

Olena Perepelynska: Doing business in the war zone

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A baker kneads dough at a bread factory in Debaltseve, eastern Ukraine, on March 9, 2015. The factory, which was damaged by shelling, resumed work on March 7, 2015, baking between 1,500 and 2,000 loaves daily as the city, captured by rebels on Feb. 18, is slowly coming back to life. © AFP

During the second half of 2014, Ukraine introduced special legislation and regulations in response to the hostilities and social unrest in the Donetsk and Lugansk oblasts.

These regulate a wide range of legal relations and issues arising on these territories. As a rule, it uses the term 'anti-terrorist operation territory' ('ATO territory'), thus limiting the scope of application of many of the regulations to specific territories.

The exact list of the cities that fall within the scope of the ATO territory must be approved by a separate resolution by the Cabinet of Ministers.

The cabinet did adopt such a resolution on Oct. 30, but then suspended it on Nov. 5. There is no precise list of the cities that qualify as ATO territory at the moment.

From a business perspective, this generates many practical problems for entities located in the Donetsk and Lugansk oblasts and for their counter-parties from other regions of Ukraine and other countries.

Implementation of commercial contracts involving parties or assets in ATO territory has been affected, or in some cases, precluded. However, such contracts, even if containing force-majeure clauses, often lack specific references to terrorist actions, military operations, or the like.

In September 2014, Ukraine amended the law on chambers of commerce and industry, introducing a broad definition of force-majeure circumstances and authorizing the Ukrainian Chamber of Commerce and Industry to confirm such circumstances for the ATO territory.

In practice, the UCCI requires that applicants seeking to obtain a force-majeure certificate must provide documentary evidence that a particular city or settlement falls within the scope of the ATO territory, or is beyond the control of Ukraine, or is a military operation area.

The practical solution in such situations is to apply to the ATO headquarters at the Security Service of Ukraine with an inquiry, or even several inquiries. An official reply is treated by the UCCI as sufficient verification regarding ATO-related issues.

Another set of problems stems from disputes against entities located in the ATO territory.

The Ukrainian postal service and independent courier services refuse to deliver parcels to addresses within the ATO territory. This is a major problem in the service of procedural documents and summons or notices that are required by contract or applicable procedural rules.

To tackle the problem, the High Commercial Court of Ukraine, in an informational letter dated Dec. 2, introduced a special procedure for initiating commercial proceedings, notifying disputing parties as to the time and place of court hearings, and dispatching court judgments if the service of documents to ATO territory is not possible.

The court now publishes important information about the time and place of court hearings on its official website (www.court.gov.ua/sudy). Interested parties are recommended to monitor the court's web resource, as well as the register of court judgments of Ukraine.