

GETTING THE DEAL THROUGH

# Dispute Resolution

in 50 jurisdictions worldwide

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# Ukraine

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### Litigation

#### 1 Court system

What is the structure of the civil court system?

Ukraine's court system has undergone substantial reform recently. Overall, it contains nearly 500 courts and 7,000 judges. In civil matters, the identities of the parties (ie, individuals, legal entities, or public officials) determine in which of the following courts jurisdiction will vest: courts of general jurisdiction; specialised commercial (hospodarsky) courts; and specialised administrative courts. Generally, civil matters involving individuals are heard in the courts of general jurisdiction. Legal entities, such as corporations, bring matters before the commercial courts. Administrative courts exercise jurisdiction over matters involving public officials or authorities. The size of a claim does not determine which court has jurisdiction.

The Law on the Court System of Ukraine envisages the hierarchy of the courts of general jurisdiction consisting of: first-instance local courts (ie, *rayon* and city courts); appellate courts (ie, *oblast* courts, Kiev and Sevastopol city courts, and the Autonomous Republic of Crimea Court) and the Appellate Court of Ukraine; and the Supreme Court.

The hierarchy of the specialised commercial and administrative courts includes: (i) first-instance commercial and administrative courts; (ii) appellate commercial and administrative courts; (iii) the High Commercial Court and the High Administrative Court; and (iv) the Commercial Panel of the Supreme Court and the Administrative Panel of the Supreme Court. In addition, the Constitutional Court has jurisdiction over constitutional matters. Only certain parties can bring cases to the Constitutional Court, such as the president, 45 members of Ukraine's parliament (the Verkhovna Rada), and the parliamentary ombudsman.

#### 2 Judges and juries

What is the role of the judge and (where applicable) the jury in civil proceedings?

Ukraine is undergoing a transition from an inquisitorial to an adversarial system of justice. The Constitution of Ukraine and major codes declare that judicial proceedings are based on the adversarial system. However, the judges remain highly involved in various aspects of civil proceedings. For example, judges frequently question witnesses and order production of evidence. As of this writing, there are no juries, in the common-law sense, for civil proceedings, but advisory juries are being organised. New laws provide for a jury in first instance courts in certain instances. Certain civil matters can be heard by a single judge with two jurors playing an advisory role.

#### 3 Limitation issues

What are the time limits for bringing civil claims?

The general limitation period for bringing civil claims is three years. Special limitation periods of one year, five years, and 10 years apply to particular claims set forth in the Civil Code of Ukraine. Generally, the limitation period starts when the aggrieved party becomes aware or should have become aware of the violation of rights.

The law provides for tolling and interrupting the limitation period. The limitation period can be tolled if, for example: the plaintiff is under force majeure, extraordinary and unavoidable circumstances preventing him from bringing the claim; the legislature enacts a moratorium on the performance of an obligation; or the plaintiff or defendant serves in the military during a military emergency. The limitation period is tolled for the duration of these circumstances and resumes once the circumstances cease to exist. The limitation period can be interrupted ab initio if, for example: the defendant acknowledges his debt or obligation through his actions (eg, by making a partial payment or an interest payment); or the plaintiff brings a claim against one of several debtors or brings a partial claim. In some cases, the court can extend the limitation period if extraordinary circumstances exist.

The parties can increase the limitation period established by the law by written agreement but cannot decrease it. The parties' right to increase the limitation period applies to both the general and special limitation periods.

#### 4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Commercial disputes are subject to pre-trial settlement if the parties agree on such pre-trial settlement. If the parties agree, the party whose rights or legitimate interests were infringed can send a demand letter to the potential defendant to settle the dispute directly. The Commercial Code of Ukraine and the Commercial Procedural Code of Ukraine state certain requirements for what should be covered in the demand letter (eg, full name and address details for both the plaintiff and the defendant, the date and the number of the demand letter, the nature, grounds and amount of the claim, evidence which proves the grounds, the demands (making reference to any legislative acts being invoked, the claimed amount and its method of calculation if it should be assessed in terms of money, the plaintiff's payment details and a list of the supporting documents that are attached to the demand letter. The demand letter should be signed by an authorised person or representative and sent to the defendant by registered mail

and delivered to the defendant with a request for return receipt. The demand letter should be reviewed and responded to by the defendant within either one or two months, depending on the circumstances. If the defendant refuses to satisfy the claim, the plaintiff can bring it to the commercial court. In disputes involving individuals, the plaintiff is not required to contact the other side prior to filing a claim.

