



**British Institute of
International and
Comparative Law**

BIICL Report: 'Unlocking Investment in Ukraine'

**Maria Tymofienko, Project Lead and Head of Projects, Ukraine
International Law Response, BIICL**

**Helen Dodds, OSTJ, International Expert and Honorary Senior
Fellow, BIICL**

**Tetyana Antsupova, Ukraine Expert, Professor and Research
Fellow, BIICL**

Kseniia Iaremych, Research Consultant, BIICL

Commissioned by the UK Ministry of Justice



Table of Contents

<i>Foreword by Lord Neuberger of Abbotsbury</i>	3
<i>Executive Summary</i>	5
<i>Abbreviations and acronyms</i>	7
I. Overview of the Ukrainian dispute resolution system	8
Shortage of judges	10
Excessive workload for judges	11
Budgetary constraints	12
Lack of judicial independence	14
Cases of corruption	15
Blocked disciplinary proceedings against judges	16
Ineffectiveness in enforcing court judgments	16
Ineffective implementation of arbitral awards	17
Slow progress in the digital transformation of the courts	18
Other rule of law challenges in Ukraine	18
II. Interviews and Surveys: Business and Judiciary Insights	20
Insights from business	20
Profile of the respondents	20
Factors impeding the investment attractiveness of Ukraine	20
Efficiency of dispute resolution	21
Enforcement of court judgments and arbitral awards	23
A need for a specialised court	24
Features of an investment court.....	25
Insights from the judiciary	28
Profile of the respondents	28
Perception of the current legal environment	28
A need for a specialised investment court	31
III. Recommendations	35
Enhancing solutions	35
Innovative ideas	42
Annex. A strong legal system: the UK example	49



Foreword by Lord Neuberger of Abbotsbury

When it comes to creating the right environment for the rule of law and a flourishing economy, few countries can have had a more unpromising recent history, and few countries can have showed more commitment and determination, than Ukraine. Following a chaotic war starting in 1917, Ukraine became part of the totalitarian and corrupt Soviet Union for 70 years, interrupted by a vicious occupation and civil war in the early 1940s; having achieved independence in 1991, and suffered a period of hyper-inflation, the economy started to perform well when it was knocked back by the 2008 crisis, and as it was recovering from that, it was invaded by Russia initially in 2014, and on a full-scale basis in 2022, since when Ukraine has been impressively fighting back.

This history would have left many countries on their knees with the rule of law in tatters and an economy which was not even at subsistence level. Ukraine has its problems but partly thanks to its talented and highly educated people, wise exploitation of its exceptionally fertile soil and its many and diverse minerals, its economy has been improving, and that is also thanks to its exceptionally successful IT sector, and its impressive defence, aircraft and shipbuilding industry. While all these aspects have been challenged by its fight against Russian aggression, Ukraine is still managing to keep its head above water, and even now, but all the more so in the future, it should be a magnet for inward investment.

A very important factor for any country in attracting investment from abroad is of course an effective, trusted court system with able, hardworking, honest judges who are free of state interference, and whose orders are enforced. The war and corruption, for both of which Ukraine has Russia to thank, have proved very challenging to the administration of justice. Given these factors, nobody could fail to be impressed by the resilience and commitment of the Ukrainian judiciary generally. They have continued to provide access to justice despite the widespread danger and destruction resulting from the war. And in the fight to maintain and improve quality and to remove corruption, the judges have demonstrated a firm commitment to the implementation of internal reforms, including the resetting of the judicial institutions namely the High Council of Justice, the High Qualification Commission of Judges, and the importance of ensuring transparent and professional selection of judges. It is very hard to get rid of corruption once it is in the system, and all three branches of the Ukrainian government have demonstrated a real commitment to uncover, investigate and prosecute corruption even at the highest level.

As a British citizen and former judge, I am proud of the important contributions in the form of expert advice and well targeted funding made by the UK government and judiciary in supporting the Ukrainian judiciary in many areas. Examples of initiatives include assistance in selection and de-selection of judges, support for Ukraine to become a member of the Standing International Forum of Commercial Courts, and strengthening the Ukrainian financial sector/FDI flow through establishment of a financial centre. There are many examples of judicial support; they include judicial selection and de-selection, judicial training, and education on war crimes and criminal prosecution, commercial dispute resolution, and arbitration. The result has been continuing improvements in the quality, expertise and integrity of the judiciary, which represents a fundamental contribution to the rule of



law, and therefore to the social and moral well-being of Ukrainians. And a high quality, respected commercial dispute resolution system is critical to ensuring investment and is therefore critical in enabling the recovery and reconstruction of Ukraine.

The present document, “Unlocking Investment in Ukraine” represents another such important initiative, and it is impressive both in its aim and its analysis. Its aim is to make recommendations as to how the domestic Ukrainian commercial dispute-resolution system can be made as efficient and respected as possible, and hence as friendly as possible to investors and business people – whether from other countries or internally. As to the analysis, it is evidence-based, and carefully considered; the report takes into account the views of judges and potential court-users, and it profits from considering the benefits and problems of models in other jurisdictions. In any view, it is an important and valuable contribution to the rule of law and a successful economy in Ukraine.

David Neuberger

President of BIICL,

Former President of the Supreme Court of the United Kingdom

April 2024

Executive Summary

- This report was commissioned by the United Kingdom Ministry of Justice in relation to the international effort to support recovery in Ukraine. It is intended to identify potential justice and legal system reforms that will encourage foreign investment into Ukraine and contribute to its recovery.
- Over the past decade, Ukraine has undergone significant judicial reform aimed at enhancing the independence, transparency and efficiency of its judiciary and legal system. This has included the establishment of a new Supreme Court in 2017 and the creation of the High Anti-Corruption Court in 2019 which included judicial selection processes involving international experts.
- Legislative measures enacted in June and July 2021, such as the reintroduction of the High Qualification Commission of Judges and vetting procedures for the High Council of Justice, have further demonstrated Ukraine's commitment to judicial reform.
- However, despite these efforts, challenges persist. A shortage of judges across various court levels, inadequate workload distribution and budgetary constraints continue to hinder the effective functioning of the judicial system. Moreover, issues such as 12,241 blocked disciplinary proceedings against judges and cases of corruption within the judiciary pose significant obstacles to the enhancement of Ukraine's legal system.
- The full-scale Russian aggression against Ukraine has exacerbated these challenges, and has particularly impacted the country's courts. Significant damage with estimated remedial costs totalling EUR 225.9 million has been inflicted on Ukraine's judicial infrastructure. This damage includes the loss of judicial staff, destruction of court buildings and disruption to the administration of justice.
- According to a survey conducted by the British Institute of International and Comparative Law in February/March 2024, from a business perspective factors impeding the investment attractiveness of Ukraine include concerns about the safety of physical infrastructure, judicial capacity and capability, inefficiency of court administration (including the use of digital technology), corruption and the undue influence of law enforcement bodies. Many business stakeholders prefer foreign dispute resolution mechanisms and law over domestic courts and law (particularly favouring English law for its predictability, flexibility and perceived fairness) and turn to international arbitration rather than taking legal proceedings in Ukraine.

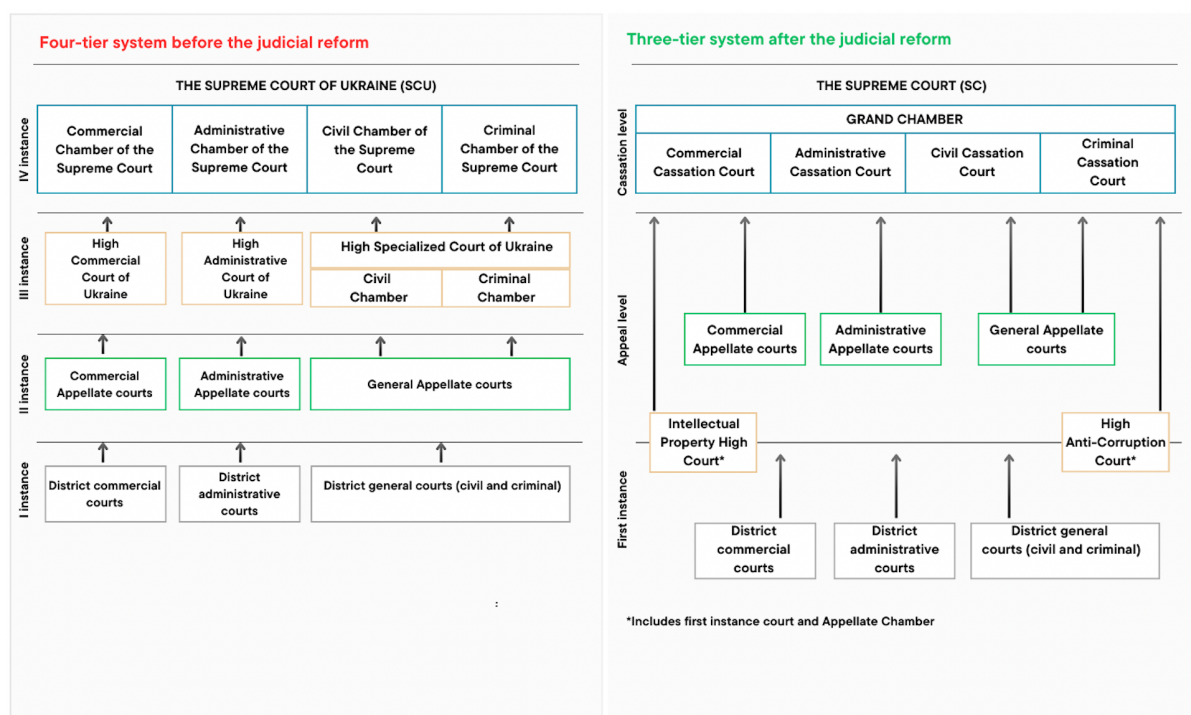
- While the enforcement of court judgments and arbitral awards in Ukraine is perceived to be moderately effective, there is a consensus among respondents that Ukraine should consider the establishment of a specialised court to hear commercial and investment matters, although there is a divergence of views between judicial and business respondents on the shape this court should take. Such a court, along with enhanced recognition and enforcement of arbitration awards, could bolster confidence in investing in Ukraine and contribute to the country's economic development.
- During the research for this report, one issue which is not within its scope came to the forefront. This concerns the role of state bodies in commercial legal disputes, whether against such bodies themselves or with third parties, and a further detailed study of this topic could well be valuable.
- Overall, while progress has been made in Ukraine's judicial reform efforts, ongoing vigilance and continued reform measures are necessary to address internal challenges, mitigate the negative impact of aggression and ensure the effective functioning of Ukraine's judiciary in upholding the rule of law, thereby attracting foreign investment – as well as benefitting Ukrainian citizens generally.
- Accordingly, based on its findings, this report emphasises the importance of enhancing Ukraine's dispute resolution system to unlock investment opportunities. It offers solutions categorised into two main areas: improving current practices ('enhancing solutions') and introducing innovative dispute resolution models ('innovative ideas')
- In terms of actionable solutions, we recommend enhancing dispute resolution mechanisms in Ukraine through various measures. These include improving arbitration and mediation processes, addressing challenges within Ukrainian court practices and procedures, enhancing the enforcement of court decisions and arbitral awards, bolstering judicial capacity and conducting a thorough analysis of existing laws to identify areas for improvement.
- When it comes to innovative ideas, we set out a number of alternatives for potential dispute resolution models. These include establishing a Kyiv Financial Centre Court, implementing a hybrid international court model within the Ukrainian judicial system, creating a specialised commercial/investment court within the existing Ukrainian judicial system and setting up a Kyiv International Arbitration Centre. Each of these models aims to provide efficient and effective mechanisms for resolving commercial disputes and attracting investment to Ukraine.

