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Perspectives Of Development Of Arbitration Legislation And Law Enforcement Practice In Uzbekistan

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Abstract: Establishment and state support of arbitration courts in Uzbekistan will help to ensure the ongoing judicial reform in the country and liberalization of the economy, as well as the expansion of privatization and the increase in the number of business entities, as well as resolving 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 competent court shall consider whether the dispute has been considered by the arbitral tribunal in accordance with the procedure established by law, and may issue a ruling on refusal to issue a writ of execution only if the responsible party provides evidence of violation of procedural requirements. 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.

Key words: arbitration, legislation, law enforcement, practice in Uzbekistan, New York convention, UNCITRAL model law, arbitration court, THE STRATEGY OF ACTION in five priority areas of development of the Republic of Uzbekistan for 2017-2021, Economic Procedure Code, Civil Procedure Code, Singapore International Arbitration Center (SIAC), China International Economic and Commercial Arbitration Committee (CIETAC), TIAC.

1. INTRODUCTION

In recent years, over 30 international arbitration claims have been filed by investors from developing countries with institutional centers and ad-hoc arbitrations. In most cases, international investment disputes are submitted to specialized international investment arbitration. Most often, claims from foreign investors are filed against developing countries, thus the countries of Central and Latin America act as defendants in international arbitration courts in investment disputes. However, the number of cases in which the defendants are Ukraine, Georgia, the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Uzbekistan is growing.

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2. RESULTS AND DISCUSSION

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

The 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 judgments. As a result, a single universal mechanism for issuing exequatur for court decisions on civil disputes should appear.

Indeed, today the number of appeals to the arbitral tribunals, voluntarily chosen by the parties to consider the dispute by agreement, is increasing day by day. For example, from 2010 to 2015, 38,391 soums worth 651.3 billion soums were awarded by the 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. 2.5 mln. 6,999 lawsuits in the amount of 195.1 thousand Euros were considered and resolved in the prescribed manner.

Despite the advocacy efforts that 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. 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.

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 with an application for the issuance of a writ of execution for the enforcement of the decision:

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

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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, June 10, 1958), other international legal instruments, as well as 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 at the place where the debtor is located or resides, or, if the place 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, the place where it is located;

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

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 address and other information.

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 shall be certified by the chairman of the arbitral tribunal, the signature of the arbitrator in the copy of the decision of the interim arbitration court must be notarized;

a copy of the arbitration agreement concluded 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 was handed over to other participants in the arbitration proceedings.

The application for the issuance of a writ of execution shall be considered by an authorized court judge individually, in accordance with the procedure 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 to the arbitration proceedings or their representatives in the competent court session shall not preclude the consideration of the application.

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. Execution of the decision of the arbitration court on the writ of execution In accordance with Article 5 of the Law of the Republic of Uzbekistan "On Enforcement of Judicial Documents and Other Bodies" dated August 29, 2001 No 258-II Enforcement of

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court decisions under the Ministry of Justice of the Republic of Uzbekistan in terms of logistics and financial support 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 decides to initiate enforcement proceedings and sets a period of five days for voluntary compliance with the requirements of the writ of execution, after which the debtor as well as notifies of 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) to direct 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 co-operation is maintained. But it should also be borne in mind that disregard or untimely execution of an arbitral award will result in enforcement by the state and excessive time and expense, 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 their legal consequences. It is known from world practice that the creation of alternative mechanisms for resolving disputes in the legal community is considered as an effective means of achieving the restoration of violated rights of individuals and legal entities.

There are a number of systemic problems that do not allow enterprises to effectively protect the rights and interests of foreign investors, to further improve the business environment and increase the investment attractiveness of Uzbekistan. 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; Current legislation, including the Law of the Republic of Uzbekistan "On Arbitration Courts", limits the parties' ability to consider investment disputes in accordance with international arbitration standards with the involvement of foreign arbitrators and the application of foreign law; 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, which reduces the country's investment attractiveness; training and retraining of local arbitrators and other specialists in the field of international arbitration is not 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

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Center (SIAC) under the Singapore Arbitration Law, 1,200 disputes were settled by the China International Economic and Commercial Arbitration Committee (CIETAC), 875 disputes by the International Chamber of Commerce (ISS) and London International Arbitration court (In the LCAI court) 450 disputes were resolved in accordance with the UNCITRAL Model Law. In this regard, one of the problems in almost every jurisdiction is to find 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 recognize the right 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.

Our 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 etc.

THE STRATEGY OF ACTION in 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 reliable protection of the rights and freedoms of citizens in the judicial system, law enforcement and regulatory bodies are aimed at ensuring unhindered access to justice, increasing the efficiency of processing court documents 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 its competitiveness through the modernization and diversification of key sectors of the national economy, ensuring 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, now enterprises and participants in international investment activities or ordinary citizens can conclude electronic contracts, negotiate electronically, organize electronic tenders and, of course, ensure justice - one of the priorities. Consequently, in the process of pre-trial dispute resolution, the Arbitration and Mediation Centers must recognize the agreements concluded by the parties based on electronic negotiations on arbitration and mediation, clearly defining which program or electronic signature of the parties. It is also necessary to introduce into the legislation online arbitration to make it easier for the parties in the event of a global pandemic emergency and in the future. And, of course, the draft law on international commercial arbitration should include the acceptance of each document in electronic form as evidence, based on the experience of the USA, UK, United Arab Emirates and Singapore.

