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Contents

Integrites is a full-service law firm with headquarters in Ukraine and offices in Russia and Kazakhstan. With two partners and eight associates on board, the firm's international arbitration practice is known for its expertise in arbitrations involving the CIS-based parties, specifically from Ukraine, Russia and Kazakhstan. The practice team offers overall support and representation in arbitration proceedings, both commercial and investment, at all stages, from their initiation to the final award, as well as in arbitration-related court proceedings on interim measures, the taking of evidence in aid of arbitration and enforcement of arbitral awards. Over the past two years, the arbitration team has represented clients in over a dozen international commercial and investment arbitration proceedings, including multi-million proceedings under the Arbitration Rules of the ICC, LCIA, SCC, SCAI, GAFTA, ICAC (Kyiv), ICAC (Moscow) and UNCITRAL. The team has become a point of choice by major industrial corporates, state enterprises, agrarian and energy companies.

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1. General

1.1 Prevalence of Arbitration

International arbitration is the preferred method of dispute resolution for international commercial contracts involving Ukrainian parties.

The main reason is the ability to enforce arbitral awards in approximately 150 jurisdictions worldwide under the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958. In contrast, enforcement of court judgments under bilateral and multilateral treaties on mutual assistance in civil matters to which Ukraine is a party is limited to the following: Bulgaria, China, the Czech Republic, Cuba, Cyprus, Estonia, Georgia, Greece, India, Iran, Hungary, Korea, Latvia, Libya, Lithuania, Macedonia, Moldova, Mongolia, Poland, Romania, Syria, Turkey, the United Arab Emirates, Uzbekistan, Vietnam and some CIS member states.

In March 2016, Ukraine signed the Hague Convention on Choice of Court Agreements, but as of July 2019 this had not been ratified.

In comparison with international arbitration, local litigation in Ukraine and other jurisdictions involves risks and disadvantages.

According to the publicly available statistics of different arbitral institutions, more than 350 arbitral proceedings initiated in 2018 involved Ukrainian parties.

1.2 Trends

After a dramatic rise in the number of cases in 2015 (following the events of 2014), the total number of arbitrations involving Ukrainian parties decreased and by 2018 constituted only one-third of the 2015 record.

However, many of those cases involved high value arbitrations extending to the oil and gas and banking and finance industries; while the latter cases mostly relate to loans extended to Ukrainian business groups before the world financial crisis of 2008, the former cases related to various Ukrainian state entities, the most famous example being the USD4.63 billion award in the Naftogaz v Gazprom dispute rendered in 2018.

Another continuing trend is a rising number of commercial and investment treaty arbitrations between Russian and Ukrainian parties. In 2018, the first arbitral awards on merit were rendered against Russia in favour of Ukrainian investors in the Crimea. The USD159 million award in Everest Estate et al. v the Russian Federation and the USD1.1 billion award in Oschadbank v the Russian Federation inspired other Ukrainian investors to commence arbitration against Russia with regard to their assets held in Crimea.

The new pro-arbitration approach of the Supreme Court in 2018 is worthy of attention. Its most famous examples include: Nibulon v Rise; Avia-FED-Service v Artem; Nuseed v Rise; and Everest Estate et al. v the Russian Federation.

The courts have also started to apply new provisions of the Civil Procedure Code and render assistance to arbitral tribunals. While it is too early to comment, the number of these types of cases will almost certainly increase in the near future.

1.3 Key Industries

In addition to the international sales of goods, the banking and finance, oil and gas, agriculture and real estate industries experienced significant international arbitration activity in 2018.

1.4 Arbitral Institutions

Traditionally, the most used arbitral institution in Ukraine is the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC). In 2018, the ICAC registered 286 new cases and rendered 185 awards.

Other arbitral institutions often chosen by Ukrainian parties include the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation, the SCC, ICC and LCIA. Their combined statistics for 2018 include around 45 cases involving Ukrainian parties.

