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National Practice on State Entities in The Republic of Uzbekistan in Light of International Commercial Arbitration

Sarvar Tojiboyev
Lecturer at Tashkent State University of Law

Abstract

This paper analyzes national legislation on State entities in Uzbekistan. Following to this, the research examines the development stages of international commercial arbitration practice in Uzbekistan and potential case between Romak SA v the Republic of Uzbekistan in the scope of international commercial arbitration. As an important goal of this paper, the significant recommendations in further development of international commercial arbitration practice in Uzbekistan will be provided accordingly.

Keywords:

INTRODUCTION

1. Law governing State entities in the Republic of Uzbekistan

The Civil Code of the Republic of Uzbekistan and the No 205 Regulation of the Cabinet of Ministers *On State entities* are the relevant legal sources on governing State entities in Uzbekistan. However, the Civil Code of Uzbekistan does not contain direct regulatory provisions concerning State entities but does provide general rules, which are relevant to the activity of State entities. According to Article 80 of the Civil Code of Uzbekistan states as following:

A legal entity established by State shall not be liable for its obligations. The State shall not be liable for the obligations of legal entities created by it except for cases provided for by a Law. The rules of the present Article shall not be applied to cases when the State on the basis of the contract concluded by it has undertaken a surety (or guarantee) the obligations of a legal entity or an indicated juridical person has undertaken a surety for (or guarantee) the obligations of the State.[1]

This provision plays a crucial role on participation of Uzbek State entities in international commercial arbitrations. In other words, this provision means that when the State concludes an arbitration contract with a private enterprise, the State should comply with its obligations that it has with private enterprise.

The No 205 Regulation of the Cabinet of Ministers *On State entities* includes provisions on the notion of State entity, the founder of the State entity, rights and obligations of the founder, establishment of State entity, the property of the State entity, the responsibilities of the State entity

[1] Butler, William, ed. *Civil Code of the Republic Uzbekistan*. Kluwer Law International, 1999, 41-42

and reorganization and liquidation of the State entity.[2] According to this regulation, a State entity is defined as a commercial organization in the form of a State unitary enterprise established based on State-owned property.[3] The founder of the State entity should be the Cabinet of Ministers or a State body, which is authorized by the Cabinet of Ministers. The State entity has its own separate property apart from the State, bank account and its corporate name in the State language. The firm name of a State entity should contain the words *"davlat korxonasi"* which in translation means *"State entity"*. A State entity may acquire and exercise property and personal non-property rights, incur obligations, and be a plaintiff or a defendant in court. State entities may be established by a decree of the Cabinet of Ministers and with some exceptions provided by the Law. The State entity is responsible for its obligations within the scope of its property. Moreover, the State entity can be reorganized or liquidated by the decision of the court according to legislation of Uzbekistan.

The Law *On Arbitration Courts*[4] which limits the ability to resolve international commercial disputes by arbitration, owing to a number of restrictions. For instance, Article 14 of the law sets forth a special provision where an arbitrator can only be a citizen of the Republic of Uzbekistan chosen by the parties of the arbitration agreement or appointed to settle the dispute. Furthermore, Article 10 states that the arbitral court should resolve the dispute according to Uzbek legislation. The scope of Uzbek legislation includes the Constitution, laws of the Republic of Uzbekistan, decrees of the President and resolutions of the Government, normative legal acts of the executive authorities, international treaties of Uzbekistan and other legal acts in force in its territory.[5] Moreover, Article 5 notes that public authorities and bodies cannot form arbitration courts and cannot be parties to such arbitration agreements. This provision shows that when one party of the dispute is a State body, the dispute cannot be resolved in arbitration courts of Uzbekistan.

