

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

Responses submitted by:

Name: Taras Tertychnyi, Natalia Antonyuk

Law Firm/Company: CMS Reich-Rohrwig Hainz Kyiv

Location: Kyiv, Ukraine

I. Would your jurisdiction be described as a common law or civil code jurisdiction?

Ukraine is a civil code jurisdiction featuring some elements of common law system. In 2016, the Ukrainian justice system and procedural law started undergoing a fundamental reform, which will eventually influence every aspect of court-related work in Ukraine. See question 42 for details.

The Ukrainian court system is currently composed of the courts of general jurisdiction and the Constitutional Court of Ukraine. Courts of general jurisdiction are divided into three specialized branches (see question 4 below), each having three levels: local courts, courts of appeal and the highest court (the court of cassation). Above all these courts, there is a Supreme Court of Ukraine with special overseeing powers.

According to the new Law of Ukraine “On Court System and Status of Judges” (the “New Law”), the system of courts of general jurisdiction is to be changed in 2017. Under the New Law, the court system will be composed of local courts, courts of appeal and the Supreme Court acting as the court of cassation. The latter is to be comprised of the Grand Chamber, the Administrative Court of Cassation, the Commercial Court of Cassation, the Criminal Court of Cassation and the Civil Court of Cassation. According to the New Law, the new Supreme Court should have been formed by 30 March 2017. This deadline was not met, however; while the new Supreme Court is expected to become functional later in 2017. Until that moment, the current highest courts and the present Supreme Court of Ukraine will continue to perform their functions.

The New Law also provides for the creation of two new specialized courts, namely, the Highest Court on Intellectual Property Issues and the Highest Anticorruption Court, which will act as the first instance courts.

Ukrainian courts are bound by statutory law, as issued by the Parliament of Ukraine, and are obliged to take into account the conclusions the Supreme Court of Ukraine reaches in particular cases. Should a court depart from such conclusion, it must provide a grounded reasoning therefor.

Ukrainian courts are also directly bound by the practice of the European Court of Human Rights by virtue of Ukraine’s accession to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the Law of Ukraine “On Execution of the Decisions and Implementation of the Case Law of the European Court of Human Rights”.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

The judicial system of Ukraine employs a hybrid method of adjudication. The role of the court varies depending on the nature of the dispute and applicable procedural issues. Civil and commercial proceedings are mostly adversarial, while adjudication in administrative and criminal proceedings has some inquisitorial features.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

The court also bears an obligation to ensure that the parties fully understand their procedural rights and obligations. This includes clarifying of consequences of certain procedural actions, such as withdrawal of claims, concluding a settlement agreement etc.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Most of the cases in Ukraine are adjudicated by professional judges acting alone (in local courts) and in panels of three, five and more judges (appellate and higher courts).

Pursuant to the New Law a person wishing to become a professional judge must be a citizen of Ukraine of no less than 30 and not more than 65 years old, hold a master's degree in law, have work experience in the area of law of at least five years and demonstrate high level of competence and integrity. A candidate for the position of a judge has to go through complex selection process, undergo a background anticorruption check, pass qualification exams, and complete a specialized preparatory course. A successful candidate receives a life appointed as a judge.

All judges currently in the office (i.e. appointed according to the old Law) have to undergo examination by the High Qualification Commission of Judges of Ukraine in order to prove the level of their competence, professional ethics and integrity.

Jurors, or lay judges, may be appointed upon request of the accused in criminal cases where a life sentence is claimed by the prosecution. They are appointed at the ratio of three jurors to two judges, and they have the same decision-making powers as judges.

In civil proceedings, jurors are appointed in a number of special proceedings, such as adoption, limitation of legal capacity of natural persons etc.. The judging panel consists of a judge and two jurors.

In order to be included in the list of jurors, a person should be a Ukrainian citizen no younger than 30 years and permanently residing in the territory over which the relevant court has its jurisdiction. The general list of jurors is approved by the local (municipal) administration every three years.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

The courts of Ukraine are divided into three specialized branches: general courts, commercial courts and administrative courts.

Jurisdiction of the courts is defined by the subject matter of a dispute and the status of a party.

General courts try cases concerning civil matters (including family, labour and other), administrative offences and criminal matters, usually involving individuals as the parties.

Commercial courts consider disputes between legal entities (or individuals registered as entrepreneurs) which arise in the course of commercial activities (commercial contracts, insolvency, corporate governance cases, etc.).

Administrative courts consider cases resulting from execution or non-execution by governmental authorities of their regulatory powers (including tax disputes, cancellation of regulatory acts and decisions, election disputes, disputes related to appointment to public service, etc.).

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

The courts follow the relevant procedural codes, namely, the Code of Civil Procedure, the Code of Criminal Procedure, the Code of Commercial Procedure, the Code of Administrative Procedure and the Code on Administrative Offences. The Codes contain special sets of procedural rules for certain types of proceedings (for example, summary proceedings, child adoption cases, enforcement or annulment of arbitral awards, etc.).

Insolvency proceedings, technically considered as a type of commercial proceedings, are governed by a separate Law of Ukraine “On Reinstating Debtor’s Solvency or Declaring it Bankrupt”.

5. Is arbitration an option and when? If so, what rules are typically used?

In most cases, arbitration is indeed an option (Article 12(2) of the Code of Commercial Procedure of Ukraine; Article 17 of the Code of Civil Procedure of Ukraine).