Abbreviations and acronyms

AIFC	Astana International Financial Centre
BIICL	British Institute of International and Comparative Law
CEDR	Centre for Effective Dispute Resolution
DIFC	Dubai International Financial Centre
EU	European Union
EUR	Euro currency
ECtHR	European Court of Human Rights
FET	Fair and equitable treatment
GBP	British Pound
GDP	Gross Domestic Product
HACC	High Anti-Corruption Court
Hcj	High Council of Justice
HQCJ	High Qualification Commission of Judges
LCIA	London Court of International Arbitration
LMAA	London Maritime Arbitrators Association
ISDS	Investor-state dispute settlement
ICC	International Commercial Court
ICAC	International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry
NABU	National Anti-Corruption Bureau of Ukraine
PEO	Private enforcement officer
SAPO	Special Anti-Corruption Prosecutor's Office
SC	Supreme Court (operates since 2017)
SCU	Supreme Court of Ukraine (operated until 2017)
SJA	State Judicial Administration
SEO	State enforcement officer
SICC	Singapore International Commercial Court
SIFoCC	Standing International Forum of Commercial Courts
UAH	Ukrainian hryvnia
USAID	United States Agency for International Development

I. Overview of the Ukrainian dispute resolution system

Following the events of the Revolution of Dignity in 2014, Ukraine initiated a series of reforms within its justice sector with the primary goal of strengthening the rule of law and enhancing the independence, transparency and efficiency of its judiciary. These reforms encompassed amendments to both the Ukrainian constitution (Constitution) and legislation pertaining to the judiciary, the establishment of a new Supreme Court (SC) in 2017, accompanied by a more transparent selection process for judges and the restructuring of the court system from four tiers to three, as outlined below.



In 2016, following the establishment of a new vetting and qualification procedure, 1,500 judges voluntarily resigned, while another 500 judges were dismissed by the High Qualification Commission of Judges (HQCJ).¹ Eligibility for appointment as a judge was extended to the wider legal profession,

¹ The HQCJ is the sole institution empowered to select new judges to address the numerous vacancies within the Ukrainian courts of law. The High Council of Justice (HCJ) serves as the foremost judicial governance body in Ukraine, nominating judges for presidential appointment.

alongside the introduction of a transparent selection mechanism. In 2019, the establishment of the High Anti-Corruption Court (HACC) with a transparent process involving international experts marked another significant step.

In 2021, the Strategy for the Development of the Justice System and Constitutional Justice for 2021 – 2023 was endorsed by a decree of the President of Ukraine.² In July 2021, legislative measures were enacted to reactivate the HQCJ and implement vetting procedures for the HCJ with the active involvement of international experts. The successful re-establishment of these entities in 2023 paved the way for the resumption of essential functions, including the selection and evaluation of judges.³ Furthermore, a competitive selection process for Constitutional Court judges, overseen by an Advisory Group of Experts, was introduced in 2023.⁴ In its Ukraine 2023 Report, the European Commission (EC) emphasised that a new strategy needed to be developed and adopted, in a transparent and inclusive manner, for the reform of the justice system to respond to the challenges of wartime needs.⁵

The Ukrainian judiciary sustained a devastating impact as a result of the Russian full-scale invasion in 2022. The EU-Ukraine Recovery and Reconstruction Needs Assessment report defines significant damage to Ukraine's judicial system (primarily courts) with EUR 107.6 million of damage to the judicial system (mainly courts buildings) and full recovery needs amounting to EUR 225.9 million. Russia's military aggression against Ukraine had caused the death of 12 judicial staff members and the destruction of or damage to 124⁶ (out of 777⁷) court buildings by January 2024. The prosecution service also suffered losses, with six staff members killed and numerous buildings affected. Air strikes, power outages and internal displacement of parties to court proceedings have further disrupted the administration of justice.⁸ Additionally, over 122,000 war crimes and related offences have been registered, particularly in areas of active hostilities and temporarily occupied territories, straining the criminal justice system.⁹

² While the strategy emphasised bolstering transparency, independence, integrity, efficiency and effectiveness within the judiciary, a formal assessment regarding the extent of its implementation has not yet been conducted.

³ Ukraine Facility Plan 2024-2027, available at <http://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf> (Accessed 24 March 2024).

⁴ Ibid.

⁵ Ukraine Facility Plan 2024-2027, page 66, available at <http://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf> (Accessed 24 March 2024).

⁶ State Judicial Administration official website, available at https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/analit_10_01_24.pdf (Accessed 18 April 2024).

⁷ Deutsche Welle, available at <https://www.dw.com/uk/yak-pratsiuie-sudova-systema-ukrainy-v-umovakh-viiny/a-61294651> (Accessed 18 April 2024).

⁸ EU Commission Staff Working Document, Ukraine 2023 Report, Communication on EU Enlargement policy, page 20, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (Accessed 24 March 2024).

⁹ See The Jerusalem Post, available at <https://www.jpost.com/breaking-news/article-788535> (Accessed 26 March 2024).

Despite these adversities, Ukrainian judicial, prosecution and other justice institutions have demonstrated resilience by continuing to deliver justice services and implementing reforms. Legislative, organisational and technical measures were swiftly enacted to adapt court operations to martial law conditions, ensuring uninterrupted access to justice. Notably, legislation enabling changes to territorial jurisdiction and the relocation of court cases has been introduced along with secondment provisions.¹⁰

Ukraine continues to demonstrate its determination to become a member of the European Union (EU) following the EU decision to open accession negotiations for Ukraine in 2023.¹¹ Among the key objectives aimed at meeting EU membership requirements in the area of the judiciary are completion of the selection of judges to the Constitutional Court, completion of the selection of judges to vacant positions in general, evaluation (vetting) of current judges, implementation of effective disciplinary proceedings against judges, measures to address corruption in courts and measures to reset the e-court system.¹² Among the key challenges facing the judiciary identified in the course of this research are (in no order of priority):

- shortage of judges;
- consequential excessive workload for judges;
- budgetary constraints;
- lack of judicial independence;
- cases of corruption;
- blocked disciplinary proceedings against judges;
- ineffective enforcement of court judgments;
- ineffective implementation of arbitral awards;
- slow progress in the digital transformation of the courts.

Shortage of judges

When comparing the total number of vacant positions with the number of acting judges (as of April 2024)¹³, the percentages are as follows.

¹⁰ EU Commission Staff Working Document, Ukraine 2023 Report, Communication on EU Enlargement policy, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (Accessed 24 March 2024).

¹¹ EU Neighbourhood Enlargement: Ukraine, available at https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/ukraine_en (Accessed 1 April 2024).

¹² EU Commission Staff Working Document, Ukraine 2023 Report, Communication on EU Enlargement policy, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (Accessed 24 March 2024).

¹³ High Qualification Commission of Judges of Ukraine official website, available at <https://vkksu.gov.ua/oblik> (Accessed 24 March 2024).

	Total judge positions	Judges appointed	Vacancies	% of vacancies
High Anti-Corruption Court	63	38	25	39.7%
Courts of Appeal	1,357	663	694	51.1%
District Courts	5,038	3,537	1,501	29.8%

Excessive workload for judges

The shortage of judges exacerbates another pressing issue: excessive workload for judges. In 2021, the average workload per judge in district commercial courts was 481 cases per year, an increase from the 425 cases recorded in 2020. The commercial courts in the Kyiv and Zakarpattia regions reported the highest average workloads: 714 and 720 cases respectively per year for a single judge.¹⁴

In 2022, there was a noticeable decline in case numbers, attributed to the repercussions of a full-scale invasion. Despite the challenges faced during wartime, the majority of courts managed to remain operational and continued to administer justice. District commercial courts dealt with a total of approximately 67,800 claims and resolved approximately 59,200. In turn, approximately 29,800 appeals were received and approximately 30,100 appeals were resolved.¹⁵ The Commercial Cassation Court received 8,746 applications and resolved 7,197 cases in the same period.¹⁶

In 2023, case numbers surged significantly, nearly reaching pre-invasion levels. For instance, district commercial courts resolved approximately 82,300 cases, marking a 39% increase compared to 2022.¹⁷ Overall, during the first half of 2023, the average workload per district commercial court judge was 321 pending cases.¹⁸ It is typical for district commercial courts in Ukraine to resolve disputes within six months, with judges typically managing between 300 to 700 cases annually. Thus, with an estimated 250 working days per year, judges may allocate merely two to eight working

¹⁴ Supreme Court Ukraine official website, Statistics as of 2021, page 9, available at https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/sud_pract/2021_analiz_KGS.pdf (Accessed 24 March 2024).

¹⁵ Supreme Court Ukraine official website, Statistics as of 2022, page 5, available at https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/ogliady/Analiz_Stan_prav_KGS_2022.pdf (Accessed 24 March 2024).

¹⁶ Supreme Court Ukraine official website, Statistics as of first half of 2023, page 4, available at https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zvi/1_Zvit_1_VS_2022.pdf (Accessed 24 March 2024).

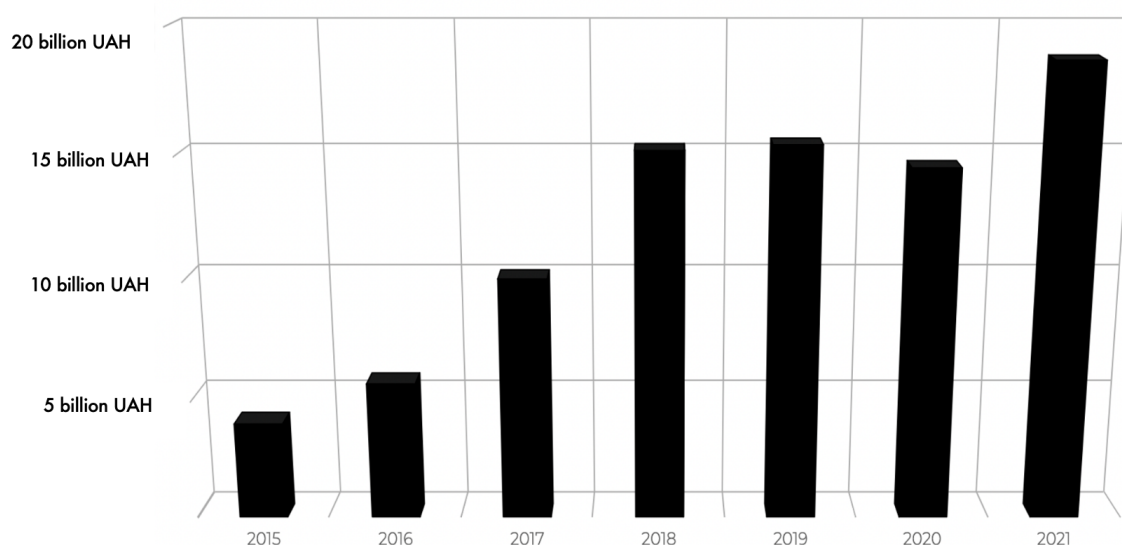
¹⁷ Supreme Court Ukraine official website, Statistics as of 2022, page 6, available at https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/ogliady/Analiz_KGS_pravo_sud_2023.pdf (Accessed 24 March 2024).

¹⁸ Supreme Court Ukraine official website, Statistics as of 2022, page 5, available at https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/ogliady/Analiz_statistika_KGS_1_pivr_2023.pdf (Accessed 24 March 2024).

hours per case to fulfil procedural requirements and render decisions, which evidently constitutes an excessive workload.

Budgetary constraints

It is evident that the total expenditure on the Ukrainian judicial system from 2015 to 2021 has seen a notable increase, as illustrated by the chart below.¹⁹



The 2022 courts budget had a planned expenditure of UAH 19 billion (equivalent to approximately GBP 380 million); this included district and appellate courts. However, due to the full-scale invasion, only UAH 16.9 billion (equivalent to approximately GBP 338 million) was ultimately allocated. This figure only satisfies 65% of the actual requirement (UAH 26 billion or approximately GBP 521 million) for the first instance and appellate courts, as calculated by the State Judicial Administration (SJA).²⁰

In 2023, the SJA, as the primary executor of court budgetary funds, was allocated budgetary appropriations amounting to UAH 17.3 billion (equivalent to approximately GBP 346 million).²¹ This represents an increase of UAH 407 million (equivalent to approximately GBP 8.1 million) compared to the end of 2022. However, it still falls short of the required funding.

¹⁹ Laws of Ukraine on State budget 2015, 2016, 2017, 2018, 2019, 2020, 2021.

²⁰ State Judicial Administration of Ukraine official report for 2022, available at [https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/ZVIT_DSA_UKRAYNA_2022_compressed%20\(1\)_compressed_compressed.pdf](https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/ZVIT_DSA_UKRAYNA_2022_compressed%20(1)_compressed_compressed.pdf) (Accessed 24 March 2024).

²¹ State Judicial Administration of Ukraine, available at <https://court.gov.ua/press/general/1352560> (Accessed 24 March 2024).

The issue lies in the fact that 90% of the total financial resources is allocated towards wages and salary accruals²² which leaves only 10% for other expenses, including the development of the justice system.