In addition, this provision stipulates that parties to international commercial arbitration are able to apply foreign law when resolving the disputes between foreign parties and legal entities of Uzbekistan; in other words, references to foreign law as applicable are not excluded.[6] Obviously, in practice, the application of a foreign law is much more preferable in the cases of international commercial arbitration, compared to domestic Uzbek law. However, domestic law is still partially applied in the cases of the law concerning restrictions on citizenship of the arbitrators, the selection of the applicable law, restrictions on the ability of courts of arbitration for matters with a foreign element, yet it does not mean that Uzbek law totally precludes the application of foreign law.

2. Development stages of international commercial arbitration practice in Uzbekistan

From the first day of independence, the idea of creating and supporting international commercial arbitration in Uzbekistan was of great importance. In the conditions of a market economy, there was always a massive need for quick and effective dispute resolution procedures; as a result, to seek alternative legal mechanisms in resolving disputes in the sphere of international commercial matters. The development of international commercial arbitration practice can be conventionally divided into three stages in Uzbekistan. The first stage covers the period from 1991 to 2006, the

[2] The No 205 Regulation of the Cabinet of Ministers of the Republic of Uzbekistan *On State entities*, [*O'zbekiston Respublikasi Vazirlar Mahkamasining "Davlat korxonalari to'g'risida"gi №205-sonli Nizomi*]
[3] Ibid
[4] the Law of the Republic of Uzbekistan *On Arbitration Courts*, [*O'zbekiston Respubikasi "Hakamlik sudlari to'g'risida"gi Qonuni*]
[5] Commentary on the Law of the Republic of Uzbekistan *On Arbitration Courts*, [*Комментарий к Закону Республики Узбекистан "О третейских судах"*],The Project is funded by the European Union, SIPCA III project is implemented by GTZ-KLC Consortium, publ. "KONSAUDITINFORM-NASHR", Tashkent, 2007, 257
[6] Ibid

second stage includes the period from 2006 to 2016 and finally, the third stage starts from 2016 continues until the present day.

The special law concerning commercial arbitration had not been adopted in the first stage, however national legislature adopted several legal acts containing some rulings about commercial arbitration in Uzbekistan. For instance, the Civil Code of the Republic of Uzbekistan (Articles 9, 10)[7], the Civil Procedural Code (Articles 100-152)[8], the Economic Procedural Code (Articles 25, 86, 88, 117)[9], the Law *On the Execution of Judicial Acts and Acts of Other Bodies* (Article 7)[10], the Law *On the Legal Basis of Economic Entities* (Article 36)[11], and the Law *On the Chamber of Commerce and Industry of the Republic of Uzbekistan*[12] partially included some provisions on commercial arbitration. Besides these, under the initiative of the government, the primary arbitration court was established in 2002 and seated in Tashkent. The main objective of the arbitration court was to resolve the disputes on exchange trade matters between the participants of the Republican Stock Exchange Market.

The second stage covers the period from 2006 to 2016 as the law *On Arbitration Court* was adopted and the International Commercial Arbitration Court (ICAC) was established under the Chamber of Commerce and Industry in 2011. Even though Uzbekistan adopted this law, it still included some restrictions on settling international commercial arbitration disputes. For instance, the arbitrators can only be citizens of the Republic of Uzbekistan, the disputes have to be resolved in accordance with Uzbek legislation, and State authorities (State entities) should not be a party to arbitration. In addition, there was an uncertainty in applying the foreign law. Therefore, the law did not meet the requirements for resolving international commercial cases.

The International Commercial Arbitration Court is an independent permanent non-State body (arbitral tribunal) carrying out its activities in accordance with the Law *On Arbitration Courts*, international law and other domestic legal acts. The seat of the ICAC is the city of Tashkent. As the Law *On Arbitration Courts* governs the arbitration rulings of the ICAC, it cannot settle international commercial disputes owing to above mentioned restrictions in the law. In other words, the ICAC cannot resolve the commercial related international disputes because the arbitral tribunal limits its capacity only with national legislation of Uzbekistan.

