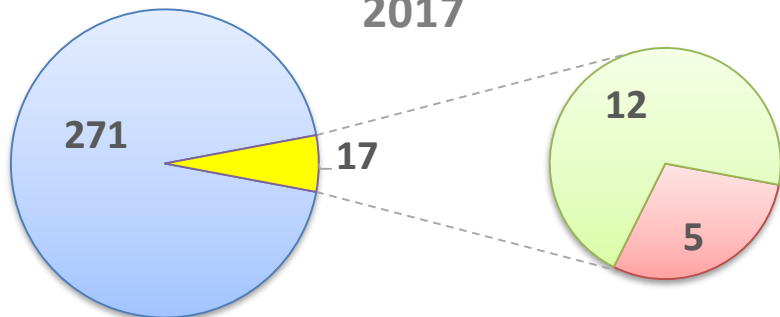
2015



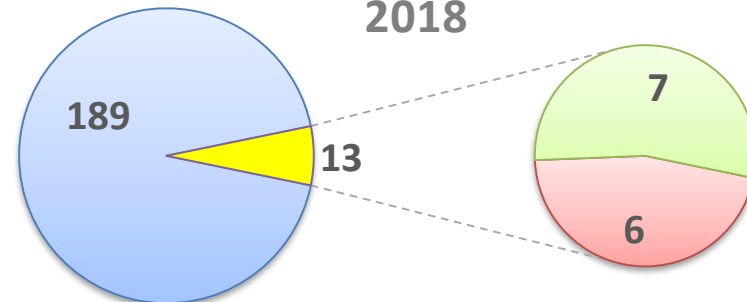
2016



2017



2018



- Number of awards rendered by the ICAC with NO applications for setting aside submitted
- Number of PENDING applications for setting aside
- Number of REJECTED requests for setting aside awards
- Number of GRANTED requests for setting aside

MORE PRO-ARBITRATION COURT PRACTICE



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- Less than 5% of the ICAC awards are challenged (67 awards out of 1442 awards rendered in 2015-2018);
- Ukrainian courts set aside only 1 (one) arbitral award in last 4 years (out of those 67 challenged awards, i.e. the success rate is 1,5%) ;
- Ukrainian courts refused recognition and enforcement of less than 3% of the international arbitral awards in last 2,5 years (in 4 cases out of 135 cases found in the court register);



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MEDIATION

REGULATION OF MEDIATION IN UKRAINE



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- **No special law** - all the attempts to adopt a special law on mediation were unsuccessful so far and the latest draft law failed in the Ukrainian Parliament in February 2019;
- **New procedural codes of Ukraine** (adopted in the end of 2017) **promote mediation** and conciliation to certain extent:
 - allowing refund of 50% of the court fee in case of reaching a settlement;
 - prohibiting to interrogate the mediator as a witness with regard to the information received during respective mediation
- Mediation of **labour disputes** envisaged by a special ‘labour’ law
- Mediation as a ‘**social service**’ for special categories of citizens