The minimum remuneration of judges is determined by law and can be increased based on various factors.²³ Salaries may differ between judges serving at different levels of the judiciary, such as first instance, appellate, or cassation courts. Thus, even within the same region, there may be discrepancies in salaries as shown in table below.

	UAH	GBP (approx.)
Minimum monthly remuneration of first instance commercial court judge	63,060 ²⁴	1,250
Minimum monthly remuneration of appeal commercial court judge	105,100 ²⁵	2,100
Minimum monthly remuneration of cassation commercial court judge (Supreme Court)	157,650 ²⁶	3,150

Court staff receive significantly lower remuneration than judges, which has an adverse effect on the quality of justice. The review of the budgetary expenditure of courts has highlighted the issue of insufficient remuneration of court employees which often falls short of the requirements set out in the law.²⁷

Court staff typically comprises judicial assistants, specialists (consultants) and court secretaries. In 2023, the average monthly salary of court secretaries in district general courts was UAH 13,563 (approximately GBP 271).²⁸ Similarly, in other district courts (including administrative and commercial courts), the average monthly salary for court secretaries in 2023 was UAH 15,152 (approximately GBP 303).²⁹ The average monthly salary for court secretaries in the appellate courts

²² High Council of Justice of Ukraine, Report On Independence of Judiciary in 2022, available at https://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2022_rik_pro_stan_zabezpechennya_nezalezhnosti_suddiv_v_ukrayini.pdf (Accessed 24 March 2024).

²³ Such as work experience, administrative position at the Court and academic degree.

²⁴ As of 1 January 2024, the minimum salary for first instance court judges is set at 30 times the subsistence wage for capable individuals. As of the same date, one subsistence wage equates to UAH 2,102.

²⁵ As of 1 January 2024, the minimum salary for appeal court judges is set at 50 times the subsistence wage for capable individuals. As of the same date, one subsistence wage equates to UAH 2,102.

²⁶ As of 1 January 2024, the minimum salary for Supreme Court judges is set at 75 times the subsistence wage for capable individuals. As of the same date, one subsistence wage equates to UAH 2,102.

²⁷ High Council of Justice official website, available at <https://hcj.gov.ua/news/vrp-zvernulasya-do-kmu-ta-minfinu-shchodo-nalezhnogo-finansuvannya-sudovoyi-vlady> (Accessed 1 April 2024).

²⁸ Information on the average salary and incentive payments of employees of courts and institutions for 2023 (UKR), available at <https://dsa.court.gov.ua/dsa/pres-centr/news/1551736/> (Accessed 31 March 2024).

²⁹ Ibid.

was UAH 15,256 (approximately GBP 305).³⁰ Moreover, the Council of Europe recommended a substantial rise in salaries of judicial assistants in Ukraine.³¹ Hence, while judicial salaries are high by comparison with other public sector salaries in Ukraine,³² salaries for court staff fall behind judicial salaries.

Lack of judicial independence

The lack of judicial independence continues to be a significant concern in Ukrainian courts. The problem of ensuring internal and external independence of the judiciary has been identified by the European Court of Human Rights (ECtHR) in *Agrokompleks v. Ukraine* (2011). The case concerned insolvency proceedings initiated by a private company (Agrokompleks) against the biggest oil refinery in Ukraine (LyNOS) to recover outstanding debts. Agrokompleks complained about, among other things, the unfairness of the insolvency proceedings, alleging that the courts were not independent or impartial and that the state authorities had a strong interest in the outcome of the case given the intense political pressure surrounding it. The ECtHR held that the interference of government officials with the court proceedings, and the instruction given by the president of the court to his two deputies to reconsider an earlier judgment, violated the principle of judicial independence.³³

There was also an ECtHR judgment on the case of a SCU judge dismissed in May 2010 on allegations of breaching his oath. The ECtHR ordered reinstatement of the judge and requested amendment of the legal framework to safeguard judicial independence.³⁴

Following the judicial reform in 2016, the process of appointing judges in Ukraine has undergone substantial positive changes. One notable change is the removal of the previously mandated five-year probation period for judges. Additionally, the Ukrainian Parliament's involvement in the appointment process has been eliminated. Instead, judges are now selected through an open and transparent competition overseen by the HJCJ. Judges are appointed by the President of Ukraine following a recommendation of the HCJ.

³⁰ Ibid.

³¹ Council of Europe Project 'Support for judicial institutions and processes to strengthen access to justice in Ukraine', Analysis of Ukrainian legislation regarding the status of judicial assistants and its compliance with Council of Europe standards and recommendations, 24, available at <https://rm.coe.int/analysis-of-the-ukrainian-regulatory-framework-regarding-the-status-uk/1680a77d67> (Assessed 08 April 2024).

³² The average monthly salaries of teachers and police in Ukraine are UAH 17,400 (approximately GBP 348) and UAH 18,600-25,000 (approximately GBP 372-500) respectively (see the Cabinet of Ministers of Ukraine website, available at <https://www.kmu.gov.ua/news/denys-shmyhal-u-2024-rotsi-zrostut-vydatky-na-sotsialnu-sferu-medytynu-ta-osvitu> and the National Police of Ukraine official website available at <https://my.patrolpolice.gov.ua/conditions/>) (Accessed 31 March 2024).

³³ *Agrokompleks v. Ukraine*, no. 23465/03, 6 October 2011.

³⁴ *Oleksandr Volkov v. Ukraine*, no. 21722/11, 9 January 2013.

As stated by the EU Ukraine 2023 Enlargement Report, despite legal and institutional guarantees, the risks of undue internal and external interference in the work of the judiciary and the prosecution service persist, and further efforts by the relevant institutions are needed to effectively reduce these.³⁵

Cases of corruption

Significant efforts have been invested in building an anti-corruption infrastructure in Ukraine, including the establishment of the newly formed HACC. The following cases have raised significant public discussion.

One recent prominent case involved the detention of the President of the SC, Vsevolod Kniaziev, on corruption charges linked to an alleged USD 2.7 million bribe. These charges were brought by Ukraine's leading anti-corruption bodies, the Special Anti-Corruption Prosecutor's Office (SAPO) and the National Anti-Corruption Bureau of Ukraine (NABU).³⁶

Another case involved audio recordings published by NABU between 2019 and 2021, in which the President of the Kyiv District Administrative Court, Pavlo Vovk, was heard discussing numerous corrupt deals and issuing illegal orders.³⁷ In December 2022, the Ukrainian Parliament passed a law to dissolve the Kyiv District Administrative Court.³⁸ One of the key objectives of the ongoing reform is to establish a new court to handle administrative cases involving central government bodies. This requirement is also listed in the EU Ukraine Facility Plan 2024-2027.³⁹

In November 2023, NABU and SAPO claimed to have uncovered a case of four judges from the Kyiv Court of Appeal receiving a bribe of USD 35,000 for overturning the seizure of aircraft property. In December 2023, the HCJ authorised the detention of the judges.⁴⁰ The number of cases of corruption within the judiciary demonstrate a dual narrative. On one hand, they signify the effectiveness of the anti-corruption infrastructure, while on the other they underscore the persistent presence and scale of corruption reaching a wide range of courts, including the most senior.

³⁵ EU Commission Staff Working Document, Ukraine 2023 Report, Communication on EU Enlargement policy, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (Accessed 24 March 2024).

³⁶ Atlantic Council, available at <https://www.atlanticcouncil.org/blogs/ukrainealert/the-fight-against-courtroom-corruption-continues-in-wartime-ukraine/> (Accessed 26 March 2024).

³⁷ The Kyiv Independent, available at <https://kyivindependent.com/us-sanctions-ukraines-most-notorious-judge-charged-with-corruption/> (Accessed 26 March 2024).

³⁸ Ukraine Facility Plan 2024-2027, available at <http://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf> (Accessed 26 March 2024).

³⁹ Ibid.

⁴⁰ Transparency International Ukraine, available at <https://ti-ukraine.org/en/news/catching-kyiv-court-of-appeal-judges-with-a-bribe/> (Accessed 26 March 2024).

Blocked disciplinary proceedings against judges

There was a substantial backlog of 12,241 pending disciplinary complaints against judges as of 1 November 2023.⁴¹ This posed a serious threat to the system of judicial integrity.

The backlog stems from the fact that in August 2021, the HCJ ceased its constitutional function, refraining from reviewing complaints against judges. This was a result of a new law that introduced the role of Special Disciplinary Inspector, tasked with (among other responsibilities) conducting preliminary investigations into disciplinary complaints against judges. Despite the introduction of these inspectors, a dedicated law to regulate their activities was not adopted until 2023.

In August and September 2023, two laws were passed to recommence disciplinary proceedings against judges (where appropriate) and to establish an independent service of disciplinary inspectors within the HCJ. In December 2023, the HCJ announced a competition for positions of disciplinary inspectors, including the Head of the Service, Deputy Head, and disciplinary inspectors. In February 2024 the application period ended, with a total of 539 applications from 415 candidates received (with some candidates applying for multiple positions).⁴² The selection procedure for 24 disciplinary inspectors' vacancies has been ongoing.

Ineffectiveness in enforcing court judgments

A significant concern exists in the persistent failure to enforce court decisions: a problem that existed both before and after the invasion. This problem presents a pressing issue requiring urgent attention. The total value of unpaid domestic court-ordered debts in Ukraine exceeded a quarter of the nation's Gross Domestic Product (GDP) in 2018, which emphasises the gravity of the problem and its extensive implications for both economic stability and the rule of law.⁴³

One significant factor contributing to this predicament is the limited ability of creditors to pursue their claims against state-owned enterprises effectively. This challenge is partly due to special legal provisions, known as the 'moratoria regime', which effectively hinder the enforcement of judicial decisions and prevent the initiation of bankruptcy proceedings against state-owned enterprises.

In 2017, private enforcement officers (PEOs) began operating in Ukraine, following legislation adopted in 2016. These individuals are licensed to execute court judgments and are akin to state enforcement officers (SEOs). They have the authority to carry out enforcement actions, such as seizing

⁴¹ High Council of Justice of Ukraine, Press Release, available at <https://hcj.gov.ua/news/informaciya-shchodo-priorytetnosti-dyscyplinarnyh-provadzhen> (Accessed 24 March 2024).

⁴² High Council of Justice of Ukraine, Report on Independence of Judiciary in 2022, available at https://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2022_rik_pro_stan_zabezpechenny_a_nezalezhnosti_suddiv_v_ukrayini.pdf (Accessed 24 March 2024). Ukraine Facility Plan 2024-2027, available at <http://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf> (Accessed on 24 March 2024).

⁴³ Sir Robert Buckland, Illia Chernohorenko, 'The ECHR remains a beacon for the people of Ukraine and Europe' (4 April 2023) The Times, available at <https://www.thetimes.co.uk/article/the-echr-remains-a-beacon-for-the-people-of-ukraine-and-europe-dx06s5pxr> (Accessed 24 March 2024).

property or recovering debts, as directed by court orders. Operating independently of the state enforcement system, PEOs are driven by personal interests and initiatives; their actions are closely monitored by the Ministry of Justice to ensure accountability. PEOs work on a fee-for-service basis, charging typically 10% of the value of the enforced debt or property. Challenges faced by PEOs include competition with SEOs, ensuring compliance with legal and ethical standards and managing their business operations, as well as the inability to enforce court judgments rendered against the state authorities/state-owned enterprises. Currently, 260 PEOs are operational, demonstrating effective performance in terms of debt collection compared with the SEOs. In 2022, enforcement case numbers dropped significantly due to the war, falling from 4.1 million to 1.7 million.⁴⁴

Ineffective implementation of arbitral awards

Ukraine has been a party to the 1958 New York Convention, governing international enforcement of arbitration awards, since 1961. In 2017, Ukraine implemented substantial reforms to its arbitration-related procedural rules, aiming to streamline processes, introduced a two-tier system for reviewing arbitral awards, and clarified court powers regarding interim measures and evidence preservation. All cases concerning the recognition of arbitral awards in Ukraine are adjudicated by the Kyiv Court of Appeal, with appeals being directed to the SC. At any stage, a claimant may request the court to secure its claim, such as by seizing the debtor's assets or funds. However, despite these reforms, challenges persist. Notably, certain categories of cases of arbitral awards may not be enforceable by the more efficient PEOs as some cases are under the exclusive jurisdiction of SEOs. Moreover, delays in initiating interim measures by parties and the requirement by courts for a high standard of proof to demonstrate the likelihood of damage may also impede the enforcement of arbitral awards.