## 5 Starting proceedings

How are civil proceedings commenced?

Civil proceedings are commenced by filing a statement of claim with a first-instance court. The statement of claim must contain the name of the court, the full names of the plaintiff and defendant, their addresses, claims, claim amount (for property claims), a statement of underlying facts, the evidence supporting each fact, and a list of supporting documents. The plaintiff must pay the required court costs. In civil proceedings, the court costs include *inter alia* the filing fee and the information-technical support fee. The amount of the filing fee may vary and depends on the value stated in the statement of claim. The amount of the filing fee, and the procedure for payment and exemption is determined by law. The Civil Procedural Code of Ukraine states the procedure the plaintiff should follow to calculate the value of the statement of claim. If the plaintiff fails to pay the court fee in whole or in part, the court will not consider the statement of claim and will specify the time to cure.

## 6 Timetable

What is the typical procedure and timetable for a civil claim?

In civil actions involving individuals, the court serves process on the defendant once it opens the case. In commercial actions involving legal entities, if the statement of claim is accepted, the judge issues a determination of initiation of proceedings within five days of acceptance of the statement of claim and sends the determination to the parties. The determination of initiation of proceedings contains *inter alia* the date and place of the hearing and describes the actions the parties should take to prepare the case for hearing. In civil actions involving individuals, the court typically holds a preliminary hearing within one month of opening the case. At the preliminary hearing, the plaintiff may withdraw the complaint; the defendant may admit fault; and both parties may settle the case or refer it to arbitration. If the dispute is not resolved at the preliminary hearing as mentioned above, the court: identifies the plaintiff's claims; discusses the merits of the case; identifies undisputed and disputed facts and evidence necessary to prevail; determines the participants in the case (eg, whether witnesses, experts and interpreters will be required); performs other actions that are required to prepare the case for hearing; and specifies the time and place of the hearing. In most cases, the court holds a hearing within one or two months of opening the case.

## 7 Case management

Can the parties control the procedure and the timetable?

Generally, the court controls the timetable of civil proceedings, but the parties can move to make changes to the timetable where compelling circumstances exist.

## 8 Evidence

What is the extent of pre-trial exchange of evidence? Is there a duty to preserve documents and other evidence pending trial? Are any documents privileged? Would advice from an in-house lawyer also be privileged? How is evidence presented at trial? Do witnesses and experts give oral evidence?

Generally, Ukrainian civil procedure does not provide for extensive discovery. Each party is required to produce evidence to prove its own claims or defences. The statement of claim should refer to evidence confirming any facts and availability of grounds releasing the parties from responsibility for proving facts. The plaintiff and defendant attach documents to the statement of claim and answer correspondingly. The plaintiff and defendant should present to or inform the court about their evidence before or at the preliminary hearing. At the preliminary hearing the judge determines what additional evidence must be provided and the timetable for the presentation of additional evidence. The parties are not required to exchange documents, answer interrogatories, and may not take depositions. Nonetheless, the parties may request the court to compel discovery, which may include subpoenas of witnesses, documents, objects, and expert examination. At trial, the court considers witness testimony, documentary and physical evidence, expert conclusions, and decisions of foreign courts (if there is a legal assistance treaty between Ukraine and the foreign country). Both the parties and the court question witnesses and experts. Experts are not regarded as 'witnesses' or 'expert witnesses'. Experts provide written conclusions regarding ultimate issues such as capacity or mental state. The court has the right upon motion or at its own initiative to request an expert to give an oral explanation. Such oral explanations of experts should be recorded in court session minutes. Although expert conclusions are not binding on the court, they have greater weight than other types of evidence. A lawyer is not required to reveal letters addressed to his client insofar as the privacy of correspondence is guaranteed by the Constitution.

The immunity of diplomatic documents is governed by the 1961 Vienna Convention on Diplomatic Relations and bilateral agreements.

There is no formal requirement to preserve documents or physical evidence pending trial. Upon a party's motion, however, the court can order a party to preserve evidence. Ukrainian law criminalises obstruction of justice, but as a practical matter, this is seldom proven.

## 9 Interim remedies

What interim remedies are available?