The third stage on development of international commercial arbitration practice includes the period from 2016 until the present day. In this stage, several decrees of the President of the Republic of Uzbekistan were adopted. For example, the decree *On additional measures to ensure the further development of entrepreneurship, the full protection of private property and a qualitative improvement of business climate* stressed to review the status and activity of the ICCA.[13]Another decree *On measures to further reform the judicial and legal system and to strengthen guarantees for the protection of citizens' rights and freedom* stated to attract more foreign enterprises into

[7] Civil Code of the Republic of Uzbekistan, [*O'zbekiston Respublikasi Fuqarolik Kodeksi*]
[8] Civil Procedural Code of the Republic of Uzbekistan, [*O'zbekiston Respublikasi Fuqarolik Protsesual Kodeksi*]
[9] Economic Procedural Code of the Republic of Uzbekistan, [*O'zbekiston Respublikasi Xo'jalik Protsesual Kodeksi*]
[10] the Law *On the Execution of Judicial Acts and Acts of Other Bodies*,["*Sud hujjatlari va boshqa organ hujjatlarining ijrosi to'g'risida"gi Qonun*]
[11] the Law *On the Legal Basis of Economic Entities,* ["*Tadbirkorlik subyektlarining huquqiy bazasi to'g'risida"gi Qonun*]
[12] the Law *On the Chamber of Commerce and Industry of the Republic of Uzbekistan,* ["*O'zbekiston Respublikasi Savdo Sanoat Palatasi to'g'risida"gi Qonun*]
[13] the Decree of the President of the Republic of Uzbekistan *"On additional measures to ensure the further development of entrepreneurship, the full protection of private property and a qualitative improvement of business climate"*

domestic economy and create sufficient conditions for their business in Uzbekistan.[14] Finally, the decree *On measures to further improve the system of State protection of legitimate business interests and further development of entrepreneurship* emphasized to improve international commercial arbitration practice in Uzbekistan and adopt the Law *On International Commercial Arbitration*.[15] .

3. *Romak SA v Uzbekistan* and the scope of international commercial arbitration

In 1997, Romak SA, a Swiss company, initiated commercial arbitration proceedings against Uzdon concerning a contract for the supply of goods (the "Romak Supply Agreement"). Romak SA requested from Uzdon payment for 50,000 tons of milling wheat that had been delivered. At the same time, Uzdon denied payment claiming that another company involved in the transaction, Adil (a Kazakh Company), should have paid for supplied product. Because of the dispute, the tribunal rendered an award in favor of Romak SA as the Uzdon side could not defend its position responsibly.

Romak SA, specialized in the trading of grain and entered into a set of contracts on the supply of wheat to Uzbek companies, namely Uzdonmakhsulot, Uzdon and Odil. Uzdonmaksulot is considered as a primary State institution responsible for manufacturing, supply, and distribution of cereal in Uzbekistan. However, it was reorganized into a "State Joint Stock Company" under the Decree of the President and a Decree of the Council of Ministers in April 1994[16] . According to the Charter of Uzdonmakhsulot, it was a legal entity that owns property and could appear in its own name before State courts and arbitral tribunals. In other words, Uzdonmakhsulot was individually responsible for its own obligations under the Law *On Property*,[17] the Civil Code of Uzbekistan, and the Law *On Joint-Stock Companies and Shareholder Protection* that provides that "[n]either the State nor its agencies shall be liable for obligations of the company, nor shall be the company liable for obligations of the State or its agencies."[18]

Uzdon Foreign Trade Company was formed by Resolution No. 120 of the Council of Ministers..[19] Uzdon was reorganized into an open joint-stock company later. Article 3 of the Resolution states that Uzdonmakhsulot established Uzdon for the purpose of centralizing the import of bread products; at the same time, the company became one of Uzdonmakhsulot's corporate members. Moreover, Odil was headquartered in Uzbekistan, at the same time, was a subsidiary of Kazakh Company called Adil, which specialized in the trading of grain and wheat.