Investment treaty arbitration serves as a crucial mechanism for resolving disputes related to investments in the country. Ukraine is a party to a significant number of investment protection treaties, including bilateral investment treaties (BITs) and the Energy Charter Treaty (ECT). Additionally, Ukraine's membership of the 1965 Washington Convention facilitates the enforcement of investment treaty arbitral awards, bolstering the effectiveness of investment treaty arbitration within its jurisdiction. Many of Ukraine's BITs were established during the 1990s and early 2000s (after the nation became independent), offering vital legal protection for investments and typically incorporating provisions for investor-state dispute settlement (ISDS).

Ukraine has been involved in numerous ISDS cases, with foreign investors filing at least 31 treaty-based claims against the country. These disputes often centre around extensive energy and natural resources projects within Ukraine's territory. A common provision in investment treaties requires Ukraine to provide investors with fair and equitable treatment (FET). However, the interpretation of such FET provisions by arbitral tribunals has varied, leading to ambiguity and escalating litigation

⁴⁴ EU Commission Staff Working Document, Ukraine 2023 Report, Page 28, Communication on EU Enlargement policy, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (Accessed 24 March 2024).

expenses. Some tribunals have adopted broad interpretations of FET provisions, prompting governments to adopt more precise or restrictive approaches in recent treaty negotiations.

Enforcement of decisions rendered by the International Centre for Settlement of Investment Disputes (ICSID) operates automatically under the Washington Convention. However, where Ukraine is a respondent in such disputes, the primary avenue for enforcing these decisions is through budgetary programmes. Notably, one such programme involves compensation for damages resulting from unlawful actions by state authorities. Another programme, administered by the Ministry of Justice of Ukraine, allocates funds for enforcing decisions against Ukraine. However, there is a limited allocation within this programme, with only UAH 577 million (approximately GBP 10.5 million) for the enforcement of all foreign judgements rendered in 2021.

Slow progress in the digital transformation of the courts

The SJA plays a crucial role in regulating and facilitating the country's judicial processes. It oversees the Unified Judicial Information and Telecommunication System (UJITS), which streamlines electronic case management and document exchange among courts and governmental bodies. However, budgetary constraints have impeded the development of UJITS subsystems from 2020 to 2023, leading to outdated infrastructure. While initiatives like mobile application of the e-court subsystem and video conferencing have been implemented, the recent audit revealed inconsistencies in the e-justice system.

To address these challenges, an independent EU/United States Agency for International Development (USAID) IT audit was conducted in 2023; this aimed to modernise hardware, software and infrastructure. Urgent action is needed to ensure equitable access to justice amidst digital advancements.⁴⁵

Mandatory online UJITS accounts for parties to court cases (excluding individuals and private businesses) were introduced in October 2023. Failure to use these can result in legal sanctions highlighting the system's growing importance.

Other rule of law challenges in Ukraine

In a broader context, the dispute resolution system in Ukraine represents just one facet of the multiple challenges impeding investment in the country. Among these challenges are deficiencies in the regulatory framework, complexities within the tax regime and disparities in risk perceptions between foreign investors in Ukraine and those observing from abroad. Additionally, while some existing foreign investors are committing substantial sums, investments from new investors are limited. Furthermore, Ukraine's implementation of wartime currency controls and a fixed exchange rate regime have introduced further complications.⁴⁶ The temporary imposition of a moratorium on

⁴⁵ Ukraine Facility Plan 2024-2027, available at <http://www.ukrainefacility.me.gov.ua/wp-content/uploads/2024/03/ukraine-facility-plan.pdf> (Accessed 26 March 2024).

⁴⁶ US Department of State, 2023 Investment Climate Statements: Ukraine, available at <https://www.state.gov/reports/2023-investment-climate-statements/ukraine/> (Accessed 26 March 2024).



additional business inspections, coupled with various ongoing criminal investigations, adds to the complexity of the investment landscape. There is a need to address disputes involving state authorities or state intervention. Although this issue is beyond the scope of the current research project, we recommend examining it further.

The challenges outlined in Section II of this report offer a crucial context for understanding the present state of the Ukrainian dispute resolution system, particularly concerning investment-related disputes. This analysis draws on information available in open sources. This report enhances understanding by presenting the findings of surveys and interviews conducted by BIICL, thereby offering previously unpublished insights. Section II explores these findings.

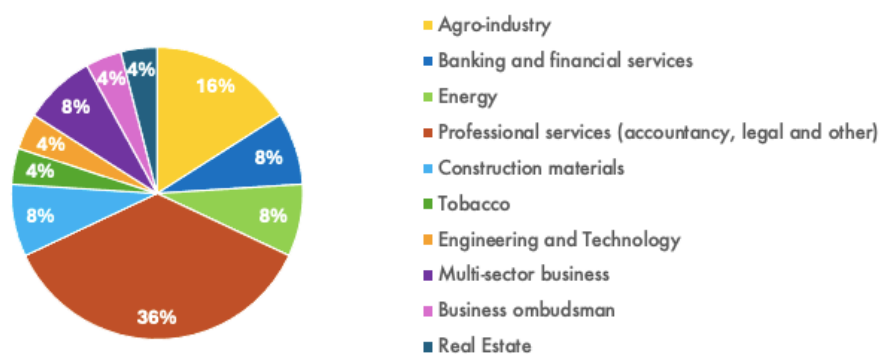
II. Interviews and Surveys: Business and Judiciary Insights

Interviews and surveys were conducted among international business stakeholders and members of the judiciary in Ukraine between 8 February and 15 March 2024. These involved 25 participants representing Ukrainian and international businesses, alongside their legal advisors, and 28 representatives of the judiciary. Given the relatively limited numbers of survey respondents, the findings of the survey should be regarded as a qualitative collection of informed views and opinions from a group of key stakeholders rather than a comprehensive statistical review.

Insights from business

Profile of the respondents

Of the respondents, 64% were business representatives actively involved in operations within Ukraine, while 36% were advisors to businesses, such as lawyers and accountants. Among the respondents, 68% held a majority interest in Ukrainian businesses and 76% had been engaged in business activities within Ukraine for over 10 years. The survey encompasses a diverse range of sectors as shown below.



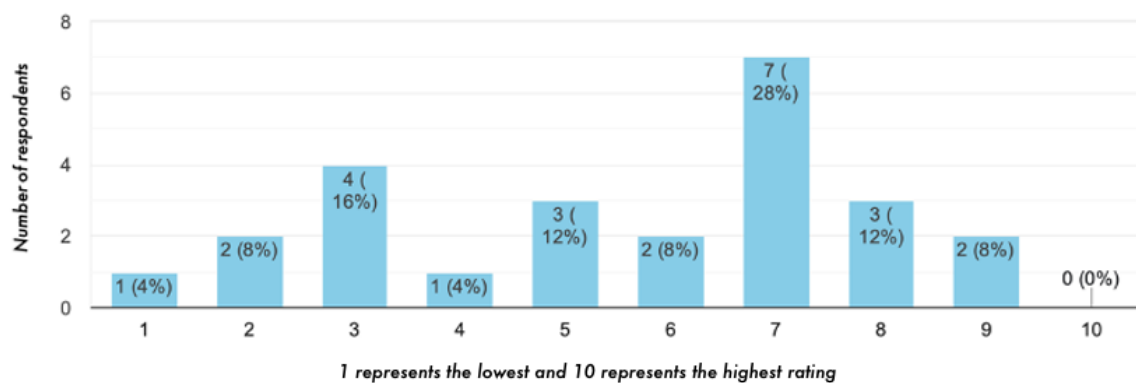
Factors impeding the investment attractiveness of Ukraine

As indicated by the survey findings, a multitude of factors act as deterrents to investment in Ukraine. On a scale of 1 to 10 (with 1 being the lowest rating and 10 being the highest), the safety of physical infrastructure in Ukraine emerged as a significant concern, with most respondents rating it between 8 and 10. Similarly, corruption was deemed a serious issue, with a majority of respondents giving it a rating of 7 or 8. Furthermore, the effectiveness of law enforcement bodies was considered paramount, with 60% of respondents assigning it a rating between 7 and 9. The efficiency of governmental agencies was perceived as less of a concern, with most ratings falling between 5 and

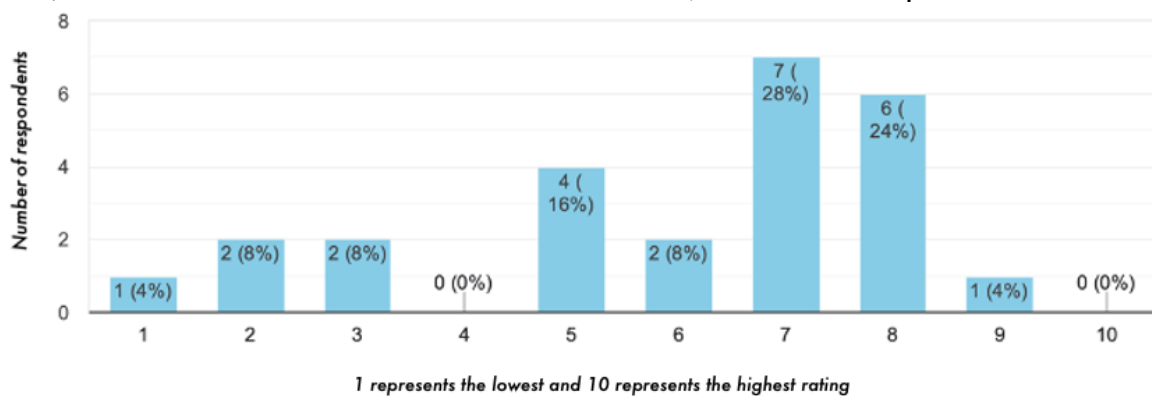
7. In addition, deficiencies in the regulatory framework were highlighted, with 20% of respondents assigning it a rating of 8.

Efficiency of dispute resolution

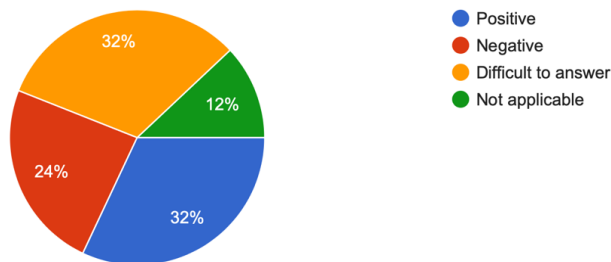
Respondents rated efficiency, fairness, speed and cost of commercial courts' resolution of investment/commercial disputes in Ukraine as follows.



On the same scale, respondents rated efficiency, fairness, speed and cost of Ukraine-based arbitration systems (through local law and the Ukraine International Commercial Arbitration Court (ICAC) in terms of resolution of commercial/investment disputes in Ukraine.

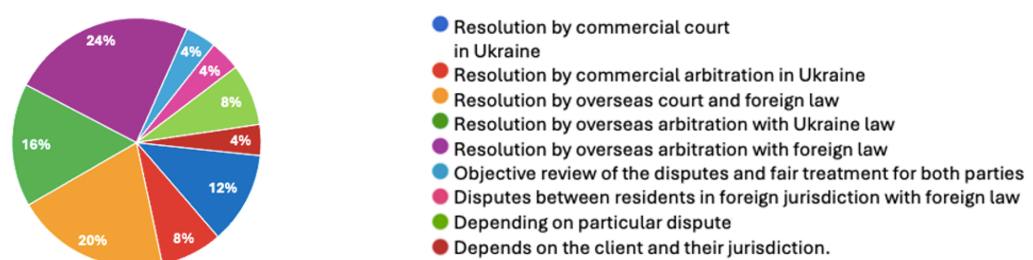


88% of respondents have been involved in court and/or arbitration proceedings in Ukraine and rated their experience as follows.



Where negative experiences were reported, insights from respondents regarding dispute resolution in Ukraine highlighted significant hurdles for businesses. Concerns primarily revolve around perceived judicial independence and impartiality, compounded by risks of corruption and political interference. A lack of trust in the legal system and doubts about regulatory effectiveness further contribute to challenges. Many prefer international arbitration over domestic courts due to perceived inefficiencies of the latter. Comparisons with other jurisdictions underscore disparities in process, efficiency and trustworthiness. Overall, Ukraine's legal system, while offering speed advantages, [relative law court fees](#), grapples with systemic issues such as bureaucratic hurdles and corruption risks, which undermine investor confidence and effective dispute resolution.