The law distinguishes between international commercial arbitration and (intra-)national arbitration, as governed by the Laws of Ukraine “On International Commercial Arbitration” and “On Arbitral Tribunals” respectively. The national arbitration tribunals are often referred to as “third-party courts”.

The Law of Ukraine “On International Commercial Arbitration” is a replica of the 1985 UNCITRAL Model Law on International Commercial Arbitration, and the whole procedure is governed in the spirit of internationally accepted standards. The most popular rules are the Rules of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC at the UCCI), with its seat in Kyiv. International commercial arbitration procedure is only applicable in cases involving a foreign (non-Ukrainian) party and in some other rare cases.

Where both parties are Ukrainian, national arbitration rules have to be applied. The Law of Ukraine “On Arbitral Tribunals” generally follows internationally accepted standards for arbitration procedure. National arbitration, however, has a wide list of non-arbitrable disputes, including labour disputes, family matters, consumer disputes, and cases related to contracts with the state (Article 12(2) of the Code of Commercial Procedure of Ukraine; Article 6 of the Law of Ukraine “On Arbitral Tribunals”). Partially due to the quite extensive restrictions, national arbitration is rather underdeveloped in Ukraine and, accordingly, there are no rules that are widely accepted or which prevail over the others.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Generally yes, in most cases the courts will reject jurisdiction over the claim that is subject to an arbitration agreement (clause), provided that a defendant party files a relevant objection before its first submission on merits, unless the court decides that the arbitration agreement (clause) is not valid or incapable of being performed.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

Mediation is not mandatory in Ukraine. In practice, mediation is rarely resorted to by the parties to a dispute. The only working example of mediation is the mediation of collective labour disputes administered by the National Service for Understanding and Reconciliation.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

There are currently a number of initiatives aiming to promote mediation and make it a mandatory or recommended procedure in some types of cases. A relevant draft law has passed the first reading in the Parliament and is now being prepared for the Parliament's consideration and adoption during the second reading.

8. What is the process for pre-hearing fact discovery (if any)?

Ukrainian litigation is very different from a regular common law procedure. In particular, the pre-hearing stage is usually very short, formal, and to a great extent performed by court in chambers, without summoning the parties. The judge formally checks whether the claimant submitted all evidence cited in its statement of claim as a preliminary measure and whether the claim contains all the elements required by the relevant procedural code. If the court considers some element to be missing, incomplete, or presented in an improper form, the court orders the claimant to amend the claim accordingly and/or to submit relevant basic evidence.

In civil and administrative proceedings, the court may hold a pre-hearing conference, during which the judge must define:

(1) the facts that should be established for resolution of the dispute and

(2) the facts that parties of the dispute accept without objection

(Article 130 of the Code of Civil Procedure and Article 111 of the Code of Administrative Procedure).

The Code of Commercial Procedure of Ukraine (Article 65) does not provide regulations for pre-hearing fact discovery. In practice, the relevant procedures and actions are usually performed during the first hearing on the case, which is often dedicated to procedural issues only and often results in a court order requesting the parties to submit additional evidence or clarify either the statement of claim or the statement of objections.

The latter is not applicable to the criminal proceedings, as in criminal cases the pre-trial investigation stage includes massive interaction between the parties and the court on issues related to collection of evidence.

(a) Are there provisions for mandatory document disclosures?

Under the general rule, all documents mentioned in the statement of claim and in the response/objection to the claim must be attached thereto and, in any case, submitted before the hearings. The parties are also entitled to request that the court order the other party, as well as any third person, to disclose and provide to the court the documents which the requesting party wishes to use as evidence during the proceedings. In some cases, the court may order document disclosure on its own initiative.

(b) Is there provision for oral examinations of the parties or others?

Not applicable in Ukrainian proceedings.

(c) Are there limits on the length of oral examinations?

Not applicable in Ukrainian proceedings.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

(d) *Are witness statements or summaries to be provided before the hearing?*

Not applicable in Ukrainian proceedings. A party's counsel may and would usually have preliminary interviews with potential witnesses, which may produce some notes outlining the results of the meeting. These notes, however, are entirely private documents and are not evidence in their own right. Only witness statements made under the oath during court hearings have official status of evidence.

9. What is the process for pre-hearing expert disclosure (if any)?

There is no specific process for pre-hearing expert disclosure in Ukraine. However, all Ukrainian procedural codes provide for a right of the court to assign an expert examination, either on its own initiative, or upon the motion of a party.

The parties also may submit written expert/specialist opinions, which are usually treated as simple written evidence and do not have any special procedural status, as opposed to a court-appointed expert examination (please see question 14 below for more details on the involvement of experts in court proceedings).

(a) *Are expert reports or written summaries required to be exchanged?*

Not applicable in Ukrainian proceedings.

(b) *Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

Not applicable in Ukrainian proceedings.

(c) *Are there provisions requiring experts to meet and narrow issues before the hearing?*

Not applicable in Ukrainian proceedings.

10. Are there other notable discovery rules?

Not applicable in Ukrainian proceedings.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Yes. Either the law directly requires a pre-hearing conference ("preliminary hearing"), or the court performs the same actions during the first day of the hearing. The aim of the preliminary hearing is to discover whether the dispute can be settled or, if settlement is not possible, to secure proper and speedy resolution of the case (in particular, with regard to clarification of the claim, application of injunctive measures, and provision of evidence). In practice, however, the quality and thoroughness of these actions greatly depend on the particular court and even on the particular judge.