The court, upon motion, can order interim remedies 'where failure to order interim remedies would make enforcement of a future judgment difficult or impossible'. Interim remedies may include:

- freezing assets or monetary funds;
- a positive or negative injunction on certain acts;
- a third-party injunction to prevent payments or transfers to the defendant or performance of obligations owed to the defendant;
- suspension of a sale;
- suspension of an execution of judgment; or
- transfer of the object of the dispute into the custody of a third party.

Courts may order such other proportionate interim remedies as justice requires. The court may require the party moving

for interim remedies to secure its request with a pledge. Interim measures are not allowed with regard to, *inter alia*:

- a salary, pension or stipend;
- maternity and medical leave benefits;
- unemployment benefits; and
- perishable goods.

## 10 Remedies

What substantive remedies are available?

Ukrainian law recognises compensatory damages. Generally, the losing party is not required to pay post-judgment interest on a monetary judgment. However, post-judgment interest on instalment payments might be granted upon request. The losing party typically compensates the prevailing party for the costs of litigation, in accordance with the European approach. Costs may include the court fee, information technology fee, attorney's fees, expenses paid to witnesses and experts, expenses related to expert examination, expenses to locate the defendant, and expenses related to the execution of judgment. Generally, punitive damages are not available. A contract between the parties, however, may contain a liquidated damages clause, which is generally enforceable. Also, civil, administrative, or criminal laws or regulations can provide for penalties.

## 11 Enforcement

What means of enforcement are available?

If a judgment debtor fails to comply with the judgment, the judgment creditor can submit a writ of execution to the Executive Service. The judgment creditor must do so within three years from the entry of judgment. Within three days of receiving the writ of execution, the Executive Service commences execution proceedings. The Executive Service specifies the deadline (which cannot be more than seven days) by which date the judgment debtor must comply with the judgment. If the judgment debtor fails to do so, the Executive Service may freeze the debtor's assets or monetary funds, seize the object of the judgment, or garnish the debtor's income. The Executive Service must complete the execution within six months from the day of determination of the initiation of enforcement proceedings. In some circumstances, the Executive Service can suspend execution on its own initiative or upon the debtor's or creditor's request. The Executive Service ordinarily charges expenses and 10 per cent of the amount collected from the debtor or the value of the assets seized from the debtor. Successful recovery depends on the type of assets the judgment creditor seeks and the identity of the debtor. The Executive Service has the authority to attach cash and securities deposited in the debtor's bank accounts as long as Ukraine has jurisdiction over them. Ukraine has jurisdiction over Ukrainian banks. Also, Ukraine may attach the debtor's accounts in foreign banks as long as Ukraine has a mutual legal assistance treaty with the country in which the foreign bank is located, and the treaty provides for assistance in the forfeiture of assets. To satisfy a writ of execution, the Executive Service orders the bank to hand over funds from the debtor's accounts. In practice, banks voluntarily comply with the order to avoid sanctions.

Pursuant to a moratorium on the seizure of the government's assets, the Executive Service cannot seize real estate, machinery, or tools owned by the government. The judgment creditor cannot seize real property of a state-owned enterprise or an enterprise with over 25 per cent state ownership.

All that being said, enforcement remains the Achilles heel

of Ukraine's legal process. In practice, the vast majority of court awards are never enforced in Ukraine. The system of enforcing both court awards and foreign arbitral awards in Ukraine is inefficient and remains in need of extensive improvement.

## 12 Public access to court records

Are court hearings held in public? Are court documents available to the public?

Generally, court hearings are open to the public. The court holds a closed hearing if the case involves a state secret, commercial secret, bank secret or other secret protected by law. Upon motion by a party, the court may hold a closed hearing to protect personal dignity, the privacy of intimate relations, and the secrecy of adoption. Even if the hearing is open to the public, private correspondence can only be revealed if the affected parties consent. At public hearings, audio recording is generally allowed. The court can authorise photography, video recording, and broadcasting if all participants consent. The public generally has no access to court documents. Only the parties, their representatives, and interested third parties that can be affected by the judgment have access.

## 13 Inter partes costs

Does the court have power to order costs?

Generally, the court orders the losing party to pay the winning party's costs. If a party wins in part and loses in part, the court orders that party to pay its proportionate share of the costs. The plaintiff is not required to provide security for the defendant's costs.

