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ATTORNEYS AT LAW

ENFORCEMENT OF FOREIGN

COURT AND ARBITRATION AWARDS IN UKRAINE

ABOUT FRISHBERG & PARTNERS

We are different from many conventional law firms. As one of the leading independent law firms based in Kiev, we are a team of American and Ukrainian lawyers, specializing in Ukrainian law since 1991. Through the years we have established a tradition of legal excellence, and have earned a reputation as a law firm that always goes the extra mile for its clients. We provide professional services of the highest quality, combining technical knowledge of Ukrainian law and practice to efficiently achieve our clients' goals.

Our long-established presence in Ukraine allows us to offer guidance on a wide range of litigation and arbitration matters. Close contacts with local authorities, including the Cabinet of Ministers, the President's Administration, the Anti-Monopoly Committee and the Tax Inspection, permit us to quickly and efficiently address the interests of our clients. And, our network of local consultants and experts often allows us to speed up bureaucratic procedures.

Last, but not least, we approach billing from a client's perspective to assure that our services are cost effective. Initial consultations are always free of charge, giving us an opportunity to offer clear and practical advice to potential clients.

Simply put, we provide clients with top quality legal services at reasonable prices.

LITIGATION AND ARBITRATION GROUP

In our experience, litigation and arbitration can result not only in monetary damages but, more importantly, in the disruption of a company's business. We believe that most disputes have the potential for an amicable resolution.

To this end, we try to position a case for an early settlement. Because of our pro-active approach, our clients often reach peaceful settlements instead of heading into full-blown litigation or arbitration proceedings. Should negotiations fail, however, we can immediately respond through the appropriate legal channels.

Our advocates are top Ukrainian experts in complex commercial litigation. For that reason, we usually succeeded in difficult and sometimes precedent-setting cases involving consumer products, maritime and aviation law, intellectual property, employment-related disputes and real estate claims.

In addition to participating in litigation with local and foreign entities, we act as legal counsel in arbitration matters administered worldwide by major arbitration institutions and ad hoc arbitration bodies. We can provide immediate advice in numerous jurisdictions and coordinate complex, cross-border actions quickly and effectively.

RREFERENCES

"Alex Frishberg has been my Honorary Legal Adviser since 2006. He has been an invaluable source of advice to the British Embassy, providing clear legal guidance and a unique insight into the legal and political structures of Ukraine. I have to terminate this appointment on my departure from Kiev, but I hope that Alex's association with the British Embassy can continue, and I wish him every success for the future." ***Tim Barrow, Her Majesty's Ambassador, British Embassy in Kyiv***

"Alex Frishberg had been my Honorary Legal Adviser since June 2008. He also held this position for my predecessor. Alex and his team have given the embassy a range of timely and helpful advice on a broad range of important legal issues. These have included property and human resource questions as well as other issues associated with running a busy embassy in Kyiv. We have immensely valued their help. I have also been interested in Alex's views and analysis of Ukrainian institutions and politics, based on his many years of experience in Kyiv." ***Leigh Turner, Her Majesty's Ambassador, British Embassy in Kyiv***

"Mr. Alex Frishberg Esq. and his associates at Frishberg & Partners have for years, including during my predecessors, provided invaluable and highly qualified legal advice and services to the Embassy of Sweden in Kyiv. We have especially appreciated Mr. Frishberg's and his law firm's support on matters concerning real estate, including by conducting negotiations on our behalf, and on a range of other issues..." ***Stefan Gullgren, Ambassador, the Embassy of Sweden in Kyiv***

"Mr. Alex Frishberg has been legal advisor and attorney for the Royal Norwegian Embassy in Kyiv since 1992. In this period Mr. Frishberg has assisted the Embassy in matters relating to Ukrainian property law, labour law, commercial code and other aspects of civil law. We have been happy to recommend his and his law firm's services to Norwegian companies that have been interested in investing or otherwise engage in the Ukrainian market, and we know that many such companies have made use of his services and with great success. Mr. Frishberg has on numerous occasions demonstrated extraordinary insight into the legal, political and economic framework for companies and other entities operating in Ukraine and it is a pleasure for us to recommend Mr. Frishberg's services to whomever may be interested or in need." ***Olav Berstad, Ambassador, the Royal Norwegian Embassy in Kyiv***

"Since 2008 Alex Frishberg is the Legal Adviser on the Belgian Embassy and gives the Embassy of Belgium timely and helpful advice, on important legal issues. These includes property and human resource questions as well as other issues associated with running a busy Embassy in Kyiv. We value this help." ***Mark Vinck, Ambassador, the Embassy of Belgium in Kyiv***

"Since many years, Frishberg and Partners provides legal services to Air France and KLM. Alex Frishberg and his associates have provided valuable support on various legal matters such as litigation, contracting, expats' visa related issues and more. We are very pleased with the level of service provided by Alex and his team. It is also important to mention the added value of Alex as a person who has vast knowledge on the political and economical system of Ukraine. His guidance positively contributed to our business." ***Hanan Zweig, Country Manager Ukraine, Air France and KLM Royal Dutch Airlines***

"Since several years Alex Frishberg and his competent team have successfully assisted us on a variety of matters. Besides the quality of their legal support, we have always been particularly pleased with their business-minded and pragmatic approach as well as with their high level of responsiveness. Alex and his team have also proven to have an excellent insight in the Ukrainian political and economic context in which their clients operate." ***Piet Grillet, Group Head, Lead Regional Counsel Europe, MasterCard***

"We are very satisfied with the services of your law firm and especially appreciate the quick, accurate and business- minded responses and analysis." ***Dr. Brigitte Carbonare-Hartsleben, British Telecom Global Services***

"As always, thank you for your immediate attention to our needs. Your assistance will help enable us to successfully complete a very large contract and to keep a very good customer." ***Lori K. Rose, CTB, Inc.***

"You did an excellent job for Joss Chemicals BV, and you prepared an excellent report on our behalf. This was very positive for us, and it allowed us to set up our business in Ukraine. Now we are actively pursuing this business thanks to your excellent lawyers." ***Jan Huijbregts, Joss Chemicals BV***

"Frishberg & Partners' advice and services are of excellent quality, very timely, reliable and to the point, and with a good understanding of our business interests." ***Christoph Zeyen, Tyco Electronics***

"We at Sun and I am personally as legal counsel for Sun operation in CIS region, are very pleased with a level of expertise and service which were and are provided to our company in Ukraine by Frishberg & Partners. I would like to particularly mention also a constant effort of F&P lawyers to keep its clients updated on the most recent developments of Ukrainian legal environment and their responsiveness to our needs in that country." ***Dr. Andrei Zalivako, Sun Microsystems***

"We hired Frishberg & Partners to analyze certain issues in the Ukrainian legislation in the process of acquiring a company in Ukraine and were very happy with the services we received. All your lawyers we worked with are extremely professional, competent and helpful. Thank you for a job well done." ***Dmitriy Kasyanenko, Vimpel Communications***

"Emilceramica appreciates Frishberg & Partners' professional collaboration in supporting the project "Joint Venture Zeus Keramik" with Ukrainian participation. In this regard, Emilceramica hopes to have Frishberg & Partners' assistance in future." ***Dr. Efrem Montepietra, Emilceramica SpA***

"My impression of your company is very good. I really appreciate the capability and professionalism of your lawyers and the efforts your company successfully put in the defense of ours. We thank you for your assistance and cooperation." ***Flavia Smiraglio, Fiat Auto S.p.A.***

"Thank you and the colleagues at Frishberg & Partners for your assistance and the very valuable input you provided. We are all happy with the outcome of the matter that was handled well, based on a good sense of judgment, lots of wisdom, good decision making and good use of past learnings from previous experiences in this country." ***Elias N. Ashkar, INDEVCO Group***

"Since 1992 we have the pleasure of being the client of Frishberg & Partners, and recent results just confirm that this was and still is a very ri ght choice for KLM Royal Dutch Airlines." ***Sergey Fomenko, Commercial Manager (KLM Royal Dutch Airlines)***

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I. INTRODUCTION

Recognizing the general rule that "everything always goes wrong at the worst possible moment," large multi-national companies often agree to resolve their disputes with each other in an international, and therefore presumably unbiased, arena. In an effort to accommodate the business needs of such companies, the world's leading nations have entered into numerous bilateral and multilateral international arbitral agreements. Such agreements set the stage for implementing the accepted international arbitration rules and executing the resulting judgments on a local level.