Romak SA entered into a quadripartite agreement with the companies Uzdonmakhsulot, Uzdon and Adil for the supply of grain in the first half of the 1990s. According to that agreement, Adil had to make a payment to Romak SA for the supplied wheat on behalf of Uzdon, in exchange for settling their prior debts vis-à-vis Uzdon in accordance with another contract between them. However, Adil failed to pay the sum, and, as a consequence, a dispute started to rise between

[14] the Decree of the President of the Republic of Uzbekistan "*On measures to further reform the judicial and legal system and to strengthen guarantees for the protection of citizens' rights and freedom"*
[15] the Decree of the President of the Republic of Uzbekistan *"On measures to further improve the system of State protection of legitimate business interests and further development of entrepreneurship"*
[16] the Decree of the President of the Republic of Uzbekistan *"On State Joint Stock Company"[O'zbekiston Respublikasi Prezidentining "Davlat aksiyadorlik jamiyatlari to'g'risda"gi Qarori]*
[17] the Law *"On Property"*[*"Mulk to'g'risda"gi Qonun*]
[18] the Law *"On Joint-Stock Companies and Shareholder Protection"["Aksiyadorlik jamiyatlari va aksiyadorlar huquqlarini himoya qilish to'g'risida"gi Qonun]*
[19] the Resolution of the Cabinet of Ministers *"On establishing Uzdon Foreign Trade Firm"[Vazirlar Mahkamasining "Uzdon chet el savdo firmasini tashkil etish to'g'risida"gi Farmoni]*

Romak SA and Uzdon.[20] After obtaining the denial from Uzdon to pay for the supplied 50,000 tons of milling wheat, the Swiss company launched arbitration proceedings under the International Association of Grain and Feed Trade (GAFTA). Owing to the fact that the Uzbek Company did not know much about arbitration at that time, Uzdon could not provide any arguments in its favor. As a result, GAFTA arbitration rendered an award in favor of Romak SA. Then, the Swiss Company unsuccessfully tried to enforce the award before the Economic Court of Tashkent City. The Tashkent Economic Court refused to enforce the GAFTA Award on the following two grounds. First, the application for recognition and enforcement of the GAFTA Award in Uzbekistan did not comply with the requirements of Article IV of the New York Convention, which requires that the party applying for recognition and enforcement provide a translation of the original award and the underlying contract in an official language of the country in which enforcement of the award is sought. In this case such language should have been Uzbek. In fact, the application of Romak SA for Tashkent Economic Court was drafted in Russian. Second, Romak SA failed to submit any evidence to the court that Uzdon had been duly notified on the appointment of the arbitrators under the GAFTA arbitration, in accordance with the requirements of Article V (i)(b) of the New York Convention. Later, the Swiss Company appealed the decision of the Tashkent Economic Court, but the Appellate Jurisdiction of the Economic Court of Tashkent affirmed the decision of the lower court.

After unsuccessful attempts in Uzbekistan on recognition and enforcement of the award, Romak SA tried to enforce the award in France. The Paris Court granted the enforcement of the GAFTA Award in France and ordered for the attachment of the bank accounts of two Uzbek companies, the National Aviation Company of the Republic of Uzbekistan and Uzaeronavigation. Uzbekistan appealed the order in the Appeal Court of Paris City. During the investigation of the case, Uzbekistan provided arguments on the independence of Uzdon Company from the government and the State; at the same time, there were no grounds in either international law or the national legal system of France to challenge the State (Uzbekistan) as liable for the obligations of separate legal entities.[21] Also, Uzbekistan presented crucial evidence on Uzdon stating that the company was a legally and financially autonomous enterprise separate from the State and had its own separate property, status as a legal entity, and leadership that exercised the activities of the company. Under the arguments made by the Uzbek side, the Appeal Court of Paris rendered a decision in favor of Uzbekistan and the order on seizure of the bank accounts was reversed. According to the decision of the French Appeal Court, the State was not liable for the obligations of independent entities since the entity has features of a separate legal personality from the State in question.[22] In conclusion, *the Romak SA v Uzbekistan case* might be one of the perfect examples claiming that a State should not be liable for the obligations of other independent legal entities established in its territory.