When queried about their preferred method of dispute resolution, only 12% of respondents opted for commercial courts in Ukraine. The majority favoured overseas courts and foreign law (20%), overseas arbitration and foreign law (24%), or overseas arbitration and Ukrainian law (16%).

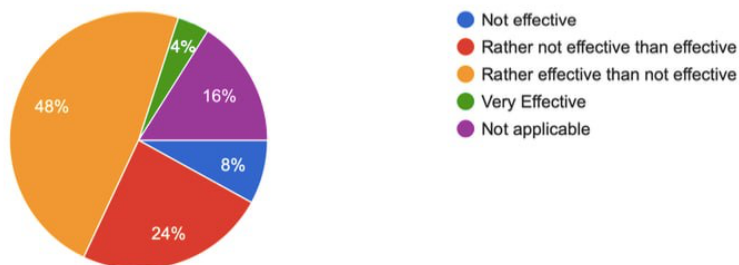


Moreover, the responses show a clear preference for foreign law, notably English, in governing disputes. English law is favoured for its predictability, flexibility, and perceived fairness, with many citing the expertise of English lawyers and the developed judicial system in England as influencing factors. French and US laws are also mentioned, but English law dominates due to its widespread acceptance and market standard status, particularly in finance, capital markets and M&A deals.

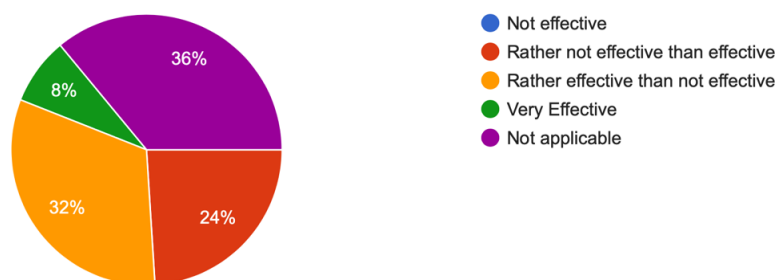
Enforcement of court judgments and arbitral awards

Although the majority of respondents sought to enforce domestic court judgments and/or arbitral awards in Ukraine, 60% reported successful enforcement while 16% encountered difficulties in doing so.

Furthermore, when questioned about the effectiveness of enforcement measures used in Ukraine, the outcomes were as follows.



Prior to enforcing an arbitral award, the award must be recognised by the Ukrainian court. Respondents were queried about the effectiveness of this recognition process, yielding the following results.



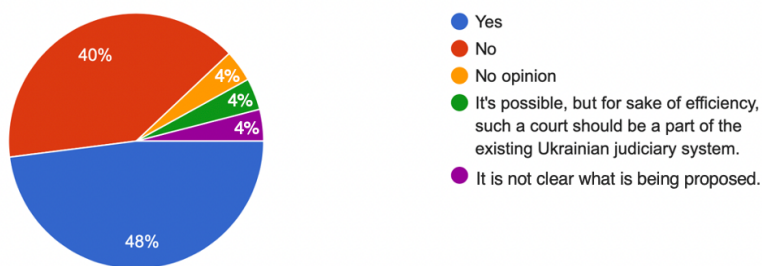
The responses indicate a mixed experience regarding the recognition and enforcement of foreign arbitral and court awards in Ukraine. While some respondents expressed satisfaction with the process, citing improvements such as the concentration of enforcement proceedings in a single court and amendments to procedural legislation, others highlighted challenges such as lengthy procedures and formalistic approaches by courts.

Overall, there is a general recognition that Ukrainian courts have made strides towards alignment with international standards, demonstrating a good understanding of international commercial arbitration.

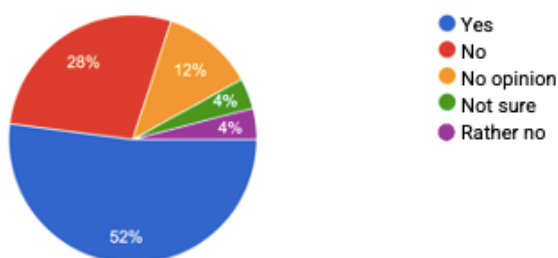
A need for a specialised court

Respondents were asked whether they thought Ukraine should establish a new standalone specialised court dedicated to handling international and commercial legal disputes, and whether this initiative would enhance their confidence in investing in or conducting business in Ukraine.

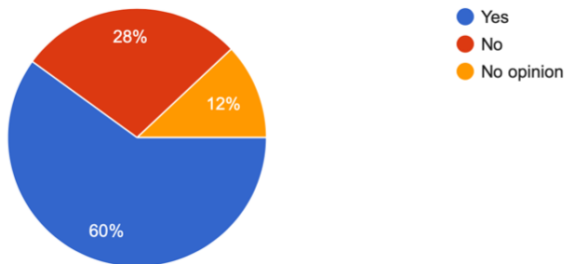
Almost half of the respondents provided affirmative answers, although a substantial number disagreed.



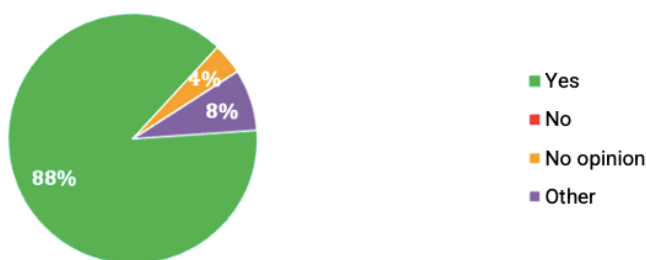
The subsequent question posed to respondents was whether the creation of an independent international commercial financial centre in Ukraine, akin to the Dubai International Financial Centre (DIFC) or the Astana International Financial Centre (AIFC), would instil greater confidence in investing in or conducting business with Ukraine.



60% of respondents agreed that if a specialised investment court is established, it would be appropriate to empower such a court to adjudicate cases involving regulatory bodies and other governmental and municipal authorities that could impact investors' rights.



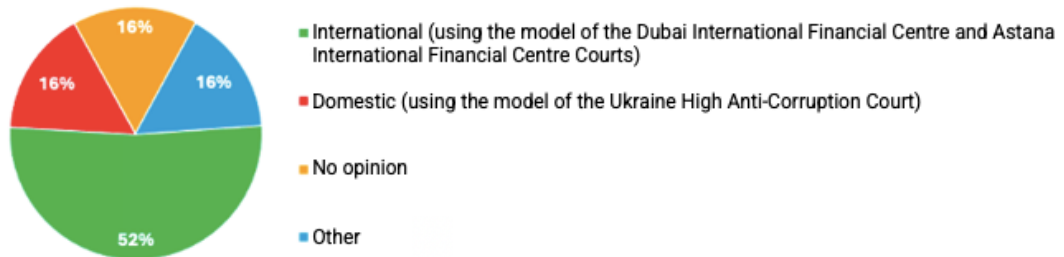
Furthermore, 88% of respondents agreed that Ukraine should take steps to enhance and streamline the enforcement of domestic and international arbitration awards to boost confidence in investing in or conducting business with Ukraine.



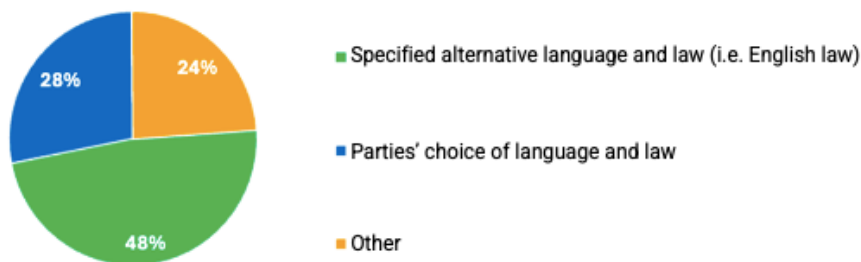
When offering comments, respondents expressed varied viewpoints on enhancing Ukraine's legal infrastructure for international commercial and investment disputes. While some stressed the significance of recognising foreign arbitration decisions and creating specialised courts, others prioritised addressing corruption within current judicial systems and enhancing judicial training. Opinions also diverged on the role of international financial centres and the necessity of specific jurisdictional improvements. There also seems to be a consensus favouring measures that strengthen the capacity and capability of existing courts while tackling corruption risks and bolstering judicial training.

Features of an investment court

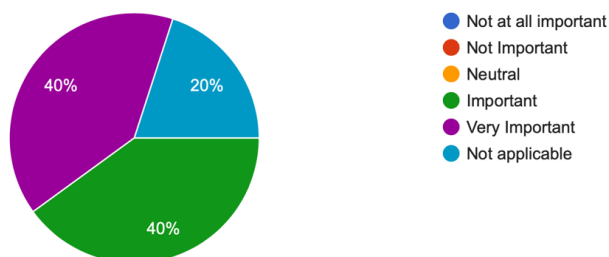
Over half of respondents (52%) indicated a preference for a specialised international investment court, while only 16% favoured a purely domestic investment court.



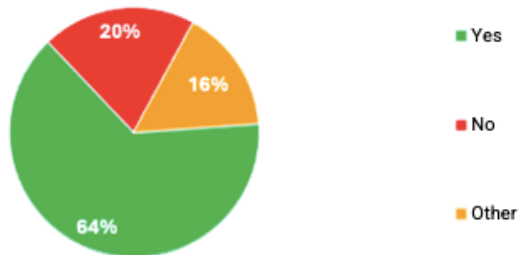
When asked about the preferred language and law for an international court, the responses varied.



80% of respondents stressed the importance of being able to appoint experienced international judges to decide cases.



64% of respondents thought that if the court applied foreign law and involved foreign judges, it would make them more confident in investing in or doing business with Ukraine.



Overall, respondents have highlighted the recent improvements in the court system, including the creation of the new SC, as a positive development and offered a comprehensive array of recommendations aimed at enhancing confidence in investing in or doing business with Ukraine, particularly focusing on legal and judicial reforms. Many respondents focused on measures to increase the capacity and capability of existing courts to deal with international commercial/investment disputes through streamlining processes and procedures as well as training and upskilling judges. Some respondents highlighted the importance of measures to strengthen judicial independence by implementing merit-based appointments, while others stressed the importance of introducing transparent and effective disciplinary actions for violations of the law by judges. Transparency and efficiency improvements are also highlighted, with suggestions including increasing transparency in court proceedings, streamlining procedures and adopting technology solutions for case management.

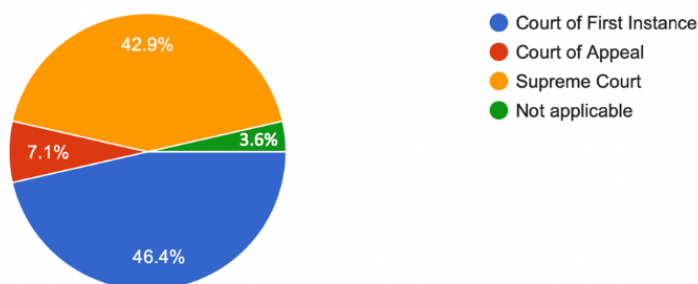
Insights from the judiciary

Profile of the respondents

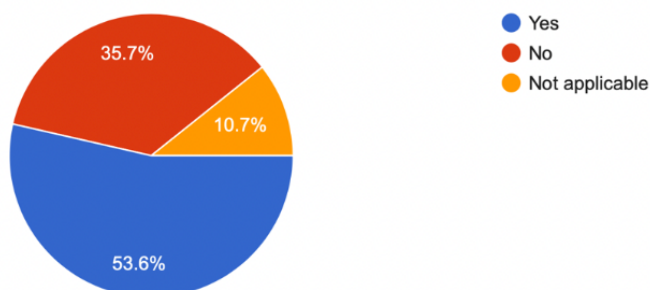
While the majority of respondents were judges currently serving (78%) or retired (7%), the survey also encompassed court officials and judge candidates. Among the respondents, 66% possessed over a decade of judicial experience while 17.9% had 6 to 10 years and 25% had 1 to 5 years experience. Notably, a significant portion (75%) had presided over more than 2000 cases while 10.7% had adjudicated fewer than 100 cases.

Regarding representation across Ukrainian court jurisdictions, courts were represented as follows: 28.6% of respondents had experience in administrative courts, 57.1% in civil courts, 42.9 % in commercial courts and 53.6% in criminal courts.

