

## HISTORICAL DEVELOPMENT OF ARBITRATION PRACTICE IN UZBEKISTAN

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### **Abstract**

This research comprehensively analyses the respond of the Uzbekistan arbitration system. The discussion of the research is based on the common insight into the legal notion of international arbitration practice and the perspective of Uzbekistan's arbitration law and practice. In the process of considering both international and Uzbekistan's domestic arbitration practices, the research generates proposed reforms to the Uzbekistan arbitration legislation and judicial practice.

**Keywords:** arbitration; commercial arbitration; dispute; arbitral institutions; Uzbekistan

## O'ZBEKISTONDA ARBITRAJ AMALIYOTINING TARIXIY RIVOJLANISHI

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### **Annotatsiya**

Ushbu tadqiqotda O'zbekiston arbitraj amaliyoti tizimi har tomonlama tahlil qilingan. Tadqiqotning muhokamasi xalqaro arbitraj amaliyotining huquqiy tushunchasi hamda O'zbekistonda arbitraj huquqi va amaliyoti istiqboliga oid umumiy tushunchaga asoslanadi. Xalqaro va O'zbekistonning ichki arbitraj amaliyotini tahlil qilish natijasida O'zbekiston arbitraj qonunchiligi va sud amaliyotini takomillashtirish yuzasidan takliflar bayon etilgan.

**Kalit so'zlar:** arbitraj; tijorat arbitraji; nizo; arbitraj institutlari; O'zbekiston

### **ИСТОРИЧЕСКОЕ РАЗВИТИЕ АРБИТРАЖНОЙ ПРАКТИКИ В УЗБЕКИСТАНЕ**

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### Абстракт

В этом исследовании всесторонне анализируется арбитражная системы Узбекистана. Обсуждение исследования основано на общем понимании юридического понятия международной арбитражной практики и перспективы арбитражного права и практики Узбекистана. В процессе рассмотрения как международной, так и национальной арбитражной практики в Узбекистане в исследовании вырабатываются предложения по реформированию арбитражного законодательства и судебной практики Узбекистана.

**Ключевые слова:** арбитраж; коммерческий арбитраж; спор; арбитражные институты; Узбекистан

Generally, parties of international business transactions prefer to the well-recognized and efficient alternative method, rather than the traditional national court in settling their dispute. International commercial arbitration is one of such alternative dispute resolution system adopted by international businesspersons. According to statistics, in the single year of 2018, 842 new cases were registered to International Chamber of Commerce (ICC), one of the world's famous arbitral institution, which consist merely a tip of the iceberg of international commercial arbitration world.

Uzbekistan is a Central Asian country, which, like most of the rest countries in the world, has accepted the institution of arbitration in solving commercial disputes. However, since the commercial arbitration in Uzbekistan is at an infant stage, plus other reasons, the legislation and rules on arbitration in Uzbekistan are not so advanced with certain flaws of law need overhaul and improvement. One of such flaws lies in the policy on public policy in choice of law.

On September 11, 2020, the Law of the Republic of Uzbekistan “On International Commercial Arbitration” was discussed at the seventh plenary session of the Senate of the Oliy Majlis (Parliament of the Republic of Uzbekistan, hereinafter Oliy Majlis). [1] It was noted that the main purpose of the adoption of this law is to reduce the costs of business entities in disputes, establish mechanisms for the recognition and enforcement of arbitral awards, and on this basis enhance the country's prestige in the region. In the following sections, development of arbitral process in Uzbekistan is discussed.

## 1. Arbitral Institutions

Both permanent and ad hoc arbitration courts are permitted in Uzbekistan. Permanent arbitration courts may be established by any kind of legal entity, except governmental bodies. As of 2015, there are more than 200 permanent domestic arbitration courts registered at the Ministry of Justice. [2] Each permanent arbitration court shall conduct arbitral proceedings in accordance with its own rules, determine the schedule of fees and keep the permanent list of arbitrators. Needless to say, the permanent arbitration courts handle the majority of arbitral disputes in Uzbekistan.

For the purpose of the development of arbitration courts, the Association of Arbitration Courts was established in May 2009, with fourteen regional branches. Another prominent and permanent arbitral institution in Uzbekistan is the Arbitration Court at the Chamber of Commerce and Industry (CCI). It has fourteen regional offices. [3] The Chamber of Commerce and Industry of Uzbekistan also launched the International Commercial Arbitration Court (ICAC) under its own aegis in 2011. [4] Although the ICAC started its work with high enthusiasm and succeeded in attracting several multi-million dollars cases, the lack, and formal absence of a legal framework on international commercial arbitration made its activity almost dormant.

