

CONCEPT of International Investment Court¹

I. Objective:

establishing an independent adjudicatory institution for disputes over domestic and foreign investments in Ukraine.

II. Principles:

- independence from the state and other external influences;
- alternative to state courts;
- automatic recognition and binding nature of the IIC's judgments in Ukraine;
- no budgetary burden;
- trust, professionalism and integrity;
- a combination of features of international investment arbitration and state courts;
- prioritizing a healthy and sustainable investment climate;
- completeness and effectiveness of investment protection;
- appeals against decisions exclusively to the Grand Chamber of the Supreme Court (the highest judicial body in Ukraine) on an exhaustive list of grounds (public policy, subject matter jurisdiction, composition of the court, etc.)

III. The essence of the concept:

- establishing a new dispute resolution centre in Kyiv to protect the rights of investors who have invested in Ukraine's economy.
- theoretical and legal basis - the incorporation of international investment arbitration tribunal, which is proposed to be improved by its "nationalisation" and deeper integration into the legal system of Ukraine.
- the jurisdictional basis (the main "feature") of the mechanism is the presumed (laid down in the law) consent of the state to refer the dispute to the Court at the request of the investor. It is the investor who ultimately chooses the court as the jurisdiction for his case, either: a) when filing a lawsuit, when he is the plaintiff; b) when filing an application for transfer of the case to the Court, when the investor is already a defendant in a state court.

IV. Subject matter jurisdiction of the Court:

Disputes involving investors (both foreign and Ukrainian) and the state of Ukraine and its entities (state authorities, their officials, state-owned enterprises, etc.) regarding:

- validity, fulfilment, amendment or termination of contracts related to investments in Ukraine;
- participation in business entities;
- government-related bonds, securities and shares;
- state-guaranteed contracts;
- tax calculation and payment;
- public-private partnerships;
- possession (ownership) of land;
- fines, sanctions and other financial (property) measures of state influence;
- other issues specified in the law on IIC.

There may be the time limits for the investments to be made in order to fall under the Court's jurisdiction (e.g., investments made after the Russian invasion started or after the law on IIC comes into force).

The law may also establish exceptions related to Ukrainian national security, defence or other critical sectors.

¹ Hereinafter – the IIC or the Court. Alternative names: International Investment Arbitration Court (IIAC); Kyiv International Investment Court (KIIC), etc.

V. Persons who may be accredited as judges:

- lawyers who have the right to trial in the highest courts of the country of origin of the investment;
- advocates of Ukraine;
- judges of Ukraine;
- judges who are entitled to hear cases in the country of origin of the investment;
- legal scholars with a scientific degree and the right to provide opinions at the request of the Supreme Court or the highest court of the country of origin of the investment.

In the course of accreditation, the law may establish additional requirements that will be general and objective and verified by an independent body (to avoid dependence on the state and corruption risks).

VI. Determination of judicial panel of IIC:

- cases are heard by a judicial panel of at least 3 accredited judges (arbitrators);
- the first judge is appointed by the state;
- the second judge is chosen by an investor;
- the third – by the first and the second judge themselves.

VII. Guarantees of independence:

- autonomy of financing;
- proper salaries;
- financial transparency and property declaring;
- criminal procedural guarantees;
- continuity of professional experience.

VIII. Financing:

- advance payment of the basic costs (legal fee) of the Court is made at the expense of the fee paid by parties the claimant in the amount corresponding to the amount of the fee in international arbitration;
- ongoing financing of related expenses (legal assistance, expertise, etc.) at the expense of the party;
- imposing the fee and related costs on the losing party.

IX. Recognition and enforcement of decisions:

- the recognition and enforcement of the Court's judgments in Ukraine will be carried out automatically by virtue of law, without the need to apply to the Kyiv Court of Appeal or another court.
- the recognition and enforcement of Court's judgments abroad will be carried out in accordance with the regime of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and/or laws of a foreign country.

X. Implementation:

- no need to amend the Constitution of Ukraine (judiciary system, status of foreign judges within it, etc.).
- adoption of a separate law on the International Investment Court, amendments to the Law on International Arbitration, the Civil Procedure Code of Ukraine, the Commercial Procedure Code of Ukraine, the Law of Ukraine on international private law, and other laws.

XI. Advantages:

- the fast speed of legislative implementation;
- familiarity of procedural rules of court proceedings to a foreign investor;
- independence from external influence (political pressure, corruption, etc.);
- employing the potential of Ukrainian judges, lawyers and academics;
- empowering investors to protect their investments and improving the investment climate.