Most of the respondents were judges either of the first instance court or the SC as follows.

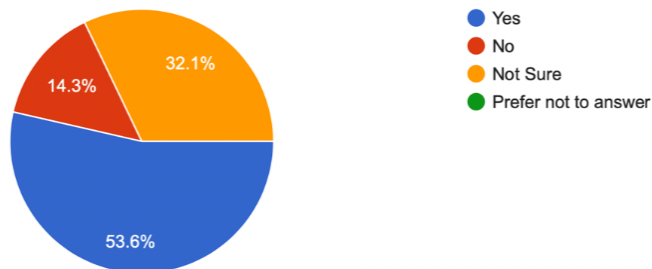


Most of the respondents also presided over/adjudicated cases involving commercial/investment disputes and foreign parties in Ukraine.



Perception of the current legal environment

While over 50% agreed with the assertion that courts operate independently, it should be noted that 32% and 14% of respondents respectively either expressed uncertainty or disagreed with the assertion that the courts in Ukraine operate independently.



When queried about the proficiency of Ukrainian judges and court officials for drafting judgments in English, 42.9% of respondents rated it as 3 out of 10 while an additional 25% rated it at just 1 out of 10. Notably, no ratings above 6 were recorded. The knowledge of English is primarily necessary as Ukrainian judges consider cases under foreign law and, to do so, directly access relevant case law and legislation which is often available exclusively in English.

Meanwhile, when rating the effectiveness of the current legal environment for handling commercial investment disputes involving foreign parties in Ukraine on a scale of 0 to 10, 21.4% rated it at 6, 1.9% at 5, 14.3% at 8, 14.3% at 9, and 7.1% at 10.

Opinions regarding the strengths and weaknesses of Ukraine's current legal framework for resolving commercial/investment disputes involving foreign parties were diverse and multifaceted.

Strengths:

- Presence of the Cassation Commercial Court within the structure of the SC, housing judges specialised in commercial matters.
- Speed and cost-effectiveness of court procedures in commercial disputes and flexibility and progressiveness of the procedural code.
- Adoption of international legal principles and doctrines, enhancing the adaptability of Ukrainian jurisprudence to international business standards.
- Provision for resolving investment disputes in international arbitration, offering alternative dispute resolution mechanisms.
- Ability to apply principles laid down by the ECtHR, contributing to legal alignment with European standards.
- Inclusion of specific provisions in the legal framework to accommodate foreign investors and prioritise international treaties.

Weaknesses:

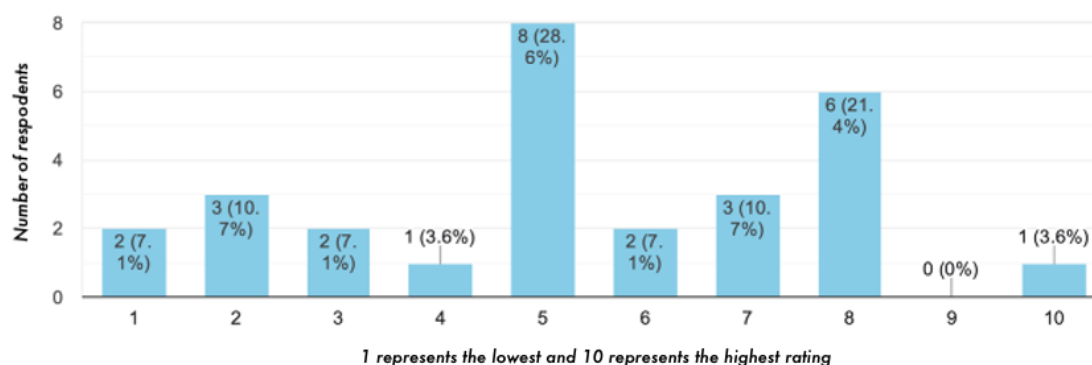
- Formalised and complicated legal framework.
- Inconsistent judicial practices and changes in legal position by the SC.
- Low quality of legislation and overregulation, as well as inconsistencies and contradictions between different statutes.

- Inadequate knowledge of foreign law among judges.
- Insufficient proficiency in foreign languages among judges.
- Shortage of judges and excessive workload, leading to delays in case resolution.
- Pressure on courts and lack of trust in the judiciary.
- Complexity and inefficiency in serving summonses and procedural documents on foreign parties.
- Lack of accountability for decisions violating investors' rights and non-enforcement of court decisions.

Supplementing these perspectives, 60.7% of respondents reported never having encountered challenges in ensuring a fair and efficient resolution of commercial/investment disputes involving foreign parties, while 25% acknowledged having encountered such challenges. Specific challenges were confirmed or additionally named as follows.

- Difficulty in navigating foreign legal systems and accessing relevant materials.
- Disagreements within the judiciary over procedural matters and rights protection for foreign investors.
- Challenges applying English law due to limited access to precedents.
- Concerns about notification processes for foreign individuals and delays due to notification procedures and translation inadequacies.
- Abuse of rights, procedural delays, and lengthy case processing as well as misuse of injunctions and abuse to circumvent claim allocation systems.
- Revocation of preferential tax regimes impacting foreign investors.

Separately, the survey explored the efficiency of enforcement of court judgments and recognition and enforcement of arbitral awards. Most respondents rated the effectiveness of the enforcement system at 5 or fewer points out of 10.



The survey also explored specific challenges encountered in the enforcement of awards related to commercial/investment disputes involving foreign parties. Respondents highlighted various issues including the complexity of the enforcement mechanism, lack of ability to access assets belonging to

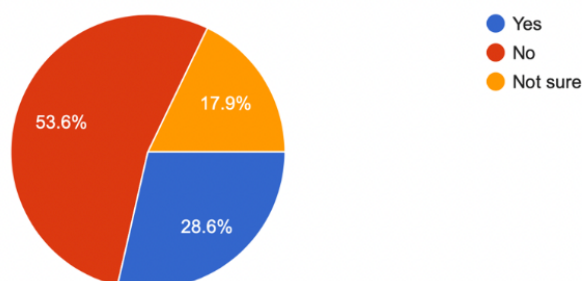
debtors and hurdles in enforcing decisions across international borders. Additionally, problems such as delays in enforcement, lack of incentives for debtors to fulfil non-monetary obligations and attempts by debtors to contest arbitral awards during the enforcement stage were mentioned.

Regarding improvements to streamline the process of recognition and enforcement of awards related to commercial/investment disputes, suggestions included empowering courts with greater oversight over the enforcement process, increasing accountability for non-compliance and enhancing the role of PEOs. Other recommendations focused on introducing procedures for enforcing arbitral awards involving periodic payments, simplifying mechanisms for changing enforcement methods and digitising the enforcement process.

In addition, respondents proposed measures such as introducing enhanced criminal liability for non-enforcement of court decisions in the sphere of foreign investments, implementing property liability for states in BITs and establishing a Commissioner for the Rights of Foreign Investors with additional powers to oversee enforcement-related issues.

A need for a specialised investment court

28.6% of the participating judges expressed support for establishing a specialised commercial/investment court in Ukraine to enhance the resolution of disputes involving foreign parties, while 53.6% were against the establishment of such a court.



The respondents were also asked to elucidate the benefits and drawbacks of establishing such a court in Ukraine. Their summarised responses are as follows.

Benefits

- Enhanced quality of court decisions due to specialisation, potentially improving outcomes for investment disputes.
- Positive impact on the investment climate, serving as a PR initiative and attracting investors with specialised knowledge of English among judges.
- Increased trust and confidence among foreign investors in the Ukrainian judiciary, potentially leading to greater investment inflow.
- Guarantees for the protection of foreign investors' rights and improvement of the investment climate.
- Opportunity for judges to undergo training or internships in foreign courts, fostering consistency and unity in judicial practice.

- Specialised training and expertise of judges in international investment law, leading to higher-quality adjudication.
- Facilitation of more effective communication between Ukrainian judges and their foreign counterparts.
- Addressing challenges such as the lack of trust in the judiciary and perceptions of corruption, potentially revitalising the post-war economy.

Concerns:

- Risk of dependence on authorities when appointing judges, potentially leading to lack of independence and experience among new judges.
- Lack of need for specialised courts, potentially undermining legal certainty and existing commercial courts.
- Challenges in defining jurisdiction (particularly in distinguishing investment disputes from other types of disputes) and coordinating disputes, potentially leading to jurisdictional chaos.
- Problems with staffing in courts and lack of resources, potentially leading to the overcommitment of judges and prolonged case hearings.
- Concerns about trust in the court and potential discrimination between domestic and foreign investors.
- Potential gap between societal groups and tension within the judiciary due to the courts' establishment.
- Limited impact of such courts on issues with law enforcement agencies such as police, tax authorities and customs, which are critical for investors.
- Additional costs and need for constitutional changes to establish such courts.
- Unclear role and place of such courts within the existing judicial system; careful delineation of the courts' jurisdiction would be required to ensure effective functioning.

Respondents also recommended the key features or attributes for the structure of a specialised investment court in Ukraine as follows.

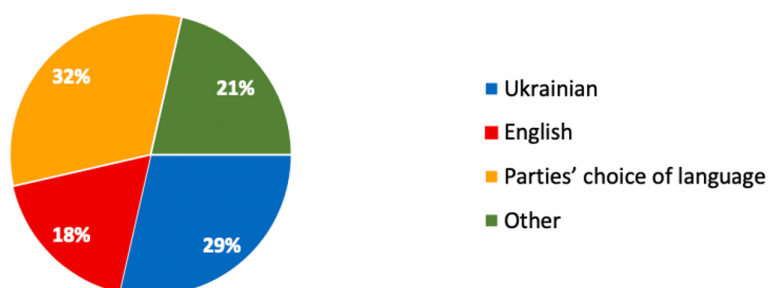
- Court of first instance: there should be a court of first instance, possibly at the regional level, to ensure accessibility for parties involved in smaller investment disputes.
- Panel of judges: cases should be heard by a panel consisting of a minimum of three judges to ensure fair and diverse perspectives.
- Incorporation of arbitration elements: while being a state court, the court should incorporate elements of arbitration, allowing parties to choose judges they trust.
- Mandatory mediation: mandatory mediation should be implemented as part of the dispute resolution process.
- Inter-jurisdictional authority: the court should handle disputes not only within the commercial jurisdiction but also administrative and criminal, functioning as a court with inter-jurisdictional authority.
- Clear jurisdiction criteria: there should be clear and precise criteria for determining the jurisdiction of disputes to avoid ambiguity.

- Specialisation: specialisation within the existing judicial system or the creation of specialised chambers within commercial courts should be considered.
- Language proficiency: judges and court staff should be proficient in Ukrainian and English to facilitate proceedings.
- Independent selection of judges: judges should be selected through a competitive process, possibly involving international experts, to ensure impartiality and expertise.
- Appellate instance: the court should have an appellate instance to review decisions made at the first instance.

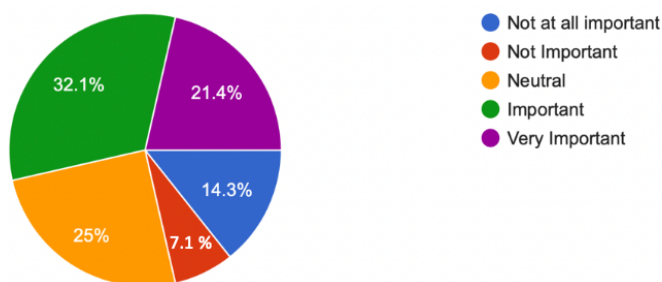
When asked about the nature of the investment court (whether it could be international, domestic, or hybrid) the responses varied as follows.



As to the preferred language of the court, responses were as follows.



Finally, the majority of respondents emphasised the importance of involving experienced international arbitrators or foreign judges in a new investment court.



When considering the procedural framework for the new court, nearly half of the respondents (43%) confirmed the adequacy of the current commercial procedure code while 36% stated that a new set of procedural codes is required.

Training and capacity building

The survey examined the necessity for training and capacity-building for the judiciary, revealing a unanimous sentiment among the respondents: 96% in favour. Suggestions for training and capacity-building for judges handling commercial/investment disputes include:

- gaining additional understanding of business operations;
- training on principles of state responsibility and balancing public and private interests;
- familiarisation with foreign legal systems and languages;
- exposure to European court (ECtHR, CJEU, or/and domestic European courts) mechanisms and international law;
- practice sessions with experienced arbitrators;
- study of EU law, corporate law, and investment protection;
- specialised training on intellectual property and antitrust/competition disputes.