2. Governing Legislation

2.1 Governing Law

International arbitration in Ukraine is governed by the Law of Ukraine on International Commercial Arbitration, 24 February 1994, No. 4002-XII (ICA Law).

The ICA Law is almost a verbatim replica of the UNCITRAL Model Law (1985), with a few deviations related to arbitrability rules, competent authorities, electronic form of arbitration agreement, tribunal-ordered interim measures, court assistance, adverse inference, requirements for arbitral awards and regulations covering local arbitral institutions.

In particular, Article 1 of the ICA Law allows referral to international commercial arbitration of: any disputes resulting from contractual and other civil law relationships arising in the course of foreign trade and other forms of international economic relations; disputes involving Ukrainian enterprises with foreign investment and international associations; organisations established in the territory of Ukraine; and disputes between such entities.

Article 6 of the ICA Law confers the functions of assistance to arbitration to the President of the Ukrainian Chamber of Commerce and Industry, and those in control of arbitrations in Ukraine to the general appellate courts at the place of arbitration.

Article 7 of the ICA Law expressly allows the entering into an arbitration agreement by way of exchange of electronic communications if the information contained therein is accessible and usable for subsequent reference.

Pursuant to Article 17(2) of the ICA Law, an arbitral tribunal may require appropriate security from the party requesting an interim measure upon application by the opposing party. If allowed, the arbitral tribunal may order that the respective amount be placed in a deposit account.

Article 25 of the ICA Law expressly allows an arbitral tribunal to draw an adverse inference in the event that a party fails to produce documentary evidence upon order.

Article 27 of the ICA Law specifies the type of court assistance (assistance in examining witness, taking evidence or inspection) and the courts competence to perform such functions (the general appellate court at the place of location of evidence).

According to Article 31 of the ICA Law, the award must state the reasons on which it is based, a resolution regarding satisfaction or rejection of the claim and the amount of arbitration fees and costs and how they are to be apportioned. The parties are not permitted to agree that no reasons be given in the arbitral award (except for an award on the agreed terms).

The ICA Law has two annexes containing the regulations of two Ukrainian arbitral institutions that were created a couple of years prior to the adoption of this law: the ICAC and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (MAC).

The Civil Procedure Code of Ukraine governs the issues of judicial control and assistance to arbitral matters. The Commercial Procedure Code of Ukraine contains certain rules on the enforcement of arbitration agreements and arbitrability. The Criminal Code of Ukraine contains provision regarding the criminal liability of arbitrators for corruption and abuse of authority.

2.2 Changes to National Law

By the end of 2017, Ukraine had reformed its arbitration law and arbitration-related procedural legislation. Arbitration reform constituted a part of a much larger judicial reform in Ukraine, introduced by the Law No.2147-VIII, which entered into force on 15 December 2017 (save for several provisions). The latter amended the Commercial Procedure Codee, the Civil Procedure Code, the Code for Administrative Court Proceedings of Ukraine and other laws, including the ICA Law.

The reform has finally enabled arbitration users to receive the assistance of the Ukrainian courts in obtaining interim measures and preserving and collecting the evidence necessary for arbitral proceedings. It also enabled the entering into of arbitration agreements electronically and clarified arbitrability rules regarding many categories of disputes. As a result of these reforms, the courts are now expressly obliged to interpret any defect in the arbitral agreement in favour of its validity, operability and capability of bring performed. Finally, it has improved rules on judicial control over international arbitration.

The reform improved the time efficiency of all arbitration-related court proceedings. Now only two (instead of four) judicial instances have jurisdiction over international arbitration-related matters: a competent civil Appellate Court (designated depending on the type of proceedings) and the new Supreme Court of Ukraine.

3. The Arbitration Agreement

3.1 Enforceability

Neither Ukrainian legislation nor the international treaties to which Ukraine is a party provide an exhaustive list of the legal requirements for an arbitration agreement to be made valid and enforceable.

