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ARBITRATION AGREEMENT. ENFORCEMENT OF ARBITRAL AWARDS

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Abstract:
The article discusses the issues of arbitration agreement and enforcement of arbitral awards in the international arbitration court. The arbitration agreement is one of the most important elements of the arbitration process since it defines the competence of the arbitration court and obliges the parties to resolve disputes in arbitration. The execution of arbitral awards is the final stage of the judicial proceedings and ensures the protection of the rights and interests of the parties. The article analyzes the requirements for an arbitration agreement provided for by international conventions and national legislation. Some topical issues related to arbitration practice in Uzbekistan and around the world are also considered. Particular attention is paid to the validity of the arbitration agreement, its interpretation and challenge.

Keywords: arbitration, arbitration agreement, UNCITRAL, Law of the Republic of Uzbekistan on International Commercial Arbitration, International Chamber of Commerce, TIAC.

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INTRODUCTION

In the modern digitalized world, the legal status of the business sphere and trade is becoming increasingly important, in which the occurrence of commercial disputes is inevitable. In general, the concept of arbitration is extensive. History shows us that the birth of arbitration law took place in the distant past. Even in Ancient Rome, the general provisions on arbitration were reflected in the Code of Justinian, and the powers of the arbitrator and other issues were provided for by the arbitration agreement "com-promissum" (double consent). In Lazarev's scientific article, four stages of the historical development of international arbitration were identified. The first stage originates in ancient times and covers the period from the fourth millennium BC to the end of the first millennium AD. In this era, the arbitration procedure for resolving interstate disputes was used by the states of the Ancient East, Ancient Greece and Ancient Rome. The second stage of development

— arbitration settlement of disputes in the Middle Ages and during the period of absolutism — covers the XI—XVIII centuries. The third stage originates in the period of formation and development of bourgeois states, at the end of the XVIII century, or rather — with the "Jay Treaty" of 1794 between the USA and Great Britain — and continues until the end of the XIX century . The fourth stage of development began with The Hague Peace Conferences of 1899 and 1907, at which Conventions on the Peaceful Resolution of International Conflicts were adopted, and continues to the present day.

With the development of arbitration, it became clear that for its effective functioning, legislative

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regulation is necessary that would give legal force to arbitration agreements and arbitral awards. Such regulation should be interstate and supranational in order to ensure the recognition of the legal force of arbitration agreements and decisions in different countries. In this regard, the following international conventions and documents were adopted:

- The Geneva Protocol of 1923 on the Recognition and Enforcement of Foreign Arbitral Awards;
- The Geneva Convention on Foreign Trade Arbitration of 1927;
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958;
- The 1961 European Convention on International Commercial Arbitration;
- The UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended in 2006).

In addition, many countries have adopted national laws regulating the activities of arbitration courts (arbitrations).

As Dmitrieva G. K. noted, the agreement on the procedure for resolving disputes related to the implementation of economic activities, signed in Kiev on March 20, 1992, is an important document regulating the procedure for the consideration of economic disputes between economic entities of the CIS countries. Of course, the agreement is not aimed at unifying the procedure of international commercial arbitration, but covers a wide range of issues related to the consideration of any economic disputes, including in state courts of general jurisdiction and state arbitration courts. Moreover, regional international agreements in the field of arbitration include the Inter-American Convention on International Commercial Arbitration, concluded in Panama on January 30, 1975, the Arab Convention on International Commercial Arbitration of 1987.

Natalia Shelkoplyas, in her article on arbitration agreements, notes that in Western European countries there has historically been arbitration in which arbitrators acted as intermediaries seeking to reach a compromise and a fair resolution of the dispute. As part of this function, arbitrators were not required to strictly follow the letter of the law and could deviate from the rules of law if necessary for a fair decision. Currently, this type of arbitration is also known as fair arbitration or arbitration of friendly intermediaries. By authorizing the arbitrators to resolve the dispute fairly, the parties imply that the arbitrators may not only deviate from the rules of law, but not apply them at all, making decisions guided by common sense, practice, customs and considerations of fairness.

The right of arbitrators to resolve a dispute fairly or as friendly intermediaries is enshrined in the 1961 European Convention on International Commercial Arbitration (article VII (2)), the Model Law on International Commercial Arbitration UNCITRAL (article 28, part 3). In addition, arbitrators, in turn, can resolve a dispute fairly or as friendly intermediaries only if the parties have explicitly and unambiguously authorized them to do so.

Thus, arbitration is an alternative way of resolving conflicts, in which the parties entrust the resolution of the dispute to a third independent party - an arbitrator or an arbitration court. In addition, the arbitrator, in turn, makes a reasoned and final decision, which is mandatory for the parties. But first of all, an agreement must be concluded between the parties, which is called an arbitration agreement.