Likewise, Ukraine has established a similar forum for resolving international commercial disputes at the Ukrainian Chamber of Commerce and Industry, the rules of which are based on the Law of Ukraine "On International Commercial Arbitration" which, in turn, is based on the UNCITRAL rules. Ukraine also adheres to many international agreements previously entered into by the former Soviet Union, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, and the European Convention on International Commercial Arbitration of 1961 (Geneva). Plus, Ukraine is a signatory to the multi-lateral Agreement on the Procedure of Dispute Resolution Connected with Commercial Activity between the CIS states (also known as the Kiev Agreement).

Following the declaration of its independence in August 1991, Ukraine passed its own comprehensive legislation governing dispute resolution in the context of both domestic and foreign transactions and investments. These laws included Law No. 1142-XII "On Commercial Courts," dated June 4, 1991 (lost force in February 2002), Law No. 4002-XII "On International Commercial Arbitration," dated February 24, 1994, Law No. 93/96-VR "On the Foreign Investment Regime," dated March 19, 1996, and Law No. 959-XII "On Foreign Economic Activities," dated April 16, 1991, among others.

Generally, Ukraine's local and foreign arbitration legislation is in accordance with global standards. As in other countries, the parties to international agreements have the freedom to select either the domestic (Ukrainian) national court system or international arbitration in any country (including Ukraine). The final award or ruling can be executed in Ukraine

under the 1958 New York Convention, assuming that all parties involved in the arbitration are signatories to that Convention. While the applicable legislation is well-settled, in today's Ukraine numerous unexpected practical problems may arise to prevent the actual enforcement of international arbitral decisions.

Under Ukrainian legislation, foreign investors may submit disputes for resolution to either (1) Ukrainian national (commercial) courts; (2) Ukrainian national arbitration courts or (3) any other international arbitration tribunal. The third option can be further separated into two categories: (a) arbitration conducted in Kiev at the Ukrainian Chamber of Commerce and Industry or (b) arbitration held in a third country (e.g., Sweden, Great Britain, U.S.A.).

This briefing paper examines each of these options, as well as enforcement of foreign arbitral awards in Ukraine, immediately below.

II. THE UKRAINIAN NATIONAL COURT SYSTEM

Like all of its legislation, Ukraine inherited its court system structure from the Soviet Union. Only recently the court system has begun undergoing reforms with the passage of a number of laws. The initial steps were made on June 1, 2001, with the passage of amendments to various laws, including Law No. 1789-12 "On the Prosecutor's Office," Law No. 1142-12 "On Arbitration Courts," Law No. 2862-12 "On the Status of Judges," etc. Reforms continued in 2010 with the complete revamping of the court system in the Law of Ukraine No. 2453-VI "On the Court System and the Status of Judges," dated July 7, 2010 ("Law No. 2453").

In general, Law No. 2453 provides the overall structure of the new judicial system after August 3, 2010. It defines the legal bases for the organization of the judiciary branch of power and the service of justice in Ukraine, the system of general jurisdiction courts, the basic requirements in the forming of the professional judges' corps, the system and procedure of carrying out of judicial self-regulation, etc. Law No. 2453 also legalizes the relations, which already exist between the branches of the executive and judicial powers. Related amendments were also introduced to the Civil, Commercial and Criminal Procedural Codes.

Under the reformed judicial system, there is the constitutional court and a system of general jurisdiction courts based on the principles of territoriality, specialization and instances. The currently effective, unified system of general jurisdiction courts is as follows:

1. Local courts of first instance (regional, city, inter-regional, etc.);

2. Appellate courts which may consider civil, criminal, commercial and administrative cases. Commercial appeals are considered by commercial appellate courts created in appellate circuits pursuant to presidential decrees;

3. Highest specialized courts (cassation courts); and

4. All of the above are subordinate to the Supreme Court, which is the highest judiciary authority in the system of general jurisdiction courts.

A major novelty in this hierarchy is the introduction of specialized courts, which consider matters in specialized fields (i.e., civil, criminal, commercial, administrative, etc.). Administrative courts and courts that review specific categories of cases (such as land, family, tax and intellectual property matters, among others) may be established in the judicial system. As a result of the reclassification, commercial courts (formerly known as arbitration courts) have also been subordinated to the Supreme Court, subjecting their decisions to reconsideration by the Supreme Court as is the case with any other court of general jurisdiction. Local commercial courts are located in the Autonomous Republic of Crimea, regions and the cities of Kiev and Sevastopol.

All foreign investors, as well as Ukrainian resident companies (such as joint ventures and wholly-owned foreign subsidiaries), have the right to submit their disputes with other Ukrainian entities to commercial courts. In fact, unless a provision in an international agreement specifically defers arbitration to take place elsewhere (e.g., the Ukrainian Chamber of Commerce and Industry), then national commercial courts have jurisdiction. While many foreigners may be skeptical of their efficiency and fairness, both the Ukrainian Chamber of Commerce and Industry and the national commercial courts are surprisingly good choices of forum because they are comparatively inexpensive and efficient, handling many international cases per year.

Although impartiality and predictability are not the strongest features of Ukrainian judicial system, the local commercial courts can be occasionally fair, as demonstrated by various rulings. For instance, a German company "Vero Handels GmbH" applied to the then High Court of Arbitration to settle its dispute with the Ukrainian joint venture "Minolta Trading." In its complaint, Vero Handels alleged that Minolta Trading failed to pay 68,680 US Dollars, due after Vero Handels' delivery of goods. In the course of the proceedings, the High Court of Arbitration determined that the joint venture underwent reorganization during the time of payment by separating into two companies. One of the resulting companies, "Ukrinvaluttorg," was ultimately held liable for payment. The Highest Commercial Court

of Ukraine is the highest body for resolving economic disputes. The Highest Commercial Court of Ukraine supervises the lower courts' judgments and exercises control over their activities. The Highest Commercial Court of Ukraine is also responsible for the preparation and selection of candidates for judgeships, the improvement of the qualification of the commercial courts' employees, among other functions.

In the past, submitting a case to arbitration required the plaintiff to undergo a fairly simple administrative or so-called "pre-trial" dispute resolution procedure. In fact, this "pre-trial" procedure was mandatory for all disputes considered by arbitration courts. Today, as a result of changes to the Commercial Procedural Code, the unreasonably long and highly bureaucratic "pre-trial" procedure is strictly voluntary in all cases (i.e., only if the parties to a dispute previously agreed to apply the "pre-trial" procedure).