The law does not specify the time that must pass between a pre-hearing conference and the beginning of the hearing on merits. However, in civil, administrative and commercial proceedings the hearings on a particular case are normally held at two-week intervals.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Not applicable in Ukrainian proceedings.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

No. The judge usually defines admissibility of the evidence during the hearing.

14. What is the standard for admissibility of expert evidence?

Ukraine has a different system of expert's involvement in the court proceedings.

First, only the court may appoint an expert examination to be used during the hearings. Accordingly, only the expert opinion obtained pursuant to the court order is admissible as expert evidence.

Second, an expert opinion in court proceedings can be provided only by a licensed and impartial "court expert", as listed in the open public State Register of Certified Court Experts. The profession of a court expert is quite extensively regulated, as are the rules for conduct when examining and preparing an opinion. The court experts usually work together in specialized expert organisations, often paired with research institutions. The courts often direct the case to an expert institution, which then appoints a particular expert to provide an opinion.

The expert opinion is submitted to the court and is available to all parties to the proceedings. The cost of expert examination is borne by the party which requested the court to order it. The court may subsequently order that such cost be reimbursed by the other party as a part of litigation costs distribution.

The expert usually appears at the hearings and both the court and the parties may ask questions to the expert.

In certain cases, the court may, either on its own initiative or upon the request of a party, schedule an additional (further) examination (asking additional questions), a second (alternative) examination (appointing another expert to answer the same questions) or an examination by a panel of experts.

Any party may prepare its own list of questions to be answered in the course of the expert examination. The court approves the final list of questions to be submitted to the expert. The giving of deliberately false evidence or unlawful refusal to give evidence by the expert constitute a criminal offence.

Some procedures also provide for a right of the court to call for the assistance of a "specialist", i.e. a person not having the license of a "court expert" but possessing specialist knowledge. The "specialist" would not conduct a full-scale examination but may advise the court on issues requiring specialist knowledge.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

As explained above, it is the court's sole power to appoint an expert; the parties may also request that the court appoint an expert. There is a vast variety of possible examinations, usually of technical nature. In practice, the courts often appoint expert examination on issues regarding the authenticity of documents and signatures, issues related to trade mark disputes,

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

construction costs calculation, DNA analysis in paternity disputes etc.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Ukrainian procedural rules protect attorney-client privilege, as well as other forms of privilege. There is a general provision that certain persons cannot be questioned as witness, including “*persons who are legally obliged to keep secret the information that had been entrusted to them in connection with their official or professional status*”. Clergy cannot be questioned “*on the information obtained in the course of confession of a believer*” (see, e.g. Article 51 of the Code of Civil Procedure).

An attorney client privilege, literally formulated in Ukraine as “advocate’s secret”, covers a very broad scope of information and is defined as “*any information that became known to the advocate ... regarding the client, issues on which the client ... requested advice, ... the content of the advice, ... documents prepared by the advocate ... and other documents and information obtained by an advocate in the course of providing legal services to his client*” (Article 22 of the Law of Ukraine “On Advocacy and Attorney Activity” (“Law on Advocacy”). According to Article 65 of the Code of Criminal Procedure, the attorney cannot be questioned as a witness or requested to produce any information related to his/her participation in the criminal proceeding, or any information protected by privilege, unless the client releases the attorney from this confidentiality obligation. The attorney client privilege is protected by law; there is no need to enter into a separate non-disclosure agreement.

Other types of privilege include medical secrecy privilege, close family members privilege, reporter’s privilege etc. It has to be noted, however, that protection of professional privileges other than the attorney-client privilege and clergy privileges are quite loosely defined, which may raise disputes during actual proceedings.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Not applicable in Ukrainian proceedings.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The privilege disputes are usually resolved by the same court that considers the case where an issue of privilege emerges.

19. Briefly describe the trial process?

A standard trial process in Ukraine includes the following stages:

- opening statement by the (presiding) judge, introducing the parties and their representatives, subject matter of the dispute, composition of the court, party’s rights and other formal issues;
- consideration of the procedural motions of the parties and other involved persons (includes announcement of the motion and grounds thereto, hearing of the parties’ opinions, and delivery of the court’s decision);

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

- formal questioning of the parties on whether they support their claim and objection and whether they wish to make a settlement agreement;
- opening statements by the parties (the “explanations”);
- determination by court of the order and schedule of proceedings, including the order in which the witnesses appear. In practice this stage is often omitted, especially when there are no witnesses in the case;
- examination of evidence (including witnesses, documents, tangible evidence, video or audio recordings, expert’s opinion);
- closing statements by the parties (the “debates”); and
- court retires to deliberate in camera and announce the decision. The court will often only announce the resolution part of the decision, a full text will be provided within a five-day period from the announcement of the resolution part.

(a) Are there opening submissions, in what form and of what length?

Yes. Formally, the submissions may be oral, but parties usually prefer to make them in written form, especially if there are significant changes compared to the original claim/response statements.

(b) What is the order of presentation of witnesses?

The order of presentation of witnesses is defined by the court.

(c) Who conducts examination and in what order?

