

Why Choose London as Your Arbitration Seat for Your Ukrainian Company?

By Nataliya Yankovska, [Legal Advisor to UBBC](#) and [Associate at Marcus Parker Limited](#)

2 October 2023

Ukraine is experiencing a burgeoning economy, leading to more companies starting up and doing business there. Regardless of whether you are a domestic Ukrainian company or an international company expanding into this region, you must think carefully about how the legal system of the country may affect dispute resolution.

Recent years have seen a growing trend of companies choosing arbitration over traditional litigation since arbitration provides greater confidentiality and control. Ukraine, like many other nations, permits companies to conduct arbitration proceedings in foreign countries, including the United Kingdom.

Choosing the UK, particularly London, as your company's arbitration seat has numerous advantages. However, it is important to carefully consider the legal and logistical implications of this decision before taking any action. If you are considering arbitration abroad as a method of resolving your dispute, here are a few things to consider.

Options for Dispute Resolution in Ukraine

Ukraine offers a few options for resolving disputes, including arbitration, litigation, and mediation. You will need to specify which of these mechanisms you will use in all contracts with your stakeholders, employees, and business partners.

Business disputes in Ukraine are still mostly resolved through traditional court litigation, although arbitration has gained some traction in recent years.

Each of these methods has its own set of benefits and considerations, so we will examine them in more detail below.

Please note that the information provided in this article does not, and is not intended to, constitute legal advice; instead all information, content, and materials cited in this article are for general informational purposes only. It is possible that the information on this website is not the most current legal or other information available. The article contains links to other websites owned by third parties. The links are provided for copyright purposes, to acknowledge the authors of the original articles, and for the convenience of readers, users, or browsers. All third-party websites are accessed at your own risk, and you acknowledge and understand that they may contain terms and privacy policies that are different from those of our site. Such provisions are not within our control, and we disclaim all responsibility for them.

1. *Litigation*^{1, 2, 3}

Ukraine is a civil code jurisdiction. The Ukrainian judicial system is composed of general jurisdiction courts and the Constitutional Court. Courts of general jurisdiction are part of a single court system, which consists of both general and specialised courts. Those courts are all overseen by the Ukrainian Supreme Court.

It is generally accepted that Ukrainian court proceedings are inquisitorial, however there is a clear trend towards the use of an adversarial approach, especially in civil and commercial cases.

Trials in Ukraine typically involve the following stages:

- Judge's opening remarks;
- Initial pleadings outlining the parties' positions;
- Evidence examination;
- Stage of debates in which parties present their full arguments;
- Handing down of a judgement.

2. *Mediation*⁴

Although mediation is a widely used alternative dispute resolution method worldwide, it is not widely used as a substitute for litigation or arbitration in Ukraine.

There is, however, a strong commitment to developing alternative dispute resolution methods, specifically mediation, as part of the reform of the Ukraine justice system. In November 2021, Ukraine adopted the Law of Ukraine "On Mediation" No. 1875-IX, as a first step toward introducing mediation as a voluntary alternative dispute resolution mechanism at the legislative level. The law is based on international mediation standards, such as Directive 2008/52/EC of the European Parliament and of the Council of Europe regarding certain aspects of mediation in civil and commercial matters, UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, among others.

3. Arbitration⁵

Arbitration is a private mechanism where parties submit their dispute to an impartial arbitrator or a panel of arbitrators. Unlike litigation, arbitration takes place outside of the court system, thereby providing both parties with greater confidentiality and flexibility.

In Ukraine, an arbitral award is enforceable if it is issued in a country that has ratified the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The International Commercial Arbitration Court (ICAC) is the principal international arbitration institution in Ukraine. A dispute arising from foreign trade or other foreign commercial relations may be brought before the ICAC if at least one party is domiciled abroad and the parties agree in writing to have it heard by the ICAC.

Why Do Ukrainian Companies Choose a Foreign Arbitration Seat?

