ISSUES OF REGULATION OF ADR SYSTEMS IN UZBEKISTAN

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The establishment and state support of arbitration courts in Uzbekistan will help to ensure ongoing judicial reform in the country and the liberalization of the economy as well as the expansion of privatization, the increase in the number of business entities and the resolution of disputes between them. Currently, more than 200 permanent arbitration courts in Uzbekistan are registered by the judiciary, 160 of which are organized by the Association of Arbitration Courts of Uzbekistan and its representative offices, 15 by the Chamber of Commerce and Industry and its territorial divisions and 30 by other legal entities.

The multilateral conventions governing the recognition and enforcement of judicial decisions include, first of all, agreements concluded between states with similar legal systems. Often, these are agreements of a regional nature (the Bustamante Code of 1928, the Convention between Norway, Denmark, Finland, Iceland and Sweden in 1932, the Convention on the Enforcement of Judgments of the Member States of the League of Arab States 1952 and the Afro-Malagasy General Convention on Cooperation in the Field of Justice 1962).

Universal conventions are recognized as the most effective means of mutual issuance of exequatur on judicial decisions. Currently, the Hague conferences on private international law are developing a universal convention on the mutual recognition and enforcement of foreign awards. As a result, a single universal mechanism for issuing exequatur for court decisions on civil disputes should soon appear.[1]

Indeed, today, the number of appeals to arbitral tribunals, voluntarily chosen by the parties to resolve their dispute by agreement, is increasing day by day. For example, from 2010 to 2015, 38,391 awards worth 651.3 billion soums were made by arbitration courts under the Association of Arbitration Courts of Uzbekistan and its representative offices, and 316.1 billion soums by arbitration courts under the Chamber of Commerce and Industry of the Republic of Uzbekistan and 2,506,999 lawsuits in the amount of 195.1 thousand euros were considered and resolved in the prescribed manner.[2]

Despite the advocacy efforts to recognize the advantages of arbitration courts, there are still questions about the enforcement of arbitral awards by many, especially businesses. Therefore, we aim to provide brief and concise information on this issue.

The Law of the Republic of Uzbekistan 'On Arbitration Courts' is devoted to the execution of the decision of the arbitral tribunal. This Law stipulates that the decision of the arbitration court may be enforced voluntarily or compulsorily.

The decision shall be executed voluntarily in the manner and within the time limits established therein.[3] In practice, the arbitral tribunal's request for the parties to set a time limit for the performance of their obligations is the basis for the inclusion of a voluntary period of enforcement of the arbitral award. If a deadline has not been set, it must be executed immediately.

If the decision of the arbitral tribunal is not voluntarily executed in the manner and within the time limits established therein, the claimant shall have the right to enforce the decision of the arbitral tribunal.

[1]Suleymanova, A.M. (2011) ENFORCEMENT OF JUDICIAL DECISIONS OF FOREIGN STATES IN PRIVATE INTERNATIONAL LAW, dissertation, p. 31.
[2]Xudayberganov, A.S. (n.d.) 'Execution of the decision of the arbitral tribunal', http://www.chamber.uz/ru/page/4857
[3] Egorova M.A. Commercial law: textbook for universities. - M .: 2013 .- P.16;

In this case, depending on the nature of the existing dispute and the subjective parties, the claimant may apply to one of the following competent courts for the issuance of a writ of execution for the enforcement of the decision:

inter-district, district (city) courts on civil cases at the place of residence of the defendant (citizen) (as required by Chapter 353 of the Code of Civil Procedure of the Republic of Uzbekistan);

the economic courts of the place of residence of the respondent (citizens carrying out business activities without forming a legal entity or obtaining the status of an individual entrepreneur in the manner prescribed by law) (as required by Chapter 202 of the Code of Economic Procedure).

If the recognition and enforcement of arbitral awards in foreign countries is required, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and other international legal instruments apply, and an application shall be submitted to the relevant state court in accordance with the requirements of the procedural legislation of that foreign state.

An application for a writ of execution for the enforcement of an arbitral award shall be submitted to the competent court in the place where the debtor is located or resides, or, if the location or place of residence of the debtor is unknown, at the place where his property is located.

