

Special Issue

March 2008



Recognition and Enforcement of Foreign Arbitral Awards in Ukraine

A helpful starting point

Yes – there is a treaty governing the matter of enforcement of foreign arbitral awards to which 142 States are parties

But – be aware that in each of these jurisdictions, including Ukraine, you’ll find national peculiarities you need to know about

This bulletin will help you deal with some special aspects of enforcement procedure in Ukraine

Statutory Regulation

Let’s start with the treaty

Since 8 January 1961 Ukraine has been a party to the Convention on Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) and now is one of 142 contracting parties thereto.

The New York Convention as duly ratified international treaty constitutes an integral part of Ukrainian legislation, and has direct effect – its provisions prevail over the provisions of Ukrainian laws and regulations, except for the Constitution.

It is worthy to notice that at the regional and bilateral level there are some treaties which are *lex specialis* with regard to the New York Convention.

Now let’s turn to Ukraine’s national laws and regulations

These lay down the specific procedure of recognition and enforcement of foreign arbitral awards in Ukraine. The main laws here are:

- The Law of Ukraine on Private International Law;
- The Civil Procedural Code of Ukraine;
- The Law of Ukraine on International Commercial Arbitration (based on the Model Law adopted in 1985 by UNCITRAL);
- The Law of Ukraine on Execution Procedure.

New York Convention prevails over Ukrainian law

In this issue

Statutory Regulation	1
Key Issues	2–3
Structure of the Application	3
Enforcements Procedure	4
Post-Recognition Enforcement	4

Key Issues

a) Documents

The party seeking recognition and enforcement shall, at the time of the application, file:

- the duly authenticated original award or the duly certified copy thereof (in the manner referred to below)
- the original agreement or the duly certified copy thereof.

b) Legalization of Documents

The Law of Ukraine on Private International Law stipulates that unless otherwise provided for by international treaties, documents executed by state bodies of foreign countries would be recognized only after their legalization.

Legalization is the official confirmation that a signature, seal or stamp appearing on a document is true and accurate.

Thus, in the absence of effective international agreements the party seeking enforcement in Ukraine should apply for such legalization in the consulate of Ukraine in the jurisdiction where the document is issued.

States (including Ukraine) which are parties to the Convention Abolishing the Requirement for Legalisation for Foreign Public Documents recognize documents issued in one of the signatory countries for legal purposes, certified with apostille.

Taking into account that more than 85 states are parties to this Convention, this alternative to legalization is commonly used for the purposes of recognition and enforcement in Ukraine.

Moreover, under some bilateral agreements (for example at the level of Commonwealth of Independent States) public documents have their effect without apostillization or legalization whatsoever.


c) Translation

If the documents to be submitted for the purposes of recognition and enforcement of an award are not executed in Ukrainian language, the party applying for recognition and enforcement of the award shall arrange the relevant translation of these documents.

Generally, it should be done by translator. But the Law of Ukraine on Notary authorizes a notary to translate documents if he/she knows the respective language. In any event notarization is inevitable because authorization of the translator's signature is subject to notary certification.

d) Enforcing Authority

Under the Ukrainian Code of Civil Procedure, foreign arbitral awards are to be recognized and enforced in Ukraine by the lower courts – the courts of general jurisdiction of first instance. Under the applicable jurisdictional rules, the courts of the place of the defendant's registered office, place of business or residence is to have the jurisdiction to consider the applications on recognition and enforcement of the arbitral awards.



The only documents of any use in arbitration are those that are properly issued and certified.

You may need to advise your foreign clients exactly how to obtain the “Ukrainian legalization” in their jurisdiction if no “apostille” is available.

You're going to need a Ukrainian notarization

Ukrainian lower courts are enforcing authority

Sometimes the court where defendant's assets are located has jurisdiction to consider enforcement

If the defendant has no place of business or permanent residency in Ukraine or it is unknown the court of the place where substantial assets of the defendant are located is to have the power to rule on the matter at issue.

e) Limitation Period

Limitation period for applying for enforcement of foreign arbitral awards is three years after the date when such award comes into force. In the case where the applicant seeks to enforce the arbitration decision awarding staged payments for the past periods, the implication of the limitation period would be the following. Ukrainian courts will award the staged payments only in relation to the past 3 years and not for the whole overdue period.

