

Arbitration - Ukraine

Arbitrating state interests abroad: clearer basis for counsel and state entities

Contributed by [Astapov Lawyers International Law Group](#)

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Dispute resolution practitioners have long argued for enhanced legal clarity on the procedures for protecting Ukraine's rights and interests and for representing such interests in disputes with foreign entities.

It is no secret that Ukraine is involved in at least 20 ongoing disputes before various jurisdictional bodies, including the International Centre for Settlement of Investment Disputes and the Stockholm Arbitration Institute. The claimants in such proceedings are primarily foreign investors - or entities which believe that they enjoy such status.

In this context, it is vital to understand which public authority is empowered to instruct legal advisers on representing Ukraine's interests - or to take other action - before an international arbitral body, and on what basis the authority may do so. A new presidential decree gives clear guidelines for determining which state authority is in charge of instructing external counsel in such cases.

The key point of the new policy is to make the Ministry of Justice solely responsible for the entire process; previously, the applicable law vested this function with an "authorised body". This ambiguous provision meant that the appropriate government authority had to be determined on a case-by-case basis. The new decree will prevent the conflicts that inevitably arose when one dispute was handled by up to five ministries.

The main practical changes are as follows:

- The decree identifies the ministry as the central public authority with responsibility for representing the state's interests. Other public authorities - generally, the ministries with responsibility for the sector in which the dispute has arisen - will play a supporting role;
- Only the minister of justice or his or her deputy may lead an inter-agency working group;
- The Cabinet of Ministers, as the single authorised body, must be kept updated on developments every month; and
- Legal advisers and other external advisers to an arbitration or litigation will be appointed by the Ministry of Justice.

The decree is a positive development, both for arbitration practitioners involved in state-related processes and for state bodies involved in the arbitration of disputes with investors and others. However, it neglects one significant issue: which government authority should appoint external counsel to represent state companies, which are increasingly involved in foreign court and arbitration proceedings?

For further information on this topic please contact [Andrey Astapov](#) at Astapov Lawyers International Law Group by (+38 044 490 7001), fax (+38 044 490 7002) or email (astapov@astapovlawyers.com).

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