The court conducts examination of witnesses. The parties also have the right to examine witness (Article 180 of the Code of Civil Procedure of Ukraine and Article 141 of the Code of Administrative Procedure of Ukraine).

The Code of Criminal Procedure of Ukraine (Article 352) prescribes that a witness for the prosecution is questioned first by the prosecutor; the defence party questions the witness for defence. After direct examination, the other party has the right to cross-examine the witness.

(d) What is the process for closing submissions?

There is no special process for closing submissions. The submissions are usually made orally and contain a summary of the submissions presented by the parties during the proceedings. The parties may also refer to any new facts discovered during the evidence examination. The claimant speaks first; the court may allow an exchange of rebuttals, but in any case the last submission should be made by the defendant. The court may ask questions and, if required, it may limit the length of the closing submission.

20. Please identify any other notable trial procedures.

Not applicable in Ukrainian proceedings.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

Ukrainian procedural law usually refers to a burden of proof in general, without differentiating in detail between the various elements that should be proved by a party.

In general, each party has to prove the facts and circumstances on which it relies in its submissions (the Code of Civil Procedure of Ukraine (Article 10), the Code of Commercial Procedure of Ukraine (Article 33) the Code of Administrative Procedure of Ukraine (Article 71)). This formula includes all elements that a party has to prove in each particular case to receive remedy as provided by law.

In criminal proceedings, the burden of proof lies on the prosecutor, investigator or, in a small number of cases, on a victim (Article 92 of the Code of Criminal Procedure of Ukraine).

In administrative cases involving the appeal (cancellation) of a decision, an act or failure by a state body to act, it is the responding state body that bears the burden of proving the legality of its act or decision (Article 71 of the Code of Administrative Procedure of Ukraine). In practice, however, courts still often consider claims with an assumption that the state bodies' actions are or were legal.

The concept of specific standards of proof is not developed in Ukraine.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

In Ukrainian law, damages are divided into real damages and lost profit (Article 22 of the Civil Code of Ukraine). These damages are recoverable by the damaged party (Article 22 of the Civil Code of Ukraine).

Real damages and loss of profits may be loosely equated to compensatory damages. Real damages represent the expenses a person must incur in order to restore its status before the damage occurred. Lost profit represents profit that a person could receive under normal conditions but failed to do so due to the violation of its right.

As a sanction for non-performance of obligation, a debtor is usually obliged to pay a penalty to the creditor (article 549 of the Civil Code of Ukraine). A penalty can be determined as a certain fixed amount or the percentage of the amount of an obligation that was not performed. The penalty amount is usually agreed by the parties in the contract.

In monetary obligations, a debtor is also obliged to pay an interest for the use of other person's money, unless otherwise agreed by the parties to the contract or stated by the law (article 536 of the Civil Code of Ukraine). Also, in monetary damages a party may recover losses due to inflation, which is particularly useful when inflation reaches 10 or more per cent per annum.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Ukrainian law generally does not use the concept of punitive damages.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

There may be a few exceptions, though. One is aimed at preventing parties from entering into contracts under pressure. If a party to a deed provided false information to or exerted unlawful pressure on another party to the deed, the former must compensate twice the amount of damages caused by such illegal actions (Articles 230 and 231 of the Civil Code of Ukraine).

24. Are there time limits for bringing claims? Responding to claims? Please describe.

The time limits for bringing claims vary depending on the type of a case.

The general time limit for bringing a civil or a commercial claim is three years (Article 257 of the Civil Code of Ukraine).

Special time limits are established for certain types of claims, such as claims for the recovery of penalties, refutation of false information published in mass media, claims in connection with transportation of goods, postal services etc. (one year, Article 258 of the Civil Code of Ukraine).

The parties may agree to the prolongation of the time limit as established by law (Article 259 of the Civil Code of Ukraine).

In some cases there are no time limits, for example, for certain claims for compensation to damages caused by harm to health or by death, for claims for the return of money from a bank account and for claims made under insurance policy (Article 268 of the Civil Code of Ukraine).

For administrative claims, the law provides a general time limit of six months (Article 99 of the Code of Administrative Procedure of Ukraine). In certain administrative cases, shorter time limits apply. The shorter limits are 15 days or one month, depending on the type of claim and on whether the claimant has made use of pre-trial measures of dispute resolution (Article 99 of the Code of Administrative Procedure of Ukraine).

The time limit for civil, commercial and administrative claims commences on the day when a person discovered or could have discovered that his/her rights had been infringed.

The time limit for responding to a claim is specified by the court upon receipt of the claim, and is usually between two and four weeks.

The time limit for holding a person liable for a crime depends on the gravity of the crime committed. The limitation period for a crime of little gravity, a crime of average gravity, a grave crime or a crime of extreme gravity is, accordingly, two or three years (depending on the punishment type), five years, ten years and fifteen years respectively (Article 49 of the Criminal Code of Ukraine).

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

Foreign parties to Ukrainian court proceedings enjoy the same treatment as Ukrainian parties. This means that, with some exceptions as listed below, general rules of jurisdiction apply to claims filed against a foreign defendant.

The general rule of jurisdiction in Ukraine is the territorial jurisdiction, which means that claims in civil, commercial and administrative disputes usually fall under the jurisdiction of the court at the defendant's domicile. This means that the courts would decline jurisdiction in claims directed against a foreign defendant registered or domiciled outside Ukraine.