In practice, the validity of an arbitration agreement depends on compliance with the requirements as to: (i) the form of arbitration agreement; (ii) the capacity of the parties to the agreement; and (iii) the content of the agreement.

On the first point, according to the ICA Law, an arbitration agreement must be in writing.

Second, the parties to an arbitration agreement shall have respective powers to enter into such an agreement. Recent Supreme Court practice confirmed that the scope of authority given to an attorney to enter into the main contract should be interpreted in good faith and should include the power to enter into an arbitration agreement, unless demonstrated otherwise by the party that issued the respective power of attorney.

Third, the arbitration agreement must contain the following conditions: (i) consent to refer the dispute to arbitration and (ii) the scope of legal relations.

3.2 Arbitrability

The general approach to determine whether or not a dispute is arbitrable is based on the analysis and interpretation of the respective statutory provisions.

The ICA Law sets out general arbitrability rules, allowing the referral to international arbitration of any cross-border dispute arising in international commerce as well as disputes involving Ukrainian enterprises with foreign investment and international bodies established in the territory of Ukraine (even if such disputes are not cross-border).

Exemptions from these rules may be established only by law or international treaty.

The main law establishing such exemptions has always been the Commercial Procedure Code of Ukraine. After the reforms of 2017, it confirms the arbitrability of corporate disputes arising out of contracts concluded between a legal entity and its shareholders as well as civil law aspects of competition disputes and disputes arising out of public procurement or privatisation contracts. At the same time, all other aspects of the types of disputes listed above are now declared non-arbitrable, along with disputes regarding records in the register of real estate, IP rights, titles to security instruments and bankruptcy disputes, as well as disputes against a debtor in bankruptcy proceedings.

Between 2014 and 2018, several laws established that certain categories of disputes that were not cross-border could be referred to international arbitration.

In 2014, new rules broadening the arbitrability of disputes in Ukraine were introduced by a special law covering the period of occupation of the territory of Crimea by the Russian Federation. They allowed the referral to the ICAC or MAC of disputes between participants in commercial activity in the Crimea and participants in commercial activity in other parts of Ukraine.

In early 2016, another special rule on arbitrability was added by a law on the privatisation of state-owned assets, which was included in the new law of 2018. This law allows the privatisation body to include an arbitration clause in any privatisation agreement and to refer disputes between the seller and buyer to international arbitration. This law features an interesting default mechanism; if the privatisation agreement contains an arbitration clause but the parties failed to agree on applicable institutional rules, disputes between them should be resolved according to the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

An exemption favouring arbitrability was introduced in mid-2016 by the Law of Ukraine on Financial Restructuring. This law, currently effective until October 2019, allows the referral to international arbitration of disputes arising during the financial restructuring covered, even if a particular creditor is not a foreign entity or a Ukrainian enterprise with foreign investment.

3.3 National Courts' Approach

Ukrainian court practice concerning arbitration agreements is not uniform and is sometimes formalistic, especially in the lower courts. However, the practice of the new Supreme Court is more arbitration friendly.

Defects in the wording of an arbitration agreement no longer constitute a problem in view of specific provisions obliging the courts to interpret any such defect in an arbitration-friendly manner.

The Ukrainian courts are inclined to conduct a full rather than a prima facie judicial review of the validity of arbitration agreements. Although not in line with Ukrainian arbitration law and doctrine, the Ukrainian courts most often apply lex fori (ie the Civil Code of Ukraine provisions governing the validity of transactions), regardless of whether the issue arose with respect to the enforcement of arbitration agreement or the setting aside an arbitral award or enforcement of it.

3.4 Validity

Following the UNCITRAL Model Law approach, the ICA Law sets out the separability rule, thus preserving the validity of an arbitration clause even if the contract in which it is contained is deemed invalid. In particular, this rule provides for the treatment of an arbitration clause that forms part of a contract as an agreement independent of the other terms of the contract. It also emphasises that a decision of an arbitral tribunal that the contract is null and void does not entail ipso jure the invalidity of the arbitration clause. The recent practice of the new Supreme Court confirms the application of the separability rule.