The application for the issuance of a writ of execution for the enforcement of the decision of the arbitral tribunal must contain the following:

1) the name of the competent court to which the application is filed;

2) the name and composition of the arbitral tribunal that made the decision, as well as the place where it is located;

3) the names (surname, name, patronymic) of the parties to the arbitration proceedings as well as the location or place of residence of the partners (postal address);

4) the date of the decision of the arbitral tribunal;

5) the date of receipt by the arbitral tribunal of the decision of the arbitral tribunal;

6) a request to issue a writ of execution for the enforcement of the decision of the arbitral tribunal.

The application for the issuance of a writ of execution for the enforcement of the decision of the arbitral tribunal may contain telephone numbers, fax numbers, e-mail addresses and other information.[4]

The following shall be attached to the application for issuance of a writ of execution:

a certified copy of the decision of the arbitral tribunal (a copy of the decision of the permanent arbitral tribunal must be certified by the chairman of the arbitral tribunal, and the signature of the arbitrator in the copy of the decision of the interim arbitration court must be notarised);

a copy of the arbitration agreement, completed in the prescribed manner;

documents confirming the payment of the state duty (twice the minimum wage) in the prescribed manner and amount, as well as a copy of the application that was given to other participants in the arbitration proceedings.

The application for the issuance of a writ of execution shall be considered by an authorised court judge individually, in accordance with the procedures established by the Code of Economic Procedure of the Republic of Uzbekistan or the Code of Civil Procedure of the Republic of Uzbekistan. The parties to the arbitration proceedings shall be notified of the time and place of consideration of this application. The absence of the parties or their representatives to the arbitration proceedings in the competent court session shall not preclude the consideration of the application.[5]

The competent court shall assess whether the dispute has been considered by the arbitral tribunal in accordance with the procedures established by law and may issue a ruling on refusal to issue a writ of execution

[4] The United Kingdom applies the New York Convention only to the recognition and enforcement of awards made in the territory of another contracting State.

[5] Matray (1982) 'Arbitrage et ordre public transnational'. *The Art of Arbitration: Essays on International Arbitration Liber Amicorum Pieter Sanders*, eds. Schultsz, J.C. and van den Berg, A.J., Kluwer, p. 245.

only if the responsible party provides evidence of violation of procedural requirements.[6] However, the competent court shall not have the right to examine the circumstances established by the arbitral tribunal during the hearing of the case or to reconsider the content of the arbitral award.[7]

The writ of execution issued on the basis of the competent court ruling on the compulsory execution of the decisions of the arbitral tribunal may be executed within six months from the date of receipt.[8] Execution of the decision of the arbitration court on the writ of execution is provided for in Article 5 of the Law of the Republic of Uzbekistan 'On Enforcement of Judicial Documents and Other Bodies' dated 29 August 2001 No. 258-II. Enforcement of court decisions under the Ministry of Justice of the Republic of Uzbekistan in terms of logistics and financial support applies to the relevant law enforcement officers of the Department.

No later than three days from the date of receipt of the writ of execution, the bailiff may decide to initiate enforcement proceedings and set a period of five days for voluntary compliance with the requirements of the writ of execution, after which the debtor notifies law enforcement in case of collection of enforcement costs.

The following are mandatory enforcement measures:

1) directing the collection to the debtor's money and other property;

2) directing the recovery to the debtor's money and other property held by other persons;

3) directing the collection to the debtor's salary, stipend, pension and other types of income;

4) withdrawal of certain items specified in the executive document from the debtor and transfer to the claimant;

5) other measures taken in accordance with the legislation ensuring the execution of the executive document.

Enforcement actions and requirements of the writ of execution shall be executed and enforced by the bailiff within a period not exceeding two months from the date of expiration of the period established for voluntary execution of the writ of execution.

In short, the consideration of cases in arbitration is primarily aimed at maintaining a friendly relationship between the parties. In most cases before the arbitral tribunal, the dispute ends with the parties reaching an amicable settlement, and further cooperation is maintained. However, it should also be borne in mind that disregard or untimely execution of an arbitral award will result in enforcement by the state as well as excessive time and expenses, as outlined above.