Under the "pre-trial" procedure, the plaintiff must first send a written letter, which also serves as a complaint, by confirmed or registered mail, return receipt requested, to the respondent. According to the Commercial Procedural Code, this letter must contain information on the plaintiff, the grounds for the complaint, confirmation of the circumstances under which the complaint arose, the demands of the plaintiff, the amount in controversy, various documents which confirm the complaint, among others.

The respondent then has one month to consider the letter (complaint) from the day it is actually received, which period can be suspended if any necessary supporting documents are absent from the letter. In case the parties agreed to review any issues (for instance, review of defective goods by the manufacturer) the resulting complaints may be further considered over a two-month period. The respondent must provide a written answer regarding its consideration of the complaint. The response must indicate the full information concerning the respondent, the acceptance or rejection of the plaintiff's demands, any necessary documents proving the respondent's position, etc.

Further, if the respondent admits to allegations contained in the letter/complaint, it must indicate the amount of the claim it is prepared to repay. If such admission (together with the transferred amount) is absent, the plaintiff may appeal to the respondent's bank seeking a so-called "indisputable debit" of the relevant funds from the respondent's account.

If the respondent's response calls for dispute resolution, the plaintiff may initiate proceedings in a commercial court at the location of the party at fault or in an ad-hoc (arbitration) court. One party may also propose to introduce amendments or terminate the commercial agreement in question. In this case, such party must send to the other party a proposition, which must be answered by the recipient within 20 days. If the parties do not come to an agreement regarding the proposed amendments or termination, only then may the claim be submitted to a commercial court.

As a side matter, foreign investors should note that unpredictable financial issues will most certainly arise unless they are specifically addressed in the claim. Thus, the claim should state both the amount in controversy and the currency of payment. For instance, if foreign currency is involved in a given transaction, the complaint must state its equivalent at the official National Bank exchange rate as of the date of submission of the application. Further, the complaining party should specifically seek remuneration in foreign currency in order to avoid problems associated with repatriation under currency regulations and the risk of loss due to hyper-inflation if forced to accept the award in Hryvnia with a view to subsequently convert it into foreign currency for ultimate transfer abroad.

Upon receiving the claim, the judge of the commercial court will decide whether to proceed with the case. Generally, disputes under commercial agreements must be considered by the commercial court at the place of the party which is obliged to perform certain actions in favor of the other party under the underlying commercial agreement (e.g., transfer property, perform works, provide services, make payments, etc.) or at the respondent's place of location in case of a demand to perform obligations set forth in a commercial agreement. The claim must contain detailed information about the parties, the amount of the claim, the circumstances surrounding the claim, "pre-trial" dispute resolution (if applicable), security measures, etc.

If the commercial court has jurisdiction and decides to hear the claim, the plaintiff must send copies of the claim and all supporting documents to the respondent(s) and all interested

third parties. This is especially important in bankruptcy cases, as the court may refuse to hear the claim if the plaintiff is unable to find all interested third party creditors. The plaintiff also retains this obligation even if the commercial court calls other respondents to participate in the proceedings.

The respondent may either send a response to the claim and/or submit a counterclaim after receiving a copy thereof. A response must be sent to the commercial court with a copy to all other participants in the proceedings. If a response is signed by an authorized representative, then the power of attorney or other document evidencing the representative's authority must be sent along with the response. Counterclaims must be jointly considered and directly connected with the plaintiff's initial claim.

In preparation for the case consideration, the court will determine whether other respondents should be included in the court hearing or whether the respondent should be replaced by another respondent. The judge will also call the representatives of the parties to the court, if possible, to ascertain the facts of the case and the need for additional case materials, documents, evidence, etc. At this point, the judge may also require the parties to take certain actions, such as verify settlements, review evidence or appoint court expert examinations. The judge will also review the written and oral evidence of the parties, hear explanations of the case facts, resolve to apply security measures and take any other actions required for the correct, timely and fair consideration of the matter.

The judge may decide, either at its own initiative or based on the plaintiff's petition, that security measures are indeed necessary at any stage of the case. These security measures may include the arrest of property or cash funds, a ban on certain actions by the respondent or third parties, and a suspension of collection actions or property arrest. Note that security measures may not include a ban on convening a general meeting of shareholders and its decisions, a ban on participation of shareholders in a general meeting of shareholders, a ban on determining the legality of a general shareholders meeting, etc.

In most cases, the commercial court must resolve disputes within two (2) months from the date of receiving a claim, unless both sides ask for an extension. An extension, however, may only be granted for a further fifteen days. During the two-month term, the judge may determine the need to set up video

conferencing to resolve the matter, to suspend the consideration for a certain amount of time, to terminate the proceedings if a settlement agreement is reached by the parties, etc. In the end, the commercial proceeding results in a written decision and, if applicable, an order to execute such decision. For example, the court may recognize an agreement to be fully or partially invalid, to decrease the penalties and fines under an agreement, to delay the execution of the decision, etc.

In contrast to the finality of international arbitration, any litigant can appeal the final decision of a Ukrainian national commercial court within ten (10) days from the date of a decision. Appeals are submitted via the commercial court that issued the final decision. If the parties to the dispute are not satisfied with the decision at the appellate level, they may further appeal the decision to the Highest Commercial Court, whose decision may only finally be appealed to the Supreme Court.

III. RECOGNITION AND ENFORCEMENT OF FOREIGN COURT AWARDS

On January 15, 2002, foreign investors were provided with another option for settling any disputes with their Ukrainian counterparts with the coming into effect of Law No. 2860-III "On the Recognition and Enforcement of Foreign Court Decisions in Ukraine," dated November 29, 2001. However, this law subsequently lost force on September 29, 2005, after its provisions were superceded by the Civil Procedure Code of Ukraine, which came into effect on September 1, 2005. Law No. 2860 was the first attempt to solve the common problem in Ukraine when foreign investors (or other holders of valid foreign judgments) would have to go through the lengthy process of obtaining a foreign judgment in their favor only to find that enforcement of such judgment was impossible in Ukraine.

Section VIII of the Civil Procedure Code of Ukraine (No. 1618-IV, dated March 18, 2004, entitled "On Recognition and Enforcement of Foreign Court Judgments in Ukraine") continued the spirit of Law No. 2860 and was further clarified and strengthened by numerous amendments in 2010 and 2011. The Civil Procedure Code broadly encompasses the decisions of most foreign courts involving civil and commercial matters. The Code also applies to the decisions of foreign and international arbitration courts and acts of other bodies of foreign governments empowered to consider civil and commercial matters.

Importantly, the Civil Procedure Code applies to the foreign court judgments only if they have come into force and are subject to mandatory enforcement on the territory of Ukraine in accordance with international agreements to which Ukraine is a party. Conversely, if a judgment is made by a foreign court in a country without an international agreement with Ukraine, such judgment may only be subject to mandatory enforcement based on the principle of reciprocity. In most cases, reciprocity is presumed to exist unless otherwise proven.

With reference to the statute of limitations, a foreign court judgment may be presented for mandatory enforcement in Ukraine within three years from the date when it came into legal force. There is an exception for foreign court judgments that call for the recovery

of periodical payments, which may be presented for mandatory enforcement during the entire term for collecting indebtedness that arose over the last three years.

In general, the court at the place of residence or location of the debtor considers requests for the mandatory enforcement of a foreign court judgment in Ukraine. If the place of residence or location of the debtor is unknown, the issue will be considered by the Ukrainian court where the debtor's property is located.