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

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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, the 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 with 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.

The study examined the experience of countries with developed legal systems based on different legal systems, in particular, the UNCITRAL model laws adopted by Germany, Great Britain, Japan, Singapore, the CIS countries, Kazakhstan and the United Nations.

International arbitration has become an acceptable way of resolving disputes between business partners in almost all areas of international trade, commerce and investment. International Arbitration Dispute Resolution allows the 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 arbitration as the most important priority of arbitration as a means of resolving disputes, it is necessary to determine the degree of confidence of the parties that the arbitration agreement will be respected and that it will be the result of the arbitration.

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

(1) The arbitral tribunal may rule on any matter within its jurisdiction, including:

Objections to the existence or validity of an arbitration agreement, to this end, an arbitration clause that forms part of a 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 ipso arbitration charter.

Pursuant to section 30 of the United Kingdom 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, namely:

(a) Whether an arbitration agreement exists or not;

(b) Whether the court is properly organized;

(c) What is involved in the arbitration in accordance with the arbitration agreement?

(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 in it creates the following advantages for our legislation:

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✓ 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;

✓ A legal environment will be created that will help to resolve disputes successfully, striving for time and savings;

✓ By agreement of the parties, in addition to local law, the legal system chosen by 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 is carried out in the manner prescribed by the legislation, as well as international treaties of the Republic of Uzbekistan;

✓ Cost: Historically, arbitration has often seen disputes as a moderately cheaper method than litigation;

✓ Speed. With a few exceptions, arbitration tends to follow a more precise and defined time interval to resolve a dispute, and judges do not always face excessive workload and workload, which leads to faster final decisions;

✓ Justice: Arbitration judges are often selected by agreement of both parties, using the third party arbitration service or the method specified when access from both parties is permitted. This means that in many cases neither side controls who the arbitrator (or arbitrator) is;

✓ Conclusion. Often, it is 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 in one way or another and allows the parties to continue;

✓ Simplified Procedures: A typical trial process can involve many documents, multiple discussions, testimony, subpoenas, and other similar processes. Arbitration can destroy some or all of the time-consuming and costly litigation tools.

✓ Confidential: Arbitration proceedings are not held in public and records are not part of public records. In some cases, this can be very beneficial for the parties.

3. CONCLUSION

Based on the theoretical and practical analysis of the effectiveness of regulation of arbitration jurisdiction, theoretical conclusions, practical proposals and recommendations for improving legislation and law enforcement practice have been developed, such as:

1. Proposals on the powers of the International Arbitration Court were set out within the framework of Article 21 of the Law of the Republic of Uzbekistan "On International Commercial Arbitration", indicating that the arbitration court has the right to consider disputes in accordance with the procedural legislation of the state. The competent court has absolute authority until the conclusion of all arbitration proceedings. The competent court may, at the request of the parties or at the request of the arbitral tribunal, take provisional or permanent measures prior to the commencement of the arbitration proceedings or during the proceedings as it deems necessary in relation to existing or potential arbitration proceedings.

2. Proposals have been developed on the need at the legislative level to establish that the arbitral tribunal can accept any objections to its jurisdiction, including the existence or validity of the arbitration agreement or its inclusion in the subject of the dispute. The arbitral

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tribunal decides on the claim as a preliminary issue or final arbitral award on the merits. If the arbitral tribunal makes a decision on the original claim within its jurisdiction, the parties may require the court to resolve the case within fifteen days of receiving notification of the decision. After that, the court within thirty days sends a request to the court, and its decision is not subject to appeal, if such an application is pending, the arbitration proceedings remain in force only until the arbitration court decides to continue the arbitration proceedings at the request of the party.

3. The necessity of establishing a procedure for filing a claim against the jurisdiction of international arbitration in a competent court and its expedited consideration has been proved.

4. The competence of the International Arbitration Court has been substantiated based on the nature of the dispute to take the following measures:

a) an order to keep evidence that is relevant to the case and may be relevant to the resolution of the dispute.

b) take the necessary measures to store the goods that are the subject of the dispute, for example, an order to store goods to a third party or to sell goods that may be damaged.

c) preservation of assets and funds that may be necessary for the execution of the decision;

d) maintaining or restoring the current state of an unresolved conflict;

e) an order to take measures to prevent or terminate actions that may or may not harm the arbitral tribunal.

5. The necessity and expediency of applying the UNCITRAL Technical Instructions on Online Dispute Resolution (2017) in the context of the current realities arising from the pandemic, as well as the expediency of developing a Regulation on Dispute Resolution Online Arbitration, which will serve the settlement of cross-border disputes and could be a turning point and contribute to the development and implementation of online dispute resolution platforms in the field of international arbitration.

All this will improve the efficiency of legal regulation of the activities of international arbitration andwill serve to attract foreign investment in the country's economy.

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