In practice, however, it may be the case that a claimant includes a Ukrainian co-defendant, thus gaining a right to submit the claim to Ukrainian court. In such case, the courts do not have the power to strike out the claim, even if it is evident that a claim against Ukrainian co-defendant is ill-founded. This procedural move involves, however, a considerable drawback for

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

the claimant, as the court in such case is normally obliged to notify the foreign defendant according to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which postpones the actual beginning of the proceedings for a period of 6 to 9 months. In the meantime, however, the court may issue an injunction order that may be enforced, for example, against the foreign defendant's assets in Ukraine.

There are also a few major exceptions to the general jurisdiction rule. In particular (i) claims for damages (may be brought to the court of the place where the damages had been caused), (ii) consumer claims (may be brought to the court of the consumer's domicile), and (iii) cases where the parties agreed on the jurisdiction of a Ukrainian court.

The matter of jurisdiction in disputes involving a foreign defendant in civil and commercial cases is further developed in the Law of Ukraine "On International Private Law". The Law sets out a list of specific cases where Ukrainian courts have exclusive jurisdiction (Article 77). They include mostly family matters and issues of administrative nature, such as the invalidation of a patent or trademark registration in Ukraine. The other important cases within the exclusive jurisdiction of Ukrainian courts include any disputes over real estate located in Ukraine and insolvency cases where the debtor is a Ukrainian company.

It is not possible to invoke a non-convenience forum defence in Ukraine, as Ukrainian procedural law does not contain such concept, and the courts are only allowed to decline jurisdiction on the grounds explicitly provided by law.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

In commercial proceedings, a court may bring a co-defendant into the proceeding on the court's own initiative or if there is a relevant application from a party to a case (Article 24 of the Code of Commercial Procedure).

In civil proceedings, a court may bring another potentially responsible party into the proceeding only if there was a relevant application from the claimant (Article 33 of the Code of Civil Procedure of Ukraine).

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

The practice and procedure for reimbursing legal costs, in particular in civil and commercial proceedings, is still underdeveloped in Ukraine.

The general rule is that the losing party should reimburse all the costs borne by the other party, provided that such costs have documental proof. If there is no clear losing party, the legal costs are distributed between the parties in proportion to the amount of granted and rejected claims (Article 88 of the Code of Civil Procedure of Ukraine, Article 49 of the Code of Commercial Procedure of Ukraine, Article 124 of the Code of Criminal Procedure of Ukraine, Article 94 of the Code of Administrative Procedure).

In most cases, the amount of recovery is limited by law. The legal costs include the court fee, the expenses on legal aid and on the services of lawyers, translators, experts, mail and transportation etc.

In commercial (economic) proceedings there is no limitation on recovery; however, the commercial courts may reduce the amount of legal costs awarded so that it complies with the reasonable court expenses in the case; the amount of legal costs

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

may not usually exceed 10 per cent of the amount in dispute.

As to the legal costs, the courts often refuse to take into account the documents issued by privately practicing lawyers and accept only bills from licensed attorneys (see question 36 below for information on the two types of legal professionals in Ukraine.).

There is also a technical problem deriving from the fact that the motion to reimburse legal costs (and supporting documents) should be submitted before the last hearing in the case. The first problem is that it is often difficult to predict which of the hearings will be the last. If the party manages to provide a calculation in a period close to the final hearings, the costs of the final hearing (and any post-hearing services) would be missing. Furthermore, the courts often grant recovery of the costs actually paid, and will not accept a claim based on the fact that an amount has to be paid by a party to its lawyer in the future.

In cases where the parties reach a settlement agreement but do not agree on the issue of allocation of legal costs, the costs are equally split between the parties (Article 89(2) of the Code of Civil Procedure of Ukraine, Article 96 of the Code of Administrative Procedure of Ukraine).

28. Are contingency fees allowed?

The issue of fees is regulated by a contract between an attorney and a client; the procedural legislation is silent in this regard. The law regulating the legal profession and the relevant rules of ethics only provide for general principles to determine fees, and do not restrict contingency fees. General practice shows that contingency fees are not prohibited and are sometimes used in Ukraine. It is unlikely, however, that such fees would be reimbursed by the court as they directly depend on the outcome of the proceedings and should be claimed and submitted before the end of hearings, which makes such fees impossible to file within the time limits prescribed by the law (see question 27 above).

29. Is third party funding of claims permitted? Under what circumstances?

The laws of Ukraine do not provide any special regulations in this regard. The concept of commercial third-party funding is, however, being actively discussed in the legal community and we may see pilot cases in the near future.

The known examples of third-party funding are mostly non-commercial: the national state-funded program of legal aid (in particular, in criminal cases) and the cases where claims are sponsored by charities or non-government organisations.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Multi-party actions are allowed both in commercial and civil proceedings (Article 32 of the Code of Civil Procedure and Article 23 of the Code of Commercial Procedure). Both codes allow the joint bringing of a claim by several claimants or against several defendants.

Under the Code of Civil Procedure, multi-party actions are allowed in the following cases:

- (1) the subject-matter of the case concerns joint rights and/or obligations of several claimants or defendants;
- (2) the rights and obligations of several claimants or defendants arise from the same grounds ;and
- (3) the subject-matter of the case concerns rights and obligations of the same nature (Article 32(2)).