In accordance with the Economic Procedure Code and the Civil Procedure Code of the Republic of Uzbekistan, the judge determines the possibility of concluding a settlement agreement or an alternative solution to the dispute and explains the legal consequences. It is known from world practice that the creation of alternative mechanisms for resolving disputes in the legal community is considered an effective means of achieving the restoration of violated rights of individuals and legal entities.

There are a number of systemic problems that prevent enterprises from effectively protecting the rights and interests of foreign investors to further improve the business environment and increase the investment attractiveness of Uzbekistan. These include the lack of a regulatory framework governing international arbitration in Uzbekistan, which leads to an increase in the costs of foreign investors and local businesses, who are forced to resort to international arbitration. Additionally, current legislation, including the Law of the Republic of Uzbekistan 'On Arbitration Courts', limits parties' ability to consider investment disputes in accordance with international arbitration standards for the involvement of foreign arbitrators and the application of foreign law; furthermore, the lack of clear legal mechanisms for the implementation of international arbitration decisions in Uzbekistan negatively affects the confidence of foreign investors in the

[6] Private international law. Textbook for higher education institutions. //H.R.Rahmonkulov et al. / Under the general editorship of H.B.Boboev, M.Kh.Rustamboev, O.Okyulov, A.R.Rakhmanov. - Tashkent: "World of Economy and Law" Publishing House, 2002, P.123-122.

[7] Banttekas, I. (2008) *Australian Year Book of International Law*. Volume 27. p. 193. See *US Fire Insurance Co v National Gypsum Co*, 101 F 3d 813 (2nd Cir 1996).

[8] Rustambekov, I.R. (2018) 'International commercial arbitration'. *Textbook.* pp. 27–28.

country's judicial system, which reduces the country's investment attractiveness. Training and retraining of local arbitrators and other specialists in the field of international arbitration has also not been established.

International arbitration has become an acceptable way to resolve international disputes between business partners in almost all areas of international trade, commerce and investment. In 2019, 479 disputes were settled by the Singapore International Arbitration Center (SIAC) under the Singapore Arbitration Act, 1,200 disputes by the China International Economic and Trade Arbitration Committee (CIETAC), 875 disputes by the International Chamber of Commerce (ISS) and London Court of International Arbitration (LCIA) and 450 disputes in accordance with the UNCITRAL Model Law. In this regard, one problem in almost every jurisdiction is the search for an acceptable balance between the interests of efficiency and legality of arbitration proceedings. The arbitration system is consensual in nature, the jurisdiction of the court to consider a specific dispute can also be transferred if arbitration jurisdiction can be established. Thus, the courts, as a starting point, should be empowered to rule on their jurisdiction, including any circumstances that may preclude it (i.e. the existence, validity and applicability of the arbitration agreement). However, most court decisions today also recognise the rights of judges to make decisions in their jurisdiction. This increases tensions between jurisdictions to determine if an arbitration agreement exists as well as the ability of arbitrators to determine their own jurisdictions.

Uzbekistan's national legislation contains a number of laws on the protection of entrepreneurship – in particular, the Constitution of the Republic of Uzbekistan, the Economic Procedure Code, 'Special Economic Zones', 'On Investment and Investment Activities', 'On Public-Private Partnership', 'On Guarantees of Freedom of Entrepreneurship', 'Law of Audit' and so on.