There are two methods for submitting a petition for the mandatory enforcement of a foreign court judgment in Ukraine. The first method is the direct submission of the petition by the judgment creditor or its representative or by another party permitted under an international agreement. The second method is submission via a state authority when an international agreement calls for submission only via a particular state authority.
A petition for the mandatory enforcement of a foreign court judgment must be submitted in writing and contain the name and residence/location of the applicant, the name and residence/location of the debtor or the debtor's property, and the grounds for submission. The foreign judgment holder may also request the court to take measures to secure the claim, and the court may apply such measures at any stage of the consideration of a petition if the failure to take measures will complicate enforcement of the judgment or render it impossible.

Unless an international agreement states otherwise, the foreign judgment holder must submit a petition to enforce the foreign judgment, along with the following documents:

a) a duly certified copy of the foreign court judgment;

b) an official document confirming that the foreign court decision has come into legal force (if this is not indicated in the decision itself);

c) a document certifying that an absent party (defendant) was timely and duly notified of the time and place of the foreign court proceeding;

d) the document that determines in which part or from what time the foreign court's decision is subject to enforcement (if not earlier enforced);

e) a document certifying the authority of the representative of the foreign judgment holder (if the petition is submitted by a representative); and

f) a duly certified translation of the above documents in the Ukrainian language or other language provided by a relevant international agreement.

Procedurally, the court must inform the debtor in writing regarding the receipt of a petition to enforce a foreign court judgment within a five-day term. In its turn, the debtor has a one-month term to respond with any objections. After the one-month term has passed, the court will issue a decision on the time and place of the court's consideration of the petition and inform the parties in writing no later than ten days prior to consideration. The parties may request a rescheduling of the court consideration for valid reasons. The court's decision to satisfy or refuse the petition to enforce a foreign court judgment will be sent to the parties within a three-day term from the date of its issuance.

If security measures are determined necessary by the court based on the judgment holder's request, the court may order individually or a combination of such measures as:

a) the arrest of property or cash funds owned and possessed by the debtor (or other party, if applicable);

b) a ban on undertaking certain actions;
c) an obligation to undertake certain actions;

d) a ban on other parties from making payments or transferring property to the debtor or performing other obligations in relation to the debtor;

e) the transfer of disputed amounts or property for custody to other parties.

In case the foreign court judgment reflects a debt amount in foreign currency, the court will determine the amount in Ukrainian hryvnias pursuant to the exchange rate of the National Bank of Ukraine on the date of the issuance of the court's decision to enforce the foreign court judgment. Alternatively, the court may require compensation in foreign currency as

indicated in the foreign court judgment if the debt obligations arose and should have been performed in such foreign currency pursuant to the requirements of Ukrainian legislation (e.g., a foreign economic agreement between an resident and a non-resident).

Should the court resolve that the foreign court judgment is subject to mandatory enforcement in Ukraine, the court will send an executive order to the state enforcement service on the basis of the foreign court judgment and its decision to grant permission for mandatory enforcement. The state enforcement service is part of the Ukrainian Ministry of Justice with subdivisions in all regional centers, cities, city districts, etc.

The enforcement procedure is described in detail below.

IV. ARBITRATION OPTIONS FOR FOREIGN INVESTORS

Recognizing that Ukraine is a young nation without a long history of rendering and enforcing international commercial arbitral awards involving foreign investors, Western parties naturally prefer dispute resolution to take place in an impartial third country, such as the United Kingdom or Switzerland. Considering the current Ukrainian economic climate, however, decisions concerning the place of arbitration must be made in light of each particular transaction.

For instance, a foreign arbitration provision probably would not serve its intended purpose in a transaction where a private Ukrainian company or an individual cannot afford the arbitration fees and costs. Similarly, a foreign partner in a Ukrainian joint venture that has minimal capitalization or comparatively small project may not seek to effectuate such foreign arbitration provision, particularly if the international arbitration took place in a third (and rather expensive) country. Linguistic restrictions, visa requirements and extensive document production may also have an impact on the choice of forum for arbitration.

Ukrainian commercial law is quite liberal where foreign investors are concerned. For instance, as an alternative to national commercial courts, parties engaged in so-called "foreign economic activities" have the option of submitting their disputes for resolution to any international arbitration forum, applying any substantive law the parties chose in their agreements, except in cases when disputes arise between the parties to a Ukrainian-based joint venture. In cases of joint ventures, the law of the country of registration of the joint venture governs disputes arising between the parties, regardless of the desire of the parties to submit disputes to another arbitration court.

Under Ukrainian laws, the parties to a foreign economic agreement may provide for arbitration to take place in any forum and in accordance with established international rules, including the United Nations Commission on International Trade Law ("UNCITRAL"), the International Convention on Settlement of Investment Disputes ("ICSID"), or the

Rules of the Court of Arbitration of the International Chamber of Commerce ("ICC"). This effectively results in two choices: holding international arbitration in Ukraine or anywhere else in the world. Below we discuss the first option in greater detail.

A. International Arbitration in Ukraine

In 1991, the Parliament created the Ukrainian International Commercial Arbitration Court (the "Court") at the Ukrainian Chamber of Commerce and Industry (the "Chamber"). In its usual less-than-swift response to changing circumstances, on February 24, 1994, the Parliament finally adopted the Law "On International Commercial Arbitration," which permits litigation, either on the basis of a court order or the agreement of the parties, by an arbitrator or panel of arbitrators approved by the Court. The above law incidentally also acknowledged the "Maritime Arbitration Commission" of the Ukrainian Chamber of Commerce and Industry as a forum for numerous maritime disputes (most of which took place overseas anyway).

The Court is an independent arbitral tribunal engaged in the resolution of economic disputes involving foreign parties. The Chamber uses UNCITRAL-based rules as the Court's procedural rules to be applied to international arbitration cases. The Chamber selects the Court's Presiding Officers and prepares a list of recommended arbitrators that are "independent and impartial in fulfilling their duties" in accordance with Ukrainian legislation. In contrast to the national arbitration system, the Court currently handles numerous international arbitration cases a year at a surprisingly efficient rate. In fact, the Chamber's reputation has grown increasingly over the past 18 years and many law firms recommend choosing arbitration through the Chamber.

In order for the Court to hear a case, the parties should specifically provide an arbitration clause to that effect at the time they negotiate and document their agreement. Such clauses must be evidenced in writing and can be part of an agreement or signed as a separate agreement.

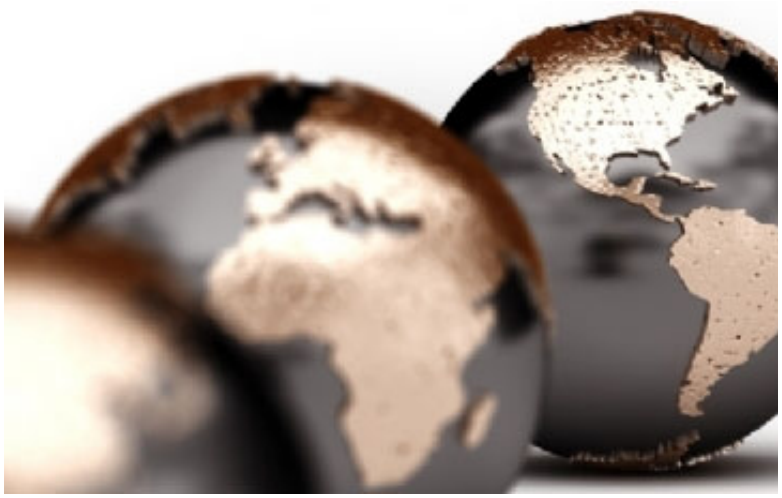
To avoid additional expenses in the future, and to provide greater predictability, the arbitration clause should declare the substantive law regulating the matter, the place of arbitration, the number of arbitrators (1 or 3), the language of the proceedings, translation costs, etc. In fact, the Court has published a recommended text for arbitration clauses in cross-border agreements.