The Code of Commercial Procedure of Ukraine has no specific provisions on the types of claims or circumstances when

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

multi-party actions are allowed. Thus, such actions are allowed in all types of commercial claims.

In administrative cases multi-party actions are not allowed.

The only type of claim where an action somehow similar to a class action is allowed by law is an action that may be brought by a consumer association “in the interests of an unspecified group of consumers” (see below).

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

This issue is vaguely regulated, and there is very little relevant practice.

The right of a consumer association or another representative organisation to commence an action in the interests of another person or a group of persons is very restricted. For example, in civil proceedings, the law allows an organisation to commence a claim in the interests of another person or in the interests of a public only “in the cases provided by law” (Article 3 of the Code of Civil Procedure). The most relevant law (Law “On Civic Associations”), however, does not provide for the direct right of an organisation to commence a claim.

In this unclear situation, most representative organisations concentrate on the provision of legal aid to, and representation of, specific persons within the field of interest of the organisation. In such case, while the main power behind the case is the organisation, the claimant is formally an individual or a legal entity, which definitely satisfies the procedural requirements.

At the same time, there exists a certain practice of direct claims by representative organisations, which usually claim that they represent the interests of their members.

Consumer organisations may also file claims “in the interests of an unspecified group of consumers” (Article 25 of the Law of Ukraine “On Consumer Protection”).

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

The actual duration of proceedings depends on the type of case and the court involved.

As to the civil and commercial cases, a court should issue an order to initiate the proceedings within three days of receiving a claim (Article 122(4) of the Code of Civil Procedure; Article 64 of the Code of Commercial Procedure). The first hearing should be appointed within 10 days after the order (Article 129 of the Code of Civil Procedure, no time limit in commercial procedure).

The law requires courts to consider a case within a maximum of two and a half months starting from the date when proceedings were initiated (Article 157 of the Code of Civil Procedure; Article 69 of the Code of Commercial Procedure of Ukraine). In fact however, the actual time needed to consider a case at the first level courts usually amounts to three to nine months in civil cases and three to six months in commercial cases. One remarkable exception are insolvency cases, where first level court proceedings may easily take several years.

The main factors affecting the duration of proceedings are the complexity of the case, the number of parties involved, the amount of evidence submitted, if an expert examiner is appointed (which alone may take a few months), the degree to which the claimant(s) and the defendant(s) are proactive (in particular, the number of procedural motions submitted), and the special circumstances of the particular judge.

An administrative court should initiate the proceedings within three days after the day it has received a claim and decide a

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

case within a reasonable period of time but not later than one month after the receipt of the claim (Articles 107(4), 122(1) of the Code of Administrative Procedure of Ukraine). The actual length of proceedings may vary from approximately two to six months, depending on the same factors as listed above.

The Code of Criminal Procedure of Ukraine provides that the investigation of a case should be initiated within 24 hours of receiving a criminal complaint (Article 214(1)). Such pre-trial investigation can last up to 12 months, depending on the type of crime (Article 219). The investigation should result in either the termination of the proceedings or the submission of an indictment to the court, which results in triggering the trial proceedings. In the latter case, the court should assign the date of the preparatory court hearing within five days of receiving the indictment (Article 314(1)).

The law prescribes no specific term within which the court should deliver its decision in a criminal case. The only basic requirement is that the court should do this within a reasonable time (Article 318(1)). In practice, criminal case trials may take approximately three to twelve months.

It is important to remember that trial duration also varies depending on the workload of Ukrainian courts. As a result of to the recent reforms in the judicial system, many judges left their offices, while no new judges have been appointed yet. This puts additional pressure on the judges remaining in the office and slows the process down significantly.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

An appeal process is available for all types of cases. The appeal is heard by a court of appeal having jurisdiction over the appellate circuit within which the court of first instance (the local court) is located. The judges of these courts are appointed in accordance with the general rules as explained above in question 3.

An appeal against a final decision or a procedural ruling (i.e. interlocutory / procedural order) in civil, commercial and administrative cases may be filed within ten days (against final decisions) or five days (against procedural orders) (Article 294 of the Code of Civil Procedure of Ukraine; Article 93 of the Code of Commercial Procedure of Ukraine; Article 186 of the Code of Administrative Proceedings of Ukraine).

Many of the procedural orders may not be appealed separately, and may be only appealed along with the final decision.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

The procedure is mostly conducted with the use of printed (or, in some cases, handwritten) documents. Most of the courts do not have any electronic facilities in the hearing room except for the secretary's computer, the audio-recording equipment, and the microphones. At least one hearing room per court is supplied with equipment for a videoconference witness examination (see below). The same equipment may be used to review video recordings and similar materials.

Legally speaking, the electronic exchange of documents between the parties and the court became possible already in 2013. In practice, however, the current standard for courts and lawyers is to use traditional hard-copy exchange of documents.

Since 2016, the courts have been providing some services via electronic channels, including information on the date of hearings and sending copies of court decisions to parties to the proceedings.

In April 2017, electronic proceedings were started as pilot projects in seven different courts in Ukraine, including four courts of appeal.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

The court may, on its own initiative, or at the request of a party, decide that videoconference should be used in the proceedings (the Code of Civil Procedure of Ukraine (Article 158-1), the Code of Commercial Procedure of Ukraine (Article 74-1) and the Code of Administrative Proceedings of Ukraine (Article 122-1)).

