

Constant Advice



International disputes in the agrarian sector have always developed as a separate legal service segment. The international rules and institutions governing this area enjoy an incredible level of credibility and enforcement. Recent political changes affect agrarians and the nature of disputes that are unusual for Ukraine. Disputants expect and demand more from their legal advisors, especially when it comes to unsuspected difficulties and consequent losses. The UJBL tackles the recent state of play with arbitration challenges with **AGA Partners**, a bright Ukrainian team focused on sectoral legal assistance. What does the firm face in its client workflow, and how does it respond? We asked three partners: **Aminat Suleymanova**, **Ivan Kasynyuk** and **Irina Moroz**. This is what they told us.

UJBL: You are known for your sharp focus on international arbitration, especially soft commodities arbitration practice (agrarian sector). Can you tell us about recent developments in such arbitrations?

Aminat Suleymanova: AGA Partners has always occupied a unique niche in the legal services market. Indeed, we focus mainly in the agrarian industry, advising Ukrainian and international grain traders in the course of exporting agricultural commodities and resolving disputes that arise under sale contracts. In the last few years we have noticed a rise in the number of more complex cases in the agricultural sector, which entails a high standard of legal services and specific requirements to the role of legal adviser in resolving international disputes. The types of claims have also been in a state of flux: earlier, cases mostly concerned non-delivery or short delivery of goods, which are seen as quite common, and currently, cases have become more intricate, that is predetermined by recent legislative and geopolitical changes. Along with Ukrainian integration into the EU, agribusiness should satisfy high requirements to the quality of exported commodities, which often causes disputes. There are also a growing number of cases based on the force majeure clauses, that arose after occupation of the Crimean Peninsula, introduction of restrictions on import of soft commodities to the Russian Federation, hostilities in the eastern part of our country. Moreover, the geopolitical situation in the world is unstable and a great number of sanctions introduced by the USA, the EU, Switzerland and other European countries cause complications in executing sale contracts and international money transfer. As a consequence, this gives rise to new types of disputes that arise under legislation on sanctions. Therefore, we can notice new categories of cases unusual for our jurisdiction, like peculiar force majeure, related to military conflicts and constant unpredictable political and

economic changes in Europe and Asia. As a result, legal advisors should go in step and broaden their knowledge in order to comply with recent developments in the field of international trade and arbitration and be more flexible.

UJBL: What are the most typical requests made by your clients in this regard?

A. S.: Cases on non-delivery, short delivery and non-payment for the delivered goods remain the most common ones. The growing number of companies working in the international field of agribusiness causes an increase in supply and demand and huge market competition. Consequently, when traders are not satisfied with the initial con-

THERE ARE ALSO A GROWING NUMBER OF CASES BASED ON THE FORCE MAJEURE CLAUSES, THAT AROSE AFTER OCCUPATION OF THE CRIMEAN PENINSULA, INTRODUCTION OF RESTRICTIONS ON IMPORT OF SOFT COMMODITIES TO THE RUSSIAN FEDERATION, HOSTILITIES IN THE EASTERN PART OF OUR COUNTRY

tract price, they have more options in reselling the goods to other party, and this leads to disputes. We have to point out that Ukrainian agricultural market players become more familiar with the principles of English law, which is most commonly applied in international trade and, consequently, it leads to an increasing number of more complicated disputes. The wide range of inquiries relate to whether a contract was actually concluded, as it might be concluded even without the signing of a single document by the parties. Moreover, we are often approached by our clients to give our opinion on whether the complicated political situation in Ukraine and hostilities in the eastern part of the country can be considered as force majeure. Of course, each such case has its peculiarities and each contract



AGA PARTNERS KEY FACTS:

- **Year of establishment**
2005
- **Number of lawyers/partners/consultants**
3/3/2
- **Core practice areas**
International commercial arbitration
International trade
International family law
Private client's practice.

should be analyzed separately. The reasons for relying on force majeure regarding hostilities in Ukraine are very constrained. The trend shows that clients, while submitting cases to GAFTA and FOSFA arbitration, want to have constant legal advice of the highest quality.

UJBL: Does the current situation in Ukraine affect the number of applications to GAFTA and FOSFA arbitration institutions? What kind of challenges did the annexation of Crimea and occupation of the East bring to arbitration practice?