International practice shows that an arbitration agreement is a contract concluded between the parties before the dispute arises, in which they agree to submit to the arbitration process. As stated

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in the UNCITRAL Model Law on International Commercial Arbitration, an arbitration agreement is a contract between the parties in which they undertake to resolve all or certain disputes that may arise between them in connection with any legal relationship, regardless of whether it is contractual. An arbitration agreement may be concluded in the form of an arbitration clause in a contract or in the form of a separate agreement. They could be settled in writing, including in the form of an electronic document signed by the parties, or in the form of an exchange of letters, telegraphic or fax messages, emails or other documents that contain a direct expression of the parties' consent to submit disputes to the arbitration court. The requirement to conclude an arbitration agreement in writing is considered fulfilled if the arbitration agreement is recorded in an electronic message that contains information available for subsequent use. In addition, an arbitration agreement is considered concluded in writing if it is concluded by exchanging a statement of claim and a response to the claim, in which one of the parties claims the existence of an agreement, and the other does not object to it. A reference in the contract to any document containing an arbitration clause is considered an arbitration agreement in writing if this reference makes the said clause part of the contract. The content of the arbitration agreement must contain the necessary elements to ensure its legal binding. This includes the identification of the parties, a clear definition of the disputes to be resolved, the choice of the arbitral tribunal or arbitrator, the applicable law, the place of arbitration and the language in which the process will be conducted.

The arbitration agreement is of great importance for business and international relations, as it allows the parties to choose a dispute resolution method independent of state justice. This helps to speed up the dispute resolution process and increase the effectiveness of justice. Arbitration agreements have a number of advantages over litigation. Firstly, arbitration proceedings are usually conducted faster and cheaper than court proceedings. Secondly, arbitration proceedings are conducted in confidence, which may be important for parties who want to keep their cases confidential. Third, arbitration proceedings are usually conducted according to rules that the parties can agree on, which can lead to a fairer and more effective dispute resolution.

The arbitration agreement plays an important role in resolving disputes between the parties. Its advantages include the independence of the resolution, the speed and cost-effectiveness of the process, as well as the possibility of international application. However, for the successful execution of the arbitration agreement, it is necessary to strictly comply with its terms and, if necessary, apply to national courts.

At the same time, arbitration agreements can be challenged in court. The grounds for challenging the arbitration agreement include the following:

- absence of a written form of the arbitration agreement;
- absence of the parties' signature on the arbitration agreement;
- absence of an indication of an arbitration clause in the arbitration agreement;
- the dispute does not fall within the jurisdiction of the arbitration court;
- the parties had no right to conclude an arbitration agreement;
- the arbitration agreement was concluded under the influence of deception or violence.

If the arbitration agreement is valid, the arbitration court will have exclusive jurisdiction to resolve the dispute. This means that the court will not have the right to consider the dispute if the parties have concluded an arbitration agreement.

What comes to the types of arbitration agreements, Sergeeva M.R. in her article "Arbitration

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agreement and the competence of international commercial arbitration", identifies three types of arbitration agreements, such as an arbitration agreement, an arbitration clause and an arbitration record. We will consider in detail all aspects concerning the arbitration agreement:

1) An arbitration agreement is an agreement between the parties in which they undertake to resolve any disputes that may arise in the future between them by arbitration.

2) An arbitration clause is a condition in a contract in which the parties undertake to resolve any disputes that may arise in connection with this contract by arbitration.

3) An arbitration record is an agreement between the parties in which they undertake to resolve a dispute that has already arisen between them through arbitration.

According to the number of parties, arbitration agreements are divided into:

1) Bilateral arbitration agreements are agreements concluded between two parties.

2) Multilateral arbitration agreements are agreements concluded between more than two parties.

According to the subject of the dispute, arbitration agreements are divided into:

1) General arbitration agreements are agreements that cover all disputes arising out of or in connection with the contract.

2) Special arbitration agreements are agreements that cover only certain disputes arising out of or in connection with the contract.

Enforcement of arbitral awards: problems and ways to solve them

The arbitration award is the final document that is issued by the arbitration court based on the results of the consideration of the arbitration case. The execution of an arbitration award is an important stage after its issuance. The decision of the arbitration court is binding on the parties and is subject to immediate execution. The parties must comply with the terms of the decision, including the payment of damages or other payments.

However, despite the fact that the enforcement of arbitral awards is one of the most important functions of arbitration courts, this function is not always performed properly. In this regard, in recent years there has been an increase in the number of unfulfilled arbitral awards.

Based on the above, we list several reasons that may be the basis for non- enforcement of arbitral awards:

1) unfair behavior of the parties. In some cases, the parties who lost the case intentionally evade the execution of the arbitration court's decision. To do this, they can use various methods, such as closing or changing a legal entity, transferring property to hard-to-reach places, etc.