Regardless of good reasons for failure to comply, it is impossible to renew or extend this limitation period.

Structure of the Application

The first thing enforcing party should do in such complicated procedure is filing of written application to the competent court, which should contain the following data:

1. name of the enforcing party (or its representative) and its address;
2. name of the party against which the recognition and enforcement are sought;
3. applicant's address or address of its property location in Ukraine;
4. reasoning of application;
5. documents, required by the respective international treaties of Ukraine or if no set of documents to be submitted is set forth in the international treaties:
 - i) a duly certified copy of the award;
 - ii) if the award itself has no indication of its entry into force an official document certifying thereof;
 - iii) a document certifying due notification of party regarding whom the award is rendered and who did not participate in the proceedings;
 - iv) if the award has previously been enforced, a document the time following which the award is subject to enforcement;
 - v) if the application is submitted by the applicant's representative - a document certifying his/her powers (power of attorney, by-laws or other statutory document, etc.)

General rule is a 3-year limitation period

*Staged arbitral payments?
– only last 3 years are recoverable*

Complete the application carefully and submit it to the proper court

Enforcement Procedure

After receiving duly prepared application for recognition and enforcement of foreign arbitral award, the court will set the date and time of the hearings and notify the parties (applicant and defendant) thereof.

Depending on how defendant uses its time for preparation of a defence (one month is granted under the law), the first hearings will be held sometime within 45 days after filing of application.

It is worth noting that the court may re-schedule the hearing due to a reasonable excuse presented by a party (e.g., difficulties in obtaining relevant documents).

The decision on recognition and enforcement may be challenged in the upper court and in this case the general rules governing the appeals apply. In case where either party challenges the court decision in the upper court, this decision enters into force upon delivery of relevant decision of the upper court.

In any event, the recognition and enforcement may be refused only on the grounds stipulated in Article 5 of the New York Convention.

Post-Recognition Enforcement

As soon as the court awards recognition and enforcement, the applicant needs to apply for an executive writ from the competent court of first instance.

Under the Law of Ukraine on Execution Procedure, the aforementioned document is sufficient for commencement of the closing stage of the whole procedure – enforcement of the arbitral award *per se*.

In the absence of debtor's voluntary performance of its obligations under the award so enforced, the officer of Ministry of Justice of Ukraine commences enforcement procedure. It consists of imposition of restraints on alienation and subsequent sale of debtor's property which applies firstly to the most liquid assets like cash and other liquid movables, and only then to real estate.

One “delaying tactic” may be to ask for an adjournment based on a reasonable excuse, like failure to obtain needed documents

You'll need an enforcement writ later on, so why not prepare it now and learn where to file it?

Kiev Office

23 Shota Rustaveli Street, Suite 3,
Kiev, 01019, Ukraine
Telephone: + 380 (0)44 490-5400
Facsimile: + 380 (0)44 490-5490
E-mail: info@konnov.com

Chernovtsy Office

13-a Komarova Street, Suite 204,
Chernovtsy, 58017, Ukraine
Telephone: + 380 (0)3722 4-5729
Facsimile: + 380 (0)3722 4-8700
E-mail: chernovtsy@konnov.com

London Office

338 City Road
London EC1V 2PY, United Kingdom
Tel. +44 (0)20 7239 8217
Fax +44 (0)20 7239 8286
E-mail: london@konnov.com

Moscow Office

82 Sadovnicheskaya Street, Building 2,
Aurora Business Park Center,
Moscow, 115035, Russia
Phone: + 7 (495) 225-9370
Fax: + 7 (495) 225-9383
E-mail: moscow@konnov.com

Nicosia Office

16, Zenas Kanther Street,
Karandokis Bldg, 7 Floor Office 25-26,
P. O. Box 22571,
Nicosia, 58017, Cyprus
Tel. +357 22872122
Fax +357 22872123
E-mail: nicosia@konnov.com

www.konnov.com