HOW READY IS UZBEKISTAN FOR AN ENTRY OF INTERNATIONAL COMMERCIAL ARBITRATION?

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Annotation: This article explores the readiness of Uzbekistan to accept international commercial arbitration as a means of resolving disputes. The author delves into the current legal framework and assesses if it is conducive to promoting international arbitration. Additionally, the article evaluates the country's infrastructure and human resources to determine if they are sufficient for the establishment of a robust international arbitration regime. Through insightful analysis, the author provides valuable insights into the key challenges and opportunities for Uzbekistan in the global arbitration arena. This article will be useful for legal professionals, international arbitration practitioners, and anyone interested in Uzbekistan's legal developments.

Key words: law, international and domestic arbitration, commercial arbitration, legislation

Admittedly, ADR (Alternative Dispute Resolution) is becoming more paramount nowadays. Majority of developed countries have already set applicable rules so as to regulate the process by which arbitration proceedings are performed. In fact, more than 90 % of commercial disputes arising out of, in connection with or related to commercial agreements are resolved by international commercial arbitrations (ICA) in Singapore which is considered to be one of the most developed countries in terms of economic and financial regulation. As for France, legal basis for the commercial arbitration is clearly promulgated separately – according to two types of it: domestic (Articles from 1442 to 1503 of the Code of Civil Procedure) and international (Articles 1504 to 1527). It can be seen that arbitration plays a considerable role in favor of both a country and parties, which will be discussed below further. Beyond all dispute, is Uzbekistan legally, mentally and commercially mature enough to accept as well as bring the arbitration in?

Arbitration is an alternative (to national courts) and widespread means of settling disputes that may arise from a variety of legal relationships as commercial disputes, investment measures, contractual obligations and so on. Basically, it is divided into 2 types which are **domestic,** in which parties in a dispute ought to be nationals of the

country where the arbitration seat located and **international** arbitrations that resolve only international disputes which have been discussed below. Rather than domestic ones, international commercial arbitrations are sharply gaining dominance over commercial disputes with an international aspect. The basic components making a commercial dispute international are provided for in **Article 1** of UNCITRAL Model Law (1985).

Legal nature of arbitration in Uzbekistan

According to our legislation two separate laws (one for the domestic and the other for the international commercial arbitration) have been approved. "About arbitration courts" law of the Republic of Uzbekistan, coming into effect in 2007, highlights its basic principles and functions as well as the jurisdiction under which what kind of disputes can be resolved and what law is applied therein. As an instance, **Article 9** of the law says: Arbitration courts resolve disputes arising from civil legal relations, including economic disputes arising between business entities. However, the article discloses what types of claims may not be lodged, such as administrative, family and labor legal relations. Additionally, in our domestic arbitrations only the legislation of the Republic of Uzbekistan ought to be applied, with an implementation of business practices and similarity of law when necessary, which is provided for in **Article 10** of the law. Surprisingly, those arbitrations can never make use of application of other legislations or international set of rules since it breeds possibility of considering it null and void. Nonetheless, utilization of foreign norms is almost always avoided by adjudicators to decrease the probability of nullification in principal. But unfortunately, the arbitration has not become successful due to public unawareness and unconfident treatment to them. Because arbitration awards are not compelling enough to suit the legislation which is caused by a lack of expertise among judges. As an evidence, more than 200 arbitration awards were nullified by state courts in 2021, which is a relatively bad condition.

Concerning international commercial arbitration, "On international commercial arbitration" law of the Republic of Uzbekistan entering into force in August, 2021. It is inevitable to claim that this an example of a direct implementation of UNCITRAL Model law with some nuances which did not fundamentally alter its essence. **Article 4** of the law (same with Article 1 of UNCITRAL Model law) displays legal relationships over which the ICA has jurisdiction. Specifically, the ICA has an ability to arbitrate disputes, if:

1) commercial enterprises of the parties to the arbitration agreement are located in different countries at the time of its conclusion; or

2) if one of the following places is located outside the country where the parties have their commercial enterprises:

a) the place of arbitration, if it is specified in or pursuant to the arbitration agreement;

b) any place where the greater part of the obligations arising from the commercial relationship must be performed or the place more closely connected with the subject of the dispute; or

3) arbitration is considered international if the parties have directly agreed that the subject of the arbitration agreement is related to more than one country.

Interestingly, according to data.egov.uz, there are more than 1100 domestic arbitration courts in Uzbekistan as opposed to the number of ICAs which constitutes just one. Tashkent International Arbitration Centre (TIAC) is the only ICA in the whole country. Even that arbitration was established under the auspices of Decree of the President of the Republic of Uzbekistan "On the establishment of the Tashkent International Arbitration Centre (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan" (05.11.2018). Natural stimulus, without any willingness and commitments of the state, leading to the phenomenon of an independent establishment of the ICA has not yet occurred. TIAC has resolved more than 20 international commercial disputes so far, which is pretty low for the dominant monopoly arbitration throughout the country. Proponents of TIAC mostly argue about the time needed to make progress and advertise itself but the underlying key issues do not support this justification.