## 14 Fee arrangements

Are 'no win, no fee' agreements or other types of contingency or conditional fee arrangements available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a defendant share its risk with a third party?

Ukrainian law does not expressly prohibit contingency or conditional fee arrangements. However, Ukrainian courts follow the continental European tradition in disfavouring contingency fee arrangements. Generally, a representation agreement between the lawyer and the client governs the lawyer's compensation. The representation agreement can provide for a flat or hourly fee, or pro rata or percentage fee. If a lawyer was appointed to represent a client in a criminal case and the client is released from payment of legal fees, the lawyer is entitled to be paid a statutory fee, specified by the Cabinet of Ministers and paid out of the state budget. If the representation agreement is terminated, the law provides for the lawyer's compensation quantum meruit. Ukrainian law does not regulate third-party funding. There is no prohibition against third-party funding, yet such practice is not prevalent. Interested third parties cannot share in the proceeds because the court, when satisfying the claim, will collect the proceeds for the benefit of the claimant, not for the benefit of interested third parties.

## 15 Class action

May litigants with similar claims bring a class action or other form of collective redress? In what circumstances is this permitted?

Class action lawsuits, as understood under US law, do not exist in Ukrainian law.

However, under Ukrainian law, a claim can be lodged jointly by several claimants or against several defendants. Each claimant or defendant acts independently in civil litigation.

Several claimants and (or) defendants may jointly participate in litigation if:

- the subject matter of a dispute is jointly held rights or responsibilities of several claimants or defendants;
- rights and responsibilities of several claimants or defendants arose on the same grounds, for example, when several claimants are contesting an inheritance from a single deceased person; or
- the subject matter of a dispute is rights and responsibilities of the same type.

Jointly participating persons may authorise one among them to handle a case, so long as the person chosen is of the legal age of majority (18 years).

#### 16 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Ukrainian law provides for two stages of appeal: appeal and cassation. Generally, any party can appeal the decision of the first-instance court within ten days after the judgment is announced through submission of a petition of appeal to the first-instance court. If the petition of appeal is submitted to the first-instance court then an appellate complaint can be submitted within 20 days of the petition of appeal being submitted. Any party can appeal the appellate court's decision to the cassation court within two months of the appellate court's decision taking effect. The law of Ukraine states certain criteria for the preparation of an appellate complaint and cassation complaint. The scope of appellate and cassation review differs. Appellate courts review all evidence *de novo* and can also gather additional evidence (eg, call witnesses to testify). Typically, appellate courts review the case within the bounds of the appellate complaint. Cassation courts, by contrast, only review the record (ie, materials in the case file) to determine procedural or substantive law violations.

Cassation courts cannot gather additional evidence or determine the weight or credibility of the evidence. The grounds for reversal at the appellate and cassation levels differ. Appellate courts can reverse a first-instance court if, for example:

- outcome-determinative facts were not fully investigated;
- outcome-determinative facts were not proven;
- incorrect legal conclusions were drawn; or
- substantive or procedural law was violated or misapplied.

The grounds for mandatory reversal at the cassation level include severe procedural defects, such as:

- the judge or composition of the court were improper;
- the judgment was issued by a judge or judges who did not hear the case;
- a default judgment was issued where the absent party was not given proper notice;
- the court disposed of the rights and duties of absent third parties;
- the court failed to decide some claims, and the defect cannot be corrected by a supplemental decision;
- exclusive jurisdiction rules were violated when the case was heard; or
- the court violated or misapplied substantive or procedural law, and the defect affected the outcome.

Decisions of general first-instance courts can be appealed to the appellate courts and then to the Supreme Court. Decisions of specialised first-instance commercial and administrative courts can be appealed to: the appellate commercial and administrative courts; then to the High Commercial and High Administrative Courts, which perform cassation functions; and then to the Commercial Panel of the Supreme Court and the Administrative Panel of the Supreme Court, which perform secondary cassation functions.