CONCLUSION

The further development of international commercial arbitration practice in Uzbekistan should involve three major steps. First, the Law *On Arbitration Courts* should be drastically

[20] Жураев Н. *"Окончательное решение французского суда в пользу Республики Узбекистан",* (*The final decision of the French court in favor of the Republic of Uzbekistan*), (accessed Deceember, 2017), http://narodnoeslovo.uz/index.php/zarubejom/item/1279

[21] Ахмедов Д. и Рахманова М. *"Французский суд поддержал позицию Узбекистана",* (*The French court upheld the position of Uzbekistan*), (accessed December, 2017), http://uzbekistan.lv/francuzskij-sudpodderzhal-poziciyu-uzbekistana

[22] Жураев Н. *"Окончательное решение французского суда в пользу Республики Узбекистан",* (*The final decision of the French court in favor of the Republic of Uzbekistan*), (accessed December, 2017), http://narodnoeslovo.uz/index.php/zarubejom/item/1279

amended to meet the requirements of international arbitration standards. Finally, the status and activity of the ICAC should be reviewed in order to enhance the capacity of the tribunal for settling international commercial disputes.

The amendments could open a new chapter in the development and practice of international commercial arbitration in Uzbekistan. The amendments would make Uzbekistan more integrated with the world community, attract foreign investors (enterprises), and meet international standards on arbitration. Therefore, the amendments to the Law *On Arbitration Court* should include as follows: first, in Article 14 of the law, where arbitrators can only be citizens of Uzbekistan, there should be added the provision that foreign citizens should also be granted to be arbitrators. Article 10 of the law where it states that the disputes are settled in accordance with the legislation of Uzbekistan should be amended so that the disputes are settled not only in accordance with the legislation of Uzbekistan but in regards to applicable law (foreign law) which the parties have chosen in their arbitration agreement. Also, Article 5 of the law, which stipulates that public authorities or bodies should not be a party to arbitration, should be changed to the provision that public authorities and bodies (State entities) can be a party to arbitration.

As of the writing of this paper, Uzbekistan has already adopted the Law *On International Commercial Arbitration*". This law is a fundamental guarantee for foreign investors and enterprises on doing business in Uzbekistan. In case of not adopting this law, Uzbekistan might have failed to create all the necessary conditions for attracting foreign investors and enterprises. However, Uzbekistan had to adopt this law to meet the requirements of international standards of arbitration. In this sense, the UNICTRAL Model Law on International Commercial Arbitration (1985) with amendments in 2006[23] could be a great example to follow.

The change of status and activity of the ICAC is relatively connected with the amendments to the Law *On Arbitration Courts* and adoption of the Law *On International Commercial Arbitration.* These steps could have an effect on the capacity of the ICAC to settle commercial disputes.

References

4. Butler, William, ed. *Civil Code of the Republic Uzbekistan*. Kluwer Law International, 1999, 41-42
5. The No 205 Regulation of the Cabinet of Ministers of the Republic of Uzbekistan *On State entities*, [*O'zbekiston Respublikasi Vazirlar Mahkamasining "Davlat korxonalari to'g'risida"gi №205-sonli Nizomi*]
6. Ibid
7. the Law of the Republic of Uzbekistan *On Arbitration Courts*, [*O'zbekiston Respubikasi "Hakamlik sudlari to'g'risida"gi Qonuni*]
8. Commentary on the Law of the Republic of Uzbekistan *On Arbitration Courts*, [*Комментарий к Закону Республики Узбекистан "О третейских судах"*],The Project is funded by the European Union, SIPCA III project is implemented by GTZ-KLC Consortium, publ. "KONSAUDITINFORM-NASHR", Tashkent, 2007, 257
9. [1] Ibid
10. The No 205 Regulation of the Cabinet of Ministers of the Republic of Uzbekistan *On State entities*, [*O'zbekiston Respublikasi Vazirlar Mahkamasining "Davlat korxonalari to'g'risida"gi №205-sonli Nizomi*]
11. Ibid