Overall, after the enactment of the Arbitration Law, due to its less time-consuming and less expansive character, the number of cases resolved by arbitration courts also increased drastically. According to statistics, arbitration courts under the Association and CCI handled 38,391 and 6,999 cases between 2010 and 2015, respectively. [5]

## 2. Development of the International Arbitration in CIS region

Commonwealth of Independent States (CIS) is a territorial organization formed on December 8, 1991 by Ukraine, Russia and Belarus after the termination of the Soviet Union. [6] The members of CIS reached 11 after signing Almaty protocol on 21 December 1991 Azerbaijan, Armenia, Kyrgyzstan, Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan and Moldavia joined. Currently nine former Soviet Union republics are member states of CIS (originally fifteen republics got independence after broke-up of the Soviet Union), Ukraine and Turkmenistan are associate members, Georgia ceased membership after Georgia-Russia was in 2008. Latvia, Lithuania and

Estonia — Baltic states — are members of European Union by rejecting to unite to CIS. [7, B. 126]

CIS countries cooperate in the spheres of trade, security, legal partnership and in other important areas. Besides that, CIS has its own Economic court which deal with the disputes within the context of organization. In post-Soviet space other intergovernmental organizations also formed by CIS member. For instance, Eurasian Economic Union (EAEU) achieved a remarkable integration, Russia, Kazakhstan, Kyrgyzstan, Armenia and Belarus are member states of EAEU. Eight states out of nine members of CIS are members of CIS Free Trade Area (October 18, 2011. Uzbekistan is not member of the Free Trade Area). [8, B. 154]

All CIS countries are the member states of 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards except associated member Turkmenistan. [9] All CIS countries have adopted national and international arbitration laws.

These countries share the common background by having civil law jurisdiction as all of them were the part of Soviet Union. Specialized commercial arbitration courts have been developed over the time and made remarkable progress. [10]

### **3. The development of the International Arbitration center in Uzbekistan**

In this day and age, in the context of the rapidly developing globalization of the economy, the development of interstate relations and the unification of legislation at the regional and international levels, commercial arbitration, as an alternative non-state judicial form of resolution of commercial disputes, is becoming increasingly important, being one of the main elements of market relations, as in nationally and internationally. In Uzbekistan, the formation of the arbitration courts can be divided into two separate phases: (i) arbitration courts in national level; (ii) international commercial arbitration. These stages will be discussed in the following section.

### **4. Arbitration courts dated 2006**

Uzbekistan became a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on February 7, 1996

accession came into force on May 7, 1996. [11] Moreover, Uzbekistan accessed the International Convention for the Settlement of Investment Disputes (ICSID) on 17 March 1994 which came into effect on August 25, 1995. [12]

For years Uzbekistan did not have its own international commercial arbitration court, therefore on April 5, 2006 Agreement on cooperation in the domain of international commercial arbitration signed between the CCI of the Republic of Uzbekistan and Chamber of commerce and industry of the Russian Federation. [13]

The experience of ample states indicated the real necessity of establishment and operation of the international commercial courts with the path of expansion of the global market. After getting independence, the economic ties evolved from one intrastate to international level and there was historical need for Uzbekistan to develop an independent system for the settlement of disputes emerging in the course of trade.

In Uzbekistan the law “On Arbitration courts” adapted in August 2006. [14] However, it was different from the international arbitration, this arbitration courts have the right to solve economic disputes only in a local level. It should be noted that in many CIS countries legislation there are two system of solving economic disputes through arbitration, first is arbitration within one country and the second is that we are discussing now – International Commercial Arbitration. For instance, in Russia the law “On Arbitration Courts” [15] determine preconditions of the local economic litigation while the law “On International Commercial Arbitration” [16] defines the conditions for resolving disputes of an international nature. The same pattern inherited in Kazakhstan [17] and Ukraine. [18]

## **5. International Arbitration Institution**

In order to implement tasks set in Strategy Action of development in five priority directions of Uzbekistan in 2017-2021, formation of modern and international standards of investment dispute resolution by international arbitration and improvement of investment climate on November 5, 2018, Shavkat Mirziyoyev, the President of the Republic of Uzbekistan signed a Decree “On establishment of the Tashkent International Arbitration Center under the CCI of the Republic of

Uzbekistan” [19] with the status of non-governmental, non-profit organization (hereinafter - TIAC).

The main purpose of TIAC is to settle disputes between commercial entities in different countries through international arbitration. It is noted that the TIAC can involve both Uzbek nationals and qualified foreign arbitrators to the arbitration process.

It was historically important to introduce a mechanism for resolving international disputes through international, non-governmental system of arbitration to ensure the protection of the legitimate rights and interests of business entities in Uzbekistan, improve business environment and increase the investment attractiveness of the state.

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