#### 17 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Foreign judgments are valid and enforceable in Ukraine based on a multilateral or bilateral treaty between Ukraine and a foreign country governing enforcement of judgments or a reciprocal *ad hoc* arrangement. An international treaty can set forth the procedures for enforcement of foreign judgments in Ukraine and grounds for refusing their enforcement. In the absence of a treaty provision, Ukrainian law sets forth the default procedures for enforcement of foreign judgments and grounds for refusing their enforcement. International treaties supersede domestic law to the extent they differ. According to Ukrainian law, the winning party can enforce a foreign judgment by petitioning to a first instance court that has territorial jurisdiction over the defendant. The limitation period for enforcement of foreign judgments is three years from the date the foreign judgment becomes effective. The petitioner must submit a copy of the foreign judgment and a translation, among other documents. The court typically schedules an abbreviated hearing, where it reviews documents and hears arguments. The court may then issue a writ of execution, and the petitioner can submit it to the Executive Service, which will enforce the foreign judgment just like a domestic judgment.

Ukrainian law sets forth the following grounds for refusing enforcement of foreign judgments, among other circumstances specified by law:

- the judgment has not become effective in the country where it was rendered;
- the party against whom the judgment was rendered was not properly notified of the proceedings and was therefore unable to present his or her case;
- the case is within the exclusive jurisdiction of the Ukrainian courts;
- there is a Ukrainian court judgment involving the same parties and the same subject matter, or the same case is pending in a Ukrainian court;
- the limitation period has expired;
- the dispute is not capable of judicial settlement under Ukrainian law; or
- enforcement of the judgment threatens the interests of Ukraine.

As noted above in section 11, even successful litigants can expect to encounter significant difficulties enforcing their judgments in Ukraine.

#### 18 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Ukraine has been party to The Hague Convention on Taking of Evidence Abroad in Civil and Commercial Matters (The Hague



Evidence Convention) since 2001. Litigants in the countries that are parties to The Hague Evidence Convention should be able to obtain evidence in Ukraine by sending letters of request to the Ministry of Justice or through diplomatic channels. If The Hague Evidence Convention does not apply, evidence in support of foreign proceedings can be obtained through diplomatic channels.

## Arbitration

### 19 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Ukraine's Law on International Commercial Arbitration is largely based on the UNCITRAL Model Law.

### 20 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

An enforceable arbitration agreement must be in writing and signed by the parties. Generally, an exchange of letters, telegrams or faxes will meet the 'in writing' requirement. An exchange of e-mails, however, will not likely meet the requirement. In the absence of a written document, an enforceable arbitration agreement can be implied where one party asserts the existence of an arbitration agreement in a pleading, and the other party does not dispute such existence in its responsive pleading.

### 21 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration agreement is silent as to how many arbitrators will be appointed, Ukrainian law provides for the appointment of three arbitrators. If the arbitration agreement is silent as to how the arbitrators will be appointed, Ukrainian law provides that each party will appoint one arbitrator, and the two arbitrators will appoint the third arbitrator together. If either party fails to appoint its arbitrator or if the two arbitrators fail to agree on the third arbitrator, the president of the Chamber of Commerce and Industry will make the appointment. (If the arbitration agreement provides that one arbitrator will be appointed but does not specify how he will be appointed, Ukrainian law provides that either the parties agree on the arbitrator or upon the request of either party the president of the Chamber of Commerce and Industry will appoint him.) A party can challenge the appointment of an arbitrator only if there are grounds to question the arbitrator's independence, impartiality or competence.

### 22 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

To the extent that it does not contradict the provisions of Ukraine's Law on International Commercial Arbitration, the arbitration agreement governs the procedures to be followed in conducting the arbitral proceedings. If the arbitration agreement is silent, Ukrainian law fills the gaps. Ukrainian law contains few specific procedural requirements.

### 23 Court intervention

On what grounds can the court intervene during an arbitration?

Ukrainian law expressly limits the scope of judicial intervention into the arbitral proceedings. The law does not allow judicial review of the arbitral tribunal's decision on the merits. An arbitral tribunal or a party can petition a first-instance (*rayon* or city) court to order discovery. The court will entertain such discovery requests within the bounds of its jurisdiction and in accordance with its rules.

### 24 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

Unless the parties agree otherwise, the arbitrators may order interim relief and require any party to post a bond in connection with such relief. However, if a party refuses to comply with interim relief ordered by the arbitral tribunal, the tribunal lacks the power to enforce it. Ukrainian law does not specifically provide a mechanism for filing a petition with a court to order interim remedies (although it provides for a mechanism to petition a court to order discovery).

### 25 Award

When and in what form must the award be delivered?