Companies in Ukraine have the option of conducting arbitration proceedings within Ukraine or internationally. The legal framework in the United Kingdom often makes it a desirable arbitration seat.

First and foremost, the UK's Arbitration Act of 1996 creates a very conducive environment for arbitration. The act is aligned with international best practices on arbitration, including the UNCITRAL Model Law, which ensures that arbitration proceedings are conducted in a fair, efficient, and timely manner. It provides parties with flexibility in choosing arbitrators, setting procedural rules, and enforcing arbitral awards.

Furthermore, the UK has a well-established legal system that is known for upholding the rule of law. The principles of English common law, the basis of the legal system, are widely respected and understood internationally, ensuring that disputes are handled fairly and impartially.

Geopolitically, the UK is also regarded as a neutral jurisdiction. This is advantageous for foreign companies seeking a level playing field during arbitration, especially when dealing with state-owned companies.

Last but not least, there are numerous law firms in the United Kingdom with a wealth of experience in international arbitration. London, in particular, has a number of experienced arbitrators and experts who can assist your company in resolving its dispute effectively.

The Arbitration Process in The UK

As a general rule, arbitration is a straightforward and very efficient process in the United Kingdom. There are generally four stages to the proceedings.

1. *The Claim and Response*⁶

Arbitration is a contract-based dispute resolution mechanism; therefore, there may be steps that must be followed before arbitration can be initiated. It is also common for parties to agree to the application of certain institutional rules to their arbitration, and these rules will often address the commencement process.

Should the parties not agree on a process, Section 14 of the Arbitration Act 1996 provides that⁷:

- *Where the arbitrator is named or designated by the parties in the arbitration agreement, the proceedings are commenced when one party serves a notice in writing to the other party, requiring them to submit the matter to the person named/designated.*
- *Where the parties are to appoint the arbitrator, arbitration is commenced when one party serves on the other party notice requiring them to appoint an arbitrator or to agree to the appointment of an arbitrator.*
- *Where the arbitrator or arbitrators are to be appointed by a third party, proceedings are commenced when one party gives notice in writing to that third party requesting it to make the appointment in respect of that matter.*

However, in most cases, a claimant will initiate arbitration by sending their opponent a document known as a "request for arbitration" or a "notice to arbitrate".

In your notice of arbitration, a claimant will include the necessary information as specified by the rules of the arbitration institution in which the arbitration will take place. However, at the very least, the notice will provide a brief description of the dispute at issue.

It will then be possible for the other party (or parties) to submit a brief response within a specified period of time.

2. Appointing Arbitrators

The arbitration process will commence with the formal establishment of the arbitration tribunal. In the event that there are to be three arbitrators in a dispute between two parties, each party typically nominates one arbitrator. The nominees or the arbitral institution will nominate a third arbitrator to serve as chair.⁸ In cases where there is to be one arbitrator and/or more than two parties, the arbitration agreement or the rules of the arbitral institution will typically provide guidance for selecting the arbitrators.

3. Evidence and Arguments

In the course of the arbitration proceedings, the arbitrators will oversee the arguments and evidence presented by the claimant and the respondent. In most cases, both parties will have designated legal representatives who will present their arguments in the form of "submissions", which generally include both written and oral submissions (for which a hybrid/in-person hearing is scheduled). Following the hearing, both parties may be given the opportunity to submit a post-hearing brief that summarises their arguments and evidence.

Usually, this stage of arbitration can take several months, depending on the availability of parties and arbitrators, as well as how much evidence the arbitrators require before they can reach a decision.

4. The Decision

After hearing both parties' arguments, the arbitrators will decide the dispute and determine the arbitral award. Whether this award is monetary in nature or comes in another form will be determined by the arbitration clause of the original contract that was signed by the parties.

By carefully drafting arbitration clauses, you can significantly reduce your company's liability and ensure that even if the arbitration results in a negative outcome, you will not be obliged to pay out a large sum of money. You are, however, limited in how much you are able to limit your liability, and this is determined by industry regulations and various laws. Therefore, it is imperative that you seek legal advice to ensure your clauses are effective and enforceable.