Why no ICAs?

Initially, it is literally complicated to achieve transparent enforceability in Uzbekistan, albeit it has been a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) since 1996. According to **Article 3** of the Convention, each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon. In turn, some clauses are provided for in **Article 5**, giving five general grounds to refuse the enforceability of a particular award. Those provisions seem general and give national laws a discretional right to specify to. Likewise, Code of Economic Procedure reinforces the same rules in **Article 256**. However, the problem lies on the revision of national courts on the awards. Neither Convention nor internal laws give national courts an authority to revise the case based on substantive law, which judges of Uzbekistan perform at times. The internal courts are solely obliged to revise cases under procedural provisions, which is still remaining as a major concern for ICAs. In order to preclude it, the judges should be taught international conventions and their applicability in a broad range since majority of judges lack expertise in the application of international law.

Aside from this, the second point, in which judges apply laws inappropriately, lays on separability presumption. In accordance with Article 2 of the New York

Convention, arbitration agreement is wholly independent from any underlying contract, except some terms taking place rarely. The USA experience of application of the norm is priceless, and shows the most democratic and fair treatment to international arbitration agreements, on the whole. Particularly, there have been several cases related to the doctrine of separability as Prima Paint and Buckeye ones, by which the US legislation was enriched with two more great judicial precedents. During those cases above, attorneys made attempts to make an acting court to deem the arbitration agreement on account of invalidity of an entire commercial contract. Nonetheless, the national court refused to consider arbitration clause null and void, involved in the underlying contract. Specifically, the USA precedents can provide legislature with valuable legal experience in respect with party autonomy, as well as the ability of arbitration agreements to be separate from main treaties. As an instance, if a party to a treaty lodges a claim challenging terms other than that of dispute resolution, US national courts do not review the case since the challenge is not directed into the arbitration clause itself. With a view that only arbitration should review any case as a first instance as long as an arbitration clause stays still, the state courts direct the case to the arbitration, which has been agreed upon the arbitration clause. In case a challenge is about deeming an arbitration clause legally ineffective, the arbitration court cannot make a decision about it on a purpose of a principle of transparency, unless this may potentially breed way worse problems than that. Because the arbitration never refuses to review the case and they are in advantage of the validity of the arbitration clause, which is why only national courts ought to review the challenges specifically on arbitration clause.

However, settlement on some exact grounds is included in national courts directly such as formation or existence of a contract, which are out of arbitration's competence. On the other hand, the arbitration can settle disputes coming from validity or legality issues. The grounds of validity and existence are relatively similar to each other, thus, it is a major culprit of disapprovals in terms of an exact and fair distribution of competence of commercial arbitrations and national courts. Naturally, a question may arise from the abovementioned information: what should resolve the case over which some challenges are related to other parts of an underlying contract and the rest are on arbitration clause? One, who is unaware of the answer, may claim that as universality happens, national courts must review the case, which is not appropriate. The US courts commentate on this issue broadly: if the condition above takes place, generally, arbitration courts should be competent to review it, as there is no specific intent to challenge an arbitration clause itself. The intent is of critical importance in that term and if the challenge is not solely on the arbitration clause, then this matter belongs to the arbitration to solve.

Additionally, specific procedural norms, according to which are necessary to establish an ICA, do not exist at all. This factor also impedes the situation even worse. So many countries have already set related rules on starting an international arbitration courts as Singapore, France, the USA etc. Presumably, the Cabinet of Ministers of the Republic of Uzbekistan ought to be responsible for setting relevant rules on the issue in question.

Above all, the fundamental development of financial relationships is of paramount importance. Because rule of law (especially, civil rights as a right to private property) is not adequately maintained in Uzbekistan, it is natural for foreign investors not to invest in the country ruthlessly. This, in turn, is a major culprit of a significant reduction in international commercial relations, which the international trade or commercial disputes arise from. This is why setting specific and comprehensive rules on ICA and simplifying enforceability of the awards without ensuring the rule of law and adherence would potentially result in one step forward and two step back for Uzbekistan. Hence, the government should take necessary steps to control equality as well as privacy under the law, after which they may concern about dispensing with unreliable and uncertain norms.

In conclusion, regardless of many problems to bring in international commercial arbitration, the core issues are already being solved at the national level. Further progression of ICAs in Uzbekistan is entirely dependent on how the government could provide the rule of law through the country.

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