4. The Arbitral Tribunal

4.1 Limits on Selection

The ICA Law does not impose any limits on the parties' autonomy to select arbitrators. However, the local arbitral institutions – ICAC and MAC – in practice only allow appointments only from the pool of arbitrators in their rosters.

4.2 Default Procedures

Generally, there are three arbitrators, though the parties are free to decide a different number if they wish.

The parties are free to agree on a procedure for appointing arbitrators, subject to compliance with the provisions of the ICA Law. If the parties' chosen method for selecting arbitrators fails, or if the parties fail to agree on a method, the following default procedure applies according to the ICA Law:

- in an arbitration with three arbitrators, each party appoints one arbitrator and those two arbitrators appoint the third. If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so (from the other party), or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment will be made, upon request of a party, by the President of the Ukrainian Chamber of Commerce and Industry; or
- in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator will be appointed upon the request of a party by the President of the Ukrainian Chamber of Commerce and Industry.

4.3 Court Intervention

The Ukrainian courts cannot intervene in the selection of arbitrators. The ICA Law expressly prohibits court intervention into matters governed by it, unless there is a provision in the law that permits the courts to do so.

Under the ICA Law, the courts do not act as an appointing authority. That function is performed by the President of the Ukrainian Chamber of Commerce and Industry. There is no appeal against a decision made by the President.

4.4 Challenge and Removal of Arbitrators

The ICA Law replicates the provisions of the UNCITRAL Model Law regarding the removal or challenge of arbitrators and gives the President of the Ukrainian Chamber of Commerce and Industry the power to decide whether the mandate of an arbitrator can be challenged or terminated.

The parties may agree between themselves on a procedure for challenging an arbitrator.

According to Article 13(3) of the ICA Law, if any such procedure agreed by the parties is unsuccessful, the challenging party may request that, within 30 days of receiving notice of the decision rejecting the challenge, the President of the Ukrainian Chamber of Commerce and Industry shall make a decision. No further appeal is allowed.

In the event that the parties fail to reach agreement on a procedure for challenging an arbitrator, a party which intends to make a challenge shall, within 15 days of becoming aware of the constitution of the arbitration tribunal or after becoming aware of any circumstance that gives rise to justifiable doubts as to an arbitrator's impartiality or independence, send a written statement of the reasons for the challenge to the tribunal. Unless the challenged arbitrator withdraws

from his or her office or the other party agrees to the challenge, the tribunal will decide on the challenge. Failing that, the challenging party may resort to the procedure available under Article 13(3) of the ICA Law.

4.5 Arbitrator Requirements

According to Article 12(1) of the ICA Law, individuals approached with a view to their possible appointment as arbitrators must disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. This obligation continues throughout the arbitral proceedings. There is no set rule as to what circumstances would be regarded as raising justifiable doubts about the impartiality or independence of an arbitrator.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

This matter has been addressed in Section **3.2 Arbitrability**.

5.2 Challenges to Jurisdiction

The ICA Law respects the competence-competence principle and allows an arbitral tribunal to rule on a party's challenge to the tribunal's own jurisdiction.

Pursuant to Article 16 of the ICA Law, the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. If the tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, that the general appellate court located at the seat of arbitration decide the matter. Such a decision is not subject to appeal. While the request is pending, the arbitral tribunal may proceed with the arbitral proceedings and render an award.

5.3 Circumstances for Court Intervention

According to the ICA Law, a Ukrainian court can address issue of jurisdiction in three situations:

- when the arbitral tribunal rules on its own jurisdiction as a preliminary question and a party to the arbitration requests the court to decide the matter;
- if a party to arbitration files an application for the setting aside of the final arbitral award rendered in Ukraine; or
- if an award creditor files an application to enforce the arbitral award in Ukraine and the debtor opposes to the enforcement.

