

## **Business in Ukraine**

dispute settlement

### **System of Commercial Courts in Ukraine**

**Issues connected with dispute settlement and the restoration of violated rights and interests related to business activities are one of the most urgent for those engaged in commerce. This category of disputes is settled in Ukraine by filing a suit to a commercial court.**

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This court system is specialized and makes up a single three-tier system consisting of commercial courts, commercial appellate courts on the oblast level, and the Supreme Business Court of Ukraine. Decisions by the Supreme Business Court of Ukraine can be reversed by appeal to the Supreme Court of Ukraine. Business courts of the higher echelon are obligated to consider complaints of parties concerning decisions from lower courts. Consequently, there are four categories of courts competent to consider business disputes. The higher court has the right to modify or revoke the decision of a lower court in this system.

Court decisions are delivered in name of Ukraine and are obligatory for fulfillment throughout the country. Judges are thereby guided exclusively by acting legislation of Ukraine.

Companies, establishments, organizations, and other business entities, both domestic and foreign, and individuals who are involved in business activities via obtaining private entrepreneur status in due order, have the right to file a complaint to a business court regarding the protection of violated or disputed rights and legally protected interests.

It should be stressed that business courts are eligible to consider complaints with the participation of foreign companies and organizations in cases when the territory of Ukraine is a location of their affiliates, representative offices, and independent units, or if real estate in Ukraine is the object of dispute.

The following cases are in the competence of the commercial court system:

- 1) Cases regarding disputes that occur while concluding, amending, terminating, and executing contracts, as well as on consequent grounds;
- 2) Cases of the invalidity of acts on the grounds enumerated in legislation, except for:
  - disputes on agreements on standards and technical conditions;
  - disputes on establishing prices for output (commodities), as well as tariffs for services if these prices and tariffs cannot be established by agreement between the parties as envisaged by legislation;
  - other disputes which should be settled by other bodies in accordance with the laws of Ukraine, international agreements, and treaties;
- 3) Insolvency cases; and
- 4) Cases regarding complaints submitted by the Antimonopoly Committee of Ukraine and Audit Chamber on the issues of their competence as stipulated by the legislation.

Court proceedings with parties located on the territory of Ukraine are held in Ukrainian.

Cases on disputes arising during concluding, amending, or termination of civil contracts, as well as cases on invalidation of contracts are considered by commercial courts situated according to location of a party, which is obligated to do an act in favor of the other party (like, to make a property over, fulfill works, provide services, pay money, etc.).

Cases on disputes arising during fulfilling of civil contracts or on other grounds, as well as cases on invalidation of acts are considered by commercial courts located at the place of the defendant. Cases on disputes with participation of several defendants are considered by a commercial court located at the place of one of the defendants as chosen by a claimant.

Cases on insolvency are considered by a commercial court located at the place of a debtor.

Disputes that should be considered by a commercial court can be transferred for settlement by the arbitration court, called the Court of Referees, upon the agreement of the parties, except for cases on making acts invalid or disputes that occur while concluding, amending, terminating, and executing contracts connected with the state needs.

It should be taken into account that an arbitration clause of the following content should be included into contracts to empower its parties to address a regular court of arbitration:

”Any dispute as to the conditions of the present agreement or related to it, should it not be settled by means of negotiations, should be brought to consideration and final judgment to the regular court of arbitration at ... (name of the body should be mentioned, for example, Kiev Chamber of Industry and Commerce) in accordance with its Regulations”.

Arbitration is considered concluded if:

- it is signed by the parties;
- it is concluded by exchange of letters, teletype, telegraph, or with the utilization of electronic or other communications that secure the fixing of such an agreement; and
- lawsuit is revoked by sending a document where one party confirms the reaching of the agreement, and the other party is not against it.

A reference in a contract to a document that contains the conditions for dispute arbitration consideration is deemed an arbitration clause, provided the agreement is concluded in writing and the reference contains a clause making arbitration an inalienable part of the agreement.

Pursuant to the Provisions and Order of a regular court of arbitration, parties can add requirements as to composition of the court of arbitration and the language of arbitration into an arbitrary clause.

It is possible to conclude an arbitration clause both before disputes happen and in the process of their settlement.