The Code of Criminal Procedure (Article 232) states that the examination of witnesses and/or identification of evidence during pre-trial investigation is also acceptable through videoconference.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The procedural laws of Ukraine state that parties have to prove the facts which form the grounds for their claims and objections. None of the procedural codes of Ukraine have limitations on the methods of presentation. As a matter of practice, in most civil or commercial cases no multimedia materials are used in the hearings. In criminal cases, however, video materials, audio recordings and expert witness presentations are used on a regular basis.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Ukrainian procedural law has no limitation on the involvement of one lawyer for both the pre-trial procedure and the trial.

It should be noted that there are two ways in which a legal professional can practice law in Ukraine. First, there are “lawyers”, who usually hold a university diploma in jurisprudence and can act as consultants and representatives/agents of their clients in negotiations, contracting or court hearings on the basis of a power of attorney. Many prominent practitioners, in particular in the field of business law, are, or have until recently been simply “lawyers”. This way of practicing law is not regulated by any special rules, but rather is governed only by general rules of civil law.

The other form of practice is becoming a licensed “attorney at law”, or an “advocate”. This requires, in addition to obtaining a legal education, that the attorney at law meet certain qualification criteria, pass a bar exam, pay mandatory fees, and join a national attorneys’ association (compulsory), which is a self-governing organisation. The activities of an attorney are regulated by a special law “On Advocacy” and by the Attorney’s Rules of Ethics. An attorney is entitled to a carefully defined attorney-client privilege. They enjoy also other powers and privileges as compared to non-licensed legal professionals, i.e. “lawyers”. For example, while any prosecutor may initiate criminal investigation against an ordinary person, investigation against an advocate may only be initiated by a General Prosecutor or by a chief regional prosecutor.

In 2016, the procedural law significantly changed the rules for representing clients in court proceedings. As of January 2017, advocates are granted a monopoly to represent clients in the Supreme Court and the courts of cassation. This monopoly will extend to the courts of appeal from the 1st of January 2018 and to courts of first instance from the 1st of January 2019.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff’s negligence reduce or eliminate liability of defendants named in the litigation?

There are no contributory negligence laws in Ukraine. However, the amount of liability can be decreased (Article 1193 of the Civil Code of Ukraine). This rule is applicable for cases where the fault of the person suffering the damage contributes to the occurrence or extent of damage. In determining the size of compensation the court considers the fault of the person who

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

caused the damage and the fault of the person suffering damage.

38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?

Ukraine is a party to the Hague Convention. Therefore, its rules should be followed when the service of judicial documents abroad is required.

In addition, Ukraine is a party to a number of bilateral treaties regulating, *inter alia*, service of judicial documents. The rules of bilateral treaties might differ from those established by the Hague Convention, being less formal.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

There are no specific legal provisions governing the export of documents to a foreign jurisdiction. Therefore, general rules of use and access to the case materials are applicable. The court decisions are published online in the Unified State Register of Court Decisions. The case materials, however, are accessible to the parties to the particular case (including third parties) only.

In cases involving cross-border proceedings, a foreign court may request the provision of certain case materials or information from the Ukrainian court within the framework of international treaties on legal cooperation and assistance.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

In Ukraine, there are no Best Practices in the meaning of a common law system. Still, some acts with a similar function do exist.

The current highest Ukrainian courts as well as the new Supreme Court, being created, have the power to analyse court practice and issue recommendations and clarification on various issues of substantive and procedural law. The latter clarify and often supplement the rules set out in the procedural codes. For example, there is a separate recommendation dealing with proceedings in the court of first instance, the proceedings to enforce foreign judgements and arbitral awards, proceedings involving foreign parties etc. Though such overviews and recommendations are not obligatory for the courts, in practice they are usually adhered to by the judges of courts of all instances.

On a technical side, the State Judicial Administration of Ukraine issues instructions on office management regulating the management of court records, case materials, archives, registration of any incoming and outgoing documents etc. These instructions are obligatory for all Ukrainian courts.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

All the procedural codes provide for the principle that all parties to a proceeding have equal rights and the courts generally follow this rule. In practice, however, this balance in certain cases is disturbed.

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

UKRAINE

In all types of proceedings, a defendant has a number of options to delay or disrupt proceedings, inter alia, by filing procedural submissions that have no objective grounds but still have to be considered by a court to ensure due process. Many loopholes are being eliminated by continuously changing procedural legislation or upon the instructions of the higher courts. However, new ways to disrupt the proceedings are being regularly invented by litigants; and as of now there is no effective instrument to prevent, confront or punish such behaviour by a party to the proceedings. The ongoing reforms of the judiciary, legal profession and of procedural law are expected to address this problem. As of now, however, a defendant usually has a number of technical advantages in the proceedings.

Interim injunctive measures are usually intended to ensure the claimant's interests are secured in the course of court proceedings. Said measures are insufficiently regulated by law, are very inconsistently applied by the courts, suffer from the general problem that court decisions often cannot be enforced and in general cannot be considered as reliable measures. In practice, this means that a claimant often has to bear the costs of court proceedings, while accepting the risk that a defendant would dispose of its assets shortly before or immediately after an unfavourable court decision, thus avoiding the collection and enforcement.