5.4 Timing of Challenge

The parties have the right to go to court to challenge the jurisdiction of an arbitral tribunal seated in Ukraine only upon receipt of the final award, if the issue of jurisdiction was not decided as a preliminary question.

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

Neither the ICA Law nor the Civil Procedure Code of Ukraine establishes a standard of judicial review for the question of admissibility and jurisdiction. Court practice is not consistent.

5.6 Breach of Arbitration Agreement

As a rule, the national courts of Ukraine do not consider the commencement of court proceedings under contracts containing arbitration clauses as a breach of those contracts.

In 2002, the High Commercial Court of Ukraine clarified that it is the party's right, but not an obligation, to refer a dispute to arbitration according to the arbitration agreement.

If the other party to a dispute does not object and does not request referral of the dispute to arbitration, the Ukrainian court will rule on the dispute on its merits, even if the arbitration agreement in question is valid, operative and capable of being performed.

This approach is based on interpretation of Article 8 of the ICA Law and Article II (3) of the New York Convention.

5.7 Third Parties

Ukrainian legislation does not provide for the jurisdiction of an arbitral tribunal over individuals or entities that are not party to an arbitration agreement. For an arbitral tribunal to assume jurisdiction over a non-signatory, it needs to be proven that the third party became a party to the arbitration agreement, eg by way of assignment or otherwise by way of succession.

In addition, the rules of the ICAC provide that the arbitral tribunal may assume jurisdiction over the third party if all parties and a third party have agreed to conduct the arbitral proceedings with the participation of the said third party, thereby concluding a new arbitration agreement.

6. Preliminary and Interim Relief

6.1 Types of Relief

Under Article 17 of the ICA Law, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any 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 decision on interim measures is binding upon the parties.

In addition, under the ICAC Rules, the ICAC president is empowered to order interim measures before the arbitral tribunal is constituted.

6.2 Role of Courts
The courts in Ukraine can grant interim measures in aid of arbitrations seated both in Ukraine and abroad. The law does not provide for an exhaustive list of such measures, therefore the courts can take any measures necessary to protect such rights. These measures may be ordered if failure to take them would make enforcement of the ultimate award impossible or substantially more difficult.

The Ukrainian legislation does not regulate emergency arbitrators. Therefore, they are treated as an arbitral tribunal and all general rules applicable to arbitral tribunals apply. Accordingly, emergency arbitrators can grant any interim relief with respect to the subject matter of the dispute. Such decisions are binding upon the parties. The general rules for court intervention apply (see Section **5.3 Circumstances for Court Intervention**).

6.3 Security for Costs
The ICA Law allows the tribunal to order security for arbitration costs in the context of interim measures.

7. Procedure

7.1 Governing Rules
Ukrainian law distinguishes between international arbitration and domestic arbitration. Separate laws regulate their respective procedures. International arbitration is governed by the ICA Law, which is a virtually verbatim adoption of the UNCITRAL Model Law (1985) with only minor deviations. Domestic arbitration is governed by the Law of Ukraine on Domestic Arbitration Courts.

7.2 Procedural Steps
Since the ICA Law replicates the UNCITRAL Model Law, there are no particular procedural steps in Ukraine that are different from international arbitration practice.

7.3 Powers and Duties of Arbitrators
The powers and duties of arbitrators under Ukrainian law are in line with those widely adopted in international arbitration.

The powers conferred upon an arbitral tribunal include the power to rule on its own jurisdiction, grant interim measures and determine the admissibility, relevance and weight of any evidence.

The arbitrators must treat the parties with equality, give to each party a full opportunity to present his or her case and resolve the dispute referred to them by the parties. Furthermore, when approached as regards the possible appointment as an arbitrator, that person must disclose any circumstances that could give rise to justifiable doubts as to his or her impartiality or independence. The arbitrator, from the time of the appointment and throughout the arbitral proceedings, must without delay disclose any such circumstances to the parties unless they have already been informed of them.