To initiate arbitration proceedings, the plaintiff must submit to the Court its complaint and various documents supporting the complaint (with copies of such documents for the respondent). The signed claim must include various statements, including the circumstances on which the plaintiff bases its claim, evidence that supports the claim, well-grounded calculations of the amount in controversy, the applicable legislation upon which the plaintiff bases its claim, the list of documents and any other evidence attached to the claim, etc. According to the rules of the Court if the claim is improperly submitted, the plaintiff has thirty (30) days to rectify it or such claim may be rejected. Based upon the above documents, the Court decides whether sufficient reasons exist to proceed with the case and issues its decision whether to proceed within ten (10) days from receiving the complaint.

At that time, the Court's secretary will send to the plaintiff a list of recommended arbitrators and an invoice for the arbitration fees and costs, payable to the Chamber (the "Information"). At the same time, the Court's secretary will send to the respondent a copy of the complaint, the attached documents and the list of recommended arbitrators and administrative (arbitration) costs.

In addition to selecting arbitrator(s), the plaintiff and the respondent have other responsibilities. For instance, the plaintiff must pay the arbitration costs within 30 days from the date of receipt of the Information. As should be expected, failure to pay the arbitration fees is grounds for an outright dismissal of the case.

On the other hand, once a claim has been filed, the respondent must submit to the arbitration court a written response to the claim, all documents supporting any objections to the claim and a statement of offsets or counter-claims (if applicable) within thirty (30) days after receipt of the copy of the plaintiff's complaint. Copies of the respondent's explanations must also be sent to the plaintiff. At the respondent's request, the 30-day period may be extended, but for no more than one (1) month. Failure to submit documents or to participate in the arbitration proceedings may result in continuation of the proceedings in the respondent's absence, which usually concludes in a default judgment.



Unless otherwise provided in the parties' agreement, under the Court's rules (which were collated into the Law "On International Commercial Arbitration"), the parties must agree on the number of arbitrators (1 or 3). If no such agreement exists, the arbitration court will require the selection of 3 arbitrators by default. A single arbitrator may be selected by mutual agreement between the parties or, alternatively, by the President of the Court at the parties' request. In the case of three arbitrators, each of the parties will nominate one arbitrator and these two arbitrators will in turn appoint a chairman of the arbitration tribunal.

Failure by either the plaintiff or the respondent to appoint an arbitrator in a timely fashion will result in the Court appointing an arbitrator or arbitrators on their behalf. The parties can challenge the appointment on only two grounds: (1) circumstances exist which cast doubts about such arbitrator's independence and impartiality; or (2) the arbitrator's lack of necessary qualifications, as specified by the parties. If the challenged arbitrator continues to participate in the arbitration for any reason, an appeal may be brought to the Presidium of the Court, and the challenged arbitrator will most likely be substituted. A new arbitrator is appointed by the same procedure as the substituted arbitrator.

Assuming the arbitration selection proceeds smoothly, the Court's secretary will collect all documents and notify the parties by providing the time and place of arbitration and the arbitral panel selection at least thirty (30) days prior to the first sitting. This timeframe, however, may be abbreviated or extended by an agreement between the parties. Unfortunately, the Court's rules concerning discovery, evidence and hearings are not as extensive or as detailed as those of the UNCITRAL Rules.

During the actual arbitration process, the arbitration tribunal will apply any language and substantive law selected by the parties to the agreement, as well as the trade customs relevant to the particular case. Provided such conditions are met, the arbitration tribunal may decide to examine the case verbally (i.e., presentation of oral evidence and discussions) or to examine the case based solely on written documents and other printed materials. Note that the UNCITRAL Rules are substantially the same, except Article 15.2 of the UNCITRAL Rules specifically gives the parties a right to hold hearings, witness presentations or oral arguments at any stage of the arbitral proceedings.

Like the UNCITRAL Rules, awards or rulings made by a three-person arbitration tribunal are made by a majority vote, unless the parties specifically agreed otherwise. The chairman of the arbitration tribunal, however, may resolve certain procedural issues if such individual is empowered so by the parties or, alternatively, the members of the arbitration tribunal. Proceedings should not exceed six (6) months from the date the Court receives the plaintiff's complaint or arbitration fees; however, this term may be extended for reasonable cause as demonstrated by the arbitration tribunal or one of the parties. The arbitration proceeding is completed after the arbitration tribunal has delivered its final award or ruling.

The arbitration decision is announced at an arbitral sitting after the proceedings are completed. The final arbitration ruling must be in writing and signed by the arbitrator(s). The ruling must state the specific reasons for the final decision, unless the parties agree ahead of its rendering that such reasons should not be disclosed. The Court sends a copy of the ruling to each of the parties within fifteen (15) days from the date of issuing the ruling, along with the written conclusions of the experts and other documents or evidence upon which the arbitration tribunal based its award.

As in the UNCITRAL Rules, within thirty (30) days of the ruling, any of the parties may request the Court to rectify an administrative error, such as mathematical miscalculations or misprints, or request a clarification of any part of the ruling. If the arbitration tribunal finds the request justified, it will rectify the ruling or award or, alternatively, give the necessary explanations within thirty (30) days from receiving the request.

Any party may submit a request to the arbitration court to hand down additional decisions on claims which were submitted during the arbitration proceedings but not included in the final decision. Such requests must be made within thirty (30) days from the day of the arbitration court's initial decision. Thereafter, if the arbitration court finds grounds for making such additional decision(s), it must do so within sixty (60) days.

Significantly, the Court's awards are final, and must be carried out by the parties within the period indicated by the Court. Awards or rulings not carried out voluntarily are enforced in accordance with the procedure for mandatory enforcement of national and foreign court decisions as described below.

B. International Arbitration in a Foreign Forum

As mentioned earlier, foreign parties may provide in their agreements with Ukrainian entities for the arbitration process to take place in any third country. Unfortunately, due to strict visa requirements and high arbitration costs, many Ukrainian parties are unwilling or unable to attend arbitration hearings in foreign forums. This absence may result in significant impediments in subsequently enforcing the foreign arbitration court's award in Ukraine for many reasons. For instance, the respondent may assert before the Ukrainian court that it was not properly served notice during the arbitration process or was not provided with a fair opportunity to participate in the arbitration hearings. For more details, please see the discussion regarding enforcement of foreign arbitration awards below.

V. ENFORCEMENT OF FOREIGN ARBITRATION AWARDS

A. Applicable Ukrainian and International Treaties

Article 390 of the Code of Civil Procedure of Ukraine provides that the procedure for enforcement in Ukraine of foreign court judgments and foreign arbitration awards is determined by the corresponding international treaties of Ukraine and the laws of Ukraine. In the absence of an international treaty, such judgments or awards may be enforced on the principle of reciprocity.

The succession of Ukraine in respect of the rights and duties of the USSR under its various treaties is governed by the Law of Ukraine "On Legal Succession of Ukraine." Under Article 7 of this Law, Ukraine became a legal successor under any international agreements to which the USSR was a party so long as these agreements were not inconsistent with the Ukrainian Constitution and interests of Ukraine. Further, Article 6 of the Law provides for succession of Ukraine under any agreements signed by the Ukrainian Soviet Socialist Republic prior to proclamation of independence.