The National Action Strategy on Five Priority Areas of Development of the Republic of Uzbekistan for 2017–2021 also includes the reform of the judicial system, the introduction of modern information technologies, ensuring of reliable protection of the rights and freedoms of citizens in the judicial system, commitment of law enforcement and regulatory bodies to ensuring unhindered access to justice, increasing the efficiency of processing court and other documents, reducing state participation in the economy in order to achieve a sustainable economy and sustainable income, protecting private property rights and strengthening its priority, encouraging small business and private entrepreneurship tasks (such as the continuation of institutional and structural reforms), increasing competitiveness through the modernisation and diversification of key sectors of the national economy and ensuring that the rule of law and justice throughout the country is an unconditional process of the judiciary. Due to the fact that the coronavirus pandemic has caused a number of inconveniences for the continuation of business and investment activities, enterprises and participants in international investment activities as well as ordinary citizens can now conduct electronic contracts, negotiate electronically, organise electronic tenders and, of course, ensure the upholding of justice, one of the priority areas of development. Consequently, in the process of pre-trial dispute resolution, arbitration and mediation centres must recognise the agreements concluded by the parties based on electronic arbitration and mediation negotiations, clearly defining which program or electronic signature of the parties is required. It is also necessary to introduce online arbitration into the legislation to make it easier for the parties in the event of a global pandemic emergency and in the future. Additionally, the draft law on international commercial arbitration should include the acceptance of each document in electronic form as evidence, based on the experiences of the US, UK, United Arab Emirates and Singapore.

At the same time, there are a number of systemic problems that do not allow businesses to effectively protect the rights and interests of foreign investors, further improve the business environment and increase the investment attractiveness of Uzbekistan. In particular:

first, the lack of a legal framework regulating international arbitration in Uzbekistan leads to an increase in the costs of foreign investors and local enterprises, which are forced to resort to international arbitration in foreign countries to resolve disputes;

secondly, current legislation, including the Law of the Republic of Uzbekistan 'On Arbitration Courts', limits the ability of the parties to consider investment disputes in accordance with international arbitration standards, the involvement of foreign arbitrators and the application of foreign law;

thirdly, the lack of clear legal mechanisms for the implementation of international arbitration decisions in Uzbekistan negatively affects the confidence of foreign investors in the country's judicial system, thereby reducing the country's investment attractiveness;

fourthly, there is a lack of training and retraining of local arbitrators and other specialists in the field of international arbitration.

There is no national legislation on online dispute resolution and enforcement of its decisions, as another issue associated with the use of ODR platforms is the ability to enforce an online solution. Which court should enforce the judgment – the court of the place where the arbitration agreement was signed, the court of the place of the seat of arbitration, the court of the place where the decision was made, the place in which the ODR facility is physically located or the place in which the internet servers are installed?

This study examined the experiences of countries with developed arbitration systems based on various legal systems – in particular, the UNCITRAL Model Law adopted by Germany, the UK, Japan, Singapore, the CIS countries, Kazakhstan and the United Nations.

International arbitration has become an acceptable method of resolving disputes between business partners in almost all areas of international trade, commerce and investment. International arbitration allows parties to resolve their disputes in a personal, confidential, economic and time-saving manner in a neutral court of their choice. However, if someone identifies privacy as the most important aspect of arbitration as a means of resolving disputes, it is necessary to determine the degree to which the confidence of the parties of the arbitration agreement will be respected and what the results of the arbitration will be.

Under Article 16 of the UNCITRAL Model Law on International Commercial Arbitration 1985, the powers of the arbitral tribunal to decide matters within its jurisdiction are as follows:

The arbitral tribunal may rule on any matter within its jurisdiction, including objections to the existence or validity of arbitration agreement; to this end, the arbitration clause that forms part of an arbitration contract should be treated as an agreement independent of the other terms of the contract. The decision of the arbitral tribunal on the invalidity of the contract does not invalidate the arbitration clause.[9]

Pursuant to Section 30 of the English Arbitration Act 1996, the court's jurisdiction is as follows:

(1) Unless the parties have agreed otherwise, the arbitral tribunal may decide within its jurisdiction:

(a) whether the arbitration agreement exists or not;

(b) whether the court is properly organised;

(c) what is involved in the arbitration proceedings in accordance with the arbitration agreement.[10]

(2) Any such decision may be appealed or revised in accordance with the existing arbitration proceedings or the provisions of this section.