[23] the UNICTRAL Model Law on International Commercial Arbitration (1985) with amendments in 2006 http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html

12. the Law of the Republic of Uzbekistan *On Arbitration Courts,* [*O'zbekiston Respubikasi "Hakamlik sudlari to'g'risida"gi Qonuni*]
13. Commentary on the Law of the Republic of Uzbekistan *On Arbitration Courts*, [*Комментарий к Закону Республики Узбекистан "О третейских судах"*],The Project is funded by the European Union, SIPCA III project is implemented by GTZ-KLC Consortium, publ. "KONSAUDITINFORM-NASHR", Tashkent, 2007, 257
14. [1] Ibid
15. Civil Code of the Republic of Uzbekistan, [*O'zbekiston Respublikasi Fuqarolik Kodeksi*]
16. Civil Procedural Code of the Republic of Uzbekistan, [*O'zbekiston Respublikasi Fuqarolik Protsesual Kodeksi*]
17. Economic Procedural Code of the Republic of Uzbekistan, [*O'zbekiston Respublikasi Xo'jalik Protsesual Kodeksi*]
18. the Law *On the Execution of Judicial Acts and Acts of Other Bodies*,["*Sud hujjatlari va boshqa organ hujjatlarining ijrosi to'g'risida"gi Qonun*]
19. the Law *On the Legal Basis of Economic Entities,* ["*Tadbirkorlik subyektlarining huquqiy bazasi to'g'risida"gi Qonun*]
20. the Law *On the Chamber of Commerce and Industry of the Republic of Uzbekistan,* ["*O'zbekiston Respublikasi Savdo Sanoat Palatasi to'g'risida"gi Qonun*]
21. the Decree of the President of the Republic of Uzbekistan *"On additional measures to ensure the further development of entrepreneurship, the full protection of private property and a qualitative improvement of business climate"*
22. the Decree of the President of the Republic of Uzbekistan "*On measures to further reform the judicial and legal system and to strengthen guarantees for the protection of citizens' rights and freedom"*
23. the Decree of the President of the Republic of Uzbekistan *"On measures to further improve the system of State protection of legitimate business interests and further development of entrepreneurship"*
24. the Decree of the President of the Republic of Uzbekistan *"On State Joint Stock Company"[O'zbekiston Respublikasi Prezidentining "Davlat aksiyadorlik jamiyatlari to'g'risda"gi Qarori]*
25. the Law *"On Property"*[*"Mulk to'g'risda"gi Qonun*]
26. the Law *"On Joint-Stock Companies and Shareholder Protection"["Aksiyadorlik jamiyatlari va aksiyadorlar huquqlarini himoya qilish to'g'risida"gi Qonun]*
27. the Resolution of the Cabinet of Ministers *"On establishing Uzdon Foreign Trade Firm"[Vazirlar Mahkamasining "Uzdon chet el savdo firmasini tashkil etish to'g'risida"gi Farmoni]*
28. Жураев Н. *"Окончательное решение французского суда в пользу Республики Узбекистан",* (*The final decision of the French court in favor of the Republic of Uzbekistan*), (accessed Deceember, 2017), http://narodnoeslovo.uz/index.php/zarubejom/item/1279
29. Ахмедов Д. и Рахманова М. *"Французский суд поддержал позицию Узбекистана",* (*The French court upheld the position of Uzbekistan*), (accessed December, 2017), http://uzbekistan.lv/francuzskij-sudpodderzhal-poziciyu-uzbekistana
30. Жураев Н. *"Окончательное решение французского суда в пользу Республики Узбекистан",* (*The final decision of the French court in favor of the Republic of Uzbekistan*), (accessed December, 2017), http://narodnoeslovo.uz/index.php/zarubejom/item/1279
31. the UNICTRAL Model Law on International Commercial Arbitration (1985) with amendments in 2006
32. http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html