How to Make Sure Your Company is Able to Arbitrate in The UK

If you wish to resolve disputes using arbitration in the United Kingdom, you'll need to ensure you're in compliance with Ukrainian law and that you have properly informed any parties you are doing business with that this is how disputes will be settled.

1. Establish Arbitration Clauses

In all contracts, it is essential to include a clause explicitly stating that any disputes will be resolved by arbitration. The clause should be precise, unambiguous, and comprehensive, containing the following⁹:

- *An explicit referral of disputes to arbitration;*
- *The governing law of the arbitration agreement;*
- *The seat of arbitration;*
- *The rules governing the arbitration;*
- *The number of arbitrators and their method of selection; and*
- *If applicable, the institution governing proceedings or confirmation of Ad hoc arbitration.*

The English Arbitration Act 1996 will govern all arbitrations (whether *ad hoc* or institutional) whose legal "seat" or "place" is in England and Wales or Northern Ireland¹⁰.

As well as the above, you may wish to consult with your legal team regarding additional terms, such as placing limitations on remedies or specifying how confidential information during arbitration should be handled

2. Select an Arbitration Organisation

It is very important for your company to appoint a reputable arbitration institution in order to ensure that any dispute is handled properly.

Although there are many institutions to choose from, there is no single recipe for choosing between them.

The following are the most common criteria that companies should consider when selecting an appropriate institution¹¹:

1. *The level of institutional involvement;*
2. *The costs of the arbitration (both administrative and arbitrator fees);*

3. *Protection of privacy* (There will often be a variation in the degree of confidentiality and privacy offered by different arbitration institutions. As an example, under the London Court of International Arbitration (LCIA) rules:

“The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority. The parties shall seek the same undertaking of confidentiality from all those that it involves in the arbitration, including but not limited to any authorised representative, witness of fact, expert or service provider.”¹²⁾

4. *Industry or case-specific expertise.*

Although your contract should define an organisation, you are not required to appoint individual arbitrators until a dispute arises.

How to Make Sure Your International Arbitral Awards gets recognised in Ukraine^{13, 14}

As a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, most arbitration awards awarded abroad are enforceable in Ukraine. Nevertheless, certain conditions must be met in order for Ukrainian courts to recognise and satisfy an award.

A court may refuse to satisfy an award in the following circumstances:

- *One of the parties was incapacitated when the arbitration agreement was signed;*
- *The respondent was not informed of the appointment of the arbitrator or the arbitration proceedings, or was otherwise unable to present his case;*
- *The award addresses a matter that was not contemplated or not covered by the arbitration agreement, or it contains decisions regarding matters that were outside the scope of the arbitration agreement;*
- *The arbitration tribunal's composition or the arbitral procedure was inconsistent with the parties' agreement or the law of the state where the arbitration took place;*
- *A competent authority of the country in which the award was made has not yet made the award binding on the parties, or has set it aside or suspended it;*
- *The law prohibits the submission of a dispute to arbitration;*

- *A recognition and enforcement of this kind would be contrary to Ukrainian public policy.*

Final Comments

Despite the competition from Paris, Dubai, New York, and Stockholm among others, the inherent nature and traditions of English law make London an attractive location for international arbitration.

One of the factors that makes English law so attractive to businesses is its emphasis on the principle of freedom of contract (i.e. *the parties' ability to negotiate and create the terms of their agreements without interference from the government*¹⁵). Furthermore, London's confidentiality advantages also contribute to its selection as a venue for arbitration, as it allows protection of commercially sensitive information.

In spite of the recent reforms in the Ukrainian judicial system, which indicate that Ukraine is willing to adopt progressive ways of resolving disputes, most international companies still cite the Ukrainian judicial system as a barrier to entering the market.