2) inefficiency of the system of execution of court decisions. The system of execution of court decisions in world practice is quite complex and confusing. This complicates the process of enforcement of decisions of arbitration courts.

3) insufficient qualifications and motivation of bailiffs. Bailiffs, as a rule, have low qualifications and motivation. This leads to the fact that they do not always effectively execute the decisions of arbitration courts.

Also, to solve the problems of enforcement of arbitral awards, the following measures should be taken:

1) to tighten the responsibility for non-enforcement of arbitral awards. It is necessary to increase the amount of fines for non-enforcement of arbitral awards, as well as to introduce criminal liability for malicious non-enforcement of arbitral awards.

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2) simplify the system of execution of court decisions. It is necessary to amend the legislation aimed at simplifying the system of execution of court decisions. This will speed up and reduce the cost of the process of enforcement of decisions of arbitration courts.

3) to improve the qualifications and motivation of bailiffs. It is necessary to develop professional development programs for bailiffs, as well as introduce motivation mechanisms aimed at improving the efficiency of their work.

4) Create a unified register of enforcement proceedings. This will allow bailiffs to monitor the progress of enforcement proceedings more effectively.

5) Develop mechanisms for simplified enforcement of decisions of arbitration courts. This will speed up and reduce the cost of the process of enforcement of decisions of arbitration courts.

6) Establish special deadlines for the execution of arbitral awards. This will reduce the deadlines for the execution of decisions of arbitration courts and increase their efficiency.

All these measures contribute to the further development of arbitration legislation in the international arena, as well as the development of this law in the Republic of Uzbekistan.

Since 2016, large–scale reforms in the field of international arbitration have been carried out in Uzbekistan, which resulted in the establishment of the Tashkent International Arbitration Center (hereinafter - TIAC, Center) at the Chamber of Commerce and Industry of the Republic of Uzbekistan, as well as the adoption of

Law No. LRU-674 of 16.02.2021 "On International Commercial Arbitration". In 2018, President of the Republic of Uzbekistan Shavkat Mirziyoyev signed a decree on the establishment of the Tashkent International Arbitration Center (TIAC) at the Chamber of Commerce and Industry. The Tashkent International Arbitration Center (TIAC), established at the Chamber of Commerce and Industry of Uzbekistan, is a non-governmental non-profit organization that is designed to resolve disputes between commercial organizations from different countries, including foreign investors. The main tasks of TIAC are:

- dispute resolution between commercial organizations from different countries. The Center considers disputes related to any civil law relations, including investments, intellectual property and block-chain technologies.
- development and improvement of dispute resolution mechanisms. The Center strives to improve the efficiency and quality of international arbitration, as well as to expand the possibilities of alternative dispute resolution methods.
- cooperation with leading foreign arbitrations will allow TIAC to exchange experience and knowledge with other reputable centers. This will contribute to improving the quality of TIAC's work and strengthening its position at the international level.
- training and advanced training of specialists in the field of international arbitration. TIAC will conduct training and professional development activities for specialists, as well as promote scientific research in this area.
- provision of consulting services to companies in the field of dispute prevention. TIAC provides advice to companies, including foreign investors, on investment-related issues to help them avoid disputes.

The establishment of the Tashkent International Arbitration Center is an important step in the development of international arbitration in Uzbekistan. The Center is intended to become an authoritative and effective body for resolving disputes between commercial organizations from

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different countries.

TIAC handles disputes between parties with commercial ties to Uzbekistan or other countries. Disputes may be either contractual or non-contractual. TIAC is governed by its own Arbitration Rules, which are based on the ICC Arbitration Rules. The center consists of an odd number of arbitrators who are appointed by the parties to the dispute or by the arbitral tribunal. The arbitrators shall be independent and impartial. TIAC's decisions are final and enforceable in accordance with the laws of the Republic of Uzbekistan. In short, TIAC is a reputable arbitration institution that offers parties effective and fair ways to resolve disputes. For example, parties can choose a neutral arbitrator to hear their dispute, and arbitration proceedings take place in a confidential environment.

In the Republic of Uzbekistan, the decisions of the arbitration court are subject to enforcement in accordance with the legislation of Uzbekistan. The parties are free to choose the place of arbitration, the language of arbitration and the applicable law, and the arbitration proceedings are conducted in accordance with the principles of confidentiality and economy.

In general, the situation with the arbitration agreement and the enforcement of arbitral awards is favorable today. Arbitration is a widely recognized and effective way to resolve disputes between parties from different countries. However, despite this, there are some problems that may hinder the effective resolution of disputes through arbitration. Solving these problems will contribute to the further development of arbitration as an effective way to resolve disputes. The article also listed several points that contribute to further improving the efficiency of the arbitration process. These measures are aimed at improving the efficiency of the arbitration process and ensuring the proper execution of arbitral awards. Their implementation will make arbitration more accessible and attractive for participants in international commercial relations.

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