Suggestions for court staff and administration include:

- providing courses for proficiency in relevant languages;
- ensuring adequate salaries;
- updating computer equipment and providing technical support;
- offering training in diplomatic protocol and etiquette, as well as regulatory instructions regarding document circulation in leading international arbitrations handling disputes with foreign investors.

III. Recommendations

It is recommended to strengthen dispute resolution in Ukraine via two avenues: enhancing current practices ('enhancing solutions') and introducing new dispute resolution models ('innovative ideas').

Enhancing solutions

In the field of **arbitration and mediation**, we propose that recognition procedures are enhanced for both international and domestic arbitration awards, while raising awareness about the effectiveness of arbitral award recognition. Additionally, we advocate development of mediation expertise, promotion of pre-trial mediation, and ratification of the 2023 Singapore Convention on mediation.

Regarding **Ukrainian court practice and procedure**, improvements are proposed to streamline the process of obtaining preliminary injunctions and to address staffing shortages within the courts. The importance of completing the ongoing audit of the e-court system (led by USAID and EU) and fully digitising the court system to boost efficiency is also emphasised. In terms of enforcing court decisions and arbitral awards, audit and reform of the SEO system, as well as enhancement of the self-regulation of PEOs, is recommended. Furthermore, the importance to facilitate recognition and enforcement of foreign judgements is stressed.

Within the realm of **building Ukrainian judicial capacity**, the need to address shortages in the judiciary, particularly within commercial courts, and to introduce training programmes covering various legal aspects for judges is highlighted. The need for capacity-building is underscored by the survey of the Ukrainian judiciary which revealed near-unanimous support for such initiatives among respondents (96%). Based on preliminary training needs assessment within the survey, capacity-building for judges who handle investment disputes includes enhancing their understanding of business operations, providing training on principles of state responsibility and balancing public and private interests as well as familiarising judges with foreign law (mostly English law) and English language, exposing them to international court mechanisms and international law, conducting practical sessions with experienced arbitrators, studying EU law, corporate law and investment protection, and offering training on intellectual property and antitrust disputes. Language proficiency programmes for judges are also recommended, alongside efforts to facilitate Ukraine's membership in the Standing International Forum of Commercial Courts (SIFoCC). SIFoCC is a London-based forum that brings together commercial courts from across the world to share best practice in commercial dispute resolution, support the rule of law and support countries in their own work on resolving commercial disputes.

Finally, a review of investment protection laws, commercial procedural laws and enforcement laws to identify areas for improvement is called for. This will involve identifying **gaps in existing domestic investment protection laws**, preparing recommendations for legislative amendments to address contradictions and complexities within the legal framework and implementing these changes into law.

Table 'Enhancing solutions'.





Approximate timeline:

 - short-term measures (up to 12 months)

 - medium-term measures (1-3 years)

 - long-term measures (3-8 years)

1. Arbitration and mediation

Recommendation	Timeline	Expected Outcome	Amendment of the Constitution Required
1.1. Raise awareness of the efficiency of the current system of recognition of arbitral awards.	 Short-term	Create wider confidence among international and national businesses in the effectiveness of arbitral award recognition in the Ukraine.	No
1.2. Further improve procedures for recognition of international and domestic arbitration awards.	 Short-term	Faster and more predictable process for arbitral award recognition.	No
1.3. Develop mediation expertise and capacity and encouragement of pre-trial mediation.	 Medium-term	Enable increased numbers of disputes to be settled outside court proceedings and raise awareness of and increased trust in the mediation process.	No
1.4. Ratify Singapore Convention on mediation.	 Short-term	Increased foreign investor confidence that international mediation settlements will be enforceable in Ukraine.	No

2. Ukrainian court practice and procedure

Recommendation	Timeline	Expected Outcome	Amendment of the Constitution Required
2.1. Improve and harmonise practice and procedure for obtaining preliminary injunctions.	Short-term	The courts develop a harmonised practice of issuing injunctions in line with international standards which increases the ability for parties to make financial recovery in the Ukraine.	No
2.2. Address court staff shortages and create more capacity among court personnel including through training and better remuneration.	Medium-term	Improved processes for attracting talent to join court administration staff through increased remuneration and better training, leading to higher quality court staff and increased confidence among court users.	No
2.3. Complete the audit of the Ukrainian e-court system (UJITS) which is currently undertaken with the support of the EU and USAID.	Short-term	The UJITS system audit is completed and a strategy is agreed for implementation of a comprehensive e-court system.	No
2.4. Digitise the court system in a holistic and innovative manner, including advanced case management systems and e-court solutions.	Medium-term/ Long-term	A fully digitalised human-centric e-court system is implemented in accordance with the best international practices of online dispute resolution, A paperless court is in operation.	No

3. Enforcement of court decisions and arbitral awards

Recommendation	Timeline	Expected Outcome	Amendment of the Constitution Required
3.1. Audit and further reform the SEO system including by increasing salaries, creating a rigorous qualification, recruitment and oversight process, and incentives for rapid enforcement.	Medium-term	Increased efficiency of enforcement of court decisions by SEOs.	No
3.2. Enhance regulation of the PEO system including by passing pending laws to enhance their powers.	Medium-term	Enhanced standards and powers of PEOs and reinforcement of enforcement.	No
3.3. Facilitate recognition and enforcement of foreign judgements	Short-term	Increased level of attractiveness of Ukraine as a jurisdiction for commercial dispute resolution and increased confidence in the ability to enforce Ukrainian court decisions abroad. In turn, given that Ukraine is aiming to become a member of the EU and join the single market, it will benefit from joining the Lugano Convention.	No

4. Ukrainian judicial capacity-building

Recommendation	Timeline	Expected Outcome	Amendment of the Constitution Required
4.1. Address judicial shortages, especially in the commercial courts.	Medium-term/ Long-term	Court vacancies are filled in a timely fashion and salaries in first and appellate instances are increased to provide enough incentives for talented and experienced legal professionals to join the judiciary.	No
4.2. Implement a training programme for commercial court judges covering international commercial law, international arbitration, ECtHR and commercial laws of foreign jurisdictions (i.e., English law).	Short-term	Increased level of understanding and consistency of application of international and foreign law.	No
4.3. Provide a training programme for judges on recognition of arbitration awards in line with international standards.	Short-term	Judges deal effectively with the recognition of arbitral awards and have a comprehensive knowledge of international and national arbitration procedure.	No
4.4. Implement a language proficiency programme for commercial court judges.	Short-term	Increased language proficiency among commercial court judges enabling better interaction with international investors.	No

<p>4.5. Implement a revised selection process for commercial court judges to include language proficiency.</p>	<p>Medium-term</p>	<p>Commercial court judges are able to adjudicate cases in English including by assessing foreign case law if relevant.</p>	<p>No</p>
<p>4.6. Facilitate Ukraine's membership of SIFoCC.</p>	<p>Short-term</p>	<p>Ukraine's commercial courts system benefits from SIFoCC as a platform for sharing best practice including on investment protection.</p>	<p>No</p>
<p>4.7. Complete the selection of judges for the High IP Court.</p>	<p>Short-term/ Medium-term</p>	<p>Enables the initiation of the work of the High IP Court to support investors in the digital economy and creative industries.</p>	<p>No</p>
<p>4.8. Continue supporting capacity building within the HQCJ and the HCJ using foreign experts and civil society.</p>	<p>Short-term/ Medium-term/ Long-term</p>	<p>Increased efficiency of the HQCJ and the HCJ, strengthening oversight of the judiciary and ensuring high standards of professionalism among judges.</p>	<p>No</p>

5. Gap analysis of existing laws

Recommendation	Timeline	Expected Outcome	Amendment of the Constitution Required
5.1. Domestic investment protection law review.	Short-term/ Medium-term	Gaps in existing domestic investment protection laws are identified. Recommendations for legislative amendments to eliminate contradictions and complexities within the legal framework are prepared and legislation is passed to address gaps.	No
5.2. Commercial procedural law review.	Short-term/ Medium-term	Legislative amendments to commercial procedural are prepared and implemented into law.	No
5.3. Enforcement law review.	Short-term	Recommendations are developed to amend the legislation on enforcement of court decisions and any legislative changes required are introduced.	No

Innovative ideas

In terms of innovative ideas, this report proposes four innovative models that could be applied in Ukraine.

- **Model 1:** Establishing a Kyiv Financial Centre Court similar to the DIFC/AIFC models, focusing on international disputes.
- **Model 2:** Implementing a hybrid international court model within the Ukrainian judicial system, incorporating features of international commercial courts like those in Singapore.
- **Model 3:** Implementing a European model of the international commercial court within the Ukrainian judiciary system similar to the HACC and European Commercial Courts.
- **Model 4:** Setting up a Kyiv International Arbitration Centre as an independent organisation for commercial and government dispute resolution, potentially part of an international finance centre.

The creation of a new court/centre independent of the national court system provides an opportunity to design fully digital procedures for them, thereby allowing hearings to be held remotely; this would (in some cases) eliminate the need for judges/arbitrators and parties to be physically present in Ukraine. Parties could submit all documents online with data being safely stored on the cloud, and some administrative tasks could be accomplished by AI, freeing up time for administrators and judges. Such online dispute resolution could also benefit from advanced online negotiation and mediation tools providing parties with opportunities to resolve disputes without going through a full trial. Such a solution would ensure both the physical safety of the parties and staff, as well as significantly reducing the costs of physical infrastructure. Furthermore, with technological advancements, AI solutions can be used to reduce the workload and incorporate tools that will inform participants about the costs involved and chances of success. Given Ukraine's technological lead in the IT sector, such cutting-edge technological solutions may truly create a new brand of transparency, professionalism and independence of the dispute resolution system in Ukraine.

Model 1: Financial Centre Court

A Kyiv Financial Centre Court (based on the DIFC/AIFC Courts model) could be implemented if an international financial centre is established in Ukraine. Such a centre would typically be governed as an exclusive special economic zone with an independent court separate from the domestic legal system. This court would feature both foreign and domestic judges and would have the capacity to hear cases in foreign languages, most likely in English. It would encompass small claims and appellate proceedings, for instance, and could potentially offer mediation services. The decisions of

such a court would be final and directly enforceable in Ukraine. Like the DIFC Courts, it could provide an arbitration facility and offer mediation as in the AIFC Courts. It could provide fast-track enforcement and handle disputes involving state-owned enterprises.

The medium to long-term goal of this model is to establish a specialised international commercial court independent from the existing judicial system and government bodies, thereby instilling confidence among investors in judicial capacity and independence from government influence. It presents several advantages including independence from the state (the only final appeal stage would be conducted exclusively by the financial centre court itself), the ability to attract top-tier foreign judiciary to collaborate and enhance standards among domestic judges and comprehensive coverage of disputes, including those involving state-owned enterprises (as in the DIFC Courts).

However, its implementation poses significant challenges, necessitating the establishment of an international finance centre and constitutional amendments to integrate a court outside Ukraine's judicial system and allow for the participation of international/foreign judges. Additionally, it may not be supported by the Ukrainian judiciary as only 7% of respondents from the judicial survey supported this model. Without provisions for local parties to opt in, it could be perceived as more favourable to foreign investors. Moreover, the process of establishing such a court is likely to be time-consuming and would entail considerable costs.

Model 2: Hybrid model

This model features a specialised international commercial court within the Ukrainian judicial system. Inspired by the Singapore International Commercial Court (SICC), it entails the participation of foreign judges alongside specially selected Ukrainian judges who would adjudicate cases under both Ukrainian and foreign laws. Unlike Model 1, this model maintains integration within the existing legal system and thus may lack complete independence from the state or the rest of the judicial system.

Key features of this hybrid model include the involvement of foreign and domestic judges, the application of foreign and domestic law and the capability to conduct proceedings in foreign languages, most likely English. It would cover both first instance and appellate proceedings, with enforcement carried out through the existing local system, and may include the ability to handle cases against state entities.

The long-term objective of this model is to establish a system that incorporates elements of specialised international commercial courts within the Ukrainian system, thereby enhancing access to efficient commercial dispute resolution while upholding the integrity of the domestic court system.

However, there are several challenges to address. These include the necessity for constitutional amendments to engage international/foreign judges, the absence of full autonomy from the state, the potential for cases to revert to the primary court system at the second appellate level, enforcement obstacles and the risk of appearing biased towards foreign investors unless local parties are given the option to participate. Furthermore, while to a lesser extent than the Model 1, implementation is still expected to be both time-consuming and financially burdensome.