Ivan Kasnyuk: The current situation in Ukraine has not direct influence on the number of applications to the mentioned arbitration institutions, but we noticed a spike in the number of cases immediately after the annexation of Crimea in 2014. The general position under GAFTA and FOSFA contracts is that despite the difficulties in political and economic situation in Ukraine, changes in exchange rate, difficulties with the Ukrainian banking system, contracts shall be fulfilled and the parties should keep to their bargain. The parties can be discharged from their contractual obligations in very limited situations and under exceptional circumstances. Therefore, GAFTA and FOSFA arbitration institutions do not afford easy relief and/or remedy just because of the difficult current political and economic situation in Ukraine.

Irina Moroz: However, we have to point out that the annexation of Crimea imposes new challenges to resolution of investments disputes. We had a number of inquiries from clients that lost their assets in Crimea after its occupation, and we are pursuing new and efficient mechanisms of investment dispute resolution related to the compensation of financial losses sustained

by legal and natural entities after expropriation of property in Crimea.

We expect the number of claims to investment arbitration institutions to rise, as it is obvious that there are a significant number of investors who has suffered huge damages after the annexation of Crimea and many of them are now in the process of drafting claims to submit them to international arbitration institutions.

UJBL: Which cases have been the most significant for your firm to date, and why?

A. S.: We have no particular case we consider the most significant, as all our clients and all cases we had are very important to us, but we can provide two examples to illustrate the importance of our legal role on the market. The first is the contract with an overall value of USD 26.5 billion between the State Food Grain Corporation of Ukraine (SFGCU) and China National Machinery Industry Complete Engineering Corporation (CMCEC) on cooperation in agriculture. Our company advises SFGCU, the largest state owned company, under the contract of inter-governmental significance. The contract was concluded with the approval of the Chinese and Ukrainian governments to guarantee food security of the Republic of China and it is one of the most important contracts for the Ukrainian government.

The second one is the High Court of Justice case in a dispute between PC Rise and Nibulon S.A. The majority of grain industry players in Ukraine remember late 2010 well, when the Ukrainian Government introduced grain export quotas and subjected grain export to licensing. The quota allocation rules and procedures were changing on a daily basis, often at the last minute and in a very impracticable manner for

business. As a result, only a few companies were able to obtain export licenses; the majority, including the largest international trading houses, were unable to do so and could not perform their contractual obligations, which led to a wave of terminations and cancellations of contracts.

A case arose at GAFTA where Nibulon S.A. claimed damages for non-delivery of corn due to prohibition of export from Ukraine. The GAFTA Award was reviewed at the High Court of Justice, where the relevant judgment was issued in 2015. The importance and the high role of this case is due to the fact that this matter has fundamentally influenced trading practice in the Black Sea region and we are proud to be involved in such a significant case.

UJBL: It is known that the arbitration award not always guarantees it will be executed. What experience do you have in the recognition and execution of arbitration awards?

I. K.: From the initial stage of our engagement, we think on the process of award execution, as we clearly understand that obtaining an arbitration award does not always mean real refunding to our client's bank account. In this regard, our legal support always consists of a detailed action plan, including seeking of preliminary measures aimed at securing a claim where it is available and handling the arbitration process in a manner that guarantees unimpeded execution of arbitration award in any jurisdiction. As our experience shows, in 80% of cases companies voluntarily execute GAFTA and FOSFA arbitration awards. Besides, we have experience of successful recognition and enforcement of arbitration awards in Switzerland, Germany, Poland, Turkey, Russia, Ukraine and other jurisdictions.

UJBL: Your firm has considerable practical experience in the field of arbitration. Do you take part in the development of new legislation or new trade rules?

I. M.: Yes, we understand we should use our experience to help develop and improve the legal regulation of the agricultural sphere. Accordingly, we actively participate in enhancing trade rules and developing national legislation. For instance, our partner Ivan Kasnyuk is a member of the GAFTA Trade Committee and participates in elaboration of new legislation on cargo quality standards. Moreover, recently he became a member of the working group of Ukrainian Ministry of Agrarian Policy and Food with the primary task to make improvements to Ukrainian legislation on transfer pricing.

I. K.: Our firm regularly participates in enhancing international trade rules and their unification at the request of international trade associations, in particular GAFTA, as well as at the request of our clients, who use these rules in their daily work.

AS OUR EXPERIENCE SHOWS, IN 80% OF CASES COMPANIES VOLUNTARILY EXECUTE GAFTA AND FOSFA ARBITRATION AWARDS





NOW WE CAN SEE THE TENDENCY FOR CONTRACTING PARTIES TO REFER DISPUTES TO ARBITRATION INSTITUTIONS IN SINGAPORE AND HONG KONG

UJBL: Currently Ukraine is on its path to integration with the EU, which opens up new markets for Ukrainian business and introduces new standards for producers of agricultural commodities. What are the most typical requests made by your clients in this regard?