The award must be in writing and signed by the arbitrators. The award must state the reasoning, its conclusion concerning the satisfaction or rejection of the claims, the arbitration fee, and its apportionment among the parties. Also, the award must state the date and place of arbitration. Once the arbitral award is made, a copy signed by the arbitrators must be delivered to the parties. Ukrainian law does not address the timing of delivery of the arbitral award.

### 26 Appeal

On what grounds can an award be appealed to the court?

A party against whom an arbitral award was rendered in Ukraine (as opposed to abroad) can petition a first-instance (*rayon* or city) court with territorial jurisdiction over the place of arbitration to set aside the arbitral award. Arbitral awards are presumed valid. The exclusive grounds for setting aside an award are:

- the party stating a petition for the cancellation of an arbitration award submits evidence to the effect that:
  - a party to the arbitration agreement was under some incapacity, or the arbitration agreement is invalid under its stated governing law, or failing any indication thereof, under the law of Ukraine;
  - a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
  - the award dealt with a dispute over matters that were, in whole or in part, beyond the scope of the submission to arbitration; or
  - the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with Ukrainian law;
- a court determines that:
  - the dispute is not capable of settlement by arbitration under Ukrainian law; or
  - the award is contrary to Ukraine's public policy.

**Update and trends**

In 2003, the Verkhovna Rada enacted the new Civil Code and in 2004 a new Civil Procedural Code to replace the old Soviet Codes. In 2005 and 2006, the first commentaries to the Civil Code and the Civil Procedural Code were published, alleviating initial uncertainty about many of their provisions. (In Ukraine, as in other civil law countries, academic commentary produced by distinguished jurists is regarded as important persuasive authority.) Case law interpreting the new Codes is still sparse (and not binding). The uncertainty associated with Ukraine's civil procedure is expected to dissipate over time. Ukraine currently has two civil procedural codes: the 2004 Civil Procedural Code

applicable to disputes involving individuals ('physical persons'); and the 1991 Commercial (Hospodarsky) Procedural Code applicable to disputes between legal entities. The Commercial Procedural Code dates back to the Soviet system of abbreviated commercial proceedings (*arbitrazh*), where a single state arbitrator summarily disposed of cases. The Commercial Procedural Code persists as a result of a legislative compromise. There is some indication that Ukraine will eventually get rid of the Commercial Procedural Code and form an integrated civil procedure governing both individuals and entities.

A petition for the cancellation of an arbitral award must be filed within three months after the day the petitioning party received its arbitration award.

The grounds for setting aside an arbitral award resemble the grounds for refusing recognition and enforcement of a foreign arbitral award set forth in article 5 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The court can stay proceedings for setting aside the arbitral award and remand the case to the arbitral tribunal to correct defects. There is a right of further appeal to, first, the appellate courts (*oblast*, Kiev and Sevastopol city courts, or the Autonomous Republic of Crimea Court) and then to the Supreme Court.

**27 Enforcement**

What procedures exist for enforcement of foreign and domestic awards?

Noting again the caveats regarding the difficulty of enforcing any award in Ukraine, the party seeking recognition and enforcement of a foreign or domestic award can petition a court and submit the original award (or its acknowledged copy) and a translation into Ukrainian. Both foreign and domestic awards are presumed valid and enforceable. The grounds for refusing enforcement of foreign and domestic awards are the same as the grounds for setting aside arbitral awards rendered in Ukraine (see question 26). In addition, the court can refuse enforcement of a foreign arbitral award.

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tral award if the award has not become final and binding in the country where it was rendered, or where a court in that country has set aside the award. On its face, Ukraine's law complies with the letter and spirit of the New York Convention (articles 1, 2, and 5), to which Ukraine is a party. Once the court recognises the award, it issues a writ of execution. Thereafter, the award is enforced just like a domestic judgment (see question 11).

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**28 Costs**

Can a successful party recover its costs?

A successful party can recover costs if the arbitral award so provides. Normally, an arbitral award sets forth the arbitration fee, costs, and their apportionment among the parties. Apportionment of the arbitration fee and costs is within the discretion of the arbitral tribunal.

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**Alternative dispute resolution**

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**29 Obligatory ADR**

Is there a requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process? What types of ADR processes are commonly used? Is a particular ADR process popular?

There is no requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings. Compelling the parties to participate in ADR would be contrary to existing practice.

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**Miscellaneous**

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**30 Are there any specific features of the dispute resolution system not addressed in any of the previous questions?**

None.