Model 3: Specialised Court within the Ukrainian Judicial System

This involves the establishment of a specialised court within the existing Ukrainian judicial system akin to the successful model of the HACC and similar to European practices observed in jurisdictions like

the Netherlands, Paris, and Frankfurt. This specialised court would operate within the framework of the Ukrainian legal system, utilising Ukrainian judges only, while incorporating elements of foreign and domestic law⁴⁷. It would have the capability to conduct proceedings in foreign languages, predominantly English, and could follow the structure of the HACCC, encompassing both first instance and appellate proceedings with cassation appeals directed to the SC. The medium-term strategy entails further specialising Ukrainian courts to handle international commercial disputes by leveraging the proven success of the HACCC and European precedents. Alternatively, it proposes establishing a specialised chamber within either the SC or Appellate Court. Notably, this approach does not necessitate constitutional changes and is anticipated to be more acceptable to the Ukrainian judiciary and national stakeholders. Additionally, it is expected to incur lower costs compared with alternative models. As a long-term solution, this approach aims to bolster the capacity of Ukrainian courts and judges to adjudicate commercial cases proficiently, addressing existing deficiencies within the court system.

However, despite its merits, this model faces challenges. Firstly, it remains tethered to a judicial system vulnerable to independence/corruption risks, potentially undermining its independence. Delineating the jurisdiction of such a chamber from the broader national court system presents another obstacle. Moreover, there is the prospect of cases reverting to the main court system at the cassation level. Building a cadre of experienced judges proficient in international commercial dispute resolution practices and foreign laws poses a significant challenge given the current lack of this particular expertise/language proficiency among national judges. Potential resistance from commercial courts currently handling such disputes, as well as enforcement challenges, further complicates implementation. Additionally, reassuring foreign investors of the system's independence and professionalism is likely to be a protracted endeavour, potentially prompting parties to continue opting for international arbitration where feasible.

Model 4: Kyiv International Arbitration Centre

This international arbitration hub, situated in Ukraine, would have a diverse panel of eminent arbitrators, both foreign and Ukrainian, working in mixed tribunals. Hearing cases under both foreign and domestic law, it would facilitate proceedings in foreign languages, predominantly English, and could offer mediation services. The centre would serve as an independent entity, offering a neutral and unbiased platform for resolving disputes involving commercial (and, notably, governmental entities) if this is defined on the level of law. It would administer arbitration cases on regional and global scales for parties opting for arbitration as their preferred dispute resolution method.

Unlike Model 1, establishing the Kyiv International Arbitration Centre would not necessitate constitutional amendments to bring in international/foreign arbitrators. It could be set up either as part of an international finance centre or as an independent entity. Importantly, the Kyiv International Arbitration Centre would not require an appellate mechanism, rendering it more palatable to the

⁴⁷ Within the survey conducted by USAID in 2021, 37% of respondents identified the establishment of specialised courts as the most suitable way to move forward. See USAID Survey 2021 of representatives of Ukrainian and international businesses, available at: https://newjustice.org.ua/wp-content/uploads/2021/05/NJ_CDR_Presentation_Survey_UA_RoL.pdf (Accessed 30 March 2024).

Ukrainian judiciary. Its decisions could be globally enforceable through the New York Convention and its establishment could be relatively swift. Furthermore, findings from a USAID 2021 survey underscore the significance of trust in arbitration mechanisms. Specifically, 44% of respondents from major businesses identified a lack of trust in the existing national arbitration mechanism as a deterrent to opting for arbitration. Moreover, 31% of respondents from major businesses and 37% of all surveyed respondents expressed a demand for the establishment of a new arbitration institution in Ukraine, highlighting a perceived need for improved arbitration services. In contrast, only 11% of respondents voiced opposition to the idea of establishing a new arbitration institution.⁴⁸

However, collaboration with existing arbitration bodies within Ukraine would be essential, and its jurisdiction would be confined to contractual disputes with arbitration clauses or cases where parties voluntarily opt in.

Enforcement of, and challenges to, arbitration awards will have to be in the hands of the Ukrainian courts system. Accordingly, there should be restrictions on such challenges (as there are in almost all jurisdictions), and there will have to be a cadre of judges (at first instance and on appeal) who understand the law and practice of arbitration and foreign law sufficiently well to support the reputation and standing of the Arbitration Centre.

⁴⁸ Ibid.

Table 'Innovative ideas'.

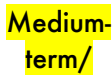

Approximate timeline:

 - short-term measures (up to 12 months)

 - medium-term measures (1-3 years)

 - long-term measures (3-8 years)

6. Innovative ideas - new dispute resolution models

Model	Description of the Model	Timeline	Outcome	Amendment of the Constitution Required
<p>6.1. International Financial Centre Court (based on DIFC/AIFC/ADGM model).</p>	<p>In the context of the establishment of an international financial centre.</p> <p>International financial centre regulated by independent regulator exclusive to a special economic zone, with an independent court (separate from the domestic legal system).</p> <p>May also have advanced features such as an exchange.</p> <p>Has its own regulatory framework that regulates the operation of the centre including financial regulation, company law, insolvency, employment and a procedural code modelled on common law best practice.</p> <p>Foreign and domestic judges and law. Can hear cases in foreign language (most likely English).</p>	<p> Medium-term/  Long-term</p>	<p>Establishment of a specialised international commercial court which is independent of the existing judicial system and government bodies and regulates itself, creating confidence among investors on judicial capacity and independence from government.</p>	<p>Yes</p>

	<p>Includes small claims, first instance and appeal.</p> <p>Can include an arbitration centre.</p> <p>Can offer mediation services.</p> <p>Can fast-track direct enforcement as in AIFCC.</p> <p>Able to take cases against state-owned enterprises as in DIFC Courts.</p> <p>Digital approach as in ADGM Courts (electronic filing of documents, online hearings and trials, and advanced case management).</p>			
<p>6.2. Hybrid model of a specialised international commercial court within the Ukrainian judicial system with the participation of foreign judges and specially selected Ukrainian judges hearing cases under Ukrainian and foreign laws (Singapore model).</p>	<p>Not in the context of an international financial centre.</p> <p>Not independent from the state or the rest of legal system.</p> <p>Foreign and domestic judges and law.</p> <p>Can hear cases in foreign language (most likely English).</p> <p>First instance and appeal.</p> <p>Enforcement through the existing local system.</p> <p>Able to take cases against state entities.</p> <p>Digital approach.</p>	<p>Long-term</p>	<p>Creation of a hybrid model incorporating features of specialised international commercial courts within the Ukrainian judiciary, akin to the Singapore model, improving access to efficient commercial dispute resolution while maintaining domestic court system integrity.</p>	<p>Yes</p>

<p>6.3. Model of specialised commercial court within the Ukrainian judicial system (as used in the High Anti-Corruption Court and European models such as in the Netherlands/Paris/Frankfurt).</p>	<p>Specialised court within existing Ukrainian system.</p> <p>Ukrainian judges.</p> <p>Foreign and domestic law.</p> <p>Can hear cases in foreign language (most likely English).</p> <p>Can be created using the model of the High Anti-Corruption Court, to include first and appellate instances, while cassation would go to the Supreme Court.</p> <p>Digital approach.</p>	<p>Medium-term</p>	<p>Further specialisation of Ukrainian courts to deal with international commercial disputes using the successful model of the High Anti-Corruption Court and European practice or alternatively creating a specialised chamber within the Supreme or Appellate Court.</p>	<p>No</p>
<p>6.4. Kyiv International Arbitration Centre</p>	<p>International arbitration centre based in Ukraine with a bank of foreign and Ukrainian arbitrators who sit together on mixed panels.</p> <p>Foreign and domestic law.</p> <p>Can hear cases in foreign language (most likely English).</p> <p>Could also offer mediation services.</p> <p>Digital approach as in many modern international arbitration centres (electronic filing of documents, online hearings and trials, and advanced case management). Potential for the entire arbitration process to be online.</p>	<p>Medium-term</p>	<p>An independent organisation which acts as a neutral and impartial dispute resolution forum for commercial and government entities.</p> <p>It may administer regional and global arbitration cases for parties who have chosen arbitration as their preferred dispute resolution method.</p>	<p>No</p> <p>(Amendment to the Law on International Commercial Arbitration)</p>

Annex. A strong legal system: the UK example

Value of law to the economy

Law is a critical platform on which economic value rests.⁴⁹ The UK economy has benefited greatly from the fact that English law is one of the most pre-eminent laws used in global business transactions. In 2018 it governed EUR 66.1 trillion of global OTC derivatives contracts, in 2019 GBP 250 billion in global M&A activity, and in 2020 USD 11.6 trillion of global trading in metals.⁵⁰ This has helped UK business, and other global businesses using English law, to underpin business transactions and make them smoother and more cost-effective by lowering transaction costs, reducing friction and increasing deal volume while supporting more complex deals. In short, where all parties regularly use the same law, costs are reduced and familiarity with that law creates well understood norms and provides business confidence among users.

While this is an obvious asset for the UK, non-UK users of English law can also benefit. By using an international standard, they can also lower transaction costs and increase transaction volume and complexity.

By increasing its capability to use English and other leading foreign laws, it may be possible for Ukraine to harness some of these advantages for itself, particularly in upskilling and familiarising courts, judiciary, arbitration centres and arbitrators in the understanding (and in some cases application of) English and other foreign laws.

Value of strong courts and arbitration bodies

The internationally leading reputation of the English courts (in particular, the Commercial Court in London) and arbitration bodies (such as the London Court of International Arbitration (LCIA) and the London Maritime Arbitrators Association (LMAA)) strongly enhances the UK's reputation as a safe place to invest and do business and firmly underpins investment into the UK. Investors can be confident that any disputes they may have that are heard in London will be decided by world class judges and adjudicators.

⁴⁹ Economic Value of English Law Oxera 5 October 2021 available at <https://legaluk.org/wp-content/uploads/2021/09/The-value-of-English-law-to-the-UK-economy.pdf> (Accessed 26 March 2024).

⁵⁰ Ibid.



In 2022/23, the Commercial Court rendered 257 judgments involving parties from 78 different jurisdictions, with 60% of litigants from outside the UK.⁵¹ In 2022, the LCIA received 293 referrals involving parties from 90 different jurisdictions, with 88% of parties from outside the UK.⁵² In 2023, the LMAA continued to dominate international maritime arbitration, with 3,268 arbitral appointments from 1,845 references, and published 436 awards.⁵³

These bodies and the rule of law and justice assurance they provide create a key foundation for other important UK businesses, such as financial services and life sciences, to flourish and grow.

Value of a strong legal services sector

The highly robust and efficient English courts and arbitration bodies support multiple sectors of the UK economy. In addition, their international reputation has given rise to a thriving legal services sector which creates economic value for the UK in and of itself. As dispute resolution business is drawn to the UK because of the strength of English law and courts and UK arbitration bodies, this has created an agglomeration effect which has caused the growth of a substantial legal services ecosystem in the UK. This includes not only law firms and barristers' chambers, but all the services that are necessary to support a sophisticated and world-leading legal system such as expert witnesses, litigation funders, eminent mediation organisations such as the Centre for Effective Dispute Resolution (CEDR) and a thriving body of Lawtech providers. This sector contributed GBP 34 billion to the UK economy in 2023, with a GBP 5.7 billion trade surplus, and employed 368,000 people.⁵⁴

As Ukraine develops and establishes international confidence in its own legal system, it too will be able to benefit from the additional revenue this draws into the country.

⁵¹ Portland Commercial Courts Report 2023 p4. available at <https://portland-communications.com/publications/commercial-courts-report-2023/> (Accessed 15 April 2024).

⁵² LCIA 2022 Annual Casework report available at <https://www.lcia.org/News/lcia-news-annual-report-on-2022-updates-on-the-lcia-court-and.aspx> (Accessed 26 March 2024).

⁵³ London Retains Its Crown in International Maritime Arbitration 6 March 2024 LMMA available at <https://lmaa.london/london-retains-its-crown-in-international-maritime-arbitration/> (Accessed 26 March 2024).

⁵⁴ Legal Excellence, Internationally Renowned, UK Legal Services 2023, CityUK, available at <https://www.thecityuk.com/media/0didzlm/legal-excellence-internationally-renowned-uk-legal-services-2023.pdf> (Accessed 26 March 2024).