The adoption of the Law of the Republic of Uzbekistan 'On International Commercial Arbitration' and the establishment of arbitration jurisdiction within it creates the following advantages for the nation's legislation:

- ✓ Gathers practitioners of international arbitration courts and experienced and qualified arbitrators who are well versed in combining civil law procedures with elements of common law;
- ✓ Creates a legal environment that will help to resolve disputes successfully, resulting in saved time and money;
- ✓ In addition to local law, the legal system chosen through agreement of the parties as well as the law of a foreign state may be used in resolving disputes;
- ✓ Enforcement of decisions of arbitration courts in the territory of the Republic of Uzbekistan will be carried out in the manner prescribed by the legislation as well as in international treaties of the Republic of Uzbekistan;

[9] Rustambekov, I.R. (2018) 'International commercial arbitration'. *Textbook*. pp. 27–28.
[10] Gaillard, E. and Savage, J. (1999) (eds.) Fouchard Gaillard Goldman on International Commercial Arbitration (Kluwer Law International).

- ✓ Historically, arbitration has often been able to resolve disputes in a relatively cheaper manner compared to litigation;
- ✓ With a few exceptions, arbitration tends to adhere to a more precise and definite time interval in resolving a dispute, and judges do not always face excessive workloads, leading to faster final decisions;
- ✓ Arbitration judges are often selected through the agreement of both parties, using a third party arbitration service or the method specified when access from both parties is permitted. This means that in many cases, neither party decides who the arbitrator is (or who the arbitrators are);
- ✓ It is often very difficult to appeal arbitral awards, even if the judge has made gross errors. This can be a positive factor in ending the final discussion one way or another and allowing the parties to continue;
- ✓ A typical trial process can involve many documents, multiple discussions, testimonies, subpoenas and other similar processes. Arbitration simplifies procedures, foregoing the need for some or all time-consuming and costly litigation tools.
- ✓ Arbitration proceedings are confidential, and records are not part of public records. In some cases, this can be very beneficial for the parties.

We have analyzed the specifics of national courts and international arbitration, and we have come to the following conclusions. Unlike a single arbitrator, the arbitral tribunal is a collegial body, usually consisting of three arbitrators. Typically, each party appoints one arbitrator, and thus, the two appointed arbitrators appoint a third acting president of the arbitral tribunal. In some cases, especially in multilateral arbitration courts, direct appointment by an arbitral tribunal or other competent authority may be necessary or desirable for all three judges. Arbitration tribunals consisting of more than three arbitrators or only two arbitrators may be provided for under the mandatory provisions of certain arbitration laws prohibiting the use of more than one arbitrator.

This study examined experiences with the UNCITRAL Model Law adopted by countries with developed legal systems – in particular, Germany, the UK, Japan, Singapore, CIS countries, Kazakhstan and the United Nations.

In this regard, one of the challenges in almost every jurisdiction is to find an acceptable balance between the interests of the effectiveness and legitimacy of arbitration proceedings. The arbitration system is inherently agreed upon and may delegate the power of the court to hear a particular dispute, even if arbitration may be established. Thus, the courts, as a starting point, should have the right to decide on their jurisdiction, including any circumstances that may preclude it (i.e. the existence, validity of the arbitration agreement and compliance). However, most court decisions today also recognise the rights of judges to make decisions in their own jurisdiction. This increases tensions between jurisdictions to determine the existence of an arbitration agreement as well as the ability of arbitrators to determine their own jurisdictions.

Pursuant to Article 16 of the UNCITRAL Model Law on International Commercial Arbitration 1985, the powers of an arbitral tribunal to decide matters within its jurisdiction are as follows:

The arbitral tribunal may render a decision on any matter within its jurisdiction, including objections to the existence or validity of the arbitration agreement, which shall, for this purpose, be treated as an agreement that is independent of the other terms of the agreement. The decision of the arbitral tribunal on the invalidity of the contract shall not invalidate the statute of arbitration.

This study analyzed the adoption of the Law 'On International Commercial Arbitration' and the benefits and privileges it will create for the Republic of Uzbekistan. In conclusion, the Law on International Commercial Arbitration plays an important role in maintaining Uzbekistan's reputation as an international arbitration centre in the region. The Law on international arbitration is a harmonization of the UNCITRAL Model Law and will serve to coordinate Uzbekistan's efforts to develop a legal environment conducive to investor confidence.

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