In insolvency proceedings, the law has a lot of flaws and fails to provide for an efficient collection procedure. In practice, it often results in a situation largely benefiting debtor to the detriment of creditors. Such situations may range from very extended or delayed insolvency proceedings to inefficient disposal of assets and even to barely legal 'controlled insolvency', where a debtor, cooperating with a group of affiliated creditors, uses insolvency proceedings to receive protection from other creditors for an extended period of time while maintaining a de-facto control over its assets and profits. Normally, the only possible way to oppose such abuse by a debtor is to form a creditors' consortium holding over 50% of the unsecured creditors' claims and employing aggressive litigation tactics. Where non-affiliated creditors cannot agree on a joint position in the proceedings, the fate of the debtor to a great extent depends on such debtor's pro-active approach and quick reaction. Despite the fact that at least some of the improper practices used in insolvency proceedings may constitute criminal offences, they are difficult to prove, and successful criminal prosecution of violators is very rare.

Proceedings on enforcement of court decisions in Ukraine are notorious for their complexity and inefficiency. Enforcement proceedings constitute a separate procedure from the court proceedings. Enforcement of court decisions is administered by the State Enforcement Service. If the losing party does not execute the decision voluntarily, the winning party should submit the decision to the State Enforcement Service. In enforcement proceedings, the parties are, in principle, equal. However, the complexity of procedure and the fact that enforcement officers often have insufficient qualification and low motivation and a limited number of tools available to them means the losing party may avoid or significantly delay the actual performance of the court decision, while the winning party has to invest enormous effort in ensuring that the procedure moves forward, and often does not receive a positive result of this effort. An ongoing reform of enforcement proceedings is intended to address this issue, in particular by introducing private enforcement officers.

Finally, in criminal proceedings the state investigator has all procedural rights from the very beginning of the proceedings. The defending party acquires its rights only after the investigator issues a formal accusation to a particular person. This may result in a situation where a substantial part of the pre-trial investigation is carried out without the participation of the suspect, or even without the party being informed of the investigation. In such case, the defence only gains access to the case within a very short period before the case is submitted to the court for trial.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Ukraine is currently undergoing a major process of reform, which includes changes in the regulation of court proceedings

SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

This document is a resource tool only. The information was compiled in 2014 and updated in 2016 and 2017. Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

UKRAINE

and multiple related matters. Recent legislative initiatives involve measures aimed at ensuring that creditors are effectively protected against unfair debtors, that court decisions are enforced effectively, that e-services are improved for the parties to the disputes under consideration by the courts etc. Some of the most discussed and anticipated reforms that may become a reality within the next one or two years include the following:

- 1) A massive replacement of judges, beginning with full re-staffing of the Supreme Court judges. The new composition of the Supreme Court is expected to hear first cases already in fall of 2017, and it is expected that the new judges will be able to produce decisions of higher quality and ensure independent, equal and just treatment of the parties to the proceedings.
- 2) Reform of the procedure of the court decisions enforcement. The reform provides for a number of major changes both in the system of enforcement bodies and in the enforcement procedure itself. In particular, the law introduces private enforcement officers, who are expected to be more efficient and motivated as compared to the current state enforcement officers. The first private enforcement officers have begun to work in the fall of 2017..
- 3) Reform of the party's representation in courts and an overall update for the regulations for legal profession. Recent amendments to the Constitution of Ukraine introduced the so-called "attorney's monopoly", meaning that only licensed attorneys will be entitled to represent parties in courts. The new regulations became effective for the Supreme Court and highest courts proceedings on 01 January 2017, and will extend to courts of appeal from 01 January 2018 and first instance courts from 01 January 2019 respectively.
- 4) Reform of court assistance in international arbitration proceedings. The draft legislation aims to streamline the proceedings for the recognition and enforcement of foreign arbitral awards by allowing the following: direct submission of applications to the court of appeal, which will mean the level of first instance courts is skipped; the option for the parties to apply for interim measures in Ukrainian courts while the dispute is being considered by an international arbitration institution; and other relevant measures.
- 5) Complete replacement of three basic procedural codes governing civil, commercial and administrative proceedings. The updated proceedings would provide for summary proceedings; simplified proceedings (including small claims cases); updated rules for provisional measures, including the introduction of securities for costs; and measures which will allow the court or parties to oppose and disallow abuse of procedural rights by dishonest parties/representatives.
- 6) Introduction of mediation as an officially recognized and regulated method of dispute resolution. The relevant draft law has already passed the first hearing and is now being further elaborated and prepared for the second hearing at the Parliament of Ukraine.
- 7) Development of e-services for the parties to the dispute being considered by the court. The draft law enables parties to the dispute to have access to the case materials online. The draft law is now being elaborated in the relevant committee of the Parliament of Ukraine. Pilot projects have started in seven courts across the country, including four courts of appeals.
- 8) Introduction of a specialised intellectual property cases court. While the level of legislation, as well as the party representatives' qualifications in these matters, is quite high, the judges have been lagging behind in understanding and applying modern concepts of intellectual property issues. Judges of the Highest Court on Intellectual Property Issues will be selected based on their experience in intellectual property cases and are expected to have the same level of qualifications as party representatives and provide well-reasoned decisions. It is expected that the Highest Court on Intellectual Property Issues will act as a court of first instance (and, probably, as a court of appeals), while the Supreme Court will remain as the court of cassation in these type of cases.