7.4 Legal Representatives
The ICA Law does not impose any particular qualification or other requirement for legal representatives appearing in Ukraine.

8. Evidence

8.1 Collection and Submission of Evidence
The parties must prove the facts on which they seek to rely in support of their claims or defences. Apart from setting forth such general guidance as to the burden of proof, the ICA law does not provide any further special rules with respect to the collection, submission or production of evidence.

Usually, the parties submit their evidence along with their written submissions. However, in practice, additional written evidence can be submitted at the hearing. There is no general duty of disclosure. However, a party may seek an order of the tribunal for the production of certain evidence by the other party.

As regards witnesses and expert evidence, the ICA Law expressly regulates tribunal appointed experts. In particular, the tribunal is empowered to order the inspection of evidence by an expert. However, such witness evidence is not widely used by tribunals seated in Ukraine.

The ICAC rules set forth the detailed regulation of witness and expert evidence. In particular, prior authorisation by the arbitral tribunal is required before the submission of expert evidence. The rules also provide that the tribunal may order the witness or expert to appear at an oral hearing of the case for examination by the tribunal or cross-examination by the other party.

8.2 Rules of Evidence
There are no special rules on the submission and admission of evidence. The arbitral tribunal has full discretion in determining admissibility, relevance, materiality and weight of any evidence. In practice, the IBA Rules on the taking of evidence in international arbitrations is rarely used in arbitration proceedings in Ukraine, unless the parties expressly so agree.

8.3 Powers of Compulsion
Pursuant to the ICA Law, the arbitral tribunal is authorised to order parties to produce additional factual or expert evidence, including documents. Furthermore, both the arbitral tribunal and the parties may seek the assistance of the courts in obtaining evidence, including the examination of witnesses.

9. Confidentiality

9.1 Extent of Confidentiality

The ICA Law does not set forth any requirement as regards the confidentiality of arbitration proceedings. This is subject to the parties' agreement.

The ICAC Rules impose a duty of confidentiality on the president and vice presidents of the ICAC, arbitrators and the ICAC secretariat, but not on the parties to arbitral proceedings.

10. The Award

10.1 Legal Requirements

Under the ICA Law, the award must be made in writing and must be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated. Furthermore, the award must state the reasons upon which it is based, the resolution regarding satisfaction or rejection of the claims, the amount of the arbitration fees and costs and their allocation as between the parties, as well as its date and the place of arbitration. The parties are not permitted to agree that no reasons be given in the arbitral award, although an award on agreed terms is possible.

The ICAC Rules impose further requirements for the issue of an arbitral award. In particular, the award must contain, inter alia: the name of the ICAC; the case registration number; the composition of the arbitral tribunal and the procedure of its constitution; the names of the parties to the dispute and other persons participating in the arbitral proceedings; the substantiation of ICAC competence; the subject matter of the dispute; and a summary of the circumstances of the case. An arbitrator disagreeing with the award may express his or her dissenting opinion in writing, which must be attached to the award.

After the award has been made, each party must receive a copy of the award signed by the sole arbitrator or by the tribunal.

There is no statutory deadline for delivery of the award. However, under the ICAC Rules the award must be rendered within 30 days from the date the case was completed. In exceptional cases, the President of the ICAC is entitled to extend the period for rendering of the award.

10.2 Types of Remedies

The ICA Law does not restrict the types of remedies that an arbitral tribunal may award. This will depend on the applicable substantive law.

10.3 Recovering Interest and Legal Costs

The prevailing arbitration legislation of Ukraine does not contain any specific rules as to the types of relief. Thus, if the claimant so requests, the arbitral tribunal may award interest according to the rates (if any) as envisaged in the contract between the parties, or as provided by the applicable law.