On August 10, 1960, both the USSR and Ukraine, in a separate capacity, became a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards (subject to the proviso that awards issuing from a state not a party would be enforced only in the event of reciprocity), and on September 17, 1966, to the 1954 Hague Convention on Civil Procedure. Further, the Ukrainian Soviet Socialist Republic became a party on January 25, 1964, to the 1961 European Convention on International Commercial Arbitration.

The USSR also concluded bilateral agreements providing for the recognition and enforcement of arbitration awards with Afghanistan (1974); Albania (1958); Austria (1955); Bulgaria (1948); China (1958); Cyprus (1976); Czechoslovakia (1947); Democratic People's Republic of Korea (1960); Federal Republic of Germany (1958); Finland (1947); Hungary (1947); Iraq (1973); Italy (1948); Japan (1957); Laos (1976); Mongolia (1957); Norway (1925); Poland (1945); Rumania (1947); Sweden (1940); Switzerland (1948); Syria (1965); Vietnam (1958); and Yugoslavia (1940).

With reference to the enforcement of foreign court judgments, the only treaties concluded by the USSR were (i) those concluded with the Communist states of Eastern Europe and Asia; (ii) an agreement on assistance and service of court documents and letters rogatory with the Federal Republic of Germany; (iii) a treaty on judicial assistance and extradition with Iraq; and (iv) treaties on judicial assistance with Algeria, Greece, Cyprus and Italy.

In addition to the above-mentioned multi- and bilateral agreements of the USSR, on May 16, 1995, Ukraine ratified the Stockholm Convention on Reconciliation and Arbitration within the Council on Security and Cooperation in Europe.

After 1991, Ukraine concluded a number of bilateral agreements providing for the recognition and enforcement of foreign judgments and arbitration awards which can be classified into two groups:

(i) agreements on providing legal assistance in civil, criminal, family, etc. cases entered into between Ukraine and Azerbaijan (1993); Russia (1993); Kirgisia (1993); China (1993); Belarus (1993); Lithuania (1993); Moldavia (1994); Poland (1994; 1998); Estonia (1995); Georgia (1995); Latvia (1995); Mongolia (1995); Greece (1996); Turkmenistan (1996); and Turkey (2000); and

(ii) agreements on mutual encouragement of investments which provide for mutual recognition and enforcement of court/arbitration judgments as far as investments are concerned. Such agreements were concluded with Denmark (1992); Egypt (1992); Poland (1993); Germany (1993); United Kingdom (1993); Vietnam (1994); Armenia (1994); Lithuania (1994); U.S.A. (1994); Slovak Republic (1994); the Netherlands (1994); Argentina (1995); Bulgaria (1995); Estonia (1995); France (1995); Georgia (1995);Canada (1995); Kazakhstan (1995); Korea (1995); Czech Republic (1995); Sweden (1995); Austria (1996); Benelux (1996); Belarus (1996); Lebanon (1996); Chile (1996); Cuba (1996); Greece (1996); Hungary (1996); Israel (1996); Italy (1996); Moldavia (1996); Switzerland (1996); Turkey (1996); Azerbaijan (1997); Croatia (1997); Latvia (1997); Indonesia (1997); Iran (1997); Spain (1998); Macedonia (1998).

In line with the aforementioned multilateral and bilateral agreements, Ukraine signed a number of multilateral agreements providing for the enforcement mechanism within the Commonwealth of Independent States. Among them is the Agreement on the Formation of the Commonwealth of Independent States, which was ratified by Ukrainian Parliament on December 10, 1991. Article 12 of this Agreement provides that the High Contracting parties will guarantee, in accordance with their national legislation, performance of international obligations, which are binding on them under treaties of the former USSR.

Ukraine is also a signatory to the 1992 Agreement on Procedure of Settling Disputes with Regard to Carrying out Business Activities (also known as the Kiev Agreement of March 20, 1992). On November 10, 1994, Ukraine became a party to the 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (the Minsk Convention). These two documents provide the enforcement procedure of foreign judgments and arbitral awards between the CIS member states that are parties to the Convention.

Finally, in line with Ukraine's goal of shoring up its national legislation with respect to foreign investment, the enforcement of foreign judgments is touched upon in the Civil Procedure Code of Ukraine, Articles 35 and 36 of the Law of Ukraine No. 4002-12 "On International Commercial Arbitration, dated February 24, 1994 and in the Law of Ukraine No. 606-XIV "On Enforcement Procedure," dated April 21, 1999. The Ukrainian Parliament also passed Law No. 1701-IV "On Arbitration Courts," dated May 11, 2004 (as lastly amended on April 7, 2011, which covers arbitration proceedings within Ukraine, but does not cover international commercial arbitration).

As a result of the above treaties, conventions and laws, Ukrainian courts recognize and enforce judgments only of courts of foreign nations that have concluded international agreements with Ukraine regarding recognition and enforcement of such judgments. Foreign money judgments may also be enforced on the principle of reciprocity if an international agreement is not available.

The 1958 New York Convention, to which Ukraine is a signatory, requires courts of member states to recognize that written arbitration agreements take precedence over normal rules of jurisdiction, and to enforce arbitral awards rendered abroad. Moreover, according to the New York Convention, arbitral awards are enforced according to the procedure provided by

legislation of the country where the enforcement is requested. In Ukraine, foreign arbitration decisions are enforced according to the procedure described above in accordance with the Civil Procedure Code of Ukraine (see discussion regarding executive enforcement procedure below).

B. Related Ukrainian Case Law

While the decisions of arbitration cases involving foreign money judgments are not publicly published, the Judicial Collegium on Civil Matters of the Supreme Court of Ukraine has released several examples of efforts to enforce foreign money judgments in Ukraine. According to the decision of the International Commercial Arbitration Court of the Chamber of Commerce and Trade of the Russian Federation, the Institute of Ethereal Oil and Medicinal Plants (hereinafter the "Institute") was obliged to pay a judgment of 663,252 USD to "Akvacoop" (Czech Republic) and 3,324 USD in compensation to "Akvacoop" for arbitration expenses. The Supreme Court of the Autonomous Republic of Crimea decided to enforce the petition of "Akvacoop" regarding recognition and enforcement of the decision of the International Commercial Arbitration Court of the Chamber of Commerce and Trade of the Russian Federation on the territory of Ukraine.

The Institute appealed the decision of the Supreme Court of the Autonomous Republic of Crimea with the Supreme Court of Ukraine. Using the arguments that the International Commercial Arbitration Court of the Chamber of Commerce and Trade of the Russian Federation lacked jurisdiction and that notice on the forum and time of consideration of the case was improperly served, the Appellant requested to cancel the decision of the Supreme Court of the Autonomous Republic of Crimea as unlawful. In the end result, the Judicial Collegium on Civil Matters of the Supreme Court of Ukraine upheld the Institute's appeal.

Another example involved a petition to the Kiev City Court, which was submitted by a company called "Carlsbad Enterprises Limited," requesting compulsory enforcement of a decision of the International Commercial Arbitration Court of the Chamber of Trade and Industry of Ukraine, which allowed the collection of a debt incurred by the Public Bureau (Embassy) of the Great Socialist Libyan Arab Republic in the amount of 779,341.82 USD.

