US-UKRAINE MINERALS DEAL DISCUSSION AT NEW YORK ARBITRATION WEEK

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Key insights and perspectives from events we host, attend, and support highlighting what matters most to our clients and industries.

By: Maria Kostytska

Our firm, together with Ukrainian law firm Vasil Kisil & Partners, co-hosted a high-level discussion during New York Arbitration Week titled, “US-Ukraine Minerals Deal: Managing the Risks of Implementation and Potential Disputes.”

The event, hosted by *ICDR–AAA*, with information partnership of the US-Ukraine Business Council, brought together government leaders and private-sector experts to explore the strategic implications of the recently created US-Ukraine Reconstruction Investment Fund—initiative designed to accelerate Ukraine's post-war reconstruction and attract investment in critical minerals and infrastructure.

WHAT WE SHARED

Maria Kostytska, Paris International Arbitration partner, moderated the session and provided essential context on the legal evolution of the US-Ukraine Minerals Deal, from the draft memoranda of understanding to the ratified intergovernmental agreement and commercial agreements between the US and Ukrainian partners.

She explained that the Reconstruction Investment Fund operates as a parity-based investment vehicle, enabling both the US and Ukrainian partners to co-invest in strategic sectors such as:

- Extraction and processing of 57 critical minerals.
- Oil and gas development (including LNG).
- Infrastructure (ports, railways, cellular towers, data centers).

Key legal insights shared:

- An overview of the legal framework comprising US-Ukraine the Minerals Deal.
- The role of the fund as a private equity fund and its level of participation in investment projects.
- The role of production sharing agreements (PSAs) and public-private partnerships (PPPs) in mitigating investor risks.
- The possibility of conversion of previously issues licenses for subsoil use into PSAs.
- The protection provided by stabilization clauses in PSAs and the carve-outs from such clauses.
- The importance of selecting suitable dispute-resolution mechanisms at the contract drafting stage.

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WHAT WE LEARNED

While the discussion was rich in detail, here is what stood out:

- The fund is positioned as a market-making instrument, initially targeting critical materials and expanding into energy and telecom sectors.
- Ukraine is currently adjusting its legal framework to implement the US-Ukraine Minerals Deal, including standardized amendments to subsoil-use agreements.

WHAT LIES AHEAD

Looking ahead, the following developments will be worth monitoring:

- The second board meeting of the fund allowing it to finalize investment protocols and prepare a pipeline of high-potential projects.
- Standardization of all subsoil-use agreements, pursuant to the recently adopted resolution of the Cabinet of Ministers of Ukraine, to ensure alignment with US-Ukraine commitments and the fund's regulatory framework.
- Launch of additional tenders for development of minerals under PSAs.
- Further discussions in relation to the war-risk insurance that can be provided to the individual operators, namely by the DFC.

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