The practice of the ICAC is that the legal costs usually follow the event. However, the amount of compensation remains at the discretion of the tribunal, depending on whether it finds them reasonable and justified. The amount of legal costs shall be proven by the parties.

11. Review of an Award

11.1 Grounds for Appeal

Arbitral awards in Ukraine are not subject to appeal. The only recourse available to the parties is an application to have the award set aside for the limited number of grounds envisaged in the ICA Law. These grounds are identical to those set forth in the UNCITRAL Model Law and Article V of the New York Convention.

A motion to set aside the final award can be submitted within three months after the party has received the award or, if a party requested correction or clarification of the award, within three months of the arbitral tribunal ruling on such a request.

The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

Furthermore, if an application to enforce the award has been submitted to the same court where the application for setting aside of the same award is pending, these two proceedings can be consolidated.

11.2 Excluding/Expanding the Scope of Appeal

Ukrainian legislation does not give parties the right to exclude or expand the scope of challenges to an arbitral award.

11.3 Standard of Judicial Review

Arbitral awards in Ukraine cannot be appealed on their merits.

12. Enforcement of an Award

12.1 New York Convention

Ukraine is a party to the New York Convention. Ukraine has made a declaration that, with respect to awards made in the territory of non-contracting states, Ukraine will apply the convention only to the extent to which those states grant reciprocal treatment. On 15 November 2015, Ukraine made a communication '…from 20 February 2014 and for the period of temporary occupation … of the Autonomous Republic of Crimea and the city of Sevastopol … as well as … certain districts of the Donetsk and Luhansk Oblasts of Ukraine, which are temporarily not under control of Ukraine … the application and implementation by Ukraine of the obligations under the [New York Convention], as applied to the aforementioned occupied and uncontrolled territory of Ukraine, is limited and is not guaranteed'.

Ukraine is also a party to the European Convention.

12.2 Enforcement Procedure

The procedure for recognition and enforcement of an arbitral award (both foreign and one rendered in an international arbitration seated in Ukraine) is governed by Chapter 3 of Section IX of the Civil Procedure Code of Ukraine. The respective application must be submitted to the Kyiv Court of Appeal in the Ukrainian capital, Kyiv. The grounds for refusal to enforce an arbitral award are identical to those set forth in the UNCITRAL Model Law and Article V of the New York Convention. The decision on the application for recognition and enforcement of an arbitral award can be only be appealed to the Supreme Court.

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An award that has been set aside by the courts in the seat of arbitration is unlikely to be enforced in Ukraine.

Ukrainian state and state entities do not enjoy sovereign immunity in Ukraine with respect to applications to have an arbitral award against them recognised in Ukraine. As regards foreign states, under Ukrainian legislation they enjoy absolute jurisdictional immunity. However, recent court practice has shown the willingness of the Ukrainian courts to change that approach in favour of functional immunity. In particular, the courts have applied the United Nations Convention on Jurisdictional Immunities of States and Their Property (to which Ukraine is not a party) as rules of customary international law.

12.3 Approach of the Courts

The Ukrainian courts have generally shown a pro-arbitration approach. Most of the arbitral awards are recognised and enforced in Ukraine. The public policy defence remains the most popular one raised by the Ukrainian parties that oppose enforcement. However, this defence rarely succeeds. The Ukrainian courts tend to interpret public policy quite narrowly as the most fundamental principles of the Ukrainian public order.

13. Miscellaneous

13.1 Class-action or Group Arbitration

Ukrainian law is silent with regard to class action arbitration or group arbitration.

13.2 Ethical Codes

There are no such codes and standards.

13.3 Third-party Funding

Ukrainian law does not provide for any rules or restrictions on third-party funders.

13.4 Consolidation

The ICA Law does not set forth any rules on consolidation.

13.5 Third Parties

Please refer to the information provided in Section **5.7 Third Parties**.