The Kiev City Court refused to consideration the petition of "Carlsbad Enterprises Limited," forcing them to appeal to the Supreme Court of Ukraine to cancel the Kiev City Court's decision and review the case matter in hand. The Judicial Collegium on Civil Matters of the

Supreme Court of Ukraine declined to hear the appeal based on the following grounds:

"According to Article 425 of the [former] Civil Procedure Code of Ukraine, the submission of a claim against a foreign government, its enforcement and the levying of execution on the property of such government, which is located on the territory of Ukraine, may be permitted only with the consent of the competent bodies of the corresponding government (sovereign immunity) In the decision of the International Commercial Arbitration Court of the Chamber of Trade and Industry, the subject matter of the case is the levying of execution on the property of a foreign government (the Great Socialist Libyan Arab Republic), represented by its Embassy. Therefore, the collection of the debt could only be enforced according to the norms of Article 425 of the [former] Civil Procedure Code of Ukraine and the relevant international agreement."

Based on this reasoning the Judicial Collegium on Civil Matters of the Supreme Court of Ukraine upheld the decision of the Kiev City Court

VI. POSSIBLE DEFENCES TO ENFORCEMENT OF FOREIGN ARBITRATION AWARDS

According to Article 35 of the Law of Ukraine "On International Commercial Arbitration," an arbitration award, regardless of the state of origin, is recognized as mandatory (binding) and, after submission of a written petition to a competent court, is subject to enforcement.

Note, however, that the respondent has several viable defences, any one of which would emasculate all efforts to enforce foreign arbitration court's award in Ukraine. Specifically, the respondent has the right to appeal to the competent court with a request to refuse recognition and enforcement of a decision of a foreign court. In fact, pursuant to Article 5, paragraph 1 of the New York Convention and Article 36 of the Law of Ukraine "On International Commercial Arbitration," the recognition and enforcement of an arbitration decision may be denied at the request of the respondent if it provides evidence that:

a) the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law which the parties chose to govern said agreement or, in the absence of such agreement, under the law of the country where the award was made; or

b) the party against whom the award was issued was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

c) the award deals with a dispute not falling within the arbitration agreement or clause, or it contains decisions on matters beyond the scope of the arbitration agreement or clause. However, if decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

d) the composition of the arbitration court or the arbitration procedure did not correspond to the agreement of the parties, or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place; or

e) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

As Ukraine is also a signatory to the 1961 European Convention on International

Commercial Arbitration in Geneva, during the consideration of a petition on the recognition and enforcement of decisions of international commercial arbitration courts, it is important to take into account the provisions of Article IX of the said Convention regarding the recognition of arbitral decisions as invalid. Specifically, paragraph 2 provides that in the relations between states, which are signatories to the European Convention and simultaneously signatories to the 1958 New York Convention, paragraph 1 of Article IX limits the application of Article 5, paragraph 1(e) (see above) of the New York Convention in certain cases.

Further, an arbitral decision may be declined for recognition and enforcement if the competent authority (in Ukraine, the competent court) of the country in which the relevant request for recognition and enforcement determines the following:

a) The object of the dispute cannot be the subject of arbitration under the law of such country; or

b) The recognition and enforcement of such decision contradicts such country's public order.

Thus, obtaining a foreign arbitration court's award is only half of the battle. Enforcing the judgment is the other half, which in Ukraine is often far more difficult to accomplish than obtaining the initial decision.

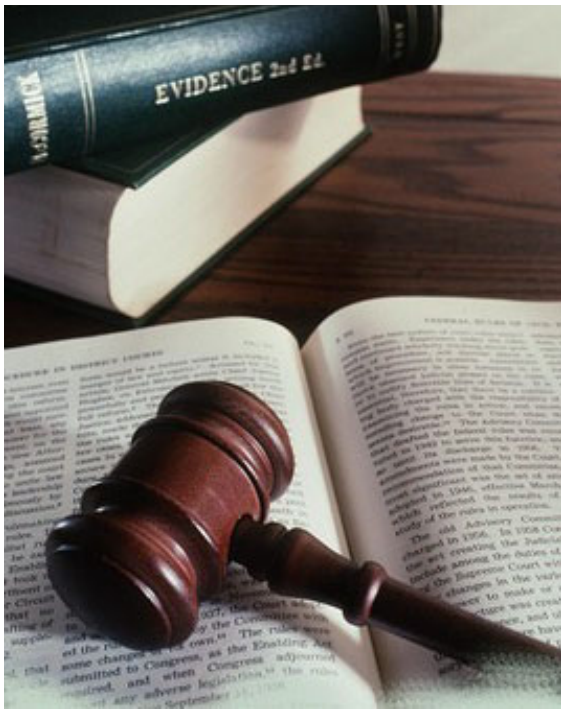
Below we discuss the enforcement procedure for national and foreign court awards as well as for international arbitration awards.

VII. EXECUTIVE ENFORCEMENT PROCEDURE

In order to initiate the executive enforcement procedure, the judgment holder must present to the state enforcement service the enforcement order of the commercial court along with an application and, if applicable, the court decision to permit enforcement of a foreign court decision or the arbitration court decision. In the case of arbitration, the judgment holder must present the arbitration court's decision and evidence that the said arbitration decision was not voluntarily and timely performed by the respondent.

The judgment holder has the right to include in the application information on the debtor's bank account(s), place of employment or receipt of other income, the location of property, etc. The judgment holder also has the right to request the state enforcement service to place an arrest on the debtor's property and cash funds (Ukrainian securities) and to prohibit their alienation. The judgment holder should also submit the documents evidencing the court's decision to confiscate property (or the absence of property) and/or the decision to apply security measures (if applicable).

Generally, the enforcement procedure is conducted at the place of location (residence, sojourn, work) of the debtor or the location of the debtor's property. In case the debtor is obliged by the court decision to take certain actions, the place of enforcement will be the place where such actions must take place. The state enforcement service, if necessary, may also conduct an investigation regarding the existence and availability of the debtor's property or work at places other than the debtor's location. In such case, the state enforcement service must act within ten working days from the receipt of instructions to conduct the investigation. Any property uncovered by the state enforcement service will be set forth in a description and subject to arrest.



An enforcement order must be presented to the state enforcement service within one year. A judgment holder, who failed to present an enforcement order within a one-year term, may petition the issuing court or the court at the place of enforcement to renew the one-year term. In such case, the court must consider the petition within a ten-day period, unless otherwise provided by law. Obviously, the judgment holder must provide a valid reason for missing the deadline for presenting the enforcement order to the state enforcement service.

Once an enforcement order is presented within the prescribed term, in the proper manner and to the correct state enforcement agency, a state enforcement representative must issue an order to initiate the enforcement procedure within three working days. The said order must indicate the requirement that the debtor voluntarily perform the obligation within seven days from the date of the order. The order must also contain a warning that unless the debtor provides documentary confirmation to the contrary, the foreign court decision will be enforced in a compulsory manner with the collection of the enforcement duties and expenses connected with the organization and conducting of the enforcement actions.

The judgment holder may also request the arrest of property and cash funds of the debtor simultaneously with the opening of the enforcement procedure. The voluntary seven-day term will not be applied if the enforcement order calls for the confiscation of property, the collection of periodical payments or security measures or if the foreign court decision is subject to immediate enforcement. A copy of the order to initiate an enforcement procedure will be sent to the judgment holder and the debtor no later than the next working day after it is issued.

There are several reasons why the state enforcement service may refuse to open an enforcement procedure, including untimely presentation of the enforcement order, improper place of its presentation, a court-ordered delay in enforcement, etc. Both a decision to open an enforcement procedure and a decision to refuse to open such procedure may be appealed within a ten-day term.