By executing agreements under English Law and choosing London as the arbitration venue, your company will be able to take advantage of the well-established legal framework and the availability of experienced arbitrators familiar with international law, removing one of the primary concerns when expanding business operations into Ukraine.

References

- ¹ Oksana Legka, *Litigation And Enforcement In Ukraine: Overview*, 1 April 2021 (https://www.asterslaw.com/press_center/publications/litigation_and_enforcement_in_ukraine_overview2/)
- ² Volodymyr Kashporov, *Judiciary System And Reform* (<https://static.razomforukraine.org/wp-content/uploads/2017/01/9.-Judiciary-System-and-Reform.pdf>)
- ³ Taras Tertychnyi, Natalia Antonyuk, *Survey Of International Litigation Procedures: A Reference Guide (Ukraine)*, 2017 (https://www.iadclaw.org/assets/1/7/SILP_Ukraine.pdf)
- ⁴ T Tsuvina, T Vakhonieva, 'Law of Ukraine 'On Mediation': Main Achievements and Further Steps of Developing Mediation in Ukraine', 2022 1(13) Access to Justice in Eastern Europe 142-153. DOI: <https://doi.org/10.33327/AJEE-18-5.1-n000104>
- ⁵ Oksana Legka, *Litigation And Enforcement In Ukraine: Overview*, 1 April 2021 (https://www.asterslaw.com/press_center/publications/litigation_and_enforcement_in_ukraine_overview2/)
- ⁶ Stewarts Law, *Arbitration Process*, <https://www.stewartslaw.com/expertise/international-arbitration/arbitration-process/#:~:text=In%20entering%20into%20an%20arbitration,same%20as%20mediation%20or%20conciliation.>
- ⁷ Herbert Smith Freehills LLP (Lexology), *Arbitral proceedings in the United Kingdom*, 11 June 2019, <https://www.lexology.com/library/detail.aspx?g=10e3da61-fbe9-4df6-bdc1-2ca685c9cccb>
- ⁸ Stewarts Law, *Arbitration Process*, <https://www.stewartslaw.com/expertise/international-arbitration/arbitration-process/#:~:text=In%20entering%20into%20an%20arbitration,same%20as%20mediation%20or%20conciliation.>
- ⁹ Wood Myfanwy, *Arbitration Clause*, last updated on 9 May 2023, [https://jsumundi.com/en/document/publication/en-arbitration-clause#:~:text=The%20governing%20law%20of%20the,\(see%20Arbitrator%20appointment\)%3B%20and](https://jsumundi.com/en/document/publication/en-arbitration-clause#:~:text=The%20governing%20law%20of%20the,(see%20Arbitrator%20appointment)%3B%20and)
- ¹⁰ CMS, *International Arbitration Law and Rules in England and Wales*, <https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/england-and-wales>
- ¹¹ Ashurst, *Quickguides - International arbitration: Which institution?*, <https://www.ashurst.com/-/media/ashurst/documents/news-and-insights/legal-updates/2017/december/quickguide---comparison-of-the-major-arbitral-institutions.pdf>
- ¹² Article 30.1, LCIA Arbitration Rules 2020, https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx#Article%2030
- ¹³ Danil Hristich, Yana Zdioruk, *Recognition and Enforcement of Arbitral Awards and Foreign Judgments in Ukraine*, 6 October 2022, <https://fortiorlaw.com/news/recognition-and-enforcement-of-international-arbitral-awards-in-ukraine/>
- ¹⁴ Danil Hristich, Yana Zdioruk, *Mistakes in recognition of arbitral awards in Ukraine*, 18 October 2022, <https://fortiorlaw.com/news/mistakes-in-recognition-of-arbitral-awards-in-ukraine/>
- ¹⁵ Cornell Law School, *Freedom of Contract*, https://www.law.cornell.edu/wex/freedom_of_contract#:~:text=Freedom%20of%20contract%20is%20the,outside%20interference%20from%20the%20government.