UKRAINE IN FOCUS: INVESTMENT INTO POST WAR RECONSTRUCTION, CONTRACTS, AND DISPUTES AT PARIS ARBITRATION WEEK

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Event Insights

By: Maria Kostytska

During Paris Arbitration Week, the firm, together with the Ukrainian Arbitration Association (UAA), hosted a panel discussion titled “Ukraine in Focus: Investment into Post War Reconstruction, Contracts, and Disputes.” The session examined the legal, regulatory, and dispute resolution considerations shaping investment into Ukraine's post war reconstruction.

The distinguished panel featured in-house counsel Heorhii Hrabchak (Ukrnafta head of international disputes), Oleksandr Kushch (Naftogaz head of international disputes), alongside Markiyan Malskyy (Arzinger, managing partner and UAA Board Member), and Sergii Uvarov (Impacta partner and UAA President).

WHAT WE SHARED

Maria Kostytska (Paris partner and UAA Board Member) opened the event by providing context for the discussion, noting the full-scale invasion going into the fifth year and underscoring the importance of looking ahead to investment opportunities and ensuring legal preparedness for investments into Ukraine's post war reconstruction.

Sergii Uvarov followed with a comprehensive overview of how dispute resolution in Ukraine has evolved over the past four years, how the courts and arbitral institutions continue to function, and how enforcement was stayed in certain cases due to martial law and sanctions.

Thereafter, panel addressed a broad range of legal and practical issues relevant to investors, including:

- Recent legislative and regulatory reforms affecting public private partnerships (PPPs) and privatization
- The legal framework governing production sharing agreements (PSAs), subsoil licenses, conversion of subsoil licenses into production sharing agreements, concessions and joint ventures with foreign investors
- Prevention and mitigation of disputes, as well as techniques and modalities of dispute resolution in the post-war reconstruction context.

Markiyan Malskyy (Arzinger) analyzed recent reforms in PPPs and privatization, highlighting Ukraine's ongoing efforts to attract foreign capital. He reflected on historic privatization related disputes. He also addressed the risks associated with investing in or acquiring sanctioned assets—particularly those administered by ARMA and sold

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through the State Property Fund—as well as the potential for claims to be brought by sanctioned Russian individuals or entities for deprivation of assets.

Heorhii Hrabchak (Ukrnafta) shared insights into investments into Ukraine's energy sector, which is currently shaped by financial restrictions and sanctions framework. He elaborated on PSAs and the conversion of subsoil licenses into PSAs as a mechanisms for foreign investor participation alongside state-owned enterprises. On the bright side, he commented on Ukraine's recent victory in the first renewable energy case arising from the change in the green tariff regime, in which the government negotiated with the renewable energy producers, signed a memorandum of understanding, implemented it into law, and thus avoided liability under the Energy Charter Treaty (ECT).

Oleksandr Kushch provided insights into the gas wars ongoing until the termination of the long-term gas transit contract between Naftogaz and Gazprom, focusing on the ongoing enforcement of arbitral awards. He also mentioned recent achievements in enforcement of Crimea related awards and the complex interplay between Ukrainian and European creditors seeking recovery against assets of Gazprom Export, Gazprom and Russia.

Louis Degos (Bâtonnier du Barreau de Paris) concluded the session with a high level synthesis, emphasizing the importance of legal foresight and strategic planning for Ukraine's reconstruction.

WHAT WE LEARNED

- Ukraine continues to adapt its legal and regulatory framework to support investment during and after the war, particularly in energy, infrastructure, and natural resources.
- Conducting early due diligence and planning for dispute resolution is critical in protecting investor interests.
- Investors must carefully assess the evolving legal and regulatory framework, sanctions related risks and jurisdictional overlaps when structuring investment transactions and pursuing claims.

The discussion closed with an engaging Q&A, reflecting strong audience interest in the practical and forward looking issues raised by the panel.

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KEY CONTACTS



MARIA KOSTYTSKA
PARTNER

PARIS
+33.1.58.44.15.16
MARIA.KOSTYTSKA@KLGATES.COM

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