Should the debtor fail to voluntarily perform its obligations within the established term, the state enforcement service must immediately begin the enforcement procedure on the very next day. In most cases, the state enforcement service will collect the enforcement duty from the debtor which will be equivalent to 10% of the amount owed to the judgment holder or 10% of the value of the property subject to transfer by the debtor to the judgment holder.

The enforcement actions of the state enforcement service must be completed within six months from the opening of the enforcement procedure. In cases when the foreign court decision is of a non-proprietary nature (e.g., compulsory performance of certain acts or refraining from certain

acts by the debtor), the enforcement procedure must be completed within two months. Importantly, the six-month term does not take into account the time necessary to conduct expert conclusions or property appraisals, to prepare technical documentation for the sale of the debtor's property, court-imposed delays or suspensions of the enforcement procedure, etc.

If the debtor voluntarily performs its obligations by repaying the amount due to the judgment holder via the state enforcement service, the cash funds will be divided as follows:

1) In the first priority, the advance deposit paid to the state enforcement service for organizing and conducting the enforcement actions, if paid for applying security measures against the debtor's alienation of property or cash, is returned;

2) In the second priority, the expenses of the state enforcement service, connected with organizing and conducting the enforcement actions and which are not covered by an advance deposit, are compensated. These include expenses for transporting, storing or selling the debtor's property, expenses for hiring experts and appraisers, courier expenses, property search expenses, document preparation expenses, etc.;

3) In the third priority, the judgment holder's claim is satisfied and the enforcement duty is paid (10% of the actual amount collected from the debtor);

4) In the fourth priority, penalties imposed by the state enforcement service are collected.

Any amount left over will be returned to the debtor. However, in case the debtor does not have sufficient funds to cover the indebtedness, the amount actually collected will be divided between the judgment holder and the state enforcement service firstly from secured claims of the judgment holder from the amount of secured property and secondly from all other available amounts.

In the event the debtor fails to voluntarily perform its obligations within the required term, the state enforcement service will levy mandatory execution in the first priority on the debtor's funds in hryvnias and foreign currency and on other valuables, including cash on bank accounts and deposits in banks and other financial institutions and on securities accounts. Any cash uncovered will be confiscated, while the funds and valuables in the

debtor's bank and deposit accounts will be subject to arrest, including any funds deposited to other accounts opened after the arrest of the initially uncovered funds.

For legal entities, this means that the state enforcement service will firstly confiscate any cash funds located in the debtor's cash desk or other safety deposit boxes. The state enforcement service will then look to other funds in banks and other financial institutions, including the debtor's representative offices' or branches' accounts. The state enforcement services has the right to request information about the existence of the debtor's bank and deposit accounts from the tax and other state authorities, companies with the legal obligation to disclose such information and the judgment holder. If the legal entity-debtor fails to perform the foreign court decision and opens additional bank accounts, the state enforcement service will send notice to the law enforcement authorities to initiate criminal proceedings.

In case the debtor has insufficient funds to satisfy the judgment holder's claim, mandatory collection will be levied on the debtor's other property. The debtor has the right to suggest which property should be firstly collected; however, the state enforcement service will make the final decision regarding the order of priority of collection. The amount collected from the debtor must be sufficient to cover the underlying debt, expenses connected with the enforcement procedure, the enforcement duty and any penalties. Importantly, the state enforcement service may attach a debtor's residence and the land thereunder whenever the debt exceeds 10 minimum monthly salaries (approximately 1,400 USD in 2012).

In case the debtor is a legal entity, the state enforcement service has the right to levy collection on its property and the property on the balance sheet of its branches, representative offices and other subdivisions, regardless of who actually uses the property. Upon the arrest of property, property which is not directly used in production (securities, passenger cars, office furniture, finished products, etc.) will be sold in the first order of priority. Thereafter, real estate, machines, equipment, principle assets, raw materials and other materials intended for use in production will be sold.

Any property, which must be sold to cover the debt amount, will be sold at public sales, auctions or on a commission basis. Property must be sold at prices derived from the official appraisal value of such

property. After two months any unsold property will be subject to sale at a discounted price of no less than 30% of the originally appraised value. If the property remains unsold for another month, then the appraisal price may be further decreased by 50%. If the property remains unsold for a yet another month, the state enforcement service will offer to the judgment debtor to keep the property, or the property will be returned to the debtor.

Finally, any pledged property may be subject to mandatory levying of execution if the judgment holder is not the pledgee (mortgagee). This is possible if (i) the pledge right (lien) arose after the Ukrainian court's decision to permit the enforcement of the foreign court decision and (ii) the value of the pledged property exceeds the amount of the debtor's indebtedness before the pledgee (mortgagee).

Overall, Ukrainian legislation has covered many of the gaping holes that existed in foreign court enforcement legislation contained in Ukrainian international agreements. However, the law should not be viewed as an automatic vehicle for foreign investors to quickly line up and obtain judgments against their breaching Ukrainian counterparts. Both (a) a careful review of the various international agreements to which Ukraine is a party and (b) meticulous adherence to a well-structured dispute resolution provision are absolutely mandatory prerequisites to relying on the effective Ukrainian legislation as a guideline to legal enforcement.

VIII. CONCLUSION

Ukraine has recently joined the World Trade Organization, which hopefully means that the practical aspects of enforcing foreign judgments will become more transparent and predictable as time goes by. Until such time, we strongly encourage you to retain experienced professional counsel if you require assistance with potential or existing litigation in Ukraine.

APPENDIX I

LEGISLATIVE PROVISIONS GOVERNING ENFORCEMENT OF FOREIGN JUDGMENTS

A. The Code of Civil Procedure of Ukraine No. 1618-IV, dated March 18, 2004 (as lastly amended on July 5, 2012);

B. The Law of Ukraine No. 1543-12 "On Legal Succession of Ukraine", dated September 12, 1991;

C. The Law of Ukraine No. 4002-XII "On International Commercial Arbitration, dated February 24, 1994 (as further amended);

D. Presidential Order No. 3/95 "On Preparing Draft Intergovernmental Agreements on Legal Relations and Legal Assistance", dated January 4, 1995 (eventually lost force);

E. The Law of Ukraine No. 606-14 "On the Enforcement Procedure," dated April 21, 1999 (as lastly amended on July 5, 2012);

F. The Law of Ukraine No. 2860-14 "On Recognition and Enforcement of Foreign Court Decisions in Ukraine," dated November 29, 2001 (lost force September 29, 2005).

APPENDIX II

LIST OF INTERNATIONAL AGREEMENTS RELEVANT TO ENFORCEMENT OF FOREIGN JUDGMENTS

1. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards;

2. The 1954 Hague Convention on Civil Procedure (the effectiveness of this treaty is unclear following the dissolution of the USSR);

3. The 1961 European Convention on International Commercial Arbitration;

4. The 1995 Stockholm Convention on Reconciliation and Arbitration within the Council on Security and Cooperation in Europe (the Convention has not yet come into effect);

5. The 1992 Agreement on Procedure of Settling Disputes with regard to Carrying on Business Activities;

6. The 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Criminal and Family Cases;

7. Treaties with eight (8) states on legal relations and provision of legal assistance;

8. Treaties with thirty three (33) states on mutual encouragement of investments.

9. Treaties concluded by the USSR with twenty five (25) states providing the enforcement of arbitration awards (the effectiveness of these treaties is unclear following the dissolution of the USSR);

10. Agreements of the USSR providing for the enforcement of court judgments (the effectiveness of these agreements is unclear following the dissolution of the USSR).

Note: information contained herein is provided as general information and should not be relied upon as legal advice.

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