A. S.: Ukraine's integration into the EU poses new challenges for both the Ukrainian authorities and the agriculture business. We are constantly improving and deepening our knowledge of legislation on European integration and establishment of free trade zone, new quality requirements to exported goods, new standards and technical regulations. Our company shares its cumulative experience with its clients in order to make Ukrainian agribusiness meet EU standards and make their daily work in entering European markets easier.

UJBL: How do global arbitration developments affect Ukrainian cases? How did they shape your practice?

I. K.: It is an international trend to resolve international disputes that arise from the contracts of agricultural commodities at London-based arbitration institutions. Despite this, we can notice that resolution of disputes in other spheres tends to be replaced with arbitration institutions in Asian countries, which is explained by the growth of Asian economy and rising number of contracts for import and export of commodities concluded with Asian companies.

I. M.: While earlier London, Paris and Stockholm arbitration institutions were the most commonly pursued in the event case of international disputes, now we can see the tendency for contracting parties to refer disputes to arbitration institutions in Singapore and Hong Kong.

Our company supports the trend to meet the new needs of our clients in expanding their trade

with Asian countries, and that is why we have started to step up our presence in this region.

UJBL: In September 2015 AGA Partners celebrated its 10th anniversary. What are your team's main achievements?

A. S.: AGA Partners Law Firm has been included in the list of the leading companies in its practice fields from the moment of its establishment. We have had many achievements over the course of 10 years. We have significantly expanded the number of our clients, increased the number of our employees, and with their help, got into gear and work with a larger number of cases. We have carried out the restructuring of our company and changed the partnership structure. Our firm has also expanded by having a presence in new jurisdictions.

We are proud of the fact that the biggest Ukrainian based agribusiness companies are among our clients, and it is great achievement for AGA Partners to be the first Ukrainian law firm to be invited as speakers to GAFTA training courses.

I. K.: Moreover, Aminat Suleymanova, managing partner, is acknowledged and recommended as one of the leading Ukrainian lawyers in agriculture and land legal practices. She was also named by the annual legal rating Ukrainian Law Firms for Foreign Clients among notable practitioners in the field of agribusiness, international arbitration and international trade. The firm is invariably ranked among the leading Ukrainian law firms in the areas of International arbitration, International trade and agribusiness.

AGA partners has been constantly developing not only its practice in GAFTA and FOSFA arbitrations, but also in other professional arbitrations. We recently expanded our activity with a

private clients' practice advising on international business structuring and taxation.

I. M.: Besides, the recognition of our firm's legal practice in the field of international family law can also be considered a big achievement. Aminat Suleymanova was the first member of IAML (International Academy of Matrimonial Lawyers) from Ukraine. She is currently an active member of this organization. Besides, the lawyers of our firm are often asked to contribute to the world's leading legal editions on private clients' practice and international family law. Notably, AGA Partners team has contributed to the Ukrainian jurisdiction in Private Client 2015, prepared in cooperation with the acknowledged foreign publication Getting the Deal Through, published by Law Business Research, to the Ukrainian jurisdiction in Family Global Guide, to the Ukrainian and Russian jurisdiction in IBA Surrogacy Newsletter, and Jurisdictional Comparison on Children Relocation covering Ukrainian and Russian jurisdictions.

UJBL: What is the strategy of AGA Partners for tomorrow?

A. S.: We now live in time described by many as a crisis, but we believe it's a time for opportunities. The crisis is a challenge, which we are happy to accept. Perhaps those law firms that previously specialized in almost all areas of law, must now identify the main specialization in order to convince a client in their exceptional services. We think that the company's development strategy now should be clearly defined and more than ever bold and innovative.

In our work, we abide by several of our fundamental principles, including the principle of pragmatism, — law for the sake of the client, rather than law for law's sake. Moreover, our specialists are always concerned about the long-term consequences of the solutions that we propose, which is one of the key rules for a modern lawyer. AGA Partners has been guided by these rules without fail ever since it was established.

Talking about our self-improvement, we can mention that providing high quality services was always the core of our company's strategy. We believe that our employees' high level of professionalism is a guarantee of the company's successful development. For this reason, we have strict requirements of our employees' education and are continually trying to provide them with opportunities to broaden their knowledge by participating in internship programs, attending international training courses.

We truly believe that it is this practice that underlies the high esteem and appreciation in which our company is held by our clients and all participants of the legal services market. In our view the rules underlying our operations are a direct reflection of our success and never-ending development.

END